

**Submission to the Legislative Council Select Committee - Inquiry into the Provisions  
of the University of Tasmania Act 1992**

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## ***0. Introductory Comments***

### *a. Some historical background and context*

Australian universities have been in a state of almost constant and revolutionary change over the last thirty years. Those changes began with the publication, under Federal Minister John Dawkins, of the green and white papers that set out a new direction in Australian higher education in the late 1980s (see Dawkins 1987/1988). Dawkins's original intention was indeed revolutionary – it was intended radically to shift Australian universities towards a more corporatised, managerialist, and commercially-oriented mode of operation (see Macintyre, Croucher, Brett, 2017). Yet the changes that have occurred both in the late 1980s and in the years since, notwithstanding their radicality, have largely been carried out by Ministers and Vice-Chancellors independently of any genuine consultation with the Universities as defined in the legislation or with the wider community.

These changes have occurred across the entire system, but they have affected different institutions in different ways. The University of Tasmania was a little unusual in having resisted some of the effects of those changes even until the early 2000s. However, the last fifteen years in particular have not only seen the same sort of regime applied here as elsewhere, but if anything, it has been applied with even greater zeal and impact. This is partly because of a perceived need to “catch up” with other institutions. But it also reflects the unique position of the University of Tasmania as the only university in the state, as a consequence of which, any change in the University of Tasmania is a change to the *entirety* of Tasmania's system of higher education.

Compared to many other Australian higher education institutions, the University of Tasmania has a long and distinguished history, but it also lacks the same size and level of resources (including philanthropic resources) that other institutions of a similar age and distinction typically possess. One might well argue, however, that past University of Tasmania administrations have, in fact, simply failed to capitalise on the University's many advantages. Rather than following the same path as so many other institutions, an alternative vision might have looked to develop the University as offering a unique educational experience built around the personal contact that is such a hallmark of island communities, developing both its teaching and research programmes in ways that, whilst retaining breadth and global relevance, also drew more directly on the University's scholarly distinction, its history, and the uniqueness of its island location (and did so in genuine rather than merely rhetorical fashion). Sadly, the path that has been taken, and that continues to be followed, appears to lead, not to such an enlarged future, but to a very much diminished one. This may well be the first generation in which the University of Tasmania will be less for those who come after than for those who came before.

Despite the many changes to Australian universities over recent years, the extent to which those changes are consistent with the various state legislative provisions under which Australian universities are constituted has not previously been given detailed scrutiny of the sort this inquiry effectively enables. In addition to the other considerations mentioned above, this makes the current inquiry especially significant and timely.

### *b. The nature of this submission*

I would like to thank the Legislative Council for providing the opportunity, through this Inquiry, to scrutinise the legislation on which the University of Tasmania is founded. The current University Act is the second of two documents that have served as such a foundation. The first was the original University of Tasmania Act of 1889 by which the University was established. That Act was

substantially amended by a series of Acts, the Tasmanian University Act 1935, the Tasmanian University Act 1951, and the Tasmanian University Amendment Act 1980. The University of Tasmania Act of 1992 (hereafter referred to as “the University Act” or just “the Act”) has also seen significant amendment since it came into law, through the University of Tasmania Amendment Act 2001, the University of Tasmania Amendment Act 2004, and the University of Tasmania Amendment Act 2012. Given that thirty years have passed since the Act was first promulgated, it seems timely that it now be subject to a substantial review – all the more so given the current circumstances.

The Terms of Reference of the Inquiry specify five areas of concern relating, in summary: to *the constitution, functions and powers of the University*; to *the constitution, functions and powers of the Council and the Academic Senate*; to *the processes of accountability* to which the decision-making of the University may be subject; to *the measures that protect and promote academic freedom*; and to *other matters incidental* to these.

My submission touches on all of these areas. *Its main contention, however, is that, in its current form, there are serious inconsistencies between the constitution and functions of the University as set out in the University Act (in Division 2, §§5-6), and the constitution and powers of the Council and Academic Senate, as well as some of the matters pertaining to the key offices of the University (as set out in Divisions 3-4, §§8-17[a]). This has the result that the Act lacks any adequate structures or processes to ensure accountability in decision-making and that it effectively lacks any structures or processes to protect and promote academic autonomy or academic freedom (or to ensure conformity with the University’s key teaching and research functions)*

Power and authority within the institution are effectively centralised in the hands of the Vice-Chancellor, and to a lesser extent the Chancellor, with little in the way of significant checks and balances (although the Chief Operating Officer, operating under authority that essentially derives from the Vice-Chancellor and Chancellor, also exercises significant and increasing control). In addition, but of special relevance in the contemporary context, the Act includes no independent mechanism to ensure that internal grievances or complaints can be dealt with in a fair and independent fashion.

*I would thus contend both that the Act is seriously flawed in its own terms, as well as when measured against community expectations, and that the University’s management (more specifically its Chancellor, Vice-Chancellor, and Council) operates, to a very large extent, in a fashion incompatible with the Act’s own definition of the University and its functions.*

In addition to the main body of the submission, this document includes two appendices: a statement of my personal and professional background as relevant to the submission and a list of relevant supporting documentation and sources.

My apologies in advance for the length of this submission. I have been concerned to address the terms of reference as comprehensively as possible, to offer a reasonably detailed analysis and to provide an appropriate level of evidential and argumentative support in relation to the range of issues addressed.

## **1. Definition and Functions of the University**

### *a. The University as an epistemic community*

The University Act enshrines two fundamental ideas about the nature and functions (or perhaps better, “purposes”) of a university.

The first is the idea that universities are *communities*. In the Act this is expressed in the specification of the University of Tasmania (under Division 1, §5[1]) as consisting in the entire body of its staff, including its academic staff and the professional staff who support them, and its students and graduates. This makes the structure of a university quite different from a business entity that is the *property* of its owners or shareholders. It also makes the academic and professional staff of the University no mere “employees”, but rather constituting members of the institution (a key issue in the Orr case in 1958, see Davis 2002, as well as a much more recent case in Western Australia in 2008, see Forsyth, 2014, pp.165-166). Similarly, students cannot be considered mere “customers” either, since they too, along with the graduates or *alumni*, are constituting members of the institution to which they belong.

The second is the idea, specified in Division 2, §6(a), that universities are communities concerned “to advance, transmit and preserve” *knowledge* and *learning* (those three aspects of the function being implicitly tied together). The University is thus an *academic* or *epistemic* community, since even non-academic staff have a role defined in relation to that academic or epistemic focus. All of the main functions of the University of Tasmania are specified by the Act in relation to that primary focus which, in practical terms, means a focus on the activities of teaching and research (§6[b]), and the promoting and sustaining of those activities, as the Act makes clear “to international standards of excellence” (§6[c]). The functions specified under Division 2, §6(d)-(f) concern the opportunities, accessibility, and facilities associated with that primary function. The emphasis in §6(d), on encouraging and providing “opportunities for students and staff to develop and apply their knowledge and skills” is worth noting as is the emphasis under §6(d) on the provision of “educational and research facilities appropriate to [the University’s] other functions”.

The Act also states, in §6(g), that a further function should include promoting the “social, cultural and economic welfare of the community” (presumably the wider community beyond that of the University alone) and making available the resources of the University to this end. This too surely has to be read in keeping with the primary epistemic focus of the University’s other functions. It cannot be taken to imply that the University should be engaged in *any* activity to promote the welfare of the wider community – its primary focus on epistemic activities must remain, and this also means that the resources that it makes available, which may well include its buildings and facilities, would be primarily its epistemic resources, namely, the expertise of its staff and the knowledge (including the material knowledge contained in its collections) that it is concerned “to advance, transmit and preserve”.

The character of the University as given in the Act’s specification of the University’s constitution and primary functions is continuous with the character of the university as realised in those autonomous communities of scholars that were established in medieval Europe, in cities such as Oxford and Paris (and that also have parallels in other cultures and times, including, for instance, the monastic centres of learning that have been so important in many Buddhist societies). It is in these medieval institutions that contemporary universities find their origins. And the basic idea of the medieval university as an autonomous epistemic or academic community remains a central element in the

university as it is today – it is, for instance, an idea that can be seen to be operative in the *Magna Charta Universitatum* to which almost 1000 universities around the world, including the University of Tasmania, are signatories (see Observatory Magna Charta Universitatum, 1988, updated 2020).

The Act's characterisation of the University as essentially *an epistemic community* is expressive of the idea that the advancement, transmission, and preservation of knowledge is a *collective* activity undertaken by communities of knowers (since even the individual researcher depends on the work of others). The proper functioning of such a community requires a degree of equality and respect among members of that community. This not only reflects the character of universities as collective and cooperative bodies, but also the character of knowledge as itself collective and cooperative, and as therefore ill-served by authoritarian and top-down structures of direction and control. There are, in this respect, important connections, even though not always as direct as is sometimes claimed, between science and democracy (for two famous and influential accounts see Merton, 1942 and Popper, 2013[1945]; see also Douglas, 2021, esp. pp.1-5 and also, for an especially strong account, Ferris, 2011).

Science certainly contains competitive elements within it, but it nevertheless remains an essentially collaborative enterprise. It is an enterprise that is fundamentally dependent, regardless of the extent to which this is explicitly acknowledged or affirmed, on a common commitment to truth, to transparency and the sharing of information, to a willingness to engage in open dialogue and debate, and to a recognition of fundamental equality among knowers (since all knowers are all equally prone to ignorance and error).

The character of the University as an epistemic community thus requires that, if it is to be successful in the long term, it must also be a *collegial* or largely *democratic* community. It is for this reason that universities have traditionally operated through election rather than appointment of senior figures such as Heads, Deans and even Vice-Chancellors. And it was precisely this collegial and democratic tradition that was a key target of the changes instigated by Minister Dawkins in 1989. The managerialist framework, it should be noted, is neither democratic nor collegial, but essentially autocratic (the latter being a commonly used term to characterise contemporary Australian university management in much of the contemporary literature), and as such it already stands in tension with the idea of a university as an academic community.

Although it is of course possible that someone might challenge the definition of the University and the specification of its primary functions as set out in the Act, it is difficult to see how this could be done in any way that was either well-founded or likely to command wide community support.

In fact, such definitions and specifications of functions have seldom been directly challenged, either in Tasmania or elsewhere, and continue to be drawn upon by Vice-Chancellors and others – as they are even by the current Vice-Chancellor of the University of Tasmania (and as demonstrated by the continued commitment of the University of Tasmania, noted above, to the *Magna Charta Universitatum*).

Just as importantly, however, any such challenge would not just be a challenge to the idea of a university as an autonomous epistemic community, but it would also go against a set of fundamental ideas concerning *the very nature and constitution of science and scientific scholarship*. What is at issue in the Act's definition of the University and specification of its functions is not just the character of a particular historically contingent institution, but the nature of knowledge and the means by which it is to be successfully pursued.

As a consequence of these considerations, *the specification of constitution and function set out in the University Act represents the fundamental starting point for any review either of the remaining provisions of the Act, including questions concerning any provisions in relation to oversight or accountability, or of the extent to which the University of Tasmania, as it currently operates and is configured, is indeed in accord with the Act.*

*b. Lack of consistency in the Act and in university operation*

Yet although the Act's specification of the University's constitution and functions is entirely appropriate, the Act also exhibits significant shortcomings — various weaknesses, omissions, and even inconsistencies— in terms of some of the remaining provisions when these are considered in relation to those fundamental points of constitution and function.

Many of the shortcomings in the current Act could be seen as due to a lack of attention in the formulation of the Act (and despite the lessons of the previous century of the University's operation, see Davis 2002) to the possibility that the University's management might diverge from the fundamental principles embodied in the specification of constitution and function, that University Council might acquiesce in such divergence, or that Academic Senate may be so weakened that it could no longer properly represent or champion those principles. However, many of these shortcomings have actually arisen as a result of the imposition onto the University sector of that corporatised, managerialised, commercialised mode of operation that has come to dominate policy in relation to universities (and many other public institutions) under successive Federal Governments both Coalition and Labor over the last 30 years.

As noted earlier, the *consistency* of such a corporatised, managerialised, commercialised mode of operation with the constitution and functions of the University as laid down in the Act (and with similar Acts elsewhere) has never properly been addressed by policy makers or by government and, in fact, contradicts the fundamental character of the University as an epistemic community.

The corporatised, managerialised, commercialised ideal that is evident here is not one that has any strong empirical or theoretical foundation and in its general form has been the subject of a very large body of critical literature over the past 30 years developed from a range of different perspectives and in varying forms (see, among many other works, Anderson, 2019; Hood and Dixon, 2015; Locke and Spender, 2011; Parker, 2002; Power, 1997; Sennett, 2006; Sandel, 2012; Travers, 2007; Yeatman and Costea, 2018). It is a recurrent focus in contemporary criticism of Australian university management (see e.g. Biggs and Davis, 2002; Coady, 2000; Hil, 2012; Meyers, 2012; Forsyth, 2014; Hil, Pelizzon and Baumits, 2022; Sims, 2020 – there is an even larger body of overseas literature).

It is, however, an ideal that has been adopted by many governments and aggressively promoted by the large consultancy firms – McKinsey among them – that have, over recent years, increasingly looked to the public sector, and so to institutions like universities, as one of their major sources of revenue. Those firms often have close relationships with universities and government, at both personal and institutional levels (notably so at the University of Tasmania) advising on and promoting the adoption of specific models of audit and quality assurance as part of regulatory and best practice standards and systems at the same time as they also offer their own services to institutions in meeting those very same standards and systems (the conflict of interest involved here is a major and well-recognised problem that remains almost completely unaddressed – on some of

the problems associated with such firms, and McKinsey in particular, see e.g. Bogdanich and Forsythe 2022; Markovits, 2020).

Many of the shortcomings at issue here have also arisen as a result of the amendments to the Act that have occurred since 1992 – amendments that have been entirely at the behest of the senior management of the University, lack any clear articulation or foundation with respect to the fundamental principles set out in the Act’s specification of constitution and function, and were not developed on the basis of any genuine consultation either with the University itself (that is, with the body of staff and students) nor with the wider Tasmanian community. Moreover, most of these amendments have as their clear purpose an increased concentration of power and authority in the hands of the Vice-Chancellor (and of senior managers) and a commensurate shift away from the wider academic body. It is these amendments that have played a significant role in facilitating recent decisions made by the University’s senior management regarding, among other matters, the abandonment of the Sandy Bay campus and the shift to an increasingly online mode of operation.

The last of these matters warrants some further comment. Although the move initiated by the University’s senior management away from Sandy Bay and into the Hobart CBD is not a central focus for this submission, it should be noted that the move is itself bound up with the aggressive push on the part of the University’s management towards online teaching, a shift that is almost entirely driven (notwithstanding claims to the contrary) by the desire to reduce costs, decrease staffing and centralise control.

It is not unreasonable to ask to what extent the move into the city and online is itself consistent with the emphasis under Division 2, §6(d) of the Act on the provision of “educational and research facilities appropriate to [the University’s] ... functions”. How *appropriate* is the much-diminished commitment to face-to-face teaching, and all that goes with it, to the University’s designated functions of advancing, transmitting and preserving knowledge and learning, and of promoting and sustaining teaching and research to international standards of excellence? How *appropriate* is the shift to what is almost certain to be a much more dispersed mode of operation across multiple city sites and the loss of a concentrated (and, as everyone acknowledges, highly attractive) campus that more readily facilitates staff and student interaction?

These are all questions that ought to be asked, and the problems they raise are in urgent need of being addressed, but they are also questions which the current corporatised, managerialised, commercialised mode of operation largely prevents from emerging in any serious way within the University or within the wider community – certainly not in a way that allows for transparent, open or public discussion that could lead to any fundamental change in direction.

The problems surrounding the move into the city are far from being the only significant issues that are evident when one compares the current way the University is being managed with key specifications in the Act. Such problems (and the two examples that I discuss in the section immediately following) are illustrative rather than exhaustive. There are many other problems (and other examples) that indicate the lack of fit between the statutory definition of the University, including its functions, and its actual mode of operation (similarly one could easily generate other examples to demonstrate the inconsistencies here). Moreover, this lack of fit between legislative definition and current operation also extends to a lack of fit *within the current Act* between the specification of the University’s constitution and functions and the specification of the University’s governance structures and processes, particularly as these relate to the University Council and Academic Senate.

### *c. Two illustrative examples*

Before coming to a more detailed consideration of the shortcomings in the Act in regard to matters of institutional structure and governance (particularly in regard to Council and Academic Senate), it is worth giving some further attention to the discrepancy between the statutory functions of the University and the University's current mode of operation. This discrepancy can be brought out quite clearly by the use of examples – there are two main examples that will be used here – although it should be emphasised that these examples are, as already noted above, illustrative rather than exhaustive.

#### *i. Expenditure and orientation*

The first example relates to overall expenditure and the balance of academic expenditure over non-academic expenditure – that is, expenditure on activities directly related to the University's statutorily defined functions and especially its primary functions (the advancement, transmission and preservation of knowledge, and the promoting and sustaining of teaching and research to international standards) over activities related to its administrative activities.

The University's annual financial report does not make it easy to separate the two areas of expenditure in question, but there is clear evidence that non-academic expenditure makes up the bulk of the University's annual expenditure overall. Australian universities generally allocate more than 50% of their expenditure to non-academic activities (the proportion was significantly lower in the period up until the 1980s and even 1990s). In the case of the University of Tasmania the figure is likely to be around 60% or higher if one takes into account the shift of administrative tasks onto academics that has occurred in recent years. This is all the more so if one also takes into account the likely inclusion under academic expenditure of the salaries of senior managers (such as the Vice-Chancellor and Provost, but also, increasingly, Heads of School and Deans) whose positions no longer include any significant academic activity.

This shift in expenditure has, in recent years, been accompanied by substantial increases in the salary levels of the Vice-Chancellor and other senior University managers, along with an increase in senior managerial positions generally, and a proliferation of often grandiose titles associated with those positions ("Vice President, Strategy, Finance and Marketing" being a notable example as are the very many positions designated "Pro-Vice-Chancellor"). The excessive remuneration of senior university managers, especially Vice-Chancellors, has been the subject of persistent media attention. It was an issue raised as part of the 2021 New South Wales Inquiry into the university sector in that State with the Inquiry recommending referral of the matter to the State's Auditor-General (NSW Wales Parliament, 2021, Recommendation 3).

Despite the idea of the University as forming a single community (an idea that still appears in communications from the Vice-Chancellor and others), the University of Tasmania is characterised by a very clear separation of managers from academics that is spatial as much as it is remunerative or organisational. Neither the Vice-Chancellor nor his senior managers frequent the University Club and are seldom seen in any of the University's other social spaces. They are, in fact, seldom seen anywhere on campus other than in the administrative buildings and carparks. The disengagement of senior managers from everyday interaction with other staff, and even from ordinary university activities, not only underlines the strongly top-down character of the institutional structure but is itself expressive of the prioritisation of the non-academic over the academic. Moreover, recent restructuring of key areas of the University's administration – specifically Finance, University

Services, and the Office of Future Students – make very clear not only how extensive is the non-academic managerial structure of the institution but also how much of the institution’s operations are driven by administrative concerns, especially investment and financial considerations, with little or no academic input, under the direction of the Chief Operating Office.

Such considerations reinforce the imbalance evident in the relation between non-academic and academic expenditure. This skewing of expenditure and orientation towards the non-academic prompts an obvious question as to the consistency of this with the specification of functions as set out in the Act. Is the University of Tasmania, as currently configured, an institution that remains true to its primary functions of advancing, transmitting, and preserving knowledge and learning, and of promoting teaching and research? Or is it rather an institution for which any academic or epistemic functions have essentially become secondary to a set of almost purely managerial and financial imperatives?

Consider, by way of comparison, a hypothetical business that purports to be primarily concerned with manufacturing of products for sale, but which allocates only 40% of its budget to the manufacturing side of its operations and 60% to its administrative activities. Such a business would surely be judged, not only to have its priorities in the wrong order, but also to be seriously dysfunctional. Such a business would be most unlikely to attract investors, and for good reason – it would be unlikely to survive let alone return any significant profit. The fact that universities are not troubled in analogous fashion is merely an indication of the extent to which their managers have indeed succeeded in separating their institutional operations from the properly constituted and legislatively specified institutional functions.

It is, of course, true that academic activities require administrative support, just as academic activities also require financial resources. This does not mean that one cannot distinguish the non-academic from the academic nor does it imply that administrative or financial considerations can be given priority over considerations of teaching and research. *The relation of the non-academic to the academic must be understood as an enabling and facilitating relation.* When the primacy of academic considerations is lost sight of, and administrative and financial concerns drive the institution, then the result can only be a corroding of the underlying values of the institution and a distortion of its proper character. In the case of the University, this also means a failure to operate in accordance with the primary orientation set out in the University Act.

#### *ii. Commercial activities*

The second example relates to the University’s commercial activities. The 2020 University of Tasmania Annual Report contains a section on “University Properties Pty Ltd”. This states that “University Properties Pty Ltd was established pursuant to section 6(g) of the University Act and is a not-for-profit, non-political entity established and located in Australia for the sole purpose of furthering the functions of the University as set out in the University Act”. §6(g) of the Act specifies the functions of the University as follows: “to engage in activities which promote the social, cultural and economic welfare of the community and to make available for those purposes the resources of the University”. It is quite unclear exactly how what is effectively a property management and development company might serve to “promote the social, cultural and economic welfare of the community and to make available for those purposes the resources of the University”, or how such a company might further “the functions” of the university more broadly. As presented in the media, the rationale for the establishment of University Properties Pty Ltd is that it was to allow “the university to focus on its core business of learning, teaching and research” (Campus Morning Mail, 2021), but this suggests that the decision of the University’s management to engage in the extensive

property dealings that have been one of the hallmarks of its recent history does indeed represent a distraction and deviation from the University's core functions.

One area of commercial activity in which universities do become engaged, and which is included as a function of the University under a 2001 amendment to the Act, is the commercialisation of intellectual property (see Division 2, §6[fa]: "to foster or promote the commercialisation of any intellectual property"). Unlike the activities of a company such as University Properties Pty Ltd, research commercialisation has a direct connection to the University's core functions, although here too, it is important to draw a line beyond which such commercialisation can go too far. Except in some specialised areas, it is generally not thought appropriate, for instance, for a university to become directly involved in the manufacture and marketing of products based on patents the university may hold, and other instances of involvement in commercialisation may also prove similarly problematic. In this respect, the University's own move to more aggressively engage in commercialisation of research as a key element in its finance and investment strategy through the establishment of what is referred to as "Utas Holdings" is, in the present context, a worrying development – all the more so given the fact that this is run as part of the increasingly expansive domain administered by the Chief Operating Officer.

So far as the University's property dealings are concerned, it is worth considering another hypothetical case. Suppose that instead of allowing the property near the Churchill Avenue entrance to the University to be taken over as a site for Hill St Grocer, the University's managers had decided to develop the University's own supermarket and food outlet on that site, and then to expand it into a series of such food outlets around Sandy Bay, Taroona and the Hobart CBD, with the resulting entity being named the "University Grocer". An analogous rationale could be advanced for such a development as for University Properties Pty Ltd: "established pursuant to section 6(g) of the University Act", University Grocer Pty Ltd would allow "the university to focus on its core business of learning, teaching and research" whilst also meeting the need for provision of a food and grocery outlet to serve staff, students and the wider community. I suggest that we would not view a move by the University into the grocery business as genuinely compatible with its specified functions – why then should the move into the business of real estate be viewed any differently?

Such considerations are of special interest given the controversy over the Sandy Bay campus and the move into the city. It is especially relevant, however, to consideration of the University's relation to the Act inasmuch as it is indicative both of the rather tenuous justifications the current University management seems inclined to use to justify its activities and the complete absence of any institutional or legislative framework within which University management might be held to account in regard to such activities and the justifications offered. In this case, the reference to the Act has become almost completely meaningless – a form of superficial and *ex post facto* attempt at legitimisation that shows a degree of disrespect and even contempt for the legislative framework under which the University operates.

The way the University's management has attempted to justify its property interests and activities with reference to §6(g) might be taken to show a deficiency in the specification of function in the Act, at least with regard to §6(g). Certainly, there seems a strong case for saying that, in the case of University Properties Pty Ltd, §6(g) is being used to justify an activity that is not in accord with the University's primary functions. This might suggest a need for §6(g) to be revised, and it probably is advisable that consideration be given to some clarification of the function specified. It is important to note, however, that the current wording would be unlikely to present a significant problem were the management and governance of the institution sufficiently well-aligned with the University's

character, including its functions, as specified under the Act. What this shows, in other words, is precisely the need for greater consistency within the structure of the Act as a whole.

## **2. University Council and Academic Senate**

### *a. Some general considerations*

There have long been issues over the extent to which academic voices and interests have been properly included in the governance of the University of Tasmania (see Davis, 2002). Yet, for much of the period from the 1930s onwards, especially after the 1955 Royal Commission into the University, and up until at least the 1990s and even the early 2000s, there existed various mechanisms within the structures and processes of the University of Tasmania, all of which had the effect of ensuring that a greater range of views had to be taken account of in decision-making at the same time as academics themselves were more directly involved in the decision-making process. The character of the institution was thus much more collegial (even “democratic”) than it was managerial (see Chapman, 2015).

Those mechanisms included, as part of a much more collegial rather than managerial structure, a stronger Academic Senate, other academic structures and processes within the Faculties, Schools and Departments (including Faculty Boards), the authority of the Deans, and a more diverse Council. Within this structure, moreover, it was the Professorial Board (made up of all Professors and the non-professorial Heads) which had been the key body in the administration of the University from the 1930s until the Board ceased to operate, in the early 1990s, as a result of changes associated with the 1992 Act (as Arthur Sale notes, “to a large extent, the Professorial Board ran the University internally”, Sale, 2015, p.37). The centrality of the Professorial Board ensured that, while it operated, the university remained an institution with a strongly academic focus in the administration of which academics had a key role.

The current operation of the University is a stark contrast to its mode of operation prior to the 1990s or even the 2000s. As the institution is currently configured, genuine academic views and voices have been all but eliminated from the decision-making processes of the University. This is very clear when one looks more closely at the University’s structures and processes.

### *b. University Council*

University Council is the key decision-making body within the University. Its composition has been significantly altered in recent years largely in terms of the reduction of representation from the University itself – specifically the reduction in student and staff membership (especially academic staff). Since Council’s powers and composition are defined by the University Act, the changes in composition have occurred as a result of amendments to the Act, most recently those of 2012.

Under the Act (as specified in Division 3, §8), Council includes only two elected members – one each from the academic and professional staff – with no elected student representative (instead the Act requires a minimum of one student who is appointed by Council). This is in contrast with the previous composition of Council as it was under the unamended version of the Act in which the elected membership was higher and across a greater range of categories.

The majority of Council is not elected but appointed. Two members are appointed by the Minister (the actual practice appears to be that these appointments are made on the informal advice of the

Vice-Chancellor or Chancellor) who must not be students or staff members and at least one of whom must be a University of Tasmania graduate. Up to an additional six members can be appointed by the Council, at least one of whom must be a graduate of the University, but who must also be neither students nor staff members. And finally, the Council includes three *ex officio* members, the Chancellor, Vice-Chancellor, and Chair of Academic Senate, as well as the Council Secretary.

Of the fourteen members who make up the current Council, ten (plus the Secretary) are directly appointed, with those appointments being largely controlled by the Vice-Chancellor and Chancellor. It is also not uncommon for Council members to have personal or professional connections with the Vice-Chancellor or Chancellor, and that appears to hold true for several members of the current Council.

Of the current members of Council, only three have any significant qualifications, to an international standard, in teaching and research. They include Professor Peter Dawkins, Professor Natalie Brown (Chair of Academic Senate), and the one elected academic member, Distinguished Professor Jamie Kirkpatrick. This is a significant point of contrast with most University governing bodies overseas – the governing body of Oxford University, for instance, has a membership of which over 70% have academic experience and expertise.

The Act specifies that the Vice Chancellor is “the chief academic” as well as the executive officer of the University (Division 4, §16[2]) (the Vice-Chancellor thus takes the title of “professor”). However, the position of Vice-Chancellor is no longer associated with any significant teaching or research role, with the position being entirely corporate or managerial in its orientation (the “academic” designation has thus become purely nominal). Moreover, the current Vice-Chancellor has not only never been a Head of Discipline, Head of School, or Dean, but has limited experience as a teacher or postgraduate supervisor, and his research profile is far below what would normally be expected even of a senior lecturer, let alone anyone of professorial rank. The current Chancellor appears to have no significant academic experience or expertise – although she, like the current Vice-Chancellor, was previously a partner at McKinsey and Company.

The Council has the power to make ordinances and by-laws that determine almost all aspects of the University’s operation. Practically speaking, control of Council is in the hands of the Chancellor and Vice-Chancellor (a genuinely strong and independent Council would require a very different composition and mode of appointment) and there is no outside body that can intervene or to which the Vice-Chancellor, the Chancellor, or the Council are directly answerable. This means that almost all power and authority in the University is effectively vested in the Vice-Chancellor and Chancellor, and, for the most part, in the Vice-Chancellor (or the officers to which the Vice-Chancellor delegates such power and authority). Moreover, through their control of Council, the Vice-Chancellor and Chancellor also effectively control one another’s appointment and, in the case of the Vice-Chancellor, renewal of contract. It should be noted that although the Act specifies the conditions under which the Chancellor and Deputy Chancellor may be dismissed (see Division 4, §17[a]), there is no specification of the conditions under which the same may happen with respect to the Vice-Chancellor.

### *c. Academic Senate*

In the relatively recent past, Academic Senate has exercised significant power and authority in its own right, even going so far as to contest budgetary decisions where those decisions were deemed to have an adverse and unacceptable impact on academic matters and threatening a vote of no-

confidence in the Vice-Chancellor. In its current form, however, the Academic Senate has been almost entirely disempowered and its role significantly diminished. That this could occur is a simple consequence of the fact that the functions and powers of Academic Senate are not given statutory definition in the Act but are instead subject to determination by Council through prescription by ordinance (see Division 4, §13 [3]). The last 30 years have seen significant changes to the ordinance relating to Academic Senate and it is these changes that are primarily responsible for the Senate's reduced role and powers (for the current ordinance, see University of Tasmania, 2022).

Although Senate was much less important previously, the demise of the Professorial Board that occurred with the changes in 1992 led to Senate becoming the main academic decision-making body within the University. Academic Senate is specified, in the Act, as having an advisory function to Council on academic matters (Division 4, §13 [4]) – already a lesser role than that of the Professorial Board but significant nevertheless. Yet even though the Senate Ordinance retains a reference to Senate's advisory role (the Ordinance repeats the statement regarding Senate that is present in the Act), the more detailed specification given in the body of the Ordinance restricts Senate's role to what is essentially the management of a series of quality assurance processes (“monitoring” and “ensuring”) with no mention whatsoever of any substantive advisory role and with no real or independent decision-making power of any consequence. In this respect, Senate has shifted over the last thirty years from being a body that gave genuine voice and authority to academics within the University's administration to what is now little more than a quality assurance committee, albeit with a large membership.

The membership of the Senate (which is not specified in the Act but is also made entirely subject to the Council Ordinance – again see Division 4, §13 [3]) has itself been heavily juniorised with only a small proportion of the professoriate represented and only a small proportion of the Senate being made up of senior staff who are actively engaged in significant teaching and research.

Much of the Senate membership is comprised of individuals who occupy managerial positions with direct lines of reporting (and so also of supervisory oversight) through to the Directors, Deans, Pro-Vice-Chancellors, Executive Deans, Deputy Vice-Chancellors, Provost, Chief Operating Officer, and Vice-Chancellor, many of whom are themselves members of Academic Senate. Whilst this creates a very particular problem in relation to Senate (which was previously composed largely of senior academics – professors and heads of school), it is also indicative of a more general problem within the institution, namely the way many of the institution's decision-making bodies are composed of managers who are directly subordinate to (and whose positions are therefore dependent on the favour of) more senior managers who sit on those same committees.

In an organisation with as top-down a managerial structure as the University of Tasmania, and such a strongly disciplinary managerial culture, this is a very effective deterrent to any form of independent thinking, critique or dissent (an issue that the group of Distinguished Professors, of which I was a part, raised some years ago when the University's management was considering the development of a conflict-of-interest policy – the issue remained ignored and unaddressed then and remains so now).

In the case of Academic Senate, this means that the Senate is, as with so much of the University's current operation, very much under the control of the Vice Chancellor. Moreover, although the Chair of Academic Senate remains an elected position, the election is by members of the Academic Senate. Since that membership is so heavily weighted towards management (leaving aside the other mechanisms that can also be brought to bear), this implies, once again, effective control by the Vice-

Chancellor. And as the Chair of Academic Senate is also an *ex officio* member of Council, it further consolidates the Vice-Chancellor's control of the latter body as well as the Senate.

*The Academic Senate is thus no longer a properly academic body, and academic decision-making is now almost entirely made according to managerial criteria and is undertaken primarily by those with managerial and not academic responsibilities who often lack significant academic experience or expertise.*

This situation has been exacerbated by the weakening (if not the effective removal) of any requirement that Heads of Discipline and Heads of School should have experience and expertise in teaching and research "to international standards of excellence" despite the fact that many such positions also carry the rank of professor (this also reflects the general abandonment of any specified research expectations for academic staff). This means that senior staff positions, even when included as part of the University's academic complement, are increasingly occupied by individuals with purely managerial qualifications and no real academic background. Thus, to cite one especially prominent example, the position of Executive Dean of the College of Science and Engineering, previously held by a well-respected scientist who had previously been Head of Chemistry but who was inexplicably removed from the role, is now held by someone who is a career administrator lacking even a doctoral qualification.

Although the University's management regularly employs the language of consultation and engagement in its internal managerial rhetoric in just the same way as it does externally, the same pattern is evident in both cases: *such language remains purely rhetorical, and the activities of consulting and engaging by university management in relation to decision-making typically takes the form simply of informing relevant stakeholders of decisions already taken.*

This is readily apparent in the way University management has engaged (and continues to engage) with the wider Tasmanian community, and especially with the Hobart community over the proposed abandonment of the Sandy Bay campus and the move to the city, but it is equally apparent in the way University management engages with the University itself – that is, with the academic and professional staff, the students, and the graduates.

#### *d. Lack of consistency in structure and governance*

The current configuration of the University's management and governance as reflected in the Council and Academic Senate, is thus such that the institution, *although defined as primarily an epistemic or academic community by the Act itself*, is neither managed nor governed by those with experience or expertise in academic or epistemic matters. Moreover, the manner in which the University is managed and governed is almost entirely severed from the community that constitutes the institution and from the wider community that it also serves.

*The inevitable conclusion is that the current configuration of the University's management and governance is significantly at variance with the founding character of the University as laid down in the Act and that key elements within the Act are similarly at variance with that founding character.*

Regardless of the concentration of power in the hands of the Vice-Chancellor, it is nevertheless the University Council that bears ultimate responsibility for all aspects of the University's operations – which is why the constitution of Council is so important. Given the troublesome character of the University as it is now, it is worth recalling an earlier set of comments from 1954. In the letter to *The Mercury* from that year, in which he called for a public inquiry into the University (the Royal

Commission into the University followed in 1955), Sidney Sparks Orr wrote that “It is self-evident that the Council of the University of Tasmania, as a result of apathy, neglect and maladministration over recent years, has failed completely to discharge its most vital duty to the Government and the people of Tasmania, of maintaining the traditional ideals of, and essential prerequisites for, a University” ( Orr, 1954). It is hard to avoid the conclusion that a similar verdict applies today.

### **3. Accountability, Academic Freedom and Autonomy**

#### *a. Reporting and regulatory requirements*

The University is required, under Division 4, §12 of the Act, to provide an annual report, containing full financial details, within six months after the end of each financial year to the Governor, and so to the Minister also, and that report is then tabled before both Houses of the Parliament. The University’s operation, as set out in the report, is subject to scrutiny by the Auditor-General’s office.

This reporting requirement might be thought to provide an important means by which the University can be held *financially* accountable and to some extent this is true, at least so far as the formal audit process is concerned.

However, the report is limited in the information it provides and far from transparent as to the full details of the University’s operations. Moreover, I am not aware of the University’s annual report receiving any particular scrutiny from members of the Parliament nor of it ever having been the focus of real debate and discussion. In this respect, the University’s reporting to Parliament has become little more than a formality, and there is, in any case, no obvious or direct mechanism by which the Parliament could ordinarily take action with respect to the University should irregularities or areas of concern become evident as a result of examination of the University’s annual report. The Auditor-General does consider the University’s report in detail, but this is only within the specific framework of current audit practice, and does not, in the usual course of affairs, consider the report as it might relate specifically to the University’s academic activities nor in relation to its specified functions under the Act.

I would note too that the University’s financial year ends on December 31, with the annual report typically being finalised in February of the following year. However, the University then waits for the full six months to elapse before sending the report to the Governor, with another wait until the next sitting before it is tabled in Parliament. The result is that the report is generally not available until eight months after the end of the University’s financial year. Such a delay itself hampers prompt scrutiny and genuine public accountability – especially problematic at a time when the University is engaged in contentious planning and development, and even more so given that the annual reporting process appears to be the only significant means, under the Act, by which the University is open to scrutiny from outside.

The University’s management often makes the claim, in response to charges of lack of scrutiny and public accountability, that it does, in fact, operate within a complex structure of regulatory requirements that ensure accountability in ways that are not reflected in the University Act alone. The implied (and sometimes explicitly drawn) conclusion is that the University is accountable, not only in terms of its reporting obligations under the Act, but via a different set of mechanisms that are mandated through other state legislation and regulation, and federally.

There is indeed a complex structure of regulation and legislation within which the University operates, that is separate from the Act, some of which is specific to the University (and to

universities nationwide) and some of which applies across a wide range of organisations and activities. Yet, as can be shown by examples from the University of Tasmania (especially in relation to mandated requirements relating to staff), institutions frequently find ways around regulatory constraints, and the fact that a regulatory framework is in place implies nothing about the adequacy of that framework nor the stringency with which it is applied. Moreover, a system of *regulation* is not the same as a system of *accountability*, and even were one to allow that a degree of accountability is embodied in the existing state and federal frameworks, there is an important question as to the specific respects in which accountability is exercised in this way and where such accountability is directed.

The distinction between regulatory frameworks and genuine systems of direct institutional accountability is very clear within the corporate world (the same world, of course, that Australian university managers have increasingly invoked to justify their own mode of operation). Public companies also have to operate within regulatory frameworks of various kinds, but their Boards (unlike the University Council) are directly accountable to shareholders. There is no such mechanism that ensures a similar level of accountability of university managers or of the University's governing Council (see also Forsyth, 2014, pp.151-152). Indeed, given the constitution of the University under the Act, and despite the reporting and regulatory framework that obtains, neither the University's senior managers, including the Chancellor and Vice-Chancellor, nor its Council are accountable in any significant way *to the University itself*.

#### *b. Lack of genuine accountability*

The lack of genuine accountability of the University of Tasmania management and governing body to either the University or to the Tasmanian community is especially concerning given, as noted earlier, that the University of Tasmania is the *only* University in the state.

That lack of accountability is made worse by the lack of transparency, one might go so far as to say, the *secrecy*, that characterises the University's current organisation and operation. The University routinely uses delaying tactics whenever it is required to make a public release of information (as was shown in the case of the recent FOI request from the ABC regarding the Fountainside Hotel, and even in the case, as noted earlier, of the annual report). Moreover, the decision-making of University management, including Council, is largely closed to outside scrutiny, and the centralised system of management and authority means that it is not readily open to internal academic scrutiny either.

Although it is still possible to access lists of staff through the University website, it is not possible to find any such lists specifically of the managerial hierarchy nor is it possible easily to determine the identity of key figures other than those at the very top of the institution. The entire managerial side of the University has effectively been rendered anonymous. Inquiries about university matters, including inquiries from staff and students, are routinely directed to generic email addresses or phone numbers. This is a special problem for students who, when they encounter a problem, have no continuity of care in their attempts to have that problem addressed, often having to communicate with a different administrator on each occasion they contact the relevant office. Much the same is also true for staff, except in those cases where they already have the personal contact details of a relevant officer or where the issue is dealt with by a supervisor as part of line-management.

The generic and anonymous character of university administration's mode of engagement even with its own staff and students is itself a function of both the centralised and top-down approach to administration that it has embraced and the shift to an online mode of operation.

The University's shift online is most often seen in terms of a shift away from face-to-face teaching and to online delivery. But the shift online is much broader and more pervasive. Increasingly, all aspects of the University's operation have been transformed in this way. COVID-19 intensified this shift (though it did not initiate it) and the University management's abandonment of Sandy Bay and move to the city is directly tied up with it. In truth, the so-called move to the city is not so much a move to the Hobart CBD as it is a move online. A university that operates online has much reduced needs in terms of buildings and campus (it actually doesn't need much of a campus at all), just as it no longer has a need for the same level of staffing.

From an academic perspective, of course, an online institution is much less satisfactory – essentially a cut-price version of what a real university should be. This is partly because of the reduction in real academic engagement that is possible online. And despite the oft-repeated claims of university managers, there is no significant evidential basis for the idea that online learning is more effective than face-to-face – although it can be more cheaply delivered and is often seen as more convenient, it is generally a less pedagogically successful mode of learning and teaching.

The character of universities as academic or epistemic communities makes the spaces and places in which they are embodied and embedded of great importance to their operation. Not only teaching benefits enormously from personal face-to-face interaction, but so too does research. That is why university campuses are so important – they provide the concentrated spaces in which academic discussion is sustained and in which academic relationships are built. Ironically the University's management has promoted its move to the City, which is so much bound up with its move online, by invoking exactly the idea of academic life as it is based around face-to-face engagement on the campus (which ought to include face-to-face engagement, not only in coffee bars and on the street, but in seminar and lecture rooms, in offices and common rooms). Yet it has invoked this idea to promote a mode of university operation that is directly opposed to it – a mode of operation that is primarily online rather than face-to-face and that is associated with a set of physical spaces that are dispersed across the CBD in a way that is likely to lead to a consequent dispersal of student and academic life.

The existing university spaces in the city are already, for the most part, dead and empty – devoid of exactly the kind of social engagement that the University's management so enthusiastically spruiks. This is true also for those spaces, such as the Art School precinct at Hunter Street, that were once alive and active, and is a result, not only of restrictions consequent on the pandemic, but of the increasingly online character of the institution, and the loss of any sense of university community.

*The lack of accountability in the University's current structure and mode of operation itself reflects the lack of adequate accountability provisions in the Act as it now stands. That lack of accountability has become a serious problem given the development of such a strongly centralised managerial structure and mode of operation within the institution and the lack of transparency that is associated with it. The lack of adequate accountability provision is thus a serious deficiency in the Act.*

### *c. Academic autonomy and academic freedom*

A similar and equally serious deficiency is evident when one looks to identify any provisions in the Act to protect and ensure academic freedom or when one considers broader issues of academic autonomy. The phrase “academic freedom” does not appear in the 1992 Act nor does the concept appear under any other form of words. Nor is there any explicit attention given to issues of academic autonomy. This may be because, in the original version of the Act, the basic ideas of both academic freedom and autonomy, in some form, were already assumed in the idea of the University as an academic or epistemic community – although even in the period prior to the 1990s, the protection of academic freedom and autonomy was a very real concern (see Davis, 2002).

In the present circumstances, where there is no effective academic body at work within the University’s governance structure and where genuine academic views and voices are effectively excluded from decision-making in favour of the managerial, the possibility of the exercise of genuine academic autonomy has been almost entirely extinguished. In such a situation, the threat to academic freedom is very real.

Whether there is a clear distinction between academic autonomy and academic freedom is a moot point. *Autonomy* concerns the capacity for *self-determination* – in this case for academics to make their own decisions about matters pertaining to the academic work in which they are engaged. Even outside the academic environment autonomy is an important element in all but the most basic forms of work and activity – autonomy, which is itself linked to intrinsic motivation, is well-established as a key factor in improved productivity and creativity (a large literature exists on this topic in the psychological and related literature, but for a recent and accessible discussion of some of the relevant issues, see Reisinger and Fetterer, 2021).

Such autonomy is a very important feature of professional activity and it is notable that many of the changes that have led to a loss of academic autonomy at the University of Tasmania (and in Australian higher education more generally) have also been tied to the de-professionalisation of academic work and the effective de-skilling of academics (a tendency that can also be observed as a feature in the rise of managerialism elsewhere, see e.g. Yeatman, 2018). The subjugation of the academic to the managerial is a crucial factor in this process as is the shift to increasingly online forms of university operation.

As a brief additional point, it is worth considering the extent to which the processes of de-professionalisation and de-skilling that are occurring (and that are also tied to the increasing workloads, including administrative workloads, placed on academic staff) might itself be inconsistent with the emphasis in Division 2, §6(d) of the Act, on encouraging and providing “opportunities for students and staff to develop and apply their knowledge and skills”. Academic staff, in particular, find themselves in a situation in which their own professional development is now heavily skewed (as are the opportunities for promotion) towards the managerial rather than the academic.

Whilst academic autonomy often has a more general sense and a broader extension, *academic freedom* is a notion usually taken to be more specific in character. It includes but is not restricted to a certain freedom of expression when it comes to academic matters, although it is not to be confused with mere “freedom of speech” (on this, and some of the other issues surrounding academic freedom, including its definition and contemporary threats to it, see Lyons, 2021; Evans and Stone, 2021). Nor is it restricted to the freedom (within the bounds of ethical conduct) as to how academics may conduct their research, the topics on which they may focus, or the hypotheses and

arguments they may advance. Academic freedom extends, within certain reasonable constraints, to freedom in teaching – both what is taught and how it is taught.

Academic freedom (and this is an important additional consideration in relation to academic autonomy) is founded in the idea that academic or scientific work is determined primarily by considerations of knowledge and truth and should not be constrained by political or economic considerations, by considerations of what is fashionable, or by other external pressures. The argument for such an idea of academic freedom is simple to state. If one is involved in the pursuit of knowledge (which is also the pursuit of what is true), then the only constraints on that pursuit, apart from the ethical, must be epistemic – they must be considerations that are indeed relevant to knowledge and to truth. And since no claim to knowledge can be absolute (any such claim is only as strong as the evidence on which it is based and all evidence is partial), so, in the pursuit of knowledge, we will do well to keep as many different lines of inquiry open as possible (see e.g. Malpas, 2018). The idea that we can decide in advance what is likely to be true and commit all our resources to just one way line of inquiry almost always leads to disaster.

There are many pertinent and instructive examples here that show the importance, not only of academic freedom, but also the dangers that attend on the introduction of untoward bias into the pursuit of knowledge regardless of whether that derives from commercial or financial interest or ideological or political preference. Perhaps the historically most important example, however, concerns the attempt, on the part of Soviet authorities in the 1930s, to force a particular scientific approach, the anti-Mendelianism of Trofim Lysenko, onto Soviet agricultural and biological science. The result was the collapse of Soviet agricultural production and mass starvation. The failure of Lysenkoism is a clear demonstration of why academic freedom matters. Unfortunately, the idea behind the Soviet promotion of Lysenko, namely that governments can “pick winners” when it comes to scientific theories, remains operative in many Australian managerial and governmental circles.

The idea that research can be directed by governments or by non-academic managers is closely tied to the idea that research requires constant managerial audit and evaluation – usually in terms set by non-academic managers or by governments. Always seen as suspect, this idea, in its contemporary corporatist and managerialised form, is under increasing attack in the scientific literature (see e.g. Hallonsten, 2021), and there is good evidence to suggest that, despite increased governmental attention to regimes designed to direct research or ensure greater excellence in research, genuine innovation in research is declining as research policies effectively encourage researchers to pursue lines of research that will gain favor with funding agencies and research managers (rather than being primarily led by relevant epistemic considerations), and that will be less risky in terms of possible outcomes (see e.g. D’Agostino and Malpas, 2021).

Not only does the current Act lack explicit measures to protect and ensure academic freedom, despite the implicit commitment to it in its characterisation of the nature and functions of the University, but the way in which the Act allows the centralisation of decision-making in the hands of non-academic managers presents a direct threat to such freedom. It is thus not surprising to find that the current University management has attempted to silence dissent from within the University in relation to a range of important decisions and that there have also been attempts, on the part of University managers, to pressure researchers in regard to public statements relating to their research, especially where such statements are seen as reflecting negatively on the State government or, indeed, on the University.

Universities play a key role in contemporary democracies as centres, not only for the advancement, transmission and preservation of knowledge that is essential to democratic debate and decision-making, but also for the formation and expression of alternative viewpoints and critical and dissenting opinion. It is no surprise that control over universities is always a key step in the consolidation of power and authority by anti-democratic regimes.

*The centralised managerial control now being exercised in the University of Tasmania, as well as in many other Australian institutions, is a direct threat to the capacity of the University to operate in the way required of it by a democratic society which capacity is itself embodied in and dependent upon the idea of academic freedom.*

The constraining of academic freedom has not occurred only through the direct pressuring of researchers. The de-emphasising, and, in some cases, the removal of academic criteria in the consideration of promotions and appointments, in favour of the administrative and managerial, and the institution of two promotion rounds per year (so that assessment for promotion is an almost constant process) provides an indirect means of encouraging compliance and discouraging the independence and critical demeanor that is crucial to academic and scientific life and work.

Moreover, the fact that senior academic positions are now effectively being cleared of those with strong academic backgrounds, to be filled by individuals whose academic qualifications are relatively weak or even non-existent, means that academic staff are now increasingly supervised by those who often lack serious academic standing (especially when considered internationally) but also show little or no interest in academic autonomy or academic freedom. This feeds into a general atmosphere of what is effectively contempt for academics and academic work that appears to have become endemic among many of the University's managers and that is itself inconsistent with, as well as corrosive of, the University's commitment to its primary functions.

In the past, academic autonomy and freedom were closely tied to what used to be referred to as *academic tenure* – often assumed to be the same as permanency of employment (although in an academic context the two are slightly different). When academic employment is insecure, academic freedom and autonomy amount to very little (and as the case of at least one senior figure in the University demonstrates, under current arrangements, even contractual positions at the University are not secure from what is effectively summary dismissal). Although exact figures on the casualisation of employment, including academic employment, at the University of Tasmania are hard to ascertain, it is clear that the University has one of the highest rates of casualisation in the country. In broad terms, it seems likely that around 70% of the University's staff, both academic and non-academic, are in insecure employment, and it also seems likely that, although percentages vary across disciplines and Schools, the majority of the University's teaching is undertaken by casual staff.

Such high rates of casualisation are not compatible with any strong institutional commitment to academic autonomy or academic freedom, but such rates also appear in tension with the idea of the University as a genuine community of staff and students and, at least potentially, with certain specific functions as given under the Act. How, for instance, is the University adequately to discharge its obligations under §6(d) in relation to the encouragement and provision of opportunities for staff to develop and apply their knowledge and skills in teaching and research when so many staff are in casual employment? And to what extent are such high levels of casualisation consistent with the promotion of teaching and research “to international standards of excellence” as specified under §6(c)?

*d. Managerial bullying, coercion, and the suppression of dissent*

The problems that affect academic autonomy and freedom at the University of Tasmania and the lack of adequate structures and processes to ensure accountability in decision-making are exacerbated by the managerial bullying that is also evident. Such bullying has been noted as increasingly widespread across Australian university management over the last 20-30 years (see e.g. Thornton, 2004), but is especially notable as a characteristic feature of the managerial culture at the University of Tasmania.

Bullying of this sort, which typically takes the form of the direct and indirect coercion and intimidation of staff by those in managerial positions (often in very senior positions), was recognised by the current University management as a feature of the institution's culture under the previous Vice-Chancellor. An internal inquiry was set up by the University, carried out by barrister Maree Norton, interviews conducted, a large quantity of information gathered, and a report completed. In December 2020, a public apology was issued by the Chancellor. Issues of gender-based harassment were an important focus, but the inquiry also purported to address bullying more generally.

Whether an external inquiry, for instance, through the Integrity Commission, might have been more appropriate (especially given the nature of the issues) seems never to have been considered. The inquiry also appears to have been quite constrained in its terms of reference, with the evidence that was acted upon seeming to be quite limited, and full details of the inquiry have never been made public (although there is anecdotal evidence that concerns were raised about the continuation of the "culture of fear" that was also seen as a part of the previous administration). Moreover, the apology largely focused on the behaviour of the former Vice-Chancellor. Neither in the apology nor any statement subsequent to it was there any acknowledgement of the then Chancellor's own potential responsibility (this had occurred, after all, during his tenure) nor that of Council nor of the fact that managers implicated in that culture remained (and still remain) at the institution. In addition, it not only failed to give proper recognition to the widespread character of the *culture* at issue (treating it more as an issue of *individual* misconduct), but included no real measures directly to address the continuation of that culture – the latter being impossible in the absence of a genuine acknowledgment of all that had occurred *and was still occurring*.

That this culture has continued is clear. Indeed, in many respects it has intensified. The coercion and intimidation of staff, especially academic staff, appears a generalised feature of the way the University is now managed. The managerial culture has become increasingly authoritarian and disciplinary. The renaming of the University's "Human Resources" office to become "People and Wellbeing" has done nothing to ameliorate this culture, serving only to provide a rhetorical veil behind which it continues to operate.

It is this culture of managerial bullying, designed to ensure compliance with the decisions handed down by management, that has led to the reluctance of staff to speak out publicly about what has been occurring (an issue highlighted by an ABC news report earlier this year, see Baker and Oliver, 2022) —a reluctance reinforced, in some cases, by disciplinary action under the University's behaviour procedures (as in the case of Vadim Kamenetsky) as well as legal threats directed at staff who are viewed as having stepped out of line. This reluctance has not been dispelled by the protections afforded under this Inquiry.

Moreover, that same culture of managerial bullying is also a key factor in the departure of so many staff, sometimes as a result of their own unhappiness at the system within which they are forced to work and sometimes, in the case of staff who are less compliant or more vocal in their criticisms,

through the direct threat of disciplinary action (usually based on weak claims of behavioural misconduct) coupled with the offer of redundancy packages. And when staff have accepted redundancy offers, regardless of the circumstances, such acceptance has standardly required agreement to a non-disparagement clause – which is why so many retired staff have also been reluctant to speak out publicly against university management. I can personally attest to the fact that, just as many salaried staff fear to speak out, so too have many adjunct, honorary or retired staff been reluctant to make a submission even to this Inquiry for fear of contravening such clauses despite their unhappiness with the current situation.

The routine use of such clauses and of non-disclosure agreements, or NDAs, is a common contemporary practice – it is part of what shields consultancy firms such as McKinsey from public scrutiny – but the fact that it can be found elsewhere does not make it any the less problematic or less pernicious. I would add that it also serves to enable and encourage unethical conduct within institutions – which is why firms and organisations that routinely make use of such instruments and practices, usually as part of a broader regime designed to control image and information, are so very prone to corruption and misconduct. Ethical practice depends on openness and transparency, unethical practice thrives on secrecy and control.

The attempt by the University's senior management to discipline and silence dissenting voices among its staff (both academic and professional) has been paralleled by its attempts to control public discussion in relation to University matters and even to muzzle external dissent and criticism. This has occurred through the use of its partnership with the Hobart City Council to promote its plans and proposals in relation to Sandy Bay and the City in ways not readily open to public scrutiny and the direct pressuring of journalists and key media outlets. It is this, more than anything else, that led to my call, in February of this year, for an independent inquiry into the University through either the Integrity Commission or the Legislative Council (with a preference for the latter) (see Malpas, 2022).

The University's claim is that bullying, including the managerial bullying at issue here, is already adequately handled under their current behaviour procedures. According to those procedures, complaints are typically (though not always) dealt with by the University's "Safe and Fair Community Unit". However, this unit, and the behaviour policy with which the unit is aligned, does not seem either to be equipped for, nor focused on, matters relating to the sort of endemic managerial bullying that has become such an ingrained part of the University's current culture. When the bullying at issue comes from a Head of School, a Head of Division, or someone even higher in the managerial structure, appealing to the "Safe and Fair Community Unit" or beyond that to "People and Wellbeing" is unlikely to constitute a reliable, safe or independent means by which to obtain redress.

Indeed, the University's behaviour policy is, in general, too amenable to employment by those in positions of managerial authority as a means to coerce or intimidate staff – supposed behavioural breaches being used by managers, as already noted above, to exert pressure on staff who are already seen as troublesome or to impose managers' own *ad hoc* judgments on staff or students whose behaviour they deem to be "improper" or "unethical" (usually in ways already determined by those managers' own prior and often inappropriate biases). In other words, the very structure supposedly designed to deal with bullying and harassment is itself too open to being co-opted into the very culture of coercion and intimidation that is such a fundamental problem and does indeed seem to have been employed in that very fashion.

In the past, up until the mid-1990s, there did exist a position at the University of Tasmania with the title of University Ombudsman. The position was usually held by a respected senior professorial-level academic (although towards the end it also included a more junior academic assisting) – it was occupied for some time by one of the holders of the chair of philosophy, W.D. Joske. Such a position still exists at some other Australian universities, notably at La Trobe University (where it is currently occupied by another senior academic who also previously held the chair of philosophy at that institution).

*Although it cannot be the only relevant measure, the re-establishment of the position of University Ombudsman position (properly constituted and resourced) would be an important element in addressing some of the issues of accountability, through providing an internal check on decision-making, and, more importantly, providing an important independent avenue to address issues of bullying and managerial misconduct as well as offering some protection in relation to issues of academic freedom.*

The University Act currently contains no provision for such a position. I would contend that, given the problems evident at the University of Tasmania, such a position ought to be included as part of an amended Act, or as part of a new Act, and so given a foundation in law rather than being dependent, for instance, on an ordinance of Council (the latter being effectively the situation at La Trobe). It ought to operate independently of the University's administration, though resourced from within the University budget, with wide powers to investigate complaints and to recommend redress.

#### **4. Concluding Comments and Summary**

##### *a. Inadequacy of the current Act and the current situation of the University*

In a recent article in *Times Higher Education* (Forsyth, 2022), Hannah Forsyth writes of the loss of trust in Australia's universities that has occurred over the last 25 years. Nowhere is that loss of trust more evident than in Tasmania. That loss of trust has occurred as the result of several factors, but it has also arisen, in part, through inadequacies in the governance framework established by the various State university acts, and this is as true in Tasmania as it is true elsewhere.

In the above submission, I have been concerned to point out some of the deficiencies in the current University Act that have contributed, in the Tasmanian case, to this loss of trust. Those deficiencies relate directly to the lack of consistency between the Act's specification of the University's constitution and functions and the Act's provisions in relation to the details of the University's structure and governance. These deficiencies are significant and require remediation. They clearly indicate that the Act is not fit for purpose in its current form. However, they are all the more significant, and remediation all the more urgent, given the current background against which consideration of the Act has to be set and which goes beyond the loss of public trust alone.

The University of Tasmania is in a position where its very future, and so the future of university teaching and research in Tasmania, is in question. Will it continue to serve the State as it has for much of its 130 or more years history, as an institution dedicated to advancing, transmitting, and preserving learning and knowledge, and to promoting teaching and research to international standards of excellence? Or will it decay into little more than a vocational training institution attached to a handful of increasingly pressured research institutes? The University still ranks

relatively well internationally, but one can already see the beginnings of decline across almost all of the major rankings (the current Vice-Chancellor has declared such rankings to be irrelevant – itself a potentially dangerous signal in terms of overall reputation as well as national and international standing). Moreover, although research income still looks reasonably strong (but with some downward indications), publication output is clearly weakening.

That the University is in decline would not be a surprise given the large numbers of staff, and especially senior staff, who have left the institution (or who have effectively been forced to leave) over recent years. Some disciplines, most notably those in the Humanities and Social Sciences, no longer have any real capacity adequately to teach across the curriculum nor do they any longer possess a complement of academic staff with strong international reputations. In many of these areas, postgraduate enrolments (an important marker of research capacity and research excellence) are minimal. Because the University of Tasmania is the only university in the State, a loss in capacity of the University in any one discipline is a loss to the State in its entirety – and that means losses across many different areas:

- *a loss to the State's education system* (where changes to the University's staffing and teaching programmes are already leading to problems in support for teaching across important disciplines at the secondary level – some disciplines may simply cease to be sustainable);
- *a loss to the State's artistic and cultural life* (which has already been seriously diminished by the effective loss of what was one of the strongest art schools in the country);
- *a loss to the State's intellectual and scientific resources* (both in terms of knowledge and expertise and in terms of equipment and materials – including important archival and historical materials previously held in university collections);
- *a loss to both the State's social as well as epistemic capital.*

The deficiencies in the Act, coupled with problematic developments in federal university policy, have led to the development of a culture and mode of operation at the University of Tasmania that is not only inconsistent with the foundational elements in the Act itself, not only detrimental to the long-term welfare of the State of Tasmania, not only destructive of the University itself, but also exemplary of what I can only call a form of systemic ethical breakdown. And, although that breakdown is realised, in the case of the University, in ways particular to the university context, the ethical breakdown at the University of Tasmania appears to exemplify a type of systemic breakdown in ethos and culture that is increasingly being revealed, in other inquiries and investigations, and often in more extreme and distressing fashion, as an all-too-common feature of contemporary public institutions.

#### *b. Addressing institutional breakdown and measures for legislative reform*

As embodied in its management and governing structures, the University of Tasmania has become an institution that has lost touch with its community, that is contemptuous of its academic staff, that condones an endemic culture of bullying managerialism, that has abandoned commitment to the fundamental academic and epistemic principles that ought to underpin its character as an institution, and that seeks to avoid public scrutiny and to operate instead in ways that appear deliberately designed to obfuscate and mislead.

The extent of the institutional breakdown that is evident in the case of the University of Tasmania, and that is evident when one looks closely at the current state of the institution in comparison with

the Act that provides its legislative foundation, may be taken to suggest that more is needed here than can be accomplished by a review of the Act alone. There is a strong case that a more extensive investigation – perhaps along the lines of Royal Commission – is needed into all aspects of the University’s operation and management. The circumstances surrounding the decisions regarding the abandonment of the Sandy Bay campus and the move into the city certainly warrant much closer investigation as do the various property dealings associated with this.

Nonetheless, the review of the University Act does provide important insight into the conditions that have made possible the institutional breakdown that is now evident. And whilst reform of the University Act will not be enough to address all the problems at issue, any attempt to reform the University, and so to address those problems, will have to begin with reform of the Act and so with reform to the University’s system of governance. Such reform ought to include (though it should not be restricted to):

- i. Reconstitution of *Council* as specified under the Act so that the composition of Council better reflects the composition of the University and is better attuned to the University’s primary functions – ideally this would involve a higher proportion of members elected from the University itself and especially from the academic staff and students – and in a way that ensures its membership is no longer subject to the effective control of the Vice-Chancellor and Chancellor.
- ii. Reconstitution of the *Academic Senate*, with its composition and powers no longer subject to Council Ordinance, but established as part of the University’s founding legislation; this should include clear specification of the Senate as the primary academic body of the University and its composition and powers should reflect this.
- iii. Changes to Council and Senate will go a considerable way to improving *accountability* within the institution through restoring a system of *internal checks and balances* and providing a broader base for decision-making; some consideration should also be given, however, to measures that would improve the institution’s accountability to the wider community; this should include improved *transparency* in Council decision-making so that the decision-making process, and the resulting decisions, are made more readily open to public scrutiny in a prompt and timely manner (some care should be exercised to ensure that any additional level of accountability directly to the Parliament does not expose the University to political influence or manipulation of a sort that could compromise its capacity to exercise its primary functions).
- iv. Consideration should be given to the conditions under which the Vice-Chancellor and Chancellor are *appointed*, and, especially in the case of the Vice-Chancellor, the conditions under which they can be *dismissed*; there is a strong case for the position of Vice-Chancellor to return to being a position filled by election from the academic body of the institution (the principle of election is central to any system of collegial academic governance of the sort that would accord with the definition of the University under the Act).
- v. Specific provisions should be included in the Act guaranteeing *academic autonomy* and *academic freedom* in respect of both teaching and research; this ought to be part of a broader set of measures intended to ensure that the operation of the institution is indeed in keeping with its specified functions, since without changes to governance and accountability under the Act, academic freedom and autonomy cannot be protected.
- vi. The Act should include specific provision to re-establish the office of University Ombudsman (or its equivalent), able to operate independently of University management, in order to deal with internal grievances and complaints in a fair and equitable fashion – this would be an important additional element in protecting academic autonomy and freedom.

- vii. Other measures should also be considered relating to aspects of the internal structures and processes of the University as well as the roles of key offices, including Deans, but also non-academic offices such as that of the Chief Operating Officer (these matters might be thought to be of special concern given the issues surrounding the move to the city) – a key question concerns the powers of University Council, including the power to make ordinances, and whether those powers, as specified under the Act, are simply too wide and unconstrained.

The measures listed above are not intended to be comprehensive and further work is also required to determine exactly how such measures would be incorporated in legislation. However, they provide an important starting point for reform.

*c. The significance of this Inquiry for the State and Nationally*

One final comment is relevant to the issues raised in this submission and the Inquiry as a whole. I noted earlier the fact that this will be the first time that serious scrutiny has been given to the consistency between the legislative foundation of an Australian university and the radical changes that have occurred over the last thirty years. There has been one other recent inquiry, in the last ten years, by a State Parliament into the university sector. This was conducted by the Legislative Council of the NSW Parliament in 2021 (see NSW Parliament, 2021). However, that Inquiry, although significant and overlapping in some respects with the current Tasmanian Inquiry, had a rather different focus and context (the NSW university system also diverges from the Tasmanian in its multi-institutional character).

The concentrated focus that this Inquiry makes possible into the relation between the University and the legislation on which it is based, and the internal consistency of that legislation in the face of the changes that have occurred, makes this Inquiry of national importance. To what extent the University, as currently configured under its founding legislation, is genuinely in keeping with the basic idea of the University as an epistemic community that is embedded at the very heart of that legislation (and that also has wide public acceptance) has not seriously been addressed in any previous inquiry at State or national level.

It might be argued, however, that the serious issues that are evident both in respect of the University Act and the current operation of the University are so much determined by factors at work federally that no state inquiry nor state legislative intervention can significantly address them. This is an understandable response (although presumably not one shared, it should be pointed out, by the NSW Legislative Council), but it is also seriously mistaken. Let me briefly set out the reasons for this.

- i. The seriousness of the issues at stake mean that it would be *irresponsible* simply to treat them as entirely outside the concerns or the powers of the State Government and Parliament, and the fact that the University of Tasmania is constituted under State legislation whilst also reporting to the State Government and Parliament means that there is a *prima facie* responsibility here, no matter the other circumstances that may prevail.
- ii. The fact that the University is constituted under State legislation not only gives the Parliament responsibility, but also gives it a degree of *power* commensurate with that responsibility, and thereby does indeed enable the State Parliament to have a significant influence on the character of the State's only university.

- iii. There are avenues by which the State Parliament, and especially the State Government, is able to take up the issues at stake at a federal level – all that is required is the willingness to do so, and probably a degree of persistence in doing it, on the part of State politicians and State Government Ministers.
- iv. The potential impact that the Inquiry may itself have on public debate and discussion at the national level should not be underestimated – in fact, the announcement of the Tasmanian Inquiry has already led to discussions about a similar inquiry, using the Tasmanian terms of reference, to be proposed in Victoria.

*In short, the fact that the University of Tasmania is both a state university and part of a national university system in no way diminishes the importance of the University to the State nor does it diminish the need for the State to give close and careful attention to the way in which the State University is constituted and the manner of the University's operation.*

### **Appendices**

#### *a. Personal and professional background as relevant to this submission:*

I would note that I have no direct financial interest in the matters covered by this inquiry. However, the same background and experience on which my submission draws also means that I do have an interest in the matters at stake, not only as a member of the Tasmanian community that the University of Tasmania supposedly serves and to whom it must ultimately be accountable, but also as a working academic (despite my emeritus status I continue to publish and lecture), as an unsalaried staff member of the University of Tasmania, and as a member of the wider international community of scholars.

My submission is based on over forty years of work in the university sector in New Zealand, Australia, the United States and Europe, as well as other parts of the world. My career began before the changes of the 1980s and has encompassed experience in several university environments very different to that currently to be found in Australia.

I have served as a Director of Research (Murdoch University), Director of University Collections (University of Tasmania), Head of Programme (Murdoch), Head of Discipline (Murdoch), and Head of School (Tasmania). I have also served as Chair of the Murdoch University Research Ethics Committee, as a formal advisor to the University of Tasmania Research Committees, and as a member of the University of Tasmania Resources and Planning Committee (at a time when it was the key decision-making body in the institution). I have also served on the University of Tasmania Senate and various other committees of the University of Tasmania. I held the Chair in Philosophy at the University of Tasmania from 1999 until 2018. I was made a Distinguished Professor at the University of Tasmania in 2011 and confirmed as Distinguished Professor Emeritus in 2019.

I established the Centre for Applied Philosophy and Ethics (CAPE – later the Inglis Clark Centre) at the University of Tasmania in 2000 (for some years the most successful consultancy body in the University), and was its director until 2005. I am a Fellow of the Australian Academy of Humanities, Vice-President of the Australian Association of Humboldt Fellows, and have served as an expert advisor to the Australian Research Council as well as the European Research Council.

I regularly act as a research assessor for various international bodies including the Czech Academy, the Polish Academy, the Italian Universities Consortium, and the Belgian Research Foundation. I am currently Honorary Professor at the University of Queensland and at La Trobe University. I am the

author or editor of over 30 scholarly volumes with international academic presses and the author of over 150 essays in scholarly journals and collections. I have also published on topics directly related to this submission in the philosophy and theory of science, in public and organisational ethics, management theory and policy formation, and with specific reference to contemporary policies regarding universities and the conduct of scientific research.

My academic work has been used by the current Vice-Chancellor of the University of Tasmania in his development and promotion of the new agenda that he declared for the Institution in the first years of his arrival – although the way in which my work has been drawn upon appears to have been rhetorical rather than substantive.

In addition to my academic experience, I have worked and continue to work as an advisor on matters relating to ethics and critical thinking in organisational settings. In this capacity I was involved, through the Centre for Applied Philosophy and Ethics, in establishing an ethics training programme at the Tasmanian Police Academy which ran successfully in that form for many years and in advising the State Services Commission in the early years of its operation. Sir Max Bingham and I were the first to put forward a detailed proposal for an Ethics Commission in Tasmania (although the model adopted for the Integrity Commission that resulted was rather different from that in our proposal). I am also a member of the Ethicos Group providing specialist ethical advisory and training services.

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Signed:

A handwritten signature in black ink, appearing to read 'Jeff Malpas', written in a cursive style.

Distinguished Professor Emeritus Jeff Malpas

Grove, Tasmania

August 29, 2022

Monday 29 August 2022

Ms Jenny Mannering,  
Inquiry Secretary, Legislative Council Select Committee  
Inquiry into the Provisions of the University of Tasmania Act 1992  
Ph: (03) 6212 2249  
[utas@parliament.tas.gov.au](mailto:utas@parliament.tas.gov.au)

Dear Ms Mannering

*RE: submission to Legislative Council Select Committee Inquiry into the Provisions of the University of Tasmania Act 1992*

Please find attached my personal submission to the Inquiry. You will note that I am also party to a joint submission from University of Tasmania academics.

Yours sincerely

A handwritten signature in black ink that reads "Jeff Malpas". The signature is written in a cursive style with a large, sweeping initial "J".

Jeff Malpas, Distinguished Professor Emeritus, University of Tasmania

A large black rectangular redaction box covering the bottom portion of the page, likely containing contact information or a title.