

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 2

**INQUIRY INTO GOVERNANCE OF NEW SOUTH WALES
UNIVERSITIES**

At Sydney on Thursday 26 February 2009

The Committee met at 10.45 a.m.

PRESENT

The Hon. R. M. Parker (Chair)

The Hon. A. Catanzariti

The Hon. G. J. Donnelly

The Hon. M. A. Ficarra

The Hon. K. F. Griffin

Dr J. Kaye

Reverend the Hon. G. K. M. Moyes

The Hon. C. M. Robertson

CHAIR: Welcome to the first public hearing of the inquiry of General Purpose Standing Committee No. 2 into the governance of New South Wales universities. The genesis of this inquiry was generated by reports of conflicts of New South Wales universities that involve senior university managers and their governing bodies. There appeared to our Committee to be a pattern that these conflicts were generated at times by a lack of clarity regarding the roles of senior university managers and their governing bodies. A complex mix of State and Federal legislation and protocols govern universities. The inquiry will investigate whether there is a need to review the legislation and protocols to address this apparent confusion and reduce the level of conflict at some universities.

Before we commence I make some procedural announcements. As to the broadcast of proceedings, Legislative Council guidelines state that only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photos. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation they place on anything that is said before the Committee. Those guidelines are available on the table at the back of the room. Anyone who wishes to pass information to Committee members, please do so through the secretariat staff. I note for the public record that the Hon. Tony Catanzariti has informed me that he is a member of the Council of Charles Sturt University and Dr John Kaye has informed me that he is a member of the National Tertiary Education Union. The Hon. Christine Robertson has advised that she was previously a member of the University of New England.

MERVYN JOHN PHILLIPS, Convenor and Chancellor, University Chancellors Council and University of Western Sydney, 6 O'Connell Street, Sydney, sworn and examined:

CHAIR: Do you wish to make a brief opening statement?

Mr PHILLIPS: It seems to me that for the past 15 or 16 years I have said and written so much about governance in different areas that it would be putting pig on pork for me to give an opening statement. I think I prefer to respond to areas that the Committee members think I may be able to help.

CHAIR: I note that you have been part of previous submissions and you have participated with the vice chancellors submission to other bodies as well?

Mr PHILLIPS: I think that the University of Australia submitted to this Committee a copy of the documentation, which has been prepared jointly by what was then the Vice Chancellors Committee and the University Chancellors Council when the previous Federal Government was reviewing the governance protocols and I was one of the two or three main authors of that document.

CHAIR: A large part of the debate in terms of governance, from my reading, appears to be about whether a governing body of a university should follow more of a corporate model or whether it should be subject to the Corporations Act. Could you discuss whether you think that should be the case and whether that is the path we should be going down with universities?

Mr PHILLIPS: With the introduction of the national governance protocols and the change to the legislation of the various New South Wales universities by the Government, governance of the New South Wales universities is now very close to the corporate model; it is not quite the same but it is very much the same because one of the arguments that we put very strongly to the Government at that time, both at the State and the Federal level, was that people who were members of the university senates or councils, or in our case boards of trustees, should be subject to similar, certainly no more onerous, obligations than the directors of public companies. That was pretty well achieved in the enactment of the legislation following the national governance protocols.

I have split views on whether it would be better to put universities under corporate law. In some respects it would, but I think if you did it, you would have to introduce special sections in the Corporations Law to cover universities because they are not quite like companies in many areas and the relationships within the universities are not like the relationships within the corporations, even though they are similar in many respects. I used to say that universities were not a business but they had to conduct their affairs in a businesslike manner.

I have changed my mind on that in recent years. I think universities are in fact a business but they are a very different type of business. If you want to get my views on that they are well on the record. So I would not push to put universities under the Corporations Law. There are some people who would. I happen to think that the problems that have occurred in a number of universities, including the one to which you referred earlier, have been caused, not by a lack of clarity in the legislation or the rules and by-laws of the universities; I think it has often been caused by the fact that the people who are the main players have not sought to read those things and understand them.

In a sense, I think the education of people coming on to university boards, while it has improved, has a fair way to go. In particular, I do not think we have done enough to educate—and I think some of my colleagues will be a bit upset about me using that word—incoming chancellors, because many of those are coming from areas where they have not been subject to the same kind of protocols and procedures that they ought to be following within universities.

CHAIR: Do you see the problem being that those people have that issue because they are taking a corporate view into an educational institution?

Mr PHILLIPS: No.

CHAIR: Can you just flesh that out for us?

Mr PHILLIPS: I think if they took a genuine corporate view they would find it very easy to settle into the role of chancellor. The modern Australian chancellor is very different to the chancellor of 40 years ago and is very different to the chancellor in the United Kingdom and in most of Europe, for example. You would say that the chancellor is a bifurcated person. You have, on the one hand, all of the ceremonial duties and the public contact duties that go with being a chancellor. That has always been part of the responsibilities. But on top of that now being chairman of the council or the board of the senate is almost exactly the same as being the chairman of a major Australian company, so you have to be able to perform both functions.

I think if people have come out of the corporate sector and really understand that; if they have had experience of being chairman of a substantial corporation—because even small universities in terms of the responsibilities are quite substantial corporations—if they understand that, they will behave better. We have to remember that in the corporate sector there are good chairmen and bad chairmen and there are good chief executives and bad chief executives. If you manage to pick one of those up and transfer them into the university sector, they will not necessarily improve when they transfer.

CHAIR: A number of our submissions have talked about the size of governing bodies, some arguing for smaller governing bodies, some arguing for more inclusion, while others talk about skills being the most important thing. What are your views on those issues?

Mr PHILLIPS: I think size is a matter of secondary importance. Certainly the larger the council, the more onerous it is for a chancellor to try to maintain the kind of harmony you want to maintain to get good performance. It is very important that you have on a council a range of skills that are necessary to determine the strategy and the policies for the university.

The role of the council, rightly said in all the writings, is not to manage; it is to set policies and to set guidelines, within which the executive operates. The people who are there have to be able to make a contribution to that debate. So you need a mixture of people on there. I have no problems, and never have had problems, with members of staff being elected or with members of the student body being elected. I think it is important that you have a majority of external members on councils and boards. I do think it is important that the staff and student members of those boards are properly protected.

I can remember a particular example of a student member of the council who supported a decision of his governing body because he regarded it as being in the best interests of the university, which is of course what the legislation says that he must do. The people who elected him thought that he ought to be only concerned about them, not about the university as a whole. They effectively sent him to Coventry and made his life so miserable that he had to stand down from his membership of the council.

You have to be able to get across to the students and staff bodies what the real responsibilities of those members are and make sure that as far as possible you protect those members so that they can speak freely and take a general part in the discussion. Having said that, I think getting student views and staff views on council discussions is important in a university: I would not support it in a corporation.

The Hon. MARIE FICARRA: Just carrying on from the line of discussion on qualifications and experience of council members, have we ever had any guidelines as to what qualifications or experience should be required as a minimum? Do you think that that would be something that would be beneficial?

Mr PHILLIPS: I am not sure how you would write them. In theory it would be nice, but if you look around universities you find that there are people with very strange backgrounds who make very good members, and people who look as though they have everything it takes have been a disaster. On top of everything else, apart from the qualifications, people have to be able to work together. They have to be able to speak their mind, argue their point of view, and at the end of the day work together. If you get people with overweening ambition or they have too strong a sense of vanity, they will never make a good member.

The Hon. CHRISTINE ROBERTSON: It sounds just like this place!

Mr PHILLIPS: Madam Chair, I would like to say that I was not pointing the finger at anybody.

The Hon. MARIE FICARRA: We will point it at each other! What sort of size of council would you see as being ideal? I will just choose one: say, for instance, the University of New England has a council of 18. Is there any sort of size range that you think is appropriate?

Mr PHILLIPS: Let me say that we have had a maximum number of 18. At the moment, we are operating with 15. In our case, I would like to fill one of those positions, and we are looking to get proper qualifications and background to do that. It has not been vacant for very long, but I am not in a hurry to urge our board of trustees to fill the other two vacancies until and unless we can find people who really bring into the group the kind of qualifications, qualities and background that we need.

In the case of New England or a regional university, it sounds strange to say this, but I would favour a smaller one. This is personal. The only reason I would favour that is that I think those universities could find it more difficult to find appropriate people in the regional areas. We have enough difficulties in the regional area of Western Sydney. But I think if we are moving into some of the other regional areas, they find it difficult. I think if they were able to find enough people to put in place a very strong board of, say, a dozen or whatever, I would prefer that than their feeling that they have to go and get other people to sit on the board, just to make up the numbers.

The Hon. CHRISTINE ROBERTSON: Do you perceive that those numbers of persons should be prescriptive, or up to?

Mr PHILLIPS: No. I prefer the up to. I prefer giving the council some scope both to bring in very good people if they suddenly appear and also to leave a position vacant if there is nobody suitable around.

The Hon. MARIE FICARRA: I have one quick last question, which probably could be expanded upon, concerning the relationship between chancellors and vice-chancellors. Are there enough guidelines as to the roles and interactions? For instance, in the setting of key performance indicators [KPIs] of a vice-chancellor, is it better that the entire council be involved in the setting of those, the knowledge of what they are and the actual evaluation of those KPIs? There have been so many instances where there have been problems in the governance area.

Mr PHILLIPS: If you did that, if you had the entire council do it—I will come back to the relationship—you would have to immediately exclude staff and student members. You would have to exclude also the chair of the academic senate because they would have such a conflict of interest in terms of protocols and legislation, they should stand down. You are back, if you like, to external members doing a lot of this—not all of it, but a lot of it.

In our case, our case being the University of Western Sydney, the legislation puts the onus on the chancellor to do the review. We have a remuneration and nomination committee of the board of trustees. I do the review in conjunction with them. I consult with all members of the board in doing a review. I report back at the end of it to tell them what are the major objectives that have been set for the vice-chancellor and invite comment. That works very well. It is not prescriptive. What the Act says is that the chancellor should do it, and I think a sensible chancellor will always try to draw his colleagues into these processes.

Dr JOHN KAYE: Mr Phillips, thank you for being here today. You have made a number of statements that might be interpreted from some perspectives as being controversial. Would you say they represent the view of your organisation?

Mr PHILLIPS: Do you mean of the Chancellors' Council?

Dr JOHN KAYE: Yes.

Mr PHILLIPS: For the most part, yes. But as there are in all things, there are different views among chancellors. Some of them are driven by the fact that chancellors are coming from different States with different traditions and different legislation, so to speak.

Dr JOHN KAYE: And different backgrounds?

Mr PHILLIPS: And some of them have different points of view. Most of what I said would be agreed to by most of my chancellor members.

Dr JOHN KAYE: I am paraphrasing you here. You said that universities are businesses. You said that "We have come to view universities as businesses". We have used the words "corporation" and "business"

interchangeably, which perhaps muddies the water. With that statement, are you saying that they ought to be like businesses, or that the legislation has made them like businesses? I am not sure whether that is a normative or positive statement you have made there.

Mr PHILLIPS: Let me say first that I am not trying to confuse corporations and universities. There is only one or perhaps two universities that are corporations. The others are public bodies with their own legislation. But with businesses, it is a different type of business. The reason I have concluded that in my own mind—I am now speaking for myself, not for the Chancellors' Council—is that it is a mixture of a number of factors. Because of the way the government, particularly the Federal Government, has approached higher education and universities in recent times, the pressures that have been put on the financial side of universities, the legislative and other requirements that have been put on universities who are operating commercial activities, the legislation that has been put on universities that are operating instrumentalities that are subsidiaries, if you like, of the universities—and all universities have these—when you look at the whole mixture, it is hard to run the place without running it as a business operation.

The big difference comes in when you get to the main purpose of the university, which is education, teaching, learning and research. You have to think differently. You have to think in a businesslike manner, but you have to think very differently when you get into those areas to the way that I would have been thinking when sitting in the chairman's position at AGL a few years ago because the objectives of the business are quite different to the objectives of a normal corporation. But I think the fact is that the way that the legislation, the requirements, the reporting back and all of these things have combined mean that you have no option these days but to run universities as a kind of business.

Dr JOHN KAYE: Let me unpack that the word "run" in those paragraphs. Do you mean run in the sense of what a council or governing body ought to be doing, or do you mean run in the sense of what a vice-chancellor and a vice-chancellor's unit ought to be doing, what do you mean run in the sense of what an academic board should be doing?

Mr PHILLIPS: No. I mean run as in what the totality of the university governance should be doing. Some people believe that governance is separate from management. That is not the case. Management is part of governance. Governance is that intermingling, that certain connection, between all the players of the universities that are supposed to come together so that they can produce the effect that the university has to produce as effectively and as well as possible. When I talk about running a university, I mean how the totality of the university structure runs itself. That includes in our case the board of trustees, the vice-chancellor, the senior executive and the academic board.

Dr JOHN KAYE: If I am correct in understanding it, what you are saying is that the relationship between the vice-chancellor and the senior executive—and we will consider them as one unit for the purpose of this conversation—the council and the governing board and the chancellor and the academic board ought to be structured on the same principles as a business.

Mr PHILLIPS: No, no. It is not wise to put words in my mouth.

Dr JOHN KAYE: I am trying to understand what you are saying.

Mr PHILLIPS: I am not saying that at all. I am saying that the academic senate in our case has a responsibility to the board of trustees. The overweening control of universities, legislatively and otherwise, is in the hands of the board of trustees or the council or the senate.

That is the way the legislation is, that is the way it has to be. You get anarchy if it is not, the buck has to stop somewhere in all these things. The board of trustees sets the terms, the conditions and the KPIs, if you like, for the vice-chancellor and the executive team. In terms of the academic senate, all the board of trustees does is sets the parameters within which the academic senate will work. It does not and should not get itself involved in academic argument, but it can get involved in setting parameters for the academic senate to work in. Then if you take our own university, we inherited from the federated model such a mess of courses that you could not believe it. The board of trustees, with the advice of the academic senate, sets policies to deal with that question and then the academic senate got on and it did it. That is the way the thing works.

With the executive, the board of trustees sets the parameters, sets the delegations, sets the amounts that can be approved by the vice-chancellor or by the vice-chancellor's executive, and anything above those amounts

are referred back to the board of trustees. All of these relationships in a well running business operate very smoothly.

Reverend the Hon. Dr GORDON MOYES: Mr Phillips, as the roles of the interaction between chancellors and vice-chancellor's has involved, or devolved, in the last few decades—

Mr PHILLIPS: It has become involved.

Reverend the Hon. Dr GORDON MOYES: —in differing directions, how is the performance of chancellors evaluated?

Mr PHILLIPS: Not enough, is the answer at the moment. If I can quote the example of our university: each year we have one meeting of our governing body, which devotes a lot of time to governance, usually the first meeting each year. Each second year we do a review of the performance of the board and that includes the performance of the chancellor.

The Hon. CHRISTINE ROBERTSON: Internal?

Mr PHILLIPS: Yes.

CHAIR: So it is a self-review?

Mr PHILLIPS: Yes.

Reverend the Hon. Dr GORDON MOYES: Are any external people involved in that review?

Mr PHILLIPS: On an irregular basis yes, but not in the process. We try to do a 360 degree review, and that is done, so far as the vice-chancellor is concerned, and on a less regular basis so far as the chancellor is concerned. That means that we would use an external person to do that. The normal process is done within the board and that is done with the use of questionnaires, the invitation of comment, and with debate around the board table itself. Then, of course, each year we do that review of the vice-chancellor's performance at the same time setting whatever happens to the remuneration scales of the vice-chancellor.

I accept that it is very difficult to do the review of the chancellor, for two reasons: First, many chancellors do not like it being done, because it can bring out some things you do not like to hear. Secondly, people are often not willing to stand up and say what they really think. So, you have to get at it in some indirect ways as well, often when doing a review of the performance of the board, the conduct of board meetings and the conduct of committee meetings, and the like. In that process you will get back comments which, while they relate to the performance of the committee of the board, indirectly tended to tell you something about the performance of the chairman of the board or the chairman of committees.

Reverend the Hon. Dr GORDON MOYES: But there are no formal structures that are normally set up across—

Mr PHILLIPS: There is a requirement in the protocols for assessment of the performance of the board. When that was written it was assumed it would include the chancellor, but in many cases it does not.

Reverend the Hon. Dr GORDON MOYES: In your role on the University Chancellors' Council, does the council perform any mentoring roles as far as new chancellors are concerned? For example, in a situation with which I am familiar, in the United States when a new president of a university is appointed, before that president is inaugurated there is a period, sometimes several months, during which time a structure of other presidents of other nearby universities are involved in mentoring him in his own role. Is anything like that done here?

Mr PHILLIPS: No.

Reverend the Hon. Dr GORDON MOYES: Would there be value in that?

Mr PHILLIPS: There could be. To the extent that it happens, it happens informally and tends to happen within States, but there is nothing set down that requires that or provides a formal structure for that.

Reverend the Hon. Dr GORDON MOYES: My concern is to avoid the conflict of that role definition.

Mr PHILLIPS: Yes, as I said earlier, when people come into this role it would be very helpful to give them better indoctrination. We do very good indoctrination these days for members of councils; it really has improved immensely.

CHAIR: Yes, that is right.

Dr JOHN KAYE: Induction or indoctrination?

Mr PHILLIPS: Not indoctrination, it was probably a Freudian slip.

CHAIR: To expand on that, who do you see doing that induction or training of chancellors? Who would be best placed to perform that role?

Mr PHILLIPS: There has been an attempt by the Institute of Company Directors to do some work on this. If people choose to do the Institute of Company Directors course, particularly the chairman's course, they will be in a better position coming into the university. It does not do it quite well enough yet. It may be that the Chancellor's Council could do something about it, it would be the only other body that I can think of at the moment.

Reverend the Hon. Dr GORDON MOYES: That would be the appropriate body, although the Institute of Company Directors established specialised training courses, I am aware will not-for-profit organisations and educational institutions, et cetera.

Mr PHILLIPS: They did. Some years ago we managed to persuade them to run courses for chairman, which they were not doing them. I believe it would help considerably if they were master classes, I suppose, for chairman and you could extend that to master classes for chancellors.

Reverend the Hon. Dr GORDON MOYES: I imagine the Chancellor's Council would be the appropriate body to do that?

Mr PHILLIPS: Within the structure of the university. I should explain that we tried to keep that Chancellor' Council as far as possible an informal body. We do not want to cut across what Universities Australia does. Our major reason for existence is governance, to look at things, which, in the normal course, are the prerogative of university councils rather than university executives. That is how we got involved in the governance protocols. The council started off the program of indoctrination and training of council members with some money given to us by the Commonwealth at the time. We have now passed on to other people to do, because we do not want to get to the stage where we had to set up a permanent Secretariat, because once you get a permanent secretariat you start to do things you really did not intend to do when you began.

The Hon. CHRISTINE ROBERTSON: On that last point, if they were to be regimented compulsory training for each chancellor that commenced, in your mind—and this is a personal question, not an organisational one—what would be the risk of it becoming an indoctrination project and the individual universities leucine a lot of their individuality that is their value? What would be the potential if there were a blanket?

Mr PHILLIPS: I personally would not favour making it compulsory. I am more in favour of making the thing available. I do not believe you can take control of this process out of the hands of individual councils, or whether there would be a great danger of indoctrination—using the word in its proper context—I am not sure. It would depend how it was structured. I personally would not see it happening in that way. On the other hand we want university councils to have responsibility for their operation, to understand those responsibilities and to carry them out properly. I am not greatly in favour of making these things compulsory.

The Hon. CHRISTINE ROBERTSON: On the issue of our chancellors, do you think there would be potential—as picked up by Reverend the Hon. Dr Gordon Moyes—to set parameters and performance indicators they did not threaten the individuality of the individual universities for chancellors? Not complicated, in-depth ones about what subjects to teach.

Mr PHILLIPS: I think it would be difficult.

The Hon. CHRISTINE ROBERTSON: Do you?

Mr PHILLIPS: Yes, and the reason I say that is that chancellors are an integral part of the board of trustees and to some extent the kind of KPI you would put on a chancellor would be that the board of trustees has to operate effectively, properly and ethically and achieve certain things for the university. If a university is having trouble is at the governance level, the first person you would always blame is the chancellor. I always talk about the first requirement of a governing body being harmony; not having everyone singing the same note, but from the same hymn sheet. Harmony means you can argue, you can debate and at the end of the day you can make decisions in the interests of the university. At the end of the day it is the chancellor's main role to conduct the orchestra for best effect.

The Hon. CHRISTINE ROBERTSON: Yes, but it makes for a great difficulty when talking about the review processes for chancellors.

Mr PHILLIPS: Yes.

The Hon. CHRISTINE ROBERTSON: Could you give more information about the discussions on Corporations Law and protocols? Could you give some indication of differences under discussion in relation to those pushing for Corporations Law and those accepting or working with the protocols as they currently stand? What differences would occur?

Mr PHILLIPS: Very little. The people who sat on the councils, would have availability of the business judgment law. There is something akin to the business judgement law that has been introduced into the legislation of the New South Wales universities at least. It is not quite the same, but fairly similar. There is not much else now that would be there. The big differences that exist at the moment are that the universities' Acts are each a separate Act, which, in some parts of the legislation, take account of the particular place of that university.

At my university there is a section that tells us our responsibilities in relation to the greater Western Sydney, which you would not get if it were not. Under present arrangements, it is possible for governments to legislate to make special provisions for particular universities, which probably would not be the case if it came under the Corporations Law. I am not sure there would be much other change after that. There would be some changes in periods for which directors can serve. In most New South Wales universities at the moment, members of councils can serve two terms. If they get a strong vote from the council they can serve a third, but they cannot go beyond that. There are many things like that in our legislation that are not in the Corporations Law.

The Hon. CHRISTINE ROBERTSON: So where is the debate emanating from?

Mr PHILLIPS: The main drivers for it are people from the business sector.

The Hon. CHRISTINE ROBERTSON: Who want to get their fingers in?

Mr PHILLIPS: Not so much that, I think they regard universities as not having the same kind of disciplines apply to them as business companies—which is a bit strange given recent events. The major protagonist I think was the Business Council, particularly David Murray when he was chairman. David is still of that belief. In fact I saw him last night and he said, "I hope you tell the Legislative Council that they should put them all under the corporations law." I must say I am not sure that that is the case.

There is a big push at the moment—as you know—following the Bradley report for the Commonwealth to take over the legislative control of higher education providers. One of the things that that would be likely to do would be to change the present system, where each university has got a set of legislation which applies to it, into a blanket legislation which applies to all universities. Because I cannot see if the Commonwealth took over it would be legislating separately for every university. Whether that is good or bad I am not sure. I happen to think that the present system, after the changes that were made a few years ago, is working quite well and I am not prone to say let's change things just for change.

The Hon. GREG DONNELLY: Would you put on the record a general statement as to what the University Chancellors' Council is? Is it a State organisation? Is it part of a national organisation?

Mr PHILLIPS: The University Chancellors' Council, which in one way or another has been operating for about eight years but as the Council for the last three years I think, is an organisation which is open to membership by chancellors of all universities in Australia—that includes private universities as well as public universities. Originally the Vice Chancellors Committee used to have an annual meeting with the minister and the Prime Minister over a black-tie dinner and they would invite the chancellors to attend that dinner. The chancellors would normally meet for an hour or so in the afternoon before that dinner. It was really a very unstructured gathering.

When Brendan Nelson introduced his reforms, and part of them had to do with governance and the training of university people, we decided that we needed to do rather more as chancellors than we had been doing. Many of the things that were being proposed were the direct responsibility of the council of the universities and, to our surprise, we found that they were being debated by the Vice Chancellor Committees and not taken to the councils in many cases at all. We changed the arrangements so we met as a group of chancellors twice a year, usually for a full day, and that is what we have been doing ever since. At the normal meeting of the 38 or 39 universities we would probably have up to 34 or 35 representatives present. Sometimes because chancellors had other things to do we would have deputy chancellors representing them, but usually we would have a very large majority of Australian universities, including the Notre Dame University and the Australian Catholic University.

The Hon. GREG DONNELLY: You said your thoughts about business and university had developed over time and changed. You have moved from a position that you held at a time in the past to your current view. Would you explain what that change is and why it has come about?

Mr PHILLIPS: It came about because I was asked by the Institute of Company Directors to give an address at their annual gabfest in Coolumb, or wherever, and the title I was given was "Universities—the new business model". In preparing to give the talk it forced me to sit down and think a good deal more about this relationship of management of the university and the direction of the university compared with the way that businesses operate. When I went back to see what I had said in the past I could find myself saying in earlier talks I had given that universities were not a business but they had to be run in a businesslike manner. When I went through it for the purposes of this subsequent talk—which is now probably five years ago—it did strike me that is what had happened with the way the Commonwealth Government was operating, where nearly everything new that was being done had to be recompensed by something the university did. In other words, you only got money if you fitted it into some particular requirement that the Commonwealth put on you. The Commonwealth decided that they would have a new method of reporting, which cost our university \$1.5 million in the first year because we had to change our entire computer program with no benefit to the university.

There were a whole lot of these things that struck me as not really university things. You have to think of these things in terms of what you do. When I looked at some of the other things we did; we had a printing operation, we had a subsidiary company that looked after student accommodation and the hiring of facilities, all of these had been running for a long time with no thought about whether they could contribute to the financial situation of the university or not. It was thinking through all of these things that had really changed, as a result partly of governance but very largely because of the financial restrictions—which particularly the newer universities were facing—it caused me to think that really it is a business but it is a different kind of business. You have to really think about the differences as well as the business side of it, but it is a business. That is what caused me to change.

The Hon. GREG DONNELLY: Would you be able to provide the Committee with a copy of that paper?

Mr PHILLIPS: I can send you a copy if you would like it, yes.

CHAIR: That would be very useful. Thank you for your attendance today as a first witness. You have really set the scene on your views on the hybrid model of the university as such between a corporation and an education institution. I hope you would allow our secretariat staff to clarify anything they need to with you?

Mr PHILLIPS: That is fine.

UNCORRECTED

(The witness withdrew)

(Short adjournment)

JAMES ANTHONY SWANSSON, governance researcher and consultant, appearing on behalf of the National Institute of Governance at the University of Canberra, sworn and examined:

Dr SWANSSON: I was principal in charge of developing the university governance professional development program and I have been a university governance consultant and researcher for the institute.

CHAIR: We are asking witnesses that if they take a question on notice to send the answers back to us within a couple of weeks. There may be opportunities for the secretariat to talk further with you after you give your evidence today. We also offer our witnesses an opportunity to make a brief opening statement. Would you like to do that?

Dr SWANSSON: I will try to keep it short and simple. Two propositions: one is that university governance is in general a very complicated area of debate internationally, although the level of debate in Australia is quite limited. The second point is that this is a very timely inquiry, even limited to the New South Wales universities, because the progress of that debate in Australia has come to a bit of a hiatus and there is an opportunity here to jog it along towards the next step.

CHAIR: When you say that the debate is timely because it has come to a hiatus, could you flesh that out a little and tell us why that is? Is that because of the Bradley report? What is the reason for that?

Dr SWANSSON: There are two elements to that. One is there have been three reviews which encompass university governance in the last 18 months. The first was the Ministerial Council on Education, Employment, Training and Youth Affairs [MCEETYA] review the national governance protocols themselves. That was placed on hold partly because of the Commonwealth's initiation of the Bradley review and partly because of effectively the revocation of the national governance protocols. The second was a review of higher education legislation in the State of Victoria. That was motivated by the introduction of the Human Rights Act, which provided an opportunity to look at all their legislation and potential improvements. That has also effectively been put on hold because of the Bradley review, and now the Bradley review included regulation and governance as part of its terms. We effectively culminated all of these in our Institute's submissions to the Bradley review.

The second main issue is that the single vehicle for debate around university governance in Australia has been the national governance protocols introduced in the Higher Education Support Act in 2003. The section of that Act that deals with the national governance protocols is the same section that dealt with the higher education employment workplace agreements, which the new Commonwealth Government repealed as part of a commitment to removing Australian Workplace Agreements.

The Hon. CHRISTINE ROBERTSON: The component or the protocols?

Dr SWANSSON: The part of the Act that related to the protocols. The protocols are actually contained not in the Act but in regulations. The Act required that all Australian universities report to the Commonwealth Minister for Education on an annual basis their compliance against the national governance protocols. That requirement for reporting and the corresponding funding that was attached to it was removed by the removal of that section. In effect the national governance protocols are now a voluntary standard for the sector.

CHAIR: How long has that been the case? Was that immediately?

Dr SWANSSON: That was done about this time last year. The repeal was in February and reporting is normally in August-September, so there would have been no reporting last year.

CHAIR: Do you know, if it is voluntary, whether anyone volunteered to participate in that review or did they say, "That's great, we don't have to worry about it—do what we want"?

Dr SWANSSON: Reading through part of our submission to your inquiry and our submission to the other reviews that have gone on, part of the issue to our mind has been the transparency around these governance protocols, particularly because they related to funding. The university report on compliance to the department and the Minister was not made public by either the university or the department and the Minister's acceptance of those reports and comments and conditions on those reports have not been made public either. It is not so much in the legislation or the regulations to do with the protocols but in the way they are handled

because it is not an open or transparent process. The wider public and the particular issues around the university are not informed about what compliances may have been made, although this is a point acknowledged by the department: all universities satisfied the terms of the protocols to the extent of receiving their funding, but that is not a guide as to whether they changed their behaviour.

CHAIR: To flesh that out further, your submission to the national governance protocols talked about a rules-based sort of mentality and compliance that was "tick a box" but not really providing any incentive for improvement. Can you give us some information about what you think is a good governance culture and how we could improve it? What is in fact the standard and quality of governance protocols in New South Wales universities?

Dr SWANSSON: A general statement with regard to the quality of governance of Australian universities, including those in New South Wales, is that it is reasonably good. We have a very large, thriving and successful sector. But governance in general is an area of not particular academic and considered review. It is 15 to 20 years old and largely driven by a well-known litany of failures in the corporate sector, business sector. That has been transferring slowly into the public sector, the not-for-profit sector, universities. As early as 10 years ago the academics and regulators who were looking at this area, primarily to do with publicly listed companies on the stock markets, had recognised that a compliance regime gets you compliance. People do what is necessary in order to satisfy the laws that we have established. That does not necessarily mean that they actually live by the principles that we want them to live by. The Australian Stock Exchange, and I think there was a joint project by the Canadian stock exchange and one of the leading accountancy associations—all began talking about expressing the regulatory requirements of organisations more in terms of the principles: that you should have a high level of ethics, you should be looking at the strategy of an organisation, you should be considering the impact your organisation has, and much less about "You are required to do this" or "You shouldn't do that". We cite some of those in our written submissions.

Part of that discussion naturally turned to: How do you promote those cultures? The simplest thing is: Tell us. Particularly in the context of publicly listed companies, governance practices are where you observe the principles that we have set out as being required. The Australian Stock Exchange, for example, has, I think, 11 principles, although I would not be held to that number. They have an "If not, why not" clause: If you are not doing this, explain why. So that your owners can make their own judgement as to whether or not your governance practices meet the standard they desire and that there is that level of transparency such that people who ultimately are going to take control of the organisation, being the owners, can have the knowledge in order to enforce their right as the owners.

That probably is not an answer to the question you asked. It leads me to the next major theme of our submissions, which has been that, particularly in Australia, and even worse in Victoria, it is very difficult to determine who the owners of the university are. In fact, I have a supplementary table for the Committee which looks at the language of the University Acts of all the universities around Australia and identifies some of the key terms pertinent to this point. Nearly every university is identified as a body corporate, and the emphasis in governance of scholarship and regulatory attention over the past 10 to 15 or 20 years has been on improving the performance of the governance of the body corporate. However, in one way or another nearly every Australian university also defines the membership—a membership technically consisting of its staff, its academic staff in particular, its students and its principal officers, including those of its governing body.

In reading the table you have just been given, nearly every one of them includes the definition as to body corporate. Those in Victoria include a definition as a body politic, the only problem there being it is not exactly clear what a body politic is. The membership of the university often consists of these classes of convocation, members, academic staff, students, and what have you. Queensland also explicitly defines universities as a statutory body of the State, although it is nearly the only State to do so. As a product of the national governance protocols, the State Acts now also include statements to do with the duties and responsibilities of the governing body and individual protocols.

At core of the issue, to my mind at this point, is: Clearly the States being the bodies that enact this legislation bringing these organisations into existence have a stake in ownership of these institutions, and they formally report to you through an annual report and Auditor-Generals' reports. We also have a class of owners which would be the membership of those organisations, and in one case in the legislature they are identified as moral owners, that is, they are people who have a stake in the mission of the organisation, but you can build an argument based on what the university has that it is also implicit that there is recognition that they are legal owners.

The ultimate picture is: This is simply not clear, particularly in Victoria where you also have the university defined as a body politic, where the common notion is that a body politic is a community which is able to govern itself but, by implication, also tax itself in order to cover its body corporate responsibilities. I think it is even more confusing. This raises the question: How can you have transparent, accountable governance which is appropriate to the organisation and its ownership if you do not understand who the ownership is? That is possibly one area where this inquiry may be able to forge ahead a bit in where the State of New South Wales lies.

CHAIR: What would your recommendation be on that? Universities would fiercely fight to have their individuality, according to my interpretation of the submissions. Would you say that there should be a standardised form? Are you saying that they should go under the Corporations Act, or what would you recommend?

Dr SWANSSON: I do not think they fit under the Corporations Act. That is a fairly straightforward statement to make. While I agree with John Phillips that they are businesses, I think in the MCEETYA submission they include a table showing how they are very large businesses comparable with very large companies, and we need to be run efficiently and accountably. They still have a very distinct purpose, a very public purpose, and that is recognised by the fact that you have to be recognised by a State government in order to be called a university in Australia, under the national protocols.

I do not inherently think transfer to Commonwealth ownership would solve the problem. Certainly there is the problem of the universities who have complained for a long time about the level of red tape and regulation within the sector. It is not an a priori that you will get reduction of that just because of the shift in ownership. I do think there is room to clarify some of these issues within the existing legislation for universities, particularly to clarify who are the owners; what is the balance—particularly recognising at least the two groups of the State as an owner and the members of the university as an owner—of that ownership, in the sense of what is the balance of responsibilities. At least that would enable those responsible for the governance of the universities to understand to whom they are accountable, to whom they should be talking, finding out about what they should be doing for the university and also reviewing what they have done. And ultimately, if they fail in that, who would hold them to account for that, and ultimately who would actually try to sue them. At the moment I do not think you will find anyone has the ability to sue them.

Dr JOHN KAYE: I want to talk generally about governance and your view of governance. What is the outcome that distinguishes between good governance and bad governance? What features of a university would say that the governance was good or the governance was bad? We keep talking about good governance, but we do not really defined what we mean by "good" in that statement.

Dr SWANSSON: It is problematic, and one of the reasons why governance is a difficult topic to study and talk about. Ultimately, the sign of good governance is the way you are operating an organisation.

Dr JOHN KAYE: You have closed the circle on the definition by doing that.

Dr SWANSSON: One of the problems you have is that it is management that you hold responsible for actually achieving that good operation. It is a bad definition, because it does not help you distinguish between the governance role and the management role. One substantial issue in governance that has come out over the last 10 or 15 years has been a shift from a focus on compliance to a larger role for a governing body in developing and overseeing the implementation of the strategy of an organisation. Another part of the answer is: It is a moving target that you are trying to hit.

You still have a situation where senior management is largely responsible for the development of detail of a strategy and very much responsible for the operational implementation of that strategy. But if the governors of an organisation are meant to be either skilled and knowledgeable in the business of that organisation or representative of parts of the ownership of that organisation, knowing and understanding where that organisation wants to go and thinking about what other things it needs to get there, and what are the challenges that are going to stand in its way of getting there, are going to be key things you would expect a government body to be discussing.

A good example, particularly in the current financial context, would be their estates. I use the English word because in Australia it is an area that we have not discussed very well and we do not describe it very well.

Essentially as big businesses universities own a lot of property and some of the universities are now very old and need to be maintained, and in some cases this needs to be replaced entirely. It is something that historically, particularly in the 30-year era where we have had nearly full State funding for the universities, the universities have shifted this burden onto government rather than taking allowances for that themselves.

Last time I looked at it the figures in the written submissions we had a deferred maintenance bill of a bit over \$10 billion—that is not quite correct, it is a bit over \$1 billion; it is about 10 per cent of the annual income of the sector, which is about 6 per cent of the asset value, so it is nearly double the 3 per cent that DEST actually considered acceptable. Is the fact that nationally we are in that sort of situation a sign that there is a weakness in the strategising of the governing bodies of our universities? I think the simple answer is yes. The complicated answer is what do we now do about it?

Dr JOHN KAYE: Is it fair to say that what you want in a university is financial probity, good financial management so that the money is allocated appropriately and managed well, and you want quality education and research and consulting activities? Would you agree that good governance is a key ingredient to producing outcomes in those three sectors?

Dr SWANSSON: Yes.

Dr JOHN KAYE: Do you think the higher education protocols are a step forward or a step backwards across all three of those sectors?

Dr SWANSSON: The national governance protocols focus on financial aspects of the body corporate so they do not have anything to say about the body politic and have very little to say about education, apart from requiring effectively that it is part of the objects of the university.

Dr JOHN KAYE: But you would agree that the three areas interact very strongly; a change in one will have impacts across the other two?

Dr SWANSSON: They will. A short version is they are a good step forward but there are more steps to be taken. I suppose another way of characterising governance generally is that it is a continuous improvement. We do not understand it; it is always defined in relation to its environment so one of the things you do is you review what you are doing and where your practices can be improved, you improve them and where your practices are redundant, you stop doing them.

Reverend the Hon. Dr GORDON MOYES: As long as I can remember universities have been centres of grievance and conflict. In your research did you find that all centres had adequate grievance procedures in place and independent grievance bodies and, in particular did the senates, councils and boards have grievance committees?

Dr SWANSSON: It is not a subject I can answer in great detail. Obviously issues of grievance were identified as significant. They were included in the national governance protocols and the most I could really say is you presume by the fact that the protocol has been satisfied for four years in the reports of all our universities nationally then that protocol must, in some sense, have improved grievance procedures.

Reverend the Hon. Dr GORDON MOYES: Why is it that grievances seem to get settled more in the *Sydney Morning Herald* than in any other place?

Dr SWANSSON: Can I ask for clarification of whether you mean grievances with students and staff and members of the community and the university or grievances within the governing body?

Reverend the Hon. Dr GORDON MOYES: No, usually between members of staff and the students versus the governing body, senate or council?

Dr SWANSSON: Presumably they have processes in place; that was a requirement of the protocol. If they are still coming to that level of attention, then they are not working well and could be improved. It is that simple. It is also a matter that is largely internal to the university.

The Hon. TONY CATANZARITI: In your opinion under which banner should the university be run, at the national or State level and why?

Dr SWANSSON: There are clearly tensions in the regulation of universities at the moment because we have State founded universities that are largely funded at the Commonwealth level. As John Phillips noted, over the last 20 years we have had movement in the "new so-called public management", which gives you the money but which attaches strings and conditions to that money to the point where the Commonwealth micromanages significant activities within the university.

A university and its governing body have their hands tied to a considerable extent over how they spend their resources to achieve their aims. That is a problem not invented by the States. To a significant degree it is difficult to see how you could improve that, apart from negotiations with the Commonwealth and States. Internationally though, one of the things that stands out, particularly with the United Kingdom, is that the regulators, the leaders of the governing body, being the chancellors, or the chairs as they are often called in the United Kingdom, have a common strategy which is that improved governance of individual organisations means that you can have lower levels of regulatory interference within an organisation, which means that you have lower levels of cost to the State or the Commonwealth in enforcing that regulation.

Again, a major implement of that is the transparency in that the governing bodies of the institution demonstrate they perform at higher levels and therefore that they are low risks in a regulatory sense and therefore there is a low level of intervention, but it does not quite answer your question. The short version of the answer is by handing universities from the States to the Commonwealth you will not solve much of anything in this area. You just change the environment.

The Hon. CHRISTINE ROBERTSON: Do the current protocols not registering their legal status or otherwise actually provide measures for governance for chancellors, vice chancellors and councils?

Dr SWANSSON: The short answer is no. Protocol 4 has two parts. The first part is that the governing party has to make available a program of induction in professional development, which is a matter we could discuss at great length by itself.

The Hon. CHRISTINE ROBERTSON: What happens if they fall over on a protocol or a reporting? It is just about resolving why that it is not happening, is it? Is there a measure?

Dr SWANSSON: The second part of the protocol states that at regular intervals the governing body must assess its performance with these protocols and identify needed skills and expertise for the future.

The Hon. CHRISTINE ROBERTSON: Without criteria?

Dr SWANSSON: There are no additional criteria to that.

The Hon. CHRISTINE ROBERTSON: To measure.

Dr SWANSSON: That said, this is one of the key focal points of scholarship and activity that endeavour in the field of governance. It is not actually that hard to reflect on performance and then to say, "These are our joint performance objectives as a team" and then 12 months later say, "How did we perform against those objects?" There is a very large body of work and Professor Geoffrey Kiel is one of the leading Australian academics in this field. Whether or not individual organisations or universities apply any of these measures is up to them.

The Hon. CHRISTINE ROBERTSON: Can I ask about the implementation of those protocols because we were tightly tied to the funding that came to universities at that time.

Dr SWANSSON: That is true.

The Hon. CHRISTINE ROBERTSON: They were implemented without a way of measuring whether or not they happened?

Dr SWANSSON: No, the universities were required annually to report their compliance against all of the protocols.

The Hon. CHRISTINE ROBERTSON: Were they given indicators to report from?

Dr SWANSSON: No.

The Hon. CHRISTINE ROBERTSON: They would just tick?

Dr SWANSSON: You will observe that the governance protocols were developed in conjunction with the chancellors in identifying the areas and how they would be described. There is very much a sense that the universities had the ability to develop some of these things internally, however much you want to debate that. The process was that they would demonstrate that they were doing things.

The Hon. CHRISTINE ROBERTSON: They had a go.

Dr SWANSSON: They would not necessarily demonstrate that those things worked. All that was required is that they demonstrated that they had made changes.

The Hon. CHRISTINE ROBERTSON: In No. 5 on your submission, are you actually inferring that councils or senates, whichever word is utilised, should not exist, should go, or have their roles changed? There is an issue here about councils interfering with vice chancellors' roles. Is that what you are saying or have I picked up the wrong message?

Dr SWANSSON: No, I do not think that is what I am saying. A major point of the terms of reference of this inquiry has to do with the roles of the chancellor and the vice chancellor particularly and more generally the council as the governing body. There is a for-profit corporate model put in place by the national governance protocols where one of the first requirements of the duties of the governing body are identified that the vice chancellor is the chief executive officer of the organisation.

Obviously that language evokes a particular sort of relationship. That grates in an academic environment for a number of reasons, most of which have to do with a culture within a university where the vice chancellor is it. When I went to university I did not even know necessarily that we had a chancellor let alone what the person's name was, what their role was or how they affected the future of the organisation that I was a fervent member of.

That culture has not shifted very much. An issue that we have encountered in consulting with a couple of universities, and certainly we have seen in the stories that have been reported in the press in New South Wales and Victoria, is that when you do have a conflict between a vice chancellor and a chancellor specifically or the governing body in total, the internal mechanisms that that body has for dealing with that conflict obviously are proving insufficient to prevent it becoming a public debate.

The Hon. CHRISTINE ROBERTSON: I see: You are making a statement about that issue. That is fine. I have the gist, thanks.

Dr SWANSSON: Once it becomes a public debate, the culture that we have within the university in general, though it is not with the vice-chancellors, does tend to take over. I am contrasting it with a business environment. You would go further and say that if the board were not throwing out some of the CEOs proposals from time to time, you would have to say that the CEO just was not very courageous.

The Hon. CHRISTINE ROBERTSON: Or the board was not.

The Hon. GREG DONNELLY: Thank you, Dr Swansson, for coming along today and giving evidence, and thank you for the table. It is a very interesting matrix that lays out the situation in a range of universities. There are four universities listed in the table that have been struck out. Can you explain what the situation is in relation to those universities?

Dr SWANSSON: It probably means that I did not have access to the relevant analysis.

The Hon. GREG DONNELLY: The other question I have relating to this table is that at the top there is the word "members". You may have explained this earlier, but I may have missed it and in that case I apologise. What does that column mean? I am sorry; I do not mean to put you on the spot. I just was not sure. Some have ticks and some have crosses.

Dr SWANSSON: That is just to make it more confusing. The analysis is specifically picking up whether or not these words are used in the Act. It is not necessarily taking the next step of putting together precisely what they mean.

The Hon. GREG DONNELLY: Okay.

Dr SWANSSON: The intent in looking at the members is where there is a definition of "members" of a university. In some sense, as you might have with a company, it has a defined membership with its owners, and more so for an incorporated association which has its defined membership. In that sense, these people are all members of the university. They constitute its community and, ultimately perhaps, if we ever get representation of it nationally, its body politic. The crosses are probably because the wording in the Act is not clear to show that that is what membership is about. The ticks are there because that is exactly what the reference to membership is about.

The Hon. GREG DONNELLY: I will take you to Bond University, which is at approximately point number four down the column. There is very little information that appears to be identified there.

Dr SWANSSON: Bond gets one tick. Bond is a private university and an incorporated company, and it does therefore have a membership of that company.

The Hon. GREG DONNELLY: Right. That leads me to my final question: in terms of the contrast between the public and the private universities—and this table contains both—on the issue of governance, is there an easy way of explaining in the governance models the difference, to the extent there is a difference, between the public and a private university? Is it in fact quite complex to explain the difference in governance? This is not meant to be a complex question, but it probably is.

Dr SWANSSON: In one sense, it is simple. A private higher education provider, to use the Commonwealth term which means a university or a private provider providing degrees, will be either a company limited by guarantee drawing from a limited association or an incorporated association. It will have to comply with governance that is required for those forms of incorporation. In addition, depending on its status and whether it is a university or a self-accrediting provider or a non self-accrediting provider, it will have to meet the requirements of the national protocols for higher education providers which have in them a general clause to the effect that the organisation has academic governance of a standard that would be expected of an organisation at that level. Does that make sense? Private universities have to demonstrate that they have governance at the level of a public university.

The private side of the answer to that question is quite straightforward. The public side is much more complicated. I do not know the status in New South Wales. I have not looked at the relevant Acts very closely, but in the submission we made on the Victorian higher education legislation, we did look at this quite closely. In a sense, that academics and general staff of the university are not public servants is expressed by an exemption from parts of the Victorian Act, which defines them as public servants. The point that I made in that submission is that that removes the requirement for those governors of the body to meet the governance and financial requirements of the organisations that would be required of statutory bodies. So there are no financial requirements or governance requirements for public universities. They are not covered by the Corporations Act, and they are not covered by a Public Administration or Financial Management Act. They are not covered by anything apart from the general community sense that we have. But in order to enforce that, we have to take it to court. There is no context for that to happen.

CHAIR: Thank you very much. I know that other Committee members have questions, but we seem to have run out of time. I hope you will not mind if the secretariat staff come back to you with further clarification and further review of your comments today. Thank you very much for your evidence and for adding to our debate.

Motion by the Hon. Christine Robertson agreed to:

That the document be tabled.

Document tabled.

(The witness withdrew)

FREDERICK GEORGE HILMER, Vice-Chancellor and President, University of New South Wales, Kensington, 2052, sworn and examined:

CHAIR: We appreciate your coming in to give evidence in both your capacities. I know that you are here representing the vice-chancellors committee, but there may be occasions when your other role is relevant. If you like, there is an opportunity for you to give a brief opening statement. It is up to you.

Professor HILMER: Let me say firstly that this inquiry is very welcome. The whole governance issue is one that has been changing and the Acts that have not been. It is really time, I think, that we revisited the issue of governance. The universities have changed dramatically. If you look at the universities, even our university which is 60 years old, but any of the universities I represent, they were formed under Acts some 100 years ago. They are quite different institutions in size and complexity. We are a moderately sized university with 40,000 students. We have a budget of over \$1 billion and we have an enormous range of disciplines, not the old idea of arts and sciences. Many universities have 15 or 17 faculties and 100-plus schools and sub-disciplines. They are very, very complex organisations.

The reason that governance is important is not just because the university is more complex and the situation has changed. As I reflect on what has really derailed universities and when a university does go wrong or bad, it occurs more often than not when governance breaks down and in particular when the relationships between the governing body, the academic and the managerial leadership breakdown.

It is no great secret that the reason I came back to the University of New South Wales was because, frankly, we had dysfunctional governance. As a result of that governance, I was the fourth vice-chancellor in four years. Our research performance had been drifting down. Our student enrolments were not going the right way, both in terms of quality and numbers. I saw firsthand that dysfunctional governance is really damaging to the organisation at a time in the development of our economy—our smart, knowledge-based economy—when the universities are more important than ever. I welcome the inquiry.

I am happy to wear both hats and talk to two submissions that we have sent—one on behalf of all universities, of which I am the convener, and the second of behalf of the University of New South Wales. We really could see ourselves as a mini case study in terms of governance and how we would like to be involved. I am happy to talk to both of those, but the major concern we have is that governance of universities is inherently unstable. I do not wish to offend, but to some degree we have an NRMA situation where small groups with particular interests can cause enormous instability in the operation. I think we are just too important for that to be allowed to occur.

That occurs because of the Acts and the processes by which the governing body is selected and then the processes by which the governing body is formed in terms of size and the composition of the governing body. We have put forward some specific recommendations. I think universities as a whole, not just the New South Wales universities, feel we would like some flexibility in governance, so that we do not have a one-size-fits-all, and we would like something that is far less prescriptive in detail but allows the university to evolve its governance as the needs change. A good example in our case is that our university ran into a lot of financial problems. It made a really bad investment that I have had to unwrangle. We did not have the financial skills on the council, and we had nowhere where we could get them readily.

We have kind of fixed that because crises focus your mind, but we solved it in spite of the governance, not because we had good governance. With good governance I do not believe we would have, for example, made what has what turned out to be a very expensive and unwise investment in Singapore, which cost us \$50 million that I would much rather see put into learning and teaching. Maybe that is enough. I will be happy to take questions.

CHAIR: Thank you. Your comments are really valuable. I would like to flesh out a couple of your comments. Following our discussion this morning, are you suggesting that, in improving governance, universities should perhaps fall under the Corporations Act, or do you think that is too prescriptive?

Professor HILMER: When we did have that discussion, a number of our VCs said, no, it would be fine. We had a meeting of the VCs and chancellors at the time, and some people thought that would be fine. Some universities, such as the Australian Catholic University, are under the Corporations Act. The Corporations Act is quite flexible. At the moment, each of us has our own Act. We can either move under the Corporations

Act, or our own Act could be tailored to our own requirements. We really do not mind how it occurs as long as the result gives us a little more flexibility and a little less rigidity in terms of size, composition and some of the fairly detailed descriptions about roles within the university that are in the Act and that almost are being bypassed by the changing nature of the university.

CHAIR: In the roles of people within the university, a number of submissions suggest that there is a lack of understanding of those different roles within the governing body particularly and conflicts and misunderstanding of the roles of the chancellor and vice-chancellor for example, and, further, a lack of education of those roles. What are your views on those issues?

Professor HILMER: If I jump to a company, most of the companies do not rigidly define the chief executive's role or the chairman's role. It is generally well understood that the chairman's role is to chair the board and the chief executive's role is to effectively operate, that is manage, the company. That is generally the understanding in the university. I do not know if you can be much more prescriptive than that. What happens if you change that, I do not know.

I think the problem occurs because there are people who do not understand the role. At the moment we have a chancellor, David Gonski, who is a very skilled chairman of both public and private enterprises. He and I have a very clear and workable arrangement and he has been able to make that work. That comes back to the skill set that you need. You need to have a skill set that the current arrangements do not necessarily give you, which includes both the ability to understand the subtleties of a chairman role, here a chancellor role, and the subtleties of a chief executive, or vice-chancellor, role.

If that works well and there is a good partnership, universities do well. If it does not work well, you get all the fun that keeps the *Sydney Morning Herald* selling copies to past graduates. You can codify it to an extent, but I do not think codification will solve the problem. Training is very important. We put all our council members through the Institute of Directors course. If you are an experienced director you might choose not to attend, but everyone is entitled to do that course. New members who are not from a business background do that course. We also have an induction session for new members and we spend a lot of time talking about roles, the Fireman's case and the role of council is primarily not that complicated. It is, firstly, to select and if necessary deselect, the vice-chancellor. That is the most important role.

When I started three years ago I visited top universities to understand what good universities did. At Cambridge I asked them to tell me about the council and how it operated. They said that there is only one item on the agenda at every meeting. When I asked what that was, I was informed that effectively it was a vote of confidence in the competence of the vice-chancellor. That is role number one. Role number two involves strategy in major decisions, such as should we open a campus in Singapore and should we get into veterinary science. They are major decisions and you need the skill base around the table to interrogate that.

The third role is about values; what we stand for. We discuss that at council and talk about things such as social inclusion and equity. We talk about the values in a university and define that. The council will approve that, and that is important. There are a lot of ethical issues in universities, particularly when medical and psychiatric faculties are involved.

Lastly there is the compliance and performance role. You can describe those roles. As long as they are described in general terms that could be useful, but it is having people who understand the roles in the way that words are interpreted is where things either work or do not work.

Reverend the Hon. Dr GORDON MOYES: I acknowledge your experience and expertise in all these fields. You said that David Gonski and yourself have wonderful understandings of each other's roles and that you work harmoniously. Are those roles defined in the Act?

Professor HILMER: Only in the very broadest terms. My role is—

Reverend the Hon. Dr GORDON MOYES: Is your role in the Act?

Professor HILMER: My role is in the Act as the Principal Executive Officer.

Reverend the Hon. Dr GORDON MOYES: Is the word "President" defined in the Act?

Professor HILMER: "President" is not defined in the Act. To give you the history, three or four predecessors ago we found that in America the vice-chancellor tends to—

Reverend the Hon. Dr GORDON MOYES: Yes, so you are using that for international relations, so they would understand it?

Professor HILMER: "President" is meaningful in America, "vice-chancellor" is meaningful in the British model, in the United Kingdom, Canada, New Zealand, South Africa.

Reverend the Hon. Dr GORDON MOYES: Sir, I am not asking you about convenience. I am asking about what is in the Act, because many universities do not even have vice-chancellors in their Acts?

Professor HILMER: I am not an expert on many universities, but in our Act the vice-chancellor has a fairly loosely defined but clear role, which is that they are, in effect, the principal academic and managerial officer of the—

Reverend the Hon. Dr GORDON MOYES: Is that written into the Act?

Professor HILMER: Yes, it is.

Reverend the Hon. Dr GORDON MOYES: There are occasions when my good friend David Gonski and you might end up at opposite extremes on issues, and then you have to resort to Acts?

Professor HILMER: We have had different views and, again, Singapore is a case in which we had different views. There was a case where we both spoke to the council and in the end reached a common view. So we do have different views. The different views are not about our roles or about the Act. In the history of our university, which I know reasonably well, we have had councils who did not understand their roles, and sought to micro-manage.

Reverend the Hon. Dr GORDON MOYES: Yes.

Professor HILMER: When I came, for example—

Reverend the Hon. Dr GORDON MOYES: My concern is—

Professor HILMER: —the council had mandated when term started. Term will start on this day and of course it has to be changed every year because the calendar does not fit. To me that was a symptom of a council that did not understand its role. The Act was clear!

The Hon. CHRISTINE ROBERTSON: We understand the divisions of power.

Reverend the Hon. Dr GORDON MOYES: My concern is that your development in the working relationship in the university has gone far beyond the Act. The Act is lagging behind reality. Who will update the Act?

Professor HILMER: I would hope that there is an updating of the Act as a result.

CHAIR: This inquiry might make recommendation on that point.

Reverend the Hon. Dr GORDON MOYES: Could I ask one further question? Who is responsible for the great loss in investment portfolios in the university?

Professor HILMER: Ultimately the council is responsible for everything and then I am responsible to them—it is who is responsible to whom. I could say that actually the sub-prime lenders in America were responsible for the loss.

Reverend the Hon. Dr GORDON MOYES: In which case you would be a politician.

Professor HILMER: Yes, I should have been a politician. Ultimately I accept responsibility and I can go through how those decisions are made, if you want me to. We have a finance committee of the council and at the moment it is very well staffed.

Reverend the Hon. Dr GORDON MOYES: And investment committee?

Professor HILMER: Yes, finance and investment. That committee reviews on a regular basis the portfolio and makes various decisions. Whether there is a loss or a gain is a moot point. The responsibility of that is a question of timing. We have long timeframe. Two years ago we had a gain but this year we have a loss. But in our operating model, which is a responsibility of council, we do not use those funds to operate the university.

Reverend the Hon. Dr GORDON MOYES: I understand.

Professor HILMER: In terms of our ability to operate, which is a key responsibility of the council and of me, that has not been an issue.

The Hon. MARIE FICARRA: Professor Hilmer, an internal policy paper—and I will not nominate the university—described the chancellor as the principal officer, but it did not define that particular role. How would you define the role of a chancellor? Do we go for a more ceremonial position or do we need a chairman of a corporation in your view?

Professor HILMER: I think "principal officer" is wrong; that is the executive role.

Reverend the Hon. Dr GORDON MOYES: Vice-chancellor.

Professor HILMER: In our Act that is the vice-chancellor, but it is more than a ceremonial role. Its role is to preside over the governing body, and that is important to make sure it is well constituted, making sure it has the proper agenda, making sure that the papers that come to it get fully disclosed, like information that is going to be needed for it to play a useful role, making sure that of the compliance work of the council is done properly. It is a ceremonial role, we all have ceremonial roles and talk about playing dress ups, but the Act should focus on the substantive role, that is the chairing of the governing body, to whom I report collectively.

The Hon. MARIE FICARRA: Page three of your submission states that the size of the governing body should be secondary in importance compared to the skills and experience of the members. What are the arguments for large or smaller governing bodies? How do we define experience and qualifications?

Professor HILMER: Again in an Act for an organisation—touch wood, Cambridge is over 600 years and I am hoping we will be at some point—we would not want to be too prescriptive, but you want to put the responsibility on the entity to have the skills that are needed. Today the financial skills needed for a university are quite different from the financial skills needed—less than 20 per cent of our funds are the Government support and 80 percent of our funds are earned in markets, whether the markets for students or marketing consultants or the market for research.

The Hon. CHRISTINE ROBERTSON: Competition policy.

Professor HILMER: So, you need a different kind of financial acumen. We deal with very valuable intellectual property. We have a fiduciary duty to manage that. You make a general statement that you need to have the skills and you put that responsibility on the nominating committee of the board, and if we have breakdowns there is a responsibility. But you cannot prescribe skills; you could describe them today but in 10 years we would meet again, and in another 10 years we would meet again, and it shifts.

Dr JOHN KAYE: I must admit that I am getting a bit confused about all of this. Initially the Committee was told by Mister Phillips that the role of a council was to set policy, the role of a governing body was to set policy, and it was a role of the chief executive officer, the vice-chancellor and the senior executive to implement that policy. Yet, you are telling the Committee that there is a role of overview finances or making financial decisions on the council. Is that correct?

Professor HILMER: The fundamental job of a governing body is to make sure that the entity continues to operate successfully in terms of its objectives. You cannot do that if you are insolvent. As someone

who has been a director and is a director of companies, solvency is the first role. That is no different with the university. If we came to the Government and said, "We are broke, bail us out", I do not think we would be around very long. You cannot do that job of ensuring solvency if you do not actually intervene in major decisions that could affect solvency. In our case an investment of the scale we talked about in Singapore of some hundreds of millions could have affected solvency.

Dr JOHN KAYE: Therefore, is that not a recipe for blurring the line between the council and the management of the university?

Professor HILMER: The lines are always going to be blurred. It is never crystal clear and it requires people of skill coming back and understanding with goodwill to make them work. That is no different in a company. We will make adjustment and the council would very readily make adjustment. That if we were to undertake a \$20 million investment in the context of a billion-dollar budget there would be relatively little scrutiny. But the finance committee might have a look at it. I have authority up to \$10 million, I think that is the number.

Dr JOHN KAYE: We would hope you would know that?

Professor HILMER: It is not critical because there is a process that I go through. It is different if it is in budget or out of budget, so I will not get lost in the detail. But we have a process by which we work those things out. If it is \$200 million I would go straight to council. I think council has to oversee the operating budget because if it does not, understand what is happening to the finances, you are in big trouble. The budget role of the council I think is strategic. The council does not say to me—we have just been through this—"Vice Chancellor, I think you are spending too much on the law faculty and not enough on science." That is not their role. But they will say, "I think this budget is not meeting sufficient operating surplus to cover the capital needs that you are committing to. What are you going to do about that? Are you going to get some more revenue? Are you going to cut costs? Are you going to finance it? What are you going to do about that? That is part of what I was saying is a constructive and useful relationship.

Dr JOHN KAYE: How did the national governance protocols change the relationship at your university between the chancellor, the vice chancellor and the governing body—in your case, the council?

Professor HILMER: It really had no impact in a practical sense.

Dr JOHN KAYE: It obviously increased the reporting requirements of the university?

Professor HILMER: Yes.

Dr JOHN KAYE: But you do not think it had any impact?

Professor HILMER: I do not know whether you have the Universities Australia's submission, which we attached and endorsed, but that was the view of pretty much the majority of the Australian universities.

Dr JOHN KAYE: In your opening remarks you referred to a small group on council destabilising the operation of Council. Can you explain what you mean by that? I am not asking you to name names or rake over old coals but it is relevant to the whole governance issue. Are you specifically referring to elected representatives being on council and not playing the game of supporting the objectives of council?

Professor HILMER: Yes.

Dr JOHN KAYE: Would you elaborate on that?

Professor HILMER: I will be more specific as it will be more useful to your inquiry. There are a number of different election processes by which people get on to council. It is not the majority but a significant number of members. Firstly, there are quite a lot of staff members and alumni members—

Dr JOHN KAYE: And students?

Professor HILMER: Yes, and students. There are two student members, four staff members and the alumni members. It is not that hard because very few people vote—out of the 200,000 elected it is something

like 2,000 votes, or about 1 per cent, for alumni—it is not that hard to run a campaign. Universities are potentially quite political. There is a lot of heat and passion about various issues. You might have a particular management group whose activities are resented by a part of the university—I think that is what happened in our case. So that part of the university ends up with a rump on council. Then what happens is the business people leave. They say, "This is all too hard. I did not come here to do this." So the people who are supposed to provide the balance do not want to play the game and they drop out. You then have a small group, not insignificant but say one-third of the council—in quorum terms, often more than one-third—being absolutely disruptive and unproductive, to the point that you get what we had, which was musical chairs at the vice chancellorship. That is about as destabilising as you could want.

Dr JOHN KAYE: What would you do to resolve the problem that you have identified?

Professor HILMER: Firstly, other than staff and student members we would not have alumni elections. We would have fewer elected positions—in our view we have too many elected positions.

The Hon. CHRISTINE ROBERTSON: By the university community elected positions?

Professor HILMER: No, the university community in the sense of staff can elect, students can elect but we would not have alumni elected positions. The reason we had that was because as a new university we wanted to make sure that the alumni got involved, but we are now at the point where we have very distinguished alumni and they should be selected on the basis of their skills and not on an agenda they are trying to run. Again, I have tabled the proposal, but we would have fewer people, fewer elected positions, and a nominating committee with a fairly clear charter to get the skill balance that is needed by the university.

CHAIR: Are you saying from that skill base that you are looking to fill those other positions with, if there were an alumni they would go to the top of the list or is there no priority ranking at all for alumni?

Professor HILMER: The reality is that most of the people on council who are our sort of age—around 60 years—are alumni. Because the people who care and want to give their time, and who you want to have, are your alumni's. In the early days we had it as a rule—but I do not think we need it as a rule because it is now a reality—that if we needed some-one who was not an alumni but because they had expertise in a particular field and an alumni did not come forward then we might get someone who graduated from another university. We should have the flexibility to do that. We should not be bound by an election process, which frankly has been taken over a few times in our history.

Dr JOHN KAYE: What is your view on the role of having elected representatives of students and staff? Why do you think they should be there?

Professor HILMER: We are not a managed organisation in the same way as a corporation. We are very much a community and there is a sense of symbolism that the vice chancellor that reports to council is accountable also to the staff and the students. A round the table is entirely appropriate in a university. If the staff and the students have serious problems with me I think it is not wrong for the governing body to hear that. I do not mind having them there. I think they are constructive members actually. Having them there and being elected is sort of a safety valve. It is sort of part of the symbolism of an academic community as opposed to a corporation with owners who sit on the board and just decide on the profits. I think having them there is also very helpful in terms of the community understanding of what the black box called the vice chancellor is. What does it do? When a budget decision comes out you have had people there who have seen how they debated it. There is no more money and that is it. So it adds a transparency to what we do that I think helps us all as we try to run the university.

The Hon. CHRISTINE ROBERTSON: What is the risk by decreasing the size of the council, of being more selective about who gets on it and what kinds of positions get on it, of the thing becoming a normative tool of the vice chancellor and no longer a questioning model? The council is sort of an external body to the functioning of the university to value add from the university community? What are the chances of knocking that off?

Professor HILMER: I do not think any worse than would be in the other circumstance. As vice chancellor I am really not the principal person to bring nominations to council—some of those positions occur through the nominating committee. The normal protocol as the CEO is not to sit on the nominating committee.

The Hon. CHRISTINE ROBERTSON: In some circumstances there has been a history of much interference though? I am not talking about you; I am talking about the world?

Professor HILMER: I am saying that can happen irrespective of what Acts you write, and it generally does not happen. The best balance is to have a chancellor—who the council would select—who works in a partner-like but balanced way with the vice chancellor. It is the same issue in corporations. Unfortunately we are dealing with humans. Some humans exert more power in meetings—

The Hon. CHRISTINE ROBERTSON: With an enormous responsibility for the future of our country, so I am not devaluing what you do. Under the reduced structure where everyone is very happy and getting on very well together and the outcomes are a group-decision process, what are the odds of a very crook vice chancellor coming forward? You have a smaller group so it is much easier for it to be controlled?

Professor HILMER: Firstly, a group of 14 is not exactly small.

The Hon. CHRISTINE ROBERTSON: I recognise that but I am asking the questions that are worrying me about your proposed changes?

Professor HILMER: Our proposed changes would still have, by Government standards, a large board—a corporate board would be more in the 8 to 10 category. This is still a large board with representative people. A small board would be three or four. We still have a relatively large group because we need to cover the interests and cover the skills. We are much more complex than a corporation and we are much less centrally run. So we still have a large board but 22 is a pretty cumbersome number to have discussions. What we have tried to do in our submission is get a balance between a reasonable size that deals with the proper concerns that you raise but, at the same time, is able to have a better depth of discussion than you get in the very large boards where issues tend to pop up at a different parts of the table and you do not follow things through.

The Hon. CHRISTINE ROBERTSON: We have heard quite a bit of discussion this morning about reporting. I recognise that there is external reporting but it is now not in the Act so you have internalised it and most of you are still using it and most of you were compliant. I am wondering what is being done to standardise some of the performance measures of those protocols, or is each individual university in toto making their own measures for their internal reporting?

Professor HILMER: We were looking at these individually. For example, do we do induction? Yes.

The Hon. CHRISTINE ROBERTSON: Tick.

Professor HILMER: Do we provide training? Tick. So we have questions. In making sure we comply—audited by an auditor—we have to provide evidence that we comply and that we are actually doing something.

The Hon. CHRISTINE ROBERTSON: Is anyone working on performance indicators that give you feedback on whether or not your ticks are effective?

Professor HILMER: What we have sought to do—and I do not think this is very different in good practice in governance generally—is to have an external review from time to time.

The Hon. CHRISTINE ROBERTSON: Of the ticks?

Professor HILMER: No, of the effectiveness of the council. Because a lot of what we are discussing is qualitative judgements. If you get someone from outside and they tend to interview everybody individually and then come back and talk to us, we get a bit of a straight view on matters that are quite difficult to tick boxes about.

The Hon. CHRISTINE ROBERTSON: I just worry about the ticks. We had huge fights in health for many years over, "Do you like the nurse?" Tick.

Professor HILMER: Yes. We do not have that question.

The Hon. CHRISTINE ROBERTSON: No, but you have, "Did you do this?" Tick. That is the same as, "Did you like the nurse?"

The Hon. GREG DONNELLY: I have been listening to your testimony this morning and reflecting on the changes that have taken place in universities. I have been reminiscing a little bit about my university days back in the 1970s when back then you would go to the library and look up a card catalogue. In the last two or three decades there has been enormous change. I have also been looking at a schedule of the private versus public universities in Australia that was presented to the Committee by an earlier witness. My mind turned to current universities overseas, both in our own region and far away in North America and Europe, and the reality of distance education. I thought further that what we are being faced with these days—and I am observing it more and more—is the reality of students enrolling in courses and programs interstate. We are increasingly seeing this reality of domestic students in New South Wales wanting to do tertiary courses but obviously you could not do all courses because you could not do a medical degree, for instance, over the Internet.

Are we facing this reality that whether we like it or not—regardless of our particular views about competition and whether the competitive model or the market model is something we want to have associated with or part of the tertiary sector—with the advent of the Internet and all the changes that are going to happen that we know nothing about yet, universities are really being challenged to work out how they are going to survive individually in this environment? I am not asking you to take sides in an ideological position, although you may have a particular view, but just look at the reality, whether we like it or not. Are students in Australia enrolling in overseas university degrees by distance education?

Professor HILMER: Presumably we do. I notice in some business areas we do. We also have people overseas enrolling in Australian universities. Technology is going to change. As I said, the university has changed enormously since we were formed. The real strength of the university is what we call the student experience, which is much more than just going to class, taking lecture notes, coming in and doing an exam and getting out. The students are back this week. A week ago it was just dead and now it is lively and there are booths everywhere and there are something like 200 different clubs.

Increasingly people also do not work alone. The nature of work is that you work in teams. How many of us work alone? More and more university study is team based. You have team-based assignments, you work in projects, you learn to work with people as much as learning just to rote repeat something. It is a challenge for universities, though I have to say that the enrolment figures since I have been there and this year particularly are through the roof, so people are voting with their feet—this is an attractive model—and that includes people from all over the world. We have 127 nationalities on campus, more than there are countries in the United Nations.

The Hon. TONY CATANZARITI: Going back to the chancellor-vice chancellor relationships that are going on in certain areas at the moment, do you have an opinion on a different structure? The chancellor's role is looked on as a ceremonial role and as a chairman-type role. Is there another structure that could better service a university than the existing one?

Professor HILMER: I think our structure works quite well. I think a number of American universities have my role as chancellor and chief executive, in the same way that a lot of American corporations have a chairman-chief executive role combined. You can see that in some of the university models. For the same reasons that the Americans are now moving to split those roles, it is a healthy thing to split the roles. Somebody has to pick the vice-chancellor and somebody has to decide whether the vice-chancellor is doing a good job, because ultimately that is going to be the make or break aspect of the university's performance. Having somebody who is independent and doing that role is a good counter.

I think our model is okay. I think we could define it better: as I said—leaving aside the ceremonial role, which will be what you make it—defining it clearly as a chairman's role and the vice-chancellor as an executive role. Some of the Acts make it clearer than others but I think it would be good practice to be at least as clear as the Corporations Act—not in exactly the same words, but at least as clear. Not to be too prescriptive, because you do not want people litigating about whether something is within their power or not.

CHAIR: We could talk for a lot longer. We really appreciate your giving up your valuable time today. It is clear from UNSW's submission the recommendations relating to your specific Act that this inquiry might pick up. We fleshed out a number of your personal views, and we appreciate that. Perhaps the Committee's staff, if it is all right with you, might contact you to clarify issues from time to time. One of the questions we did not

get to was about training of chancellors, which we raised with other people. Just so that we get a variety of views we might—

Professor HILMER: Could I say something about that? I really think we should not appoint a chancellor who needs training. It is like becoming a chairman of a public company with a big board. You do not do that until you have served your apprenticeship either in a deputy chairman role or as a chairman of a smaller board. To take a major university and say, "I have never chaired anything in my life, I have never really been a board member, I don't understand governance but you're going to train me and I am the leader"—you do not send a rookie out on the field and say, "I'll train you as you're batting." I feel very strongly. It is good if they feel a need to have discussions and talk together, but the chancellor is a critical role in this. If the chancellor is not skilled in chairing significant bodies then they should not be appointed.

CHAIR: Thank you for your frank answers. I believe universities are a lot like political parties and institutions. You do not send rookies out to do jobs they are not qualified for, do you?

(Luncheon adjournment)

(The witness withdrew)

MARK ANDREW THOMAS DOLAHENTY, Senior Industrial Officer, National Tertiary Education Union, New South Wales Division, sworn and examined:

AMANDA ALEXANDRA McCORMACK, Organiser, National Tertiary Education Union, New South Wales Division,

GENEVIEVE KELLY, Secretary, National Tertiary Education Union, New South Wales Division, and

LEONARD STANLEY JAMES PALMER, President, National Tertiary Education Union, New South Wales Division, affirmed and examined:

CHAIR: One of the opportunities we provide for you—apart from the chance to be grilled by Committee members—is for you to make a brief opening statement. Would any of you like to make some brief opening remarks?

Ms KELLY: Yes, I will make some opening remarks. It is obvious from this morning's hearing that people here have taken great care to read the submissions that have been put in, and I think that is something that we take for granted and I will not be going through our submission in detail.

Firstly, as we have done in the submission, we very much welcome this inquiry that the New South Wales upper House is undertaking. The role of the State Government in these governance matters is very much understated to the general public because there is so much focus on funding matters. As people have noted, the recent dysfunction in the way that university governing bodies have been operating has certainly highlighted some of the issues that our members have been dealing with on various levels. So we have a vital interest in this, and we think it is great that the Parliament is looking into it from a New South Wales perspective.

The NTEU represents academics, general staff and technical staff at each university in New South Wales. So we have a fair overview. We are also very fortunate in having membership with a lot of expertise in various technical matters and also in university governance. Our submission is very much formed by that. We have had a number of submissions from our national office around the governance issues, and they are all on the public record as well, and any of those we can source for the Committee on any particular issue you are concerned about.

I will deal with a couple of general issues. Our first point is about what should be guiding the university governance. It is very much coming down, as the whole submission is, in re-emphasising the academic and intellectual freedom and institutional autonomy that universities have traditionally had. In the last period this has been severely eroded. You walk into any university in New South Wales at this point in time, and any person working there will tell you that that whole culture of academic freedom—the academic community has been severely eroded. We need to ask, when we are looking at governance: Why did that happen? How did we allow it to happen to one of our most important public institutions, our universities, where we are nurturing the great minds of the future, where we are building the economy for the future? How did we let this happen in New South Wales universities?

Relevant to governance, there are a couple of general issues. One of the things that have been touched on this morning is in relation to the 2003 protocols. Whatever we might think of the content, the direction—and certainly some of those directions were welcomed at particular times by the union—however, we looked at the way they were implemented by having at least \$500 million of our public money at the Federal level tied to universities dancing to a particular tune with the Federal Government. This has real applications for academic freedom and how our institutions operate.

It set up a culture of managerialism. The way people managed before: If you tick of these boxes, sure, we can say we have good governance, we will get the money from the Federal Government, we will run away, and it will be business as usual behind the scenes. It did nothing about the quality agenda; in fact, the quality agenda over that same period has deteriorated markedly. Ask any student who has been in the system for a while and they will make the point that they are paying more, they are paying fees, they are paying more and more for their education and getting less and less. Reference was made earlier about the Internet. A lot of managers in the university sector saw the Internet as an opportunity to say let us do it all online. Who needs to pay good-quality academics to do this? If they give it once, we can iPod it, get it down there to the students, then it is all done and Bob's your uncle.

However, when you look at student quality surveys, what they are all saying is that they want more group interaction, they want to be taught by people who know what they are talking about, they want to have the ability. Sure, it might look attractive to be able to do it online. It might look attractive, as is happening in a lot of our institutions, to have mass lectures to a thousand people. They cannot even fit in the room; half of them are in the room next door and it is videoed to them. They can play their games and do other stuff at the same time. That looks attractive to a first-year student, sometimes straight out of school. However, if they want to ask questions or learn anything in depth, they are not going to get it next door; there is no interaction from the lecturer. They are not going to get it by video.

There is lots of enhanced learning that can be done on the Internet that can be very interactive. But the way to get that is by putting a lot of resources into it, by having online tutors who can respond when students need a response, but it is quite an intensive way of educating people. What we have at the moment is a situation where the dollar is totally driven by the management systems at the university. We do it by the cheapest possible way. That has been brought about, I think, by a lot of this ideological drive, if you like, to bring in the cheapest way to deliver the product. In our submission, that is a comment quite clearly on the academic corporate citizen versus the private sector citizen. There is a major difference. I think some of the lack of transparency that came through the protocols, people ticking boxes, et cetera, have been highlighted pretty well by other submissions.

There has been talk about the role of the chancellor and the vice-chancellor. It is clear that it is different to what both the chancellors represented here today and the vice-chancellor have said. If you look at the Acts of the New South Wales Parliament, the appointment of the vice-chancellor is very much the role of the council or the governing body. It is not just the role of the chancellor. In fact, John Phillips is obviously an excellent example of good governance in terms of corporate sector management. However, one area on which we would disagree with what he said this morning is that assumption that not the whole council can be involved. If you have elected representatives there, they cannot be involved in that role. It is not what the Act says. The Acts say you involve the whole council. He talked about strategies: that once the decision is really made, bringing in the rest of the council.

The union would certainly challenge this assumption that automatically, because somebody is staff or a student, they have some kind of vested interest that other people do not have. Certainly there are excellent examples of very good elected representatives who take the whole view of the university as well as representing the interests of staff and students and where they are coming from.

The other major feature of our submission is the concern about the role of wholly owned entities. There are major business matters that universities are dealing with and operating and, as Fred Hilmer pointed out, \$50 million can go down the drain if you do not have good governance and you do not have these things having proper oversight from the council. We have had examples come to us from our members in preparing the submission. We have referred to it as managerial practices where people, through restructuring et cetera—who is keeping up the register, who is doing it. There are a lot of mechanical things in terms of the way some wholly owned entities operate that have led to problems within universities.

I guess the major issue here is that there has to be full and transparent accounting for this; it is no good if it is just behind closed doors and the Federal Government as the funding source ticks the box to say it is all accounted for. I think the role of the State is to make sure that the council is bringing in good-quality information about the activities of the wholly owned companies that universities are operating.

CHAIR: From your comments and your submission it is clear that you feel very strongly that staff and students should be part of governing bodies and constitute a critical part of that. But you also say that there should be more training. We have had some evidence to say that there are good induction programs and training for members of governing bodies. I guess that might be different. Could you explain what you mean by more training?

Ms KELLY: I am a graduate of the Australian Institute of Company Directors course and I did that in a previous role. I think the arrogance of saying you are not on the board unless you can run the world, I do not think really is the reality of what we have got in our universities. We do get, in classic situations, where sometimes there is the assumption that if somebody has made money in a particular industry then they are going to be able to run anything. That is not my personal experience and I do not think it is the research and evidence in company practices, which show there are particular skills that people can develop and can improve. One skill

referred to by John Phillips earlier is the skill of managing people and allowing different voices to come through in a particular place.

Without casting aspersions, different voices coming through at New South Wales universities at the moment might be an improvement or the staff might see that there is a need to have diversity of opinion on their council and the ability to question something like Singapore when is happening not after the event. I think the training involved in something like the company directors training, et cetera, being rolled into the university environment is done, I cannot see that that would do any council members any harm at all, including staff-elected representatives. There are fine lines.

I think staff-elected representatives, in my experience, can often be intimidated by some of that company law. They do not know what the fiduciary duties are and what the code of conduct should be and a bit of training around that is very helpful and can give people more confidence to participate. To think that by training you are just going to run the company line and not have a bit of diverse opinion around the table is problematic. I think the real difference in the academic enterprise is that we want to encourage academic communities and the kind of managerialism that has taken over in these processes has been very detrimental to our academic culture.

CHAIR: Who would you see doing that extra component of training you are talking about, apart from the Institute of Company Directors style of governance training?

Ms KELLY: In this sense I think the role of the chancellor in his or her capacity as the chair or presiding officer of a council should be the person who ultimately would facilitate that particular sort of training. Professional development is a better term to use because it is not about training someone up; it is about the professional development of someone who sits on a particular—

Reverend the Hon. Dr GORDON MOYES: A new position?

Ms KELLY: Exactly, so in that sense the presiding officer has direct responsibility, not only of care but also ensuring that the people who sit on the board are able to actually fully function in their capacity as a member of the governing body. The provision of training so that people do not have to go to the desk website to find out things like changes in student numbers, Excel, or changes in PhDs over time or even having to go to the New South Wales parliamentary website to find audited reports over a number of years means that people should know where the registry office is at a university, who to go when they need to get annual reports from their particular institution and where to go internally to find that information, and how to interpret it, is a key point.

Mr DOLAHENTY: And the educative role needed by new members of the council is not just about training those people who may not have what one might call the requisite business skills; it is about educating people from outside the university about the university, the role of the university and where the council fits within the culture, the life and the history of universities as a whole.

The Hon. MARIE FICARRA: You undoubtedly have experience from various campuses, councils, governing bodies. With these appointments on to councils and the board, is enough attention paid to conflicts of interest, without bringing up examples that have come to my attention? I am fairly horrified that people manage to get there with obviously very poor background checks and self-declarations? What do you think?

Ms KELLY: In my experience conflicts of interests do, on the whole, seem to depend on voluntary declaration but I think you could encourage a much more open culture of where do we have a conflict? This will vary depending upon the context. I am not sure whether you are referring to a particular institution?

The Hon. CHRISTINE ROBERTSON: Can she give us some examples of conflicts of interest?

The Hon. MARIE FICARRA: Appointments where people have worked on corporate boards together, people have been employed under a certain person? We are very much aware of it because politicians can end up in all sorts of trouble. Is it legislated at the moment? How important do people on councils and boards regard conflicts of interest?

Ms KELLY: I guess it is similar to other boards. It is up to the chancellor to try to make people aware. At the start of every council meeting or board of trustees meeting there should be a declaration of form and there

should be a culture where people come forward. However, there are often a lot of blurred lines. For instance, if you are at a regional university where you have historic State properties that are under your care and control and you see the possibility of development, you might think the best-qualified person to be on the council is the local developer who knows something about that development. Those sorts of conflicts arise in terms of business developments and everywhere, but I do think there needs to be a sharp reporting environment.

Mr DOLAHENTY: One of the very important things about the role of not just elected people on councils is that there should be no possibility of retribution if one council member challenges another on their conflict of interest. We have examples where chancellors have decided that they, and only they, will declare who does or does not have a conflict of interest. It ought to be open to the council as a whole or individuals to be able to say, "I believe you have a conflict of interest" to another member and ask them either to comment on it or disprove it.

The Hon. CHRISTINE ROBERTSON: Has that just become the norm or is it the rule?

Mr DOLAHENTY: At some institutions it has become the norm where chancellors make the decision.

Ms KELLY: We have had examples where if staff elected representatives have disagreed with the chancellor they have been said to have a conflict of interest and people genuinely come, because they are employed in the organisation as well, so it is a difficult role, as John pointed out earlier, and say, "Does it mean I have a conflict of interest?" No, it does not, just because you disagree with the chancellor, but perhaps someone who agrees with the chancellor but has a financial conflict of interest might end up themselves.

The Hon. MARIE FICARRA: Do you believe that that area needs to be tightened up—I know that you cannot be overly prescriptive—in the legislation to allow members of the council to ask questions of each other?

Mr DOLAHENTY: There is certainly a role for some form of guideline that spells out that anybody on a council has the right to question whether or not someone has a conflict of interest and those conflicts can be financial, personal or any range of connections between anyone, including whether or not a conflict of interest is one of the genuine conflict between two members of the council in the past rather than where one has a conflict of interest simply because of a very close relationship with other members.

Ms McCORMACK: Following on from the initial issue to do with professional development that is part of the university's induction and I should hope professional development program, that the issue of conflict of interest should be raised through that so that people have a clear idea of what it is that defines a conflict of interest and also how to address it; whether through the open fora of the university governing body but also had to actually register a conflict of interest on the university's register.

The Hon. MARIE FICARRA: Under Federal legislation—and I do not cast assertions on anyone in this room—members of Parliament are not permitted to serve on boards and are not to be chancellors. Do you have any opinion?

Ms KELLY: On boards of?

The Hon. MARIE FICARRA: State member of Parliament appointees?

The Hon. CHRISTINE ROBERTSON: They can but the council has to appoint them.

Dr JOHN KAYE: They cannot serve because of their office. Torbay is still on the University of New England.

The Hon. MARIE FICARRA: Do you have any opinion on members of Parliament being members of the council?

Ms KELLY: Yes we do. In fact our submission says quite clearly that we think there are times when such members can be very useful to the governing body. In my personal experience, I was on the Board of Governors at Western Sydney and we certainly found out State representatives to be very helpful. There are a lot of issues that the university deals with that intersect directly with State Government and I would not rule them out per se. It is the nature of the involvement, whether you are from the corporate sector, whether you are from

the university sector or Parliament. It is getting clear on the nature of involvement of these potential conflicts that is really more the issue.

Mr DOLAHENTY: Very often members of Parliament can act as the honest broker on a university council because there can be no question of retribution against them—they are members of Parliament.

The Hon. CHRISTINE ROBERTSON: They can put issues forward without getting hit on the head for that?

Mr DOLAHENTY: Yes.

Ms KELLY: They can bring an independence that other members do not have. Obviously it does depend on quality of the person.

Dr JOHN KAYE: Can you spell out for us the pathway from changes in governance at universities through to the pressure that is being placed on academic freedom and/or electoral freedom? How do those two things connect and how do we disconnect them?

Ms KELLY: I think that is the challenge for this Committee.

Dr JOHN KAYE: That is why I asked you the question.

Ms KELLY: I see. That is the nub of what really is being experienced at the moment. I do not think we have put the silver bullet in our submission, but I think we have tried to tease through some of the issues around this. The need for good governance is not just about the governing council. It is about the whole of the university.

Reverend the Hon. Dr GORDON MOYES: That is right.

Ms KELLY: We need a culture of freedom of decision making and expression as well. If we cannot achieve that in our universities in this country, where can you get it? That is the big question we all have to ask ourselves. To answer John's question about how it has got to this state, I think in the previous period, when we had the 2003 legislation that tied massive amounts of government funding and spending to particular managerial requirements to tick boxes. That was at the big picture level. We then saw vice-chancellors, and the union—I will put that straight on the table—cooperating in things like the HEWRRs, the higher education workplace reform regulations, that was referred to before.

This was when the Federal Government tied the Higher Education Support Act [HESA] so that, to get your money, you had to offer people things like AWAs. To get your money, you had to write out the involvement of any union participation in governing bodies at the university or any union participation in disputes settling arrangements that we talked about earlier today.

The Hon. CHRISTINE ROBERTSON: Exactly, and sack the State representatives.

Ms KELLY: In some cases, yes.

Dr JOHN KAYE: Was it the funding that was used as a mechanism and the culture that that created, or was it what the funding was used for that did the most damage—or was it both?

Ms KELLY: My view is that it was both, but I think the mechanism is what did the long-term damage. HEWRR has been repealed; we no longer have that. I have spoken to all the university managers in this State and nobody wants to change easily any of the things that were put in under the HEWRRs. That is because it was more convenient perhaps not to call the unions into a dispute problem, or not to call them as representatives for particular things, or to have particular representatives on a board. I think it was actual funding because some of it was around at the human relations types of exercises, but that was not universal. Universities such as New South Wales, for instance, did not even apply for that funding. They thought it was a waste of time. The universities that were more cash strapped applied for the money and implemented programs.

The bigger picture thing was the quality framework, and they called it quality just to tick the boxes. To follow that through, you have that done at the council level. You then have an academic senate who is told by

the governing body, "You've got this many dollars, and one way you can get around it is to give half the number of tutorials." Why would you have a two-hour tutorial if you can tick the same box for a one-hour tutorial? That just cuts in half the amount of teaching that students are receiving for their dollar, and it is an academic position. If a lecturer comes back and says in professional or in particular fields, "No, to have an engineer know about the size of that bolt on the bridge, we need two hours to tell them" is not a relevant consideration any more. What is relevant is: Can you tick boxes saying that you have halved the number of your tutorials? That is what the governing body is asking. That is the sort of decision making.

Then you have it at the broader course level—"Let's do away with all these particular courses that might be flavour of the month", or might not be. Academically, you will get professionals saying, "Well, we need those courses for the professional body to agree that this is a certifiable course. We need that teaching", but the response has been, "Well, tell the professional body to get out of here. We have to manage within the dollars we have." It is not necessarily about the quality of education.

Dr JOHN KAYE: If tomorrow this Parliament repealed the sections which we inserted into the Act—

The Hon. CHRISTINE ROBERTSON: To comply with the Federal dogma.

Dr JOHN KAYE: —to comply with the changes to the Higher Education Support Act, so that that effectively repealed the Government's protocols and the other matters that were put into the Act, and if we went back—and I am not saying that we should do this—would that underline the problems, or are there other things that have happened since then?

Mr DOLAHENTY: I think that the other things that have happened are that there has been a change in the culture of universities. Perhaps the most deleterious example I can point out is that the HEWRRs required that there could be no limit on the method of one's engagement at the university, so one sees an enormous explosion of people who are no longer continuing employees. They are now fixed-term employees. With the growing managerialism that has come in over the last few years, that has meant that people simply no longer speak out fearlessly when they are on fixed-term contracts.

The Hon. CHRISTINE ROBERTSON: Because they have to spend the end of their time getting back on the next contract.

Mr DOLAHENTY: No—because they would not be renewed.

Ms McCORMACK: Also in terms of the national governance protocols, there has been a disconnect between Federal Government funding that was tied to the implementation of those in the institutions themselves. I know that this is not the case in New South Wales: universities are going back and really looking at how they constitute themselves, but also at the character and the kinds of corporatism that has come into the way in which they have managed a university. In the first instance, having this discussion through this upper House Committee is one way of universities going back to their governing bodies.

Dr JOHN KAYE: Amanda, what you are saying is that the nature of the governing bodies that were created out of the changes to HESA are not going to undo what happened to them to make them what they are.

Ms KELLY: I think that is exactly the point. That is what we are experiencing with the winding back of HEWRRs. The Federal Government thinks that it has fixed everything by repealing HEWRRs very soon after it came to government, but you still have the same people there managing who do not necessarily want things to be done differently. But I would not underestimate the importance of the climate of debate. The fact that the New South Wales Parliament is raising this and that you can look at what is relevant to roll back is an important part of the equation.

Dr PALMER: I think there is another circuit involved as well, which is part of what you are looking for, Dr Kaye. It was not from nowhere that the Federal Government sought in this way to intervene in universities at the governance level. It was that they were being told by certain groupings in society that that was the way to go. You probably had a very keen and interested group of vice-chancellors; a good proportion of them thought that was the way to go as well. One circuit is that the Government was responding to a request for more managerialism while internally another circuit was that, when the managerialist opportunity created by the intervention of the governance protocols and HEWRRs and those related things happened, many vice-chancellors jumped at the chance.

The Hon. CHRISTINE ROBERTSON: Not all, but many.

Dr PALMER: Not all. Yes, not all. As a union, we would express different kinds of values than are expressed under a managerialist approach. One of the issues that was mentioned earlier was about size. There is no evidence that a small size improves things.

Dr JOHN KAYE: Are you talking about the size of councils—the size of the governing body?

Dr PALMER: That is right. We think that a stronger value is the one of diversity, as Genevieve has mentioned, and also the right of people to speak and to express themselves and to represent the expertise that they are drawn from. Students and staff have an experience of universities that vice-chancellors do not have, and that voice must be in there as well.

Reverend the Hon. Dr GORDON MOYES: I would like to follow up a question with Amanda, if I might. I appreciate your comments about providing a program of professional development and that was also stated very clearly in the submission. You may have heard me asking previous speakers about that and the comment being made, for example, "You shouldn't be inviting anybody into the position if they need to be trained." Obviously, we are not talking about training in that sense. Earlier in the day I mentioned the American mentoring process whereby the presidents of several surrounding universities come together to mentor the new president in another institution over a period. You suggested in your submission that these development programs should include people from outside the university.

Ms McCORMACK: I would not say that I have suggested that they should come from outside the university.

Reverend the Hon. Dr GORDON MOYES: All right. I think you mentioned outside bodies. It was on page 7, I think.

Ms McCORMACK: Not necessarily from outside bodies.

Reverend the Hon. Dr GORDON MOYES: I am wondering how you saw that working in practice. I ask because I agree with it.

Ms McCORMACK: In terms of practice, once again I guess university governing bodies are autonomous bodies in and of themselves. In terms of working out where it is or who should provide that training, that should be a discussion as part of the governance side of things of where people identify their weaknesses and what will help them more effectively to be a good member of the governing body. They would, either through discussion or through the chancellor as the presiding member, be able to have those frank discussions with the person and identify the professional development programs that they might like to undertake. Whether it happens internally or externally I think is a moot point. What is important is that people are able to participate on a university governing body in a particular capacity, but they also have the skills to be able to do that effectively.

Reverend the Hon. Dr GORDON MOYES: My gut feeling is that the people who are inclined to be appointed as chancellors, for example, are not the people who are going to say, "Well, I have identified my own personal weakness, and I believe that I ought to undertake some professional development in this field." That just does not happen: yet, when the conflict arises, it is inevitably at the apex of the administration. How can we get over this problem?

Ms KELLY: I think some kind of mentoring is relevant. I guess that is the company director's model. They come together to do their training among the needs that they have identified within the corporate sector. I guess there is no reason why chancellors could not do the same thing and recognise that there are problems and have that sort of group mentoring. But I guess that would have to be up to them. I do not think there is any way you can legislate to do that.

The Hon. CHRISTINE ROBERTSON: I wonder if you could just give us an outline that is not long or complex of the indicators of the erosion of academic freedom that you have observed?

Ms KELLY: I think the one that Mark pointed out a moment ago in relation to lack of tenure is the one that I hear the most. I have only been State Secretary since October last year. I have been going to various universities and just talking on the ground to academics and people who are around. I think this whole lack of certainty about employment is a major theme.

The Hon. CHRISTINE ROBERTSON: Does it drop risk taking or something?

Ms KELLY: It very much drops risk taking. In fact, whole courses can be threatened. Even if you have tenure, these days if you stand up in an academic senate and disagree with some major change—such as the one I mentioned before, that teaching should be cut in half or something—they may well turn around and say, "Well, do we need this course any more? Let us rationalise here. If it really takes so much in resources to teach engineering, why should we do it?" Everything is up for grabs in that kind of environment.

This has been something that has personally shocked me a little bit because I think if you look outside the university, you would think our academics and general staff, compared to building sites and other places you might look at, would have very secure employment. But people feel very threatened in our institutions at the moment and they feel threatened because it is not just the dollars in terms of employment. Some people put their life's work into a particular area of research. People know where their vulnerabilities are. If that program goes, their whole research program goes as well as the whole contribution that they make to their students and to the community. Unless something is built-in as a fundamental fact, you might say that that would be where we would make cuts. But in terms of academic freedom, unless something is built-in to give people that security, they are feeling very threatened.

The Hon. CHRISTINE ROBERTSON: Yet the academic world is an amazingly competitive place that does not actually encourage security. You are chucking balls up.

Ms KELLY: That is true.

Dr PALMER: Can I give a very simple example? In the university where I work, increasingly we get requests from staff that, when they are being addressed by emails, we use the blind carbon copy version, which does not disclose who was sent an email.

The Hon. CHRISTINE ROBERTSON: We know how to do that.

The Hon. MARIE FICARRA: We have been doing that for years!

Dr PALMER: So have we. However, I think it is an indicator of the kind of thing that you are saying. People who are committed to the university in many ways do not want to be named in relation to certain matters.

The Hon. CHRISTINE ROBERTSON: Only send us stuff by "BC"?

Dr PALMER: So no-one else can see the carbon copy.

Ms KELLY: And that is different from the academic model where there is competition between your theory and someone else's theory. You will have a debate about it. That is the kind of normal competition you would expect between people. Sure, some people win and lose in the game. It is different from saying, "You will teach in a particular way. You will not talk about the managerial practices of this university, or you are under threat".

The Hon. CHRISTINE ROBERTSON: Okay.

Mr DOLAHENTY: Not only that, it becomes, "You will not talk about particular issues", not just to do with the university, but there have been examples of academic who have spoken out at various universities about matters which I personally disagree with vehemently. But, they should be allowed to say it should be part of an open democratic society.

The Hon. CHRISTINE ROBERTSON: Yes, that is the stuff in Sydney.

Mr DOLAHENTY: In many universities if those people do not have some security of employment they will never speak out and be able to contribute to the debate. So it becomes a one-size-fits-all model.

Dr JOHN KAYE: You are saying that within their area of academic discipline you have examples of people who, because of the managerial culture of universities within their area of academic discipline, become constrained on what they can pursue or just what they can say?

Mr DOLAHENTY: What they can say outside. One can never curtail what one thinks in one's own mind. Note that it cannot be curtailed from outside, but people feel afraid to speak out. Even if we hate their views we should respect their right to have it.

Dr JOHN KAYE: And that is having an impact of the nature of the research that they pursue, because they are unable to publish in certain areas?

Mr DOLAHENTY: Yes, or speak out publicly.

The Hon. CHRISTINE ROBERTSON: This morning the Committee was provided with a table that indicated that Queensland has created statutory bodies. Do any of you know whether that has made a difference to the Queensland Government's processes? Has it made it better or worse?

Mr DOLAHENTY: I do not know, sorry.

Ms KELLY: We could find out and provide the information.

The Hon. CHRISTINE ROBERTSON: Yes, please take that question on notice.

The Hon. TONY CATANZARITI: Earlier the Committee touched on ticking boxes and that some courses were given two hours or cut back to one hour. Ms Kelly, could you elaborate on that? It seems to me that there is a waste of money if that is occurring for the sake of saying, "We do cover this course, yet there is no real emphasis on it". What should be done to prevent that?

Ms KELLY: That came up when I was trying to unpick the question about where has managerialism come in. My understanding of what happened in the past is that if a course were approved by a university body, it was approved with a package of so many units to be taught, and other units will be core and others will be elective. There could be, say, three one-hour lectures, two-hour tutorials, or an on-line experience. Whatever the way the course is approved, that is the way it is taught.

When I first worked in a university 25 years ago, if that is soon to change the school that was teaching that would come together, there would be a lot of academic discussion about if an hour were cut here or there, could it be put into another part of the course—making academic decisions about what the product would look like at the end of the day, if something was cut. There has always been financial pressure and if there, how can we still achieve what we have to achieve academically? My experience, certainly at Western Sydney and what comes back from other universities, is that there has been a shortcutting of that process.

If you told that a course is cost so many dollars to the university and is under threat, managerial decisions are made across the board, "You will teach in this mode", or "You will cut out this many. You cannot have 12 compulsory units to teach a nurse or a social worker. You can have only eight, because it is more efficient for us to get more bodies on seats in generalised units". That sort of decision is made totally separate from the academic process. It might look like the corporate governance needs have been met because we are balancing the books and we get a report back from the academic senate on how they did it, but no one asks the people at the coalface, the students or the lecturers. In a lot of cases if you ask them they would say no, it is not doing the job.

The Hon. TONY CATANZARITI: How can it be prevented?

Ms KELLY: There needs to be more academic accountability at the council level. It must be mandated that at least the chair of the academic senate is on the boards. I think most people do that, and Amanda McCormack will correct me if I am wrong. That voice needs to be strong, not just sitting there and taking directions away from the council. It needs to be something where there is an academic senate underlying that, where people can debate it and say it is important to have it.

The Hon. CHRISTINE ROBERTSON: If you gave the council more control over your academic agenda, how would you stop the council and the vice-chancellor to totally control the academic senate?

Ms KELLY: I was not suggesting more control.

The Hon. CHRISTINE ROBERTSON: But you are saying there should be more input by the council into the academic senate.

Dr JOHN KAYE: No, the other way round: More input from the academic senate into the council. And the language here is complex, because some places call them "academic boards" and some places call the councils "senates", but more from the peak academic council onto the university council.

The Hon. CHRISTINE ROBERTSON: How do you stop the council from then becoming interventionist within the processes of the academic board? This is a very fine line.

Mr DOLAHENTY: One way we suggest is to ensure that academics feel free to speak out not just in the academic board but in general across the university community. That then goes to the styles of managerialism to security of employment. It is a very complex weave.

The Hon. CHRISTINE ROBERTSON: And how to stop their control moving in.

Ms KELLY: I can see your point about councils discussing it, but if council did have it on the agenda, or whatever the peak governing body is, it should have academic consideration that is relevant to talk about, not just about the managerial side of things.

CHAIR: This is a fascinating discussion. Thank you for your attendance and your evidence today. You have agreed to provide the Committee with some further information. The secretariat will contact you to clarify or expand on some of your comments. The Committee looks forward to making a report that encompasses some of your comments.

(The witnesses withdrew)

RUDI LIDL, Audit Director, Australian Universities Quality Agency, affirmed and examined:

CHAIR: Would you like to make an opening statement?

Dr LIDL: Yes, if I could make a couple of comments. First, my accent belies that I have been in Australia for 32 years. I come from Austria, but I came in 1976 and have been here for a long time. All this time I have been in the higher education sector, as a Professor of Pure Mathematics and as an elected academic on councils for many years. In my 15 years as Deputy Vice-Chancellor of the University of Tasmania, I always attended council meetings during that time. That is a broad background of interest, but I am here as the Audit Director of the Australian Universities Quality Agency [AUQA]. I am seconded from the University of Tasmania for two years. The ideal person to speak about this is the executive director, but unfortunately he is overseas and he has asked me to appear for him as I had a hand in compiling the information that we provided to this inquiry. I have been with AUQA since December 2007, so I may have to ask to take some questions on notice and reply in writing.

CHAIR: Thank you, you sound very well qualified to give evidence today. When undertaking an audit, how much of that relates to university governance and governance issues?

Dr LIDL: The audit system in Australia was established in 2001. We had a first cycle of all universities in Australia between 2002 and 2007. In that first cycle there was probably an equal emphasis on a wide range of aspects of university activities. Starting with, and this normally comes early in the audit, interviews with the vice-chancellor, chancellor and external members of the governing body but also covering teaching and learning matters, research matters, university service, community engagement, overseas activities—so the whole gamut of university activities was audited in that first cycle.

The second cycle that started last year, in 2008, is quite different. It is focused on two major topics and so far the topics are decided between AUQA and the universities and so far, if my recollection is correct, we have not had any university selecting governance for example.

The Hon. CHRISTINE ROBERTSON: Is that not a worry?

Dr LIDL: In the scheme of things one could say that in teaching 50,000 students at Monash and 30,000 students at Adelaide, teaching is a very core activity. Not surprisingly, about half the universities so far have selected student experience, including teaching and learning, as one of the core themes. Another call being that is stipulated for at least two years for 2008 and 2009 is internationalisation, or international activities of universities. The main reason for that is that it is such a high-risk area, particularly as far as reputation of risk is concerned, the whole of Australia could suffer in a major way if there is a glitch at one institution. As you know there is often a tendency of generalising. When something happens in one institution or in one faculty suddenly the whole sector is under the gun because of that.

For two or three years, if not for three years until 2010, internationalisation is the other major topic. In addition to that there is a follow-up on some of the recommendations from the first cycle audits. In those considerations sometimes the audit panel may focus on governance issues but I would say only in those cases where there is evidence that something either has not been rectified or something has gone wrong since the first audit.

The Hon. MARIE FICARRA: Mr Lidl, from what you glean from this inquiry, would you carry feedback to your organisation that perhaps more attention needs to be paid to governance issues in your audits? Is it an area that you believe is in greater need of scrutiny?

Dr LIDL: I have to confess I have not studied the other submissions but from the evidence that AUQA gathers, and how universities operated when they were looked at in the period of 2002-07, yes, there were some indications where things should be changed or fixed, but at the moment I would not know what would be the precise message I should take back if you asked me specifically. The only thing I have heard about this inquiry is from the previous speakers and on some issues I have to confess I have quite a different view, probably because of my different background as an academic being involved in deciding tutorial sizes and so on for many years, and also being aware that Australia has moved from the halcyon days of 25 or 30 years ago when money was not an issue at universities, to mass higher education where student numbers have just exploded. It is not possible any more, I think, in universities to say, "Lets' provide unlimited numbers of tutorials or lecturers" and

so on. The Government has to recognise major shifts in higher education in the world, not just in Australia, to mass higher education.

The Hon. MARIE FICARRA: From the trends you have seen in Australia since you have been here, where academics have been told to streamline their tutorials or restructure their courses or whatever, do you think on the whole we have had good outcomes for the students on their graduation into their careers?

Dr LIDL: You will probably say I am biased but I think Australia has an excellent reputation in higher education. It is not second to none but it is amazing that a small country in population size like Australia has such a high reputation that it rivals, or comes certainly very close to, the United States and the United Kingdom. When you listen to French President Sarkozy in the first week of his office deploring the performance of French universities, or you look at the struggle of some of the German universities, which are well-established universities compared to the Australian higher education sector, I think there are a lot of things we can be proud of in Australia in our higher education sector.

I also feel one has to perhaps differentiate. I have to confess I do not know the New South Wales universities very well. Probably the university I know best is the University of Newcastle because I conducted the audit of that university last year and that is still fresh in my mind. But my experience from that university certainly was not that the academics feel threatened that they cannot publish in the areas that they would like to publish. The university conducted what they call a climate survey, which is a wide-ranging survey of the academic and general staff of the university and there are, of course, as always, pockets of disagreement and unhappiness but overall that climate survey—which is conducted by an increasing number of universities now—was quite positive.

The Hon. MARIE FICARRA: The governance issues sets the theme on the operations of the university and the students and staff all zero in on the cultural. When it is operating well it is operating well and no-one notices, it is great and everything is rosy, but when there are problems it filters down into the morale of the staff and the students and the way they feel about the university. Is that something your organisation would pick up on during audits and would it make any recommendations?

Dr LIDL: I think I heard it mentioned earlier but when we talk about governance it is very important to bear in mind that this governance occurs at many levels throughout the institution. It is not just the governing body called the council or the senate or the board. Even within New South Wales three different universities use different names. Normally I would say that the governing body provides the broad direction to the institution to achieve strategic direction, and approves normally the strategic plan that was discussed before, but the culture that exists in a university I would say is not predominantly guided by what the council does or how the council operates—it filters down through the various levels. In some universities it is very influential and in other universities it is extraordinarily small and those issues are of concern.

I remember years ago when I was chair—this was not in New South Wales unfortunately but it was in Queensland—of a panel that looked at, we were very concerned that the academic board there consisted mainly of the university executive and a few additional academics. How could that be described as an academic board or an academic body providing academic direction for the university? I agree with you. I was interested in those aspects. In some cases it has picked up on those and recorded it publicly.

The Hon. MARIE FICARRA: Does anything ever happen? Do they pick up on your recommendations? Do you go back and review whether anything has been put in place?

Dr LIDL: I should have made that point in my introduction. The one difficulty we have is that because this occurred from 2002-07 the second cycle only started last year. Last year we audited half a dozen universities so that is the occasion when we have a formal opportunity to check up and say, "These were the recommendations. What have you done?" We require universities to give us progress reports in the first 18 months after publication. AUQA looks quite closely at those progress reports and how they plan to implement them but then the next opportunity is really at the next audit to look closely to see if they have really done what they promised to do in the implementation.

CHAIR: Is there a sanction if they have not?

Dr LIDL: There is not a financial sanction or any other sanction.

Reverend the Hon. Dr GORDON MOYES: They can lose their quality standards though?

Dr LIDL: There is a reputation risk for universities. You may recall that Central Queensland University was in serious trouble and not only did the Federal Minister for Education but the State Minister for Education take a close interest into the university's activities—I think that inquiry is still going. So there are the mechanisms that kick in when there are some difficulties getting identified or highlighted or emerge for a particular university.

The Hon. TONY CATANZARITI: Is there a ranking of the universities by your audits?

Dr LIDL: No, the audit is not a ranking exercise. There are many rankings, and they are increasingly popular in the world, every country. The Shanghai Jiao Tong ranking is the ranking for the most effective research-university. Then the next most important and popular one is the Times higher education ranking. Then there are other rankings as well. But those institutions like Shanghai University or Times higher education would produce annually, or sometimes more than once each year, either institutional rankings for the world or discipline rankings for the universities in the world—global rankings. In addition to that there are some organisations that produce national rankings but in Australia we do not subscribe to—when I say "we" there is no national ranking by the Universities of Australia or by the Federal Government and, as far as I am aware, no ranking by State governments.

That does not mean that there is not an implicit ranking. Whenever there is a funding allocation, for example, on learning and teaching performance funds for Australian universities there is a list of how many millions of dollars each university gets in recognition of their excellence in teaching and learning. One only has to go down that listing and you have automatically a ranking there of who performs well and who does not perform well. Similarly, with research grants there is an implicit ranking there as to who are the winners and the losers in research grant allocations. There are rankings in that sense.

The Hon. TONY CATANZARITI: Should there be a ranking?

Dr LIDL: Many people, including AUQA as well, say that rankings are meaningless if they are at institution level because you are mixing up apples and oranges. You can have an excellent school of law and a lousy school of pharmacy and that gets completely ignored in a global ranking where you have only one number and one place for each university. Therefore discipline rankings make much more sense where the discipline of engineering, discipline in science and the discipline in humanities gets looked at and ranked. So there is support for those types of rankings.

Dr JOHN KAYE: I want to draw your attention to a number of episodes that have happened at universities around Australia where there has been a spectacular breakdown in relations or activities on councils or between the vice chancellor and the chancellor or within the council itself. There have been four or five of these that have happened in New South Wales over the last decade in the public domain, and probably a lot more that have happened behind closed doors. Has AUQA been into a university where that has happened, shortly after it has happened, or while it is happening, and have you been able to measure with your instruments, and the way you operate, the impact that has on the university?

Dr LIDL: I am quite sure on the latter that the answer is clearly no, we have not measured causes and actions and remedies and outcomes. As far as time is concerned my recollection is, for example, the University of New England was audited in 2003 and the main factor that exercised the university then was coming through the financial crisis that brought the university to the brink of collapse only a few years before and the actions taken by the university governing body and management, including the vice chancellor—that is reflected in the public record at that time. Again, at that time my recollection is—from the public record and also from reading the audit report—that there was no major issue of breakdown in the governance of that university.

The University of Sydney is another example that comes to mind. There was an extreme difficulty between management and the senate as it is called—the governing body there—but that happened after the first audit took place and the report was written, which was I think in 2004. That is my recollection. These were the big examples that stick in my mind in New South Wales of major difficulties. I have to say the University of New England is being audited this year. The audit takes place in the middle of the year—I think it is scheduled in July. This is an audit that is closer to some of the issues that have been raised in recent times.

Dr JOHN KAYE: In the time that AUQA has been operating there has been a fairly substantial decline in the proportion of staff that has permanent or ongoing positions. That is to say, casual and contract staff have become the dominant mode of employment in Australian universities. What impact has that had on, firstly, the nature of inquiry at Australian universities and, secondly, on the quality of inquiry at Australian universities? Have the audits of AUQA not picked that up?

Dr LIDL: AUQA's audits certainly picked up the dramatic increase in casualisation and there has been a strong focus in two audits on this very issue, because it has to do with teaching large numbers of students, the way they are taught, the time that is devoted to teaching, and so on. The percentages vary extensively but one could say perhaps that the percentage of casualisation from institution to institution ranges between 10 and 30 percent. I know absolutely that AUQA took great care in exploring those issues. Questions were raised about the training of the casual staff, the opportunities for casual staff to be involved, the risks were pointed out—

Dr JOHN KAYE: To be involved in?

Dr LIDL: To be involved in university activities and to be involved in scholarship, because teaching and scholarship go together. Increasing casualisation and its effect on universities is one of the major issues that arose in recent years. As recently as December last year I conducted an audit of a university in Western Australia that also operates in Sydney and we pointed out to the university the risks of casualisation and that great care has to be taken. I should say that no evidence was provided to AUQA that academic freedom is at risk. I would not like to make the linkage that contract employment or casualisation of the workforce impinges on the freedom of academics. It certainly impinges on the opportunities to conduct long-term research because in some areas such as agricultural science a big time cycle is needed to conduct a research program. It is not like in chemistry where five publications a year are the norm. This is not possible in some disciplines, so you need longer-term employment to conduct those programs. I think it is difficult to make the linkage between increases in contract or fixed-term employment and quality of research because, again on a world scale, Australia is performing very well in some of the research indicators. How come we are performing so well as far as some of the research outcomes and outputs are concerned and at the same time we are seeing a reduction in the number of tenured staff?

Dr JOHN KAYE: It is a dynamic system. Things have happened in the past that contributed to a higher ranking on international scales. Surely there are time lapses and lags in the system?

Dr LIDL: The Jiao Tong survey of top university rankings is published every year and you can see from the media the close scrutiny that is paid to who comes first among Australian universities and who comes second.

Dr JOHN KAYE: What instruments do you use to measure academic freedom or to measure pressures on freedom of inquiry?

Dr LIDL: I can only speak from my experience of how I conduct audits and the kind of policy in AUQA. We require documentation, or more often we are provided with documentation, that is a policy on academic freedom in the institution. In some cases we require policy documents on communication—that is who can make comments on various aspects of university activities. We conduct a wide range of interviews, as I mentioned in the submission. Three hundred people and many dozens of academics are involved. They have opportunities to speak. I know this is sampling—this is not the total population of university—but also we provide what are called open sessions where any person can approach the committee to convey their views about a particular university.

Dr JOHN KAYE: In camera or in open session?

Dr LIDL: All the interviews are in camera. All of the interviews are guaranteed anonymity. None of the audit reports refers to a particular individual—perhaps I should have qualified that—with the exception of the vice-chancellor, because sometimes we say the vice-chancellor has indicated a policy will be changed. The main concern is really that when individuals appear before the panel their views are not reflected.

The Hon. CHRISTINE ROBERTSON: I have a question that follows on from what John was just talking about. Are the audit processes that you use outcome based, output-based or outputs proven to deliver outcomes. I refer to the indicators. Sorry to put it like that. This is to stop the "Is the nurse nice? Tick the box" approach.

Dr LIDL: I think the indicators we are using range from input indicators to output indicators and outcomes. There was a comment during the first cycle that there was so much emphasis on processes and not on outcomes so therefore the members of AUQA, who are the Ministers for Education in each State, stipulated that there had to be more emphasis on outcomes in the second audit cycle. That is happening and has happened since 2008.

The Hon. CHRISTINE ROBERTSON: What sort of work went into developing those outcome measures, and how?

Dr LIDL: Outcome measures, just to give a couple of examples, included an extensive survey of graduates and getting their feedback on experience at the university after they have graduated.

The Hon. CHRISTINE ROBERTSON: "Was the lecturer nice to you?" Sorry.

Dr LIDL: These are not five or six things. They range from facilities, the library, to access to computers. I do not think it is put as "Was the lecturer nice?" but rather did the lecturer know the subject matter. That is an explicit question. "What is the feedback you received from the lecturer? Was the feedback timely?" This is actually a question that often gets relatively low percentages because students understand they would like feedback on assignments as quickly as possible.

CHAIR: Given that AUQA's role is not really to review governance specifically—my understanding is it is the only body that conducts audits—is there any other external body that looks at governance in particular?

The Hon. CHRISTINE ROBERTSON: Do you do audits on a contractual basis? Are you contracted by the universities or someone else to do them?

Dr LIDL: There is now a legislative requirement on AUQA that it conduct an audit of each Australian university. There is no other contract or document that stipulates it so AUQA produces a manual that outlines how we go about it. I am not aware whether there is some other body that looks closely at governance, but I think there is now some improvement compared to certainly the recent past or even five or 10 years ago. Finally the chancellors, the heads of the governing bodies, have decided to formalise their activities and hopefully one would expect more exchange of information and learning from each other to occur because of that formal body of chancellors in Australia. It has existed for the vice-chancellors forever.

The Hon. CHRISTINE ROBERTSON: Yes, he talked about that today.

The Hon. GREG DONNELLY: Your organisation is progressing to the second cycle of audits. How long has it existed as an organisation with this role?

Dr LIDL: It was established in 1999 by Minister Kemp, the then Minister for Education. The rationale was the high risk factor of growing international education in Australia. There was no body that could assure the public and overseas parents, students and governments of the quality of Australian higher education. That was one of the primary reasons for establishing AUQA as an agency whose members are the Ministers for Education.

The Hon. GREG DONNELLY: Could you explain briefly how AUQA is funded?

Dr LIDL: Yes. There is an allocation from MCEETYA, which is the Ministers from all States and Territories and the Federal Government. They established AUQA with an annual grant. In addition to that, AUQA requires each institution to make a contribution, not to pay for the whole audit but to make a substantial contribution to the audit costs. That cost is also publicly known; it is in the AUQA manual. Currently it is of the order of \$85,000 for one audit.

The Hon. GREG DONNELLY: Given that AUQA has been doing its audit for a relatively short period of time, did it develop its methodology for auditing tertiary institutions from scratch—it is now on the second round of audits—or did it derive the methodology or techniques by borrowing from equivalent organisations in other countries? I am interested to know how your methodology was established in the first place.

Dr LIDL: In the first place the Minister appointed as the foundation executive director the head of a similar organisation in New Zealand, David Woodhouse. A New Zealand organisation had existed for several years before ours was established and I think it is fair to say that that organisation in turn borrowed quite a lot of the philosophy and approach from the Quality Assurance Agency [QAA] in the United Kingdom. That was established in the mid 1980s, I think. The United Kingdom has been running quality assurance agencies for many years and other countries followed suit. There is a different approach in the United States and the reason that was not imported or borrowed heavily from was because in the United States accreditation plays a much greater role than it does in Australia. When you say tertiary institutions—

The Hon. GREG DONNELLY: That is probably imprecise language on my part. I should be talking about universities.

Dr LIDL: It is true that in the second cycle we are also auditing colleges that offer higher education programs. In the first cycle it was only universities. Now AUQA, through legislation, is part of the auditing process of institutions that offer higher education programs. These may be private colleges, TAFE institutes or other organisations.

The Hon. GREG DONNELLY: Is it fair to say—because I am not familiar with the methodology—that essentially up to now the auditing has been more of a qualitative assessment than a quantitative assessment, or is it far more sophisticated than that?

Dr LIDL: I think it would really not represent the audit because if you look at the audit documentation in cycle one, just to give an indication, the survey included outcome data on research activity, benchmarking, community engagement, teaching results, comparisons of offshore and onshore gradings—a myriad of data was surveyed. For some institutions the documentation was as wide as the width of this table. It was not just having a chat around the table to conduct interviews.

The Hon. GREG DONNELLY: In terms of the auditing of universities or tertiary institutions, you referred to the New Zealand experience, which predated Australia's establishment of AQUA, and you said both the United Kingdom and the United States experiences are a bit different. You may well be familiar with the European experience. At an international level, is there a peak body that meets or is involved in this whole issue of looking at the auditing of universities?

Dr LIDL: Yes, there is.

The Hon. GREG DONNELLY: What is that? I do not want to put you on the spot.

Dr LIDL: The International Quality Assurance Agency Higher Education body. That is an international organisation that has annual meetings, that brings together the quality agencies of the world to conduct a conference and to exchange views, and so on. I should also say that in most countries in Europe there are quality agencies now. They started relatively late, during 2000. AUQA, for example, is establishing training and providing know-how in the Middle East. There is one in Kuwait, there is one in Bahrain, there is activity in Dubai, and also in Hong Kong. In January I spent some time in Hong Kong to train the people there to set up audits of the activities of the eight universities in Hong Kong.

There are many other collaborations. We have just set up a collaboration between Australia and China. The Chinese approach to quality assurance is similar to the Australian approach: they conduct audits, although, as you can appreciate, it is completely different in size. They have 700 audits to conduct in a cycle, whereas our country conducts 40.

CHAIR: Thank you very much for your attendance today and for your submission. The Secretariat staff may contact you to clarify or expand on what you have presented. We appreciate your contribution.

(The witness withdrew)

(Short adjournment)

NOAH WHITE, President, Student Representative Council, University of Sydney, and Representative, National Union of Students, and

JAMES CAMPBELL, Caseworker and Policy Officer, Student Representative Council, University of Sydney, affirmed and examined:

CHAIR: We are offering the opportunity for people appearing before our Committee to make a brief opening statement, or we can go straight to questions if you wish.

Mr WHITE: The Student Representative Council's particular interest lies in student representation and how students are represented within the governance of universities in New South Wales. We have a view that student representation, when it is done effectively, not only enhances the quality of decision making within the governing body but also creates a better environment for students studying at the university because they feel not only more connected with the decisions that are being made but also they see the reasons and logic behind those decisions.

CHAIR: I think you would argue for increased student representation. If that is the case, is it because you think students need to have more input and more experience? Can you expand on that?

Mr WHITE: I think there are two parts to it. I think the most important part, and the thing that is really not done by any universities very well at all, is making sure that the student representatives on their governing bodies, or in fact anywhere within the university, are trained properly. Universities do not offer any significant training for students at all really. The University of Sydney does offer some training for students. However, it is not geared specifically towards student representation, which is quite different from, say, someone who is a graduate or staff representative. I think that is one area where universities in New South Wales could greatly improve, and I would like to see some incentive for universities to develop and provide strong training programs for student representatives so that they can represent students effectively.

In terms of expanding student representation throughout the university, I think that is important. It is not only important to possibly expand the numbers of students on governing bodies but also to expand student representation right throughout the decision-making process within the university, so that students are not simply used as a tick-the-box exercise when the decision is being ratified by the university senate or council, so that students actually have input into the development of the decision making, not just the yes or no tick at the end.

CHAIR: What do you see as the best method for those students to be elected to that governing body? How should that take place?

Mr WHITE: The universities in New South Wales use several different methods. Some use online polling. The University of Sydney uses postal ballots. As far as I am aware, with universities that have moved to online systems I do not think there has been a significant increase in voter turnout. I think that online systems do have problems. In saying that, I think that online systems have their benefits and they should be used once a technology is fully developed and it should be made sure that there are no problems with it.

I think the universities have a role to play in educating students about the positions that are available. We have problems, certainly at Sydney University, not at a governance level but at a faculty level. We have problems about students not filling positions because those positions are not advertised because faculties make no effort to encourage students into those positions. So universities do have a role to play in informing students about the election and also creating an accessible means as to how those students are elected. What I am saying is, we are open to online elections but they do come with certain pitfalls.

CHAIR: Some of the evidence we have had today—as well as a broad range of evidence in terms of the submissions we have received—has dealt with the issue of governance and governing bodies being more corporatised, and training being based upon company directors' roles with governing bodies. Your submission talks about more community representation, indigenous people, and a broader input from the community. Could you expand on the values that you see in that, and how that then fits with the other view that there needs to be a more corporatised role for governing bodies?

Mr WHITE: I think universities have gone down a road—maybe a bit too far—towards a very corporate model and in some ways this is not reversible, especially because of the huge proportion of income that international student fees now make up at some universities. At some universities it is upward of 50 per cent. So, I think that while there is a role for governing bodies to be somewhat corporatised, student representatives on those bodies need to be trained in those roles so that they can effectively represent students on what is essentially a corporate governance body.

In relation to having a wider representation on the governance body, I think that is also important. First of all, universities are not corporate entities; they are very much still publicly owned institutions, and their first and foremost mission is to provide education for domestic students through the HECS scheme and other public entry schemes, as well as developing research and other innovations. It touches on the fact that universities do not simply have one particular group of stakeholders. It is not like a business which might have a group of shareholders that participate in the meetings and that own the company. The university is owned by the public and it serves several different groups of stakeholders, including students and academics, but as well as that, the entire community.

It is particularly true for rural areas. In rural New South Wales, Charles Sturt University and Southern Cross University both play very big roles in the communities that they serve. For example, that can be in medical centres. A lot of the time without a presence of these universities in rural areas there might not be that particular facility available.

Mr CAMPBELL: We take the position that they are public institutions and they form part of the States, with an investment in them by the State of New South Wales. Every student and member of staff who have gone through them over a period of time means that although they should have autonomy in the sense of not being politically directed by the Federal Minister for Education in the sense that this piece or that piece of research should not be allowed, they should have academic autonomy. They are not separate corporate companies. They owe their duty to the public.

The notion of a university is not that there is a bunch of seven or 22 or whatever number on the governing body of the university body. The university is the people involved in it, including the many tens of thousands of students at Sydney University and the many thousands of staff who are involved. The identity of the university is not just the governing body. There is a notion behind the corporate governance one, which is about shareholders and fiduciary duty to the shareholder. We have a concern with that notion, although people on the governing bodies need to be responsible, appropriately trained and deal with matters appropriately and legally when there are financial matters involved. Their duty is to the institution broadly and that is what we are trying to suggest that we should be a part of.

The Hon. MARIE FICARRA: Your submission stated that you would like to see the tenure of student representation on the board increased. Could you elaborate on that? Have you served on the board? What is your experience? In terms of the student body, only a certain percentage is involved in electing SRC representation? What happens in communicating what is happening on the board that might influence the students, not just people who vote on the SRC but the wider student body?

Mr WHITE: With student voting, probably an average number of students who vote in election might be about 3,000 out of 33,000 undergraduate students, but 33,000 undergraduate students are not on campus all on the same day when those elections are held. Only about 9,000 students are on campus that day in total, undergraduates and post-graduates. There is a point to be made that while the numbers are low and there is a problem with that; they are not as low as they might seem.

I have not served on the governing body of my university. The tenure on the university centre is one year for a student representative whereas for all other positions it is at least two years. The problem with that is that the student representatives that I have seen go through the process of being on that governance committee and go through the process of being on that governance committee really only get into it properly at the end of their first year. By the end of it they are able to sit there with the vice chancellor and argue across the table; they are able to say something to the dean of science—

The Hon. GREG DONNELLY: That is why it is only for one year.

Mr WHITE: If it is going to remain at one year there is a real imperative for students to be trained properly so they can participate and represent their cohorts effectively, but there is also an argument to allow

students to have the same opportunity to represent their cohorts that any other representative on the governing body would have.

Mr CAMPBELL: One of the complications of the terms that the senate and the governing bodies at universities is that you need to be a student, but that is subject to a definition that says at the point that you run for the election, which I think is October, you need to be an enrolled student but then continue to be so in the following year. It then becomes open to somebody who is very early in their career or who is prepared to enrol and not do well and the consequences for that or, as was the case a number of years ago, a very strong student who was on the governing body stopped being a student but in good faith believed he was fulfilling the requirements. At that point there became a conflict between that person and other members of the governing body, the vice chancellor at the time, and that person had to leave, although that was not clearly necessarily the will of the majority of the governing body; it became an illegal situation.

The Hon. CHRISTINE ROBERTSON: Because they no longer fit the criteria?

Mr CAMPBELL: One interpretation of the Act was that the student needed to be a student enrolled at that particular time. The principle was that the student needed to be engaged as a student but the question was whether they had to actually be enrolled in a particular class at a particular point in time. You could give some thought to changing the terms.

Mr WHITE: I think the most important part of your question was in relation to how the students give feedback to the rest of the student body. That has become increasingly difficult over the last two or three years. The way it has worked at Sydney University—and I know this is the way it works at several other universities—is that the student representative on the senate is very much engaged with the student organisation because that is where they are able to get the training they need and where they are able to access research and casework officers.

The Hon. CHRISTINE ROBERTSON: And the votes?

Mr WHITE: Yes. So it is through that organisation often that the feedback happens. For the past three years the student organisations have all undergone significant funding cuts because of voluntary student unionism, which has meant for a lot of student organisations they have not been able to really fulfil their duty properly of giving that information back to students because they have been so internally focused.

I think that is starting to get better now and I think over the next few years we will see an improvement in feedback into the student body and I think that will translate into higher numbers of students being interested and involved, as well as voting in the general elections. That is a role that the student representatives and organisations should be required to play. I think it is an important role but again fulfilling that duty really cannot be done without training because if you are in the second year of your arts degree and you have never served any representative role before or had any contact with student organisations, you do not know how to get out and speak to students and make that contact.

That is very evident because in the elections for our governing body for student representative positions we have had contested elections for as long as I can remember but for the past eight years at least every single one of those representatives have been a past SRC president because they know what is expected of them and they are comfortable in doing that.

Mr CAMPBELL: I make a small point just to complement what Noah was saying. The interactions between the student organisations and that representative are obviously pretty strong and where they are weaker—Sydney has been affected by VSU but probably much less than many other universities around New South Wales and the country and that weakening of those student organisations, you could assume, has led to some weakening in the support, the background and the provision of feedback that may exist in other universities. Sydney does one thing reasonably well that may not exist in other universities, that is, it has some financial training for incoming student representatives and other members. That is directed through the institute of directors.

Mr WHITE: The problem with that is that it is not particularly directed at student representatives, although it does help.

Mr CAMPBELL: It is the corporate model not the democratic one.

Mr WHITE: I know that research has come out of the University of Waikato and Princeton University about student representation and how to best use that.

CHAIR: It is more on the corporate role. Are you talking about advocacy training?

Mr WHITE: For student representatives? I guess it touches on how the student representatives actually relate back to the student cohort, how they engage with the student cohort, how to figure out what are the important issues to students because being the student representative is not necessarily about going out there and projecting your own views; it is about making sure that the views of the majority of students are projected. That is not something that is particularly easy to do if you are not in tune with the rest of the student cohort, so there has to be some training about how you go about that.

Dr JOHN KAYE: I was interested in your comment then. You said that the role of the student representative on the council is to project the views of the majority of the students. That runs counter to the law actually because the law says—and I will be interested in your feedback on this—that you have to vote in accordance with what is best for the institution?

Reverend the Hon. Dr GORDON MOYES: Not what is best for your stakeholder group.

Mr WHITE: I would argue that what is best for a student is best for the university.

The Hon. MARIE FICARRA: Good answer.

Dr JOHN KAYE: Good answer. In this debate you probably realise I am on your side, but what I want to ask you is this: has that change moving towards a more company directors style view of the members of governing bodies constrained the way in which members of student representatives on governing body execute their duty to the people who elect them?

Mr WHITE: I think it has affected the way in which governing bodies, certainly, have acted, and it has affected the way in which student representatives have acted. I think the answer is potentially, yes, to some extent. I think where there is very strong student representation—and I am speaking from my background at the University of Sydney where we have been quite lucky and we have had quite strong student representation on our governing body—I do not think it has been affected as much whereas if you were to go to, say, the University of New England where the student organisation has shut down—they do not have a student organisation any more—I would think that the actions of the student representatives on the governing body would have been severely affected by the move to a more corporatised body.

Dr JOHN KAYE: So you advocate a move back to a body that elects representatives who can represent their interpretation of what is the best interests of their constituents?

Mr WHITE: I think it is a difficult issue. It is not a dichotomy to say that when you are acting on behalf of your electorate as a student representative you may be in conflict with the best interests of the university. I may go into a meeting at university and say, "Well, I don't think you should sign a deal with a company X because they are being tried for war crimes", or whatever. I use that example because it has come up at Sydney University. However, the university might say, "Well, we think it is best that we do because it's more money to the university." Who is acting in the best interest of the university is completely debatable. I do not think there is that dichotomy. I do not think you can break it down like that.

Dr JOHN KAYE: Let us take the conversation somewhere else. Is it your view that disruptions of the operation of council, whether that arises from severe conflicts or breakdowns in relationships or a lack of clarity, flows through to the quality of education that is being delivered to students?

Mr WHITE: Yes.

Dr JOHN KAYE: How does that happen?

Mr WHITE: I think that conflicts between members of the governing body or conflicts with members of senior or executive groups in institutions need to be resolved very quickly. We have had situations at the University of Sydney very recently and they are ongoing. Breakdowns and relationships have had disastrous

effects on certain faculties. It has led to a breakdown in relationships right down the food chain, I guess you would call it—from senior executives to academics, to students, and to the general staff. Once relationships are not working properly between people and the institution, we have found that it very much disrupts the learning environment and the quality of education itself.

Mr CAMPBELL: I assume that your university experience would flow through with some of that. The organism, which is the university, is defined in part by the leadership that is provided at the top. Factors of morale make a big difference to the fear that staff can put in. If there is a sense that what is happening at the top is not representing the university community and it is going in a direction which is not an agreed one across the group of people involved in that community, that breaks down most sorts of relationships, and it is fairly general.

If I can get back to your sense of what the law is and notions of fiduciary duty and if you define that clearly a member of a governing body has a duty not to undermine the commercial position of the university by doing the wrong thing, that does not mean that the commercial financial position of the university on a profit maximising notion is an appropriate one for a person who is a member of that body. A student is one of a number of elected people. If they are going there, either the Commonwealth or the State has recognised that they come from a particular constituency in order to put a point of view and to argue a case, if it is appropriate, in a responsible and appropriate manner. It is a democracy, in a sense.

If they do not have the votes, if they cannot convince the governing body that they have a sensible point to make about what is in the best interests of the university, they are not going to win. But what we want is not to remove the sense of balance and a sense of debate, and that is what happens when you go to a small group and commercially focused governing body.

Reverend the Hon. Dr GORDON MOYES: Mr White, I was just thinking about the numbers of student representatives that should be quarantined within the total governance body. You are suggesting there might be two, for example, instead of one, set aside for student representatives to allow for the fact that half the student body, give or take, now comprises international students. Do you have any comment about their rights?

Mr WHITE: I would expect that international students should have a say in the election of their representatives. It is an interesting question you raise. You ask me whether there should be a dedicated international student representative.

Reverend the Hon. Dr GORDON MOYES: Yes.

Mr WHITE: I think it is a very interesting question. I have actually recently had this debate with somebody. I think there is a problem within student representation that international students maybe do not nominate themselves for various reasons. I do not think it is an active part in the elections, but international students do not get elected, for whatever reason. Having affirmative action for international students on governing bodies is an option worth considering, but I think what might be more effective is finding ways in which to encourage international students to run for those positions themselves.

Reverend the Hon. Dr GORDON MOYES: In the same way, do you think there should be certain numbers or percentages set aside for alumni?

Mr WHITE: The alumni always has been a very important part of the university community. Having been through that institution themselves, I think that gives them a good understanding of what the institution is about and the traditions of the institution as well. In relation to the actual number of alumni on governing bodies, it is a large number.

Reverend the Hon. Dr GORDON MOYES: It is a large number simply because they are the people who get elected rather than having a set-aside number of positions for alumni.

Mr WHITE: Yes. That is true. I do think that the alumni have an important role to play because they have been through that institution and know a lot about it.

Reverend the Hon. Dr GORDON MOYES: Some organisations are actually specifying in their numbers on the senate that they need to have an alumni representative.

Mr CAMPBELL: Yes.

The Hon. CHRISTINE ROBERTSON: You spoke about the training role specifically for student representation. The issue that was discussed quite a lot through conversation was about the ability to be an integral component of the senate or council, or whatever is the name of the body in the university. Do you think that as an adjunct to the general training in participation there could be specific training about the ability to be an integral component while representing views? The issue that you hear at the council level is that the student representative comes with an issue that is on the side and that maybe is away from where the rest of the people are on the council and the work of getting that through so that it is on the agenda. Is that the sort of training you are looking at as specialised training? I know you are looking also at getting back out to the students afterwards and such like, but it is the actual integral role of the council when people seem to be able to put up unpleasant phrases to put on the end of things to say that you are an added nuisance on the edge. Do you know what I mean?

Mr WHITE: That is a very important part. I guess the example again is that it works much better at the University of Sydney where we have strong student representation in other parts of the university and are able to have our say, and we are able to follow the process right through from the beginning to finish when it ends up on the table of the governing body. The student representative knows where this has been and knows what input student representatives have had. If students still have concerns with the issue, of course they can raise at the senate meeting. But if those concerns have been raised and addressed, that basically solves the problem. Other universities do not.

I guess I am straying from the governing bodies and talking about other things, but it is important to know how the rest of the university community feeds into the governing body and how the decisions are fed into the governing body. In relation to the training, I think it is important to let students understand that while they are there to serve the needs of the university and students at the same time, they are not separate roles. They are one and the same.

The Hon. CHRISTINE ROBERTSON: The work at Princeton and the other place you said, did that actually include this in the process?

Mr WHITE: I mentioned the work at Princeton and Waikato because I read a document written by the University of Sydney medicine faculty on student representation and effective student representation. That is where most of the information was sourced.

The Hon. CHRISTINE ROBERTSON: Would it be a dreadful nuisance for us to ask you to get that article back to us?

Mr WHITE: I can forward it to you, certainly.

The Hon. CHRISTINE ROBERTSON: Do you think that the proportion of public funding, compared with fees and private corporate funding that is now in universities, has reduced academic freedom within the university?

Mr WHITE: Yes. We have a situation where the university decided to sign a deal with Rio Tinto giving Rio Tinto intellectual property rights to a whole lot of students' academic work. That was signed basically because the university wanted the money, to be frank.

The Hon. MARIE FICARRA: Which faculty was it?

Mr WHITE: It was the chemistry faculty and part of the engineering faculty—the school of chemistry and part of the engineering faculty, I think.

The Hon. GREG DONNELLY: My question will follow up that question.

Reverend the Hon. Dr GORDON MOYES: It did not do them much good, by the way.

Mr WHITE: Yes.

The Hon. GREG DONNELLY: Regarding this encroachment of commercial interests so explicitly into tertiary institutions, Mr White, could you give some comment on that? You have given an example, but the first element is: Is this a trend that is growing? Secondly, to the extent that it is a trend, is it across all faculties or is it concentrated in particular faculties? You may not know the answer, in which case say so, but I am just probing this issue.

Mr WHITE: I mentioned that one example because it is one of the most recent. There have been several examples while I have been at university, including one with the Dow Chemical Company which was the sole supplier of napalm to the United States during the Vietnam War. It is a symptomatic problem in terms of which faculties it affects. I believe it affects more so the science and engineering faculties, so it is faculties that have very applicable research to the real world and to industry, particularly the big industries in Australia—for example, the mining industry.

Reverend the Hon. Dr GORDON MOYES: GM modified crops?

Mr WHITE: Yes.

Mr CAMPBELL: If you are looking at a trend in management, it does not necessarily follow but it creates an environment and pressures; that if you look at the proportion of public funding that goes to universities as a proportion of their budget, there is a very clear trend line over the past 20 years. That proportion has gone from the significant majority down to the minority; certainly in Sydney and in most other institutions, in a few regional ones perhaps not so much. Some of that is fee-based stuff. In terms of students it would be a big proportion of that. If nothing else, there is an argument that it is a huge stakeholder problem group that should have representation.

Also, it is traditional, it is who is the key thunder. The Commonwealth position has been to squeeze funding sources and to say "go out and be entrepreneurial". Those sorts of pressures when things are getting tight inevitably means that people work out what they think is going to be the best bang for the buck. You need to look at individual elements of each to see if you are happy with it. The university recently introduced a one-page policy about academic freedom to try to deal with some of those notions. They are still wrestling with the notion of ethical investment, ethical dealings, but they have not, we think, come up with a good and satisfactory strategy.

The Hon. CHRISTINE ROBERTSON: But they are having a go, you are telling us?

Mr CAMPBELL: Yes, but only because they are being pushed to do so.

The Hon. CHRISTINE ROBERTSON: Yes, but that is okay. Other places are not having a go.

Mr CAMPBELL: But they have not come up with an answer yet.

CHAIR: This is a fascinating debate that could potentially keep us here for a long time. Perhaps there will be another inquiry. We could hear more about that at some other time. I appreciate your attendance, your contribution and your representation of students today. Students appear to be very well served by the level of contribution you have made today. Thank you. The secretariat will contact you to get more information about some of the studies that you mentioned.

(The witnesses withdrew)

(The Committee adjourned at 4.50 p.m.)