

Submission  
No 12

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

**Organisation:** University of New South Wales  
**Name:** Mr David Gonski and Professor Frederick Hilmer  
**Position:** Chancellor and Vice-Chancellor  
**Date received:** 16/02/2009

---

# UNSW



20 February 2009

The Hon Robyn Parker MLC  
Committee Chair  
Inquiry into the governance of NSW universities  
c/- The Director, General Purpose Standing Committee No. 2  
Legislative Council, Parliament House  
Macquarie St, Sydney  
NSW 2000  
By Website

Dear Ms Parker

**Re: Submission to Inquiry into the governance of NSW universities**

Thank you for the opportunity to make a submission to the inquiry into the governance of NSW universities. This inquiry is welcome and timely, and in an area to which the University of New South Wales has given much thought. Historical governance arrangements no longer serve universities well - many of the difficulties and periods of poor performance experienced by universities in recent times have more often than not been due to instability in governance. With universities increasingly important to the State and the nation's future economic and social prosperity, we need a revised model. We urge you to increase flexibility for universities, which would acknowledge the corporate responsibilities that are increasingly being vested in them.

Regarding our specific recommendations related to the inquiry's terms of reference, on 8 December 2008, the University of New South Wales Council agreed that we should forward to you Council's submission to the former Minister for Education and Training, The Hon John Della Bosca, of 7 March 2008. This submission followed an external review of our Council's performance by The Hon Robert Cartwright.

Our previous and current submissions relate directly to the eighth term of reference of the standing committee:

*The representation on governing bodies, and their committees, of staff and students and the current and appropriate balance between external members and elected representatives,*

and the ninth term of reference:

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

Our submission to the former Minister and this submission recommend amendments to the University of New South Wales Act and By-Laws to change the governance structure of UNSW by a proportionate reduction in the size of our Council from 22 members to 11-14 members, retaining staff and student elected positions, and increasing the number of positions for which persons can be selected for specific skills and expected contributions required at the time. Our current Council of 22 comprises 3 ex-officio positions (Chancellor, Vice-Chancellor and President, Academic Board), six Ministerial appointees, two Council appointees (one of whom must be a graduate), four elected graduates, four elected academic staff, one elected non-academic staff, one elected postgraduate and one elected undergraduate student.

The resolution recommending the proportionate reduction was passed with only one member of our Council voting against it and therefore by a very large majority. We are awaiting a response to our submission to the former Minister, and we have raised it again with the new Minister, The Hon Verity Firth, in a meeting on 5 January 2008. She has indicated that she recognises the need for universities to have flexibility in determining the size and composition of their governing bodies to suit particular needs, and is giving the proposed changes to the UNSW Council careful consideration, whilst awaiting the report of your inquiry.

As demonstrated by the resolution of Council, there was a strong mandate for change to increase the ongoing probability of Council adding value for the University. The consensus was that a reduction in size would be conducive to Council's efficient functioning under the Act. Members considered the importance of the perspectives provided through the positions of academic staff member, professional and technical staff member, undergraduate student and postgraduate student, and agreed these should remain as elected positions. There was consensus that whilst being a graduate was a valuable attribute, this could be addressed through the proposed nomination process for the remainder of the positions.

Reducing the size of our Council and increasing the number of appointed positions would ensure that the Council has the diversity of talents which can give to the University the necessary experience, strategic input, operative oversights and general direction required to ensure that the University operates to the maximum benefit of all its various stakeholders. The proposed changes would recognise that the nature of the University and the higher education environment has changed markedly from when the Council's current composition and methods of appointment were set. The UNSW Council now provides oversight for a budget of more than \$1billion per annum, with more than 63% of revenue coming from non-Government sources, in an increasingly competitive context.

The Council resolution of 25 February 2008 also contained recommendations relating to the removal of Council members and to allow Council to meet by electronic means. The full resolution follows:

That Council recommends to the State Minister for Education and Training that the UNSW Act and By-Law be amended in the following way:

1. That Council is to consist of not less than eleven and not more than fourteen members.
2. That Council shall at any time have at least:-
  - a. One person who is a member of the professional and technical staff of the University and is elected by the professional and technical staff of the University;
  - b. One person who is a member of the academic staff of the University and is elected by the academic staff of the University;
  - c. One person who is an undergraduate student of the University who is not a member of the academic or professional and technical staff of the University and is elected by the undergraduate students of the University; and
  - d. One person who is a postgraduate student of the University who is not a member of the academic or professional and technical staff of the University and is elected by the postgraduate students of the University.
3.
  - a. The Vice-Chancellor of the University and the President of the Academic Board from time to time will also both be members of Council.
  - b. The Chancellor will be chosen by Council from its members.
4. The remainder members of Council will be appointed by Council having regard to the following:
  - a. Council has a range of skills and expertise required by it for the benefit of the University;
  - b. Council members have expertise and experience relevant to the functions exercisable by Council and an appreciation of the object, values, functions and activities of the University; and
  - c. At least one member of Council at any time is an alumnus of the University.

5. Council is to constitute a Nominations Committee, comprising at least four members of Council to:
  - a. Advise Council on the size of Council from time to time; and
  - b. Advise Council on nominations to Council having regard to the provisions above.

The Nominations Committee in giving its advice to Council shall provide its reasoning for each of its decisions.

6. The length of terms for members shall generally be two years for students and staff, and four years for others, unless the Nominations Committee makes a recommendation for a shorter term, excepting the Vice-Chancellor and President of Academic Board, who are members for the term of their respective offices.
7. The Minister will have the power to remove all or any members of Council at any time and from time to time in his/her discretion provided:-
  - a. That prior to using that power the Minister has discussed the matter with Council expressing his/her concerns as to the membership of a particular person/persons and seeking a solution to these concerns; and
  - b. The removal, in the Minister's entire discretion, is for the benefit of the University and its future development.

Where the Minister has removed a person/persons as above and less than half the Council remain, the Minister may, if he/she wishes appoint further members to Council to replace those removed.

8. A member may be removed at any time by a two thirds majority of Council, if in Council's view that is in the best interests of the University.
9. Attendance at meetings of Council may be by electronic means.
10. Any elections/procedures for the appointment of members to Council will be prescribed in the UNSW Rules to be approved by Council from time to time.

Council agreed that the transitional arrangements for the proposed changes to membership should be by natural attrition.

Regarding the Inquiry's other terms of reference, we note in relation to the first:

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

the third:

*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,*

and the fifth:

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

Council has recognised these potentials for conflict and has clarified its role vis-à-vis the role of the Vice-Chancellor and management via the Cartwright external review and an internal review of Council's delegations to management, as the roles are not clearly defined in the UNSW Act.

Regarding the role of Chancellor, we are not sure one should be too prescriptive, except perhaps to note that it is the Vice-Chancellor who is the chief executive officer, and that the equivalents of these roles are not prescribed in the Companies Act.

Council has also endorsed the strategic objective in *B2B: Blueprint to Beyond 2010* - UNSW Strategic Intent: to "streamline governance and management structures, clarifying accountabilities and interfaces"<sup>1</sup>.

Some of the ways Council has streamlined governance structures and clarified accountabilities is by reducing the number of Council meetings from as many as eleven per annum to six (the required number under the Act), reducing the number of Council committees, and ensuring that Council and its committees maintain a strategic focus. Operational and executive matters are left to the Vice-Chancellor.

An initial review of Council delegations to the Vice-Chancellor and management in 2006 has been followed by a comprehensive review, which is almost complete. This will further clarify the roles of the Council and of the Vice-Chancellor in some areas which have remained unclear.

Regarding reviewing the performance of individual members of Council, including the Chancellor (term of reference six), the UNSW Council has not sought to focus

---

<sup>1</sup> <http://www.unsw.edu.au/about/pad/strategicplan.html>

on individuals, rather on how Council functions as a whole. The external review provided a mechanism in which individual members of Council, former Council members and members of senior management were interviewed in confidence.

Council has also recognised a current limitation in the UNSW Act in allowing for removal of Council members. Removal by a two-thirds majority of Council is only possible if a member has breached their duty *as a Council member* – other matters which may bring the member (and therefore by inference, Council and the University) into disrepute within the academic or general community cannot be taken into account. Hence Council has suggested the amendment that “a member may be removed at any time by a two thirds majority of Council, *if in Council’s view that is in the best interests of the University*”.

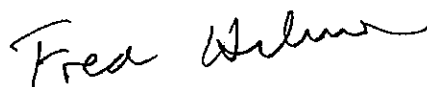
We hope that the recommendations contained in this submission will result in legislative change to the UNSW Act, and we look forward to the inquiry’s recommendations more generally.

If we can be of any further assistance, please do not hesitate to contact us. Once again, thank you for the opportunity to make this submission, and we wish you well in your deliberations.

Yours sincerely,



David Gonski, AC  
Chancellor



Frederick G Hilmer, AO  
Vice-Chancellor