

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 2

INQUIRY INTO

GOVERNANCE OF NEW SOUTH WALES UNIVERSITIES

At University of New England, Armidale on

Tuesday 17 March 2009

The Committee met at 9.45 a.m.

PRESENT

The Hon. R. M. Parker (Chair)

The Hon. G. J. Donnelly

The Hon. M. A. Ficarra

Dr J. Kaye

Reverend the Hon. G. K. M. Moyes

The Hon. C. M. Robertson

The Hon. P. G. Sharpe

CHAIR: Thank you for being here in the Oorala Aboriginal Centre. I acknowledge the first Australians and their elders past and present. It is great to be in this building and see all sorts of support this university obviously offers.

Welcome to the second public hearing of General Purpose Standing Committee No. 2's inquiry into the governance of New South Wales universities. As I said, thank you to the University of New England for giving us this opportunity to hold a hearing at the university to get your views on this important subject. This is one of two visits outside Parliament House. Next week we are going also to the University of Sydney—so, one rural or regional and one metropolitan university. We have Committee members who have affiliations and I need to note that for the purposes of this inquiry. The Hon. Christine Robertson advises that she was previously on the University of New England Council from May 2003 to December 2004. Dr John Kaye is a member of the National Tertiary Education Union. The Hon. Penny Sharpe, who is acting as a substitute member today for the Hon. Tony Catanzariti, is on the Council of the University of Technology, Sydney.

If media are in the room, there are guidelines for broadcasting of proceedings on the table as they enter the room. Only witnesses or Committee members may be filmed. The audience is not to be the primary focus of any filming. If anyone needs to pass messages to any of the Committee or to witnesses, you are welcome to do so, but please do that through our Committee staff. We need also to make some comments at the outset about adverse mention. This inquiry is not a forum for individual witch-hunts or to make adverse reflections on any individuals. We provide that protection to witnesses under parliamentary privilege, but that privilege should not be abused, and I am sure it will not be today. If we just keep to the terms of reference rather than any individuals. Parliamentary privilege does not apply to what witnesses might say outside this Committee hearing. That is a matter for everyone in so far as matters of defamation are concerned.

KAY HEMPSALL, Member, University of New England Council and Manager, Organisational Development, University of New England, affirmed and examined:

CHAIR: We offer an opportunity for any of our witnesses to make a brief opening statement if they so wish. That is entirely up to you. Would you like to?

Ms HEMPSALL: Thank you for the opportunity to speak. I am appearing today in an individual capacity. I think the main thing I would like to make mention of at the outset is that I believe that the social, emotional and financial cost of what occurred last year is quite significant. I welcome the opportunity for possible solutions to prevent any such thing happening in the future. That said, I am aware, as I have said in my written submission, that in reality there may be limited legislative solutions to some of the issues.

CHAIR: Thank you. How long have you been with the University of New England?

Ms HEMPSALL: I was first a student here in 1978 to 1979. I was an international student on a Commonwealth scholarship from England. I formed a very strong allegiance, not only to the New England but to this country. I have been a student on and off throughout that time and have done several external awards. I returned to Armidale in 2000 and took up a position at the university in November 2001, and have been in that role ever since. I did do some temporary work at the university prior to that.

CHAIR: How broadly has this inquiry visit been publicised? Have any council members been informed? Would you know?

Ms HEMPSALL: I believe it was a very broadly publicised through different channels.

CHAIR: Thank you for your submission, which has some great suggestions for us, and very practical suggestions. You mentioned that councillor Torbay has brought in some new procedures to improve governance, and also you talk about a retreat that took place in February. Can you give us more information about how the retreat worked from your point of view, did it address the right issues and what sort of changes have been brought about?

Ms HEMPSALL: I think the retreat specifically addressed making sure we had in place procedures to accurately manage the relationship between governance and management to make sure that neither side oversteps the mark in that regard. One aspect of that would be the appointment of the university secretary and legal counsel who, I believe from my relatively short-term interaction with her, is a great asset to the university and certainly a welcome appointment. The retreat was refreshing for those members of council who had been on council previously and it was quite a different induction for the new council members who were joining at that time. We spent a little bit of time looking at what were the key issues we need to address but we did not spend any time going over the past. We figured everybody believed that was not in the best interests of the university or the council members.

So, as a group we were looking forward to the future and laying down particular processes such as how communications were going to be handled between council and management and how agendas were going to be managed. Even things like minutes. In previous times the minutes of council meetings often did not turn up for several weeks after. I am pleased the report on the last two council meetings has arrived within a few days after council, which is a much better system for us to have the meeting still fresh in mind and to be able to make comments on things like that. So, I feel the flow of information and the transparency of that has been significantly improved.

CHAIR: Are all council members able to access all information? Is it available on websites everyone can log onto or is it just restricted to the intranet of the university?

Ms HEMPSALL: I am not sure whether they have completed—there were some potential issues with the security of the website. While they are resolved, I believe certain things are not available on the website yet. But, every council member has the right to request that information, and my belief is that now that request would be honoured, but it was not honoured in the past.

CHAIR: Are all council members given adequate training in governance issues?

Ms HEMPSALL: This is my third year on council, and I have attended three separate council induction sessions. While all council members are requested to attend, it was not mandatory to my knowledge. The aim was that all council members would repeat that process every year. This year, the vast majority of councillors were present for that induction session. I appreciate other members of council had sat on boards previously and would have undergone different forms of induction, but I believe it is useful as a group to undertake that on an annual basis. My belief is that that is now what we are setting down for the future. The most recent induction session was, I think, more informative than the previous sessions.

CHAIR: You talk in your submission about elective representatives and the value they offer. I have heard from a number of people, and this backs up some of our evidence, that in some universities there is a division between elected representatives and others—there is almost a two-tier system within councils. I wonder whether that is an issue here and can you elaborate on why you believe elected representatives make a contribution?

Ms HEMPSALL: I think whether or not there is a two-tier council very much depends on the leadership of the council. That is a personal characteristic and quality. Certainly, my experience in the previous two years was that information was not forthcoming specifically to elected representatives because it was deemed that we had conflicts of interest. I believe quite to the contrary of that; that we were on council to act in the best interests of the university, and you cannot do that if you do not have all the information. So there was compromise there. However, the information flow in the past couple of months has been significantly increased. So, I am confident, at least with the current leadership of council, there is no intent to withhold that information. So, I would definitely say it is very useful to spell that out to make sure such a thing could not happen in the future. Because it does depend on the style of leadership and you cannot always guarantee that.

With respect to the value of elected representatives on council, there are a couple of elected representatives on council who have a 30-year history with the university—one of those as a student, as a staff member and a community member. The elected representatives have a huge incentive to have the best interests of the university at heart for a number of reasons. You have an allegiance to your alma mater, and also as a staff member the health and vitality of the organisation is important to your ongoing association with it. So, I think we are genuinely interested in the best interests of the university and want to see it thrive and prosper. It would be a real shame, as I said in my submission, or detrimental to the organisation if that voice were removed from council. My belief is that had the elected representatives not been on council last year—at UNE specifically—the outcome of last year would have been significantly different, and I am not confident it would necessarily have been in the best interests of the university.

The Hon. MARIE FICARRA: When you look at the composition of the council at the moment it is 22 council members. There is a lot of debate about the optimum size of a council, whether it should be reduced to make decision-making faster, but that in itself, in your submission, is also a danger. What do you believe about the current size? Should there be any modifications, and can you comment on the composition in terms of the proportion of elected members and staff and do you have any other suggestions for the Committee?

Ms HEMPSALL: Generally speaking I think the composition of council is quite satisfactory. There is a majority of non-elected members on council—a slight majority of those. I just need to get my head around those two questions there. The size of council I think is not an issue because, as I have said in my submission, the vast majority of business is conducted quite expeditiously. It is expedited with a smooth transition through. The items which take longer to process are in actual fact those items which are contentious. Therefore, I think that it is very important to have debate about those issues which are contentious, particularly when large sums of public money are involved. I think it is very important to have a very broad range of views with respect to that and I think it is the only sensible way. After all, that is how Parliament itself runs. I think that generally speaking most standard business is conducted quite smoothly, quickly and efficiently and it does not hold the process up, the size of council. Where it might take longer to process things would definitely be in those instances where there is a whole new direction being headed off in, and I think it is wise and quite pertinent to have a good discussion about those things.

The Hon. CHRISTINE ROBERTSON: Without giving us a specific example from your council can you give us some example of what you define as contentious issues?

Ms HEMPSALL: If the university were making a decision to engage, for example, in a significant external contract that would involve large sums of money and maybe over a fairly lengthy period of time, I think it is useful to have a discussion about all of the pros and cons involved with that and what the process should be.

The Hon. MARIE FICARRA: And the other part of the question was the current composition; are there any amendments that you would suggest would work better? Is the proportion of elected members sufficiently high?

Ms HEMPSALL: No, I think actually it is fine. If you have a look at the types of expertise that are required for council they are specifically sought in the ministerial appointments, and I think that is sensible.

The Hon. MARIE FICARRA: There seems to be a lot of misunderstanding or misinterpretation about conflicts of interest. Some witnesses are telling us that they were unduly accused of having conflicts of interest and therefore precluded from taking part in a conversation on a point of interest of the people that they represented, and others were sitting there with obvious conflicts of interest that were outlined to us in confidential submissions. Do you think there needs to be far more clarification to the council members and also prescribed in the Act?

Ms HEMPSALL: I do think there is scope for more clearly defining conflicts of interest in the Act itself, and I have drawn attention in my submission to a document which I think goes some way towards clarifying that, but it is probably not sufficient. I certainly would appreciate more guidance personally on how to handle perceived conflicts of interest because I think that that is a very contentious area, and yet, as you have pointed out, perceived conflicts of interest were declared by an independent third party on more than one occasion and in all directions probably, and in some cases that was upheld and in others it was not. So I think that we did not have a clear process for that.

Dr JOHN KAYE: Thank you for an excellent submission. Can I just ask you about the issue of the inner and outer cabinet that seems to have formed? We have heard this in a number of submissions. We have seen this story about a division on council. I do not want you to go into the specifics of individuals but what I would like you to do is address the failure of the governance structures at the University of New England council and in general that allowed that to happen. What should have been in place that should have stopped the exclusion of elected members of council from being part of the decision-making? What should we be recommending we put in place to stop that happening?

Ms HEMPSALL: I think probably what would be really useful is to consider at an induction session all council members speaking of what skills and expertise they actually bring because I think that individually will bring a wealth of experience regardless of what our work position is or whatever our position in the community is. I think if there was a greater understanding of the qualifications and background of individual council members there would be a greater appreciation for the skills that individual council members bring rather than perhaps assumptions being made about if you are a staff member you are not astute in business matters, for example. That is not something that you can actually equate, yet I think there is a tendency to look at how people are engaged in their roles and minimise their supposed expertise to that of the role. But I think that is a mistake.

I have had two careers prior to coming here and I ran a business for 10 years. That has probably not surfaced and probably no other council members know about that unless I have engaged in a one-on-one conversation with them about that. So I think that at the outset an induction, perhaps good background information, CV even, of all council members would not be a bad thing. I think also that is a good idea. That would also probably help with understanding where people have come from and how they fit into the various relationships with people and how they therefore can actually be beneficial otherwise perhaps.

Dr JOHN KAYE: Just on a similar issue—this highly vexed issue of conflict of interest. Am I correct in saying that there were allegations of conflict of interest against elected members on the grounds that they would be voting for the best interests of themselves on matters to do with salaries, wages and conditions and so on?

Ms HEMPSALL: Yes, although I find it a bit confusing that allegation, if you like. The short answer to your question is, I think, yes. But I find that somewhat confusing because it suggests that somebody who is elected can only act in their own interest rather than the interests of the university, and, like I said at the beginning, I think elected representatives often have the bigger picture of the long-term success and prosperity of the university at heart.

Dr JOHN KAYE: Was there ever any attempt made to distinguish between an interest which attracts to you because of your membership of a class of people versus an interest which attracts to you as an individual because of an individual thing you have done or an individual attribute you have?

Ms HEMPSALL: I think that there was perhaps, and may exist in other organisations actually more broadly—in my very broad reading of organisational matters of management I would say this is true, so I think I can speak more broadly—that there is a sense that the staff do not understand management and that they do not understand these decisions and so therefore they cannot really be party to making those decisions and that they would always act in their own interest rather than the broader interests of the group: therefore, if you are a representative of, say for example, the general staff groupers in my case, that you would only speak on behalf of that group of staff, and I do not think that is true at all, I really do not. I think it again comes down to individual qualities. It may be that a certain individual might do that, but I think that the vast majority of people would not because they put themselves up for election purely and simply because they are interested usually in the bigger picture. I'm sorry, have I answered that question adequately?

Dr JOHN KAYE: No, but you have given some interesting information. Where I was really going with that was, for example, as members of Parliament our conflict of interest is only in respect of what we do, what we are indeed joined to, but we do not have a conflict of interest if we advocate on behalf of a class of people we belong to. So if I advocate on behalf of a class of people who are potentially beneficiaries of defined benefits of superannuation, even though I am one, that does not create a conflict of interest. It seems to me that the conflict of interest allegations that were being made against the elected representatives were not in respect of the individual interest. It was not because you owned a house somewhere or you had a specific personal investment but because of your membership of a class of people who might benefit.

Ms HEMPSALL: Yes, generally speaking I would say that was correct.

Dr JOHN KAYE: You make a remark, which I personally agree with, where you say that it is a mistake to draw a comparison between the executive board of a private company, whose principal focus is to make a profit to increase shareholder value, and a university council/senate, whose principal focus is to provide a quality public service. We have heard evidence effectively to the contrary to that in Sydney. Can you spend 30 seconds explaining why it would be a mistake to make that comparison?

Ms HEMPSALL: I think that there is a danger that with education if you focus only on profit you will remove aspects of education which are beneficial for the longer term future. An example might be not to fund research if it does not suggest an immediate commercial benefit, and yet 20 years in the future it may be the very thing which actually saves the planet. I think it is a really big mistake to put education totally on the equivalent path of whether it is actually making a profit or not. I think we have to fund education that is for the sake of education to impart.

Reverend the Hon. Dr GORDON MOYES: I want to take up the question of values, because we all appreciate the fact that probably the biggest aspect in business governance and corporate governance in the last couple of decades has been in the development of the alignment of values for the corporation. I wanted to push you a little bit further on values with the university. It would seem to me that university ought to be a place where values are challenged and in fact are bodies of challenging values. I mean, that is their basic purpose.

Ms HEMPSALL: Yes.

Reverend the Hon. Dr GORDON MOYES: If, as you say, the alignment of values is so significant and will drive the organisation, does that not logically suggest to you that if the university is there to challenge and refute values, in point of fact universities are inherently ungovernable?

Ms HEMPSALL: I think in one sense one of the critical values that we need to be mindful of in universities is that of the freedom to have maybe a different value to what is actually going on. I agree with you totally, but I think inherent in that is that one of the values is to challenge values and I think that in my recent experience it would seem totally inappropriate to have those challenging values because it stopped a particular path. Again, not wanting to talk too specifically, but in reality the types of values that I believe are essentially part of the university are those bringing many different points of view into a pot, if you like, to be able to ultimately work towards the best solution.

That idea is not new; it has been around since King Arthur and the Round Table: the idea of keeping on going around all the different views until you move up to the highest common value. So I think that is what is important in universities. I do not think it makes them inherently ungovernable; I think it does mean that significant decisions take longer. But I think in a way that is the solution to what you are saying: it is about whether or not we respect that search for a higher common value or not, or whether we are just going to charge through because a certain group of people believes that this is the only path that we can possibly take right now. But if the majority disagree with that I think that makes it—

Reverend the Hon. Dr GORDON MOYES: Was there much emphasis upon any of this in the induction program that council members went through?

Ms HEMPSALL: I would say almost none. It is certainly a point that could actually be dwelt on. I did also highlight, which I think is worth mentioning, that the very first line in the policy of the Council of the University of New England says that the council shall educate itself regarding the values held by the persons it represents.

Reverend the Hon. Dr GORDON MOYES: You do not believe that came through the induction?

Ms HEMPSALL: No, I do not think that came through.

Reverend the Hon. Dr GORDON MOYES: You have been to three inductions?

Ms HEMPSALL: Yes.

Reverend the Hon. Dr GORDON MOYES: They have been different inductions each time?

Ms HEMPSALL: Yes.

Reverend the Hon. Dr GORDON MOYES: Yet, you have come away from those not knowing much about the background of any other council members, nor has there been significant discussion on what is inherently the basis of good governance?

Ms HEMPSALL: I do believe that that is certainly a significant recommendation that could be made.

The Hon. GREG DONNELLY: In the second paragraph of your submission you make reference to the procedures introduced by Chancellor Torbay that, in your view, have helped improve the governance management relationship between the members of council and the staff. In your view, have these new procedures helped—to use a word—heal the inequity and move things forward so they are more than transitional or do you believe the new procedures are going to create a new footing that you think will take the university forward? There could be a difference between those two. I am wondering, in your assessment, which one of those procedures is more likely?

Ms HEMPSALL: It is early days, so I would say we are only in the first phase of making sure that the healing phase, for want of a better word, actually progresses as quickly as possible so we can then in perhaps a more mature way establish the longer term procedures. I think individually, as council members, we need to be very serious about reflecting on how we individually contribute to that.

The Hon. GREG DONNELLY: Your answer to that question leads me to my next question. How do you think these additional procedures, or refinement of what are these sort of transitional procedures, if I can use that phrase, can be developed? Do you think they are something capable of being developed internally by the university organisation or that the university will need to look beyond its boundaries, so to speak, to see what other universities utilise as governance procedures that seem to serve those universities well?

Ms HEMPSALL: My understanding is that there is research being done across all universities in order to inform our process and I think that is a sensible way to approach things as well.

The Hon. GREG DONNELLY: Is that research being done by this university into other universities?

Ms HEMPSALL: Yes. Our new legal counsel in her office has actually been doing research into what other universities are doing with respect to certain things and then to bring that back to all of council and to

actually have a collaborative process. We have been invited for our input into that and I think that is a sensible approach.

The Hon. GREG DONNELLY: On the question raised by Dr Kaye about the incident—in the fifth paragraph—with the two councils and the tensions that flowed from the dynamics that existed, in your view has the structure of the two council framework broken down and no longer exists, or does it still exist?

Ms HEMPSALL: Largely but I think, perhaps, we need clarity around things. Like, university expenditure and financial records are a public record and therefore I do not necessarily see why an elected member of council who happens to be a staff member—because not all elected members of council are staffers; there are students and graduates as well—should not necessarily be able to observe committee processes such as remuneration because it goes into the public record. It seems to me rather strange that that needs to be an "in camera" process. Yes, I think that is one area where there is unlikely necessarily to be significant movement, although I note in the most recent minutes and agendas being put around our email list that we are being invited to let the chair of the various committees know if we want to observe that committee. But I do not think the remuneration committee is one of those, so it is not a complete process.

The Hon. GREG DONNELLY: Of the 22 council members, how many of those are students at the university?

Ms HEMPSALL: Two. Well, except for those people who are there in multiple capacities but two.

The Hon. GREG DONNELLY: Have you got the breakdown for the other members of the committee or would you be able to provide that information?

Ms HEMPSALL: You mean of council?

The Hon. GREG DONNELLY: Sorry. The breakdown of the 22 members of the council?

Ms HEMPSALL: Yes.

The Hon. GREG DONNELLY: Two of those are students?

Ms HEMPSALL: Yes.

The Hon. GREG DONNELLY: And the other 20 are made up of?

Ms HEMPSALL: There is one general staff representative, there are two academic staff representatives, there is the chair of the academic board who is also a staff member, then there are two elected representatives who are graduates of the university—so former or alumni students—one of whom is a business person, so you are starting to get multiple roles, then you have those two people and there are I think five or six ministerial appointments.

The Hon. GREG DONNELLY: Quite a broad range?

Ms HEMPSALL: A broad range, yes.

The Hon. PENNY SHARPE: It seems to me from a lot of the discussion that the leadership provided by the chancellor and the vice-chancellor and executives team is critically important. You can prescribe all the requirements that you want but that does not necessarily flow if the participants are not willing to be part of that. Is there anything specifically that you think must be prescribed and that you would like the Committee to take on board?

Ms HEMPSALL: I think that in business generally in order to continue to improve what you are doing you need to undertake ongoing training and development. I think that is probably a significant thing that we should be participating in and not just—as happens in many organisations—the front-line staff who go to training and not the managers. I think in reality it needs to be the whole organisation that is engaging in ongoing professional development on a regular basis. I think that is particularly true for council because we have to be abreast of everything that is happening more broadly and also to provide the best leadership that we can. My particular area of interest as manager of organisational development is leadership development at the university

—so I should perhaps put that on the table upfront. In actual fact I do not think we do that well, yet. We are improving but I think some of the shortfalls in leadership could probably be remedied by regular reflection and development.

The Hon. CHRISTINE ROBERTSON: My first question is a bit vague but you have talked about the issue of ensuring the leadership of individual members of the council. The Committee's terms of reference are to try to develop some concrete ways to move forward. Although the University of New England has had lots of issues in recent times, from the information gathered by the Committee in this inquiry so far there are governance issues in relation to universities across the State. I am wondering how you ensure equity for all council members? How do you do that? Apart from copying a chancellor who operates off a collaborative model?

Ms HEMPSALL: Well you could have a more specific policy. One of the things that I think is needed—my final point 6—council members should be required to adhere to all policies as a matter of leadership. We have quite a clear policy—as I am sure most universities do—on equity and diversity and codes of conduct. As it is, the current council code of conduct is different from that which the students and the staff of the university adhere to. So perhaps there should be a streamlining or using the same policies.

The Hon. CHRISTINE ROBERTSON: How is that different?

Ms HEMPSALL: It is a little bit looser. I am sorry, but without having them both in front of me, I think the guidelines are clearer in the staff and student policies than they are in the council code of conduct.

The Hon. CHRISTINE ROBERTSON: Would you be able to provide the Committee with the guidelines for both the council and the staff?

Ms HEMPSALL: Yes.

The Hon. CHRISTINE ROBERTSON: You will take that on notice?

Ms HEMPSALL: Yes.

The Hon. CHRISTINE ROBERTSON: Another thing that has become more obvious is the requirement that has emerged in recent years for corporate business skills to be available to the council. From the evidence given in Sydney in some universities apparently corporate business skills have become the most important focus of the council. Would you give your comments on the kind of persons who should be grouped together as council members?

Ms HEMPSALL: From somebody who has made a formal study of business and management, I would say there is quite a disconnect often between what is considered good practise and outstanding practise in corporate expertise matters and what often routinely occurs. I think there is a danger in putting too much focus on corporate expertise unless, what are the measures of that? For instance, HIH might have said it had good corporate expertise but it did not help the organisation in the long term. I think there has to be—I am sorry I cannot think of the correct word—some caution or a caveat around that. To have all the emphasis shift to corporate expertise I think is only useful if it is outstanding corporate expertise and I do not know how you define that.

There is a big difference between some of the research that has been written about outstanding business practise. Some of the organisations that are going ahead in leaps and bounds because they are following these practises are standout organisations—they are not the routine commonplace—and different industries have different standards around those things. I think that is a very fuzzy area and would need teasing out and defining very clearly if one was to agree with that focus. As I have said, I totally accept that universities need to be well managed to prosper and I have no issue with that.

There is a lot of excellent research going on within universities around good business practise. Perhaps—and this is something I have only just thought of—we need to have an advisory board. This university would have several academic staff who are engaging in significant research in this area. Perhaps they could be advisers to council? I understand in the United States they have a board of governing bodies that actually acts as an advisory body to governing organisations such as university councils. To answer your question about corporate expertise, that could be managed in a body like that. But I would say let's look at what research is going on in universities about that because we should be using that resource. I have never really understood why

we do not have an advisory board here made up of those significant academic staff who are doing that sort of research.

The Hon. CHRISTINE ROBERTSON: One other question, an extension of the discussion earlier about the retreat. Did you get together some performance indicators that it was expected that you might?

Ms HEMPSALL: I think we started the conversation and I think we are engaging in that as an ongoing conversation.

The Hon. CHRISTINE ROBERTSON: What outcome are you expecting from that?

Ms HEMPSALL: I would hope that by mid-year we will have something well and truly in place.

CHAIR: Is that the review that the vice-chancellor talks about in his submission? Is that what you are talking about?

Ms HEMPSALL: No, I think we were looking at what would be the key performance indicators for council. There are some already, and they are attendance at meetings, but that is also a bit of a contentious issue and I am sure it is not just here but across the board. You might have a council member who only attends part of a meeting on quite a regular basis, for example. Certainly some of the things about what is going on in the university were missed by a certain cohort of council members because they were no longer present for that part of the meeting. So, we have to be wary of the tick-the-boxes type of performance criteria. We have to look more deeply and what that means. However, the current chancellor has initiated a series of activities where at every council meeting the council will meet with a certain cohort of the university community, either over lunch or morning tea, to discuss issues. That is certainly something, and you can get feedback from that cohort, which is qualitative but perhaps will indicate more clearly what is going on from their point of view. So, things are starting to happen.

CHAIR: Can I clarify one thing? You said the remuneration is on the public record. Does that include bonus payments and things like that?

Ms HEMPSALL: I think the total package is reported and it is not identified to the individual, but is done in rank order. So, I am saying it is quite easy to work out who is who in that list. If you look at the financial records you will see it is just in rank order but it is the total package. I cannot remember whether that delineates bonus payments but it is possible that it does not. But, could I say, in hard economic times that is also a very contentious issue.

CHAIR: Just a final clarification on induction: Some other universities are putting their council staff through an Institute of Company Directors course. Do you think that would be beneficial to new councillors?

Ms HEMPSALL: I am absolutely certain that could be. I am not sure what the course entails but I think that could be something that would be a good benchmark at least, that you knew everybody had completed that course. But I think you need to take it further.

CHAIR: The secretariat may want to contact you to clarify some of your comments, and that is a two-way communication. You took a couple of things on notice; if you would not mind giving those within two weeks?

Ms HEMPSALL: Yes.

(The witness withdrew)

MAXINE DARNELL, President, University of New England Branch, National Tertiary Education Union, affirmed and examined:

MARK ANDREW THOMAS DOLAHENTY, Senior Industrial Officer, New South Wales Division, National Tertiary Education Union, on former oath:

CHAIR: Thank you for your submission and appearance today. I notice in your submission you talk about a lack of clarity, and that is one of our key terms of reference, a lack of clarity between the roles of chancellor and vice-chancellor and the effect that can have on the university and the community. Can you elaborate in more detail what you mean by that? How can that be improved so it does not occur in the future?

Dr DARNELL: I think the clarification of the roles can only be partially set by legislation. I think it goes back to education and training of the council members. It is clearly stated in the universities Act what the role is of the chancellor and the role of the vice-chancellor. In one way it does come down to personalities within those roles. I think training and education on the roles but also a recognition of what the role of the university is and what the role of a council is. It is not just clarity about the roles, it is clarity about the institution itself and where it sits within the public sphere and within the community itself.

CHAIR: So, you are talking about an ongoing debate about the corporatisation of universities and how that works in an educational setting?

Dr DARNELL: I think partly it is that ongoing debate about to what extent is a university a corporation. Historically you can go back and say that universities were the first corporations because of the way they were framed in the Middle Ages. They were the first formal corporations. If we are looking now, the corporations are quite different from universities in terms of their goals and position within the public sphere. The university is a corporation within its structure but it should not be running as a public corporation with profit-making being its first and foremost goal.

CHAIR: Along those lines, do you think the balance is right in the membership of the council, how people are appointed, the sorts of representation? We have had a number of submissions about smaller councils having different representation, how people are nominated or elected. What is your view on that?

Dr DARNELL: I think the size of the council is right. I think if it is any smaller you would not get the true representation that is required. I think that representation needs to take in local regional stakeholders. Especially in a regional university, that is most important because when you have a university like the University of New England, which is a major employer in Armidale, but it has a much broader field of employment when you look at rural centres as well. You need that stakeholder input into council. Elected representatives must be on the council. I think the experience of the university last year showed the importance of having elected representatives on council. Without those elected representatives I doubt we would be sitting here today looking into the governance of universities. The concerns would not have been brought out and voiced, as they could have been without those elected representatives.

CHAIR: So you are saying that the elected representatives are the ones who really raise concerns and have the issues dealt with rather than those who are nominated?

Dr DARNELL: Yes.

CHAIR: The other comment has been from people within the university councils that there is sort of a two-tier system on it or a division between elected representatives and those that are nominated. Is that how some of these issues have occurred?

Dr DARNELL: Yes it is, because there has been that two-tier inner-outer cabinet, whichever way you wish to frame it, actually evolve within the University of New England council, which meant that—I will take that back—which did not allow the full council to engage in the matters before council, and that was one of the concerns that had been brought out by the elected members of council.

CHAIR: So has that restriction of information and engagement of members, of councillors, been resolved, or, if not, how in future can that be resolved?

Dr DARNELL: I think it has been resolved at this point in time or it is still being resolved. I believe that with the new chancellor and the training weekend that they had, looking at the role of council, of members of council and how it all fits together, and I think that with the greater transparency of council business that has occurred under the new chancellor, that we are not going to be going down that same road again where there is a two-tier system within council which prevents the university knowing what is really going on.

Mr DOLAHENTY: I think you will find that in the union's primary submission, of which this is a supplement, I suppose, we stress all the time that council must act as a body, not as some executive chair, and the inner cabinet again, or the privy chamber, that council as a whole is empowered under the Act, not individuals within it, to do certain things without the knowledge of the rest of council.

CHAIR: We have had a discussion about what involvement various councillors, particularly staff representatives, should have on conflicts of interest and those sorts of issues. Are you saying that all councillors should be involved in all committee discussion, including remuneration?

Mr DOLAHENTY: I think there is an issue about whether elected councillors should be voting members of the remuneration committee, and I think that is still something that should be considered. But all councillors should have access to every committee of council. This university, more than most in Australia, is run on public funds, and those meetings which deal with the expenditure of public monies must be open to the whole governing body. In terms of conflict of interest, a thought that has occurred to me is that it might be useful if when people are either elected or appointed to council that they are required to complete some form of register of interests, much as parliamentarians are required to do, so that if there are perceived conflicts of interest, at least the interest is noted in some form of register.

But, more importantly, it is not for one person—in particular, the chancellor—to declare that somebody else on council has a conflict of interest. If one person fails to declare that interest and it arises later, then there are measures that can be taken. But certainly council as a whole must consider whether individuals, and individuals must consider within themselves, whether they have a conflict of interest. That goes to personal integrity. But it is not for one person on council to declare simply because he or she disagrees with the presiding officer that that person has a conflict of interest.

The Hon. MARIE FICARRA: Just going back to the chancellor and appointments made by the chancellor onto the council, from your experience have you seen problems with that sort of process arising in terms of decision-making governance?

Dr DARNELL: Yes, I have.

The Hon. MARIE FICARRA: It is a bit of a Dorothy Dixier, I know, but please feel free to elaborate.

Dr DARNELL: I was just trying to think of how I can best elaborate on that. I think that the chancellor having the power to appoint members of council does provide for the situation to arise where an inner cabinet is put into place. That is not good for the council as a whole.

The Hon. CHRISTINE ROBERTSON: Council's senior executive, was it?

Dr DARNELL: Yes, something like that—the inner cabinet. It does not make for good decision-making because you can have some council members beholden to one person and therefore following a lead, and they are supposed to be there as individuals and to be looking at the issues and debating on the issue on their own terms of those issues, not on the basis of how they got onto council.

The Hon. MARIE FICARRA: From your experience in sitting on council do you believe that you are always provided with sufficient information to deal with the issues that you have to decide on?

Dr DARNELL: I am not on council.

The Hon. MARIE FICARRA: I am sorry, I take that back. From your experience talking to those council members that would have been participating in these meetings, was the provision of sufficient information to make a decision something that was a criticism?

Dr DARNELL: I think sometimes the withholding of information as to what was happening at some levels of council rather than the withholding of information itself, so that there were some decisions, some things, being done at council that other members of council were not aware of at all, in that way, yes, a withholding of information which prejudiced any other decision that may have been made by the whole of council.

The Hon. MARIE FICARRA: Would there have possibly been meetings from inner cabinet or star chambers or whatever, that would have occurred that other members of the council would not have been aware of and therefore were not privy to that information?

Dr DARNELL: Yes, there were meetings of the inner cabinet.

Mr DOLAHENTY: Yes, these meetings, none of them took place on the university campus and most of them, in fact, took place somewhere other than Armidale.

Dr DARNELL: And they were called using university council resources, and those meetings were never reported back to the whole of council. So, in those terms, yes, there was withholding of information.

The Hon. MARIE FICARRA: Do we need to have more prescribed regulations as to the holding of meetings and the resourcing of notices and so forth, because those notices would have to have gone out from a secretariat?

Dr DARNELL: Yes, I believe so.

Mr DOLAHENTY: That is correct.

The Hon. PENNY SHARPE: Could I just clarify that? You are saying that it was not a matter of some councillors getting together in, to use a political term, caucus prior to meetings, but decisions were being made at these meetings that were then implemented by the university with no input from the council?

Mr DOLAHENTY: Some of them were for the purposes of, let us be blunt about it, assessing the vice-chancellor's performance. They were called by the chancellor using university resources to arrange them.

The Hon. PENNY SHARPE: So they were official—

Mr DOLAHENTY: We were told through the elected members of council that no they were not official. There were no minutes, yet decisions were taken at them that involved considerable university expenditure.

Dr JOHN KAYE: Can I ask you about the impact that all of this had on the staff and on the students at the University of New England? You make some reference in your written submissions to how it permeated through the University and how staff thought they were unable to speak out on issues that affected them. Can you elaborate on that please?

Dr DARNELL: I think overall the effect was quite devastating and everything came to a head last year. It was not just that everything happened last year; it was a long series of various issues. I know that it reduced people's belief in the operation of council, that council was operating in the best interests of the university as an institution but as a community of people. I just lost the thread. Can you just repeat the last part of your question?

Dr JOHN KAYE: What I was interested in was the way in which this permeated through the university. Where I really want to head with this is the importance of governance in the day-to-day functioning of the university in the negative sense, not the positive sense, and the way in which when governance does fall apart it impacts on the functioning of the university.

Dr DARNELL: There were situations where the chancellor was giving directions to various members of staff and this was known by other staff. So there were questions about where these directions were coming from: was this something that the vice-chancellor agreed with? So there was that disruption and this disconnect between what was really happening, and because of, I suppose, this underlying feeling of not really knowing what was happening within the council and because the chancellor's position was up for re-election, that people

came together and started discussing what we saw as necessary within a chancellor. The interesting part was that all of the criteria that was set out by this meeting you could have said that the current chancellor did not hold with those. The governance issue, part of it was because people really did not know what was going on; they were unsure of where the directions were coming from and what direction the university was going in, because of the lack of clarity within the governing framework.

Dr JOHN KAYE: Where a chancellor issues an instruction that goes around the vice-chancellor and is directed to a member of the academic staff or a member of the general staff—

The Hon. CHRISTINE ROBERTSON: Can we have an example?

Dr JOHN KAYE: Dr Darnell said this was happening—

The Hon. CHRISTINE ROBERTSON: I understand that. You are adding to this question by an example of a chancellor—

Mr DOLAHENTY: One example would be that the chancellor instructed the secretary of council to summon the select committee, as it were, of council to a meeting at an establishment where he had a major financial interest.

The Hon. CHRISTINE ROBERTSON: We got the gist of that, but an example of the chancellor interfering with the workings of the university.

Mr DOLAHENTY: The chancellor gave direct instructions to the chief operating officer to conduct various investigations into the vice-chancellor.

The Hon. CHRISTINE ROBERTSON: Thank you.

Reverend the Hon. Dr GORDON MOYES: Can I continue on with the same line? My question is very similar to what you are seeking to flesh out. Dr Darnell, I was quite taken aback when I read that one of the dominant features of the university was that the council interfered not just with the decision-making processes—leave that to one side—but with the day-to-day management and the decision-making on pedagogical matters, I can understand the academic board being responsible for teaching academic matters but can you give me an example or two of how interference was made by the council in teaching matters?

Dr DARNELL: I think one of the clearest examples was the push for all units taught by the university, or subjects, to have an online presence; so every unit would have a website. We have been slowly moving to that way.

Reverend the Hon. Dr GORDON MOYES: That is not an academic matter, is it?

Mr DOLAHENTY: I disagree. I think it most definitely is.

Dr DARNELL: Yes, it is a pedagogical issue, but it has major resourcing issues, because somebody has to maintain those; somebody has to build the websites; and there is also the training for those people who have not operated websites.

Reverend the Hon. Dr GORDON MOYES: This is a university where the majority of the students are off campus?

Dr DARNELL: Yes.

Reverend the Hon. Dr GORDON MOYES: You are saying that the primary function should be for the teaching instruction to be given face-to-face?

Dr DARNELL: No, I am not saying that at all.

Reverend the Hon. Dr GORDON MOYES: Please give me an example of how the council interfered with the teaching methodology in a university that is primarily on line?

Dr JOHN KAYE: With respect, Dr Darnell just did.

Dr DARNELL: Yes, because most units did have an online presence. Not every unit had an online presence—a website—but there was a decision made that every unit would have an online site. Now, I am not saying that is bad at all—

The Hon. GREG DONNELLY: Just to interrupt. Surely not a website for each unit?

Dr DARNELL: Yes.

The Hon. GREG DONNELLY: A website?

Dr DARNELL: A fully operational website for each unit.

Mr DOLAHENTY: Rather than the normal interface.

Reverend the Hon. Dr GORDON MOYES: I want an example of this to clarify your claim here. Not for one moment am I saying this should have been an instruction of the council. I am staggered that this should be an instruction of the council. It seems to me it should come more properly, as I did say, through the academic board or at least through the vice-chancellor's office.

Dr DARNELL: Yes.

Reverend the Hon. Dr GORDON MOYES: Are there any other examples of this interference with teaching methodologies?

Dr DARNELL: I do not think of teaching methodology.

CHAIR: Were there any appointments at any stage that the chancellor or the council made directly? Is that an example of what you are talking about?

Dr DARNELL: I really could not speak on that because I am not on council. There may have been, but I could not honestly say that there had been. Can I just go back to Reverend Moyes question? I am not saying there is a problem with every unit having a website. We are moving to that, and we were moving to that. It is when there is a dictate brought down without considering the resources that go behind it that we have a major problem and we had significant problems because of that. We were not ready for it and we would have lost students because of it.

Mr DOLAHENTY: So there were issues not just of how it was taught but also because of the direction from counsel that these websites had to be set up immediately, there were enormous resource implications about the number of academic staff to be employed and that certainly goes to the quality of teaching.

CHAIR: I would like to remind everyone of the Committee's terms of reference and to be careful as to examples of adverse management.

Dr JOHN KAYE: Where I was going with my question was to ask you how, in your opinion, do you protect the normal processes within the university from that sort of interference? You could say that when a council issues an edict that goes around the academic board then it is an illegal edict in some sense and the staff should say, "No, we are not going to do that. We want to see what the academic board has got to say." But that is not realistic. How do we fix that problem?

Mr DOLAHENTY: I think it is an educative process of council. They are there for oversight and to operate as a body; they are not there as executive managers.

Dr JOHN KAYE: Is there anything in the Act, in council's standing orders or in the university's policy that made that illegal or ultra vires for the council?

Dr DARNELL: There is a university policy on policies, would you believe, which gives the order of merit, if you like, that such policies go through various committees to the academic board and would be signed

off by the academic board, the vice-chancellor, and just go to council for noting. A lot of that had been turned around.

Dr JOHN KAYE: In violation of that policy?

Dr DARNELL: Yes.

Dr JOHN KAYE: Part of what I am getting to is that the policies alone of the university are not strong enough to constrain a council that wishes to behave in an adverse fashion?

Dr DARNELL: They are definitely not and hence the movement last year.

Dr JOHN KAYE: Is it correct to say that your suggestion is to do two things: to educate councillors in how to behave within the normal realms but also there needs to be regulatory barriers against them behaving in that fashion?

Dr DARNELL: Yes, but I do not know how far those regulatory barriers can go without being so restrictive that they prevent council being proactive?

Dr JOHN KAYE: They need to be careful not to hamstring the council?

Dr DARNELL: Yes.

Dr JOHN KAYE: You talked about how the stifling debate on governing bodies permeated through the university. Are you saying that the atmosphere created in council undermined academic freedom and how would we stop that happening in the future?

Dr DARNELL: Yes, it did undermine academic freedom. I think part of the undermining has been the changing structure and the changing nature of university employment. Tenure has the great advantage in that you can speak out. With the movement to increase the numbers of fixed-term employees, especially short-term appointments—six-months, one-year, two-year appointments—people are therefore afraid to speak out about what is happening in their area here and there, for the obvious fear that they will not be re-employed when their contract is finished. You have two factors working there: one being the dominance within council of one person preventing or hindering people freely speaking out across the university, but also that change within the university employment structure itself.

The Hon. CHRISTINE ROBERTSON: I would like to say that Parliament has an absolutely appalling time separating the powers. How do you envisage that you can structure something that will separate the powers of the council from the university?

Mr DOLAHERTY: I would think the first thing I would recommend would be that all councils must act as a whole. They are a body corporate and a body Uniate, as it were, in that individual council members in terms of exercising power have no existence other than within a united—

The Hon. CHRISTINE ROBERTSON: A whole?

Mr DOLAHERTY: Yes.

The Hon. CHRISTINE ROBERTSON: We have heard a lot about the inner and outer circle. The inner and outer circle appears to have been defined as elected and non-elected members. I did serve a short time on this council—and that has been noted as an expression of interest—and did not perceive myself to be one or the other but quite often I voted with the elected members and therefore probably moved to the outer circle. I would like to know they were sorted? Were the elected members one circle and the rest the other circle?

Mr DOLAHERTY: It was not as clearly defined as that.

The Hon. CHRISTINE ROBERTSON: This is not about then but the future?

Mr DOLAHENTY: Yes, again it comes down to everybody must act as a whole. All information must be available to every member of council. Every member of council must be available to attend any committee meeting, either as a voting member or as an observer.

The Hon. CHRISTINE ROBERTSON: So it is not as neat as elected and non-elected. It is just some persons and other persons?

Mr DOLAHENTY: Yes.

The Hon. CHRISTINE ROBERTSON: And the chancellor was elected by the council?

Mr DOLAHENTY: A contested election, yes.

Dr JOHN KAYE: We he elected or appointed?

Dr DARNELL: He was elected.

The Hon. PENNY SHARPE: You have outlined to the Committee that there are policies in place and it was your view that they were not followed or they were actually subverted. Given that circumstance, and given the difficulties we have been talking about this morning, do you have any views as to how to resolve those issues? When it is so broken down and clear that people are not following policy do you have any suggestions as to how to resolve that?

Mr DOLAHENTY: One way to possibly resolve that might be some form of university ombudsman, or ombudsperson or ombud, as I have seen it described at one university now. But again it is very difficult to proscribe bad behaviour in a legislative format: one has to rely on integrity. The other thing is that there should be no fear by a university community that they can freely express views contrary to something that is coming out of council.

The Hon. PENNY SHARPE: It also comes down to how you resolve conflict and when there is conflict you go back to the rules?

Mr DOLAHENTY: Yes, you go back to the rules.

The Hon. PENNY SHARPE: I suppose there are specific things that you think should be in there?

Mr DOLAHENTY: I think one of the things that might be considered is that chancellors and vice-chancellors only serve when they enjoy the confidence of council. If such a matter were to be raised, for example, that a council was moving to express no confidence in a chancellor, then the chancellor must not preside at that meeting.

The Hon. PENNY SHARPE: One of the terms of reference of the Committee is the current and possible future mechanism for reviewing the performance of chancellors. The idea of no confidence as a trigger for further action is well covered in the submissions, are there other things that you could suggest?

Mr DOLAHENTY: Initially it must be from within council. We are very firmly of the view that council's operate for the good of a university and that without ability and confidence in themselves to be sure that they can manage their own affairs—if they are doing well—without too much outside interference, that it is most appropriate that council's operate from within. How you do that when there are two armed camps is a matter for powers greater than me to consider.

The Hon. GREG DONNELLY: Dr Darnell, have you served as an academic in any other university other than the University of New England?

Dr DARNELL: No.

The Hon. GREG DONNELLY: I refer you to the fourth paragraph of your submission. You say the experience of the University of New England over the past four to five years has clearly shown the importance of defined roles for vice-chancellors, chancellors and university government bodies, and also as to how these bodies are constructed and operate. Are you making that statement specifically in the context of the University

of New England or are you articulating a broader proposition about the issue of the more defined roles, which I presume means more specifically defined in terms of written provisions or requirements as to rights and responsibilities?

Dr DARNELL: I think I did it in both ways, if I can straddle the fence there. Yes, I was writing about the experience of the University of New England but I think it does hold—as history has shown us—for other universities, but there are clashes between what is the role of the chancellor and what is the role of the vice-chancellor? Where do they overlap? Do they overlap? So, yes, there needs to be defined roles, there needs to be acceptance by those individuals of those roles and what their roles are. So, the clarity has to be within the written word as to what the role of the chancellor is within the university and what the role of the vice-chancellor is and what the role of the governing body is. There also has to be clarity in the acceptance by the individuals in those roles as to what their role is, and the expectation of each role has to be enunciated. So, the expectation of the chancellor when he first takes office should be clearly set out: We expect you as chancellor to chair council, to turn up to graduations, publicise the university.

The Hon. GREG DONNELLY: But that is creating a rather prescriptive job description. I am interested in the submission.

Dr DARNELL: I do not think you can prescribe within legislation that you will sit down with the chancellor and say we see your role as this, but within legislation it needs to be clear where each of these roles sits within the university and the expectations that the university has of these roles. I think one of the problems is that sometimes—within the Act it says the university is the council, the students, the staff, the alumni. Sometimes I think individuals see themselves that they are the mainstay of the university rather than the university being seen as this much broader institution.

The Hon. GREG DONNELLY: Surely your view here is coloured by this dysfunctionality that has occurred for a period of time?

Dr DARNELL: Without a doubt.

The Hon. GREG DONNELLY: Could you imagine that your view could be different from what you are submitting here if the institution had not suffered this dysfunctionality?

Dr DARNELL: I do not think my view would be different. I think it would be tempered. It may not be as strong. I think the situation here last year was across the university sector. Other universities across Australia and around the world have experienced similar situations of conflict within councils and between councils and chancellor.

The Hon. GREG DONNELLY: Or tensions perhaps?

Dr DARNELL: Yes, tensions. Even though it is not happening at their university here and now, I think most people realise there is the possibility of it happening in the future because there is not this clarity within the roles. I think many people would say at their institution they have seen a similar thing happen on a much smaller scale at times.

Mr DOLAHENTY: I think one of the best indicators of that is how vice-chancellors around Australia are now describing themselves. In the past it was vice-chancellor. Now you will see, for example, in Sydney University, it is vice-chancellor and principal. Here it is vice-chancellor and chief executive officer. At other universities it is vice-chancellor and president.

Reverend the Hon. Dr GORDON MOYES: That is the American system.

Mr DOLAHENTY: That is American, but there are a number in Australia called vice-chancellor and president. I think that indicates that vice-chancellors are perhaps attempting to make it plain, and perhaps councils by allowing them to describe themselves in this way, and some councils are moving now to understand and to reinforce that the vice-chancellor is the head of the university. The vice-chancellor is responsible to the chancellor, who is the presiding officer. The buck essentially stops with the vice-chancellor and if there are manifest problems, the council deals with the vice-chancellor, not by trying to change things under the vice-chancellor.

UNCORRECTED

(The witnesses withdrew)

HERMAN BEYERSDORF, former member, University of New England Council, affirmed and examined:

CHAIR: Thank you for your submission, which gave us some good practical suggestions. Perhaps controversially you suggest that councils should be able to take, as a governing body, a vote of no confidence to remove a chancellor who has lost support of the members. How would that mechanism work in reality?

Dr BEYERSDORF: Obviously you want to include in the detail safeguards so it is not just a whim on a late afternoon or something. There must be due notification. You may give it a different name, not a vote of no confidence but maybe to terminate office or to cease office. I would have thought that in many organisations a vote of no confidence means just that—it is not a legal but a moral imperative, if one has lost the confidence of the board or the council that has appointed one to then take the message and resign, quite frankly. Obviously that is not always the case and has not always been the case. I hope you as a Committee reporting to Parliament might see fit to slightly amend Act or other legislation or bylaws or whatever to allow some mechanism.

At the moment council has the power to terminate the appointment of the vice-chancellor if it needs to do so. Some years ago there was an occasion when that almost happened and the vice-chancellor at that time resigned before council was about to do that. So, council does have the power, and that is a power I am quite comfortable with, to be used only in rare and extraordinary circumstances. But I find it hard to believe that while council does appoint a chancellor for five years, there is no mechanism of terminating that appointment if there is a major—not just a small—difference of opinion or if the council as a whole, by a majority, finds the actions of the chancellor to be wrong.

CHAIR: Would you extend that to other members of council?

Dr BEYERSDORF: I have not thought about that. There is a provision somewhere in the bylaws or whatever that by a two-thirds majority people may be removed provided they are given notice and they can defend themselves. So, there is already a mechanism. We have to differentiate. The chancellor, in some ways, has the chair of the council. He is more of a linchpin than member No. 17 or member No. 12. As important as each one is, if it is a council of 18 or 19 members, it may not be that important to terminate the membership of a councillor unless there is proven misbehaviour or other things.

CHAIR: Do you think there is a division between those members of council who are elected members as opposed to those who are nominated, and is that an ongoing issue or just dependent on the leadership of the council, the chancellor?

Dr BEYERSDORF: Yes, I think there is or has been such a division. It has dissipated over the past few years—three, four or five years perhaps. There has been a division largely between appointed, if I can use that word, and elected members. I do not necessarily think it should always be so in every institute in New South Wales and elsewhere, and it undoubtedly is not, but the past few years have led to this division. I think one of the problems—and I hope I do not make myself unpopular with people who come from Sydney—we have had at this university 550 coming north to this university. Without pointing the finger at any individual, external council member, that is too many away from this area, too many away from the region. Internal members, students, staff, obviously do not have to be but in most cases are in or close to Armidale.

While it is very good that we have the expertise of a number of people, especially people with financial expertise from Sydney or Melbourne, perhaps it went a bit too far in the last term of office of council. With everything that has been happening since 2008 we should try to get more members, including external members obviously, who are from the larger region. One of the things I would support is going back to the system of having two people from Parliament because they have a certain independence. They are not directly elected in the sense that I was and others are, but members of Parliament often tend to be very independent and forthright. Of course, they have no reason to be afraid of any action by the powers that be. I certainly served with people from both major sides of Parliament and found most of them to be very good.

CHAIR: Some people would say that the government of the day has no place in appointing positions to a council, particularly if there is no funding.

Dr BEYERSDORF: That is a point, but we are creatures of State governments in that we are set up by a State Act of Parliament while the Commonwealth does most of the funding. I think technically they are not appointed by the Government but were in the past elected by either the lower House or the upper House.

CHAIR: No, ministerial.

Dr BEYERSDORF: In the past they were ministerial appointments? My apologies.

The Hon. MARIE FICARRA: Does there exist a Power and Authority of the Chancellor document? Some witnesses have claimed there was a document.

Dr BEYERSDORF: Yes, indeed. Perhaps I can table it. I am sorry I did not submit it earlier. There is a document of one-and-a-bit pages called Power and Authority of the Chancellor and/or the Deputy Chancellor. It was approved in June 2006. Obviously, one of the council members had pushed for such a document or policy to be adopted. It probably took 12 months to get something, which was finally approved in June 2006. It should have been reviewed, I just noticed, in June 2008; it was not.

The Hon. MARIE FICARRA: If my memory serves me correctly, it was to be reviewed by the office of the secretariat? The council approved the document originally but then reviews were by the secretariat, is correct?

Dr BEYERSDORF: I am a bit uncertain here. I would have assumed, maybe wrongly, that the secretariat would have done the legwork on it and then the council would either approve it or not, if any reviews or changes were necessary, but I am a bit uncertain here, I am afraid. And it did not happen.

The Hon. MARIE FICARRA: From that document, which you have in front of you, where it talks about review, I believe—and is it true to your knowledge—that in 2007 external members of the council were invited by the chancellor and met in private at one of the schools associated with the chancellor and with some of the centre management, and they were briefed on management matters without the knowledge of the vice-chancellor or the council. Is that, to the best of your knowledge, what occurred?

Dr BEYERSDORF: That is almost correct, except the part about without the knowledge of the vice-chancellor. But perhaps you would like me to give you my knowledge. From memory, and I may be slightly wrong there, but 27 May 2007—it was certainly May 2007—there was a meeting called by the chancellor through the secretariat, to the best of my knowledge, held at NEGS, which is one of the local private schools here in Armidale.

Dr JOHN KAYE: NEGS is New England Grammar School?

Dr BEYERSDORF: New England Girls School. That meeting was called by the chancellor. It never came to my attention who actually attended but I do know there were a number of mainly external members. There may have been one or two "internal" members, but certainly neither myself nor the other academic staff representatives or indeed the general staff representative or the two student representatives were invited. But perhaps worse than that, not only were we not invited to such a meeting—I will get to the purpose of the meeting—we did not even know about it until, I think from memory, almost a year later, about this time last year, February, March, April we found out.

If you go through the minutes of the various council papers from then on, there were a number of people, including myself and fellow elected members—mainly staff—who queried and asked sort of questions without notice and gradually we got some information, but, undoubtedly, not all information. The purpose of the meeting was to assess the performance of the vice-chancellor. I believe the vice-chancellor was informed of the meeting, as were two or three, or maybe four, senior members of the executive who were summoned or certainly asked or told to come along to this meeting outside the university and to talk to the selected members of council, and the vice-chancellor—this is my understanding, but it is only second-hand understanding—was then also being summoned or asked to come.

I do not know what the discussion was all about except that he was required to attend and perhaps to exchange views with what you would call the rum council, if I may call it that. To me, the most concerning bit was not necessarily not being there—although that is bad enough—or not having the chance to be there, but not knowing about it. There were no minutes kept, to my knowledge, or no minutes were ever distributed to council, to any of the committees. It was not even a committee meeting as such, so in that sense it was what you would call a secret meeting, and that, I think, is exactly what was wrong.

The Hon. MARIE FICARRA: The resources of the secretariat were used to hold that meeting?

Dr BEYERSDORF: That is my understanding. And the people—the senior executive plus the vice-chancellor—thought they were required to attend in their work time.

Dr JOHN KAYE: Could we talk a little bit about conflict of interest which attracts to staff members because they are elected members of council? In your submission you talk specifically about how it is done for local government and I think it is similar to how it is done for us where there is not a conflict of interest where it attracts because of membership of a class of people. Do you think it is practical to create the same mechanisms or the same definitions of conflict of interest on university councils?

Dr BEYERSDORF: If not the same then perhaps something very similar. I did allude to local government, which I think a number of people around this table are familiar with. We do not just want to import the pecuniary interest provisions of the Local Government Act *holus bolus*, but I think we could learn from it and perhaps adopt something of that level of detail, suitably tailored. I think it is an absurdity to say, for example, that specially elected staff members have a general conflict of interest, because in that case they should not be on council, which is something I do not support, because the University of New England Act, and I am sure other Acts of Parliament, states that councils shall consist of X, Y and Z. The people who drafted those Acts—and the last University of New England Act was redrafted in 1993, from memory, so it was not that long ago—obviously meant that staff, students and other stakeholders were to have a full and equal part in council deliberations.

Again, with conflict of interest—I think previous witnesses talked about it—there is a difference between the general—for example, "Of course I will approve the budget" or not approve the budget, as the case may be, even though indirectly until last year a minuscule part of the budget was my salary and perhaps affected the heating for my room and the library with the books I use—because of the fact of generality, like I would as a councillor in the city approve the rates even though it might impact on my own rates in that general sense, it is not something specific and I think, again, the minutes of the various council meetings will make this clear. For example, when there was a conflict, if you like, or a different point of view between the university and the Armidale Dumaresq Council regarding the ownership or trusteeship of the Hinton Collection, which was quite a big political issue here, I declared an interest of my own volition, both here at the university council and also at the Armidale Dumaresq Council, and left the chamber. I think one has to learn to differentiate between individual specific things and that cold generality.

Dr JOHN KAYE: What if there had been an issue when you have been on council specifically about the department of German and about resourcing for the department of German?

Dr BEYERSDORF: Then I would probably declare an interest I think, yes.

Dr JOHN KAYE: And not vote? Should you be excluded from voting?

Dr BEYERSDORF: I would exclude myself.

Dr JOHN KAYE: Leaving aside your own standards, do you think it should be a standard that at that level an elected staff member should recuse themselves from consideration of that issue?

Dr BEYERSDORF: If it is that close to home I would still say yes, even though you might say, "Will one vote make a difference?" so to speak. But I think then one has to say, "I am in German" or "I am in history, zoology" or whatever, and if they were going to, let us say, close down German—this is last year, of course, or previously—I do not think I would be able, despite my best intentions, to act in a completely disinterested manner.

Dr JOHN KAYE: But you could on a matter that was, for example, to do with salaries of staff?

Dr BEYERSDORF: I believe so.

Dr JOHN KAYE: Can I take you to point 3 in your submission where you seem to be saying that the vice-chancellor should not be an *ex officio* member of council but should be present at council meetings as a voice at council meetings, but not as a voting member of council meetings? Am I correct in reading your point 3 in that fashion and, if so, can you defend that against the suggestion that the vice-chancellor is an integral part of

the university community and his or her role on council is representing, as much as you represent the staff, the management?

Dr BEYERSDORF: That is a very good point. Point 3 is not a point I would die in a ditch about, quite frankly.

Dr JOHN KAYE: I was not intending to kill you in a ditch; that's fine.

Dr BEYERSDORF: I am just saying that it is not the most important part of my submission in terms of what I consider to be essential stuff, like limiting the role of the chancellor. But I have always found it to be a bit of an anomaly because on one hand the vice-chancellor is appointed—not elected, unlike the chancellor—by council after sort of a due selection process, on merit, and then becomes a member of council. It just seems to be a bit of an anomaly. If I had my way I would say, "Well, vice-chancellor, we love you; we love your contribution; you are the CEO", to use that horrible word, "and therefore you report to us, and you have full speaking rights", as a CEO normally would, except in very circumscribed matters where their contract or their performance is at stake, "but I don't think you should necessarily vote". But it is a fairly minor point in my submission.

CHAIR: I think you are drawing an analogy between the corporate world, are you not—

Dr BEYERSDORF: And local government too, quite frankly, yes.

CHAIR: So it is not important.

Dr BEYERSDORF: No, it is just an idea.

Dr JOHN KAYE: One last question, which I put to other speakers. One of the characteristics of the disruption that happened here at the University of New England was a fairly cavalier disregard of policies of the university in the actions of certain people on council. Do you feel there is a need to strengthen the sanctions against disregarding what policies say you should or should not do? If not, how do you feel those policies should be given more teeth, or how do you feel we should guard against the disregarding of those policies?

Dr BEYERSDORF: One would hope in the first place that promises are not disregarded or whatever.

Dr JOHN KAYE: The point is they have been and now we are here to find out how we can stop that happening again.

Dr BEYERSDORF: It did happen and the chancellor, in fact, in my view, went completely outside of university policy and, as I think I said before, appointed Ernst and Young upon his own authority. Something which is subsequent: if you go through the paper trail you will probably find that the chief operating officer signed off on it a month later, and in early 2008 appointed Ernst and Young to assist in enterprise bargaining. That was not done, I must admit in all fairness, totally unilaterally by the chancellor but it was done by the chancellor sitting together with the remuneration committee and the decision was then made and, to my knowledge, Ernst and Young were appointed, I am not sure at what expense, before such a decision was approved either by the council. I believe that because a month or so had passed—six weeks later it was then, and I cannot speak on behalf of anybody else—it was then sort of signed off by either the vice-chancellor or one of the other senior officers. But I think the initial decision had been made by the chancellor on the "recommendation" or instruction of the remuneration committee.

Those things happened. How do you stop them from happening? I suppose apart from having documents, that were alluded to a while ago, about the power and authority of the chancellor, I think it should be a clearer picture that the chancellor by him or herself should have no executive role at all, except the chancellor only acts with council or with the majority of council—it can be his casting vote that makes the majority, and that is fine on a constitutional level. But otherwise the chancellor, in my view, to overstate the case, should not even be able to buy himself a cup of coffee—at university expense I mean. That is overstating it but with, of course, the authority of council, the chancellor can do everything, including sack the vice-chancellor, if appropriate.

Reverend the Hon. Dr GORDON MOYES: Even the Pope must work within the council.

Dr BEYERSDORF: Absolutely.

Reverend the Hon. Dr GORDON MOYES: I am interested in a couple of your out-of-left-field comments, which are quite interesting. You say that you would like to see the opportunity not only of specialist staff, such as deans and heads of department, being called in to council meetings—I can appreciate that very much—but you wanted to have all the stakeholders within the university having the opportunity to directly question and also make comment to the council—a sort of revival of the Greek polis where everybody could gather, or the American town meeting where even the President can be questioned by ordinary people. Are you really saying that the elected representatives of all those stakeholders are not doing their job in two-way communication?

Dr BEYERSDORF: No, I do not think so—at least it was not my intention. I think my feelings about perhaps opening it up a bit saw the limitations of that and the analogy of having a five-minute presentation. At the moment my feeling is, whilst I have been on the University of New England council for a number of years, that it was always a bit of a closed-shop mentality. For example, extending also to the right of observers to be present; instead of just having that right—just like here: anyone can just walk in, I believe, as long as it is an open session—there was a sort of rather onerous requirement that if any person—and I think it only applied to members of the university, staff or students or whatever—wanted to attend a council meeting—and I am only talking about the open session, not the confidential session—they had to apply to the secretariat at least 48 to 72 hours in advance, et cetera. I have the feeling nothing would discourage people attending meetings and that sort of thing of having to actually write down your name and be put through the system rather than just having the door open. So, as part of that more openness—and I appreciate your points that the elected reps while being part of the council as a whole also have their—

Reverend the Hon. Dr GORDON MOYES: They have got responsibilities to communicate both ways.

Dr BEYERSDORF: To communicate with their groups, be it the staff, students or whatever, that if somebody wants to address council—and, again, you cannot have 200 people addressing council, unfortunately, at one meeting or we would be there all day, or two days.

Reverend the Hon. Dr GORDON MOYES: Socrates died because of that.

Dr BEYERSDORF: I do respect the old situation of the polis of the Greeks, the way they did democracy, but a bit more openness—that is all I was trying to say. The exact mechanism, that is a matter of—

Reverend the Hon. Dr GORDON MOYES: Following that up and trying it to put it in a more contemporary environment, you say that agendas and subsequent minutes should be freely available. Are the agendas and other minute available on either the intranet internally within the university or the internet?

Dr BEYERSDORF: It is my belief that they are—that is to say, the open part and not the confidential part naturally. The previous witness might have said—and I know it is work so perhaps one should not be too critical—that council meetings are sometimes two months apart, or thereabouts, and sometimes the period between the council meeting being held and the actual minutes being available to councillors, let alone the general public or the university community, can be four to six weeks.

Reverend the Hon. Dr GORDON MOYES: Would a prescription that agendas and minutes should be made available electronically to anybody who wanted to have access to them within a period of seven days—

Dr BEYERSDORF: Seven or 14, I would certainly support something like that.

Reverend the Hon. Dr GORDON MOYES: Would that help the whole communication issue?

Dr BEYERSDORF: It probably would. If I might add something to that: One thing that certainly the staff members have done—and sometimes got in to trouble for and almost sued for libel—was to release through electronic communication not the minutes—which is not our job—but a kind of a subjective summary. I have found—and perhaps others can comment later—I often get emails back from members of the staff saying, "Thank you for that. I now know what is going on," and so on. There is that effort that certainly the academic staff, and I now think the general staff, try to put out something. The students do too when they can but sometimes their means of communication are not that easy. That is all very well and good but I have suggested

to the vice-chancellor that not only should minutes appear—minutes can be very formal and do not often reflect, well they do reflect what happens but in a very formal way—but what would be wrong with the vice-chancellor—without adding to his workload—putting out a kind of a summary within seven days, or getting one of his staff to do it?

CHAIR: Do you think that elected members—I am thinking of student-elected members as well as staff—would benefit from having more resources available to facilitate that perhaps by having a support staff person who has better Internet access or something like that?

Dr BEYERSDORF: Here at the university we used to have until fairly recently—up to two or three years ago—a thing called *Uni Discussion*, which was open to anybody in the university community, staff or student, to write whatever they wished. They could complain about the food in the bistro or the first magpie strike of the season, or more serious matters. That was closed down effectively two or three years ago and that was a very good method of communication, including getting rid of your gripes. Sometimes it got boring because people just went on and on with their gripes but you could opt in or opt out. But it led, for example, certainly to staff having no difficulty communicating with their electorate—if that is the right term—and now we use—and we have been criticised for this—the good offices of the NTEU and, also the CPSU where appropriate, to communicate the same but, of course, we can only communicate to the members. That in a sense was forced upon us. We, certainly I personally, wanted to communicate with every member of, in my case, the academic staff.

The Hon. CHRISTINE ROBERTSON: What is the chance that more definitive guidelines and rules in relation to chancellors and vice-chancellors might push us into this world of incredibly nice people who are not terribly much use in the requirements for innovation in the university world? Are we going to make so many rules and regulations on the roles of chancellors and vice-chancellors? You know what I mean?

Dr BEYERSDORF: I think I understand. I think part of the problem is, as somebody else said earlier, that with people of goodwill you hardly need rules. People who are perhaps unsuitable do not quite dah, dah, dah. Sometimes the best rules in the world do not impact at least for a while. I do not want a 100-page document but, for example, that one and a bit pages that we have here—

The Hon. CHRISTINE ROBERTSON: How do you give a policy document power?

Dr BEYERSDORF: That is the point. It was ignored, in my view, for the last two and a half years. So go back to this document—I am talking about the internal university process, whatever you as a Committee may decide—amend it perhaps and then make sure it is actually implemented. It can only be implemented if the majority—in this case the council—is keen to have it implemented, and demands to have it implemented, and that the chair or chancellor at the time will, of course, go along with the implementation in the proper way without having—as you rightly said—too many rules and regulations, red tape and bureaucracy.

Dr JOHN KAYE: Does that require sanctions for people who disregard the policy?

The Hon. CHRISTINE ROBERTSON: What sort of sanctions?

Dr JOHN KAYE: I do not know. Do you think that requires sanctions?

Dr BEYERSDORF: I am a person who does not believe in sanctions for every little mistake that is made or every little whatever but, yes, unfortunately ultimately—and we talked about this in my submission—the need to have, if you like, the ultimate sanction in the case of a chancellor, and perhaps also for other council members, to terminate their appointment. Yes, there should be that possible sanction of termination of appointment.

Dr JOHN KAYE: But there has to be gradations of that? It took the University of New England a long time to work through that process?

Dr BEYERSDORF: It did.

Dr JOHN KAYE: And it is a very expensive process, as you have pointed out, on staff and the council itself?

Dr BEYERSDORF: Absolutely. One of the things—without going on about meeting procedure—either I or perhaps others have occasionally moved, for example, dissent from the chair's ruling. One does not like doing that but it is a useful tool. Of course, for a long time—without criticising the majority of my fellow staff members—that was seen to be as popular as whatever. In other words, the dissent motion was inevitably pushed aside rather than taken as a serious response. So there should be gradations, and I think a simple dissent motion looked at by council in a responsible way can often do the trick on one particular issue.

The Hon. GREG DONNELLY: Is the document in front of you the document you refer to in your first paragraph?

Dr BEYERSDORF: Yes, indeed. I am sorry I did not attach it.

The Hon. GREG DONNELLY: Are you aware—and if you are not, please say so—of the context that led up to the development of that document? For example, were there rumblings afoot that led to the creation of that document in the first place?

Dr BEYERSDORF: Yes, I believe so. Again I can only talk for myself, but in the end the majority of council approved this document. As one of the council members, but certainly not the only one, I started having difficulties with the way in which the council was being run by the then chair, or chancellor, and decided—by the way, there were other difficulties, not only with one person but generally, like making sure some process was done where there was a policy on what should and should not be confidential. Because before that we had our fingers burnt when sometimes people at the end of a confidential session would mention something that was not confidential. It was just part of a general effort to improve the governance, quite frankly.

So confidential matters A, B, C, can only be confidential or whatever. The attempt here was—while there was some movement, in my view, about perhaps the style or the way in which the council was being run or chaired—it seemed to me that we needed a general document of this nature and I, and I think some other people, started pushing for it. It was finally agreed to and then a subcommittee—or perhaps the secretariat, I forget the detail—worked on this document and it was finally brought back to council. That took the best part of a year, I think. In June 2006 it was approved in its current form.

The Hon. GREG DONNELLY: You go on to say in your submission that it was, in effect, ignored from your point of view?

Dr BEYERSDORF: That is my belief, yes.

The Hon. GREG DONNELLY: That then takes me to a question raised by other witnesses as to the nature of the chancellor's role, the vice-chancellor's role, the relationship between them and the governing body, and how far one can go in terms of delineating the various roles, responsibilities, rights and functions. How far realistically can one go when in fact, if I understand it—and this is reducing it to a very simple analysis—what brought about the real dysfunctionality at this university were issues with the chancellor?

Dr BEYERSDORF: I think your question leads to what the Hon. Christine Robertson also asked about with the level of detail and so on?

The Hon. GREG DONNELLY: Yes.

Dr BEYERSDORF: I think you are right, at the end there. If I may quote Rex Galileo when somebody said to him, "Unhappy is the country that has no heroes." Galileo thought for a moment and said, "No. Unhappy the is country that needs heroes." In other words, men and women of goodwill would not do this. Having said that, From all reports, I do think—without wanting to comment too personally—the former chancellor was a very good CEO and executive chair of his company, Abigroup, and he ran that successfully to my knowledge—but I have no detailed knowledge—and probably his misapprehension was that his role as chancellor would be very similar to being executive chair of a private company.

I have nothing, well nothing really, against the executive chairs of private companies provided they do their job and do not ask for too many bonuses, but, all joking aside, I think this is quite a different kettle of fish. I think that was one of the misapprehensions of the previous chancellor, Mr John Cassidy, that he was still the executive chair and could just engage Ernst & Young. Apart from that he did not, in my view, have the executive authority, or indeed the financial delegation. He also breached university policies regarding contracts

above \$50,000 and needing to have an expression of interest. You could probably do that in a private company but I think at a university, a public institution, publicly funded and there for a number of purposes including education and so on, it is a different thing. I think the tragedy of Mr John Cassidy is that he never quite realised that he was no longer chair or executive chair of a private company.

The Hon. GREG DONNELLY: My final question is not designed to be a provocative one but merely to put the matter on the table. Could it be argued with respect to the people who formed the council at the time—I do not know them as individuals—that their understanding collectively as a group about—if I can use the phrase—more effective governance of the university, may have been a limited pool of experience, and what they individually and collectively brought to the council, I am not saying contributed to the dysfunctionality, but did not provide as much assistance or wisdom to resolve the dysfunctionality as quickly as possible?

Dr BEYERSDORF: By the way, Mr John Cassidy was a member of the university council two years before he became the chancellor and to the best of my recollection I think he did a good job as an external member of council. Having said that, I have already alluded to a very subjective view possibly of too many people on the council being external members from outside the immediate region. What it led to, in my view, were people of undoubted expertise, including financial and other qualifications, not having much insight into the university. I am not talking in too much detail because, firstly, they were obviously busy with high-powered jobs; secondly, they often found it difficult to get to Armidale—so many members, without targeting each one, often with good reason, attended only by teleconference from Sydney or some other place; and, thirdly, sometimes unfortunately because of their commitments or whatever, attended a council meeting in the morning and left shortly after lunch—in one case, in the middle of the vice-chancellor giving us his latest review of our strategic plan for 2007 to 2010—as they had already booked a plane.

It is that level of inability to give time and commitment to engage more fully with the university. An example of that, the last graduation I attended, or the last couple, there was no external member of council there at all. People like me and others were there during that ceremonial occasion but there were no external members. I can see the tyranny of distance. If you are at New South Wales and you live in or have your office in Macquarie Street or Pitt Street or George Street you can easily get to the New South Wales council meeting in the afternoon or evening. We have members away from the region and you have to make sure those members realise the effort and commitment needed. We have a great region here, New England, not just Armidale, and we have a lot of big towns full of people who could serve as councillors.

CHAIR: The document you referred to, it was suggested that you might table it?

Dr BEYERSDORF: I am happy to table it.

(The witness withdrew)

(Luncheon adjournment)

JUDITH REDMAN, former member, University of New England Council, and Uniting Church chaplain on campus, sworn and examined:

CHAIR: Thank you for appearing today. We provide an opportunity for our witnesses to give an opening statement if they so wish, or we can go straight into questions?

Reverend REDMAN: I would like to say something briefly. I am appearing in an individual capacity. I was here for the first session this morning and I agree with what Ms Hempsall said about the cost to the university of what happened last year. I am very concerned and I am here because I would like to have some input into trying to stop that from happening again anywhere. In response to what she said I would like to highlight my concerns about the way remuneration of senior management is handled. I do not believe it is appropriate for management at universities to have employment agreements that offer bonuses on the basis of money saved or earned, because that creates a conflict of interest to the business of the university. I also believe that the parameters in which remuneration packages can be negotiated should be approved by the whole council when approval to fill positions is granted. I think universities need to be accountable for the way they use public money and to have a free hand at negotiating bonuses on the basis of this kind of thing is not appropriate. That is something I would like to add to my submission.

CHAIR: You are saying all members of university councils should be able to participate in all discussions in relation to staff remuneration. Do you mean to have the voting capacity in relation to that, or just to be aware of those discussions?

Reverend REDMAN: They definitely ought to be aware of them. I am not so sure about the voting capacity. I certainly think it is totally inappropriate to have the entire council involved in negotiating individual employment agreements. I think that would be stupid but I think there ought to be the capacity of the whole council to look at the parameters and say it is possible to negotiate this but not that. I do not see there is any conflict of interest in that kind of voting capacity.

CHAIR: We have had a lot of discussion—and you have been here this morning and you heard some of that—about conflict of interest and different members of council, particularly elected members, having a perceived conflict of interest. In your experience, has that been an issue and, if so, how can that be resolved?

Reverend REDMAN: It has certainly been an issue at the University of New England. There has been a tendency to talk about elected members en block, yet elected members come in three different categories. There are members of staff, there are the alumni and there are current students. We each have different relationships with the university. It is difficult to argue that the alumni, unless they are also employees—and I do not think they are allowed to be elected as alumni if they are employees—have a conflict of interest in their relationship with the university. They are not employed, they are no longer students, they are there because they are concerned about the welfare of the university, but they do not have the same relationship as a member of staff, and a student does not have the same relationship as a member of staff.

Students are clients of the university, if you like. Undergraduate students are buying their education. They pay their HECS upfront, they come out with a HECS debt or they are a full-fee-paying student. Yet, if they are a higher-degree research student, the work they do in the course of their study is part of the output of the university. So, there is a quite different relationship between the students and the university staff and the university and the alumni. Yet, in most of the stuff I have read and the rhetoric I have heard, elected members are lumped together and they say elected members have a conflict of interest here and they have a conflict of interest there. I do not think that is a helpful way of looking at things. That does not answer your question, does it?

CHAIR: No, but it adds to the information we had and, I guess, reinforces what a lot of people have been saying. Do you think the mix is right in the number of elected representatives with the other composition in membership generally in council?

Reverend REDMAN: Yes, I think so. There needs to be a majority of people who are not in a particular relationship with the university involved in the governance, but I think there needs to be a group of people who are more than just one lone voice. There needs to be people with a range of expertise, and I think the composition looks about right and felt about right when I was a member of council.

The Hon. MARIE FICARRA: In terms of the chancellor's performance, in your submission you describe difficulties encountered by the council in evaluating the performance of the chancellor. Would you like to expand upon that?

Reverend REDMAN: Specifically we ran into problems where the Act said the chancellor shall preside at all meetings of council at which the chancellor is present. In circumstances where we were wanting to discuss some of the issues that were happening, it was felt to be inappropriate that the chancellor should be chairing the discussions, yet the Act said he should chair and it was difficult to negotiate our way around that.

The Hon. MARIE FICARRA: There was no vacating of the chair during the discussion?

Reverend REDMAN: We would have liked that to have happened but it did not.

The Hon. PENNY SHARPE: So you think that probably needs to be prescribed, where it is not clear, on resolution of the council, for example?

Reverend REDMAN: Yes, there should be some way in which it is possible to have an open discussion without the presence of the person whoever is supposed to be chairing it at the time, because it could be the deputy chancellor, of course, in the absence of the chancellor for whatever reason.

The Hon. MARIE FICARRA: Do you think a majority of council members wanted that discussion?

Reverend REDMAN: Yes.

CHAIR: Do you think that a vice-chancellor having a CEO's role and then also having voting rights as a member of council causes any conflict there at all?

Reverend REDMAN: There might be circumstances where that might be possible but in general, no, I do not think so. I think that given that the role of the council is to ensure the governance of the university is carried out appropriately, one of the people who is in the best position to understand that in some circumstances is the person who is the CEO, and although I am uneasy about the commercial model in many ways, it is quite normal in commercial companies for the chair of the board to be CEO and, I assume, to have voting rights. I do not think it is a blanket issue.

Reverend the Hon. Dr GORDON MOYES: Not for publicly listed companies?

Reverend REDMAN: No.

CHAIR: It is the opposite, in fact.

Reverend the Hon. Dr GORDON MOYES: May I just continue on in the same line? It has always been a puzzle to me that if you are in a publicly listed company and you are the CEO of that company you are not the chairman of the board, the chairman of the board is an external appointee, and it is very clear in corporate governance that the chairman does not try to act in an executive role, that is the role of the CEO. But we seem to have developed a culture, at least for a period of time, at this university where that distinction was not made and in point of fact the board chairman, to use the corporate jargon, started to interfere with executive management issues. In corporate terms that is just not acceptable and yet it developed. So why did it develop here?

Reverend REDMAN: I am not absolutely certain. I think that that is something that happened before I started my time on council, because before I became a member of council the vice-chancellor's title had been changed from vice-chancellor to vice-chancellor and CEO. I assume that was in response to some perceived problem, but I do not know what.

Dr JOHN KAYE: Your submission outlines the distinctions you see between a private for-profit company and a university in terms of how that is from the governance perspective. What are the implications of those differences? For example, would you see training people that are on council using the standard corporate governance training as being inappropriate, would you see that meaning that we need to think differently about the chancellor as against the chair of the board of a large corporation? What are the practical implications of that?

Reverend REDMAN: I have not actually done training as a director of a corporate company. I have certainly done training as a director of a not-for-profit organisation, and I actually found that the training was quite similar. I suspect that there would need to be some modifications in some of the role and structure kinds of things, and, rightly, in making sure that members of university councils understood that there were significant differences with managing public money, that there is a need to be transparent and accountable. One of the differences that I see, as I have said in my submission, is that commercial companies conduct research to make sure that they are producing the best widgets in the most efficient way possible.

Universities conduct research that has got nothing to do with the actual making the business of the university profitable. They do that but a lot of the research is not about making the university profitable, and it is not really helpful to have directors asking questions about why is this not part of the university making a profit; surely it ought to be able to make a profit. No. When you are doing that kind of research you need to be able to fail, to run at a loss or to cost money. The way that you conceptualise what a university needs to do is quite different, but actually understanding your responsibilities may not be a huge amount difference, I am not sure.

Dr JOHN KAYE: My next question relates to the staff and students of universities. You identify them as having specific expertise. In what ways does the construction or conflict of interest, as it was construed in your time on the board here, interfere with their abilities to bring that special expertise to bear on the governance of the university, and in what way did the university suffer as a result of that?

Reverend REDMAN: When it is deemed inappropriate for a student to be a member of the standing committee of the council, as happened in my time, then it means that when the standing committee is making decisions about issues that are considered urgent and important that may have an impact on how students function or an effect on students, there is not that kind of person saying, "Excuse me, but you may not have considered this". A university is a very, very complex organism and I do not think that it is possible for any one, two or three members of management to really realise what effect some of the decisions that are made will have on the grassroots of the university.

It is not possible to go and consult with the broader student body, and obviously one student or two students are not necessarily going to produce a whole wisdom but at least they are more likely to be able to say, "Hey, if you do it that way then it is going to have this kind of effect on me, so maybe it is going to have that kind of effect on other people". We certainly had a situation where a staff member was told that there was a conflict of interest and, as a result, she could not participate in a discussion where her expertise would have been quite helpful. It was not going to affect her personally. When Ms Hemsall was giving her evidence you talked about classes of people as opposed to individuals, and it was not going to affect her as an individual but her knowledge as a class of academic staff member was going to be quite useful.

The Hon. CHRISTINE ROBERTSON: So the process of conflict of interest includes the right to participate in discussion, not just vote?

Reverend REDMAN: Yes. Certainly the way that conflict of interest is articulated in the university's documentation it says that as soon as a conflict of interest is declared then the person should absent themselves from the discussion and every time that issue comes up.

The Hon. CHRISTINE ROBERTSON: So not just the decision but the entire discussion?

Reverend REDMAN: Yes, and I find that that is really problematic at times.

The Hon. GREG DONNELLY: I take you to your submission and your first paragraph specifically. Just to help me understand more clearly in my mind the point you are trying to make, the second sentence says, "As the elected post graduate goes on", and it talks about "problems experienced generally during that time were (1) the result of the lack of clarity about the respective roles"—so that was the issue over perhaps individuals not understanding what their role was on the council?

Reverend REDMAN: Yes.

The Hon. GREG DONNELLY: Then you go on to say, "And lack of clarity about the role of the governing body"—that is the entity itself, the sort of conglomerate body?

Reverend REDMAN: Yes.

The Hon. GREG DONNELLY: "of a public institution of higher education as distinct from the role of the board of a for-profit public company". Are you saying there that in fact the University of New England council at the time you experienced it that there was an undue focus on this corporate model?

Reverend REDMAN: Yes, I believe so.

The Hon. GREG DONNELLY: Could you just for the Committee's understanding give us some examples, if you can recall, about how that was manifested? Was it an undue questioning about property or student fees, or whatever?

Reverend REDMAN: Certainly profit. I was flabbergasted when the question was raised why were the university farms not being run at a profit because clearly you cannot conduct research and run a commercial farm. I was stunned by that kind of questioning of the role of things, that we need to be good careful stewards of the finances. But trying to run a university at a profit I think is—

The Hon. GREG DONNELLY: Let us say for argument's sake that your experience is very much coloured by the experience of the council you are in at the time when this dysfunctionality occurred, does that necessarily mean though that in terms of whatever legislation exists in terms of this entity, the University of New England, and the other legislation in terms of the governance or the operation of a tertiary institution, that there is actually inadequacy in regards to this issue of the respective roles of people on the council and the council as a governing body or really the application was already there in the context of this particular tertiary institution?

It could be argued that a whole lot of other universities have tensions that operate, and I do not think anyone is denying that, and witnesses today from other universities have indicated that, but those tensions have not manifested in such a confusing and dysfunctional way as they appear to have manifested here at the University of New England. So, is the problem the University of New England or is the problem the legislation, or is it a combination of both?

Reverend REDMAN: I think it is a combination of both. I think that if the whole conflict of interest kind of issue had been spelt out more clearly and more sensibly then the particular personalities and people who were involved in what happened at the University of New England would not have been able to function in the way that they did that caused some problems. For example, we have the argument that because there was no pecuniary material interest there was no conflict of interest in what the chancellor was doing, where common sense would have suggested that in this really public debate, that hit not just national but international media, for a fairly public figure to lose would have a negative effect on that figure as a person, and so there was clearly some level of conflict of interest, I would have thought, even though there was no money involved and no material gain.

From the other end, the other conflict of interest stuff that I have already talked about where people were told they had a conflict of interest and therefore could not participate, if that were clearer—not just clearer but defined the way I think that ought to be defined, obviously—then the problems would not have happened. But some of this stuff cannot be legislated, I agree; some of it is about personalities, it is about common sense.

CHAIR: Does that go to training and induction of councillors in terms of giving them an understanding right from the beginning and as an ongoing process? I know some universities put their councillors through the company directors course—there may be other courses that are important. Do you think that might assist with that understanding?

Reverend REDMAN: I think training certainly helps and I think that regularly reminding people about their role also helps. I think when you first join our board there is an awful lot of stuff to take in and you are on a very steep learning curve. Even, I imagine, if it is the tenth company you have been a director of, it is different; there is a learning curve. So I would see that ongoing training would definitely have a role as well as the original induction stuff.

The Hon. GREG DONNELLY: It was asserted by one of the other witnesses earlier today that the new chancellor, working with the council, has put into place some new practises and procedures that appear to be starting to deal with some of the issues associated with the governance on matters that were problematic and

came to a head last year. My question is twofold. Firstly, do you agree with that assertion? Secondly, do you believe that what has been put in place is satisfactory, in terms of enabling this whole movement towards functionality of the governance? Is that satisfactory or is there more to be done in terms of new practises and procedures?

Reverend REDMAN: I cannot actually answer that because my term on council finished on 4 October last year and I am not actually aware—

The Hon. GREG DONNELLY: That is fine. Thank you.

The Hon. CHRISTINE ROBERTSON: I refer you to dot point No. 4 in your submission.

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: Would you clarify that further?

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: In relation to authority of expenditure and such?

Reverend REDMAN: When there were questions raised about the vice-chancellor's conduct, and it was felt necessary to conduct an investigation, the chancellor authorised that to happen and employed investigators without actually consulting council. The way that it was done was perfectly in line with the process, in that a member of management actually authorised the expenditure, but it would seem to me to be fairly difficult for a member of the management to say to a chancellor, "No, I am not going to do that" unless there were quite clear guidelines that said the council as a whole, rather than any one particular member of it, even if were the chair of the council, would be able to.

The Hon. CHRISTINE ROBERTSON: Universities are structured within the legislation as individual entities?

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: There is, of course, no overarching. In an organisation I once worked they used to refer to it as calling in the dogs when there was a problem going on and somebody came from outside and had a good look at what was going on. There is no outside entity, is there, because the chancellors have a little group and the vice-chancellors have a little group, but there is not legal entity to assist with problems?

Reverend REDMAN: No.

The Hon. CHRISTINE ROBERTSON: I appreciate that is probably not where you want to go but I am anticipating what happens when you have isolated governance?

Reverend REDMAN: Yes. I do not know what could be put in place that would be external.

The Hon. CHRISTINE ROBERTSON: You would not want dogs?

Reverend REDMAN: No, because certainly in my denomination there is always somebody else you can call in and form a small committee to conduct an investigation but I am not quite sure how you would do that with a university.

Reverend the Hon. Dr GORDON MOYES: I did raise that question on our first day, about the chancellors from other universities being called in as a mentoring body.

Dr JOHN KAYE: You are talking about conflict resolution?

The Hon. CHRISTINE ROBERTSON: No, I was talking about a major issue with—excuse us having a quick discussion—with a governance issue and then it had to be dealt with internally in the eyes of the chancellor, whereas in other organisations an external body would have come in.

Reverend the Hon. Dr GORDON MOYES: But they could hire people like Sir Laurence Street.

The Hon. CHRISTINE ROBERTSON: Yes.

Reverend REDMAN: That worked.

The Hon. CHRISTINE ROBERTSON: They did. They did that through a strange executive decision. Who at that time was negotiating bonuses? Was that the remuneration committee?

Reverend REDMAN: Yes.

Dr JOHN KAYE: Bonuses for the chancellor or the vice-chancellor?

The Hon. CHRISTINE ROBERTSON: These were bonuses in relation to whether people were making profits or not in their different organisations?

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: The remuneration committee was doing that?

Reverend REDMAN: I believe so. I believe that there was at least one member of the senior management—and I am not sure more than that who was receiving a performance bonus—and that was actually negotiated by the remuneration committee.

The Hon. CHRISTINE ROBERTSON: For clarity should not the performance bonus process really be with the CEO, with an endorsement by the council later? Should not the vice-chancellor position really have that role?

Reverend REDMAN: I am not—

The Hon. CHRISTINE ROBERTSON: I am sorry but I am attempting to fix my confusion.

The Hon. MARIE FICARRA: What occurs in other universities, from your experience?

Reverend REDMAN: I am not totally convinced that a performance bonus is actually an appropriate thing to have at university and therefore I have never really thought about who might be the appropriate people to negotiate it.

The Hon. PENNY SHARPE: But you, as a council member then, never had an opportunity to voice that concern in the first place?

Reverend REDMAN: No.

The Hon. PENNY SHARPE: Because it was never actually reported. So the issue about whether it is delegated appropriate for the vice-chancellor to do it, it is an issue of whether the council is comfortable with the general policy setting that says that performance bonuses for profit or loss, or whatever the motivation is, needs to have some endorsement from the council as a whole?

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: So in academic worlds in the past the performance has been related to research grants, research publications and that sort of process?

Reverend REDMAN: Yes.

The Hon. CHRISTINE ROBERTSON: And the number of students in classes. When do you think it changed to profit? Were you around during that time? Different departments got more reward for doing more research in the olden days, did they not?

Reverend REDMAN: Yes, well you got rewards because you got research grants which then enabled you to do more research. I do not know. I have not paid that much attention to university governance until sort of two years ago when I was on the council.

CHAIR: You are talking about individual payments?

Reverend REDMAN: Yes, and I am talking about—

The Hon. CHRISTINE ROBERTSON: The boss of the department got it because they made the profit?

Reverend REDMAN: Yes.

CHAIR: I want to ask a question in relation to being an academic member of the council. It has been suggested that the casualisation of academic staff in universities means that perhaps those academic staff members are more reluctant to speak out on governance issues because of security of tenure. Do you think that is an issue?

Reverend REDMAN: It is certainly something that various members of academic staff had said to me. "I am a bit loathed to make waves because it may affect my contract being renewed." I have certainly had people saying, "I am near retirement anyhow. It does not matter. They cannot hurt me. I can speak out." Yes, I would say that is a concern among at least a proportion of the academic staff.

The Hon. MARIE FICARRA: You said you were a Uniting Church minister. Do you act in that capacity on the campus?

Reverend REDMAN: Yes.

The Hon. MARIE FICARRA: Have you noticed any disturbance in emotion or disturbance in a feeling of belonging within the campus or some troubled minds because of the notoriety?

Reverend REDMAN: Absolutely. There was a period last year where I could not leave my office unless I had an hour to spare because there would be people who wanted to talk to me about the level of distress they were experiencing about what was happening. It had a very negative effect on the life of the campus.

The Hon. MARIE FICARRA: From staff and students?

Reverend REDMAN: More from staff than students. The students were frustrated because they could not get decisions made because of the unease and they were frustrated because everyone was fighting very publicly and they did not think that was a particularly helpful thing to do. The stress was much more from the staff who were finding it difficult to do what they were there to do.

(The witness withdrew)

JEANNE MADISON, Associate Professor, University of New England, affirmed and examined:

CHAIR: Welcome to our inquiry. Would you like to make a brief opening statement?

Professor MADISON: I am appearing today in an individual capacity. I think my submission speaks for itself. I am open to questions.

CHAIR: I know you have been listening for some time to some of the discussions that we have been having. Your submission talks about the university's core business. We have had discussions with a number of people about the corporatisation of universities as opposed to the pedagogical role. Would you flush out what you mean by that to core business and how that affects the governing body in relation to that?

Professor MADISON: I have 20 years of experience working in hospitals and now 18 years working in a university. They both have highly distinctive roles and functions that are quite different from other corporations and organisations. They have a higher calling. Your customers are either students or patients. They are not really customers in the broadest sense of the word. Patients are quite vulnerable and students are quite honourable. There is an entirely different goal, for lack of a better word, in running a university. You are there to teach, you are there to research and you are there to serve the community—hospitals are very similar.

I think, obviously, I would like to get paid and I think all employees would like to get paid. You do need to run a good business but there will be parts of the business of a university or a hospital that subsidise other parts. You might be looking for a cure for breast cancer and it is costly. You may be looking for a new energy source and it is going to have to be subsidised by other parts of the organisation. Universities and healthcare organisations are quite different from construction companies or telephone companies.

CHAIR: How does that play out, then? Do you think the council here, in your experience, and in other universities, is comprised of a good mix? Is it a good mix of skills and representation? Should it be smaller, larger, should it be more inclusive? What is your view on how that is, given you have talked about what its core business is?

Professor MADISON: I think it could be smaller, it could be larger. I think our present size is about right. I agree with my colleague who preceded me; it is a complex organisation and the required skills would be far more than nine or 11 people. It requires a wide variety of people. University has so many groups they really need to have a voice at the council level, and I suggest that this particular mix seems to be good. Most of the work of the council is done, as my colleague ahead of me said, in committee. A council of nine or 11 people are going to be very busy people. Like most organisations, committees run organisations. Controversial issues bubble up to the council level but generally it is the committees that get the work done, as you would all know.

CHAIR: How is that work done if you have counsellors who come from a great distance away? How do they participate in that, particularly in a regional or rural university setting? Are they able to participate or is the work not shared around in the same way?

Professor MADISON: The participation of some of the more distance people to the committee has been on the telephone, which loses a fair bit in translation. If I were on the telephone talking to you, you would be at a disadvantage, I suggest. You miss a lot of non-verbal language—whose hands are shaking, who is blushing or who is asleep or awake. When a council is organised it really is a factor. If people have three flights to get to your council table it is going to be pretty difficult. However, we have talked at council several times about videoconferencing. We do have non-verbal participation, which is really important, but it is a factor when you are in a regional university. It is the nature of the beast.

The Hon. MARIE FICARRA: What do you feel about performance measurement of not only the vice-chancellor but also the chancellor, and the council as a whole?

Professor MADISON: Eminently sensible. It is a huge responsibility. One would expect to have performance criteria clearly spelt out, not only for the chancellor but the vice-chancellor, for all council members, for all members of the university community. It is essential; it is critical. Many organisations, and this one is no different, use 360 evaluations where you have a subordinate, a colleague and a supervisor evaluating your performance. They are all going to look at you differently, but it is essential.

The Hon. MARIE FICARRA: You do not feel that council members would have too much objection to that?

Professor MADISON: I am sure there would be some objection but one would hope we realise we are there for altruistic purposes and we can all afford to be evaluated, all of us.

The Hon. CHRISTINE ROBERTSON: What sort of performance indicators are you looking for?

Professor MADISON: Depending on the role. If you are talking about the chancellor or the cleaner you will have totally different criteria. One would hope attendance, participation, preparation, knowledge. Do you come and are you ready? Do you come prepared for what is being discussed? Do you participate in as many committees as possible, appropriate with your skills and contribution?

The Hon. MARIE FICARRA: If we go currently to the new position of legal counsel and university secretary being merged into one position—and we have been told it is to improve the effectiveness of the relationship between chancellor and the council on the one hand and the vice-chancellor and the executive on the other—is this in your experience a good thing? Is it happening? Is it a positive thing?

Professor MADISON: It is a little new to make a serious determination. I think it has the potential for being extremely helpful but it is very early days. One would hope it adds value rather than confuses the issue. Many issues that come before council are legal issues. It is a big responsibility and a big group that has a variety of expertise that needs to be realised. I think in the early days that it was presented to this council there was some lack of clarity as to whom this person was to report, whether it was to the chancellor or to the vice-chancellor or to the council. I think there was a little bit of confusion. As it has turned out, it seems clear and that it will add value ultimately, one would hope.

The Hon. CHRISTINE ROBERTSON: This is a position employed by the university?

Professor MADISON: Yes, a new position. She has been in her role for the past six weeks.

The Hon. MARIE FICARRA: Early times?

Professor MADISON: Very early days to make a decision.

The Hon. MARIE FICARRA: Who does this position report to?

Professor MADISON: She reports to the chancellor. I would have to check that. Ultimately the role is supposed to have a three-way communication mechanism and not further confuse.

The Hon. MARIE FICARRA: Having legal training, would that eliminate certain irregularities that perhaps occurred previously with the secretariat position utilising the university's resources for meetings that were not known or condoned or approved by the council? Do you see this new position with legal backing that this person would understand what is permissible and what is not permissible, what is correct and ethical?

Professor MADISON: Yes and yes. Eliminate is a bit strong, but have the knowledge and the wherewithal to be tuned to the complexities rather than someone without legal expertise.

Dr JOHN KAYE: You make a statement in your written submission to us:

It is imperative that governing body members, and certainly a Chancellor, understand, appreciate and respect the content and context of the core business of a University.

What are the implications of that statement for people who are appointed either as a chancellor or as members of the governing board whose background is corporate—that is, they come from a construction company or the food industry or somewhere other than a university—and who do not have a lot of connection to the university or to universities in general?

Professor MADISON: One would hope that the elected current employees of the university and recent graduates would be able to provide context, background, balance, information for those appointed members of the council. I would see that as our primary role, as an employee, as an academic staff member, to submit the core business of the university. That is, I think, one of my primary roles and responsibilities on the council, to

provide that to people who, No. 1, are not from a regional area, who are from the metropolitan-based area, who are from the corporate world and provide the university with great expertise in reverse. One would hope it is a two-way communication because a lot of people do not understand the core business of a university.

Dr JOHN KAYE: There are three verbs in the second clause of that sentence—understand, appreciate and respect. In terms of understanding, that would be an appropriate method to ensure they understood—people can be made to understand. But the other two verbs, which I strongly agree with, are appreciate and respect. They are not so much about knowledge, they are about culture, experience, values, and so on. Again, I take you back to my question, what are the implications of those two verbs for people who are appointed from corporate backgrounds to the university without experience of a university?

Professor MADISON: It would be all-important. Why would you be on a governing body without respecting the core business of that organisation? It is hard to understand why you would think serving on the governing body was appropriate if you did not respect what the organisation was doing. Appreciate—it would defy the most logical thinking if you did not. Am I answering your question?

Dr JOHN KAYE: Yes, you are. Your definition of core business, which I think is a very good one, goes beyond a corporate definition of core business. Your definition of core business, reading between the lines in your submission, is about the community of scholars and the way in which a community of scholars would operate, including research and teaching and the whole business of the accumulation and imparting of knowledge and wisdom. That is what universities do. I imagine you would agree that is very different from the business of making profit from building roads or processing food or whatever?

Professor MADISON: It goes without saying, of course. Many people, academics, in the university, I would suggest, as in a hospital, doctors and nurses, feel a calling and have almost a religious fervour—I am sure there is a different word than that. They feel a serious calling to this and they are completely wrapped up in their academic role or, in my previous life, their doctoring and nursing role. They eat, sleep and breathe their mission, and it is associated with the core business of the university. It is not something that you leave on the weekend. Most of my colleagues back here work every weekend because they are called to it. There are some serious exceptions but they are few and far between.

Reverend the Hon. Dr GORDON MOYES: Taking up that analogy, I could imagine that the previous chancellor had very much a sense of vision and calling to his role, and from what I have read, to make the university more economically efficient, more effective in the work and its outcomes, and a real passion for doing this; so much so that maybe, without going into any of the details, there may be ways of governance that were bypassed. Is that a fair statement?

Professor MADISON: Yes. One of the controversial issues that happened in the last couple of years was a change in the budgeting process where a subject was evaluated based on that one subject and whether there was enough money coming in to support that subject. That is interesting and that is one way to budget. However, you have very low enrolment subjects for something that has a social good, a cultural good; we have small numbers of certain students that are disadvantaged for a variety of reasons and they need a leg up, and you have a subject running for other than profit reasons.

Reverend the Hon. Dr GORDON MOYES: Where would the world be without ballet?

Professor MADISON: Someone earlier said how did the council involve themselves in academic issues? There was a move to eliminate units, subjects, that did not make a profit. Wrong.

Reverend the Hon. Dr GORDON MOYES: It is quite obvious that you are also a person of great passion and calling into your field.

Professor MADISON: I hope it is not that obvious.

Reverend the Hon. Dr GORDON MOYES: You are also head of the school, is that correct?

Professor MADISON: I was for the last six years and I am on study leave at the moment.

Reverend the Hon. Dr GORDON MOYES: Is it also true that you have been through a period of intense personal criticism about your management styles and about the outcomes?

The Hon. CHRISTINE ROBERTSON: That is way off our terms of reference.

CHAIR: I think we had better stick to the terms of reference.

Professor MADISON: I think anyone in a leadership role is open for criticism.

Reverend the Hon. Dr GORDON MOYES: My bottom line: Is that the same situation with the chancellor, without going into details?

The Hon. GREG DONNELLY: In your submission in the third paragraph you say, "There seems to be no strategy in place to remove a chancellor". The phrase "no strategy", I am trying to get my mind around what you mean by that. Are you basically trying to say that there is no current legal procedure that exists in a legislative way to terminate a chancellor?

Professor MADISON: No. The rest of that sentence is, "in such an unequivocally, unsupportive position". Colleagues before me have indicated that a vote of no confidence by a couple of hundred, then a vote of no confidence with a larger number and then finally I think there were 700 UNE community votes of no confidence, and then the council itself, I would suggest under those conditions you cannot lead if no-one is following.

The Hon. GREG DONNELLY: I understand the thrust of what you are putting here, but I was wondering what the phrase "no strategy" could mean; whether you were talking about an actual specific procedure that would be followed to bring about this particular outcome if it got to the point where there was a loss of confidence in the chancellor. On this question that you raised in one of your responses about attendance at meetings, I think it might have been to Dr Kaye or the Hon. Marie Ficarra, I am not sure, was that an ongoing issue that in fact it was a real problem with respect to regular attendance at council meetings?

Professor MADISON: I think that there would probably be a debate about attendance. If attendance is telephonically attending, then there was certainly the opportunity for people to attend telephonically. I do not believe we ever did trial video conferencing. But, yes, it is an issue when attendance is not in person and is done telephonically.

The Hon. GREG DONNELLY: I do not disagree with the point you are making, but I am just wondering were not the dates for the meetings set out 12 months in advance so people knew what the dates were?

Professor MADISON: Yes.

The Hon. GREG DONNELLY: I mean there are obviously other regional universities in this State and other States of Australia. You may not know the answer to this, but do they have problems getting people to attend their council meetings?

Professor MADISON: I would suggest in any regional organisation there would be a problem when you have—I was going to say international, but certainly metropolitan or more distant members. It is not unusual and the council annually publishes attendance: Susie has been to four out of 12; John—

The Hon. CHRISTINE ROBERTSON: Do you know who pays the travel costs?

Professor MADISON: Travel costs to come to council?

The Hon. CHRISTINE ROBERTSON: Yes.

Professor MADISON: The university.

CHAIR: It has been suggested that there should be remuneration for councillors. Is that your view?

Professor MADISON: I am not sure that I suggested that, but it has been suggested, and I would suggest that a small honorarium would be okay. I do not have strong feelings one way or the other. If you are

not paid one would hope that you have the highest motives for participating, and honorariums are not going to make someone attend.

Reverend the Hon. Dr GORDON MOYES: It takes away an excuse.

Dr JOHN KAYE: We have heard from a lot of others but you also talk about how it is essential to define explicitly and differentiate between the roles, duties and responsibilities of both a chancellor and a vice-chancellor and a chief executive officer. I am sorry to pick you up on grammar on this; there is no comma in there and I was not quite clear. Are you saying that we need to distinguish between the roles of a vice-chancellor and a chief executive officer?

Professor MADISON: No.

Dr JOHN KAYE: So it is between a chancellor on the one hand and a vice-chancellor and chief executive officer on the other hand?

Professor MADISON: Yes.

Dr JOHN KAYE: What, broadly speaking, would you see as a distinction there? Would you see it as being the commonly understood distinction—the chancellor as being the chair of council and a ceremonial titular head, if you like, of the university, and the CEO being the operating officer?

Professor MADISON: Absolutely, and one of the topics that came up here, which, as far as I am concerned, typifies this, is the remunerations committee of the council looks at the remuneration packages of the senior executive. One would suggest, as possibly you yourself suggested, the remunerations committee of council should rightly look at the vice-chancellor's remuneration package, KPIs—performance indicators—and the vice-chancellor and chief executive officer should look at the rest of the senior executive committee. I am not quite sure why the university council should dip themselves that far down into the executive branch when in fact I see that as the chief executive's role.

The Hon. CHRISTINE ROBERTSON: And that is part of his performance indicators there. I agree with you.

Dr JOHN KAYE: It is traditional at universities that when a course of study or a subject is proposed, it goes through the academic board, then goes to the council and the council basically rubberstamps it. There is a tradition that the council will not fiddle with an academic subject because they do not have the expertise to understand. They might fiddle with it in a policy sense but they will not fiddle with the details. Can I ask you, as someone who has served on a council, why do we bother sending subjects, courses of study, to councils for approval? Why do we not just empower academic boards to do that and keep it as an understood and formally academic responsibility?

Professor MADISON: The ultimate authority would have to be the council and the core business of the university would have to be the council, and you are right, in almost every instance it is a rubber stamp. However, it does emphasise that the buck stops with the council.

Dr JOHN KAYE: So you can envisage situations where a council should reject or change a description of a content of a course, of a subject?

Professor MADISON: That would not come to council; that would be at the academic board.

Dr JOHN KAYE: It does not go to council?

Professor MADISON: The content would not. We are developing a social work program and it has participants from the sociology department, the philosophy department, the health department. We have got a course in how to deal with abused children; that kind of detail does not come to council.

CHAIR: Thank you very much for presenting your submission and for coming in to see us.

(The witness withdrew)

UNCORRECTED

(Short adjournment)

EILIS MAGNER, Professor and Chair of the Academic Board, University of New England, sworn and examined:

CHAIR: Would you like to make an opening statement or proceed straight to questions?

Professor MAGNER: Thank you for the opportunity to speak. I am appearing today in an individual capacity. I would like to put on record at the outset that the events of last year were truly traumatic for the university as a whole and very much concerning for me. In my view, the deterioration of relationships between the chancellor and certain members of council started before last year. However, I am delighted to be able to report that events this year have proved much better. We seem to have a restored era of harmony and have resolved that we will go forward together.

CHAIR: As you know, we are looking broadly at governance issues across all universities. I know you have other roles that put you in touch with other universities. You might then have some suggestions for us in terms of improvements. I note in your submission you talk about the role of the chancellor and the role of the vice-chancellor and that that has been misunderstood. Would you expand on that?

Professor MAGNER: In my view the chancellor—I think this is almost universally accepted—the source of their power lies in the fact that they are the chair of council. The role of chair is, as you would know, quite a powerful role.

CHAIR: I wish.

Professor MAGNER: But it is supposed to be a facilitative role; it is not supposed to be an individual decision-making role. The chair does not have executive power and should not have executive power. Some corporations have the chair also being the chief executive officer—that is not the case at any university that I am aware of. So the chancellor's role is chair of the university council. There are some other functions; the chancellor is also the chief ceremonial officer. Ceremony, rite and ritual have a strong importance on them. The role at graduations, the role at various other functions of the university, is an important role but again it is not a role that carries executive power. It is necessary for the vice-chancellor to have somebody to discuss the matters concerning the university with on a basis of absolute candour. That is the role of the chancellor but again it is not a role that carries executive power. The former chancellor appeared to believe that he did have executive power.

The Hon. CHRISTINE ROBERTSON: So an advisory role?

Professor MAGNER: It is an advisory role, it is a ceremonial role and it is a role as chair of the meeting.

CHAIR: But as a member of the council? With the vice-chancellor many universities term that role as the CEO in a corporate model?

Professor MAGNER: Indeed, our Act says the vice-chancellor is the vice-chancellor and chief executive officer of the university.

CHAIR: If that is the case, how do you see that position then having voting rights on the council? Do you see that as a conflict at all?

Professor MAGNER: No, I do not as such. The vice-chancellor should have a role in determining the policy that the university is going to follow and that is the primary role of council. I think it is appropriate that the vice-chancellor reports matters to council, as I do, and he should have a voice in the formulation of the policy that is going to guide what goes on in future.

CHAIR: In terms of performance review indicators, I think you say there is a performance review of the council as a whole entity but not of individuals; namely, the chancellor?

Professor MAGNER: That is right. Each year council goes through a self-review process in which we look at the policies we have examined, we look at the terms of reference of council and we look at attendances

at meetings. The attendance record is brought up there, but there is not an opportunity there for performance review of the individual or what the individual has contributed.

CHAIR: Do you think that councils should have the opportunity to review the performance of the chancellor and then, ultimately, if it is not going well, have the option of dismissing that chancellor?

Professor MAGNER: I think I distinguish in my submission between—I think I suggest that maybe there is a role for a 360-degree performance review, which is in fact used with many members of the senior executive of the university and it would be appropriate for the chancellor to seek some feedback of that sort. But that would be done informally.

Dr JOHN KAYE: On the idea of a 360-degree review for a chancellor, you have a council member, a chancellor from another university, but how do you get the third component of the 360 degrees?

Professor MAGNER: The third component might well be from people lower in the university who are seeing how the chancellor's performance is affecting the university.

CHAIR: Staff?

Professor MAGNER: The staff or the students.

Reverend the Hon. Dr GORDON MOYES: The president of the SRC?

Professor MAGNER: The president of the SRC indeed.

The Hon. CHRISTINE ROBERTSON: You have got to have one first.

Professor MAGNER: Very, very true but that is another issue.

CHAIR: We have been talking a little bit today about the ability to participate fully in council meetings and the capacity for councillors to attend if they live some distance away and, indeed, to student representatives, the costs involved not only in their time but also the financial cost. Do you think we ought to be moving to a model where there is reimbursement in some way, or for students to have some sort of secretary to assist, both the staff and students or people with dual roles to perform their duties?

Professor MAGNER: Not staff; students and maybe external members of council could be paid a sitting fee. I have noted in my submission the provision in the Victorian legislation that allows the universities—it does not mandate that this must be paid—to pay a sitting fee. I was persuaded by what I heard at the annual governance conference in Brisbane last year about sitting fees. That is where the idea was introduced to me. There seems to be some research—I am sorry I cannot point you to it, I was listening rather than doing this research—in the United States of America to prove that even if the sitting fee is minimal and the person is a highflier who could pull down many more dollars elsewhere, a sitting fee did seem to impact on attendance and performance and paying attention.

The president of the Australian Union of Students, Angus McFarland, I believe from the University of Sydney, also spoke at the conference about sitting fees and how it assists the student members of council. It means that they do not have to get an additional job and I have been very conscious of the fact that our student members do frequently need to get that. How you combine proper attendance to the governance functions with your studies and with an external job is beyond me. I think that is a really big call.

CHAIR: And then accessing all the information?

Professor MAGNER: Indeed. And doing the proper homework.

The Hon. MARIE FICARRA: We have heard a lot about the issue of conflict of interest being used to, perhaps, eliminate people from a discussion. Are the people who are sitting around the table perhaps people who may have had conflicts of interest but had not declared them and no pecuniary interest register exists? What is your experience and what do you think we can do to improve the situation?

Professor MAGNER: My experience and what I think we can do to improve the situation are two different things. My experience with conflict of interests and the former chancellor's definition of conflict of interest started in August 2007 when the chancellor of the academic board is a member of the standing committee of council. The standing committee on councils needed to deal with the unfortunate plagiarism issue that had occurred at MIT. I was chair of the academic board—

Dr JOHN KAYE: MIT where?

Professor MAGNER: Not the Massachusetts Institute of Technology. It was a partner institution of the University of New England and I do not have the translation of the acronym, but it did attract public attention. It was in the newspapers. I was told the chancellor did not wish me to attend the next meeting of the standing committee on councils. I was not given notice of the standing committee on councils. I did not know when it was or where it was occurring. The meeting happened. They considered the plagiarism issue. They also considered six other items on the agenda. So, when I found out the meeting had occurred I wrote a paper for the chancellor pointing out to him that failure to give me notice of that meeting invalidated that meeting, which it does. Sorry, can I refer to my expertise here? I am the author of *Joske's Law and Procedure of Meetings in Australia*. I do know this. It invalidated the meeting. I cited him authorities on this proposition. I cited him authorities for the fact his failing to give me notice invalidated the meeting and invalidated all the resolutions that could be ratified, and I wanted to take that paper to council.

He asked me not to do so, promised me he would never again declare me out of a meeting on the basis that I had a conflict of interest. But I discovered he had done this previously to a number of other members of council over the past five years. That is not the way you should be dealing with it. The thing went on for a while until we managed to get an opinion of a senior council to the effect that no, the member of the board did not have a conflict of interest because she happened to know something about the plagiarism policy in dealing with a specific item of plagiarism. That is basically what happened. That was my first experience. The reverse side was that the chancellor did not, as I drew attention to in my submission, consider that he had a conflict of interest when we put a motion of no confidence in him in front of the committee.

The Hon. CHRISTINE ROBERTSON: Does this mean there was a financial loss if the decision had gone one way or the other?

Professor MAGNER: No. In fact, there was no suggestion I had, myself, a material or personal interest.

The Hon. CHRISTINE ROBERTSON: No, not you personally, the university?

Professor MAGNER: Yes, but that was not why we were saying he had a conflict of interest. Yes, the university could have lost money. But that was not the issue.

Reverend the Hon. Dr GORDON MOYES: Just pushing a bit further on the powers of a chancellor, because most of our law on these matters comes from the United Kingdom, I looked up a couple of well-established universities in the United Kingdom and I discovered that the power of the chancellor—and I want your reflection on this, because it might help us because at the moment we do not have any good definition before us. They say that the power of the chancellor lies in his persona, his status, achievements, standing, prestige, which he brings to the university.

Professor MAGNER: Or she, I hope.

Reverend the Hon. Dr GORDON MOYES: Or she, yes. Actually, I do not think so. Oxford certainly not. Anyway, the point is taken. But it is what the chancellor brings to the university that is of benefit, not the administrative role the university might give to the chancellor.

Professor MAGNER: I would suggest that the role here is not an administrative role.

Reverend the Hon. Dr GORDON MOYES: That is right, that is what I am saying.

Professor MAGNER: But you are saying it is because of the gravitas of the chancellor that they get respect.

Reverend the Hon. Dr GORDON MOYES: They gain respect.

Professor MAGNER: They gain respect. The vice-chancellor can rely on the advice given to them by this person, but I think it goes beyond that. I think there is a fair amount invested in the role the university confers: The chairing of the council, working with people to achieve a unified vision, which I hope is what the council does.

Dr JOHN KAYE: The issue of conflict of interest—and it has clearly been exploited and therefore we can conclude from that it is open to be exploited by a chancellor who would seek to do so—would you see the solution being a new definition or legislated definition or regulated definition of conflict of interest, and would you see that as being done in a form that separates conflict of interest by virtue of being a member of a class of people versus conflict of interest by virtue of a personal characteristic?

Professor MAGNER: It would be a very difficult provision to write. As you will see at the end of my submission, I say I think this is beyond—did I say legislative competence? I am sorry, I am not trying to walk on your toes there. I was suggesting there is not any possible legislative response. It is difficult to walk through that maze. We have perceived conflict of interest as well as material conflict of interest as well as personal interest in the non-legal term.

Dr JOHN KAYE: But the councils and the Parliament of New South Wales and the Parliament of Australia all deal with this.

Professor MAGNER: I know, and courts deal with it continually. I have not found what the right thing is that covers all those bases.

Dr JOHN KAYE: Do you believe there is one, not necessarily the perfect solution but a step forward?

Professor MAGNER: There could be a step forward.

Dr JOHN KAYE: And by separating out the capacity for having a conflict of interest declared against you by virtue of your membership of a class, for example, student or teacher or academic staff or general staff member?

Professor MAGNER: Give me two weeks and some research money and maybe I can write you a paper on that.

Dr JOHN KAYE: I am sure the Chair will see what she can do in that regard. Can I take you to the issue of the so-called inner Cabinet? You suggest here that all members should be entitled to full information on a matter under discussion by council or a committee of council or a subcommittee of council. Are there other mechanisms that need to be pursued, in particular in the way in which people are appointed to councils and the type of people being appointed to councils and the power of the chancellor to affect the appointments of councils?

Professor MAGNER: I think what we saw was too many of our council members being virtually hand chosen by the chancellor, and I think that might have been part of our problem. I am in favour of the elected staff members retaining their positions on council. I think this is hugely important.

Dr JOHN KAYE: The number of people who were effectively appointed by the chancellor, they were ministerial appointments on the recommendation of the chancellor?

Professor MAGNER: A number of them were ministerial appointments on the recommendation of council but council was rubberstamping the chancellor's nominations. I think we as council bear some responsibility for all of that. There were also one or two places on council that were council appointed, and again we tended to be accepting the nominations of the chancellor without having the nominations committee working effectively. I am on the nominations committee. There was a situation in which five nominations were put in and we were sent around a resolution that we were asked to approve that at least two of these five would be appointed. I objected. We did not do that and that was the first time I had the opportunity, because most of the nominations were before I was there.

Dr JOHN KAYE: Did you feel at any time there was an attempt to undermine the academic board?

Professor MAGNER: Definitely.

Dr JOHN KAYE: And do you think that academic boards are in general vulnerable to that and do you think things should be done to enshrine the independence of the academic board as a separate locus of power, locus decision-making, within the context of the university?

Professor MAGNER: All of the university's decision-making bodies need to work together to an ultimate resource. I thought the two years, since my first appointment—my term as academic board started in February 2007. Between then and very soon thereafter, my first council meeting, I noticed—and this is an impression, I am sorry—the way the chancellor said the academic board was sacked, and I strongly resented it but there was not much I could do about it.

Dr JOHN KAYE: But you did feel there were attempts to abrogate power of the academic board to the council?

Professor MAGNER: Yes, and perhaps one would not have been surprised in August 2007 if the next stage had not been a proposal to remove the voice of the academic board from council. It is written into the Act, so it would have been difficult to do but I thought that might be coming.

Dr JOHN KAYE: Do you feel there needs to be stronger protections of the independence of the academic board in the Act?

Professor MAGNER: The fact that the chair of the academic board is an ex officio member of council is a pretty effective protection. No, I do not think it needs to be strengthened in the Act. I did feel vulnerable, but in retrospect I do not think I should have done.

The Hon. CHRISTINE ROBERTSON: Your item 7, which relates to the chair of the organisation being asked to leave the chair, how do you implement a process like that without waiting until there is a high level of conflict?

Professor MAGNER: I am suggesting that there should be two things. There should be the motion of no confidence. You can ask for the chair to leave the chair and hand over the gavel to somebody else on a particular issue for a number of reasons, and it need not be a matter of conflict. I am suggesting that the provision in the schedule to the Act about when the chancellor presides should be subject to a resolution of council, and it could be because we want to award an honorary degree to the chancellor or something comparable. This is a normal part of meetings procedure under common law. I do not think it is necessarily a matter of conflict.

The Hon. CHRISTINE ROBERTSON: In order for it not to work in a conflict situation the chairperson has to have a really good handle on the requirement to leave the chair without a conflict situation?

Professor MAGNER: No. The issue arises that a chancellor has an individual point of view to put and some member of council moves a motion that the chancellor should leave the chair and this particular part of the meeting should be chaired by the deputy chancellor and the meeting passes that resolution and the gavel is handed over. I do not see that there is a need for particular percipience by the chancellor.

The Hon. CHRISTINE ROBERTSON: The other issue on this matter of conflict of interest, I am very interested to hear that once a conflict of interest is declared individuals can no longer participate in discussion. I do not feel comfortable with that. Can you tell me why it is so? I can quite understand they can no longer participate in the voting but I have an interest in why they cannot participate in discussion.

Professor MAGNER: It can on occasion be an issue. There was an instance, for example, last year when the vice-chancellor was involved but I wanted some information from the vice-chancellor. The item arose as the vice-chancellor was about to leave the room and I asked the vice-chancellor to remain until we had received the information, and that was done. I think that should probably always be possible to be done; it was not strictly covered by the written rules.

The Hon. CHRISTINE ROBERTSON: Is it a normal rule? Is it a normal thing to happen that they are not to participate in the discussion or is it a rule?

Professor MAGNER: It is probably a university rule. The university defines conflict of interest and stipulates what should be done in that case. It is not in the Act and it is not in the schedule to the Act or the bylaws.

The Hon. CHRISTINE ROBERTSON: Because it is outside of our—

Professor MAGNER: It is outside of your region, yes. And I think your point is well made: There are frequently occasions on which you would like the information from the person. The other concern of the law, of course, is to make sure that not only can they not vote but that they do not know how the other individuals are voting unless we have a "you scratch mine and I'll scratch yours".

The Hon. CHRISTINE ROBERTSON: But they could leave the room for the vote?

Professor MAGNER: But they could leave the room for the vote.

The Hon. CHRISTINE ROBERTSON: In my eyes—and I may well be wrong, and my parliamentary colleagues may well correct me—the conflict of interest process for us relates to our individual decisions, unless there is some amazing political force on the other side that makes up a pretend one that you are stuck with. So the definition is not written in black and white. Do you people have a definition?

Professor MAGNER: We have a definition.

The Hon. CHRISTINE ROBERTSON: The university?

Professor MAGNER: The university has a definition. We have conflict of interest rules which define conflict of interest in the terms of our material or pecuniary interest. But the problem there is it does not take it far enough. It should in fact probably be a personal interest and there should be some acknowledgement of the perception. In fact, I think I will go back and start looking at our conflict of interest rules with your suggestions in mind—for us, not you.

Dr JOHN KAYE: Each university has a conflict of interest—

The Hon. CHRISTINE ROBERTSON: All different?

Professor MAGNER: Yes, almost for sure.

The Hon. PENNY SHARPE: I have two questions and I am hoping that you will be able to provide me the answer to this one particularly. The former Federal Government put in place the national government protocols—very controversial at the time—and they have now been pulled apart a little bit in terms of being divorced from the funding arrangements. This is some material that has been given to our Committee that is not in the submission, but it talks about the breach of duties and the power of governing bodies to dismiss a member with a two-thirds majority. Again, the information we have been given is that New South Wales amended our university legislation Act to comply with these protocols. I am wondering why that was not able to be enacted in the University of New England situation.

Professor MAGNER: It could have been and in fact I looked seriously at it, except that it is a very serious procedure that requires the approach of almost a prosecutor—in fact, probably a good prosecutor. You need to have an iron-tight legal case and I just simply did not have the time to develop such a legal case myself. Maybe arguably I had the expertise but did not have the time—it would have taken a good three weeks of work. If the former chancellor had had a term of another three years to go I think I would have recommended that we go that track. But when it was in fact another six months, then diminishing, it just was not worth the effort; it was not going to be a prodigious matter.

The Hon. PENNY SHARPE: In terms of what the Committee looks at, would it be your view that while suitable provision may exist that perhaps it is overly onerous to deal with the issue—

Professor MAGNER: I think it is particularly onerous, especially if you have somebody litigious on the other side, and we did have somebody litigious on the other side. That is, in fact, why my submission contains a suggestion that we should have a provision about loss of confidence.

The Hon. CHRISTINE ROBERTSON: Because it has been the way the legislation is written that creates the criticism?

Professor MAGNER: Yes.

The Hon. PENNY SHARPE: We have had a lot of discussion today about the role of elected members and there has been much less discussion, other than I think in passing, over appointed members, and you have alluded to it in your evidence this afternoon, that perhaps you felt that the council at the time did not provide enough due diligence in terms of those appointments that were recommended to the Minister. I do not mean that as a criticism of the council at the time.

Professor MAGNER: No, and neither do I. In fact, most of our councillors did come around. It was perhaps the fact that given that their recommendations, given that their appointments were seen as coming from an individual, they were inclined to give too much credence to that individual. It took an awful lot of work, an awful lot of talking, to persuade them to look at what was actually happening on the ground, what the situation was. Most of those councillors were in the end persuaded—in fact, I think unanimously all the councillors that remained on council were persuaded—that something had to be done. Only one felt that they were forced to resign by the fact that they just simply could not agree with the council

The Hon. PENNY SHARPE: So in managing appointed members as opposed to elected members, elected members have a mandate that is given to them by the fact that people voted for them to be there, do you have any suggestions that this Committee could consider in relation to the way in which appointments are made or how they are oversighted by the councils themselves, or the criteria that university councils currently are allowed to use in relation to their recommendations?

Professor MAGNER: I find it particularly difficult. Clearly, the nominations committee needs to be an active entity rather than a rubberstamping entity. I would like to see the council itself perhaps being a little bit more active—maybe meeting with the nominee before the name goes forward.

The Hon. CHRISTINE ROBERTSON: Does the nominations committee currently meet with the nominees?

Professor MAGNER: No, it does not; it considers CVs. We do not have an interview process.

The Hon. CHRISTINE ROBERTSON: What do you think of that idea?

Professor MAGNER: I think it would be a great idea if we could.

The Hon. CHRISTINE ROBERTSON: What sort of people are on the nominations committee? Is it a diverse group from the council? Is it stacked?

Professor MAGNER: Good question. The nominations committee consists of the chancellor, the vice-chancellor, the president of the academic board and two other members.

The Hon. CHRISTINE ROBERTSON: It is pretty stacked.

Professor MAGNER: It does tend to be the power group and it probably should be a little bit more independent.

The Hon. CHRISTINE ROBERTSON: I wonder how you ask for that to happen.

The Hon. GREG DONNELLY: A witness earlier today spoke about observing how the procedures and practices had started to improve with the new chancellor, and improved in the context of, I guess vertically and horizontally: the chancellor, vice-chancellor and then across through the whole of council.

Professor MAGNER: Yes, I perceived that too.

The Hon. GREG DONNELLY: Is that your perception?

Professor MAGNER: It is my perception.

The Hon. GREG DONNELLY: In terms of those new procedures and practices, do you think that what you have now—this is a difficult question but I will ask it anyway—is what probably should have been operating all along or what you have now is something that is essentially a transitional arrangement, because to the extent that it is a transitional arrangement it begs the question: What ultimately are the chancellor, vice-chancellor and the council working towards to become essentially the compartmentalised set of procedures and practices which will sustain the whole body going forward?

Professor MAGNER: We have identified, as a result of our trauma, a number of changes that need to be made in our rules and procedures. Not all of these changes and rules have taken place yet. There was a council retreat, which has probably been referred to, where there were a number of issues that were on the table for changing our procedures. For example, I think our electoral rules need to be changed, and there has been a suggestion that we will be developing a number of position papers, a number of suggestions, to do that. It has not been done yet; it will be done. We need some time to do it.

CHAIR: Just to pick up on that, I gather that is part of the review, is it, that the vice-chancellor referred to in his submission?

Professor MAGNER: I believe so.

CHAIR: You said that the atmosphere and the way in which things are progressing at the moment has improved. I would imagine you were part of the retreat process?

Professor MAGNER: Yes.

CHAIR: Do you think that the retreat process effectively dealt with issues in terms of understanding of the responsibilities of council members?

Professor MAGNER: No, I do not, although that was the initial idea behind the retreat. But what the retreat did—and in retrospect I think it might have been appropriate—was to focus on what Professor Madison referred to as the core business of the university and brief the council members in a way that they hadn't—because they had lost touch with what the core business of the university was. But I do not think what the retreat did was to address the issues of how council should be operating.

CHAIR: Some universities offer training, for example, through the Institute of Company Directors on the role of councillors on governance issues. Do you think that is a path that you should go down?

Professor MAGNER: We also do that, or at least we do corporate training but its focus tends to be outside the council procedures, to the council's legal responsibilities and what council is required to do—which is not the stuff we should start getting right, alright? We had council training very shortly after the retreat where a lawyer talked to us about directors et cetera and at that level that was fine to pursue.

CHAIR: We have heard about inequities in the sharing of information with councillors—some receiving information and others not—IT access to papers and the ability to attend meetings even if there is not a voting right at those meetings?

Professor MAGNER: Yes.

CHAIR: Indeed, the two-tier system of the council. Has that been your experience? If so, has that improved or is there something that needs to be done?

Professor MAGNER: That was my experience last year but this year we are circulating agendas for all the committee's so committee members can choose to observe. There is at least one case already where a council member has chosen to attend a committee they are not a member of and was allowed to contribute to the discussion at that meeting. So this sort of thing is happening now, and well may it continue.

CHAIR: The Committee probably has a lot more questions on which the secretariat may seek your advice.

Professor MAGNER: I would be delighted to contribute. Can I just make one final point? You referred to the information that is available to councillors. That is one of the recommendations I have put in here. There is a provision in the Corporations Act about councillors, directors being able to get access to information. It was a continual frustration of mine last year that I kept asking for information and kept being told—the university lawyer would say to me confidentially, "Yes, you have a right to this, of course."

The Hon. CHRISTINE ROBERTSON: What kind of information?

Professor MAGNER: Specifically I wanted to know—we had a meeting in July last year at which we set up the inquiry into the conduct of the vice-chancellor. Shortly after that meeting the chancellor and the deputy chancellor met with lawyers. I wanted to know what instructions had been given because it looked to me like the thing was turning into a witch-hunt—if the instructions had been what I would have hoped them to have been I would have been able to see that. I wanted access to those notes. The secretary to the council was present at that meeting and took notes and in my view I should have been able to access them and I was denied access.

(The witness withdrew)

CHAIR: Before we conclude I would like to make some comments to a number of today's participants and to those who have been watching the proceedings. At times what could be perceived to be adverse comments have been made about individuals, et cetera. Whilst those comments are protected by parliamentary privilege, what you choose to repeat outside of this process is a matter for you but I would advise you to think carefully about that in case you feel inclined to do so. The Committee looks forward to making recommendations from the evidence given today, from evidence received from other universities and from submissions made to its inquiry, which will assist not only the beautiful University of New England but also other universities across New South Wales. Thank you to the University of New England for hosting the Committee.

(The Committee adjourned at 3.40 p.m.)