JCHE Review of the National Governance Protocols
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The ACT Department of Education and Training, as a member of JCHE, was asked in May 2007 for its views on the impact and the effectiveness of the current National Governance Protocols and suggestions for any changes to the Protocols for the future.

Staff of the Department conducted a meeting on Friday 29 June 2007, to discuss responses from ACT Universities and their Councils. Attendees included staff from the Australian National University, the University of Canberra, Department of Employment, Science and Training, the Australian Catholic University, Charles Sturt University and the ACT Accreditation and Registration Council. This gathering was held in order to capture the views of the ACT higher education community with a view to assisting in formulating the Departmental response to the review.

Attached please find an outline of the ACT position. Should you require further clarification please contact John Gorman, Acting Manager, Higher Education Section on 6205 7039 or john.gorman@act.gov.au

Yours sincerely

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Background
The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) are reviewing the National Governance Protocols.

MCEETYA's own Joint Committee on Higher Education (or JCHE) has been tasked to consult on the Protocols, with the higher education community. The ACT Department of Education and Training, as a member of JCHE, was asked in May 2007 for its views on the impact and the effectiveness of the current National Governance Protocols and suggestions for any changes to the Protocols for the future.

Staff of the Department conducted a meeting on Friday, 29 June 2007, to discuss responses from ACT Universities and their Councils. Attendees included staff from the Australian National University, the University of Canberra, Department of Employment, Science and Training, the Australian Catholic University, Charles Sturt University and the ACT Accreditation and Registration Council. This gathering was held in order to capture the views of the ACT higher education community with a view to assisting in formulating the Departmental response to the review.

The Governance Protocols, which came into effect in mid 2004, meant that the enabling legislation of universities, across Australia, had to be amended to embed the intent of the Protocols (a requirement of the Australian Government's HESA Act 2003).

ACT Position

The Protocols were designed to ensure national consistency of approach to governing Australia's higher education institutions. The newly revised National Protocols for Higher Education approvals also emphasise best practice in governance, and their supporting guidelines focus on the arrangements all providers must demonstrate they have in place.

Environmental factors, such as state or territory legislation and regulation, university policy and practice all have direct influence on the governing body of a University. The ACT supports the view that the Protocols should recognise the diversity between universities and thus recognise the range a ways compliance with the Protocols may be met by individual institutions.

In general, the ACT believes that the current Protocols have been effective in providing broad guidelines and principles for effective governance and there has been a general willingness by the universities to incorporate the spirit of the Protocols into their operations. However, the current Protocols appear to be a combination of statements of broad general intent, interspersed with prescriptive regulation.

The ACT believes that 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 could be better addressed by having the Protocols less prescriptive, instead focussing more on the broad intent of national consistency, client service and responsive management systems. Underpinning these broad statements of intent should be a set of national guidelines supporting the Protocols by specifying:
• standards
• quality indicators
• operating protocols.

The guidelines must recognise that over regulation is not a prescription for good governance and thus neither the Protocols, nor the guidelines should become prescriptive and indeed must recognise diversity.

Issues that the ACT wishes to specifically comment on follow below:

3.1.3 Are there other factors and influences that impact on governance practices which ought to be addressed in the Protocols?

Supporting the view that the mostly general nature of the current Protocols without the underpinning support of Guidelines is the important issue of variations in interpretation. For example, the requirement for the higher education provider’s governing body to approve a business plan (Protocol 2b) requires clarification on the definition of a business plan. With university’s not being traditional businesses in any commercial sense, the ACT has accepted the interpretation of this requirement as meaning that universities would operate in a “business-like” manner (but certainly not in a narrow commercial sense). The ACT does accept that business-like does include more focus on setting tangible performance measures. National guidelines would be a valuable adjunct and may well spell out the requirement for a business plan as a means of encouraging more rigour and clarity when assessing performance against objectives.

3.1.7 How have the Protocols contributed to improving the performance of individual higher education providers? How have the existing Protocols been instrumental in guiding and shaping institutions’ own effective governance structures and relationships?

The contribution of the Protocols for the purpose of compliance is seen as less effective in improving the performance of individual higher education providers than the purpose of good practice with the “signing off” of compliance statements not necessarily adding value. A continuous improvement model may be a more effective model for improving performance. Thus again, the Protocols can be viewed as a good idea but in need of guidelines to include for example, best practice models as a reference.

Failure of the JCHE broad-based review to move towards best practice would be a serious omission. The guidelines, when introduced, should not be prescriptive (as in “this is how you do it”) but rather provide examples that individual universities would reference and use/modify where appropriate.

3.2.2 Is the maximum size of governing bodies appropriate? What would be an ideal size?

The ACT supports the concept that it is appropriate to have a maximum size for university governing bodics. It does however seek clarification regarding the
foundation for choosing the minimum size of a governing body, questioning whether a minimum size for a university governing body is supported by research.

Anecdotal evidence would suggest that the notion of 15 being around the ideal size for university governing body is perhaps a sound idea. The ACT concedes that larger committees do lead to paralysis and the lowest common denominator outcomes. The notion that universities need to make timely and complex decisions suggest that 15 members of a governing body would be acceptable.

While the majority of Protocols tend to provide broad guidelines, the issue of the size of the governing body, in particular setting a minimum size, is quite specific. Thus this is no longer an underlying principle to good governance but a “thou shalt”. This reinforces the ACT view that the Protocol should outline a general principle with underpinning guidelines suggesting that the minimum size should be determined by who the university wanted on their council, for example if they wanted to include student or staff representatives, or members with specific skills or expertise.

3.2.5 Should representatives of staff and students be included in consultative rather than governing bodies?

The ACT recognises the current practice of staff and students, both undergraduate and post-graduate, being represented on university councils. Problems regarding rapid turnover and availability of student representatives are acknowledged, but the ACT does not support excluding them. Students may be seen as being the equivalent to shareholders or customers and it is important to have a customers’ perspective. The major issue of whether an elected student representative is going to accurately present the perspective of the student body in comparison to a consultative approach may well be addressed in a set of guidelines. The guidelines could outline the need to use a consultative process but that as members of a university governing council, the member’s responsibility is to the good governance and future direction of the university itself, not any specific body. Thus good governance could be maintained whilst still acknowledging that universities have a responsibility to give students experience in participating in the operations of governing bodies. Anecdotal evidence would support that student representation does enhance “best practice” because having students represented on council does raise the consciousness of learner’s needs and issues amongst council members.

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 Protocols and underpinning guidelines must acknowledge that university councils and committees should not be involved in the micro managing of universities. The collegial nature of decision-making in universities, an important factor in the success of universities as leaders, has always been viewed as a strength and should be acknowledged within the Protocols and guidelines.

Protocols do not have a duty to inform councils on how compliance might be achieved, rather this should be the role of guidelines. Guidelines could:

- provide university councils with advice on how best to monitor performance
• advise on what information university councils need to judge performance
• advise university councils on their responsibilities to inform itself about good practice, liabilities under law, statutes etc before signing off on strategic plans.

Issue of the councils meeting in the absence of management is certainly seen as too much detail for the Protocols to get involved in by the ACT. Guidelines could be used to clarify the level of governance implied in this question and would be useful due to any inexperience council members may have in their understanding of how universities operate.

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 ACT recognises that a Council Secretary provides another form of advice on responsibilities, legal requirements etc, independent from the Vice Chancellor, however it acknowledges that the appointment of a Secretary should be up to each individual council. Guidelines could outline the importance of a Secretary, or even that council can commission independent advice if it needs to. The guidelines should emphasise that in providing a support service to Council, the Secretary should be seen to have an appropriate degree of independence from management. The specific role and responsibilities of the Secretary should be a matter for the governing body to determine.

The more important issue for the guidelines is that the governing body have a protocol for members to have access to independent advice if necessary. Guidelines should outline that a Secretary:
• does not necessarily need to be independent
• should be obliged to keep secrets
• can only be sacked by Council and not the Vice Chancellor

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

The ACT accepts that such a Protocol enhances audit practice as well as increasing external scrutiny, independent of council. This may generally be seen as part of the checks and balances that are important for proper accountability.

The underpinning guidelines associated with this would be a recognition of what is now common practice by AUQA. For example AUQA audits recommend that the Chancellor not be the chair of the audit committee.

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

The ACT believes that the CEO/ VC should have responsibility for sub-committees and sub-committees should not to be micro-managed by the governing body.