



LEGISLATIVE ASSEMBLY

Public Accounts Committee

Inquiry into Academics' Paid Outside Work

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Charter of the Committee

The Public Accounts Committee has responsibilities under Part 4 of the *Public Finance and Audit Act 1983* to inquire into and report on activities of Government that are reported in the Total State Sector Accounts and the accounts of the State's authorities.

The Committee, which was first established in 1902, scrutinises the actions of the Executive Branch of Government on behalf of the Legislative Assembly.

The Committee recommends improvements to the efficiency and effectiveness of government activities. A key part of committee activity is following up aspects of the Auditor-General's reports to Parliament. The Committee may also receive referrals from Ministers to undertake inquiries. Evidence is gathered primarily through public hearings and submissions. As the Committee is an extension of the Legislative Assembly, its proceedings and reports are subject to Parliamentary privilege.

Terms of Reference

At its meeting on 2 July 2003, the Committee resolved to undertake a follow-up inquiry into the Audit Office Performance Audit Report entitled *Academics' Paid Outside Work*. The terms of reference for the inquiry were:

1. Implementation of the report's recommendations; and
2. The value of the audit report, in terms of accountability and in improving the performance of government.

Chairman's Foreword

In February 2000 the Audit Office published a performance audit report on academics paid outside work. The audit found that whilst all universities in New South Wales had developed policies to manage Academics' Paid Outside Work (POW) and to protect their Intellectual Property (IP) rights:

- Many of these policies are outdated and required urgent review;
- Many policies do not adequately protect the universities or provide adequate compensation for the use of their resources or their name; and
- There is inconsistent implementation and monitoring of compliance with the policies.

This follow-up report examines how universities are complying with minimum requirements identified by the audit report in relation to POW and IP policies. In order to do this, the Committee compared the various policies with the minimum standards identified.

The Committee was pleased to see that on the whole universities have addressed the minimum requirements identified by the audit report for POW and IP policies. However, there are a number of areas which still require improvement. This report highlights those areas.

Whilst it appears that universities have addressed the minimum requirements identified, the Committee was unable to determine the extent of compliance with policies and suggests that a further compliance review be considered by the Auditor-General.

The Committee felt it was important to follow-up on the audit report as universities are established and accountable under State legislation. Furthermore, as part of the NSW public sector they are subject to oversight by the Minister for Education and Training, the Treasurer and bodies such as the Auditor-General.

I would like to thank all universities in New South Wales, the National Tertiary Education Union (NSW) and the Minister for Education and Training for providing submissions to the inquiry. I would also like to thank Vicki Buchbach and Stephanie Hesford for their assistance in drafting this report.



Matt Brown MP
Chairman

List of Findings and Recommendations

The Committee finds that the audit report's recommendation that paid outside work (POW) and intellectual property (IP) policies be reviewed to address the minimum standards identified has on the whole been implemented. The majority of universities have issued new policies or amended existing policies since the performance audit was conducted.

Universities have reported that their guidelines meet the minimum requirements as identified by the audit report. The use of the checklist provided by the audit report has led to improvements in the accountability arrangements. However, the Committee found that a number of areas remain which need to be improved.

The Committee is unable to determine the extent of compliance with the policies and suggests a further compliance review be considered by the Auditor-General.

Recommendations

1. The Committee recommends that, in relation to paid outside work activities, all universities should include in their policies:
 - Review timeframes and mechanisms; and
 - A link between approval to conduct POW activities and performance.

2. The Committee recommends that, to enhance accountability, all universities' POW policies should:
 - Make specific reference as to how POW activities will be monitored;
 - Detail how the use of university resources will be monitored and accounted for;
 - Details of how costs incurred by the use of university resources in private POW activities will be recovered; and
 - Require some form of reporting on POW activities undertaken.

3. The Committee recommends that, in the interests of risk management, all universities should include in their POW policies:
 - A requirement for evidence to be shown that clients have been informed that the university is not involved in private POW activities;
 - Specify that insurance must be taken out by academics engaged in private POW activities and that evidence of this be required; and
 - Specify that disciplinary action will occur for breaches of the policy.

4. The Committee recommends that all universities' IP policies should:

- Include a timeframe and mechanism for future review;
 - Include a detailed definition of IP which goes beyond referring to applicable legislation; and
 - Identify specific exemptions for works, both scholarly and creative.
5. The Committee recommends that, in relation to exploitation, all IP policies should:
- Clearly specify time limits that universities have to make decisions in relation to the exploitation of IP;
 - Make specific reference to confidentiality requirements whilst consideration is given to exploiting IP;
 - Address the issue of sharing ownership and IP rights with the originators if IP is exploited; and
 - Specify that the university has the right to exploit IP as it sees fit.
6. The Committee recommends that, in relation to resolving disputes regarding IP, policies should:
- Specify the means by which disputes will be resolved;
 - State who will make a final decision binding all parties; and
 - Adopt a time limit in which to resolve disputes.
7. The Committee recommends that all universities include an education component in their IP policies.
8. The Committee recommends that each university ensure that POW and IP policies are implemented at all levels of the university.
9. The Committee recommends that the Auditor-General conduct a compliance review of universities' POW and IP policies to determine the level of compliance with the policies.

Chapter One - Introduction

- 1.1 The traditional role of universities has evolved from one which was primarily concerned with training in professions such as medicine, law and humanities to one which is more entrepreneurial. This has been in response to government policies which have promoted the commercialisation of higher education and financial self-reliance.¹
- 1.2 The more commercial environment within universities brings risks that must be identified and managed including that of paid outside work activities and intellectual property. This was observed by the Audit Office of New South Wales.²
- 1.3 Universities, whilst largely funded by the Commonwealth Government, are established under State legislation and as part of the NSW public sector are subject to oversight by numerous State Government agencies including the Auditor-General. Universities are required under State legislation to table annual reports in Parliament and the provisions of the *Public Finance and Audit Act 1983* apply. As such, all NSW universities are subject to auditing, both financial and performance, by the Auditor-General.
- 1.4 Under section 57(1) of the *Public Finance and Audit Act 1983* the Committee has the power to examine any report of the Auditor-General laid before the Legislative Assembly. This report is a follow-up of one such report. The Committee is also empowered to make recommendations in relation to improving accountability in public sector agencies and has found a number of areas where universities can improve.

THE PERFORMANCE AUDIT REPORT

- 1.5 In February 2000, the Audit Office published a Performance Audit Report entitled *Academics' Paid Outside Work*. The impetus for the audit was a protected disclosure referred to the Audit Office under the *Protected Disclosure Act 1994*. This allegation raised concerns about arrangements to undertake Paid Outside Work (POW) at a university claiming that public money had been wasted. It also raised issues relating to whether Intellectual Property of the University had been used without permission and without compensation to the university.³
- 1.6 Whilst there was no evidence to substantiate the allegation, the audit report noted that it was "concerned about the extent to which the same situation could occur at other universities and carried out a desk audit of all universities in New South Wales."⁴

¹ Senate Employment, Workplace Relations, Small Business and Education References Committee, *Universities in Crisis: Report into the Capacity of Public Universities to meet Australia's Higher Education Needs*, September 2001, pp 16 – 20

² Audit Office of New South Wales, *Performance Audit Report: Academics' Paid Outside Work*, February 2000, p 11

³ *ibid*, p 2

⁴ *ibid*, p 3

Chapter One

- 1.7 The audit found that whilst all universities in New South Wales had developed policies to manage Academics' Paid Outside Work (POW) and to protect their Intellectual Property (IP) rights:
- Many of these policies were outdated and required urgent review;
 - Many policies do not adequately protect the universities or provide adequate compensation for the use of their resources or their name; and
 - There is inconsistent implementation and monitoring of compliance with the policies.⁵
- 1.8 The audit report provided two checklists for assessing whether the paid outside work and intellectual property policies complied with the suggested minimum standards for ensuring protection of the universities' resources and reputation. See Appendix Two.
- 1.9 The audit report did not indicate which universities did not meet the recommended arrangements. However, it did note that none of them met all the minimum standards. It recommended that universities:
- Review their existing Paid Outside Work and Intellectual Property policies to ensure that those policies address the minimum standards identified in this report; and
 - Enhance the accountability procedures to ensure that requirements are implemented at all levels in the university.⁶

THE COMMITTEE'S FOLLOW-UP INQUIRY

- 1.10 Pursuant to section 57(1) of the *Public Finance and Audit Act 1983*, which provides for the Committee to follow-up reports of the Auditor-General, the Committee resolved at its meeting on 2 July 2003 to conduct a follow-up inquiry on the report. The terms of reference for the inquiry were:
- Implementation of the report's recommendations; and
 - The value of the audit report, in terms of accountability and in improving the performance of government.

Call for submissions

- 1.11 The Committee invited submissions to the inquiry from each of the ten universities in New South Wales. Submissions and information was also received from the National Tertiary Education Union and the Minister for Education and Training. A list of submissions and other documents received is at Appendix One.
- 1.12 The submissions received from the ten universities indicate that all universities have reviewed their policies on paid outside work activities and intellectual property rights since the Performance Audit. They were asked to respond to the terms of reference for the inquiry which then enabled the Committee to determine whether universities' policies met the minimum requirements. See pages 5 and 13 for checklists of compliance.

⁵ *ibid*, p 3

⁶ *ibid*, p 5

- 1.13 Following an analysis of the various policies it became evident that universities, on the whole, now comply with the minimum standards outlined in relation to paid outside work activities and intellectual property as described in chapters two and three. However, there are a number of areas which need to be better addressed by universities. For POW policies the areas where a number of universities fail to address adequately include:
- Review mechanisms or timeframes;
 - Procedures for monitoring POW activities to ensure compliance with policies;
 - Details of administrative procedures which account for resources used by academics in POW activities; and
 - Requirements to report on POW activities.
- 1.14 Inadequacies in IP policies include a lack of:
- Review mechanisms or timeframes;
 - Definitions for IP that go beyond noting the relevant legislation;
 - Arrangements for sharing ownership if IP is exploited by the University;
 - A clear statement that the university can exploit the IP as it sees fit.
- 1.15 The submissions also indicated that the majority of universities found the audit report to be valuable in terms of helping to highlight areas that should be addressed in paid outside work and intellectual property policies particularly in terms of enhancing accountability. However, there was one exception, with the University of Newcastle questioning the need for the Audit Office to investigate such issues as it was considered that the audit duplicated the function of the governing bodies of universities which are created by or under statute.

Public hearing

- 1.16 The Committee held a public hearing in Maitland on 19 May 2004 in relation to the inquiry with a representative from the University of Newcastle. This hearing provided the Committee with an opportunity to question the University about its comments in relation to the value of the audit report and the issue of independent scrutiny.

Chapter Two - Implementation of Recommendations on Paid Outside Work

REVIEW OF EXISTING PAID OUTSIDE WORK POLICIES

- 2.1 This chapter considers how New South Wales universities are complying with the minimum standards identified in the audit report in relation to POW policies. In particular, it considers those issues that were identified by the audit report as being inadequate.
- 2.2 In order to determine whether universities had addressed the minimum standards identified, the Committee compared the policies for the ten universities to the checklist for POW policies published in the audit report. See Appendix Two. The table on the following page sets out the level of compliance.

PAID OUTSIDE WORK POLICIES

- 2.3 Universities provide for academics to engage in POW activities in addition to their core activities of teaching and conducting research. POW activities may be conducted through Schools, Faculties or a University Company or it may be of a private nature. The audit report noted that the right of academics to engage in POW activities:
- ...is characteristic of the academic profession and arose from the need for universities to attract quality staff while managing the total salary bill in an environment of declining revenue from government.⁷
- 2.4 The National Tertiary Education Union – NSW notes the importance of academics engaging in POW activities in terms of professional development arguing that:
- It is important academic staff have the opportunity to undertake additional work to enhance their practical and professional skills. It is equally important for academics to import knowledge to the wider community and connect the Academy to the wider community.⁸
- 2.5 It is evident that POW activities can bring many benefits to academics and universities but there is a need to ensure that all risks associated with such activities are effectively managed. This requires the implementation of policies and procedures dealing with POW activities.

⁷ Audit Office of New South Wales, *Performance Audit Report: Academics' Paid Outside Work*, February 2000, p 14

⁸ Submission from the National Tertiary Education Union – NSW.

Minimum standard	Number of universities complying	Number of universities which do not comply or have ambiguous guidelines/policies
1. The university's POW policy has been recently issued	10	0
2. The policy contains evidence of recent review or includes review mechanism and timeframes	4	6
3. The policy states the types of POW allowed to academics	10	0
4. The policy sets a time limit for academics engaging in POW AND/OR specifies other methods for monitoring POW activities	Time limits – 8 Monitoring – 3	Time limits – 2 Monitoring – 7
5. There is a specific requirement that academic advise the University before starting POW activities	9	1
6. The policy contains procedures for approving POW	10	0
7. The policy states the circumstance where activities are exempt from approval procedures	8	2
8. The policy unambiguously states whether the use of university resources is allowed for private POW activities	10	0
9. The policy provides guidelines on allowable usage of university resources in private POW activities	9	1
10. Procedures exist for charging staff (or other means of recovery) for using university resources for private POW activities	3	2 Not Applicable to 5 universities that do not allow resources to be used for private POW
11. Charge rates for university resources are specified or available	7	3
12. The policy requires a statement from the academic that University is not involved in private POW activities	10	0
13. Academics must submit evidence that the above statement has been provided to clients for each private POW activity	6	4
14. Procedures require academic to have adequate insurance coverage before engaging in private POW activities	10	0
15. Evidence is required that academics have adequate insurance coverage if engaging in private POW activities	7	3
16. Academics have the option of engaging in University- sponsored POW	10	0
17. The policy contains requirements for academics to report their private POW activities to the University on a periodic basis	8	2
18. The policy contains a statement that disciplinary measures will be taken in instances of non-compliance	9	1

Procedures within universities

- 2.6 The audit report expressed the view that each university is obliged to assess the risks for paid outside work and to implement relevant policies to manage risks so identified.⁹
- 2.7 The audit report expressed the need for each university to:
- identify the risks arising from academics' POW, develop, and implement a policy and supporting procedures to manage those risks. The policy and procedures should include a process of periodic review and amendment to ensure that policies remain relevant, respond to implementation comments and address emerging issues.¹⁰
- 2.8 As noted, in the audit report, all universities have a policy or other agreements such as an enterprise or industrial agreement which covers POW activities by their staff. The majority of universities have issued a new policy in relation to POW activities or amended policies following the performance audit. However, a number of universities fail to specifically provide in their policies a review mechanism or timeframes for review despite noting review timeframes and/or mechanisms in their submissions to the inquiry.
- 2.9 The Committee is of the view that this is not sufficient and that review timeframes and mechanisms should be specified in the policy so that people are aware that the policy is not static but changes as the need arises.

Restrictions on POW

- 2.10 The audit report noted that:
- Policies should include discussion of any restrictions that universities place on academics engaging in POW activities. The most common restrictions are the type of work that academics may undertake and the amount of "normal duties" time that can be used for non-university related activities.¹¹
- 2.11 The Committee is pleased to see that the majority of universities note within their POW policies the types of restrictions placed on academics engaged in POW activities. A number specifically address the issue of perceived or actual conflict of interest and prohibit staff from engaging in activities that conflict with the interest of the university or is in competition with services otherwise provided by the university.
- 2.12 In relation to time limits all but two universities have specified the amount of time that academics may work on POW activities. However, when it came to the monitoring of POW activities the majority of universities have not specifically mentioned how this is to be done. This is of concern to the Committee as the audit report argued that "...if university policy applies the one-day a week rule then there is a requirement for management to monitor adherence to the time limit."¹²

⁹ Audit Office of New South Wales, 2000, *op. cit.*, p 15

¹⁰ *ibid*, p 16

¹¹ *ibid*, p 18

¹² *ibid*, p 19

2.13 The audit report also noted that applying specific time-limits can be inherently difficult implying that it may be more prudent for policies to ensure that an academic maintains a satisfactory level of performance of duties as a condition of engaging in POW activities.¹³ The Committee is pleased to find that a number of universities have adopted this approach and encourages other universities to follow a similar path.

Notification procedures

2.14 In relation to notification procedures the audit report notes that as a minimum POW policies should require notification to the university that an academic proposes to engage in POW activities. This will enable universities to monitor performance and compliance to policies. The audit report also noted that:

Policies should identify exemptions allowed under the university's procedures. This simplifies compliance requirements by academics and avoids unnecessary work for university and faculty administration staff.¹⁴

2.15 The Committee is pleased to see that all universities have specifically noted in their policies that approval is required prior to commencing any POW activity and that all policies specify approval procedures.

2.16 In relation to exemptions for the approval process, all but one university has noted in their policies activities which are exempt such as examination of theses, writing or publishing conventional scholarly works, speaking engagements and attending meetings. The University of Western Sydney does not specify exemptions from the approval in its Enterprise Agreement, which sets out the policy and procedures relating to POW activities, and argued in its submission that whilst exemptions are not specifically mentioned that the definition of "additional work" to which the policy applies "provides guidance and is considered adequate."¹⁵

Using university resources

2.17 The audit report recommended that at a minimum:

If the policy requires that academics *are to be precluded* from using university resources for private POW then:

- measures are necessary to monitor university resources for appropriate usage especially such items as consumable supplies, photocopying, facsimile machines and telephones, and computer equipment.

If resources *are allowed* to be used for private POW university policies should *as a minimum*, contain:

- Guidelines on the use of resources, for example under what circumstances is the use of resources approved;
- Administrative procedures to record and account for resources used in private POW; and

¹³ *ibid*, p 19

¹⁴ *ibid*, p 20

¹⁵ Submissions from the University of Western Sydney, p 4

- Procedures for identifying and recovering the university's overhead costs in relation to private POW.¹⁶
- 2.18 The audit report noted "the analysis of universities' policies in regard to the use of resources disclosed ambiguity and some gaps." It argued that "adequate accountability mechanisms are not established within faculties and schools of universities" and that "most policies are silent in terms of providing guidance on what is permissible usage of university resources and on procedures for recovering the cost of usage."¹⁷
- 2.19 From its analysis of POW policies, the Committee noted that a number of universities do not allow their resources to be used for private POW activities. Others allow resources to be used on a full-cost recovery basis and a written agreement in relation to allowable usage is entered into by the academic and the university. Given this, whilst POW policies on the whole are silent in terms of providing guidance on allowable usage of resources of the university, such guidance is usually given through a written agreement.
- 2.20 In relation to procedures for recovering the cost of usage, the majority of policies do not specify beyond the fact that use of resources is on a full-cost recovery basis and that written agreements may be entered into which includes arrangements for charging staff. In addition, there is little information on charge rates in POW policies, although a number do refer to internal charging policies or a list of charges which are available from the university in question.
- 2.21 In terms of whether universities are complying with the minimum standards as expressed by the audit report, it appears that no university's POW policy provides any detail of administrative procedures which record and account for resources used in private POW activities beyond noting that a written agreement may be entered into with the academic in relation to charging them on a full-cost recovery basis. Furthermore, no policy provides information as to the procedures taken to identify and recover the university's overhead costs apart from noting that internal charging policies will apply.
- 2.22 The Committee is concerned that POW policies of all universities in New South Wales are not meeting the minimum standards in relation to monitoring use of university resources for private POW activities and setting out procedures to record and account for resources used and for recovering the cost of such usage. The Committee is of the view that universities' POW policies could be significantly improved by providing more detail as to how the use of resources will be monitored and accounted for, and by detailing how costs incurred by the use of university resources for private POW activities will be recovered rather than just noting that they will be recovered on a full-cost recovery basis.

¹⁶ Audit Office of New South Wales, 2000, *op. cit.*, p 22

¹⁷ *ibid*, p 23

Liability and Indemnity

2.23 The audit report argued that:

Universities should require academics as part of the notification and approval process to certify that an academic has informed the potential client that he/she is acting in a private capacity.¹⁸

2.24 During the performance audit, the Audit Office observed that whilst most policies included a requirement that an academic inform his/her client that the activity is undertaken in a private capacity that few universities require evidence that this has occurred.¹⁹

2.25 The Committee has found from an analysis of the POW policies that about half require evidence that clients have been informed that the university is not involved in private POW. Those that do not require evidence generally require academics engaged in private POW activities to sign a written declaration that the client has been informed that the university is not involved. The Committee is of the view that it would be more prudent of universities to require evidence that this has occurred rather than relying on a written declaration to that effect. The Committee is pleased to see that one of the universities, which currently does not require evidence that clients have been informed that the university is not involved, will be considering this need when the policy is next reviewed and encourages all universities which do not require evidence to do the same.

2.26 In relation to professional indemnity insurance and the like, the audit report observed that:

Some policies suggest that academics engaging in POW effect professional indemnity insurance. Two universities require academics to provide evidence of insurance. Although universities might not be able to enforce such a requirement, it is desirable that academics are made aware of the risks associated with private POW.²⁰

2.27 The Committee found from its analysis of the policies that the majority of universities require academics to ensure that adequate insurance for POW activities is taken out and that evidence of this is required before approval is given to undertake POW. For the few universities that do not specifically require insurance to be taken out or evidence of it, it is implicit in the policies noting that it is the employees' responsibility to ensure that adequate insurance is sought.

2.28 The University of Wollongong notes that it does not require academics to submit evidence of adequate insurance coverage due to the administrative overhead associated with it.²¹ Given that the majority of universities do require evidence and have not noted any significant burden on administration, the Committee is not swayed by the University's argument and encourages all universities to specifically require that professional indemnity insurance be taken out by any academics engaged in private POW activities and that evidence of this be required.

¹⁸ *ibid*, p 25

¹⁹ *ibid*, pp 25 - 26

²⁰ *ibid*, p 26

²¹ Submission from the University of Wollongong

Reporting and Monitoring

- 2.29 In relation to the reporting of and monitoring of POW activities the audit report argued that as a minimum policies should:
- specify mechanisms to monitor compliance with policy. This might be through the performance appraisal system or through periodic reporting requirements for POW.²²
- 2.30 As noted in the audit report, the majority of universities include within their POW policies some form of reporting on the level of POW undertaken with most universities requiring an annual report to be submitted either by the academic themselves or by providing this information to the Head of School or Dean who must then report this information to the University. The Committee is however concerned that a number of universities have no requirement within their POW policies to report on POW activities. Charles Sturt University is one of the universities which has no requirements within its POW policy in relation to reporting POW activities. It has noted in its submission to the inquiry that a new clause has been recommended whereby quarterly reports of all POW activities will be submitted. The Committee encourages Charles Sturt University to adopt this reporting requirement as part of its POW policy as soon as possible. The Committee is also of the view that it would be in the interests of all universities to require some form of reporting on POW activities undertaken as an accountability mechanism.
- 2.31 It should also be noted that in conducting the performance audit, the Audit Office observed "little, if any, follow-up action on compliance with reporting arrangements appears to occur." From the information received the Committee is unable to determine the level of compliance. This is discussed further in Chapter Four.

Disciplinary Measures

- 2.32 The audit report argued that all university policies should state clearly that disciplinary action can and will occur in instances of non-compliance.²³ The audit report noted that only two universities' POW policies contained specific reference to disciplinary measures. The Committee is pleased that there has been a significant improvement in this area with the majority of universities' POW policies now containing a specific reference to disciplinary measures in instances where the policy is breached. Other universities mention disciplinary action for failing to seek approval for POW activities.
- 2.33 The University of Wollongong is the only university which fails to specify that disciplinary action will occur in relation to breaches of POW policies. The policy for the University of Wollongong does note that "staff who fail to register a personal consultancy will be considered to be acting outside established University rules and regulations."²⁴ However, there is no specific mention of disciplinary action. The submission from the University notes that "separate advice has been issued to all staff that failure to comply with the policy is considered a serious breach, and that in such instances staff are not indemnified by the University in the event of a claim

²² Audit Office of New South Wales, 2000, *op. cit.*, p 27

²³ *ibid*, p 27

²⁴ University of Wollongong, *Consultancy and Contract Research Policy*, p 9

for compensation arising from the activity.”²⁵ The Committee commends this but is of the view that it would also be prudent of the University to specifically state in its POW policy that disciplinary action will occur for breaches of the policy.

RECOMMENDATION 1: The Committee recommends that, in relation to paid outside work activities, all universities should include in their policies:

- Review timeframes and mechanisms; and
- A link between approval to conduct POW activities and performance.

RECOMMENDATION 2: The Committee recommends that, to enhance accountability, all universities’ POW policies should:

- Make specific reference as to how POW activities will be monitored;
- Detail how the use of university resources will be monitored and accounted for; Details of how costs incurred by the use of university resources in private POW activities will be recovered; and
- Require some form of reporting on POW activities undertaken.

RECOMMENDATION 3: The Committee recommends that, in the interests of risk management, all universities should include in their POW policies:

- A requirement for evidence to be shown that clients have been informed that the university is not involved in private POW activities;
- Specify that insurance must be taken out by academics engaged in private POW activities and that evidence of this be required; and
- Specify that disciplinary action will occur for breaches of the policy.

²⁵ Submission from the University of Wollongong

Chapter Three - Implementation of Recommendations on Intellectual Property

INTELLECTUAL PROPERTY POLICIES

- 3.1 Universities are a potential source for new intellectual property (IP) which is capable of being exploited and as argued by the Audit Office, universities must actively seek and enforce their rights to ownership of, and rewards from IP.²⁶ The management of IP is important as:

NSW Government policy states that the management of information and the use of new and emerging technologies are cornerstones of the Government's plans for reforming public sector services, administration and obligations.²⁷

- 3.2 The management of IP becomes an issue, particularly when academics are engaged in POW activities, where they are free to exploit their 'know-how' as "difficulties can arise...in distinguishing between what constitutes an academic's 'know-how' and IP over which a university has a legitimate claim."²⁸ This highlights the need for universities to have adequate IP policies which ensure that IP of the university is protected and not used by an academic without the knowledge, approval of, and compensation to, the University.

- 3.3 In October 2001, the Audit Office released a Better Practice Guide entitled *Management of Intellectual Property*. The importance of having a policy for managing IP was emphasised:

Policies and plans provide direction for the agency's management of IP. Priorities are determined, targets established, expertise developed, incentives provided, results measured and staff held accountable for meeting goals.²⁹

- 3.4 The minimum standards identified by the audit report in relation to IP policies for universities were developed taking into account suggestions made by the Australian Vice-Chancellors' Committee (AVCC) in 1995.³⁰ The audit report noted that in conducting the performance audit it was found that universities had included in their policies the issues identified by the AVCC and that compliance with the minimum standards identified was more thorough for IP policies than for policies relating to paid outside work.³¹

- 3.5 A number of universities did not provide information on their IP policies in their submissions to the inquiry. However, the Committee was able to access all policies through the Internet.

²⁶ Audit Office of New South Wales, *Performance Audit Report: Academics' Paid Outside Work*, February 2000, p 34

²⁷ Audit Office of New South Wales, *Performance Audit Report: Management of Intellectual Property*, October 2001, p 2

²⁸ Audit Office of New South Wales, 2000, *op. cit.*, pp 34 - 35

²⁹ Audit Office of New South Wales, *Better Practice Guide: Management of Intellectual Property*, October 2001, p 4

³⁰ Audit Office of New South Wales, 2000, *op. cit.*, p 35

³¹ *ibid*, p 36

- 3.6 The Committee compared the IP policies for the ten universities to the minimum standards published in the audit report.³² The table on the following page sets out the level of compliance.

Policy, procedures and review

- 3.7 The audit report argued that:

Each university should develop and implement policy and procedures to identify and protect its rights to IP. The policy and procedures should include a process of periodic review and amendment to ensure that policy and procedures remain relevant, respond to implementation feedback and address emerging issues.³³

- 3.8 As noted by the audit report all universities have developed and implemented a policy on IP. It also observed that most IP policies are current with most IP policies being reviewed since 1995. However, it was also observed that not all policies set timeframes for future review or review mechanisms.³⁴

- 3.9 The Committee is pleased that all universities have reviewed or are in the process of reviewing their IP policies to ensure that they remain relevant and take into consideration any emerging issues which may have arisen since the policies were first released. However, the Committee is concerned that a number of universities have not included in their revised policies any mention of timeframes and/or mechanisms for future review despite the need to do so being identified by the audit report.

- 3.10 The Audit Office has expressed the importance of reviewing and evaluating procedures for IP. They argued:

Because [of] the complexity of IP and the short lifecycle of innovation...it is important that the agency regularly reviews and evaluates its procedures for identifying IP assets.³⁵

- 3.11 The Committee is of the view that all universities need to ensure that a timeframe and a mechanism for reviewing IP policies is included as part of the policy. This will make it clear that such policies are not static but subject to change.

³² See appendix two for a copy of the minimum standards.

³³ *ibid*, p 36

³⁴ *ibid*, p 36

³⁵ Audit Office of New South Wales, *Better Practice Guide*, October 2001, *op. cit.*, p 8

Minimum Standard	Number of universities complying	Number of universities which do not comply or have ambiguous guidelines/policies
1. University's IP policy is current (that is, recently issued or reviewed).	9	1 (dated 1995)
2. The policy contains review timeframes and review mechanisms.	Timeframes: 4 Mechanisms: 6	Timeframes: 6 Mechanisms: 4
3. The policy contains an adequate definition of what constitutes IP.	2	8 (only refer to legislation to define IP)
4. There is a clear statement on the ownership of IP developed by staff.	10	0
5. Courseware (lecture notes, AV material) when commissioned by the university is included in IP.	10	0
6. The policy contains procedures for academics to use such courseware if the academic leaves the university.	9	1
7. The policy identifies specific exemptions allowed for scholarly books, articles, audio-visuals and lecture notes not commissioned specifically by the university.	8	2
8. The policy includes exemptions for creative works not specifically commissioned by the university.	7	3
9. The policy addresses the ownership of IP developed by students.	10	0
10. The rights of students are stated (if included in the IP policy).	10 (although a number only refer to the right of students to share in any commercial benefits of IP created by them and not to other rights)	0
11. The policy contains specific procedures and requirements for notifying the university of the development of IP.	10	0
12. Time limits are set for the university to decide whether to involve itself in the exploitation of the IP.	7	3
13. The policy includes confidentiality requirements while the university assesses IP.	8	2
14. The policy contains procedures for assigning or sharing ownership of IP with originators when the university decides to exploit the IP.	6	4
15. There are procedures to determine the ownership if the university decides not to exploit the IP.	10	0
16. Students are included in revenue-sharing arrangements.	9	1
17. The policy includes a role for originators in the exploitation of the IP.	10	0
18. The university asserts the right to exploit the IP as it sees fit (or it is implicit throughout the policy)	6	4
19. There are procedures for sharing income from IP exploitation.	10	0
20. The university acknowledges specifically the moral rights of originators (for example, to attribution).	10	0
21. The policy contains adequate dispute resolution mechanisms.	Procedures: 10 Specifies who will make the final decision: 7 Timeframes for disputes to be resolved: 7	Procedures: 0 Specifies who will make the final decision: 3 Timeframes for disputes to be resolved: 3

Definition and ownership of IP

3.12 The audit report expressed the view that IP policies should:

- Provide a definition of IP;
- State the circumstances under which the university asserts ownership of IP; and
- Note IP for which the university intends not to assert ownership (for example, artistic works).³⁶

3.13 The audit report observed that the majority of universities address the issues of what constitutes IP and the ownership of IP developed in their policies. It also noted that most policies define IP by reference to legislation. The audit report argued that whilst the mention of legislation which covers IP is “desirable and commendable” that it is not in itself sufficient to adequately explain the concept of IP.³⁷

3.14 From its analysis of the IP policies of the universities, the Committee found that a number of universities still only define IP by reference to the applicable legislation. Only two universities, Macquarie University and University of Technology Sydney (UTS), provide a detailed definition for IP in addition to referring to legislation. The Committee commends both universities and encourages other universities to provide a more detailed definition of IP in their policies.

3.15 The audit report expressed the view that in addition to setting out the ownership of IP created by academics that IP policies should also identify specific exemptions. It found that exemptions from policy are not adequately addressed by several universities.³⁸

3.16 From its analysis the Committee has found that the majority of universities’ IP policies included specific exemptions for scholarly and creative works not specifically commissioned by the university. However, the University of New England and Southern Cross University fail to note exemptions within the policy. The Committee encourages both universities to revise their IP policies with a view to listing those works, both scholarly and creative, which are exempt from the policy.

3.17 The Committee is also concerned that a number of universities are not providing specific exemptions within their policies but are instead including a blanket clause which covers works not commissioned by the university. For instance, the University of Western Sydney claims that it has included exemptions in relation to creative works in clause 2.3 of its IP policy. It provides:

Copyright in commissioned works, pursuant to the contract by which the work is commissioned, will be owned by the University. Procedures and protocols will set out the terms of any use of commissioned works by the author, other than for the university’s purposes.³⁹

³⁶ Audit Office of New South Wales, 2000, *op. cit.*, p 37

³⁷ *ibid*, pp 38 - 39

³⁸ *ibid*, p 38

³⁹ Submission from the University of Western Sydney, p 10

- 3.18 The Committee is of the view that it would be in the best interests of the University to follow the advice of the audit report and identify specific exemptions for creative works in its IP policy as it has done with scholarly works.⁴⁰

Notification

- 3.19 In relation to the notification of IP created the audit report argued that:

The onus for reporting IP capable of being protected and exploited rests with the originator. Therefore, it is necessary for policies to contain specific arrangements for notifying the university when IP is developed.

Arrangements should include time limits and confidentiality requirements whilst the university decides whether to protect and exploit IP. Policies should address the role and rights of originators if the university is involved in the exploitation of IP, and procedures for determining ownership rights to IP if the university declines such involvement.⁴¹

- 3.20 The audit report observed that whilst the majority of policies included specific requirements for academics to notify universities of the development of IP that a number of universities' IP policies were ambiguous and did not provide specific guidance of this matter.
- 3.21 The audit report also found a number of universities needed to improve their IP policies by including time limits on the university making a decision as to whether or not it will exploit IP. It also observed that approximately "half of universities' policies do not address adequately the issue of assigning or sharing IP ownership between originators and the university."⁴²
- 3.22 The Committee was pleased to see that all universities have specified how academics are to notify the university of the development of IP that has the potential to be exploited and that no ambiguities persist. These procedures require academics to notify either their supervisor/Head of School or an intellectual property officer/committee. Reporting of IP developed is important for an agency to be able to effectively manage its IP as noted by the audit report:
- A reporting regime provides relevant and timely information on matters affecting the management of IP.⁴³
- 3.23 In relation to time limits, the Committee notes from its analysis of the universities' IP policies that there are two universities (the University of Western Sydney and the University of Technology Sydney) that fail to specify time limits on making decisions in relation to the exploitation of IP. The University of Western Sydney has flagged the issue for consideration when the policy is next reviewed. Macquarie University argues in its submission to the inquiry that it complies with all the minimum standards for IP policies identified in the audit report, although time limits are not clearly stated in the policy. The Committee encourages all universities to ensure that IP policies clearly specify time limits that universities have to make decisions in relation to the exploitation of IP.

⁴⁰ Clause 2.4.1 of the University of Western Sydney's Intellectual Property Policy

⁴¹ Audit Office of New South Wales, 2000, *op. cit.*, p 39

⁴² *ibid*, p 40

⁴³ Audit Office of New South Wales, *Better Practice* Guide, October 2001, *op. cit.*, p 18

- 3.24 In terms of confidentiality requirements, the Committee found that the majority of universities specifically note in their IP policies that any IP developed must remain confidential until it has been protected or exploited by the university. A number of policies prohibit any publications in relation to the IP developed for a specified time period or until the IP is exploited. Other policies state that anyone who is informed or consulted about the IP must sign a confidentiality agreement or must ensure that all consultations are done on a confidential basis.
- 3.25 The IP policies of the University of Wollongong and the University of Western Sydney do not contain specific confidentiality requirements. The University of Wollongong notes in its submission that “all IP disclosures are treated in-confidence by the University and that standard forms are annotated to this effect.”⁴⁴ The University of Western Sydney has advised the Committee that this issue has been flagged for when the policy is next reviewed. The Committee encourages both universities to make specific reference to confidentiality requirements within their IP policies.
- 3.26 In relation to the sharing of ownership and IP rights with the originators, the Committee found that there has been a marked improvement in IP policies. The majority of universities now state within their IP policies procedures for assigning or sharing ownership of the IP with the university if it decides to exploit it. For instance the University of Wollongong states in its IP policy that when the University asserts a propriety interest in IP it:
- will enter into a written agreement with the originator and such other people as may be appropriate. The agreement will define the ownership shares and rights of the parties to the agreement.⁴⁵
- 3.27 However, a number of policies are still ambiguous in terms of addressing ownership with some simply stating that in instances where IP is exploited that the rights are vested in the University and not the originator. The Committee would like to see all universities address the issue of sharing ownership and IP rights with the originators if IP is exploited. As argued by the audit report, such a strategy will “encourage academics to excel in their particular disciplines.”⁴⁶
- 3.28 Whilst some improvement is required in terms of sharing ownership arrangements between universities and originators in instances where IP is exploited, the Committee was pleased to see that all universities state within their IP policies procedures for determining ownership rights if the university decides not to exploit the IP.

Exploiting IP

- 3.29 In relation to the exploitation of IP, the audit report argued:

The manner in which exploitation is pursued is an important policy issue which should address:

- Management and administrative arrangements;
- Liaison among stakeholders;

⁴⁴ Submission from the University of Wollongong

⁴⁵ Clause 5.6 of the University of Wollongong’s IP policy

⁴⁶ Audit Office of New South Wales, 2000, *op. cit.*, p 41

- Decision-making processes; and
 - Income-sharing arrangements.⁴⁷
- 3.30 The Committee is pleased to see that all policies specify income-sharing arrangements should IP be exploited and that the majority of universities have included in their policies a consultative approach to the exploitation of IP by including a role for the originator.
- 3.31 The audit report also noted that most, but not all, universities' IP policies acknowledge or affirm moral rights of the originators such as the right of attribution and the right to object to derogatory treatment such as using material out of context.⁴⁸
- 3.32 From the Committee's analysis of universities' IP policies it is evident that all policies now address the issue of moral rights. All policies specify that authors/innovators will be acknowledged i.e. the right to attribution and that any alteration of the work will be done only in consultation with the originators. The Committee is pleased by this finding.
- 3.33 The audit report also noted that in regard to the exploitation of IP that some policies did not "emphasise that the university, whilst committed to a consultative process, has the right to exploit IP as it sees fit" and that it is worthwhile stating this explicitly within the policies.⁴⁹
- 3.34 The Committee found that the majority of universities do not specifically state within their IP policies that they have the right to exploit IP as they see fit. A number of universities argued in their submissions to the inquiry that whilst a statement to this effect is not contained within the policy that it is asserted through the procedures and that such a right is implicit. The University of Western Sydney indicated in its submission that this issue has been "flagged for further consideration when the policy is next reviewed."⁵⁰ The Committee encourages other universities to do likewise.

Dispute resolution

- 3.35 The audit report expressed the view that:

University policies need to have mechanisms to consider and determine impartially and fairly disputes that arise as to ownership and exploitation of IP.⁵¹

- 3.36 All universities' IP policies address the issue of disputes. Most specify the mechanisms that will be used to deal with disputes with many using mediation and/or arbitration as ways of resolving disputes. This is commendable as the audit report argued that "disputes arising from the ownership of IP benefit from having mechanisms involving external mediation and arbitration."⁵² A couple of policies do not set out how disputes are to be resolved but do provide for appeals or reviews against any decisions to commercialise IP. The Committee would like to see all

⁴⁷ *ibid*, p 42

⁴⁸ *ibid*, p 42

⁴⁹ *ibid*, p 43

⁵⁰ Submission from the University of Western Sydney, p 12

⁵¹ Audit Office of NSW, 2000, *op. cit.*, p 43

⁵² *ibid*, p 44

universities specify the means by which disputes which arise will be resolved within their IP policies and encourages them to adopt mediation and/or arbitration procedures.

- 3.37 The audit report also expressed the need to ensure that a final decision is made on any dispute.⁵³ The majority of policies do specify who will make the final decision should any dispute remain unresolved following mediation and/or arbitration. A number have empowered the Vice-Chancellor to make a final decision on disputes in relation to the application of the IP policy which will be final and bind all parties. Other universities leave the final decision to the relevant mediator, arbitrator or dispute resolution centre. The Committee encourages the few universities which failed to express who would make a final decision that will bind all parties to do so to ensure that disputes do not remain unresolved for extended periods of time.
- 3.38 In relation to timeframes, the Committee found that the majority of IP policies do not express any timeframe in which disputes should be resolved. Specific timeframes are noted in the policies for both the University of New South Wales (one month) and the University of Sydney (73 – which is broken down into different timeframes for different steps in the process) and the policy for the University of Technology Sydney states that disputes must be resolved in a ‘reasonable’ time. The Committee appreciates that it may be difficult for all disputes to be resolved within a set timeframe but encourages all universities to adopt a time limit in which to resolve disputes in order to ensure that they are resolved expeditiously.

RECOMMENDATION 4: The Committee recommends that all universities’ IP policies should:

- Include a timeframe and mechanism for future review;
- Include a detailed definition of IP which goes beyond referring to applicable legislation; and
- Identify specific exemptions for works, both scholarly and creative.

RECOMMENDATION 5: The Committee recommends that, in relation to exploitation, all IP policies should:

- Clearly specify time limits that universities have to make decisions in relation to the exploitation of IP;
- Make specific reference to confidentiality requirements whilst consideration is given to exploiting IP;
- Address the issue of sharing ownership and IP rights with the originators if IP is exploited; and
- Specify that the university has the right to exploit IP as it sees fit.

⁵³ *ibid*, p 44

RECOMMENDATION 6: The Committee recommends that, in relation to resolving disputes regarding IP, policies:

- Specify the means by which disputes will be resolved;
- State who will make a final decision binding all parties; and
- Adopt a time limit in which to resolve disputes.

Chapter Four - Enhancing Accountability

- 4.1 The audit report recommended that universities:
- Enhance present accountability procedures to ensure that requirements contained within policies are implemented at all levels of the university.⁵⁴
- 4.2 There is little evidence from the submissions as to whether accountability procedures have been enhanced to ensure that requirements are implemented at all levels in the universities. Nevertheless, there are a number of comments that can be made.
- 4.3 In relation to the implementation of POW policies the audit report argued that as:
- University policies form part of the conditions of employment...policies should form part of the performance appraisal mechanism with a failure to comply with policies attracting possible disciplinary action.⁵⁵
- 4.4 As previously noted, all but one university currently states within its POW policy that disciplinary action will occur in instances where the policy is breached. In addition, a number of universities have linked approval for POW activities conditional on performance assessment. A representative of the University of Newcastle noted in evidence that its POW policy related to the approval of workload:
- CHAIR:** Can you talk a bit about how many academics at the university are out there getting paid outside of university work and how closely they relate to the guidelines? Is there some sort of register?
- Ms BEACH:** There is, but I think I need to explain that we have a range of policies where each is a stand-alone policy document but they are interrelated in terms of compliance monitoring. The current consultancy policy is part of the suite of policies that are covered by the current provisions under the enterprise agreement for the approval of workload....⁵⁶
- 4.5 The Committee would like to see all POW policies specifically note that disciplinary action will occur if the policy is breached and to make as a condition of undertaking POW activities that the academic maintain a satisfactory level of performance of duties.
- 4.6 As previously noted, the Committee found that few POW policies specified how the use of university resources for private POW would be monitored. The Committee considers that if universities implement all of the minimum standards identified by the audit report, which include methods for monitoring the use of university resources for private POW activities, that this will improve accountability. In doing so it is important for policies to set out the procedures by which the use of university resources will be recorded and accounted for. It is also imperative that policies outline the procedures for recovering the cost of such usage.
- 4.7 The Committee also considers that it is in the interests of all universities to ensure that POW activities are monitored and reported on in a timely manner. As noted in Chapter Two, whilst the majority of POW policies require some level of reporting on

⁵⁴ Audit Office of New South Wales, 2000, *op. cit.*, p 5

⁵⁵ *ibid*, p 28

⁵⁶ Evidence given by Ms Susan Beach, Director, Vice-Chancellor's Division and Legal Unit, University of Newcastle, Transcript of evidence, 19 May 2004, p 2

POW activities undertaken, it was observed that little follow-up action on compliance with reporting arrangements occurs. The Committee is unable to determine the level of compliance since the audit report and is concerned that universities are leaving themselves exposed to unnecessary risks by not ensuring that information on POW activities is reported on in a timely manner.

4.8 In relation to the implementation of IP policies, the audit report expresses the view that education on IP matters is important for ensuring that IP policies are implemented effectively. This is because education will increase staff awareness and clear any confusion that may exist about IP issues.⁵⁷ The majority of universities do note some form of education program or where advice can be obtained within their IP policies. However, the Committee is disappointed that not all universities have addressed this need even though it was specifically mentioned in the performance audit report. The Committee agrees with the audit report that including an education requirement within IP policies represents better practice that all universities should address.

4.9 Furthermore, the Committee is of the view that it is in all universities best interests to ensure that POW and IP policies take on board best practice principles and are implemented across all levels of the university so that universities are exposed to less risk and that accountabilities are clearly set out.

RECOMMENDATION 7: The Committee recommends that all universities include an education component in their IP policies.

RECOMMENDATION 8: The Committee recommends that each university ensure that POW and IP policies are implemented at all levels of the university.

Compliance

4.10 As noted, there are a number of issues with compliance. Whilst the Committee was able to determine whether POW and IP policies referred to the minimum standards identified in the audit report, the Committee notes that it is unable to determine the level of implementation of these policies and suggests that the Auditor-General consider a further compliance review to determine whether universities monitor compliance and have reporting mechanisms in place.

RECOMMENDATION 9: The Committee recommends that the Auditor-General conduct a compliance review of universities' POW and IP policies to determine the level of compliance with the policies.

⁵⁷ Audit Office of New South Wales, 2000, *op. cit.*, p 45

Chapter Five - The Value of the Audit Report

- 5.1 The second term of reference for this inquiry relates to the value of the report in enhancing accountability. Universities are unusual entities being established by State legislation but largely funded by the Commonwealth, and increasingly by fee-paying students and commercial activities. As noted by the Minister for Education and Training, they are largely autonomous entities.⁵⁸ However, given that the ten universities in New South Wales have operating revenues in the order of \$3,500 million⁵⁹, the Committee considers it important that universities have good governance arrangements and are accountable.
- 5.2 A number of universities noted in their submissions to the Committee's inquiry that the audit report was valuable in terms of assisting universities to develop and/or review policies and guidelines for managing paid outside work and intellectual property issues. For instance, the University of Western Sydney noted in its submission that:

The real value of the audit report lies in:

(a) its balanced approach; and

(b) the provision of benchmarking data and the checklists that have helped guide the development of the UWS policies covering paid outside work and intellectual property.

It has also enabled the University to identify its policy strengths and to flag others for further consideration.⁶⁰

- 5.3 However, in contrast the University of Newcastle did not think that the audit report was valuable and even questioned the need for the Audit Office to investigate such issues. The submission from the University argued that such a role was the function of the university's governing bodies and its committees.
- 5.4 The Committee questioned a representative of the University of Newcastle about the role of the Audit Office in auditing universities' performance:

Mr RICHARD TORBAY: In Professor Holmes' letter he basically comments that he is not persuaded that the Audit Office needs to have a role in auditing universities' performance in those areas. Basically, he is indicating that it duplicates functions with other bodies. Can you give us some information about what types of bodies and what they do?

Ms BEACH: The university council, the governing body, has two principal committees, one of which is the audit committee. The other one is known as resources and administration, which deals with other matters. Through the audit committee, which is the body charged with managing the audit functions, the compliance functions on a strategic level at the university, there is increasingly a role for that committee to do the work of say the audit office as it was done with the consultancy arrangements, particularly given the push towards more effective governance in universities. I think the essence of the vice-chancellor's submission

⁵⁸ Correspondence received from the Minister for Education and Training

⁵⁹ See the Auditor-General's Report to Parliament 2004 Volume Two, pp 24 - 26

⁶⁰ Submission from the University of Western Sydney, p 13

was that the audit committee should be doing that work and the university would envisage that it would be doing that work.

Mr RICHARD TORBAY: What about the independent scrutiny issues?

Ms BEACH: Again, we have an extensive internal audit function and we also have external audit. So we are audited quite considerably and I think it was in light of both the role of the audit committee and the various audits to which we already had to submit that the vice-chancellor saw that there was no need for yet another layer or another level of audit.⁶¹

- 5.5 The Committee was concerned that the University appears to not recognise the importance of independent scrutiny and the role of the Auditor-General in holding the University to account. As the Auditor-General has noted in correspondence to the Committee:

The argument misses the point that an external auditor is appointed to provide an independent report to a relevant third party. A “positive” report adds assurance that the management of an entity is sound; a “negative” report alerts the third party that something is wrong. And it is that independence that constitutes precisely the auditor’s *raison d’être*.

- 5.6 The Auditor-General has also expressed the view that independent auditing is essential for good governance arrangements.⁶²

- 5.7 Furthermore, the view of the University of Newcastle does not consider that public universities, being established by state legislation, are part of the New South Wales public sector and are subject to oversight. As noted by the Independent Commission Against Corruption (ICAC) in its publication *Degrees of Risk: A Corruption Risk Profile of the New South Wales university sector*:

The State Government’s key oversight of universities is mainly through the Minister’s appointment of a number of members to each university’s Senate or governing body. State bodies such as the Auditor-General and the Treasurer also have particular oversight responsibilities. State legislation imposes accountability measures on universities including annual reporting and public auditing under the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*.⁶³

- 5.8 There has also been some concern about whether universities are equipped to handle the risks that may arise from the increasingly commercial environment which they are finding themselves in the 21st Century. In 2002, the Commonwealth Government conducted a review of Australia’s higher education system. As part of the review process the governing bodies of universities were considered. An issues paper published as part of this review process questioned whether the governing bodies of universities were equipped to deal with the risks involved in commercial activities that were being pursued by universities:

⁶¹ Evidence given by Ms Susan Beach, Director, Vice-Chancellor’s Division and Legal Unit, University of Newcastle, Transcript of Evidence, 19 May 2004, pp 3 – 4

⁶² See the Auditor-General’s submission to the Joint Committee of Public Accounts and Audit of the Federal Parliament in relation to its *Review of Independent Auditing by Registered Company Auditors*, May 2002. Available from the following website: <http://www.audit.nsw.gov.au/JCPAA-31-5-02.pdf>

⁶³ Independent Commission Against Corruption, *Degrees of Risk: A corruption risk profile of the New South Wales university sector*, August 2002, p 12

The dramatically changing environment in which universities now operate, including the growing importance of managing risk, begs the question as to whether university governing bodies are appropriately tasked, structured and composed to lead institutions effectively through the next decade and beyond.⁶⁴

- 5.9 This view supports the need for independent scrutiny to ensure that the commercial activities of universities are managed appropriately.
- 5.10 The State Government has been active in ensuring that appropriate risk management strategies are implemented in relation to the commercial activities of universities. The *Universities Legislation Amendment (Financial and Other Powers) Act 2001*, which amended the establishing legislation of the various universities in New South Wales, provides a means of limiting the State's potential exposure to liability for the commercial activities of universities by establishing risk management and accountability arrangements. Under the legislation, universities undertake all commercial activities in a manner consistent with processes and procedures contained in guidelines approved by the Minister for Education and Training following advice from the Treasurer.⁶⁵ The Minister has provided the Committee with a copy of these guidelines see Appendix Four. This arrangement is evidence of the role that the State Government has in holding universities to account.
- 5.11 The legislation also requires universities to provide details on the implementation of any recommendation made in a report of the Ombudsman or Auditor-General.⁶⁶ The Audit Office released a better practice guide entitled *Monitoring and reporting on performance audit recommendations* in June 2001 which universities may find useful in complying with this requirement. It states that:

Following a performance audit, agencies should:

- Assign responsibility for the implementation of recommendations accepted to a single person or branch;
- Develop an action plan which includes a timetable for implementation and clearly outlines roles and responsibilities for the implementation of each recommendation accepted;
- Include in the plan mechanisms to monitor and report on results against key indicators where they have been identified in the audit;
- Allocate sufficient resources to implement the plan and set realistic and achievable timeframes and targets;
- Have the plan endorsed by the CEO and where appropriate, the Board and the Minister;
- Incorporate the plan in other planning documents such as the corporate plan, business plans or performance agreements;
- Nominate or establish a committee to monitor and report on progress (some agencies use their audit committee or risk management committee to do this);

⁶⁴ Commonwealth Department of Education, Science and Training, *Meeting the Challenges: the governance and management of universities*, August 2002, p 17

⁶⁵ See the Legislative Assembly Parliamentary Debates, 07/11/2001, p 18163 ff for the Minister's Second Reading Speech on the legislation.

⁶⁶ See for example, section 20B of the *Charles Sturt University Act 1989*

- Provide regular reports on the progress of implementation of the recommendations to the CEO and where appropriate, the Board and the Minister;
- Raise staff awareness of the outcomes of the performance audit and invite feedback on how best to implement the recommendations;
- Regularly review and monitor the plan and make amendments, where necessary, to maintain relevance and appropriateness; and
- Report progress and actions taken to address issues raised in the performance audit in the annual report (reporting progress each year until implementation is complete).⁶⁷

5.12 The Committee encourages all universities to adopt these suggestions of the Audit Office to assist them in ensuring that action is taken in areas where it is considered procedures need to be improved.

Concluding comments

5.13 The Committee considers universities should be subject to external scrutiny. The public has a right to certainty of good management. Universities have ambiguous governance arrangements due to being established by State law but receiving a significant amount of funding from the Commonwealth. They have large resources at their disposal and important educational responsibilities. The Committee considers it highly important that there be assurances of good governance and management within universities.

⁶⁷ Audit Office of NSW, *Better Practice Guide: Monitoring and reporting on performance audit recommendations*, available from the following website: <http://www.audit.nsw.gov.au/guides-bp/PerformanceAuditsChecklist.PDF>

Appendix One – Submissions, other documents received and Witnesses

Submissions and documents

No.	Provided by	Subject
1	Mr Ian Goulter, Vice-Chancellor Charles Sturt University	Submission to the inquiry
2	Professor Roger S Holmes, Vice-Chancellor and President The University of Newcastle	Submission to the inquiry
3	Mr John Ingleson, Deputy Vice-Chancellor (International and Education) The University of New South Wales	Submission to the inquiry
4	Mr Ken Eltis, Acting Vice-Chancellor and Principal	Submission to the inquiry
5	Mrs Phyllis Waters, Director Human Resources Southern Cross University	Submission to the inquiry
6	The Hon. Dr Andrew Refshauge MP Deputy Premier, Minister for Education and Training and Minister for Aboriginal Affairs	Correspondence to the inquiry and Universities' Commercial Activities Guidelines
7	Ms Celia Bevan, State President, National Tertiary Education Union, New South Wales	Submission to the inquiry
8	Mr Mark Cartwright, Director, Audit and Risk Assessment University of Western Sydney	Submission to the inquiry
9	Professor Brian Stoddart, Pro Vice-Chancellor (Research and International) University of New England	Submission to the inquiry
10	Professor James Piper, Deputy Vice-Chancellor (Research) Macquarie University	Submission to the inquiry
11	Mr David Rome, Vice Principal (Administration) University of Wollongong	Submission to the inquiry
12	Professor Ross Milbourne, Vice-Chancellor University of Technology, Sydney	Submission to the inquiry
13	Mr Bob Sendt, Auditor-General of NSW	Correspondence related to the inquiry

Witness

Organisation	Representative
University of Newcastle	Ms Susan Beach Director, Vice-Chancellor's Division and Legal Unit

Appendix Two – Minimum Standards

2. Managing the Risks

2.11 Checklist for Paid Outside Work Policies

Minimum Standards	Result
1. The university's POW Policy has been recently issued.	
2. The policy contains evidence of recent review or includes review mechanism and timeframes.	
3. The policy states the types of POW allowed to academics.	
4. The policy sets a time limit for academics engaging in POW AND/OR specifies other methods for monitoring POW activities.	
5. There is a specific requirement that academic advise the University before starting POW activities.	
6. The policy contains procedures for approving POW.	
7. The policy states the circumstance where activities are exempt from approval procedures.	
8. The policy unambiguously states whether the use of university resources is allowed for private POW activities.	
9. The policy provides guidelines on allowable usage of university resources in private POW activities.	
10. Procedures exist for charging staff (or other means of recovery) for using university resources for private POW activities.	
11. Charge rates for university resources are specified or available.	
12. The policy requires a statement from the academic that University is not involved in private POW activities.	
13. Academics must submit evidence that the above statement has been provided to clients for each private POW activity.	
14. Procedures require academic to have adequate insurance coverage before engaging in private POW activities.	
15. Evidence is required that academics have adequate insurance coverage if engaging in private POW activities.	
16. Academics have the option of engaging in University-sponsored POW.	
17. The policy contains requirements for academics to report their private POW activities to the University on a periodic basis.	
18. The policy contains a statement that disciplinary measures will be taken in instances of non-compliance	

3.10 Checklist for Intellectual Property Policies

Minimum Standards	Result
1. University's IP Policy is current (that is, recently issued or reviewed).	
2. The policy contains review timeframes and review mechanisms.	
3. The policy contains an adequate definition of what constitutes IP.	
4. There is a clear statement on the ownership of IP developed by staff.	
5. Courseware (lecture notes, AV material) when commissioned by the university is included in IP.	
6. The policy contains procedures for academics to use such courseware if the academic leaves the university.	
7. The policy identifies specific exemptions allowed for scholarly books, articles, audio-visuals and lecture notes not commissioned specifically by the university.	
8. The policy includes exemptions for creative works not specifically commissioned by the university.	
9. The policy addresses the ownership of IP developed by students.	
10. The rights of students are stated (if included in the IP policy).	
11. The policy contains specific procedures and requirements for notifying the university of the development of IP.	
12. Time limits are set for the university to decide whether to involve itself in the exploitation of the IP.	
13. The policy includes confidentiality requirements while the university assesses the IP.	
14. The policy contains procedures for assigning or sharing ownership of IP with originators when the university decides to exploit the IP.	
15. There procedures to determine ownership if the university decides not to exploit the IP.	
16. Students are included in revenue-sharing arrangements.	
17. The policy includes a role for originators in the exploitation of the IP.	
18. The university asserts the right to exploit the IP as it sees fit.	
19. There are procedures for sharing income from IP exploitation.	
20. The university acknowledges specifically the moral rights of originators (for example, to attribution).	
21. The policy contains adequate dispute resolution mechanisms.	

Appendix Three – Universities' Commercial Activities Guidelines

Universities' Commercial Activities Guidelines:

NSW Government requirements regarding the principles and processes to be incorporated into the guidelines

This document outlines the requirements that should be met in all of the commercial activities guidelines produced by universities. Universities are asked to assess the extent to which their draft guidelines meet the eleven requirements set out below and to amend the guidelines where they are found to be inadequate.

1. Guidelines must emphasise the need to identify risk as part of the preliminary evaluation process. Risks should be assessed prior to determining whether an activity is exempt. The risk of corruption should be included in the overall risk assessment.
2. Guidelines must include a requirement that the source of university funding is identified as part of the evaluation process for proposed commercial activities.
3. Guidelines must address insurance of risk. Both insured and uninsured risk should be identified clearly in the reporting to university governing bodies, or their delegated approval authorities. Further, all guidelines should include a threshold of \$100, 000 for uninsured risk.
4. Guidelines should specify clearly what activities are considered to be commercial. In determining whether an activity is a commercial activity for the purposes of the guidelines, the following principles should be applied:
 - (i) the range of activities specifically excluded from coverage by the guidelines should be limited to those that are clearly not commercial and involve no significant risk to the university, such as publicly funded core higher education teaching and research
 - (ii) guidelines should not specify blanket exclusions for the following:
 - activities involving the development and provision of cultural, sporting, professional, technical and vocational services
 - activities conducted or managed by controlled entities
 - teaching and research functions
 - (iii) where guidelines establish thresholds, either calculated as a percentage of the value of the activity or specified as a dollar amount:
 - these should be set at a realistic level so that the majority of a university's commercial activities is captured
 - calculating whether an activity meets a threshold must be based on the full cost of service provision (all resource inputs whether in cash or other forms)

Appendix Four

- guidelines should specifically prohibit artificial separation of a commercial activity into component parts in order not to reach a threshold figure.

5. Indicators that are used to determine whether an activity is commercial and should be subject to the guidelines should include:

- (i) the activity involves user-charges for goods or services, and
- (ii) managers of the activity have a degree of independence in relation to production or supply of the good or service and the price at which it is provided.

Even where an activity exists primarily for the purpose of providing facilities for students and staff, it may be a commercial activity or may contain a significant commercial component that should be subject to the guidelines.

6. Guidelines must outline requirements for the conduct of controlled entities. The Boards of Directors of controlled entities are to be responsible for ensuring that evaluation, risk management and accountability processes are in place, and that these are consistent with the requirements of the university's Act in relation to commercial activities, and with the university's guidelines. However the guidelines should also specify that the governing body of the university is ultimately responsible for the activities of controlled entities.

7. Guidelines must include a requirement that commercial activities be assessed for their compliance with competitive neutrality principles. If the commercial activity involved is to take place in a competitive or contestable market, the university is to act in a competitively neutral way and comply with the principles set out in the *NSW Government Policy Statement on the Application of Competitive Neutrality*. This includes pricing commercial activities in a competitively neutral way and including the full cost of service provision unless that provision is provided on an ad hoc basis, e.g. using surplus capacity. The university's pricing policy and guidelines should be referenced in the guidelines.

8. If guidelines provide for the governing body of the university to delegate commercial activities functions, in accordance with the university's legislation, the guidelines should also require that the person or people to whom the functions are delegated have the appropriate commercial experience or have access to the advice of an appropriately qualified person.

9. Guidelines must include requirements designed to prevent corruption. Reference should be made in the guidelines to complementary policies and procedures of the university aimed at preventing corruption and reporting suspected corrupt conduct.

Guidelines must also include approval requirements that ensure protection against conflicts of interest. In addition to requirements for the keeping of a register of interests, notification and inspection, and relevant prohibitions on voting, guidelines must specify that the person approving a proposed activity under delegated authority must not also be the sponsor of the activity.

10. The guidelines must require the university to establish and maintain a register of all approved commercial activities. The register should include the activities of any controlled

entities, in accordance with the requirements of the university's legislation. The guidelines should state that the register is to be directly accessible by members of the university's governing body.

11. The guidelines must require the university's register of commercial activities to be reviewed annually and each commercial activity listed on the register to be fully reviewed at least once every three years. The review should identify any significant changes and justify the activity continuing for a further period if that is the outcome.

Appendix Four – Minutes of Proceedings



LEGISLATIVE ASSEMBLY
PUBLIC ACCOUNTS COMMITTEE

Minutes of Proceedings of the Public Accounts Committee

Wednesday 2 July 2003 at 9.30am
Room no 1254 Parliament House
Meeting 4/2003

Members Present

Mr Brown, Mr McLeay, Mr Whan, Ms Berejiklian, Mr Turner and Mr Torbay

Apologies

No apologies

Follow ups of Auditor General's Reports

Resolved on the motion of Mr Turner and seconded by Mr McLeay:

“That the Committee commence an inquiry to examine the Auditor General’s performance audits into the Ambulance Service: response times (March 2001) and Academics’ Paid Outside Work (February 2000) according to the following Terms of Reference:

1. Implementation of the report’s recommendations; and
2. The value of the audit report, in terms of accountability and in improving the performance of government.”

The Committee adjourned at 10:00am until 9:00am on Tuesday 15 July 2003.

Chairman

Committee Manager



Minutes of Proceedings of the Public Accounts Committee

Tuesday, 15 July 2003 at 9.00 am

Meeting No 5/2003

Parliament House -Jubilee Room

Members Present

Mr Brown, Mr McLeay, Mr Whan, Ms Berejiklian, Mr Turner and Mr Torbay

Apology

No apologies

Correspondence

a) Correspondence with the Auditor-General, Mr R J Sendt regarding follow-up inquiries:

Resolved, on the motion of Mr Torbay and seconded by Mr Whan:

To write to the Auditor-General to inform him the Committee are:

- Commencing inquiries into *Universities: Academics' Paid outside work* and *Ambulance Service of NSW: response times*.

The Committee adjourned at 3.15pm.

Chairperson

Committee Manager



LEGISLATIVE ASSEMBLY
PUBLIC ACCOUNTS COMMITTEE

Minutes of Proceedings of the Public Accounts Committee

Thursday, 28 August 2003 at 1.15pm

Meeting No 6/2003

Parliament House (Library Meeting Room)

Members Present

Mr Brown, Mr Whan, Ms Berejiklian and Mr Turner

Future hearing dates:

Resolved on the motion of Ms Berejiklian and seconded by Mr Whan:

“That the Committee advise the secretariat of available hearing dates for inquiries in October November and December.”

That the Committee decide at the next meeting on 3 September 2003 to prioritise either the Academics' Paid Outside Work or Ambulance Response Times follow up inquiries.

The Committee adjourned at 1.55pm.

Chairman

Committee Manager



Minutes of Proceedings of the Public Accounts Committee

Wednesday, 17 September 2003 at 9:00am

Meeting No 8/2003

Parliament House – Room 1254

Members Present

Mr Brown, Mr McLeay, Mr Whan, Ms Berejiklian and Mr Turner

Apologies

Mr Torbay

Inquiries

Inquiry into Academics' Paid Outside Work and Ambulance Response Times:

Resolved on the motion of Mr Turner and seconded by Mr Whan:

“That the Committee prioritise the Inquiry into Ambulance Response Times.”

The Committee adjourned at 10:05am until Wednesday, 15 October 2003 at 9:00am.

Chairman

Committee Manager



LEGISLATIVE ASSEMBLY
PUBLIC ACCOUNTS COMMITTEE

Minutes of Proceedings of the Public Accounts Committee

Wednesday, 29 October 2003 at 9:00am

Meeting No 12/2003

Parliament House – Room 1254

Members Present

Mr Brown, Mr McLeay, Mr Whan, Ms Berejiklian, Mr Turner and Mr Torbay

Apologies

No apologies

Inquiry into Academics' Paid Outside Work

Resolved on the motion of Ms Berejiklian and seconded by Mr Whan:

“That submissions for the inquiry be circulated to members to deliberate and consider. If Members agree that no further evidence is required, the report can be prepared.”

The Committee adjourned at 9:55am until Wednesday, 5 November 2003 at 11:30am.

Chairman

Committee Manager



Minutes of Proceedings of the Public Accounts Committee

Wednesday, 19 May 2004

11:00am

Maitland City Council
Administration Building
285-287 High Street
Maitland
Meeting 10/2004

Members Present

Mr Brown, Mr Whan, Mr Turner and Mr Torbay.

Apologies

Mr McLeay, Ms Berejiklian.

Public Hearing

The Committee commenced its hearing into the Academics' Paid Outside Work.

Ms Sue Beach, University Solicitor, University of Newcastle was, sworn and examined.

Evidence completed the witness withdrew.

The Committee adjourned at 12:50 pm until Wednesday, 2 June 2004 at 9:00am.

Matt Brown MP
Chairman

Vicki Buchbach
Committee Manager



LEGISLATIVE ASSEMBLY
PUBLIC ACCOUNTS COMMITTEE

Minutes of Proceedings of the Public Accounts Committee

Thursday, 23 June 2004
9:00am
Room 1254, Parliament House
Meeting 13/2004

Members Present

Mr Brown, Mr McLeay, Mr Whan, Ms Berejiklian, Mr Turner and Mr Torbay.

Academics' Paid Outside Work

The Committee resolved on the motion of Mr Whan, seconded Mr Torbay, that the Committee agree to conduct the inquiry according to the scope described and to invite the Auditor-General to make a submission to the inquiry.

The Committee adjourned at 9:45 am until the next Committee meeting which is to be determined.

Matt Brown MP
Chairman

Vicki Buchbach
Committee Manager



Minutes of Proceedings of the Public Accounts Committee

Tuesday, 10 August 2004

9:00am

Room 1254, Parliament House

Meeting 14/2004

Members Present

Mr Brown, Mr Whan, Mr Turner Ms Berejiklian, Mr Torbay and Mr McLeay.

Inquiry into Academics' Paid Outside Work

- a) Submission received from Mr R J Sendt, Auditor-General of The Audit Office of New South Wales, submission 13.
Resolved on the motion of Mr Turner and seconded by Mr Torbay.
"That the Committee approve publication of the submission on the Internet once the submitter has received letter of acknowledgement."
- b) Transcript of Evidence for the Public Hearing on Wednesday, 19 May 2004 at Maitland.
Resolved on the motion of Mr Torbay and seconded by Mr McLeay.
"That the Committee approve publication of the Transcript of Evidence on the Internet."

The Committee adjourned at 5:00 pm until the next Committee meeting on 17 August 2004 at 2:15 pm in Room 1254.

Matt Brown MP
Chairman

Vicki Buchbach
Committee Manager



LEGISLATIVE ASSEMBLY
PUBLIC ACCOUNTS COMMITTEE

Minutes of Proceedings of the Public Accounts Committee

Tuesday, 17 August 2004

2:15 pm

Room 1254, Parliament House

Meeting 15/2004

Members Present

Mr Brown, Mr Whan, Mr Turner, Mr Berejiklian, and Mr McLeay.

Apology

Mr Torbay.

Inquiry into Academics' Paid Outside Work

Draft report for discussion.

Resolved on the motion of Mr McLeay and seconded by Mr Turner.

“That the Committee agree to the Chairman tabling the report after any agreed changes have been made to the draft report by the Secretariat.”

The Committee adjourned at 3:40 pm until the next Committee meeting on 1 September 2004 at 9:00 am in Room 1254.

Matt Brown MP
Chairman

Vicki Buchbach
Committee Manager