

FROM	Rāwinia Thompson, Education Officer, Victoria University of Wellington Students' Association
TO	Ministry of Education
DATE	12 November 2013
SUBJECT	Review of the Legislative Settings for University Governance

*1 Introduction*

- [1] This submission is made on behalf of the Victoria University of Wellington Students' Association (VUWSA), a representative organisation advocating on behalf of the 22,000 students of Victoria University.
- [2] The proposed changes in the review of university governance would see a decrease in the number of members on University Councils (councils) from 12 - 20 members, to 8 - 12 members.
- [3] At present, the Education Act 1989 (the Education Act) prescribes mandatory requirements for council membership, including (but not limited to) members appointed by the Minister responsible for tertiary education (the Minister), and representatives of staff and students. The proposed changes would reduce mandatory requirements for council membership to 4 ministerial appointees, and remove the obligation for students and staff to be represented on councils.
- [4] The status quo is considered to produce 'large, unwieldy' councils. The proposed changes are based on the assumption that larger councils, which are representative in nature, cannot govern institutions in an efficient and effective manner.

## *II Executive Summary*

- [5] VUWSA is pleased by the Government's acknowledgment of the many challenges universities face, and the need for universities to be governed as efficiently and effectively as possible in light of this. However, we dispute the claim that perceived inefficiencies are the result of larger, more representative councils.
- [6] Institutional autonomy, and fulfilment of the role of *critic and conscience of society*,<sup>1</sup> can only be realised if councils are sufficiently independent from the political, social and economic elite of the day.
- [7] Democratically elected representatives of students on councils will result in more informed decision-making by councils, buy-in from students at large, amelioration of risk and fulfilment of a council's fiduciary duties.
- [8] Councils must make decisions with regard to education, academic quality, teaching, and learning. Representatives of students and staff are equipped with the relevant knowledge, and best placed to hold councils to account in this regard.
- [9] Similar changes to the ones proposed in this review took effect 2010, changing the structure of Institute of Technology and Polytechnic (ITP) councils. These changes have had some undesirable results. By retaining student and staff representation on councils, similar results can be avoided.
- [10] Under the status quo, the makeup of many councils throughout New Zealand do not adequately reflect the ethnic and socio-economic diversity of communities served by the institutions they govern. Changes to the status quo should seek to remedy this.
- [11] The proposed changes need to be demonstrably justifiable in light of the relevant provisions in the Education Act.

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<sup>1</sup> Education Act 1989, s 162(a)(v)

## **A      *Efficient and Effective Governance of Tertiary Institutions***

- [12] The review assumes that larger councils that are representative in nature do not govern efficiently or effectively. This is not substantiated by evidence.

[12.1] Many of the world's leading tertiary institutions have comparatively large governing bodies:

Institution	Name of governing body, and no. of members	QS World Rankings 2013
Massachusetts Institute of Technology (MIT)	<i>The Corporation, 76</i>	1
Harvard	<i>Board of Overseers, 32</i>	2
Stanford	<i>Board of Trustees, 33</i>	7
Oxford	<i>Council, 25</i>	6
Cambridge	<i>Council, 23</i>	3
Victoria University of Wellington (status quo)	<i>Council, 18</i>	265
Victoria University of Wellington (proposed changes)	<i>Council, 8 - 12</i>	N/A

[12.2] The composition of each governing body differs from institution to institution, but representative elements are evident in each. Cambridge employs a highly representative model, their council comprised of 4 external members, 16 elected academic staff and 3 students.<sup>2</sup> Further, QS World University Rankings indicate that larger, more representative councils can and do govern world-leading institutions, so we don't see the rationale behind departing from this model to be sound if we, too, want to operate in this highly competitive international environment.

- [13] A non-representative model of governance will not necessarily result in effective governance of tertiary institutions. In our experience, having representatives of stakeholders at the table can improve decision-making and institutional responsiveness.

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<sup>2</sup> Listed under "About the University: Governance," on the University of Cambridge website, <http://www.cam.ac.uk/about-the-university/how-the-university-and-colleges-work/governance>.

Universities are large, complex public institutions and our councils must consider issues unique to such institutions like academic and educational quality; delivery of teaching and learning; the student experience; the requirement of the Education Act to be the critic and conscience of society, and bastions of academic freedom.<sup>3</sup>

Although external professionals may have governance expertise, they do not possess the first-hand knowledge necessary to consider how the policies they will implement might impact upon the day-to-day operations of the institution outlined above. This knowledge is often possessed by students and staff, who are actively engaged in delivering teaching, learning and conducting research, as well as enhancing the student experience. In this capacity, representatives of students and staff should be considered experts, whose knowledge and experience is essential in dealing with the unique challenges tertiary institutions face, therefore invaluable assets to councils.

Furthermore, decision-making in an institution is improved by the feedback loop provided by students and staff to the governing body. For example, if a decision to cut a programme or enter into a relationship with a third party was not delivering the goals outlined in the decision to take those actions, then students and staff are able to quickly and easily voice concerns with a guaranteed place among decision-makers, free from the undue influence of a university's management.

- [14] VUWSA acknowledges the need for councils to be well-equipped with skilled governors, but it is not necessary that every member entering a council be a skilled, experienced governor. It is sufficient to have a number of skilled governors on a council who can help other members, namely representatives, gain knowledge and skill in governance. The base general requirement should be that members have an appreciation of governance, but not necessarily experience.
- [15] VUWSA further acknowledges the need for councils to be equipped with skilled members, be those skills in the field of law, finance, accounting, or any other, but the issue can be addressed without eliminating the representative element of councils. Councils can co-opt members to fill any perceived gaps in skill, like Victoria University's council has done

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<sup>3</sup> Education Act 1989, s 160

this year, co-opting an auditor and a financier. The Minister could be more responsive to the needs of councils, giving consideration to the particular skill shortages of a council when making appointments.

The assertion that councils need to be well equipped with a range of skilled members is at odds with the reduction in size of councils. Larger councils not only allow more flexibility in membership to include representatives, but also the inclusion of a range of professional skill. A reduction in the size of councils to such small numbers is likely to see councils lose particular professional skill sets entirely.

- [16] Good governance decisions are the result of thorough deliberation and robust debate amongst members from diverse backgrounds, who bring their own unique perspectives to the table. Former Prime Minister, Jenny Shipley, affirms this:

[Diversity is] actually part of the opportunity... Diversity in a boardroom or in a Parliament means that you just have different minds, different life experience, different ways of thinking about patients or customers or voters so that when you bring that intellect, you look at opportunity and risk, and then you have it much better balanced. The boards I chair that are 50/50 [men/women], we take a much broader view than the boards where I'm a complete minority still... When you get the balance of both talent... qualification and experience, worldview, but also understanding customers and voters.<sup>4</sup>

Doug Matheson agrees with the principles Shipley speaks to:

Diversity is important because without it the board does not have the perspectives, backgrounds and values that must be part of the mix at the board table. Ideally [the board] should reflect the mix of society, or the constituency the organisation serves, or is accountable to.<sup>5</sup>

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<sup>4</sup> Transcript of Dame Jenny Shipley's Q+A Interview, <http://www.scoop.co.nz/stories/PO1309/S00153/qa-dame-jenny-shipley-reflects-on-mainzeal-collapse.htm>

<sup>5</sup> Matheson, Doug. *Great Governance: How The Best Boards Work*.

From the above, we can deduce that diversity amongst members of councils is both beneficial and essential to a council's success. VUWSA agrees with this position. Achieving the right balance between governance skill, professional expertise and more representative elements of councils is a perpetual challenge, but balancing these three things will result in the most efficient and effective governance of tertiary institutions. Speed and expediency should not be mistaken for efficiency or effective governance; a less quick but more robust and deliberative decision-making process should always be preferred over the opposite.

## **B     *Legislative History (ITP Councils)***

- [17] Similar changes to the ones proposed in this review were enacted in 2010, reducing the size of ITP councils to 8 members; 4 ministerial appointees, and 4 further appointments made by those ministerial appointees. Problems in this new, non-representative model arose earlier this year at the Western Institute of Technology in Taranaki. WITT staff declared no confidence in their council, writing to the Minister requesting he suspend the council chairwoman, and even dismiss the council in its entirety. Two high-profile resignations followed, being the human resources manager and, most notably, CEO Richard Handley. Without addressing the competence of this particular council, the facts of the situation are sufficient to conclude that there is considerable risk in a non-representative, undemocratic model such as this.
- [18] Disputes such as the one outlined above can be avoided if representatives of stakeholders like students and staff are at the table, included in decision-making processes. In this capacity, representatives of students and staff can contribute to sound decision-making and can act as ameliorators of risk. Not only that, but students and staff at large will be more likely to buy in to council decisions if they feel that they, vicariously through their representatives, were involved in the decision-making process and that councils are accountable to them. Further, healthy relationships between governors, staff and students are beneficial in the day-to-day operations of the institution, and good for the functioning of the institution as a whole.

## **C     *Student Representation***

- [19] Fundamentally, all the decisions councils make directly affect students and determine how student money is distributed. VUWSA acknowledges that councils must make rational, pragmatic and holistic decisions in the best interest of the institutions they govern, but the element of distributing student money gives rise to fiduciary duties of care, loyalty and good faith to students. In order for these obligations to be met, students must be represented on councils. Councils must make well-informed decisions and be accountable to students. Consulting students on matters that councils *think* will affect students is not sufficient; there is no guarantee that councils will conduct adequate, genuine consultation, and information gleaned from consultation processes can be misinterpreted. Any decisions made on this basis should be considered negligent. Student representatives on councils are best placed to inform decision-making processes and hold councils to account where decisions will affect students.
- [20] Ministerial appointees and university management are not mandated to determine how public money is spent or fulfil the other functions of councils any more so than students, staff and members of the community. Students may not have the knowledge or experience in formulating investment plans or long-term strategic planning, but can provide a perspective different to that of ubiquitous governing experts resulting in more robust decision-making.
- [21] Including student representatives on councils should be considered an investment in the future of governance, raising the next generation of skilled governing experts. The student representatives will gain invaluable skills and knowledge that can be utilised in future.

## **D     *Ensuring Educational Excellence***

- [22] A core function of a council is to ensure the university's highest standards of educational excellence. VUWSA asserts the need for representatives of students and staff to be directly involved in decision-making processes in order for educational excellence to be ensured. Students and staff are heavily invested in academic quality, teaching and learning; governing experts are not. Students and staff should, for all intents and purposes, be considered experts, with the knowledge of

curriculum issues how council decisions will affect day-to-day operations of the institution in teaching and learning. The absence of student and staff representation on councils could see councils making poorly-informed decisions, without regard to academic quality. Consultation is not sufficient. Representatives of students and staff need to be directly involved in council decision-making processes in order for councils to truly be held to account where education, academic quality, teaching and learning are concerned.

## ***E Institutional Independence and Autonomy***

- [23] The Education Act charges universities with a duty to fulfil the role of critic and conscience of society. However, the increased influence afforded to the Minister responsible for tertiary education, whose appointees will make up no less than one third and up to one half of a university's governing body under the proposed structural changes, crucially undermines this. A university cannot act as critic and conscience of society if so many of the council's members are appointed by a member of the group the institution is supposed to be critiquing. This is a major cause of concern, as this loss of independence could prevent an institution from practicably carrying out its duty of critic and conscience of society as prescribed by statute.
- [24] One of the core functions of a council is to determine the long-term strategic direction of the institution they govern. In order to fulfil this, councils cannot be subject to the whim of the government of the time. Universities are historical, and continue to operate despite pendulum-like changes in governments and governments' often-conflicting priorities. An independent, autonomous council should determine a university's long-term vision, and this should not be undermined for the sake of political expediency. The proportion of ministerial appointees to university-appointed, elected or co-opted members must be more pronounced in order for councils to be more independent and autonomous. In order for this to be achieved, the total number of members on councils cannot be reduced so drastically; 10 - 15 members would be more appropriate.



## ***F Reflecting the Diversity of the Community***

- [25] VUWSA believes that public institutions like universities should be socially conscious, and have a social responsibility to the communities they serve. According to the Education Act, council membership should reflect diversity of the community, including ethnic, socio-economic and gender diversity. However, this diversity isn't even achieved in the status quo, despite the flexibility of up to 20 council members. This becomes clear when analysing the membership of the Victoria University's council, where there are no Māori or Pasifika members, and there is a gender imbalance which favours men. Less than one-third of members are women, and no member is non-white. We suggest conducting a review of other councils to determine their relative diversity.
- [26] We are concerned that the proposed changes to the status quo will perpetuate the lack of diversity in councils. The fewer seats at the table there are, the less likely it becomes that groups like Māori and Pasifika, the less affluent, women and others will be represented. We acknowledge that achieving diversity amongst governors is a challenge; our own organisation struggles to achieve representativeness in our Executive. However, lack of diversity amongst decision-makers is a perpetual problem and any changes should seek to remedy this, not perpetuate it further.
- [27] The need for councils to reflect the diverse communities tertiary institutions serve should be taken into account when the Minister is making appointments.

## ***III Recommendations***

- [28] For the reasons outlined above, the statutory requirement that students and staff are represented on councils must be maintained.
- [29] VUWSA does not believe that the number of members on councils should be reduced at all. If they are going to be, the reduction should not be so drastic. 10 - 15 is more flexible and would allow for balance between skilled governors, professional experts, and representatives of students, staff and the diverse community the institution serves.

- [30] Any skill shortages councils experience should be remedied through the co-option of members with appropriate skill or expertise. The Minister should also be more responsive to the needs of councils, having regard for any skill shortages councils might have when making appointments.
- [31] Changes to the status quo should seek to remedy the lack of ethnic, socio-economic and gender diversity on councils, not perpetuate this.

#### *IV Conclusion*

- [32] VUWSA is pleased by, and strongly agrees with, the Government's assertion that universities need to be to be governed as efficiently and effectively as possible. However, we do not think universities are governed inefficiently or ineffectively under the status quo. We are convinced neither by the rationale behind the proposed changes, nor the outcomes the changes are supposed to achieve. Such a drastic reduction in the numbers of members on councils is not necessary or desirable, as this will undoubtedly lead to an imbalance in governance skill, professional expertise and representation of stakeholder groups like students and staff, and subsequently, poorly informed decision making which is neither robust, nor efficient, nor effective. For this same reason, we must strongly oppose the removal of the statutory requirement that students, staff and members of the community be represented on councils.

However, VUWSA also welcomes the review as it provides an excellent opportunity to address the lack of diversity amongst members on councils.