



# The University of Sydney

## University of Sydney Act 1989 (as amended)

**Assented to by:** the NSW Government on 30 August 1989

**Date of effect:** 1 January 1990

**Latest amendment assented to by:** the NSW Government on 21 December 2004

**Date of effect:** 21 December 2004

### Long Title

An Act with respect to the constitution and functions of the University of Sydney; to repeal the *University and University Colleges Act 1900*; and for other purposes.

### PART 1 - Preliminary

#### 1 Name of Act

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

#### 2 Commencement

(1) This Act (section 40 (2)-(4) excepted) commences on a day or days to be appointed by proclamation.

(2) The provisions of section 40 (2)-(4) commence on the date of assent to this Act.

#### 3 Definitions

(1) In this Act:

**academic college** means a college established by or under Part 5.

**advisory council** means an advisory council established under Part 5.

**Bachelor** means any person on whom the degree of Bachelor has been conferred by the University.

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

**Doctor** means any person on whom the degree of Doctor has been conferred by the University.

**Fellow** means a member of the Senate.

**incorporated college** means Sancta Sophia College, St Andrew's College, St John's College, St Paul's College, Wesley College or the Women's College.

**Master** means any person on whom the degree of Master has been conferred by the University.

**principal**, in relation to an incorporated college, means the master, warden, rector or other person who is the head of the college.

**residential college** means an incorporated college or a college (other than an academic college)

established under this Act.

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

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

(2) In this Act, a reference to a graduate of the University is a reference to:

- (a) a person who is the recipient of a degree, or of such other diploma, award or certificate as may be prescribed by the by-laws, conferred or awarded by the University, or
- (b) 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:
  - (i) by or on behalf of any former institution that has, pursuant to this Act or to the *Higher Education (Amalgamation) Act 1989* or otherwise, become a part of the University, or
  - (ii) by any predecessor of any such institution.

(3) In this Act:

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

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

## **PART 2 - Constitution and functions of the University**

### **4 Establishment of University**

A University, consisting of:

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

is established by this Act as a continuation of the University of Sydney established by Act 14 Vic No 31.

### **5 Incorporation of University**

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

### **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,
  - (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 Senate, authorities and officers of the University**

### **8 The Senate**

- (1) There is to be a Senate of the University.
- (2) The Senate is the governing authority of the University and has the functions conferred or imposed on it by or under this Act.

### **9 Constitution of Senate**

- (1) The Senate is to consist of:
  - (a) 3 official members, being:
    - (i) the Chancellor (if the Chancellor is not otherwise a member of the Senate), and
    - (ii) the Vice-Chancellor, and
    - (iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and
  - (b) 6 external persons appointed by the Minister, one of whom is nominated by the Senate for appointment otherwise than pursuant to subsection (2), and
  - (c) one external person appointed by the Senate, and
  - (d) 4 persons:
    - (i) who are members of the academic staff of the University, and
    - (ii) who have such qualifications as may be prescribed by the by-laws, and
    - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
  - (e) one person:
    - (i) who is a member of the non-academic staff of the University, and
    - (ii) who has such qualifications as may be prescribed by the by-laws, and
    - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
  - (f) one person:
    - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and

- (ii) who has such qualifications as may be prescribed by the by-laws, and
    - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
  - (g) one person:
    - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
    - (ii) who has such qualifications as may be prescribed by the by-laws, and
    - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
  - (h) 5 external persons:
    - (i) who are graduates of the University, and
    - (ii) who have such qualifications as are prescribed by the by-laws, and
    - (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.
- (2) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Senate for appointment. No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (3) Of the members of the Senate:
- (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).
- (4) All appointed members of the Senate must have expertise and experience relevant to the functions exercisable by the Senate and an appreciation of the object, values, functions and activities of the University.
- (5) The majority of members of the Senate must be external persons.
- (6) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Senate.
- (7) Schedule 1 has effect in relation to the members and procedure of the Senate.
- (8) A reference in this section to members of the academic staff of the University includes a reference to such persons as the by-laws declare to be members of the academic staff of the University for the purposes of this section.
- (9) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

## **10 Chancellor**

- (1) Whenever a vacancy in the office of Chancellor occurs, the Senate must elect a person (whether or not a Fellow) to be Chancellor of the University.
- (2) The Chancellor, unless he or she sooner resigns as Chancellor or ceases to be a Fellow, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

## **11 Deputy Chancellor**

- (1) Whenever a vacancy in the office of Deputy Chancellor occurs, the Senate must elect a Fellow to be Deputy Chancellor of the University.
- (2) The Deputy Chancellor, unless he or she sooner resigns as Deputy Chancellor or ceases to be a Fellow, holds office for such period (not exceeding 2 years), and on such conditions, as may be prescribed by the by-laws.
- (3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

## **12 Vice-Chancellor**

- (1) Whenever a vacancy in the office of Vice-Chancellor occurs, the Senate must appoint a person (whether or not a Fellow) to be Vice-Chancellor of the University.
- (2) The Vice-Chancellor, unless he or she sooner resigns as Vice-Chancellor, holds office for such period, and on such conditions, as the Senate determines.
- (3) The Vice-Chancellor is the principal executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act.
- (4) If a person who is not a Fellow is appointed at any time to act in the place of the Vice-Chancellor, that person is, while so acting, to be taken to be a Fellow.

## **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 Fellows and former Fellows of the Senate,
  - (b) the graduates of the University,
  - (c) the persons referred to in section 34,
  - (d) 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
  - (e) such graduates of other universities, or other persons, as are, in accordance with the by-laws, admitted as members of Convocation.
- (2) 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.
- (3) A quorum at any meeting of Convocation is to be such number of members as may be prescribed by the by-laws.
- (4) Convocation has such functions as may be prescribed by the by-laws.
- (5) The Senate 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 Senate may, in accordance with the by-laws, determine.
- (2) Subject to subsection (1), the constitution and functions of the Academic Board are to be as prescribed by the by-laws.

## **PART 4 - Functions of Senate**

### **Division 1 - General**

#### **16 Functions of Senate**

- (1A) The Senate:
  - (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 Senate to be best calculated to promote the object and interests of the University.
- (1B) Without limiting the functions of the Senate under subsection (1A), the Senate is, in controlling and managing the affairs and concerns of the University:
  - (a) to monitor the performance of the Vice-Chancellor, and
  - (b) to oversee the University's performance, and

- (c) to oversee the academic activities of the University, and
- (d) to approve the University's mission, strategic direction, annual budget and business plan, and
- (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
- (g) to approve significant University commercial activities (within the meaning of section 26A), 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 Fellows a program of induction and of development relevant to their role as a Fellow.

(1) Without limiting the functions of the Senate under subsection (1A), the Senate may, for and on behalf of the University in the exercise of the University's functions:

- (a) provide such courses, and confer such degrees (including ad eundem degrees and honorary degrees) and award such diplomas and other certificates, as it thinks fit,
- (b) appoint and terminate the appointment of academic and other staff of the University,
- (c) (Repealed)
- (d) borrow money within such limits, to such extent and on such conditions as to security or otherwise as the Governor on the recommendation of the Treasurer may approve,
- (e) invest any funds belonging to or vested in the University,
- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),
- (g) (Repealed)
- (h) authorise any other university or educational institution (whether in New South Wales or elsewhere) to confer degrees, or to award diplomas or other certificates, on behalf of the University,
- (i) make loans and grants to students, and
- (j) impose fees, charges and fines.

(2) The functions of the Senate 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 Senate.

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

## 16A Controlled entities

(1) The Senate 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 Senate is permitted to do so by the Minister under this section.

(2) The Minister may, by order in writing, permit the Senate 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 Senate at its discretion.

(5A) The Senate 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 Senate 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 Senate.

(6) In this section:

**controlled entity** means a person, group of persons or body of which the University or Senate has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983* .

### **17 Delegation by Senate**

The Senate 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:

- (a) any member or committee of the Senate,
- (b) any authority or officer of the University (including any advisory council), or
- (c) any other person or body prescribed by the by-laws.

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

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

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

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

- (a) whether or not the recommendation relates to a referral by the Minister under section 26E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 26A).

## **Division 2 - Property**

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

(1) The Senate:

- (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise, and
- (b) has the control and management of all property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.

(2) The Senate is not, except with the approval of the Minister, to alienate, mortgage, charge or demise any lands of the University.

- (3) Notwithstanding subsection (2), the Senate may, without the approval of the Minister, lease any lands of the University if:
- (a) the term of the lease does not exceed 21 years, and
  - (b) the Senate 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 Senate thinks fit.
- (5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

### **19 Powers of Senate 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 Senate has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Senate to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).
- (3) Notwithstanding subsection (2), the Senate 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) is to be for a term not exceeding 21 years, and
  - (b) is to contain a condition that the lease is not to be assigned and such other conditions as the Senate thinks fit.
- (5) The Senate is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

### **20 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) The Minister may do so only if the University:
- (a) applies to the Minister for acquisition of the land, and
  - (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) For the purposes of the *Public Works Act 1912*, any acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this section.

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

- (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:
- (a) if it is vested in the Crown--be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Natural Resources thinks fit, or
  - (b) if it is vested in a Minister of the Crown--be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.
- (2) A conveyance, transfer or other instrument executed for the purposes of this section:
- (a) is not liable to stamp duty under the *Stamp Duties Act 1920*, and

(b) may be registered under any Act without fee.

### **Division 3 - Variation of trusts**

#### **22 Definitions**

In this Division:

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

**prize** includes a scholarship or exhibition.

#### **23 Trusts to which Division applies**

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

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

#### **24 Variation of amount of prize, scholarship or exhibition**

(1) If:

- (a) by the terms of a trust for the award from time to time, out of the income from the trust property or its proceeds, of a prize, the prize to be awarded is a fixed amount of money, and
- (b) in the opinion of the Senate, the value of the amount so fixed has been so affected by monetary inflation that it no longer reflects the intentions of the donor with respect to the value and significance of the prize,

the Senate may request the Minister to effect a variation of the amount of the prize.

(2) The Minister, if satisfied that it is just and equitable to do so, may determine to vary the amount of the prize in accordance with the Senate's request.

(3) On delivery to the Senate of an instrument in writing signed by the Minister and specifying such a variation, the trust concerned is varied accordingly.

#### **25 Variation of terms of trust**

(1) If:

- (a) by the terms of a trust, any property is held:
  - (i) on trust for a charitable purpose, or
  - (ii) on trust for a purpose of the University other than its general purposes, and
- (b) in the opinion of the Senate, it is impossible or inexpedient to carry out or observe the terms of the trust, whether as to its purpose or any other of its terms,

the Senate may request the Minister to effect a variation of the terms of the trust.

(2) The Minister, if satisfied that it is just and equitable to do so, and with the concurrence of the Attorney General, may determine to vary the terms of the trust concerned in accordance with the Senate's request.

(3) In the making of any such determination, regard is to be had:

- (a) to the extent to which it may be necessary to depart from the terms of the trust concerned in order to avoid the impossibility or inexpediency complained of, and
- (b) to what appear to have been the intentions of the donor in creating the trust.

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

#### **26 Further variation**

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

## **Division 4 - Commercial activities**

### **26A Definitions**

In this Division:

**the Guidelines** means the guidelines approved for the time being under section 26B.

**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.

### **26B Guidelines for commercial activities**

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Senate may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
  - (a) requiring feasibility and due diligence assessment,
  - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
  - (c) requiring the undertaking of risk assessment and risk management measures,
  - (d) regulating and imposing requirements concerning the delegation by the Senate 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 26A,
  - (f) establishing a protocol regarding the rights and responsibilities of members of the Senate in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Senate must ensure that the Guidelines are complied with.
- (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Senate or any failure by the Senate to submit proposals for the Guidelines.
- (6) Guidelines are approved by the Minister by giving notice in writing to the Senate of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

### **26C Register of commercial activities**

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

#### **26D Reports to Minister on commercial activities**

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

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

#### **26E 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 Senate 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 Fellows**

#### **26F Duties of Fellows**

The Fellows have the duties set out in Schedule 2A.

#### **26G Removal from office for breach of duty**

(1) The Senate may remove a Fellow 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 Senate of which notice (including notice of the motion that the Fellow 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 Fellows for the time being.

(4) The motion for removal must not be put to the vote of the meeting unless the Fellow concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the Fellow 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 Fellow may not be removed from office by the Senate for breach of duty except pursuant to this section.

### **PART 5 - Establishment of academic colleges**

#### **27 Establishment of academic colleges**

(1) The following academic colleges of the University are established:

Sydney Conservatorium of Music

Cumberland College of Health Sciences

Sydney College of the Arts

Orange Agricultural College

(2) The Governor may, by order published in the Gazette, establish:

(a) an educational institution set up by the University,

(b) any other public educational institution or body, or

(c) any part of any such institution or body,

as an academic college.

(3) If, before the establishment of an academic college, any property has been vested in or acquired by any person on trust for the purposes for which the college is established, the person may, when the college is established, convey or transfer the property to the University on trust to apply the property, or the proceeds of it or the income from it, for the benefit of the college.

## **28 Advisory councils**

- (1) An advisory council may be constituted for an academic college.
- (2) An advisory council is to consist of no fewer than 10, and no more than 20, members.
- (3) The members of an advisory council are to be appointed by the Senate.
- (4) An advisory council has such functions as may be prescribed by the by-laws.

## **PART 6 - General**

### **29 Advance by Treasurer**

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

### **29A Stamp duty exemption**

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

### **30 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.

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

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

### **32 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 Senate, on grounds of conscience, from membership of the body corporate of the University or of Convocation, or both.

### **33 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.

### **34 Academic status**

- (1) Persons belonging to the following classes of persons have the same rights and privileges within the University as have Masters and Doctors:
  - (a) professors and other full-time members of the academic staff of the University,
  - (b) principals of the incorporated colleges,
  - (c) persons declared by the by-laws to be superior officers of the University.
- (2) Persons who possess qualifications that are recognised by the by-laws as being of the same rank as the degree of Bachelor have the same rights and privileges within the University as have Bachelors.

### **35 Seal of University**

The seal of the University is to be kept in such custody as the Senate may direct and is only to be affixed

to a document pursuant to a resolution of the Senate.

### **36 By-laws**

- (1) The Senate may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) the management, good government and discipline of the University,
  - (b) the method of election of members of the Senate who are to be elected,
  - (c) the manner and time of convening, holding and adjourning the meetings of the Senate or Academic Board,
  - (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Senate or Academic Board,
  - (e) the functions of the presiding member of the Senate or Academic Board,
  - (f) the conduct and record of business of the Senate or Academic Board,
  - (g) the appointment of committees of the Senate or Academic Board,
  - (h) the quorum and functions of committees of the Senate or Academic Board,
  - (i) the resignation of members of the Senate, 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 and the designation of students of the University as undergraduate students, postgraduate students 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 Senate considers necessary, including fees and charges to be paid in respect of:
    - (i) entrance to the University,
    - (ii) tuition,
    - (iii) lectures and classes,
    - (iv) examinations,
    - (v) residence,
    - (vi) the conferring of degrees and the awarding of diplomas and other certificates,
    - (vii) the provision of amenities and services, whether or not of an academic nature, and
    - (viii) an organisation of students or of students and other persons,
  - (o) the exemption from, or deferment of, payment of fees and charges, including fines,
  - (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements,
  - (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours,
  - (r) the assessments for, and the granting of, memberships, 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 discipline of academic and residential colleges,
  - (v) the classes and courses of instruction provided at academic colleges and the conduct of examinations at such colleges,
  - (w) the constitution and functions of advisory councils,

- (x) the delegation of functions of the Senate to advisory councils,
  - (y) the affiliation with the University of any educational or research establishment,
  - (z) the creation of faculties, schools, departments, centres, institutes or other entities within the University,
  - (aa) the provision of schemes of superannuation for the officers and employees of the University,
  - (bb) the form and use of academic costume,
  - (cc) the form and use of an emblem of the University or of any body within or associated with the University,
  - (dd) the use of the seal of the University, and
  - (ee) the making, publication and inspection of rules.
- (2) A by-law has no effect unless it has been approved by the Governor.

### **37 Rules**

- (1) The by-laws may empower any authority (including the Senate) 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), 9 (1) (d)-(h), (6) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 30 and 36 (1) (b) and (k) and clauses 1 (1) (c) and (d) and 3 of Schedule 1.
- (2) A rule:
- (a) has the same force and effect as a by-law, and
  - (b) may, from time to time, be amended or repealed by the Senate (whether or not the Senate 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.

### **38 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.

### **39 Repeal etc**

- (1) The *University and University Colleges Act 1900* is repealed.
- (2) The Senate of the University of Sydney, as constituted immediately before the repeal of the *University and University Colleges Act 1900*, is dissolved.
- (3) The persons holding office as members of the Senate and Deputy Chancellor immediately before the repeal of the *University and University Colleges Act 1900* cease to hold office as such on that repeal.

### **40 Savings and transitional provisions**

- (1) Schedule 3 has effect.
- (2) For the purpose only of enabling the Senate to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if:
  - (a) the whole of this Act, and
  - (b) sections 7, 10, 13, 19, 20 and 21 of the *Higher Education (Amalgamation) Act 1989*, were in force.
- (3) A Fellow who is elected or appointed to the Senate under this section does not assume office before the commencement of section 9.

(4) The Senate of the University of Sydney referred to in the *University and University Colleges Act 1900* is to make the nomination for the purposes of section 9 (4) in respect of the first Senate to be constituted under this Act.

## **SCHEDULE 1 Provisions relating to Fellows and to the procedure of the Senate**

(Section 9)

### **1 Term of office**

- (1) Subject to this Act, a Fellow holds office as follows:
- (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
  - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
  - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
  - (d) in the case of an elected member referred to in section 9 (1) (h), 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 Senate must be taken into account:
- (a) by the Senate, when making the by-laws required under this clause, and
  - (b) by the Minister and the Senate, when appointing members to the Senate.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Senate otherwise resolves in relation to the person).

### **2 Vacation of office**

The office of a Fellow becomes vacant if the Fellow:

- (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 Fellow appointed by the Minister, to the Minister, or
  - (ii) in the case of a Fellow appointed by the Senate, to the Chancellor, or
  - (iii) in the case of an elected Fellow, 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 Senate pursuant to section 26G, or
- (i) is absent from 3 consecutive meetings of the Senate of which reasonable notice has been given to the Fellow personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Senate for his or her absence, or
- (j) in the case of an elected Fellow, ceases to be qualified for election, or
- (k) in the case of a Fellow appointed by the Minister, is removed from office by the Minister, or
- (l) in the case of a Fellow appointed by the Senate, is removed from office by the Senate.

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

- (1) If the office of an appointed or elected Fellow 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 Senate**

- (1) The Senate 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 Fellows.
- (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 Senate or (subject to any determination of the Senate) by the committee.

#### **5 Liability of Fellows and others**

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

- (a) the University, the Senate or a Fellow, or
- (b) any person acting under the direction of the University or the Senate,

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 Fellow 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 Senate and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Senate.

#### **7 Presiding member**

- (1) The Chancellor is to preside at all meetings of the Senate at which the Chancellor is present.
- (2) At any meeting of the Senate 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 Senate a Fellow appointed by the Senate (or, if no Fellow is so appointed, elected by and from the Fellows present) is to preside.
- (4) At any meeting of a committee constituted by the Senate 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 Senate, a majority of the total number of Fellows for the time being constitutes a quorum.

#### **9 Voting**

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

### **SCHEDULE 2 Investment**

(Section 16)

#### **1 Definition of "funds"**

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

#### **2 Investment powers**

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

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

- (1) The Senate may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.

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

### **3 Investment common funds**

- (1) The Senate may establish one or more investment common funds.
- (2) The Senate 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 Senate 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 Senate 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 Senate 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 Senate 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 Senate, and
  - (b) the power of the Senate 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 Fellows**

(Section 26F)

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

A Fellow 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 Fellow 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 Fellow must not make improper use of his or her position:

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

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

A Fellow must not make improper use of information acquired because of his or her position:

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

### **5 Disclosure of material interests by Fellows**

(1) If:

- (a) a Fellow has a material interest in a matter being considered or about to be considered at a meeting of the Senate, and
- (b) the interest appears to raise a conflict with the proper performance of the Fellow's duties in relation to the consideration of the matter,

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

(2) A disclosure by a Fellow at a meeting of the Senate that the Fellow:

- (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 Senate 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 Senate.

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

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

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

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

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

(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 Senate pursuant to section 26G.

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

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

(10) In this clause:

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

- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the Fellow,
- (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 Fellow,
- (c) any other person who is known to the Fellow for reasons other than that person's

connection with the University or that person's public reputation.

### **SCHEDULE 3 Savings and transitional provisions**

(Section 40)

#### **1A Savings or transitional regulations**

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

*University Legislation Amendment Act 2004*

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

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

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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

The University is a continuation of, and the same legal entity as, the University of Sydney referred to in the *University and University Colleges Act 1900*.

#### **2 Chancellor**

(1) The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of Sydney:

(a) remains Chancellor of the University, and

(b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Chancellor.

(2) Section 10 (2) does not apply to or in respect of the Chancellor referred to in this clause.

#### **3 Deputy Chancellor**

The Senate must, at its first meeting that takes place after the commencement of this clause or as soon as practicable thereafter, appoint a Deputy Chancellor of the University.

#### **4 Vice-Chancellor**

(1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of Sydney:

(a) remains Vice-Chancellor of the University, and

(b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.

(2) Section 12 (2) does not apply to or in respect of the Vice-Chancellor referred to in this clause.

(3) Any appointment made by the Senate of the University of Sydney referred to in the *University and University Colleges Act 1900* before the commencement of this clause (not being an appointment that has been revoked) under which a person has been appointed to succeed, as Vice-Chancellor, the person who was the Vice-Chancellor immediately before the commencement of this clause continues to have effect, unless sooner revoked, as if it had been made by the Senate on or after that commencement.

#### **5 Convocation**

(1) Convocation includes:

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

(b) graduates of any of those institutions.

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

the institution.

## **6 Savings of delegations**

Any delegation made or taken to have been made by the Senate of the University of Sydney under the *University and University Colleges Act 1900* is to be taken to be a delegation under this Act by the Senate.

## **7 Existing investments**

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

## **8 Advisory councils**

An advisory council constituted under section 43 of the *University and University Colleges Act 1900* and in existence immediately before the commencement of this clause is to be taken to have been constituted under section 28.

## **9 By-laws**

The By-laws of the University of Sydney:

- (a) continue in force as if they had been made by the Senate, and
- (b) may be amended and revoked accordingly.

## **10 Visitor**

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

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

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

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

## **13 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.

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

- (1) In this clause:

**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.

(2) 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.

(3) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).

(4) The Senate is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Senate is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.

(5) For the purposes of making the by-laws referred to in subclause (4), the Senate must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).

(6) The Senate is taken to be properly constituted until such time as it is constituted in accordance with new section 9.

(7) A casual vacancy occurring in the office of a Fellow before the Senate is duly constituted under new section 9 is to be filled as follows:

- (a) if the vacancy occurs in the office of a Fellow 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 Fellow appointed under new section 9 (1) (c), the Senate is to appoint a person whom the Senate considers appropriate,
- (c) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (d) or (e), the Senate is to appoint a person qualified to hold that office,
- (d) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (f) or (g), the Senate is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Senate,
- (e) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (h), the Senate is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.

(8) Subject to this Act, a Fellow appointed under subclause (7) holds office from the time that person is appointed under that subclause until the expiry of the term of that Fellow's predecessor.

(9) Subject to this Act, if, on the expiry:

- (a) of a Fellow's term of office that is continued under subclause (2) (b) or (c), or
- (b) in the case of a Fellow appointed under subclause (7), of the term of office of the Fellow'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 Fellow may continue to hold that office until such time as a person is so duly appointed or elected.

(10) For the purposes of subclause (2), a Fellow 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 Fellow's predecessor was elected or appointed.

(11) A person who ceases to hold office under subclause (2) (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 Fellow.

- (12) Consecutive years of office served by a Fellow immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the Fellow.
- (13) However, clause 1 (3) of Schedule 1 does not affect the operation of subclause (2) (b) or (c) or (9) of this Schedule.
- (14) Section 26G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.
- (15) No amendment made by the amending Act affects the continuity of the Senate.
- (16) The provisions of this clause are subject to any regulations made under clause 1A.