Introductory Comments

The University of Western Australia accepts the general principle that as an autonomous public institution created under State legislation, it must be accountable, through Government, to the public it serves. It is entirely appropriate, therefore, that the University is accountable for the effectiveness of its governance, against agreed best practice principles.

The University does not accept, however, that such accountability requires the highly prescriptive regulation of its internal governance arrangements by either State or Commonwealth Government. There is no reason, for example, why a University's governing body should be subject to more detailed and prescriptive requirements than a governing board operating under the provisions of the Corporations Law.

The University submits that no good purpose would be served by extending the current protocols into areas of institutional management as proposed. Indeed, an intrusive 'one size fits all' regime would run counter to the objective of a diverse and differentiated university sector and would impose upon institutions an unwarranted and costly compliance burden. Institutions need the flexibility to tailor their governance arrangements to their particular mission and circumstances.

Accountability against sound governance principles is therefore preferred to compliance with detailed and prescriptive rules.

The following detailed comments are made in this general context.

Comments addressing individual consultation questions listed in the Issues Paper released by MCEETYA in May 2007

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 existing Protocols have had a minimal effect on good governance at UWA. Other changes which either pre-date or are not covered by the Protocols have had a greater effect on improved governance practices. These changes have been initiated internally. One area where the Protocols perhaps assisted is covered by 3.1.4.

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

Yes.

The requirement to comply with Protocol 5 (two members having financial expertise) had unintended consequences as the University had to argue the case for a patently qualified individual to be recognised as meeting the financial expertise criterion. The
wording of the criterion, and the interpretation of the wording applied by DEST, needs to be reviewed in favour of greater flexibility.

The requirement to restrict ex officio members in accordance with Protocol 2 has resulted in the certain positions no longer automatically being members of Senate e.g. the President of the Guild, the President of the Postgraduate Students Association and the Warden of Convocation. (Even though the Protocols permit the Chair of the Academic Board to be an ex officio member, our State legal drafting team would not permit this since the holder of such a position could not be removed from their position by Senate.) The University has therefore had to find alternative, less convenient, ways to ensure adequate reflection of experience from these groups. This illustrates a measure of difficulty associated with election as a mode of appointment to governing bodies.

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

No.

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

Protocols 10 and 11 concerning the oversight of controlled entities and risk assessment for all partly owned entities have been instrumental in ensuring that the University has an appropriate governance framework in this area which includes reporting to the governing body.

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?

The existing Protocols have largely addressed these concerns with the following exceptions:

- Remuneration, which some of our members believe warrants further exploration;
- Size, where there is a diversity of view about the relationship between size and effectiveness of the governing body (see 3.2.2)
- Election, where some of our members question whether this is the most effective way to recruit and appoint effective members,

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

The Protocols have had no real effect on overall sustainability at UWA.

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

We cannot comment from the point of view of other higher education providers. At UWA the Protocols have had minimal effect.
3.1.8 Has compliance with the existing Protocols enhanced the reputation of individual higher education providers?

Compliance with the existing Protocols has not made any impact on UWA’s reputation.

3.1.9 Have individual institutions developed their own governance practices and procedures sufficiently to satisfy the spirit of the Protocols?

We believe we have done so at UWA.

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

Yes. The wording of Protocol 5 regarding members with financial expertise needs to be reviewed in order to provide greater flexibility. There is also a suggestion in 3.4.6 that Protocol 2 include a requirement for the governing body to appoint an audit committee.

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?

Yes.

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

There is not a common view within our Senate, nor indeed across Australian university governing bodies, about the ideal size of the governing body.

Some argue strongly that a smaller body would allow for more vigorous, free-flowing and effective debate than can occur in a larger body. Others argue as strongly that a larger body allows for a broader range of views to be heard and point to examples of successful organisations which have large governing bodies. Irrespective of which view is taken, no evidence is offered in the discussion document of any correlation between size and effectiveness. Given the lack of agreement on this issue, such evidence would be useful.

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

We believe that 12 years is a reasonable maximum term.

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

No, however, as mentioned earlier, the wording and interpretation of the financial expertise requirement in Protocol 5 needs to be reviewed in favour of greater flexibility.
3.2.5 Should representatives of staff and students be included in consultative rather than governing bodies?

UWA believes it is important that members drawn from the staff and student bodies are present as members of the governing body itself. This ensures that staff and student views may be heard during governing body discussions.

The frequent use of the term ‘representatives’ to describe staff and student members, as for example in question 3.2.5, suggests incorrectly that these members’ role is to represent the interests of their particular constituency rather than those of the University as a whole. Reference to student “members” and staff “members” of the governing body rather than “representatives” would help avoid such confusion.

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?

Yes, it is an important role. The Secretary should have a dual reporting line: to the Chancellor and the governing body for matters pertaining to the governing body but also to the Vice-Chancellor (through the Registrar in the case of UWA) for other responsibilities in the Secretary’s portfolio. It is practice at UWA for the Chancellor on behalf of the Senate to serve on the selection committee which appoints the Secretary.

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

No. This is a best practice issue and does not need to be detailed in the Protocols.

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

We think this is covered adequately by Protocol 2 which states that the governing body is responsible for appointing the Vice-Chancellor (who manages the institution on behalf of the governing body) and monitoring his/her performance.

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

No, we do not believe that this is necessary. This is an example of where the proposals go beyond governance to institutional management.

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?

No, we do not believe that this is necessary.
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, they do.

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 members of the governing body?

Yes.

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

No, we do not believe that this is necessary.

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

No, the current provisions are sufficient. Again, the distinction between governance and management is important.

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

At UWA the audit committee is a standing committee of the governing body. It may be useful to include in the Protocols for Table A a provision similar to that in Protocol 2 for Table B which requires the governing body to appoint an audit committee.

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

Yes. At UWA the chair must be one of the external members of the Senate appointed to the committee. However, we do not believe that this level of detail needs to be specified in the Protocols. The current somewhat ambiguous wording in Protocol 2 relating to membership of the audit committee for Table B providers might be worth reviewing.

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

No, this is unnecessary.

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 (outlined above) provide greater guidance for institutions on the role and operation of the governing body?

No, the Protocols should not be expanded to cover these areas.

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?

No. Many universities, including UWA, are very active in continuously improving their governance arrangements. They choose to do this through a variety of mechanisms. Non-participation in the University Governance Professional Development (UGPD) programme should not be interpreted as a sign of lack of interest. UGPD course offerings have not met our requirements.

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?

No. The existing requirements of Protocol 4 are adequate.

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, other than as mentioned previously the financial expertise requirement in Protocol 5 needs to be reviewed in order to increase flexibility.

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?

No.