



AUDITOR-GENERAL
AUSTRALIAN CAPITAL TERRITORY



PA 02/04

16 June 2003

The Speaker
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Allegations of Financial Mismanagement University of Canberra Union*".

This audit was managed and conducted by Greg Martin of this Office.

Yours sincerely

John A Parkinson

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1. REPORT SUMMARY

INTRODUCTION

1.1 This Report addresses allegations made to the Auditor-General's Office of financial mismanagement of the University of Canberra Union (the Union). The allegations were made to the Auditor-General under the *Public Interest Disclosure Act* 1994, by particular post-graduate students of the University and a former employee of the Union.

1.2 Many allegations were made to the Auditor-General's Office, the Ombudsman's Office and the Chief Minister's Department. The allegations in this Report were chosen for assessment because they involved significant sums of money.

1.3 Although the allegations could have been investigated by the Auditor-General under the *Public Interest Disclosure Act* 1994 because of their financial and governance nature, the Auditor-General decided to investigate the allegations as an audit under the *Auditor-General Act* 1996 with the co-operation of the University and Union.

APPLICATION OF THE PUBLIC INTEREST DISCLOSURE ACT

1.4 At the commencement of the Audit conjecture existed as to whether the *Public Interest Disclosure Act* 1994 applied to the University, Council and Union. The University Council (the Council) governs the University's administration (the University) through the University's Vice-Chancellor. The conduct and control of the affairs of the Union is vested in the Union's Governing Board (the Union Board).

1.5 The Government Solicitor's Office provided advice that the Act applied to the Council and also applied to the Union because of the governance arrangements existing between the Council and Union. The Audit Office agrees with this advice.

NATURE AND ORIGIN OF THE ALLEGATIONS

1.6 In an interview and submissions presented to the Auditor-General's Office by students of the University and a former employee of the Union allegations were made about mismanagement of cash at the Stone Eve event conducted by the Union and the Union Bar in 1999 and 2000. Allegations were also made in relation to the payment of a substantial sum for the rights to the Stomp brand name – a trademark for an entertainment theme at the Stone Eve event of Stone Week¹.

1.7 Allegations also appeared in the national press that the Union had incurred financial losses over the last several years of operation and that this was further evidence of the mismanagement of the Union's finances.

AUDIT SCOPE

1.8 The scope of this Audit was limited to addressing allegations made to the Audit and the allegation that appeared in the press related to material financial mismanagement which were not being dealt with by the Ombudsman's Office.

1.9 In order to assess the allegations and to consider the potential for them to reoccur it was necessary to consider the governance relationships of the University Council, University administration and the Union Board and a review initiated by the Council of the Union's governance.

AUDIT APPROACH

1.10 Information was requested from the University and the Union and interviews were held and file examinations conducted. The Audit also made requests for written responses to questions.

1.11 Available evidence was assessed against better practice cash management procedures. Trend analyses of the financial results of the Union were performed.

¹ Stone Week is a music festival hosted by the Union which takes place in the week in which the University's Foundation Day (Stone Day) is celebrated. A major component of the festival is the Stone Eve event which incorporates a dance party.

AUDIT OPINION

1.12 The independent opinion drawn on the allegations considered by the Audit is set out following:

AUDIT OPINION

- Allegations of financial mismanagement within the University of Canberra Union addressed by the Audit were substantiated.

1.13 There was one significant exception. Allegations of accumulated losses of \$1 million as reported in the press were unfounded. (see *Chapter 4*)

1.14 The reasons for the Audit's opinion are set out in later Chapters of this Report.

FUTURE ACTIONS

1.15 During the audit certain findings were made which, in the Audit view, require action to be taken. These are described in the following comments.

Lack of Police Involvement (Chapter 2)

1.16 The Union Board (which included Council and University representatives) did not request the Police to investigate whether payments made for the Stomp brand name were fraudulent in law.

Suggested Action 1

The Union Board through the Chair should arrange for discussions to be held with the Police on the possibility of whether some or all of the activities related to the payments for the Stomp brand name were fraudulent.

Formal Cash Management Controls (Chapter 3)

1.17 The Audit noted a lack of formalised controls for the management of cash and stock for the Union Bar and Stone Eve events and the accurate accounting for the profit and loss for those events in 1999 and 2000 as alleged.

1.18 The Union's new General Manager has approval from the Union Board to introduce an electronic transaction and stock control system for the Union Bar and is introducing a new system to enable accurate accounting for the profit and loss of Stone Week events (including Stone Eve).

Suggested Action 2

The introduction of an electronic transaction and stock control system and a new system to enable accurate accounting of Stone Week events should be progressed promptly to full implementation.

University Council Review Recommendations (Chapter 5)

1.19 A consultant was engaged to perform a review of the Union's governance processes by a committee of the University Council. The consultancy report (Council review) was incorporated in the Audit because it included a large number of recommendations, directed at improving the general governance framework for the Union.

1.20 The University Council's review made twenty-seven recommendations, which should on the whole improve the corporate, financial and operational governance of the Union. Significant progress has been made with the implementation of most of the recommendations.

1.21 Five recommendations have not been implemented. Implementation of thirteen recommendations is in progress. Seven more recommendations have been implemented.

1.22 Two particularly important recommendations were made in relation to the corporate governance of the Union. One was implemented and the action taken in relation to the other was the opposite of that recommended. (See *paragraph 5.7*)

Suggested Action 3

The implementation of recommendations arising from the University Council's review of the Union should continue to be progressed until full implementation is achieved.

2. ALLEGATION - STOMP BRAND NAME

INTRODUCTION

2.1 Stone Week is a music festival hosted by the Union for students, other Union members and the public in October each year. A foundation stone was unveiled by the right honourable JG Gorton, M.P., Prime Minister of Australia on the 28 October 1968 to mark the establishment of the Canberra College of Advanced Education. A music festival to mark the unveiling has been held on the campus grounds each year since the stone was unveiled thirty-four years ago. A major component of the festival is a Stone Eve event which incorporates a dance party.

2.2 This Chapter provides details of allegations relating to the purchase of a brand name for the Stone Eve event dance party and the results of the Audit's inquiries into the allegation of payments for the brand name "Stomp".

THE ALLEGATION

2.3 Allegations of potential corruption or mismanagement were made. It was alleged:

- approval of the payment for the brand name exceeded the General Manager's delegation;
- a significant sum had been paid by the Union for the rights to the Stomp brand name for the dance component of the annual "Stone Eve event";
- the payment was unnecessary because the Stomp dance party had been part of the Stone Eve event for several years; and
- the payment was arranged between the then General Manager and a former partner in a business providing other services to the Union.

Allegations Referred to in the Council's Review of the Union

2.4 The Council's review reported findings, which supported allegations made to the Audit. The review reported a payment of \$50000 to Sonar Entertainment for the rights to the Stomp brand name had been made.

Audit Comment

2.5 The review report included findings which supported the factual substance of allegations made to the Audit. A substantial sum was paid for the Stomp brand name. The following sections provide the Audit's more detailed coverage of these allegations.

Information Provided by the Union

2.6 The Union provided information about the Stomp brand name to the Audit. The information provided confirmed the following:

- the Union Board was not consulted about the purchase of the Stomp brand name;
- it was custom for the General Manager to present to the Board a schedule of any payments made for \$5000 or more;
- the total intended purchase price for the Stomp brand name was \$95000²;
- payments totalling \$50,000 for the Stomp brand name have been made;
- a formal delegation which identified the General Manager's authority was not in place; and
- the \$50000 in payments has been made on an unexecuted (unsigned) contract.

2.7 The Union Board has resolved to make no further payments to the vendor.

Documentation for the Stomp Brand Name

2.8 The Audit considered information in relation to the stomp brand name other than that supplied by the Union to assess the allegations. The information considered identified the following.

2.9 *General Manager Acting Outside of Delegation* – The Union Board did not consider or approve the Stomp purchase.

2.10 *Payments of \$50000* – Between 12 September 2001 and 7 November 2001 payments were made by UCU to the vendor for a total of \$50000. Four

² For the right to hold Stomp as an event for one day per year on Stone Eve or another agreed day for a 5 year period.

of the payments were for \$5000. One payment of \$30000 clearly exceeded the General Manager's implied authority.

2.11 *The Payment Was Unnecessary* - Audit's inquiries confirmed the allegation that the Stomp dance concept had been a long-standing component of the Stone Eve event before any agreement or payments for the brand name had been made.

2.12 Additional information also shows that the payment for the Stomp brand name was unnecessary. An application made by the Union to register the "Stomp" trademark with IP Australia³ was not accepted. The reason given for not accepting the trademark was that it was incapable of being distinguished from similar services in the market place. In summary "Stomp" was a name commonly used for a form of dance that could be offered by anyone.

2.13 *Parties to the Transaction* – As alleged, documentation and audit inquiries confirmed that the payments for the arrangement to purchase the "Stomp" brand name had been made between the General Manager of the Union and a person in a business which had previously been a significant service provider of other services to the Union.

The Union's Legal Position

2.14 Additional information provided to the Audit confirmed that the Union Board did not intend to make any further payments to the brand name's vendor for the brand name.

2.15 The Union Board does not intend taking any action to recover the \$50000 in payments made to the vendor for the brand name.

2.16 The law may allow for the Union Board to recover from the General Manager the amounts of payments made by the General Manager without the Union Board's authorisation. It is likely, however, that a contract has been established between the Union and the vendor and the likelihood of recovering the monies from the General Manger are outweighed by the risk of substantial legal expenses being incurred.

³ IP Australia is the Commonwealth agency responsible for granting rights in patents, trademarks and designs.

Lack of Police Involvement

2.17 The Union Board (which includes Council representatives) has not considered whether the payments for the brand name were fraudulent in law or discussed this possibility with the Police. For example, was there a special relationship between the contracting parties which influenced the business dealings for the brand name to the detriment of the Union?

Audit Opinion

2.18 The Audit opinion formed was that, the allegations made in relation to payments for the Stomp brand name are supported.

2.19 A significant sum had been paid for the rights to the Stomp brand name and the payment was probably unnecessary because the Stomp dance party had been part of the Stone Eve event for several years and Stomp was not a special name. Approval of the payment for the brand name exceeded the General Manager's delegation and was not ratified by the Union Board and, as alleged, the arrangement was made between the General Manager and a person from a business which had previously provided other significant services to the Union.

CONCLUSION

2.20 The allegations made in relation to the Stomp brand name are supported.

2.21 The Union Board since becoming aware of the payments has taken the sensible actions of not making further payments and seeking legal advice on recovery of the amounts paid.

2.22 The substantial payments for a brand name without the Union Board's approval, is strong evidence of the weak governance which was in existence at the time these payments were made. The need for strong governance arrangements to allow the University Council to assist the Union Board to protect the interests of students and the need for the full implementation of the recommendations of the Council's review are highlighted by the confirmation of the allegations made to the Audit.

2.23 A new constitution has recently been adopted for the Union as part of the procedure for the incorporation of the Union. The Audit considered it to be important that the new Union Constitution, and the incorporation of the Union by the Council should not lessen the Council's corporate, and

especially its financial, governance powers over the Union. In a formal response to this Report the University acknowledged that the Council continues to exercise control over the Union Board through the powers and functions of Foundation Members (Council members) in the new constitution. (See also *Chapter 6*)

Suggested Action 1

The Union Board through the Chair should arrange for discussions to be held with the Police on the possibility of whether some or all of the activities related to the payments for the Stomp brand name were fraudulent.

3. ALLEGATION – CASH MISMANAGEMENT

INTRODUCTION

3.1 This Chapter contains the results of the Audit's review of allegations of poor or non-existent cash control at Stone Eve events and at the Union Bar also on Stone Eve.

STONE EVE EVENTS

The Allegations

3.2 Allegations were made, in relation to Stone Eve events held on 28 October 1999 and 30 October 2000, of:

- very poor money handling procedures and large sums of cash collected with no recording system in place;
- no till tapes in any of the liquor outlets; and
- non-accountability for ticket sales and poor stock control.

Allegations Referred to in the Council's Review of the Union

3.3 The Council's review reported the finding that while bar sales had grown substantially for the years 1999 to 2001 gross margins and net profits declined. The net profit of \$35000 for 2001 was considerably below the budgeted net profit of \$102000 and the actual profit for the preceding year of \$105000.

Audit Comment

3.4 The review report included findings which supported the factual substance of allegations made to the Audit. The Union Bar did incur uncharacteristic operating losses in 2001. The following sections provide the Audit's more detailed coverage of these allegations.

Audit's Consideration of the Allegation

3.5 The allegations of cash mismanagement were important enough for the Audit to consider because of the large sums of cash likely to be involved. Based on reliable information from the 2002 Stonefest, cash of almost \$170000 could have been received at the Stone Eve activities referred to in the allegations.

3.6 *No Formal Money Handling Procedures* -The Audit requested information on any formal cash management controls in existence at the Stone Eve event and the Union Bar for Stone Eve in 1999 and 2000.

3.7 The present General Manager of the Union advised the Audit that file examinations had been performed and he was not aware of any formal written cash control, and/or operating procedures including reconciliation of ticket sales that were in existence for either the Stone Eve event or the Union Bar for Stone Eve in 1999 and 2000.

3.8 *Absence of Till Tapes for Union Bar* - Detailed tapes showing all transactions were not available for the Union Bar on Stone Eve of both 1999 and 2000. Audit inspection demonstrated that all necessary detailed transactions tapes and bar till summaries that would normally be used to identify the amount of cash that should have been received for banking from bar sales were not available for Stone Eve in 1999 and 2000.

3.9 *Non-Accountability for Ticket Sales* - Furthermore till tapes for gate takings were not kept or ticket sale reconciliations performed for substantial gate revenues.

3.10 *Poor Stock Control* - The Audit was also advised that in general stock takes were not performed regularly for the Union Bar and the inventory system was unreliable.

3.11 *Unverifiable Results for Stone Week/Stone Eve* - The profit and loss for the Stone Eve or Stone Week events for 1999 and 2000 could also not be verified by the Audit.

3.12 The new General Manager is introducing a new system to enable accurate accounting for the profit and loss of Stone Week events (including Stone Eve) and has approval from the Union Board to introduce an electronic transaction and stock control system for the Union Bar.

Audit Opinion

3.13 There were no formal controls in place for money handling and those procedures for receipting cash to bank were not followed for Stone Eve revenues. Non-accountability existed for ticket sales and stock control was poor. The allegations of mismanagement of cash in 1999 and 2000 are supported. It is not possible, however, to quantify the dollar effect due to the lack of information and the low level of reliance that could be placed on any information recorded at the time.

CONCLUSION

3.14 In the Audit's view the substance of the allegations are supported by the non-existence of formal controls for the management of cash, absence of till tapes, non-accountability of substantial ticket sales revenue and poor stock control for the Stone Eve event and the Union Bar for Stone Eve in 1999 and 2000.

Suggested Action 3

The introduction of an electronic transaction and stock control system and a new system to enable accurate accounting of Stone Week events should be progressed promptly to full implementation.

4. ALLEGATION – ACCUMULATED LOSSES

INTRODUCTION

4.1 Allegations were made in the national press that the Union had incurred losses of \$1 million over recent years.

4.2 This Chapter describes Audit's assessment of trends in the Union's financial performance in recent years.

TRENDS IN FINANCIAL PERFORMANCE

Trends in Operating Results

4.3 The Audit performed assessments of trends in the Union's financial performance for the calendar years of 1995 to 2000 and calculations prepared by the Union's management for 1996 to 2001. The assessments were based on the Union's audited financial statements.

4.4 The Audit's and the Union management's calculations demonstrate that the accumulated operating losses for the Union in the past six years have been negative but the accumulated result is less than \$.25m and not the alleged \$1m.

Audit Comments

4.5 The much smaller negative accumulated operating result does not support the allegation.

Trends in Operating Cash Flows

4.6 The Audit assessed that operating cash flows for the Union were constantly positive and around \$.3m per annum for the same period.

Audit Comments

4.7 The positive result for average operating cash flows does not support the allegation.

CONCLUSION

4.8 The Audit's assessment of trends in operating results and cash flows does not support the allegations about the size of the accumulated operating losses for the Union.

5. UNIVERSITY COUNCIL REVIEW OF THE UNION

INTRODUCTION

5.1 The Audit considered the findings and recommendations of a report titled, “Review of the University Canberra Union”, prepared by consultancy firm KPMG⁴ for a committee of the University Council. The review Report was prepared following a motion of no confidence in the Union Board by the Union membership, on 5 December 2001. The University advised that the review arose from information provided to the Chancellor by the Deputy Chancellor.

5.2 The allegations made were an indication of a serious breakdown in the governance of the Union. The Council’s report was incorporated in the Audit because it included a large number of recommendations, directed at improving the general governance framework for the Union’s operations.

CORPORATE GOVERNANCE

5.3 From the perspective of corporate governance the Council’s review examined the decision making of the Union, the constitution of its Board; and the Union’s relationship with the University.

Review Findings

5.4 The findings of the Council’s review included that the decision-making processes of the Union Board had fallen down. Board minutes had not been recorded, attendance at board meetings had been poor and the minutes did not record whether a quorum was present at meetings. The Union Board had become politicised and there were regular vacancies in board positions.

⁴ Klynzeld Peat Marwick Goerdeler

Review Recommendations

5.5 Recommendations made in the Council's review included that:

- (1) a new General Manager be appointed;
- (4) the Union should assure compliance with relevant legislation;
- (17) the Union Constitution be amended to ensure that matters of significance are properly advertised so that they can be the subject of informed debate by the Union Board;
- (19) committees be established with representation from Union membership;
- (20) the description of the respective roles of the Union Board and the General Manager in the constitution be expanded;
- (21) all new Union Board members to be properly educated in their role and the mission and associated strategy of the Union;
- (22) the Union Board be restructured and reduced in size;
- (23) the Chair of the Union Board be independent of the stakeholders in the Union;
- (24) the Union Board arrange for a person with experience in Board secretarial matters to be engaged to advise the Union Board;
- (25) a register of board members be implemented and meeting minutes to be kept up to date;
- (26) a sub-committee of the Union Board fully review the Union Constitution; and
- (27) the Union not incorporate.

Audit Follow up on Implementation of Recommendations

5.6 The Audit was provided with implementation tables and reviewed supporting documentation provided by the Union's new General Manager indicating for each recommendation the action taken or intended to be taken to address the recommendations made in the Council's review.

5.7 The majority of recommendations have been or are being implemented. Two significant exceptions were noted. The review of the then constitution has resulted in a constitution being adopted which does not specify the Council's direct governance of the Union. Actions have been taken to incorporate the Union which is the exact opposite of the review's recommendation 27 which was based on the consultant's view that incorporation would jeopardise the Union's commercial viability.

Audit Comment

5.8 The Union is progressing the implementation of suitable actions to address the recommendations relating to corporate governance made in the Council's review of the Union. The Audit's view is that these steps in general should improve the corporate governance of the Union.

FINANCIAL GOVERNANCE

5.9 The Council's review covered the financial systems, financial performance and financial position of the Union.

Review Findings

5.10 The Union's poor financial performance included an "alarming decline in net profit" in 2001. For the year 2001, the Union recorded a net loss of \$.136m, the bar made a minimal profit – reflecting a large loss during Stone Week festivities; and the Sports Centre had lost \$.219m.

Review Recommendations

5.11 Recommendations made by the Council's review included that:

- (5) regular stock-takes for all areas be implemented;
- (13) the Finance and Development Committee be re-established (the Chair of the committee to report to the Union Board);
- (14) accounting and cash-flow budgets be prepared for 2002; and
- (15) results be monitored against budget with large variances explained.

Audit Follow up on Implementation of Recommendations

5.12 Information provided to the Audit supported the Union's intentions to take actions to implement recommendations 5, 14 and 15 made in the Council's review report. No action has been taken by the Union Board to re-establish the Finance and Development Committee.

Audit Comment

5.13 With one very important exception, the Union is taking suitable actions to address weaknesses in the Union's financial governance framework identified by the Council's review. Recommendation (13) related to re-establishment of the Finance and Development Committee needs to be addressed for sound financial governance of the Union.

OPERATIONAL GOVERNANCE

5.14 The Council's review covered the operational aspects of the Union's governance.

5.15 The review made wide-ranging recommendations for the improvement of the operations of the Union.

Review Recommendations

5.16 The Council's review recommended that:

- (2) a review of all the operations and structure of the Union be conducted by the new General Manager, and the General Manager provide a report on his or her review to the Union Board;
- (3) a greater focus be placed on generating commercial returns from the Union's different trading areas;
- (6) a review of the state of Union facilities, and prioritisation of future necessary replacement upgrades be undertaken;
- (7) more emphasis be given to marketing and promoting the Union;
- (8) independent market research be conducted of the services provided by the Union to establish whether they are in line with expectations of the members;
- (9) appropriate staff and operational manuals be prepared;
- (10) job descriptions be prepared for all employees and updated annually;

- (11) consideration be given to increasing bar prices and determining their impact on profits and cash flows;
- (12) the appropriateness of the level of the amenities and services fee be discussed with the University;
- (16) area managers be provided with their budgets for the year and made accountable for their performance against budget; and
- (18) the draft business plan be completed.

Audit Follow up on Implementation of Recommendations

5.17 The Audit was provided with information by the Union's new General Manager indicating the action taken or intended to be taken to address the recommendations made in the Council's review.

5.18 Information provided to the Audit supported the Union's intentions to take actions to address the majority of recommendations made.

Audit Comment

5.19 The Union is taking actions to strengthen its operational governance framework. As they do not relate to the allegations being considered the Audit does not express a view on the need to address any outstanding actions.

CONCLUSION

5.20 The University Council appointed consultants to review the management of the Union. The Council's review made twenty-seven recommendations related to the corporate, financial, and operational, governance of the Union.

5.21 Information provided by the Union confirmed that suitable actions had or will be taken by Union management to implement the majority of the twenty-seven recommendations. The Audit's opinion is suitable actions have been or will be taken by the Union to implement recommendations, which will improve the overall governance framework for the Union.

5.22 Any changed governance arrangements should not weaken the Council's ability to step-in and ensure that the welfare of the students is being fully provided for in exceptional circumstances.

5.23 The Council's review provided important information on allegations raised with the Audit. The Audit examined these allegations in greater detail in *Chapters Two and Three*.

Suggested Action 4

The implementation of recommendations arising from the Council's review of the Union should continue to be progressed until full implementation is achieved.

6. GOVERNANCE ARRANGEMENTS

INTRODUCTION

6.1 This Chapter provides the Audit's assessment of the responsibilities of the University Council and University administration for the Union. The assessment was necessary to establish the governance relationships of the University Council, University administration and the Union Board and the roles and responsibilities of the University Council and administration for the Union and its student members. The Governance arrangements described in this Chapter for the University Council and Union Board were the arrangements in existence at the time referred to in the allegations.

RELATIONSHIP BETWEEN THE UNIVERSITY AND UNIVERSITY UNION

6.2 The University Council (the Council) governed the University's administration (the University) through the University's Vice-Chancellor.

6.3 In accordance with the Union's constitution the conduct and control of the affairs of the Union was vested in the Union's Governing Board (the Union Board). The Council and University administration exercised significant influence over the Union Board through corporate and financial governance arrangements.

Corporate Governance

6.4 Council had significant control over the Union's Constitution. The Council approved the Union's Constitution. The Constitution vested the power in the Council to dissolve the Union. The Union's constitution could only be amended by resolution of the Council. The Union Board was not to make rules inconsistent with the Constitution.

6.5 The senior members of the Union Board were appointed by Council or the University. The Union's Constitution defines the University and Council membership on the Union Board. The Chair of the Union Board was a member of Council appointed by the Council; another member was appointed by the Vice-Chancellor; and the Deputy Vice-Chancellor or their nominee was also a member.

6.6 The Council exerted significant influence over the administration of the Union. Council appointed the General Manager of the Union who was

responsible to the Union Board for the physical, financial and human resources of the Union.

Financial Governance

6.7 Council could exert significant influence over the accounting and reporting of the Union. This was because the constitution gave Council the right to approve the accounting and other records maintained by the Union Board; direct the Union Board to audit the Union's accounts and be provided with financial statements and reports which it required the Union Board to provide.

6.8 The University and Council appointees had significant control over the assets and finances of the Union. All Union property was vested in the Trustees of the Union, the Chair, General Manager and the Deputy Vice Chancellor's Nominee. The Trustees could with the consent of the Council borrow for the purposes of the Union. The Trustees of the Union maintained the bank accounts of the Union. Monies were only to be drawn from these accounts by joint signatories approved by resolution of the Union Board and the Vice Chancellor and Deputy Vice Chancellor's nominee to the Union Board and the Chair of the Union Board.

COUNCIL GOVERNED THE UNION

6.9 Resolutions of Council meetings demonstrated Council's willingness to become directly involved in the governance of the Union when necessary. For example, in February 2002 Council made decisions on the temporary appointment of the Chair, recruitment of the General Manager and the Constitution of the Union. Council also resolved that the Chair of the Union be required to submit a written report on the Union to each meeting of Council.

THE UNION WAS NOT A SEPARATE LEGAL ENTITY

6.10 At the time of the allegations the Union was not a separate legal entity to the University. As reported in the report *Committee of the University Council – Review of the University of Canberra Union*:

The Union is not a separate legal entity to the University. As such, the Union does not own property in its own right, University representatives sign major contracts it negotiates and legal actions are taken in the name of the University.

CONCLUSIONS ON GOVERNANCE RELATIONSHIPS

6.11 In summary, at the time of the allegations the Council and the University had significant influence over the affairs of the Union through the membership of the Union Board, the Union's Constitution and financial stewardship.

6.12 The Union was indirectly the responsibility of the University and Council. The University and Council had strong corporate and financial governance links with the Union and a general responsibility for the welfare of its students as demonstrated by the Council's decisions on matters of Union governance.

6.13 The General Manager of the Union was responsible to the Union Board, however, Council and the University were also responsible for the actions of the General Manager. They had significant influence over the Union Board through senior membership. The Council also appointed the General Manager.

INCORPORATION OF THE UNIVERSITY OF CANBERRA UNION

6.14 On 7 August 2002, Council received a paper from the Deputy Chancellor (Chair of the Union Board) recommending incorporation of the University of Canberra Union. The paper was based on legal advice sought on the University's responsibility for and exposure to the debts and liabilities of the Union. The primary reasons cited for recommending incorporation were:

- minimising to the extent possible the potential liability of the University in respect of the conduct of the Union's affairs;
- giving the Union a separate legal existence;
- more clearly separating the Union from the University; and
- providing a firm regulatory regime to better control the affairs of the Union.

6.15 In summary, the primary reason cited for incorporation of the Union was the welfare of the University and minimising the University's exposure to the liabilities of the Union. A second reason was the regulatory regime imposed by the statutory requirements contained in the *Association's Incorporation's Act 1991*.

6.16 The Council meeting encouraged the Union Board to proceed with incorporation. The Union incorporated under the *Association's Incorporation's Act* 1991 on 30 December 2002. The action of Council is the opposite of the recommended action in Recommendation 27 of the Council's Review which was based on the potential negative impacts on the Union's commercial viability arising from incorporation.

6.17 The Council was advised that the Union Board considered that any major revision of the constitution should be undertaken after incorporation (to allow appropriate consultation with the general membership).

6.18 The constitution in place pre-incorporation included numerous references to the responsibilities of the Council for the Union including specific responsibilities for the financial governance of the Union. The constitution accepted for incorporation by the Registrar-General does not include any direct reference to the Council or the Council's specific responsibilities for the financial governance of the Union.

Audit Comment

6.19 The Audit acknowledges the potential benefits for formalising the governance of the Union by the Union becoming an incorporated association. Incorporation of the Union would formalise the Union Board's responsibilities as legal requirements under the *Association's Incorporation's Act*, 1991. The Audit considered it important that the new constitution should not lessen the University's powers and responsibilities for the Union so that it might act in the best interest of the Union in circumstances such as in the situations described in the reported allegations.

University's Response on Continuing Governance

6.20 In a response to a draft report of this Audit the University advised the following:

The report makes some important points about governance with which the University agrees. In this light the incorporation of the Union as a separate entity has been carried out using the notion of "foundation members" who carry an overarching responsibility for the enterprise. These foundation members are the Chancellor, the Deputy Chancellor, the Vice-Chancellor, the Deputy Vice-Chancellor and a nominee of the University, presently the Secretary of Council. In circumstances where matters go terribly wrong with the management and or governance of the Union it is expected that the foundation members would intervene to ensure that such matters were appropriately addressed and rectified. As the Union is a recipient of fees collected from students then, in accordance with the University's Fees Rules, the Council will continue to require the audited financial statements of the Union each year to be presented to it. Council and the University consider that the Union is a most important part of the University.

Audit Comment on the University's Response

6.21 The Audit had concerns that new governance arrangements could reduce the Council's responsibility for the Union and its Board. This responsibility is necessary in special circumstances to protect the interests of students and Union members. The University's response provides assurance to the Audit that the University accepts continuing responsibility for the Union and its Board.

PREVIOUS AUDIT REPORTS⁵

Reports Published in 2003

1. Effectiveness of Annual Reporting
2. Belconnen Indoor Aquatic Leisure Centre
3. Emergency Services
4. Management of Fraud and Corruption Prevention in the ACT Public Sector
5. Lease of FAI House

Reports Published in 2002

1. Special Purpose Review of Part of the Commission of Audit Report on the State of the Territory's Finances at 31 October 2001
2. Operation of the Public Access to Government Contracts Act
3. Governance Arrangements of Selected Statutory Authorities
4. Frameworks for Internal Auditing in Territory Agencies
5. V8 Car Races in Canberra – Costs and Benefits
6. Annual Management Report for the Year Ended 30 June 2002
7. Financial Audits with Years Ending to 30 June 2002

Reports Published in 2001

1. Financial Audits with Years Ending to 30 June 2000
2. Enhancing Professionalism and Accountability
3. Market Research and Marketing (Second Report)
4. Peer-Based Drug Support Services Tender – 1998
5. The Administration of Payroll Tax
6. Annual Management Report for the Year Ended 30 June 2001
7. Managing Canberra Urban Parks and Open Spaces
8. Canberra Tourism and Events Corporation – Relocation to Brindabella Business Park
9. Agents Board – Financial Administration of Training Grant Program
10. Corrective Services – Review of Certain Allegations
11. Financial Audits with Years Ending to 30 June 2001

⁵ 46 Reports were issued prior to 1996. Details can be obtained from the ACT Auditor-General's Office or the ACT Auditor-General's homepage: <http://www.audit.act.gov.au>.

12. The Freedom of Information Act

Reports Published in 2000

1. Bruce Stadium Redevelopment — Summary Report
2. Bruce Stadium Redevelopment — Value for Money
3. Bruce Stadium Redevelopment — Costs and Benefits
4. Bruce Stadium Redevelopment — Decision to Redevelop the Stadium
5. Bruce Stadium Redevelopment — Selection of the Project Manager
6. Bruce Stadium Redevelopment — Financing Arrangements
7. Bruce Stadium Redevelopment — Stadium Financial Model
8. Bruce Stadium Redevelopment — Actual Costs and Cost Estimates
9. Bruce Stadium Redevelopment — Market Research and Marketing
10. Bruce Stadium Redevelopment — Stadium Hiring Agreements
11. Bruce Stadium Redevelopment — Lawfulness of Expenditure
12. Bruce Stadium Redevelopment — Governance and Management
13. Annual Management Report for the Year Ended 30 June 2000

Reports Published in 1999

- 1 Stamp Duty on Motor Vehicle Registrations
- 2 The Management of Year 2000 Risks
- 3 Annual Management Report for Year Ended 30 June 1999
- 4 Financial Audits With Years Ending to 30 June 1999

Reports Published in 1998

- 1 Management of Preschool Education
- 2 Lease Variation Charges - Follow-up Review
- 3 Major IT Projects - Follow-up Review
- 4 Annual Management Report for Year Ended 30 June 1998
- 5 Management of Housing Assistance
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers
- 7 Magistrates Court Bail Processes
- 8 Territory Operating Losses and Financial Position
- 9 Financial Audits with Years Ending To 30 June 1998

- 10 Management of Schools Repairs and Maintenance
- 11 Overtime Payment To A Former Legislative Assembly Member's Staffer

Reports Published in 1997

- 1 Contracting Pool and Leisure Centres
- 2 Road and Streetlight Maintenance
- 3 1995-96 Territory Operating Loss
- 4 ACT Public Hospitals - Same Day Admissions
Non Government Organisation - Audit of Potential Conflict of Interest
- 5 Management of Leave Liabilities
- 6 The Canberra Hospital Management's Salaried Specialists Private Practice
- 7 ACT Community Care - Disability Program and Community Nursing
- 8 Salaried Specialists' Use of Private Practice Privileges
- 9 Fleet Leasing Arrangements
- 10 Public Interest Disclosures - Lease Variation Charges and Corrective Services
- 11 Annual Management Report for Year Ended 30 June 1997
- 12 Financial Audits with Years Ending to 30 June 1997
- 13 Management of Nursing Services

Reports Published in 1996

1. Legislative Assembly Members – Superannuation Payments/Members' Staff – Allowances and Severance Payments
- 2 1995 Taxi Plates Auction
- 3 VMO Contracts
- 4 Land Joint Ventures
- 5 Management of Former Sheep Dip Sites
- 6 Collection of Court Fines
- 7 Annual Management Report For Year Ended 30 June 1996
- 8 Australian International Hotel School
- 9 ACT Cultural Development Funding Program
- 10 Implementation of 1994 Housing Review
- 11 Financial Audits with Years Ending to 30 June 1996

Availability of Reports

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