EDITH COWAN UNIVERSITY’S (ECU’s) COMMENTS ON THE REVIEW OF THE NATIONAL GOVERNANCE PROTOCOLS (NGPs) ISSUES PAPER

EXECUTIVE SUMMARY

These comments have been developed with input from members of ECU’s governing Council. Consistent with a resolution of ECU’s governing Council taken at its 28 June 2007 meeting, the comments have been approved by the Governance Committee, which is a standing committee of Council.

ECU’s response to the Issues Paper is structured against the specific consultation questions posed in the paper. The response is based largely on ECU’s own experience with university governance and the NGPs, augmented at times by broader observations from across and beyond the sector.

In broad terms, ECU considers that the NGPs have led to benefits for ECU and the sector. Those benefits have particularly related to the greater focus on governance which the NGPs have stimulated, as well as increased attention to specific areas such as controlled entities and partly owned entities. For ECU, specific changes arising from the NGPs have been relatively minor in nature. The stronger impetus for governance enhancements at ECU has come from institutionally-specific factors to which the University has responded with locally appropriate governance reforms.

ECU is strongly committed to good governance and to ongoing governance improvements. It does not, however, see an expanded and more detailed set of NGPs as necessary or desirable to help it achieve such continuous improvement. There are many guidelines, frameworks and professional development opportunities already available to assist universities to improve their governance practices, and ECU is already availing itself of such assistance.

In ECU’s view, developing and/or mandating more detailed governance requirements for universities is not desirable for a number of reasons, including:

- The time and effort which would be involved in developing and then implementing expanded NGPs, for limited value-adding;
- The inconsistency between such an approach and the desire for greater institutional diversity within the sector, especially as it is widely acknowledged that there is no “one-size-fits-all” best approach to governance;
- The existence of more suitable means of addressing specific instances of poor governance practice which may occur at times in any sector; and
- The potential to deter experienced people from remaining on or joining university governing bodies, as the governance specifications for universities could exceed those in other sectors.

ECU is keen to continue to work co-operatively with its fellow universities and with DEST to advance good university governance in Australia, through Universities Australia and other means. This should include the sharing of good practice examples and information on the advances being made by individual universities. Such an approach is seen as more beneficial and likely to promote greater and more sustained governance advances than the development of a more detailed and prescriptive set of revised NGPs.
COMMENTS AGAINST SPECIFIC CONSULTATION QUESTIONS

ECU’s responses to the 36 consultation questions are based on the following underlying positions:

• In ECU’s view, the existing NGPs have had a positive impact on good governance at ECU and within the sector. A stronger impetus for governance improvements at ECU, however, has come from institutionally-specific factors. Many governance enhancements at ECU had their origin well before the NGPs (indeed, as early as 1998 ECU commissioned a major external review of its governance arrangements which was undertaken by PriceWaterhouseCoopers). Further improvements have built on pre-NGP changes, addressing ECU-specific needs in institutionally appropriate ways, including through a governance reform program arising from a second external review conducted in 2005.

• ECU is concerned that judgements are being made, about university governance and what universities may or may not be doing to progress governance improvements, based on simplistic indicators such as attendance at National Institute of Governance programs. Such an indicator overlooks other ways in which a university such as ECU is improving its governance arrangements.

• ECU is of the view that there is no “one-size-fits-all” approach to good governance. This view is supported in the Good Governance Principles published by Standards Australia (2003), and in the ASX Principles of Good Corporate Governance and Best Practice Recommendations (2003), to name but two sources.

• ECU is also of the view that while sound governance processes and structures are important, positive relationships and trust are more crucial to good governance than are prescriptive processes. This view is supported in the Review of New Zealand Tertiary Education Institution Governance conducted by the then Director of the National Institute of Governance, University of Canberra who noted that “… simple formulaic prescriptions and compliance measures or adopting a “one-size-fits-all” approach” cannot secure good governance, because “At its heart, good governance is about strong relationships and shared understandings among people.” (p.6)

• Given that within Australia there are many public universities which have different Missions and are at different points in their development, it is not desirable to expand the current NGPs and/or to make them more prescriptive. Such an approach seems inconsistent with the Federal Government’s desire to foster diversity within the sector.

• ECU’s current position has therefore not changed since its response to DEST’s 2005 paper on Building Better Foundations in which ECU commented that “Many of the ways to improve governance of public universities are really best handled by each respective university, depending on its own needs, circumstances and stage of development”.

• Introducing additional regulations/prescriptions for all is not seen by ECU as a desirable way to address specific instances of poor governance. Such instances are better addressed in other ways.

• ECU notes that the Standards Australia and the ASX approach to governance has been to present guides, which are not mandatory and which recognise different circumstances. For the reasons noted previously, such an approach is preferable to that of mandating and/or linking specific governance arrangements to funding.

• ECU’s governing Council contains people with experience in senior positions in other organisations and/or on other boards. The University is concerned that an expansion of the NGPs, especially in a detailed and prescriptive way which goes beyond requirements in other sectors, could be prejudicial to attracting and retaining high quality and experienced people to serve on its governing body.
3.1 Contribution of the National Governance Protocols to good governance

3.1.1 How have the existing Protocols impacted or influenced good governance?

In ECU’s view, the existing NGPs have had a positive impact on good governance at ECU and within the sector. The contributions relate particularly to:

- increasing the general focus on good governance;
- re-emphasis of the “trustee” role of all members of governing bodies; and
- increased attention to the oversight of controlled entities and the risk management of any partly owned entities (although ECU has few entities in either category).

A stronger impetus for governance improvements at ECU, however, has come from institutionally-specific factors. The University has addressed ECU-specific needs in institutionally appropriate ways, including through a governance reform program arising from a second external review of its governance arrangements conducted in 2005.

3.1.2 Has the requirement to comply with the existing Protocols had any negative or unintended consequences?

Yes. Considerable time and effort of both the governing Council and senior staff have been spent in making relatively minor amendments to legislation, and preparing and approving NGP reports. Different interpretations of the NGPs given by DEST officers has also been a matter of concern, especially as NGP compliance is linked to funding.

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

In ECU’s view, other factors and influences are usually best addressed in institutionally-specific ways, assisted by existing governance guidelines and sources of advice (eg. Standards Australia guidelines, ASX guidelines, AICD programs).

3.1.4 How have the existing Protocols been instrumental in guiding and shaping institutions’ own effective governance structures and relationships?

3.1.5 How have the existing Protocols addressed the concerns about university governance raised in the Higher Education at the Crossroads and the Meeting the Challenges: the Governance and Management of Universities papers?

3.1.6 How have the Protocols contributed to the overall sustainability of individual higher education providers?

3.1.7 How have the Protocols contributed to improving the performance of individual higher education providers?

3.1.8 Has compliance with the existing Protocols enhanced the reputation of individual higher education providers?

In regard to 3.1.4 to 3.1.8, please see ECU’s response to 3.1.1.
3.1.9 Have individual institutions developed their own governance practices and procedures sufficiently to satisfy the spirit of the Protocols?

Yes. ECU has built on its pre-NGP governance initiatives, with additional impetus coming from the NGPs and from internal factors and needs. Advances include: development of a Corporate Governance Statement, Standing Orders and a Council Code of Conduct; re-shaping of Council Committee arrangements; introduction of a Nominations Committee (and a related Nominations Policy); an external review of governance arrangements conducted in 2005; formalisation of matters reserved for Council approval; re-shaping of agendas; improved monitoring and reporting against Council-approved KPIs and Annual Goals; improved induction processes and support information; increased focus on strategic issues by Council; and, the holding of Council workshops, including a mid-2006 workshop on governance conducted by the AICD.

3.1.10 Do the Protocols need to be improved? How could this be achieved?

In ECU’s view, the NGPs are sufficient and other sources provide ample additional guidance when it is needed.

3.2 The role and composition of the governing body

3.2.1 Are the existing Protocols adequate for defining the role, responsibilities and activities of governing bodies and the duties and obligations of individual members?

Yes. ECU has a Corporate Governance Statement, Code of Conduct and Standing Orders which provide fuller role clarification in an institutionally-relevant context. To enshrine greater definition into expanded NGPs would be unnecessarily prescriptive and a one-size-fits-all approach is not seen as appropriate.

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

In ECU’s view, there is no one ideal size for a university governing body, and this matter is best left to each university, taking into account its own Mission and stage of development.

In its submission to the earlier issues paper on Meeting the Challenges: The Governance and Management of Universities, ECU (2002) made the following points which are still pertinent:

- In its Crossroads submission, ECU stated that given the complexities facing university governance there is a need for smaller, and more expert governing bodies, with appropriate organisational skills and business acumen. This was on the premises that:
  - smaller governing bodies, with membership selected to ensure an appropriate mix and level of skills, would be better placed to ensure high quality and strategically focused governance; and
  - broader consultation/representation can be achieved in ways other than membership of the governing body.

These views are not necessarily shared by all universities. The matter of the optimal size for the governing body is probably best left to each individual university, with changes to relevant sections of the legislation being sought if considered necessary by the institution.

- While smaller governing bodies may have advantages in terms of timeliness of decision-making, having the right level and mix of expertise available on the governing body is probably more important. In this context, both elected representatives and ministerial appointments can make it more difficult to ensure an optimal mix of expertise across the whole of the governing body.

(p.4)
3.2.3 Is the maximum term of appointment for board members appropriate? What would be a reasonable maximum term?

Yes. The limits stipulated in the current NGPs seem appropriate as they provide a finite “ceiling”, while still allowing sufficient longevity of membership to enable members to gain knowledge and experience in their role and to go on to use that experience in positions such as Chair of a key committee or Pro-Chancellor. ECU’s Act already stipulates a maximum term of nine years, compared with the 12-year maximum in the NGPs. Special provision for a longer term would, however, seem warranted when a board member progresses to the role of Chancellor.

3.2.4 Is there a need for the Protocols to provide additional requirements or guidance on the skill mix required for an effective governing body?

In ECU’s view, the current NGPs suffice. ECU has augmented these with its own Nominations Committee policy and processes.

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

See 3.2.2. This again is a matter best determined by each university, depending on its Mission and stage of development.

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?

The role of Secretary is important to the good operations of the governing body.

In ECU’s view the role should not be separated from that of the senior university administration. Essential aspects of the role are to be a link between the governing body and senior management, and to be able to advise the Chancellor and the governing body, in an informed way, about a range of matters relevant to the university. Such a role is facilitated by the Secretary position being held by a person who is well informed about a wide range of university matters and who can facilitate effective links between the Chancellor and governing body, the Vice-Chancellor and other senior staff.

In most Australian universities, the Secretary position is held by a senior officer who has other responsibilities. Models include: Registrar/Secretary; Legal Counsel/Secretary; CFO/Secretary; Strategy & Planning/Secretary. In ECU’s view there is no one right model and the most appropriate model for a university is best left to each institution.

Even in the UK approach, in which specifications for the Secretary are outlined in some detail, the Secretary “… normally has other administrative responsibilities within the institution. Some are designated as secretary or registrar, and some are designated as a deputy or pro-vice-chancellor” (Committee of University Chairmen, 2001, p. 17).

What is important is that the Secretary must have direct and independent access to the Chancellor and Council. This can be guaranteed by quite simple means. In ECU’s case, its Corporate Governance Statement specifies independence for the Secretary and for the Director, Risk Management and Audit Assurance, and recognises that adequate resources are to be provided for these functions.

3.2.7 Should the Protocols recognise the role, responsibility and powers of a Secretary? What should they be?

See discussion in 3.2.6. Again, such matters are best left to each university. Ample guidance is already available to institutions if needed (eg. Standards Australia, ASX, AICD).
3.2.8 Should the Protocols cover the relationships between the governing body and key management roles in the institution?

3.2.9 Should the Protocols contain explicit guidance on the devolution of Management responsibilities to the Vice-Chancellor/CEO.

In regard to 3.2.8 and 3.2.9, such coverage is not seen as necessary or desirable by ECU. There is no “one-size-fits-all” approach to such issues, ample guidelines are available from other sources and attempts to introduce commonality would create much work and have wide-spread implications. Such matters are best left to each university, taking into account its circumstances, guided by existing governance frameworks.

3.3 Leadership

3.3.1 Do the Protocols need to be improved to encourage a stronger role for governing bodies in guiding institutions in a more diverse higher education sector? If so, how could this be achieved?

ECU does not consider such an expansion of the NGPs to be necessary or desirable. At ECU, governing body members are kept well appraised of sector developments through a variety of means, including attendance at conferences.

3.4 Accountability

3.4.1 Do the existing Protocols provide sufficient guidelines for the accountability of the institution through the oversight of performance by the governing body?

Yes. In ECU’s view no further guidelines are needed. ECU already has in place institutional performance monitoring and reporting arrangements approved by its governing body.

3.4.2 Do the Protocols need to be enhanced to provide for improved accountability?

3.4.3 Do the existing Protocols provide sufficient guidelines for the fiduciary responsibilities of members of the governing body?

3.4.4 Should the Protocols include any additional provisions relating to the accountability of members?

3.4.5 Would the Protocols be improved with the provision of additional guidelines and requirements on the role of the governing body in risk management?

In regard to 3.4.2 to 3.4.5, ECU considers that such matters are already sufficiently covered in the NGPs. Other sources of information and guidance are available to assist university governing bodies in these areas.

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

3.4.7 Should an audit committee be required to have an independent chair?

ECU does not consider that the NGPs should be expanded in this regard. Most universities would have such arrangements in place already. Where they do not, this matter could be taken up through other means.

ECU has for many years had an Audit Committee which is a standing committee of its governing body. ECU’s Audit Committee arrangements specify that the Chair is to be external/independent and appointed by the governing body, on the recommendation of the Nominations Committee.

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

In ECU’s view, relationships between the governing body and sub-committees are best determined by the institution, to ensure that its needs are met.
3.4.9 Would the inclusion of additional provisions and requirements improve overall accountability?
3.4.10 Would the inclusion of additional provisions and requirements such as these provide greater guidance for institutions on the role and operation of the governing body?
3.4.11 Are there any other provisions that the Protocols should contain in relation to the governing body and its individual members in matters concerning accountability?

In regard to 3.4.9 to 3.4.11, in ECU's view, further inclusions are not necessary or desirable.

3.5 Continuous improvement

3.5.1 Do the existing Protocols encourage continuous improvement of governance arrangements?

Yes. The NGPs make reference to induction, professional development and governing body performance appraisal programs.

3.5.2 Should the Protocols include further guidance for governing bodies on the regular review of their own performance, such as reporting the outcome?
3.5.3 Would the inclusion of additional provisions and requirements improve the Protocols?

In regard to 3.5.2 and 3.5.3, ECU is of the view that ample information on performance appraisal of governing bodies and continuous improvement is available from other sources.

3.6 Improving the form and clarity of the National Governance Protocols

3.6.1 Are there useful clarifications that could be made to any of the existing Protocols or the overall presentation of the Protocols?

While the NGPs are long and wordy, the time and effort which would be required to amend them is not warranted.

3.7 Other Issues

3.7.1 Are there any other matters within the terms of reference or relating to the Protocols generally that have not already been mentioned on which you would like to comment?

Please refer to the overarching comments on page 1 of this submission.

In Closing

ECU is keen to continue to work co-operatively with its fellow universities and with DEST to advance good university governance in Australia, through Universities Australia and other means. This should include the sharing of good practice examples and information on the advances being made by individual universities. Such an approach is seen as more beneficial and likely to promote greater and more sustained governance advances than the development of a more detailed and prescriptive set of revised NGPs.

Note: ECU approves the lodging of this response on the relevant DEST website.

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References:

ASX Corporate Governance Council 2003, Principles of Good Corporate Governance and Best Practice Recommendations, Sydney.

Australian Institute of Company Directors, Harris, B & Stackhouse, G (eds) 2006, Directors Essentials, Sydney.


