



Seminar on

**Governing bodies of higher education institutions:
Roles and responsibilities**

University Governance

by

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Introduction

This paper sets out the Australian Government's approach to the issue of University Governance and places it in the context of the Government's overall reform policy for higher education in Australia. This subject has closely engaged the attention of the Australian Government in recent times and we look forward to exchanging experiences with those of other OECD countries.

Context

There are over 20 million people in Australia, most of whom live in major coastal cities and regional centres. The capital city, Canberra, in the Australian Capital Territory, lies between the two largest cities – Sydney in New South Wales with a population of 4.15 million and Melbourne in Victoria with a population of 3.49 million. Australia's population is diverse, with some 23 per cent being born outside Australia.

The higher education sector in Australia is largely made up of universities. There are now 37 public and three private universities (including an American university, Carnegie Mellon, which has recently opened a branch in one of the capital cities). In addition, there is a large number of specialised higher education institutions offering a limited range of courses.

There are now around 950,000 students at Australian universities. The Government does not collect data on all the students in private higher education institutions so the total numbers currently studying at higher education level will be greater.

These figures include international students. From 1986, universities have been able to charge full fees for overseas students. Universities took up the opportunity to generate additional income flowing from this initiative and to market themselves as high quality education providers.

In 2004, 51 per cent (or 72 per cent including offshore) of the total international student enrolments were in the higher education sector, with a total of 164,535 onshore international higher education student enrolments.

Australian universities are comprehensive institutions, offering a wide range of programmes. They vary significantly in size, from 2,000 to 40,000 students. But most have between 10,000 to 20,000 students. Some universities are located in the major cities but a significant number can be found in smaller regional centres.

Most universities and other self-accrediting higher education providers are established under State or Territory legislation. Three are established under Commonwealth (Federal) legislation.

The Australian Government (“the Commonwealth of Australia”) has significant financial and policy responsibility for higher education, while State and Territory governments retain major legislative responsibility.

Universities are self-governing institutions. Their enabling legislation vests responsibility for governance and management of the university in a governing body, which is accountable to the relevant government for university operations.

Funding

The Australian Government is the primary source of public funding for Australian universities. Teaching is supported largely through the Commonwealth Grant Scheme, which funds student places (known as Commonwealth supported places) and a wide range of other grants to provide funds for areas such as equity, collaboration, workplace productivity, learning and teaching and quality.

A number of private higher education providers may also be allocated Commonwealth supported places in national priority areas (nursing and teaching) and have access to some other federal funding programmes.

The Australian Government funds higher education research and research training through peer reviewed competitive research funding schemes and through performance-based block research funding schemes.

History

The history of the Australian higher education sector has been one of growth and reform. The number of universities has grown from six prior to World War 2 to the current forty. Colleges of advanced education were established in the mid 1960s to provide advanced instruction in a wide range of courses. Colleges were to be primarily teaching institutions which would offer tertiary education, but only to the level of the diploma. In a short time, colleges of advanced education offered degrees and subsequently higher degrees; they engaged in applied research, for which they received no support in their operating grants; and a number adopted many of the titles and procedures of the universities.

A national review of higher education in 1987 and 1988 took place against a background of rising levels of unmet demand for higher education, a questioning of the rationale for the binary divide between universities and colleges of advanced education and lobbying by the college of advanced education sector for access to Commonwealth research funding. During this period some States used

their legislative powers to establish universities in order to convert colleges of advanced education to universities.

The 1980s reforms resulted in a major programme of amalgamations and rationalisations. As a result, the number of colleges of advanced education and similar higher education institutions reduced dramatically. By 1991, the number of universities had grown from 19 to 38. At the same time, Australia experienced an explosion of student numbers, with an increase of 64 per cent, from 314,390 to 559,365 studying at higher education level.

The thinking behind the 1980s reforms was to engage Australia with the global economy and the huge increase in participation rates in the final years of schooling. During this period the Government introduced student contributions through the Higher Education Contribution Scheme (HECS). HECS is designed to provide a more equitable arrangement for funding of the higher education sector by ensuring students contribute to the cost of their higher education but have access to an interest-free loan (it is indexed to maintain its real value) with a deferred income contingent repayment. The deferred payment arrangements mean that students are not prevented from participating in higher education if they are unable to pay the contribution up front.

There were three phases of post-war expansion of higher education until the late 1970s:

- The first growth phase from the mid-1940s to the end of the decade saw enrolments in universities increasing to more than double what they were at the beginning of the war – from 14,236 in 1939 to 30,630 in 1950;
- During the second phase of expansion from 1956 to 1966 the number of universities grew from 9 to 14 and the student population in universities trebled;
- The third phase of expansion, from 1967 to 1977/8, took place primarily in the advanced education sector. Total student numbers in universities over this period grew from 100,000 in 1968 to 159,500 in 1978, an increase of 59 per cent. Total student numbers in advanced education grew from around 45,000 in 1968 to 153,500 in 1978, an increase of 242 per cent.

Strong growth in higher education students continued through the 1980s through to the early 1990s – from 1982 to 1992 total students increased by 64 per cent, from 341,390 to 559,365. Growth over the decade can be divided into two periods. From 1982 to 1987 the increase in total students was a relatively modest 15 per cent; from 1987 to 1992 it was 42 per cent with large rises in total students during 1990 and 1991.

A number of major changes to the sector took place during the 1990s. There was massive expansion in student numbers with the number of students in higher education increasing by 30 per cent, from approximately 534,500 student students in 1991 to around 695,500 in 2000.

It has been suggested that the most far-reaching policy change was the growth in self-earned income by universities, which changed the operation of universities and their relationships with government. From 1990, all new overseas students paid full fees (with some students sponsored). Opportunities for the expansion of domestic fee-paying services were opened up in 1994 in the postgraduate area, and in 1998 universities were enabled to charge fees to domestic undergraduate students.

The number of students has continued to increase this decade with approximately 945,000 in higher education by 2004.

Further reforms – the Crossroads review and Our Universities: Backing Australia’s Future

In 2002, the Australian Government reviewed the higher education system and released the *Higher Education at the Crossroads* review paper, which stimulated discussion and debate on various issues across the sector. In 2003, the Government announced the *Our Universities: Backing Australia’s Future* (BAF) package of reforms associated with an additional \$2.6 billion in spending over the following four years. The reform package aimed to deliver an integrated policy framework based on four key principles:

- **Quality** – Australia’s current reputation for providing high quality educational experiences was to be maintained and enhanced;
- **Equity** – to ensure all Australians have access to higher education and addresses systemic barriers to the participation of historically disadvantaged groups, in particular Indigenous Australians;
- **Diversity** – to recognise that Australia needs a high quality higher education sector with a range of institutions servicing different communities and varied requirements; and
- **Sustainability** – to ensure that higher education institutions work towards achieving long term sustainability.

Quality

Australia’s universities have a reputation for providing high quality educational experiences. We want to emphasise teaching and learning outcomes, particularly at the undergraduate level, to ensure that students develop knowledge and skills relevant to their own needs, those of their employers, and those relevant to equip them for the 21st Century.

The quality assurance framework for higher education in Australia encompasses the varied roles of universities, state and territory governments, the Australian Qualifications Framework (AQF), the Australian Universities Quality Agency (AUQA) and the Australian Government.

Australian universities have the authority to accredit their own programmes. Also, they have primary responsibility for their own academic standards and quality assurance processes. The capacity to exercise this authority responsibly is among the criteria for recognition as a university in Australia.

Other recent initiatives to improve the quality of Australian higher education include establishment of the Learning and Teaching Performance Fund and the Carrick Institute for Learning and Teaching in Higher Education.

Equity

The Australian Government ensures all eligible Australian have access to higher education through new arrangements for student financing under the Higher Education Loan Programme (HECS-HELP, FEE-HELP and OS-HELP), a new scholarships programme – the Commonwealth Learning Scholarships programme (which comprises two types of scholarships – one for educational costs and one for accommodation costs) and additional funding to support disability and equity programmes in higher education institutions. Under the *Backing Australia’s Future* package of reforms the Government also introduced a range of initiatives to improve the participation of Indigenous Australians in higher education – these include the establishment of the Indigenous Higher Education Advisory Council, Indigenous Staff Scholarships and increased funding through the Indigenous Support Fund.

Diversity

The *Backing Australia's Future* reform package identified diversity as one of its key themes. Australia needs a high quality higher education sector with a range of institutions servicing different communities and varied requirements. Not all universities should be the same, but aim for distinct missions within the overall system.

The recent OECD meeting of Education Ministers in Athens recognised the need to encourage institutions to pursue diverse missions and respond to the needs of students as well as a wide range of other groups and our Minister for Education, Science and Training, the Hon Julie Bishop MP, is calling for more diversity within the Australian higher education system.

The challenge for the Australian higher education sector is how to achieve greater diversity, based on individual strengths and which are relevant to the economic growth of their regions and in the best interests of their students.

Diversity is being encouraged through the creation of performance-based incentives for institutions to differentiate their missions such as the \$250 million Learning and Teaching Performance Fund and the Research Quality Framework. It is also being encouraged through funding to support greater collaboration between individual universities and other education providers, industry, business, regions and communities through the \$47 million Collaboration and Structural Reform fund.

We have recently reached agreement between all the State and Territory Ministers with responsibility for education in Australia to revise the National Protocols for Higher Education Approval Processes. The new set of National Protocols for Higher Education Approval Processes ("the National Protocols") will allow high quality higher education providers to accredit their own courses, bypassing costly and time consuming reaccreditation processes run by State Governments. Currently only universities and a handful of other institutions established by State or Commonwealth legislation can accredit their own courses. In addition, specialist institutions will have access to a university title, meaning that we may, over time, see the establishment of a Sydney University of Performing Arts, or a Western Australian University of Minerals and Resources, or similar. This change will bring us into line with overseas practice and provide significant additional diversity and choice within Australia's higher education sector. The new Protocols also clarify requirements for overseas higher education institutions seeking to operate in Australia, and reduce research and higher degree teaching requirements for new universities in their first five years of establishment.

Sustainability

A key theme of the BAF reforms has been the sustainability of public self-accrediting higher education institutions. I would like to focus now on some of the particular measures to promote workplace reform and good governance.

The reforms aim to give universities access to the funding they need to deliver world-class higher education. To underpin the reforms the Australian Government will provide some \$11 billion over ten years in new support for the higher education sector (from 2004). This will be matched by a new accountability framework to ensure that universities' responsibilities are exercised with due diligence, and that institutions will be able to continue delivering the services the Commonwealth is funding, both in the short and long term.

Overall Governance of universities

One of the issues raised in the *Crossroads* review was concerns about governance arrangements in Australian universities. Attention was focused on whether governing body members had the skills needed to oversee Australian universities, which over the previous 20 years had evolved into large, complex and sophisticated organisations. Universities now had to deal with complex private and public sources, managed budgets of up to a billion dollars, and were involved in a wide variety of operations in teaching and learning, research, and engagement with external entities.

Universities contend with complex relationships with government – State, Federal and sometimes foreign – as well as ethical issues, their duty of care for students, intellectual property protection, academic integrity ... and much more, all under constant media and public scrutiny.

A second concern was the tendency for many governing body members to represent interest groups, rather than serving the interests of the university as a whole.

A third issue was the unwieldy size of some governing bodies, up to 35 members. Good practice models suggested that 10 to 15 members gave the best size for effective decision making, whilst still benefiting from a diversity of viewpoints.

Fourthly, there were doubts about the ability of governing bodies to monitor effectively universities' commercial operations. The review considered that governing bodies could exercise this control more effectively if their members had greater proficiency in commercial activities.

It became clear that universities' best interests were served by taking note of developing best practices in corporate governance which could help ensure their ongoing sustainability.

Introduction of the National Governance Protocols

The Government responded to these concerns by announcing National Governance Protocols as part of the *Backing Australia's Future* policy statement. While compliance with the Protocols is not compulsory, substantial funding increases were made available to complying institutions. The Protocols became effective on 2 June 2004.

The Protocols (see Attachment A) cover a range of matters, including:

- responsibilities to clarify the role of the governing body ;
- duties of members and sanctions for their breach to outline standards of conduct members are expected to follow, and the removal of members who do not meet those standards;
- a process for election and nomination in accordance with skills and expertise from which only three office-holders are exempt;
- a limit of 22 members on the size of the governing body;
- conditions relating to length of service and to the appointment of members of parliament to give an opportunity for new members;
- a requirement that some members have financial and commercial expertise;
- provision for induction programmes and professional development of members;
- a requirement for codified grievance procedures, release of an annual report; and
- minimum standards for the oversight of commercial operations.

All state and territory legislation now reflects the new governance protocols.

Building Better Foundations discussions

In 2005, the Australian Government initiated a public debate on the legislative and regulatory framework for higher education, with release of a discussion paper *Building Better Foundations for Higher Education in Australia: A discussion about re-aligning Commonwealth-State responsibilities*.

Building Better Foundations explored the scope to further improve the size and composition of university governing bodies and ways of reinforcing the need for members of governing councils to act in the overall interests of the university.

Feedback during the consultations on the paper consistently supported the National Governance Protocols, which were regarded as having an overall positive effect on governance.

There was some interest in exploring the possibility of increasing the personal responsibility of members of governing councils along the lines of company directors under the Corporations Act.

- Some argued that this could increase the professionalism and effectiveness of the operations of governing councils.
- However, there was also some concern that imposing personal liability requirements could deter potential members.

These issues remain under consideration by the Australian Government.

Assessment of the Protocols' Effectiveness

Universities' compliance of the Protocols has been assessed in 2004 and 2005. All universities were found to be either compliant, or compliant subject to their completing implementation of changes arising from legislative amendment before 30 September 2006. The compliance assessment entails an examination of whether required actions have been taken and criteria have been met. It cannot measure behaviours and the extent to which good practices have been embraced.

University Governance Professional Development Programme

Universities might achieve only limited improvements to their governance arrangements if they do only the minimum necessary to achieve technical compliance with the letter of the Protocols.

The Australian Government has provided funding to set up a University Governance Professional Development Programme. This programme assists universities to develop "best practice" in their governance arrangements, through:

- induction for new governing body members;
- professional development training;
- a web site for sharing of better practice;
- an annual Conference; and
- studies and investigations.

The Australian Government has recognised the importance of effective university governance, given the growing complexity of university operations and their increasing budgets. It has taken steps, through the National Governance Protocols and the establishment of the University Governance Professional Development Programme, to improve the standard of university governance. At this stage it is still too early to assess the effectiveness of these measures, but a review in 2007 should give us useful information and guide us as to what further steps are necessary.

AUQA review and university governance

As mentioned earlier, the Australian Universities Quality Agency (AUQA) plays an important role in the broader quality assurance framework for higher education in Australia. The higher education sector is dynamic and has been marked by significant growth in recent years. After its first five years of operation, AUQA has undergone an independent external review to consider its activities and achievements to date and inform consideration of its future focus and activities.

The review found that AUQA's contribution has been positive and indicates that AUQA has had a demonstrable impact on a range of university governance issues. The review identified a number of strengths, noting that AUQA has done well to establish a credible audit regime and gain the general support of the higher education sector. Based on feedback from the sector, the review concluded that AUQA has also achieved good results in raising the awareness of quality matters and showcasing good practice. This includes encouraging and supporting institutions in the planning, management and review of their activities with the aim of embedding quality management in all aspects of their operations.

The review report is under consideration by Australian Governments.

Higher Education Workplace Relations Requirements

The Government announced the introduction of the Higher Education Workplace Relations Requirements (HEWRRs) as part of *the Backing Australia's Future* reforms (see Attachment B).

Rather than a 'one size fits all' approach to workplace arrangements in higher education, the Government is committed to encouraging sector diversity where each higher education institution has the right to pursue its individual mission with workplace arrangements tailored to its special circumstances and the needs of its stakeholders.

The reforms are designed to support a workplace relations system in universities focused on greater freedom, flexibility and individual choice. The HEWRRs continue to provide choice in agreement making, direct relationships with employees, workplace flexibility, workplace productivity and performance, and freedom of association.

Furthermore, under the HEWRRs workplace agreements, policies and practices must provide for direct consultation between employees and the university on workplace relations and human resources matters and can not be restricted to third party representation only, such as through trade unions. Universities must neither encourage nor discourage union membership. Conditions of employment must be tailored to the circumstances of the university and must not inhibit the capacity of the university and its employees to respond to changing circumstances.

Workplace procedures must likewise support organisational productivity and performance and the HEWRRs require that each university has a transparent performance management scheme which rewards high performing individual staff.

To meet the general standards set by the HEWRRs, universities must provide genuine choice and flexibility in agreement making by offering Australian Workplace Agreements (AWAs) to all employees. An Australian Workplace Agreement (AWA) is an individual written agreement between an employer and an employee that sets out terms and conditions of employment. Once an AWA starts to operate, it replaces any industrial award or workplace agreement that would otherwise apply to the employee. As a statutory contract enforceable under the federal *Workplace Relations Act 1996*, an AWA can override some employment conditions in State and Territory laws.

In its first year of operation, the HEWRRs have driven significant workplace reform in Australia's universities.

The sweeping process of reform embodied in the HEWRRs framework also holds out the prospect of direct financial gain as the business operations and organisational cultures of Australia's universities move towards a more sustainable, internationally competitive model.

Additional funding for compliance with the HEWRRs and Governance Protocols

Higher education institutions in receipt of the Commonwealth Grant Scheme (which funds student places) receive a significant increase to their grant amount if they comply with the HEWRRs and Governance Protocols – all 43 eligible institutions received a 2.4% increase in 2005, 41 received 5% in 2006 and those institutions that comply in later years will receive 7.5%.

- of the 43 higher education institutions eligible for increased funding in 2006, 41 met both the Protocols and the HEWRRs and received an additional \$151 million in 2006; and
- over \$230 million is available in 2007 for universities that comply with the Protocols and HEWRRs as at 31 August 2006.

Workplace Productivity Programme

An additional policy instrument to help achieve the required level of workplace reform in the higher education sector under the *Backing Australia's Future* reform package is the Workplace Productivity Programme (WPP).

The Government is providing \$83.3 million from 2006 to 2008 (\$27.2m in 2006, \$27.8m in 2007, and \$28.3m in 2008). The initial priority for 2006 is the review and reform of the efficiency of universities, including of financial arrangements and operational management. This could include budgeting, procurement, investment, internal allocation models, financial and accounting systems, professional development in financial management, business plans, asset and financial restructuring, financial indicators and operational and structural issues to improve productivity and performance. Proposals from Universities for programmes to be funded under the programme are currently being assessed.

Conclusion

These initiatives have reflected the Australian Government's overall commitment to supporting universities to become more productive through improved governance and management arrangements.

**ATTACHMENT A
NATIONAL GOVERNANCE PROTOCOLS**

COMMONWEALTH GRANT SCHEME GUIDELINES

Chapter 7: Increases In Assistance For Higher Education Providers Meeting Certain Requirements (Section 33-15)

7.1 *PURPOSE*

7.1.1 The purpose of this chapter is to set out the requirements known as the:

National Governance Protocols that higher education providers eligible for grants under the Commonwealth Grant Scheme need to satisfy under section 33-15(1)(a) of the Act and to specify a date (the “Protocols Compliance Date”) for higher education providers to meet these requirements under section 33-15(1)(c) of the Act; and the

Higher Education Workplace Relations Requirements (HEWRRs) that higher education providers eligible for grants under the Commonwealth Grant Scheme need to satisfy under section 33-15(1)(b) of the Act and to specify a date (the “HEWRRs Compliance Date”) by which higher education providers must meet the HEWRRS to the Minister’s satisfaction as part of the requirements for receiving an increase in the basic grant amount for a year under section 33-15(1)(c) of the Act.

7.1.2 For the 2006 grant year, the Protocols Compliance Date is 30 September 2005. However, where a higher education provider’s compliance with the Protocols requires changes to its enabling legislation, the legislation implementing those changes (the “Change Legislation”) may allow the provider a period of not more than 12 months, ending after 30 September 2005 (the “Transition Period”), within which the provider must implement any particular change. Provided the Change Legislation commences on or before 30 September 2005, the Protocols Compliance Date for that change is the date of the last day of the Transition Period.

7.1.3 For the 2006 grant year, the HEWRRs Compliance Date is 30 November 2005 and for later years it will be 31 August of the year prior to receiving the increase in assistance funding.

7.1.4 In this chapter, all references to the Corporations Act are to the Corporations Act 2001 (Commonwealth) as in force from time to time.

7.5 *NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION PROVIDERS LISTED IN TABLE A OF THE ACT*

In the case of the Australian Catholic University, where a Protocol refers to enabling legislation, it is taken to mean its constitution and/or where applicable, the Corporations Act.

- 7.5.1 **Protocol 1:** the higher education provider must have its objectives and/or functions specified in its enabling legislation.
- 7.5.5 **Protocol 2:** the higher education provider's governing body must adopt a statement of its primary responsibilities, which must include:
- (a) appointing the vice-chancellor as the chief executive officer of the higher education provider, and monitoring his/her performance;
 - (b) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
 - (c) overseeing and reviewing the management of the higher education provider and its performance;
 - (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
 - (e) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
 - (f) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
 - (g) overseeing and monitoring the academic activities of the higher education provider;
 - (h) approving significant commercial activities of the higher education provider.
- 7.5.10 The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.
- 7.5.15 **Protocol 3:** the higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board (s) each member must be appointed or elected ad personam. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the higher education provider.
- 7.5.20 Duties of members must include the requirements to:
- (a) act always in the best interests of the higher education provider as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
 - (b) act in good faith, honestly and for a proper purpose;
 - (c) exercise appropriate care and diligence;
 - (d) not improperly use their position to gain an advantage for themselves or someone else; and
 - (e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).
- 7.5.25 There should be safeguards, exemptions and protections for members of a higher education provider's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions

and protections as are the equivalent of those that would be available were the member a director under the Corporations Act. The higher education provider (with the exception of those subject to the Corporations Act) must have a requirement that the governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above included in its enabling legislation. A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.

- 7.5.30 **Protocol 4:** each governing body must make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.
- 7.5.35 **Protocol 5:** the size of the governing body must not exceed 22 members. There must be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. There must be a majority of external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.
- 7.5.40 **Protocol 6:** the higher education provider must adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations for the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.
- 7.5.45 Members so appointed must be selected on the basis of their ability to contribute to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a higher education provider and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the higher education provider's external community needs from that higher education provider.
- 7.5.50 To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms must generally overlap and governing bodies must establish the maximum period to be served. This should not generally exceed 12 years unless otherwise specifically agreed by the majority of the governing body.
- 7.5.55 **Protocol 7:** the higher education provider is to codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
- 7.5.60 **Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes.
- 7.5.65 **Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.

7.5.70 **Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:

- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- (b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the higher education provider, where possible;
- (c) ensuring that the board adopts and regularly evaluates a written statement of its own governance principles;
- (d) ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
- (e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

7.5.75 **Protocol 11:** A higher education provider must assess the risk arising from its part ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of the provider must, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.

7.10 NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION PROVIDERS NOT LISTED IN TABLE A OF THE ACT

7.10.1 **Protocol 1:** the higher education provider must have its objectives specified in a constitution or such other document that establishes the higher education provider as a legal entity.

7.10.5 **Protocol 2:** the governing body of the higher education provider must adopt a statement of its primary responsibilities, which must include:

- (a) appointing the chief executive officer of the higher education provider and monitoring his/her performance;
- (b) appointing, where necessary, the secretary or public officer of the higher education provider;
- (c) ensuring that the processes of the governing body are carried out in accordance with the constitution of the governing body;
- (d) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- (e) appointing an external auditor;
- (f) appointing, where necessary, an audit committee that consists of at least three independent members (excluding the chair) of the governing body;
- (g) establishing policy and procedural principles consistent with legal requirements and community expectations;
- (h) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;

- (i) overseeing and reviewing the management of the higher education provider and its performance as a higher education provider;
- (j) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- (k) overseeing and monitoring academic activities of the higher education provider; and
- (l) approving significant commercial activities of the higher education provider.

7.10.10 The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

7.10.15 **Protocol 3:** the higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its constitution or other such document of the higher education provider. Other than the Chair of the Governing Body, Chief Executive Officer and the Presiding Member of the Academic Board (or the equivalent officer) each member must be appointed or elected ad personam. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the higher education provider.

7.10.20 Duties of members must include the requirements to:

- (a) act always in the best interests of the higher education provider as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- (b) act in good faith, honestly and for a proper purpose;
- (c) exercise appropriate care and diligence;
- (d) not improperly use their position to gain an advantage for themselves or someone else; and
- (e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

7.10.25 There should be safeguards, exemptions and protections for members of a higher education provider's governing body for matters or things done or omitted in good faith. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the Corporations Act. The higher education provider (with the exception of those subject to the Corporations Act) must have a requirement that the governing body has the power to remove any member of the governing body from office if the member breaches the duties specified above included in its constitution or other such document of the higher education provider. A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.

7.10.30 **Protocol 4:** each governing body must make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.

- 7.10.35 **Protocol 5:** the size of governing body must not exceed 22 members. There must be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. A majority of the members must be external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.
- 7.10.40 **Protocol 6:** the higher education provider must adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected.
- 7.10.45 **Protocol 7:** the higher education provider is to codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
- 7.10.50 **Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes required by the Commonwealth.
- 7.10.55 **Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.
- 7.10.60 **Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:
- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - (b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the higher education provider, where possible;
 - (c) ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
 - (d) ensuring that the board documents a clear corporate and business strategy which reports and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
 - (e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.
- 7.10.65 **Protocol 11:** the higher education provider and its associated entities shall be audited by an external auditor and the auditor's report (including audit certification and management letter) provided to the higher education provider's governing body or the higher education provider's audit committee.

7.15 DATE TO MEET THE NATIONAL GOVERNANCE PROTOCOLS REQUIREMENTS (PARAGRAPH 33-15(1)(c))

7.15.1 Dates to meet the National Governance Protocols requirements (“Protocols Compliance Dates”) for a higher education provider to receive an increase in its basic grant amount for a year under the Commonwealth Grant Scheme are:

Grant year	Funding Increases	Dates for meeting the requirements
2006	5.0%	30 September 2005
2007 and later years	7.5%	31 August 2006 and 31 August in later years

ATTACHMENT B
HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS (HEWRRS)

7.20 HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS FOR PUBLICLY FUNDED INSTITUTIONS AND PRIVATE PROVIDERS WITH APPROVED NATIONAL PRIORITY PLACES – PREAMBLE

7.20.1 Access to increased Commonwealth Grant Scheme funding is determined annually. Higher education provider's workplace arrangements, including collective and individual workplace agreements and workplace policies and practices, are to comply with the HEWRRs as detailed below.

7.20.2 The HEWRRs apply to all workplace agreements made and approved or certified after 29 April 2005.

Requirements for increases in 2006

7.20.5 Higher education providers, with existing agreement(s) which are collective agreement(s) that have been subject to a concluded ballot as at 29 April 2005 and have subsequently been certified by the Australian Industrial Relations Commission, with a nominal expiry date on or before 30 September 2005, must have in place, on or before 30 November 2005, a certified agreement(s) and workplace policies and practices that comply with the HEWRRs.

7.20.10 Higher education providers, with existing agreement(s) which are collective agreement(s) that have been subject to a concluded ballot as at 29 April 2005 and have subsequently been certified by the Australian Industrial Relations Commission, with a nominal expiry date on or after 1 October 2005, must have in place, on or before 30 November 2005, workplace policies and practices that comply with the HEWRRs, except where compliance with the HEWRRs would be directly inconsistent with the higher education provider's obligations under its existing agreement(s) as at 29 April 2005.

7.20.11 A higher education provider may not contravene the requirements of 7.20.5, 7.20.10 and 7.25.1 because it did not offer to an employee and Australian Workplace Agreement before 30 November 2005 for the reason only that the employee had left employment with that higher education provider before an Australian Workplace Agreement was in operation or could have been offered to that employee.

Requirements for increases in 2007 and later years

7.20.15 To qualify for the increase in Commonwealth Grant Scheme funding available in 2007 and later years, higher education providers must by 31 August of the year prior have in place certified agreement(s), individual agreements and workplace policies and practices that comply with the HEWRRs.

Private Providers

7.20.20 Higher education providers which operate as non-Table A providers with funding for national priority places, who employ all staff on individual arrangements, will be assessed on the content of their workplace policies and practices, for compliance with the HEWRRs. Table A providers are specified in section 16-15 of the Act. These non-Table A providers will be required to comply with the HEWRRs by 30 November 2005, and by 31 August in later

years, to qualify for the increase in Commonwealth Grant Scheme funding available in 2006, and later years respectively.

Qualifying for Increases

- 7.20.25 In order to qualify for any given year's increase in Commonwealth Grants Scheme funding, submissions must be supported by a statement signed by the Vice-Chancellor, or person in an equivalent position, of the relevant higher education provider at the relevant time outlining their compliance status with each of the HEWRRs. The submission must include reference to relevant clauses and sections in workplace agreements and in other relevant documents, such as workplace policies, practices and guidelines. Higher education providers must provide the Department of Education, Science and Training with access to the relevant documents, including any template for and or common elements of their individual agreements, as requested.
- 7.20.30 A higher education provider must comply with the HEWRRs during any year in which the Provider receives an increase in the basic grant amount under section 33-15.
- 7.20.31 At the request of the Department of Education, Science and Training, a higher education provider must at any time (and whether before or after the Minister makes a determination under section 33-15(c)):
- (a) allow the Department or its representative full access to the premises and staff of the higher education provider; and
 - (b) during the access described above, provide all assistance requested,
- to enable the Department or its representatives to undertake a detailed specific assessment of the higher education provider's compliance with the HEWRRs.
- 7.20.32 The Department of Education, Science and Training may choose not to undertake a specific assessment or to undertake more than one assessment. Assessments may be undertaken at any reasonable time. Assessments may be used by the Minister for Education, Science and Training to decide if he or she is satisfied that the higher education provider has complied with the HEWRRs for the purposes of making a decision under section 33-15(c) of the Act, or otherwise to assess compliance by the higher education provider with the HEWRRs.
- 7.20.33 If a higher education provider succeeds in meeting the HEWRRs and the National Governance Protocols in 2005 and receives the increase in assistance (being the basic grant amount) in 2006 but then cannot, for whatever reason, continue to meet the requirements of section 33-15(1) for 2006, an increase in assistance will not be approved for 2007. The same principle will apply with respect to later years. There will be no retrospective increases in assistance.
- 7.20.35 Any statement found to be false and misleading relating to the higher education providers compliance with the HEWRRs may result in the requirement to repay the Commonwealth Grant Scheme increase, or a reduction of future Commonwealth Grant Scheme funding, at the discretion of the Minister for Education, Science and Training.
- 7.25 HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS (HEWRRs)**
- 7.25.1 **HEWRR 1 Choice in Agreement Making:** the higher education provider must provide employees with genuine choice and flexibility in agreement making by offering Australian Workplace Agreements (AWAs) to all new employees employed after 29 April 2005 and to

all other employees by 31 August 2006. Until 30 June 2006, higher education providers are exempt from offering Australian Workplace Agreements to casual employees engaged for a period of less than one month.

- 7.25.5 The higher education provider's certified agreements, made (or varied) and certified after 29 April 2005, are to include a clause that expressly allows for AWAs to operate to the exclusion of the certified agreement or prevail over the certified agreement to the extent of any inconsistency. The following clause is recommended:

The [insert higher education provider's name] may enter into AWAs with its employees. Those AWAs may either operate to the exclusion of this certified agreement or prevail over the terms of this certified agreement to the extent of any inconsistency, as specified in each AWA.

- 7.25.10 **HEWRR 2 Direct relationships with employees:** the higher education provider's workplace agreements, policies and practices must provide for direct consultation between employees and the higher education provider on workplace relations and human resources matters. The involvement of third parties representing employees must only occur at the request of an affected employee.
- 7.25.15 Workplace relations consultative committees and associated committee processes must include direct employee involvement. Employee involvement in negotiations and discussions on workplace relations and human resources issues must not be restricted to third party representation only.
- 7.25.20 **HEWRR 3 Workplace Flexibility:** the higher education provider's workplace agreements, policies and practices are to facilitate and promote fair and flexible arrangements. Higher education providers must have working arrangements and conditions of employment which are tailored to the circumstances of the higher education provider and which benefit both the higher education provider and its employees.
- 7.25.25 The higher education provider's workplace agreements should expressly displace previous workplace agreements and relevant awards.
- 7.25.30 The higher education provider's workplace agreements, policies and practices are not to inhibit the capacity of the higher education provider and its employees to respond to changing circumstances. The higher education provider's workplace agreements, policies and practices must not limit or restrict the higher education provider's ability to make decisions and implement change in respect of course offerings and associated staffing requirements, including not placing limitations on the forms and mix of employment arrangements.
- 7.25.35 The higher education provider's workplace agreements must be simple, flexible and principle-based documents which avoid excessive detail and prescription.
- 7.25.40 **HEWRR 4 Productivity and Performance:** the higher education provider's workplace agreements, policies and practices must support organisational productivity and performance.
- 7.25.45 The higher education provider's workplace agreements, policies and practices must include a fair and transparent performance management scheme which rewards high performing individual staff. Consistent with this, the higher education provider's workplace agreements, policies and practices must also include efficient processes for managing poor performing staff.

7.25.50 **HEWRR 5 Freedom of Association:** the higher education provider’s workplace agreements, policies and practices must be consistent with freedom of association principles contained in the Workplace Relations Act 1996. Higher education providers must neither encourage nor discourage union membership.

7.25.55 The higher education provider must not use Commonwealth Grant Scheme funds to pay union staff salaries, or fund union facilities and activities.

7.30 DATE TO MEET THE HIGHER EDUCATION WORKPLACE RELATIONS REQUIREMENTS (PARAGRAPH 33-15(1)(c))

7.30.1 Dates to meet the Higher Education Workplace Relations Requirements (“**HEWRRs Compliance Dates**”) for a higher education provider to receive an increase in its basic grant amount for a year under the Commonwealth Grant Scheme are:

Grant year	Funding Increases	Dates for meeting the requirements
2006	5.0%	30 November 2005
2007 and later years	7.5%	31 August 2006 and 31 August in later years

The increases for each year are specified in subsection 33-15(2) of the Act.