

# University of New England Act 1993 No 68

[1993-68]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Authorisation

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## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Definitions .....	5
<b>Part 2 Constitution and functions of the University</b> .....	6
4 Establishment of University .....	6
5 Incorporation of University .....	6
6 Object and functions of University .....	6
7 Facilities for students, staff and others .....	7
<b>Part 3 The Council, authorities and officers of the University</b> .....	8
<b>Division 1 The Council</b> .....	8
8 Definitions .....	8
8A The Council .....	8
8B Size of Council .....	8
8C Qualifications and experience of members .....	9
8D Elected staff and student members .....	9
8E Graduate members .....	10
8F Council appointed members .....	10
8G Ministerially appointed members .....	11
8H Official members .....	11

9 Term of office .....	11
<b>Division 2 Other officers and bodies .....</b>	<b>12</b>
10 Chancellor .....	12
11 Deputy Chancellor .....	12
11A Removal from office of Chancellor or Deputy Chancellor .....	12
12 Vice-Chancellor.....	13
13 Visitor .....	13
14 Convocation.....	13
15 Academic Board.....	14
<b>Part 4 Functions of the Council .....</b>	<b>14</b>
<b>Division 1 General .....</b>	<b>14</b>
16 Functions of Council .....	14
16A Controlled entities .....	16
17 Delegation by Council.....	17
17A Operation of certain Acts.....	17
17B Recommendations of Ombudsman or Auditor-General .....	17
<b>Division 2 Property .....</b>	<b>18</b>
18 Powers of Council relating to property.....	18
19 Powers of Council over certain property vested in Crown.....	19
20 Acquisition of land .....	19
21 Grant or transfer of certain land to University .....	20
<b>Division 3 Commercial activities .....</b>	<b>20</b>
21A Definitions .....	20
21B Guidelines for commercial activities.....	20
21C Register of commercial activities .....	21
21D Reports to Minister on commercial activities .....	22
21E Referral of matters to Ombudsman or Auditor-General .....	22
<b>Part 4A Duties of Council members .....</b>	<b>22</b>
21F Duties of Council members.....	22
21G Removal from office for breach of duty .....	22

<b>Part 5 General</b> .....	23
22 Advance by Treasurer .....	23
22A Stamp duty exemption .....	23
23 Financial year .....	23
24 No religious test or political discrimination.....	23
25 Exemption from membership of body corporate or Convocation .....	23
26 Re-appointment or re-election .....	23
27 Seal of University .....	24
28 By-laws .....	24
29 Rules.....	26
30 Recovery of charges, fees and other money .....	27
31 Savings and transitional provisions .....	27
32 Repeal .....	27
<b>Schedule 1 Provisions relating to members and procedure of the Council</b> .....	27
<b>Schedule 2 Investment</b> .....	30
<b>Schedule 2A Duties of Council members</b> .....	31
<b>Schedule 3 Savings and transitional provisions</b> .....	33

# University of New England Act 1993 No 68



New South Wales

An Act to establish a new University of New England and to provide for its constitution and functions; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *University of New England Act 1993*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act—

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

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

**University** means the University of New England established by this Act.

#### Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of 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 by or on behalf of—

(a) the University, or

(b) any former institution that is currently a part of the University (having become a part of the University or any predecessor of the University pursuant to the *Higher Education (Amalgamation) Act 1989* or otherwise), or

(c) any predecessor of the University or of any institution referred to in paragraph (b).

- (3) Former institutions that became a part of the University or a predecessor of the University (such as the Northern Rivers College of Advanced Education and the Orange Agricultural College) are not considered to be predecessors of the University for the purposes of subsection (2) (c) or section 14 (2).
- (4) In this Act—
  - (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (5) Notes included in this Act do not form part of this Act.

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

### **4 Establishment of University**

A University is established by this Act, consisting of—

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

### **5 Incorporation of University**

The University is a body corporate under the name of the University of New England.

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

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object—
  - (a) the provision of facilities for education and research of university standard,
  - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
  - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,

- (d) the participation in public discourse,
- (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

(3) The University has other functions as follows—

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

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

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

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

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

### Division 1 The Council

#### 8 Definitions

In this Division—

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

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

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

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

**elected member**—see section 8D.

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

**graduate member**—see section 8E.

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

**official member**—see section 8H.

#### 8A The Council

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

#### 8B Size of Council

- (1) The Council is to consist of a minimum of 11, and a maximum of 22, members.
- (2) The total number of members is to be determined from time to time by a resolution passed by at least two-thirds of the members of the Council (the **total number of members**).
- (3) The Council is to include the following categories of members—
  - (a) official members,
  - (b) elected members,



(c) Council appointed members,

(d) Ministerially appointed members.

(4) Subject to subsection (6), the number of members (other than official members) in each category is to be prescribed by rules made by the Council (in this Division called the **constitution rules**).

(5) A rule for the purposes of subsection (4) may be made only by a resolution passed by at least two-thirds of the members of the Council.

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

**Note—**

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

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

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

### **8C Qualifications and experience of members**

(1) Of the members of the Council—

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

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

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

### **8D Elected staff and student members**

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

(a) elected (academic staff) members,

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

(c) elected (student) members.

**Note—**

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

- (2) Of the members elected under this section—
  - (a) at least 1 must be a member of the academic staff of the University elected by members of the academic staff, and
  - (b) at least 1 must be a member of the non-academic staff of the University elected by members of the non-academic staff, and
  - (c) at least 1 must be a student of the University who—
    - (i) is not employed on a full-time basis (or on such other basis as the by-laws may prescribe) as a member of the academic or non-academic staff of the University, and
    - (ii) is elected by the students of the University.
- (3) The members referred to in subsection (2) (a)-(c) are—
  - (a) to have such qualifications as may be prescribed by the by-laws, and
  - (b) to be elected in the manner prescribed by the by-laws.

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

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

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

- (1) The Council may appoint as members of the Council such number of external persons

as is prescribed by the constitution rules for the category of Council appointed members.

- (2) The by-laws are to prescribe the procedures for the nomination of persons for appointment under this section.

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

- (1) The Minister may appoint as members of the Council 2 external persons, or such greater number of external persons (not exceeding 6) as is prescribed by the constitution rules for the category of Ministerially appointed members.
- (2) The Minister may not appoint a member of the Parliament of New South Wales, the Parliament of the Commonwealth or another State or the Legislative Assembly of a Territory as a Ministerially appointed member.
- (3) Without limiting the discretion of the Minister under subsection (1), the Council may suggest to the Minister persons who the Council considers would be appropriate for appointment by the Minister.

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

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

- (a) the Chancellor,
- (b) the Vice-Chancellor,
- (c) the person for the time being holding the office of presiding member of the Academic Board (if the person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor).

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

- (1) Subject to this Act, a member of the Council holds office as follows—
  - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
  - (b) in the case of a Ministerially appointed member or Council appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
  - (c) in the case of an elected member other than an elected (graduate) member, for such term (not exceeding 2 years) as may be prescribed by the by-laws,
  - (d) in the case of an elected (graduate) member, for such term (not exceeding 4 years) as may be prescribed by the by-laws.

- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account—
  - (a) by the Council, when making the by-laws required under this section, and
  - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

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

### **10 Chancellor**

- (1) The Council is to elect a person (whether or not a member of the Council) 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 5 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

### **11 Deputy Chancellor**

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

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

- (1) The Council may remove the Chancellor or Deputy Chancellor from office by a no confidence motion passed in accordance with this section if it considers it in the best interests of the University to do so.

- (2) The removal from office may be effected only if the no confidence motion is supported by at least a two-thirds majority of the total number of members for the time being of the Council at two consecutive ordinary meetings of the Council.
- (3) The Chancellor or Deputy Chancellor may be removed from office under this section despite section 21G (6) and without the need to establish any breach of duty.
- (4) This section applies to the Chancellor and Deputy Chancellor holding office on the commencement of this section and all subsequent holders of those offices.

## **12 Vice-Chancellor**

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

## **13 Visitor**

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

## **14 Convocation**

- (1) Convocation consists of—
  - (a) the graduates of the University, and
  - (b) the members and past members of the Council of the University, and
  - (c) the present and past full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
  - (d) such graduates of other universities, or other persons, as are, in accordance with the by-laws, admitted as members of Convocation.
- (2) In this section—
  - (a) a reference to the University includes a reference to any predecessor of the

University, and to any former institution that became a part of the University or of any predecessor of the University pursuant to the *Higher Education (Amalgamation) Act 1989* (or otherwise) and is currently a part of the University, and

(b) a reference to the Council of the University includes a reference to the governing body of an institution referred to in paragraph (a).

- (3) The first meeting of convocation is to be convened by the Vice-Chancellor.
- (4) Subject to the by-laws, meetings of Convocation are to be convened and the business at the meetings is to be as determined by Convocation.
- (5) A quorum at any meeting of Convocation is to be such number of members as may be prescribed by the by-laws.
- (6) Convocation has such functions as may be prescribed by the by-laws.
- (7) The Council may establish a Standing Committee and such other committees of Convocation as it considers necessary.

## **15 Academic Board**

- (1) There is to be an Academic Board of the University, consisting of—
  - (a) the Vice-Chancellor, and
  - (b) such other persons as the Council may, in accordance with the by-laws, determine.
- (2) The constitution and functions of the Academic Board are to be as prescribed by the by-laws, subject to subsection (1).

## **Part 4 Functions of the Council**

### **Division 1 General**

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

- (1A) The Council—
  - (a) acts for and on behalf of the University in the exercise of the University's functions, and
  - (b) has the control and management of the affairs and concerns of the University, and
  - (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.
- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in

controlling and managing the affairs and concerns of the University—

- (a) to monitor the performance of the Vice-Chancellor, and
  - (b) to oversee the University's performance, and
  - (c) to oversee the academic activities of the University, and
  - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
  - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
  - (e1) without limiting paragraph (e), to enter into or participate in arrangements or transactions, or combinations of arrangements or transactions, to effect financial adjustments for the management of financial risks, and
  - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
  - (g) to approve significant University commercial activities (within the meaning of section 21A), and
  - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
  - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
  - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
  - (k) to adopt a statement of its primary responsibilities, and
  - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.
- (1) Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions—
- (a) provide such courses, and confer such degrees and award such diplomas and other certificates, as it thinks fit, and
  - (b) appoint and terminate the appointment of academic and other staff of the University, and

- (c) (Repealed)
  - (d) obtain financial accommodation (including, without limitation, by the borrowing or raising of money) and do all things necessary or convenient to be done in connection with obtaining financial accommodation, and
  - (e) invest any funds belonging to or vested in the University, and
  - (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated), and
  - (g) (Repealed)
  - (h) establish and maintain branches and colleges of the University, within the University and elsewhere, and
  - (i) make loans and grants to students, and
  - (j) impose fees, charges and fines.
- (2) The functions of the Council 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 Council.

**Note—**

Division 7.3 of the [Government Sector Finance Act 2018](#) regulates the provision of annual reporting information to Parliament by the Council and requires the Council to report on the University's operations.

**16A Controlled entities**

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.
- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) Nothing in the preceding subsections confers power on a controlled entity to engage in any activity.



- (5) Nothing in the preceding subsections affects any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (5A) The Council is, as far as is reasonably practicable, to ensure—
- (a) that the governing bodies of controlled entities—
    - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
    - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
    - (iii) adopt and evaluate their own governance principles, and
    - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
  - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.
- (6) In this section—

***controlled entity*** means a controlled entity (within the meaning of the [Government Sector Finance Act 2018](#)) of the University or Council.

## **17 Delegation by Council**

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

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

Nothing in this Act limits or otherwise affects the operation of the [Ombudsman Act 1974](#), the [Government Sector Finance Act 2018](#) or the [Government Sector Audit Act 1983](#) to or in respect of the University or the Council.

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

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

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and

- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

## **Division 2 Property**

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

- (1) The Council—
- (a) may acquire (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 property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.
- (2) The Council may, subject to this section, alienate, mortgage, charge or demise any lands of the University and may dispose of or otherwise deal with any other property of the University.
- (2A) The Council 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 Council 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 Council is satisfied that it is to the benefit of the University, whether from a financial or educational standpoint or otherwise, that the lease be entered into.
- (4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease—
- (a) 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 Council thinks fit.
- (4A) The Council may enter into a voluntary planning agreement under the *Environmental Planning and Assessment Act 1979*—
- (a) except as provided by paragraph (b)—without the approval of the Minister, or
  - (b) in the case of an agreement requiring any lands acquired by the University from

the State at nominal or less than market value to be dedicated free of cost—only with the approval of the Minister.

- (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.

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

- (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).
- (3) Despite subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.
- (4) Such a lease—
  - (a) 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 Council thinks fit.
- (5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

## **20 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may do so only if the University—
  - (a) applies to the Minister for acquisition of the land, and
  - (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) For the purposes of the [Public Works Act 1912](#), any acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

- (4) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this section.

## **21 Grant or transfer of certain land to University**

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

## **Division 3 Commercial activities**

### **21A Definitions**

In this Division—

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

**University commercial activity** means—

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

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

- (1) The Council must by resolution determine, and must maintain, Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council 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 Council of any of its functions under this Act in connection with University commercial activities,
  - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
  - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
- (5), (6) (Repealed)

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

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities—
- (a) a description of the activity,
  - (b) details of all parties who participate in the activity,
  - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
  - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
  - (e) such other details as the Guidelines may require.
- (2) The Guidelines may make provision for the following—
- (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
  - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
  - (c) enabling related activities to be treated as a single activity for the purposes of the Register.

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

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

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

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

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

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

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

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

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

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

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

- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

## **Part 5 General**

### **22 Advance by Treasurer**

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

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

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

### **23 Financial year**

The financial year of the University is—

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

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

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

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

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

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

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

## 27 Seal of University

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

**Note—**

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

## 28 By-laws

- (1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any of the following—
- (a) the management, good government and discipline of the University,
  - (b) the method of election of members of the Council who are to be elected,
  - (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Board,
  - (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board,
  - (e) the functions of the presiding member of the Council or Academic Board,
  - (f) the conduct and record of business of the Council or Academic Board,
  - (g) the appointment of committees of the Council or Academic Board,
  - (h) the quorum and functions of committees of the Council or Academic Board,
  - (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor,
  - (j) the tenure of office, stipend and functions of the Vice-Chancellor,
  - (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise,
  - (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University,
  - (m) admission to, enrolment in and exclusion from courses of studies,
  - (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of any of the following—



- (i) entrance to the University,
- (ii) tuition,
- (iii) lectures and classes,
- (iv) examinations,
- (v) residence,
- (vi) the conferring of degrees and the awarding of diplomas and other certificates and awards,
- (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,
- (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates, awards and honours and the attendance of candidates for degrees, diplomas, certificates and honours,
- (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes,
- (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of degrees or diplomas without examination,
- (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges,
- (u) the affiliation with the University of any educational or research establishment,
- (v) the creation of faculties, schools, departments, centres or other entities within the University,
- (w) the provision of schemes of superannuation for the officers and employees of the University,
- (x) the form and use of academic costume,

(y) the form and use of an emblem of the University or of any body within or associated with the University,

(z) the use of the seal of the University,

(aa) the making, publication and inspection of rules.

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

## 29 Rules

(1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for or with respect to any or all of the matters for or with respect to which by-laws may be made, except the matters referred to in sections 3 (2), 8D (3) (a), 8E (4), 8F (2), 9 (1) (c) and (d), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (k) and clause 3 of Schedule 1 (to the extent it relates to appointments).

(1A) Despite subsection (1), only the Council may be empowered to make rules for or with respect to which by-laws may be made concerning matters referred to in sections 8D (3) (b), 8E (2) (a) and 28 (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 Council must ensure that any election rule it makes is made readily available to the public by whatever means the Council 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 Council (whether or not the Council is empowered to make such a rule), or by the authority or officer of the University for the time being empowered to make such a rule, and

(c) takes effect on the day on which it is published or on such later day as may be specified in the rule, and

(d) must indicate the authority or officer who made the rule and that it is made under this section.

(3) In the event of an inconsistency between a by-law and a rule, the by-law prevails to the extent of the inconsistency.

(4) The fact that a provision of this Act specifically provides for a matter to be the subject

of by-laws (without mention of rules) does not prevent the matter from being the subject of rules made in accordance with this section.

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

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

### **31 Savings and transitional provisions**

Schedule 3 has effect.

### **32 Repeal**

The *University of New England Act 1989* is repealed.

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

(Section 8A (3))

### **1 (Repealed)**

### **2 Vacation of office**

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

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed—
  - (i) in the case of a member appointed by the Minister, to the Minister, or
  - (ii) in the case of a member appointed by the Council, to the Chancellor, or
  - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or

- (h) is removed from office by the Council pursuant to section 21G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, or a member appointed pursuant to section 8E (2) (b), ceases to be qualified for election or appointment, or
- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
- (l) in the case of a member (other than a graduate member) appointed by the Council, is removed from office by the Council.

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

- (1) If the office of an appointed or elected member of the Council becomes vacant, a person is, subject to this Act and the by-laws, to be appointed or elected to fill the vacancy.
- (2) The by-laws may provide that, in such circumstances 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 the Council**

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

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

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

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

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, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

## **6 General procedure**

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

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

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

### **7 Presiding member**

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

### **8 Quorum**

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

### **9 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which

a quorum is present is the decision of the Council.

## **10 Remuneration**

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

## **Schedule 2 Investment**

(Section 16)

### **1 Definition of “funds”**

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

### **2 (Repealed)**

#### **2A Funds managers**

- (1) The Council 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 Council 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 Council may establish one or more investment common funds.
- (2) The Council may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the University.
- (3) Subject to subclause (4), the Council must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.
- (4) The Council may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.
- (5) If an investment is brought into an investment common fund—
  - (a) the University is to be taken to hold that investment on behalf of and for the

benefit of the common fund instead of the participating trust fund or other fund, and

- (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Council at the time it is brought into the common fund, and
  - (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Council to the equity in the common fund of that participating fund at the time of withdrawal.
- (6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.
- (7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

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

In respect of the trust funds of the University—

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

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

(Section 21F)

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

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

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

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

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

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

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

- (a) to gain, directly or indirectly, an advantage for the member or another person, or

(b) to cause detriment to the University.

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

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

(a) to gain, directly or indirectly, an advantage for the member or another person, or

(b) to cause detriment to the University.

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

(1) If—

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

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

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

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

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

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

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

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

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

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

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

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

(5) For the purpose of the making of a determination by the Council under subclause (4),



a member of the Council who has a material interest in a matter to which the disclosure relates must not—

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

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

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

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

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

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

(10) In this clause—

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

(a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,

(b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,

(c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

**Note—**

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

## Schedule 3 Savings and transitional provisions

(Section 31)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule—

**Southern Cross University** means the University established by the [Southern Cross University Act 1993](#).

**former University of New England** means the University of New England established under the [University of New England Act 1989](#).

**former University at Armidale** means the University of New England, Armidale, being the network member of that name under the [University of New England Act 1989](#).

**new University** means the University of New England established by this Act.

**transfer day** means the day on which the [University of New England Act 1989](#) is repealed.

## 2 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 day.
- (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 Transfer of staff

### 3 Definitions

In this Part—

**officer**, in relation to the former University at Armidale, means a person who, immediately before the transfer day, held any salaried office or employment in the staff establishment of that institution otherwise than as a temporary staff member or a staff member employed on a fixed term contract.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**temporary staff member**, in relation to the former University at Armidale, means a

person who, immediately before the transfer day, was employed in the staff establishment of that institution on terms and conditions that allowed for his or her services to be dispensed with at any time.

#### **4 Minister may give directions as to staff**

- (1) The Minister may, by order in writing, direct that a person who immediately before the transfer day held any salaried office or employment in the staff establishment of the former University of New England is taken for the purposes of this Schedule to have held that office or employment in the former University at Armidale, and any such direction has effect accordingly.
- (2) The Minister may give directions to the new University and to Southern Cross University requiring either to make specified payments to the other for the purpose of making adjustments between them in relation to their liabilities in respect of persons who become members of their staff establishments as a result of the operation of this clause. Such a direction has the effect of creating a liability to make any payment directed to be made.
- (3) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

#### **5 Transfer of staff generally**

- (1) Each officer of the former University at Armidale becomes, on the transfer day, an officer of the new University.
- (2) Except as provided by this Part or the regulations, the terms and conditions on which a person becomes an officer of the new University under this clause are the same as those on which he or she was an officer of the former University at Armidale.

#### **6 Remuneration and tenure**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University becomes such an officer on the same terms and conditions as to remuneration, and duration of appointment, as those on which he or she was employed at the former University at Armidale immediately before the transfer day.
- (2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the *Industrial Relations Act 1991* until the salary is, or the wages are, lawfully varied.

## **7 Superannuation**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University—
  - (a) may continue to contribute to any superannuation scheme to which the person was a contributor immediately before becoming an officer of the new University, and
  - (b) is entitled to receive any payment, pension or gratuity accrued or accruing to the person under any such scheme, as if he or she had continued to be such a contributor during his or her service as an officer of the new University.
- (2) Service by an officer of the former University at Armidale as an officer of the former University of New England is taken to be service as an officer of the former University at Armidale for the purposes of any law under which the officer continues to contribute to any such scheme or by which an entitlement under any such scheme is conferred.
- (3) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University is regarded as an officer or employee, and the new University is regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (4) If a person would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under any such scheme—
  - (a) the person is not so entitled on the person's becoming a contributor to any other superannuation scheme, and
  - (b) the provisions of subclause (3) cease to apply to or in respect of the person and the new University where the person becomes a contributor to any such other superannuation scheme.
- (5) Subclause (4) does not prevent the payment to an officer of the former University at Armidale, on the officer's ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the officer if the officer had ceased, by reason of resignation, to be such a contributor.

## **8 Annual leave, long service leave and sick leave**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University retains any rights to—
  - (a) annual leave, and
  - (b) leave in the nature of long service leave, and

(c) sick leave, accrued or accruing to the person as an officer of the former University at Armidale.

(2) A person's entitlement to any such leave is to be calculated—

(a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the officer, as an officer of the former University at Armidale, before that day, and

(b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the officer, as an officer of the new University, after that day.

### **9 No entitlement to dual benefits**

An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

### **10 Temporary staff**

(1) Each temporary staff member of the former University at Armidale becomes, on the transfer day, a temporary staff member of the new University.

(2) A temporary staff member of the former University at Armidale who, pursuant to this clause, becomes a temporary staff member of the new University becomes such a staff member on the same terms and conditions (including conditions as to remuneration) as those on which he or she was employed at the former University at Armidale immediately before the transfer day.

(3) Such part of the remuneration referred to in subclause (2) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the *Industrial Relations Act 1991* until the salary is, or the wages are, lawfully varied.

### **11 Fixed term contracts**

A fixed term contract in force, immediately before the transfer day, between a person and the former University of New England in relation to the former University at Armidale (being a contract under which the person performed services for the former University at Armidale)—

(a) is taken, for the remainder of its term, to be a contract in the same terms, between the person and the new University, under which the new University assumes the rights and obligations of the former University of New England, and

(b) may be arbitrated, terminated or renewed in any manner provided by the contract.

## 12 Part does not apply to former CEOs etc

This Part does not apply to a person holding office as chief executive officer of a member of the University network under the *University of New England Act 1989*, or as Vice-Chancellor under that Act.

## 13 Operation of this Part generally

- (1) Nothing in this Part affects the operation of the *Industrial Relations Act 1991*.
- (2) Neither the contract of employment nor the period of employment of a person is taken to have been broken by the operation of this Part for the purposes of any law, award or agreement relating to the employment of that person.
- (3) A person is not entitled to receive any payment or other benefit merely because the member ceases to be a member of staff of the former University at Armidale by the operation of this Part.

## Part 3 Property etc

### 14 Definitions

In this Part—

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

### 15 What constitutes the assets etc of the former University at Armidale

- (1) For the purposes of this Part, the assets, rights and liabilities of the former University at Armidale comprise—
  - (a) those assets, rights and liabilities of the former University of New England that relate to the former University at Armidale, and
  - (b) any assets, rights and liabilities of the former University of New England that the Minister directs by order in writing are to be regarded as assets, rights or liabilities of the former University at Armidale.

- (2) The Minister may in a direction under this clause specify a particular day that is later than the commencement of this clause as the transfer day for the purposes of any asset, right or liability to which the direction relates and the day so specified then becomes the transfer day for the purposes of the operation of this Schedule in relation to that asset, right or liability.
- (3) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

## **16 Transfer of assets etc**

- (1) On and from the transfer day—
  - (a) the assets of the former University at Armidale vest in the new University by force of this clause and without the need for any conveyance, transfer, assignment or assurance, and
  - (b) the rights and liabilities of the former University at Armidale become by force of this clause the rights and liabilities of the new University, and
  - (c) all proceedings relating to the former University at Armidale commenced before the transfer day by or against the former University of New England and pending immediately before the transfer day are taken to be proceedings pending by or against the new University, and
  - (d) anything done or omitted to be done in relation to the former University at Armidale before the transfer day by, to or in respect of the former University of New England is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the new University, and
  - (e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the former University at Armidale or to the former University of New England (to the extent that it relates to the former University at Armidale) is to be read as, or as including, a reference to the new University.
- (2) The new University has the control and management of land that was under the control and management of the former University of New England in relation to the former University at Armidale immediately before the transfer day.
- (3) The assets of the former University at Armidale vested in the new University by this clause are vested subject to any trusts or conditions subject to which they were held immediately before the transfer day and are to be applied by the new University for the purposes of the new University.

- (4) The transfer, by this Part, of the control and management of any asset to the new University does not affect any power of the person or body by whom the control and management of that asset has been conferred, or of any lawful successor of that person or body—
- (a) to remove the control and management of that asset from the new University, or
  - (b) to vary the conditions subject to which the control and management of that asset may be exercised by the new University,
- that could have been exercised by that person or body, or by that lawful successor, in respect of that property had this Act not been enacted.

## **17 Operation of Part**

- (1) The operation of this Part is not to be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (2) No attornment to the new University by a lessee from the former University of New England is required.
- (3) Any instrument executed only for—
- (a) a purpose ancillary to or consequential on the operation of this Part, or
  - (b) the purpose of giving effect to this Part,
- is not chargeable with stamp duty and is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

## **Part 4 Interim Council**

### **18 The interim Council of the University**

- (1) Pending the commencement of section 9, the Council is to consist of such persons as the Minister appoints for the purposes of this clause (referred to in this Part as the ***interim Council***).
- (2) The members of the interim Council hold office, subject to this Act, until the



commencement of section 9.

- (3) The Minister may call the first meeting of the interim Council in such manner as the Minister thinks fit.
- (4) A member of the interim Council designated by the Minister is to preside at all meetings of the interim Council until the election of the first Chancellor of the University.
- (5) The interim Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that a Council is duly constituted under section 9 so as to take office within 12 months after the commencement of this clause or within such extended time as is specified in a proclamation at any time during that period of 12 months.
- (6) The interim Council has and may exercise all the functions of the Council until the commencement of section 9, except the functions of the Council under sections 10 (Chancellor) and 11 (Deputy Chancellor). The provisions of this Act (except clause 1 (Term of office) of Schedule 1) applicable to the Council or the members of the Council apply to the interim Council and the members of the interim Council.
- (7) Schedule 1 has effect in relation to the members and procedure of the interim Council as if those members were appointed members of the Council.

## **19 Removal of current office holders**

- (1) The Board of Governors of the University of New England, as constituted immediately before the repeal of the *University of New England Act 1989* is dissolved.
- (2) The persons holding office as members of the Board of Governors, Chancellor, Deputy Chancellor and Vice-Chancellor immediately before the repeal of the *University of New England Act 1989* cease to hold office as such on that repeal.
- (3) The offices of chief executive officer of a member of the University network under the *University of New England Act 1989* are abolished and the persons holding office as such immediately before the repeal of that Act cease to hold office as such on that repeal.
- (4) Nothing in this clause affects any entitlement to compensation that a person who held office as Vice-Chancellor or chief executive officer of a member of the University network immediately before the repeal of the *University of New England Act 1989* has as a result of ceasing to hold that office.
- (5) The Minister may give directions to the new University, Southern Cross University and any other university that the Minister considers should bear responsibility for compensation referred to in subclause (4), requiring the making of specified payments by them for the purpose of adjusting their liabilities in respect of that compensation.

Such a direction has the effect of creating a liability to make any payment directed to be made.

- (6) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

## **20 Election of first Chancellor**

The election of the first Chancellor of the University by the Council is not to take place until the Council is (apart from the election of Chancellor) fully constituted as provided by section 9.

## **21 Appointment of first lay member of Council**

The first appointment of a person under section 9 (6) as a member of the Council is not to take place until the other members of the Council provided for in section 9 (2), (4) and (5) have been elected or appointed.

## **22 Interim Council to appoint first Vice-Chancellor**

- (1) The first Vice-Chancellor is to be a person appointed by the interim Council on the recommendation of a committee established with the approval of the Minister for the purpose of selecting a person for appointment.
- (2) The interim Council may, instead of appointing a person to be Vice-Chancellor, appoint a person to act as Vice-Chancellor pending the appointment of a Vice-Chancellor.
- (3) If the interim Council has not appointed a person to be Vice-Chancellor before the commencement of section 9, a vacancy in the office of Vice-Chancellor is considered to have occurred (for the purpose of enabling the Council constituted under section 9 to appoint a person to be the Vice-Chancellor).

## **Part 5 Other matters consequent on the establishment of the new University**

### **23 Students**

- (1) Each person who was, immediately before the transfer day, a student of the former University at Armidale enrolled in a course of study becomes on that day a student of the new University in that course of study and the new University must provide such courses of study as are necessary for the purposes of this clause.
- (2) A course of study provided by the new University that is equivalent to a course of study provided by the former University of New England (***the former course***) is taken

to be the same as the former course and accordingly a student enrolled in such a course of study is to be given credit in that course for any subject or work completed by the student in the former course.

- (3) Students enrolled in courses of study under this clause are entitled, on satisfactory completion of their courses, to appropriate awards conferred by the new University.

#### **24 Arrangements for students transferred to Southern Cross University**

- (1) The new University must enter into arrangements with Southern Cross University for the purpose of affording students transferred to Southern Cross University who were enrolled in courses of study at the former University of New England immediately before the transfer day the opportunity (if they wish) to complete those courses as provided by the new University.
- (2) The **students transferred to Southern Cross University** are the students who become students of Southern Cross University pursuant to clause 22 of Schedule 3 to the [Southern Cross University Act 1993](#).
- (3) Students of Southern Cross University who satisfactorily complete their courses under the arrangements referred to in this clause are entitled to appropriate awards conferred by the University of New England.

#### **25 Former By-laws**

- (1) The *By-laws of the University of New England* (as in force immediately before the transfer day) continue in force as if they had been made by the Council under this Act and may be amended and revoked accordingly.
- (2) A reference in those By-laws to the Board or the Board of Governors is taken to be a reference to the Council and a reference to the Academic Senate is taken to be a reference to the Academic Board.
- (3) The *Armidale College of Advanced Education By-law* is repealed.

#### **26 Saving of delegations**

Any delegation made by the Board of the former University of New England in respect of the former University at Armidale and in force immediately before the transfer day continues to have effect as if it were a delegation made by the Council, but may be revoked at any time by the Council.

#### **27 Existing investments**

Nothing in this Part affects the validity of any investment made by or on behalf of the former University of New England before the transfer day.

## **28 Conduct of elections etc**

- (1) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if the whole of this Act were in force.
- (2) A member who is elected or appointed to the Council under this clause does not assume office before the commencement of section 9.

## **29 Construction of certain references**

In any other Act or in any statutory instrument (including any industrial award or industrial agreement) or other document, a reference to the former University at Armidale is, on and from the transfer day, to be read as a reference to the new University.

## **30 Determination of certain questions**

- (1) Any question arising in connection with the operation of this Schedule—
  - (a) as to which land is under the control and management of any particular institution, or
  - (b) as to which institution any assets, rights, liabilities or obligations belong or relate to, or
  - (c) as to which institution the employment of any staff pertains to,is to be determined by the Minister.
- (2) A certificate by the Minister as to a determination under this clause is, for any purpose, evidence of the matters contained in the certificate.
- (3) The Minister is not to make a determination under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed determination and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed determination is concerned.

## **31 Directions to University of Sydney as to liabilities of Orange Agricultural College**

- (1) The Minister may give directions to the University of Sydney (as the institution responsible for Orange Agricultural College) requiring that University to make specified payments to the new University and Southern Cross University for the purpose of adjusting the liabilities of those Universities arising under this Schedule or Schedule 3 to the [Southern Cross University Act 1993](#) that the Minister considers are attributable to the Orange Agricultural College.
- (2) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and

unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

- (3) A direction under this clause has the effect of creating a liability to make any payment directed to be made.

### **32 Acts supersede [Higher Education \(Amalgamation\) Act 1989](#)**

This Act and the [Southern Cross University Act 1993](#) supersede the operation of the [Higher Education \(Amalgamation\) Act 1989](#) in relation to the former University of New England, the former Armidale College of Advanced Education and the former Northern Rivers College of Advanced Education.

## **Part 6 Miscellaneous**

### **33 Visitor**

- (1) Section 13 (2) extends to disputes and other matters arising before the commencement of this clause.
- (2) However, if an inquiry by or at the direction of the Visitor into a dispute or other matter has commenced or been completed before the commencement of this clause, the dispute or other matter is to be dealt with and determined as if the [University Legislation \(Amendment\) Act 1994](#) had not been enacted.

### **34 Effect of the [University Legislation \(Amendment\) Act 1994](#) on existing by-laws and rules**

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

## **Part 7 Provisions consequent on enactment of [Universities Legislation Amendment \(Financial and Other Powers\) Act 2001](#)**

### **35 Investment powers**

Until an order is made under clause 2 of Schedule 2 (as substituted by the [Universities Legislation Amendment \(Financial and Other Powers\) Act 2001](#)), approval is taken to have

been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

### 36 Validation

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

## Part 8 Provisions consequent on enactment of **University Legislation Amendment Act 2004**

### 37 Definitions

In this Part—

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

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

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

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

### 38 General

The provisions of this Part are subject to any regulations made under clause 2.

### 39 Constitution of Council

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

- (a) a person holding office under former section 9 (2) ceases to hold that office, and
- (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
- (c) a person holding office under former section 9 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.

(2) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as

is reasonably practicable after the relevant day.

- (3) For the purposes of making the by-laws referred to in subclause (2), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (4) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (5) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows—
  - (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
  - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
  - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
  - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
  - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (6) Subject to this Act, a member appointed under subclause (5) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (7) Subject to this Act, if, on the expiry—
  - (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
  - (b) in the case of a member appointed under subclause (5), of the term of office of the member's predecessor,the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (8) 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.

(9) 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.

#### **40 Maximum incumbency for Council members**

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 39 (1) (b) or (c) or (7) of this Schedule.

#### **41 Application of section 21G**

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

#### **42 Continuation of Council**

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

### **Part 9 Provisions consequent on enactment of [Universities Legislation Amendment \(Regulatory Reforms\) Act 2014](#)**

#### **43 Definition**

In this Part—

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

#### **44 Guidelines for commercial activities**

The Guidelines approved for the time being under section 21B, 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 Council under that section as amended.

#### **45 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.



#### 46 Previously acquired land

Section 18 (2)-(3), as inserted by the amending Act, extend to land acquired from the State before the insertion of those subsections.

### Part 10 Provisions consequent on adoption of standard governing body provisions

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

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

(2) In this clause—

**amended provision** means a provision of this Act and the by-laws amended as set out in an order made by the Minister under section 4 of the [Universities Governing Bodies Act 2011](#).

**existing member** of the Council means a member of the Council as constituted immediately before the governing body resolution took effect.

**Note—**

The governing body resolution took effect on the day on which the [Universities Governing Bodies \(University of New England\) Order 2016](#) commenced.

**governing body resolution** means the governing body resolution made by the Council on 27 November 2015.

(3) An existing member of the Council continues in office until the expiration of the term for which the member was appointed or elected (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office).

### Part 11 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2017](#)

#### 48 Financial accommodation and risk management

An amendment made to this Act by the [Statute Law \(Miscellaneous Provisions\) Act 2017](#) does not affect the validity of any financial accommodation made by or on behalf of the University, any transaction or arrangement entered into or participated in to manage a financial risk, or any disposal or other dealing with property of the University, before the commencement of the amendment.