

## **WHAT IS A UNIVERSITY GOVERNING BODY AND WHAT SHOULD IT DO?**

Rather than answer the central question of how universities should be governed, the report recommendations appear mainly to continue to pass this parcel on to the Minister for Education and Training. (One can continue to play this game for centuries?)

This response instead supports ‘the considerable consensus among inquiry participants that the role of a governing body is to be the governing authority for a university and that its focus should be on strategic rather than operational matters’ (p 74). From this perspective, good governance normally requires clear separation of policy and direction from administration, with the former driving competitive, transparent, service provision so all may identify a range of economic, social and environment related outcomes.

According to the report, a university governing body may be referred to in its enabling legislation as a Council, a Senate or a Board of Trustees (p. 2). It also claims the State Minister for Education and Training is responsible for the administration of the enabling Acts ‘which provide universities with the freedom to govern themselves in the way they see fit, while also ensuring that appropriate and effective governance arrangements are in place’ (p. 17). The supposedly happy state described is not self-evident truth. Whether the enabling legislation provides universities with freedom to govern themselves and whether they do so appropriately and effectively are all propositions which ideally are openly tested by governance in practice, in order to improve governance and legislation further, in the light of continuously testing the ideal against the apparent reality.

Professor Vicki Sara, Chancellor of the University of Technology Sydney stated ‘the University’s enabling act makes it very clear that the Council has the overall control and management of the affairs of the University’. She noted:

Council has summarised its functions as being ‘to review, advise, approve and propose policy and strategy in pursuit of UT’s goals and to raise matters of general University concern’ (p. 74).

The above sounds like an advisory role rather than a governance role. Who is being advised and will they take any notice? Who sets the organizational goals? Who is responsible for their implementation? How are people to be held accountable for their performance of governance and implementation? The governance role ideally requires policy and related decisions to be made and supporting processes to be carried out. Their implementation must be monitored and the outcomes evaluated on a comparative basis.

Professor Fred Hilmer, Vice Chancellor (VC) of the University of New South Wales (NSW) and author of an earlier report leading to the national Competition Policy Reform Act (1995) said to the Standing Committee:

The fundamental job of a governing body is to make sure that the entity continues to operate successfully in terms of its objectives. You cannot do that if you are insolvent (p.8).

That appears undeniably true. All decision on governance aims or objectives and related support to attain them must logically be tailored to this fundamental economic reality. All report recommendations must naturally also be judged in a related light.

The NSW Auditor-General's Report to Parliament in May 2009 focused on the corporate governance of universities and large government agencies (p. 13). It identified a number of issues of concern relating to universities, including:

- A combined operating loss of \$66 million in 2008 compared to a surplus of \$388 million in 2007, largely as a result of the global financial crisis and volatility in financial markets.
- An increase in unfunded superannuation liabilities to \$3.1 billion
- Increased reliance on overseas students as a source of income, with overseas students now contributing nearly half of total student revenue.

*(Why is the last considered a problem for Australia? The primary aim should be to increase income through open education and research and development partnerships locally and in other countries. See attached discussion on carbon pollution reduction and sustainable development in Singapore, China and elsewhere. Suggestions are made to deal with related financial problems.)*

- Financial exposure due to excessive annual leave balances of academic staff
- Significant maintenance backlogs of nearly \$1 billion (p.13-14)

University governance aims or objectives and related support to attain them must be designed to solve the above economic problems and achieve sustainable growth. Ways forward have been suggested in the attached for discussion with UniSuper and others.

A review to consider the future direction of the higher education sector and the options for reform produced its final report (the Bradley report) in December 2008 (p. 13). This recommended a national framework in which all higher education providers should be regulated by a single independent national agency, with each university being able to set its own strategic direction. For effective accountability the governors must be allowed to govern themselves and others. Aims and related governance direction are discussed later.

The Bradley report recommended that funding be provided to the university if it is able to attract:

.....publicly funded undergraduate and postgraduate students, full-fee paying domestic and international students and publicly funded research and commercial opportunities based on the quality of its teaching and research effort (p. 13).

This payment structure appears to be derived from the ‘governance roles and functions’ currently outlined in state university Acts and described in chapter 7 of the current report. However, roles and functions are administrative concepts which ideally serve aims as directly as possible. The enabling legislation does not provide direction and related organizational aims and objectives. How is the organisational direction which administration ideally serves expected to be set and followed? The university is like a headless chicken, as anybody who has ever worked in government will recognise immediately. When one perceives a problem, nobody ever seems empowered to fix it.

Let universities govern openly and publicly justify deviations from legislation when necessary, to achieve their stated aims and objectives better. This is a scientific approach to governance, as befits most organizations, but especially universities. The alternative view is that past and current legislators are natural repositories of truth or good order, which is not necessarily so. The periodic review and reformulation of legislation ideally depends upon evidence which is systematically gathered on the efficacy of its application to achieve broader community and organizational objectives in specific environments.

The Bradley Report and the current NSW Legislative Council report appear consistent with the United Kingdom’s Independent Commission on Good Governance in Public Services position that:

Good governance requires all concerned to be clear about the functions of governance and their own roles and responsibilities and those of others, and to behave in ways which are consistent with those roles (p. 73).

However, public servants ideally execute the policies and directions of their elected governments. The relationship between deciding direction and its implementation needs to be clarified if universities are not simply to keep repeating past administrative practice. Ideally, universities should take their direction autonomously, like a private sector organization, but driven by broader social and environmental goals, as well as money.

For best governance results, the collegiate ‘business as usual’ approaches of universities must be better directed to achieving key international and national goals for sustainable development, which all Australians ideally support personally, as well as through their governments and related organizations. This is discussed further in the attachments.

The World Commission on Environment and Development defined sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’ (Beder 2006, p. 18). The first principle of the supporting United Nations (UN) Rio Declaration on Environment is that human beings are at the centre of concern for sustainable development and are entitled to a healthy and productive life in harmony with nature. Nature is also seen by many as wrought by God’s Hand. Key economic operations have religious or charitable origins which ideally now cooperate in this context. Industry superannuation funds are also non-profit. The logical forward direction is ideally also discussed with UniSuper directors.

Hilmer defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993, p.2). His definition was not adopted in the Trade Practices Act or in related legislation, which continues to assume that competition is always and only about making money. Hilmer's is a crucial definition for triple bottom line accounting, which is required by the UN to meet social, environmental and economic goals. In triple bottom line accounting, the supporting service performances and outcomes are ideally compared openly, to improve future performance to achieve the stated social, environmental and economic goals

The Prime Minister (PM 2009) has listed the following key Challenges for the Future and these are ideally also the social goals which university governors and communities seek to support competitively, as part of the broader Australian and international communities:

- Delivering an education revolution to build the skills that Australia will need as the economy recovers
- Ensuring that every Australian can get the health care they need when and where they need it
- Building a lower carbon economy and creating the low pollution jobs of the future
- Securing water supplies for our cities, towns and farmers, and acting to restore the health of our rivers; and
- Implementing a new way of governing that is more open, accountable and in touch with the community

Greig Gailey, the President of the Business Council of Australia (BCA), stated in regard to the carbon pollution reduction scheme (CPRS) that:

There are substantial benefits in the government and opposition working together to resolve the outstanding matters and ensuring the scheme does not include the risk of reducing the competitiveness of Australia's industries, deferral of investment or business closures, and employment losses in the early years.

Business and the community want an emissions trading scheme that contributes to the reduction of global greenhouse emissions in a manner that does not cause unnecessary disruptions.

This means avoiding last-minute parliamentary deals, made in the early hours of the morning, made with no time to consider the policy and implementation implications of the compromise, made simply to get the numbers.

A successful Australian CPRS will provide an example to many other nations. To provide that example, we must find the right economics, and we must find it together. ('Keep politics out of emissions solution' Australian Financial Review, AFR, 5.5.09, p. 63).

The right economics is unlikely to be found without the support of Chinese and other national communities of interest, as discussed in attachments. Australian universities can assist sustainable solutions or stay rooted in their feudal past. Let the governors govern.

## **APPOINTMENTS OR ELECTIONS, PAYMENT AND THE CHANCELLORS**

University governance aims and functions should be directed to serving national, international and related community and organizational interests. One assumes a university governing body (referred to in legislation as a Council, a Senate or a Board of Trustees) ideally sets university aims and direction as well as carrying out the legislated functions. If legislation appears to interfere with the university undertaking its preferred aims and direction in particular circumstances, this problem ideally is openly addressed.

***Report recommendation 3 is that governing bodies should have the flexibility to either appoint or elect their alumni (or Convocation) members. This seems reasonable. The decision to appoint or elect members appears ideally left to the University, as long as the governing body performs effectively to meet its clearly stated goals.***

Professor Hilmer's view that alumni members of governing bodies should 'be selected on the basis of their skills not on the basis of the agenda they are trying to run' (p. 37) seems common sense which ideally appears to apply to all and not just to alumni members.

However, Dr Michael Spence, the VC of Sydney University, confirmed that university's general commitment to the election of the governing body and stated that the abolition of elections for staff and students 'is not something we have considered, and is not something that I can imagine we would consider'. Fair enough if one wants to keep spending so much money on voting for people one usually knows little or nothing about.

The larger the governing body and the more rapid the turnover of its members, the more difficult it naturally is for them to demonstrate their competence and accountability in relation to any decision on direction and its implementation. Any discussion of their remuneration (***as in Report Recommendation 5***) needs centrally to take this into account and change the current structural governance problems first.

Student representatives on any governing body should be paid. However, academics are already being paid for working in the university and their variety of service is taken into account in all decisions about promotion. One ideally assumes governors are not being paid for a comparatively short period of warming seats, committee work, lively debates or pursuit of sectional interests, but for making the organization perform to expectation. When the governance structures to obtain this operate, remuneration may fit them.

The first term of reference given to the Standing Committee asks for comment about any apparent lack of clarity in the roles of governing bodies and VCs and the consequent opportunities for conflict. However, the position of VC is overlooked in the report to focus on the Chancellor's position. If one wants to retain a Chancellor, the most obvious governance distinction between the two might logically be that the Chancellor's position

relates to governance policy and direction and the VC is head of its administration. One assumes, however, that the role of Chancellor, like that of Governor General, is an unnecessary and expensive legacy of English feudalism. What are Chancellors paid?

***Report recommendation 8 is that the Minister for Education and Training amend the university Act to allow for the dismissal of a Chancellor or Deputy Chancellor, similar to the provision contained in the University of Sydney By-Law 1999.***

The Committee note that ‘the language in the university Acts is clear that the Chancellor is the presiding member of the university governing body’ (p. 78). One wonders what is expected of a presiding member of the university governing body.

Mr John Cassidy, the former Chancellor of the University of New England stated that the law is clear with regard to the respective roles of the Chancellor and the VC:

The Chancellor is the principal officer of the university and the VC is the chief operating officer responsible for the day to day activities.....if the person is not fit for that role then there should be some mechanism to move on, whether it be the Chancellor or the VC or other members of the Council (p. 78).

One still wonders what the principle officer of the university is expected to do. The VC seems to be head of administration in this account.

Dr Spence, VC of Sydney University states:

The role of the Chancellor is to facilitate the role of the Senate. Being Chancellor is not a job in the sense that it has tasks and key performance indicators and all the rest of it.....To think about the effectiveness of the chancellor’s work in that context is the right approach (p. 68).

The word ‘facilitate’ suggests the Chancellor may not be a member of the governing body and that the governing body does not have effective mechanisms for governing because it lacks the capacity to direct the institution and to be held accountable for the administration and outcomes of this direction. This key problem needs recognition.

Professor Hilmer ‘believes that the role of a Chancellor goes beyond the ceremonial duties traditionally associated with this position’ (p. 74) He stated:

It is more than a ceremonial role. Its role is to preside over the governing body....to make sure it is well constituted, making sure it has the proper agenda, making sure that the papers that come to it get fully disclosed.....making sure that the compliance work of the council is done properly’ (p. 75).

The above suggests that the Chancellor is like a Super Secretary who can also make sure the governing body is well constituted and who must also report to a higher body or person if this is not so, or if the work of the council appears neglected or done poorly.

Who is this superior body or person who may appear to be the real governor of the university? The role of the Council (governing body) as discussed by the Chancellor of the University of Technology and referred to earlier, which makes the body appear an advisory one rather than a decision making one, is recalled in this very confusing context.

Dr Robin Fitzsimons, a fellow of the University of Sydney Senate, noted that while some universities have adopted a more 'corporate' look in selecting their Chancellors':

A Chancellor is not simply the Chair of a Board....In the case of the University of Sydney ...we have chosen to choose our Chancellor with a strongest (unwritten) emphasis on that person being someone who will embody all that is best about the university and who will reflect these characteristics to the outside world (p. 75).

In the light of what has gone before, it seems that a Chancellor is nothing like the Chair of a Board. If so, he or she would ideally be held accountable for taking decisions and ensuring their execution, with the help of the rest of the board. They would all be openly held accountable and removed if they did not perform. This does not appear to be so.

Chancellors superficially appear to be expensive ceremonial relics of the colonial legal link to feudal English practice, which may now be dispensed with to avoid confusion and save the students and taxpayers' money. Off with their heads? (That is up to you.)

Thank you for the opportunity to make this submission.

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