

House of Assembly—No 104

As laid on the table and read a first time, 4 May 2005

South Australia

Statutes Amendment (Universities) Bill 2005

A BILL FOR

An Act to amend *The Flinders University of South Australia Act 1966*; the *University of Adelaide Act 1971*; and the *University of South Australia Act 1990*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *The Flinders University of South Australia Act 1966*

- 4 Amendment of section 1—Short title
- 5 Amendment of section 2—Interpretation
- 6 Amendment of section 3—Establishment and incorporation of The Flinders University of South Australia
- 7 Insertion of sections 4A and 4B
 - 4A Declaration of logo and official titles
 - 4B Protection of proprietary interests of University
- 8 Amendment of section 5—Council
- 9 Amendment of section 6—Term of office
- 10 Amendment of section 16—Appointment of Chancellor, Vice-Chancellor, etc
- 11 Repeal of section 17
- 12 Insertion of sections 18A to 18E
 - 18A Duty of Council members to exercise care and diligence etc
 - 18B Duty of Council members to act in good faith etc
 - 18C Duty of Council members with respect to conflict of interest
 - 18D Removal of Council members for contravention of section 18A, 18B or 18C
 - 18E Civil liability for contravention of section 18B or 18C
- 13 Amendment of section 20—Power of Council to make statutes, regulations and by-laws
- 14 Amendment of section 21—Power to confer awards
- 15 Repeal of section 23
- 16 Repeal of sections 25 and 26
- 17 Insertion of section 29
 - 29 Immunity from civil liability

Part 3—Amendment of *University of Adelaide Act 1971*

- 18 Amendment of section 3—Interpretation
- 19 Amendment of section 4—Continuance and powers of University
- 20 Insertion of section 4A
 - 4A Object of University
- 21 Amendment of section 6—Power to confer awards
- 22 Amendment of section 9—Council to be the governing body of University
- 23 Amendment of section 12—Constitution of Council
- 24 Insertion of section 12A
 - 12A Term of office
- 25 Amendment of section 13—Casual vacancies
- 26 Substitution of section 15
 - 15 Duty of Council members to exercise care and diligence etc
- 27 Amendment of section 16—Duty of Council members to act in good faith etc
- 28 Amendment of section 17A—Removal of Council members for contravention of section 15, 16 or 17
- 29 Amendment of section 23—By-laws
- 30 Amendment of section 25—Report
- 31 Insertion of section 29
 - 29 Immunity from civil liability

Part 4—Amendment of *University of South Australia Act 1990*

- 32 Amendment of section 3—Interpretation
- 33 Amendment of section 4—Establishment of the University
- 34 Amendment of section 6—Powers of the University
- 35 Amendment of section 7—Principles to be observed by the University
- 36 Insertion of sections 9B and 9C
 - 9B Declaration of logo and official titles
 - 9C Protection of proprietary interests of University
- 37 Amendment of section 10—Establishment of the Council
- 38 Amendment of section 11—Term of office
- 39 Amendment of section 12—Chancellor and Deputy Chancellor, etc
- 40 Insertion of sections 15A to 15E
 - 15A Duty of Council members to exercise care and diligence etc
 - 15B Duty of Council members to act in good faith etc
 - 15C Duty of Council members with respect to conflict of interest
 - 15D Removal of Council members for contravention of section 15A, 15B or 15C
 - 15E Civil liability for contravention of section 15B or 15C
- 41 Amendment of section 16—Vice Chancellor
- 42 Amendment of section 18—Annual report
- 43 Amendment of section 22—Jurisdiction of Industrial Commission
- 44 Amendment of section 24—Power to make statutes
- 45 Amendment of section 25—Power to make by-laws
- 46 Insertion of section 27
 - 27 Immunity from civil liability

Schedule 1—Transitional provisions

Part 1—Transitional provisions related to *The Flinders University of South Australia Act 1966*

- 1 Council members

Part 2—Transitional provisions related to *University of Adelaide Act 1971*

- 2 Council members

Part 3—Transitional provisions related to *University of South Australia Act 1990*

- 3 Council members
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Universities) Act 2005*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *The Flinders University of South Australia Act 1966*

4—Amendment of section 1—Short title

Section 1— delete "*The*" and substitute:
the

5—Amendment of section 2—Interpretation

(1) Section 2, definition of *Convocation*—delete the definition

(2) Section 2, definition of *graduate*—delete the definition and substitute:

graduate means a person on whom the University has conferred an academic award, including an honorary award and an award conferred jointly with another body under section 21;

(3) Section 2—after the definition of *graduate* insert:

logo means a design (the copyright of which is vested in the University) declared under this Act to be a logo;

official insignia means a logo, an official symbol or an official title;

official symbol means a combination of a logo and an official title;

official title means a name or title declared under this Act to be an official title;

6—Amendment of section 3—Establishment and incorporation of The Flinders University of South Australia

(1) Section 3(2)—delete "a Convocation" and substitute:

graduates

(2) Section 3(3) and (4)—delete subsections (3) and (4) and substitute:

(3) Subject to subsection (5), the University is a body corporate invested with full juristic capacity and unfettered discretion, subject to the laws of this State, to conduct its affairs in the manner it thinks fit.

(4) The University may exercise its powers within or outside the State (including outside Australia).

(5) The University must not alienate (except by way of lease for a term not exceeding 21 years), mortgage or charge land vested in or conveyed to the University on trust except with, and in accordance with any terms or conditions of, an approval given by the Governor.

(6) To avoid doubt, subsection (5) does not confer any power to alienate land contrary to the terms of a trust relating to the land.

(7) The University is not an instrumentality or agency of the Crown.

7—Insertion of sections 4A and 4B

After section 4 insert:

4A—Declaration of logo and official titles

- 5
- (1) The Minister may, by notice in the Gazette, declare a design to be a logo in respect of the University.
 - (2) *The Flinders University of South Australia* and *Flinders University* are official titles.

4B—Protection of proprietary interests of University

- 10
- (1) The University has a proprietary interest in all official insignia.
 - (2) A person must not, without the consent of the University, in the course of a trade or business—
 - 15 (a) use a name in which the University has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or
 - (b) sell goods marked with official insignia; or
 - (c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

- 20
- (3) A person must not, without the consent of the University, assume a name or description that consists of, or includes, official insignia.
Maximum penalty: \$20 000.
 - (4) A consent under this section—
 - 25 (a) may be given with or without conditions (including conditions requiring payment to the University); and
 - (b) must be given in writing addressed to the applicant for the consent; and
 - (c) may be revoked by the University for a breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
 - 30 (5) The Supreme Court may, on the application of the University, grant an injunction to restrain a breach of this section.
 - (6) The court by which a person is convicted of an offence against this section may, on the application of the University, order the convicted person to pay compensation of an amount fixed by the court to the University.
 - 35 (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the University apart from those subsections.

8—Amendment of section 5—Council

(1) Section 5(2)—delete subsection (2) and substitute:

(2) The Council is the governing body of the University and has the following as its primary responsibilities:

- (a) appointing the Vice-Chancellor as the chief executive officer of the University, and monitoring his or her performance;
- (b) approving the mission and strategic direction of the University, as well as the annual budget and business plan;
- (c) overseeing and reviewing the management of the University and its performance;
- (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
- (e) approving and monitoring systems of control and accountability, including general overview of any entities controlled by the University (within the meaning of section 50AA of the *Corporations Act 2001*);
- (f) overseeing and monitoring the assessment and management of risk across the University, including commercial undertakings;
- (g) overseeing and monitoring the academic activities of the University;
- (h) approving significant commercial activities of the University.

(2) Section 5—after subsection (2) insert:

(2a) The Council must in all matters endeavour to advance the interests of the University.

(3) Section 5(3)(c)—delete paragraph (c)

(4) Section 5(3)(h)—delete paragraph (h) and substitute:

(h) 3 students of the University (not being persons in the full time employment of the University), 1 of whom must be a postgraduate student and 1 of whom must be an undergraduate student, appointed or elected in a manner determined by the Council.

(5) Section 5(3b)—delete "one must have qualifications and experience in financial management" and substitute:

2 must have financial management expertise and at least 1 must have commercial expertise (demonstrated by relevant qualifications or relevant experience at a senior level in the public or private sector)

9—Amendment of section 6—Term of office

(1) Section 6(1)—delete "A member" and substitute:

Subject to subsection (5a), a member

- (2) Section 6(5)—delete "At the expiration" and substitute:

Subject to subsection (5a), at the expiration

- (3) Section 6—after subsection (5) insert:

(5a) A person may not, except by resolution of the Council, be appointed or elected as a member of the Council if the appointment or election (as the case requires) would result in the person being a member of the Council for more than 12 years.

- (4) Section 6(6)—delete "The Council" and substitute:

Subject to this section, the Council

- (5) Section 6—after subsection (6) insert:

(6a) An appointed or elected member of the Council may only be removed under subsection (6)(d) by resolution passed by at least a two-thirds majority of the members of the Council.

- (6) Section 6(7)—after paragraph (e) insert:

or

(f) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

10—Amendment of section 16—Appointment of Chancellor, Vice-Chancellor, etc

- (1) Section 16—after subsection (1) insert:

(1a) The Vice-Chancellor is the principal academic and chief executive officer of the University and is responsible to the Council for the academic standards, management and administration of the University.

- (2) Section 16(2)—after "Pro-Chancellors" insert:

or Deputy Chancellors

- (3) Section 16(6)—after "Pro-Chancellor," insert:

a Deputy Chancellor,

11—Repeal of section 17

Section 17—delete the section

12—Insertion of sections 18A to 18E

After section 18 insert:

18A—Duty of Council members to exercise care and diligence etc

A member of the Council must at all times in the performance of his or her functions—

- (a) exercise a reasonable degree of care and diligence; and
- (b) act in the best interest of the University.

18B—Duty of Council members to act in good faith etc

- 5
- (1) A member of the Council must at all times act in good faith, honestly and for a proper purpose in the performance of the functions of his or her office, whether within or outside the State.
- (2) A member of the Council must not improperly use his or her position to gain an advantage for himself or herself or another person, whether within or outside the State.
- 10
- (3) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the interest of the University.

18C—Duty of Council members with respect to conflict of interest

- 15
- (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—
- 20
- (a) must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and
- (b) must not take part in any discussion by the Council relating to that matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.
- 25
- (2) A member of the Council will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with staff members, graduates or students of the University generally, or with a substantial number of staff members, graduates or students of the University.
- 30
- (3) If a member of the Council makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
- 35
- (a) the contract is not liable to be avoided by the University; and
- (b) the member of the Council is not liable to account to the University for profits derived from the contract.
- 40
- (4) If a member of the Council fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the University.

(5) A contract may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

5 (6) If a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council, the member must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office.

10

(7) A disclosure under this section must be recorded in the minutes of the Council.

15

(8) Without limiting the effect of this section, a member of the Council will be taken to have an interest in a matter for the purposes of this section if the member's spouse, or a relative of the member, has an interest in the matter.

20

(9) This section does not apply in relation to a matter in which a member of the Council has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.

(10) In this section—

25

relative of a person means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

spouse includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

18D—Removal of Council members for contravention of section 18A, 18B or 18C

30

Non-compliance by a member of the Council with a duty imposed under section 18A, 18B or 18C will be taken to be serious misconduct and a ground for removal of the member from office.

18E—Civil liability for contravention of section 18B or 18C

35

If a person who is a member of the Council or a former member of the Council is guilty of a contravention of section 18B or 18C, the University may recover from the person by action in a court of competent jurisdiction—

40

- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
- (b) if the University suffered loss or damage as a result of the contravention—compensation for the loss or damage.

13—Amendment of section 20—Power of Council to make statutes, regulations and by-laws

Section 20(1)(h)—delete "and Convocation"

14—Amendment of section 21—Power to confer awards

- 5 (1) Section 21(1a)—delete subsection (1a) and substitute:
- (1a) The power of the University to confer academic awards under subsection (1) includes the power to confer academic awards jointly with—
- 10 (a) another university; or
- (b) a registered training organisation; or
- (c) another body specified in regulations made under subsection (4).
- (2) Section 21—after subsection (3) insert:
- 15 (4) The Governor may, on the recommendation of the Council, make regulations for the following purposes:
- (a) specifying a body for the purposes of subsection (1a);
- (b) excluding a registered training organisation from the ambit of the definition of *registered training organisation*.
- (5) In this section—
- 20 *registered training organisation* means a training organisation registered under the *Training and Skills Development Act 2003* but does not include a training organisation excluded from the ambit of this definition by regulations made under subsection (4).

15—Repeal of section 23

25 Section 23—delete the section

16—Repeal of sections 25 and 26

Sections 25 and 26—delete the sections

17—Insertion of section 29

After section 28 insert:

30 **29—Immunity from civil liability**

- (1) Subject to this Act, no civil liability attaches to a member of the Council for an act or omission in the exercise or purported exercise of official powers or functions.
- 35 (2) An action that would, but for subsection (1), lie against a member of the Council lies instead against the University.
- (3) This section does not prejudice rights of action of the University in respect of an act or omission not in good faith.

Part 3—Amendment of *University of Adelaide Act 1971*

18—Amendment of section 3—Interpretation

Section 3, definition of *graduate*—delete "another university" and substitute:
another body under section 6

5 19—Amendment of section 4—Continuance and powers of University

Section 4—after subsection (6) insert:

- (7) To avoid doubt, subsection (5) does not confer any power to alienate land contrary to the terms of a trust relating to the land.

20—Insertion of section 4A

10 After section 4 insert:

4A—Object of University

The object of the University is the advancement of learning and knowledge, including the provision of university education.

21—Amendment of section 6—Power to confer awards

15 (1) Section 6(1a)—delete "with any other University." and substitute:

with—

- (a) another university; or
(b) a registered training organisation; or
(c) another body specified in regulations made under subsection (4).

20 (2) Section 6—after subsection (3) insert:

- (4) The Governor may, on the recommendation of the Council, make regulations for the following purposes:
(a) specifying a body for the purposes of subsection (1a);
(b) excluding a registered training organisation from the ambit of the definition of *registered training organisation*.

25

(5) In this section—

registered training organisation means a training organisation registered under the *Training and Skills Development Act 2003* but does not include a training organisation excluded from the ambit of this definition by regulations made under subsection (4).

30

22—Amendment of section 9—Council to be the governing body of University

Section 9(1)—delete subsection (1) and substitute:

- (1) The Council is the governing body of the University and has the following as its primary responsibilities:
- (a) appointing the Vice-Chancellor as the chief executive officer of the University, and monitoring his or her performance;
 - (b) approving the mission and strategic direction of the University, as well as the annual budget and business plan;
 - (c) overseeing and reviewing the management of the University and its performance;
 - (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
 - (e) approving and monitoring systems of control and accountability, including general overview of any entities controlled by the University (within the meaning of section 50AA of the *Corporations Act 2001*);
 - (f) overseeing and monitoring the assessment and management of risk across the University, including commercial undertakings;
 - (g) overseeing and monitoring the academic activities of the University;
 - (h) approving significant commercial activities of the University.

23—Amendment of section 12—Constitution of Council

(1) Sections 12(1)(ab) and (ac)—delete paragraphs (ab) and (ac)

(2) Section 12(1)(g)—delete paragraph (g) and substitute:

- (g) 3 students of the University (not being persons in the full time employment of the University), 1 of whom must be a postgraduate student and 2 of whom must be undergraduate students, appointed or elected in a manner determined by the Council.

(3) Section 12(1)(h)—delete "two graduates (neither" and substitute:

3 graduates (none

(4) Section 12(3)—delete "one must have qualifications and experience in financial management" and substitute:

2 must have financial management expertise and at least 1 must have commercial expertise (demonstrated by relevant qualifications or relevant experience at a senior level in the public or private sector)

24—Insertion of section 12A

After section 12 insert:

12A—Term of office

- 5 (1) Subject to subsection (6), a member appointed to the Council by the Council will be appointed for a term of between two and four years to be determined—
- (a) in the case of a member appointed on the recommendation of a selection committee—by that selection committee; and
- 10 (b) in the case of a member co-opted and appointed by the Council—by the Council.
- (2) A member of the academic or general staff of the University elected to the Council will be elected for a term of two years.
- (3) A student of the University appointed or elected to the Council will be appointed or elected for a term of one year.
- 15 (4) A graduate elected by graduates to the Council will be elected for a term of two years.
- (5) Subject to subsection (6), at the expiration of a term of office, a member appointed or elected to the Council is eligible for reappointment or re-election.
- 20 (6) A person may not, except by resolution of the Council, be appointed or elected as a member of the Council if the appointment or election (as the case requires) would result in the person being a member of the Council for more than 12 years.

25—Amendment of section 13—Casual vacancies

- 25 (1) Section 13(2)—after paragraph (e) insert:
- or
- (f) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.
- (2) Section 13—after subsection (2) insert:
- 30 (2a) An appointed or elected member of the Council may only be removed under subsection (1)(d) by resolution passed by at least a two-thirds majority of the members of the Council.

26—Substitution of section 15

Section 15—delete the section and substitute:

- 35 **15—Duty of Council members to exercise care and diligence etc**
- A member of the Council must at all times in the performance of his or her functions—
- (a) exercise a reasonable degree of care and diligence; and
- (b) act in the best interest of the University.

27—Amendment of section 16—Duty of Council members to act in good faith etc

(1) Section 16(1)—delete "honestly" and substitute:

in good faith, honestly and for a proper purpose

(2) Section 16—after subsection (1) insert:

(1a) A member of the Council must not improperly use his or her position to gain an advantage for himself or herself or another person, whether within or outside the State.

28—Amendment of section 17A—Removal of Council members for contravention of section 15, 16 or 17

Section 17A—delete "constitutes" and substitute:

will be taken to be serious misconduct and

29—Amendment of section 23—By-laws

Section 23(3a)—delete "sealed with the seal of the University and"

30—Amendment of section 25—Report

Section 25(1)—delete "September" and substitute:

June

31—Insertion of section 29

After section 28 insert:

29—Immunity from civil liability

- (1) Subject to this Act, no civil liability attaches to a member of the Council for an act or omission in the exercise or purported exercise of official powers or functions.
- (2) An action that would, but for subsection (1), lie against a member of the Council lies instead against the University.
- (3) This section does not prejudice rights of action of the University in respect of an act or omission not in good faith.

Part 4—Amendment of *University of South Australia Act 1990*

32—Amendment of section 3—Interpretation

(1) Section 3, definition of *the Academic Board*—delete "regulations" and substitute:
statutes

(2) Section 3, definition of *graduate*—after "another university" insert:
another body under section 6

- (3) Section 3—after the definition of *graduate* insert:

logo means a design (the copyright of which is vested in the University) declared under this Act to be a logo;

official insignia means a logo, an official symbol or an official title;

official symbol means a combination of a logo and an official title;

official title means a name or title declared under this Act to be an official title;

33—Amendment of section 4—Establishment of the University

- (1) Section 4(2)—delete subsection (2) and substitute:

(2) Subject to section 6, the University is a body corporate invested with full juristic capacity and unfettered discretion, subject to the laws of this State, to conduct its affairs in the manner it thinks fit.

- (2) Section 4(3)—after "instrumentality" insert:

or agency

34—Amendment of section 6—Powers of the University

- (1) Section 6(1a)—delete "any other university." and substitute:

with—

(a) another university; or

(b) a registered training organisation; or

(c) another body specified in regulations made under subsection (1b).

- (2) Section 6—after subsection (1a) insert:

(1b) The Governor may, on the recommendation of the Council, make regulations for the following purposes:

(a) specifying a body for the purposes of subsection (1a);

(b) excluding a registered training organisation from the ambit of the definition of *registered training organisation*.

- (3) Section 6(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

(2) The University may exercise its powers within or outside the State (including outside Australia).

(3) The University must not alienate (except by way of lease for a term not exceeding 21 years), mortgage or charge land vested in or conveyed to the University on trust except with, and in accordance with any terms or conditions of, an approval given by the Governor.

(4) To avoid doubt, subsection (3) does not confer any power to alienate land contrary to the terms of a trust relating to the land.

(5) In this section—

registered training organisation means a training organisation registered under the *Training and Skills Development Act 2003* but does not include a training organisation excluded from the ambit of this definition by regulations made under subsection (1b).

35—Amendment of section 7—Principles to be observed by the University

Section 7(2), (3) and (4)—delete subsections (2), (3) and (4)

36—Insertion of sections 9B and 9C

After section 9A insert:

9B—Declaration of logo and official titles

- (1) The Minister may, by notice in the Gazette, declare a design to be a logo in respect of the University.
- (2) *The University of South Australia* and *UniSA* are official titles.

9C—Protection of proprietary interests of University

- (1) The University has a proprietary interest in all official insignia.
- (2) A person must not, without the consent of the University, in the course of a trade or business—
 - (a) use a name in which the University has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or
 - (b) sell goods marked with official insignia; or
 - (c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

- (3) A person must not, without the consent of the University, assume a name or description that consists of, or includes, official insignia.
Maximum penalty: \$20 000.
- (4) A consent under this section—
 - (a) may be given with or without conditions (including conditions requiring payment to the University); and
 - (b) must be given in writing addressed to the applicant for the consent; and
 - (c) may be revoked by the University for a breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (5) The Supreme Court may, on the application of the University, grant an injunction to restrain a breach of this section.

(6) The court by which a person is convicted of an offence against this section may, on the application of the University, order the convicted person to pay compensation of an amount fixed by the court to the University.

5 (7) Subsection (5) and (6) do not derogate from any civil remedy that may be available to the University apart from those subsections.

37—Amendment of section 10—Establishment of the Council

(1) Section 10(2)—delete subsection (2) and substitute:

10 (2) The Council is the governing body of the University and has the following as its primary responsibilities:

- (a) appointing the Vice-Chancellor as the chief executive officer of the University, and monitoring his or her performance;
- 15 (b) approving the mission and strategic direction of the University, as well as the annual budget and business plan;
- (c) overseeing and reviewing the management of the University and its performance;
- (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
- 20 (e) approving and monitoring systems of control and accountability, including general overview of any entities controlled by the University (within the meaning of section 50AA of the *Corporations Act 2001*);
- 25 (f) overseeing and monitoring the assessment and management of risk across the University, including commercial undertakings;
- (g) overseeing and monitoring the academic activities of the University;
- 30 (h) approving significant commercial activities of the University.

(2) Section 10—after subsection (2) insert:

(2a) The Council must in all matters endeavour to advance the interests of the University.

(3) Section 10(3)(c)—delete paragraph (c)

35 (4) Section 10(3)(h)—delete paragraph (h) and substitute:

(h) 3 students of the University (not being persons in the full time employment of the University), 1 of whom must be a postgraduate student and 1 of whom must be an undergraduate student, appointed or elected in a manner determined by the Council.

- (5) Section 10(5)—delete "one must have qualifications and experience in financial management" and substitute:

2 must have financial management expertise and at least 1 must have commercial expertise (demonstrated by relevant qualifications or relevant experience at a senior level in the public or private sector)

38—Amendment of section 11—Term of office

- (1) Section 11(1)—delete "A member" and substitute:

Subject to subsection (5a), a member

- (2) Section 11(5)—delete "At" and substitute:

Subject to subsection (5a), at

- (3) Section 11—after subsection (5) insert:

(5a) A person may not, except by resolution of the Council, be appointed or elected as a member of the Council if the appointment or election (as the case requires) would result in the person being a member of the Council for more than 12 years.

- (4) Section 11(7)—after paragraph (e) insert:

or

(f) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

- (5) Section 11—after subsection (7) insert:

(7a) An appointed or elected member of the Council may only be removed under subsection (6)(d) by resolution passed by at least a two-thirds majority of the members of the Council.

39—Amendment of section 12—Chancellor and Deputy Chancellor, etc

- (1) Section 12—after subsection (3) insert:

(4) The Council may appoint not more than 2 Pro-Chancellors for a term of 2 years on terms and conditions fixed by the Council.

- (2) Section 12(5)—delete "or Deputy Chancellor" and substitute:

, Deputy Chancellor or Pro-Chancellor

- (3) Section 12(6)—delete "or Deputy Chancellor" and substitute:

, Deputy Chancellor or Pro-Chancellor

40—Insertion of sections 15A to 15E

After section 15 insert:

15A—Duty of Council members to exercise care and diligence etc

A member of the Council must at all times in the performance of his or her functions—

- (a) exercise a reasonable degree of care and diligence; and

- (b) act in the best interest of the University.

15B—Duty of Council members to act in good faith etc

- 5 (1) A member of the Council must at all times act in good faith, honestly and for a proper purpose in the performance of the functions of his or her office, whether within or outside the State.
- (2) A member of the Council must not improperly use his or her position to gain an advantage for himself or herself or another person, whether within or outside the State.
- 10 (3) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the interest of the University.

15C—Duty of Council members with respect to conflict of interest

- 15 (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—
- (a) must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and
- 20 (b) must not take part in any discussion by the Council relating to that matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.
- 25 (2) A member of the Council will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with staff members, graduates or students of the University generally, or with a substantial number of staff members, graduates or students of the University.
- 30 (3) If a member of the Council makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided by the University; and
- 35 (b) the member of the Council is not liable to account to the University for profits derived from the contract.
- 40 (4) If a member of the Council fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the University.

- 5
- (5) A contract may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- 10
- (6) If a member of the Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council, the member must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office.
- (7) A disclosure under this section must be recorded in the minutes of the Council.
- 15
- (8) Without limiting the effect of this section, a member of the Council will be taken to have an interest in a matter for the purposes of this section if the member's spouse, or a relative of the member, has an interest in the matter.
- 20
- (9) This section does not apply in relation to a matter in which a member of the Council has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (10) In this section—
- relative* of a person means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;
- 25
- spouse* includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

30

15D—Removal of Council members for contravention of section 15A, 15B or 15C

Non-compliance by a member of the Council with a duty imposed under section 15A, 15B or 15C will be taken to be serious misconduct and a ground for removal of the member from office.

35

15E—Civil liability for contravention of section 15B or 15C

If a person who is a member of the Council or a former member of the Council is guilty of a contravention of section 15B or 15C, the University may recover from the person by action in a court of competent jurisdiction—

- 40
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
- (b) if the University suffered loss or damage as a result of the contravention—compensation for the loss or damage.

41—Amendment of section 16—Vice Chancellor

Section 16(2)—delete subsection (2) and substitute:

- 5 (2) The Vice Chancellor is the principal academic and chief executive officer of the University and is responsible to the Council for the academic standards, management and administration of the University.

42—Amendment of section 18—Annual report

Section 18(3)—after "University" insert:

10 , and of every statute of the University confirmed by the Governor during the year ending on the preceding 31 December

43—Amendment of section 22—Jurisdiction of Industrial Commission

Section 22—delete "*Industrial Conciliation and Arbitration Act 1972*" and substitute:

Industrial and Employee Relations Act 1994

44—Amendment of section 24—Power to make statutes

15 Section 24(2)(a)—delete "sealed with the common seal of the University and"

45—Amendment of section 25—Power to make by-laws

Section 24(3)(a)—delete "sealed with the common seal of the University and"

46—Insertion of section 27

After section 26 insert:

27—Immunity from civil liability

- 20 (1) Subject to this Act, no civil liability attaches to a member of the Council for an act or omission in the exercise or purported exercise of official powers or functions.
- 25 (2) An action that would, but for subsection (1), lie against a member of the Council lies instead against the University.
- (3) This section does not prejudice rights of action of the University in respect of an act or omission not in good faith.

Schedule 1—Transitional provisions

Part 1—Transitional provisions related to *The Flinders University of South Australia Act 1966*

1—Council members

35 A member of the Council holding office under section 5(3)(c) of *The Flinders University of South Australia Act 1966* immediately before the commencement of this clause will, subject to that Act as amended by this Act, continue to hold office until the expiration of his or her term of office as if he or she were a student appointed or elected under section 5(3)(h) of that Act.

Part 2—Transitional provisions related to *University of Adelaide Act 1971*

2—Council members

5 (1) A member of the Council holding office under section 12(1)(ab) of the *University of Adelaide Act 1971* immediately before the commencement of this clause will, subject to that Act as amended by this Act, continue to hold office until the expiration of his or her term of office as if he or she were a student appointed or elected under section 12(1)(g) of that Act.

10 (2) A member of the Council holding office under section 12(1)(ac) of the *University of Adelaide Act 1971* immediately before the commencement of this clause will, subject to that Act as amended by this Act, continue to hold office until the expiration of his or her term of office as if he or she were a graduate elected under section 12(1)(h) of that Act.

Part 3—Transitional provisions related to *University of South Australia Act 1990*

3—Council members

20 A member of the Council holding office under section 10(3)(c) of *University of South Australia Act 1990* immediately before the commencement of this clause will, subject to that Act as amended by this Act, continue to hold office until the expiration of his or her term of office as if he or she were a student appointed or elected under section 10(3)(h) of that Act.