

**ITEM 6 - UNIVERSITY GOVERNANCE (A) MATERIAL FROM UNSW**

**NATIONAL GOVERNANCE PROTOCOLS  
FOR PUBLIC HIGHER EDUCATION INSTITUTIONS**

**PRINCIPLES UNDERLYING THE COMPOSITION OF UNSW COUNCIL**

**1. Good Governance**

There should be a substantial majority of external (i.e. non-employee, non-student) members of Council.

**2. Independence and Academic Autonomy**

There should be a limited number of positions appointed by Parliament(s) and/or Minister(s). This number should not be more than a quarter of the total composition of Council.

**3. Good Management -- Ex-Officio Participation**

Only two officers of the University should be members of the Council by virtue of the offices they hold: the Vice-Chancellor and the President of the Academic Board.

**4. Academic Collegiality**

Subject to the three major principles above:

- there should be positions occupied by academic members of staff to ensure academic collegiality and plurality of discipline view-points;
- there should be positions occupied by members of the current student-body of the University and from the non-academic staff of the University, to ensure inclusiveness;
- there should be positions occupied by graduates of UNSW, reflecting the composition of the legal body corporate (Council itself, present staff and students, emeritus professors and those who have taken their degrees from UNSW).

**5. Flexibility and Leadership**

- Council should be able to appoint at least two members-at-large, to ensure that its skill-and-knowledge-base is apposite to its needs at all times.
- In addition, Council should be able to appoint its own Chancellor as Chair, from outside the existing membership of Council.

**6. Varied Methods of Selection**

Fundamentally, there are only three routes to membership of Council:

- (a) Parliamentary/Ministerial/Governor-in-Council appointment

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- (b) Co-option/appointment by the Council
- (c) Election by a specified electorate

Each may be modified by more or less formality and prescription in terms of search and consultation, proclamation of the results, etc.

In the case of Parliamentary/Ministerial members, (a) is appropriate.

In the case of Council co-opted/appointed members and Council's Chair, (b) is appropriate.

In the case of all other positions, (c) is appropriate.

**7. Terms of Office**

There should be at all times sufficient experience and continuity to ensure sound governance, but provision for genuine renewal and plurality.

Adopted by UNSW Council  
29 September 2003

**UNIVERSITY OF NEW SOUTH WALES RESPONSE**

***Preamble***

The University of New South Wales (UNSW) accepts the spirit of improved governance underlying the proposed protocols. Given initiatives already taken and in development, it finds that governance at UNSW already achieves much of what is sought. With the exception of items discussed in the following response, especially with regard to size, composition and removal of members of the governing body, UNSW believes that, should Commonwealth and State governments agree to proceed with these protocols, it would not find great difficulty in complying.

***Protocol 1- Objectives***

***The institution must have its objectives specified in the enabling legislation.***

***Response***

UNSW agrees with this protocol. A suitable statement of objectives is currently contained in the ***University of New South Wales Act 1989***, (2001 amendment) viz:

- 6(1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

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### **Protocol 2 – Statement of Primary Responsibilities**

***The institution's governing body should adopt a statement of its primary responsibilities, which includes:***

- appointing the vice-chancellor as the chief executive officer of the institution, and monitoring his/her performance;***
- approving the mission and strategic direction of the institution, as well as the annual budget and business plan;***
- responsibility for the sound management of the institution, including responsibility for approving significant commercial activities;***
- defining policy and procedures consistent with legal requirements and community expectations;***
- establishing and monitoring systems of control and accountability, including monitoring any controlled entities;***
- reviewing and monitoring both the management of the institution and its performance as an institution; and***
- managing risk across the institution, including commercial undertakings.***

***The institution's governing body should not delegate approval of any listed primary responsibilities.***

### **Response**

UNSW agrees with this protocol but suggests the following rewording of some of the responsibilities listed to reflect the fact that the governing body is not responsible for the day-to-day management of the University's operations.

Point 3 - Suggested wording:

- responsibility for overseeing the sound management of the institution, including responsibility for approving significant commercial activities;***

Point 5 - Suggested wording:

- establishing and monitoring systems of risk management, control and accountability, including monitoring any controlled entities;***

Point 7 – Delete if risk management is included in point 5.

### **Protocol 3 – Duties of Members and Sanctions for Breaches of Duties**

***The enabling legislation of the institution should specify the duties of the members of the governing body and sanctions for the breach of these duties. Each member should be appointed or elected ad***

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personam *and should be responsible and accountable to the governing body (council) and act solely in the interests of the university rather than as a delegate or representative of a particular constituency. Duties of members should include the requirements to:*

- *act solely in the interests of the institution taken as a whole having regard for its objects;*
- *act in good faith, honestly and for a proper purpose;*
- *exercise appropriate care and diligence;*
- *not improperly use their position to gain an advantage for themselves or someone else; and*
- *disclose and avoid conflicts on interest.*

*Sanctions should include a requirement that the governing body has the power to and must remove any member of the governing body from office if the member breaches the duties specified above, is or becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act.*

### ***Response***

UNSW agrees that the legislation should specify the duties of the members of the governing body. It has serious concerns, however, about empowering and particularly about requiring the governing body to remove any of its members from office for breach of duties, noting that corporate boards do not have this power and must report breaches to a regulatory body. UNSW is of the view that governing bodies could use this power to remove people for the wrong reasons, but recognises the need for a formal and open process for dealing with Council members who breach their duties. UNSW agrees that a member must be removed if they become disqualified from managing corporations under Part 2D.6 of the *Corporations Act*.

UNSW believes that a statement formulated by a group of New South Wales Chancellors on this issue is more appropriate, viz:

*"The duty of a member of the governing body is always to exercise the functions of a member of the governing body in the paramount interests of the university as a whole rather than simply as a delegate or representative of a particular constituency".*

UNSW notes that its own Council Code of Conduct similarly specifies that Council members have a responsibility to act solely in the interests of the University, rather than as a delegate or representative of a particular constituency.

### ***Protocol 4 – Professional Development***

*Each governing body should have in place a formal programme of 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.*

### ***Response***

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UNSW agrees with this protocol and believes that the governing body should determine the scope, timing and delivery of such a program. UNSW has in place an induction program for new Council members which will provide a platform on which to build a more comprehensive program of professional development.

### ***Protocol 5 - Size and Composition of Governing Body***

***The size of the governing body is not to exceed 18 members. There should be at least two members having financial expertise and at least one member with commercial expertise. There should be a majority of external independent members on the governing body and not include current members of any State or Commonwealth parliament or legislative assembly.***

### ***Response***

UNSW does not see a pressing need to reduce the size of its Council, noting that there is no evidence to suggest that smaller governing bodies are more effective. UNSW is of the view that if the New South Wales State Government were to decide to remove the parliamentary representatives, this would not be problematic. However, any further reduction in size beyond this may limit expertise and make it difficult for Council members to staff its committees and complete its tasks. [Attached as Appendix I is a list of present UNSW Council Committees, their memberships and frequency of meetings in 2003. This makes it desirable to maintain the UNSW Council at least at its current size].

UNSW agrees with the principle that governing Councils should include amongst their members several with financial and commercial expertise and notes that UNSW Council has, and always has, satisfied this criterion.

UNSW believes, however, that a requirement for academic expertise should be explicitly stated in this protocol, given the central academic purposes of the university.

### ***Protocol 6 - Procedures for the Nomination of Appointed Members***

***The institution is to adopt systematic procedures for the nomination of prospective members of the governing body for appointment by the Governor in Council, the relevant Minister, or the council itself. This responsibility is to be delegated explicitly to a nominations committee of council. The institution is to publicly nominate at least one preferred candidate for any current or imminent vacancy on the governing body to be appointed by the Governor in Council or relevant Minister.***

### ***Response***

UNSW notes that for UNSW there are two categories of appointed members, viz:

- i. members appointed by the State Minister for Education and by State Parliament;
- ii. members appointed by Council itself.

UNSW accepts the current arrangements which empower the State Minister to make appointments to the Council, but agrees that there should be a formal and transparent process in relation to

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members who are co-opted by Council itself. UNSW believes that to ensure a wide consultation on possible appointed members and broad support for their appointment, there should be a Nominations Committee, both to give advice to the Minister and to put forward names for internal appointments.

### ***Protocol 7 - Codification of Internal Grievance Procedures***

***The institution is to codify and collate its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.***

#### ***Response***

UNSW recognises the importance of the implementation of proper grievance procedures and also of appropriate training and notes that UNSW grievance procedures and protected disclosure procedures have already been published on its website. Council will from time to time review all grievance and complaints procedures

### ***Protocol 8 - Use of the Annual Report for reporting on high level outcomes***

***The annual report of the institution should be used for reporting on high level outcomes required by the Commonwealth***

#### ***Response***

UNSW agrees with this protocol and understands that the Commonwealth's aim is to gain as much information about universities as possible from published documents, such as annual reports, without having to write and ask for it.

### ***Protocol 9 - Inclusion of risk management report in the Annual Report***

***The annual report of the institution must include a report on risk management within the organisation.***

#### ***Response***

UNSW agrees with this protocol and notes that it will fall within the role of its newly-established Risk Management Committee.

### ***Protocol 10 - Informing the Minister on capacity to meet its obligations***

***The Institution must keep the Commonwealth Minister for Education informed of any significant event affecting the institution or its subsidiaries which may affect its capacity to meet its obligations as set out in its funding agreement with the Commonwealth.***

#### ***Response***

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UNSW agrees in principle with this protocol. However, in order to avoid being subject to demanding requirements for continuous disclosure of immaterial matters, UNSW recommends that the word "materially" be inserted before "affect its capacity to meet its obligations".

### ***Protocol 11 - Oversight of Controlled Entities which incur risk***

***The governing body is required to effectively oversee controlled entities which incur risk by:***

- ***ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;***
- ***appointing some independent directors to the board of the entity, where possible;***
- ***ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;***
- ***ensuring that the board documents a clear corporate and business strategy which reports and updates annually the organisation's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and***
- ***establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.***

### ***Response***

UNSW agrees with this protocol and recommends that it be expanded to include joint ventures. However, UNSW notes that this may not be possible if it does not have a controlling interest in the joint venture.

UNSW believes that the protocol should also have a requirement for a clearly stated rationale and procedure for the establishment and disestablishment of its controlled entities. UNSW ensures, through its Audit and Risk Management Committees, that there is full accountability for its controlled entities.

### ***Protocol 12 - Auditing of entities not subject to auditing by State/Territory or Commonwealth Auditor-General***

***Entities (including associated companies, joint ventures and partnerships) that are not subject to audit by the State/Territory or Commonwealth Auditor-General should, after appropriate risk assessment, be audited by an external auditor and the auditor's management report provided to the institution's council.***

### ***Response***

UNSW agrees in principle with this protocol, noting that it has, amongst others, two overseas entities that fall into this category. However, UNSW notes that this may not be possible if it does

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not have a controlling interest in such entities.

UNSW draws attention to the fact that progressive changes in its procedures have resulted in increasingly detailed disclosure of all associated companies, and enhanced auditing of all Research Centres, including joint-venture Cooperative Research Centres and subsidiaries of controlled entities.

UNSW requires the auditor's management report for all controlled entities to be provided to the Audit Committee of Council for review.

Adopted by UNSW Council  
29 September 2003