

**Submission  
No 13**

## **INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES**

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General Purpose Standing Committee No. 2  
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# Inquiry into the governance of NSW universities 2009

Submission by  
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University Governance Professional Development Program

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discussion | research | practice | change

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## Introduction

The Institute is pleased to make this submission to the NSW Legislative Council General Purpose Standing Committee No. 2 (Standing Committee) Inquiry into the governance of NSW universities. The Institute has long held an interest in the governance of these institutions, and seeks to promote discussion that can lead to insights improving on current practices.

Although the Inquiry's Terms of Reference refer to the current state of governance of NSW universities, the Institute's reflections in this and the attached documents are broadly of what is a relatively homogenous national Higher Education sector, and not necessarily State specific.

The Standing Committee should be aware of the three recent reviews of the Higher Education sector generally, and encompassing university governance in particular, that each raise questions and responses pertinent to the Inquiry's Terms of Reference:

- The 2007 MCEETYA Review of the National Governance Protocols (NGP Review)  
<http://www.mceetya.edu.au/mceetya/mceetya/jche.11474.html>;
- The 2008 OTTE Review of Victorian Higher Education Legislation (VHEL Review)  
[http://www.diird.vic.gov.au/CORPLIVE/STANDARD/PC\\_65242.html](http://www.diird.vic.gov.au/CORPLIVE/STANDARD/PC_65242.html); and
- The 2008 Commonwealth Review of Australian Higher Education (Bradley Review)  
<http://www.deewr.gov.au/HigherEducation/Review/Pages/default.aspx>.

The Institute has made submissions concerning university governance to each of these three reviews, and includes those submissions here as attachments for the Standing Committee's consideration in the NSW context. In addition this preamble will highlight issues therein particularly relevant to specific Terms of Reference of the Inquiry.

The major theme of all of the Institute's submissions has been that that which any legislature can influence by the legal framework that it creates, so called 'hard' governance, is only half the picture. The governance culture, or 'soft' governance, the actual behaviour and actions of governing bodies and governors, cannot be legislated.

However it can be influence by those practices of regulators that shape the environment in which those governance cultures thrive. Two dominant themes in recent years, reflected in the Institute's submissions to the above Reviews, have been the issues of reporting/transparency and ownership/accountability.

## Responses to Terms of Reference

1. Since 2003 the National Governance Protocols (NGP) 2 and 3 have required university governing bodies to adopt a "statement of primary responsibilities" and "duties of the members" that codify the roles of the governing bodies and members, including that of the vice-chancellor "as the chief executive officer of the higher education provider". These are broadly equivalent of the corresponding standards for directors of companies.

Until the repeal in February 2008 of section 33-17 of the Higher Education Support Act 2003 (HESA), all Australian universities were required to report compliance with all National Governance Protocols to the satisfaction of the Commonwealth Minister for Education for the receipt of conditional funding. There should be little doubt that universities possess clear specification of these roles. However as neither the universities' reports nor the Minister's responses are public documents, there is little by way of public evidence to assess the adoption of these roles within a university's governance culture. In our NGP Review submission we quoted a Departmental view that these compliance reports "cannot measure behaviours and the extent to which good practices have been embraced" (see Walters 2006, quoted p7).

2. In addition to repeating the comment above, the Institute has notified Australian universities of documents such as "A Template for Role Description of the Chair of University Governing Body" published by the UK Committee of University Chairs (<http://www.shef.ac.uk/cuc>).
3. The comment above is repeated in reference to NGP 7.
4. The duties and responsibilities of governing body members set out in NGP 3 are the product of our cultural, legal and political evolution both within and without the university community. In our NGP Review submission we discuss the recent international shifts in expectations of governing bodies (pp 5-10). Perhaps the question should be how do we measure the added value governing bodies and their members give to universities?
5. Presuming the existence of the codifications of roles, responsibilities and duties for NGP 2 and 3, the main 'opportunities' for intervention arise because these boundaries are naturally ambiguous and shifting – even then a governance culture that recognises the potential for such shifts is capable of adjusting itself around them.  
There is here a significant difference between university cultures and those of companies, NGOs and public sector departments. The status of the vice-chancellor as the university's 'chief academic officer' enhances the vice-chancellor's authority within the university, reinforced in Australia by a significant tradition investing vice-chancellors as ultimate authorities and chancellors (indeed, university councils) as largely symbolic ones. In the event of what would ordinarily be a resolvable disagreement internal to the governing body, frequently the intentional or not swell of opinion within the university community for or against the vice-chancellor will determine outcomes. In other words, the dissent of the whole or part of the governing body to a vice-chancellor's proposal is interpreted as disloyalty, a "vote of no confidence". In comparable corporate or public organisations the decision of a governing body to overturn that of a CEO is completely ordinary.
6. The review of governance performance is included very briefly in NGP 4. In addition to the general comment on compliance reporting, it should be noted that there does exist a comprehensive literature and practice of performance reviews of governing bodies, including university councils, exemplified by the work of Professor Geoffrey Kiel. Perhaps the question should be what are the universities doing by way of performance evaluation, and to whom are the results being reported, and does that reflect a culture of continuous improvement?
7. Two bodies are primarily responsible to holding a governing body to account for its performance: the governing body itself and the 'owners' of the organisation. The primary incentive for the governing body's self-discipline is avoidance of the organisation's owners' censure in response to performance reports, which raises the two issues of reporting and ownership. The Institute has addressed the complicated, unanswered question "who owns the university?" at length in its submission to the VHEL Review. Once there is a clear identification of the owners of the university, then it will become possible for the governing body to demonstrate its accountability to those owners by transparent reporting of the review of their own performance.
8. In the Institute's submission to the Bradley Review it addressed some of the reasons (page 4) why these questions, while persistent in the Australian debate, are nearly redundant. Internationally the size, composition and 'representational' nature of governing bodies of universities and corporations varies enormously across OECD countries, such that for each example of the 'success' of one model there is a list of 'successes' of its opposite. Arguably all that this shows is that, as Justice Owen observed of HIH, it is much less important that governing bodies demonstrate the trappings of good governance, more so what they actually do.
9. It has been noted that the Commonwealth government has repealed that section of HESA requiring universities to report compliance with the National Governance Protocols, such that even that minimum standard for the sector is effectively voluntary. Consequently the NGP Review is effectively on hold. In this respect the NSW Parliament can lead national initiative in considering what it may require NSW universities to report, and to whom.

