

# University of Newcastle Act 1989 No 68

[1989-68]



New South Wales

## Status Information

### Currency of version

Historical version for 5 July 2013 to 25 August 2014 (accessed 27 June 2024 at 0:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Universities Legislation Amendment \(Regulatory Reforms\) Bill 2014](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 19 March 2014

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# University of Newcastle Act 1989 No 68



New South Wales

An Act with respect to the constitution and functions of the University of Newcastle; to repeal the *University of Newcastle Act 1964*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *University of Newcastle Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**commercial functions** of the University means the commercial functions described in section 6 (3) (a).

**Council** means the Council of the University.

**University** means the University of Newcastle established by this Act.

(2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded:

(a) by the University,

(b) by or on behalf of any former institution that has, pursuant to this Act or to the *Higher Education (Amalgamation) Act 1989* or otherwise, become a part of the University, or

(c) by any predecessor of any such institution.

(3) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(4) Notes included in this Act do not form part of this Act.

## **Part 2 Constitution and functions of the University**

### **4 Establishment of University**

A University, consisting of:

- (a) a Council,
- (b) Convocation,
- (c) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
- (d) the graduates and students of the University,

is established by this Act.

### **5 Incorporation of University**

The University is a body corporate under the name of the University of Newcastle.

### **6 Object and functions of University**

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
  - (a) the provision of facilities for education and research of university standard, having particular regard to the needs of the Hunter region, the Central Coast and surrounding areas,
  - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
  - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
  - (d) the participation in public discourse,
  - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,

- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

(3) The University has other functions as follows:

- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
- (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
- (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
- (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.

(4) The functions of the University may be exercised within or outside the State, including outside Australia.

## **7 Facilities for students, staff and others**

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

# **Part 3 The Council, authorities and officers of the University**

## **Division 1 The Council**

### **8 Definitions**

In this Division:

***appointed member*** means a Council appointed member or a Ministerially appointed member.

**categories of members**—see section 8B (3).

**constitution rules**—see section 8B (4).

**Council appointed member**—see section 8F.

**elected member**—see section 8D.

**external person** means a person other than a member of the academic or non-academic staff of the University or an undergraduate or graduate student of the University.

**graduate member**—see section 8E.

**Ministerially appointed member**—see section 8G.

**official member**—see section 8H.

## 8A Council

- (1) There is to be a Council of the University.
- (2) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act.
- (3) Schedule 1 has effect in relation to the members and procedure of the Council.

## 8B Size of Council

- (1) The Council is to consist of a minimum of 11, and a maximum of 22, members.
- (2) The total number of members is to be determined from time to time by a resolution passed by at least two-thirds of the members of the Council (the **total number of members**).
- (3) The Council is to include the following categories of members:
  - (a) official members,
  - (b) elected members,
  - (c) Council appointed members,
  - (d) Ministerially appointed members.
- (4) Subject to subsection (6), the number of members (other than official members) in each category is to be prescribed by rules made by the Council (in this Division called the **constitution rules**).
- (5) A rule for the purposes of subsection (4) may be made only by a resolution passed by at least two-thirds of the members of the Council.



(6) The majority of the total number of members must be external persons.

**Note—**

Depending on the circumstances, the Chancellor may be counted as an external person for the purposes of subsection (6).

(7) The number of members in any one category of members must not at any time constitute a majority of the total number of members.

(8) The Council must give the Minister written notice of the terms of any resolution passed under this section within 7 days after it is passed.

**8C Qualifications and experience of members**

(1) Of the members of the Council:

(a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and

(b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).

(2) All appointed members must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.

**8D Elected staff and student members**

(1) The constitution rules are to prescribe the number of persons to comprise the following categories of members:

(a) elected (academic staff) members,

(b) elected (non-academic staff) members,

(c) elected (student) members.

**Note—**

There may also be elected (graduate) members if the constitution rules so provide—see section 8E.

(2) Of the members elected under this section:

(a) at least one must be a member of the academic staff of the University elected by members of the academic staff, and

(b) at least one must be a member of the non-academic staff of the University elected by members of the non-academic staff, and

(c) at least one must be a student of the University who:

- (i) is not employed on a full-time basis (or on such other basis as the by-laws may prescribe) as a member of the academic or non-academic staff of the University, and
  - (ii) is elected by the students of the University.
- (3) The members referred to in subsection (2) (a)–(c) are:
- (a) to have such qualifications as may be prescribed by the by-laws, and
  - (b) to be elected in the manner prescribed by the by-laws.

#### **8E Graduate members**

- (1) At least one member of the Council, or such greater number of members as may be prescribed by the constitution rules, must be external persons who are graduates of the University.
- (2) The constitution rules may provide for the persons referred to in subsection (1) to become members of the Council in any one or more (or combination) of the following ways:
  - (a) by election as elected (graduate) members in the manner prescribed by the by-laws,
  - (b) by appointment by the Council under section 8F,
  - (c) by appointment by the Minister under section 8G.
- (3) A rule providing for the appointment of a member by the Minister under section 8G may be made only with the approval of the Minister.
- (4) The members referred to in subsection (1) are to have such qualifications (if any) as may be prescribed by the by-laws.

#### **8F Council appointed members**

- (1) The Council may appoint as members of the Council such number of external persons as is prescribed by the constitution rules for the category of Council appointed members.
- (2) The by-laws are to prescribe the procedures for the nomination of persons for appointment under this section.

#### **8G Ministerially appointed members**

- (1) The Minister may appoint as members of the Council 2 external persons, or such greater number of external persons (not exceeding 6) as is prescribed by the constitution rules for the category of Ministerially appointed members.

- (2) The Minister may not appoint a member of the Parliament of New South Wales, the Parliament of the Commonwealth or another State or the Legislative Assembly of a Territory as a Ministerially appointed member.
- (3) Without limiting the discretion of the Minister under subsection (1), the Council may suggest to the Minister persons who the Council considers would be appropriate for appointment by the Minister.

#### **8H Official members**

The **official members** of the Council are the following:

- (a) the Chancellor,
- (b) the Vice-Chancellor,
- (c) the person for the time being holding the office of President of the Academic Senate (if the person is not the Vice-Chancellor) or of Deputy President of the Academic Senate (if the President is the Vice-Chancellor).

#### **9 Term of office**

- (1) Subject to this Act, a member of the Council holds office as follows:
  - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
  - (b) in the case of a Ministerially appointed member or Council appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
  - (c) in the case of an elected member other than an elected (graduate) member, for such term (not exceeding 2 years) as may be prescribed by the by-laws,
  - (d) in the case of an elected (graduate) member, for such term (not exceeding 4 years) as may be prescribed by the by-laws.
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
  - (a) by the Council, when making the by-laws required under this section, and
  - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

### **Division 2 Other officers and bodies**

## **10 Chancellor**

- (1) The Council shall:
  - (a) at its first meeting or as soon as practicable thereafter, and
  - (b) whenever a vacancy in the office of Chancellor occurs,elect a person (whether or not a member of the Council) to be Chancellor of the University.
- (2) The Chancellor, unless he or she sooner resigns or is removed from office as Chancellor or ceases to be a member of the Council, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

## **11 Deputy Chancellor**

- (1) The Council shall:
  - (a) at its first meeting or as soon as practicable thereafter, and
  - (b) whenever a vacancy in the office of Deputy Chancellor occurs,elect one of its members to be Deputy Chancellor of the University.
- (2) The Deputy Chancellor, unless he or she sooner resigns or is removed from office as Deputy Chancellor or ceases to be a member of the Council, holds office for 2 years from the date of election and on such conditions as may be prescribed by the by-laws.
- (3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

## **11A Removal from office of Chancellor or Deputy Chancellor**

- (1) The Council may remove the Chancellor or Deputy Chancellor from office by a no confidence motion passed in accordance with this section if it considers it in the best interests of the University to do so.
- (2) The removal from office may be effected only if the no confidence motion is supported by at least a two-thirds majority of the total number of members for the time being of the Council at two consecutive ordinary meetings of the Council.
- (3) The Chancellor or Deputy Chancellor may be removed from office under this section despite section 21G (6) and without the need to establish any breach of duty.
- (4) This section applies to the Chancellor and Deputy Chancellor holding office on the

commencement of this section and all subsequent holders of those offices.

## **12 Vice-Chancellor**

- (1) The Council shall, whenever a vacancy in the office of Vice-Chancellor occurs, appoint a person (whether a member of the Council or not) to be Vice-Chancellor of the University.
- (2) The Vice-Chancellor holds office for such period, and on such conditions, as the Council determines.
- (3) The Vice-Chancellor is the principal executive officer of the University and has such functions as are conferred or imposed on the Vice-Chancellor by or under this or any other Act.

## **13 Visitor**

- (1) The Governor is the Visitor of the University but has ceremonial functions only.
- (2) Accordingly, the Visitor has no functions or jurisdiction with respect to the resolution of disputes or any other matter concerning the affairs of the University (other than a matter involving the exercise of ceremonial functions only).

## **14 Convocation**

- (1) Convocation shall consist of:
  - (a) the members and past members of the Council,
  - (b) the graduates of the University,
  - (c) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
  - (d) such graduates of other universities, or other persons, as are, in accordance with the by-laws, admitted as members of Convocation.
- (2) The first meeting of Convocation shall be convened by the Vice-Chancellor.
- (3) Subject to the by-laws, meetings of Convocation shall be convened and the business at the meetings shall be as determined by Convocation.
- (4) A quorum at any meeting of Convocation shall be such number of members as may be prescribed by the by-laws.
- (5) Convocation has such functions as may be prescribed by the by-laws.
- (6) The Council may establish a Standing Committee and such other committees of Convocation as it considers necessary.

## **15 Academic Senate**

- (1) There shall be an Academic Senate of the University, consisting of:
  - (a) the Vice-Chancellor, and
  - (b) such other persons as the Council may, in accordance with the by-laws, determine.
- (2) Subject to subsection (1), the constitution and functions of the Academic Senate shall be as prescribed by the by-laws.

## **Part 4 Functions of Council**

### **Division 1 General**

#### **16 Functions of Council**

- (1A) The Council:
  - (a) acts for and on behalf of the University in the exercise of the University's functions, and
  - (b) has the control and management of the affairs and concerns of the University, and
  - (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.
- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
  - (a) to monitor the performance of the Vice-Chancellor, and
  - (b) to oversee the University's performance, and
  - (c) to oversee the academic activities of the University, and
  - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
  - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
  - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
  - (g) to approve significant University commercial activities (within the meaning of section 21A), and

- (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
  - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
  - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
  - (k) to adopt a statement of its primary responsibilities, and
  - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.
- (1) Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:
- (a) provide such courses, and confer such degrees and award such diplomas and other certificates, as it thinks fit,
  - (b) appoint and terminate the appointment of academic and other staff of the University,
  - (c) (Repealed)
  - (d) borrow money within such limits, to such extent and on such conditions as to security or otherwise as the Governor on the recommendation of the Treasurer may approve,
  - (e) invest any funds belonging to or vested in the University,
  - (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),
  - (g) (Repealed)
  - (h) establish and maintain branches and colleges of the University, within the University and elsewhere,
  - (i) make loans and grants to students, and
  - (j) impose fees, charges and fines.
- (2) The functions of the Council under this section shall be exercised subject to the by-laws.
- (3) Schedule 2 has effect in relation to the investment of funds by the Council.

**Note—**

The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

**16A Controlled entities**

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.
- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) Nothing in the preceding subsections confers power on a controlled entity to engage in any activity.
- (5) Nothing in the preceding subsections affects any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (5A) The Council is, as far as is reasonably practicable, to ensure:
  - (a) that the governing bodies of controlled entities:
    - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
    - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
    - (iii) adopt and evaluate their own governance principles, and
    - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
  - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

- (6) In this section:

**controlled entity** means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A)



or 45A (1A) of the *Public Finance and Audit Act 1983*.

### **17 Delegation by Council**

The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any member or committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the by-laws.

### **17A Operation of certain Acts**

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

### **17B Recommendations of Ombudsman or Auditor-General**

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

## **Division 2 Property**

### **18 Powers of Council relating to property**

- (1) The Council:
  - (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise, and
  - (b) has the control and management of all property at any time vested in or acquired by the University, and may, subject to this section, dispose of property in the name and on behalf of the University.
- (2) The Council shall not, except with the approval of the Minister, alienate, mortgage, charge or demise any lands of the University.
- (3) Notwithstanding subsection (2), the Council may, without the approval of the Minister, lease any lands of the University if:
  - (a) the term of the lease does not exceed 21 years, and

- (b) the Council is satisfied that it is to the benefit of the University, whether from a financial or educational standpoint or otherwise, that the lease be entered into.
- (4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:
  - (a) shall be for a term not exceeding 99 years, and
  - (b) shall be at a nominal rent, and
  - (c) shall contain a condition that the lease shall not be assigned and such other conditions as the Council thinks fit.
- (5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

#### **19 Powers of Council over certain property vested in Crown**

- (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).
- (3) Notwithstanding subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.
- (4) Such a lease:
  - (a) shall be for a term not exceeding 21 years, and
  - (b) shall contain a condition that the lease shall not be assigned and such other conditions as the Council thinks fit.
- (5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

#### **20 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may do so only if the University:

- (a) applies to the Minister for acquisition of the land, and
  - (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) For the purposes of the *Public Works Act 1912*, any acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this section.

## 21 Grant or transfer of certain land to University

- (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:
- (a) if it is vested in the Crown—be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Natural Resources thinks fit, or
  - (b) if it is vested in a Minister of the Crown—be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.
- (2) A conveyance, transfer or other instrument executed for the purposes of this section:
- (a) is not liable to stamp duty under the *Stamp Duties Act 1920*, and
  - (b) may be registered under any Act without fee.

## Division 3 Commercial activities

### 21A Definitions

In this Division:

**the Guidelines** means the guidelines approved for the time being under section 21B.

**University commercial activity** means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

### **21B Guidelines for commercial activities**

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
  - (a) requiring feasibility and due diligence assessment,
  - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
  - (c) requiring the undertaking of risk assessment and risk management measures,
  - (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
  - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
  - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
- (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
- (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

### **21C Register of commercial activities**

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
  - (a) a description of the activity,
  - (b) details of all parties who participate in the activity,

- (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
  - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
  - (e) such other details as the Guidelines may require.
- (2) The Guidelines may make provision for the following:
- (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
  - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
  - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

#### **21D Reports to Minister on commercial activities**

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

#### **21E Referral of matters to Ombudsman or Auditor-General**

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the [Ombudsman Act 1974](#).

### **Part 4A Duties of Council members**

#### **21F Duties of Council members**

The members of the Council have the duties set out in Schedule 2A.

#### **21G Removal from office for breach of duty**

- (1) The Council may remove a member of the Council from office for breach of a duty set

out in Schedule 2A.

- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

## **Part 5 General**

### **22 Advance by Treasurer**

The Treasurer may, with the approval of the Governor, advance to the Council money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed upon.

#### **22A Stamp duty exemption**

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

### **23 Financial year**

The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing on 1 January, or

(b) the period prescribed by the by-laws for the purposes of this section.

#### **24 No religious test or political discrimination**

A person shall not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of the University.

#### **25 Exemption from membership of body corporate or Convocation**

A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Council, on grounds of conscience, from membership of the body corporate of the University or of Convocation, or both.

#### **26 Re-appointment or re-election**

Nothing in this Act prevents any person from being re-appointed or re-elected to any office under this Act if the person is eligible and otherwise qualified to hold that office.

#### **27 Seal of University**

The seal of the University shall be kept in such custody as the Council may direct and shall only be affixed to a document pursuant to a resolution of the Council.

**Note—**

Documents requiring authentication may be sufficiently authenticated without a seal in accordance with section 50 (3) of the [Interpretation Act 1987](#).

#### **28 By-laws**

(1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the management, good government and discipline of the University,
- (b) the method of election of members of the Council who are to be elected,
- (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Senate,
- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Senate,
- (e) the functions of the presiding member of the Council or Academic Senate,
- (f) the conduct and record of business of the Council or Academic Senate,
- (g) the appointment of committees of the Council or Academic Senate,

- (h) the quorum and functions of committees of the Council or Academic Senate,
- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor,
- (j) the tenure of office, stipend and functions of the Vice-Chancellor,
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise,
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University,
- (m) admission to, enrolment in and exclusion from courses of studies,
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of:
  - (i) entrance to the University,
  - (ii) tuition,
  - (iii) lectures and classes,
  - (iv) examinations,
  - (v) residence,
  - (vi) the conferring of degrees and the awarding of diplomas and other certificates,
  - (vii) the provision of amenities and services, whether or not of an academic nature, and
  - (viii) an organisation of students or of students and other persons,
- (o) the exemption from, or deferment of, payment of fees and charges, including fines,
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements,
- (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours,
- (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes,
- (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting



to graduates of such universities or institutions, or to other persons, of degrees or diplomas without examination,

- (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges,
- (u) the affiliation with the University of any educational or research establishment,
- (v) the creation of faculties, schools, departments, centres or other entities within the University,
- (w) the provision of schemes of superannuation for the officers and employees of the University,
- (x) the form and use of academic costume,
- (y) the form and use of an emblem of the University or of any body within or associated with the University,
- (z) the use of the seal of the University, and
- (aa) the making, publication and inspection of rules.

(2) A by-law has no effect unless it has been approved by the Governor.

## **29 Rules**

- (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for or with respect to any or all of the matters for or with respect to which by-laws may be made, except the matters referred to in sections 3 (2), 8B, 8D, 8E, 8F, 8G, 9 (1) (c) and (d), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clause 3 of Schedule 1.
- (2) A rule:
  - (a) has the same force and effect as a by-law, and
  - (b) may, from time to time, be amended or repealed by the Council (whether or not the Council is empowered to make such a rule), or by the authority or officer of the University for the time being empowered to make such a rule, and
  - (c) takes effect on the day on which it is published or on such later day as may be specified in the rule, and
  - (d) must indicate the authority or officer who made the rule and that it is made under this section.
- (3) In the event of an inconsistency between a by-law and a rule, the by-law prevails to

the extent of the inconsistency.

- (4) The fact that a provision of this Act specifically provides for a matter to be the subject of by-laws (without mention of rules) does not prevent the matter from being the subject of rules made in accordance with this section.

### **30 Recovery of charges, fees and other money**

Any charge, fee or money due to the University under this Act may be recovered as a debt in any court of competent jurisdiction.

### **31 Repeal etc**

- (1) The *University of Newcastle Act 1964* is repealed.
- (2) The Council of the University of Newcastle, as constituted immediately before the repeal of the *University of Newcastle Act 1964*, is dissolved.
- (3) The persons holding office as members of the Council, Chancellor and Deputy Chancellor immediately before the repeal of the *University of Newcastle Act 1964* cease to hold office as such on that repeal.

### **32 Savings and transitional provisions**

Schedule 3 has effect.

## **Schedule 1 Provisions relating to members and procedure of the Council**

(Section 9)

### **1 (Repealed)**

### **2 Vacation of office**

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
  - (i) in the case of a member appointed by the Minister, to the Minister, or
  - (ii) in the case of a member appointed by the Council, to the Chancellor, or
  - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his

or her estate for their benefit, or

- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
- (h) is removed from office by the Council pursuant to section 21G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, or a member appointed under section 8F, ceases to be qualified for election or appointment, or
- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
- (l) in the case of a member appointed by the Council, is removed from office by the Council.

### **3 Filling of vacancy in office of member**

- (1) If the office of an appointed or elected member of the Council becomes vacant, a person shall, subject to this Act and the by-laws, be appointed or elected to fill the vacancy.
- (2) The by-laws may provide that, in such circumstances (other than expiration of term of office) as may be prescribed, a person shall be appointed or elected in such manner as may be prescribed instead of in the manner provided for by this Act.

### **4 Committees of the Council**

- (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Council or (subject to any determination of the Council) by the committee.

## **5 Liability of Council members and others**

No matter or thing done or omitted to be done by:

- (a) the University, the Council or a member of the Council, or
- (b) any person acting under the direction of the University or the Council,

shall, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member of the Council or a person so acting personally to any action, liability, claim or demand.

## **6 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act and the by-laws, be as determined by the Council.

### **6A Use of technology**

- (1) Without limiting clause 6, a meeting of the Council may be called or held using any technology consented to by all the members of the Council.
- (2) The consent may be a standing one.
- (3) A member may only withdraw his or her consent a reasonable period before the meeting.
- (4) If the members are not all in attendance at one place and are holding a meeting using technology that permits each member to communicate with other members:
  - (a) the members are, for the purpose of every provision of this Act and by-laws concerning meetings of the Council, taken to be assembled together at a meeting and to be present at that meeting, and
  - (b) all proceedings of those members conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present.

## **7 Presiding member**

- (1) The Chancellor shall preside at all meetings of the Council at which the Chancellor is present.
- (2) At any meeting of the Council at which the Chancellor is not present, the Deputy Chancellor shall preside and, in the absence of both the Chancellor and the Deputy Chancellor, a member elected by and from the members present shall preside.
- (3) Except as provided by subclause (4), at the meetings of a committee constituted by the Council a member appointed by the Council (or, if no member is so appointed,

elected by and from the members present) shall preside.

- (4) At any meeting of a committee constituted by the Council at which the Chancellor is present, the Chancellor is entitled, if he or she so desires, to preside at that meeting.

## **8 Quorum**

At any meeting of the Council, a majority of the total number of members for the time being of the Council constitutes a quorum.

## **9 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

## **10 Remuneration**

The Council may, but need not, provide from time to time for a member of the Council to be paid such remuneration (if any) as is determined by a resolution passed by at least two-thirds of the members of the Council.

# **Schedule 2 Investment**

(Section 16)

## **1 Definition of “funds”**

For the purposes of this Schedule, the funds of the University include funds under the control of the University and real property, securities or other property comprising an investment.

## **2 Investment powers**

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

## **2A Funds managers**

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager

for the University in the Treasurer's approval.

- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

### **3 Investment common funds**

- (1) The Council may establish one or more investment common funds.
- (2) The Council may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the University.
- (3) Subject to subclause (4), the Council must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.
- (4) The Council may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.
- (5) If an investment is brought into an investment common fund:
  - (a) the University is to be taken to hold that investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund, and
  - (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Council at the time it is brought into the common fund, and
  - (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Council to the equity in the common fund of that participating fund at the time of withdrawal.
- (6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

#### **4 Terms of trust to prevail**

In respect of the trust funds of the University:

- (a) the investment powers of the Council, and
  - (b) the power of the Council to bring the trust funds into an investment common fund,
- are subject to any express direction in or express condition of the trust.

### **Schedule 2A Duties of Council members**

(Section 21F)

#### **1 Duty to act in best interests of University**

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

#### **2 Duty to exercise care and diligence**

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

#### **3 Duty not to improperly use position**

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

#### **4 Duty not to improperly use information**

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

#### **5 Disclosure of material interests by Council members**

(1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.

(4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:

(a) be present during any deliberation of the Council with respect to the matter, or

(b) take part in any decision of the Council with respect to the matter.

(5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Council for the purpose of making the determination, or

(b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G or the person's remuneration pursuant to clause 10 of Schedule 1.

(8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.



(9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.

(10) In this clause:

**associate** of a member means any of the following:

- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
- (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
- (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

## Schedule 3 Savings and transitional provisions

(Section 32)

### Part 1A General

#### 1A Savings or transitional regulations

(1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

[University Legislation Amendment Act 2004](#)

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 1 Interim Council**

### **1 Interim Council of the University**

- (1) Pending the commencement of section 9, the Council of the University shall consist of:
  - (a) the Chancellor (if the Chancellor is not otherwise a member of the Council),
  - (b) the Vice-Chancellor,
  - (c) the person for the time being holding the office of:
    - (i) presiding member of the Academic Senate (if that person is not the Vice-Chancellor), or
    - (ii) deputy presiding member of the Academic Senate (if the presiding member is the Vice-Chancellor),
  - (d) the person who held office immediately before the commencement of this clause as the Principal of the New South Wales State Conservatorium of Music (Newcastle Branch),
  - (e) the person who held office immediately before the commencement of this clause as the Principal of the Hunter Institute of Higher Education, and
  - (f) not more than 15 persons appointed by the Minister.
- (2) The members of the Council shall, subject to this Act, hold office until the Council is duly constituted under section 9.
- (3) The first meeting of the Council shall be convened by the first Vice-Chancellor who shall preside at all meetings of the Council until a Chancellor is elected.
- (4) The Council shall make all necessary by-laws and take all necessary steps to ensure, as far as possible, that a Council is duly constituted under section 9 so as to take office within 12 months after the commencement of this clause or within such extended time as is specified in a proclamation at any time during that period of 12 months.
- (5) The provisions of this Act (except clause 1 of Schedule 1) applicable to the Council or the members of the Council apply to the Council as constituted in accordance with this clause or the members holding office under this clause.
- (6) Nothing in this Act prevents the Council from being constituted in accordance with this clause before the commencement of section 4 and, if the Council is so constituted, it may exercise its functions (as far as is practicable) even though the University has not yet been established under this Act.

## **2 Chancellor**

- (1) The Council constituted under this Part shall:
  - (a) at its first meeting or as soon as practicable thereafter, and
  - (b) whenever a vacancy in the office of Chancellor occurs,elect a person (whether or not a member of the Council) to be Chancellor of the University.
- (1A) The Chancellor elected under this clause does not assume office before the commencement of section 4 otherwise than for the purpose of exercising his or her functions as a member of the Council.
- (2) The Chancellor elected under this clause shall, subject to this Act, hold office until a Chancellor is duly elected under section 10.
- (3) Section 10 (1) and (2) do not apply to or in respect of the Chancellor elected under this clause.

## **3 Deputy Chancellor**

- (1) The Council constituted under this Part shall:
  - (a) at its first meeting or as soon as practicable thereafter, and
  - (b) whenever a vacancy in the office of Deputy Chancellor occurs,elect one of its members to be Deputy Chancellor of the University.
- (1A) The Deputy Chancellor elected under this clause does not assume office before the commencement of section 4.
- (2) The Deputy Chancellor elected under this clause shall, subject to this Act, hold office until a Deputy Chancellor is duly elected under section 11.
- (3) Section 11 (1) and (2) do not apply to or in respect of the Deputy Chancellor elected under this clause.

## **4 First Vice-Chancellor**

- (1) The first Vice-Chancellor shall be the person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of Newcastle.
- (2) The first Vice-Chancellor shall be taken to have been appointed for the residue of his or her term of office as Vice-Chancellor immediately before that commencement.
- (3) Section 12 (2) does not apply to or in respect of the first Vice-Chancellor.

## **Part 2 Savings**

### **5 University a continuation of the old University**

The University is a continuation of, and the same legal entity as, the University of Newcastle established by the *University of Newcastle Act 1964*.

### **6 Convocation**

(1) Convocation includes:

- (a) past members of the governing body of any of the former institutions that have, pursuant to this Act or to the *Higher Education (Amalgamation) Act 1989* or otherwise, become a part of the University, and
- (b) graduates of any of those institutions.

(2) In this clause, a reference to a former institution includes a reference to any predecessor of the institution.

### **7 Savings of delegations**

Any delegation made or taken to have been made by the Council of the University of Newcastle under the *University of Newcastle Act 1964* shall be taken to be a delegation under this Act by the Council.

### **8 Existing investments**

Nothing in this Act affects the validity of any investment made on behalf of the University before the commencement of Schedule 2.

#### **8A Conduct of elections etc**

(1) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if:

- (a) the whole of this Act, and
  - (b) sections 8 and 11 of the *Higher Education (Amalgamation) Act 1989*,
- were in force.

(2) A member who is elected or appointed to the Council under this clause does not assume office before the commencement of section 9.

#### **8B Control and direction**

The governing bodies of:

- (a) the University of Newcastle established under the *University of Newcastle Act 1964*,

(b) the Conservatorium of Music (Newcastle branch) within the meaning of the *Higher Education (Amalgamation) Act 1989*, and

(c) the Hunter Institute of Higher Education,

are subject to the control and direction of the Council pending the dissolution of those bodies.

## **9 By-laws**

The University of Newcastle By-laws:

(a) continue in force as if they had been made by the Council, and

(b) may be amended and revoked accordingly.

## **10 Visitor**

(1) Section 13 (2) extends to disputes and other matters arising before the commencement of this clause.

(2) However, if an inquiry by or at the direction of the Visitor into a dispute or other matter has commenced or been completed before the commencement of this clause, the dispute or other matter is to be dealt with and determined as if the *University Legislation (Amendment) Act 1994* had not been enacted.

## **11 Effect of the *University Legislation (Amendment) Act 1994* on existing by-laws and rules**

(1) Any by-law made or taken to have been made under this Act and in force immediately before the commencement of this clause is taken to have been made under this Act as amended by the *University Legislation (Amendment) Act 1994*, but only to the extent to which it could have been made under this Act if this Act had been so amended at the time the by-law was made.

(2) Any rule in force immediately before the commencement of this clause is taken to have been made under this Act as amended by the *University Legislation (Amendment) Act 1994*, but only to the extent to which it could have been made under this Act if this Act had been so amended at the time the rule was made.

## **12 Elected members**

If, on the commencement of the amendments to section 9 made by Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1999*, the membership of the Council fails to comply with section 9 (5) as so amended, there is for the purposes of clause 3 (1) of Schedule 1 to this Act taken to be a vacancy in the office of the member in respect of which the failure exists.

## **Part 3 Provisions consequent on enactment of *Universities Legislation***

## Amendment (Financial and Other Powers) Act 2001

### 13 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

### 14 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

## Part 4 Provisions consequent on enactment of University Legislation Amendment Act 2004

### 15 Definitions

In this Part:

**amending Act** means the *University Legislation Amendment Act 2004*.

**former section 9** means section 9 as in force immediately before its substitution by the amending Act.

**new section 9** means section 9 as substituted by the amending Act.

**relevant day** means the date of assent to the amending Act.

### 16 General

The provisions of this Part are subject to any regulations made under clause 1A.

### 17 Constitution of Council

(1) Subject to this Act, on the relevant day:

- (a) a person holding office under former section 9 (2) ceases to hold that office, and
- (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and

- (c) a person holding office under former section 9 (5) (a), (b), (c), (c1) or (d) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (2) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (3) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (4) For the purposes of making the by-laws referred to in subclause (3), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (5) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (6) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
- (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
  - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
  - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
  - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
  - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with Convocation.
- (7) Subject to this Act, a member appointed under subclause (6) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (8) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
  - (b) in the case of a member appointed under subclause (6), of the term of office of

the member's predecessor,

the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

- (9) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (10) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
  - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

#### **18 Maximum incumbency for Council members**

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 17 (1) (b) or (c) or (8) of this Schedule.

#### **19 Application of section 21G**

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

#### **20 Continuation of Council**

No amendment made by the amending Act affects the continuity of the Council.

### **Part 5 Provisions consequent on adoption of standard governing body provisions**

#### **21 Adoption of standard governing body provisions under the [Universities Governing Bodies Act 2011](#)**

- (1) Terms used in this clause and also in the [Universities Governing Bodies Act 2011](#) have the same meanings in this clause as they have in that Act.
- (2) In this clause:

***amended provisions*** means the provisions of this Act and the by-laws amended as



set out in the *Universities Governing Bodies (University of Newcastle) Order 2012* and the constitution rules as prescribed in the resolution of the Council referred to in that Order.

**existing appointed member** of the Council means a member of the Council as constituted immediately before the governing body resolution was passed who was appointed by the Minister or the Council.

**governing body resolution** means the governing body resolution passed by the Council on 24 August 2012.

- (3) An existing appointed member of the Council holds office as an appointed member of the Council until 1 January 2013 (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office).
- (4) The provisions of this Act, and the by-laws, as in force immediately before the commencement of the *Universities Governing Bodies (University of Newcastle) Order 2012*, continue to apply in respect of existing appointed members until 1 January 2013.
- (5) The proportion of the Council and Ministerially appointed members of the Council specified under the constitution rules is, until 1 January 2013, taken to be the number of existing members in those categories at any particular time.
- (5A) Despite subclause (3), if the term for which an existing appointed member was appointed is to expire after 1 January 2013 the member's term of office ends on the expiry of the term for which the member was last appointed.
- (6) For the purposes only of enabling the Council to be duly constituted on or after 1 January 2013 elections for each of the categories of elected members may be conducted as if the amended provisions were in force.
- (7) A person who, immediately before 1 January 2013, held office as an elected (academic staff) member or elected (non-academic staff) member of the Council continues to hold office after that date.
- (8) Subclause (6) has effect despite any requirements of the amended provisions that elections be held at a specified time.