3.1 Contribution of the National Governance Protocols to good governance

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

The NGPs have served to reinforce existing practices of good governance already established and operating within JCU as evidenced in several reports including the Queensland Audit Office’s Review of Governance and Risk Management (2003) and the commendations and affirmations contained in the University’s AUQA audit report (2004). There is no doubt that for those HEPs that had poor or incomplete governance practices the NGPs would have served as a useful guide in the development of overall good governance at those institutions.

More specifically the NGPs have encouraged governing bodies and management to clarify and delineate between the governance and management roles; ensured that due attention has been afforded to the risk management of a HEP's activities (especially its non-core activities such as commercial activities and its investments in controlled and non-controlled entities); and reinforced the critical importance of having financial and commercial expertise on a HEP’s governing body together with an appropriate focus on getting the right mix of skills, knowledge and experience.

NGPs have also increased public confidence in the operation of largely taxpayer-funded HEPs and have enshrined a sense of public accountability and transparency through such requirements as the codification and publication of its internal grievance procedures.

For JCU, resulting amendments to its enabling legislation have had a fairly minimal impact on the operations of the governing body or the University.

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

The reduction in the size of the JCU Council from 25 to 22 members has resulted in a reduction of the total number of external members from 14 to 12. As a consequence a greater workload has been experienced by external members in order to maintain the same level of involvement in the various committees of the governing body and governance processes.

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

In achieving good governance there is no panacea or standard formula and therefore the temptation to ‘over-prescribe’ should be resisted. Government should be mindful that a HEP’s key stakeholders are broad-based, eg. its students; its staff; local, state and federal governments; the local community; and the public.

HEPs are not companies and do not have shareholders looking to maximise profit. Instead, HEPs aim to operate prudently to advance their missions.

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

Governance practices are constantly under review at JCU. The NGPs have served to reinforce existing practices of good governance already established and operating within JCU.
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 Challenges: the Governance and Management of Universities papers?

The existing NGPs appear to have addressed previous governance concerns as follows:

- **whether governing body members had the skills needed to oversee complex multi-million dollar enterprises;**
  - NGP 5 requires two members with financial expertise and one commercial expertise;
  - NGP 6 requires appointment of members with appropriate and needed skills.

- **the tendency for many members to see themselves as representing interest groups, rather than serving the interests of the university as a whole;**
  - NGP 3 clarifies the duty to:
    - "(a) act always in the best interests of the HEP….."
    - "(e) disclose and avoid conflicts of interest ….”

- **the size and composition of councils;**
  - NGP 5 imposes:
    - size restrictions
    - a requirement for a majority of external independent members
    - only VC, Chancellor and Chair of Academic Board may be ex-officio

- **that governing bodies were not effectively monitoring universities’ commercial operations.**
  - NGP 2 has specifically ascribed responsibility to the governing body for the oversight of risk management for all commercial undertakings and responsibility for the approval of significant commercial activities
  - NGP 10 and 11 has addressed these concerns for those commercial operations not directly operated by the HEP.

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

The NGPs have ensured a greater focus on the risk management of a HEP’s interests in controlled and non-controlled entities which may operate core or non-core activities.

In addition the NGPs have placed great importance on a HEP having a minimum number of members in place with skills and experience commensurate with running complex multi-million dollar enterprises.

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

The NGPs have reinforced the need for HEPs to focus on its primary responsibilities and its core business. When a HEP is undertaking activities through a controlled or non-controlled entity the NGPs emphasise the need for regular review and monitoring and incorporation into the HEPs overall assessment of performance management.

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

HEP annual reports are nearing the same level of quality as private sector reports. The increased focus on efficiency, accountability, transparency and a corporate like approach to managing public funding must enhance the reputation of HEPs. In the current environment of higher education funding constraints and the need to generate funding from non-government sources, many HEPs will begin to take risks in the pursuit of sustainability and improved performance and as a result may generate losses. However, this is in fact a healthy sign for the industry and HEPs must learn from their mistakes and learn to manage the risks associated with such activities.
3.1.9 Have individual institutions developed their own governance practices and procedures sufficiently to satisfy the spirit of the Protocols?

JCU is currently fully compliant. In many instances, JCU already had in place governance practices or procedures that met or surpassed the requirements of the NGPs and has continued to refine these practices and procedures in order to improve the overall performance of the University.

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

The NGPs do not need to be improved.

3.2 The role and composition of the governing body

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 existing NGPs are adequate with the exception that there is no mention of “quality” in the statement of responsibilities.

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

The size of a governing body is considered an issue of secondary importance. More important is the blend of skills, experience and motivation among members and the method of their appointment.

As to the most desirable size of a governing body, 22 is considered an acceptable number, particularly as it is possible for a university to have a governing body with a smaller number if that were to suit its circumstances better (some already have a lesser number). However, it is important that universities should have flexibility in this regard. Apart from the Protocols, a university’s enabling legislation should provide for this flexibility.

3.2.3 Is the maximum terms of appointment for board members appropriate? What would be a reasonable maximum term?

With governing bodies having the option to permit terms of members beyond the 12 year maximum, the prescribed maximum term is indicative only. Twelve years is considered an appropriate indicative maximum. However, it would be inappropriate to remove a governing body’s power to extend terms beyond the indicative maximum term.

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?

No.

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

The role of staff and students in a community-based organisation with community-based needs and objectives can not be underestimated.

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 to the governing body is a important role. It is crucial to ensure the HEP meets its statutory and legislative responsibilities and obligations. As Secretary to the governing body, the Secretary is responsible for the timely notices of meetings, production of agenda and minutes, and facilitating the decision-making processes of the governing body. A company secretary must be free of bias and liaise closely with both the Chair of the governing body (the Chancellor) and the CEO (the Vice-Chancellor and President) to
ensure the effective, efficient and economical transmission of business through the governance processes of the HEP.

It is quite common in the corporate world for company secretaries to be a member of the senior management team or to be responsible for many of the company’s governance responsibilities including legislative and statutory compliance, risk management, internal audit oversight, legal services, corporate information, corporate policies and secretariat support.

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

Role:
- Provide advice and secretariat support to the governing body, other decision-making bodies and senior management in the good governance of the HEP;
- Ensure the HEP’s statutory and legislative obligations are effectively discharged.

Responsibilities:
- Timely distribution of Notices of meetings of the Governing body
- Timely preparation of Minutes of meetings of the Governing body
- Use and safe custody of the seal of the HEP;
- Certification and lodgement of annual NGP compliance certificate;
- Maintenance of various registers:
  - Governing body members’ register
  - Pecuniary or Conflicts of Interests registers
  - Reportable gifts register
  - Minute registers.
- Ensure the lodgement of the HEP’s Annual Report within statutory time limits;
- To conduct statutory election and appointment processes for the governing body, its committees and sub-committees as prescribed (often under Statute);

Powers:
- Power to affix the HEP’s seal within the approved delegations of the governing body;
- Right of access to all records and information of the HEP.

3.2.8 Should the Protocols cover the relationships between the governing body and key management roles in the institutions?

The determination of the nature and extent of the relationship should remain the sole prerogative of the governing body in consultation with the CEO (VC).

3.2.9 Should the Protocols contain explicit guidance on the devolution of management responsibilities to the Vice Chancellor/CEO?

The determination of the devolution of management responsibilities should remain the sole prerogative of the governing body in consultation with the CEO (VC).

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?

The role taken by the governing body in guiding institutions in a more diverse high education sector should be determined by the governing body informed by strategic planning which focuses on sustainability, government policies, environmental concerns and community needs.

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, sufficient guidelines are provided in the following National Governance Protocols, NGP 2, 8, 9, 10 and 11. These requirements are considered adequate and not over-prescriptive.

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

No.

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

Yes, NGP 3 adequately outlines the fiduciary responsibilities of members of the governing body which are aligned to private sector corporate responsibilities.

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

No.

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?

No additional guidelines are considered necessary. However, a requirement for HEPs to comply with or adhere to the relevant Australian Standard would not be inappropriate.

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

An Audit Committee is a fundamental and crucial element of corporate governance and enhanced public accountability. The Audit Committee should be accountable direct to the governing body.

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

Best practice dictates that an Audit Committee should have a Chair who is independent (that is, in the case of a HEP, neither a member of staff nor a student of the HEP). The Chair should ideally be appointed by and from the governing body. However, where the requisite skills and experience cannot be found in the independent members then the Chair should be appointed by the governing body through the cooption provisions contained in the Committee’s constitution.

Best practice also dictates that all members of an Audit Committee should be independent members and the VC should be a permanent advisor to the Committee.

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

As the number and role of committees of HEPs vary significantly from HEP to HEP, it would be impracticable and inappropriate to attempt to define such relationships other than in a generic sense.

However, NGP2 could be amended to recognise the ability of the HEP to delegate its powers to appropriately constituted governance committees of the governing body.

3.4.9 Would the inclusion of additional provisions and requirements improve overall accountability?

No.
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?

No.

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?

No.

3.5 Continuous improvement

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

Continuous improvement of governance arrangements is encouraged through:
- NGP 2 - encourages constant review of delegations;
- NGP 3 - encourages constant awareness of responsibilities of governing body members;
- NGP 4 - encourages regular maintenance of governing body members' skills;
- NGPs 10 & 11 - encourage constant maintenance of review and monitoring practices over investments in controlled and non-controlled entities.

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?

The determination of how the governing body intends to measure its own performance and how it will report on outcomes should remain the sole prerogative of the governing body in consultation with the CEO (VC).

3.5.3 Would the inclusion of additional provisions and requirements improve the Protocols?

No.

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?

No.

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?

The NGPs only require annual reports on compliance with such reports requiring information on changes to existing compliant practices. As there are no requirements to demonstrate effectiveness of the relevant governance practices from year to year, there is no incentive to keep such practices under constant review nor to improve them notwithstanding that most HEPs will do so.

Finally, there is currently no requirement for the inclusion in the HEP’s Annual Report of a report on governance practices employed by the HEP. Again, most HEPs already provide reports on the various components of their governance practices and as such this requirement would not be expected to impose too great a compliance cost on a HEP and would undoubtedly add to public confidence about the HEP specifically and the sector in general.