

INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES

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Students' Representative Council
The University of Sydney

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The Director
General Purpose Standing Committee No. 2
Parliament House
Macquarie St
Sydney NSW 2000

16 February, 2009

Inquiry into the Governance of NSW Universities

Dear Director,

The Students' Representative Council (SRC) is the representative student association for the approximately 32,000 undergraduate students at The University of Sydney. The SRC provides representation and advocacy for students to the University, Government and other bodies. As such, the SRC is pleased to make a submission into this inquiry.

As with any organisation, The University of Sydney has at times had conflicts between Vice Chancellors and the Senate. Efficient resolution of such conflicts is important to the smooth running of the institution.

For a student representative's point of view, there has sometimes been suggestion that student Fellows of Senate act in the best fiduciary interests of the University, rather than as representatives of the groups who elected them. Using the analogy of the University that sees the Vice Chancellor as the Principal Executive Officer, that would make sense that the Senate act like a company Board of Directors. However, the University is not solely or primarily a commercial entity, as discussed more fully below. Members of Senate, together with the Vice Chancellor need to act in the interests of the University's stakeholders. That is, the students, the staff and the general community.

From the position of the SRC, term of reference number 8 is the most interesting. The question of appropriate balance between staff and student representatives on any University Committee is always an area for consideration. The size of The University of Sydney's Senate has reduced over the years. Historically there were more student members than the current single undergraduate and postgraduate elected fellow. The size of the University governing bodies is now also mandated by the National Governance Protocols - limiting it to 22 members.

The right to any student representation on the governing bodies has been contested for over a decade. Some more hard line neo-liberal positions suggest that the only role (and power) for students is as 'purchasers' of education in the University market place, despite that market being structured in a way that offers no real power to the student 'consumer'. However, the SRC would argue that the role of students and their representatives is far broader than that. Democratically elected student representatives play the essential role of bringing to the institution the thoughts, needs and desires of the principal stakeholder.

The eighth term of reference also raises the question of appropriate balance between external members and elected representatives. At the same time as positioning students as consumers, business expertise has been promoted, with the business community's power and influence over of public resource of the university being elevated. The SRC does not support this model. Instead we favour continued and potentially expanded student representation.



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Setting The Framework Within Which Governing Bodies and Vice Chancellors Work

There is a need to identify and codify through the National Governance Protocols the primary purpose of the University as a *public* institution - engaged in education and research. It has a commercial element, but that is not its central role. The University of Sydney Senate passed a resolution in 2001 describing itself as a primarily public institution. Public universities in Australia are publicly funded, even if the public funding element has declined. These institutions have autonomy but it should be noted that they arise from investment of public land and money and the contributions of students over the years. There can and should be institutional and political autonomy, but a broad duty is owed to the public.

We support the notion advanced by the National Tertiary Education Union (NTEU) that good governance comes through "ensuring the public interest is underwritten by democratic principles and a culture of free enquiry' and openness." (Allport, C. 2001, p.1) University governance should reflect those principles and the governing body should have primacy in University decision-making.

Student Right To Representation

Students have a natural right to participate in decisions in the institutions in which they study, based on the democratic principle of the consent of the governed. (Houghton, R. 1995) Students are responsible for themselves, not to somebody making decisions for and without them. Students (and staff) have a right and responsibility to participate in decision-making. This needs more than mere consultation. It needs active participation in decisions. This involves, rather than excludes students, creating the potential for compromise and ownership of decisions.

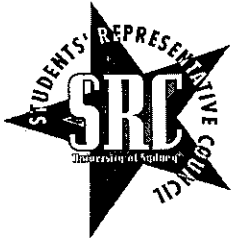
Students are the largest constituency in the University community. They have a unique and distinctive position that cannot be replaced by others. Education must not be about perpetuating social, political and economic equity. The University should welcome the ideas and contributions of the diverse community of students.

Arguments For Expansion of The Membership of Governing Bodies

Given Universities are public institutions with broad communities and important social roles, there is an argument for broader community representation than currently exists. This could include representatives of Aboriginal and Torres Strait Islander people, people from low SES backgrounds and those involved in TAFE's and secondary schools. Potential membership would vary according to the University's composition. For example, some universities have TAFE components and some are regionally based.

The idea of diversity of mission for Universities can be enhanced by an expansion of the governing body membership. Students are not a homogenous group. Increased diversity might also be achieved by the expansion of the number of student representatives. A small start could be to change the current standard of one postgraduate and one undergraduate on The University of Sydney Senate to two of each, as it was in the early 1990s.

There is agreement in studies on this area that the size of the Governing body does not reduce its effectiveness. (Trakman, L. 2008) It could, therefore, be said that expanding the number of student representatives could only benefit the University.



Arguments For Broadening The Decision Making Processes of Governing Bodies

Some research suggests a more experimental, or innovative, approach of external consultation when governing bodies make public interest decisions about things such as equity in admissions and environment impacts. (Trakman, L. 2008) The SRC believes this should provide governing body decision-makers with information that will help them shape university decisions. Their decision is still the final essential step to the process.

The Value of Student (and Staff) Membership to The University

In addition to their right to representation, "students and staff are often in the best position to evaluate the effectiveness and appropriateness of planning funding and policy positions." (Houghton, R. 1995, p.2) They have an important contribution to make, and bring a different experience and perspective. They have a working knowledge of the areas being affected by decisions. Student participation also improves communication flow to constituent groups, and makes management feel accountable to those constituencies.

There are sometimes arguments about the need for external membership. For example, the SRC notes that persons with financial experience are sometimes mandated those. The SRC believes there should be limits to which membership of the business community (persons with business expertise) should be privileged over other communities. Democratic principles mean a fair hearing of diverse voices, not a narrow community of business-persons. External members only have limited experience of University and may lack some important alternative sources and perspectives to question the information provided by University management.

Debate About Members' Duty

There has been an ongoing debate about limiting the representative nature of students elected to governing bodies. Some have suggested that their primary duty is to the institution, not their constituencies. The SRC believes this is flawed on a number of levels. It ignores an understanding that what is good for a constituency may well be good for the institution as a whole. It is the role of students, and others elected to governing bodies, to provide the perspective of the constituencies they come from; recognising those interests are in the overall interests of the University.

Often notions of fiduciary duty frame this debate. We support the NTEU view that, "Unlike commercial corporations, Universities do not have shareholders to which directors owe a fiduciary duty. Rather, the fiduciary duty of university governors is to multiple stakeholder groups, both internal and external, present and future." (Allport C. 2007, p.5) This complexity requires a governing body with a broad range of understandings of the institution's role.

Similarly, the SRC agrees with others who argue "universities do not have duties towards corporate shareholders but owe interlocking duties to a range of stakeholders: students, faculty and staff, corporate partners, government and the public at large. University boards are staffed primarily by volunteers and are not subject to identical standards of performance and accountability as corporate boards." (Trakman, p.70)



One Core Underlying Cause Of Conflict

The lack of real indexation of public funding and government encouragement for universities to adopt a corporate or commercial model of operations, as has been seen at some institutions, such as the University of New England with its recent problems with its Chancellor, and UNSW and its problems with overseas education provision, creates bad decision-making and significant internal tensions. The restoration of full indexation of public funding as broadly recommended by the recent Bradley Report on Higher Education would create a different environment and restore the public focus of such universities.

Universities sometimes enter into agreements that are 'commercial in confidence'. This means that most stakeholders are have no knowledge of the arrangement. While in the world of commerce this is seen to be necessary to protect the interests of one or more of the parties involved, a 'commercial in confidence' arrangement in a University setting is usually inappropriate as major stakeholders and some decision makers are unable to access information necessary to assess the benefits and risks of such commercial relationships.

Strategies for Dealing with Conflict with University Governing Bodies & Management

The SRC notes the Australian Universities Quality Agency's (AUQA) view that that there are some individual areas of concern, but no clear evidence of on-going poor performance or a failure to meet minimum standards for effective governing body operation across Australia. Without this there is not a case for additional regulation. (AUQA, 2007, p.1.) There is a range of strategies that our experiences and reflections would suggest to deal with problems that have arisen in the past at The University of Sydney and in other institutions.

Strengthen democratic accountability to stakeholders.

Create structures so that Chancellors are primarily responsive to their own governing bodies and do not assume executive like powers. Our experience of the current Chancellor is that she has a clear understanding of the line between executive and governing body. Avoid problems of limiting control of information by the Vice Chancellor, Secretariat or Chancellor. This is important particularly for external members with no alternative sources of advice.

Provide better support and structures for all to consult with their broader constituency.

Provide professional development to clarify roles rather than adopting more prescriptive rules - though an explicit delegation policy is advisable. Some individual problems might be averted with the empowerment of members through supportive internal protocols, induction and training and regular assisted self-review. Use appropriate meeting procedure, provide full minutes and allow an equal treatment of all members. Recent student representatives on Senate note the value of the professional training paid for by The University of Sydney.

Create greater transparency in the selection process for the Chancellor and the Vice Chancellor and the Vice Chancellor's contract.

Some of these concerns, particularly around remuneration issues have been highlighted by the Auditor General of NSW.



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Grievance Procedures

Provide clearer internal grievance procedures for governing bodies. It makes sense to have clear external grievance processes when conflicts arise. Some have argued that this could appropriately be handled by a Universities' Ombudsman.

Terms for student representatives

Provide greater flexibility for student representatives to build up expertise, for example through longer (2 year) terms and by allowing suspension of study while being representatives.

Concluding Recommendations

1. **Adopt the 'strategies for dealing with conflict' outlined above.**
2. **Identify and codify, through the National Governance Protocols and the State Acts, the primary purpose of universities as autonomous public institutions - engaged in education, community service and research.**
3. **Continue to recognise the rights of students to representation on governing bodies.**
4. **Expand the number of student representatives and other community members on governing bodies.**
5. **Create mechanisms for broader consultation and community accountability of governing bodies.**
6. **Support for fully indexed and sufficient levels of public funding of universities.**
7. **Limit the exercise of 'commercial in confidence' arrangements on the public accountability of governing bodies.**
8. **Continue to recognise the value and legitimate duty of representatives of internal constituencies, such as staff and students, to represent the views of those constituencies when decisions are made for the whole university.**

Thank you for the opportunity to be involved in this inquiry.

Yours Sincerely,

Noah White



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Modelling University Governance

University of New South Wales Faculty of Law Research Series