

**INQUIRY INTO THE GOVERNANCE OF NSW
UNIVERSITIES**

Organisation: The University of Sydney
Name: Dr William Adams
Position: Secretary to Senate
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The University of Sydney

NSW 2006 AUSTRALIA

Dr William Adams
Secretary to Senate

11 February 2009

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

Dear Sir

Re: Governance of NSW Universities

Thank you for the opportunity to make a submission to the above Inquiry. Our submission, addressing each of the Inquiry's terms of reference, is attached.

Also included (Attachment 1) is a copy of the University of Sydney's submission to the Commonwealth's Review of the National Governance Protocols in mid-2007. The main points raised in the submission were:

- That the eleven protocols are regarded by the University as generally appropriate and all have been fully implemented.
- That the view of the Senate is that to the maximum extent possible the Government's aspirations and views regarding university governance should be articulated and managed in such a way as to give university governing bodies the maximum scope to respond flexibly and in a manner which is appropriate to their university's particular needs and circumstances. Ideally this would be achieved through the provision of guidelines and not be the imposition of mandatory requirements.

In making its submission to the abovementioned Commonwealth review the University sought to emphasise its view that in matters of governance "one size does not fit all" is not the approach to be preferred. Areas in which an adequate level of flexibility is considered essential include, in particular, the qualities to be sought in a Chancellor and the nuances of definition regarding the role that person plays, reflecting both the mission and history of the university and the capacity of that person to reflect the particular characteristics of the university to the outside world.

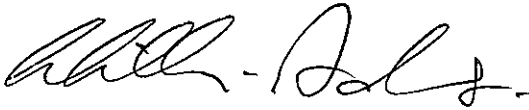
Also attached are copies of documents referred to in the present submission, specifically:

The University of Sydney Act 1989 (as amended) (Attachment 2)

The University of Sydney By-Law 1999 (as amended) (Attachment 3)

Relevant Sections of the Senate Resolution on University Governance of 2001
(Attachment 4)

Yours sincerely

A handwritten signature in black ink, appearing to read 'William Adams', written in a cursive style.

William Adams
Secretary to Senate
University of Sydney

University of Sydney Submission to the General Purpose Standing Committee No 2 Inquiry into the Governance of NSW Universities

1. Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellors and the consequential opportunities for conflict

The role of Senate, in the sense of the functions it is empowered and obliged to perform in controlling and managing the affairs and concerns of the University is specified in s16 of the *University of Sydney Act 1989 (as amended) (the Act)*.

Section 12 of *the Act* establishes the position of Vice-Chancellor as the principal executive officer of the University and s9 confers on him or her status as a member of the Senate, *ex officio*. The functions of the Vice-Chancellor are set out in Chapter 5 of the *University of Sydney By-Law (the By-Law)*.

In addition to those functions referred to in the *By-Law* the Senate has, through its power of delegation, conferred on the Vice-Chancellor the authority to act in a broad range of administrative matters (see Delegations of Authority – Administrative Functions, which may be accessed on the University of Sydney website).

In addition to the above the Senate, in 2001, passed a resolution which sought to provide greater clarity as regards each of the roles of Chancellor, Senate and Vice-Chancellor. While the resolution is clearly subject to the requirements of *the Act* and *the By-Law*, it was also informed by the contemporary views of corporate governance as they applied to the private sector. In so saying it is emphasised that while the corporate sector provides us with a valuable model and principles of good governance these should not be adopted in an uncritical way which does not take account of the unique features of a university as an academic institution. In a number of respects the governance resolution anticipated the requirements later specified in the Commonwealth's National Governance Protocols for Higher Education Institutions.

It is the University's view that in combination the provisions of *the Act*, *By-Law* and Senate's governance resolution provide an appropriate and adequate description of the roles of the Chancellor, Senate and Vice-Chancellor.

2. Any apparent lack of clarity in the delineation of duties of governing bodies and the Chancellors

In addition to the provisions referred to above, Part 4A of *the Act* refers to a set of specific duties which applies to Fellows, including the Chancellor and Vice-Chancellor, in their role as Fellows. These duties are specified in Schedule 2A of *the Act* and include:

the duty to act in the best interests of the University; the duty to exercise care and diligence; the duty not to improperly use position; the duty not to improperly use information and the duty to disclose material interests. Part 4A also specifies the circumstances in which a Fellow may be removed from office for breach of duty.

Beyond these duties which apply to Fellows generally, *the Act* and *the By-Law* include very little by way of definition of the role and duties of Chancellor specifically, other than Clause 7 of Schedule 1 of *the Act*, which provides that the Chancellor is to preside at all meetings of the Senate at which he or she is present. This provision is taken to infer that the Chancellor is expected to exhibit those attributes which are normally associated with the role of Chairman. However, given the flexibility provided on this point by the Act, the Senate, in 2001, via the previously mentioned resolution on university governance outlined its own view of the role of the Chancellor at the University of Sydney. It is the University's view that any concern about a lack of clarity not only with the content of the different roles but also with the delineation of the respective duties was resolved in 2001 by the governance resolution when read with the relevant provisions of the *Act* and *By-Law*.

It is also noted that the formulation of the Chancellor's role in the governance resolution bears significant similarity to the description of the role of Chairman recommended in the Review of the Role and Effectiveness of Non-Executive Directors, conducted by Derek Higgs for the UK Government in 2003. In Higgs' view the Chairman of the Board is responsible for:

- Leadership of the board, ensuring its effectiveness in all aspects of its role and setting its agenda
- Ensuring the provision of accurate, timely and clear information to directors
- Ensuring effective communication with shareholders
- Arranging the regular evaluation of the performance of the board, its committees and individual directors, and
- Facilitating the effective contribution of non-executive directors and ensuring constructive relations between executive and non-executive directors.

Noting the significant convergence of Senate's formulation and that of Higgs, the University believes that its view of the role of Chancellor is currently in line with contemporary views of the role of Chairman and is appropriate for the University of Sydney.

Finally it is noted that an additional feature of the University of Sydney legislation, is that Chapter 3 of *the By-Law* specifies that the Chancellor holds office while he or she retains the confidence of the Senate. This provision, which allows the Senate to remove a

Chancellor from office, but only after due process, may not be common to the legislation of other universities.

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

The respective roles of the Senate and the Vice-Chancellor as regards policy and grievance procedures are specified in *the Act* (see particularly s16(h) and s16(i)) and *the By-Law* (see Chapter 5)).

Under Chapter 5 of *the By-Law*, the Vice-Chancellor exercises functions which complement those of Senate in that in managing the business of the University he or she is required to give effect to "any rules and resolutions or reports adopted by the Senate" (Chapter 5, Clause 47(g)).

By way of practical example, policies relating to student appeals against academic decisions and against exclusion from the University, student misconduct and harassment prevention are all policies approved by the Senate. Procedures for dealing with non-academic or administrative grievances as well as procedures for dealing with the resolution of harassment complaints are approved by the Vice-Chancellor.

What the examples reflect is the complementary roles of the Senate and Vice-Chancellor in this area. Simply put the Vice-Chancellor, through his management team develops and advises Senate on particular issues of policy, which Senate then approves, with modification if required. The Vice-Chancellor then implements Senate's policy, developing operational procedures as required. The role the Chancellor plays in this process is as Chair of the Senate and as described previously and in the Senate resolution on governance.

With regard to the communication of policy to the student body this is managed via the University website and email by members of University management. Moreover, the implementation of the grievance procedure is decentralised, to the extent that its implementation is effected, at least in the first instance, by members of the University who students are likely to know through their faculty or school. By this means the University intends to secure not only the effective promulgation of the policy but also its ready accessibility to students rather than requiring them to deal with an unknown member of the University's central administration.

4. The appropriateness of changes in duties and responsibilities of governing body members

The changes to *the Act* and *the By-Law* which were enacted in order to achieve conformance with the Commonwealth's Higher Education Governance Protocols were

matters on which the University was fully consulted. It is the University's view that the changes relating to the duties of Fellows of Senate were entirely appropriate and consistent with contemporary views of good corporate governance.

5. Opportunities for governing bodies and chancellors to intervene in the responsibilities that more properly lie with the Vice-Chancellor as Chief Executive Officer

The importance of achieving clarity and agreement regarding the different roles of Chancellor, Senate and Vice-Chancellor was very much part of Senate's thinking when, in 2001, it adopted its resolution on university governance. The resolution reflects Senate's concern to document how the roles are different but complementary.

While it would be naïve to suggest that any written formulation could, of itself, prevent a Chancellor or Senate from intervening in areas which are more properly the responsibility of the Vice-Chancellor, the resolution does provide a useful point of reference for discussion and guidance on issues relating to role boundaries should they arise. That said the resolution clearly makes the point that in discharging the requirements of the respective roles of Chancellor and Vice-Chancellor much depends on the ability of the individuals involved to understand and accept the nature of their roles and on their willingness to work together "in an atmosphere of mutual trust and respect". It is the University's view that the regime established by the *Act, By-Law* and governance resolution, if observed, provide no greater opportunity for such intervention than would exist in the corporate sector.

6. Current and possible future mechanisms for reviewing the performance of chancellors and governing body members in discharging their responsibilities

It is a requirement of *the Act* that Senate regularly review its own performance. The desirability of pursuing such a course was in fact recognised and reflected in Senate's governance resolution of 2001, before the Act was amended in this regard.

The first review of Senate's performance was conducted in 2002 by the Hon T J Ludeke. Subsequent reviews were conducted in 2003, by the same reviewer and in 2005 and 2006 by the Hon R Cartwright.

The methodology used in the four reviews conducted to date involved personal interviews with individual Fellows of Senate and members of senior management. A written report was then presented to Senate and discussed, with the reviewer present, at a subsequent meeting of Senate.

At present, the University is in the process of identifying an appropriate external consultant to conduct the next review of Senate's performance which, it is expected, will be completed in early 2009.

7. Protocols for addressing poor performance of chancellors and governing body members

Beyond conducting regular reviews of Senate's performance, with subsequent report and discussion, Senate has not resolved to create any formal protocols for addressing poor performance on the part of Chancellor or Fellows.

What Senate has done, however, is to require all new Fellows to participate in an induction program to help ensure that they understand and are equipped to discharge the obligations of their role. This process includes the appointment of an experienced Fellow to act as a mentor to all new Fellows. In addition it is, of course, open to the Chancellor to speak to individual Fellows regarding their performance should he or she believe there is a need to do so. It is also the case that a substantial proportion of the Senate is determined by robustly contested elections by alumni, staff and students which, it might be assumed, serves as an incentive to maintain performance.

As regards the Chancellor specifically, as previously noted Chapter 3 of *the By-Law* provides that it is a condition on which the Chancellor holds office that he or she retains the confidence of Senate.

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

Currently the Senate comprises 22 Fellows of whom four are members of academic staff, one is a member of general staff and two are students. The remaining fifteen Fellows include the Vice-Chancellor, Chair of the Academic Board and thirteen external Fellows, including the Chancellor. Senate committees include a mix of internal and external Fellows but no staff or student Fellow sits on committees charged with audit or remuneration responsibilities.

With respect to the issues raised here, the Senate, in its submission to the Commonwealth's Review of the National Governance Protocols, expressed the view that "With respect to the size and profile of the governing body our view is that the current size and membership profile of the Senate of the University of Sydney approximately reflects the diverse constituencies which have a legitimate interest and should have a useful role to play in the governance of the institution. It follows that membership of the Senate should include staff, students and graduates." Senate has not re-considered this issue more recently.

9. Proposals for changes to the various acts governing NSW universities and to the National Higher Education Governance Protocols to address any systemic causes found.

No changes are proposed by the University of Sydney at the present time.

10. Any other related matter

No other matters are raised.