

Review of the National Governance Protocols

Issues Paper

May 2007

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FOREWORD

In May 2003, the Australian Government announced its package of reforms in higher education, *Our Universities: Backing Australia's Future* (BAF). The *Higher Education Support Act 2003* (HESA) enabled the BAF reforms to be implemented progressively from 2004.

The National Governance Protocols were implemented under BAF and became effective on 2 June 2004. The Protocols were intended to improve governance practices at universities by providing a set of standards to ensure that governing bodies were effectively overseeing university operations.

In late 2005, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) decided to commission a review of the impact of the Protocols and the scope for their enhancement. The Joint Committee on Higher Education (JCHE) is conducting the review.

PURPOSE OF THE ISSUES PAPER

The purpose of this issues paper is to seek views from higher education providers, governing body members, peak bodies, professional organisations and other interested parties on the impact and the effectiveness of the current Protocols and suggestions for any changes to the Protocols for the future.

SUBMISSIONS

Comments and suggestions within the terms of reference, including on the issues and consultation questions raised in this paper are invited.

Responses are sought by close of business, **TUESDAY 31 JULY 2007** and should be submitted by email to NGPreview@dest.gov.au or posted to:

JCHE Review of the National Governance Protocols
Loc. 130
Department of Education, Science and Training
GPO Box 9880
CANBERRA ACT 2601

An electronic version of this issues paper and other information about the National Governance Protocols review is available at:

<http://www.mceetya.edu.au/mceetya/default.asp?id=11474>

PART 1: INTRODUCTION

1.1 Background and Context

The National Governance Protocols were a response to concerns about university governance raised in the 2002 review *Higher Education at the Crossroads*. Among these concerns were:

- whether governing body members had the skills needed to oversee complex multi-million dollar enterprises;
- the tendency for many members to see themselves as representing interest groups, rather than serving the interests of the university as a whole;
- the size and composition of councils;
- that governing bodies were not effectively monitoring universities' commercial operations.

The Protocols were finalised following consultations with Universities Australia (formerly the Australian Vice Chancellors' Committee), University Chancellors' Conference (UCC) and JCHE. They became effective on 2 June 2004. Apart from the insertion of a transitional clause in 2005, to allow universities more time to implement legislative changes, the Protocols have remained largely unchanged since.

In 2004 the Australian Government released a discussion paper, *Building Better Foundations*. The paper included consideration of university governance.

During consultations, stakeholders reported that the Protocols had had a positive effect on governance practices, and suggested there be a more detailed assessment of their impact before further changes were considered.

At the meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs on 17 November 2005, the Commonwealth, State and Territory Ministers:

- agreed to a review being conducted of the impact of the National Governance Protocols and scope for their enhancement, including examination of the need for stronger fiduciary responsibilities for members of governing councils; and
- requested that the JCHE coordinate the review, in conjunction with Universities Australia and the UCC, and report its findings to Ministers in 2007.

The Protocols aim to ensure a consistent national approach towards key aspects of governance. However, the Protocols are not the only influence on governing body structures and governance practices. State/Territory general legislation, universities' enabling legislation and universities own policies and priorities would also determine the operations of a governing body. In addition, other factors such as corporations law and commercial principles may influence some of the operations of governing bodies.

PART 2: DESCRIPTION OF THE REVIEW

JCHE will:

- Undertake consultations with higher education providers, peak bodies, professional organisations and other interested parties, including via submissions;
- Analyse comments and submissions; and
- Report findings to MCEETYA in 2007.

JCHE has:

- Established a working group, consisting of the following members:
 - Rod Manns, Branch Manager, Funding and Student Support Branch, Australian Government Department of Education, Science and Training (chair);
 - Brendan Sheehan, General Manager, Higher Education and Regulation, Office of Training and Tertiary Education (Victoria)
 - Richard Symonds, Director, Higher Education (South Australia);
 - Ian Kimber, Director, Queensland Office of Higher Education; and
 - Andrew Rolfe, Director, Higher Education, Department of Education and Training (New South Wales).

2.2 Terms of reference

Part A – Review of the impact of the National Governance Protocols

1. Assess the broad impact to date of the National Governance Protocols, with emphasis on:

- organisational sustainability;
- the activities, operations and culture of governing bodies;
- organisational performance;

and the effectiveness of the Protocols in addressing the concerns about university governance raised in the:

- *Higher Education at the Crossroads* discussion paper; and the
- *Meeting the Challenges: The Governance and Management of Universities* issues paper.

Both papers are available at <http://www.backingaustraliasfuture.gov.au/pubs.htm>.

Part B – Scope for enhancement of the Protocols

Strengthening fiduciary responsibilities of governing body members

2. Consider the desirability of increasing the fiduciary responsibilities of members and the advantages of remuneration.

Enhancing the role of the governing body

3. Consider whether additional responsibilities should be added in relation to setting strategic direction, performance monitoring and oversight of controlled entities.
4. Consider the desirability of changing the size, length of appointments and composition.

Diversity

5. Consider means by which the Protocols can promote diversity within the higher education sector.

Relationships of the governing body

6. Advise whether the Protocols should cover the relationships between the governing body, the secretary, the chief executive and other officers of the institution.

Clarification and enhancement of existing provisions

7. Advise on appropriate revisions to existing Protocols to:
 - improve clarity;
 - improve effectiveness; and
 - address unintended consequences including any reduced flexibility.

2.3 Key Dates

<i>Activity</i>	<i>Timeframe</i>
Issues paper released and submissions invited	May 2007
Discussion forums held	June-July 2007
Closing date for submissions	31 July 2007
Final report provided for MCEETYA	Second half of 2007

PART 3: ISSUES FOR CONSIDERATION

3.1 Contribution of the National Governance Protocols to good governance

Good governance needs to extend to all levels of an organisation and to all aspects of an organisation's operations. It needs to be integrated within the organisation's culture and policies providing the structure and authority (the framework) for management and administrative processes.

Governance structures and practices for Australian universities are entrenched in legislation that establishes universities, provides public funding and requires public auditing of university business. All establishment legislation currently complies with the National Governance Protocols.

The National Governance Protocols aid individual institutions in establishing and developing their institutional framework and structure for governance. They seek to provide guidelines and principles for effective governance as well as to detail specific requirements for higher education providers. The Protocols seek to safeguard and enhance the nation's investment in higher education through the effective oversight of each higher education provider's activities and management.

The Protocols and their incorporation into the Commonwealth Grant Scheme Guidelines would appear to have had a significant impact on the operations of universities. For example:

- all universities have made changes to satisfy the requirements of the Protocols;
- a number of universities have published their own statements on governance; and
- the majority of universities have participated in the University Governance Development Programme.

This review seeks to assess the extent to which the current Protocols have influenced and had an impact on the quality of governance for higher education providers and whether the Protocols can be further improved.

Consultation questions:

- 3.1.1 *How have the existing Protocols impacted or influenced good governance?*
- 3.1.2 *Has the requirement to comply with the existing Protocols had any negative or unintended consequences?*
- 3.1.3 *Are there other factors and influences that impact on governance practices which ought to be addressed in the Protocols?*
- 3.1.4 *How have the existing Protocols been instrumental in guiding and shaping institutions' own effective governance structures and relationships?*
- 3.1.5 *How have the existing Protocols addressed the concerns about university governance raised in the Higher Education at the Crossroads and the Meeting the Challenges: the Governance and Management of Universities papers?*
- 3.1.6 *How have the Protocols contributed to the overall sustainability of individual higher education providers?*

Consultation questions:

- 3.1.7 *How have the Protocols contributed to improving the performance of individual higher education providers?*
- 3.1.8 *Has compliance with the existing Protocols enhanced the reputation of individual higher education providers?*

The effectiveness of the Protocols to date has been dependent on the willingness of individual higher education providers to incorporate the requirements and spirit of the Protocols into their operations. Further governance improvements can only be achieved with the commitment and support of each higher education provider.

This paper outlines areas where the National Governance Protocols could potentially be improved to provide additional guidelines to institutions in developing and continuously improving their governance arrangements. JCHE is also interested in general comments on the scope for enhancing the Protocols.

Consultation questions:

- 3.1.9 *Have individual institutions developed their own governance practices and procedures sufficiently to satisfy the spirit of the Protocols?*
- 3.1.10 *Do the Protocols need to be improved? How could this be achieved?*

3.2 The role and composition of the governing body

To be effective, a governing body needs the right structure, responsibilities and skills to match the characteristics and needs of the institution. The governing body should oversee the operations of the institution and the performance of management. The Protocols currently provide specific provisions relating to:

- the primary responsibilities of the governing body;
- the requirement to define the duties of members in enabling legislation;
- the size of the governing body;
- the requirement for a minimum number of members with specific skills;
- the length of tenure for members;
- requirements for the oversight of controlled entities; and
- the conditions for appointment of members.

Consultation question

- 3.2.1 *Are these existing Protocols adequate for defining the role, responsibilities and activities of governing bodies and the duties and obligations of individual members?*

The existing Protocols provide for a maximum size of a governing body of 22 members. There are also provisions that enable very long term appointments.

Governing bodies need to be large enough to benefit from a diversity of viewpoints, while small enough to facilitate effective decision making. There is a diversity of views on what size might achieve this balance. For instance, the Business, Industry and Higher Education Collaboration Council considers that nine to eleven members would be appropriate for higher education governing bodies. There is also a range of views on the appropriateness of staff and student membership of governing bodies, and the number of external independent members who can bring particular specialized skills the organisation might require.

The current maximum term of appointment for board members is set at 12 years with scope for longer terms. Good practice models suggest shorter terms and less scope for exceptions could be more appropriate.

Consultation questions:

- 3.2.2 *Is the maximum size of governing bodies appropriate? What would be an ideal size?*
- 3.2.3 *Is the maximum term of appointment for board members appropriate? What would be a reasonable maximum term?*
- 3.2.4 *Is there a need for the Protocols to provide additional requirements or guidance on the skill mix required for an effective governing body?*
- 3.2.5 *Should representatives of staff and students be included in consultative rather than governing bodies?*

The position of a Secretary may provide an important coordinating resource for the governing body and the individual members that is independent of management. The Protocols could be expanded to provide for the appointment of a Secretary to the governing body.

Consultation questions:

- 3.2.6 *Is the role of a Secretary important to a governing body? Should the role be separated from that of the senior university administration?*
- 3.2.7 *Should the Protocols recognise the role, responsibility and powers of a Secretary? What should they be?*

The Protocols are largely silent on the relationship between the governing body and key management roles. Effective coordination and cooperation between the governing body and senior management is a crucial factor affecting governance. For this to occur, the role, responsibilities and importantly the relationship between the governing body and senior management needs to be clear.

Consultation questions:

3.2.8 *Should the Protocols cover the relationships between the governing body and key management roles in the institution?*

3.2.9 *Should the Protocols contain explicit guidance on the devolution of management responsibilities to the Vice Chancellor/CEO.*

3.3 Leadership

Effective leadership is closely aligned with good governance. Leadership needs to be exercised by the governing body to steer and guide the direction of the institution.

Leadership is essential for the growth and development of an organisation. In an environment of increased international and domestic competition and increasing diversity in learners' needs, a higher education provider needs to differentiate its activities from that of other institutions.

For the governing body leadership involves:

- providing a sense of purpose and distinctive direction for the institution;
- strategic planning, budget setting and asset management, aimed at taking advantage of business opportunities and ensuring and enhancing the long term viability and sustainability of the institution;
- building management capability and developing close and productive working relationships with management at all levels; and
- ensuring information and decisions are communicated clearly.

Consultation question

3.3.1 *Do the Protocols need to be improved to encourage a stronger role for governing bodies in guiding institutions in a more diverse higher education sector? If so, how could this be achieved?*

3.4 Accountability

Good governance relies on key elements of accountability such as:

- setting measurable targets and indicators of performance, and then publicly reporting on achievements;
- effective and independent audit and review processes, including audit committee arrangements;
- the management of risks;
- measurement and review of management performance and effectiveness;
- effective internal controls and clear and enforceable policies and procedures to ensure the integrity and reliability of day to day operations and data; and
- effective information systems and reporting arrangements on the institution's (and the governing body's) operations and performance.

The Protocols promote accountability primarily by incorporating these elements of accountability into the responsibilities of the governing body. These elements also contribute significantly to management performance and effectiveness.

Consultation questions:

3.4.1 *Do the existing Protocols provide sufficient guidelines for the accountability of the institution through the oversight of performance by the governing body?*

3.4.2 *Do the Protocols need to be enhanced to provide for improved accountability?*

Fiduciary responsibilities rest with people in an organisation that exercise authority, decision making and responsibility. This includes managers at all levels and the individual members of the governing body. Members of the governing body and management occupy positions of trust. Both have an obligation to act honestly in good faith and to the best of their ability in the interests of the higher education provider. Their decisions affect directly and indirectly the longer term viability of an institution.

The Protocol provisions relating to the individual duties of members of the governing body are intended to ensure that they act in good faith. The duties could be strengthened to include provisions related to:

- participating fully and supporting the activities of the governing body;
- exercising integrity, trust and responsibility in all financial dealings and matters;
- exercising care and right judgement in the acceptance of gifts and donations and in the use of the resources of the institution;
- not improperly using information to gain an advantage for themselves or someone else;
- maintaining confidentiality where information is either sensitive or provided on a confidential basis;
- being prepared to declare conflicts of interest and potential conflicts of interest; and
- undertaking continuous development to enhance current skills.

In addition to the duties of individual members, a higher education provider needs to have a well defined organisational structure with responsibilities of key groups and positions clearly defined.

Consultation questions:

3.4.3 *Do the existing Protocols provide sufficient guidelines for the fiduciary responsibilities of members of the governing body?*

3.4.4 *Should the Protocols include any additional provisions relating to the accountability of members?*

A key requirement for effective governance and management is the management of internal and external risk. The current Protocols provide limited reference to the management of risk and no guidance on the process of identifying, measuring and assessing risk or developing appropriate strategies to manage risk.

Governing bodies need to identify and respond to both internal and external risks and position the institution for long term sustainability and success. Internal risks and pressures can relate to matters such as the adequacy of infrastructure; skills and mobility of staff; corporate and intellectual knowledge; available resources and cost management; and information communication and technology. External risks, pressures and opportunities can relate to matters such as domestic and international competition; environmental risks; diversification and commercial activities and sponsorship.

Consultation question:

3.4.5 Would the Protocols be improved with the provision of additional guidelines and requirements on the role of the governing body in risk management?

The current protocols also make no specific mention of the operation of the Audit Committee which is considered to be an important requirement for proper accountability. The operation of the Audit Committee should be a responsibility of the governing body. The Protocols could specifically recognise this.

Consultation questions:

3.4.6 Would accountability be enhanced by requiring the Audit Committee to be a responsibility of the governing body?

3.4.7 Should an audit committee be required to have an independent chair?

The Protocols do not mention the relationships between the governing body and sub-committees. Sub-committees can play an important part in the operation and governance of universities and the oversight of these bodies should be a responsibility of the governing body.

Consultation question

3.4.8 Should the Protocols be expanded to cover the relationships between the governing body and sub-committees within the institution?

Some other requirements relating to accountability may be covered by legislation in some States/Territories. Requirements that could be added to the Protocols to enhance national consistency could include:

- assigning responsibility to the governing body to accept annual audited financial statements and the institution's annual report;
- provisions providing for the protection of "whistleblowers" from undue pressure or harassment;
- defining more clearly the ability of the governing body to delegate its key responsibilities; and
- requiring the governing body to put in place mechanisms for reviewing and reporting on its own performance, including periodic external evaluation.

Consultation question:

3.4.9 *Would the inclusion of additional provisions and requirements improve overall accountability?*

There is also room for examining the scope for further specifying the operation of governing bodies and individual members, particularly in relation to:

- approving the selection and remuneration of key senior management positions;
- reviewing the performance of senior management in achieving strategic plans, targets, measurable outcomes and performance measures including consideration of performance measures set or produced by DEST;
- approving all significant investment and business decisions;
- the approval of a strategic asset management plan;
- ensuring the establishment and operation of effective audit processes through the operation of an audit committee;
- reviewing the transparency of communication; the adequacy of disclosure; and the integrity and timeliness of the arrangements and processes for the reporting of financial and non financial information; and
- reporting the operations of the governing body in a form consistent with the *Financial Statement Guidelines for Australian Higher Education Providers*.

Consultation questions:

3.4.10 *Would the inclusion of additional provisions and requirements such as these provide greater guidance for institutions on the role and operation of the governing body?*

3.4.11 *Are there any other provisions that the Protocols should contain in relation to the governing body and its individual members in matters concerning accountability?*

3.5 Continuous improvement

Compliance is only the first step towards excellence. Effective governance is more than compliance with legislative requirements and regulations and involves continuous improvement and the development of best practice. Continuous improvement is essential for institutions operating in competitive and changing environments.

The Protocols could include a focus on continuous improvement in governance arrangements. For example, this could include:

- participation in the Universities Governance Development Programme;
- training and development of individual members of the governing body;
- improving oversight of strategic planning and budgeting arrangements; and
- clarifying information requirements and improving reporting arrangements to the governing body.

Consultation questions:

- 3.5.1 *Do the existing Protocols encourage continuous improvement of governance arrangements?*
- 3.5.2 *Should the Protocols include further guidance for governing bodies on the regular review of their own performance, such as reporting the outcome?*
- 3.5.3 *Would the inclusion of additional provisions and requirements improve the Protocols?*

3.6 Improving the form and clarity of the National Governance Protocols

The current form of the Protocols is capable of improvement, particularly in respect to the following:

- improving the overall structure and logical order of the Protocols; and
- providing greater certainty over the application of specific requirements.

Consultation question:

- 3.6.1 *Are there useful clarifications that could be made to any of the existing Protocols or the overall presentation of the Protocols?*

3.7 Other Issues

Consultation question:

- 3.7.1 *Are there any other matters within the terms of reference or relating to the Protocols generally that have not already been mentioned on which you would like to comment?*

PART 4: NEXT STEPS

4.1 Consultation meetings

In addition to seeking written submissions, the JCHE will hold consultation meetings. Meetings will be held in Sydney, Perth, Melbourne and Brisbane. Further details of dates and agendas will be provided.

4.2 Report to MCEETYA

A summary of responses from the consultative meetings and submissions received will be included in the report to MCEETYA. Submissions will also be posted on the website after the closing date unless the submitter requests that this not occur.

ATTACHMENT: EXISTING PROTOCOLS

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*.

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

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.

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.

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.

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).

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*.

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.

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.

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.

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.

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.

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.

Protocol 8: the annual report of the higher education provider must be used for reporting on high level outcomes.

Protocol 9: the annual report of the higher education provider must include a report on risk management within the organisation.

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.

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.

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

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.

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.

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.

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.

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).

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*.

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.

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.

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.

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.

Protocol 8: the annual report of the higher education provider must be used for reporting on high level outcomes required by the Commonwealth.

Protocol 9: the annual report of the higher education provider must include a report on risk management within the organisation.

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.

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.