

Submission  
No 3

**INQUIRY INTO THE GOVERNANCE OF NSW  
UNIVERSITIES**

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The Director, General Purpose Standing Committee No 2, Parliament House.

Dear Madam

**\*INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES\***

This submission responds to the Inquiry into the governance of NSW universities to address the following terms of reference. The response is summarized directly below. (Please consider the attached related policy direction.)

**\*1. Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellor (VC) and the consequential opportunities for conflict.\***

The Sydney University Act and the Sydney University website have opposing views on the importance for decision making and related accountability of the Senate and the VC. Choose the Sydney University approach where the VC makes decisions. Change the Act to reflect the ideal accountability of the VC. The Senate cannot govern effectively because it represents a large collection of narrowly informed and partial collegiate interests whom it is also difficult to hold accountable for decisions and their continuing outcomes. It should normally be an advisory body to the VC, not a decision making one.

**\*2. Other related matters: Free inquiry and 'a paramount fiduciary duty of loyalty to the University' in 'an atmosphere of mutual trust and respect' may not comfortably co-exist. \* Free and open inquiry should be paramount.\***

The Sydney University Act seeks free enquiry. The Sydney University website seeks 'a paramount fiduciary duty of loyalty to the University' and 'an atmosphere of mutual trust and respect'. The University should seek free and open enquiry and also learn from the Australian Broadcasting Commission view of self regulation and from the multicultural approach of the SBS code of conduct. The latter states as its purpose:

'SBS leads the exploration of the real, multicultural Australia and our diverse worlds.

This means

- We are a pioneering broadcaster, going places that other broadcasters avoid; and
- We reflect real, multicultural Australia – contemporary Australia is multicultural and multilingual; and
- We explore and connect the diverse cultures and perspectives that make-up the worlds that we live in.'

The SBS code contains many statements like the above. See related discussion below.

**\*1. Supporting discussion on the roles of Senate and the VC\***

This response is based on comparing requirements of the University of Sydney Act (1989) as amended, with responses to frequently asked questions about Sydney University governance, outlined on the institution's website. The University of Sydney Act and the way Sydney University appears to be conducting itself require major clarification. I have no idea of the situation in other universities but I assume all should be driven consistently unless it is clear that the public interest would be served by something different. The University of Sydney Act suggests the Senate makes decisions and the VC is largely irrelevant. It specifically indicates that fund investment is a Senate responsibility. In opposition to this, the Sydney University website suggests the VC is very strongly empowered by the Senate to govern on its behalf, unless specifically directed otherwise. See a few key examples of the current differences below.

In Part 2 of the Act, entitled *\*Constitution and functions of University\*(sic.)*, a university is described as consisting of a Senate, Convocation and varieties of staff. The VC is not mentioned. The clear implication of section 6, which discusses *\*The objects and functions of University \*(sic.)*, is that the VC cannot be primarily responsible for them because his or her existence has not so far been mentioned. Furthermore, under Part 3, entitled *\*The Senate, authorities and officers of the University\** the Senate is dealt with first and it is stated that it is the governing authority of the University and has the functions conferred or imposed on it under the Act. The VC is not mentioned until section 12, and then only very briefly. Under the later heading *\*Functions of Senate\**, on the other hand, a long list of duties is outlined. In the Sydney University Act the VC appears powerless.

On the other hand, on the Sydney University website, the VC is referred to as the Principal, the chief executive and Fellow of the Senate and as the senior representative of its academic body participating in ceremonial occasions. The VC is also required to 'Manage all the business of the University except where the Senate has explicitly determined limitations'. The Sydney University website states that 'The Senate of the University *\*oversees \*(my italics) all major decisions concerning the conduct of the University. A list of matters is then outlined. Overseeing seems a pointless activity to me. In my view people in a university should feel not only free but under a moral obligation to advise each other and relevant others, such as government inquiries. Currently doing the latter provides them with no brownie points for promotion, so groups of friendly colleagues establish journals and publish each other's product instead. Who does this proliferation of journals serve but handfuls of like-minded professional friends?*

In general in universities, the collegiate cultures represented in the Senate cannot serve the goals of the institution and the public interest effectively because they are narrowly circumscribed and driven by their disciplinary and related professional and collegiate interests, who may naturally seek the orderly demise of less well-represented competitors in times of funding scarcity. The Senate should therefore normally act only in an advisory capacity to the VC, who ideally has a broader, institutional, national and international governance focus, unless there is a strong and general Senate intent on stopping him or her from doing something. I assume everybody in the University and beyond would ideally discuss the pros and cons of any future action. One of the major problems of universities is one can seldom find out who to hold accountable for action. I agree with the Sydney University website view that the VC is ideally the boss. The VC should have greater powers than are provided in the Sydney University Act.

\*2. Supporting discussion on free inquiry and the Sydney University alternative \*

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The Sydney University Act states (Part 2 S. 6) under the heading 'Object and functions of University' that (1) The object of the University is the promotion within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching and academic excellence'. The importance of free inquiry is also mentioned later under this title heading. Since one assumes that all organizations operate within the limits of their resources, one wonders why this needs to be stated in the case of Sydney University. However, my main concern is to promote free and open intellectual inquiry against academic colleagues who may seek to destroy it, in one way or another. Free inquiry and education are ideally open, so all can judge value and decide what to support.

In contradiction to the Act, the Sydney University website states under the heading: 'Role of the VC and Principal':

\*1.5 With the Chancellor, ensure the Senate, the senior executives and the relevant Committees work fairly, with integrity respecting confidentiality within transparent process and in an atmosphere of mutual trust and respect in an informed fashion; in particular ensuring that the Senate functions as it should, as a cohesive, accessible, effective, inquiring and informed body with a paramount fiduciary duty of loyalty to the University to act in the best interests of the University owed by its members both individually and collectively;\*

I do not consider that any academic should have a paramount fiduciary duty of loyalty to the University to act in its best interests. One also wonders in what sense academics 'own' the university. I assume most are employees. I think an academic properly holds an allegiance to the search for truth about matters of substance above all other loyalties.

Transparent product should be valued as much as transparent process in my view, so all may judge its value and benefit from it further. If this elevation of the search for truth is not recognized in a university, then who may one trust anywhere else in society? Certainly not lawyers – they operate on feudal, pre-scientific principles. In addition, those who inquire freely in order to pursue truth from their perspective will often be charged with lacking trust and respect for the existing social structures and those who inhabit them. Consider Galileo, Copernicus, Marx, Freud, Kinsey and a galaxy of other extremely influential intellectual innovators who saw themselves as being scientific but who were pilloried or worse by those surrounding them and upholding the status quo.

In my experience, when one staff member complains about another's speech, Sydney University is usually on the side of the offended, however feebly narrow minded. I regard this as part of an unhealthy and growing bureaucratic and feudal attachment to lawyers and their acolytes. Challenging speech is not necessarily a sign of mental illness or criminality on the part of the challenger or the challenged. It may be a useful and interesting path to learning for all. In my opinion, Sydney University should learn from the ABC self-regulation framework and the SBS code of conduct in order to better reflect the multicultural society of Australia to itself and to the world. Under the current circumstances it is likely to become an increasingly narrow and stifling place.

Nobody can mandate 'trust and respect' any more than they can mandate love. Emotions can only be freely chosen and to assume otherwise is to require a lying pretence which is also anti-intellectual. Why should a Senate which is an advisory body be 'cohesive', when their debate and that of others could inform all? A university dies without free inquiry, which should also be open so that all can learn and judge its value and are encouraged to do so. Without this the public cannot be served because collegiate cultures more easily serve each other's elite career interests and closed shops by refusing to acknowledge, let alone challenge, any 'expert' views which apparently are also wrong. For example, one wonders how psychologists who spend their lives making up and delivering questionnaires for others to tick the specified boxes can consider themselves scientists, as they invariably do at Sydney University, rather than social scientists. This may be authoritarian and dangerous to clients expected to play their game, in my opinion, but nobody questions psychologists' lofty assumptions about their own intellectual powers and their view of the comparative mindlessness of their clients, as far as I can see. (I can assure you that to bring this up for debate is not normally welcome in the relevant faculty tea rooms.)

The Nuremberg Code stated all those involved in research must be properly informed and have the power and moral responsibility for autonomous speech and decision. The first principle of the Code states:

The voluntary consent of the human subject is absolutely essential. .... The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to others with impunity.

Code principles should be applied in any broadly scientific approach to individual or community management, as well as in medical experiments. Ethical judgment, like scientific inquiry, is ideally an ongoing activity for all, since community life is continually developing, along with knowledge and related conceptions of truth. This inclusive approach to ethical judgment requires much greater recognition of the need for informed participation of communities in all service provision. It also requires educational approaches which recognize the subjectivity of all, including that of any researchers who prefer to think of themselves as above the fray gripping those below. Instead of this, new races of lawyers, ethicists and psychologists appear to have been produced who willingly speak for others by first silencing them on the pretence of protecting them from harm. The intent of the Declaration of Human Rights is also undermined by narrow professional interests who make their living off others by labeling and directing on slender information.

Free inquiry seeks the perfect information which is necessary for a perfect market. The parliament recognises that progress is not made if apparent fools in opposition are gladly suffered. The University should too. Big leaps in knowledge are made by challenging the past, which is very often resisted strongly. Truth often seems very rude to those with vested interests in the status quo. Others who are less rigid may find conflict a great source of fun and knowledge. (Consider how much Australians enjoy politicians on TV.)

One also learns an enormous amount from SBS or ABC programs where journalists speak to real people, rather than simply outlining the dubious questionnaire research or related views of Western appointed experts who happily pontificate upon them. If one wants to address a social problem one might send out a collection of eminent elderly lawyers or academics to stay in five star hotels in the capital at great expense or send a journalist to make a TV documentary accessible to all. Universities like the former.

The traditional academic, government, professional and commercial incentives need to be harnessed more effectively in the service of human rights and sustainable development, rather than leaving them each to meet their narrower and inconsistent professional objectives, which may also be dysfunctional from broader community perspectives. In their discussion paper on Gene Patenting and Human Health, produced for the Australian Government and the Australian Law Reform Commission (AG/ALRC), the authors addressed the National Principles of Intellectual Property Management for Publicly Funded Research (National Principles)(AG/ALRC, 2004, p. 321). These principles properly seek to serve the needs of stakeholders, not merely stockholders, when they aim:

To recognize the rights and needs of all stakeholders involved in the research and define the ways in which benefits from the development and exploitation of the intellectual property will be allocated; (AG/ALRC, 2004, p.323)

The key stakeholders in university research are ideally those who benefit directly from its product and those who fund it. Related stakeholders are the people of Australia and the world who ideally also benefit. It seems logical to treat education in a consistent fashion, which might, for example, define 'commercialisation' goals as:

'maximising the process of transferring outcomes to the community in a manner which optimizes the chances of their successful implementation, encourages their use, accelerates their introduction and shares the benefits among the contributing parties'.

A representative of the Sydney University Business Liaison Office offered the above definition of commercialisation to the Medical Foundation and the College of Health Sciences Cell to Society Conference in 2002. However, the Business Liaison Office and related areas of Sydney University administration appear to have ignored this approach in favour of traditional commercially driven management approaches like patent production.

According to Australian Workplace Agreements (AWA) provisions I signed at Sydney University in 2006, and which apparently have common law origins, one is required to keep Sydney University 'trade secrets and institutional knowhow, strategies, plans and initiatives' secret. One wonders exactly what trade secrets there are in academia. 'Institutional knowhow' seems to cover anything and everything done in a university, and appears to conflict with freedom of information legislation as well as freedom of speech. Educational plans, strategies and initiatives which are kept secret are unlikely to succeed at all, let alone in a timely fashion. Especially in the current global context where bio-diversity is under threat, academic freedom is ideally conceptualised as the duty to seek and fearlessly tell the apparent truth, in the interests of everybody, as distinct from being silent or lying in the narrower interests of commercial, political or collegiate groups.

(See the attached related policy directions. I would be grateful for any support.)

Thank you for the opportunity to make this submission.  
Yours truly Carol O'Donnell,