

# Western Sydney University Act 1997 No 116

[1997-116]



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—

- **Previously named**  
University of Western Sydney Act 1997
- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2017 No 22](#) (not commenced — to commence on 8.6.2017)  
[Universities Legislation Amendment \(Planning Agreements\) Act 2017 No 23](#) (not commenced — to commence on 1.7.2017)

### Authorisation

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# Western Sydney University Act 1997 No 116



New South Wales

An Act to provide for the constitution and functions of the Western Sydney University; to repeal the *University of Western Sydney Act 1988*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Western Sydney University Act 1997*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Divisions 1 and 4 of Part 2 of Schedule 4 to this Act commence on the date of assent to this Act.

### 3 Definitions

- (1) In this Act:

**Academic Senate** means the Academic Senate of the University.

**Board** means the Board of Trustees of the University.

**commercial functions** of the University means the commercial functions described in section 8 (3) (a).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**professional staff** of the University means the staff of the University that is not the academic staff.

**University** means the Western Sydney University 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, or
- (b) by or on behalf of any institution or body that has, pursuant to this Act or otherwise, become a part of the University, or
- (c) by any predecessor of any such institution or body.

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

#### **4 (Repealed)**

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

### **5 Establishment of University**

A University is established by this Act, consisting of:

- (a) a Board of Trustees, and
- (b) (Repealed)
- (c) the staff of the University, and
- (d) the graduates and students of the University.

#### **Note—**

The University is a continuation of the University established by the [University of Western Sydney Act 1988](#). Refer to Schedule 4.

### **6 Incorporation of University**

The University is a body corporate under the name of the Western Sydney University.

### **7 Campuses of the University**

The University has the following campuses and may have other campuses:

- Bankstown
- Blacktown
- Campbelltown
- Hawkesbury
- Parramatta
- Penrith

#### **Note—**

Before the substitution of this section by the *University of Western Sydney Amendment Act 2000*, the University's structure was that of a federation consisting of the office of the Vice Chancellor and the University Members (comprising the University of Western Sydney, Hawkesbury, the University of Western Sydney, Macarthur, and the University of Western Sydney, Nepean).

## **8 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 and aspirations of residents of Greater Western Sydney,
  - (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, beginning in Greater Western Sydney,
  - (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, with particular regard to the need to contribute to the development of Greater Western Sydney,
    - (a1) without limiting paragraph (a), the University may generate revenue for the purpose of funding the promotion of its object and the carrying out of its principal

functions,

- (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community, with particular regard to the need to contribute to the social, economic and intellectual life of Greater Western Sydney,
- (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.

### **9 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 Governance of University**

### **10 Board of Trustees**

There is to be a Board of Trustees of the University.

### **11 Functions of Board**

- (1) The Board is the governing authority of the University and has the following functions:
  - (a) the development of broad policies and strategic plans with respect to the University,
  - (b) generally defining the University's educational profile,
  - (c) the management of the University's resources and the monitoring of the University's performance,
  - (d) representation of the University as occasion requires.
- (2) The Board has such other functions as are conferred or imposed on it by or under this Act or any other Act.

### **12 Constitution of Board**

- (1) The Board is to consist of:



- (a) 3 official members, being:
  - (i) the Chancellor (if the Chancellor is not otherwise a member of the Board), and
  - (ii) the Vice-Chancellor, and
  - (iii) the Chair of the Academic Senate, and
- (b) 6 external persons appointed by the Minister who, in the opinion of the Minister:
  - (i) each have an interest in Greater Western Sydney and its development or an interest in the students or other clients of the University, and
  - (ii) bring to the Board suitable levels of knowledge, skills and experience in matters such as strategic planning, human resources or educational or financial matters, and
- (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Board, and
- (d) one person:
  - (i) who is a member of the academic staff of the University, and
  - (ii) who has such qualifications as may be prescribed by the by-laws, and
  - (iii) who is elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
- (e) one person:
  - (i) who is a member of the professional staff of the University, and
  - (ii) who has such qualifications as may be prescribed by the by-laws, and
  - (iii) who is elected by members of the professional staff of the University in the manner prescribed by the by-laws, and
- (f) one person:
  - (i) who is an undergraduate student of the University but who is not a member of the academic or professional staff of the University, and
  - (ii) who has such qualifications as may be prescribed by the by-laws, and
  - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
- (g) one person:
  - (i) who is a postgraduate student of the University but who is not a member of the

academic or professional staff of the University, and

(ii) who has such qualifications as may be prescribed by the by-laws, and

(iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and

(h) one or more external persons (being such number as is prescribed by the by-laws):

(i) who are graduates of the University, and

(ii) who have such qualifications as may be prescribed by the by-laws, and

(iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Board.

(2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (h) that when added to the number of other members to be appointed or elected to the Board would exceed 22.

(3) A person appointed under subsection (1) (h) is appointed in addition to any member appointed under subsection (1) (c).

(4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Board for appointment.

No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

(5) Of the members of the Board:

(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).

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

(7) The majority of members of the Board must be external persons.

(8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Board.

- (9) Schedule 1 has effect in relation to the members and procedure of the Board.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or professional staff of the University or undergraduate or postgraduate students of the University.
- (11) (Repealed)

### **13 Chancellor**

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

#### **Note—**

Schedule 1 also provides that the Chancellor is to preside at all meetings of the Board or a committee of the Board at which he or she is present.

### **14 Deputy Chancellors**

- (1) The Board is to elect one or more persons from the members of the Board to be Deputy Chancellors of the University. Whenever a vacancy in the office of a Deputy Chancellor occurs, the Board is to elect a person from the members of the Board to fill the vacancy.
- (2) A Deputy Chancellor, unless he or she sooner resigns or is removed from office as Deputy Chancellor, holds office for such period (not exceeding 4 years), 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, a Deputy Chancellor appointed from time to time by the Board in accordance with the by-laws has all the functions of the

Chancellor.

- (4) No more than one person may be appointed under this section at any one time to exercise the functions of the Chancellor.

#### **14A Removal from office of Chancellor or Deputy Chancellor**

- (1) The Board may remove the Chancellor or a 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 Board at two consecutive ordinary meetings of the Board.
- (3) The Chancellor or Deputy Chancellor may be removed from office under this section despite section 32G (6) and without the need to establish any breach of duty.
- (4) This section applies to the Chancellor and each Deputy Chancellor holding office on the commencement of this section and all subsequent holders of those offices.

#### **15 Vice-Chancellor**

- (1) The Board is to appoint a person (whether or not a member of the Board) to be Vice-Chancellor of the University, and is to do so whenever a vacancy in the office of Vice-Chancellor occurs.
- (2) The Vice-Chancellor holds office for such period, and on such conditions, as the Board determines.
- (3) The Vice-Chancellor:
  - (a) is the chief executive officer of the University and the academic and administrative head of the University, and
  - (b) is to exercise stewardship of the University on behalf of the Board, and
  - (c) has such other functions as may be prescribed by the by-laws or determined, subject to the by-laws, by the Board.
- (4) The Vice-Chancellor may establish committees to assist the Vice-Chancellor in the exercise of his or her functions under this Act.
- (5) The Vice-Chancellor is a member of every committee that is established by the Board or the Vice-Chancellor.
- (6) The by-laws may provide that the position of Vice-Chancellor is to be referred to by a particular title (instead of or in addition to the title of Vice-Chancellor) and the use of that title has for all purposes the same effect as the use of the title of Vice-Chancellor.

## **16-18 (Repealed)**

### **19 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).

### **20 Academic Senate**

- (1) There is to be an Academic Senate of the University.
- (2) The Academic Senate:
  - (a) is the peak forum of the University for academic debate and discourse, and
  - (b) is the primary custodian of academic values and standards for the University, and
  - (c) is a standing committee of the Board, and
  - (d) has such other functions as may be prescribed by the by-laws.
- (3) The by-laws may provide for the constitution of the Academic Senate, including the election or appointment of members of the Academic Senate and the terms and conditions of office of those members.

### **21 Chair of Academic Senate**

- (1) The Academic Senate is to appoint a person to be the Chair of the Academic Senate, and is to do so whenever a vacancy in the office of Chair of the Academic Senate occurs.
- (2) The Chair of the Academic Senate holds office for such period (not exceeding 2 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chair of the Academic Senate has such functions as may be prescribed by the by-laws.

## **Part 4 Functions of Board**

### **Division 1 General**

#### **22 Functions of Board**

- (1A) The Board:
  - (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 Board to be best calculated to promote the object and interests of the University.
- (1B) Without limiting the functions of the Board under subsection (1A), the Board 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 22A), and
  - (g) to approve significant University commercial activities (within the meaning of section 32A), 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 Board a program of induction and of development relevant to their role as such a member.
- (1) Without limiting the functions of the Board under subsection (1A), the Board may, for and on behalf of the University in the exercise of the University's functions:
- (a) provide such courses as it thinks fit and, in conferring and awarding degrees and diplomas, issue such certificates in the nature of degrees, diplomas or other awards as it thinks fit, and

- (b) appoint and terminate the appointment of staff of the University, and
  - (c), (d) (Repealed)
  - (e) borrow money,
  - (f) invest any funds belonging to or vested in the University, and
  - (g) 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),
  - (h) (Repealed)
  - (i) establish and maintain branches, campuses and colleges of the University, within the University and elsewhere, and
  - (j) make loans and grants to students, and
  - (k) impose fees, charges and fines.
- (2) The functions of the Board under this section are to be exercised subject to the by-laws.
- (3) Schedule 2 has effect in relation to the investment of funds by the Board.

**Note—**

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

**22A Controlled entities**

- (1) The Board 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 Board is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Board 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 Board at its discretion.
- (5A) The Board 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 Board 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 Board.
- (6) In this section:

**controlled entity** means a person, group of persons or body of which the University or Board 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*.

## 23 Delegation

- (1) The Board 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 of the following bodies or persons:
- (a) (Repealed)
  - (b) a member of the Board,
  - (c) a committee of the Board,
  - (d) an authority or officer of the University,
  - (e) any other person or body prescribed by the by-laws.
- (2) If a function of the Board is delegated to the Vice-Chancellor in accordance with subsection (1) and the instrument of delegation authorises the sub-delegation of the function, the Vice-Chancellor may (subject to any condition to which the delegation is subject) sub-delegate the function to any person or body referred to in subsection (1).



### **23A 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 Board.

### **23B Recommendations of Ombudsman or Auditor-General**

The Board must include in each annual report of the Board as part of the report of its operations a report as to any action taken by the Board 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 Board or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 32E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 32A).

## **Division 2 Property**

### **24 Powers of Board relating to property**

- (1) The Board:
  - (a) may acquire (whether by purchase, gift, grant, bequest, devise or otherwise) any property for the purposes of this Act and may agree to carry out the conditions of any such acquisition, and
  - (b) has the control and management of all real and personal 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 Board may, subject to this section, alienate, mortgage, charge or demise any lands of the University.
- (2A) The Board must not alienate, mortgage, charge or demise any lands acquired by the University from the State at nominal or less than market value except with the approval of the Minister.
- (3) Despite subsection (2A), the Board may, without the approval of the Minister, lease any such lands if:
  - (a) the term of the lease does not exceed 21 years, and
  - (b) the Board 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) is to be for a term not exceeding 99 years, and
- (b) is to be at a nominal rent, and
- (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Board thinks fit.

(5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, grant, bequest or devise to which the University has agreed.

## **25 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.

## **26 Powers of Board over certain property vested in Crown**

- (1) If 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 Board has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Board 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) Despite subsection (2), the Board 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) must not be granted for a term (including any option for the grant of a further term) exceeding 21 years except with the approval of the Minister, and
  - (b) is to contain a condition that the lease is not to be assigned and such other conditions as the Board thinks fit.
- (5) The Board is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

## **27 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, exemptions and reservations as the Minister for Land and Water Conservation 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 thinks fit.
- (2) A conveyance, transfer or other instrument executed for the purposes of this section:
- (a) is not chargeable with stamp duty, and
  - (b) is exempt from payment of any fee or charge that would otherwise be payable under any Act in respect of the registration of the conveyance, transfer or other instrument.

## **Division 3 Variation of trusts**

### **28 Definitions**

In this Division:

**donor**, in relation to a trust, means the person creating the trust, whether or not the trustee is a volunteer.

**prize** includes a scholarship or exhibition.

### **29 Trusts to which this Division applies**

This Division applies to a trust, whether created before or after the commencement of this section:

- (a) by which any property is held:
  - (i) by the University on trust for a particular purpose, or

- (ii) by any person on trust for the University for a particular purpose, and
- (b) the terms of which, by reason of the death or incapacity of the donor or otherwise, could not, but for the provisions of this Division, be varied without the order of a court.

### **30 Variation of amount of prize**

- (1) If the terms of a trust provide for the award from time to time, out of the income from the trust property or its proceeds, of a prize for a fixed amount of money, the Board may request the Minister to effect a variation of the amount of the prize if in the opinion of the Board:
  - (a) the value of the amount the prize has been so affected by monetary inflation that it no longer reflects the intentions of the donor with respect to the value and significance of the prize, or
  - (b) the income of the trust property or its proceeds is insufficient to support the award of the prize or the continuation of the award of the prize.
- (2) The Minister may, if satisfied that it is just and equitable to do so, determine to vary the amount of the prize in accordance with the Board's request.
- (3) On delivery to the Board of an instrument in writing signed by the Minister and specifying such a variation, the trust concerned is varied accordingly.

### **31 Variation of terms of trust**

- (1) If:
  - (a) by the terms of a trust, any property is held:
    - (i) on trust for a charitable purpose, or
    - (ii) on trust for a purpose of the University other than its general purposes, and
  - (b) in the opinion of the Board, it is impossible or inexpedient, or not in the reasonable interests of the University, to carry out or observe the terms of the trust, whether as to its purpose or any other of its terms,

the Board may request the Minister to effect a variation of the terms of the trust.
- (2) The Minister may, if satisfied that it is just and equitable to do so, and with the concurrence of the Attorney General, determine to vary the terms of the trust concerned in accordance with the Board's request.
- (3) In the making of any such determination, regard is to be had:
  - (a) to what appear to have been the intentions of the donor in creating the trust, and
  - (b) to the extent to which it may be necessary to depart from the terms of the trust

concerned in order to avoid the impossibility or inexpediency complained of or to enable the trust to be carried out or observed in a manner that is in the reasonable interests of the University.

- (4) On delivery to the Board of an instrument in writing signed by the Minister and specifying a variation of the terms of the trust concerned, the trust is varied accordingly.

### **32 Further variation**

A trust that has been varied in accordance with this Division may, in the same manner, be further varied from time to time.

## **Division 4 Commercial activities**

### **32A Definitions**

In this Division:

***the Guidelines*** means the guidelines determined for the time being under section 32B.

***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.

### **32B Guidelines for commercial activities**

- (1) The Board must by resolution determine, and must maintain, Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Board may by resolution amend or replace the Guidelines from time to time.
- (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 Board 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 32A,
- (f) establishing a protocol regarding the rights and responsibilities of members of the Board in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.

(4) The Board must ensure that the Guidelines are complied with.

(5), (6) (Repealed)

### **32C Register of commercial activities**

(1) The Board 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 Board must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

### **32D Reports to Minister on commercial activities**

(1) The Minister may request a report from the Board as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.

- (2) The Board must provide a report to the Minister in accordance with the Minister's request.

### **32E 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 Board 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 Board members**

### **32F Duties of Board members**

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

### **32G Removal from office for breach of duty**

- (1) The Board may remove a member of the Board 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 Board 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 Board.
- (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 Board may not be removed from office by the Board for breach of duty except pursuant to this section.

## **Part 5 General**

### **33 Advance by Treasurer**

The Treasurer may, with the approval of the Governor, advance to the Board money for the temporary accommodation of the University on such terms and conditions in relation

to repayment and interest as may be agreed.

### **33A Stamp duty exemption**

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Board is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Board 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.

### **34 Financial year**

The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing 1 January, or
- (b) the period prescribed by the by-laws for the purposes of this section.

### **35 No religious or political discrimination**

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

### **36 Exemption from membership of body corporate**

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

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

This Act does not prevent a person from being immediately, or at any time, re-appointed or re-elected to any office or place, if otherwise qualified and eligible for such appointment or re-election.

### **38 Limited tenure in certain positions**

- (1) This section applies in respect of the following positions:
  - (a) Chancellor,
  - (b) Deputy Chancellor,



- (c) appointed member of the Board,
  - (d) elected member of the Board.
- (2) A person who holds office in a position to which this section applies for 2 consecutive terms is not eligible for re-election or re-appointment to that position, if such re-election or re-appointment would result in the person holding office in that position for 3 consecutive terms.
- (3) However, a person may be exempted from this section by resolution of the Board so as to enable the person to be re-elected or re-appointed to the position for a third consecutive term of office.
- (4) If so re-elected or re-appointed, the person is not eligible to be re-elected or re-appointed to the position for a fourth consecutive term of office.
- (5) If the office of a position to which this section applies becomes vacant otherwise than because of the expiration of the term of office of the office holder, and a person is appointed or elected to fill that office for the remainder of that term, that term of office of the person is not to be counted for the purposes of this section, unless the remaining term exceeds half the maximum single term of office for that position.
- (6) For the purposes of subsection (5), the maximum single term of office for a position is as follows:
- (a) in the case of the Chancellor—4 years,
  - (b) in the case of a Deputy Chancellor—4 years,
  - (c) in the case of an appointed member of the Board—4 years,
  - (d) in the case of an elected member of the Board referred to in section 12 (1) (d), (e), (f) or (g)—2 years,
  - (e) in the case of an elected member of the Board referred to in section 12 (1) (h)—4 years.

### **39 Seal of University**

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

**Note—**

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

### **40 By-laws**

- (1) The Board 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 the following:

- (a) the management, governance and discipline of the University,
- (b) the election of members of the Board who are to be elected,
- (c) the manner and time of convening, holding and adjourning the meetings of the Board or the Academic Senate,
- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Board or the Academic Senate,
- (e) the functions of the presiding member of the Board or the Academic Senate,
- (f) the conduct and record of business of the Board or the Academic Senate,
- (g) the appointment of committees of the Board or the Academic Senate,
- (h) the quorum and functions of committees of the Board or the Academic Senate,
- (i) the resignation of members of the Board or the Academic Senate and of the Chancellor, Deputy Chancellor or Vice-Chancellor,
- (j) the tenure of office, stipend and functions of the Vice-Chancellor,
- (ja) the designation of members of staff of the University as academic staff, professional staff, full-time staff, part-time staff or otherwise,
- (k) the number, stipend, manner of appointment and dismissal of deans, professors, lecturers, examiners and other officers and staff of the University,
- (l) admission to, enrolment in and exclusion from courses of studies,
- (m) the creation of faculties, schools, departments, centres or other entities within the University,
- (n) the payment of such fees and charges, including fines, as the Board considers necessary, including fees and charges to be paid in respect of the following:
  - (i) entrance to the University,
  - (ii) tuition,
  - (iii) lectures and classes,
  - (iv) examinations,
  - (v) residence,

- (vi) the conferring of degrees and diplomas,
  - (vii) the provision of amenities and services, whether or not of an academic nature,
  - (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 (including exemptions from, or deferment of, those penalties),
  - (q) the course of lectures or studies for, the examinations for, and the granting of, degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours,
  - (r) the examinations for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes,
  - (s) the admission of 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 other persons, of a degree or diploma without examination,
  - (t) the establishment of residential colleges and halls of residence within the University and their conduct, and the affiliation of residential colleges,
  - (u) the affiliation with the University of any educational or research establishment,
  - (v) the provision of a scheme of superannuation for the officers and staff of the University,
  - (w) the form and use of academic dress,
  - (x) the form and use of an emblem of the University or of any campus or college within or associated with the University,
  - (y) the exemption of persons, on grounds of conscience, from membership of the body corporate of the University,
  - (z) the making, publication and inspection of rules.
- (2) A by-law has no effect unless approved by the Governor.

**Note—**

This Act contains other by-law making powers, including:

- (a) section 15 (6), which allows the by-laws to provide for a different title for the position of Vice-Chancellor,
- (b) section 20 (3), which allows the by-laws to provide for the constitution of the Academic Senate.

#### **41 Rules**

- (1) The by-laws may empower any authority (including the Board) 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), 12 (1) (c), (d) (ii), (e) (ii), (f) (ii), (g) (ii) and (h) (ii) and (8), 13 (2), 14 (2), 22 (1) (e) and (f) and 40 (1) (ja) and clause 1 (1) (c) and (d) of Schedule 1 and clause 3 of that Schedule (to the extent it relates to appointments).
- (1A) Despite subsection (1), only the Board may be empowered to make rules for or with respect to which by-laws may be made concerning matters referred to in sections 12 (1) (d) (iii), (e) (iii), (f) (iii), (g) (iii) and (h) (iii) and 40 (1) (b) and clause 3 of Schedule 1 (to the extent it relates to elections) (***election rules***).
- (1B) Election rules must be consistent with sound and democratic electoral practices, procedures and methods of voting.
- (1C) The Board must ensure that any election rule it makes is made readily available to the public by whatever means the Board considers appropriate as soon as practicable after it is made.
- (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 Board (whether or not the Board 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.

## **42 Repeal of University of Western Sydney Act 1988 No 90**

The *University of Western Sydney Act 1988* is repealed.

## **43 (Repealed)**

## **44 Savings, transitional and other provisions**

Schedule 4 has effect.

## **45 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 Provisions relating to members and procedure of Board**

(Section 12)

### **1 Term of office**

- (1) Subject to this Act, a member of the Board 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 member appointed under section 12 (1) (b) or (c), 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 referred to in section 12 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
  - (d) in the case of a member referred to in section 12 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Board must be taken into account:
  - (a) by the Board, when making the by-laws required under this clause, and

(b) by the Minister and the Board, when appointing members to the Board

## **2 Vacation of office**

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

- (a) dies, or
- (b) (Repealed)
- (c) declines to act, or
- (d) 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 Board, to the Chancellor, or
  - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (e) 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
- (f) becomes a mentally incapacitated person, or
- (g) 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
- (h) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the [Corporations Act 2001](#) of the Commonwealth, or
- (i) is removed from office by the Board pursuant to section 32G, or
- (j) is absent from 3 consecutive meetings of the Board 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 Board for his or her absence, or
- (k) in the case of an elected member, or a member appointed under section 12 (1) (h), ceases to be qualified for election or appointment, or
- (l) in the case of a member appointed by the Minister, is removed from office by the Minister, or
- (m) in the case of a member appointed by the Board, is removed from office by the Board.

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

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

### **4 Committees of Board**

- (1) The Board 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 Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

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

A matter or thing done or omitted to be done by the University, the Board or a member of the Board, or any person acting under the direction of the University or the Board, does not, 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 Board 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 Board and for the conduct of business at those meetings is to be as determined by the Board, subject to this Act and the by-laws.

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

- (1) Without limiting clause 6, a meeting of the Board may be called or held using any technology consented to by all the members of the Board.
- (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 Board, 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 is to preside at all meetings of the Board at which the Chancellor is present.
- (2) At any meeting of the Board at which the Chancellor is not present, the relevant Deputy Chancellor is to preside, and in the absence of both the Chancellor and the relevant Deputy Chancellor, a member elected by and from the members present is to preside.
- (2A) At any meeting of a committee constituted by the Board, a Deputy Chancellor is to preside, and in the absence of any Deputy Chancellor, a member elected by and from the members present is to preside.
- (2B) However, the Chancellor is entitled (but is not required) to preside at any meeting of a committee constituted by the Board at which the Chancellor is present.
- (3) The **relevant Deputy Chancellor** is the Deputy Chancellor appointed by the Board for the time being to exercise the functions of Chancellor under section 14.

## **8 Quorum**

At any meeting of the Board, a quorum is one-half (or if one-half is not a whole number, the whole number next higher than one-half) of the total number of members for the time being of the Board.

## **9 Voting**

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

## **10 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

## **11 Remuneration**

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



## Schedule 2 Investment

(Section 22)

### 1 Definition of “funds of the University”

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 (Repealed)

#### 2A Funds managers

- (1) The Board may engage a funds manager to act in relation to the management of the funds belonging to or vested in the University.
- (2) Such a funds manager may on behalf of the Board invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.

### 3 Investment common funds

- (1) The Board may establish one or more investment common funds.
- (2) The Board 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 Board 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 Board 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 Board 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 Board 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 Board, and

(b) the power of the Board 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 Board members**

(Section 32F)

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

A member of the Board 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 Board 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 Board 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 Board 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 Board members**

(1) If:

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

(2) A disclosure by a member of the Board at a meeting of the Board 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 Board 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 Board.

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

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

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

- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.

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

- (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 Board pursuant to section 32G or the person's remuneration pursuant to clause 11 of Schedule 1.
- (8) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Board 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 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 44)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends 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) 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 2 Provisions consequent on enactment of this Act

### Division 1 Preliminary

#### Note—

This Division commences on assent.

#### 2 Definitions

In this Part:

**existing University Member** means a University Member referred to in clause 4 of this Schedule.

**former Board** means the Board of Governors of the University of Western Sydney constituted under section 9 of the repealed Act.

**new Board** means the Board of Trustees constituted under section 12 of this Act.

**repealed Act** means the [University of Western Sydney Act 1988](#).

### Division 2 Constitution and functions of University

#### 3 University is a continuation of the old University

- (1) The University of Western Sydney is a continuation of, and the same legal entity as, the University of Western Sydney referred to in the repealed Act.
- (2) Any provision of Schedule 3 (Savings and Transitional Provisions) to the repealed Act that, immediately before the repeal of that Act, had any ongoing operation or effect continues to have effect as if it had not been repealed.

#### 4 University Members

- (1) On the commencement of this clause, the members of the University network established under section 6 of the repealed Act are taken to have been established as University Members by order under section 7 of this Act.
- (2) The order can be amended or repealed by order of the Governor made on the recommendation of the Minister under section 7 (2) of this Act.

#### Note—

The repealed Act established a federated University network. Under section 6 of the repealed Act, the University network was a federation of:

- (a) the University of Western Sydney, Nepean, and
- (b) the University of Western Sydney, Hawkesbury, and
- (c) the University of Western Sydney, Macarthur, and
- (d) such other network members as may be established from time to time by order of the Governor under that section.

## **Division 3 Governance of University**

### **5 Dissolution of former Board and membership of new Board**

- (1) The former Board, as constituted under the repealed Act immediately before the repeal of the repealed Act, is dissolved.
- (2) The persons holding office as members of the former Board immediately before the repeal of the repealed Act cease to hold office as such on that repeal.
- (3) The member of the Legislative Council holding office as a parliamentary member of the former Board under section 9 (3) (a) of the repealed Act immediately before the repeal of that Act:
  - (a) is taken, on the repeal of that Act, to have been elected to the office of parliamentary member of the new Board under section 12 (2) (a) of this Act, and
  - (b) continues to hold office as such, subject to clause 2 of Schedule 1, until a member of the Legislative Council is elected as a replacement.
- (4) The member of the Legislative Assembly holding office as a parliamentary member of the former Board under section 9 (3) (b) of the repealed Act immediately before the repeal of that Act:
  - (a) is taken, on the repeal of that Act, to have been elected to the office of parliamentary member of the new Board under section 12 (2) (b) of this Act, and
  - (b) continues to hold office as such, subject to clause 2 of Schedule 1, until a member of the Legislative Assembly is elected as a replacement.
- (5) The undergraduate student holding office as an elected member of the former Board under section 9 (6) (c) of the repealed Act immediately before the repeal of that Act:
  - (a) is taken, on the repeal of that Act, to have been elected to hold office as an elected member of the new Board under section 12 (5) (c) of this Act, and
  - (b) continues to hold office as such, subject to clause 2 of Schedule 1, for the residue of the term for which he or she was elected to the former Board.

- (6) The postgraduate student holding office as an elected member of the former Board under section 9 (6) (c) of the repealed Act immediately before the repeal of that Act:
- (a) is taken, on the repeal of that Act, to have been elected to hold office as an elected member of the new Board under section 12 (5) (d) of this Act, and
  - (b) continues to hold office as such, subject to clause 2 of Schedule 1, for the residue of the term for which he or she was elected to the former Board.

## **6 Chancellor**

The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of Western Sydney under the repealed Act continues to hold office as such (unless he or she sooner resigns) until the new Board elects a person to that office under section 13 of this Act.

## **7 Vice-Chancellor**

- (1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of Western Sydney under the repealed Act:
- (a) remains Vice-Chancellor of the University, and
  - (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.
- (2) The Vice-Chancellor holds office on such terms and conditions as had effect in relation to his or her office under the repealed Act immediately before the commencement of this clause, subject to any variation that is made by the new Board, and agreed to by the Vice-Chancellor, after the commencement of this clause.

## **8 Principal executive officers of University Members**

- (1) A person who, immediately before the commencement of this clause, held office under section 16 of the repealed Act as a chief executive officer of a member of the University network (being an existing University Member):
- (a) is taken to have been appointed as the principal executive officer of the University Member under section 18 of this Act, and
  - (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as chief executive officer.
- (2) Each principal executive officer holds office on such terms and conditions as had effect in relation to his or her position (as chief executive officer) under the repealed Act immediately before the commencement of this clause, subject to any variation that is made by the new Board, and agreed to by the principal executive officer concerned, after the commencement of this clause.

## **9 Academic Senate**

- (1) The Academic Board, as constituted under section 23 of the repealed Act immediately before the commencement of this clause, is taken to have been constituted as the Academic Senate under section 20 of this Act.
- (2) Subject to the by-laws, a person who was appointed or elected as a member of the Academic Board and was holding office as such a member immediately before the commencement of this clause continues to hold office as a member of the Academic Senate (unless he or she sooner resigns) for the residue of the term of office for which he or she was appointed or elected as a member of the Academic Board.

## **10 Chair of Academic Senate**

- (1) The person who, immediately before the commencement of this clause, held office as the Chair of the Academic Board of the University of Western Sydney under the repealed Act:
  - (a) is taken to have been appointed as the Chair of the Academic Senate under section 21 of this Act, and
  - (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed or elected as Chair of the Academic Board.
- (2) The Chair of the Academic Senate holds office on such terms and conditions as may be prescribed by the by-laws.

## **Division 4 Constitution of new Board and other matters**

### **Note—**

This Division commences on assent.

## **11 Appointed members**

Any person appointed by the Minister for the purposes of section 9 (5) of the repealed Act whose term of office would have expired at the end of 1997 (otherwise than because of resignation or because of the commencement of section 12 of this Act) and who holds office as an appointed member of the former Board immediately before 1 January 1998:

- (a) is taken to have been re-appointed to the office of member of the former Board for the purposes of section 9 (5) of the repealed Act for a term that expires when section 12 of this Act commences, and
- (b) on the commencement of section 12 of this Act, is taken to have been appointed as a member of the new Board for the purposes of section 12 (4) of this Act and holds office as such (unless he or she sooner resigns) for a term that expires on 1 March 1998 or such other date (whether earlier or later than 1 March 1998) as the Minister



may direct by instrument in writing.

## **12 Former Board may appoint one new Board member**

- (1) Before section 12 of this Act commences, the former Board may appoint a person to hold office as a member of the new Board for the purposes of section 12 (6) of this Act and that person is taken to have been appointed by the new Board under section 12 (6) of this Act.
- (2) Such an appointment does not take effect until section 12 of this Act commences.
- (3) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

## **13 Elected staff members and graduate member**

- (1) An election for the first elected members of the new Board, being the elected members referred to in section 12 (5) (a), (b) and (e), may be called before section 12 of this Act commences and conducted in accordance with the directions of the Vice-Chancellor (whether given before or after the commencement of this Division), instead of in the manner provided for by section 12 of this Act.
- (2) Anything done for the purpose of such an election before the commencement of this Division is taken to be valid, to the extent to which it could have been done had those directions been made at the time that it was done.
- (3) The term of office of any member of the new Board who is elected as provided for by this clause before the commencement of section 12 of this Act does not commence until section 12 of this Act commences.

### **Note—**

This clause does not apply to the elected members referred to in section 12 (5) (c) and (d), because their terms of office are continued under clause 5 of this Schedule.

## **14 Former Board may appoint first Chairs of Councils**

- (1) Before section 12 of this Act commences, the former Board may appoint persons to hold office as Chairs of the Councils for the purposes of section 17 of this Act and those persons are taken to have been appointed by the new Board under section 17 of this Act.
- (2) Such an appointment does not take effect until section 17 of this Act commences.
- (3) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

### **15 Former Board may make new by-laws**

- (1) Before section 12 of this Act commences, the former Board may make any by-law under this Act that could be made by the new Board under this Act, as if section 40 of this Act had commenced.
- (2) Such a by-law may revoke any by-law made under the repealed Act. Clause 18 of this Schedule does not apply in respect of any by-law that is so revoked.
- (3) Such a by-law takes effect no earlier than the day on which section 40 of this Act commences.
- (4) On the commencement of section 12 of this Act, such a by-law is taken to have been made by the new Board and may be revoked or amended accordingly.
- (5) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

## **Division 5 Functions of Board**

### **16 Saving of delegations**

Any delegation made under the repealed Act by the former Board and in force immediately before the repeal of the repealed Act is taken to be a delegation under this Act by the new Board, and may be revoked at any time by the new Board.

## **Division 6 General**

### **17 Limited tenure provisions—application**

Section 38 of this Act does not apply in respect of a term of office that commenced before the commencement of that section.

### **18 Continuation of by-laws**

- (1) The by-laws of the University of Western Sydney as in force immediately before the repeal of the repealed Act:
  - (a) continue in force as if they had been made by the new Board under this Act, and
  - (b) may be amended or revoked accordingly.
- (2) In those by-laws:
  - (a) a reference to the Board of Governors of the University of Western Sydney is to be read as a reference to the Board of Trustees, and
  - (b) a reference to a member of the University network is to be read as a reference to

a University Member, and

- (c) a reference to the chief executive officer of a member of the University network is to be read as a reference to the principal executive officer of a University Member, and
- (d) a reference to the Academic Board of the University of Western Sydney is to be read as a reference to the Academic Senate of the University of Western Sydney.

### **19 Continuation of rules and orders**

- (1) Any rule made under section 36 of the repealed Act and in force immediately before the commencement of this clause:
  - (a) continues in force as if it had been made under section 41 of this Act, but only to the extent that it could have been made under this Act if section 41 had been in force at the time the rule was made, and
  - (b) may be amended or repealed accordingly.
- (2) Any order made under section 36 of the repealed Act and in force immediately before the commencement of this clause:
  - (a) continues in force as if it had been made under section 41 of this Act, but only to the extent that it could have been made as a rule under this Act if section 41 had been in force at the time the order was made, and
  - (b) may be amended or repealed accordingly.
- (3) Section 41 (2) (d) of this Act does not apply in respect of a rule or order made under section 36 of the repealed Act before the commencement of this clause and accordingly does not prevent the continuation of such a rule or order under this clause.

## **Part 3 Provisions consequent on enactment of [University of Western Sydney Amendment Act 2000](#)**

### **20 Degrees and other awards conferred by University Members**

For the purposes of the operation of section 3 (2) after the commencement of the amendment made to that subsection by the [University of Western Sydney Amendment Act 2000](#), an institution or body that was a University Member (pursuant to this Act or otherwise) before that commencement is taken to have become a part of the University when it became a University Member.

### **21 Deputy Chancellors**

- (1) A person holding office as a Deputy Chancellor under section 14 immediately before

the commencement of the amendments made to that section by the *University of Western Sydney Amendment Act 2000* ceases to hold that office on that commencement, but is eligible to be elected as a Deputy Chancellor under that section as so amended.

- (2) An election may be conducted for the purposes of section 14 before the commencement of the amendments referred to in subclause (1) but a Deputy Chancellor so elected does not assume office before the commencement of those amendments.

## **22 University Members**

On the repeal of sections 16–18 by the *University of Western Sydney Amendment Act 2000*:

- (a) the Councils of University Members are abolished, and
- (b) a person holding office as Chair of a Council or as principal executive officer of a University Member ceases to hold that office, and
- (c) anything done by the Council of a University Member before that repeal that has effect immediately before that repeal is, on and from that repeal, taken to have been done by the Board.

## **23 General**

A person who ceases to hold an office under this Part is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

## **Part 4 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001**

### **24 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 Board of any funds of the University in any manner that the Board was authorised to invest those funds immediately before the Board ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

### **25 Validation**

Any act or omission occurring before the substitution of section 8 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 5 Provisions consequent on enactment of **University Legislation Amendment Act 2004**

### 26 Definitions

In this Part:

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

**former section 12** means section 12 as in force immediately before its substitution by the amending Act.

**new section 12** means section 12 as substituted by the amending Act.

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

### 27 General

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

### 28 Constitution of Board

- (1) Subject to this Act, on the relevant day:
  - (a) a person holding office under former section 12 (2) ceases to hold that office, and
  - (b) a person holding office under former section 12 (3) (c) or (6) is taken to be appointed as a member under new section 12 (1) (c), and
  - (c) a person holding office under former section 12 (4) is taken to be appointed as a member under new section 12 (1) (b), and
  - (d) a person holding office under former section 12 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 12 (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 12 (1) (b).
- (3) The Board is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Board is duly constituted under new section 12 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 Board must be constituted so as to include all of the members required to be appointed under new section 12 (1) (b).
- (5) The Board is taken to be properly constituted until such time as it is constituted in

accordance with new section 12.

- (6) A casual vacancy occurring in the office of a member before the Board is duly constituted under new section 12 is to be filled as follows:
- (a) if the vacancy occurs in the office of a member appointed under new section 12 (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 12 (1) (c), the Board is to appoint a person whom the Board considers appropriate,
  - (c) if the vacancy occurs in the office of a member elected under new section 12 (1) (d) or (e), the Board 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 12 (1) (f) or (g), the Board is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Board,
  - (e) if the vacancy occurs in the office of a member elected under new section 12 (1) (h), the Board is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (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), (c) or (d),  
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 12 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.

### **29 Existing exemptions from section 38**

An exemption granted by the Minister under section 38 (3) (as in force immediately before its amendment by the amending Act) is taken to be an exemption by resolution of the Board under that subsection as so amended.

### **30 Application of section 32G**

Section 32G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

### **31 Continuation of Board**

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

## **Part 6 Provisions consequent on enactment of [Universities Legislation Amendment \(Regulatory Reforms\) Act 2014](#)**

### **32 Definition**

In this Part:

**amending Act** means the [Universities Legislation Amendment \(Regulatory Reforms\) Act 2014](#).

### **33 Guidelines for commercial activities**

The Guidelines approved for the time being under section 32B, as in force immediately before the amendments made to that section by the amending Act, continue to have effect as if they were Guidelines determined by the Board under that section as amended.

### **34 Existing investments**

An amendment made to this Act by the amending Act does not affect the appointment of a funds manager or the validity of any investment made by or on behalf of the University before the commencement of the amendment.

### **35 Previously acquired land**

Section 24 (2)-(3), as inserted by the amending Act, extend to land acquired from the State before the insertion of those subsections.