Submission

Review of the National Governance Protocols for Higher Education

July 2007

The Council of Private Higher Education welcomes the opportunity to make this submission on the Review of the National Governance Protocols.

As an organization representing higher education providers that are required to be incorporated entities we are interested in corporate governance and the value that good practice can add to our members.

The impact of the National Governance Protocols has primarily applied to public universities and most of the review consultation questions are applicable to them. There are in effect two forms of National Governance Protocols in the Guidelines and as we do not presume to speak for public universities we will confine our comments to The National Governance Protocols for Higher Education Providers (HEPs) Not Listed in Table A of the HESA. These protocols only apply to a small number of providers who are in receipt of CGS funding for National Priority Places.

In practice however, the protocols have influenced wider consideration of governance issues for HEPs, even those ineligible for CGS funding where compliance is not an issue.

During the development of the HESA Guidelines in 2004 the Council of Private Higher Education (COPHE) had, on behalf of our members, sought to engage in the process of developing governance guidelines appropriate to private providers. The final version of the protocols that emerged was really a mirror of what was required of Table A institutions established under State and Territory enabling legislation.

Whilst the underlying principles of the National Governance Protocols, when considered as principles, are sound and the issues identified pertaining to public universities that needed to be addressed are genuine, the universities tend to be much larger and more complex organizations than non table A providers. We would question why a mirror version of the governance protocols applicable to public universities necessarily reflects best practice for smaller institutions.

Higher Education Providers, approved under the HESA, are required to be incorporated and the majority of private providers are incorporated under corporations law. Thus, members of governing bodies have the legal responsibilities of directors and are increasingly aware of their fiduciary responsibilities. Furthermore, the understanding of what constitutes effective governance as well as community expectation has accelerated, spurred on partly by media reporting of spectacular failures but also in a more positive way by a wide range of publications and courses.
From our own perspective we have emphasised in our dealings the positives of how good governance and effective directors add value to an organization.

A key issue arising for private providers, even though the NGPs are not mandated for the majority, is the propensity for State and Territory accreditation agencies, inspired by the NGPs, to introduce registration requirements pertaining to governance, that are inappropriate, intrusive and potentially in conflict with requirements under corporations law.

A further issue in the wider application of the National Governance Protocols arises from mandating specific roles and functions within the governing body. Where Higher Education Providers are incorporated under the Corporations Act, or other legislation, it is the responsibility of members of the governing body, the directors, to ensure they have the expertise to ensure they meet their obligations. The duties of a director of a corporation are clearly established in law and enforced by civil and criminal penalties. It is not the responsibility of government to mandate a specific skill set, such as financial or commercial skills as the NGPs currently do.

In summary, in reference to HEPs Not Listed in Table A of the HESA and given that such approved HEPs are incorporated entities governed by corporations law;

- Whilst National Governance Protocols may provide helpful principles and positive examples of best practice, HEPs should not be subject to compliance with particular requirements that are in addition to corporations law.
- It is not appropriate or necessary to strengthen fiduciary responsibilities for governing board members. Already they can go to jail under the Corporations Act.
- It is not necessary or appropriate to determine the number of members or mandate particular roles, responsibilities and functions for members of governing bodies.
- Notwithstanding our view that mandating additional governance requirements that go beyond corporations law is unnecessary, any development that highlights, communicates and reinforces best practice in governance in higher education is welcome and we applaud the positive steps that many public universities have taken.

CONTACT DETAILS

Council of Private Higher Education Inc.
Suite 244
813 Pacific Highway
Chatswood NSW 2067

Executive Officer – Adrian McComb
Phone (02) 8021 0841 Fax (02) 8021 0843   email amccomb@cophe.edu.au