

Submission
No 14

INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES

Organisation: University of New England
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The Hon Robyn Parker MLC
Committee Chair
General Purpose Standing Committee No 2
Parliament House, Macquarie Street
Sydney NSW 2000

Dear Chair,

I refer to your letter of 19 November 2008 in which you invited me to make a submission to your Committee's Inquiry into the governance of NSW universities.

In response to your invitation, I have attached a submission to the Inquiry.

You also wrote to me on 8 December 2008 inviting me to appear and give evidence to the Inquiry at a public hearing. I do not wish to appear before the Committee at a public hearing.

Yours sincerely,



Professor Alan Pettigrew
Vice Chancellor & CEO

Inquiry into the governance of NSW Universities

Most of the Terms of Reference for this inquiry can be grouped into two major themes as follows.

The numbers under Themes A and B below refer to the Inquiry's Terms of Reference.

A. Clarity of roles and duties

1. Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellors and the consequential opportunities for conflict.
2. Any apparent lack of clarity in the delineation of duties of governing bodies and the Chancellors.
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.
5. Opportunities for governing bodies and chancellors to intervene in the responsibilities that more properly lie with the Vice-Chancellor as Chief Executive Officer.

B. Performance of Chancellors and governing body members

6. Current and possible future mechanisms for reviewing the performance of chancellors and governing body members.
7. Protocols for addressing poor performance of chancellors and governing body members.
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.

This submission has been prepared to provide information to the Inquiry in respect of these two major themes as they affect the University of New England (UNE). The information relevant to theme A is drawn from documents currently applicable at UNE. The information relevant to theme B is drawn from the same source as well as responses to enquiries or examination of public documents from other institutions.

The two remaining Terms of Reference (4 and 9) are to consider the possibility of change emerging from the inquiry.

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

These terms have not been addressed in this submission.

Theme A: Clarity of roles and duties

1. The University of New England Act 1993 establishes the University as a body corporate (section 5) and declares that the Council is its governing authority (section 8) with specified functions that include controlling and managing the affairs and concerns of the University, and acting in all matters concerning the University in such a manner as appears to the Council to promote the object and interests of the University (section 16(1A)).

2. Section 16(1B) sets out more specific functions for the Council. These include:

(a) to monitor the performance of the Vice-Chancellor;

.....

(d) to approve the University's mission, strategic direction, annual budget and business plan;

.....

(h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations;

.....

(j) to regularly review its own performance (in light of its functions and obligations imposed by or under any Act).

The Act is at **Attachment A**. The Act provides the Council as a whole with authority and control through oversight functions.

3. The Council may delegate any of its functions to any member or committee of the Council or any authority or officer of the University or any other person or body prescribed by the By-laws (section 17).

4. The Council may establish committees to assist in the exercise of any of its functions (section 9, Sch.1, Clause 4).

5. The Chancellor (who is a member of the Council) has the functions conferred or imposed by or under the Act or any other Act (section 10(3)). There are no specific additional functions of the Chancellor referred to in the University's Act or any other Act.
6. The Vice-Chancellor (who is also a member of the Council) is the Chief Executive Officer of the University with functions conferred or imposed by or under the Act or any other Act (section 12(3)). There are no specific additional functions of the Vice-Chancellor referred to in the University's Act or any other Act.
7. From time to time the Council has resolved how its powers will be exercised and has established a number of committees and defined their powers.
8. **Attachment B** contains a summary of authorities retained by the Council and the extent to which it has delegated its powers. The matters in respect of which the Council retains authority include
 - Appointment of the Vice-Chancellor,
 - Monitoring the Vice-Chancellor's performance,
 - Overseeing the University's performance, and
 - Regularly reviewing Council's own performance.

There are additional matters over which the Council retains authority but receives advice from committees, including from the Remuneration Committee in relation to

- The approval of remuneration policy and strategy for University's senior staff, and
 - The approval of salary packages for the Vice-Chancellor and University senior staff.
9. The senior staff are currently the Deputy Vice-Chancellor, Chief Operating Officer, the Chief Development Officer and four Pro Vice-Chancellors. They are identified in the Organisation Chart which is at **Attachment C**.

10. The Remuneration Committee's current Terms of Reference are at **Attachment D**. These Terms are currently under review by the Committee in order to clarify the extent to which the Committee is involved in determining remuneration arrangements for those senior managers who are not employed under the University's enterprise agreement and who do not report directly to the Vice-Chancellor. These are critical issues in respect of the respective roles of Council and its advisory committee and that of senior management, especially the Vice-Chancellor and CEO.
11. A number of policies, described as Council Policies, have been adopted by the Council. They are at **Attachment E**. Statements from those policies include
- the Council's overriding function to formulate policies for the University.
 - the Vice-Chancellor's function to implement Council's policies and be accountable to the Council for that implementation,
 - a declaration that the work of the Council and of the Vice-Chancellor are separate and that either party trying to do the other's job is interfering with effective operation of their respective functions,
 - the Vice-Chancellor must influence an organisational culture,
 - the Council must clarify tasks and not allow individual proclivities to destroy the process of its performance as a Council,
 - Council members bear responsibility for the integrity of governance. The Vice-Chancellor is to help Council members in implementing, amongst other things, governance methods. The Council is to set out explicit governing policies,
 - the Council will govern by emphasising strategic leadership more than administrative detail, [and a] clear distinction of Council and Staff roles. In that spirit the Council will:-
 - i) keep its major involvement with the intended long-term impact of the organisation, not with administrative or programmatic means of attaining those effects,

- ii) inspire the organisation through the establishment of policies that address various matters, including Council-Staff relationships,
- iii) self police Council tendencies to stray from rigorous governance,
- iv) review its role and performance on an annual basis to address any issues relating to the execution of its responsibility for the governance of the University.

12. Within the Council Policies document there is a Statement of Council's Primary Responsibilities. These are

- Appointing the Vice-Chancellor as the chief executive officer of the University, and monitoring his/her performance,
- Approving the mission and strategic direction of the University, as well as the annual budget and business plan,
- Overseeing and reviewing the management of the University and its performance,
- Establishing policy and procedural principles, consistent with legal requirements and community expectations.
- Approving and monitoring systems of control and accountability, including general overview of any controlled entities,
- Overseeing and monitoring the assessment and management of risk across the University, including commercial undertakings,
- Overseeing and monitoring the academic activities of the University,
- Approving significant commercial activities of the University.

13. The Council's Policies include policies concerning the power and authority of the Chancellor and/or the Deputy Chancellor (at **Attachment F**), including

- The Chancellor, advising and working with the Council and the Vice-Chancellor, provides counsel and encourages free, trusting and frank communication on all issues concerning the well being of the University,

- Together with the Vice-Chancellor and Chairs of the Committees of Council, the Chancellor is to ensure that the Council has all the necessary information that it needs for decision-making,
- The Chancellor is to encourage Council and senior management to work in a cohesive manner to the benefit of the University,
- The Chancellor should consult with the Council, the Vice-Chancellor and, normally with the knowledge of the Vice-Chancellor, the senior management, to provide and receive advice,
- The Chancellor should work closely and co-operatively with the Vice-Chancellor and the senior management.

14. The Council has also adopted a Rule concerning the Vice-Chancellor's relationship with the Council. This Rule at **Attachment G** states that

- The Vice-Chancellor's role is the implementation of Council's policies and subsidiary policy development,
- All Council authority delegated to staff is delegated through the Vice-Chancellor, so that all authority and accountability of staff can be phrased as the authority and accountability of the Vice-Chancellor,
- The Vice-Chancellor's performance will be considered synonymous with organisational performance as a whole and will be reviewed annually,
- The Vice-Chancellor is authorised to establish all further policies, make all decisions, take all actions and develop all activities which are true to the Council's policies. The Council may, by expanding its policies, withdraw some delegations, but will respect the Vice-Chancellor's choices so long as the delegation continues. This does not prevent Council from obtaining information (through the Vice-Chancellor) about activities in the delegated areas,
- Only the Council, by majority vote, has authority over the Vice-Chancellor.

15. The Council's Policies include its Code of Ethics (**Attachment H**). The Council's Code requires adherence to the University Code of Conduct for Staff.
16. The Council's Policies were last reviewed by Council in 2002. The Council will be undertaking a review of its policies and the Rule referred to in paragraph 14 commencing in February 2009.
17. Although no set of rules or guidelines can provide complete guidance to the Chancellor and Vice-Chancellor in their relations with one another, their relationship should be cooperative and should recognise and observe the boundaries between their respective roles.

Conclusion – Theme A:

- The University of New England has its Act and own policies that define the roles and responsibilities of the Council, the Chancellor and the Vice-Chancellor. The Council itself has the responsibility to ensure that its policies and procedures are consistent with the requirements and tenor of the Act, By-law(s), other applicable legislation, and the National Governance Protocols (**Attachment I**).
- During 2007 but most particularly during 2008, the functional relationship between the Chancellor and Vice-Chancellor at UNE was severely damaged due largely to differing managerial approaches. It became evident that clarity and refinement of the roles and responsibilities of Chancellor and Vice-Chancellor was required.
- The former Chancellor's term expired in early December 2008 and his appointment was not renewed. A Chancellor has been appointed and the relationship between him and the Vice-Chancellor is positive and productive.
- The Vice-Chancellor has taken measures to address and improve corporate governance issues, amongst which is the creation of a new role within the University at senior level that will greatly assist in the effectiveness of the relationship between the Chancellor/Council and the Vice-Chancellor/Executive. The position of Legal Counsel and University Secretary has been established, which reports to the Chancellor in respect of Council matters and operationally reports to the Vice-Chancellor. The position has been filled.
- A principal focus of this role is review of governance matters including refinement and amendment of policies and procedures to reflect Council's deliberations in respect of Chancellor, Vice-Chancellor and Council responsibilities.
- In addition and in collaboration with the Chancellor, the Vice-Chancellor has organised a Strategic Planning Retreat for Council to be held on 20/21st February 2009. A major part of the first day will review, assess and clarify the roles and responsibilities of the Council, the

Chancellor and the Vice-Chancellor. The Council will also begin a review of its policies in the context of the UNE Act, other applicable legislation and the National Governance Protocols.

- The Vice-Chancellor has also taken steps to strengthen risk management within the University. This is against the backdrop of revising corporate governance principles within the context of the University sector generally and best practice examples.
- UNE has recognised management tools in place to run the organisation effectively, including a sound strategic plan, established budget process and accountability measures to both state and federal governments.
- In addition, the Strategic Planning Retreat will refine strategies and explore opportunities in light of the recent Bradley Report, to continue the strong academic, teaching and research traditions of this University.

Theme B: Performance of Chancellors and governing body members.

1. At UNE, the Council has adopted a set of policies (**Attachment E**), a statement of the power and authority of the Chancellor/Deputy Chancellor (**Attachment F**) and a set of Standing Orders for Council (**Attachment J**). Should Council decide, a set of quantitative and qualitative indicators can be constructed against which the performance of the Chancellor can be measured. This is a matter for the Council to determine and this will be discussed at the aforementioned retreat.
2. The question then arises, however, as to the benchmarks against which the Council might assess performance. It might be difficult to define such benchmarks with absolute clarity. Nevertheless, the Council as a whole should determine how it responds to the assessment of the Chancellor's performance. Such a response may be a statement of support or congratulation. Equally, the Chancellor might be counselled by Council members.
3. Ultimately, the UNE Act allows for the Council, by a two thirds majority, to dismiss a member, including the Chancellor.
4. Given the legislated responsibility of the Council as the governing body of the University, it is a matter for each University Council to ensure that it has the policies and procedures in place to deal with the matters raised above. As stated these matters are to be considered by the UNE Council at its retreat on 20 and 21 February 2009.
5. With respect to the presence on governing bodies of staff and students of the University, this matter has not been raised at the UNE Council in recent times. This is a complex matter that is borne out of the centuries old traditions of universities across the world. Up to this time, UNE has welcomed staff and students to membership of the Council.
6. Membership of committees by staff and students is balanced at UNE according to the roles and responsibilities of the committees themselves. For example, quite appropriately no staff or student members of Council sit on the Remuneration Committee of Council, but

there is a staff member on each of the Finance Committee and the Infrastructure Committee.

7. The University operates on the understanding that staff or student members of Council could be co-opted to attend meetings of Committees where appropriate and as necessary. Similarly, members of Committees or Council itself must declare a conflict of interest when appropriate, and may be excluded from those meetings.
8. In all of the situations mentioned above, staff and students form a minority membership of the Council and its Committees. In this respect these bodies benefit from both external and internal membership, but the independence of their decisions by a simple majority is preserved.
9. The alternative of not having any students or staff on Council or its Committees would, in the view of many, lead to great tension and 'disconnect' between the governing body and the community of the University. The great principles of freedom of enquiry and collegial approach must be preserved through the current balance of membership of the governing body of any University. This is particularly the case when it comes to the assessment of the performance of the governing body and of the Chancellor.

Conclusion – Theme B:

- The Council has recognised that further definition of the performance expectations and criteria of the Council and the Chancellor would enhance its corporate governance framework. These matters will be considered at the Strategic Planning Retreat.
- The membership of the Council and its Committees should also be reviewed by the Council at an interval that is appropriate for the Council to either confirm its current position or adopt a new position as circumstances pertaining to its local operation and community expectation require. This should not be a matter that is mandated by government legislation in any manner that is uniform across all universities in NSW, or indeed Australia. The establishment of a Code of Good Practice for Councillors and Chancellors may be useful for Councils, members of Councils, Chancellors, and for external review bodies such as the Australian Universities Quality Agency.
- UNE is now well placed to co-operatively examine all governance arrangements to ensure clarity of roles, responsibilities and expectations of performance for the Chancellor, Vice-Chancellor and Council and to refine any processes or procedures that will achieve best practice standards.