General Comments

The current national governance protocols for higher education providers cover the key aspects of University Councils, including –

- ensuring the provider’s objectives and functions are specified in its enabling legislation
- outlining the primary responsibilities of the governing body
- outlining the key duties of Council members, and sanctions for failure to comply
- providing for induction and professional development for Council members
- prescribing the maximum size of Council and the expertise of its members
- providing for the appointment of Council members
- requiring internal grievances procedures to be in place and publicised
- requiring that the annual report content includes high level outcomes and a risk management report
- requiring effective oversight of controlled entities
- requiring the assessment of risk arising from part ownership of entities.

The Federal Government is seeking to create diversity in the university sector, and therefore it is important that any changes to the national governance protocols recognise and allow for this.

**UTAS strongly supports the response from the University Chancellors’ Committee and Universities Australia, and adds the following comments.**

Governance Reform at UTAS

Before addressing the questions raised by the review, it is useful to take a brief look at the recent history of governance reform at UTAS, both before and after the introduction of the NGPs.

The National Governance Protocols were first introduced as CGS guidelines in 2003, for reporting against as at 31 August 2004. However, by 2003 UTAS had already substantially reformed its governance structure and processes, so that only minor adjustments were necessary for UTAS to comply fully with the NGPs. In that circumstance, forced compliance and reporting was an unnecessary additional imposition and provided very little benefit to this particular institution.

To make the minor adjustments, legislative amendment of the University of Tasmania Act 1992 (Tasmania) were required. This necessitated another round of
negotiations with State Government and the Independents in the Legislative Council (following quickly on the 2001 amendments to that Act). This caused a few awkward moments in the UTAS:Tasmanian State government relationship for very little gain.

**Reporting**

The University reports annually to the Governor through its annual report, a public document. It reports to the Commonwealth Government through DEST and DIMIA, and is performance-audited by AUQA. Its financial statements are audited by the State Auditor-General, and it also answers indirectly to the State Government through bodies such as the State Ombudsman and the Anti-Discrimination Commissioner.

Separate reporting against the NGPs is now unnecessary, as all universities comply with the NGPs and therefore have reached at least a basic level of governance. If ongoing reporting is required, it should be included in an institution’s annual report, and be at a general level. Ongoing governance structures and processes, now that a common base has been established, should be left to the discretion of the governing body of each institution, to encourage diversity and innovation in the sector, and to reduce the incidence of “governance fatigue” that could produce a culture of compliance rather than improvement.

**Aim of the Review**

The aim of the review of the NGPs should be to identify any remaining critical elements of governance that need to be added to the governance protocols in order to ensure uniformity, and, just as importantly, to recognise any areas in which the national governance protocols have succeeded and can therefore be removed. There are also some areas in which the protocols should properly remain silent, where absence of national regulation will provide the scope and flexibility for individual universities to create their own governance practices in this era of change and diversity.

UTAS strongly suggests these include the new areas flagged by the review, particularly issues regarding size of the governing bodies, their composition and the relationship between members of the governing body and the executive of the university.

The most striking aspect of the review is the number of additional areas flagged that could be covered by revised protocols. UTAS shares with others in the sector a concern that the protocols may, if the flagged changes are if fact included, be moving deep into the operations of the university, rather than concentrating its governance.
The current protocols quite rightly concentrate on a few critical issues. The most important of these in practice is the competencies of the members of the governing body. Given that each university has a set of Council members with a good combination of knowledge, experience and approaches, and who know that they must at all times make decisions that are in the best interests of their institution, then protocols on detailed operational issues are unnecessary. The people charged with the governance oversight of the institution should be trusted to conduct their business competently and responsibly, and in those cases where things go astray a response to the particular issue is required, not a nationwide regime of uniformity.

By way of example, if there is to continue to be a NGP relating to the composition of Councils, the UK Committee of University Chairmen (sic) made this suggestion back in 2004 –

There should be a balance of skills and experience sufficient among members to enable the institution to meet its primary responsibilities and ensure stakeholder confidence. A governing body of no more than [they say 25, NGP currently says 22] members represents a benchmark of good practice.

The key idea here is that of benchmarks of good practice, rather than legislated minimum standards. AUQA already has a repository of examples of good practice, unearthed during its audits and collected on its website. Enhancement of this repository and encouragement to universities to make use of it is likely to produce much better results than the imposition of a one-size-fits-all governance model through increasingly prescriptive NGPs.

Summary

UTAS does not support the suggested increase in regulation flagged in the National Governance Protocols discussion paper. Key concerns are:

- that increased regulation is inconsistent with increasing diversity and innovation.
- that there is no evidence of systemic problems requiring tighter regulation to improve university governance
- that the protocols are in danger of encroaching too far into the internal affairs of individual institutions.

UTAS understands the reasons for the review may be multifaceted, and looks forward to contributing to a national debate in the appropriate forum.

Damian Bugg AM QC
Chancellor

Professor Daryl Le Grew
Vice-Chancellor