

Universities Governing Bodies Act 2011 No 51

[2011-51]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act 2016 No 27](#) (not commenced — to commence on 8.7.2016)

Authorisation

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Universities Governing Bodies Act 2011 No 51



New South Wales

An Act to enable the governing bodies of universities to progressively adopt standard provisions allowing greater flexibility in their size and composition; and for other purposes.

1 Name of Act

This Act is the *Universities Governing Bodies Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

governing body of a University means:

- (a) except as provided by paragraphs (b) and (c), the Council of the University, or
- (b) the Senate of the University of Sydney, or
- (c) the Board of Trustees of the University of Western Sydney.

governing body resolution—see section 4 (1).

replaceable provisions, in relation to a University Act, means the following:

- (a) for Charles Sturt University—sections 8A and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (b) for Macquarie University—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (c) for Southern Cross University—sections 9 and 10 of, and clause 1 of Schedule 1 to, the University Act,
- (d) for the University of New England—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (e) for the University of New South Wales—sections 8 and 9 of, and clause 1 of

Schedule 1 to, the University Act,

- (f) for the University of Newcastle—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (g) for the University of Sydney—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (h) for the University of Technology Sydney—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act,
- (i) for the University of Western Sydney—sections 10 and 12 of, and clause 1 of Schedule 1 to, the University Act,
- (j) for the University of Wollongong—sections 8 and 9 of, and clause 1 of Schedule 1 to, the University Act.

rule-making power, in relation to a University Act, means the following:

- (a) for Charles Sturt University—section 32 (1) of the University Act,
- (b) for Macquarie University—section 29 (1) of the University Act,
- (c) for Southern Cross University—section 30 (1) of the University Act,
- (d) for the University of New England—section 29 (1) of the University Act,
- (e) for the University of New South Wales—section 28 (1) of the University Act,
- (f) for the University of Newcastle—section 29 (1) of the University Act,
- (g) for the University of Sydney—section 37 (1) of the University Act,
- (h) for the University of Technology Sydney—section 29 (1) of the University Act,
- (i) for the University of Western Sydney—section 41 (1) of the University Act,
- (j) for the University of Wollongong—section 29 (1) of the University Act.

standard governing body provisions means the provisions set out in Schedule 1.

University means the following:

- (a) Charles Sturt University,
- (b) Macquarie University,
- (c) Southern Cross University,
- (d) University of New England,

- (e) University of New South Wales,
- (f) University of Newcastle,
- (g) University of Sydney,
- (h) University of Technology Sydney,
- (i) University of Western Sydney,
- (j) University of Wollongong.

University Act, in relation to a University, means the Act establishing the University.

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

4 Adoption by resolution of the standard governing body provisions

- (1) The governing body of a University may, by a resolution passed by at least two-thirds of the members of the governing body (a **governing body resolution**):
 - (a) displace the replaceable provisions of its University Act and adopt instead the standard governing body provisions, and
 - (b) determine, for the purposes of the standard governing body provisions, the total number of members the governing body is to have, and the total number of members in each category of those members, when the governing body resolution takes effect.
- (2) The governing body of the University is to give the Minister written notice of the terms of the governing body resolution.
- (3) The governing body resolution has effect:
 - (a) on the day an order made by the Minister, at the request of the governing body of the University, giving notice of the terms of the resolution and setting out the resultant amendments to the University Act and by-laws specified in subsection (4) (b) and (c), respectively, is published on the NSW legislation website, or
 - (b) on a later day specified in, or determined in accordance with, such an order published on that website.
- (4) On the day on which the governing body resolution takes effect:
 - (a) the replaceable provisions of the University Act cease to have effect, and
 - (b) the University Act is amended as set out in the order made by the Minister:
 - (i) by omitting the replaceable provisions and inserting instead the standard governing body provisions (renumbered with cross-references updated

consequentially, and with references to the “governing body” being replaced with references to the “Council”, “Board” or “Senate”, references to “non-academic staff” replaced with references to “general staff” and references to the “Academic Board” replaced with references to the “Academic Senate”, as appropriate), and

(ii) to make any other necessary consequential changes, and

(c) any by-laws made under the University Act are amended as set out in that order to make any necessary consequential changes resulting from the omission of the replaceable provisions and insertion of the standard governing body provisions, and

(d) the rule-making power for the University is amended as set out in that order by omitting so much of any matter designating a subsection, paragraph, clause or other portion of a replaceable provision omitted by the operation of paragraph (b) and making any necessary consequential changes resulting from the omission.

(5) An order made by the Minister under this section may provide for the commencement of provisions of a savings or transitional nature before the day on which the governing body resolution takes effect.

5 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act 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.

6 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Standard governing body provisions

Incorporation instruction—

Each reference in this Schedule to the “governing body” is to be read as a reference to the “Council”, “Board” or “Senate” as appropriate and, accordingly, any amendments to a University Act made by the operation of section 4 are to be made to reflect the correct title of the governing body affected by the amendments. Similarly, references to the “non-academic staff” are to be replaced with references to the “general staff”, and a reference to the “Academic Senate” (instead of “Academic Board”) inserted, if appropriate. Each section is to be renumbered (with cross-references updated consequentially) as appropriate on

incorporation in the University Act concerned.

Division 1 The **[governing body]**

1 Definitions

In this Division:

appointed member means a *[governing body]* appointed member or a Ministerially appointed member.

categories of members—see section 3 (3).

constitution rules—see section 3 (4).

elected member—see section 5.

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

[governing body] appointed member—see section 7.

graduate member—see section 6.

Ministerially appointed member—see section 8.

official member—see section 9.

2 **[Governing body]**

- (1) There is to be a *[governing body]* of the University.
- (2) The *[governing body]* 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 *[governing body]*.

3 **Size of [governing body]**

- (1) The *[governing body]* 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 *[governing body]* (the **total number of members**).
- (3) The *[governing body]* is to include the following categories of members:
 - (a) official members,

- (b) elected members,
 - (c) [*governing body*] 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 [*governing body*] (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 [*governing body*].
- (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 [*governing body*] must give the Minister written notice of the terms of any resolution passed under this section within 7 days after it is passed.

4 Qualifications and experience of members

- (1) Of the members of the [*governing body*]:
- (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 [*governing body*] and an appreciation of the object, values, functions and activities of the University.

5 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 [*general*] staff) members,
 - (c) elected (student) members.

Note—

There may also be elected (graduate) members if the constitution rules so provide—see section 6.

(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 [*general*] staff of the University elected by members of the non-academic [*general*] 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 [*general*] 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.

6 Graduate members

- (1) At least one member of the [*governing body*], 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 [*governing body*] 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 [*governing body*] under section 7,
 - (c) by appointment by the Minister under section 8.
- (3) A rule providing for the appointment of a member by the Minister under section 8 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.

7 [Governing body] appointed members

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

8 Ministerially appointed members

- (1) The Minister may appoint as members of the [governing body] 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 [governing body] may suggest to the Minister persons who the [governing body] considers would be appropriate for appointment by the Minister.

9 Official members

The **official members** of the [governing body] 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 Board [Academic Senate] (if the person is not the Vice-Chancellor) or of Deputy President of the Academic Board [Academic Senate] (if the President is the Vice-Chancellor).

10 Term of office

- (1) Subject to this Act, a member of the [governing body] 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 [governing body] 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 [*governing body*] must be taken into account:
 - (a) by the [*governing body*], when making the by-laws required under this section, and
 - (b) by the Minister and the [*governing body*], when appointing members to the [*governing body*].
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the [*governing body*] otherwise resolves in relation to the person).

Division 2 Other officers and bodies

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - this Act
- (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) If the regulations so provide, any provision referred to in subclause (1) may have effect despite any specified provision of this Schedule or a University Act or statutory rule made under such an Act.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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 2 Provisions consequent on enactment of this Act

2 Continuation of governing body

No amendment made to a University Act by the operation of this Act affects the continuity of the governing body under the University Act.

Schedule 3 (Repealed)