

Review of the National Governance Protocols Joint Committee on Higher Education (JCHE)

A submission by the
Council of Australian
Postgraduate Associations
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The logo for the Council of Australian Postgraduate Associations (CAPA) features the lowercase letters 'capa' in a bold, sans-serif font. The 'c' and 'a' are connected, and the 'p' and 'a' are also connected. The letters are dark grey.
Council of Australian Postgraduate Associations Incorporated

Introduction

The Council of Australian Postgraduate Associations (CAPA) is the national peak body for Australia's 263,504 postgraduate students, including 48,201 research students and 215,303 students undertaking coursework qualifications.

CAPA welcomes the opportunity to offer a submission on the issues paper released as part of the review of the impact of the National Governance Protocols by the working group convened by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). CAPA supports the spirit of the Protocols, intended to support appropriate standards of transparency, accountability and good governance among Australian universities.

The National Governance Protocols were implemented under the Federal government's reforms in higher education and became effective in June 2004. The Protocols were to improve governance practices at universities by providing standards to ensure that governing bodies were effectively overseeing the operations of universities¹.

Stakeholder consultation following the release of a discussion paper on university governance in 2004 yielded positive feedback on the effect of the Protocols on university governance practices.² In November 2005, the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) agreed to conduct a review of the impact of the National Governance Protocols and call for suggested improvements. Subsequently, an Issues Paper has been released in May 2007, and consultation forums have been hosted for feedback on the Protocols in July (in which CAPA was also a participant).

CAPA's response to the consultation questions in the Issues Paper are selectively focussed on matters of relevance and importance to postgraduate students:

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

While participants in the Melbourne Discussion Forum largely agreed that the Protocols have had a positive impact, it is evident that many universities have made improvements in governance over a number of years in response to a broader range of factors (for example, additional requirements enacted by

¹ Nelson, Brendan, 2004, Department of Education, Science and Training (DEST), Commonwealth of Australia, Higher Education Support Act 2003, Guidelines for Commonwealth Grant Scheme, pp 13-18, http://www.backingaustraliasfuture.gov.au/guidelines/documents/cgs_guide.pdf

² DEST 2005, Building Better Foundations for Higher Education in Australia: A discussion about re-aligning Commonwealth-State responsibilities – Issues Paper, Canberra.

Victorian and New South Wales State Governments³). CAPA believes the Protocols should therefore be developed as broad tenets alongside other initiatives aimed at improving university governance. CAPA further believes that the aim of the Protocols should be to promote good governance and decision making without becoming a regulatory mechanism that is overly burdensome for universities.

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

It was noted in the Melbourne Discussion Forum that limitations on Council membership should be based on an ability to make an effective contribution⁴. CAPA believes the Protocols are too prescriptive in regard to membership and appointment, and university governing bodies should be free to select their members by means of selection committee, election or *ex officio* appointment. The best means of appointment should be determined by the governing body in consultation with the university community. CAPA recommends that the protocols be amended to remove the prohibition in regard to *ex officio* appointments.

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

Concerns were raised in the Melbourne Discussion Forum in regard to the different levels of control for subsidiaries, associated companies and joint ventures, and that some states had more detailed legislative requirements for controlled entities than the Protocols⁵. There was general agreement that the Protocols should provide more clarity on controlled entities, in particular in relation to reporting and risk management. CAPA supports close scrutiny, accountability and reporting requirements on all university controlled entities, and supports strengthening the requirements of the Protocols in this area.

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

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

CAPA believes the number of members on a university governing body and their maximum term are matters best determined by that governing body in consultation with the university community. The size of governing bodies should not vary at the expense of student and staff members. CAPA does not believe the protocols need to be strengthened in this area, or provide any additional formal constraints.

³ CAPA submission, 2005; Sheehan, B, Facilitator, Discussion Forum, 2007.

⁴ Sheehan, B, Facilitator, Discussion Forum, 2007

⁵ Sheehan, B, Facilitator, Discussion Forum, 2007

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

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

CAPA believes it is important that university governing bodies provide opportunities for open and frank discussion informed by the full range of relevant perspectives. It is important that any mix of skills defined by the Protocols provides for both students and staff as members. The experience and knowledge of students and staff can only facilitate good decision-making and offer a significant contribution to the knowledge base of the governing body. A bias toward external members at the expense of students and staff is counter-productive to the needs and requirements of a university governing body. The skills and experience of external appointees, although invaluable, often includes little direct experience or engagement with universities outside of their own academic qualifications. A full range of perspectives on the governing body must include informed participation by individuals who reflect the profile of the academic community, including both academic and general staff, and both postgraduate and undergraduate students. Such requirements are in no way met by including students and staff on consultative committees at the expense of their membership on the governing body.

In regard to student members, such appointments should be based on an ability to engage broadly with the relevant constituencies within the student community. This facilitates better communication, greater transparency and improved relations between governing bodies and students generally. CAPA believes consultation and informed participation are central to such appointments, as opposed to being “representative” in any kind of narrow sense. University governing bodies should be free to achieve this via either *ad personam* or *ex officio* appointment, and CAPA recommends that the Protocols be amended accordingly.

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

CAPA endorses the addition of provisions regarding whistleblower protection in the Protocols. Such provisions should also include recommendations for ensuring an independent means for potential whistle blowers to raise their concerns. Protocol 7 should be strengthened to outline greater protections in line with current Australian standards as per AS 8001 and AS 8004⁶.

⁶ Available at www.standards.org.au.

Summary

Whilst the Protocols are important in supporting good practices in the decision-making and accountability of university governing bodies, they do not always need to be prescriptive in nature. The Protocols are best seen as a tool alongside other governance initiatives, not as a stand-alone legislative measure for good governance.

CAPA believes that university governance and decision making is strengthened by informed participation. A full range of perspectives is paramount to ensure well-rounded discussion and debate. The skills mix should include members with a demonstrated background and experience in areas both within and outside the university, from both internal and external stakeholder groups. This of course includes university students and staff. Their perspectives and understanding within the sector ensure a firm knowledge base to underpin the decision making of university governing bodies. CAPA believes that students and staff offer a vital contribution and believe it is not in the interests of universities to exclude these groups from offering their skills and experience in support of the healthy functioning of the governing body.

Recommendations

- **The National Governance Protocols should where possible offer descriptive as opposed to prescriptive guidelines.**
- **The National Governance Protocols should continue to include detailed guidelines on reporting and accountability for ‘Controlled Entities’.**
- **The best ‘fit’ for prospective members of university governing bodies, the number of members, their role and means of appointment are matters best decided in consultation with members of the university community. The Protocols should ensure that they have adequate freedom to do this.**
- **The National Governance Protocols should include recommendations for a mix of skills on governing bodies that includes academic and general staff, postgraduate and undergraduate students.**
- **The National Governance Protocols should include whistleblower protection measures in line with the current relevant Australian Standards.**

References

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