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APPENDIX A

NATIONAL GOVERNANCE PROTOCOLS FOR PUBLIC HIGHER EDUCATION INSTITUTIONS

Australian Vice-Chancellors' Committee

The following protocols are put forward as proposed revisions to the Commonwealth proposals contained in *Backing Australia's Future*. They have been jointly drafted by University Chancellors and the AVCC. Given the independence and autonomy of each Council however the protocols cannot automatically commit any University Council.

The recommended Protocols are as follows:

1. The university must have its objectives specified in the enabling legislation.

2. The university's governing body should adopt a statement of its primary responsibilities, which include:

   - appointing the vice-chancellor as the chief executive officer of the university, and monitoring their performance;
   - approving the mission and strategic direction of the university, as well as the annual budget and business plan;
   - overseeing and reviewing the management of the university and its performance;
   - establishing policy and procedural principles, consistent with legal requirements and community expectations;
   - approving and monitoring systems of control and accountability, including general overview of any controlled entities;
   - overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
   - overseeing and monitoring the academic activities of the university;
   - approving significant commercial activities.

   The university's governing body, without abdicating from its ultimate governance responsibilities should have the normal power of delegation for the effective discharge of these responsibilities.

3. The enabling legislation of the university should specify the duties of the members of the governing body and sanctions for the breach of these duties. Other than the Vice-Chancellor and the Presiding Member of Academic Board each member should be appointed or elected *ad personam.* All members should be responsible and accountable to the governing body. The duty of a member of the governing body is always to exercise the functions of a member with the interests of the university as a whole paramount rather than simply as a delegate or representative of a particular constituency.

Duties of members should include the requirements to:

- act always in the best interests of the university 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;
- act in good faith, honestly and for a proper purpose;
- exercise appropriate care and diligence;
- not improperly use their position to gain an advantage for themselves or someone else; and
- disclose and avoid conflicts of interest (with appropriate procedures for that purpose adapted from the articles of a public company).

There should be safeguards, exemptions and protections for matters or things done or omitted in good faith. In addition these should include such safeguards, exemptions and protections as would be available were the member a director under the Corporations Law.

The enabling legislation should include a requirement that the governing body has the power (by a 2/3 majority) to remove any member of the governing body from office if the member breaches the duties specified above. 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.

4. Each governing body should 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 should assess both its performance and its conformance with these protocols and identify needed skills and expertise for the future.

5. The size of governing body should be up to 22 members. There should be at least two members having financial expertise and at least one member with commercial expertise. There should be a majority of external independent members (as appropriately defined and who are neither enrolled as a student nor employed by the university). There should not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.

6. The university is to 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 Council may be delegated to a nominations committee of Council that the Chancellor would ordinarily chair.

   Members so appointed should be selected on the basis of contributing to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a university and its core

activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the university's external community needs from that university.

To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms should generally overlap and Councils should establish the maximum period to be served. This should not normally exceed 12 years unless otherwise specifically agreed by the majority of the Council.

7. The university is to codify and collate its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.

8. The annual report of the university should be used for reporting on high level outcomes.

9. The annual report of the university must include a report on risk management within the organisation.

10. The governing body is required to oversee controlled entities that incur risk by taking reasonable steps to bring about the following:

- ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- appointing some directors to the board of the entity who are not members of the Council or officers or students of the university, where possible;
- ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
- ensuring that the board documents a clear corporate and business strategy which reports and updates annually the organisation's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
- 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.

11. Entities (including associated companies, joint ventures and partnerships) that are not subject to audit by a State, Territory or Commonwealth Auditor-General should, after appropriate risk assessment, be audited by an external auditor and the auditor's management report provided to the university's council.

Source: AVCC 2003b

APPENDIX B

SUMMARY OF GOOD PRACTICE BENCHMARKS

Scottish Higher Education Funding Council

Guiding Principles of Governance

1. Governing bodies should adopt codes of conduct for their members, embodying the Committee for Standards in Public Life's seven general principles.

Roles and Responsibilities

2. The role and responsibilities of the Chairperson will vary among institutions but should be formally defined by each institution.

3. The role of the Chairperson should, as a minimum, include responsibility for ensuring that the meetings of the governing body proceed efficiently and effectively.

4. The Chairperson should ensure that the governing body understands its strategic role, and is able to address its responsibilities.

5. Any authority delegated to the Chairperson or other governor or officer by the governing body, should be clearly stated. When significant or material action is taken under delegated authority, it should be formally reported to the subsequent meeting of the governing body for information or homologation

6. There should be a formal induction process in which members of the governing body, when taking up office, should be fully briefed as to the terms of their appointment and should be made aware of their collective and individual responsibilities.

7. Members should be made aware of the clearly defined division between the responsibilities of the governing body on the one hand, and of the Principal/Director and executive management on the other.

8. Where the governing body has delegated authority to the Principal/Director for the management of the institution, it should be clearly defined and formally recorded. In addition the Principal/Director should formally report on action taken in exercising that delegated authority on a regular basis. The level of detail, format and frequency should be formally determined by the governing body.

9. The role and responsibilities of the Secretary of the governing body should be clearly set out so that members of the governing body are aware of the Secretary's responsibilities relating to the legal obligations of the institution.

Governing body Procedures

10. The governing body should keep under review its Standing Orders in order that they continue to support effectively the workings of the governing body. Standing Orders should be formally reviewed at least once every five years.

11. The governing body should set up a Register of Governors' Interests, normally maintained by the Secretary to the governing body, and available for public inspection. Members should be made aware of the need to disclose any pecuniary or other material interest, and should seek advice from the Secretary to the Governing body in the event of any doubt.

12. In pursuit of openness and accountability, the governing body should develop and publish a policy and procedure which would allow and encourage any member of the institution or public to raise matters of concern relating to the reputation and well-being of the institution without fear of recrimination and that allows for legitimate concerns to be investigated.

Size and Composition of the Governing body

13. The governing body should maintain the number of members indicated by its constitution.

14. An institution's governing body should not normally exceed 25 members, subject to the institution's constitution.

15. The composition of the governing body should represent an appropriate balance of skills and expertise, while having regard to the age, gender and occupation of members.

16. Membership of the governing body should be disclosed in the Annual Report and Accounts of the institution.

17. All members, other than those who are members by virtue of their office, should be appointed for a given term, usually three years.

18. The governing body Standing Orders should include a formal mechanism for removal of members, including criteria when this would be appropriate and the associated procedures.

19. All members, other than those who are members by virtue of their office, should not normally serve for a consecutive period of more than nine years.

20. Members should not normally serve more than one complete term beyond the state retirement age, which for the purpose of this guidance is assumed to be 65.

Committees of the Governing Body

21. As a minimum, governing bodies should establish a Remuneration Committee and a Nominations Committee as well as an Audit Committee.

22. All committees should be provided with a clear remit and written terms of reference, and membership of all key committees should be disclosed in the Annual Report and Accounts

Related Companies

23. The governing body should be represented on the board of directors of related companies by independent lay members of the governing body or by individuals nominated by the governing body.

24. A formal mechanism should be established through which all material issues about the company's activities, including financial performance and remuneration of directors are formally reported to the governing body.

25. Members should seek appropriate legal advice on the duties and responsibilities as directors of related companies.

Performance Measures

26. The governing body should formally adopt and monitor a range of financial and non-financial performance measures related to the institution's strategic objectives. These should be published as appropriate to enable taxpayers and other 'stakeholders' to monitor the progress and achievements of the institution.

Source: SHEFC 1999

APPENDIX C

INTERVIEW QUESTIONS

Section 1

1. How would you describe a university council?

2. What are the roles of university councils?
   2a: Are these roles changing?

3. What roles are most important?
   3a: Are there tensions among various council roles or activities?

4. What is your role on council?

5. Are university councils different to other types of boards or governing bodies?

Section 2

6. To whom are university councils accountable?

7. How do they account to various stakeholders?

8. For what are university councils accountable?

9. To whom are you, as a council member, accountable?

10. How do you provide accountability to various stakeholders?

11. For what are you accountable?

Section 3

12. What expectations do you think other people or groups have of university councils?

    12a-j:
    the community
    the university as a whole
    the vice-chancellor
    academic staff
    academic board
    students
    state government
    federal government
    industry and business
    parents

13. How do the expectations of various groups differ?

14. Which groups' expectations are the most important to meet?

15. How do you think these expectations are communicated to councils?

16. What expectations do you have of university councils as a whole?

17. What expectations do you think other people or groups have of you as a council member?

18. Which people or groups have the strongest expectations of you?

19. How do you learn of these expectations?

20. What expectations do you have of the Chair of Council?

21. What expectations does the Chair have of you?

22. How are the Chair's expectations communicated?

Section 4

23. Do universities need councils?

24. What are the best and worst things about being on Council?

25. What has influenced your ideas about university councils?

26. Are there any other remarks you'd like to make about university councils?

Section 5

Confirmation of background information; date of appointment and method of appointment

Thanks and close.

CATEGORIES OF COUNCIL MEMBERSHIP FOR VICTORIAN AND AUSTRALIAN UNIVERSITIES, MAY 2003

University	***Council members***	*Politician*	*Public servant*	*U/G student*	*P/G student*	*General staff*	*Academic staff*	*Executive staff*	*Alumni*	*Business / professional*	*Community rep*	*N/A*	*Total#*
Ballarat	22	0	2	2	0	1	4	1	1	5	4	0	20
Deakin	21	0	0	1	1	1	3	1	0	9	2	0	18
La Trobe	21	0	2	1	1	1	4	1	1	8	2	0	21
Melbourne	21	1	1	1	1	1	3	1	0	7	5	0	21
Monash	21	0	1	1	1	1	3	1	0	7	4	2	21
RMIT	22	0	1	2	0	1	6	1	0	7	0	0	18
Swinburne	22	0	1	1	1	1	4	1	0	13	0	0	22
Victoria U	22	1	6	2	0	1	3	1	0	4	1	3	22
All Victoria	**172**	**2**	**14**	**11**	**5**	**8**	**30**	**8**	**2**	**60**	**18**	**5**	**163**
% Victoria		1%	9%	7%	3%	5%	18%	5%	1%	37%	11%	3%	100%
All Australia*	**798**	**31**	**55**	**56**	**24**	**44**	**135**	**46**	**57**	**247**	**74**	**14**	**783**
% Aust.		4%	7%	7%	3%	6%	17%	6%	7%	32%	9%	2%	100%

Totals showing less than the actual size of council indicate vacancies.
* Figures are for 38 of the 39 Australian universities (37 public and one private).

Source: AVCC 2003a

APPENDIX E

LETTER SENT TO CHANCELLORS OF THE EIGHT VICTORIAN UNIVERSITIES

[Chancellor Name]
Chancellor
[University name
and address]

[Date]

Dear [Chancellor name]

I am writing to you, through Professor [Vice-Chancellor name], to seek your assistance in facilitating a research project I am undertaking for my PhD program in the Centre for Higher Education Management and Policy at the University of New England.

The subject of my research program is Australian University Council Members' Views of Their Roles and Accountabilities. I would like to interview members of the Council of [University name] as part of my research. I am approaching other universities in Victoria and I hope to interview around 80 Council members in all.

A major aim of the research is to examine the language university Council members use to describe their roles, their accountabilities and the expectations they believe are held by key stakeholders. My supervisors and I hope that the study will make a useful contribution to understanding evolving trends in Australian university governance. We also believe that the study may be of interest to Council members themselves, both for its findings and for the opportunities it provides to engage in reflection among those who participate.

I should stress that all interviews will be confidential and results will be reported anonymously, as my major interest is in the analysis of the language repertoires in use across the whole group of interviewees. No individual and no institution will be identified - or identifiable - in report's of the study's findings. The study has received ethics clearance from the University of New England Human Research Ethics Committee. I would be happy to provide a report on my overall findings to you and to the Council of [University name] on completion of my research.

A copy of the interview questions is attached, together with the Informed Consent statement that Council members who express an interest in participating will be asked to sign. You will note from the attached list of questions that I emphatically do not wish to explore issues of internal policy or of Council members' views on particular institutions. On this understanding, I hope that you would allow me to approach members of the Council to ask them to participate in the study.

I have written to Professor [Vice-Chancellor name] in similar terms and have asked him to forward this letter to you for your consideration. I would be most grateful if you were to discuss my request with Professor [Vice-Chancellor name].

Please do not hesitate to contact me on the numbers below should you have any questions or require additional information. Alternatively, you may care to contact A/Professor V Lynn Meek at the above address.

Yours sincerely

Jeanette Baird

[Researcher's home address

telephone numbers and

fax number]

APPENDIX F

LETTER SENT TO INDIVIDUAL COUNCIL MEMBERS

[Researcher's home address]

[Council member name]
c/- [University name]

Dear [Council member name]

I am writing to invite you to participate in a series of interviews of university council members I am undertaking for my PhD program. I approach you with the permission of the Vice-Chancellor and Chancellor, having explained to them in writing the aims and methods of my research.

The subject of my research program is Australian University Council Members' Views of Their Roles and Accountabilities. I am approaching all universities in Victoria and I hope to interview around 80 council members in all. A major aim of the research is to examine the language university council members use to describe their roles, their accountabilities and the expectations they believe are held by key stakeholders.

My supervisors and I hope that the study will make a useful contribution to understanding evolving trends in Australian university governance, not least because it is the first time for many years in which the views of council members themselves are being investigated. We hope that the study will be of direct interest to council members, both for its findings and for the opportunities it provides to engage in reflection among those who participate.

I would be very grateful if you were prepared to be interviewed for my research. I would expect the interview to take no longer than an hour. All interviews will be kept strictly confidential and results will be reported anonymously, as my major interest is in the analysis of the language repertoires in use across the whole group of interviewees. No individual and no institution will be identified - or identifiable - in reports of the study's findings.

The questions I will ask are not expected to cause you any embarrassment or distress and they do not touch on any issues of internal university policy. My supervisors on the project at A/Professor Lynn Meek and Dr Kay Harman of the Centre for Higher Education Policy and Management at the University of New England. This study has received ethics clearance from the University of New England Human Research Ethics Committee.

If you would be interested in participating, I would be grateful if you would complete and detach the form at the bottom of this letter and send it to me in the enclose reply-paid envelope. I will then contact you to arrange an interview time. Prior to interview I will ask you to sign an Informed Consent statement. Please note that you are free to withdraw your participation in this study at any time.

If you would like to receive a mail copy of the Informed Consent statement and the interview questions in advance, please also indicate this on the form.

Please do not hesitate to contact me on the numbers below should you have any questions or require additional information.

Yours sincerely

Jeanette Baird

[Researcher's home address

telephone numbers and

fax number]

- -

I would be interested to participate in your research study on Australian university council members' views of their roles and accountabilities.

My name:

To arrange a time and place to interview me, please contact me at (address, phone number, fax number or email address):

Please send me a copy of the Informed Consent statement and a list of interview questions in advance of interview (circle either Yes or No below):

YES / NO

Thank you.

APPENDIX G

INFORMED CONSENT FORM

Australian University Council Members' Views of Their Roles and Accountabilities

INFORMED CONSENT STATEMENT

Dear Council member

Thank you for agreeing to see me, with a view to participating in research I am conducting for my PhD program at the University of New England. Before you take part in an interview, the University of New England requires that you read and note this Informed Consent Statement. If you agree to participate in an interview, please complete and sign both copies of this Statement at the bottom of the form. I will keep one copy and one copy is for your own records.

The title of the research project is "Australian University Council Members' Views of Their Roles and Accountabilities". The principal aim of the project is to improve our understanding of the governance of Australian universities through an analysis of the ways in which governing body (council) members describe their roles, accountabilities and the expectations others have of them. I am undertaking this research under the direction of my PhD supervisor, Associate Professor V Lynn Meek.

The study involves interviews with members of several Australian university councils: I hope to interview around 80 participants in all. The focus of the research is the language that councils members use to describe their roles and accountabilities - I will be looking at patterns of similarity and difference in the way council members express themselves in response to a series of questions on these topics.

Each interview should last no longer than one hour. I would like to tape record the interview, to ensure that your actual words are recorded, as analysis of language is crucial to the research. The results of the study of all participants will be written up in the form of a generic report sent to the Chancellors of participating universities and embodied in my PhD thesis. There may also be publications arising from the study. Quotes from interview transcripts may be used in these documents. Please note that in my analysis and in the writing up of results, your comments will be anonymous: no individuals will be identified by name and no indications that may identify an individual or a particular university will be included. Interview transcripts and tapes will be numbered and your name will not be recorded on them. All materials for the study, including disks, will be kept confidential and stored in locked filing systems.

The interview questions have been designed to explore an important topic in higher education, the roles of governing bodies, without asking you to discuss any sensitive or confidential matters such as university policy or particular issues and relationships.

We would be very grateful if you were able to participate, but I should stress that you are under no obligation to do so. You are free to withdraw your consent and discontinue your participation in the study at any time. If you wish to discontinue participation in the study or to not have your interview included in the analysis, please contact me and I will confirm the arrangement in writing.

Any questions regarding the project titled "Australian University Council Members' Views of Their Roles and Accountabilities" can be directed to:

Associate Professor V Lynn Meek
Director of the Centre for Higher Education Management and Policy
Department of Administration and Training
University of New England, Armidale NSW 2351
or phone 02 6773 2675 or email vmeek@metz.une.edu or fax 02 6773 3363.

Should you have any complaints concerning the manner in which this research is conducted, please contact the UNE Human Research Ethics Committee at the following address:

The Secretary
Human Research Ethics Committee
Research Services, University of New England
Armidale, NSW 2351
Telephone: 02 6773 2352 or Fax: 02 6773 3543

Thank you.

Jeanette Baird
[Researcher's home address
Home and work phone numbers
Work fax number]

I (the participant) have read the information above and any questions I have asked have been answered to my satisfaction. I agree to participate in this study, realising that I may withdraw at any time. I agree that research data gathered for this study may be published, provided my name is not used and that any publications do not allow identification of myself, my institutional affiliations or particular institutions.

Signed (Participant).....

Name..... Date.....

Signed (Investigator).....

Name..... Date.....

Similarities and differences among the three repertoires (business, community stakeholder and university community) on particular issues

Repertoire →	Business	Community stakeholder	University community
Extent to which university councils are like corporate boards	Largely the same, maybe corporate governance with a 'twist'.	Both like and unlike corporate boards; additional emphasis on values, different regulatory and risk environment.	Unlike corporate boards, closer to an upper house in a parliament.
Membership	Skills-based; external.	Should bring divergent views, external and some internal members. Externals to particularly include community members.	Must bring differing views, external and certainly internal, proportional representation.
Preferred size	Smaller than at present.	Larger or same size.	Larger and a different balance.
Should members be remunerated?	Yes in theory but no in practice.	No, possibly recompense for expenses.	Possibly small amount or recompense for expenses.
Council roles	Good governance, including compliance and strategic planning.	Strategic planning; oversight by the community; steering; community and regional development	Loyal opposition; strategic planning; watchdog; counter to poor managerial decisions; bring issues to the table; defend higher education; strategic planning.
Individual roles	Same as all other members; different responsibilities depending on specialist skills.	Advisor; sounding board; bring specific perspective or focus on specific issues; oversight on behalf of the wider community.	Representative of constituency (but not bound by their views on each issue); bring specific perspective or expertise.
Council's role vis à vis management	Let the managers manage; council's role is not to manage.	Council needs to hear from staff and students through some mechanism and to understand internal as well as external issues. However, council's role is not to manage.	Council needs to be prepared to overturn recommendations of management or to send matters back for review.
Council's role in fundraising	No role.	No role.	Could be useful.

Repertoire →	Business	Community stakeholder	University community
Performance objectives of council	Produce good graduates; meet compliance responsibilities; keep finances in good shape.	Maintain universities as leaders of social improvement; good graduates; regional and community development; social justice; keep finances in good shape; ensure well being of staff and students.	Maintain universities as leaders of social improvement; value knowledge; ensure well being of staff and students; keep finances in good shape.
Does the university have a role in community development?	Only if specifically identified in enabling legislation.	Yes, in the specific sense of local and regional communities.	Yes, in the general sense of social development plus maybe for local communities.
Risks and threats	Failures to meet financial and ethical responsibilities; failure to protect academic standards; sudden unforseen crises.	Failures to meet financial and ethical responsibilities; failure to protect academic standards; failure to deliver benefits for regional and local communities.	Failure to protect autonomy of academics and universities; failure to protect funding base; failure to protect academic standards or reputation of university.
Accountability to whom	To State Government and, contractually, to Federal Government.	To State Government and to stakeholders, including external and internal community.	To internal and external stakeholders.
Individual accountability to whom	Self, Chancellor.	Self, Chancellor, specific internal and external stakeholders.	Self, Chancellor, constituents.
Whose expectations should be met?	No one's in particular, apart from the Vice-Chancellor. Internal stakeholders have unrealistic expectations.	Community leaders, Vice-Chancellor.	Internal community and some external members. Difficult to meet the expectations of internal stakeholders.
Preferred structure of council operations	Formal 'sign-off' meetings of full council; strong executive committee and council committee structure.	More discussion at full meetings or separate retreats and planning meetings; more interaction and stimulation; effective committee structure.	Open debates at full meetings and formal meeting procedure (voting); more interaction and stimulation; less distinction between insiders and outsiders; representation on all committees.
Legal liability	Known to exist; council should and will be held accountable.	Known to exist but council may not be held accountable.	Known to exist; council should be held accountable but has not been.

Repertoire →	Business	Community stakeholder	University community
Personal aspects	Members are required to make a positive impact in return for remuneration and to discharge responsibilities.	Contribution and commitment in return for personal satisfaction and stimulation, ongoing involvement with university life or opportunities to see the 'bigger picture'.	Contribution in return for opportunity to influence the future of the university, for personal status and to see the 'bigger picture'.
Improvements	Reduce size and change composition; better selection mechanisms; focus on roles and liability; induction and evaluation of performance.	More opportunities to contribute; better selection mechanisms; induction and evaluation of performance.	Stronger internal representation; more debates on substantive issues; induction and evaluation of performance.
View of effectiveness / councils as rubber stamps	Councils are not as effective as they could be, due in part to their composition and size. The charge of rubberstamping is unjustified if it means that internal governance structures are working effectively. Performance information needs to be improved.	Councils seem to be doing their job effectively but are also likely to be snowed by management, so they are potentially rubber stamps. They could be more effective if members were able to contribute more substantially and if performance information was better.	Councils are largely rubber stamps for management. Stronger counter-balancing forces are needed for councils to be effective. Councils need to know the full story.
Ideological dilemmas / tensions	Existing membership and stakeholder versus skill focus; remuneration versus existing voluntary commitment; poor performance of corporate boards in other spheres; managerial hegemony and power of Vice-Chancellor go against models of good practice.	How to provide accountability to stakeholders; place of internal stakeholders; lack of teamness and group spirit; legal liability versus personal, voluntary contribution; managerial hegemony and power of Vice-Chancellor lead to doubts over the extent to which contributions of others are valuable.	How to provide accountability to stakeholders; existing membership and small representation of internal stakeholders; tension between elected members and individual role; managerial hegemony and power of Vice-Chancellor render council ineffective.