



Australian Vice-Chancellors' Committee
the council of Australia's university presidents

*Chancellors and AVCC statement on
university governance*

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Chancellors and AVCC Governance Discussions – informing the national and institutional debates

Introduction

Over the next few years Australia has the opportunity to reshape its university sector to produce a diversity of universities which are truly comparable to leading universities globally, open to all who can benefit from tertiary study, relevant to students and national needs, and fully engaged with the wider community.

Effective university governance and management structures are essential to realising this national opportunity. As the expectations of universities change, so it is anticipated that governance and management will also experience significant changes.

The sector has followed the developments in governance in the corporate and business environment, with particular notice of the generic principles recently enunciated for reform by the Australian Stock Exchange and the Institute of Directors as well as in Australian Standard AS (8000). It has also participated in State-based reforms – such as those that led to the Victorian ‘declaration’, and the discussions under way in New South Wales.

The existing framework

The framework for university governance is set by 35 university establishment State Government Acts, 2 Territory Government Acts and 1 Commonwealth Government Act. These create both the powers of governance and the autonomy of universities within that legal framework. The fundamental principle is that the governing body has final responsibility for the good governance of the university and the delivery of administrative, educational and research outcomes consistent with community expectations.

But there is, of course, debate over the modes and models of implementation, as well as about the internal structures that best lead to a culture of performance.

That debate is bound by two main perceptions of how university governance does, or should, operate:

- there is a traditional ‘stakeholder’ model that gives voice to all with an interest in these public institutions, including those who work or study within them. It has been criticized for hindering effective governance and management through slowing, or avoiding, crucial strategic decision-making;
- a ‘business model’ has been advanced – notably through submissions to the 2003 Crossroads Review of higher education – that places a premium on effective financial management and outcomes for shareholders. It drew critical commentary for the low priority it gave to the educational and learning objectives of universities, as well as for the exclusion of internal stakeholders.

Interestingly, a third model, ‘trusteeship’ has recently been proposed, not least from the Harvard Business School, concerned with governance in not-for-profit organisations oriented at achieving their mission. This approach explicitly recognises non-financial goals are among the core objectives of the university, but it endeavours to provide an effective governance and management structure to achieve a multiple bottom line in complex institutions of learning, research and community service.

Independence of Government

External to these various models, Governments (at both State and Commonwealth level) have set accountability requirements that can constrict universities' operational autonomy through treating universities as an arm of government, or 'agencies of the state'.

An effective governance framework for universities must be based on universities being organisations established by the public through Parliament within a legal framework which respects the public good, but otherwise independent of the Government of the day and promoting effectiveness and autonomy in governance and decision making. Councils (and their Chancellors) are the active trustees of that autonomy.

Independence of internal stakeholders

Concomitantly, universities' internal arrangements must ensure that their governance and management structures and processes reflect the purpose of universities in working to, and for, the broader common good. This requires effective, open reporting on performance, accountability for funds, and sufficient independence of the immediate interests of staff and students of the day.

The essential elements: Councils, university objectives, executive management and academic boards

Ideally, a balance is set between external accountability (that maintains public confidence in the operation of a university) and each university's capacity to set its own direction to achieve its objectives.

A number of different elements are required for this to be effective:

- the Council or Senate, which provides the body independent of Government but responsible in the public interest for the operation of the university;
- the universities' objectives, as established by Council and drawing on advice from senior management;
- a Vice-Chancellor and executive managers, responsible to the Council for the effective management of the university; and
- an academic board, responsible to Council for ensuring the academic quality and credibility of the university's operations as an educational institution.

No single way to achieve an effective governance arrangement

The precise way in which such a structure is achieved can, and should, vary. The test should be the appropriateness of the structure to meet the overall goals set out above in a way effective for the mission of each particular university.

While business and other public bodies respect a diversity of effective models, the Commonwealth's protocols tend towards imposing single solutions in a number of areas. They also attempt to protect the Commonwealth's financial interest in universities, through building into the structure of universities its claim to priority of notice of potential problems rather than rely on appropriate formal agreements with each university.

Operational good practice

Within an effective governance structure, universities also must work to ensure good practice in operational governance and management that goes beyond formal arrangements.

Critical to achieving good governance is the need to develop:

- a joint understanding between the governing body, executive management and academic board of their respective roles and responsibilities;
- ‘partnership’ of Chancellor and Vice-Chancellor which is vital for the working success of any governance model;
- Council members’ understanding of the full scope and scale of the university, its opportunities and the challenges it faces in wider national, global and political contexts;
- the effectiveness of the governing body with members’ terms specified and overlapping to enable new thinking consistent with experience and continuity and through a clear majority of external independent members as appropriately defined with a suitable mix of skills of members. (This may require enabling legislation to be amended to allow a certain number, or proportion, of members to be co-opted to fill gaps in terms of needed skills);
- a demonstrable understanding of members’ fiduciary responsibilities, including the need to make decisions for the good of the university as a whole;
- the provision, and proper use of, information that optimises the quality and relevance of decision-making;
- the capacity of the governing body and executive management to act with care and due diligence, understanding the risks involved; and
- an understanding of the regulatory context of universities and the need for compliance across an array of legislation and government requirements.

Generic principles and the individual universities

The Chancellors and AVCC discussions about generic principles and precepts of ‘good practice’ have repeatedly returned to the critical reality that all universities have distinctive characteristics – shaped by history, mission, practices and conventions. In modern technology language, ‘a hard-wired solution’ is unlikely to work across a range of diverse universities. ‘Fitness for purpose’ offers much in approaching a system of Governance in transformation.

To reflect effectively these views of the Chancellors and the AVCC, attached are suggested amendments to the Commonwealth’s National Governance Protocols for the Commonwealth and State to take up in finalising the Protocols.

National Governance Protocols for Public Higher Education Institutions

The following protocols are put forward as proposed revisions to the Commonwealth proposals contained in *Backing Australia's Future*. They have been jointly drafted by University Chancellors and the AVCC. Given the independence and autonomy of each Council however the protocols cannot automatically commit any University Council.

The recommended Protocols are as follows:

1. The university must have its objectives specified in the enabling legislation.
2. The university's governing body should adopt a statement of its primary responsibilities, which include:
 - appointing the vice-chancellor as the chief executive officer of the university, and monitoring their performance;
 - approving the mission and strategic direction of the university, as well as the annual budget and business plan;
 - overseeing and reviewing the management of the university and its performance;
 - establishing policy and procedural principles, consistent with legal requirements and community expectations;
 - approving and monitoring systems of control and accountability, including general overview of any controlled entities;
 - overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
 - overseeing and monitoring the academic activities of the university;
 - approving significant commercial activities.

The university's governing body, without abdicating from its ultimate governance responsibilities should have the normal power of delegation for the effective discharge of these responsibilities.

3. The enabling legislation of the university should specify the duties of the members of the governing body and sanctions for the breach of these duties. Other than the Vice-Chancellor and the Presiding Member of Academic Board each member should be appointed or elected *ad personam*. All members should be responsible and accountable to the governing body. The duty of a member of the governing body is always to exercise the functions of a member with the interests of the university as a whole paramount rather than simply as a delegate or representative of a particular constituency.

Duties of members should include the requirements to:

- act always in the best interests of the university as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- act in good faith, honestly and for a proper purpose;
- exercise appropriate care and diligence;

- not improperly use their position to gain an advantage for themselves or someone else; and
- disclose and avoid conflicts of interest (with appropriate procedures for that purpose adapted from the articles of a public company).

There should be safeguards, exemptions and protections for matters or things done or omitted in good faith. In addition these should include such safeguards, exemptions and protections as would be available were the member a director under the Corporations Law.

The enabling legislation should include a requirement that the governing body has the power (by a 2/3 majority) to remove any member of the governing body from office if the member breaches the duties specified above. A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.

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

5. The size of governing body should be up to 22 members. There should be at least two members having financial expertise and at least one member with commercial expertise. There should be a majority of external independent members (as appropriately defined and who are neither enrolled as a student nor employed by the university). There should not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.

6. The university is to adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations for Council may be delegated to a nominations committee of Council that the Chancellor would ordinarily chair.

Members so appointed should be selected on the basis of contributing to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a university and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the university's external community needs from that university.

To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms should generally overlap and Councils should establish the maximum period to be served. This should not normally exceed 12 years unless otherwise specifically agreed by the majority of the Council.

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

8. The annual report of the university should be used for reporting on high level outcomes.

9. The annual report of the university must include a report on risk management within the organisation.

10. The governing body is required to oversee controlled entities that incur risk by taking reasonable steps to bring about the following:

- ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- appointing some directors to the board of the entity who are not members of the Council or officers or students of the university, where possible;
- ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
- ensuring that the board documents a clear corporate and business strategy which reports and updates annually the organisation's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
- establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

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