

Submission
No 34

INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES

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University of Western Sydney Branch

**Submission to
Legislative Council General Purpose Standing Committee No 2
In the Inquiry into the Governance of NSW Universities,
On behalf of the University of Western Sydney Branch of the
National Tertiary Education Union, February 2009**

Preliminary

This submission does not necessarily reflect the views and opinions of the New South Wales (NSW) Division of the National Tertiary Education Union (NETU) nor the employees of the University of Western Sydney (UWS). Further, it is not the intention of this submission to make direct comment on the conduct of individuals employed by, or connected with, UWS.

Introduction

This submission does not comment on all the Committee inquiry terms of reference. It is, therefore, restricted to the following:

3. Identification of the roles and responsibilities of the Vice-Chancellor, the governing body and the Chancellor in relation to the formation of University policy and grievance procedures, and the communication of such policies to the student body;
8. The representation on governing bodies, and their committees, of staff and students and the current and appropriate balance between external members and elected representatives; and
10. Any other related matter.

Overall, university governance at UWS is unproblematic (relative to some universities in NSW); hence the brevity of this submission. Therefore, only two (2) of our recommendations are UWS specific, while the other three (3) recommendations have application to all universities.

Historical background

UWS commenced operation from 1 January 1989 following the passage of the University of Western Sydney Act 1988 (No. 90). The 1988 Act provided for the establishment of the new University as a 'federated' institution formed from the Hawkesbury Agricultural College and the Nepean College of Advanced Education, and soon after included the Macarthur Institute of Higher Education, known as the University of Western Sydney, Hawkesbury, the University of Western Sydney, Macarthur, and the University of Western Sydney, Nepean. The University of Western Sydney Act 1997 (No. 35) came into force from 1 January 1998 and provided a more centralised governance structure for the University. Amendments were made to the legislation in 2000 resulting in a multi-campus University, converting the federated arrangement into a unitary governance and management structures-based institution, which is the current governance arrangement. The amended 1997 Act establishes the UWS as a corporate entity, details its objects and purposes, and defines the membership, functions and powers of its governing body, the Board of Trustees.

UWS Board of Trustees

Section 5 of the 1997 Act specifies UWS as consisting of: a Board of Trustees, the staff of UWS, and the graduates and students of UWS. Section 12(2) specifies the size of the Board of Trustees (BoT) is not to exceed 22 members. The mandated maximum size of the BoT conforms with the Howard Government's 'National Governance Protocols' (Higher Education Support Act 2003 (Cth), Section 33-15). It should be noted the passage by the Australian Parliament of the Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008 (No. 89), and the 'Group of Eight' (Go8) universities' comment the NGPs were a 'one size fits all approach to university governance' (Go8 Media Release, 3 September 2008).

Despite this, in 2008 the UWS BoT consisted of only 16 members, and currently has positions for 18 members (http://www.uws.edu.au/about_uws/uws/governance). Notwithstanding how the 1997 Act defines UWS, the BoT has positions for only five (5) members who are staff (one 'academic' and one 'general' staff), students (one 'undergraduate' and one 'postgraduate' student) or graduates (one 'graduate'). We submit this is a highly skewed

representation, effectively disenfranchising important stakeholder constituencies from making meaningful contributions to the UWS governing body.

Recommendation 1

The UWS staff, student and alumni representation on the BoT be equal to the combined total of ex officio and non-ministerial appointed members.

Board of Trustees, Policies and Delegation

Section 22(1B) of the 1997 Act states a function of the BoT is 'to establish policies and procedural principles for the University consistent with legal requirements and community expectations', while Section 11(1) states a function of the BoT is 'the development of broad policies'. However, Section 23 allows the BoT to 'by resolution, delegate all or any of its functions' to a member or committee of the BoT, an authority or officer, or any other person or body prescribed by the by-laws. In the UWS Annual Reports of 2005 (p. 10), 2006 (p. 9), and 2007 (p. 8) the role of the BoT with regard to policy making implies a preference for the Section 11 function rather than the more specific policy-related function of Section 22. The UWS Rules (Part C) state the role of the Vice-Chancellor includes responsibility for 'developing University policy about administrative and financial matters', and 'the Vice-Chancellor has whatever authority is necessary or convenient to carry out the Act, the By-law, the Rules and the Board's resolutions'.

Consequently, there is some confusion with respect to the status of UWS policies, the role of the BoT in creating policies, and the extent that senior officers of UWS (e.g. the University Executive) are bound by promulgated Policies and Procedures (Policy DDS). For example, the Delegations (Administrative) Policy

(<http://policies.uws.edu.au/view.current.php?id=00087>) states, at clause 19: 'The Vice-Chancellor has authority to exercise any delegation in this and any other delegation documents with the exception of any delegations made by the Board of Trustees to the Academic Senate or to any committee of the Board'. Furthermore, the UWS Courses and Units Approval Policy has, in part, the following objectives: assure quality of outcome; enlist the assistance of appropriate stakeholders in assessing the viability and quality of the course; and conform to a timeline which takes into account other related University operations. The policy also states a 'major variation to an existing course' includes change to graduation requirements and/or changes that affect professional accreditation. While clause 7 of the policy allows for 'fast-tracked approval', it specifically states: 'Fast-tracked approval may be used when it is necessary to shorten the period of approval for a unit or course. The conditions for this approval are very strict, for example, where short notice

has been given to submit a tender to provide a course to a government department, agency or business. Full documentation for the normal approval process must be provided' (see also cls. 81-83).

Hence, if UWS policies are to retain their integrity, their status and application needs to be clarified. We note with some concern that the policy development process, reference to variations to existing policies and/or new policies, and reasons for any variations or new policies do not feature in any noticeable way in UWS Annual Reports, despite the fact that policies regulate the conduct of students and staff in a prescriptive manner.

Recommendation 2

The precise role of the BoT in the development and approval of UWS policies should be clarified by amending the seemingly inconsistent sections of the 1997 Act, and the status of UWS policies (do they have the authority of BoT resolutions?), the degree to which – if any – they can be 'disavowed' by the BoT, and the extent to which they bind senior officers of UWS also should be clarified.

Corporate Governance: Scholarship or Business?

Section 6 of the 1997 Act establishes UWS as a 'body corporate'. This is unexceptional, for universities have traditionally always been corporations, because the corporate status of the university was historically a protective mechanism, to protect them from interference from outside influences such as the Church, Crown or state.

Unfortunately, public funding of tertiary education increased in all OECD countries between 1995 and 2004, except in Australia. A fall in the 'real terms' level of public expenditure under the Howard Government resulted in over half of university funding coming from 'private' sources (Organisation for Economic Co-Operation and Development, *Education at a Glance 2007: OECD Indicators*. OECD, Paris, 2007, p. 210). The relative (and absolute) decline in federal government funding of higher education in Australia has impacted on the management of the sector generally, and UWS in particular:

UWS continues to operate in a tight financial environment. Commonwealth operating grant indexation is expected to remain insufficient to cover salary and other costs arising from the continuing demand for more high quality teaching and research outcomes. We face the constant financial challenge of operating on six campuses supporting the Greater Western Sydney region and its growing population. It is therefore imperative to contain costs as much as possible and that self generated income sources be further developed to supplement government funding. (*UWS Annual Report 2007: The Year in Review*, p. 31)

The necessity to seek additional revenue from 'self-generating sources' has resulted in entrepreneurial and business-like investment activities by some universities, often unsuccessfully (e.g. UNSW Singapore, see B. O'Keefe, 'UNSW Singapore campus doomed to fail', *The Australian*, 27 June 2007), with significant financial losses. Indeed, it is now possible to classify the contemporary Australian university as a 'trading corporation' (see *Quickenden v O'Connor* (2001) 109 FCR 243). Therefore, there is a tension between universities as not-for-profit organisations devoted to advancing 'scholarship' (e.g. section 8 of the 1997 Act) and income generating business-like trading corporations. While UWS does conduct business-like activities with its 'related entities' (see Annual Report 2007, volume 2, Financial Statements), Australian Government financial assistance remains the major source of income. Nevertheless, the BoT generally considers these matters in closed sessions (and matters regarding remuneration), the detail of which are recorded in 'Confidential Minutes' and not the publicly available minutes.

We are concerned that the increased emphasis of universities in NSW on conducting self generated income and entrepreneurial and business-like investment activities has the potential to detract from their principal object of the promotion of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence, and implicitly encourages senior staff who advocate and practice an 'ascendency of managerialism', more suited to a commercial corporation (G. Anderson, 'Mapping academic resistance in the managerial university', *Organization*, vol. 15, no.2, 2008, pp. 251-270). As Table 1 shows, in recent years the number of 'permanent' UWS staff – be they academic or non-academic employees – has declined while student numbers have remained static. Yet, in the same period, there has been a notable increase in the number of senior staff. While there may be justifiable reasons for this, a 5% fall in the number of academic staff and a 13% rise in the number of senior staff could be interpreted as an unusual way to 'contain costs as much as possible'. If UWS was a commercial 'trading' corporation in the normal understanding of the expression, it would be regulated by the Corporations Act 2001 (Cth). Section 300A of the Corporations Act requires directors to issue a yearly report detailing the nature and amount of remuneration of the key management personnel for the company. In this context 'key management personnel' means persons having (directly or indirectly) authority for planning, controlling and directing the operations of the entity and (or) responsibility for ultimate decisions. If transparency and disclosure of remuneration of senior 'human agents' is appropriate for corporate entities which generate and use 'private' sources of funds, we submit it is also appropriate for corporate entities that use, disperse and allocate public funding, such as universities.

Table 1: UWS Student & Staff (fixed-term) data, 2005-2007.

<i>Year</i>	<i>Students (EFTSL)</i>	<i>Academic staff</i>	<i>General staff</i>	<i>Senior staff</i>
2005	24 057	925	1 184	73
2006	23 948	870	1 062	85
2007	24 025	879	1 040	84

Source: *UWS Annual Report 2007: The Year in Review*.

Recommendation 3

Institutions of higher education established as corporate entities by legislation of the NSW Parliament be required to make yearly public disclosure of the remuneration of the institution's 'key management personnel' (as defined in the accounting standards), and report this information in their annual reports made in accordance with the Annual Reports (Statutory Bodies) Act 1984. The Annual Reports (Statutory Bodies) Act 1984 (NSW) be amended to authorise and mandate such disclosure.

Regulation of Scholarship

Section 8 of the 1997 Acts includes in the object of UWS the promotion of 'free inquiry' and 'participation in public discourse'. In addition, clause 18 of the University of Western Sydney Academic Staff Agreement 2006 - 2008 states employees have a right 'to participate in public debates and to express opinions about issues and ideas related to their discipline area and professional expertise or higher education issues generally'. However, the UWS Media Policy (<http://policies.uws.edu.au/view.current.php?id=00109>), states, in part:

It is critical that the University's interaction with the media be managed in order to build and protect the University's public reputation....

For a UWS individual — staff or student — to express an opinion that deliberately and intentionally harms UWS and damages the University's reputation is a serious matter...

... academic freedom does not expand to cover areas pertaining to the University which are not in the area of expertise of the individuals concerned...

... it is expected that the comments will relate directly to their areas of scholarly expertise...

...Breaches of this policy are deemed breaches of the Code of Conduct.

While the maintenance, and advancement, of the standing and reputation of UWS is an aspiration we share (not least owing to the 1997 Act's description of the University to include 'staff', and the fact that NTEU members and potential members of the Branch are employees of UWS), we submit the effect though not necessarily the intention of the policy is potentially inconsistent with the object of UWS contained in the 1997 Act.

What constitutes a staff member's 'areas of scholarly expertise' is generally not always easy to classify with precision. For instance, would it have been a breach of the policy for a staff member who researches and teaches in the field of employment relations to have publicly questioned the desire of UWS senior management (and the BoT) to negotiate a Higher Education Workplace Relations Requirements (HEWRRs) compliant collective agreement in 2006? Would it be a breach of the policy for a staff member who researches and teaches in the field of organisational studies to publicly question the decision-making processes of UWS senior management (and the BoT)? Would it be a breach of the policy for a staff member who researches and teaches in the field of finance and accounting studies to publicly question the financial and accounting procedures of UWS, its budget and financial projections? Would it be a breach of the policy for a staff member who researches and teaches in the field of adult education to publicly question the UWS Graduate Attributes?

While clearly these hypothetical examples are within the respective areas of scholarly expertise, they could also potentially harm or damage the reputation of UWS. Would it be a breach of the policy if the same staff members made similar comments about another university in NSW?

Moreover, the policy allows senior staff to make media comments about their respective portfolio responsibilities, unit and sub-unit of UWS. The expertise in such situations derives (mostly) from their experience as an employee of UWS, and not necessarily their scholarly activity. Arguably, the policy limits academic and general staff expressing informed and evidence-based comments about university governance developed from their experiences as university employees.

Recommendation 4

The concept and exercise of 'intellectual freedom' be protected by legislation, and this concept expressly include the capacity of university employees to make public comments on university governance and management developed because the 'professional expertise' gained from the experience of being a university employee.

Staff Participation in Governance and Administration

Notwithstanding the express intention of the 1997 Act that staff are an integral component of UWS established by the Act, overall the opportunity for staff to have a role in university governance is limited. While the current governance arrangements of the Standing Committees of Academic Senate and College Academic Committees

(<http://policies.uws.edu.au/view.current.php?id=00133>), lists several Senate, College and School level boards and

committees on which staff may participate, generally staff representation is appointed or selected by the board, committee or its chairperson. If they are elected by a ballot it is usually with a narrow franchise. Further, it is not uncommon for casual staff vacancies to remain unfilled. The revised Standing Committees of Academic Senate Policy (<http://policies.uws.edu.au/view.current.php?id=00133&dvid=5>), due to take effect from 20 March 2009, only further limits the opportunity for staff to have a role in governance. We note, however, that staff representation on the Academic Senate is unusual in this respect as a sizeable proportion of its membership is elected staff.

While the issue of the appropriate student and staff members formally participating in university governance is a balancing act between the 'elegant' and 'efficient' understandings of stakeholder participation in decision making, we contend student and staff representation is generally overwhelmed by management representation. Hence, we endorse the points made by the Academic Governance Review Presentation to the 22 August 2008 Academic Senate meeting (http://www.uws.edu.au/_data/assets/powerpoint_doc/0010/31006/Academic_Governance_Presentation.ppt), that 'Academic governance is learnt' and 'Schools are the field of action'.

In this context, we note with regret the decision of the BoT of 8 October 2008 to end the experiment of School Boards, as their membership consisted of all academic staff of the respective School. While there may have been justifiable reasons for this decision (e.g. a quorum required more than half of the membership by virtue of being a committee of Academic Senate), the cessation of School Boards effectively means the vast majority of UWS academic staff – and less senior staff especially – no longer have a role in university governance. We also note that general staff have almost no opportunity to participate in governance, despite constituting the largest proportion of UWS employees (see Table 1).

Recommendation 5

University staff (not exercising a management function) and student representation on subordinate decision making and advisory boards and committees be equal to the combined total of ex officio and management appointed membership.

Where a term of a staff or student member on a subordinate decision making or advisory board or committee be of 12 months duration or longer, their method of appointment be by representative election. Where a term of a staff or student member on a subordinate decision making or advisory board or committee be less than 12 months duration (including casual vacancies), their method of appointment be by nomination of the representative organisation for the particular class of vacancy (i.e. a registered industrial organisation for employees and the undergraduate or postgraduate association for students). General staff be given representation on all university subordinate decision making or advisory boards or committees. This recommendation be given effect by appropriate legislative amendments.

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