

South Australia

University of Adelaide (Miscellaneous) Amendment Act 2003

An Act to amend 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 *University of Adelaide (Miscellaneous) Amendment Act 2003*.

2—Commencement

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 *University of Adelaide Act 1971*

4—Amendment of section 3—Interpretation

- (1) Section 3—before the definition of *academic staff* insert:

Academic Board means—

- (a) the board established by the Council under that title; or
- (b) if another body is prescribed by the statutes of the University for the purposes of this definition—that other body;

- (2) Section 3, 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 university;

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

Graduate Association means the graduate association prescribed by the statutes or rules of the University for the purposes of this definition;

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;

- (4) Section 3, definition of *postgraduate degree or diploma*—delete the definition

- (5) Section 3, definition of *postgraduate student*—delete the definition and substitute:

postgraduate student means a student enrolled at the University in an academic program designated by the statutes or rules to be a postgraduate program;

- (6) Section 3, definition of *the Senate*—delete the definition
- (7) Section 3—after the definition of *the Senate* insert:
- staff member* means a member of the academic staff or a member of the general staff;
- student* means an undergraduate student or a postgraduate student;
- (8) Section 3, definition of *undergraduate of the University*—delete the definition and substitute:
- undergraduate student* means a student enrolled at the University in an academic program designated by the statutes or rules to be an undergraduate program;
- (9) Section 3, definition of *University grounds*—delete the definition and substitute:
- University grounds* means all land owned or occupied by the University or of which the University has the care, control and management.

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

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

- (2) The University consists of the Council, members of the academic staff, members of the general staff, graduates and students.
- (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 under—
- (a) section 16 of *The Adelaide University Act 1874*;
 - (b) the *University Site Act 1876*;
 - (c) the *University Land Act 1929*;
 - (d) section 6 of the *Statutes Amendment and Repeal (Merger of Tertiary Institutions) Act 1990* to the extent that it applies to land vested in the Roseworthy Agricultural College under the *Roseworthy Agriculture College Act 1973*;
 - (e) section 26 of the *Statutes Amendment and Repeal (Merger of Tertiary Institutions) Act 1990*;
 - (f) the Waite Trust,
- except with, and in accordance with any terms or conditions of, an approval given by the Governor.
- (6) The University is not an instrumentality or agency of the Crown.

6—Repeal of section 5

Section 5—delete the section

7—Insertion of sections 5A and 5B

After section 5 insert:

5A—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 Adelaide* and *Adelaide University* are official titles.

5B—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.
- (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 6—Power to confer awards

- (1) Section 6(1)—delete ", regulations"
- (2) Section 6—after subsection (1) insert:
 - (1a) The power of the University to confer academic awards under subsection (1) includes the power to confer academic awards jointly with any other University.
- (3) Section 6(2)—delete ", regulations"
- (4) Section 6(2a)—delete subsection (2a) and substitute:
 - (2a) The University has power, in accordance with the statutes and rules of the University, to confer an honorary award on a person who the University thinks merits special recognition by the University.

9—Amendment of section 7—Chancellor and Deputy Chancellors

- (1) Section 7(2)—delete "four" and substitute:

two
- (2) Section 7(5)—delete "such number of Deputy Chancellors as it thinks fit who will hold office for such terms and upon such conditions as may be determined" and substitute:

(not being members of the Council *ex officio*, staff members and students of the University) a Deputy Chancellor who will hold office for a term of two years on conditions fixed
- (3) Section 7(6)—delete subsection (6)

10—Amendment of section 8

Section 8—after subsection (1) insert:

- (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.

11—Amendment of section 9—Council to be governing body of University

Section 9—after its present contents (now to be designated as subsection (1)) insert:

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

12—Amendment of section 10

Section 10—delete the section and substitute:

10—Delegation

- (1) The Council may, by instrument in writing, delegate any of its powers or functions under this Act to the holder of a particular office or position in the University.

- (2) A power or function delegated to the Vice-Chancellor under this section may, if the instrument of delegation so provides, be further delegated.

13—Amendment of section 11—Conduct of business of the Council

- (1) Section 11(1)—delete subsection (1) and substitute:
- (1) A quorum of the Council consists of one half of the total number of members of the Council (ignoring any fraction resulting from the division) plus one, and no business may be transacted at a meeting of the Council unless a quorum is present.
- (2) Section 11(4)(b)—delete "most senior of the Deputy Chancellors present at the meeting" and substitute:
- Deputy Chancellor
- (3) Section 11(4)(c)—delete "Chancellors" and substitute:
- Chancellor

14—Amendment of section 12—Constitution of Council

- (1) Section 12(1)—after paragraph (a) insert:
- (aa) the presiding member of the Academic Board who will be a member of the Council *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 (but that person cannot be a person appointed or elected to the Academic Board as a student of the University);
- (ab) the presiding member of the Students Association of the University of Adelaide Incorporated who will be a member of the Council *ex officio*;
- (ac) the presiding member of the Graduate Association who will be a member of the Council *ex officio*;
- (2) Section 12(1)(b)—delete "appointed by the Chancellor" and insert:
- , three of whom are appointed by the Chancellor and three by the presiding member of the Graduate Association (but at least three members of the selection committee must be graduates of the University),
- (3) Section 12(1)(c)—delete paragraph (c)
- (4) Section 12(1)(e)—delete "three" and substitute:
- two
- (5) Section 12(1)(g)—delete "three" and substitute:
- two

- (6) Section 12(1)—after paragraph (g) insert:
- (h) two graduates (neither of whom may be 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.
- (7) Section 12(5)—delete subsection (5)
- (8) Section 12(7)—delete "two academic terms" and substitute:
semester
- (9) Section 12(8)—delete "two or four" and substitute:
between two and four
- (10) Section 12(9)—delete subsection (9)
- (11) Section 12—after subsection (11) insert:
- (11a) A graduate elected by graduates to the Council will be elected for a term of two years.

15—Amendment of section 13—Casual vacancies

Section 13—after subsection (3) insert:

- (3a) If a member of the Council elected under section 12(1)(h) becomes a staff member or student of the University during his or her term of office, a casual vacancy occurs in the office held by that member.

16—Amendment of section 14—Saving clause

Section 14—after "Council" second occurring insert:

, or any defect in the appointment or election of a person to the Council

17—Insertion of sections 15 to 17B

After section 14 insert:

15—Duty of Council members to exercise care and diligence

A member of the Council must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.

16—Duty of Council members to act honestly

- (1) A member of the Council must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) 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.

17—Duty of Council members with respect to conflict of interest

- (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
 - (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.
- (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 a substantial section of the public, or with staff members or students of the University generally, or with a substantial number of staff members or students of the University.
- (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
 - (b) the member of the Council is not liable to account to the University for profits derived from the contract.
- (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.
- (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.

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

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

Non-compliance by a member of the Council with a duty imposed under section 15, 16 or 17 constitutes a ground for removal of the member from office.

17B—Civil liability for contravention of section 16 or 17

If a person who is a member of the Council or a former member of the Council is guilty of a contravention of section 16 or 17, the University may recover from the person by action in a court of competent jurisdiction—

- (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.

18—Repeal of sections 18 and 19

Sections 18 and 19—delete the sections and substitute:

18—Annual meeting

- (1) The Council must, within two months of the commencement of each financial year, convene and attend an annual meeting of the University community.
- (2) The Vice-Chancellor, or in the absence of the Vice-Chancellor, a member of the Council chosen by the Council, must preside at a meeting convened under subsection (1).
- (3) At least 28 days notice of a meeting under subsection (1) must be given in a manner determined by the Council.

(4) The business and procedures of a meeting under subsection (1) will be determined by the Council.

(5) In this section—

University community means the Council, members of the academic staff, members of the general staff, graduates and students.

19—Amendment of section 21—The Adelaide University Union

Section 21—after subsection (3) insert:

- (4) The union must, not later than 1 June in each year, provide the Council with—
- (a) the financial statements of the union for the previous calendar year, audited in a manner approved by the Council; and
 - (b) the proposed fee (including entrance fee and annual fee) for union membership for the following calendar year.
- (5) The union must, not later than 30 August in each year, provide the Council with a financial report in a form determined by the Council for the 6 months ending 30 June of that year.
- (6) The union must, not later than 1 December in each year, provide the Council with the budget for income and expenditure of the union in a form determined by the Council for the following calendar year (including proposed allocations to bodies affiliated with the union).
- (7) The union must not set membership fees except with the approval of the Council.

20—Amendment of section 22—Statutes and rules

- (1) Section 22(1)-delete ", alter or repeal any statute, regulation or rule" and substitute:
statutes or rules
- (2) Section 22(1)(g)—delete "or the Senate"
- (3) Section 22(1)—after paragraph (h) insert:
(ha) constituting and regulating the Academic Board and other boards of the University; and
- (4) Section 22(1)(ia)—delete "degree of Doctor of the University" and substitute:
award
- (5) Section 22(1)(k)—delete paragraph (k)

- (6) Section 22—after subsection (1) insert:
- (1a) The Council has power to make statutes—
 - (a) establishing a tribunal to hear and determine proceedings against any student or staff member of the University in relation to any offence under the statutes, rules or by-laws of the University, and prescribing penalties that may be awarded by the tribunal upon proof of the commission of such an offence; and
 - (b) providing that an offence under a specified statute, rule or by-law of the University allegedly committed by a student or staff member be tried by a tribunal established under paragraph (a) of this subsection.
- (7) Section 22(2) to (3) (inclusive)—delete subsections (2) to (3) (inclusive) and substitute:
- (2) The Council may—
 - (a) by statute, vary or revoke a statute; or
 - (b) by rule, vary or revoke a rule.
 - (3) A statute does not come into operation until confirmed by the Governor.
- (8) Section 22(4)—delete ", regulation"

21—Amendment of section 23—By-laws

- (1) Section 23(1)(a)—after "grounds" insert:
- and to empower any person authorised in writing by the Council to remove any person found trespassing
- (2) Section 23(1)(i)—after "grounds" insert:
- and to empower any person authorised in writing by the Council to direct traffic
- (3) Section 23—after subsection (3) insert:
- (3a) A by-law must be sealed with the seal of the University and transmitted to the Governor for confirmation.
- (4) Section 23—after subsection (4) insert:
- (5) For the avoidance of doubt, section 10 of the *Subordinate Legislation Act 1978* applies to a by-law made under this section.

22—Amendment of section 24—Proceedings

Section 24(2)—after "student" insert:
or staff member

23—Amendment of section 25—Report

Section 25(3)—delete "or regulation"

Schedule—Transitional Provisions

- 1 On the commencement of section 14(3) of this Act (which must coincide with the commencement of section 14(6) of this Act), each member of the Council elected under section 12(1)(c) of the principal Act (or, if a person has been appointed to fill a casual vacancy under clause 2 of this Schedule—that person) will vacate his or her office, and 2 graduates elected under section 12(1)(h) of the principal Act will assume office.
- 2 If a casual vacancy occurs in the office of a member elected under section 12(1)(c) of the principal Act or in the office of a member appointed under this clause, the Council must appoint a graduate nominated by the presiding member of the Graduate Association to fill that casual vacancy.
- 3 On the commencement of section 14(4) of this Act, the member of the Council who was elected under section 12(1)(e) of the principal Act with the least number of votes at the most recent election will vacate his or her office.
- 4 On the commencement of section 14(5) of this Act, a member of the Council holding office under section 12(1)(g) of the principal Act will vacate his or her office, and the Council may, in a manner determined by the Council after consultation with the presiding member of the Students Association of the University, appoint 1 postgraduate student and 1 undergraduate student to the Council.