

A Code of Governance Principles and Practice for Australia's Public Universities

1. Purpose

- 1.1 The purpose of this Code is to provide broad guidance to university governing bodies in the discharge of their functions and responsibilities. It must be read subject to the laws of the States, Territories and Commonwealth affecting the governance of universities.

2. The nature and operation of Australia's public universities.

- 2.1 Australian universities are special purpose, statutory corporations created by law.
- 2.2 The laws which create Australia's public universities generally contain express statements of their purposes and functions.
- 2.3 The use of the term 'University' in such laws implies certain historic purposes and functions. Their core functions are the transmission of knowledge by teaching and the creation of new knowledge by research and scholarship.
- 2.4 The composition and functions of governing councils and the duties of their members are generally to be found in the legislation creating the university.
- 2.5 General law duties applicable to directors and officers of companies will also for the most part, be applicable to members of governing councils.¹
- 2.6 Commonwealth law provides for governance standards as a condition of the accreditation of universities for the purposes of their funding.
- 2.7 There are many regulatory or other laws, Commonwealth, State and Territory which apply to universities, their governing bodies and the members of their governing bodies in common with other bodies corporate and their members.
- 2.8 This Code can only apply to the extent that it is consistent with the laws applicable to universities, governing bodies and their members.

3. Composition of governing bodies

- 3.1 The rules governing the composition of governing bodies of universities are generally to be found in the law creating the university. Usually those rules allow for a degree of control or influence over its own composition by the governing body through co-option of members and nomination of members for appointment by the government.
- 3.2 Within the limits of the law and the powers, formal or informal, of the governing body to determine or influence its own composition, it should seek to:
- 3.2.1 have a membership that collectively has the skills, commitment and knowledge of the university and the higher education sector to enable it to discharge its duties effectively and add value²
- 3.2.2 achieve a balance between higher education and other expertise on the governing body, with at least one non-executive member who has university leadership expertise from outside the institution³

¹ Bruce Cowley and Stephen Knight, *Duties of Board and Committee Members*(Lawbook Co, 2018) 353, [10.20].

² ASX Governance Principle 1.

³ Priority Area 3.2.1.

- 3.2.3 reflect the diversity of the Australian community, and the specific characteristics of the university community they serve, in making appointments⁴
- 3.2.4 achieve gender balance on the governing body in line with jurisdictional and Australian Government targets⁵
- 3.2.5 have First Peoples membership on the governing body⁶
- 3.2.6 where not specified by legislation the governing body should seek to have one or more student members on the governing body at both graduate and post-graduate levels⁷
- 3.2.7 where not specified by legislation, the governing body should seek to have one or more staff members on the governing body.⁸

4. First Peoples, staff, student and university community engagement in governance

A university governing body should have transparent processes to capture input on university strategy, policies and performance from staff and students, representatives of First Peoples, and the wider community it serves.⁹ These processes may include consultation mechanisms and surveys.

5. Appointment processes

- 5.1 The governing body should have processes surrounding all appointments to its membership which it controls or influences through co-option or nomination, which should be rigorous and transparent and apply a formal and regularly updated skills capabilities and diversity selection matrix in line with the requirements of that governing body's jurisdiction. The processes should be directed to the selection of the person best suited for the position.¹⁰
- 5.2 When exercising its powers, formal or informal, to appoint or influence the appointment of a new member, the governing body should undertake appropriate checks, including checks in relation to the proposed appointee's reputation for diligence and integrity.¹¹
 - 5.2.1 A governing body should have a Nominations Committee to recommend to the governing body or the relevant government as the case may be, the appointment of persons as members of the governing body.¹²
 - 5.2.2 The Nominations Committee should have at least three members who are not staff or students of the university and should be chaired by one such member and operate according to a publicly disclosed Charter.¹³

6. Duties of members

- 6.1 A university governing body should clearly delineate the respective roles and responsibilities of the governing body and management and should set out those matters expressly reserved to the governing body and those delegated to management.¹⁴

⁴ Priority Area 3.2.3.
⁵ Priority Area 3.2.4.
⁶ Priority Area 3.2.5 — partial.
⁷ Priority Area 3.2.6 — partial.
⁸ Priority Area 3.2.7 — partial.
⁹ Priority Areas 3.2.5, 3.2.6 and 3.2.7 — partial.
¹⁰ Priority Area 3.2.8.
¹¹ ASX Recommendation 1.2(a).
¹² ASX Recommendation 2.1(a).
¹³ ASX Recommendation 2.1(a)(1) to (4).
¹⁴ ASX Principle 1 and Recommendation 1.1.

- 6.2 Any such delineation cannot derogate from the overall responsibility of the governing body for the management of the affairs of the university and its obligation to hold management to account in all matters.
- 6.3 Duties of members included in a governing body statement or code 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
 - (e) disclose and avoid conflicts of interests (with appropriate procedures for that purpose similar to those for public companies)
 - (f) respect the confidentiality of proceedings save to the extent that they deal with matters in the public domain or reflected in the public minutes.¹⁵
- 6.4 The governing body should ensure that the body or a committee of the body is informed of any material breach of the statement or code.¹⁶
- 6.5 The governing body should maintain a Public Conflict of Interest Register updated annually, setting out all disclosures made by governing body members.

7. Awareness and education of members

- 7.1 All members of governing bodies should have a reasonable awareness of the legal framework within which they carry out their functions and the duties imposed upon them by that legal framework and by any statement of duties, roles and responsibilities adopted by the university's governing body. It is good practice to ensure that members receive adequate information and training about their rights and responsibilities. 'Adequate' does not mean a detailed knowledge of the law. It should be enough that members know enough about the legal framework within which they operate, to know when to ask questions about whether any particular proposal or action of management or the governing body is consistent with the law.
- 7.2 Each governing body should make available a program of induction and professional development for members and require that they undertake training on the specific responsibilities and expectations of their role as governing body members.¹⁷
- 7.3 A governing body should foster among its members and the management of the university a culture of proactive compliance with their legal and ethical responsibilities including in particular obligations to ensure that:
- (1) staff of the university are paid according to their legal entitlements
 - (2) welfare, health and safety requirements are met
 - (3) obligations imposed upon the university by the *Higher Education Support Act* and other laws applicable to the university, are being met.¹⁸

¹⁵ See the first part of para 3 of the existing Voluntary Code.

¹⁶ ASX Recommendation 3.2(b).

¹⁷ Priority Area 3.2.9.

¹⁸ ASX Principle 3.

7.4 A governing body should have and disclose a Code or Codes of Conduct for its members, senior executives and staff and ensure that the body is, or a committee of the governing body is informed of material breaches of a Code.¹⁹

7.5 A governing body should have and disclose a whistleblower and anti-bribery and corruption policies and ensure that the body or a committee of the body is informed of any material breaches of any of those policies.²⁰

8. Performance Review

8.1 (a) On a regular basis, at least once each three years, the governing body should assess its performance, the performance of its members and the performance of its committees and should disclose for each reporting period whether a performance evaluation has been undertaken and the processes by which it has been undertaken.²¹

(b) At least once every seven years the governing body should undertake an independent review of its effectiveness and its academic governance processes and ensure that the findings of such review is considered by a competent body or officer(s) and that agreed actions are implemented.

8.2 On a regular basis, at least once every reporting period, a governing body should evaluate the performance of senior executives according to a process which is disclosed and should disclose for each reporting period whether such a performance evaluation has been undertaken.²²

9. Reporting on Compliance with this Code

9.1 Each governing body should annually review its compliance with this Code, identify shortcomings and measures necessary to address them.²³

9.2 A university which has adopted this Code should disclose in its annual report its compliance with the Code and areas of non-compliance with reasons for non-compliance and measures undertaken to address them.

10. Protection of Members

10.1 To the extent that it is consistent with relevant legislation, members of the university's governing body should enjoy protection provided by the university in respect of any liability arising out of matters or things done or omitted in good faith in pursuance of any legislation. Such protection should extend to the provision of member insurance and provisions under which a member who may be the subject of legal action covered by the protection can access any university documents relevant to the questions arising out of that action.²⁴

11. Removal of Members

11.1 Where a university's enabling legislation provides for the removal of a member of its governing body, the governing body should by regulation or otherwise provide for such procedures as may be necessary to give effect to the powers of removal. It may also provide for removal on grounds not covered by legislation if the legislation permits.²⁵

¹⁹ ASX Recommendations 3.2(a) and 3.2(b).

²⁰ ASX Recommendations 3.3 and 3.4.

²¹ ASX Recommendation 1.6.

²² ASX Recommendation 1.7.

²³ Ibid.

²⁴ See para 3 of existing Voluntary Code — last part.

²⁵ Ibid.

- 11.2 Where a university's enabling legislation does not provide for the removal of a member of its governing body, the governing body should, by regulation, to the extent that it has power to do so, provide for the removal of a member of the governing body from office if the member commits a serious breach of the duties set out above, and duties set out in the enabling legislation.²⁶

12. Removal of a Chancellor or Deputy Chancellor

- 12.1 A governing body should adopt procedures, consistent with its enabling legislation:

- (a) to provide that the Chancellor or Deputy Chancellor hold office subject to retaining the confidence of the governing body
- (b) to deal with removal from that office if the governing body determines that such confidence is no longer held.

Such procedures may be provided for in University Regulations or otherwise.²⁷

13. Terms of Members

- 13.1 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 unless this is prescribed by legislation. This should not generally exceed 12 years unless otherwise specifically agreed by the majority of the governing body.

14. Risk Management

- 14.1 A university should adopt a risk management framework to guide decision making within the university and by the governing body.

- 14.2 The governing body should:

- (a) have an Audit and Risk Committee which has at least three members who are members of the body who are not staff or students of the university and one of whom chairs the Committee.²⁸
- (b) disclose the Charter of the Committee along with its membership and the relevant qualifications and experience of members of the Committee.²⁹

- 14.3 The governing body of the university should have a committee, which may be its Audit and Risk Committee, or a committee of like composition to oversee risk.³⁰

- 14.4 The governing body of a university or a committee of the governing body should:

- (a) review the university's risk management framework at least annually to satisfy itself that it continues to be sound and that the university is operating with due regard to the risk appetite set by the body
- (b) disclose in relation to each reporting period whether such a review has taken place.³¹

- 14.5 A university governing body shall disclose:

- (a) if it has an internal audit function, how the function is structured and what role it performs; or

²⁶ See para 3 of existing Voluntary Code.

²⁷ See para 4 of Existing Voluntary Code.

²⁸ ASX Recommendation 4.1(a).

²⁹ ASX Recommendation 4.1.

³⁰ ASX Recommendation 7.1.

³¹ ASX Recommendation 7.2.

- (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its governance, risk management and internal audit processes.³²

15. Academic Governance

- 15.1 The governing body should ensure that there are processes and structures established and responsibilities assigned to provide for effective academic governance in accordance with the requirements of the law including the law defining standards to be met by universities in Australia.
- 15.2 To the extent that it is consistent with the law constituting the university and any other applicable laws, the governing body, in providing for academic governance, including by way of delegation to academic bodies within the university, retains the ultimate oversight and accountability for the academic governance of the university.

16. Oversight of high risk and high priority areas

- 16.1 University governing bodies should adopt structures and processes which provide for high risk and high priority matters to reflect consultation and engagement with the university community and to be subject to appropriate oversight and reporting to and by the governing body.³³

17. Remuneration policies

- 17.1 The governing body shall maintain rigorous and transparent processes for developing and applying remuneration policies for senior university staff including :
- benchmarking remuneration policies against public and private entities of comparable scale and complexity;
 - reporting annually on total remuneration packages for senior executives, including bonuses and non-cash benefits.
- 17.2 The governing body shall maintain a Remuneration Committee:
- 17.2.1. the Remuneration Committee will have at least three members who are members of the governing body appointed or co-opted by it who are not members of staff or students and one of whom will chair the Committee
- 17.2.2 the Remuneration Committee will have a publicly available Charter
- 17.2.3 the composition of the Remuneration Committee will be disclosed
- 17.2.4 the number of meetings of the Remuneration Committee in each reporting period and the attendance by members at meetings shall be reported.³⁴

18. Oversight of Controlled Entities

- 18.1 The governing body should oversee controlled entities by:
- (a) ensuring that the entity's body possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity
- (b) appointing some directors to the body of the entity who are not members of the governing body or officers or students of the university

³² ASX Recommendation 7.3.

³³ Priority Area 3.2.2

³⁴ Combination of Priority Area 3.2.10 and ASX Principle 8 and Recommendations 8.1 and 8.2.

- (c) ensuring that the body adopts and regularly evaluates a written statement of its own governance procedures
- (d) ensuring that the body 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
- (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 reports against the business plan.³⁵

19. Risk Management of Controlled Entities

- 19.1 The university should assess the risk arising from the involvement of 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.³⁶

20. Annual Report

- 20.1 The Annual Report of the university should be used for reporting on high level outcomes including financial and environmental sustainability and performance against the university's mission and strategic plan and key performance indicators.
- 20.2 The Annual Report of the university should include a report on risk management within the organisation.³⁷

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³⁵ See para 12 of existing Voluntary Code.

³⁶ See para 13 of existing Voluntary Code.

³⁷ See paras 10 and 11 of existing Voluntary Code.