

General Purpose Standing Committee No. 2

Governance of NSW universities

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How to contact the Committee

Members of the General Purpose Standing Committee No. 2 can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Director

General Purpose Standing Committee No. 2

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au/gpsc2

Email gpscno2@parliament.nsw.gov.au

Telephone 9230 3367

Facsimile 9230 3544

Terms of reference

That the General Purpose Standing Committee No 2 inquire into and report on the current state of governance of NSW universities and in particular:

1. Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellors and the consequential opportunities for conflict
2. Any apparent lack of clarity in the delineation of duties of governing bodies and the Chancellors
3. Identification of the roles and responsibilities of the Vice-Chancellor, the governing body and the Chancellor in relation to the formation of University policy and grievance procedures, and the communication of such policies to the student body
4. The appropriateness of changes in the duties and responsibilities of governing body members
5. Opportunities for governing bodies and chancellors to intervene in the responsibilities that more properly lie with the Vice-Chancellor as Chief Executive Officer
6. Current and possible future mechanisms for reviewing the performance of chancellors and governing body members in discharging their responsibilities
7. Protocols for addressing poor performance of chancellors and governing body members
8. The representation on governing bodies, and their committees, of staff and students and the current and appropriate balance between external members and elected representatives, and
9. Proposals for changes to the various acts governing NSW universities and to the National Higher Education Governance Protocols to address any systemic causes found
10. Any other related matter¹.

These terms of reference were self-referred by the Committee on 13 October 2008

¹ LC Minutes No. 68, 21 October 2008, Item 18, p 817-818

Committee membership

The Hon Robyn Parker MLC	Liberal Party	<i>Chair</i>
The Hon Christine Robertson MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Tony Catanzariti MLC	Australian Labor Party	
The Hon Greg Donnelly MLC	Australian Labor Party	
The Hon Marie Ficarra MLC	Liberal Party	
Dr John Kaye MLC*	The Greens	
Revd the Hon Dr Gordon Moyes MLC**	Independent	

* Substituting for Ms Lee Rhiannon MLC

** Dr Moyes was a member of the Christian Democratic Party until 5 May 2009 (LC Minutes No. 96, 5 May 2009, Item 20, p 1115)

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Chair's foreword

Universities are a vital part of Australia's social and economic infrastructure. As noted in the December 2008 report of the Bradley Review of Australian Higher Education, the reach, quality and performance of the higher education sector will be a key determinant of Australia's economic and social progress. Australian universities have combined operating revenue of over \$17 billion. In financial terms, even the smallest of universities now amount to quite substantial corporations.

In his recent review of the performance of NSW universities, the NSW Auditor-General noted that 'at the core of good governance is "doing the right thing"'. In other words, acting with honesty, impartiality, integrity, trustworthiness, respect for the law and due process. He believes that a commitment to ethical values is fundamental and that well-governed organisations are more successful than those that are not.

The Committee concurs with these sentiments and believes that NSW universities need to focus on their governance arrangements if they are to not only survive, but to flourish.

The evidence to this Inquiry clearly demonstrated that universities need to tailor their governance arrangements to meet their specific needs. However, this flexibility should not be unconstrained: they must act in accordance with the fundamental principles of good governance, including transparency and accountability.

Inquiry participants told us that they need greater control over the size and composition of their governing bodies. The Committee has made recommendations to this end. While we support the call for greater flexibility, we are committed to ensuring the continued representation of a wide variety of stakeholders particularly from among the university staff, students and alumni. The Committee has also recommended that universities have access to an effective mechanism to deal with long running disputes between a Chancellor and a governing body. An additional means for universities to affect the composition of their governing bodies is through ensuring that governing body members are of the highest calibre. This can be done through a greater emphasis on performance development, as well as by remunerating governing body members.

Other recommendations are intended to foster transparency and accountability in university governance arrangements, by strengthening performance evaluation practices.

On behalf of the Committee I would like to thank each Inquiry participant for their thoughtful contributions to this Inquiry. I am also grateful to my Committee colleagues for their work on this Inquiry. On their behalf, I acknowledge the work of the Committee Secretariat: Beverly Duffy, Ian Thackeray, Madeleine Foley, Cathryn Cummins and Kate Mihajek.

I commend this report to the Government.



Hon Robyn Parker MLC

Summary of key issues

In October 2008 the General Purpose Standing Committee No. 2 self referred an inquiry into the current state of governance of NSW universities. The Committee received 36 submissions and held four hearings. This summary provides a broad outline of the key issues raised during the Inquiry and discussed in this report.

Universities in transition

The governance of Australian universities has changed dramatically over recent decades, as universities adapt to a markedly different funding environment. Governance practices associated with the corporate sector have been widely adopted by universities in response to the need to generate approximately half of their total income through commercial activities.

Some participants in this Inquiry are concerned that the extension of corporate governance practices to the higher education sector threatens the fundamental mission of universities to promote scholarship, research, free inquiry and academic excellence. Other participants accept the need for universities to be more commercially focused and believe that this can be pursued without compromising academic standards.

In his recent review of the governance of NSW universities, the NSW Auditor-General noted that ‘at the core of good governance is “doing the right thing”’. In other words, acting with honesty, impartiality, integrity, trustworthiness, respect for the law and due process. He believes that a commitment to ethical values is fundamental and that well-governed organisations are more successful than those that are not.

The Committee concurs with these sentiments and believes that NSW universities need to focus on their governance arrangements if they are to not only survive, but to flourish.

The evidence to this Inquiry clearly demonstrated that universities need to tailor their governance arrangements to meet their specific needs. However, this flexibility should not be unconstrained: they must act in accordance with the fundamental principles of good governance, including transparency and accountability.

Size and composition of governing bodies

The ability to modify the size and composition of their governing bodies was seen as a crucial issue for some inquiry participants, particularly the Council of the University of New South Wales.

The University of New South Wales Council operates near or at the maximum governing body size of 22 members largely because its legislation mandates a relatively large number of alumni and academic staff representatives. This contrasts with most other universities across Australia, where alumni membership has been abolished or reduced.

While the Committee does not support the abolition of designated alumni positions it believes that consideration should be given to permitting the University of New South Wales to bring its legislation

into line with that of other NSW universities with regard to alumni representation, following consultation by the University with its alumni. This would reflect contemporary practice regarding the number of alumni positions on governing bodies while maintaining mandated alumni representation.

Some inquiry participants questioned whether open elections are the best means to select staff, student and alumni representatives. It was claimed that low voter turnout undermines the representative claims of elected members, particularly alumni representatives. The Committee notes that half of all NSW universities are using the power under their Acts to appoint rather than elect their alumni (or Convocation) members. The Committee believes that all NSW universities should have the flexibility to decide whether to appoint rather than elect their alumni members, and recommends that the university Acts be amended accordingly.

Dismissal of a Chancellor

With the exception of the University of Sydney, NSW universities do not currently have a clear and distinct provision to dismiss a Chancellor.

The Committee believes that a timely, fair and transparent mechanism to remove a Chancellor who has lost the confidence of their governing body should be available to all NSW universities. Such a mechanism may reduce the likelihood of protracted and damaging disputes between a Chancellor and a governing body. These arguments equally apply to the Deputy-Chancellor, which is also an elected position.

The procedures established by the University of Sydney provide an appropriate mechanism for the dismissal of the Chancellor and Deputy-Chancellor. We therefore recommend that a provision for the dismissal of a Chancellor and Deputy Chancellor, as set out in the University of Sydney By-Law 1999, be inserted into the university Acts.

Induction and professional development

Evidence to the Committee indicated that induction and professional development programs vary in quality, duration and appropriateness across universities. The Committee heard that professional development should be tailored to the specific requirements of governing body members, both internal and external, and should be offered over the course of a member's term. It should also be designed to ensure access to institutional data.

While respecting the need for universities to determine the nature and content of their own professional development programs, the Committee supports a greater emphasis on training and development across the sector. The Committee notes that the Commonwealth Government has announced the development of a voluntary code of best governance practice to replace the National Governance Protocols. The Joint Committee on Higher Education will facilitate consultation regarding the code. The Committee believes that the NSW Minister for Education and Training should ensure that the professional development of members of university governing bodies is accorded a high priority during this consultation.

Notwithstanding the development of a code of best governance practice, the Committee considers the Minister should conduct a review of professional development practices in NSW universities, with a view to encouraging best practice approaches.

Performance evaluation

Performance evaluation is crucial to a governing body's effectiveness. Based on the evidence to the Committee, it appears that performance evaluation practices vary significantly across universities, in terms of the regularity of performance reviews, and also, whether a governing body's performance is reviewed by the governing body itself or by an external consultant.

As with professional development, the Committee supports a greater focus on performance evaluation across the sector. The Committee believes that the NSW Minister for Education and Training should ensure that performance evaluation of university governing bodies is accorded a high priority in the forthcoming consultation regarding the development of a voluntary code of best governance practice.

As with professional development, the Committee also believes that the NSW Minister for Education and Training should review the performance evaluation practices of university governing bodies across the State, taking into consideration the issues raised in this Inquiry. As part of the review, the Minister should examine whether individual members of a governing body, including the Chancellor, should be subject to performance evaluation.

Clarity of governance roles

The members of university governing bodies have a good understanding of their roles and duties, as is required for effective governance. The Committee considers that the university Acts provide a clear framework regarding the roles of key governance actors. In particular, the university Acts are clear that the roles of the Chancellor and Vice-Chancellor are distinct and not overlapping. The Committee notes that individual universities having the flexibility to adjust their own by-laws, resolutions or rules if they feel the need for further clarification, as some universities have done in recent years.

Summary of recommendations

- Recommendation 1** **15**
 That the Minister for Education and Training investigate the most appropriate method to ensure the full disclosure of the terms and conditions of employment contracts for university staff.
- Recommendation 2** **44**
 That the Minister for Education and Training amend the provisions in the *University of New South Wales Act 1989* regarding the number of mandated alumni positions, in line with other universities. This should occur following consultation by the University with its alumni.
- Recommendation 3** **45**
 That the Minister for Education and Training amend the university Acts to provide all university governing bodies with the flexibility to either appoint or elect their alumni (or Convocation) members.
- Recommendation 4** **45**
 That the Minister for Education and Training amend the university Acts to increase the minimum term for all members of university governing bodies from one to two years, with half the number being retired at each election.
- Recommendation 5** **49**
 That the Minister for Education and Training amend the university Acts to allow university governing bodies to remunerate their members, giving consideration to:
- eligibility for remuneration
 - the appropriate level of remuneration.
- Recommendation 6** **52**
 That the Minister for Education and Training recommend to university governing bodies that they investigate separating risk management considerations from the work of an audit committee.
- Recommendation 7** **54**
 That the Minister for Education and Training investigate whether the inappropriate application of material interest declaration provisions is being used to exclude individuals from governing body debates on the grounds of the nature of their appointments to that governing body.
- Recommendation 8** **58**
 That the Minister for Education and Training amend the university Acts to allow for the dismissal of a Chancellor or Deputy Chancellor, similar to the provisions contained in the University of Sydney By-Law 1999.
- Recommendation 9** **65**
 That the Minister for Education and Training ensure that in the forthcoming consultation regarding the development of a voluntary code of best governance practice, the professional development of governing bodies is accorded high priority.

Recommendation 10**65**

That the Minister for Education and Training conduct a review of university induction and professional development programs in NSW universities, with a view to encouraging best practice approaches to professional development.

This review should be mindful of the issues raised in this Inquiry regarding professional development, including that such programs should be:

- tailored to meet the diverse needs of governing body members
- focused on developing the cultural capability of governing body members as well as their technical skills
- provided throughout governing body members' terms of office
- designed to ensure access to institutional data.

That the findings of the review be published no later than December 2009.

Recommendation 11**70**

That the Minister for Education and Training ensure that in the forthcoming consultation regarding the development of a voluntary code of best governance practice, the performance evaluation practices of governing bodies is accorded a high priority.

Recommendation 12**70**

That the Minister for Education and Training conduct a review of the performance evaluation practices of university governing bodies. This review should be mindful of the issues raised in this Inquiry regarding performance evaluation, including that such programs should be:

- conducted at regular intervals
- involve both self-reviews and external reviews
- conducted openly and transparently, and provide for public reporting of outcomes.

Further, that the Minister investigate whether individual members of a governing body, including the Chancellor, should be subject to regular performance evaluation.

That the findings of the review be published no later than December 2009.

Chapter 1 Introduction

This Chapter provides an overview of the Inquiry process and the structure of the report.

Terms of reference

- 1.1 The Inquiry terms of reference were adopted on 13 October 2008 under the Committee's power to make a self-reference, and are reproduced on page iv.
- 1.2 The terms of reference required the Committee to examine issues such as any apparent lack of clarity in the roles and delineation of duties of governing bodies and Chancellors, the appropriateness of changes in the duties and responsibilities of governing body members and the representative mix of governing bodies.

Conduct of the Inquiry

Submissions

- 1.3 The Committee called for submissions through advertisements in the *Sydney Morning Herald* and *The Daily Telegraph* on 29 October 2008, and by writing to key stakeholders and interested parties.
- 1.4 The Committee received a total of 36 submissions, including one supplementary submission. Submissions were received from a range of stakeholders, such as the NSW Vice-Chancellor's Committee, the National Institute of Governance and the National Tertiary Education Industry Union (NSW Branch). Submissions were also received from six universities.
- 1.5 A full list of submissions is available at Appendix 1.

Hearings

- 1.6 The Committee held a total of three public hearings during this Inquiry. The first hearing was at Parliament House on 26 February 2009, the second hearing was at the University of New England, Armidale on 17 March 2009, and the public third hearing was held at the University of Sydney on 23 March 2009. The Committee would like to thank the University of New England and the University of Sydney for facilitating the public hearings at their campuses.
- 1.7 During these hearings, the Committee received evidence from a number of organisations and individuals, including several members of university governing bodies.
- 1.8 At its fourth hearing, the Committee took *in-camera* evidence from Mr John Cassidy, the former Chancellor of the University of New England on 3 April 2009. The transcript of this hearing was subsequently published by resolution of the Committee at the request of the witness.

- 1.9 A list of witnesses is set out in Appendix 2 and published transcripts are available on the Committee's website. The list of documents tabled at the public hearings is provided at Appendix 4.
- 1.10 The Committee would like to extend its appreciation to the individuals, universities, representative bodies and agencies that contributed to this report by either making a submission or by appearing at a hearing.

Terminology

- 1.11 Different terms are used to describe certain features of university governance in the university Acts. For example, a governing authority may be referred to as a Council, a Senate or a Board of Trustees.² Throughout this report, the term 'governing body' will be used to encompass these three variations.
- 1.12 Additionally, the university Acts refer variously to a Vice-Chancellor, a Chief Executive Officer or a Principal Officer.³ Throughout this report, 'Vice-Chancellor' will be used to encompass this position title.
- 1.13 Finally, some governing body members are referred to as Councillors, Trustees or Fellows. This report will refer to 'members of governing bodies'.⁴

Report structure

- 1.14 The next chapter, Chapter 2, provides an overview of key changes that have occurred in the higher education sector in response to the need for universities to supplement government funding with commercial activities. The chapter also discusses a number of reviews of the higher education sector that have taken place over the last fifteen years.
- 1.15 Chapter 3 outlines the regulatory framework for the governance of NSW universities, including the provisions in the university Acts relating to the governing body, Chancellor and Vice-Chancellor.
- 1.16 Chapter 4 addresses an issue of considerable debate during the Inquiry: the size and composition of governing bodies. It discusses whether smaller governing bodies would operate more efficiently and effectively. The Chapter also examines the composition of governing bodies and in particular, the representation of staff, students and alumni, and the practice of making Ministerial appointments to governing bodies.

² For example the *University of New South Wales Act 1989* refers to the Council, the *University of Sydney Act 1989* refers to the Senate and the *University of Western Sydney Act 1997* refers to the Board of Trustees

³ For example the *University of Sydney Act 1989* refers to the Vice-Chancellor, the *University of Technology Act 1989* refers to the Chief Executive Officer and the *University of Newcastle Act 1989* refers to the Principal Officer.

⁴ *University of Sydney Act 1989* s 3

- 1.17** In Chapter 5, several issues relating to the structure of governing bodies are considered: remuneration of members of governing bodies, the voting rights of Vice-Chancellors, membership of certain governing body committees, and the declaration of material interests by members of governing bodies. Lastly, it discusses the power to dismiss a Chancellor who has lost the confidence of the governing body.
- 1.18** Chapter 6 reviews the professional development provided to members of a university governing body, together with evaluation of a governing body's performance. The recruitment of a Chancellor is also considered briefly.
- 1.19** The final chapter, Chapter 7, addresses the clarity of governance roles, and the need to develop a healthy governance culture in which governing body members can work collaboratively to achieve excellence in university governance arrangements.

Chapter 2 Universities in transition

This Chapter outlines key changes that have occurred in the higher education sector over the past two decades, including changes initiated in response to the need for universities to supplement government funding with commercial activities. The Chapter also includes a brief discussion of several major reviews of the higher education sector over the past 15 years.

Changes to the higher education sector

- 2.1** The higher education sector in Australia grew rapidly in the post-Second World War period to meet expanding demands for higher education. The number of Australian universities grew from six institutions following the Second World War to 39 institutions in 2009⁵ with a combined operating revenue of \$17.3 billion.⁶
- 2.2** One of the most significant changes to the higher education sector in recent decades has been the reduction in the level of government funding. In 2007, the Commonwealth Government contributed approximately 55 percent of all university operating revenue.⁷ Commonwealth Government grants comprised an average 41.2 per cent of operating revenue for all NSW universities in 2008.⁸ The Department of Education, Employment and Workplace Relations (DEEWR) expects Commonwealth Government grants to be not much more than 50 per cent of operating revenue. All NSW universities achieve this expectation.⁹
- 2.3** Commonwealth Government funding is supplemented by a range of commercial activities undertaken by universities, including the imposition of fees for domestic and international students, the sale of consultancy services, the commercialisation of research and the management of intellectual property.¹⁰ Universities have become a vital export earner with higher education being Australia's third largest export industry.¹¹

⁵ The National Institute of Governance, National Coordinator of the University Governance Professional Development Program, *Submission to the MCEETYA Review of Commonwealth National Governance Protocols 2007*, p 3

⁶ Commonwealth Department of Education, Employment and Workplace Relations, *Finance 2007- Financial Reports of Higher Education Providers* September 2008, p 3
<<http://www.dest.gov.au/NR/rdonlyres/FD27AECC-5790-42ED-851D-0A1782DD8905/24030/Finance2007forpublication.pdf>> (accessed 5 May 2009)

⁷ Commonwealth Department of Education, Employment and Workplace Relations, *Finance 2007- Financial Reports of Higher Education Providers*, September 2008, p 3

⁸ Audit Office of NSW, *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 61

⁹ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 39

¹⁰ Commonwealth Department of Education, Science and Training, *Meeting the challenges: the governance and management of universities*, August 2002, pp 2-3

¹¹ Universities Australia, *Driving Economic Recovery For Australia Through Knowledge – Pre-budget submission 2009-10*, January 2009, p 6 <<http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/UA-Budget-Submission-Jan-2009.pdf>> (accessed 5 May 2009)

2.4 As a consequence ‘even small universities in terms of their responsibilities are quite substantial corporations’¹² and all ‘universities in Australia have become much more corporate in their governance, organizational structure and character’.¹³

2.5 As one witness to the Inquiry explained:

Australia has moved from the halcyon days of 25 or 30 years ago when money was not an issue at universities, to mass higher education where student numbers have just exploded. It is not possible any more, I think, in universities to say, ‘Let’s provide unlimited numbers of tutorials or lecturers’ and so on. The Government has to recognise major shifts in higher education in the world, not just in Australia, to mass higher education.¹⁴

Moving towards a more commercial focus

2.6 In response to the need for universities to generate a greater proportion of their income from commercial activities, a tension has developed between those who believe that universities should be not-for-profit organisations devoted to advancing ‘scholarship’ and those who recognise the need for universities to be commercially focused in order to continue to provide their important public functions.

2.7 Several participants in the Inquiry suggested that the shift to a more commercial focus threatened the ability of universities to pursue their traditional objectives of excellence in teaching and research. The National Tertiary Education Union-NSW Branch (NTEU-NSW Branch) told the Committee that, ‘in recent times university decision making has been dominated by a corporate managerialist culture which has undermined the academic integrity of teaching, learning and research, and the practice of good pedagogy’.¹⁵

2.8 Dr Tim Battin also drew a link between a growing corporate emphasis and his perception of a corresponding decline in the quality of education provided by universities:

The underfunding of universities intersects with the corporate and managerialist mindset and thereby gives rise to particular implications. One of these is the obvious problem of the increasingly questionable quality of higher education.¹⁶

2.9 The University of Sydney Students’ Representative Council argued that universities ‘are very much still publicly owned institutions’ with a primary mission ‘to provide education’¹⁷ and that the commercial imperative was driven by a failure of funding. It argued that problems (such as those recently at the University of New England) could be sheeted home to ‘the lack of real

¹² Mr John Phillips, Chancellor, University of Western Sydney, Evidence, 26 February 2009 p 3

¹³ Submission 16, University of NSW Alumni Association, p 3

¹⁴ Dr Rudi Lidl, Audit Director, Australian Universities Quality Association, Evidence, 26 February 2009, pp 38-39

¹⁵ Submission 23, National Tertiary Education Union -NSW Branch, p 5

¹⁶ Submission 22, Dr Tim Battin, p 4

¹⁷ Mr Noah White, President, Student Representative Council, University of Sydney, Evidence, 26 February 2009, p 45

indexation of public funding and government encouragement for universities to adopt a corporate commercial model of operations'.¹⁸

- 2.10** Some participants, while accepting that the purpose of universities was unlike other corporations, argued that corporate values were nonetheless relevant to the sector, within certain limits, if universities were to continue to function as an effective part of the nation's social and economic infrastructure.
- 2.11** Mr John Phillips, Chancellor of the University of Western Sydney, explained that, 'universities are in fact a business but they are a very different type of business'¹⁹ where 'the main purpose of the university... is education, teaching, learning and research'.²⁰ 'You have no option these days but to run universities as a kind of business' but, given its main purpose is education 'you have to think in a businesslike manner, but you have to think very differently'.²¹
- 2.12** During evidence, Mr John Cassidy, the former Chancellor of the University of New England, was asked whether running a university was the same as running a large corporation, to which he answered: 'No, absolutely not. You must take into account the very business that you are trying to support.' According to Mr Cassidy, while this business includes 'producing people with degrees or diplomas', as well as promoting community and sporting activities, research and scholarship,²² commercial activities are also important if a university is to be financially strong.²³
- 2.13** While critical of reduced funding for universities, Mr Noah White, President of the University of Sydney Student Representative Council, acknowledged 'that there is a role for governing bodies to be somewhat corporatised...' and that the move to a corporate model in some ways 'is not reversible'.²⁴
- 2.14** Mr Warwick Watkins, the Deputy Chancellor of the University of Technology, Sydney, acknowledged this blended model. He explained to the Committee that universities are 'all big businesses' and 'complex organisations' but a university 'must focus on its pursuit of excellence under its charter in research, teaching and learning'.²⁵
- 2.15** In her submission to the inquiry, Ms Catherine Rytmeister, lecturer in Higher Education Development and a PhD student, stated that, while a more corporate approach to management was necessary to ensure that modern universities remain viable and productive, it should be remembered that 'the institution's financial viability and security was of vital

¹⁸ Submission 17, Student Representative Council, University of Sydney, p 4

¹⁹ Mr Phillips, Evidence, 26 February 2009, p 2

²⁰ Mr Phillips, Evidence 26 February 2009, p 5

²¹ Mr Phillips, Evidence, 26 February 2009, p 5

²² Mr Cassidy, Evidence, 3 April 2009, p 7

²³ Mr Cassidy, Evidence, 3 April 2009, p 8

²⁴ Mr White, Evidence, 26 February 2009, p 45

²⁵ Mr Warwick Watkins, Deputy Chancellor, University of Technology, Sydney, Evidence, 23 March 2009, p 27, p 34

importance, but only insofar as this enables the institution to fulfil its mission, not as an end in itself.²⁶

2.16 A number of contributors argued that the introduction of corporate practices to university governance has the potential to threaten academic freedom. For instance, Ms Rytmeister highlighted that:

... those who see the university's core business as intrinsically linked to the manner of its management and governance, tend to view the adoption of "corporate" practices as a threat to internal diversity, collegiality and academic autonomy.²⁷

2.17 Dr Rudi Lidl, Audit Director, Australian Universities Quality Association (AUQA), conceded that while the increasing casualisation and its effect on universities was one of the major issues that arose in recent university audits conducted by AUQA, no evidence was found that academic freedom was at risk. He went on to observe that 'I would not like to make the linkage that contract employment or casualisation of the workforce impinges on the freedom of academics'.²⁸

2.18 Mr Phillips acknowledged the challenge of combining efficient fiscal management with academic integrity, before concluding that:

There is a danger that the pressure of budgets will constrain the academic contribution of universities to Australian society ... The advancement of knowledge and the encouragement of scholarship are still, and always must be, core responsibilities.²⁹

2.19 Several participants commented on the need to ensure governing bodies include people with highly developed financial skills, if universities are to remain viable. As Professor Hilmer commented:

The fundamental job of a governing body is to make sure that the entity continues to operate successfully in terms of its objectives. You cannot do that if you are insolvent.³⁰

Recent higher education reviews

2.20 The following section outlines a number of reviews of the higher education system, which have taken place over the last fifteen years.

²⁶ Submission 20, Ms Catherine Rytmeister, p 29

²⁷ Submission 20, p 29

²⁸ Dr Lidl, Evidence, 26 February 2009, p 41

²⁹ Answers to questions on notice taken during evidence 26 February 2009, Mr John Phillips, Chancellor, University of Western Sydney, pp 7-8

³⁰ Professor Hilmer, Evidence, 26 February 2009, p 22

Higher Education Management Review 1995

- 2.21** The ‘Higher Education Management Review’, also known as the Hoare Review, was commissioned by the Commonwealth Government in early 1995. The aim of the Review was to identify ways for universities to ‘develop excellence in management and accountability for the resources available to the sector’.³¹
- 2.22** The Review, which was released in December 1995, found that governance arrangements varied greatly between universities, ‘with only a limited number of governing bodies operating effectively’.³² The Review identified a number of deficiencies in relation to governance arrangements including:
- a lack of focus and emphasis on strategic issues at the governing body level
 - inadequately articulated roles and responsibilities of members
 - imbalance between external and internal appointments
 - the size of some governing bodies
 - a lack of appropriate skills and knowledge among members of the higher education sector.³³

Higher Education at the Crossroads 2002

- 2.23** In April 2002, the Commonwealth Government initiated a major review of the higher education system. The first stage of the review included the publication of a discussion paper, *Higher Education at the Crossroads*, which highlighted six key issues facing Australian universities. One of these issues was strengthening the governance and management of universities.
- 2.24** The Review identified good governance practices as being particularly important, given the increasing prevalence of universities sourcing funding from fees, charges, investments and the commercialisation of intellectual property.³⁴ It posed the question:

How can an appropriate governance balance be struck between the requirement for accountability and probity and the necessity for appropriate risk management of commercial ventures?³⁵

- 2.25** The second stage of the Review produced an issues paper on governance, entitled *Meeting the Challenge: the governance and management of universities*. It stressed that good governance practices

³¹ Hoare Review, Summary of report and recommendations
<<http://www.dest.gov.au/archive/highered/otherpub/hoare/hoare1.htm#summary>> (accessed 18 December 2008)

³² Hoare Review, Governance – main findings
<<http://www.dest.gov.au/archive/highered/otherpub/hoare/hoare2.htm#governance>>(accessed 5 January 2009)

³³ Hoare Review, Governance – main findings

³⁴ *Meeting the challenges: the governance and management of universities*, August 2002, p ix

³⁵ *Meeting the challenges: the governance and management of universities*, August 2002, p 17

are critical to the effectiveness and success of Australian universities, and are essential to maximise their ability to contribute to Australia's economic and social development. The issues paper identified some of the challenges surrounding the governance of universities as:

- role and size of governing bodies
- duties, skill set and remuneration of members of governing bodies
- composition of and appointment methods to governing bodies.³⁶

2.26 The intent of both *Higher Education at the Crossroads* and *Meeting the Challenge: the governance and management of universities* was to explore issues in relation to higher education and good governance practices. Whilst neither report made specific recommendations concerning future directions, the findings of the Reviews were considered in the 2008 Review of Australian Higher Education, discussed at the end of this chapter.

Victorian Review of University Governance 2002

2.27 The Victorian Department of Education and Training conducted a review of university governance practices in Victoria in 2002. The *Review of University Governance* examined how Victorian universities could best respond to and develop in a changing operating environment.

2.28 The Review proposed the development of:

... a system of corporate governance and accountability to Government that sheets home responsibility to universities to advance their public purposes, with transparent governance of and effective accountability for all their activities, including their commercial ventures.³⁷

2.29 The Review recommended that universities adopt a statement of their primary responsibilities, which encompassed issues such as the appointment and monitoring of the Vice-Chancellor, identifying the universities' strategic direction and the establishment of systems of control and accountability.³⁸ The Review also recommended that the Victorian Office of Higher Education establish a program to develop the leadership and governance skills of members of governing bodies.³⁹

2.30 The intent of the proposed changes was 'to enhance public confidence that effective decisions are being made' by university decision makers.⁴⁰

³⁶ *Meeting the challenges: the governance and management of universities*, August 2002, pp 17-25

³⁷ Victorian Department of Education and Training, *Review of University Governance*, May 2002, p 3

³⁸ *Review of University Governance*, May 2002, p 65

³⁹ *Review of University Governance*, May 2002, p 6

⁴⁰ *Review of University Governance*, May 2002, p 3

Joint Committee on Higher Education Review of National Governance Protocols

- 2.31** In June 2004 the Commonwealth Government introduced the National Governance Protocols. The eleven Protocols were designed to ensure a consistent national approach towards key aspects of governance. Universities were required to comply with the Protocols as a condition of receiving Commonwealth funding.
- 2.32** The Protocols were a significant governance reform. They aimed at addressing a number of governance concerns including:
- whether governing bodies had the skills to oversee complex multi million dollar enterprises
 - whether members see themselves as representing interest groups, rather than serving the interests of the university as a whole
 - the size and composition of councils
 - whether governing bodies were monitoring universities' commercial operations.
- 2.33** The National Governance Protocols led to substantive amendment of the university Acts across the States and provoked a greater interest in the theory and practice of good governance in the higher education sector.⁴¹
- 2.34** In late 2005, at the meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA), the Commonwealth, State and Territory Ministers agreed to review the effectiveness of the Protocols.
- 2.35** The Ministerial Council asked its advisory body, the Joint Committee on Higher Education (JCHE), to conduct the review and report back by the end of 2007.⁴²
- 2.36** In early 2008, prior to the JCHE finalising its Review of the National Governance Protocols, the new Commonwealth Government decided to separate compliance with the Protocols from eligibility for receipt of public funding.⁴³ According to the Department of Education, Employment and Workplace Relations, the rationale for this step included:
- that the measures for setting out governance arrangements had already been enacted through state and territory legislation and universities had taken steps to ensure compliance

⁴¹ Swansson J, Mow K and Bartos S, 'Good university governance in Australia', *Referred Proceedings of 2005 Forum of the Australasian Association of Institutional Research*, pp 100-101

⁴² The JCHE is comprised of representatives from the Commonwealth and the education departments of each State and Territory, and is chaired by an elected representative of a State Education Department.

⁴³ The Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Bill 2008 amended the *Higher Education Support Act 2003* by repealing section 33-17 of the Act. This section had required higher education providers to meet the higher education workplaces requirements (known as HEWERS) and the national governance protocols as a condition of receiving Commonwealth Grant Scheme funding. The Bill was passed on 4 September 2008 (CPD (Senate), 4/9/2008, p 4529)

- removal of the NGPs would reduce red tape and the costs associated with compliance
- a non legislative voluntary code would provide universities with flexibility in their governance arrangements.⁴⁴

2.37 The Commonwealth Minister for Education indicated that, although adherence to the National Governance Protocols would no longer be a condition of funding, a ‘voluntary code or set of best practice university governance principles’ would be developed in consultation with Universities Australia and state and territory governments to ensure that good governance practices are maintained.⁴⁵

Victorian Higher Education Legislation Review 2008

2.38 In February 2008, the Victorian Government commenced a review of its various University Acts. The Statement of Intent for the Review noted that:

... good governance in universities increasingly involves balancing commercial autonomy with a corresponding need for accountability and service to the broader community. Victorian universities hold unique public responsibilities and attributes that contrast with the requirements of private sector corporations.⁴⁶

2.39 The Review recommended changes to the legislation governing Victorian universities. These recommendations related to:

- making the remuneration of governing body members a condition of appointment
- more flexible requirements with regards to the size of governing bodies
- clearer delineation of fiduciary responsibilities for governing bodies members and basic guidelines for resolving conflicts of interest.⁴⁷

2.40 Template legislation is to be introduced to the Victorian Parliament and a series of Bills modelled on the template will be then introduced and the existing university Acts repealed.⁴⁸

⁴⁴ Submission 9, Department of Education, Employment and Workplace Relations, p 2

⁴⁵ CPD (HR), 14/5/2008, p 2762

⁴⁶ Victorian Department of Education and Training, *Statement of Intent - Higher Education Legislation Review*, October 2008, p 7
<http://www.skills.vic.gov.au/__data/assets/pdf_file/0007/24496/Statement-of-Intent.pdf>
(accessed 5 May 2009)

⁴⁷ Victorian Department of Education and Training, *Statement of Intent - Higher Education Legislation Review*, October 2008, p 8

⁴⁸ Victorian Department of Education and Training, *Statement of Intent - Higher Education Legislation Review*, October 2008, p 5

Review of Australian Higher Education 2008

- 2.41** In March 2008, the Commonwealth Government announced a major Review of Australian Higher Education, chaired by Emeritus Professor Denise Bradley. The ‘Bradley Review’ was asked to consider the future direction of the higher education sector, and the options for reform.
- 2.42** The final report of the Bradley Review was released in December 2008, making 46 recommendations to reshape the existing higher education system. It recommended major reforms to the financing of the higher education sector, as well as regulatory reforms which would see all higher education providers, including vocational institutions, regulated by a single independent national tertiary regulatory agency.⁴⁹
- 2.43** Under this proposed national framework, each university would be able to set its own strategic direction, with funding provided to the university if it was able to attract:
- ... publicly-funded undergraduate and postgraduate students, full-fee paying domestic and international students, and publicly-funded research and commercial opportunities, based on the quality of its teaching and research effort.⁵⁰
- 2.44** In May 2009, the Federal Government announced a new funding package, totaling \$5.3 billion over six years, for the higher education sector.⁵¹ The funding package is linked to a range of reforms, including the replacement of the Australian Universities Quality Agency with a new regulatory agency, the Tertiary Education Quality Standards Agency, which will oversee standards and performance in the sector.⁵²

NSW Auditor-General’s Report to Parliament 2009

- 2.45** The NSW Auditor-General’s Report to Parliament Volume Two in May 2009 focused on the corporate governance of universities and large government agencies. The Auditor-General identified a number of issues of concern relating to universities, including:
- a combined operating loss of \$66 million in 2008 compared to a surplus of \$388 million in 2007, largely as a result of the global financial crisis and volatility in financial markets
 - an increase in unfunded superannuation liabilities to \$3.1 billion
 - increased reliance on overseas students as a source of income, with overseas students now contributing nearly half of total student revenue
 - financial exposure due to excessive annual leave balances of academic staff

⁴⁹ Australian Government, *Review of Australian Higher Education: Final Report*, December 2008, p xiii

⁵⁰ *Review of Australian Higher Education: Final Report*, p 175

⁵¹ Trounson A, ‘Performance targets to drive funding’, *The Australian*, 14 May 2009 < <http://www.theaustralian.news.com.au/story/0,25197,25470917-12332,00.html> > (accessed 14 May 2009)

⁵² ‘New education body’, *The Australian Financial Review*, 13 May 2009, p B21

- significant maintenance backlogs of nearly \$1 billion.⁵³

- 2.46** The Auditor-General's report highlights that it is critical for universities to put in place effective corporate governance arrangements, and in particular, the need for universities to have access to high-level financial skills. Such skills are needed all the more because of the current financial crisis and volatility in financial markets.
- 2.47** The importance of high-level financial skills is shown by the falls in the value of universities' investments from \$2.1 billion at the end of December 2007 to \$1.6 billion a year later.⁵⁴ The biggest impact was felt by the University of Sydney: investments fell by \$271 million, or 23 per cent, from \$1.15 billion to \$884 million. According to the Auditor-General, 'the University advised that it does not believe the fall in value will materially impact its operations, however it may result in the deferral of some capital works programs.'⁵⁵
- 2.48** The Auditor-General found that six of the ten NSW universities meet all four Australian benchmarks for university financial performance, as identified by DEEWR. The benchmarks are liquidity, diversity of revenue, employee benefits and on-costs, and operating result.⁵⁶
- 2.49** In relation to diversity of revenue, two NSW universities rely on Commonwealth Government grants for more than 50 per cent of their operating revenue: the University of New England (51.5 per cent),⁵⁷ and Charles Sturt University (50.3 per cent).⁵⁸ Macquarie University is the least reliant on Commonwealth Government funds (26.4 per cent).⁵⁹ The State average for reliance on Commonwealth Government grants is 41.2 per cent.⁶⁰
- 2.50** In 2009 and 2010 the Auditor-General will more closely examine the design and operation of universities' key corporate governance arrangements.⁶¹

Committee comment

- 2.51** The governance of universities has changed dramatically over the past 20 years, largely as a consequence of reduced reliance on government funding.

⁵³ Auditor-General Mr Peter Achterstraat, 'Auditor General's Report to Parliament – Volume two 2009: Focusing on Universities,' *Media Release*, 20 May 2009

⁵⁴ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 33

⁵⁵ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 69

⁵⁶ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 37

⁵⁷ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 77

⁵⁸ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 54. The Auditor-General noted that Charles Sturt University's increased reliance on Australian Government grants in 2008 was largely due to grants for the University's new Dental School.

⁵⁹ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 61

⁶⁰ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 61

⁶¹ *Auditor General's Report to Parliament 2009 – Volume Two*, May 2009, p 7

- 2.52** While some inquiry participants felt threatened by the extension of corporate governance practices to the higher education sector, others perceived these changes as an appropriate response to the contemporary environment and compatible with the fundamental objects of a university to promote excellence in scholarship, teaching and free inquiry. The Committee acknowledges the need for universities to pursue corporate goals, and believes that these can be pursued without threatening academic or research standards.
- 2.53** Indeed, given NSW universities' combined operating loss of \$66 million in 2008, and the current global financial crisis, it is imperative for NSW universities to apply best practice corporate governance principles to their operations. As noted by the Auditor-General, 'organisations that are governed well outperform those that are not.'⁶²
- 2.54** However, these goals should be pursued within a framework of accountability and transparency. An example of this is disclosure of salary packages for senior staff. While offering significant salaries and generous performance bonuses to senior executive staff may provide an important competitive edge for some universities, given that approximately half of total university funding is provided by the Commonwealth Government, the disclosure of this information is a matter of public interest. The Committee notes the recent comments by the NSW Ombudsman criticising attempts by several universities to make the salaries of their Vice-Chancellors exempt from the *Freedom of Information Act* and thus unable to be disclosed. We share the Ombudsman's view that the terms and conditions of employment contracts of public sector staff should be open to public scrutiny, except in exceptional circumstances.⁶³

Recommendation 1

That the Minister for Education and Training investigate the most appropriate method to ensure the full disclosure of the terms and conditions of employment contracts for university staff.

⁶² 'Auditor General's Report to Parliament – Volume two 2009: Focusing on Universities,' *Media Release*, 20 May 2009

⁶³ Matthew Moore, Vice Chancellors' salaries hidden from public view', *Sydney Morning Herald*, 23 October 2008, <<http://www.smh.com.au/articles/2008/10/22/12243511234.html?feed+fairfaxdigital>> (accessed 19/5/09)

Chapter 3 The regulatory framework for NSW universities

This Chapter outlines the regulatory framework for university governance in New South Wales.

What is governance?

- 3.1** According to the NSW Audit Office, ‘corporate governance refers to the stewardship of an organisation in terms of the way it is directed and controlled’. It ‘is, therefore, concerned with the respective powers, responsibilities and accountabilities’ of the boards and stakeholders of a corporation.⁶⁴
- 3.2** University governance has been defined as:
- The institutional structures and processes that enable decision makers to exercise authority and control over the direction of the university, approve the mission and strategic direction of the university, monitor risk assessment and review and approve management decisions.⁶⁵
- 3.3** Mr John Phillips, Chancellor of the University of Western Sydney, described governance as ‘that intermingling, that certain connection, between all the players of the universities’ so that the university runs as effectively as possible.⁶⁶

The regulatory framework

- 3.4** Universities in New South Wales (and across Australia) operate within a combined federal and state regulatory regime.
- 3.5** The Commonwealth Minister for Education is responsible for funding universities, through the Department of Education, Employment and Workplace Relations.
- 3.6** The State Minister for Education and Training is responsible for the administration of the Acts under which universities are established (known as enabling Acts). The Acts provide universities with the ‘freedom to govern themselves in the way they see fit, while also ensuring that appropriate and effective governance arrangements are in place.’⁶⁷

⁶⁴ Audit Office of NSW, *Corporate Governance - Volume One: In Principle*, Performance Audit Report, In Brief, 1997, <<http://www.audit.nsw.gov.au/publications/reports/performance/1997/crpg1/inbrief.htm>> (accessed 5 May 2009)

⁶⁵ Victorian Department of Education and Training, *Statement of Intent - Higher Education Legislation Review*, October 2008, p 2 <http://www.skills.vic.gov.au/__data/assets/pdf_file/0007/24496/Statement-of-Intent.pdf> (accessed 5 May 2009)

⁶⁶ Mr John Phillips, Chancellor, University of Western Sydney, Evidence, 26 February 2009, p 5

⁶⁷ NSWPD (Legislative Assembly), 26 October 2004, p 11988

New South Wales Legislation

3.7 Ten of Australia's 39 universities are established under New South Wales legislation.⁶⁸ These are:

- Charles Sturt University
- Macquarie University
- Southern Cross University
- University of New England
- University of New South Wales
- University of Newcastle
- University of Sydney
- University of Technology, Sydney
- University of Western Sydney
- University of Wollongong.

3.8 Universities are established as entities under separate but nearly identical State Acts. The Acts define the governance framework that applies to each university, but vary slightly to accommodate the specific needs of each university.

3.9 Under the legislation the 'object' of each university in New South Wales is defined as:

The promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.⁶⁹

3.10 The university Acts include provisions relating to:

- the appointment of a Chancellor, the Vice-Chancellor and other members of the university's governance structure;
- the governing body and its constitution, representation and methods of appointment of members;
- the governing body's functions; and
- the roles and responsibilities of certain members of the governing body.⁷⁰

⁶⁸ The Australian Catholic University (ACU) receives public funding but operates as a company limited by guarantee under the Companies Code of Victoria

⁶⁹ See for example *University of Sydney Act 1989* s 6

⁷⁰ Submission 9, Department of Education, Employment and Workplace Relations, p 1

University Acts

- 3.11** The university Acts provide universities with a significant degree of independence and flexibility, enabling them to decide on many aspects of their governance themselves. Universities' decisions on governance arrangements must be given effect, however, through the relevant subordinate legislation, to provide public scrutiny of such decisions and to ensure that 'the decisions being implemented are a true expression of the will of the governing body'.⁷¹
- 3.12** The By-Laws empower the governing body to make Rules in respect of most matters for which the By-Laws are made. Both By-Laws and Rules must be consistent with the base legislation.
- 3.13** For example, By-Laws may be made in respect of the following:
- management, good government and discipline of the university
 - method of election of members of the governing who are to be elected
 - functions of the presiding member of the governing body or Academic Board
 - tenure of office, stipend and functions of the Vice-Chancellor.⁷²
- 3.14** Rules cannot be made with respect to a number of matters, including:
- aspects of the Constitution of the governing body
 - term of office of the Chancellor and certain elected members of the governing body
 - functions of the governing body relating to borrowing and investment
 - filling of vacancies on the governing body.⁷³

Accountabilities

- 3.15** Universities are subject to external oversight by the Auditor-General and the NSW Ombudsman.⁷⁴
- 3.16** The Acts also impose certain obligations relating specifically to commercial activities.⁷⁵
- 3.17** Universities are expected to adhere to the National Governance Protocols, although as noted in Chapter 2, compliance with the Protocols is no longer a condition of funding.⁷⁶

⁷¹ NSWPD (Legislative Assembly), 26 October 2004, p 11990

⁷² See for example *Charles Sturt University Act 1989* s 31

⁷³ See for example *Charles Sturt University Act 1989* s 32

⁷⁴ Submission 25, Arc - University of New South Wales, p 10

⁷⁵ See for example *University of New England Act 1993* ss 21D and 21E

⁷⁶ Submission 9, p 3

Key governance provisions of State legislation

Governing body

3.18 Each of the university Acts stipulates that there be a governing authority (variously referred to as the Council, the Senate or the Board of Trustees, hereafter referred to as the governing body).

Constitution of the governing body

3.19 There are a number of similarities between the university Acts in regards to the constitution of governing body. The following features are shared by each of the Acts:

- each governing body is to have three official members, namely the Chancellor, the Vice-Chancellor and the presiding member of Academic Board
- there are to be no more than 22 people on each governing body
- the majority of members of the governing body must be external to the university
- all members must have expertise and experience relevant to the functions of governing body
- at least two members of the governing body must have financial expertise
- at least one member of the governing body must have commercial expertise
- the governing body is to appoint one or more of the external members
- at least one member of the governing body is to be a non-academic staff member of the university.⁷⁷

3.20 There are however several differences between the university Acts. These differences relate mainly to the qualifications of members of a governing body, and the number of representatives from certain groups:

- minimum size of the governing body – there is no prescribed minimum number of governing body members across the Acts. Each Act separately identifies the number of governing body members for that university based on the numbers of the elected and appointed members prescribed. Minimum size, in effect, ranges from 15 to 22 members with most Acts establishing 16 members as the effective minimum. In practice, governing body sizes currently range from 18 members to the maximum of 22 members.
- external members appointed by the Minister – each university Act states that governing bodies are to have six external members appointed by the Minister, however some universities are more prescriptive in regards to the experience of these members. For instance, the University of New England and the University of Technology Sydney specify that the external members must have experience in education, technology, industry, business, human services or industrial relations.⁷⁸

⁷⁷ See for example *University of New South Wales Act 1989* s 9

⁷⁸ *University of New England Act 1993*, s 9 and *University of Technology, Sydney Act 1989* s 9(1)(b)

- academic staff – the number of academic staff specified in the Acts ranges from one at the University of Western Sydney to four at University of New South Wales.⁷⁹
- undergraduate and postgraduate students – most universities indicate that there should be one undergraduate and one postgraduate student on the governing body, except for Macquarie, Charles Sturt and Southern Cross Universities which state that one student of the university should be a member of the governing body.⁸⁰
- graduates of the university (alumni)
 - the number of graduate members ranges from one at the University of Western Sydney to five at the University of Sydney. The university Acts for the University of Technology, Sydney and the University of Newcastle specify that one or more members of the Convocation, rather than graduates, should be on the governing body.⁸¹ (The Convocation generally comprises the members and former members of a governing body; the graduates of the university; and current academic staff. In some cases, it also comprises former academic staff. Not all university Acts have established a Convocation.)
 - all but two of the Acts provide that graduate or Convocation representatives may either be elected by the representative group or appointed by governing body. The two exceptions are the Universities of Sydney and New South Wales where there is provision only for the election of these representatives.⁸²
 - of the universities that can either elect or appoint graduate or Convocation representatives, three universities (New England, Western Sydney and Wollongong) elect their graduate members while the remaining five (University of Technology, Sydney, Charles Sturt, Newcastle, Southern Cross and Macquarie) all appoint their graduate/Convocation members.⁸³

3.21 A table outlining the size and composition of each university governing body is at Appendix 4.

Functions of governing body

3.22 The university Acts provide that the functions of the governing body are:

- to act for and on behalf of the university in the exercise of the university's functions

⁷⁹ *University of Western Sydney Act 1997* s 12 (1)(d)(i) and *University of New South Wales Act 1989* s 9(1)(d)

⁸⁰ See for example *University of New South Wales Act 1989* s 9(f) and (g) and *Macquarie University Act 1989* s 9(f)

⁸¹ *University of Western Sydney Act 1997* s 9(1)(h); *University of Sydney Act 1989* s 9(1)(h); *University of Technology, Sydney Act 1989* s 9(1)(h) and *University of Newcastle Act 1989* s 9(1)(h)

⁸² See for example *University of New South Wales Act* s 9(1)(g)(iii) and *University of Sydney Act 1989* s 9(1)(f)(iii)

⁸³ For further details, see the by-laws and webpages of each university

- have control and management of university affairs
- to act in all matters to promote the object and interests of the university.⁸⁴

3.23 The Acts further specify that the control and management of university affairs encompasses:

- monitoring the performance of the Vice-Chancellor
- overseeing the university's performance and academic activities
- approving the mission, strategic direction, annual budget and business plan of the university
- overseeing risk management and assessment, and approving and monitoring systems of control and accountability
- establishing policies and procedural principles, and ensuring accessible grievance procedures
- regularly reviewing its own performance
- making available for governing body members a program of induction and development relevant to their position as member.⁸⁵

3.24 Other functions of the governing body include to:

- provide courses and confer degrees
- appoint and terminate academic and other staff
- borrow and invest funds
- establish and maintain other branches of the university
- make loans and grants to students
- impose fees, charges and fines.⁸⁶

Duties of governing body members

3.25 Each of the university Acts contain requirements relating to the duties of governing body members. These duties consist of:

- acting in the best interests of the university
- exercising due care and diligence in carrying out their functions
- not improperly using their position or information acquired because of their position
- disclosing material interests in matters being considered by the governing body.⁸⁷

⁸⁴ See for example *Macquarie University Act 1989* s 16(1A)

⁸⁵ See for example *University of Newcastle Act 1989* s 16(1B)

⁸⁶ See for example *University of Wollongong Act 1989* s 16(1)

⁸⁷ See for example *University of Technology, Sydney Act 1989* Schedule 2A

Removal from office for breach of duty

3.26 All NSW universities have similar provisions for the removal of a member of governing body for a breach of duty. These provisions are:

- the governing body may remove a member for breach of the duties set out in the relevant schedule of the university Act
- the removal of a member must occur at a meeting for which notice, including notice of the motion for removal, was duly given
- the motion for removal must be supported by at least a two-thirds majority of the total number of Council members
- the motion for removal must not be put unless the member concerned has been given reasonable opportunity to reply to the motion, either in writing or in person
- it is considered that a reasonable opportunity to reply has been given if due notice of the meeting has been given, even if the member concerned does not attend the meeting.⁸⁸

Vice-Chancellor

3.27 The key provisions in the university Acts relating to the Vice-Chancellor require that the Vice Chancellor is:

- appointed by the governing body and holds office for such period, and on such conditions, as the governing body determines
- the chief executive officer of the University
- an *ex officio* member of the governing body.⁸⁹

3.28 Additional or varied provisions to be found in some individual Acts include:

- a person who is not a member of the governing body and who is appointed to act in the place of the Vice-Chancellor will be regarded as a governing body member for that period (Sydney University)⁹⁰
- the Vice-Chancellor is the *principal* executive officer of the University (Sydney, New South Wales, Macquarie, Charles Sturt, Wollongong and Newcastle Universities)⁹¹

⁸⁸ See for example *Charles Sturt University Act 1989* s 24(G)

⁸⁹ See for example *University of Western Sydney Act 1997* s 12(1) and s 15

⁹⁰ *University of Sydney Act 1989* s 12(4)

⁹¹ *University of Sydney Act 1989* s 12(3); *University of New South Wales Act 1989* s 12(3); *Macquarie University Act 1989* s 12(3); *Charles Sturt University Act 1989* s 12(3); *University of Wollongong 1989* s 12 (3) and *University of Newcastle Act 1989* s 12(3)

- under the University of Western Sydney Act, the Vice-Chancellor is the academic and administrative head of the University; to exercise stewardship of the University on behalf of the governing body; a member of every committee established by the governing body or the Vice-Chancellor.⁹²

Chancellor

3.29 The key provisions in the University Acts relating to the Chancellor provide that the Chancellor:

- is to be elected by the governing body
- holds office for a period not exceeding four years (excepting the University of New England, which provides for a period of five years)⁹³
- is to preside at all meetings of the governing body at which the Chancellor is present
- may preside at any committee meeting at which the Chancellor is in attendance.⁹⁴

3.30 Additional or varied provisions to be found in individual Acts include that the Chancellor:

- is to advise and assist the Vice-Chancellor in the exercise of their functions (University of Western Sydney)⁹⁵
- is to exercise a pastoral role within the University (University of Western Sydney).⁹⁶

Committee comment

3.31 Although reliant on the Commonwealth for approximately half of their funding, universities are established under State legislation. The university Acts ensure that all universities comply with certain governance provisions, such as the constitution and functions of a governing body, and the duties of governing body members, as well as provisions relating to the role and tenure of the Chancellor and Vice-Chancellor.

3.32 As several participants to this Inquiry noted, providing universities with greater flexibility in their governance arrangements is an important way to allow these institutions to meet diverse challenges and to respond to a changing environment. University governing bodies make significant decisions on a range of complex matters. While *some* universities are able to modify the size and composition of their governing body under their Acts, other universities suggested that they need greater control over the size and composition of their governing

⁹² *University of Western Sydney Act 1997* s 15

⁹³ *University of New England Act 1993* s 10

⁹⁴ See for example *University of Technology, Sydney Act 1989* s 10

⁹⁵ *University of Western Sydney Act 1997* s 3(A)

⁹⁶ *University of Western Sydney Act 1997* s 3(B)

bodies to ensure they are able to perform their role effectively. This issue is discussed in detail in the next chapter.

Chapter 4 Size and composition of governing bodies

The size and composition of governing bodies was an issue of considerable debate during the Inquiry. While some inquiry participants argued that governing bodies are too large and unwieldy, others said that governing bodies needed to be of a certain size to ensure that a broad range of views were represented. Inquiry participants supported university staff, students and alumni being represented on governing bodies, but some raised criticisms of aspects of their role.

Size of governing bodies

4.1 The size of university governing bodies was raised a number of times during evidence. Some inquiry participants argued that governing bodies should be smaller, to ensure their efficient and effective operation. Other inquiry participants, however, said that the current size of governing bodies was satisfactory, given the need to include representatives from diverse university stakeholders.

Current size of governing bodies

4.2 Protocol Five of the National Governance Protocols required that a governing body have a maximum size of 22 members, and that there be a majority of external independent members. Ms Catherine Rytmeister, Lecturer in Higher Education Development and PhD student, Macquarie University said that, the shift in favour of external members has taken place over the last two decades, as universities have moved to adopt corporate governance practices.⁹⁷

4.3 The university Acts stipulate a maximum governing body size of 22 members, in accordance with the requirements of the National Governance Protocols. Each university Act specifies the size of the governing body through prescribing the minimum mix of representative and appointed members. This minimum varies between Acts, from 15 to 22 members, with most prescribing sixteen members as a minimum.

4.4 The legislation provides most of NSW universities with some flexibility to increase membership beyond the minimum levels, by allowing an increase in membership beyond the mandated number of members in two categories: members appointed by the governing body, and members of the alumni (or Convocation).

4.5 In practice almost all universities have membership larger than their statutory minimum. For example, the University of New South Wales has 22 members and University of Technology Sydney has 20 members, although they are only required to have 21 and 16 members respectively.⁹⁸

⁹⁷ Submission 20, Ms Catherine Rytmeister, p 54

⁹⁸ *University of New South Wales Act (NSW) 1989 s 9* and *University of New England Act (NSW) 1993 s 9*

Should governing bodies be smaller?

4.6 The Australian Institute of Company Directors stated in its submission that:

A large governing body can be detrimental in its effectiveness because discussions become lengthy and parliamentary in style. It can lead to factions developing amongst members, difficulty in obtaining agreement and less focus on strategic matters which are the province of a governing body.⁹⁹

4.7 The Institute further suggested that ‘... a reduction in size could facilitate the effective function of university governing bodies’.¹⁰⁰

4.8 According to Mr John Cassidy, former chancellor of the University of New England, the size of university governing bodies makes it inevitable that they tend to operate as a ‘mini parliament’. He noted that a number of public companies and government entities have much smaller boards, which can number between 8 and 12 members. Mr Cassidy said:

A council or board or directors of 17, let alone 22, is unwieldy, expensive to maintain and stultifies, rather than generates debate and open discussion as inevitably individuals with similar interests vote as a block in favour of those interests, their position being predetermined.¹⁰¹

4.9 Mr Cassidy asserted that the size of governing bodies should be greatly reduced. In reference to the University of New England Council, he proposed that it be reconstituted to consist of three ex-officio members (Chancellor, Vice-Chancellor and Chair of the Academic Board), four ministerial appointments (which could include university staff, students or alumni), and two external members appointed by Council.¹⁰²

4.10 Professor Frederick Hilmer, Vice-Chancellor of the University of New South Wales, criticised the size of governing bodies for being ‘cumbersome’:

We are much more complex than a corporation and we are much less centrally run. So we still have a large board but 22 is a pretty cumbersome number to have discussions. What we have tried to do in our submission is get a balance between a reasonable size that deals with the proper concerns that you raise but, at the same time, is able to have a better depth of discussion than you get in the very large boards where issues tend to pop up a different parts of the table and you do not follow things through.¹⁰³

4.11 In line with Professor Hilmer’s view, the University of New South Wales Council recommended to the former Minister for Education and Training that the Council membership be reduced to between 11 and 14 members.¹⁰⁴ The University of New South Wales again raised the proposal with the current Minister for Education and Training, who ‘...

⁹⁹ Submission 18, Australian Institute of Company Directors, p 2

¹⁰⁰ Submission 18, p 2

¹⁰¹ Submission 27, Mr John Cassidy, p 9

¹⁰² Submission 27, pp 10-11

¹⁰³ Professor Frederick Hilmer, Vice-Chancellor, University of New South Wales, Evidence, 26 February 2009, p 25

¹⁰⁴ Submission 12, University of New South Wales, p 2

has indicated that she recognises the need for universities to have flexibility in determining the size and composition of governing bodies to suit particular needs ...'.¹⁰⁵ The Minister advised that she was giving the proposed changes careful consideration, whilst awaiting the report of this Inquiry.

- 4.12** Associate Professor Jeanne Madison, the University of New England, linked the optimum size of a governing body to the amount of work to be done by its committees. Associate Professor Madison said:

I think our present size is about right ... 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 tend to bubble up to the council level but generally it is the committees that get the work done ...¹⁰⁶

- 4.13** Mr John Phillips, Chancellor of the University of Western Sydney, argued that the size of a governing body was not as important as the skills of its members:

I think size is a matter of secondary importance. Certainly the larger the council, the more onerous it is for a chancellor to try to maintain the kind of harmony you want to maintain to get good performance. It is very important that you have on a council a range of skills that are necessary to determine the strategy and the policies for the university...¹⁰⁷

- 4.14** The joint submission from the University Chancellors' Council and Universities Australia to the Review of the National Governance Protocols said that 'the view of the Chancellors and Vice Chancellors is that the size of governing boards is an issue of secondary importance. More important is the blend of skills, experience and motivation among members and the method of their appointment'.¹⁰⁸

- 4.15** Other inquiry participants expressed similar views. The University of Technology, Sydney argued that 'the fundamental issues are the effectiveness and collective skills not size'.¹⁰⁹ Ms Rytmeister agreed: 'There is little or no relationship between governing body size and effectiveness, nor between governing body size and institutional performance'.¹¹⁰

- 4.16** In addition, Ms Rytmeister questioned the assumption that quick decision-making is good decision-making:

¹⁰⁵ Submission 12, University of New South Wales, p 2

¹⁰⁶ Associate Professor Jeanne Madison, Member, University of New England Council, Evidence, 17 March 2009, p 34

¹⁰⁷ Mr Phillips, Evidence, 26 February 2009, p 3

¹⁰⁸ Submission 2, New South Wales Vice-Chancellors' Committee, p 3 (the joint submission from the University Chancellor's Council - Universities Australia to the Review of National Governance Protocols was provided to the committee as part of the Submission 2)

¹⁰⁹ Submission 8, University of Technology, Sydney, p 5

¹¹⁰ Submission 20, p 61

While it is generally acknowledged that a smaller Council can make decisions more quickly, it is not clear that quick decision-making equates to either efficiency or effectiveness, which depend, of course, on the scope and quality of the decisions and their outcomes.¹¹¹

4.17 Other inquiry participants also saw debate as critical to the governance process, rather than a hindrance. Mr James Campbell, Caseworker and Policy Officer, Student Representative Council at the University of Sydney, said that ‘... what we want is not to remove the sense of balance and a sense of debate, and that is what happens when you go to a small group and commercially focused governing body’.¹¹²

4.18 Ms Kay Hemsall, Member of the University of New England Council and Manager, Organisational Development at the University, argued that rigorous debate is crucial to discussion of significant or controversial issues:

... the vast majority of business is conducted quite expeditiously ... 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 ...¹¹³

4.19 A similar view was held by Dr Michael Spence, Vice-Chancellor of the University of Sydney:

We will never get a senate that looks like a Sunday school picnic, and I do not think anyone would want that. What we want is a senate that is adequately informed so that the heated arguments are the right heated arguments in the sense that they are about a genuine divergence of views. That is, the Senate has all the information it needs to decide between those different views collectively. Aspirationally, that is where I as an administrator hope our Senate goes.¹¹⁴

4.20 While most inquiry participants believed that the current size of governing bodies was satisfactory, or should be reduced, others by inference called for an expansion of governing bodies, through the inclusion of more university stakeholders. For example, Mr Noah White, President of the Students’ Representative Council, the University of Sydney, recommended an expansion of student representation on governing bodies.¹¹⁵ The Community and Public Sector Union took a similar position, arguing for changes to the current framework ‘to ensure a broader representation of the communities that the University Councils are serving’.¹¹⁶

¹¹¹ Submission 20, p 60

¹¹² Mr James Campbell, Case Worker and Policy Officer, Student Representative Council, The University of Sydney, Evidence, 26 February 2009, p 48

¹¹³ Ms Kay Hemsall, Member, University of New England Council and Manager, Organisational Development, University of New England, Evidence, 17 March 2009, p 3

¹¹⁴ Dr Michael Spence, Vice-Chancellor, The University of Sydney, Evidence, 26 March 2009, p 9

¹¹⁵ Mr Noah White, President, Students’ Representative Council, University of Sydney, Evidence 26 February 2009 p 44

¹¹⁶ Submission 19, CPSU – SPSF, NSW Branch/Public Sector Association, p 4

Should university Acts provide greater flexibility with regard to size?

- 4.21** Evidence to the Committee suggested that the university Acts do not provide each governing body with sufficient flexibility to determine its optimum size. Mr Alan Cameron, Deputy Chancellor of the University of Sydney, observed that the current structure was somewhat inflexible, particularly with regard to changing size:

If, for example, the Senate felt that to meet a particular circumstance it wanted to enlarge itself by another four fellows for three years to address a particular need, we could not do that without persuading the government of the day to legislate. If on the other hand we want to contract the size of the senate to meet a particular problem, we could not do that without legislative approval. There is something to be said for a less rigid structure in the legislation as a whole.¹¹⁷

- 4.22** Ms Rytmeister argued in her submission that ‘a minimum, rather than a maximum, size should be set down in the legislation in order to protect the public interest and stakeholder groups’.¹¹⁸
- 4.23** The National Tertiary Education Industry Union (NTEU), NSW Branch agreed that there should be a ‘flexible approach to size and composition of governing bodies, as this should be determined by the needs of the institution itself’. It argued, however, that ‘governing bodies should have a minimum of 18 members to ensure an appropriate diversity of experience’.¹¹⁹
- 4.24** The University of Technology, Sydney recommended that the Committee consider the proposed Victorian model which would allow each university to determine the size of its governing body within the range of 14 to 22 members.¹²⁰
- 4.25** According to the joint submission from the University Chancellors’ Council and Universities Australia to the Review of the National Governance Protocols:

As to the most desirable size of a governing body, there was a range of views among Chancellors and Vice Chancellors. In general, it was felt that the present maximum of 22 is acceptable, particularly as it is possible for Universities to have a smaller number if that were to suit their circumstances better ... It is important that Universities should have flexibility in this regard.¹²¹

Committee comment

- 4.26** The Committee heard a range of views on the size of governing bodies. Only one university, the University of New South Wales, expressed a strong view that governing bodies are too large. Other inquiry participants were generally satisfied with the current size of governing bodies, although they stressed the importance of flexibility in the university Acts for each governing body to determine its optimum size. The Committee’s recommendations

¹¹⁷ Mr Alan Cameron, Deputy Chancellor, University of Sydney, Evidence, 23 March 2009, p 3

¹¹⁸ Submission 20, p 61

¹¹⁹ Submission 23, National Tertiary Education Union – NSW Branch, p 4

¹²⁰ Submission 8, p 5

¹²¹ Submission 2, p 3

concerning the size of governing bodies are found at paragraphs 4.96-4.100, following discussion of the composition of the governing body.

Composition of governing bodies

4.27 As with size, the Committee heard a range of opinions regarding the ideal composition of governing bodies. In particular, there was debate concerning the benefits brought by governing body members selected from amongst the staff, students and alumni of the university.

Benefits of staff, student and alumni members

4.28 Inquiry participants in general agreed that staff, student and alumni representatives make a positive and important contribution to university governance.

4.29 An article published in *Company Director* magazine, co-written by the Deputy Chancellor of the University of Sydney and provided to the Committee, described the strengths of elected representatives as enthusiasm and commitment, bringing a diversity of views and experiences, credibility among stakeholders and ability to predict stakeholder reactions.¹²²

4.30 According to the NTEU, ‘university staff and students play a vital role on governing bodies... Members on university governing bodies have a responsibility to act as a conduit for views within the university community, including its external environment’.¹²³

4.31 Ms Hemsall said that ‘elected representatives often have the bigger picture of the long-term success and prosperity of the university at heart’. The presence of elected representatives results in ‘bringing many different points of view into a pot, if you like, to be able to ultimately work towards the best solution’.¹²⁴

4.32 Similarly, Ms Rytmeister cautioned that ‘if universities are not careful to draw their governing body membership from diverse backgrounds’, they could be in danger of only looking at short-term outcomes.¹²⁵

4.33 The University of Technology, Sydney expressed the view that that:

Universities are complex organisations with needs and activities different from commercial enterprises and, as such, are strongly of the view that the skills and experience that staff and students bring to a governing body are particularly important. Decision making needs to be underpinned by a sound understanding of the University’s principal functions of teaching/learning and research. Financial and commercial expertise is necessary, but not sufficient, for the governing body to be

¹²² Tabled document, Ralph L and Cameron A, ‘The Challenge of the Representative Board’, *Company Director*, June 2006, p 3

¹²³ Submission 23, p 3

¹²⁴ Ms Hemsall, Evidence, 17 March 2009, pp 4-5

¹²⁵ Ms Catherine Rytmeister, Lecturer, Higher Education Development and PhD student, Macquarie University, Evidence, 23 March 2009, p 12

able to make effective decisions that are in the long-term interests of the University.

¹²⁶

- 4.34** Professor Hilmer also acknowledged the important role of staff and students on governing bodies:

If the staff and the students have serious problems with me I think it is not wrong for the governing body to hear that. I do not mind having them there. I think they are constructive members actually. Having them there and being elected is sort of a safety valve. It is sort of part of the symbolism of an academic community as opposed to a corporation with owners who sit on the board and just decide on the profits.¹²⁷

- 4.35** A similar view was expressed by the Reverend Judith Redman, a former member of the University of New England Council, who told the Committee that the expertise of elected members complemented the expertise of external members:

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...¹²⁸

- 4.36** Associate Professor Madison agreed, noting that staff, student and alumni representatives assist external appointments by providing ‘context, background, balance, information for those external appointments of the council’.¹²⁹

- 4.37** The Australian Institute of Company Directors acknowledged that ‘elected members provide valuable perspectives to the governing body...’¹³⁰

- 4.38** In relation to the representation of staff, students and alumni on governing bodies, the joint submission from the University Chancellors’ Council and Universities Australia to the Review of the National Governance Protocol said that:

Some Chancellors and Vice Chancellors believe that governance without the direct participation of students and staff would be inconsistent with the objectives of a university; some others believe students need to be involved but not staff (other than the Vice Chancellor and Chair of Academic Senate); still others would happily operate without either group being represented and would prefer to deal with student and staff concerns through other consultative arrangements. Similar differences exist on the question of alumni representation.¹³¹

- 4.39** The Committee heard evidence from Dr Maxine Darnell, President, University of New England Branch of the NTEU, that the important role of universities in regional areas, such as

¹²⁶ Submission 8, p 5

¹²⁷ Professor Hilmer, Evidence, 26 February 2009, p 24

¹²⁸ Reverend Judith Redman, Former Member, University of New England Council, Evidence, 17 March 2009, p 27

¹²⁹ Associate Professor Madison, Evidence, 17 March 2009, p 35

¹³⁰ Submission 18, p 2

¹³¹ Submission 2, p 4

New England, warranted local regional stakeholders being represented on the governing body.¹³²

- 4.40 Dr Herman Beyersdorf, a former member of the University of New England Council, agreed that staff, student and alumni representation had an important role in regional areas. Dr Beyersdorf argued that the larger number of external members on the UNE governing body ‘from outside the immediate region’ as being a problem because, although they had ‘undoubted expertise, including financial and other qualifications’, they did not have ‘much insight into the university’.¹³³

Criticisms of staff, student and alumni members

- 4.41 While there was agreement that staff, student and alumni representatives play an important role on university governing bodies, a number of participants criticised the behaviour of these representatives. Of particular concern was an alleged tendency to represent constituencies rather than the interests of the university.
- 4.42 In the *Company Director* article provided to the Committee by the Deputy Chancellor of the University of Sydney, the typical criticisms of elected representatives were described as a lack of skills and experience, the tension between obligations to the Company and to their constituency, poor group dynamics, confusion around the respective accountabilities of board and management, and lack of monitoring of elected representatives by the constituency who elected them.¹³⁴
- 4.43 Ms Rytmeister interviewed 36 university governing body members from seven Australian universities for her doctorate on University Governance. Based on this study, My Rytmeister advised that: ‘There is a perception that some university Councils are dominated by alumni, leading to an unhealthy focus on preserving the past character of the institution rather than than a future-oriented strategic approach to governance’.¹³⁵
- 4.44 Mr Cassidy argued that ‘elected members tend to vote in a block at council and there is an issue of governance right there in my opinion’.¹³⁶
- 4.45 According to Professor Hilmer, if the staff, student and alumni representatives are at odds with the rest of the governing body, ‘the university ends up with a rump on council’. Further, ‘you then have a small group, not insignificant but say one-third of the council being absolutely disruptive and unproductive ... That is as about as destabilising as you could want’.¹³⁷

¹³² Dr Maxine Darnell, President, University of New England Branch of the NTEU, Evidence 17 March 2009, p 10

¹³³ Dr Herman Beyersdorf, Former Member, University of New England Council, Evidence, 17 March 2009, p 26

¹³⁴ Tabled document, *Company Director*, p 3

¹³⁵ Submission 20, p 57

¹³⁶ Mr John Cassidy, Former Chancellor, University of New England, Evidence, 3 April 2009, p 4

¹³⁷ Professor Hilmer, Evidence, 26 February 2009, p 24

4.46 The Australian Institute of Company Directors cautioned that ‘members of university governing bodies have a duty to act in the best interest of the whole university’ even if they ‘believe they represent certain community interests or groups’.¹³⁸

4.47 Ms Rytmeister, however, observed that ‘there is little evidence that internal members act in interests other than those of the university, although they may at times interpret these interests differently from external members’.¹³⁹ She gave evidence that:

Some staff and student-elected members in my study gave accounts of the ways in which a narrow interpretation of “the interests of the university” may be combined with a broad labelling of their contributions as “advocacy”, in order to restrict debate and contributions from certain stakeholder groups, principally staff and students.¹⁴⁰

4.48 Associate Professor Madison argued that all members of a governing body have the university’s best interests at heart:

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.¹⁴¹

4.49 The NTEU supported the view that students and staff act in the interests of the university, and noted that it should be recognised that there are different and conflicting views concerning what is in the interests of the university:

Protocol 3 should explicitly state that the rationale for selection or election of many members of governing bodies is precisely because they are expected to understand the perspective of a particular constituency that is important to the university.¹⁴²

4.50 Mr Warwick Watkins, Deputy Chancellor of the University of Technology, Sydney, told the Committee that there have been some ‘robust discussions, particularly around the difficult issues of fees and some other things that are at the heart of the historic nature of the university’. He said:

I pay credit particularly to the elected members of staff and the students who entered into those debates about structures in a spirit of not singly representing where they came from but the collegiate perspective; that is, they acted in the best interests of the university.¹⁴³

¹³⁸ Submission 18, p 2

¹³⁹ Submission 20, p 61

¹⁴⁰ Submission 20, p 30

¹⁴¹ Associate Professor Madison, Evidence, 17 March 2009, p 36

¹⁴² Submission 23, p 10

¹⁴³ Mr Warwick Watkins, Deputy Chancellor, University of Technology, Sydney, Evidence, 23 March 2009, p 34

Selection of staff, student and alumni representatives

4.51 Some inquiry participants, while supporting the representation of staff, students and alumni on governing bodies, questioned the method of open election, given the small numbers of eligible persons participating in these elections. Of particular concern was voter turnout for student and alumni elections. Some participants argued that open election should be replaced by a nomination process, whereby the governing body could determine the most appropriate candidate for the position.

4.52 The joint submission from the University Chancellors' Council and Universities Australia to the Review of the National Governance Protocols questioned the merits of open elections for staff and students, observing that:

Most Chancellors and Vice-Chancellors felt that open election was not consistent with securing the optimal skills mixture. It was noted also that many elections of student or staff members were decided with just a handful of electors casting votes. A preferable system might be to have nominations for these positions in a transparent and consultative manner, with the final selection being made by the governing body, taking account of skills, experience and motivation.¹⁴⁴

4.53 While accepting that governing bodies should consider the views of university staff, students and alumni, Mr Cassidy argued that open elections did not select candidates with the requisite skills and experience.¹⁴⁵

4.54 In reference to the numbers of electors participating in alumni elections, Professor Hilmer, said 'because very few people vote – out of the 200,000 electors it is something like 2,000 votes, or about 1 per cent, for alumni – it is not that hard to run a campaign'.¹⁴⁶ According to Professor Hilmer, 'we should not be bound by an election process, which frankly has been taken over a few times in our history'.¹⁴⁷

4.55 In response to claims of low voter turnout, Dr Robin Fitzsimons, Fellow of the University of Sydney Senate told the Committee that at approximately 10,000 alumni voted for alumni representation at the University of Sydney, which 'is a mark of real involvement'.¹⁴⁸

4.56 Mr White commented on elections for student representatives at the University of Sydney:

With student voting, probably an average number of students who vote in election might be about 3,000 out of 33,000 undergraduate students, but 33,000 undergraduate students are not on campus all on the same day when those elections are held. Only about 9,000 students are on campus that day in total, undergraduates and post-graduates. There is a point to be made that while the numbers are low and there is a problem with that; they are not as low as they might seem.¹⁴⁹

¹⁴⁴ Submission 2, p 3

¹⁴⁵ Submission 27, p 10

¹⁴⁶ Professor Hilmer, Evidence, 26 February 2009, pp 23-24

¹⁴⁷ Professor Hilmer, Evidence, 26 February 2009, p 24

¹⁴⁸ Dr Robin Fitzsimons, Fellow, The University of Sydney Senate, Evidence, 23 March 2009, p 39

¹⁴⁹ Mr White, Evidence, 26 February 2009, p 45

- 4.57** The Committee heard evidence that some universities are moving to electronic voting for staff and student elections, to facilitate participation. For example, at the University of Sydney staff and student elections will be conducted electronically this year. The exception is alumni elections, because according to Mr Cameron, ‘trying to switch the graduate roll to an electronic roll is proving to be impossible’.¹⁵⁰
- 4.58** Dr Fitzsimons cautioned that alumni ‘might not be quite ready for electronic elections – we do it by paper – otherwise you would get an unacceptable bias’.¹⁵¹
- 4.59** Eight NSW universities have the option under their university Acts to either elect or appoint representatives from the university alumni. Of those, five universities have opted to appoint rather than elect alumni members to their governing bodies.
- 4.60** The University of Technology, Sydney outlined the process set out in its By-Laws for Convocation¹⁵² representatives to be appointed by Council. The process operates as follows:
- members of the Convocation are invited to propose members suitable for appointment to the governing body
 - the Nominations Committee advises the Council on the suitability of proposed candidates, giving consideration to the skills and experience of continuing Council members, and the skills and experience needed by Council as a whole
 - the Council then determines who is to be appointed and for what term.
- 4.61** Support for this type of model was expressed by Professor Hilmer, who gave evidence that alumni members of governing bodies should ‘be selected on the basis of their skills not on an agenda they are trying to run’.¹⁵³ Professor Hilmer proposed that alumni representatives on the University of New South Wales Council be selected by a ‘nominating committee with a fairly clear charter to get the skill balance that is needed by the university’.¹⁵⁴
- 4.62** The University of Technology, Sydney proposed extending the model for appointment of its Convocation representatives to staff and student representatives.¹⁵⁵ If such a model was introduced, staff and student representatives would no longer be selected through open election, but would be appointed by the Council based on their skills and experience.
- 4.63** Dr Spence, however, confirmed the University of Sydney’s general commitment to the election process, stating that the abolition of elections for staff and students ‘is not something we have considered, and is not something that I can imagine that we would consider’.

¹⁵⁰ Mr Cameron, Evidence, 23 March 2009, p 4

¹⁵¹ Dr Fitzsimons, Evidence, 23 March 2009, p 39

¹⁵² The University of Technology, Sydney Act specifies that one or more members of the Convocation, rather than alumni, should be on the governing body. In the case of the University, the Convocation comprises the members and former members of a governing body; the graduates of the university; and current academic staff.

¹⁵³ Professor Hilmer, Evidence, 26 February 2009, p 24

¹⁵⁴ Professor Hilmer, Evidence, 26 February 2009, p 24

¹⁵⁵ Submission 8, p 5

Tenure of student representatives

4.64 Student representatives from the University of Sydney raised concerns about the tenure of student representatives elected to the governing body.

4.65 Under the university Acts, the term of office for governing body members varies according to the category of membership. Terms for appointed and elected representatives vary but are not to exceed, respectively, four and two years (for some institutions, three years). However, no minimum term is prescribed.

4.66 Mr White noted the discrepancy between the tenure for students compared to other members of the University Senate:

The tenure on the university Senate is one year for a student representative whereas for all other positions it is at least two years. The problem with that is that the student representatives that I have seen go through the process of being on that governance committee really only get into it properly at the end of their first year. By the end of it they are able to sit there with the vice-chancellor and argue across the table ...¹⁵⁶

4.67 This concern was raised with Ms Rytmeister, who said that several of her study participants had:

... identified the short term for student members (usually one year) as an impediment to their effectiveness, as they often were initially overwhelmed, and needed some time to “get up to speed” with the role. Student members themselves spoke of feeling confident and knowledgeable enough to participate more actively in Council business only towards the end of their term of membership.¹⁵⁷

4.68 Mr Cameron, Deputy Chancellor at the University of Sydney, acknowledged that this is an issue at the University of Sydney:

I have a view that it would be a good idea to consider staggered two-year terms for student Fellows so that the undergraduate fellow is elected for two years in one year, and the postgraduate fellow is elected for two years in the following year. In that way there is always one student with a degree of experience and one who is learning the ropes.¹⁵⁸

4.69 Dr Spence, Vice-Chancellor at the University of Sydney told the Committee that as part of a current review of the Senate structure, extending the tenure of student representatives from one to two years ‘... is something we are thinking about at the moment’.¹⁵⁹

¹⁵⁶ Mr White, Evidence, 26 February 2009, p 45

¹⁵⁷ Submission 20, p 53

¹⁵⁸ Mr Cameron, Evidence, 23 March 2009, p 3

¹⁵⁹ Dr Spence, Evidence, 23 March 2009, p 3

Alumni representation

- 4.70** In addition to proposals to end open election of alumni, a proposal was made by the University of New South Wales to end the practice of having designated alumni positions on their University Council. A number of inquiry participants opposed this proposal.
- 4.71** The University of New South Wales Council proposed a reduction in the size of the council from its current size of 22 members to between 11 and 14 members.¹⁶⁰ While all elected positions representing academic and non-academic staff, and undergraduate and postgraduate students would be retained, the reduction would be achieved by abolishing designated alumni positions. Professor Hilmer gave evidence that ‘... other than staff and student members we would not have alumni elections. We would have fewer elected positions – in our view we have too many elected positions’.¹⁶¹
- 4.72** The Committee notes that the University of New South Wales and the University of Sydney are required by their university Acts to have more alumni members on their governing bodies than the other NSW universities. In the second reading debate regarding reform of the university Acts in 2004, the then Deputy Premier observed that, ‘differing provisions have been made for the University of Sydney and the University of New South Wales so they largely retain their existing situations in relation to graduate members’. This was done ‘at their request’.¹⁶²
- 4.73** Ms Rytmeister commented on the reduction in alumni representation on university governing bodies, observing that:
- In most Australian jurisdictions and most universities, specific Convocation/alumni membership has either been abolished altogether or reduced to only one or two members... exceptions to this are some of the Group of 8 universities which have generally maintained a higher level of alumni-elected members...¹⁶³
- 4.74** Concerning their current proposal for change, the University of New South Wales Council advised that ‘there was consensus that whilst being a graduate was a valuable attribute, this could be addressed through the proposed nomination process for the remainder of the positions’.¹⁶⁴ The Council’s proposal would require that at least one Council member was an alumnus, but this person would be appointed to the Council having regard to their skills, expertise and experience, rather than by virtue of being an alumnus of the University.¹⁶⁵
- 4.75** Professor Hilmer explained that at the time the University of New South Wales was established, designated alumni positions were needed ‘... because as a new university we

¹⁶⁰ Submission 12, p 2

¹⁶¹ Professor Hilmer, Evidence, 26 February 2009, p 24

¹⁶² NSWPD (*Legislative Assembly*), University Legislation Amendment Bill, 26 October 2004

¹⁶³ Submission 20, p 48

¹⁶⁴ Submission 12, p 2

¹⁶⁵ Submission 12, p 3

wanted to make sure that the alumni got involved ...¹⁶⁶ He suggested that this rationale no longer applied.

4.76 In response to Professor Hilmer's comments, Dr Fitzsimons said:

I would disagree with the general point made by Professor Hilmer who said that the older you become the less important elections become. I would say that the older a university becomes the more established the alumni base becomes and therefore alumni elections are more important.¹⁶⁷

4.77 Others participants emphasised the importance of maintaining designated alumni representation on governing bodies. According to the University of New South Wales Alumni Association:

The alumni of this and other universities are among the most significant external stakeholders as permanent members of the University ... The value of our degrees depends on the success and reputation of the University ... Alumni arguably have the strongest vested interest in the quality, standards and reputation of the University.¹⁶⁸

4.78 Dr Jessica Milner Davis, former Deputy Chancellor of the University of New South Wales, described the role played by alumni:

Firstly, it is because, as I have said, they combine this external and internal dimension, so they can be somewhat of a bridge ...

Secondly, they have a direct and personal stake in the university from which they graduated. The success or diminution in degrees of that institution hits their nerves and their trouser pockets, their wallets and their handbags ...

Thirdly ... The body corporate has only two classes of life members, the alumni and the emeritus staff. Everybody else is temporary.¹⁶⁹

4.79 Inquiry participants such as Dr Milner Davis argued that alumni should be involved in governance arrangements, given the extent of their contribution to universities:

It just seems natural to me that if you want to say to the alumni, "We would like your money. We would like your support. We would like you to open doors", you might do them the courtesy of saying, "And we would like you to participate in running the place from which you obtained your degree".¹⁷⁰

4.80 Mr White, President of the Students' Representative Council at the University of Sydney, agreed that the alumni were 'a very important part of the university community'. Having gone through the university they had 'a good understanding of what the institution is about and the

¹⁶⁶ Professor Hilmer, Evidence, 26 February 2009, p 24

¹⁶⁷ Dr Fitzsimons, Evidence, 23 March p 40

¹⁶⁸ Submission 16, UNSW Alumni Association, p 6

¹⁶⁹ Dr Jessica Milner Davis, Former Deputy Chancellor, University of New South Wales, Evidence, 23 March 2009, p 20

¹⁷⁰ Dr Milner Davis, Evidence, 23 March 2009, p 21

traditions of the institution as well'. However, he observed that 'in relation to the actual number of alumni on governing bodies, it is a large number'.¹⁷¹

- 4.81** While the University of Sydney argued that universities should have greater flexibility in determining the size of their governing bodies, it supported the current composition of its own Senate:

With respect to the size and profile of the governing body our view is that the current size and membership profile of the Senate of the University of Sydney appropriately reflects the diverse constituencies which have a legitimate interest and should have a useful role to play in the governance of the institution. It follows that membership of the Senate should include staff, students and graduates.¹⁷²

- 4.82** In response to suggestions that alumni representation be decreased, Dr Fitzsimons said that '... if that view were expressed at Sydney, there would be blood on the streets, not to mention withdrawal of funding ...'.¹⁷³

- 4.83** Dr Fitzsimons was of the view that alumni must be consulted on any proposals to change their representation on governing bodies: '... if there is a proposal to change those university Acts in a way that is detrimental to any one group of university members, there should be a requirement that those university members should be consulted'.¹⁷⁴ She said that 'certainly if there were any other proposals to decrease, then I would think you would require that there should be a mandated plebiscite of alumni. It is exceptionally important'.¹⁷⁵

Ministerial appointments

- 4.84** In comparison to other states, NSW has retained a high degree of ministerial responsibility for governing body appointments, with most governing bodies having six ministerial appointees.¹⁷⁶ Ministerial appointments may avoid the risk of a self-perpetuating board. In her evidence, Ms Rytmeister discussed self-perpetuating boards in which: 'There is a risk of stagnation and there is risk of only seeking members who think like we do'.¹⁷⁷

- 4.85** Ms Rytmeister gave evidence that 'the number of Ministerial appointees is not of itself problematic, provided the Minister's usual practice of appointing the university's nominees continues. There is, however, no formal protection against "political" appointments being made ...'.¹⁷⁸

¹⁷¹ Mr White, Evidence, 26 February 2009, p 48

¹⁷² Submission 7, University of Sydney, Attachment 1, pp 1-2

¹⁷³ Dr Fitzsimons, Evidence, 23 March 2009, p 39

¹⁷⁴ Dr Fitzsimons, Evidence, 23 March 2009, p 40

¹⁷⁵ Dr Fitzsimons, Evidence 23 March 2009, p 39

¹⁷⁶ Submission 20, pp 49-56

¹⁷⁷ Ms Rytmeister, Evidence, 23 Mach 2009, p 15

¹⁷⁸ Submission 20, p 56

4.86 Further, she advised that ‘while these appointments are usually made on the recommendation of the Council concerned, several of my study participants noted that Ministers do not always accept Council recommendations, and may use their own discretion in appointments’.¹⁷⁹

4.87 In response to the question of whether a governing body’s nominees had ever been rejected by the Minister, Dr Milner Davis said that she believed this may have happened on occasion:

I believe also that there have been individual cases in which there has been to-ing and fro-ing between the Minister and the chancellor or vice-chancellor about particular names. You might find that the names that end up being appointed in all cases are not necessarily the identical list that was put forward by a council. I repeat that you cannot fetter ministerial discretion when the Minister has the right to appoint under the legislation.¹⁸⁰

4.88 Ms Rytmeister claimed that ‘of greater concern for some institutions is the imbalance between Ministerial and Council appointees’.¹⁸¹ Such concerns arise because while some governing bodies can directly appoint up to eight of their own members, others such as the University of Sydney can appoint only one. Ms Rytmeister recommended that:

The number of Ministerial appointments on NSW university governing bodies should be reduced from six to three, transferring the responsibility for appointing three positions to the governing body. Alternatively, governing bodies should be allowed to match Ministerial appointments with direct appointments, even if this means exceeding 22 members.¹⁸²

4.89 Ms Rytmeister drew the Committee’s attention to the provisions in the *Australian National University Act*, which require that if a Minister decides not to appoint the nominee recommended by the governing body:

... the Minister must notify the Council in writing and provide reasons for the decision. This provision appears to give adequate protection against nominations being refused for external political or partisan reasons, and prevents Ministers from appointing their own agents or advocates as members of the ANU Council.¹⁸³

4.90 The Committee also heard evidence on the practice of appointing Members of Parliament to university councils. Previously each House of the NSW Parliament elected one its members to the each governing body, but this practice ceased with the introduction of the National Governance Protocols.¹⁸⁴ Ms Rytmeister advised that, although they are no longer required to have Members of Parliament on their governing bodies, universities had tended to continue this practice, by ‘recommending that the Minister appoint two Members of Parliament to the Council, one from the Lower House and one from the Upper House ...’¹⁸⁵

¹⁷⁹ Submission 20, p 49

¹⁸⁰ Dr Milner Davis, Evidence, 23 March 2009, p 25

¹⁸¹ Submission 20, p 56

¹⁸² Submission 20, p 8

¹⁸³ Submission 20, p 49

¹⁸⁴ NSWPD (*Legislative Assembly*), 26 October 2004, p 11988

¹⁸⁵ Submission 20, p 56

- 4.91** Several inquiry participants commented favourably on the role played by Members of Parliament serving on governing bodies. According to Mr Mark Dolahenty, Senior Industrial Officer, NTEU - NSW Division, ‘very often members of Parliament can act as the honest broker on a university council because there can be no question of retribution against them – they are members of Parliament’¹⁸⁶
- 4.92** A similar view was expressed by Dr Beyersdorf, who said that ‘... 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.’¹⁸⁷
- 4.93** This view was shared by Ms Rytmeister:

Of course, one of the positives is that a member of Parliament who is on a governing body has an independent source of authority ... At times when it comes to asking some critical questions that can be very useful. I know in the past that it has been useful in my own institution.¹⁸⁸

Committee comment

- 4.94** Inquiry participants supported the representation of staff, students and alumni on governing bodies. The Committee believes that these members play a unique role by representing the views of university stakeholders. Their views complement the expertise, skills and experience brought by external members, who may not have had a prior connection with the university. While some inquiry participants felt staff, student and alumni representatives were too narrowly focused on the interests of their constituencies, these concerns were isolated, and do not diminish the importance of the contribution made by these representatives in general.
- 4.95** The Committee believes that universities should be allowed to exercise some flexibility in determining the optimum size of their governing bodies. Most universities are satisfied with the current size of their governing bodies. While the University of New South Wales Council has called for the size of its governing body to be substantially reduced, their concerns may be partly allayed by altering the statutory composition of its Council. The Committee believes that consideration should be given to extending the flexibility available to other universities to affect the size of their governing bodies, to the University of New South Wales, as discussed below.
- 4.96** The University of New South Wales has proposed that the Minister for Education and Training decrease the size of its Council, by abolishing designated alumni positions. The University would however require that at least one Council member be an alumnus. The Committee understands that the Minister for Education and Training is giving the proposed change careful consideration, whilst awaiting the report of this Inquiry. On the other hand, the Committee heard evidence that because of the importance of university alumni in supporting their alma maters, they should have the right to be represented on governing bodies. These

¹⁸⁶ Mr Mark Dolahenty, Senior Industrial Officer, NTEU - NSW Division, Evidence, 26 February 2009, p 32

¹⁸⁷ Dr Beyersdorf, Evidence, 17 March 2009, p 19

¹⁸⁸ Ms Rytmeister, Evidence, 23 March 2009, p 17

inquiry participants argued that alumni representation on governing bodies therefore should not be reduced.

- 4.97** The University of New South Wales along with Sydney University are more constrained than the other NSW universities by their legislation, with regard to size and composition of their governing bodies. The legislation mandates a relatively large number of alumni and academic staff representatives on their governing bodies, which operate, therefore, near or at the maximum size of 22 members. This provides little flexibility for these governing bodies to alter their size. In this respect their Acts differ noticeably from those of other university NSW universities and most universities across Australia, where alumni membership has been abolished or reduced to one or two members. The higher number of alumni representatives on the governing bodies of the University of New South Wales and the University of Sydney is a consequence of a request made by these two universities at the time of the 2004 legislative reforms.
- 4.98** The Committee believes that university alumni play an important role on governing bodies. The Committee agrees that if universities are to rely on the support of their alumni, then they should be represented on governing bodies. The Committee does not support abolition of designated alumni positions.
- 4.99** However, the Committee is of the view that consideration should be given to permitting the University of New South Wales to bring its legislation into line with that of other NSW universities with regard to alumni representation. The Committee believes that any changes should be considered in consultation with the alumni of the University.

Recommendation 2

That the Minister for Education and Training amend the provisions in the *University of New South Wales Act 1989* regarding the number of mandated alumni positions, in line with other universities. This should occur following consultation by the University with its alumni.

- 4.100** Some inquiry participants questioned whether open election was the best means to select staff, student and alumni representatives. It was claimed that low voter turnout undermined the representative claims of elected members, particularly alumni representatives. Some inquiry participants proposed that alumni representatives instead be appointed by the governing body. Indeed, the Committee notes that half of the NSW universities, being the University of Technology, Sydney, Macquarie University, Charles Sturt University, Newcastle University and Southern Cross University, are already using the power under their Acts to appoint rather than elect their alumni (or Convocation) members. The Committee believes that all NSW universities should have the flexibility to decide whether to appoint rather than elect their alumni members. The Committee recommends that the university Acts be amended accordingly. The Committee does not, however, support the proposal by the University of Technology, Sydney to extend the process for appointing Convocation members to staff and student representatives.

Recommendation 3

That the Minister for Education and Training amend the university Acts to provide all university governing bodies with the flexibility to either appoint or elect their alumni (or Convocation) members.

- 4.101** Another issue relating to composition was the one-year tenure of student representatives elected to the University of Sydney Senate. The Committee heard evidence that all other members had terms of at least two years. It was proposed that the tenure of student representatives be increased, to allow students sufficient time to develop the necessary skills to function as effective members of the governing body. The Committee supports this position, and believes that this argument applies equally to all members of governing bodies. The Committee therefore recommends that all members of a governing body should have at least a two-year term. In addition, the election of representatives with two-year terms should be staggered, with half the number being retired at each election, to ensure continuity of experience.
-

Recommendation 4

That the Minister for Education and Training amend the university Acts to increase the minimum term for all members of university governing bodies from one to two years, with half the number being retired at each election.

Chapter 5 Structural issues

This chapter will examine a number of structural issues raised during the Inquiry, including the remuneration of governing body members, Vice-Chancellors' voting rights, the membership of audit and remuneration committees, material interests declared by governing body members, and provisions to affect the dismissal of a Chancellor.

Remuneration of governing body members

- 5.1** During the Inquiry, it was suggested that remuneration of governing body members be considered. At present, the university Acts are silent on the issue of remuneration for members of governing bodies.
- 5.2** Professor Geoffrey Kiel, in his paper on *Managing Relationships on University Councils*, argued that remuneration should be introduced for members of governing bodies, in line with the trend to pay appropriate remuneration to directors of corporations and non-profit organisations:

If council members are expected to contribute much greater hours to their duties, if there is a higher level of personal risk with respect to their membership of council and these new council members are selected on the basis of the particular skills, knowledge, expertise and social capital they hold, then the very nature of the relationship between the council member and the university will have changed.¹⁸⁹

- 5.3** Professor Eilis Magner, Chair of the Academic Board at the University of New England, said that 'students and maybe external members of Council could be paid a sitting fee'.¹⁹⁰ Professor Magner did not support remuneration for staff representatives. In relation to the University of New England, she advised that 'at points in 2008 there was a distressing absence of members of the University Council while business of the University was being discussed'.¹⁹¹ Professor Magner suggested that remuneration could improve attendance at meetings.
- 5.4** Since 2003 Victorian universities have had the capacity to remunerate elected or appointed members of the governing body, at the discretion of the governing body. Certain members cannot be remunerated, such as full-time university staff members, office holders under the Crown and officers in a statutory authority, and Members of Parliament. Currently, of the eight Victorian universities, six provide remuneration.¹⁹² Following a recent review of its higher education legislation, the Victorian Government concluded that remuneration should be a condition of appointment to a governing body.¹⁹³

¹⁸⁹ Kiel G, 'Managing Relationships on University Councils', paper presented to *University Governance: Managing Relations Conference*, Victoria University, 30 March 2007, p 12

¹⁹⁰ Professor Eilis Magner, Professor and Chair of the Academic Board, University of New England, Evidence, 17 March 2009, p 41

¹⁹¹ Submission 32, Professor Eilis Magner, p 2

¹⁹² Email from Mr Ian Gribble, Manager, Governance Unit, Victorian Department of Innovation, Industry and Regional Development, to Principal Council Officer, 11 May 2009

¹⁹³ Victorian Government, Statement of Intent: Higher Education Legislation Review, Melbourne 2008, p 7

5.5 Levels of remuneration are determined within the existing framework for remuneration of members of State Government boards, members of statutory bodies and advisory committees. In this framework the Chancellor receives a higher rate of remuneration than other members of the governing body. Certain members of governing bodies are also eligible for travel allowances. The current levels of remuneration for governing body members of Victorian universities are outlined at Appendix 5.

5.6 On remuneration of student representatives in particular, Professor Magner said:

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.¹⁹⁴

5.7 Remuneration of governing body members was supported by the United Kingdom's 2004 *Good Governance Standard for Public Services*:

Paying governors for their time may make participation in governance a practical option for more people and encourage a wider range of people to take part; it can also be a way of publicly recognising the seriousness of governance responsibilities.¹⁹⁵

5.8 Mr John Cassidy, former chancellor of the University of New England, observed that:

Whilst the Chancellor sits at the apex of the organisation, incongruously the position is unpaid notwithstanding the responsibilities, under both the UNE Act and the Corporations Act, are onerous ... Independent members of Council, including the Chancellor if he or she meets that description, should be remunerated if not already paid by the State ... Council members, as is the case with directors of public companies, accept onerous fiduciary duties and responsibilities. Remuneration should be forthcoming, perhaps in the range of \$35,000 to \$50,000 per annum.¹⁹⁶

Committee comment

5.9 The Committee supports the proposal to remunerate members of governing bodies to recognise the increasing demands of governing body membership. In particular, the Committee notes that remuneration could allow student representatives more time to focus on their role as a member of a governing body.

5.10 Consideration would need to be given to the persons eligible for remuneration, as we do not believe certain classes of people should be remunerated, such as university staff members, public servants and Members of Parliament. In addition, a mechanism would need to be devised to determine an appropriate level of remuneration.

¹⁹⁴ Professor Magner, Evidence, 17 March 2009, p 41

¹⁹⁵ Independent Commission on Good Governance in Public Services, *The Good Governance Standard for Public Services*, Office for Public Management and The Chartered Institute of Public Finance and Accountancy, 2004, p 19 (attached to submission 4)

¹⁹⁶ Submission 27, Mr John Cassidy, p 12

Recommendation 5

That the Minister for Education and Training amend the university Acts to allow university governing bodies to remunerate their members, giving consideration to:

- eligibility for remuneration
 - the appropriate level of remuneration.
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Vice-Chancellors' voting rights

5.11 Under the university Acts the Vice-Chancellor is an ex-officio member of a governing body with full voting rights. Inquiry participants held differing views as to whether it is appropriate for a Vice-Chancellor to be a member of a governing body with consequent voting rights.

5.12 In his submission to the Inquiry, Dr Herman Beyersdorf, former staff representative on the University of New England Council, suggested that there was an inherent contradiction between a Vice-Chancellor's role as the university's chief executive officer, and a Vice-Chancellor's role as a full voting member of a university's governing body. He suggested a more appropriate model might be that of a General Manager of a Local Government Authority, who attends Council meetings to brief Councillors but does not vote.¹⁹⁷ Under such a model, a Vice-Chancellor would not be a member of a governing body and therefore not enjoy voting rights.

5.13 In response to questioning on whether it may be a conflict for a Vice-Chancellor to have voting rights, Reverend Judith Redman, a former member of the University of New England Council, said:

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 ...

¹⁹⁸

5.14 Professor Magner, Chair of the Academic Board at the University of New England, was also questioned on whether it may be a conflict for a Vice-Chancellor to have voting rights. According to 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 the Vice-Chancellor reports matters to council, as I do, and he

¹⁹⁷ Submission 28, Dr Herman Beyersdorf, p 1. The relevant provision is contained in the *Local Government Act 1993* s 376

¹⁹⁸ Reverend Judith Redman, former member, University of New England Council, and Uniting Church chaplain on campus Evidence, 17 March 2009, p 28

should have a voice in the formulation of the policy that is going to guide what goes on in future.¹⁹⁹

Committee comment

- 5.15** The Committee considers that a Vice-Chancellor plays an important role on a governing body. In the absence of strong evidence on this issue, the Committee is of the view that Vice-Chancellors should continue to enjoy voting rights.

Membership of audit and remuneration committees

- 5.16** The Committee heard evidence, primarily from inquiry participants at the University of Sydney, that it was not appropriate for staff and student representatives to sit on the audit and remuneration committees of a governing body, due to a potential conflict of interest.

- 5.17** Mr Cameron, Deputy Chancellor, was asked to explain why the University of Sydney Senate excludes staff and student representatives from its Audit Committee:

The reason is that the audit committee, first of all, is monitoring the expenditure of money. In our view it would be inappropriate. In the same way as it is regarded as inappropriate for executive directors or other employees to serve on audit committees in public companies, so the university regards it as inappropriate for staff or students to serve on the audit committee to the extent that it audits.

I might say that in the context of the review of committees to which the vice-chancellor referred, we are considering whether to remove risk management from audit in some way. My own view is that the same argument does not apply to the risk management aspects of the audit and risk management committee, and we might benefit from having staff and student participation on that side of the committee.²⁰⁰

- 5.18** On further questioning, Mr Cameron explained that it also was a matter of perception: 'I still think that there is an appearance of interest and they could not really separate the agenda of the audit committee so that it dealt with particular faculties'.²⁰¹

- 5.19** In relation to membership of the remuneration committee, Mr Cameron said:

... it is really the same argument. The remuneration and benefits committee has to determine and effectively sign off on the remuneration packages, including performance components, for the most senior staff of the university. We do not think it is appropriate necessarily for other employed staff or students to be directly involved in that process. It is a question of probity and what the senate has thought appropriate over the years. On recollection, that is a matter of protocol rather than rule.²⁰²

¹⁹⁹ Professor Magner, Evidence, 17 March 2009, p 40

²⁰⁰ Mr Alan Cameron, Deputy Chancellor, University of Sydney, Evidence, 23 March 2009, pp 4-5

²⁰¹ Mr Cameron, Evidence, 23 March 2009, p 5

²⁰² Mr Cameron, Evidence, 23 March 2009, p 5

5.20 On further questioning Mr Cameron explained that with regard to the Remuneration Committee, ‘it would simply not be seemly to have a student directly involved in that process or, for that matter, a more junior staff member. It has been a question of propriety’.²⁰³

5.21 Dr Michael Spence, Vice-Chancellor of the University of Sydney, supported this position, drawing the Committee’s attention to:

... the impact of staff and students present on the ability of other members of the Remuneration Committee to speak their minds freely about the performance of the senior executive group. It is in the interests of the university that that discussion be as robust as possible. For better or for worse, there is the real possibility that that discussion would be modified by the presence of staff and students.²⁰⁴

5.22 According to Dr Alan Pettigrew, Vice-Chancellor of the University of New England, the University of New England adopts a similar position:

Membership of committees by staff and students is balanced at UNE by the roles and responsibilities of the committees themselves. For example, quite appropriately no staff or student members of Council sit on the Remuneration Committee of Council, but there is a staff member on each of the Finance Committee and the Infrastructure Committee.²⁰⁵

5.23 Mr Mark Dolahenty, Senior Industrial Officer, National Tertiary Education Union-NSW Branch, argued that even if staff and student representatives are excluded from membership of the Remuneration Committee, they should be able to attend committee meetings as observers:

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.²⁰⁶

5.24 Ms Kay Hempsall, member of the University of New England Council and Manager of Organisational Development, took a similar position: ‘university expenditure and financial records are a public record and therefore I do not necessarily see that an elected member of council who happens to be a staff member ... should not necessarily be able to observe committee processes such as remuneration ...’²⁰⁷

²⁰³ Mr Cameron, Evidence, 23 March 2009, p 6

²⁰⁴ Dr Michael Spence, Vice-Chancellor, University of Sydney, Evidence, 23 March 2009, p 6

²⁰⁵ Submission 14, University of New England, pp 11-12

²⁰⁶ Mr Mark Dolahenty, Senior Industrial Officer, National Tertiary Education Union-NSW Branch, Evidence, 17 March 2009, p 11

²⁰⁷ Ms Kay Hempsall, Member, University of New England Council and Manager, Organisational Development, University of New England, Evidence, 17 March 2009, p 7

Committee comment

- 5.25** Staff and student members of a governing body are in some instances excluded from membership, and attendance at meetings, of its audit and remuneration committees. The Committee believes that it would be inappropriate for staff or students to be involved in determining the remuneration packages of university employees. The Committee also considers that it would not be in the university's best interests for staff or students to be involved in auditing expenditure. However, the Committee agrees with the University of Sydney that staff and students may bring valuable insights to risk management processes. The Committee urges the Minister to recommend to university governing bodies that they investigate separating risk management considerations from the work of an audit committee.
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Recommendation 6

That the Minister for Education and Training recommend to university governing bodies that they investigate separating risk management considerations from the work of an audit committee.

Disclosure of material interests by governing body members

- 5.26** The members of a governing body are expected to make decisions on a range of challenging and occasionally controversial issues. To ensure impartial decision-making, members of governing bodies are required to disclose any material interests they may have in regard to the matters being considered.
- 5.27** The university Acts set out the procedure to be followed if a member has a material interest in a matter being considered. Disclosure must be made as soon as possible, after which the member must not be present during deliberations or take part in any decision on the relevant matter, unless otherwise determined by the governing body. The Acts further stipulate that the member must disclose the material interests of any of their associates, including spouses, children and business partners.²⁰⁸
- 5.28** Several staff and student members of the University of New England Council told the Committee that they were routinely denied access to information on grounds of a supposed conflict of interest, thus limiting their ability to properly perform their functions and leading to the development of a 'two-tier inner-outer cabinet ... 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'.²⁰⁹
- 5.29** Dr Maxine Darnell, President, University of New England Branch of the National Tertiary Education Union, suggested that this exclusion had resulted in 'some decisions, some things being done at council that other members of council were not aware of...'²¹⁰
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²⁰⁸ See for example *University of New England Act 1993*, Schedule 2A p 5

²⁰⁹ Dr Maxine Darnell, President, National Tertiary Education Union-University of New England Branch, Evidence, 17 March 2009, p 10

²¹⁰ Dr Darnell, Evidence 17 March 2009, p 12

- 5.30** Dr Herman Beyersdorf, former member of the University of New England Council, argued that the application of a general conflict of interest based simply on membership of a group, was not the intention of university legislation, particularly as the legislation stipulates that staff, students and other stakeholders are to be members of the governing body.²¹¹
- 5.31** According to Dr Beyersdorf, ‘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’.²¹² He felt that, with regards to conflict of interest, there should be differentiation between ‘individual specific things and that overall generality’.²¹³
- 5.32** A similar position was held by Ms Catherine Rytmeister, Lecturer in Higher Education Development and PhD student at Macquarie University. She felt that conflict of interests provisions should apply only to specific instances of conflict, rather than any collective interest that a governing body member may have:
- Conflict of interest pertains to individual interest rather than the collective interest that a member might have by virtue of membership of the staff or student body. True conflict of interest would apply in only rare cases where an issue under discussion might impact directly and particularly on an individual's personal circumstances (for example, decisions about restructuring and staff redundancies in a staff-elected member's own work area).²¹⁴
- 5.33** Ms Hemsall was concerned that there was a lack of ‘clear process’ for resolving conflict of interest matters and suggested there was ‘scope for more clearly defining conflicts of interest in the Act itself’.²¹⁵ She suggested the following definition, as provided by the National Institute for Governance, as a possible improvement:
- A Council member has a conflict of interest when an interest creates an incentive for the members to act in a way which may not be in the best interests of the University. A conflict of interest may be financial or non-financial, direct or indirect, professional or family related; it may be potential, actual or perceived.²¹⁶
- 5.34** It was also suggested that members of the governing body be required to fill in a register of interests similar to the register that parliamentarians are required to complete.²¹⁷

²¹¹ Dr Herman Beyersdorf, former member, University of New England Council, Evidence, 17 March 2009, p 21

²¹² Dr Beyersdorf, Evidence, 17 March 2009, p 21

²¹³ Dr Beyersdorf, Evidence, 17 March 2009, p 21

²¹⁴ Submission 20, Ms Catherine Rytmeister, p 54

²¹⁵ Ms Hemsall, Evidence 17 March 2009, p 4

²¹⁶ University Governance Professional Development National Induction Pack, quoted in Submission 33, Ms Kay Hemsall, p 2

²¹⁷ Mr Dolahenty, Evidence, 17 March 2009, p 11

Committee comment

- 5.35** The Committee notes that several members of the governing body of the University of New England expressed concern regarding perceived material interests and ensuing exclusion from governing body proceedings.
- 5.36** The Committee believes that the requirements already specified under the university Acts provide sufficient guidelines for the disclosure of material interests. In the absence of further evidence demonstrating that the existing disclosure provisions need to be tightened, the Committee is reluctant to impose further legislative obligations on governing bodies. However, the Committee notes that it is up to each university governing body to ensure that they comply with the requirements of their university Act. The Committee believes that the application of material interest declaration provisions should be investigated, to ensure that these provisions are not being used to exclude individuals from governing body debates on the grounds of the nature of their appointments to that governing body.

Recommendation 7

That the Minister for Education and Training investigate whether the inappropriate application of material interest declaration provisions is being used to exclude individuals from governing body debates on the grounds of the nature of their appointments to that governing body.

Power to dismiss a Chancellor

- 5.37** An issue of particular interest to Inquiry participants was whether governing bodies should have a clear provision to enable them to dismiss a Chancellor who has lost the confidence of the governing body. The following section examines current arrangements for dealing with the removal of a Chancellor.
- 5.38** As discussed in Chapter 3, all NSW universities have similar legislative provisions for the removal of a member of governing body. These provisions specify that a member may be removed for a breach of duty as set out in the relevant schedule of the university Act, if the motion for removal is supported 'by at least a two-thirds majority of the total number of Council members'.²¹⁸
- 5.39** There are no distinct provisions for a governing body to remove the Chancellor as Presiding Officer. In his evidence, Mr Alan Cameron, Deputy Chancellor of the University of Sydney, discussed the difficulty faced by governing bodies that have lost confidence in their Chancellor but cannot establish a 'breach of duty' as defined in the university legislation.²¹⁹
- 5.40** The Committee heard that existing mechanisms for dealing with this situation are inadequate. Dr James Swansson, governance and research consultant, National Institute of Governance explained that:

²¹⁸ See for example *Charles Sturt University Act 1989* s 24(G)

²¹⁹ Mr Cameron, Evidence, 23 March 2009, p 1

... when you do have a conflict between a vice chancellor and a chancellor specifically or the governing body in total, the internal mechanisms that that body has for dealing with that conflict obviously are proving insufficient to prevent it becoming a public debate.²²⁰

- 5.41** Ms Rytmeister explained that ‘none of the NSW university enabling Acts, and indeed, few across the nation, provide for removal of a Chancellor who loses the confidence of their Council’.²²¹ In the absence of such a provision, Ms Rytmeister told the Committee, governing bodies have to choose from the following three options:
- the ‘wait and work around’ approach, which involves simply waiting for the Chancellors term to end, either through the Chancellor not seeking another term or the governing body making known it’s intentions to appoint a new Chancellor.
 - informal approaches, whereby some governing body members may approach the Chancellor to raise the areas of concern. It is expected that the Chancellor would then either resign or improve their performance.
 - confrontation, which ‘involves considerable preparation and would be a last resort, apart from perhaps the even less desirable mechanism of allowing issues to become public knowledge’.²²²
- 5.42** The provisions to remove a governing body member were raised during the Committee’s public hearing at the University of New England. Professor Eilis Magner, Chair of the Academic Board at the University of New England, informed the Committee that the current procedure available under the act to remove a governing body member was a major deterrent to seeking to remove the Chancellor.²²³ Professor Magner suggested that the university Acts should be changed to insert a condition ‘that stipulates that the Chancellor loses office when a vote of no confidence is passed by Council’.²²⁴
- 5.43** Ms Rytmeister also felt that a protocol for the removal of a Chancellor should be ‘embedded either in university enabling Acts or in by-laws by regulation’.²²⁵
- 5.44** The National Tertiary Education Union-NSW Branch supported the position that the university Acts should be amended to require a Chancellor to maintain the confidence of their governing body if they are to serve out their term to its expiry. The Union further added that a Vice-Chancellor should be subject to the same requirement.²²⁶
- 5.45** Mr Warwick Watkins, Deputy Chancellor of the University of Technology Sydney, agreed that it would be useful to have a specific mechanism that could be implemented when a Chancellor

²²⁰ Dr James Swansson, governance and research consultant, National Institute of Governance, Evidence, 26 February 2009, p16

²²¹ Submission 20, p 42

²²² Submission 20, p 42

²²³ Professor Magner, Evidence, 17 March 2009, p 45

²²⁴ Submission 32, p 2

²²⁵ Submission 20, p 7

²²⁶ Submission 23, National Tertiary Education Union-NSW Branch, p 7

had lost the confidence of the governing body.²²⁷ However, when questioned as to whether this mechanism should be contained within either the legislation or codes of conduct for each university, Mr Watkins explained that:

In my view I do not think it should be enshrined in legislation. I think it is important to give universities flexibility within which to operate. I believe that codes of conduct or guidelines in that respect are far better because, clearly, the performance of a university in this area depends on the integrity of an individual, whether it be a single councillor or a chancellor. ... I believe that the legislation should not be so prescriptive that it binds every university to the same practice.²²⁸

5.46 In 2001, the University of Sydney amended its By-Laws to allow for the removal of the Chancellor as Chair of the governing body. The By-Law, which applies to the current and all future Chancellors, states that:

It is a condition on which the Chancellor holds office that he or she retains the confidence of the Senate and the Chancellor shall cease to hold office if the Senate decides, by resolution passed at two consecutive ordinary meetings of the Senate, that the Chancellor does not have the confidence of the Senate.²²⁹

5.47 The same provision exists for the removal of a Deputy Chancellor.²³⁰

5.48 An important feature of the University of Sydney By-Law is that it requires that a simple majority of governing body members support the dismissal of the Chancellor. This is in contrast to the existing provisions for the removal of a governing body member, which requires that a two-thirds majority of the governing body approve the dismissal.

5.49 The Deputy Chancellor of the University of Sydney, Mr Alan Cameron, noted that requiring the resolution to be passed at two consecutive meetings was an important guard against capriciousness:

The language is quite interesting. It was clearly intended to prevent a coup d'état under which a chancellor could be removed in a heated debate. Both resolutions have to have been passed, not only at consecutive meetings but also at consecutive ordinary meetings. Ordinary meetings of the senate are held six to seven weeks apart.²³¹

5.50 Mr Cameron also emphasised that the model 'provides protections in both directions; it cannot be done capriciously, quickly or in haste, but it can be done if there is a breakdown in relationships.'²³²

5.51 Dr Jessica Milner Davis, the former Deputy Chancellor of the University of New South Wales, reflected on the potential limitations of the current situation which requires a two-

²²⁷ Mr Warwick Watkins, Deputy Chancellor, University of Technology, Sydney, Evidence, 23 March 2009, p 28

²²⁸ Mr Watkins, Evidence, 23 March 2009, p 33

²²⁹ *University of Sydney By-Law 1999* s 9(2A)

²³⁰ *University of Sydney By-Law 1999* s 11(2A)

²³¹ Mr Cameron, Evidence, 23 March 2009, p 1

²³² Mr Cameron, Evidence, 23 March 2009, p 1

thirds majority to approve the dismissal of a Chancellor. Dr Milner Davies concurred with the approach taken by the University of Sydney, stating that:

... unless there is a radical change or a proposal regarding the composition of governing bodies, there will always be subgroups; that is to say, there are staff, there are students, there are ex officio positions, there are ministerial appointees ... If you have a diverse group like that imposing a two-thirds majority, it becomes highly politicised. So you could have a single blocking one-third, which I think would disrupt the work of a council ... if it is to be prescribed at all, I think it should be a simple majority ...²³³

5.52 Ms Rytmeister initially suggested that a no-confidence motion against the Chancellor should require the support of at least a two-thirds majority of governing body members for it to take effect.²³⁴ However, during evidence before the Committee, Ms Rytmeister conceded that

... if you have got to the point at which you have a fifty-fifty split, or just over a majority or just under, in a split, you have a pretty dysfunctional governing body ... If you ever reach that point the council would have a problem—whether it is two-thirds or one-third either way, or half and half.²³⁵

5.53 Ms Rytmeister suggested if such a motion were to be defeated or not have the sufficient majority to be passed, the process should be ‘suspended until such time as the Council reactivates it on the grounds of continued poor performance’.²³⁶

5.54 Ms Rytmeister believes that the existence of a dismissal mechanism increases the likelihood that disputes between a chancellor and a governing body will be resolved early, before a situation escalates to a point whereby a Chancellor loses the confidence of the governing body: ‘If you have that hard provision at the end that you can get rid of a chancellor if you need to, it means there is much more motivation to resolve the issue before it gets to that point’.²³⁷

5.55 Mr Cameron also emphasised the importance of having a well-constructed dismissal mechanism because it encourages the early resolution of any dispute: ‘The mere fact that it is there acts as a safety valve. It does not have to be used’.²³⁸

5.56 The University of New South Wales identified an alternative option to facilitate the dismissal of the Chancellor, advising that their governing body had recently passed a resolution that recommended changes to the way in which governing body members could be removed. This resolution suggested that the University’s Act and by-law be amended to give the Minister for Education and Training:

²³³ Dr Jessica Milner Davis, former Deputy Chancellor of the University of New South Wales, Evidence, 23 March 2009, p 20

²³⁴ Submission 20, p 7

²³⁵ Ms Catherine Rytmeister, lecturer in Higher Education Development and PhD student, Evidence, 23 March 2009, p 14

²³⁶ Submission 20, p 7

²³⁷ Ms Rytmeister, Evidence, 23 March 2009, p 16

²³⁸ Mr Cameron, Evidence, 23 March 2009, p 4

... power to remove all or any members of Council at any time and from time to time in his/her discretion provided:-

- a. That prior to using that power the Minister has discussed the matter with Council expressing his/her concerns as to the membership of a particular person/persons and seeking a solution to these concerns; and
- b. The removal, in the Minister's entire discretion, is for the benefit of the University and its future development.²³⁹

Committee comment

- 5.57** The Committee notes that with the exception of the University of Sydney, NSW universities do not currently have a clear and distinct provision for the dismissal of the Chancellor.
- 5.58** The Committee believes that a timely, fair and transparent mechanism to remove a Chancellor who has lost the confidence of their governing body should be available to all NSW universities. Such a mechanism may reduce the likelihood of protracted and damaging disputes between a Chancellor and a governing body. These arguments equally apply to the Deputy-Chancellor, which is also an elected position.
- 5.59** The Committee believes that the procedures established by the University of Sydney provide an appropriate mechanism for the dismissal of the Chancellor and Deputy-Chancellor. We therefore recommend that the Minister for Education and Training insert a provision for the dismissal of a Chancellor and Deputy Chancellor, as set out in the University of Sydney By-Law 1999, into the university Acts.

Recommendation 8

That the Minister for Education and Training amend the university Acts to allow for the dismissal of a Chancellor or Deputy Chancellor, similar to the provisions contained in the University of Sydney By-Law 1999.

- 5.60** The Committee notes the recommendation from the University of New South Wales that the Minister for Education and Training be empowered to remove members of the governing body. The Committee is concerned that this approach does not reflect the view expressed throughout this Inquiry that universities should have the independence to govern their own affairs.

²³⁹ Submission 12, University of New South Wales, p 4

Chapter 6 Professional development, performance evaluation and recruitment

This chapter discusses the professional development and performance evaluation of governing body members. It also looks briefly at the recruitment of the Chancellor of a university governing body.

Induction and professional development

- 6.1 Several inquiry participants discussed the importance of professional development programs for the members of university governing bodies and that such programs should focus on technical skills as well as the ‘cultural capabilities’ of governing body members.

Importance of induction and professional development

- 6.2 The National Tertiary Education Union-NSW Branch, supports a program of professional development that ‘brings together members outside of the governing body’s room, and addresses gaps in knowledge that will help increase the quality of the governing body overall’.²⁴⁰

- 6.3 Ms Amanda McCormack, Organiser with the National Tertiary Education Union-NSW Branch, told the Committee that it ‘is important that people are able to participate on a university governing body in a particular capacity, but they also have the skills to be able to do that effectively’.²⁴¹

- 6.4 Ms Genevieve Kelly, Secretary, National Tertiary Education Union-NSW Branch, noted that professional development is important because:

... staff-elected representatives, in my experience, can often be intimidated by some of that company law. They do not know what the fiduciary duties are and what the code of conduct should be and a bit of training around that is very helpful and can give people more confidence to participate.²⁴²

- 6.5 Induction training is particularly important for new members of governing bodies who are from outside the university. According to Mr Mark Dolahenty, Senior Industrial Officer, National Tertiary Education Union-NSW Branch:

And the educative role needed by new members of the council is not just about training those people who may not have what one might call the requisite business skills; it is about educating people from outside the university about the university, the

²⁴⁰ Submission 23, National Tertiary Education Union-NSW Branch, p 7

²⁴¹ Ms Amanda McCormack, Organiser, National Tertiary Education Union-NSW Branch, Evidence, 26 February 2009, p 34

²⁴² Ms Genevieve Kelly, Secretary, National Tertiary Education Union-NSW Branch, Evidence, 26 February 2009, p 30

role of the university and where the council fits within the culture, the life and the history of universities as a whole.²⁴³

- 6.6** Reverend Judith Redman, a former member of the University of New England Council, explained that long-term professional development was needed as well as induction training:

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 ... So I would see that ongoing training would definitely have a role as well as the original induction stuff.²⁴⁴

- 6.7** Professional development is also a key tool in improving poor performance, as Ms Catherine Rytmeister, Lecturer in Higher Education Development and a candidate for a doctor of philosophy at Macquarie University, explained:

Targeted preparation, induction, professional development and mentoring programs are appropriate ways to address under-performance resulting from a lack of confidence, knowledge and/or experience.²⁴⁵

Current professional development practice

- 6.8** The provision of professional development to members of a governing body was required by Protocol Four of the National Governance Protocols:

Each governing body must make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.²⁴⁶

- 6.9** The university Acts were amended to reflect this Protocol and now include a requirement for professional development. For example, the *University of New England Act 1993* requires the University 'to make available for members of the Council a program of induction and of development relevant to their role as such a member'.²⁴⁷

- 6.10** Based on her research, Ms Rytmeister advised the Committee that:

A range of professional development experiences are made available to members, including seminars, workshops, forums and conferences. Not all members attend, although most try to attend at least some professional development sessions.²⁴⁸

²⁴³ Mr Mark Dolahenty, Senior Industrial Officer, National Tertiary Education Union-NSW Branch Evidence, 26 February, p 30

²⁴⁴ Reverend Judith Redman, former member of the University of New England Council, Evidence, 17 March 2009, p 30

²⁴⁵ Submission 20, Ms Catherine Rytmeister, p 5

²⁴⁶ Submission 9, Department of Education, Employment and Workplace Relations, Appendix A

²⁴⁷ *University of New England Act 1993* s 16 (1B)(l)

²⁴⁸ Submission 20, p 5

- 6.11** Professor Frederick Hilmer, Vice-Chancellor of the University of New South Wales, described the induction training at the University:

Training is very import. We put all our council members through the Institute of Directors course. If you are an experienced director you might choose not to attend, but everyone is entitled to do that course. New members who are not from a business background do that course. We also have an induction session for new members and we spend a lot of time talking about roles, the Fireman's case and the role of council ...²⁴⁹

- 6.12** The University of Sydney also inducts its new members. The University requires:

... all new Fellows to participate in an induction program to help ensure that they understand and are equipped to discharge the obligations of their role. This process includes the appointment of an experienced Fellow to act as a mentor to all new Fellows.²⁵⁰

Improving induction and professional development

- 6.13** A number of inquiry participants argued that current professional development programs need to be strengthened. For example, Ms Rytmeister noted from her research that 'professional development and induction events and sessions vary in quality and appropriateness'.²⁵¹ She explained that one of the reasons there were 'mixed views of the professional development programs' was that 'many programs make assumptions that simply do not apply in the university setting...'²⁵²

- 6.14** Mr John Phillips, Chancellor of the University of Western Sydney, highlighted that, while the education of new governing body members had improved, it 'has a fair way to go'.²⁵³

- 6.15** According to Ms Rytmeister professional development programs need to develop members' technical skills and expertise, as well as their 'cultural capabilities':

... only a few developmental programs for Council members explicitly tackle the issue of the Council as a social system and the elements of effective Council culture, and even fewer offer a program tailored to the cultural value and unique character of universities as organisations and institutions.²⁵⁴

- 6.16** Professor Eilis Magner, Chair of the Academic Board at the University of New England, also believed that professional development should be tailored:

²⁴⁹ Professor Frederick Hilmer, Vice-Chancellor, University of New South Wales, Evidence, 26 February 2009, p 20

²⁵⁰ Submission 7, University of Sydney, p 7

²⁵¹ Submission 20, p 5

²⁵² Submission 20, p 63

²⁵³ Mr John Phillips, Chancellor, University of Western Sydney, Evidence, 26 February 2009, p 2

²⁵⁴ Submission 20, p 63

...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.²⁵⁵

- 6.17** The Committee heard that current programs do not fully cater for the needs of student representatives. Mr Noah White, President of the Student Representative Council, University of Sydney, said:

Universities do not offer any significant training for students at all really. The University of Sydney does offer some training for students. However, it is not geared specifically towards student representation, which is quite different from, say, someone who is a graduate or staff representative. I think that is one area where universities in New South Wales could greatly improve, and I would like to see some incentive for universities to develop and provide strong training programs for student representatives so that they can represent students effectively.²⁵⁶

- 6.18** The significance of ongoing training was stressed by Ms Kay Hemsall, member of the University of New England Council and Manager, Organisational Development:

... 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 ... 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.²⁵⁷

- 6.19** The National Tertiary Education Union-Branch argued that 'training should involve a high quality and relevant induction programme for new members, and, more broadly, all members should receive training in how to access and interpret institutional data/information, particularly financial information'.²⁵⁸ The Union recommended that:

Each NSW University governing body should have in place a formal programme of professional development that goes beyond ensuring that members are aware of the nature of their duties and responsibilities and codes of conduct. Types of training should include: accessing institutional data and information, how to read financial reports, risk management processes, and reviewing and monitoring processes.²⁵⁹

- 6.20** In particular, Mr White said that students should be trained on how to consult with their constituencies in order to effectively represent their views:

... being the student representative is not necessarily about going out there and projecting your own views; it is about making sure that the views of the majority of students are projected. That is not something that is particularly easy to do if you are

²⁵⁵ Professor Eilis Magner, Chair, Academic Board, University of New England Evidence, 17 March 2009, p 47

²⁵⁶ Mr Noah White, President, Student Representative Council, University of Sydney, Evidence, 26 February 2009, p 44

²⁵⁷ Ms Kay Hemsall, member of the University of New England Council, Evidence, 17 March 2009, p 7

²⁵⁸ Submission 23, National Tertiary Education Union, p 7

²⁵⁹ Submission 23, National Tertiary Education Union, p 7

not in tune with the rest of the student cohort, so there has to be some training about how you go about that.²⁶⁰

- 6.21** Commenting on whether training should be made compulsory, Mr Phillips said: ‘I personally would not favour making it compulsory, I am more in favour of making the thing available.’²⁶¹

Training for Chancellors

- 6.22** Inquiry participants expressed differing views concerning professional development for Chancellors. Mr Phillips argued that Chancellors need more training and development opportunities:

... I do not think we have done enough to educate – and I think some of my colleagues will be a bit upset about me using that word – incoming chancellors, because many of those are coming from areas where they have not been subject to the same kind of protocols and procedures that they ought to be following within universities.²⁶²

- 6.23** Mr Phillips further advised the Committee that:

There has been an attempt by the Institute for Company Directors to do some work on this. If people choose to do the Institute of Company Directors’ course, particularly the chairman’s course, they will be in a better position coming into the university. It does not do it quite well enough yet. It may be that the Chancellors’ Council could do something about it, it would be the only other body that I can think of at the moment.²⁶³

- 6.24** Mr Warwick Watkins, Deputy Chancellor of the University of Technology, Sydney, supported an induction program for Chancellors:

Dare I say, the Chancellor should go through an induction process, albeit a different process. It is critically important in a university to have a handover period between two chancellors. It is the culture that is being challenged very much as you hand over these things.²⁶⁴

- 6.25** Professor Hilmer argued that a Chancellor should not be appointed if they needed training in how to chair a significant body:

I really think we should not appoint a chancellor who needs training. It is like becoming a chairman of a public company with a big board. You do not do that until you have served your apprenticeship either in a deputy chairman role or as a chairman of a smaller board. To take a major university and say, ‘‘I have never chaired anything in my life, I have never really been a board member, I don’t understand governance

²⁶⁰ Mr White, Evidence, 26 February 2009, p 47

²⁶¹ Mr Phillips, Evidence, 26 February 2009, p 7

²⁶² Mr Phillips, Evidence 26 February 2009, p 2

²⁶³ Mr Phillips, Evidence 26 February 2009, p 7

²⁶⁴ Mr Warwick Watkins, Deputy Chancellor of the University of Technology, Sydney, Evidence, 23 March 2009, p 35

but you're going to train me and I am the leader" – you do not send a rookie out on the field and say, "I'll train you as you're batting."²⁶⁵

Committee comment

- 6.26** Inquiry participants welcomed the opportunity to engage in induction and professional development programs to assist them to perform their governance duties. Evidence to the Committee however, indicated that such programs vary in quality, duration and appropriateness across universities. The Committee heard that professional development needs to be tailored to the specific requirements of governing body members, both internal and external, and should be offered over the course of a member's term. We were also told that a program of professional development should strive to improve the 'cultural capabilities' of members as well as their technical skills. In addition, there was evidence that governing body members would benefit from training on how to access institutional data.
- 6.27** The National Tertiary Education Union-Branch argued that 'training should involve a high quality and relevant induction programme for new members, and, more broadly, all members should receive training in how to access and interpret institutional data/information, particularly financial information'.²⁶⁶ The Union recommended that:
- 6.28** Each NSW University governing body should have in place a formal programme of professional development that goes beyond ensuring that members are aware of the nature of their duties and responsibilities and codes of conduct. Types of training should include: accessing institutional data and information, how to read financial reports, risk management processes, and reviewing and monitoring processes.²⁶⁷
- 6.29** While respecting the need for universities to determine the nature and content of their own professional development programs, the Committee supports a greater emphasis on training and development across the sector. The Committee notes that the Commonwealth Government has announced the development of a voluntary code of best governance practice to replace the National Governance Protocols.²⁶⁸ The Ministerial Council on Education, Employment, Training and Youth Affairs has agreed to progress the development of this code. The Joint Committee on Higher Education, which comprises officials from the Commonwealth, States and Territories, advises the Ministerial Council on higher education matters, and will facilitate the consultation regarding the code. The Committee believes that the Minister for Education and Training should ensure that the professional development of members of university governing bodies is accorded a high priority during this consultation.

²⁶⁵ Professor Hilmer, Evidence, 26 February 2009, p 27

²⁶⁶ Submission 23, National Tertiary Education Union, p 7

²⁶⁷ Submission 23, National Tertiary Education Union, p 7

²⁶⁸ Submission 9, p 2

Recommendation 9

That the Minister for Education and Training ensure that in the forthcoming consultation regarding the development of a voluntary code of best governance practice, the professional development of governing bodies is accorded high priority.

- 6.30** Notwithstanding the development of a code of best governance practice, the Committee considers the Minister should conduct a review of professional development practices in NSW universities, with a view to encouraging best practice approaches to professional development. The review should seek to encourage induction training and professional development programs that are tailored to individual members' needs, focused on developing members' cultural capability, provided on an ongoing basis, and designed to ensure access to institutional data.
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Recommendation 10

That the Minister for Education and Training conduct a review of university induction and professional development programs in NSW universities, with a view to encouraging best practice approaches to professional development.

This review should be mindful of the issues raised in this Inquiry regarding professional development, including that such programs should be:

- tailored to meet the diverse needs of governing body members
- focused on developing the cultural capability of governing body members as well as their technical skills
- provided throughout governing body members' terms of office
- designed to ensure access to institutional data.

That the findings of the review be published no later than December 2009.

Performance evaluation

- 6.31** Performance evaluation is necessary to determine if a governing body is operating efficiently and effectively, and to identify areas for improvement.

Current performance evaluation of the governing body

- 6.32** As noted previously, Protocol Four of the National Governance Protocols required that 'at regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future'. This requirement has been reflected in the university Acts. For example, the *University of New England Act 1993*

requires the University 'to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act)'.²⁶⁹

6.33 There is currently no statutory obligation to review the individual performance of the Chancellor, nor individual governing body members. The legislation is also silent on how and when the performance reviews are to take place.

6.34 Commenting on the requirement for performance of the governing body to be reviewed, Mr Phillips advised that this does not extend to a review of the Chancellor's performance:

There is a requirement in the protocols for assessment of the performance of the board. When that was written it was assumed it would include the chancellor, but in many cases it does not.²⁷⁰

6.35 Several universities discussed their current performance evaluation practices during evidence and in submissions. The University of Sydney, for example, evaluates the performance of the governing body, not the performance of individual Fellows.²⁷¹ Mr Alan Cameron, Deputy Chancellor at the University of Sydney, explained that:

... it is not a review of individual fellows' performance, but of whether the senate is performing its role properly and whether people are satisfied with the information they are getting, the decision-making processes and so on. That includes a loose review of the role of the Chancellor rather than a specific review. It is a review of the chancellor in the same way as it is a review of us all.²⁷²

6.36 The University of Sydney advised that it has commissioned four external reviews of the Senate's performance since 2006. These reviews have '...involved personal interviews with individual Fellows of Senate and members of senior management'.²⁷³ Mr Cameron said that the University is in the process of identifying an external consultant to conduct a review this year, who would be 'a professional in the field'.²⁷⁴

6.37 In regard to individual performance evaluation, the University of Sydney said that the 'Senate has not resolved to create any formal protocols for addressing poor performance on the part of Chancellor or Fellows',²⁷⁵ although it is '... open to the Chancellor to speak to individual Fellows regarding their performance should he or she believe there is a need to do so'.²⁷⁶

6.38 The University of Technology, Sydney has introduced a regular system of internal and external reviews for its governing body:

²⁶⁹ See for example *University of New England Act 1993* s 16 (1B)(j)

²⁷⁰ Mr Phillips, Evidence, 26 February 2009, p 6

²⁷¹ Mr Alan Cameron, Deputy Chancellor, University of Sydney, Evidence, 23 March 2009, p 2

²⁷² Mr Cameron, Evidence, 23 March 2009, p 2

²⁷³ Submission 7, p 6

²⁷⁴ Mr Cameron, Evidence, 23 March 2009, p 2

²⁷⁵ Submission 7, p 7

²⁷⁶ Submission 7, p 7

Evaluation of Council's own effectiveness is clearly accepted by all Council members. UTS has recently reviewed its system of Council evaluations and has committed to a rotating cycle of 2-yearly self-evaluation surveys and governance audits; supplemented by a commissioned external review on a 4-yearly basis. Evaluation of the performance of members is essential to building an effective Council.²⁷⁷

- 6.39** Mr Phillips advised that at the University of Western Sydney, the governing body undertook a self-review of its performance every two years, which includes the performance of the Chancellor.²⁷⁸ The self-review could be done through questionnaires, inviting comment, and debate at meetings.
- 6.40** Professor Hilmer said that the University of New South Wales arranges an external review from time to time 'on the effectiveness of the council'.²⁷⁹
- 6.41** At the University of New England, Professor Magner noted that the governing body reviews its own performance annually.²⁸⁰ Professor Magner said of the review:

... 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.²⁸¹

Improving performance evaluation

- 6.42** The National Institute of Governance advised that there already exists 'a comprehensive literature and practice of performance reviews of governing bodies...' and, with regard to improved performance, posed the question:
- ... what are the universities doing by way of performance evaluation, and to whom are the results being reported, and does that reflect a culture of continuous improvement?²⁸²
- 6.43** A number of participants suggested ways to improve performance evaluation. Of particular interest was whether the Chancellor should be subject to a specific review of his or her performance.
- 6.44** As noted previously, the University of Sydney does not specifically review the Chancellor's performance. The rationale for this was articulated by Dr Michael Spence, Vice-Chancellor of the University of Sydney:

... the role of the Chancellor is to facilitate the work of the Senate. Being Chancellor is not a job in the sense that it has tasks and key performance indicators and all the

²⁷⁷ Submission 8, University of Technology Sydney, p 4

²⁷⁸ Mr Phillips, Evidence, 26 February 2009, p 6

²⁷⁹ Professor Hilmer, Evidence, 26 February 2009, p 25

²⁸⁰ Submission 32, Professor Eilis Magner, p 1

²⁸¹ Professor Magner, Evidence, 17 March 2009, pp 40-41

²⁸² Submission 13, National Institute of Governance, p 3

rest of it ... To think about the effectiveness of the chancellor's work in that context is the right approach.²⁸³

- 6.45** A number of other inquiry participants, however, supported a specific review of the Chancellor's performance. For example, in response to a question on how the Chancellor's performance was evaluated, Mr Phillips responded: 'Not enough, is the answer at the moment.'²⁸⁴ Mr Phillips went on to describe two barriers that may hamper such performance evaluation taking place:

I accept that it is very difficult to do the review of the chancellor, for two reasons: First, many chancellors do not like it being done, because it can bring out some things you do not like to hear. Secondly, people are often not willing to stand up and say what they really think. So, you have to get at it in some indirect ways as well, often when doing a review of the performance of the board, the conduct of board meetings and the conduct of committee meetings, and the like. In that process you will get back comments which, while they relate to the performance of the committee of the board, indirectly tended to tell you something about the performance of the chairman of the board or the chairman of committees.²⁸⁵

- 6.46** The National Tertiary Education Union supported performance review of the Chancellor.²⁸⁶

- 6.47** Professor Alan Pettigrew, Vice-Chancellor of the University of New England, observed that 'should Council decide, a set of qualitative and quantitative indicators can be constructed against which the performance of the Chancellor can be measured'.²⁸⁷ He noted that:

... Council as a whole should determine how it responds to the assessment of the Chancellor's performance. Such a response may be a statement of support or congratulation. Equally, the Chancellor might be counselled by Council members.²⁸⁸

- 6.48** Associate Professor Jeanne Madison, University of New England, identified 'attendance, participation, preparation, knowledge' and involvement in committees as indicators that might assist in assessing the performance of members of the governing body.²⁸⁹

- 6.49** Another issue to arise was whether the performance of individual members of the governing body, other than the Chancellor, should be reviewed. Ms Rytmeister recommended that:

University enabling Acts should include, as one of the duties and responsibilities of the Chancellor, a regular developmental review of individual members' contributions and performance. These should take a form determined by Council, or a committee thereof. The process undertaken and any outcomes relating to the effective fulfilment

²⁸³ Dr Michael Spence, Vice-Chancellor, University of Sydney, Evidence, 23 March 2009, p 2

²⁸⁴ Mr Phillips, Evidence, 26 February 2009, p 6

²⁸⁵ Mr Phillips, Evidence, 26 February 2009, p 6

²⁸⁶ Submission 23, p 6

²⁸⁷ Submission 14, University of New England, p 11

²⁸⁸ Submission 14, p 11

²⁸⁹ Professor Jeanne Madison, Associate Professor, University of New England, Evidence, 17 March 2009, p 35

of the Council's and members' roles should be reported on and included in the university's annual report.²⁹⁰

6.50 However, Ms Rytmeister observed that 'review of individual performance is problematic because of the voluntary nature of governing body membership'.²⁹¹ In addition, as with the performance of the Chancellor, 'there are few sanctions to provide leverage in addressing poor performance...' of members.²⁹²

6.51 In 2007 the University Chancellors' Council and Universities Australia proposed an amendment to the National Governance Protocols to include a requirement for performance review, including members, as follows:

On a regular basis, at least once each two years, the governing body shall assess its performance, the performance of its members and the performance of Committees of the governing body. The Chancellor shall have responsibility for organising the assessment process, drawing on external processes if necessary. On an annual basis, the governing body shall also review its conformance with these Protocols and identify needed skills and expertise for the future.²⁹³

6.52 They did not favour, however, reporting the outcomes of these reviews.²⁹⁴

6.53 The National Tertiary Education Union did not support performance review for individual members, other than the Chancellor, arguing that a collective review of the governing body provides sufficient feedback for members on their performance.²⁹⁵

Committee comment

6.54 Performance evaluation is crucial to the effectiveness of a governing body. Based on the evidence to the Committee, it appears that performance evaluation practices vary significantly across universities, in terms of the regularity of performance reviews, and also, whether a governing body's performance is reviewed by the governing body itself or by an external consultant.

6.55 As with professional development, the Committee supports a greater focus on performance evaluation across the sector. The Committee believes that the NSW Minister for Education and Training should ensure that performance evaluation of university governing bodies is accorded a high priority in consultation regarding the development of a voluntary code of best governance practice.

²⁹⁰ Submission 20, p 7

²⁹¹ Submission 20, p 5

²⁹² Submission 20, p 5

²⁹³ Submission 2, New South Wales Vice-Chancellors' Committee, Attachment p 5 (Joint Submission from Chancellors and Vice-Chancellors to the 2007 Review of the National Governance Protocols)

²⁹⁴ Submission 2, Attachment p 7

²⁹⁵ Submission 23, p 6

Recommendation 11

That the Minister for Education and Training ensure that in the forthcoming consultation regarding the development of a voluntary code of best governance practice, the performance evaluation practices of governing bodies is accorded a high priority.

- 6.56** In addition to development of the code of best governance practice, the Committee believes it is important to get a clearer picture of performance evaluation. To this end, the Committee recommends that the NSW Minister for Education and Training review the performance evaluation practices of university governing bodies, taking into consideration the issues raised in this Inquiry regarding performance evaluation. These issues include conducting performance evaluation at regular intervals, requiring external evaluation as well as self-reviews, and openness and transparency. As part of the review, the Minister should examine whether individual members of a governing body, including the Chancellor, should be subject to performance evaluation.
-

Recommendation 12

That the Minister for Education and Training conduct a review of the performance evaluation practices of university governing bodies. This review should be mindful of the issues raised in this Inquiry regarding performance evaluation, including that such programs should be:

- conducted at regular intervals
- involve both self-reviews and external reviews
- conducted openly and transparently, and provide for public reporting of outcomes.

Further, that the Minister investigate whether individual members of a governing body, including the Chancellor, should be subject to regular performance evaluation.

That the findings of the review be published no later than December 2009.

Recruitment of a Chancellor

- 6.57** The Chancellor is a key position within a university, and is central to the effective functioning of the governing body. It is therefore critical to recruit the right person for this position. According to Ms Rytmeister, cultural capabilities and interpersonal skills are as important as technical skills in a university Chancellor:

The Chancellor's role is viewed as highly important in managing the Council and creating and maintaining an effective governance culture. Together with the relatively unusual but by no means rare public airing of boundary and relationship problems between Chancellors and Councils and /or Vice Chancellors, this provides good reason for Councils to take extra care when selecting a Chancellor, to ensure that an appropriate appointment is made....Given the central importance of the Chancellor-VC relationship to the effective functioning of the Council, the VC needs to be confident that he or she can form and maintain a mutually respectful and productive

relationship with the Chancellor. Each, therefore, should be involved in the appointment of the other.²⁹⁶

6.58 In order to maximise the likelihood of recruiting an effective Chancellor, Ms Rytmeister recommended that the following principles be applied to any changes to legislation, regulations or protocols concerning the appointment of a Chancellor:

- The appointment of a chancellor is a strategic decision, requiring broad consideration by council and refinement by a small, high quality selection committee
- Selection criteria for a Chancellor should include a broad range of individual attributes, including cultural/social attributes
- The selection committee should include at least one internal and two external Council members and the Vice Chancellor.
- Opportunistic or ‘political’ appointment should be avoided unless there is an overriding strategic justification for this.²⁹⁷

Committee comment

6.59 The appointment of the Chancellor is now a key strategic decision for a university governing body. A Chancellor must have not only the requisite technical skills and experience, but also the ‘cultural capability’ needed to operate effectively within the university environment, bearing in mind the university’s core values and culture. A university Chancellor requires excellent interpersonal skills, if they are to build a constructive relationship with their Vice Chancellor and to lead a cohesive governing body.

6.60 Universities therefore need to give thoughtful consideration to their recruitment processes, first to ensure that there is a clear understanding of the skills, experience and ‘cultural capability’ required by a Chancellor, and second, to ensure that their processes are carefully crafted to select the most appropriate person for this unique position.

²⁹⁶ Submission 20, pp 23-24

²⁹⁷ Submission 20, p 66

Chapter 7 The clarity of governance roles

This chapter discusses inquiry participants' understanding of the roles and duties of a university governing body, Chancellor and Vice-Chancellor, and whether there is a need to further clarify these roles. The chapter also examines the importance of a healthy governance culture in encouraging the members of a governing body to work effectively within the roles that have been assigned to them by university enabling Acts, by laws, resolutions and rules.

Good governance and role clarity

- 7.1 The inquiry terms of reference required the Committee to look at whether there is a lack of clarity regarding the roles of a university governing body, Chancellor and Vice-Chancellor and the delineation of duties between these roles. According to the United Kingdom's Independent Commission on Good Governance in Public Services, role clarity is an essential component of good governance:

Good governance requires all concerned to be clear about the functions of governance and their own roles and responsibilities and those of others, and to behave in ways that are consistent with those roles.²⁹⁸

Governance roles and functions

- 7.2 The roles of a university governing body, Chancellor and Vice-Chancellor are set out in the university Acts and by-laws. In addition, several universities have adopted specific resolutions or rules to further define the functions or duties of these positions.
- 7.3 For example, the University of Sydney Senate passed a governance resolution in 2001 which sought to clarify governance roles.²⁹⁹ The University of Technology, Sydney adopted a Role Statement for the Chancellor, by way of Council Resolution in 2004.³⁰⁰ As a consequence of events in 2007 and 2008 the University of New England Council developed several governance policies intended to clarify governance roles,³⁰¹ and in 2006 the University of New South Wales Council amended its governance roles via a comprehensive external review of Council's delegations to management.³⁰²

²⁹⁸ Independent Commission on Good Governance in Public Services, *The Good Governance Standard for Public Services*, Office for Public Management and The Chartered Institute of Public Finance and Accountancy, 2004, p 9 (attached to submission 4)

²⁹⁹ Submission 7, University of Sydney, Attachment D, p 1

³⁰⁰ Submission 8, University of Technology, Sydney, p 2

³⁰¹ Submission 14, University of New England, p 9

³⁰² Submission 12, University of New South Wales, p 5

The role of a university governing body

- 7.4 There was considerable consensus among inquiry participants that the role of a governing body is to be the governing authority for a university and that its focus should be on strategic rather than operational matters.
- 7.5 Dr Rudi Lidl, Audit Director, Australian Universities Quality Association, stated that ‘the governing body provides the broad direction to the institution to achieve strategic direction...’³⁰³ Professor Vicki Sara, Chancellor of the University of Technology Sydney, noted that the University’s enabling act makes it very clear that the Council has the overall control and management of the affairs of the University.³⁰⁴ Further to this:
- Council has summarised its function as being “to review, advise, approve and propose policy and strategy in pursuit of UTS’s goals and to raise matters of general University concern”.³⁰⁵
- 7.6 Several participants emphasised that the proper focus of a university governing body was on broad strategic issues, rather than operational matters. For example, Mr John Phillips, Chancellor of the University of Western Sydney, told the Committee that it was appropriate for a governing body to set policies and guidelines within which the executive can operate, but not to manage how these policies are implemented.³⁰⁶
- 7.7 Dr Tim Battin, senior lecturer in the School of Humanities, University of New England (UNE) expressed a similar view, observing that the proper role of a governing body is ‘to steer a university in the broadest terms’ but this should not entail involving itself in operational or day-to-day management matters.³⁰⁷

The role of a Chancellor

- 7.8 Inquiry participants generally agreed that the role of a contemporary Chancellor includes both ceremonial and leadership responsibilities.
- 7.9 Professor Frederick Hilmer, the Vice-Chancellor of the University of NSW (UNSW) believes that the role of a Chancellor goes beyond the ceremonial duties traditionally associated with this position:

... it is more than a ceremonial role. Its role is to preside over the governing body ... to make sure it is well constituted, making sure it has the proper agenda, making sure

³⁰³ Dr Rudi Lidl, Audit Director, Australian Universities Quality Agency, Evidence, 26 February 2009, p 39

³⁰⁴ Submission 8, p 2

³⁰⁵ Submission 8, p 2

³⁰⁶ Mr John Phillips, Chancellor, University of Western Sydney, Evidence 26 February 2009, p 3

³⁰⁷ Submission 22, Dr Tim Battin, p 4

that the papers that come to it get fully disclosed ... making sure that the compliance work of the council is done properly.’³⁰⁸

7.10 The role of the ‘modern’ Australian Chancellor, according to most participants, is parallel to that of the Chairman of the Board. As Mr Phillips explained ‘being chairman of the council or the board of the senate is almost exactly the same as being the chairman of a major Australian company’.³⁰⁹

7.11 The University of Sydney Senate also compared the role of Chancellor with that of a corporate Chair, suggesting that the statutory requirement that the Chancellor preside at all meetings of the governing body at which they are present infers that the Chancellor should exhibit the attributes of a Chairman of the Board.³¹⁰

7.12 While acknowledging the analogies between the positions, a number of inquiry participants expressed discomfort with equating the role of the Chancellor with that of a corporate board chair. Dr Robin Fitzsimons, a fellow of the University of Sydney Senate, noted that while some universities have adopted a more ‘corporate’ look in selecting their Chancellors:

... a Chancellor is not simply the Chair of a Board. ... In the case of the University of Sydney ... We have chosen to choose our Chancellor with a strongest (unwritten) emphasis on that person being someone who will embody all that is best about the university and who will reflect these characteristics to the outside world ...³¹¹

7.13 There was a strongly held view among inquiry participants that a Chancellor *should not* exercise executive functions. The National Tertiary Education Union (NTEU) observed that it is not the Chancellor’s role ‘to intervene in the day to day management of the university’.³¹²

7.14 In her evidence, Professor Eilis Magner, Chair of Academic Board at the University of New England explained that:

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 ... 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.³¹³

7.15 According to Ms Rytmeister, governing body members expect that in dealing with concerns about the performance of a Vice-Chancellor, a Chancellor should still respect the management/executive divide:

³⁰⁸ Professor Frederick Hilmer, Vice-Chancellor, University of New South Wales, Evidence, 26 February 2009, p 22

³⁰⁹ Mr Phillips, Evidence, 26 February 2009, p 3

³¹⁰ Submission 7, p 4

³¹¹ Submission 21, Dr Robin Fitzsimons, p 4 (emphasis in the original)

³¹² Submission 23, National Tertiary Education Union (NSW Branch), p 6

³¹³ Professor Eilis Magner, Chair of the Academic Board, University of New England, Evidence, 17 March 2009, p 40

While members see the VC as the institutional leader and Chief Executive Officer, there is an expectation that the Chancellor will act to deal with a VCs poor performance or impropriety; on the other hand, members are very sensitive to any attempts by the Chancellor to intrude on the management domain and are highly critical of this behaviour.³¹⁴

The role of a Vice-Chancellor

7.16 There was also considerable consensus among inquiry participants regarding the role of the Vice-Chancellor, who is referred to as either the as the chief executive officer (CEO) or principal principal executive officer in the university Acts.

7.17 Professor Sara advised that under the University of Technology, Sydney Act and by laws:

... the Vice Chancellor is the chief executive office (CEO) responsible to the Council for implementing the decisions of the Council, promoting the interests and furthering the development of the University and conducting the 'business' of the University.³¹⁵

7.18 Ms Catherine Rytmeister interviewed 36 university governing body members from seven Australian universities for her doctorate on University Governance. Ms Rytmeister reported that the interviewees generally understood the role of the Vice-Chancellor as being 'the institutional leader and Chief Executive Officer' responsible for the management domain.³¹⁶

7.19 While acknowledging that the role of Vice-Chancellor resembles that of the chair of a company board, Dr Robin Fitzsimons, a member of the University of Sydney Senate, felt that it would be better not to use the term, given the differences between a corporation and a university. Dr Fitzsimons prefers the term 'principal executive officer' used by the University of Sydney Senate:

Although I recognize that the position of Vice-Chancellor has many analogies with that of a company 'Chief Executive Officer' the designation CEO is not one ever heard at the University of Sydney (and I suspect many other universities). I think it would be better not to adopt this term for what are after all very different sorts of organizations.³¹⁷

The relationship between a governing body, Chancellor and Vice-Chancellor

7.20 Inquiry participants generally agreed that the quality of relationships between the members of the governing body, particularly between the Chancellor and Vice-Chancellor, is a critical component of effective university governance. This view was expressed by Ms Rytmeister:

The behaviours of the Chancellor and Vice Chancellor, and the relationship between them, are key determinants of Council culture and effectiveness. They are highly

³¹⁴ Submission 20, p 13

³¹⁵ Submission 8, p3

³¹⁶ Submission 20, Ms Catherine Rytmeister, p 13. The interviews were conducted in 2004-2006.

³¹⁷ Submission 21, p 4

influential in building collective and individual understanding of the nature of the governance-management boundary.³¹⁸

7.21 The Australian Institute of Company Directors expressed similar sentiments in its submission:

...the relationship between the chair (Chancellor) and the chief executive officer (Vice Chancellor) is critical to the organisation's success. It should be based on them affording one another mutual respect and understanding the boundaries of their respective roles.³¹⁹

7.22 Being clear about the respective roles of the chair and chief executive of a governing body is a particularly important aspect of effective governance under the UK Governance Standard for Public Services:

The Chair and chief executive share in the leadership role. The chair's role is to lead the governing body, ensuring it makes an effective contribution to the governance of the organisation; and the chief executive's is to lead the organisation in implementing strategy and managing the delivery of services. A good working relation between the two can make a significant contribution to effective governance.³²⁰

7.23 Several inquiry participants believe that the failure to respect the boundaries between the role of Chancellor and Vice-Chancellor was largely responsible for the difficulties experienced within the UNE council in 2007 and 2008. According to Professor Magner:

There has been evident a misunderstanding about the delineation of duties of the Chancellor and the governing body ... It is clear from many sources ... that the Chancellor is commonly understood as one that carries no executive power. This was not the understanding of the former Chancellor ...³²¹

7.24 The NSW Branch of the NTEU also noted that boundary issues have lead to conflict in at least one NSW university:

Conflict has occurred within at least one NSW university about what is meant by the Vice-Chancellor being the "chief/principal executive officer."³²²

7.25 In his evidence to the Committee, Mr John Cassidy, the former Chancellor at the University of New England told the Committee that the law was clear with regard to the respective roles of the Chancellor and Vice-Chancellor:

...the Chancellor is the principal officer of the university and the Vice-Chancellor is the chief operating officer responsible for the day-to-day activities ... if the person is

³¹⁸ Submission 20, p 13

³¹⁹ Submission 18, Australian Institute of Company Directors, p 3

³²⁰ Independent Commission on Good Governance in Public Services, *The Good Governance Standard for Public Services*, Office for Public Management and The Chartered Institute of Public Finance and Accountancy, 2004, pp 10-11 (attached to submission 4)

³²¹ Submission 32, Professor Eilis Magner, p 1

³²² Submission 23, p 6

not fit for that role, then there should be some mechanism to move on, whether it be the Chancellor, or the Vice Chancellor or any other member of the council.³²³

Committee comment

- 7.26** There is considerable consensus among inquiry participants regarding the role and duties of the key actors within a university governing body. Where this may not have been the case, individual institutions have acted to clarify roles by introducing or amending their own resolutions or rules.
- 7.27** The definitions in the university Acts are clear that the roles of the Chancellor and Vice-Chancellor are distinct and not overlapping. The Committee notes that the language in the university Acts is clear that the Chancellor is the presiding member of the university governing body.

Is there a need to further clarify university governance roles?

- 7.28** A small number of participants, particularly those from the University of New England, felt that the university Acts and/or by laws needed to be amended to address a lack of clarity regarding the roles of the Chancellor and Vice-Chancellor.
- 7.29** Dr Beyersdorf, a staff representative on the University of New England Council, told the Committee that even though the Council adopted a policy in 2006 to define governance roles, these matters need to be defined more clearly in the university legislation or standing orders.³²⁴
- 7.30** Associate Professor Madison from the University of New England asserted that, 'it is essential to define explicitly and differentiate between the roles, duties and responsibilities of both a Chancellor, a Vice-Chancellor and Chief Executive Officer'.³²⁵
- 7.31** Mr John Cassidy, former Chancellor of the University of New England, stated that while the law was clear as to the respective roles of the Chancellor and Vice Chancellor, there was some misunderstanding of these roles 'out there' and therefore the roles 'probably' needed to be 'clarified or restated or re-enacted'.³²⁶
- 7.32** A larger proportion of participants did not support further clarification of university governance roles in the enabling Acts, for various reasons set out in the remainder of this chapter.

³²³ Mr John Cassidy, former Chancellor, University of New England, Evidence, 3 April 2009, p 10

³²⁴ Submission 28, Dr Herman Beyersdorf, p 1

³²⁵ Submission 29, Associate Professor Jeanne Madison, p 1

³²⁶ Mr Cassidy, Evidence, 3 April 2009, p 10

Opposition to further clarification of governance roles

- 7.33** In its joint submission to the 2007 Review of the National Governance Protocols, the University Chancellor's Council and Universities Australia, argued against the need to further clarify governance roles:

The overwhelming consensus is that existing protocols adequately deal with the role, responsibilities and activities of governing bodies and the duties and obligations of individual members. The legislation establishing the various universities also contributes to this adequacy. A more detailed prescriptive approach could be counterproductive, militating against the object of diversity and adding unnecessarily to compliance/reporting costs.³²⁷

- 7.34** Referring to the above submission, the New South Wales Vice-Chancellors' Committee told the Committee that as this submission was made recently, 'the NSWVCC considered that the issues had already been dealt with carefully and comprehensively, and that the statements made in the Joint Submission do not warrant being revisited at this stage.'³²⁸

- 7.35** A similar view was expressed by the University of Sydney Senate:

It is the University's view that in combination the provisions of the Act, By-Law and Senate's governance resolution provide an appropriate and adequate description of the roles of the Chancellor, Senate and Vice Chancellor.³²⁹

- 7.36** Ms Rytmeister pointed out that the recent conflict over governance roles at the University of New England was anomalous and thus should not be the trigger for substantive legislative change.³³⁰

Opposition to further prescription of governance roles

- 7.37** Several participants felt that individual universities should be able to determine whether or not they need to further clarify their governance roles, rather than this being imposed on them. As Dr Robin Fitzsimons told the Committee:

At the end of the day, I respectfully submit that these are situations for each university governing body to sort out, each bearing in mind its own history and mission ... The nuances of the duties of Chancellor and relationships with the governing body and Vice Chancellor are for the governing body of each university to decide ...and not one which the government should normally seek to influence".³³¹

³²⁷ Submission 2, New South Wales Vice-Chancellors' Committee, p 4 (the joint submission from the University Chancellor's Council - Universities Australia to the Review of National Governance Protocols was provided to the committee as part of the Submission 2)

³²⁸ Submission 2, p1

³²⁹ Submission 7, p 3

³³⁰ Submission 20, p 74

³³¹ Submission 21, pp 3-5

- 7.38** The National Tertiary Education Union does not support ‘legislating specific roles, functions and duties for governing bodies, its membership, Chancellors and Vice-Chancellors’ because it would mean adopting an inflexible, ‘one size fits all’ approach.³³²
- 7.39** The University of New South Wales Student Representative Council similarly recommended that, if there is any uncertainty in legislation regarding the scope of any role, ‘a university should be required to set out how it defines the role and communicate this through its by laws or rules’, rather than legislation.³³³

Tension between governance roles

- 7.40** Some inquiry participants commented that demarcation disputes between actors in governance arrangements, particularly Chancellors and the governing body, were inevitable and in some circumstances may actually be productive.
- 7.41** Dr Fitzimons noted that while in theory Chancellors and Vice-Chancellors should not interfere in each other’s domains, is often very difficult to abide by this principle in practice:

Whereas it is generally true that ‘managers manage and directors direct’ this belies a complexity of interactions; it is also true that the balance of responsibilities will vary from time to time according to relative strengths and weaknesses of the CEO and the Board.³³⁴

- 7.42** Ms Rytmeister’s research also demonstrated that tensions between the boundaries of governance roles are inevitable and not necessarily harmful:

Given the different perspectives and backgrounds of governing body members, a certain level of tension around roles is inevitable, but this only rarely translates into overt conflict ... Tension and conflict are not necessarily problematic if there remains a sufficient level of mutual respect and trust among the membership.³³⁵

- 7.43** According to Professor Hilmer, ‘The lines [between Council and management] are always going to be blurred. It is never crystal clear and it needs people of skill coming back and understanding with goodwill to make them work’.³³⁶ A healthy governance culture is therefore critical.

³³² Submission 23, p 6

³³³ Submission 25, Arc - University of New South Wales, p 7

³³⁴ Submission 21, p 3

³³⁵ Submission 20, pp 13-14

³³⁶ Professor Hilmer, Evidence, 26 February 2009, p 23

The importance of a healthy governance culture

7.44 Several inquiry participants pointed out the importance of a healthy governance culture as a critical component of effective governance. In the academic literature on governance, cultural issues: namely the behaviour and actions of governing bodies and their members, are often referred to as ‘soft’ governance, whereas the legislation and structures that regulate a governing body are described as ‘hard’ governance.

7.45 The Australian Institute of Company Directors advised that cultural issues were just as important for an effective governance structure as ‘hard governance’:

Cultural issues are as important as structural and procedural ones for a governing body. Trust, respect and engagement amongst governing body members directly impact the governing body’s effectiveness, as does the relationship between the chair (Chancellor) and the chief executive officer (Vice Chancellor). Without this constructive context, the formal legal requirements will not lead to an effective governing body.³³⁷

7.46 Ms Rytmeister also stressed the importance of relationships and values in effective governance:

My findings confirm those of many authors in the corporate governance field who have emphasised that compliance with codes of practice, guidelines, regulation and legislation, while it may be necessary, is of itself insufficient to ensure effective organisational governance. Governing body culture, the values, behaviours, experience and expertise of members, and the interactions and relationships between these individuals are far more important factors in determining the nature and effectiveness of governance practice.³³⁸

7.47 Ms Rytmeister believes there are problems inherent in seeking to overdefine governance roles:

...I would not like to see some very prescriptive legislation that shifts the focus onto people saying, “Oh, do the rules so we can do this or do the rules say we cannot?” rather than saying, “The vice Chancellor and the Chancellor have negotiated boundaries between them and that is very transparent to the council or the governing body. People understand it, people know where the grey areas are and we have a way of dealing with those because we have discussed them ...”³³⁹.

7.48 Dr Maxine Darnell, the President of the National Tertiary Education Union (University of New England Branch), told the Committee, that ‘the clarification of roles can only partially be set by legislation’ because effective governance depends on ‘personalities within those roles’.³⁴⁰

³³⁷ Submission 18, p 3

³³⁸ Submission 20, p 11

³³⁹ Ms Rytmeister, Evidence, 23 March 2009, p13

³⁴⁰ Dr Maxine Darnell, President, National Tertiary Education Union (University of New England Branch), Evidence, 17 March 2009, p 10

- 7.49 Mr Warwick Watkins, the Deputy Chancellor of the University of Technology, Sydney, also emphasised the importance of the cultural aspects of effective governance:

Irrespective of whatever structure is in place, whether it be a university or some other area, you can legislate and write things down, but the real measure of performance is based around goodwill, partnerships and the way in which people undertake their activities. Nothing will ever replace that.³⁴¹

- 7.50 A similar view was held by Mr Phillips, the Chancellor of the University of Western Sydney, explained that the personality of governing body members is as important as their qualifications:

On top of everything else, apart from the qualifications, people have to be able to work together. They have to be able to speak their mind, argue their point of view, and at the end of the day work together. If you get people with overweening ambition or they too strong a sense of vanity, they will never make a good member.³⁴²

Committee comment

- 7.51 The respective roles and duties of the members of a university governing body are well understood by members of university governing bodies. The committee does not believe there is a need to amend the university Acts to further clarify roles. As several witnesses have emphasised, social and cultural processes are more meaningful in developing members' understanding of their roles than legislation and regulation. Individual institutions can adjust their own by-laws, resolutions or rules if they feel the need for further clarification, as some universities have done in recent years.
- 7.52 Disputes regarding the delineation of duties between governing body members, particularly a Chancellor and Vice-Chancellor, are relatively infrequent, and are not inherently unhealthy if they are resolved within a culture that allows for open discussion, mutual trust and respect.
- 7.53 Recruitment of governing body members and in particular, choosing a Chancellor who will respect the boundaries of their position is also crucially important in preventing destructive disputes about role boundaries. There may be occasions when a dispute between the governing body and its Chancellor are cannot be resolved. In such cases universities need an effective and timely means of removing a Chancellor in whom it has lost confidence.

³⁴¹ Mr Warwick Watkins, Deputy Chancellor, University of Technology, Sydney, Evidence, 23 March 2009, p 27

³⁴² Mr Phillips, Evidence, 26 February 2009, p 3

Appendix 1 Submissions

No	Author
1	Confidential
2	NSW Vice-Chancellors' Committee
3	Dr Carol O'Donnell
3a	Dr Carol O'Donnell – Supplementary submission
4	LH Martin Institute for Higher Education Leadership and Management
5	Name suppressed
6	Charles Sturt University
7	The University of Sydney
8	The University of Technology Sydney
9	Department of Education, Employment and Workplace Relations
10	Dr Jessica Milner Davies
11	Australian Universities Quality Agency
12	University of New South Wales
13	National Institute for Governance
14	University of New England
15	Confidential
16	UNSW Alumni Association
17	Student Representative Council, University of Sydney
18	Australian Institute of Company Directors
19	CPSU-SPSF NSW Branch/Public Service Association
20	Ms Catherine Rytmeister
21	Dr Robin Fitzsimons
22	Dr Tim Battin
23	National Tertiary Education Industry Union, NSW Branch
24	Council Of Australian Postgraduate Associations Incorporated
25	Arc, University of New South Wales
26	Confidential
27	Mr John Cassidy
28	Dr Herman Beyersdorf
29	Associate Professor Jeanne Madison
30	National Tertiary Education Union, University of New England Branch
31	Rev Judith Redman

No	Author
32	Professor Eilis Magner
33	Ms Kay Hemsall
34	National Tertiary Education Union, UWS Branch
35	Associate Professor John Carmody
36	Dr Charles Richard Watson

Appendix 2 Witnesses

Date	Name	Position and Organisation
26 February 2009, Jubilee Room Parliament House	Mr John Phillips AO	Convenor, University Chancellors' Council
	Mr James Swansson	Researcher, National Institute of Governance, University of Canberra
	Professor Fred Hilmer AO	Convenor, NSW Vice-Chancellors' Committee
	Ms Genevieve Kelly	Secretary, National Tertiary Education Union, NSW Division
	Ms Amanda McCormack	Organiser, National Tertiary Education Union, NSW Division
	Mr Mark Dolahenty	Senior Industrial Officer, National Tertiary Education Union, NSW Division
	Mr Leonard Palmer	President, National Tertiary Education Union, NSW Division
	Dr Rudi Lidl	Audit Director, Australian Universities Quality Association
	Mr Noah White	President, Student Representative Council, University of Sydney
	Mr James Campbell	Caseworker and Policy Officer, Student Representative Council, University of Sydney
17 March 2008, Oralla Centre, University of New England	Ms Kay Hemsall	Member, University of New England Council & Manager, Organisational Development, University of New England – appearing in an individual capacity
	Dr Maxine Darnell	President, University of New England Branch, National Tertiary Education Union
	Mr Mark Dolahenty	Senior Industrial Officer, National Tertiary Education Union, NSW Division
	Dr Herman Beyersdorf	Former Member, University of New England Council – appearing in an individual capacity
	Rev Judy Redman	Former Member, University of New England Council – appearing in an individual capacity
	Associate Professor Jeanne Madison	Member, University of New England Council – appearing in an individual capacity

Date	Name	Position and Organisation
	Professor Eilis Magner	Chair, Academic Board, University of New England – appearing in an individual capacity
23 March 2009, Conference Rooms 1 & 2, Darlington Centre, The University of Sydney	Dr Michael Spence	Vice-Chancellor, The University of Sydney
	Mr Alan Cameron	Deputy Chancellor, The University of Sydney
	Ms Catherine Rytmeister	Lecturer in Higher Education Development and PhD student, Macquarie University
	Dr Jessica Milner Davies	Former member of a university governing body
	Mr Warwick Watkins	Deputy Chancellor, University of Technology, Sydney
	Dr Robin Fitzsimons	Fellow, The University of Sydney Senate – appearing in an individual capacity
3 April 2009, Jubilee Room, Parliament House	Mr John Cassidy	Former Chancellor, University of New England

Appendix 3 Site visits

Date	Location
17 March 2009	Ooralla Lecture Theatre, University of New England, Armidale
23 March 2009	Conference Rooms 1 & 2, The University of Sydney, Darlington

Appendix 4 Tabled documents

Thursday 26 February 2009

Public Hearing, Jubilee Room, Parliament House

1. Table of University Acts - *tendered by Dr James Swansson*

Monday 23 March 2009

Public Hearing, Conference Rooms 1 & 2, Darlington Centre, The University of Sydney

2. The challenge of the 'representational board' - *tendered by Mr Alan Cameron*
3. Auditor-General's Report to Parliament 2004 Volume Four - *tendered by Dr Jessica Milner Davies*
4. Auditor-General's Report to Parliament 2005 Volume Two - *tendered by Dr Jessica Milner Davies*
5. Graduation and Other Selected Addresses - *tendered by Dr Robin Fitzsimons*

Appendix 5 Size and composition of university governing bodies in NSW

University	Ex-officio members	Members appointed by the Minister	Members appointed by the governing body ^{1,3,4,5}	No. of Academic Staff	No. of Non - Academic Staff	No. of Under-Graduate Students	No. of Post-Graduate Students	No. of Alumni or Convocation members	No. of members required by legislation	Total no. of members
UNE	3	6	2 (1)	2	1	1	1	2 (1)	16	18
UNSW	3	6	2 (1)	4	1	1	1	4 (4)	21	22
Sydney	3	6	1 (1)	4	1	1	1	5 (5)	22	22
UTS	3	6	4 (1)	2	1	1	1	2 (1)	16	20
UWS	3	6	4 (1)	1	1	1	1	1 (1)	15	18
Macquarie	3	6	1 (1)	3	1	1 ²		4 (1)	16	19
Charles Sturt	3	6	3 (1)	2	1	2		1 (1)	16	18
Wollongong	3	6	3 (1)	2	1	1	1	2 (1)	16	19
Newcastle	3	6	1 (1)	2	1	1	1	4 (1)	16	19
Southern Cross	3	6	2 (1)	2	1	1		1 (1)	15	16

- 1 Numbers in brackets indicate the minimum representation required by the legislation. Numbers in bold indicate the current representation in the category.
- 2 The legislation provides for a student representative. It does not differentiate between undergraduate and post-graduate students.

Appendix 6 Remuneration provisions for Victorian universities ¹

University	Band	Year introduced	Member p.a.	Chair p.a.
Melbourne	Band 3 (Group A)	2006	\$15,500	\$19,500
RMIT	Band 4 (Group A)	2004	\$13,000	\$16,250
Victoria	Band 5 (Group A)	2004	\$9,000	\$11,250
La Trobe	Band 5 (Group A)	2006	\$9,000	\$11,250
Swinburne	Band 5 (Group A)	2006	\$9,000	\$11,250
Ballarat	Band 5 (Group A)	2007	\$9,000	\$11,250

¹ Email from Mr Ian Gribble, Manager, Governance Unit, Victorian Department of Innovation, Industry and Regional Development, to Principal Council Officer, 11 May 2009

Appendix 7 Minutes

Minutes No. 24

Monday, 13 October 2008

General Purpose Standing Committee No. 2

Jubilee Room, Parliament House, Sydney, at 9.03 am

1. Members present

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Mr Greg Donnelly

Dr John Kaye (Rhiannon)

Rev Dr Gordon Moyes (from 9.15 am)

Mrs Melinda Pavey (Ficarra)

Mr Mick Veitch (Catanzariti)

2. Substitute members

The Chair advised that she had received written advice that the following members would be substituting for the purposes of this hearing:

- Dr Kaye to substitute for Ms Rhiannon
- Mrs Pavey to substitute for Ms Ficarra
- Mr Veitch to substitute for Mr Catanzariti

3. Correspondence

The Committee noted the following item of correspondence received:

- 7 October 2008 – Letter from Ms Robertson, Ms Parker and Ms Rhiannon requesting a meeting of GPSC2 to consider a proposed self reference into the governance of NSW Universities.

4. Consideration of proposed self reference – the governance of NSW Universities

The Chair tabled a letter to the Clerk of the Committee signed by Ms Robertson, Ms Parker and Ms Rhiannon requesting a meeting of GPSC2 to consider a proposed self reference into the governance of NSW Universities.

Resolved, on the motion of Ms Robertson: That the Committee adopt the following terms of reference:

That the General Purpose Standing Committee No 2 inquire into and report on the current state of governance of NSW universities and in particular,

- a) Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellors and the consequential opportunities for conflict,
- b) Any apparent lack of clarity in the delineation of duties of governing bodies and the Chancellors,
- c) Identification of the roles and responsibilities of the Vice-Chancellor, the governing body and the Chancellor in relation to the formation of University policy and grievance procedures, and the communication of such policies to the student body,
- d) The appropriateness of changes in the duties and responsibilities of governing body members,
- e) Opportunities for governing bodies and chancellors to intervene in the responsibilities that more properly lie with the Vice-Chancellor as Chief Executive Officer,
- f) Current and possible future mechanisms for reviewing the performance of chancellors and governing body members in discharging their responsibilities,
- g) Protocols for addressing poor performance of chancellors and governing body members,

- h) The representation on governing bodies, and their committees, of staff and students and the current and appropriate balance between external members and elected representatives, and
- i) Proposals for changes to the various acts governing NSW universities and to the National Higher Education Governance Protocols to address any systemic causes found.
- j) Any other related matter.

5. ***

6. ***

7. **Adjournment**

The Committee adjourned at 1.04 pm until Monday, 13 October 2008 at 2.00pm.

Stephen Frappell

Clerk to the Committee

Minutes No. 27

Tuesday 14 October 2008

General Purpose Standing Committee No. 2

Room 1102, Parliament House, 9.00am

1. **Members present**

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Mr Tony Catanzariti

Ms Lee Rhiannon

Mr Greg Donnelly

Ms Marie Ficarra

Rev Dr Gordon Moyes

2. **Previous minutes**

Resolved, on the motion of Ms Rhiannon: That draft Minutes No. 22 and 23 be confirmed.

3. ***

4. **Inquiry into the governance of NSW Universities**

Resolved, on the motion of Ms Robertson: That the Committee advertise the inquiry terms of reference in the relevant Sydney metropolitan media and specialist university publications.

5. ***

6. **Adjournment**

The Committee adjourned at 5:55 pm

Beverly Duffy

Clerk to the Committee

Minutes No. 31

Friday, 24 October 2008

General Purpose Standing Committee No. 2

Room 814/815, Parliament House, Sydney, at 9.30 am

1. **Members present**

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Mr Ian Cohen (Rhiannon)

Mr Greg Donnelly

Ms Marie Ficarra
Ms Kayee Griffin (Catanzariti)

2. **Apologies**

Rev Dr Gordon Moyes

3. **Substitute members**

The Chair advised that she had received written advice that the following members would be substituting for the purposes of this hearing:

- Ms Griffin to substitute for Mr Catanzariti

4. **Correspondence**

The Committee noted the following items of correspondence:

Received

- 15 October 2008 - Email from Ms Rhiannon advising that Dr Kaye will be substituting for Ms Rhiannon for the duration of the inquiry into the governance of NSW universities.

5. *******

6. **Adjournment**

The Committee adjourned at 11:30 am

Beverly Duffy
Clerk to the Committee

Minutes No. 32

Wednesday 12 November 2008
General Purpose Standing Committee No. 2
Members' Lounge, Parliament House, Sydney, at 10.30 am

1. **Members present**

Ms Robyn Parker (Chair)
Ms Christine Robertson (Deputy Chair)
Mr Tony Catanzariti
Mr Greg Donnelly
Ms Marie Ficarra
Dr John Kaye
Revd Dr Gordon Moyes

2. **Minutes**

Resolved, on the motion of Ms Ficarra: That draft minutes no. 31 be confirmed.

3. *******

4. **Inquiry into the governance of NSW universities**

Resolved, on the motion of Ms Robertson: That the timetable be amended to include a half-day public hearing on site at Sydney University, and to reflect that other committee commitments some members are not available on 18 and 19 March 2008, and that the Committee reconsider an amended schedule to be prepared by the Secretariat.

Resolved, on the motion of Ms Robertson: That the stakeholder letter to each University Council request that the letter be circulated to each member of the Council.

Resolved, on the motion of Dr Moyes: That the Committee write to the stakeholders identified by the Secretariat, as well as any additional stakeholders identified by Committee members and notified to the Secretariat by 5 pm Friday 14 November, informing them of the Inquiry and inviting them to make a submission.

Resolved, on the motion of Ms Robertson: That the selection of witnesses be left in the hands of the Chair, in consultation with Committee members.

5. ***

6. ***

7. **Adjournment**

The Committee adjourned at 10.57 am.

Madeleine Foley

Clerk to the Committee

Minutes No. 37

Thursday 26 February 2009

General Purpose Standing Committee No. 2

Jubilee Room, Parliament House, Sydney, at 10 am

1. **Members present**

Ms Robyn Parker (Chair)

Ms Christine Robertson (Deputy Chair)

Mr Tony Catanzariti

Mr Greg Donnelly

Ms Marie Ficarra

Dr John Kaye (Rhiannon)

Dr Gordon Moyes

2. **Minutes**

Resolved, on the motion of Ms Robertson: That draft minutes no. 36 be confirmed.

3. **Inquiry into university governance – statement of members’ affiliations**

Mr Catanzariti informed the Committee that he is a member of the Charles Sturt University Council.

Dr Kaye informed the Committee that he is a member of the National Tertiary Education Union.

Ms Robertson informed the Committee that she was a member of the University of New England Council from May 2003 to December 2004.

Mr Catanzariti, Dr Kaye and Ms Robertson asked the Chair that their affiliations be placed on the public record during the hearing, and be noted in the Committee’s report on university governance.

4. **Correspondence**

The Committee noted the following items of correspondence received:

- 18 February 2009 – From Oates & Smith Solicitors, representing John Cassidy, former Chancellor of the University of New England, requesting an extension to make a submission
- 16 February 2009 – From Professor Alan Pettigrew, Vice Chancellor and CEO, University of New England, advising that he does not wish to appear before the Committee at a public hearing.

5. ***

6. **Inquiry into governance of NSW universities: Publication of submissions**

The Committee considered submission no.’s 1 to 26, which had been previously circulated.

Resolved, on the motion of Ms Ficarra: That the Committee authorise the Secretariat to distribute hard copies of confidential submissions, provided that the submissions are copied on red paper.

Resolved, on the motion of Ms Robertson: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no.'s 2-4, 7-11, 13-14, 16-21, 23-25.

Resolved, on the motion of Dr Kaye: That the Committee defer consideration of submission no. 22.

Resolved, on the motion of Ms Robertson: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no.'s 6 and 12 but that the attachments be kept confidential at the request of the author.

Resolved, on the motion of Ms Robertson: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no. 5 with the author's name and other identifying information omitted at the request of the author.

Resolved, on the motion of Ms Ficarra: That submission no.'s 1 and 26 be kept confidential at the request of the authors.

Resolved, on the motion of Mr Catanzariti: That the Committee defer consideration of submission no. 15.

7. **Inquiry into governance of NSW universities: Site visits**

Resolved, on the motion of Dr Moyes: That the Committee invite the following witnesses to the hearings at the University of New England on 17 March and the University of Sydney on 23 March 2009, as well as any additional witnesses identified by Committee members and notified to the Secretariat by 5 pm Monday 2 March, subject to consultation with Committee members regarding additional witnesses nominated by Committee members:

- The Hon Richard Torbay MP, Chancellor, University of New England (UNE)
- Ms Zeri Hudaverdi, President, UNE Branch of the National Tertiary Education Union
- Ms Kay Hemsall, current member of the UNE Council
- Dr James Harris, current member of the UNE Council
- Revd Judy Redman, former member of the UNE Council
- Professor Victor Minichiello, Pro-Vice Chancellor and Dean of the Faculty of The Professions, UNE
- Professor Graham Webb, Deputy Vice Chancellor, UNE
- Dr Michael Spence, Vice Chancellor and Mr Alan Cameron, Deputy Chancellor, University of Sydney
- Dr Robin Fitzsimons, Fellow of the Sydney University Senate.

8. **Inquiry into governance of NSW universities: Public hearing**

Resolved, on the motion of Ms Ficarra: That the Committee request that the answers to any questions taken on notice be returned within two weeks from the date on which they are sent.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

Mr John Phillips, Convenor of the University Chancellors' Council and Chancellor of the University of Western Sydney, was sworn and examined.

The evidence concluded and the witness withdrew.

Dr James Swansson, Researcher, National Institute of Governance, was sworn and examined.

Dr Swansson tendered a document relating to the governance arrangements outlined in universities' enabling legislation.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Catanzariti: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee accept and publish the document tendered by Dr Swansson relating to the governance arrangements outlined in universities' enabling legislation.

Professor Fred Hilmer, Convenor of the NSW Vice-Chancellors' Committee and Vice-Chancellor and President of the University of New South Wales, was sworn and examined.

The evidence concluded and the witness withdrew.

The following witnesses from the NSW Division of the National Tertiary Education Union were sworn and examined:

- Dr Len Palmer, President
- Ms Genevieve Kelly, Secretary
- Ms Amanda McCormack, Organiser
- Mr Mark Dolahenty, Senior Industrial Officer.

The evidence concluded and the witnesses withdrew.

Dr Rudi Lidl, Audit Director, Australian Universities' Quality Association, was sworn and examined.

The evidence concluded and the witness withdrew.

The following witnesses from the Sydney University Student Representative Council, representing the National Union of Students, were sworn and examined:

- Mr Noah White, President
- Mr James Campell, Caseworker and Policy Officer.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.45 pm. The public and the media withdrew.

9. **Deliberative meeting**

The Committee considered submission no. 27, which having been received this day, was circulated to the Committee.

Resolved, on the motion of Dr Moyes: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no.'s 22 and 27 with the omission of potential adverse mention, subject to the amended versions being circulated to the Committee.

Resolved, on the motion of Ms Robertson: That, subject to the agreement of the author, the Committee forward submission no. 15 to both the NSW Attorney General and the Minister for Education and Training, and ask them to respond to the matters raised.

10. **Adjournment**

The Committee adjourned at 4.55 pm until 2.15 pm Monday 16 March 2009 (site visit to Armidale)

Madeleine Foley

Clerk to the Committee

Minutes No. 38

Tuesday 17 March 2009

General Purpose Standing Committee No. 2

University of New England, Armidale at 8.30 am

1. **Members present**

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Ms Penny Sharpe (Catanzariti)
 Mr Greg Donnelly
 Ms Marie Ficarra
 Dr John Kaye (Rhiannon)
 Dr Gordon Moyes

2. Substitutions

The Chair advised that she had received written advice from the Government Whip that Ms Sharpe would be substituting for Mr Catanzariti for the purpose of the public hearing at the University of New England.

3. Minutes

Resolved, on the motion of Dr Kaye: That draft minutes no. 37 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence received:

- 6 March 2009 – From Andrew Rolfe, Director, Higher Education, NSW Department of Education and Training, to the Committee Director, providing background information to assist the Secretariat with the University Governance Inquiry
- ***
- 10 March 2009 – From James Swansson, Researcher, National Institute of Governance, to the Principal Council Officer, providing papers on how to evaluate the performance of boards and councils.

The Committee noted the following items of correspondence sent:

- 4 March 2009 – From the Chair to Verity Firth MP, Minister for Education and Training, regarding submission no. 15 to the Inquiry into university governance
- 4 March 2009 – From the Chair to John Hatzistergos MLC, Attorney General, regarding submission no. 15 to the Inquiry into university governance

5. University governance inquiry: Publication of submissions

Resolved, on the motion of Ms Ficarra: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no.'s 28, 29, 30, 31, 32, 33 and 34.

Resolved, on the motion of Mr Donnelly: That the Committee invite the former Chancellor of the University of New England, Mr John Cassidy, to provide in camera evidence to the Committee at 9am on 3 April 2009, with a view to publishing his evidence after the hearing, and that Mr Cassidy be given the opportunity to be accompanied by a support person.

6. ***

7. Inquiry into governance of NSW universities: Tour of Booloominbah Homestead

The A/Chief Operating Officer of the University of New England, Mr Mike Quinlan, accompanied Committee members on a tour of Booloominbah Homestead and nearby campus facilities.

8. Inquiry into governance of NSW universities: Public hearing at the UNE, Armidale

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding adverse mention, members' affiliation, the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Kay Hemsall, Member, University of New England Council & Manager, Organisational Development, University of New England

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr Maxine Darnell President, University of New England Branch, National Tertiary Education Union and Mr Mark Dolahenty Senior Industrial Officer, NSW Division, National Tertiary Education Union (under previous oath)

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Herman Beyersdorf, former Member, University of New England Council, was sworn and examined.

Dr Beyersdorf tabled a document relating to the role of Vice Chancellors.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

9. Deliberative meeting

Resolved, on the motion of Ms Ficarra: That the Committee decline a request to give in camera evidence received from an individual not scheduled to appear at the public hearing, and to invite this person to provide a confidential submission to the Inquiry.

10. Inquiry into governance of NSW universities: Public hearing (Cont'd)

Witnesses, the public and the media were admitted.

The following witness was sworn and examined:

- Revd Judith Redman, former Member, University of New England Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Associate Professor Jeanne Madison, Member, University of New England Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor Eilis Magner Chair, Academic Board, University of New England

The evidence concluded and the witness withdrew.

The public hearing concluded at 3.30 pm. The public and the media withdrew.

11. Adjournment

The Committee adjourned at 3.30 pm.

Beverly Duffy

Clerk to the Committee

Minutes No. 39

Monday 23 March 2009

General Purpose Standing Committee No. 2

University of Sydney at 9.00am

1. Members present

Ms Robyn Parker (*Chair*)
 Ms Christine Robertson (*Deputy Chair*)
 Mr Tony Catanzariti
 Mr Greg Donnelly
 Ms Marie Ficarra
 Dr John Kaye (Rhiannon)
 Dr Gordon Moyes

2. **University governance inquiry: Public hearing at Sydney University**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding members' affiliations, the broadcasting of proceedings and other matters.

The following witnesses from the University of Sydney were sworn and examined:

- Dr Michael Spence, Vice Chancellor
- Mr Alan Cameron, Deputy Chancellor.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Catherine Rytmeister, Lecturer in Higher Education and Phd Student.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Jessica Milner Davis, former member of a university governing body.

The evidence concluded and the witness withdrew

The following witness was sworn and examined:

- Mr Warwick Watkins, Deputy Chancellor, University of Technology, Sydney.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Robin Fitzsimons, fellow, USYD Senate (appearing in an individual capacity).

The evidence concluded and the witness withdrew.

The public hearing concluded at 1.00 pm. The public and the media withdrew.

3. **Deliberative meeting**

Minutes

Resolved, on the motion of Dr Kaye: That Item 5 of draft Minutes No. 38 be amended by omitting the words 'Dr Kaye' prior to the second resolution and inserting instead 'Mr Donnelly'.

Resolved, on the motion of Dr Kaye: That draft minutes no. 38, as amended, be confirmed.

University governance inquiry: Publication of submissions

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and standing order 223(1), the Committee authorise the publication of submission no. 35.

University governance inquiry – transcript

Resolved, on the motion of Ms Robertson: That the Committee defer publication of the transcript of the evidence from Dr Milner Davis until the Secretariat has had an opportunity to confer with Dr Milner Davis about aspects of her evidence.

4. Adjournment

The Committee adjourned at 1.10 pm.

Beverly Duffy

Clerk to the Committee

Minutes No. 40

Wednesday 25 March 2009

General Purpose Standing Committee No. 2

2.05 pm, Room 1102, Parliament House

1. Members present

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Mr Greg Donnelly

Ms Marie Ficarra

Dr John Kaye (Rhiannon)

Dr Gordon Moyes

2. Apologies

Mr Catanzariti

3. Minutes

Resolved, on the motion of Mr Donnelly: That draft Minutes No. 39 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Received

- 19 March 2009 – from Oates and Smith Solicitors, on behalf of Mr John Cassidy, accepting the Committee's invitation to attend the hearing on 3 April 2009

5. University Governance Inquiry

Resolved, on the motion of Ms Ficarra: That submission no 36 remain confidential to the Committee.

6. ***

7. Adjournment

The Committee adjourned at 2.20 pm.

Beverly Duffy

Clerk to the Committee

Minutes No. 41

Friday 3 April 2009

General Purpose Standing Committee No. 2

9.15 am, Room 1102, Parliament House

1. Members present

Ms Robyn Parker (*Chair*)
 Ms Christine Robertson (*Deputy Chair*)
 Mr Tony Catanzairiti (until 9.40 am)
 Ms Marie Ficarra
 Dr John Kaye (Rhiannon)

2. **Apologies**

Mr Greg Donnelly
 Revd Dr Gordon Moyes

3. **University Governance: In-camera hearing**

The Committee proceeded to take *in camera* evidence from Mr John Cassidy. Mr Cassidy was accompanied by his legal advisor Mr Ian Temby QC, in accordance with the Committee's previous resolution that Mr Cassidy be given the opportunity to be accompanied by a support person.

Persons present other than the Committee: Ms Beverly Duffy, Ms Madeleine Foley, Ms Kate Mihaljek and Mr Ian Thackeray of the Committee Secretariat, and Ms Jenny Drury of CAT Reporters.

The Chair made an opening statement regarding legal representation of witnesses and other matters.

Mr Cassidy was sworn and examined.

Evidence concluded and the witness and his legal advisor withdrew.

Resolved, on the motion of Dr Kaye: That, in the public interest and at the request of the witness, and according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(2), the Committee authorise the publication of the *in camera* transcript of evidence of Mr John Cassidy.

4. **Previous Minutes**

Resolved, on the motion of Ms Ficarra: That draft Minutes No. 40 be confirmed.

5. *******

6. **University Governance Inquiry: Publication of submissions**

Resolved, on the motion of Ms Ficarra: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of submission no. 36.

7. *******

8. *******

9. **Adjournment**

The Committee adjourned at 10.15 am.

Madeleine Foley
Clerk to the Committee

Minutes No. 43

Monday 11 April 2009
 General Purpose Standing Committee No. 2
 9.30 am, Room 814/815, Parliament House

1. **Members present**

Ms Robyn Parker (*Chair*)
 Ms Christine Robertson (*Deputy Chair*)
 Mr Greg Donnelly (until 12.45pm)
 Ms Marie Ficarra
 Dr John Kaye (Rhiannon)
 Ms Lynda Voltz (Catanzariti) (until 12.45pm)

2. **Apologies**

Mr Donnelly from 1.30 pm

Ms Voltz from 1.30 pm

3. *******

4. **Deliberative meeting**

Correspondence

The Committee noted the following correspondence.

Received

- 17 April 2009 – From Dr Robin Fitzsimons, Fellow, The University of Sydney, providing an answer to a question taken on notice from the University Governance Inquiry hearing on 23 March 2009

- 5 May 2009 – From the Hon John Hatzistergos MLC, Attorney General, to the Chair, advising that he is unable to provide advice on the concerns raised in submission no. 15 to the University Governance Inquiry because they relate to a private legal dispute

Resolved, on the motion of Ms Robertson: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and standing order 223(1), the Committee authorise the publication of the responses to questions on notice from Dr Robin Fitzsimons, Mr John Dalglish and Mr David McKie.

University Governance

Resolved, on the motion of Dr Moyes: That the Secretariat be empowered to email the Chair's report for the University Governance Inquiry to those members who request to receive the report in this manner.

5. *******

6. **Adjournment**

The Committee adjourned at 4:05pm.

Madeleine Foley

Clerk to the Committee

DRAFT Minutes No. 46

Monday 25 May 2009

General Purpose Standing Committee No. 2

10.05 am, Room 1102, Parliament House

1. **Members present**

Ms Robyn Parker (*Chair*)

Ms Christine Robertson (*Deputy Chair*)

Mr Tony Catanzariti

Mr Greg Donnelly

Ms Marie Ficarra

Dr John Kaye (Rhiannon)

Dr Gordon Moyes

2. Minutes

Resolved on the motion of Ms Ficarra: That Item 7 of Minutes No. 44 be amended by inserting the words 'regarding the power of Committees to act when it has not adopted terms of reference for an inquiry' after 'Clerk'.

Resolved, on the motion of Ms Ficarra: That draft Minutes No. 44, as amended, be confirmed.

3. *****4. *******5. University Governance Inquiry: Chair's draft report**

The Chair tabled her draft report entitled *Governance of NSW universities*, which, having been previously circulated, was taken as being read.

The Chair tabled amendments to Chapter 2 of her draft report, which were previously circulated.

Chapter 1 read.

Resolved, on the motion of Dr Kaye: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Dr Kaye: That paragraph 2.5 be amended by omitting the word 'viable' and inserting instead 'focused'.

Resolved, on the motion of Ms Ficarra: That the following recommendation be inserted after paragraph 2.46 'That the Minister investigate the most appropriate method to ensure the full disclosure of the terms and conditions of employment contracts for university staff.'

Resolved, on the motion of Dr Moyes: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Donnelly: That Chapter 3 be adopted.

Chapter 4 read.

Resolved, on the motion of Dr Kaye: That the introduction be amended by inserting the word 'some' before 'raised' and omitting the word 'some' before 'aspects'.

Resolved, on the motion of Ms Robertson: That paragraph 4.13 be deleted.

Resolved on the motion of Dr Kaye: That paragraph 4.42 be amended by omitting the word 'a' and inserting instead 'an alleged' before 'tendency'

Resolved, on the motion of Ms Robertson: That Recommendation 1 be amended by omitting the word 'reduce' and inserting instead 'with respect to', and omitting the words 'from four to one' and inserting instead 'in line with other universities'.

Mr Donnelly moved: That Recommendation 2 be adopted.

Question put and passed.

On the question being put, Dr Kaye, being the only member voting for the noes, asked for his vote to be recorded in the Minutes.

Resolved, on the motion of Dr Moyes: That Recommendation 3 and paragraph 4.102 be omitted.

Resolved, on the motion of Mr Donnelly: That Recommendation 4 and paragraph 4.103 be omitted.

Resolved, on the motion of Mr Catanzariti: That Recommendation 5 be amended by inserting 'with half the number being retired at each election' after 'two years'.

Resolved, on the motion of Dr Moyes: That the Secretariat be authorised to revise all Committee Comment sections to reflect new or amended recommendations.

Resolved, on the motion of Ms Robertson: That Chapter 4, as amended, be adopted.

Chapter 5 read.

Resolved, on the motion of Dr Kaye: That Recommendation 6 be adopted.

Resolved, on the motion of Dr Kaye: That paragraph 5.25 be amended by inserting the following sentence at the end of the paragraph: 'The Committee urges the Minister to recommend to university governing bodies that they investigate separating risk management considerations from the work of an audit committee,' and that the following recommendation be inserted following paragraph 5.25: 'That the Minister for Education and Training recommend to university governing bodies that they investigate separating risk management considerations from the work of an audit committee.'

Resolved, on the motion of Dr Kaye: That the following recommendation be inserted after paragraph 5.36 'That the Minister investigate whether the inappropriate application of material interest declaration provisions is being used to exclude individuals from governing body debates on the grounds of the nature of their appointments to that governing body.'

Resolved, on the motion of Dr Kaye: That Chapter 5, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Dr Kaye: That Recommendation 9 be amended by inserting a fourth dot point as follows: 'designed to ensure access to institutional data' and by inserting a final sentence: 'That the findings of the review be published no later than December 2009'.

Resolved, on the motion of Ms Ficarra: That Chapter 6, as amended, be adopted.

Chapter 7 read.

Mr Catanzariti left the meeting.

Resolved, on the motion of Mr Donnelly: That the following paragraph be inserted after paragraph 7.26 'The definitions in the university Acts are clear that the roles of the Chancellor and Vice-Chancellor are distinct and not overlapping. The Committee notes that the language in the university Acts is clear that the Chancellor is the presiding member of the university.'

Resolved, on the motion of Ms Robertson: That Chapter 7, as amended, be adopted.

Resolved, on the motion of Dr Moyes: That the Secretariat be authorised to amend the Summary of Key Issues to reflect the changes to the report.

Resolved, on the motion of Ms Robertson: That dissenting statements be submitted to the Secretariat 24 hours after the receipt of the Minutes.

Resolved, on the motion of Ms Robertson: That the draft report, as amended, be the report of the Committee.

Resolved, on the motion of Ms Robertson: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry, except for documents kept confidential by resolution of the Committee.

The Chair advised that she will circulate the Chair's Foreword upon its completion.

Resolved, on the motion of Mr Donnelly: That the report be tabled on Monday 1 June 2009 and a media conference be held on that day.

6.Adjournment

The Committee adjourned at 12.45 pm until Monday 22 June 2009 (hearing into bullying of children and young people).

Beverly Duffy

Clerk to the Committee

Appendix 8 Dissenting statement

DISSENTING STATEMENT – JOHN KAYE

Recommendation 2 in the Chair's Draft Report is not supported. The committee adopted the recommendation which read as follows:

That the Minister for Education and Training amend the university Acts to provide all university governing bodies with the flexibility to either appoint or elect their alumni (or Convocation) members.

Implementation of this recommendation would have two main effects, both of which would be highly undesirable:

- ◆ disenfranchise alumni and convocation members who would no longer have a connection to the university through the opportunity to vote, and
- ◆ increase the extent to which university governing bodies are self-appointing and hence vulnerable to domination by a single interest group.

The recommendation contradicts evidence given to the inquiry about the importance of the alumni to a university. Removing the voting rights of former members of the university will lessen their sense of ownership and their willingness to contribute to the university, both materially and intellectually.

In an era of unreliability in government financial support for universities, it makes no sense to reduce ties to the alumni.

Transferring the right to select alumni representatives from democratic election to the university governing body not only disenfranchises former students. It also increases the potential for a majority faction of council to reduce diversity and cement itself in power in perpetuity.

Throughout history, self-selecting bodies have a poor track record in serving the organisations they govern. Self-selection inevitably leads to increased uniformity of views, a loss of diversity in the backgrounds and attitudes of members of the board and a decline in the value afforded to the opinion of the stakeholders.

The move towards self-selecting governing bodies is not justified by precedent in corporate affairs where boards are ultimately responsible to shareholders whose votes can reject board members at periodic elections.

Arguments in support of the recommendation include:

- ◆ the desirability of consistency across the state's universities,
- ◆ the need for governing bodies to recruit a range of skills that cannot be delivered by elections,
- ◆ the need to provide university government bodies with flexibility, and
- ◆ the relatively low proportion of eligible alumni members who vote.

In theory recommendation 2 would only affect the University of NSW and the University of Sydney, as other legislation in respect of all other institutions give governing bodies the choice between election and appointment. The Committee however heard evidence that Sydney would be unlikely to abandon elections even if it were provided with the legislated opportunity to do so.

Three of the remaining eight NSW universities that have the right to opt for either appointment or election, chose the more democratic option.

There is therefore no consistency in outcome.

Further, the desirability of uniformity has not been established. In fact, to the contrary, much of the evidence presented to the Committee spoke of the need for flexibility to adjust to the particular circumstances of each university and its community.

Governing bodies are already directly involved in the selection of the six members who are appointed by the minister, on the recommendation of the governing body itself.

Further, each university governing body is required to appoint at least one member and some chose to appoint up to four.

The legislation already gives university governing bodies adequate flexibility in its own membership to secure that it has the range of skills required to make informed quality decisions. Further flexibility is unnecessary.

The Committee received evidence that approximately 10,000 alumni of the University of Sydney voted,¹ while the figure at UNSW was ‘something like 2,000 votes.’²

The evidence suggests that the University of Sydney has been more successful in engaging its alumni than UNSW. Rather than seeking to remove the democratic rights of its alumni, UNSW would be better served by seeking to learn from the University of Sydney to improve its relations with its former students.

John Kaye MLC

¹ Dr Robin Fitzsimmons, Fellow, The University of Sydney Senate, Evidence, 23 March 2009, p. 39

² Professor Hilmer, Evidence, 26 February 2009, p 24