



Voluntary Code of Best Practice for the Governance of Australian Public Universities

As amended at the Universities Australia and University Chancellors Council
joint meeting on 15th May 2018

Introduction

As Australia's higher education sector has continued to grow, universities have become increasingly complex and sophisticated organisations that manage very substantial budgets, employ tens of thousands of staff, and educate hundreds of thousands of students. Good internal governance is central to ensuring that universities retain their reputations as highly respected institutions of learning and research, benefiting Australian society politically, economically, socially and culturally.

This Code seeks to provide support and guidance to university governing bodies and to university leadership more broadly. It outlines the key roles and responsibilities of functions of governing bodies, and provides a series of recommendations to support their effective implementation.

Good university governance requires above all a set of strong relationships based on mutual respect, trust and honesty between the governing body and the Vice-Chancellor and his or her senior management team. While clearly defined boundaries between oversight and management functions are important, nothing is more important in governing body/ management relations than the exercise of plain common sense on both sides. When issues arise which straddle the borderline between oversight and management functions – for example, personnel or budgetary decisions which are clearly management prerogatives but nonetheless may be exposing the university to external reputational risk – it is critical that they be resolved through effective consultation and communication designed to produce genuine consensus.

The Code is intended to operate in conjunction with each university's establishing Act, and does not seek to replace or overrule existing legislation. The Code is voluntary, and not all items in it may be relevant to all universities. But it is expected that all Australian universities will report on their alignment with the Code in their annual reports, providing reasons for any areas of non-compliance. Universities should approach these statements as an opportunity to demonstrate their understanding of and involvement with proper governance procedures.

Roles and Responsibilities of Governing Body

1. A university should have its objectives and/or functions specified in its enabling legislation.
2. A university's governing body should adopt a statement of its roles and responsibilities, which should include:
 - a) Strategic Oversight
 - approving the mission and strategic direction of the university;
 - ensuring that values, visions and goals are turned into effective management systems; and
 - monitoring implementation of the university's mission statement and strategic plan.
 - b) Ensuring Effective Overall Management
 - appointing the Vice-Chancellor as the Chief Executive Officer of the university, and monitoring his or her performance;
 - appointing other senior officers of the university as considered appropriate;
 - overseeing and reviewing overall management performance; and
 - overseeing and monitoring the academic governance and activities of the university.
 - c) Ensuring Responsible Financial and Risk Management
 - approving the annual budget and business plan;
 - approving and monitoring systems of control and accountability, including general overview of any controlled entities (entities satisfying the test of control in s.50AA of the *Corporations Act*);
 - overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
 - establishing policy and procedural principles, consistent with legal requirements and community expectations, including remuneration policies for the Vice-Chancellor and senior officers; and
 - ensuring compliance with legal and government policy requirements.

A university's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

Duties of Members

3. A university should have the duties of the members of the governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board, each member should be appointed or elected *ad personam*. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the university.

Duties of members should include the requirements to:

- a) 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;
- b) act in good faith, honestly and for a proper purpose;
- c) exercise appropriate care and diligence;
- d) not improperly use their position to gain an advantage for themselves or someone else; and
- e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

There should be safeguards, exemptions and protections for members of a university's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the *Corporations Act*. A university (with the exception of those subject to the *Corporations Act*) must have a requirement that the governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above included in its enabling legislation. 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. If permitted by its enabling legislation, a university should develop procedures:
 - a) to provide that the Chancellor and Deputy Chancellor hold office subject to retaining the confidence of the governing body; and
 - b) to deal with removal from that office if the governing body determines that such confidence is no longer held.
5. Each governing body must 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.

6. On a regular basis, at least once each two years, the governing body should assess its performance, the performance of its members and performance of its committees, including appropriately constituted committees for finance, and audit and risk management. The Chancellor should have responsibility for organising the assessment process, drawing on external resources if required. On an annual basis, the governing body should also review its conformance with this Code of Best Practice and identify needed skills and expertise for the future.

Composition of Governing Body and Appointment of Members

7. The size of the governing body should not exceed 22, and desirably be no more than 15 members, and include members with strong expertise in and knowledge of higher education and/or other education sectors. There should be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. There should be a majority of external independent members 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.
8. The university should 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 the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.

Members so appointed should be selected on the basis of their ability to contribute 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.

The governing body should seek to ensure that any government appointments take these appointment criteria into account and that such appointments are made in consultation with, and so far as possible in accordance with

recommendations of, the governing body or a nominations committee appointed by it.

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

Risk Management

9. A university should codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
10. The annual report of a university should be used for reporting on high level outcomes, including financial and environmental sustainability, and performance against the university's mission statement and strategic plan.
11. The annual report of a university should include a report on risk management within the organisation.
12. The governing body should oversee controlled entities by:
 - a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;
 - c) ensuring that the board adopts and regularly evaluates a written statement of its own governance principles;
 - d) ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
 - e) 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.
13. A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of the university should, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report

(including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.

Compliance with Code of Conduct

14. A university should disclose in its Annual Report its compliance with this Code of Best Practice and provide reasons for any areas of non-compliance.