

VOLUNTARY CODE OF BEST PRACTICE FOR THE GOVERNANCE OF AUSTRALIAN UNIVERSITIES

- 1: A university should have its objectives and/or functions specified in its enabling legislation¹.
- 2: A university's governing body should adopt a statement of its primary responsibilities, to include:
 - (a) appointing the Vice-Chancellor as the Chief Executive Officer of the university, and monitoring his/her performance;
 - (b) appointing other senior officers of the university as considered appropriate;
 - (c) approving the mission and strategic direction of the university, as well as the annual budget and business plan;
 - (d) overseeing and reviewing the management of the university and its performance;
 - (e) establishing policy and procedural principles, consistent with legal requirements and community expectations;
 - (f) 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*;
 - (g) overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
 - (h) overseeing and monitoring the academic activities of the university;
 - (i) approving significant commercial activities of the university.

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.

- 3: A university should have the duties of the members of its 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

¹ In the case of a university established under the *Corporations Act*, a reference to enabling legislation is taken to mean its constitution and/or, where applicable, the *Corporations Act*.

governing body should 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 should 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*) should have a requirement included in its enabling legislation that its 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. A member should be required, automatically, to 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 office if the governing body determines that such confidence is no longer held.
- 5: Each governing body should make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities.
- 6: On a regular basis, at least once each two years, the governing body should assess its performance, the performance of its members and the performance of its committees. 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.
- 7: The size of the governing body should not exceed 22 members. 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: A 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 a university's external community needs from 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 a maximum continuous period to be served. This should not generally exceed 12 years unless otherwise specifically agreed by the majority of the governing body.

- 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.
- 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 of the entity 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 a 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.
- 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.

This Code was approved out-of-session by the Ministerial Council for Tertiary Education and Employment on 27 July 2011.