

**Submission  
No 32**

**INQUIRY INTO THE GOVERNANCE OF NSW  
UNIVERSITIES**

**Organisation:** University of New England  
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**Submission to NSW Parliamentary Inquiry into the governance of NSW universities  
From Professor Eilis S Magner, Chair, Academic Board, University of New England**

I am the Chair of the Academic Board of the University of New England. I have held that office since February 2007. Under the terms of the University of New England Act 1993 (s 9 (1) (iii)) I am an ex officio member of the Council of the University of New England.

In this role I was a close participant in meetings of Council in 2007 and 2008. I wish to report at the outset that under the aegis of the new Chancellor, Richard Torbay, I have noticed a new mood of cooperation and purpose in Council meetings since December 11 2008.

In response to the terms of reference of this inquiry I would submit:

1. There has been no lack of clarity in the roles of governing bodies and the Vice-Chancellor at the University of New England. It has always been clear that the Vice-Chancellor is answerable to the Council and could be dismissed by the Council. I note that s 12 (3) of the University of New England Act specifies that "the Vice-Chancellor is the chief executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act." The Act then specifies in s 16 (1B) (a) that the Council is to monitor the performance of the Vice-Chancellor.
2. There has been evident a misunderstanding about the delineation of duties of the Chancellor and the governing body. The University of New England Act, s 10 (3), stipulates that "The Chancellor has the functions conferred on or imposed on the Chancellor by or under this or any other Act". I would submit that this section should be amended to read the Chancellor chairs the Council and has the functions conferred on or imposed on the Chancellor by or under this or any other Act." It is clear from many sources, eg Beyond Ceremony, on being a chancellor (<http://www.universitiesuk.ac.uk/Publications/Pages/Publication-295.aspx>) that the Chancellor is commonly understood as one that carries no executive power. This was not the understanding of the former Chancellor, John Cassidy AO. The power of the chair of a meeting is not inconsiderable and in addition to this power the role of Chancellor is to counsel and advise the Vice Chancellor in the exercise of the duties of that role and to represent the University as appropriate.
6. The Council of the University of New England reviews its own performance on an annual basis. Mechanisms for reviewing the performance of the Chancellor separately could appropriately be considered by an institution and might take the form of a 360-degree feedback. At this stage I do not believe there should be legislative intervention in this regard. Such a procedure would address situations where the performance is generally satisfactory.
7. On the other hand, I suggest that where the authority of an office rests on the position of being presiding officer or chair of a committee, it would appear essential that the person should maintain the confidence of the committee. It is a matter of record that the Council of the University of New England passed a vote of no confidence in the former Chancellor at the

meeting of 27 September 2008 and that he then refused to resign. Some consideration should be given to the question of whether such a vote should terminate the tenure of the person named. I would also suggest that the presiding officer should "leave the chair" when the meeting suggests that they would prefer the meeting to be chaired by another person for the discussion of a particular item.

8. I am of the opinion that it is essential that staff and students should be represented on the governing body of the University. It is essential that the governing body should have access to knowledge about the business of the University. It is also imperative that the views of the University Community should be represented to the governing body. I subscribe to the views expressed by the NTEU on this matter. Further there should be no "inner cabinet". All Council members should be entitled to full information about the matters under discussion by Council or by a Council subcommittee. I note that there were a number of occasions in 2008 when I sought information about the processing of Council resolutions and was denied such information. The rights of a director of a corporation to information about the transactions of a corporation are clearly spelt out, it might be appropriate to explicitly give such rights to a member of a University Council.
9. In line with the submissions I have made above it might be appropriate to make the following changes to the legislation governing NSW universities:
  - a. Insert into the act a provision (21 H) that stipulates that the Chancellor loses office when a vote of no confidence is passed by Council;
  - b. Amend clause 7 of Schedule 1 to the Act by adding "unless Council otherwise resolves";
  - c. Inserting into s. 16 "Functions of Council" a clause to provide members of the Council with a right to inspect documents in order to carry out their functions.
10. There are two related matters I would like to raise. These are, first, the matter of "sitting fees". At points in 2008 there was a distressing absence of members of the University Council while business of the University was being discussed. The legislation governing Universities in Victoria has been amended to permit Universities to pay fees to members see e.g. University of Ballarat Act 1993 s 8(4). I can see many advantages.

The second matter, is the definition of "conflict of interest". There were a number of occasions during his term of office when the former Chancellor decided that a member of staff or a student representative had a conflict of interest and ensured that they were not present at a meeting. This happened to me in August 2007, the suggestion was that I had a conflict of interest in dealing with a particular matter concerning plagiarism because I had knowledge of the University's Plagiarism policy. On the other hand, at the meeting of 27 September 2008 he declared that he did not have a conflict of interest that would prevent him voting on the motion of no confidence in himself. These examples are so egregious that I do not suggest that there is any possible legislative response.

*Ellis S. Magner*

Professor Ellis S Magner

Chair, Academic Board, University of New England