

THE CONSTITUTION OF THE UNIVERSITY COUNCIL.

The constitution of the Council of the University of Tasmania, determined by the provisions of the University of Tasmania Act 1992, probably underwent more change in the two decades since that Act was passed, following the merger of the TSIT with Utas, than at any other time. Since 1992 the size of Utas, the environment in which it operates and the challenges facing it have changed significantly and those changes have called for reforms to the governance model of the University.

The history of The University of Tasmania ("Utas") provides a helpful account of the challenges faced by it and those working for its success, which in turn demonstrates the need for any institution to adapt and structure itself to best govern the institution to meet the challenges of the time. When I say "adapt and structure itself", it must be understood that Utas is a creature of statute, a statute which can only be amended by Parliament, which must be taken to have approved any changes proposed and adopted in this way.

At the risk of losing detail in summary, I will suggest that there are three periods in this history which identify the reasons why particular governance models were chosen to steer the University through stages of its evolution. In the first century the model was a representative one. Towards the end of the 20th century the model was a transitional one and then, in the last two decades and for the future, the model is a corporate governance model responding to changes in the number and structure of Australian Universities, the increasing complexity of the University's business model and increasing demands for reform from the federal government. For obvious reasons I will focus on this period.

I was the Chancellor of Utas when the last amendments to the constitution of Council, contained in the University of Tasmania Amendment Act 2012 were proposed and enacted. On behalf of the Council of Utas I submitted reform proposals to the then Minister for Education, the Hon. Nick McKim MHA and we agreed that the suggested changes were appropriate, as outlined in his Second Reading Speech, which is attached. (see attachment 1) This document provides a useful summary of the level of engagement each State and Territory had in what had become a federally driven reform agenda and explains why the Utas Council is constituted as it is today.

In the 19th and 20th centuries, in what I will call the first period, Utas was governed largely on a representative model. The Council or governing body of the University was made up of people who, by virtue of the enabling legislation, were seen as 'representatives' identified by and aligned with their constituency and not independent members who were first and foremost Councillors appointed because of their skills and abilities too effectively govern the University in the best interests of the University and Tasmania.

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132 years ago when the University was established the debate concerning membership of the governing body involved concerns for "representation" of various factions and interested parties. In 1895 this was the norm and concerned governance of an institution of the State where vested interests would be represented to oversee the realisation of a hard fought agenda to establish a well credentialed University in Tasmania. The business case for a university at that time was predicated on gradual growth and increased teaching as funds became available from the State. Those parties who had advocated for a university, or opposed it, wanted to ensure oversight and therefore a seat at the table. Andrew Inglis Clark, for example, insisted on a reduction in the number of clerics appointed to the governing body, and so we see in the first Act of Parliament :-

"there shall never be more than four Ministers of Religion members of the Council at the same time" (See Section 2, 53 Victoriae No 41). Hardly something we are likely to see in the University of Tasmania Act 1992 and subsequent amendments!

In that 1889 Act the Council consisted of 18 members, The Minister for Education as an ex officio member with 8 members 'elected' by Parliament, 9 'elected' by the Senate of the University. Those early and protected beginnings are reflected in the absence of a Chancellor and Vice Chancellor from the list of ex officio members and a heavy political influence. The State was, after all, the only identifiable funding source of the University. The intention in those early days was that the process of appointment for and membership of the Council would change as the University became established, but it was a council of representatives.

It is unnecessary to trace all the changes to the size and make up of the University Council from its inception. The size of Council grew at one stage to a membership of 31 (see Tasmania University Act 1980) but, following the merger of the Tasmanian State Institute of Technology (TSIT) with the University in the early 1990's, the second, or Transition Period, commenced and continued in to the 21st century. There were two Acts which effected the Transition. The first, The Higher Education Amalgamation Act 1990, intended for a term of two years to effect the merger, established an interim Council. At about this time the "Dawkins reforms" had driven the merger of higher education institutions with Universities throughout Australia. In Tasmania the merger proposal also included a third party, the Australian Maritime College (the AMC), so the interim Council membership, for that short term, reflected that position. As it transpired, the AMC withdrew from the proposed merger.

The second Act of Parliament, which gave effect to the merger and replaced the Amalgamation Act, was the University of Tasmania Act 1992. This Act, amended subsequently, which I will explain, is the Act under which Utas operates today. This Act, coupled with the Amalgamation Act, from 1990 to 2001, forms the legislative basis for the operation of Utas through the second, or Transition, period.

Under the 1992 Act the Council had 24 members. The Chancellor, Vice Chancellor, the Chair of Academic Senate, one person appointed by the Visitor (a role which is now ceremonial, see section 17), 2 appointed by the Council, 2 appointed jointly by the Council and the Minister for Education, 2 appointed by the Minister for Education, 1 member of the Legislative Council elected by the Legislative Council, 1 Member of the House of Assembly, elected by that House, 5 members of academic staff, 2 members of general staff, 2 students elected by the students and 3 members elected by the graduates of the University. Half the Council had a direct link to the University either through employment or current study.

The emphasis on staff, alumni and political representation on Council may, with two students, elected by the student bodies, Southern and Northern, (in 2004 the election of student representatives was amended to "2 students appointed by the Council, after consultation with any relevant student association") have been necessary following the merger of the TSIT with the University, but by 2001 the University had responsibilities which had grown beyond what many may have expected at the time of the merger and had become a complex business with national and international commitments in addition to those of being the only University in the State.

In the corporate world hard lessons had been learned through poor performance and corporate collapses some of which could be linked to a failure of governance with large and unwieldy boards where representation of interests and old school tie cultures had deprived those boards of appropriate skill sets to cope with the complex and competitive environment of modern corporate governance. Reform of corporate governance was being undertaken, boards downsized and enhanced with the recruitment of people with the skills and experience required for the proper governance of the particular entity.

At the end of the Second World War there were only 6 universities in Australia and by the turn of the century there were more than 40 with a corresponding rise in student numbers. Financial modelling for most Universities was now largely based on the Commonwealth's underwriting of student fees and funding of research grants. The federal government was, understandably, showing a greater interest in the governance structures of the universities, which were, and still are, state and territory institutions of learning under statutes of the states and territories.

In Tasmania the University's improvement in performance and ranking required a structured business model with growth objectives not only for domestic students but also for research international student numbers. The building stock of the University was ageing and renewal was

required. Our Council also had to maintain our policy of inclusiveness and, as the only university in the state, understanding and meeting the challenges faced by students from the more remote regions of the island. The commitment to teach in the three regions created a model with unavoidable cost implications.

The reforms to the constitution of Council undertaken under the leadership of Dr. Michael Vertigan AC, Chancellor, in 2001 and agreed with Government (see The University of Tasmania Amendment Act 2001) aligned with but anticipated the Federal Government's drive to reform governance of Australian universities.

The Council of Utas was, by these amendments, reduced in membership from 24 to a maximum number of 18, but operable with 17. The Council was now to consist of the Chancellor, Vice Chancellor and Chair of Academic Senate, and include three members appointed by the minister, none of whom could be students or staff and at least one of whom must be a graduate of Utas. Three academic staff, elected, the chair and deputy chair of Alumni, one general staff member, elected, 2 students, elected (later to change in 2004), 3 members appointed by Council and, if resolved by Council as necessary, one member with international experience. The amending Act also provided that before making an appointment to Council the Minister and Council "must give public notification of vacancies and must have regard to regional representation and an appropriate gender balance" (see section 8(5) of the amendments)

The Act also tightened accountability and governance oversight. The functions of the University were extended to include "fostering or promoting the commercialisation of any intellectual property" (section 6(fa) added), and the Role and Powers of Council were amended to include a requirement for Council to establish an audit committee and a discretion to establish other committees and include on committees members who were not members of Council. Sections 11A and 11B were included imposing obligations of care and diligence on members of Council, to act in good faith and in the best interests of the University. To reinforce the importance of the obligations under amending sections 11A and 11B, the schedule to the Act then provided that the Minister, on the recommendation of 2/3 of the Council that an elected or appointed member of Council who had failed to discharge the obligations under those sections, may dismiss that member.

The amendments of 2001 were seen as necessary and a response to the growing need for the governing bodies of universities to embark on a process of governance reform.

The "Higher Education at the Crossroads" paper (Minister Brendan Nelson) in 2002 identified concerns with governance in the sector, particularly concerning the skill sets of Council members now that universities were large and complex organisations with funding models to match. Many universities had the added complexity of controlled entities many of which were concerned with

research based activities. The paper and dialogue around it gave rise to the federal government's release of the "Our Universities: Backing Australia's Future" reform package in 2003 and the introduction of the "National Governance Protocols" in 2004. I do not now have access to a clean copy of the 2004 National Governance Protocols, but I attach a copy of the relevant Protocols tabled in the NSW Legislative Assembly in October 2004. (attachment 2)

This document is pertinent in that it summarises the protocols and includes reference to the increases in assistance under the Commonwealth Grant Scheme which would become available to Universities on compliance with the National Governance Protocols. (A paper, which is accessible on the internet, on University Governance by Colin Walters, Group Manager, Higher Education Group, DEST delivered at an OECD Seminar on "Governing bodies of higher education institutions: Roles and responsibilities" provides a very good background to the issues and the reforms to the Tertiary sector being considered at this time and explains why the sector was prepared to adopt reforms which took in to account best practice models from the world of corporate governance).

The National Governance Protocols have also undergone change, and by the time of the last amendments to the constitution of the Utas Council (2012) had been embraced by Universities Australia (UA) and the University Chancellors Council (UCC) and adopted as a Voluntary Code of Best Practice. (See the latest edition of that Code in 2018, attached to this submission. Attachment 3). My term as Chancellor of Utas concluded in December 2012 and as a member of UCC and with Utas a member of UA, I was concerned that the progressive reform steps for our Council should be concluded for the incoming Chancellor.

In 2004, following the earlier reforms on the 2001 Amendment Act, our Parliament passed the University of Tasmania Amendment Act 2004 to include further reforms from the National Governance Protocols and fine tuned the membership appointments for Council and provided for better definition of terms of membership to ensure turnover within appropriate time frames. These reforms were uncontroversial and once again undertaken through consultation with and agreement between the Minister and the Chancellor.

The Council, during my term (2006-2012) had undertaken both internal performance reviews and external evaluations, these coupled with an assessment of the "Voluntary Code of Best Practice for the Governance of Australian Universities" resulted in Council approving a further raft of reforms for me to take to the Minister to complete the reform of the constitution of Council to meet the needs of the University and the community in to the future. The University had continued its growth, set in earlier strategic planning. We were teaching offshore in two locations in China, teaching Nursing and allied courses in Sydney, which provided critical mass for the teaching programmes in Hobart and Launceston. We had reviewed and settled the governance arrangements with our three major entities, AMC (which had finally become a controlled entity of the University), The Menzies Research Institute (MRI) and the recently established Institute of Marine and Antarctic Studies (IMAS), these last two entities were located in new purpose built premises in the Hobart city.

The capacity of Council to enlist outside expertise to committees and a better governance model had demonstrated to Council that a further reduction in the size of Council with some flexibility as to final numbers would create the optimum operating Council for the University and the community it serves. The University under the Amendment Act of 2012 has a minimum operating level of 10 members and a maximum of 14, aiming to operate usually with 12 members, as explained by the Minister in his second reading speech. The flexibility in numbers allows the Council to continue to function if a member departs, and avoids pressure to just fill vacancies when there may not be a need or a person with the right qualifications or experience is not available.

To provide consistency with accountabilities across Council section 17A was added to allow for the dismissal of the Chancellor and deputy Chancellor (who, being ex officio members, are neither elected nor appointed and therefore not covered by the 2001 inclusions of sections 11A and 11B).

Conclusion.

The constitution of the Council of Utas is best explained by reference to the operation of the University and the environment in which it has been required to operate along with the influences on the business model with which the University has to function. Those influences, when viewed from the constitution of Council and the functions and powers of the university itself provide understanding of the role, powers and obligations of the Council, which is accountable through its constitution and reporting obligations.

I am satisfied that the reforms which were made to the constitution of Council from 1992 to 2012 were both necessary and appropriate.



Dr. Damian Bugg AM QC

Former Chancellor of the University of Tasmania (2006-2012)

Council Member (2001-2012)

SECOND READING SPEECH
THE HON NICK MCKIM MP
UNIVERSITY OF TASMANIA AMENDMENT BILL
2012

Mr Speaker,

I move that the Bill now be read a second time.

Officially founded on 1 January 1890, our University was the fourth university to be established in nineteenth-century Australia. In 1992, the University of Tasmania was confirmed as a single entity, following its amalgamation with the Tasmanian State Institute of Technology. At that time the University Council was established under the Act to govern the institution.

As with other Australian universities, the University of Tasmania has been responding strategically to an altered environment, including strong growth in enrolments, changing funding arrangements, increasing competition, and new regulatory frameworks. These changes have been reflected in the University Council's desire to adopt contemporary management and governance practices.

Mr Speaker, the *University of Tasmania Amendment Act 2001* and *University of Tasmania Amendment Act 2004* have enabled the University Council to operate within a more contemporary management and governance framework.

And today, the tabling of this Bill, continues this evolution. The purpose of this legislation is to enable the University Council to be reduced from 18 members to a maximum of 14, to reduce terms of members appointed by the Minister and Council from 4 to 3 years and to formalise Council's power to remove the Chancellor and Deputy Chancellor.

These changes support the University Council to adopt recommendations from an external review of the processes and structure of the Council. The Chancellor of the University of Tasmania (UTAS), Mr Damian Bugg, requested amendment of the *University of Tasmania Act 1992*.

The changes proposed in this Bill are in accord with the *Voluntary Code of Best Practice for the Governance of Australian Universities* that I, together with my colleagues on the, then, Ministerial Council on Tertiary Education and Employment (MCTEE), endorsed in September 2011.

This Code is supported by the Australian Council of University Chancellors.

This Bill, taken together with the reforms introduced through the prior amending Acts, enables the University of Tasmania to become fully compliant with the Code.

The national Code, reflected in these proposed amendments, supports continuing transition from a traditional and large representative governance model toward a contemporary corporate governance model; particularly in relation to insistence on stricter governance and accountability of the academic quality and engagement and business competencies of Australian universities.

The *University of Tasmania Act 1992* requires the Council to provide the Minister with an annual report to be laid before both Houses of Parliament. The Voluntary Code of Best Practice for the Governance of Australian Universities requires the University to disclose in its annual report its compliance with the Code of Practice and provide any reasons for non-compliance.

The reasoning for the reduction in size and altered composition of the Council is that it should no longer be the traditional large body of persons appointed as representatives of particular interest groups.

Until 2001, the Council comprised 24 members, among them a representative from both Houses of this Parliament.

Mr Speaker, I have mentioned the changing directions in which this country's universities must operate with increasingly complex educational, organisational, business and management responsibilities, Council membership must provide the necessary skills sets for ensuring the proper governance of a large tertiary education business, within a highly competitive environment and a budget governed along business lines rewarding achievement with revenue.

In order to efficiently and effectively discharge its roles and obligations, it has been determined that Council should be comprised of a minimum 10 with a maximum of 14 members but preferably operating with 12 members. The proposed composition of Council is:

- The Chancellor, Vice Chancellor and Chair of Academic Senate (all ex officio)
- one elected member of the academic staff
- one elected member of general staff (to be termed 'professional staff')
- one appointed student

- two members appointed by the Minister
- and between two and six members appointed by Council

Mr Speaker, the changes proposed are those agreed between me, as the Minister responsible for the Act and the Chancellor of the University, Mr Damian Bugg on 8 November 2011. The current Act requires consideration to be given, when appointing members, to required skills, regional and gender balance. That provision will continue.

These proposed amendments arose from the external review of the University during the previous 12 months. They were developed through the strategic planning processes of the University Council and communicated internally through the University and more widely through public media release.

I would draw Members attention to the preservation of the Minister's prerogative to appoint two members of the Council. Not only does this provision reflect the establishment of the University of Tasmania under State legislation but the ongoing significance of the University for Tasmania's economic, social and community good.

Mr Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.

Tabled by Dr Reyschauge
by leave
of Clerk 26/10/04

ATTACHMENT 2
DAMIAN BUGI

RECEIVED

26 OCT 2004

LEGISLATIVE ASSEMBLY
PROCEDURE OFFICE

**CHAPTER 7 INCREASES IN ASSISTANCE FOR HIGHER EDUCATION
PROVIDERS MEETING CERTAIN REQUIREMENTS (Section 33-15)**

7.1 PURPOSE

7.1.1 The purpose of this chapter is to set out the requirements known as the National Governance Protocols that higher education providers eligible for grants under the Commonwealth Grant Scheme need to satisfy under section 33-15(1)(a) of the Act and to specify a date for higher education providers to meet these requirements under section 33-15(1)(c) of the Act.

7.1.5 In this chapter, all references to the *Corporations Act* are to the *Corporations Act 2001* (Commonwealth) as in force from time to time.

**7.5 NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION
PROVIDERS LISTED IN TABLE A OF THE ACT**

In the case of the Australian Catholic University, where a Protocol refers to enabling legislation, it is taken to mean its constitution and/or where applicable, the *Corporations Act*.

7.5.1 *Protocol 1*: the higher education provider must have its objectives and/or functions specified in its enabling legislation.

7.5.5 *Protocol 2*: the higher education provider's governing body must adopt a statement of its primary responsibilities, which must include:

- (a) appointing the vice-chancellor as the chief executive officer of the higher education provider, and monitoring his/her performance;
- (b) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- (c) overseeing and reviewing the management of the higher education provider and its performance;
- (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
- (e) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
- (f) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- (g) overseeing and monitoring the academic activities of the higher education provider;
- (h) approving significant commercial activities of the higher education provider.

7.5.10 The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

7.5.15 Protocol 3: the higher education provider must 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 (s) each member must 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 higher education provider.

7.5.20 Duties of members must include the requirements to:

- (a) act always in the best interests of the higher education provider 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).

7.5.25 There should be safeguards, exemptions and protections for members of a higher education provider'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*. The higher education provider (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*.

7.5.30 Protocol 4: 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. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.

- 7.5.35 Protocol 5:** the size of the governing body must not exceed 22 members. There must 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 must be a majority of external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.
- 7.5.40 Protocol 6:** the higher education provider must 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.
- 7.5.45** Members so appointed must 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 higher education provider and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the higher education provider's external community needs from that higher education provider.
- 7.5.50** To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms must generally overlap and governing bodies must 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.
- 7.5.55 Protocol 7:** the higher education provider is to 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.
- 7.5.60 Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes.
- 7.5.65 Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.
- 7.5.70 Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:
- (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 higher education provider, where possible;
 - (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.

7.5.75 Protocol 11: A higher education provider must assess the risk arising from its part 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 provider must, 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.

7.10 NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION PROVIDERS NOT LISTED IN TABLE A OF THE ACT

7.10.1 Protocol 1: the higher education provider must have its objectives specified in a constitution or such other document that establishes the higher education provider as a legal entity.

7.10.5 Protocol 2: the governing body of the higher education provider must adopt a statement of its primary responsibilities, which must include:

- (a) appointing the chief executive officer of the higher education provider and monitoring his/her performance;
- (b) appointing, where necessary, the secretary or public officer of the higher education provider;
- (c) ensuring that the processes of the governing body are carried out in accordance with the constitution of the governing body;
- (d) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- (e) appointing an external auditor;
- (f) appointing, where necessary, an audit committee that consists of at least three independent members (excluding the chair) of the governing body;
- (g) establishing policy and procedural principles consistent with legal requirements and community expectations;
- (h) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
- (i) overseeing and reviewing the management of the higher education provider and its performance as a higher education provider;
- (j) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- (k) overseeing and monitoring academic activities of the higher education provider; and

(l) approving significant commercial activities of the higher education provider.

7.10.10 The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

7.10.15 **Protocol 3:** the higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its constitution or other such document of the higher education provider. Other than the Chair of the Governing Body, Chief Executive Officer and the Presiding Member of the Academic Board (or the equivalent officer) each member must 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 higher education provider.

7.10.20 Duties of members must include the requirements to:

- (a) act always in the best interests of the higher education provider 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).

7.10.25 There should be safeguards, exemptions and protections for members of a higher education provider's governing body for matters or things done or omitted in good faith. 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*. The higher education provider (with the exception of those subject to the *Corporations Act*) must have a requirement that the governing body has the power to remove any member of the governing body from office if the member breaches the duties specified above included in its constitution or other such document of the higher education provider. 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*.

7.10.30 **Protocol 4:** 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. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.

- 7.10.35 **Protocol 5:** the size of governing body must not exceed 22 members. There must 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. A majority of the members must be external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.
- 7.10.40 **Protocol 6:** the higher education provider must adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected.
- 7.10.45 **Protocol 7:** the higher education provider is to 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.
- 7.10.50 **Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes required by the Commonwealth.
- 7.10.55 **Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.
- 7.10.60 **Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:
- (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 higher education provider, where possible;
 - (c) ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
 - (d) ensuring that the board documents a clear corporate and business strategy which reports 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.
- 7.10.65 **Protocol 11:** the higher education provider and its associated entities shall be audited by an external auditor and the auditor's report (including audit certification and management letter) provided to the higher education provider's governing body or the higher education provider's audit committee.

ATTACHMENT 3

DAMIAN BURY.



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.