

**Legislative Council—No 201**

As received from the House of Assembly and read a first time, 17 May 2017

South Australia

**Statutes Amendment (Universities) Bill 2016**

A BILL FOR

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

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**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 2016*.

### **2—Amendment provisions**

5 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 *Flinders University of South Australia Act 1966***

### **3—Amendment of section 1—Short title**

10 Section 1—delete "of South Australia"

### **4—Amendment of section 2—Interpretation**

Section 2, definition of *University*—delete "The Flinders University of South Australia" and substitute:

Flinders University

### **5—Amendment of section 3—Establishment and incorporation**

15 Section 3(1)—delete "*The Flinders University of South Australia*" and substitute:

*Flinders University*

### **6—Insertion of section 3A**

After section 3 insert:

#### **3A—References to *Flinders University of South Australia* in Acts etc**

20 (1) A reference in any other Act, regulation, by-law, instrument or document to *The Flinders University of South Australia* will, on the commencement of this clause, be taken to be a reference to *Flinders University*.

25

(2) Nothing in this clause limits the operation of section 4A or 4B.

### **7—Amendment of section 5—Council**

(1) Section 5(3)(d)—delete "10" and substitute:

8

30 (2) Section 5(3)(f)—delete "2 members" and substitute:

1 member

(3) Section 5(3)(g)—delete "2 members" and substitute:

1 member

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

2

5 **8—Amendment of section 6—Term of office**

Section 6(4)—delete "1 year" and substitute:

2 years

**9—Amendment of section 18—Conduct of business in Council**

Section 18(3)—delete "11 members of the Council" and substitute:

10 one half of the total number of members of the Council (ignoring any fraction resulting from the division) plus 1,

**10—Substitution of section 19A**

Section 19A—delete the section and substitute:

**19A—Delegation**

- 15 (1) The Council may delegate any of its powers or functions under this Act to—
- (a) a member of the Council; or
  - (b) an employee of the University; or
  - (c) the holder of a particular office or position in the University;

20 or

  - (d) any committee of the Council or the University.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Council to act in

25 any matter; and

  - (d) is revocable at will by the Council.
- (3) A power or function delegated under this section to the Vice-Chancellor, or to a committee of the Council or the University,
- 30 may, if the instrument of delegation so provides, be further delegated.

## 11—Substitution of section 27

Section 27—delete the section and substitute:

### 27—Annual report

- 5
- (1) The Council must, not later than 30 June in each year, present to the Minister a report on the operation of the University during the year ending on the preceding 31 December.
- 10
- (2) The report must include a copy of the audited accounts of the University, and of every statute and regulation of the University allowed by the Governor during the year ending on the preceding 31 December.
- (3) The Minister must, within 12 sitting days of receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

## 12—Substitution of section 29

15 Section 29—delete the section and substitute:

### 29—Indemnities

The University must indemnify and keep indemnified—

- 20
- (a) each member of the Council; and
- (b) any member of a committee constituted or appointed by resolution of the Council or by or under a statute or regulation; and
- (c) any member of the Academic Senate,

25 against all actions or claims (whether arising during or after the term of office of that member) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any power or duty conferred or imposed—

- (d) on the Council, any committee or the Academic Senate; or
- (e) on any member or members of the Council, committee or the Academic Senate,

30 by or under this Act.

## 13—Insertion of sections 30 to 33

After section 29 insert:

### 30—Creation and administration of trust funds and other funds

Subject to this Act, the University may create and administer—

- 35
- (a) trust funds; or
- (b) funds for any other purpose.

### 31—Establishment of investment common funds

- 5
- (1) The University may establish 1 or more investment common funds for the collective investment of any trust funds and other funds held by or in the custody of the University.
- (2) Without liability for breach of trust, the University may bring into or withdraw from any investment common fund the whole or any part of any trust fund or other fund held by or in the custody of the University.
- 10 (3) Subsection (2) applies despite any direction to the contrary, whether express or implied, contained in the trust instrument.

### 32—Distribution of income of investment common funds

- 15 (1) Subject to subsection (2), the University must, in accordance with the instrument that established the investment common fund, periodically distribute income from each investment common fund among the funds participating in the pool.
- (2) From time to time, the University, if it considers it expedient to do so, may—
- 20 (a) add some portion of the income of each investment common fund to the capital of the common fund; or
- (b) establish a fund or funds as a provision against capital depreciation or reduction in income.

### 33—Commissions etc

- 25 (1) The University may periodically deduct an amount (not exceeding an amount determined by the Council of the total funds under management as part of the common fund) as commission for the administration of a common fund.
- (2) Despite section 19A, the Council must not delegate the power to make a determination under subsection (1).
- 30 (3) The commission deducted under subsection (1) is to be received and accepted by the University or fund manager (as the case requires) as full payment for the costs of administration of the common fund.
- (4) The University must not make any other charges on the trust fund in addition to the commission received under subsection (3) except in accordance with the trust instrument.

### 14—Amendment of long title

35 Long title—delete "The Flinders University of South Australia" and substitute:

Flinders University

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

### 15—Substitution of section 10

Section 10—delete the section and substitute:

#### 10—Delegation

- 5                   (1) The Council may delegate any of its powers or functions under this Act to—
- (a) a member of the Council; or
  - (b) an employee of the University; or
  - 10               (c) the holder of a particular office or position in the University; or
  - (d) any committee of the Council or the University.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - 15               (c) does not derogate from the power of the Council to act in any matter; and
  - (d) is revocable at will by the Council.
- (3) A power or function delegated under this section to the Vice-Chancellor, or to a committee of the Council or the University, may, if the instrument of delegation so provides, be further delegated.
- 20

### 16—Amendment of section 12—Constitution of Council

(1) Section 12(1)—delete subsection (1) and substitute:

- 25                   (1) Subject to this section, the Council consists of not less than 12 and not more than 16 members, of whom—
- (a) 1 will be the Chancellor *ex officio*; and
  - (b) 1 will be the Vice-Chancellor *ex officio*; and
  - 30               (c) 1 will be the presiding member of the Academic Board *ex officio* (or, if the Vice-Chancellor is the presiding member of the Academic Board, a member of the Academic Board elected by the Academic Board (not being a member appointed or elected to the Academic Board as a student of the University)); and

- 5 (d) up to 7 will be persons appointed by the Council on the recommendation of a selection committee (which consists of the Chancellor and 6 other persons, 3 of whom are appointed by the Chancellor and 3 by the presiding member of the Graduate Association (but at least 3 members of the selection committee must be graduates of the University) in accordance with guidelines determined by the Council); and
- (e) 1 will be a member of the academic staff, elected by the academic staff; and
- 10 (f) 1 will be a member of the general staff, elected by the general staff; and
- (g) 1 will be a postgraduate student, appointed or elected in a manner determined by the Council; and
- 15 (h) 1 will be an undergraduate student, appointed or elected in a manner determined by the Council; and
- (i) 1 will be a graduate (not being a current staff member nor student of the University), elected by graduates in a manner determined by the Council after consultation with the presiding member of the Graduate Association; and
- 20 (j) 1 may, if the Council so determines, be a person co-opted and appointed by the Council.

- (2) Section 12(6)—delete "subsection (1)(b)" and substitute:  
subsection (1)(d)

### **17—Amendment of section 12A—Term of office**

- 25 Section 12A(3)—delete "1 year" and substitute:  
2 years

### **18—Substitution of section 25**

- Section 25—delete the section and substitute:

#### **25—Annual report**

- 30 (1) The Council must, not later than 30 June in each year, present to the Minister a report on the operation of the University during the year ending on the preceding 31 December.
- (2) The report must include a copy of the audited accounts of the University, and of every statute of the University confirmed by the Governor, and every rule made by the Council, during the year
- 35 ending on the preceding 31 December.
- (3) The Minister must, within 12 sitting days of receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.



## 19—Substitution of section 29

Section 29—delete the section and substitute:

### 29—Indemnities

The University must indemnify and keep indemnified—

- (a) each member of the Council; and
- (b) any member of a committee constituted or appointed by resolution of the Council or by or under a statute or rule; and
- (c) any member of the Academic Board,

against all actions or claims (whether arising during or after the term of office of that member) in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of any power or duty conferred or imposed—

- (d) on the Council, any committee or the Academic Board; or
- (e) on any member or members of the Council, committee or the Academic Board,

by or under this Act.

## 20—Insertion of sections 30 to 33

After section 29 insert:

### 30—Creation and administration of trust funds and other funds

Subject to this Act, the University may create and administer—

- (a) trust funds; or
- (b) funds for any other purpose.

### 31—Establishment of investment common funds

- (1) The University may establish 1 or more investment common funds for the collective investment of any trust funds and other funds held by or in the custody of the University.
- (2) Without liability for breach of trust, the University may bring into or withdraw from any investment common fund the whole or any part of any trust fund or other fund held by or in the custody of the University.
- (3) Subsection (2) applies despite any direction to the contrary, whether express or implied, contained in the trust instrument.

### 32—Distribution of income of investment common funds

- (1) Subject to subsection (2), the University must, in accordance with the instrument that established the investment common fund, periodically distribute income from each investment common fund among the funds participating in the pool.

- (2) From time to time, the University, if it considers it expedient to do so, may—
- (a) add some portion of the income of each investment common fund to the capital of the common fund; or
  - (b) establish a fund or funds as a provision against capital depreciation or reduction in income.

### 33—Commissions etc

- (1) The University may periodically deduct an amount (not exceeding an amount determined by the Council of the total funds under management as part of the common fund ) as commission for the administration of a common fund.
- (2) Despite section 10, the Council must not delegate the power to make a determination under subsection (1).
- (3) The commission deducted under subsection (1) is to be received and accepted by the University or fund manager (as the case requires) as full payment for the costs of administration of the common fund.
- (4) The University must not make any other charges on the trust fund in addition to the commission received under subsection (3) except in accordance with the trust instrument.

## Schedule 1—Transitional provisions

### 1—Certain members of Council of Flinders University to continue to hold office for remainder of term

- (1) A member of the Council who, immediately before the commencement of section 7 of this Act, held office under section 5(3)(d), (f), (g) or (h) of the *Flinders University of South Australia Act 1966*, will continue to hold office until—
- (a) they are removed from office under that Act; or
  - (b) the completion of their term of office,
- whichever occurs first.

- (2) To avoid doubt, nothing in this clause affects the operation of section 6(5) of the *Flinders University Act 1966*.

### 2—Members of Council of University of Adelaide to continue to hold office for remainder of term

- (1) A member of the Council who, immediately before the commencement of section 16 of this Act, held office under section 12 of the *University of Adelaide Act 1971* will continue to hold office until—
- (a) they are removed from office under that Act; or
  - (b) the completion of their term of office,
- whichever occurs first.

- (2) To avoid doubt, nothing in this clause affects the operation of section 12A(5) of the *University of Adelaide Act 1971*.