

Submission
No 27

**INQUIRY INTO THE GOVERNANCE OF NSW
UNIVERSITIES**

Name: Mr John Cassidy

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Partially Confidential

26 February 2009

The Honourable Robyn Parker MLC
General Purpose Standing Committee No. 2
Legislative Council
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000
By facsimile:

Dear Madam,

**RE: INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES -
SUBMISSION BY JOHN MARCUS CASSIDY AO, FORMER
CHANCELLOR OF THE UNIVERSITY OF NEW ENGLAND**

1. On 10 December 2008 my five year term as Chancellor of the University of New England (UNE) expired. Prior to being appointed as Chancellor I served for two years as a member of the University Council. I have been and remain committed to the provision of university education and research to the highest possible standard. I remain steadfastly of the view that the University of New England has the potential to achieve these goals.
2. When I addressed the Council on 23 February 2004, my first meeting as Chancellor, I foreshadowed my hopes and aspirations for the University and my reasons for taking on the role and responsibilities of Chancellor. Permit me to reflect upon that address by referring to the following excerpts.

"I have chaired public and private company boards for more than 16 years and throughout that period I have achieved consensus on all major decisions and that will be my aim in presiding over this Council..."

I have taken on this presiding role for a number of reasons:

- *I believe in the need to provide university education and research to the highest possible standard.*
- *I believe this Council is aware of the need for UNE to move quickly to strengthen its financial performance, particularly in terms of its operational efficiency and commercial activities.*
- *I believe we need to strengthen the planning and marketing of the university across the full range of activities such as:*
 - *Internal and external students.*
 - *Domestic and international students.*
 - *Research staff, students and grants.*

- o *State and Federal Government objectives and requirements.*
 - o *Government and corporate sponsors.*
 - o *Our Alumni, and*
 - o *Wide ranging community trends."*
3. Throughout my tenure I sought to bring to UNE the wealth of governance and management acumen gained from my very successful business background (at the risk of being immodest I do note I was rated among the top 15 Chief Executive Officers in Australia).
 4. Together with Dr Arthur Rickard, managing director of ABRI, I played a major role in establishing the hugely successful New England Conservatorium of Music (including securing of recurrent funding from the NSW Government) and in association with fellow Council member and Chancellor elect, the Honourable Dr Richard Torbay, secured the relevant approvals and funding from both the NSW and Federal Governments for the Joint Rural Medical School with the University of Newcastle.
 5. I firmly believe the success of such ventures, and there are many more that could be (or could have been) achieved, are crucial to the ongoing viability of the University, to its academic and residential campus, to the city of Armidale and the New England Northwest Region and beyond.
 6. Other exciting projects which have been proposed by me, but not progressed, include:
 - Combining the large animal teaching and practical sections of the vet science degree course with two universities and offering that in Armidale.
 - Establishing a major animal genetics laboratory on campus in association with NSW DPI.
 - Taking over the CSIRO research facility at Chiswick, in turn enabling a potential sale of some UNE rural properties, making funds available for research and infrastructure.
 - Taking over the DPI freshwater research facility and combining these with CSIRO yabby genetic research at Chiswick, thus maximising the stored water at "Tullimba" (a UNE rural property).
 - Setting up medical clinical facilities in Armidale, similar to those established by Melbourne University at Ballarat, in conjunction with the Rural Medical School.
 - Relocating music lectures to main campus from CB Newling building and integrating the New England Conservatorium of Music into UNE.
 - Fully articulating trade training courses with a consortium of NEGS, NSW Department of Education Secondary Schools, NSW

Secondary Catholic Schools, UNE partnerships, NSW TAFE and UNE establishing new facilities on campus for trade based certificates, diploma and degree courses, including use of residential colleges.

7. The lack of development of appropriate and successful commercial activities and joint ventures has left UNE in the unenviable position of being, among Australian Universities, the most reliant on Federal Government funding. In the absence of remunerative commercial activity and the attraction of substantial donations from benefactors (most of whom wish to be able to see that the donated funds are expended in accordance with clearly delineated guidelines or defined commercial benefit) the income of the University appears doomed to decline. Lower revenues inevitably mean less spending, less investment in infrastructure and less investment in academic and research activities. UNE, already in the lower four of the thirty eight Australian Universities in financial terms, may present as a take over target, by a more financially successful university.
8. It is axiomatic that the person charged with the responsibility of ensuring the financial well being and academic and research capacity of the University is the current Vice-Chancellor. By unanimous decision of the Council Professor Pettigrew was appointed Vice-Chancellor and Chief Executive Officer of the University for a five year term commencing 27 February 2006.

[Omitted by resolution of the Committee]

38. First, to confirm that the events at UNE had nothing to do with a conflict between the roles of Chancellor and Vice-Chancellor. Such an argument was either misinformed or disingenuous. Pursuant to Section 16(1B)(a) the Council, in controlling and managing the concerns of the University, is to 'monitor the performance of the Vice-Chancellor'. There is no limitation or restriction on that power and responsibility. Council, in turn, decided that the Vice-Chancellor should 'report directly to the Chancellor and the Council'.

[Omitted by resolution of the Committee]

40. Amongst those persons constituting any board of directors, university council or similar body it is absolutely essential that the skills and qualifications they bring to the position not only permit them to discharge their onerous responsibilities but also serve to enhance the capacity of the board or council to develop and implement strategic and tactical/operational initiatives. However, the skills and qualifications of the respective council members is not the sole criterion for an effective and progressive board/council. The number of board members or councillors should also be such that proceedings are not conducted in a way analogous to a mini parliament but such is inevitable when the councillors number 17, (The Act allows for a maximum of 22 members). This number stands in stark contrast to the boards of public companies such as Brambles Limited (8 board members), CSL Limited (9 board members), QANTAS Limited (12 board members), Macquarie Group Limited (9 board members) and government entities such as the Reserve Bank (9 board members) and Superannuation Trustee Corporation (9 board members).
41. A council or board of directors of 17, let alone 22, is unwieldy, expensive to maintain and stultifies, rather than generates debate and open discussion as inevitably individuals with similar interests vote as a block in favour of those interests, their position being predetermined.
42. When considering the making of the Council one must start with the Act itself. The objects and functions of the university are set out in Section 6 with subsection 2 enumerating the principle functions. The Council of the university, as the governing authority, is charged with the responsibility of achieving the objects and functions of the university including development of governance, financial arrangements and quality assurance processes.
43. Section 9(1)(b) sets out the qualifications required to be held by the six external persons appointed by the Minister, including experience in the field of

education, technology, industry, business, human services, industrial relations or the practice of a profession. Such a requirement is not only laudable but essential. So also is the requirement set out in section 9(5) that at least two members of the Council must have financial expertise and one must have commercial expertise.

44. Furthermore section 9(6) provides:

"All appointed members of the council must have expertise and experience relevant to the functions exercisable by the council and an appreciation of the objects, values, functions and activities of the university."

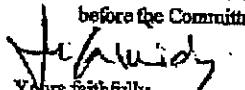
45. Notwithstanding the qualifications to be held by the external persons, the remaining seven persons provided for appointment by the Act and the by-laws are persons elected from the ranks of the academic staff, non-academic staff, undergraduate body, post graduate body and graduates themselves. According to clause 11 of the University of New England By-Law 2005 the only qualification for each of those persons to be elected to Council is that he or she be entered on the role of academic staff, non-academic staff or other role as the case may be. The process of election by popular vote could appear to be inconsistent with, or at least not conducive to the constitution of a council qualified to implement the objects and functions of the Act and possessing the "expertise and experience relevant to the functions exercisable by the Council" (section 9(6) of the Act).
46. This is not to say however that the Council should not be inclusive, considerate and welcoming of the views of members of the academic staff, non-academic staff, undergraduate student body, post-graduate student body and graduates. Rather, the essential issue is whether the most appropriate and efficacious forum for such views to be heard and considered is the Council itself or a committee which advises Council of the committee's views, as is currently the practice with respect to other committees within UNE. For example, the Academic Board is the pre-eminent "Committee" within the University, its existence protected by statute, but all its members are not members of the Council. Why, one may well ask, is the staff/student body in a different and more privileged position?
47. Moreover, whilst the Act's provision for six external persons to be appointed by the Minister, together with two external persons pursuant to section 9(1)(c) and the by-laws, is no doubt intended to be as inclusive as possible, calling to the University's aid and service eminent and experienced persons, the sheer size of the Council invites a reduction in the number of external persons, but not a dilution of the requirements and qualifications.
48. In short, it is my contention that the university council should be constituted as follows:
- (i) Three official members being the Chancellor, Vice-Chancellor and presiding member of the academic board, as laid down in section 9(1).

- (ii) Four external persons appointed by the minister who could, pursuant to section 9(1)(b)(iv), appoint a member of the academic, non-academic staff or present or past student body as such an external member.
 - (iii) Two external persons appointed by the Council, all of whom should have relevant qualifications.
49. Not only would the reconstituted Council maintain the qualifications and expertise of the presently constituted Council but all groups would retain a "voice" within the Council and the capacity to directly put forward or resist a particular case.
50. In my respectful view the constitution of the Council, including as it does a large block of persons whom a reasonable and impartial bystander may expect to owe allegiance or loyalty to the Vice-Chancellor, either as a fellow academic or a person in whose hands and under whose control their own professional or financial interests may lie, is flawed. The elected members, as part of Council, are responsible for the appointment of the Vice-Chancellor (section 12) for such periods and on such conditions as determined by the Council. Paradoxically the elected members, as part of Council, are also responsible for controlling and managing the affairs and concerns of the university including monitoring the performance of the Vice-Chancellor (section 16(1B)(a)). While on the one hand the elected members of Council are in a position of authority or power with respect to the appointment and monitoring of the performance of the Vice-Chancellor, as members of staff or students they are subject to his control and influence. This is an untenable situation for both the Vice-Chancellor and the elected members. It is simply not fair or realistic to expect the persons concerned to be able to always differentiate between the two roles they fulfil. Both have a conflict of interest when dealing with matters that affect the other. That consent is rarely, if ever, declared despite the requirement laid down in Clause 5 of Schedule 2A of the Act.
51. In my experience and opinion the divisions which must exist, together with reporting responsibilities and channels, within UNE are as follows:
- (i) Academic Board. Responsible for the formulation and delivery of viable academic programs and quality control of those programs (particularly in regard to the MIT/UNE recent plagiarism issues.
 - (ii) Finance and administration.
 - (iii) Capital works and maintenance.
 - (iv) Research and development.
 - (v) Director, Internal Audit and Risk Management - with direct access to report to the Council through the Chancellor.
 - (vi) In-house Counsel - with direct access to report to the Council through the Chancellor. Such a person should also have the ability to report directly to the external auditor which in the case of UNE is the Auditor General.
52. The Director, Internal Audit and Risk Management and In-House Counsel should be positions which are provided for within the statute as compulsory appointments with temporary or acting appointments not to exceed three months.

53. The Act is clear about the pre-eminent position of the Council and Chancellor over that of the Vice-Chancellor. The Chancellor is required to sign off on the accounts to the Auditor General. Not only is the University of New England governed by the UNE Act but it is also subject to the Corporations Act, with all Council members being bound, as are directors of the boards of public companies, by the financial duties and obligations set out in that Commonwealth Act. The majority of the University's funding is derived from the Commonwealth Government yet it is subject, principally, to governance by a NSW statute. Whilst such a situation may readily be explained by the financial realities and Commonwealth Constitution, perhaps consideration should be given to reposing ultimate responsibility for the University in the hands of the entity providing the funds, namely the Commonwealth Government.
54. Whilst the Chancellor sits at the apex of the organisation, incongruously the position is unpaid notwithstanding the responsibilities, under both the UNE Act and the Corporations Act, are onerous. If there is, in the minds of the Committee, any doubt about the role of the Chancellor vis a vis that of the Vice-Chancellor then such should be resolved by legislative amendment. Independent members of Council, including the Chancellor if he or she meets that description, should be remunerated if not already paid by the State. Independent directors of public companies attract director's fees, as does the Chancellor of Melbourne University who is paid a fee based upon an expected workload of three days per week. In my experience at least three days per week is required to be spent on University business by the Chancellor of UNE and I consistently spent that amount of time during my term. Council members, as is the case with directors of public companies, accept onerous fiduciary duties and responsibilities. Remuneration should be forthcoming, perhaps in the range of \$35,000 to \$50,000 per annum.
55. The University of New England is at a cross roads. It is saddening to me that whilst enrolments at Bond University, for example, has increased in the 2009 year (building upon an increase in the 2008 year) enrolments at the University of New England are continuing to decline.
56. Whilst there undoubtedly exists within the University the skills, knowledge and experience to deliver and expand upon academic, research and commercial activities, the structure of the organisation militates against such an outcome.
[Omitted by resolution of the Committee]
58. Reduction in the number of members of Council (but not a diminution in the skills, knowledge and management base) together with the establishment of an activity based costing system and enshrining in the statute of the "checks and balances" positions of Director of Internal Audit and Risk Management and in-house Counsel should go some considerable way to facilitating more

concise and expeditious management, allow the Council to achieve the principal functions of the Act and the University to flourish.

59. I look forward to expanding upon this brief dissertation in sworn evidence before the Committee.


Yours faithfully
John Marcus Cassidy AO