Submission
No 20

INQUIRY INTO THE GOVERNANCE OF NSW UNIVERSITIES

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Date received: 18/02/2009

Inquiry into the governance of NSW universities

Submission

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Executive summary

This submission draws substantially on the findings of my PhD research in university governance, an empirical, qualitative study focusing on the social and cultural processes by which members of Australian university governing bodies construct their understanding of their role and that of the governing body as a whole. The interviews and observations on which my analysis is based were carried out between 2006 and 2008, and I am in the process of writing up the thesis, which also includes a number of journal articles and conference papers produced over the course of the study (see reference list).

My submission is based on the premise that, while legislation and regulation provide a technical context for the delineation of the roles, responsibilities and practice of university governance and governors, social and cultural processes are far more influential and meaningful in building practitioner understanding, capability and effectiveness. Legislation and regulation should therefore be seen as enabling, rather than prescribing, meaningful construction of roles and therefore effective governance practice. This is the focus of my recommendations.

The submission opens with an introduction, in which I put forward my credentials as a researcher, teacher and service provider in the field of higher education, with a particular interest in the management and governance of universities. In the body of the submission, I have grouped the Terms of Reference into topics, under which I have provided a summary of findings relevant to my research, discussion of the implications in relation to the applicable Term(s) of Reference, and a list of the key points arising from the discussion. The topics and key points are summarised in Tables 1a and 1b (pp 4-5). These in turn provide the basis for a number of recommendations for changes in legislation and practice, which are included under Term of Reference 9 (p65) and summarised in Tables 2a-2c (pp 6-8).

A. The governance-management boundary (ToR 1, 2, 3, 5)
○ There is general agreement on the technical aspects of roles and responsibilities; ambiguities tend to emerge in discussions relating to mission, identity, reputation and strategy. ○ Role clarity arises from shared understandings gained through social and cultural interaction rather than from legislative prescription. ○ Chancellor and Vice-Chancellor behaviours and the relationship between them are strong influences on governing body culture and member perceptions of roles and boundaries. ○ Characteristics of a positive governance culture include trust, openness, inclusiveness, commitment, and good working relationships between members. ○ Conflict, or at least tension, is probably inevitable due to the diversity of Council membership. It is constructed, and therefore best dealt with, through cultural and social mechanisms rather than by the application of legislation and rules. ○ Selection, recruitment and development of Council members should take into account "cultural capabilities". ○ Roles and boundaries in relation to policy are reasonably clear, with formation, implementation and reporting clearly in the management domain. Any systemic problems are expected to be remedied and outcomes reported to the Council.
B. Changing roles of governing body members (ToR 4)
○ Perception of change in role varies according to experience and relationship to the university. ○ Members perceive little qualitative change in the technical aspects of the role but substantial change in scope. ○ Members perceive changing expectations of the governing body in relation to institutional strategic directions and external relations. ○ The duty to act in the interests of the university is in itself uncontroversial but its meaning is subject to interpretation, which is in turn influenced by members' perceptions based on individual experience, social identity, cultural norms and the behaviours of the Chancellor and Vice-Chancellor ○ Changes in the Chancellor role include an expectation of greater engagement with the institution and a more strategic role in external relations.

Table 1a: Key points covered in this submission: Topics A and B

C. Performance issues (ToR 6, 7)
o Review of individual performance is problematic because of the voluntary nature of governing body membership. o The Chancellor role increasingly includes responsibility for individual review of performance. This usually involves an informal interview with a developmental rather than evaluative emphasis. o There are few sanctions available to provide leverage in addressing poor performance (as distinct from misconduct or breach of duty) of members. o Dealing with a Chancellor's poor performance is particularly problematic due to lack of available sanctions. Such problems are usually handled using informal approaches by influential Council members. o Targeted preparation, induction, professional development and mentoring programs are appropriate ways to address under-performance resulting from lack of confidence, knowledge and/or experience.
D. Composition of governing bodies (ToR 8)
o Member views on composition and size of Council vary according to their background, experience and relationship to the university. o Diversity of perspectives, complementarity of skills, expertise and experience, good relationships and a culture of trust, commitment and the integrity are key characteristics of a well-functioning Council. Ideally all members, of whatever background, are capable of contributing to this set of characteristics. o There is little or no relationship between governing body size and effectiveness, nor between governing body size and institutional performance. A minimum, rather than a maximum, size should be set down in legislation. o There is little evidence that internal members act in interests other than those of the university, although they may at times interpret these interests differently from external members. o Concerns about internal members centre more on their lack of experience and perspective than on any perceived advocacy for their constituencies. o Some rebalancing of governing body membership may be appropriate in some NSW universities.
E. Selection, recruitment and development issues (ToR 10)
o A range of professional development experiences are made available to members, including seminars, workshops, forums and conferences. Not all members attend, although most try to attend at least some professional development sessions. o Professional development and induction events and sessions vary in quality and appropriateness. Members prefer programs tailored to the university governance context, although some generic programs are rated highly. o Members are curious about practices elsewhere and interested in sharing experiences with other Council members. o Cultural capabilities and interpersonal skills are at least as important as technical skills and expertise, and should form part of Council member selection criteria.
Table 1b: Key points covered in this submission: Topics C, D and E

A. The governance-management boundary (ToR 1, 2, 3, 5)

1. Amendments to university Acts or governance protocols aimed at increasing capacity for conflict management should focus on comprehensive approaches to selection, induction, development and review processes, mechanisms and standards, in which social and cultural capabilities are weighted equally with expertise, experience and technical knowledge.

2. The following principles should be applied in any changes made to legislation, regulations, protocols and guidelines in relation to appointment of a Chancellor.
   - Appointment of a Chancellor is a strategic decision requiring broad consideration of criteria within the Council and refinement by a small, high-quality selection committee.
   - Selection criteria should be developed that encompass a broad range of individual attributes, including background, experience, chairing skills and cultural/social capabilities. The criteria should take into account the strategic directions of the institution. Prospective candidates should be able to demonstrate a general understanding of the higher education sector and a commitment to the institution. Consideration should be given to candidates' professional and social networks with reference to the university's key external stakeholder groups and relationships.
   - The selection committee should include at least one internal and at least two external Council members and the Vice-Chancellor. Usually the Deputy Chancellor, rather than the outgoing Chancellor, would be a committee member, unless he or she is also a candidate. The committee should invite suggestions for candidates eligible for consideration as Chancellor from all members of Council, in order to maximise the benefit of member networks.
   - "Opportunistic" or "political" appointments should be avoided unless there is an overriding strategic justification for this; even if this is the case, the candidate should display satisfactory skills and capabilities in the social and cultural areas. The final appointment decision should be taken by the Council as a whole, on recommendation of the selection committee.

3. A framework for reporting on institutional policy formulation, implementation and ongoing effectives should comprise:
   - A checklist of policies, procedures and outcomes required under the various State and Commonwealth Acts that apply to universities
   - A checklist of policies, procedures and outcomes required by AUQA, either in preparation for audit or in response to AUQA recommendations following an audit cycle
   - For new or substantially amended policies and procedures, a statement or checklist reporting on the process of formulation, including an overview of the nature and scope of internal and external consultations, as appropriate
   - Evidence of a cycle of review of policies and their effectiveness, and actions taken to remedy any deficiencies or to enhance policies and procedures
   - A set of indicators relating the operations of policies and procedures to strategic and mission-based values and goals.

4. University enabling Acts should include a clearer definition of the Vice-Chancellor's executive powers in relation to entering into contracts, representing the university in financial, commercial and industrial negotiations, and financial delegation, and a specification that the Chancellor or Council may not usurp those powers other than in the case of the Council as a whole losing confidence in the Vice-Chancellor. Any part of this role may be delegated to another member of staff. This does not alter the requirement for the Vice-Chancellor to report to Council and to seek its approval for major contracts and expenditures, as required by the Council.

Table 2a: Recommendations: Topic A

B. Changing roles of governing body members (ToR 4)

5. Universities should be encouraged to develop a code of practice or framework to guide governing body members in any activities undertaken to promote the university's community engagement and external relations. These should include a clear delineation of the Vice-Chancellor's role in representing the university, ethical guidelines and communication and reporting processes to ensure that member activities are appropriately aligned with those of the executive management.
6. Universities should be encouraged to develop a code of practice or framework to guide governing body members and university executive in undertaking activities relating to strategy, in order to better leverage the individual and collective expertise and experience of Council members. In particular, these should provide for inclusion of Council members in strategic discussions, direction-setting and review of outcomes.

C. Performance issues (ToR 6, 7)

7. Protocols for addressing a Chancellor's poor performance should include the following steps:
   i. Initial informal approaches, in which the VC and/or a representative group of members express the Council's concerns directly to the Chancellor, and seek an undertaking that these concerns will be addressed, over an agreed time period.
   ii. If no improvement is discernable after the agreed time period, a further informal approach, suggesting that the incumbent should consider resignation if concerns are not addressed over a further agreed time period.
   iii. If the Chancellor refuses to acknowledge a problem, or refuses to resign, the Vice-Chancellor and/or a representative group of members compile a written statement of members' concerns. This should be presented to the Chancellor with a request that the incumbent respond in writing to the concerns raised and present this response in camera to the next full Council meeting. Note that this may require provision in standing orders to enable a motion of dissent from the Chair to be put to the meeting.
   iv. If the Council regards the Chancellor's response as satisfactory, the process is suspended until such time as the Council reactivates it on the grounds of continued poor performance. In this case, the process begins again at step iii). If the Council regards the Chancellor's response as unsatisfactory, it may proceed with a no-confidence motion in camera.
   v. If the no-confidence motion is carried by a significant majority of the membership (for example, at least two-thirds), the Chancellor is dismissed and the position declared vacant until such time as a new Chancellor can be selected and appointed. In the meantime, the Deputy Chancellor or another external member elected by the Council should assume the Chancellor's role in an acting capacity. Ideally, this would be handled with discretion, avoiding undue media attention.
   vi. If the no-confidence motion is defeated, or carried by an insufficient majority, the process is suspended until such time as the Council reactivates it on the grounds of continued poor performance. In this case, the process begins again at step iii).
8. That a protocol including the process outlined in Recommendation 7 be adopted to guide the management of poor Chancellor performance, and that this be embedded either in university enabling Acts or required in by-laws by regulation.
9. University enabling Acts should include, as one of the duties and responsibilities of the Chancellor, a regular developmental review of individual members' contributions and performance. These should take a form determined by the Council, or a committee thereof. The process undertaken and any outcomes relating to the effective fulfilment of the Council's and members' roles should be reported on and included in the university's annual report. Provision should be made for the Chancellor to delegate some or all of the review process to appropriately experienced and capable Council members such as the Deputy Chancellor and/or a committee chair.

Table 2b: Recommendations: Topics B, C

D. Composition of governing bodies (ToR 8)

10. Amendments to university enabling Acts or governance protocols should be underpinned by principles of inclusiveness and diversity, ensuring that a productive and dynamic combination of expert and stakeholder voices continue to contribute to the governance of our universities.

11. The legislated cap on the size of university governing bodies (22) be removed, so that institutions may choose to have a larger governing body if they deem it necessary. The cap should be replaced with a minimum level of membership and minima for each membership category. 15 members should be the absolute minimum considered.

12. The number of Ministerial appointments on NSW university governing bodies be reduced from six to three, transferring the responsibility for appointing three positions to the governing body. Alternatively, governing bodies should be allowed to match Ministerial appointments with direct appointments, even if this means exceeding 22 members.

13. Current levels of staff-elected members should remain as a minimum. Councils with only one student-elected member should have this increase to two, possibly elected by and from separate electorates (undergraduate/postgraduate, or coursework/research).

E. Selection, recruitment and development issues (ToR 10)

14. Amendments to legislation and protocols should ensure that they enable rather than impede the fostering of diversity, inclusiveness, trust and openness within the Council, and that they provide for the valuing of non-technical, interpersonal and cultural capabilities as well as technical and professional skills, in recruitment, selection, review and development processes.

15. Consideration should be given to convening an annual workshop/professional development conference for members of NSW university governing boards. Such a program should be jointly funded by the universities and the NSW Government, and support sought from Universities Australia and the Chancellors Committee. An organising committee comprising a member from each participating Council should be established, with institutions taking turns to organise and host the event.

16. University by-laws should include additional criterion for eligibility to stand for election to the Council, as follows:
    - Attendance at a short preparation course or seminar series covering the areas of
        - Council and member roles, responsibilities and working relationships,
        - governing body culture, meeting procedures and language conventions, and
        - expectations of member contribution, including time demands and committee membership.
    - Attendance at the non-confidential sessions of at least two Council meetings and a committee meeting.
    - Participation in a meeting with the Chancellor (or delegate).

    Provision should be made to allow waiver of some or all of these requirements in recognition of prior experience

Table 2c: Recommendations: Topics D, E

Introduction and author's background

I am a Lecturer in Higher Education Development (Leadership and Management) at Macquarie University. My research area is university governance, and I am currently completing my PhD in this area, investigating the ways in which Australian university governing body members understand and construct their role and that of the governing body as a whole. A brief overview of my PhD project is provided below, in order to illustrate the knowledge base on which I will draw in this submission.

My teaching in the Macquarie University Postgraduate Program in Educational Leadership relates to issues of governance, management and leadership in universities. In this program, I teach core units of study in organisational theory, leadership theory and the organisation, structure and governance of higher education. As a member of the Macquarie Learning and Teaching Centre, my role includes developmental and strategic project work in collaboration with Executive members, Faculty Deans, Heads of Department and other middle managers and individual staff members.

My general and professional interest in the field of higher education, and my teaching and research focus on university governance, have enabled me to develop both broad and detailed knowledge of the sector and the institutions within it, an analytical perspective on policy and an excellent appreciation of the complexity of higher education in a globally competitive environment. I am therefore confident that this submission will be a useful contribution to the work of the Inquiry and to the ongoing public and policy debate on university governance. I aim to provide a fresh perspective, based on very recent empirical research. This will assist the Inquiry in bringing about an enhanced legislative, policy and regulatory environment for university governance, that will in turn enable, support and sustain the socially and economically vital work of our universities.

In addressing the Terms of Reference, my submission will draw on findings and insights gained over the course of my PhD research, in order to support recommendations on structural, legislative and regulatory matters with a strong empirical evidence base that acknowledges the central importance of culture and human relations to the effective practice of university governance.

Overview of PhD research project

My PhD project addresses the lack of empirical studies of the "people" aspect of university governance at the board level (de Boer, Huisman, & Meister-Scheytt, 2007; Kezar & Eckel, 2004; Larsen, 2001) and the acknowledged limitations of confining discussion to formal roles and structures (Hilb, 2005; Huse, 2007; Sonnenfeld, 2002). Rather than focusing on legislation, regulatory mechanisms and formal structures, my study has taken these elements of governance as a given context for the practice of governance and governors, examining the cultural, social and micro-political interactions that occur within this context.

The study focuses on the experience and perceptions of individual practitioners, using qualitative methods to investigate university governors' understanding of their role and that of the governing body as a whole, and how they construct this understanding. The primary data consist of 36 initial and 24 follow-up interviews with university governing body members from seven universities in four Australian jurisdictions. This was supplemented with observations of governing body meetings and a range of documents such as Council papers, minutes and induction material.

The participating universities cannot be identified for reasons of confidentiality, but they included Group of 8, Australian Technology Network (ATN) and "Dawkins" universities, in both urban and regional areas. Governing body members of all categories (ex officio, appointed and elected) were interviewed, including chancellors and deputy chancellors, committee chairs, chairs of academic boards, general and academic staff, students, governing body and Ministerial appointees, and a vice-chancellor. The external members (neither staff nor students of the university) in the sample came from a range of backgrounds, including educational, financial, legal, corporate, small business, public sector and not-for-profit sector. The internal members included those elected by staff (academic and general) and students, as well as *ex officio* members (Chair of Academic Board, Vice-Chancellor).

It is important to acknowledge that the methodology used in this research and the nature of the research questions do not result in a random or representative sample of either institutions or individual governing body members. On the contrary, the combination of voluntary participation and the sensitivity of the data means that it is likely that the institutions and individuals who agreed to participate took the view that their practices

would bear up reasonably well under a researcher's scrutiny. This view was borne out in the interviews, in which most (but not all) participants expressed a high level of overall satisfaction with the functioning of their governing body. This is not to say that there were no criticisms: people spoke very frankly about negative experiences and their concerns about their governing body's practices, effectiveness and capacities. Nevertheless, while no inferences can be drawn about non-participating institutions, it seems reasonable to assume that the research constituted a study of good, if not best, practice in university governance.

My findings confirm those of many authors in the general corporate governance field, who have emphasised that compliance with codes of practice, guidelines, regulation and legislation, while it may be necessary, is of itself insufficient to ensure effective organisational governance (Hilb, 2005; Huse, 2007; Sonnenfeld, 2002). Governing body culture, the values, behaviours, experience and expertise of members, and the interactions and relationships between these individuals are far more important factors in determining the nature and effectiveness of governance practice. Cultural norms, perceptions and experiences interact with formal role definitions, influencing the construction of individual and shared understandings of roles and responsibilities and determining the nature of the relationship between key governance and management roles and structures.

In the following sections, relevant findings from my research are provided in relation to each term of reference, followed by discussion and identification of key issues. Some terms of reference have been grouped together to enable a more coherent presentation. Formal recommendations are included in the response to Term of Reference 9 (p65).

A brief note on nomenclature: The overall governing bodies of Australian universities are variously designated Council, Senate or Board of Trustees, while the academic governing body is usually, but not always, termed Academic Board or Academic Senate. To avoid confusion, this submission will use the terms *Council* and *Academic Board* to refer to the overall governing body and the academic body, respectively.

Addressing the Terms of Reference

A. The governance-management boundary

Terms of Reference:

1. *Any apparent lack of clarity in the roles of governing bodies and Vice-Chancellors and the consequential opportunities for conflict*

2. *Any apparent lack of clarity in the delineation of duties of governing bodies and the Chancellors*

3. *Identification of the roles and responsibilities of the Vice-Chancellor, the governing body and the Chancellor in relation to the formation of University policy and grievance procedures, and the communication of such policies to the student body*

5. *Opportunities for governing bodies and chancellors to intervene in the responsibilities that more properly lie with the Vice-Chancellor as Chief Executive Officer*

Relevant findings from my research

A1 Council members draw on sources of information including induction material, the relevant university's enabling Act and other relevant legislation as a foundation for their understanding of the technical and procedural aspects of the Council, Chancellor, Vice-Chancellor and individual member roles. There is little confusion or controversy over roles in these areas.

A2 More complex, relational understandings of the Council, Chancellor, Vice-Chancellor and individual member roles are constructed through social, cognitive and cultural process. Council members' conceptions of these roles differ depending on Council culture and social norms, members' social group identification and their individual experience and capabilities (Rytmeister, 2008).

A3 The governance-management boundary and the roles of the Council and VC lack technical clarity in some areas, principally those relating to:
- university strategic direction, mission, identity and reputation;
- Council's access to information;
- risk management, particularly in relation to reputational risk and negative publicity arising from
  - academic issues (student plagiarism, misconduct in research, academic standards),
  - commercial activities, including involvement in controlled entities, and
  - escalation of industrial disputes, especially where staff redundancies are involved.

Tensions in these areas are best dealt with through a collaborative process of meaning-making and learning rather than through the application of technical rules.

A4 The behaviours of the Chancellor and Vice-Chancellor, and the relationship between them, are key determinants of Council culture and effectiveness (Rytmeister, 2008). They are highly influential in building collective and individual understanding of the nature of the governance-management boundary.

A5 Despite the diversity of role and boundary perceptions amongst members, the interview data indicated the following commonalities in role construction:

Chancellor

Members see Chancellors as "setting the tone" for the Council (Rytmeister, 2008): an essentially cultural and social role. The Chancellor role is changing and developing, becoming in some ways more like that of a commercial corporate board chair. On the other hand, members either expect as a norm or accept as a peculiarity of universities, that Chancellors will display a higher level of collegiality and conscious inclusiveness than might be the case in the commercial world. Member perceptions of the Chancellor role can be summarised as follows:

- chairing Council meetings (efficiency, effective guidance of discussion)
- managing Council machinery (agenda setting, committee allocations etc)
- fostering relationships and cooperation (modelling behaviour, setting standards)
- governance-management boundary-setting, maintenance and management (with the VC)
- demonstrating a productive and harmonious relationship with the VC

Vice-Chancellor

Member perceptions of the VC's role centre on his or her capacity to inspire confidence and define roles. This is achieved through:

- the VC defining and building his or her relationship with the Council (including provision of information, interaction with members, communication)
- demonstration of competence, capability and integrity
- establishing and maintaining the governance-management boundary
- demonstrating a productive and harmonious relationship with the Chancellor

A6 While members see the VC as the institutional leader and Chief Executive Officer, there is an expectation that the Chancellor will act to deal with a VC's poor performance or impropriety; on the other hand, members are very sensitive to any attempts by the Chancellor to intrude on the management domain, and are highly critical of this behaviour.

A7 Given the different perspectives and backgrounds of governing body members, a certain level of ambiguity and tension around roles and the governance-management boundary is inevitable, but this only rarely translates into overt conflict. Overt conflict tends to involve the actions of an individual member whose behaviour is seen as inappropriate, disruptive or at odds with expectations. Other sources of conflict are generally perceived by participants as underlying tensions unless and until a crisis point is reached. Of particular relevance here are:

- concerns about the performance of the institution, Chancellor and/or VC;
- breakdown in the Chancellor-VC relationship;
- perceived inappropriate boundary-setting, defence or encroachment by the VC and/or Chancellor in relation to the governance and executive roles; and
- information asymmetry between Council and Executive management.

A8 Tensions and even conflict are not necessarily problematic if there remains a sufficient level of mutual respect and trust amongst the membership. Research participants indicated that Council fulfils its role and deals with conflict most effectively when:

- its culture is one of openness, respect and trust, and
- its membership comprises individuals with
  1. appropriate commitment, experience and expertise, and
  2. the capacity to think critically, monitor and manage their own behaviour and work constructively with diversity.

Effective management of issues at the governance-management boundary is therefore a collective responsibility. It relies to a large extent on the willingness of

- the Chancellor and VC to allow reasonable discussion of boundary issues in order to build shared understanding, and
- other members of Council, to respect the views of others and to accept the collective determination of Council on such matters, even if they disagree to some extent.

A9 *In relation to the formation of policy (ToR 3):*

- There was reasonable consensus amongst study participants that the VC has responsibility for the devising of institutional policy and procedures, through a process of internal delegation, consultation and discussion. The VC is also responsible for implementation of policy and for reporting to Council on outcomes.
- According to the accounts given in interviews, Council has general oversight of policies and procedures but would not normally be involved in review or approval, with the exception of key strategic policies, major changes in procedures, and those areas of policy subject to external regulation (for example, student grievance procedures, changes to workforce, change in educational profile, restructuring proposals). Council members might review these major policies (individually or in committee) and seek clarification or amendment before final approval is given.
- Provision of information to students clearly falls into the operational area; the Council may be informed of general communication strategies but would not generally be involved unless a major breakdown in internal systems posed a legal, financial or reputational risk to the university.

Discussion

Bargh, Scott and Smith (1996) discuss the nature of the governance role in relation to *allocative* and *authoritative* resources. *Allocative* resources are tangible, externally-valued and usually the central concern of legislative and regulatory regimes as well as of governing bodies traditionally. These are the areas in which there is general agreement about the governance-management boundary, according to my findings (A1). In relation to allocative resources and decisions, the executive role is relatively easy to define, being focused on operations and the day-to-day business of the institution. Similarly, the

monitoring, oversight and approval roles of the governing body are reasonably clear, and provided the relationship between governors and Vice-Chancellor is sound, these matters are rarely a source of conflict on their own. They may, however, become so in the presence of conflict over authoritative resources and decisions.

Authoritative resources are intangible, internally-valued and mission-based (Bargh, Scott, & Smith, 1996), and it is in deliberations over these that the governance-management boundary can blur somewhat (see A3). Authoritative resources were previously the domain of internal collegial governing bodies such as academic boards (Bargh, et al., 1996). However, a consequence of the trends in universities towards professionalised management (Moodie, 1995), adoption of corporate governance and management models (Bessant, 1995; Marginson & Considine, 2000; Meek & Wood, 1998), increasing scope and complexity (Collis, 2004) and diversification of revenue, is that authoritative decisions have become more of a concern for the overall governing body. Given this relatively recent shift, it is unsurprising that it is largely in these areas that participants in my study identified some lack of role clarity (A3), and that their understanding of these roles varied according to their background, experience and relationship to the university (A2).

The extent to which Council, Chancellor and Vice-Chancellor roles can be directly clarified in legislation, protocols and guidelines is largely limited to the allocative domain. In relation to the authoritative domain, Council, Chancellor and Vice-Chancellor roles, and the governance-management boundary, rather than being defined by rules set down in legislation, are constructed through members' perceptions, interpretations and attributions, based on social and cultural norms as well as prior experience and knowledge (A2, A3). There is, therefore, little point in seeking to clarify roles directly in legislation, other than in very broad terms, as those areas in which an unambiguous legal definition is possible are those on which there is general agreement and little contestation (A1). Rather, if any legislative or regulatory changes are to be made, they should aim to enhance the capacity of governing bodies to build collective understanding and manage role contestation in the non-technical, but vitally important, authoritative domain. One mechanism to consider is enhancement of nomination, appointment, induction, development and review processes, to include an emphasis on diversity and the use of a broader set of capabilities in selection criteria. This is the subject of discussion below and a recommendation in relation to Term of Reference 9 (see p65).

Constructing roles – a social and cultural process (A2, A3, A4, A5, A9)

The interesting point that emerged from investigation of member perceptions of the roles of Council, Vice-Chancellor and Chancellor, is the central importance to role construction of the interaction between individual knowledge and experience, the social and cultural norms of the Council and relational activities including informal interaction between members and the behaviour of the Chancellor and VC. Members' experience of and interaction with Council culture creates meaning and shared understanding of roles and the boundaries between them. While differences in role perception remain, due to the diverse perspectives and backgrounds of members, my study provides evidence that certain cultural features are conducive to attaining a workable level of consensus around roles and boundaries. These include an atmosphere of trust and mutual respect, inclusiveness, openness, commitment and cooperation.

But how is such a culture created and maintained? The answer to this question is complex, but some key influences can be identified. Of central importance are the behaviours of the Chancellor and Vice-Chancellor, and the relationship between them, and it is the relational aspects of their roles, rather than the technical aspects, that have the greatest impact on Council culture, the creation of shared purpose and understanding and the construction of collective and individual roles. The main categories of activity are listed above (A5), but it is worth considering some aspects in a little more detail to illustrate the interaction between their influence and individual perspectives, and the resulting variation in perceptions.

Vice-Chancellor

Most study participants indicated that there was a high level of trust in the VC within their Council. They had no wish to closely question or interfere with the VC's operational and executive role, and several, particularly external members, stated that they assumed that the VC would carry out appropriate internal processes before bringing matters to the Council. On the other hand, some participants expressed other views, ranging from doubts as to whether Council was being told "the whole story", concerns that internal consultations were inadequate or unease with the lack of alternatives presented, to outright distrust of the VC and Executive. In some cases, internal members expressed reservations about process, not because they mistrusted the VC per se, but because they were aware of greater internal dissent and controversy than the VC acknowledged in reports to the Council. This situation can cause some discomfort for internal members, who may not be

willing to speak openly in Council against the head of the university. In those Councils in which there was a high level of trust and openness, however, people with misgivings did feel able to raise the issue "offline" with the Chancellor, thus giving voice to their concerns in a non-confrontational and low-risk way. A number of internal members expressed satisfaction with this process, feeling that their concerns had been taken into account in further discussions, and that in some cases, modifications to proposals had been made that addressed their concerns.

In a few instances, interviewees (both internal and external) had experienced a sense of futility in seeking to question, critique or raise concerns about policy and other proposals brought to the Council by the VC. These situations tended to be accompanied by other signs of loss of confidence or trust, including factionalised Councils, concerns with university or VC performance, internal industrial problems, negative publicity and breakdowns in relationships (especially that between the Chancellor and VC). In the presence of several of these circumstances, the Council may become dysfunctional and its problems only resolved through some form of renewal: a change in VC, Chancellor or a proportion of Council members.

Chancellor

In order to achieve an appropriate balance between the governance role of oversight and monitoring and the executive role of the VC, Chancellors undertake a highly relational set of activities: consulting with the VC, committees and individual Council members to identify possible controversies, likely areas of disagreement and areas of ambiguity.

Several participants saw this "offline" work as highly constructive, enabling issues to be dealt with efficiently so that meetings and decision-making could be streamlined. Consultation in this vein was seen as inclusive and helpful, giving people who might otherwise be reluctant to speak on an issue in full Council an opportunity to be heard. On the other hand, a number of participants were clearly very sensitive to signals that such consultations had been undertaken with a view to gathering support for a particular position rather than canvassing diverse views. Perceptions that the VC and Chancellor had been "doing the numbers" with selected members resulted in feelings of suspicion and exclusion, and were clearly seen as unhelpful, if not destructive, in relation to the Council's governance capacity.

Chancellor–Vice-Chancellor relationship

My interview data indicate that the Chancellor's and Vice-Chancellor's knowledge, skills and personalities need to be compatible and complementary in order to maintain a productive relationship. Finding A6 illustrates the delicacy of the balance between roles in this key relationship, and the fact that its nature varies depending on the individuals, and is very much the product of a negotiated understanding between the incumbents. The relationship varies over time depending on the circumstances, with the Chancellor being more or less "hands on" as required.

While Council members value a cooperative, harmonious, mutually respectful and supportive Chancellor-VC relationship, some indicated that the relationship can also be *too* close: the Chancellor may defend rather than critiquing where necessary, and may not allow appropriate questioning of the Executive, thereby undermining both the governance capacity of the Council and its confidence in the Vice-Chancellor. It is important that the Chancellor maintains a certain level of independence from the Vice-Chancellor, in order to properly oversee the VC's performance and act as a mentor, adviser or "critical friend", as the situation demands.

Constructing the governance-management boundary (A3, A4, A6, A7)

There are many opportunities for Chancellors and Councils to intrude on the Vice-Chancellor's domain and to intervene in operational and executive functions. On the other hand, Vice-Chancellors also have many opportunities and the resources (including staff, superior knowledge of the institution and sector and control of information flow) to impede the governance role of monitoring and overseeing operations. Therefore the real problem here is again one of balance – how does the Council define that point at which their interest in, and concern for, the VC's and institution's performance switches from oversight and monitoring to executive decision-making? At the same time, how can the Council ensure that it is being provided with all of the information it needs in order to fulfil its role with the due diligence required of it?

There appears to be no simple answer to these questions (which is just as well, or people like me would have nothing to research!) The responses given by participants in my study illustrated the complexity and human relations aspects of defining, maintaining and defending the governance-management boundary, in particular, the influence of individual

experience and cognition, and the importance of trust. When asked questions like those above, through which I was exploring their views on defining, approaching, observing, defending and if necessary questioning the boundary, interviewees' responses varied according to their background, experience, expertise, closeness to the VC and Chancellor, and relationship to the university. Their answers, collectively, also provided strong indications of those cultural features that best enable the establishment of a shared understanding of the governance-management boundary and constructive approaches to dealing with conflict or tension at and about the boundary.

While the 36 interviewees held diverse views, they can be briefly summarised as follows:

- Several participants (usually external members with commercial corporate governance experience, often from financial and accounting backgrounds) saw the boundary very clearly, based on their experience and understanding. They felt little need to discuss it, and expressed some impatience with those Council members who insisted on approaching and questioning at the boundary, as they saw it. Their trust in the VC and Chancellor was implicit, and although they did not necessarily value the contributions of all members, they felt that the Council was generally fulfilling its role. Most of these members had served at least one full term on the Council, and some were committee Chairs. They were therefore familiar with the Chancellor and VC and embedded in the prevailing culture and social order within the Council.
- A small number of interviewees (internal elected and external members, the latter tending to have commercial or not-for-profit governance experience but not in the group of members closest to the Chancellor or VC) took the view that the Chancellor and VC were setting the boundary in the wrong place. They expressed concern at the apparent manipulation of the Council by the VC and the compliance of the Chancellor in this. They questioned the comprehensiveness of the information being brought to Council, and were suspicious about "sanitisation" or "filtering" by the VC. Some explicitly expressed a lack of trust in the VC; for others it was not so much a case of the VC's lack of trustworthiness as a natural progression in the "life cycle" of a chief executive – an expected stage after a certain period in office, at which the incumbent seeks to defend and often expand their domain and locus of control.
- The majority of participants (internal, external and with a mix of backgrounds) shared the view that, while in most situations the governance-management boundary and the respective domains of the Chancellor, Council and VC are clear, there are "grey areas"

in which the boundary becomes malleable, and where different perceptions amongst Council members, including the VC and Chancellor, need to be explored in order to make sense of the boundary in the context of the issue under discussion.

Role and boundary tensions and conflict (A6, A7, A8)

The sources of conflict identified in the research findings (A7) are situated at the nexus of the relationship between the governance and management domains, both in the abstract and as personified by the Vice-Chancellor and Chancellor. They are, however, viewed differently by different people (A2), and this is important to recognise in seeking mechanisms for conflict management, because the composition of Australian governing bodies, being both stakeholder- and expertise-based, ensures a diversity of interests, views, experiences and backgrounds amongst members. In the presence of diversity of interests, conflict is inevitable (Bolman & Deal, 2003; Morgan, 1997). The range of views of the governance-management boundary summarised above illustrates this assertion, providing evidence that the governance-management boundary is almost inevitably subject to contestation, debate and dissent. Remedies for conflict should therefore focus on managing it productively rather than the (probably) futile pursuit of its prevention.

Agreement on the boundary and how it is established, maintained and managed is not always possible, as some diverse views are simply irreconcilable. However, a number of study participants commented on the need for diverse views to at least be heard, and that in most cases people would accept the majority view provided they had had a chance to put forward their own and had it accepted as valid. A level of self-management and maturity is required of Councillors in these instances, although an effective Council culture should be able to tolerate and manage a reasonable level of dissent amongst members.

Council members who are unable to accept a majority view, even after reasonable discussion, are regarded as behaving outside the social and cultural norms of the Council, and this may cause conflict or at least discomfort amongst other members. If this conflict is ongoing and begins to obstruct the fulfilment of the governance role, members usually expect the Chancellor to act, initially through a private approach to the individual or individuals concerned, but in the last resort through censure and control from the chair. It is important to note that study participants had witnessed such situations only very rarely,

and that in their experience problems are usually resolved long before conflict becomes overt or obstructive.

Some approaches to dealing with conflict at the governance-management boundary were seen by participants as highly constructive, because they allowed for a range of views to be heard and for the building of individual and collective understanding. Constructive approaches include:

- Prior identification by the Chancellor and VC of issues likely to lead to boundary tensions or conflict, and the Chancellor openly acknowledging the tensions and leading discussion of them, either "offline" in preparation for the Council meeting, during the Council meeting itself.
- Promoting a culture of reflection and review, so that boundary issues become a part of regular performance reviews and are included in the agenda for Council retreats and planning days.
- Inclusion of a discussion on role and boundaries in induction and development sessions and resources, for both new and existing members.
- Chancellor and VC presenting their relationship in such a way that demonstrates a balance of power in their shared understanding of, and communication about, the boundary, rather than the VC apparently determining the boundary unilaterally and the Chancellor defending the VC, or the VC and Chancellor themselves being in conflict over the boundary.

The last point illustrates the importance of the Chancellor-VC relationship and of both incumbents maintaining the confidence and trust of the Council. The first three points demonstrate the importance of Council leaders (Chancellor and VC) recognising and valuing a diversity of views and encouraging their expression within the bounds of a defined social process, whether one-to-one contact or a formal meeting. This builds not only an inclusive and cooperative culture, but also the shared understanding of the issue at hand and the nature of the governance-management boundary amongst Council members. The process of listening and responding to diverse views reinforces norms of mutual respect and builds trust between Council members. On the other hand, Council members are busy and meetings are short and infrequent, so the Chancellor needs to exercise strong chairing skills in order to balance the need for building a reasonably common position, if not a full consensus, with the need for efficiency in meetings and decision-making. While

unilaterally imposing boundaries is unhealthy, spending many hours deliberating, on what to many members is merely a process issue, is also unproductive.

This discussion of constructive management of role and boundary tensions and conflict relies heavily on two assumptions: firstly, that the Chancellor has the capacity and inclination to provide the required leadership, and secondly, that the Chancellor-Vice-Chancellor relationship is perceived as positive, constructive and balanced, thereby maintaining the Council's confidence and trust in their joint capacity to lead and to establish appropriate boundaries. If either or both of these assumptions are not met, the constructive approaches to boundary tensions listed above are unlikely to emerge. A number of scenarios may unfold: these are considered in Section C, which looks at performance issues.

Possibly the most destructive boundary conflicts are those that involve disagreement between the Chancellor and Vice-Chancellor. A recent example is at the University of New England; another from the relatively recent past occurred at the University of Sydney. In these cases, the Chancellor allegedly breached the governance-management boundary and attempted to exercise executive and representative functions that were seen as lying within the VC's domain. I am aware of other cases drawn from the reported experiences of my study participants and from my own observations at conferences, seminars and forums. Generally they are handled discreetly, without the adverse media attention and public meetings that have characterised the UNE dispute.

It seems that these cases of boundary transgression tend to occur in Councils in which the social and cultural cohesion, trust and mutual respect is poor, commonly due to dominance by either the VC or the Chancellor, factionalism, poor communication and/or inadequate provision of information. In these Councils members may not feel empowered to act on any concerns they have over role definitions and boundary problems. Further, these types of individualised conflicts may indicate inadequacies in both the selection criteria and recruitment processes used to appoint Chancellors. This is discussed in more detail below.

Building Council capabilities: a focus on recruitment, selection and development

As I argued earlier, problems arising from individual qualities and attitudes or from social and cultural aspects of governing body practice cannot readily be solved directly by legislation or regulation. Apart from clarifying the executive powers of the VC, creating

additional rules to deal with these relatively rare "bad cases" and poor appointments is unlikely to be productive. Rather, in recognition of the way roles are defined and conflict dealt with socially and culturally through interaction between different interests and perspectives, any legislative mechanisms should focus on ensuring that the people appointed or elected to serve on university Councils, including the Chancellor, are of the highest calibre.

The National Governance Protocols (Department of Education Science and Training, 2004) established some conditions relating to recruitment and selection (Protocols 5 and 6), they focused on technical and legal obligations, expertise and experience more than desirable personal qualities. While the research evidence indicates that governing body members should, collectively, encompass a broad range of experience, expertise and knowledge about the university and the context in which it operates, this is on its own insufficient. They must also have the capacity to build and maintain an effective governance culture, to behave appropriately, think critically, and interact with others constructively, even if they disagree with them (A8). These "cultural capabilities", while acknowledged as important and considered to some extent in selection processes in at least some university Councils, need to play a more central role in member recruitment and selection practices and in ongoing professional and organisational development.

Clearly it is difficult to legislate for the inclusion of cultural capabilities and desirable personal qualities. Nevertheless, it is possible to refine, whether in university Acts and By-laws or in protocols and guidelines, the processes of selection and development that will help to ensure the building and maintenance of university Councils as effective social and cultural systems. In such systems, role clarity can be enhanced through a process of constructive interaction between people of diverse backgrounds and views, in a context of mutual respect, trust and commitment to the institution. This is an indirect way to build capacity to manage any conflicts that arise from differing interpretations of the roles of university governing bodies and Vice-Chancellors.

Selecting the Chancellor

The Chancellor's role is viewed as highly important in managing the Council and creating and maintaining an effective governance culture. Together with the relatively unusual but by no means rare public airing of boundary and relationship problems between Chancellors

and Councils and/or Vice-Chancellors, this provides good reason for Councils to take extra care when selecting a Chancellor, to ensure that an appropriate appointment is made.

One of the problems identified by some study participants in relation to the recruitment and selection of Chancellors is that there is no career path that leads to the position of university Chancellor. Australian university Chancellors come from a range of backgrounds, including higher education (three are former Vice-Chancellors), the law (judges have been somewhat over-represented in the ranks of Chancellors), public sector administration, and increasingly, business and industry. It is highly unlikely that any steered their careers specifically towards university Chancellorship, although several were selected for the position after several years of Council membership. Indeed, some study participants commented that the type of person who makes a good Chancellor is precisely *not* the type who would seek it out or respond to an advertisement.

Keeping in mind that my study design and topic almost certainly led to a research sample biased in composition towards the "good practice" end of the spectrum, it is perhaps instructive to consider an example from one of the participating institutions (Exhibit 1, over page), in which there was general consensus about the high quality of both the appointment process and the outcome. The way in which this institution determined selection criteria and carried out the appointment process for a new Chancellor demonstrates not only a perception that this is an increasingly important role (A4, A5, A6), but that a mixture of factors needs to be taken into account. A key indicator of this perception is that the process in this institution was treated as a highly strategic one. In addition, the comments made by members of the selection committee when presenting their recommendation for appointment reinforce the point that personal qualities and capabilities are at least as important in practice as formal qualifications, expertise and experience.

Given the central importance of the Chancellor-VC relationship to the effective functioning of the Council (A4; Rytmeister 2008), the VC needs to be confident that he or she can form and maintain a mutually respectful and productive relationship with the Chancellor. Each, therefore, should be involved in the appointment of the other. On the other hand, as noted earlier, it is important that the Chancellor maintain a certain level of independence to enable effective fulfilment of the monitoring and oversight roles.

Therefore the VC must not be the only or dominant person involved in selection of the Chancellor.

There is also a risk attached to the Council nominating its own leadership: stagnation may result from appointment of people drawn from a relatively small pool of members' professional or personal acquaintances, with similar backgrounds, experiences and views. This risk can be minimised by taking an inclusive approach to membership of the selection committee and by undertaking broad consultation and a strategic approach in formulating selection criteria. Any remaining risk is outweighed by the advantages of keeping the decision at institutional level where core values of the university reside, providing greater likelihood that the appointee will work with the prevailing Council culture and ensuring respect for defining university characteristics such as independence, autonomy, self-accrediting status and self-governance.

Exhibit 1: Appointing a Chancellor at an Australian University

The process commenced well in advance of the end of the current Chancellor's term, the incumbent having indicated that a further term would not be sought. Selection criteria were determined through discussion within the Council, aided by an issues paper produced by a long-standing and highly respected member, and refined by a committee constituted for the purpose. This committee included members from all categories – internal, external and the Vice-Chancellor, and was chaired by the Deputy Chancellor.

The canvassing of criteria included consideration of the overall strategic directions of the institution, its key stakeholder groups, current partnerships and possible new partnerships, and community engagement and networks at local, state, national and international levels. The issues paper included reference to essential and desirable personal and professional qualities and capabilities such as compatibility with the Vice-Chancellor, chairing skills with a consensus orientation in the presence of diversity, strategic thinking skills and a good understanding of the governance-management boundary and partnership.

A search was conducted and prospective candidates identified and considered. The selection committee made a recommendation for appointment to the Council at a full meeting, where I was fortunate to be present. While I cannot provide specific details, as the item came under confidential business, I was struck by the fact that when each selection committee member commented on the recommended candidate, they emphasised above all else the personal qualities of the nominee. They spoke of the compatibility of the candidate's personality and interests with those of existing Council members, and capacity to "fit in" to the Council culture and to chair the Council successfully.

Roles and boundaries in relation to policy formation (ToR

Participants in my study were not asked specifically for their views in relation to the formation of university policy and grievance procedures, although the interviews provided clear indications of certain aspects of role construction in this area (A9). While they clearly saw the formation and implementation of policy as a management responsibility, they did become engaged with the process at the level of monitoring, oversight and risk management. This largely involved the Council or one of its committees reviewing drafts, satisfying itself that any required information had been published, and recommending final approval of policy and procedures. The Chancellor coordinated Council discussions and processes, communicating and consulting "off-line" as necessary.

In the context of describing their role in relation to policy, several participants stated that they saw students as central to the university, and that their Councils took the welfare and rights of students seriously. While their duty in this regard is exercised through oversight, monitoring and risk management, it was clear that in the case of student grievances, a number of Council members were very concerned about the human impact on students of system breakdowns or inadequacies. They had clear expectations that the VC and Executive would remedy any such problems on both systemic and individual levels, and to report back to Council on the outcomes.

Summary of key issues: The governance-management boundary

- There is general agreement on the technical aspects of roles and responsibilities; ambiguities tend to emerge in discussions relating to mission, identity, reputation and strategy.
- Role clarity arises from shared understandings gained through social and cultural interaction rather than from legislative prescription.
- Chancellor and Vice-Chancellor behaviours and the relationship between them are strong influences on governing body culture and member perceptions of role and boundaries.
- Characteristics of a positive governance culture include trust, openness, inclusiveness, commitment, and good working relationships between members.
- Conflict, or at least tension, is probably inevitable due to the diversity of Council membership. It is constructed, and therefore best dealt with, through cultural and social mechanisms rather than by the application of legislation and rules.
- Selection, recruitment and development of Council members, including the Chancellor, should take into account "cultural capabilities".
- Roles and boundaries in relation to policy are reasonably clear, with formation, implementation and reporting clearly in the management domain. Any systemic problems are expected to be remedied and outcomes reported back to the Council.

B. Changing roles of governing body members

Terms of Reference:

4. The appropriateness of changes in the duties and responsibilities of governing body members

Relevant findings from my research

B1 Role construction by university governing body members is a social, cognitive and cultural process, and therefore perceptions of role differ according to the nature of the Council culture, members' social group identification and their individual capabilities. In particular, perceptions of change in duties and responsibilities depend largely on members' experience in governance of large organisations, their professional background and their relationship to the university (external/internal).

B2 External members with extensive experience in governance, whether in universities or other organisations perceive little qualitative change in most of their duties and responsibilities (the exceptions are discussed below). They saw the National Governance Protocols and consequent changes to university enabling Acts as merely an explicit statement of duties they had long understood and accepted on the basis of their prior experience and knowledge.

B3 Several internal members, especially longer-serving academics, and a few external members, did perceive some change in expectations of their role, contrasting their experience and conception of "traditional", collegial university governance and the recent adoption of a more "corporate" style of governance, with practices, processes and principles drawn from the private sector. They saw the NGP as both a symbol and agent of this change.

B4 A substantial number of participants from all categories of membership, regardless of their view of change in duties and responsibilities, remarked that the *scope* and *complexity* of these duties had increased, due to the rapid expansion and diversification of the sector and their institution over the last 10-15 years. They were acutely conscious of the increased responsibility for financial and risk management in a competitive environment, where a much larger proportion of university income comes from non-government and in many cases unstable sources (for example, overseas student enrolments, commercial ventures and partnerships).

B5 Of the statutory duties of Council members, the duty and obligation to act in the interest of the university was probably the most controversial, not because members disputed this in principle, but because there is no clear definition of "the interests of the university". All participants were asked to comment on their own individual, and the Council's collective, process of balancing interests. Their responses, and the interests they weighted or discounted most heavily, depended on assumptions and attributions based on social group identification (particularly those based on professional background and relationship to the university) and personal interaction. Their perceptions were also guided by the views of the Chancellor and VC.

B6	Competition at global, national and state/local levels requires a greater emphasis on institutional differentiation, identity and performance, and it is in some of these areas that study participants noted a qualitative shift in role, if not yet constituting a technical change in the definitions of member duties and responsibilities. One of the key areas of change is in strategic direction-setting and strategic discussions (Rytmeister, 2007); another area is that of external relations and community engagement. There is a growing desire and expectation that Council members will have some involvement in these aspects of university activity.
B7	In addition to the changes in the Chancellor's role noted in the last section (A5), there is an increasing expectation that the Chancellor will play a strategic role. Chancellor's business, community and/or government networks are increasingly important, as they may be used to leverage external relations opportunities for the university, including engagement in partnerships, commercial enterprises, targeted program delivery, fundraising, community aid and social inclusion programs.

Discussion

This Term of Reference seeks views on the "appropriateness" of changes in duties and responsibilities of governing body members. It is, however, unclear as to the changes referred to. In presenting relevant findings from my research, I have chosen to define changes in duties and responsibilities as those perceived by governing body members themselves. As the results make clear, many of my interviewees did not regard specifications in the National Governance Protocols and the consequent amendments to University Acts as constituting or representing substantive change in their duties and responsibilities (B2). Those who did indicate concerns in this area did so in the general context of concerns over the corporatisation of universities, by which they mean their adoption of commercial corporate governance and management structures, roles and practices (B3). Their responses ranged from some discomfort with the nature and pace of this trend to a deep conviction that it is doing irreparable damage to the status, quality and standards of higher education. Clearly the different perspectives on the specification of duties and responsibilities lead to different views of the "appropriateness" of the change (B1).

Regardless of perspective, there was general acknowledgement that the activities of universities have become more complex and diverse and their operating environment more competitive and less stable over the last 10-15 years. Therefore the governance and management of universities has also grown more complex, more demanding and more strategic (B6). Advocates of a more "business-like" approach to governance and

management point to the fact that universities are very large organisations with diverse and complex interests, thousands of staff and students, and turnover in the millions. They see a shift to more "corporate" practices in governance and management as the only way to ensure that universities remain viable and productive. To them, the codification of duties and responsibilities is entirely appropriate and indeed necessary to enable effective governance (B2).

On the other hand, those who see the university's core business as intrinsically linked to the manner of its management and governance, tend to view the adoption of "corporate" practices as a threat to internal diversity, collegiality and academic autonomy (B3). While few of the study participants could point to a direct negative impact at the governance level, many expressed concern about the extent of intrusion of these practices into the management sphere.

In reflecting on the meaning of "the interests of the university" and the ways in which this relates to their perceived role (B4), most participants acknowledged the core status of teaching and research, and many also spoke of the university's obligation to serve the community and industry. Student interests were clearly regarded as central by many interviewees, with some explicitly placing students above staff in a stakeholder hierarchy. All participants agreed that the institution's financial viability and security was of vital importance, but only insofar as this enables the institution to fulfil its mission, and not as an end in itself. A large proportion of the participants commented on the complexity of universities and the multiple and sometimes conflicting stakeholder expectations of it, and that these have to be balanced in order to act in the interests of the institution as a whole. Only a few participants – internal and external – found this a difficult process, and only then in relation to a fairly small range of issues: the introduction of tuition fees, voluntary student unionism, program or course discontinuation and campus closures were the most common examples given.

In discussing perceptions of "the interests of the university", it is important to note the technical point that all governors, whether or not they identify themselves with a stakeholder group, are legally obliged to place the interests of the institution above all others in the enactment of their governance role. However, Australian university Councils are constituted according to a combination of expertise and stakeholder models, making it

almost inevitable that in practice, a range of interpretations of this legal duty and "the interests of the university" exist simultaneously on any Council. The narrowest interpretation of interests relates to decision-making and measurable outcomes such as revenue, surplus and student load (allocative resources), while broader interpretations also take into account authoritative resources, public interest and the cultural role of the Council (Tierney, 2004).

Some staff- and student-elected members in my study gave accounts of the ways in which a narrow interpretation of "the interests of the university" may be combined with a broad labelling of their contributions as "advocacy", in order to restrict debate and contributions from certain stakeholder groups, principally staff and students. I have heard many similar stories over my years in the higher education sector. A typical situation in which this might occur is when staff or students ask critical questions that put forward a perspective unique to their constituency. If this is interpreted as advocacy, the Chancellor may shut down that particular line of questioning. Naturally, staff and students in such a situation claim that critical questioning is part of fulfilling their governance role, and that applying a particular perspective does not constitute advocacy. While this tension appears to be common in some Councils, it is very rare in others, and depends very much on the view of the VC and Chancellor as well as the behaviours of the elected members themselves. In the Councils that participated in my study, this type of conflict was uncommon, and it was unusual for Chancellors to close down discussion on these grounds. Nevertheless, a number of interviewees had experienced or witnessed this practice in the past, and spoke strongly of its negative impact on their sense of legitimacy and entitlement to contribute as a member of Council.

A small number of internal members in the sample recalled initial surprise at their induction into the Council, when it was explained to them that they were expected to act in the overall interest of the university rather than as a delegate or representative of those who elected them. However, once they had participated in Council for a few months, all but one interviewee had come to accept this as a reasonable expectation, partly because they became more aware of the scope and complexity of the university's operations and stakeholder groups, and the intricacies of the relationships between them.

A more strategic role for Councils?

As noted in the findings (B6), there seems to be a desire and expectation on the part of Council members that they will play a somewhat greater role in strategic discussions and direction-setting than in the past. This is natural given the increased emphasis on Council member expertise in documents, policies and public debate over the last two decades (for example, (Hoare Committee, 1995), (Department of Eduction Science and Training, 2002), the National Governance Protocols and a range of Ministerial speeches and articles in the popular press). As external members are increasingly selected on the basis of their experience and expertise, it is unsurprising to find that they expect this to be utilised in the interests of the university on whose Council they serve.

In some cases, VCs and Executive are perceived as resisting this desire on the part of Council members, fearing an intrusion into the management sphere. In others, however, university managers have acted to leverage the networks, expertise and experience of Council members, welcoming their participation in recognition of the complexity of the modern university's operating environment. VCs in the latter case in no way concede executive responsibility, but rather see the Council as a valuable resource in determining the university's strategic directions and in opening up strategic opportunities for the university.

The Council role in external relations

The other area in which the role, if not the responsibilities and duties of Council members is perceived to be changing relates to an aspect of strategy. This is the area of community engagement and external relations (B6, B7). Increasingly, external members in particular are keen to use their community, social and professional networks for the benefit of the university. This may take the form of providing a strategic introduction or invitation for the VC or Executive member, securing scholarships and donations, being a public advocate or "cheerleader" for the University, or identifying areas of need in industry or the community which provide an opportunity for the university to engage externally, whether through research, teaching or other outreach activity. Some of these opportunities primarily benefit the community; others are aimed at promoting or gaining income for the university; most, however, are seen as mutually beneficial to both parties.

Study participants who were involved in, or would have liked to have been involved in, such activities, were for the most part extremely careful not to usurp the VC's role as a university representative. Indeed, a few participants related stories of Council members (including Chancellors) who had overstepped their authority and caused difficulties for the University management. On the other hand, Chancellors' appropriate use of their networks and contacts were seen as highly valuable in promoting the university and progressing its strategic initiatives. Some participants expressed a desire for guidelines in relation to their advocacy of the university in the community and with stakeholders, in order to maximise the positive contribution they can make while ensuring that they do not place the university in a difficult position. This is the subject of a recommendation under ToR 9 (p65).

Are changes in duties and responsibilities "appropriate"?

The appropriateness of the changes as perceived by Council members is largely in the eye of the beholder. In discussing whether these changes are beneficial or otherwise to the practice of university governance, the research findings need to be considered in a broader context.

Clearly universities have expanded in both size and scope over the last two decades. In combination with increased competition and diversification of income sources, this has given rise to a new emphasis on and orientation towards strategy in its various forms: strategic direction-setting, strategic discussions, strategic planning and the interaction between managers and goal-directed activity that (Jarzabkowski, 2005) refers to as "strategizing" (p20). In response, the technical duties and responsibilities of governing body members as set down in the Protocols and Acts have in some ways intensified or shifted in emphasis; however, they have not changed greatly in a qualititative sense.

Where qualitative changes have been observed (B6, B7), they largely relate to the intangible "authoritative" areas (Bargh et al 1996) such as identity, mission and reputation. Both the trend towards a greater strategic orientation and a greater contribution in relation to community engagement and external relations should be seen in this context. Rather than being seen as an additional "duty", these emerging orientations need to be leveraged in order to maximise the inputs to strategy and operations, while maintaining the governance-management boundary in such a way that provides the requisite executive authority to the VC and the oversight and monitoring capacity of the Council.

Summary of key issues: Changing roles of governing body members

- Perception of change in role varies according to experience and relationship to the university.
- Members perceive little qualitative change in the technical aspects of the role but substantial change in scope.
- Members perceive changing expectations of the governing body and its members in relation to institutional strategic directions and external relations.
- The nature of the duty to act in the interests of the university is itself uncontroversial but its meaning is subject to interpretation, which is in turn influenced by members' perceptions based on individual experience, social identity, cultural norms and the behaviours of the Chancellor and Vice-Chancellor.
- Changes in role of Chancellor include an expectation of greater engagement with the institution and a more strategic role in external relations.

C. Performance issues

Terms of Reference:

6. *Current and possible future mechanisms for reviewing the performance of Chancellors and governing body members in discharging their responsibilities.*

7. *Protocols for addressing poor performance of Chancellors and governing body members.*

Relevant findings from my research

C1 In the participating institutions, a number of tools and processes are used for performance review of the Council, including questionnaires, discussions with individual members and the Council as a whole, formal reviews conducted by an external facilitator/consultant, informal feedback gathered by the Chancellor and Vice-Chancellor and regular consultation between them.

C2 Interviewees provided little evidence that individual performance of ordinary Council members is problematic to the point where it becomes an impediment to effective governance. Poor performance on the part of the Chancellor or VC, however, was seen as impacting negatively on Council effectiveness, in extreme cases to the point of dysfunction.

C3 Most interviewees had been involved in some form of individual reflection on their contribution and participation in the Council. This was rarely referred to as a "performance review", although it was usually undertaken in conjunction with review of the Council's performance. The usual practice is an informal discussion with the Chancellor or Deputy Chancellor which provides an opportunity for the member to nominate special interests, developmental needs and desired activities for the next year (eg, committee membership, reviews, presentations).

C4 Participants, including Chancellors, expressed concern about the legitimacy of enforcing performance standards on people who were already donating their time, expertise and energy to the University. This was the case even in those institutions which remunerate Council members, as the sum of money involved was not considered to be substantial enough to alter their essentially volunteer status. Category of membership (internal/external, appointed/elected/ex officio) is also linked to the practice and perceived legitimacy of individual performance review.

C5 In general, study participants valued informal, interactive processes over rule-based procedures. They valued the efficiency gained from clarifying duties and responsibilities, but indicated that, apart from a range of technical duties set out in the enabling Act, the most valuable contributions to the work of the governing body are born of the personal understandings, attitudes, experiences and commitment of individual Council members and their working relationships with colleagues rather than their compliance with rules.

C6	While there are mechanisms for handling poor performance of the VC (although Councils may be reluctant to use them), there are few options available for dealing with poor performance of ordinary Council members, and even fewer for dealing with poor Chancellor performance.
C7	Few participants held, or had held in the past, serious concerns about a Chancellor's performance. In Councils where a reasonably widely agreed perception had emerged that the Chancellor's performance was inadequate, the issue was usually dealt with informally and with discretion. Only on rare occasions do such concerns become public, and in these cases they are usually coupled with other tensions and conflicts such as those described earlier in this submission.

Discussion

The National Governance Protocols (Protocol 4) and any number of good practice guidelines specify that governing bodies should conduct annual reviews of their performance. Conformance with the NGP coupled with greater expectations of and demands on university governance due to environmental (B4, B6) explains the relatively advanced development of mechanisms for the reviewing of Council performance as a whole, even if they are not yet utilised to their full potential.

The NGP also state that individual members must be responsible and accountable to the Council (Protocol 3), however, beyond specifying a list of duties, the Protocols give little guidance as to how this should be carried out. As a result, mechanisms for review of individual performance are less well-developed (C2, C3) and their use and perceptions of their effectiveness varies from Council to Council and between individuals in my study (C4), although some consistently well-regarded common elements were identified. Keeping in mind the argument that the nature of the study means that the participating institutions are likely to be at the good practice end of the spectrum, these are:

- Chancellors played an active role in organising and conducting review interviews with individual members of Council.
- These interviews were seen by study participants as an opportunity to discuss the nature of their participation in the Council and to express an interest in particular committees, projects or areas of Council activity.
- The problem of assessing the performance of people who are essentially volunteers was acknowledged, not so much on technical as moral grounds

- Few participants saw individual performance as an issue that impacted negatively on Council performance as a whole. Nevertheless, several remarked on the apparent waste of potential where some members were seen to be making an inadequate contribution to the Council, either by insufficient attendance or by lack of preparation for, participation in, or engagement with committee or Council deliberations.

A number of participants gave examples of poor performance and its impact, based on past experiences in their own or other university Councils. In these cases, they identified individual performance problems involving destructive behaviour, for example, displaying a lack of respect, engaging in factional plotting and warfare or undermining the leadership of the Chancellor and/or VC. Other problems that they identified came under the definition of misconduct or breach of duty, such as indiscretion in relation to confidential business, or undeclared conflict of interest. Identification of the latter is generally more clear-cut and consensual within the Council, and since the advent of the National Governance Protocols and the funding-leveraged conformance of all institutions, sanctions for these transgressions are set down in each institution's enabling Act (Protocol 3). Issues of misconduct and breach of duty are not considered in this submission.

The identification of insufficient performance, negative behaviours and inadequate contribution and participation is somewhat more subjective, and few sanctions are available, other than a refusal to recommend reappointment (if in the Council's power), or in some Councils, the power to dismiss a member on the grounds of non-attendance without notice. Reduction in remuneration as a possible sanction was not even raised as a possibility by study participants, even by those whose Councils do provide remuneration (whether the individual interviewee was in receipt of remuneration or not). This is likely to be because the quantum of remuneration is simply not large enough for any reduction to be seen by most members as an effective sanction (C4).

Category of membership is linked to the practice and perceived legitimacy of individual performance review (C4). The key features of current practice in relation to these perceptions is summarised as follows.

Vice-Chancellor

The VC's performance review is usually conducted by either the Chancellor or a small sub-committee of the Council. This is, naturally, a highly sensitive process, and internal,

elected Council members are rarely included in such a committee, although the Chair of the Academic Board (as an ex officio member of the Council) may be.

Chancellor

Review of the Chancellor's performance is highly problematic (C6, C7) despite a number of Chancellors openly inviting comment on their management of the Council as part of both Council and individual review processes. It appears that in Councils engaged in good practice, the Chancellor actively seeks out feedback on his or her performance and is open to constructive criticism. This requires strong relationships and a culture of trust in the Council. Review of the Chancellor's performance is often implicit in the review process for the Council as a whole. A more detailed discussion of strategies for dealing with poor Chancellor performance is provided later in this section.

Internal members

Council powers in relation to performance of internal, elected members (staff and students) are limited, as the Council cannot control the outcomes of elections, nor prevent the re-election of a member if it is within the conditions set down in statutes. Therefore formal performance review and management of elected internal members is often seen as being beyond the scope of the Council's and Chancellor's powers (C4).

On the other hand, internal members may be, or may feel, more vulnerable because of their status as staff or students. In cases where poor performance takes the form of insufficient participation due to an individual's lack of confidence or knowledge, or where they have failed to observe behavioural norms and standards, informal approaches by the Chancellor and other Council members can be highly effective, demonstrating the strong normative force of shared values and Council cultural practices. Several study participants referred to the use of strategies such as mentoring informal processes to provide feedback and guidance to elected internal members in relation to their performance. These strategies vary in effectiveness, depending on the reasons for and type of poor performance identified.

The Chair of Academic Board, as an ex officio member, symbolises a source of authority and legitimacy viewed internally as independent from the Council, at least in terms of responsibility for the university's academic mission and governance. This academic legitimacy is compounded in most institutions by the fact that the Chair of Academic

Board is elected by that Board. This imposes a strong cultural limitation on the legitimacy of review and evaluation of the incumbent's performance as a Council member.

External members

The Council has greatest leverage with external members who are appointed by the Council, or on Council recommendation; nevertheless, the only sanction available for insufficient performance (as opposed to misconduct) is not to be recommended for reappointment at the end of the member's current term. As the term of office may extend to four years, this may mean that the Council "carries" a non-performing member for a substantial period of time.

Members appointed by the Minister may see themselves as less subject to the authority of the Chancellor and Council than members appointed or nominated by the Council itself. The concept of the Chancellor reviewing their performance may have less legitimacy than for Council appointees or nominees.

My sample did not include members elected by the alumni, as this method of appointment did not apply in the participating institutions. Therefore I am unable to provide evidence as to how their status as both external and elected impacts on the practice and perception of individual performance reviews for these members. It seems likely that they would share some characteristics of internal elected members, in that they may be conscious of constituency expectations of performance; on the other hand, Convocation is a large, diverse and dispersed group, and so members elected by this group are unlikely to be held to account in the same way as internal, elected members who deal with their constituency on a daily basis. In terms of leverage over alumni-elected members, in relation to performance, the Council may have even less than it is perceived to have over internal, elected members: it has no jurisdiction over their election or re-election, and further, in common with other external members, they are also likely to be viewed as volunteers and so accountability for their performance is less enforceable on a moral level, let alone at the level of technical or legal sanctions. Issues relating to the role of elected alumni on Councils are discussed further in Section D.

Chancellor performance: issues and strategies

In Section A, I referred to the key assumptions underpinning my discussion of constructive ways of dealing with conflict. One of these was the capacity and inclination of the Chancellor to provide the necessary leadership, and the other was that the Council maintained confidence in the Chancellor-VC relationship. Poor performance by a Chancellor may result in one or both of these assumptions failing. A number of scenarios and consequences may emerge: key examples are displayed in Exhibit 2 (overleaf). These scenarios are based on both my research data and information on the public record about breakdowns in relationships, roles and governance capacity in a number of institutions over the last few years.

The actions taken in response to these scenarios depend greatly on other relationships within the Council, especially between the Council and the Vice-Chancellor and within the influential group of Council members closest to the VC and Chancellor and hence typically the first to detect problems with the Chancellor-VC relationship. This group usually comprises the Deputy Chancellor and committee chairs, who tend to be the longer-serving members.

Committee chairs have more at stake than most members, as they have additional responsibilities, often related to institutional finance, audit, risk and strategy. As they often come to these positions because of their professional background and standing, inadequate fulfilment of these responsibilities may reflect adversely on their professional reputations. Longer-serving Council members also have a demonstrated commitment to the university and a certain identification with it that lends them a level of authority and influence within the Council. Of all Council members, they are therefore best placed to act in the case of a breakdown in Chancellor-VC relationship that threatens the stability, governance capacity and/or culture of the Council, and so it is this group that usually needs to lead any action aimed at dealing with poor performance. They may, however, take some time to reach the point where they perceive that the Council cannot effectively fulfil its role.

Staff-elected members, on the other hand, with professional reputations, jobs and morale at stake, and student-elected members, with the status of their degree and their quality of education and university experience at stake, tend to identify the need to act somewhat sooner than external members, as they have intimate knowledge of the university and

Exhibit 2: Poor Chancellor performance – circumstances and consequences

The Chancellor is unable or unwilling to provide leadership in constructive resolution of boundary tensions.

This may manifest in the Chancellor actively supporting and defending the VC's position, despite the discomfort of Council members, or in the Chancellor being dominated by the VC and unable to provide a balance of power and authority within the Council. It may be sustainable in the short to medium term, provided the Council maintains confidence in the VC. However, it encourages VC expansionism and "filtering" of information and disempowers the Council, so that it becomes increasingly difficult for it to exercise the due diligence required of it in the monitoring of performance and oversight of operations.

Critical and strategic questioning is usually discouraged in such situations, leaving Council members with inadequate or inaccurate information on which to build their understanding of the university's performance and directions. If a problem emerges, either because of inadequate oversight or change in the environment, the Council is ill-equipped to consider the challenges facing the university, and the strategic decisions and actions that need to be taken. This in turn places too great a responsibility and too great a burden on the VC – one participant referred explicitly to the risk posed by having a "single point of failure" in a complex system.

The relationship between the Chancellor and Vice-Chancellor breaks down.

This may lead to the dominance of the Vice-Chancellor as described above, or it may result in a power struggle between them, which may be more or less obvious to the Council or to some members of it, depending on their closeness to the leadership and/or their relationship to the university.

This has the potential to paralyse the Council and lead to the development of factions. At the very least it poses a serious distraction from the business of governance and management. While those who work most closely with the VC and Chancellor – the Deputy Chancellor, committee chairs and long-standing Council members – are usually the first to detect the signs of a failing Chancellor-VC relationship, it is not usually very long before these become obvious to the Council as a whole. If a resolution is not forthcoming, the conflict may become public, resulting in negative media publicity and making a discreet resolution of the situation impossible.

The Chancellor attempts to intrude unreasonably into the operational domain or to assert authority beyond the accepted norms of the Council.

It is in these situations that conflict often becomes both overt and public (as in the case of UNE), usually despite the efforts of many Council members to prevent this. Interestingly, internal members, regardless of any concerns about the VC's performance, will usually defend the VC in these situations, seeing the Chancellor as representing external interference and therefore constituting a threat to the university's core cultural values and defining features of autonomy and independence. If the situation becomes common knowledge within the university and the broader community, internal Council members are almost always strongly supported in this by the core university constituencies of staff and students.

the impact of various decisions, strategies and policies on its core constituencies. They are likely to be more overt in what they see as the defence of the university, although other members may perceive this as inappropriately bringing operational matters into the Council. Internal members, however, are in a minority, and so need to gain support from a sufficient number of external members, or at least a sufficient number of the most influential external members, if they are to take action.

If Council members identify a need to take action, what then can be done? This is where real difficulties can arise, because currently there are no formal sanctions available to them. They must carefully consider their response, weighing up the risk of confrontation against the risk of responsibility for a miscarriage of governance. Some members at this stage will "opt out" by resigning, particularly if they feel that they have insufficient leverage in the Council to have an impact on the situation. Others will work "behind the scenes", using informal approaches to build support for their position, with a view to acting collectively to either demand improved leadership from the Chancellor or a changeover in that position, or (on rare occasions) to move openly against the Chancellor and, if necessary, the Vice-Chancellor. Once a problem is widely acknowledged, the courses of action usually taken can be summarised as "wait and work-around", informal approaches and confrontation.

<u>"Wait and work-around"</u>

In the case of a Chancellor unable or unwilling to assert authority where necessary, committee chairs may "work-around" this situation through their informal and formal dealings with the VC and senior management group. Provided the committees are still able to fulfil their roles effectively and the Council views the VC's and university's performance as satisfactory, this situation can be sustained until there is turnover the Chancellor position. In the meantime, longer-standing members of Council will tend to fulfil some of the social and cultural roles expected of the Chancellor: consultation, informal contact and fostering relationships within the Council. The situation resolves itself when the Chancellor's term comes to an end, either because the incumbent does not seek another term, or because the Council has (perhaps subtly) made clear its intention to appoint a new Chancellor.

Informal approaches

If, despite attempts at "work-arounds", the Chancellor's performance is perceived as having a negative impact on the effective functioning of the Council and its committees, a group of influential members may decide to approach the Chancellor, raise the issues of concern in relation to his or her performance, suggest strategies and offer support. This would normally be done very discreetly out of respect for the individual and to avoid adverse publicity. In many cases, the Chancellor recognises problems with his or own performance, and either signals an intention to resign or works constructively to improve performance. If, however, no improvement is forthcoming or the Chancellor does not accept that there is a problem, a further informal approach is likely to be made, possibly directly by the Vice-Chancellor, suggesting resignation as a solution.

Confrontation

This is the highest-risk path to take in attempting to resolve an intransigent situation. It involves raising the issue of the Chancellor's performance openly in the Council, and perhaps even moving to a vote of no confidence. This involves considerable preparation and would be a last resort, apart from perhaps the even less desirable mechanism of allowing the issue to become public knowledge, reported in the mainstream media with the usual overtones of sensationalism and implications of scandal.

One problem with the confrontational strategy is that none of the NSW university enabling Acts, and indeed, few across the nation, provide for removal of a Chancellor who loses the confidence of the Council. A second problem is that a Chancellor who persists despite receiving clear messages via informal channels is unlikely to respond to a no-confidence vote if there is no compulsion to do so. A final problem is that, even if it is conducted under confidential business, a no-confidence vote against a Chancellor, or even the preparation for it, will almost always become public knowledge, leading to the problem of negative publicity.

The confrontational approach has mixed outcomes. One benefit is that ultimately, it usually works: few Chancellors will insist on maintaining their position amid negative publicity, mass staff meetings and public denigration. While the publicity may in the short term be damaging, it rarely has a lasting effect on the institution's reputation in the wider community, even if it enters into a form of higher education folklore. It may even benefit

the academic identity of the institution if it reinforces the status of the Vice-Chancellor and demonstrates the importance of institutional and academic independence and self-governance. Therefore, despite the reputational risk, if publicity brings a rapid resolution, it may be preferable to the risks posed by an institution attempting to operate in a context of conflict and imbalance between governance and management roles and authority and/or with a disempowered, incapacitated and ineffective Council.

Do we need sanctions and protocols for dealing with poor performance?

In discussing protocols for dealing with poor performance, it is important to keep in mind that a defining characteristic of a university is its academic freedom and independence. While these characteristics may at first glance appear to be somewhat removed from the issue of dealing with the unsatisfactory performance of Council members, this conclusion would be based on a very narrow understanding of the nature of academic freedom and the conditions under which it flourishes. While study participants have a clear understanding of the Council's external accountabilities to stakeholders including Government, they tend to be very sensitive to political interference in the university and the Council's operations and role. It is vital that the governance of a university is not only free from political interference but is also seen to be so.

This is best ensured by maintaining not only academics' rights to free inquiry, but also the maximum level of self-governance possible, given the constraints on full autonomy imposed by public funding conditions and the legislative and regulatory mechanisms required to safeguard the public interest. Therefore, minimal external interference must be the goal of any set of protocols around university governance, and this applies equally to protocols for addressing poor performance of members and Chancellors.

Ordinary Council members

My research findings indicate that dealing with poor performance of Council members is managed both collectively, through the normative mechanisms of social and cultural values within the Council, and individually, through the actions of the Chancellor. The latter must operate within the constraints imposed by the essentially voluntary nature of Council membership (even where remuneration is provided) and the limited sanctions available to leverage improved performance (C3, C4, C5). Given the indications that few members see poor performance of their Council colleagues at an individual level as a major impediment

to Council effectiveness (although it may be a source of frustration or seen as a waste of a position or resources), it seems that there is little to be gained from enforcing formal processes for review and evaluation of performance at the individual level for ordinary Council members.

On the other hand, there is a great deal to be gained from ensuring that individuals participate in less formal processes with a formative (developmental), rather than summative (evaluative), purpose. In my study, these processes were led and managed by the Chancellor, often with the assistance of the Deputy Chancellor, and usually took the form of an annual informal discussion, complemented by ongoing feedback and consultation between the Chancellor and members of Council as issues arise (C3). Study participants saw these discussions as providing valuable developmental opportunities, allowing them to gain greater understanding of their role. They also gave members an opportunity to express any concerns they had about the Council and fellow Councillors, and to nominate issues and activities of particular interest to them. This in turn informs the Chancellor's management of the Council, including allocation of members to committees and working parties and sharpens his or her awareness of issues on which a diversity of views might be expected.

It is therefore desirable to make explicit the Chancellor's responsibility for ongoing and periodic feedback from individuals and a development-focused review of their contributions and performance. It may also be of assistance to establish a protocol that goes no further than requiring universities to establish a framework for regular individual review. This would enable each Council and Chancellor to select the review process and tools and devise the schedule most appropriate to the needs of the individuals and institution involved. Recommendations on these issues are included under ToR 9 (p65).

Chancellor

In the case of poor performance on the Chancellor's part, the central importance of the role means that the imperative to act is greater than in the case of ordinary members (other than the VC, whose performance targets, indicators and evaluation is more formalised and accepted as part of Council's role). As I have demonstrated, current strategies for dealing with a Chancellor's poor performance are, at least initially, informal and discreet. While sufficient in most cases to resolve the problem or contain the negative impact, these

strategies seem to be inadequate for managing the more extreme levels of Council dissatisfaction with Chancellor performance. In these cases, the Council's problems are not usually isolated to issues with the Chancellor's performance, but included tension or conflict between the Chancellor and VC, factionalism on Council, lack of cohesive culture and/or failure of Council as a social system. In today's competitive and uncertain higher education environment, the negative impact of poor Chancellor performance on Council effectiveness may expose the university to considerable risk. Therefore, I believe that the consequences of poor Chancellor performance are sufficiently serious to justify the creation of formal protocols for dealing with these situations.

Rather than advocating protocols that bring governments or ministers into the fray, I suggest that they should focus on empowering the Council to act, if it should collectively come to a view that the Council's capacity to govern is being seriously compromised by the behaviour or performance of the Chancellor. Protocols should be determined in consultation with Chancellors, Vice-Chancellors and governing body members across the university sector. At the very least should be based on principles of natural justice and due process, but in the interests of discretion and efficiency should be outcome-oriented rather than process-oriented or overly bureaucratic. They should recognise the importance of discretion by maintaining a focus on informal processes but must include a mechanism for dismissal of a Chancellor who loses the confidence of the Council. A recommendation to this effect is included under ToR 9 (p65).

Summary of key issues: Performance

- Review of individual performance is problematic because of the voluntary nature of governing body membership. Member perceptions of the legitimacy of individual performance review are also influenced by their method of appointment to the Council and their relationship to the university.
- The Chancellor role is increasingly expected to include responsibility for individual review of performance. This usually involves an informal interview with a developmental rather than evaluative emphasis.
- There are few sanctions available to provide leverage in addressing poor performance (as distinct from misconduct or breach of duty) of members.
- Dealing with a Chancellor's poor performance is particularly problematic due to lack of available sanctions. Such problems are usually handled using informal approaches by influential Council members.

D. Governing body composition and size

Term of Reference:

8. *The representation on governing bodies, and their committees, of staff and students and the current and appropriate balance between external members and elected representatives.*

Relevant findings from my research

D1 Participants had diverse views about the composition and size of their governing body, depending on a combination of their governance and organisational experience, background and relationship to the university (internal/external).

D2 Apparent under-participation by some internal members, particularly general staff and students, is a cause for concern. This under-participation was generally attributed to their lack of confidence and experience and by some interviewees to their lack of understanding of the "big picture" and/or their lack of capacity to separate the governance and management domains. Nevertheless, a clear majority of study participants of all backgrounds and membership categories were in favour of retaining staff and student membership of Council, although some questioned whether direct election yielded the most suitable members.

D3 It was generally accepted that staff-elected members would have Union connections. Most participants acknowledged the Union interest as a legitimate one and few saw the situation as problematic, provided staff-elected members did not use the Council as a platform for blatant advocacy of a Union position or to attempt to engage the Council in issues perceived to be in the management domain.

D4 Some participants stated that staff-elected members tend to conflate the governance and management domains. On the other hand, several internal, elected members expressed frustration with some external members' limited understanding of how certain issues impact on mission, identity and reputation and are therefore properly dealt with as matters of interest to the governance domain.

D5 Participants were not generally conscious of the different ways in which external members were appointed (by the Minister, the Governor-in-Council on Council recommendation, or directly by the Council). However, in some Councils, a few members noted that Ministers did not always follow Council recommendations, and that this could result (and had resulted, in some instances) in:

- appointments being made for external political reasons rather than on the basis of university and Council needs, and/or
- members having a particular agenda or holding a "brief" from the Minister.

D6 Participants emphasised the importance of drawing Council membership from the university's stakeholder groups, including key industry groups and the geographical areas served by the university. The latter applied particularly to multi-campus institutions.

D7	Participants believed that the Council should encompass a range of skills, expertise and knowledge based on professional qualifications, experience and background. In their view, this as best achieved through careful selection of external members, to ensure complementarity of skills, expertise and knowledge across the Council so that all areas were covered satisfactorily by the membership as a whole.
D8	Participants viewed certain personal qualities and capabilities as being at least as important, if not more important, for Council members than their expertise, qualifications and experience. In some Councils, personal qualities and capabilities are consciously, although informally, taken into account in recruitment and selection processes.
D9	Participants valued diversity of perspectives and views on Council and welcomed their expression, provided this was in accordance with the behavioural standards and cultural values of the Council, and provided such diversity did not lead to factionalism or attempts to undermine decisions reached following open and inclusive discussion in which differing views had been aired.

Discussion

Background: constitution of Councils

University Councils are constituted differently between and even within different jurisdictions in Australia. However, there are common elements, with each Council comprising official (or *ex officio*), elected and appointed members.

Official members:

The official members are the Chancellor and Vice-Chancellor, and in most cases the presiding officer of the Academic Board (or equivalent body).

Elected members:

Elected membership varies in type and number across the sector, but all public universities include members elected:

- by and from the staff, with separate electorates for academic and general staff, and if applicable, VET/TAFE staff. Public universities have between two and five staff-elected members altogether (not including the presiding officer of Academic Board, who is often elected by that Board). There may be conditions such as:
  - restricting the electorate to certain categories of employment (eg full-time, continuing), and

- a requirement that one or more academic staff-elected members hold the rank of Professor.

- by and from the students. Students may or may not be separated into undergraduate and postgraduate electorates, and numbers vary from one student member to three.

In addition, the Academic Board or its equivalent may elect a member of Council from amongst its ranks. This is particularly so in those universities where the presiding officer of Academic Board is not an ex officio member, although some universities make provision for both.

The final category of elected membership is that drawn from Convocation (with eligibility restricted to those who are not current staff or students) or alumni. In most Australian jurisdictions and most universities, specific Convocation/alumni membership has either been abolished altogether or reduced to only one or two members. In the latter cases, the university's Act may specify that members are elected by alumni, that they are appointed by the Council or (in NSW) that the Council can choose to either arrange an election *or* appoint one or more members in this category. Exceptions to this are some of the Group of 8 universities, which have generally maintained a higher level of alumni-elected members (for example, three at the Universities of Adelaide and Queensland, four at the University of Western Australian and NSW, and five at the University of Sydney).

Appointed (external) members:

There is much greater variation in this category between different jurisdictions, in terms of numbers, method and process of appointment. Members may be appointed by:

- the Minister for Education in the relevant jurisdiction;
- the Governor, Governor-in-Council or equivalent; or
- the Council itself.

There are certain conditions on Council membership that have direct or indirect implications for appointment processes and criteria, including the following:

- two Council members must have financial expertise, and at least one must have commercial expertise;
- the total number of members may not exceed 22;

- appointed members must not be current staff or students of the institution (i.e. they must be external members);
- there may be a requirement that one or more appointed members be graduates of the university or its predecessors, in the case of amalgamated institutions;
- individual university Acts may specify that a certain number of members must be drawn from particular stakeholder groups and/or have particular types of experience and expertise; and
- no current member of Parliament may be appointed as a member unless specifically recommended by the Council.

NSW, Queensland and WA have retained a high level of Ministerial responsibility for appointments, with between a quarter and a third of each university's total membership appointed by the State Minister. While these appointments are usually made on the recommendation of the Council concerned, several of my study participants noted that Ministers do not always accept Council recommendations, and may use their own discretion in appointments (D5). Only in the Commonwealth jurisdiction is there direct accountability to the Council for Ministerial decisions: the ANU Act states that the Minister may decide not to appoint a nominee of the Council if it is the Minister's opinion that the appointment would not be in the best interest of the university, but in this event, the Minister must notify the Council in writing and provide reasons for the decision. This provision appears to give adequate protection against nominations being refused for external political or partisan reasons, and prevents Ministers from appointing their own agents or advocates as members of the ANU Council.

Governor or Governor-in-Council appointments are usually made on the recommendation of the Council, and according to a number of participants in my study, it would be extremely rare for Council nominees to be refused, although this may be different in jurisdictions not represented in my study sample.

The number of appointments made at the discretion of the Council varies considerably between jurisdictions. In South Australia, for example, all appointments are made by the Council – that is, there is no external mediation of this category of membership. In Victoria, the number of direct Council appointments matches the number of Governor-in-Council appointments, with only one position determined by the Minister. In Queensland,

the Council appoints between one and four members (depending on whether alumni positions are elected or appointed), compared to between five and eight appointed by the Governor-in-Council. The situation in Western Australia is similar, although some Councils are entitled to match the Governor's appointments and there is also a Ministerial appointment on each Council, as in Victoria. University Councils in NSW vary greatly in their ability to appoint their own members, with the number of direct appointments ranging from one to eight, although some of these are conditional (for example, some Acts specify a certain number of graduate members must be appointed) and not all Councils appoint the maximum number allowed.

Nomination and recommendation practices vary between Councils and jurisdictions, although all have conformed to National Governance Protocol 6 (requiring systemic procedures for nomination). Most Councils in my study had established formal nominations committees for this purpose. These committees not only consider nominations but also conduct an overall review of the Council membership in order to identify any skills gaps (D7). A number of participants also described this as a strategic process linked to the university's goals and community engagement, so that prospective members' community and industry networks were also taken into account (D6). Increasingly, nominations committees also discuss the more personal attributes and capabilities that are seen as necessary for effective Council membership, including commitment, integrity, respect for diversity, capacity for critical and strategic thinking, a cooperative and inclusive orientation and an appreciation of the complexity of the university as an organisation and its core values and culture, even if lacking familiarity with its internal day-to-day business (D8, D9).

Perceptions about different member categories

Member categories form part of the basis for the identification of social groups in university Councils, which in turn give rise to social identities, assumptions and attitudes that play a role in the way members perceive and construct their role and that of others. My research showed that in those Councils perceived to be highly effective by their members, social distance (between groups) is minimised while at the same time, diversity of perspectives is leveraged in the interests of the university. In such situations, all social identities other than the most obvious – that between internal and external members – have minimal impact on the way members carry out their duties. Indeed, some participants

commented that they wouldn't know who the Ministerial appointments were, or who had been directly appointed by the Council as opposed to recommended to an external appointing authority. Many were unaware of which academic member was the chair of the academic board, and who was a professor and who was not. On the other hand, all members were well aware of who was and was not an internal member.

Internal members tended to see externals as bringing valuable expertise and knowledge to the Council. On the whole they appreciated external members' interest in and commitment to the university, and valued the contribution they made (D7). However, many internal participants commented on the fact that they were often called upon to explain the internal impact of a range of issues to external members who lacked understanding of the values and culture of the university, or the collegial and committee-based systems by which it works (D4). On the other hand, several internal members commented positively on the commitment of external members to the university, and their interest in learning more about it. On a personal level, a number of internal members admitted that they had held some prejudices about external members of certain categories, particularly those with a commercial corporate background, but that these prejudices had been discarded in the process of getting to know each other. In many cases, prejudice had been replaced with admiration, respect and genuine liking, aiding the formation of productive working relationships and a friendly, inclusive Council culture.

In some instances, internal members were frustrated with some external members' refusal to engage with issues at the governance-management boundary. This was particularly the case with issues, usually but not always in the authoritative domain, that were seen by internals as having a major impact on the university's mission, identity and reputation and therefore in the domain of governance, but seen by externals as operational issues within the VC's executive management domain (D4). Typically, these issues involved funding, industrial matters, internal restructuring, education policy and tuition fees.

External members had mixed views of the value of internal members' contributions (D2, D3, D4). Those who saw internal members' contributions in a negative light did so mainly because of a perception that they lacked capacity for the governance role, in particular due to their:

- inadequate knowledge or understanding of the complexity of the institution and its activities,
- lack of understanding of the nature of governance,
- inability to take the broad perspective required, and/or
- lack of understanding or unwillingness to observe the difference between governance and management.

While there was a perception that internal members brought political and constituent agendas into the Council, these were for the most part accepted as part of their role, unless they were viewed as engaging in inappropriate advocacy or seeking to conflate management and governance issues. Those external members who were of the opinion that internal elected members did not add significant value to the Council made the point that this was not because of the individuals involved; rather, on principle, they saw their input as being more effectively obtained through a consultative mechanism led by the VC than by through their membership of the Council itself.

Most external members, however, welcomed internal member contributions, seeing them as providing valuable insights about the internal workings of the university and being an alternative source of information to the Vice-Chancellor (D2). Some external members went so far as to say that they couldn't see how the Council could fulfil its duties without the presence of internal members. A number of external members spoke very highly of particular staff and student members, and expressed admiration for the consistent valuable contribution they had made and the way they handled the expectations of their constituents where these were in conflict with the members' duties and responsibilities as a Council member. My own interactions with a number of student- and staff-elected Council members during the conduct of my study also left me impressed by the commitment and mature insights of student-elected members, and the dedication and loyalty to the university displayed by staff-elected members.

While most external member participants acknowledged the fact that many internals were elected on union or student political group tickets, the majority did not find that this posed a problem and in many cases welcomed these perspectives, seeing them as both balancing and fleshing out the information provided to the Council by the Vice-Chancellor. Some explicitly rejected the idea that the staff and student voice could be effectively heard

through a consultative committee, saying that it was important that they were "at the table" and full members of the Council if they were to make a meaningful contribution.

Several study participants, both internal and external, identified the short term for student members (usually one year) as an impediment to their effectiveness, as they often were initially overwhelmed, and needed some time to "get up to speed" with the role. Student members themselves spoke of feeling confident and knowledgeable enough to participate more actively in Council business only towards the end of their term of membership. A few interviewees raised similar concerns about some members elected by general staff, seeing their lack of confidence as the main barrier to their participation. As these members are elected, such issues cannot be addressed through improving selection processes, at least under the current election system; however, certain types of professional development program may constitute a helpful intervention early in the term of elected members. A further suggestion for enhancing elected member capabilities is considered below.

Given the evidence drawn from my study, my view is that, on balance, there is more to be gained by the inclusion of internal members in the governing body than by their exclusion. Diverse views and complementarity of knowledge, skills and experience seem to provide Councils with a breadth of human resources on which to build its collective understanding and decision-making, enhancing its effectiveness through raising its collective awareness of the complexity of the context and environment for higher education in general and the institution for which they are responsible in particular.

Committee membership

It is in Council committees that much of the technical work of the Council is carried out, particularly in the areas of resources, finance, audit and strategy, but also in relation to Council processes such as agenda-setting, nominations, remuneration and review. In addition, Council members may sit on committees that report to Council, such as EEO, senior appointments, facilities management and internal review committees. Allocation of members to committees of Council and committees reporting to Council is usually done with due regard to any required expertise and experience, the particular interests of Council members and the provision of opportunities for development of members' skills and knowledge. Gender balance was also an issue mentioned by a few interviewees: some women in particular had been allocated to a committee because "we needed a woman" on a

male-dominated committee. This was one of the few areas in which gender seemed to be a considered consciously in decision-making.

The interview data and anecdotal evidence indicate that it is relatively unusual for student- and staff-elected members to be included in the membership of key committees such as audit and risk or finance and resources. Reasons given include perception of conflict of interest, fear of highly sensitive information being leaked, and lack of expertise. While the last reason may have some legitimacy in the case of specialist functions such as financial accounting and audit, the first two indicate a certain lack of trust between the Council leadership and elected members. This may or may not be justified in relation to the individual incumbents at a given point in time, but it seems inappropriate if it is an assumption applied in general.

There seems to be no intrinsic reason why an elected member with, for example, a reasonable level of experience in finance and budgeting could not make a useful contribution to the finance/resources committee. He or she would be bound by the same conditions of confidentiality as any other member, and so if information was leaked, sanctions for breach of duty would apply as they would to any other member. Conflict of interest pertains to individual interest rather than the collective interest that a member might have by virtue of membership of the staff or student body. True conflict of interest would apply in only rare cases where an issue under discussion might impact directly and particularly on an individual's personal circumstances (for example, decisions about restructuring and staff redundancies in a staff-elected member's own work area). In such cases, it is reasonable that the member be expected to withdraw from that discussion; however, it does not disqualify him or her from membership of a committee or Council.

Relative size of member categories

Over the last twenty years, internal membership of university governing bodies has steadily been reduced as competition and public policy has increased pressure on universities to adopt corporate governance practices from the commercial sector. The National Governance Protocols effectively mandated the numerical dominance of external members on university Councils, specifying that they must be in the majority, although in most institutions this had been the case for some time. Internal membership, including the

VC and presiding officer of academic board, now ranges from five to nine members, out of a total membership of 15 to 22.

This inquiry offers a good opportunity to reflect on the current balance between internal and external membership of our governing bodies. It is also appropriate to examine the numbers *within* the external category, and consider whether NSW should seek a better balance between Ministerial and Council appointments and the impact of specific alumni positions (whether elected or appointed). While my research did not aim to answer questions about Council composition directly, its findings provide some insights into the impact on practice of the changed internal/external balance on university Councils, and on the possible impact of the mix of Council and other appointments.

Internal/external balance

Several study participants remarked on the previous Federal Coalition Government's apparent obsession with demonising internal members of university governing bodies and pathologising their contributions. There were few indications that the potential problems raised by that Government's successive Education Ministers had materialised in the experience of the Council members I interviewed; nor did most interviewees view internal members or their behaviour as a significant impediment to governing body effectiveness, although in some situations it could cause a level of discomfort (D2, D3, D4).

In some universities (including my own, Macquarie), student membership has been reduced to one. Given the difficulties student members already face due to their relatively powerless position and in most cases lack of experience, coupled with a very limited term (D2), there is a good argument for including a second student member, perhaps also dividing the electorates into either undergraduate and postgraduate, or coursework and research, to reflect the core teaching and research training interests of student stakeholders.

Currently in NSW, either three or four members are elected by academic staff and one by general staff. Three academics and one general staff member should be maintained as a minimum, and consideration given to removing restrictions on the rank of members elected by academic staff, where these still exist. Addition of a second general staff member would better reflect the relative numbers of academic and general staff, although for

academic, symbolic and cultural reasons this should not be at the expense of an academic member.

Ministerial and Council appointments

Most NSW university Councils have six Ministerial appointees. This was previously four, but was increased to six in the amendments to university Acts that were required for conformance with the National Governance Protocols. For historical and political reasons, universities in this State have continued the practice of recommending that the Minister appoint two Members of Parliament to the Council, one from the Lower House and one from the Upper House, although this practice may diminish over time. Macquarie University currently has no serving member of the State Parliament on its Council, but three members are former State MPs.

The number of Ministerial appointees is not of itself problematic, provided the Minister's usual practice of appointing the university's nominees continues. There is, however, no formal protection against "political" appointments being made, and so consideration should be given to including a provision similar to that of the ANU in NSW university enabling Acts, to ensure transparency in the event that the university's nominees are rejected.

Of greater concern for some institutions is the imbalance between Ministerial and Council appointees. Some institutions, within constraints such as identified positions for Convocation members, have the right to directly appoint up to eight members (up to four Convocation plus any positions available to take the total membership to 22 – in Macquarie's case, this would be four additional members). In other institutions (for example, Sydney University), the number of elected members and Ministerial appointments leaves only one position for the Senate itself to fill; the University of NSW is in a similar position, with the freedom to directly appoint only two members, one of whom must be a graduate. In these cases, the main mechanism for Council influence over selection of members remains the recommendations made for Ministerial appointments and is therefore contingent on the Minister's cooperation.

As NSW was not included in my study (for possible conflict of interest reasons), I cannot report from my research on the impact this might have on governance practice in this State.

However, several study participants from other jurisdictions expressed surprise and some concern at the apparent lack of input that NSW university Councils have in relation to their membership, especially given the dominance of Ministerial appointments. This is confirmed by anecdotal evidence I have gathered from a number of Council members and university executives in NSW and observations I have made at conferences and seminars, in which a number of members have expressed a level of frustration at the Council's minimal ability to strategically influence and shape its own composition and skills mix. This is marked contrast to the situation in Victoria, where the six Governor-in-Council appointees are generally made on Council recommendation, in addition to the six direct Council appointments, or the situation in South Australia, where all members other than those elected by students and staff and the Presiding Officer of the Academic Board, are appointed directly by the Council.

There are risks involved in tilting the balance too far toward direct Council appointments, not least the risk of stagnation and loss of diversity, as Councils may be inclined to favour the appointment of people who "fit" the culture and social circle of existing members, and only seek prospective members from the limited pool of existing members' contacts and networks. It is also appropriate that the State Parliament, as the enabling body and a key stakeholder, be represented in some way, if not through the membership of MPs then at least through the power to appoint at least one member of each university governing body (as is the case in Victoria). In the contemporary context of an increased strategic role for university governing bodies, the acknowledged need for a good mix of expertise and skills amongst the membership, and the importance of building a positive Council culture, a better balance between Council and Ministerial appointments is likely to enhance the strategic capacity of governing bodies. A recommendation to this effect is included under ToR 9 (p65)

Alumni membership

One of the consequences of considering an increase in direct Council appointments brings into question the balance between alumni election or appointment and unrestricted appointments. There is a perception that some university Councils are dominated by alumni, leading to an unhealthy focus on preserving the past character of the institution rather than a future-oriented strategic approach to governance. This is a false dichotomy, as universities must maintain their hard-won reputation and standing as well as look to

enhancing both in a rapidly changing and at times unstable environment. If the Council is to oversee these activities effectively, it needs to comprise a mix of people who have strong connections with the institution and understand its history and development and those who look to open up new possibilities for it in the future. There is a good reason to believe that a selection of alumni will meet the former requirement, while there is no reason why they should not have the capability to progress the latter. The question remains as to what is the ideal balance, and how should enabling Acts empower Councils to attain that balance?

It is important to note here that the actual number of alumni on a governing body may be much higher than the number of specific alumni positions (whether appointed or elected). Other external, appointed members may also be members of Convocation, as might elected staff and students and one or more of the *ex officio* members. In the case of those universities with high numbers of elected alumni, the Council has little influence over the resulting balance between alumni and others on the Council. Where alumni have a high level of identification with, and attachment to, the university, an imbalance may become problematic if it reduces diversity of perspectives available to the Council and results in a narrow focus on maintaining a particular culture and character not necessarily suited to, or achievable in, the modern operating environment. This is an issue that seems to affect the older universities to a greater extent than the newer institutions.

In order to circumvent such a circumstance, it is not necessary to reduce the number of elected or appointed alumni if the Council does not desire this or if it would appear divisive; rather, the Council should be empowered to directly appoint a greater proportion of the Council membership. This may be achieved by either by reducing the number of Ministerial appointments and replacing them with direct Council appointments, or by allowing the size of the Council to increase beyond the current limit of 22.

Capacity of elected members

Apparent under-participation by some internal members, particularly general staff and students, is a cause for concern (D2). A common complaint is that elected members are under-qualified and insufficiently knowledgeable to make an effective contribution to the governance of the university (D2, D4). There are at least two possible remedial strategies, that maintain elected staff, student, and, if applicable, alumni membership of the Council

and improve the quality of these members' contributions. One is to deliver not only the standard induction program but to also target this group with specific professional development opportunities aimed at matching their expectations to the reality of membership, building confidence and identifying particular strengths that can be utilised to benefit the Council.

A second strategy is to impose new criteria for eligibility to stand for election, which might include attendance at a short preparation course or seminar series and, as an observer, at a specified number of Council meetings. This would be a controversial innovation, as many aspiring candidates would argue that their status as a staff, student or Convocation member automatically qualifies them to sit on the Council. However, my research findings indicate that internal members' under-performance due to lack of knowledge and confidence, rather than their outspokenness or advocacy, may be seen by others as a source of frustration, a lost opportunity, or even a waste of resources. Lack of effective contribution is therefore not only a possible threat to effective governance but potentially a threat to the legitimacy of elected membership. Arguments in favour of requiring potential candidates to undergo a preparation program include the enhanced value and legitimacy of elected membership through developing knowledge, confidence and expectations and improving the quality of member contributions.

Size of governing body

Australian university Councils range in size from 15 to 22 members, with some university Acts specifying that the Council is regarded as fully constituted or quorate with as few as 8 positions filled or members present. While the Terms of Reference do not explicitly mention the size of governing bodies, this is directly related to their composition, and as it has been an obsession of Federal and some State Ministers over the last twenty years, it is worth mentioning here.

A number of participants in my study, especially those from the commercial corporate world, were of the opinion that the governing body was too large and that the Council would operate more efficiently and effectively if it were smaller (D1). For some, the size of the Council and the collegial manner of its deliberations were seen as slightly irritating and a waste of resources, but most of these interviewees also acknowledged that this was a

reflection of the particular culture of universities as academic institutions, and probably an intrinsic part of the practice of university governance.

Several participants mentioned that their Councils had discussed the issue of size, but had come to the conclusion that any substantial reduction in size would be problematic in terms of ensuring that the full range of stakeholder groups and geographical areas retained a voice in the governance of the institution. This was particularly true for regional, multi-campus and dual sector institutions. Only one or two interviewees saw the size of Council as a significant threat to effectiveness and a major cause of inefficiency, and even these participants admitted that as most of the work was actually carried out in committees, the Council managed to perform its role effectively regardless of its size.

There is little in the literature that conclusively establishes a link between the size of a university governing body and its effectiveness; on the contrary, there is considerable evidence that size has only minimal impact on effectiveness, or none at all. While it is generally acknowledged that a smaller Council can make decisions more quickly, it is not clear that quick decision-making equates to either efficiency or effectiveness, which depend, of course, on the scope and quality of the decisions and their outcomes. There seems to be no correlation between governing body size and university performance: the highest-ranked institutions (Sydney, Melbourne, ANU) have, respectively, 22, 21 and 15 members.

A reasonable conclusion is that a university needs its Council to be the size it needs to be – that is, it needs to be large enough to enable it to pursue the university's interests effectively, by including diverse voices from the university's many stakeholder groups, including industry, community and geographically-based groups, its constitutive elements of staff, students and graduates, and the Executive and Academic Board, as the Council's partners in governance. The size of the Council, at least at the upper end, should be a matter for each university itself to determine, in partnership with its community and stakeholder groups, although it should be required to maintain a reasonable balance between internal and external members. If any legislated restriction on Council size is imposed at all, it should specify a *minimum* size that protects the public interest by ensuring that the Council includes at least a minimum number of members drawn from key stakeholder groups.

Summary of key issues: Governing body composition and size

- Member views on composition and size of Council vary according to their background, experience and relationship to the university (internal/external).
- Diversity of perspectives, complementarity of skills, expertise and experience, good relationships and a culture of trust, commitment and the integrity are key characteristics of a well-functioning Council. Ideally all members, of whatever background, are capable of contributing to this set of characteristics.
- There is little or no relationship between governing body size and effectiveness, nor between governing body size and institutional performance. A minimum, rather than a maximum, size is should be set down in legislation in order to protect the public interest and stakeholder groups.
- There is little evidence that internal members act in interests other than those of the university, although they may at times interpret these interests differently from external members.
- Concerns about internal members centre more on their lack of experience and perspective than on any perceived advocacy for their constituencies
- Some rebalancing of governing body membership between Ministerial and Council appointments and between alumni and other members may be appropriate in some NSW universities.

E. Selection, recruitment and development issues

Term of Reference:

10. Any other related matter

There are no additional findings that relate to this topic, but a number of findings relating to topics A-D are relevant. These include A1, C1, C3 and D2, D7, D8, D9 and the more detailed discussion sections of findings in each section.

Discussion

The National Governance Protocols required universities to provide induction and ongoing professional development for Council members and for regular review of Council performance (Department of Education Science and Training, 2004) (Protocol 4). Many, if not most universities, already had such programs in place before the protocols took effect, although not all were comprehensive, clearly targeted or systematic. Protocol 4, however, focuses on expertise, duties and responsibilities, which in the absence of other contextual information can be taken as those listed in Protocols 2 and 3 (respectively dealing with the role of the governing body and the duties of members). Apart from due diligence and good faith requirements (Protocol 3, b) and c)), these neglect the issue of social and cultural factors.

Protocol 6 requires the establishment of a systematic process for nomination of appointed members, and provides criteria including appropriate expertise, experience and an appreciation and understanding of the values associated with academic endeavour and the relationship of the institution to its community. However, it does not explicitly acknowledge the contribution of broader social and cultural capabilities to effective governance. As my findings indicate, these are at least as important as the technical and legal matters, and should properly form a component of nominations processes, as well as of induction, professional and organisational development and review. Again, some Councils have tackled these issues, but they are by no means embedded in a systematic way in many institutions. This is especially the case in NSW, where Councils generally have less autonomy in appointment of external members than do university Councils in other States and Territories.

Professional development for governing bodies has been provided by a number of agencies and organisations, including the AICD and the body established for the purpose, the UGPD Program run by the National Governance Institute at the University of Canberra. In addition, a number of consulting firms provide courses, seminars and workshops on specific aspects of governance, such as risk management, commercial activities, statutory obligations, the implications of social legislation, governance and management of controlled entities and sector-specific trends and policies. While not all members attend professional development sessions and programs, most participants in my study appreciated the opportunities that were offered, and stated that they tried to attend as many as possible. Most programs focus on the allocative domain and the associated technical requirements and processes.

Study participants saw getting to know fellow Councillors as a very important aspect of their experience as a Council member. The relationships formed through informal social occasions before and after meetings and during Council retreats, as well as through personal interaction in the course of more formal discussion, decision-making and problem-solving were seen as extremely valuable and productive in terms of Council effectiveness. However, only a few developmental programs for Council members explicitly tackle the issue of the Council as a social system and the elements of effective Council culture, and even fewer offer a program tailored to the cultural values and unique character of universities as organisations and institutions.

This is one of the reasons for many of my interviewees having mixed views of the professional development programs they had experienced as members of Council: many programs make assumptions that simply do not apply in a university setting, in governing bodies comprising a mix of external volunteers and internal, elected members. These include unitary assumptions and a lack of understanding of the complexity and multiple goals of universities. Other reasons for dissatisfaction with professional development programs include their level (base level programs are seen as patronising or a waste of time for experienced members; overly technical or theoretical presentations fail to engage members) and when they are offered (time of day, day of week, time of year).

One of the things that study participants were curious about is practice elsewhere. Only a handful of the thirty-six interviewees had had experience as members of a Council other

than their current one, and so most were unsure at times about whether they were relating an experience specific to their institution or common to all or most university governing bodies. In the second round of interviews, many participants quizzed me about things I had learned from the first round, and were particularly interested in comparisons between their Council's practices and those of others. These responses indicate that it might be highly beneficial for people from different Councils to come together to discuss their practices and compare notes on experiences, as both an individual and a whole-of-Council development process.

The demise of the annual University Governance Conference (last held in Canberra in 2007) has left a gap in the provision of opportunities for Council members from different institutions to meet, learn and share information. The annual AFR Forum on University Governance takes the form of a series of individual and panel presentations, and while there is time allowed for questions, the program does not include the workshops and small group discussions that members found to be valuable aspects of the annual conference. At a State level, such gatherings take place regularly in South Australia and on occasion in Victoria; a recommendation arising from this discussion is that NSW should establish a similar cycle of cross-institutional university governance events. The program should include a mix of presentations, workshops and discussions, and should aim to facilitate the dissemination of good practice, the formation of productive working relationships and the development of member capabilities, especially in relation to the emerging expectation that university governing bodies become more involved in strategic discussions and direction-setting (Rytmeister, 2007).

Summary of key issues: Selection, recruitment and development

- A range of professional development experiences are made available to members, including seminars, workshops, forums and conferences. Not all members attend, although most try to attend at least some professional development sessions
- Professional development and induction events and sessions vary in quality and appropriateness. Members prefer programs tailored to the university governance context, although some generic programs are rated highly.
- Members are curious about practices elsewhere and interested in sharing experiences with other Council members.
- Cultural capabilities and interpersonal skills are at least as important as technical skills and expertise, and should form part of Council member selection criteria.

Recommendations

The recommendations relating to each topic are separated into those that propose principles that should underpin legislative change, and those that propose specific forms of change to university enabling Acts and/or protocols for university governance.

A. Role definition and the governance-management boundary (ToR 1, 2, 3, 5)

Principles

Further technical specification of the roles of university governing bodies and Vice Chancellors is unlikely to minimise opportunities for conflict, since legislation can effectively directly address only those aspects of the roles that are already subject to a high level of agreement amongst governing body members and hence are not major sources of conflict. The areas most likely to lead to conflict around role definition are those which can only be addressed indirectly by legislative and regulatory mechanisms.

Conflict is best dealt with in a culture trust and inclusiveness. Conflict highlights the importance, not only of trust between members, but also of ensuring that this trust is justified on both professional and personal grounds. Once again, the emphasis must fall on the qualities, behaviours and capabilities of individual members, including the Chancellor and Vice-Chancellor. Recruitment of members who merit and inspire trust, ensuring provision of opportunities for members to form good working relationships and understanding of their roles, and building a culture of openness and mutual respect within the Council are the key social processes involved.

Recommendation 1
Amendments to university Acts or governance protocols aimed at increasing capacity for conflict management should focus on comprehensive approaches to selection, induction, development and review processes, mechanisms and standards, in which social and cultural capabilities are weighted equally with expertise, experience and technical knowledge.

Given the essentially relationship-based and cultural role of the Chancellor, the emphasis of discussions about role should shift from formal definition to mechanisms that best provide Councils with the capacity to determine appropriate selection criteria and implement an effective search and appointment process.

Recommendation 2

The following principles should be applied in any changes made to legislation, regulations, protocols and guidelines in relation to appointment of a Chancellor.

- Appointment of a Chancellor is a strategic decision requiring broad consideration of criteria within the Council and refinement by a small, high-quality selection committee.
- Selection criteria should be developed that encompass a broad range of individual attributes, including background, experience, chairing skills and cultural/social capabilities. The criteria should take into account the strategic directions of the institution. Prospective candidates should be able to demonstrate a general understanding of the higher education sector and a commitment to the institution. Consideration should be given to candidates' professional and social networks with reference to the university's key external stakeholder groups and relationships.
- The selection committee should include at least one internal and at least two external Council members and the Vice-Chancellor. Usually the Deputy Chancellor, rather than the outgoing Chancellor, would be a committee member, unless he or she is also a candidate. The committee should invite suggestions for candidates eligible for consideration as Chancellor from all members of Council, in order to maximise the benefit of member networks.
- "Opportunistic" or "political" appointments should be avoided unless there is an overriding strategic justification for this; even if this is the case, the candidate should display satisfactory skills and capabilities in the social and cultural areas. The final appointment decision should be taken by the Council as a whole, on recommendation of the selection committee.

Councils and Chancellors should not be further involved in the formulation and operation of policy than required for the purpose of fulfilling the role of oversight, monitoring, risk management and ensuring alignment with the strategic directions, mission and identity of the institution. Rather than becoming involved in the executive role, Councils should require Vice-Chancellors to report to the Council on the formulation, implementation and ongoing effectiveness of major institutional policies and procedures against a set of standards, outcomes and critical questions. These should be devised by the Council, or a committee of Council, in consultation with the Vice-Chancellor and using a framework that relates to both statutory obligations, AUQA requirements, institutional mission and strategic directions.

Recommendation 3
A framework for reporting on institutional policy formulation, implementation and ongoing effectives should comprise:

- A checklist of policies, procedures and outcomes required under the various State and Commonwealth Acts that apply to universities
- A checklist of policies, procedures and outcomes required by AUQA, either in preparation for audit or in response to AUQA recommendations following an audit cycle
- For new or substantially amended policies and procedures, a statement or checklist reporting on the process of formulation, including an overview of the nature and scope of internal and external consultations, as appropriate
- Evidence of a cycle of review of policies and their effectiveness, and actions taken to remedy any deficiencies or to enhance policies and procedures
- A set of indicators relating the operations of policies and procedures to strategic and mission-based values and goals.

Legislation:

Given the debate over the distinction between the governance and management role, it may be helpful to specify at least the technical duties and delegations of the Vice-Chancellor as chief executive officer of the university. This should include a statement that the Vice-Chancellor (or delegate) is the representative of the university in all commercial and financial transactions and contracts as long as he or she continues to hold the confidence of the Council. This closes one avenue by which the Council or Chancellor might intrude on the role of the Vice-Chancellor. It also ensures that the governance-management boundary is clear in relation to technical matters, but that the Council collectively retains a form of "reserve power" in cases where the Council loses confidence in the VC for reasons such as poor performance or misconduct. The diversity of Councils and the mix of internal and external members provides a safeguard against a Council coming to such a decision hastily or without due consideration.

Recommendation 4
University enabling Acts should include a clearer definition of the Vice-Chancellor's executive powers in relation to entering into contracts, representing the university in financial, commercial and industrial negotiations, and financial delegation, and a specification that the Chancellor or Council may not usurp those powers other than in the case of the Council as a whole losing confidence in the Vice-Chancellor. Any part of this role may be delegated to another member of staff. This does not alter the requirement for the Vice-Chancellor to report to Council and to seek its approval for major contracts and expenditures, as required by the Council.

B. Changing roles of governing body members (ToR 4)

Principles

In response to changing expectations of Councils and their members in the areas of strategy and external relations, consideration should be given to establishing frameworks to guide practice in these areas and ensure that members' expertise and networks can be utilised for the benefit of the university while ensuring that they don't encroach on the executive responsibilities of the Vice-Chancellor. While management strategic practices and processes have improved dramatically in Australian universities over the last two decades, assisted by the AUQA audit cycle, there are still improvements that could be made in relation to the involvement of governing bodies and the leveraging of members' expertise and experience.

Recommendation 5
Universities should be encouraged to develop a code of practice or framework to guide governing body members in any activities undertaken to promote the university's community engagement and external relations. These should include a clear delineation of the Vice-Chancellor's role in representing the university, ethical guidelines and communication and reporting processes to ensure that member activities are appropriately aligned with those of the executive management.

Recommendation 6
Universities should be encouraged to develop a code of practice or framework to guide governing body members and university executive in undertaking activities relating to strategy, in order to better leverage the individual and collective expertise and experience of Council members. In particular, these should provide for inclusion of Council members in strategic discussions, direction-setting and review of outcomes.

C. Performance issues (ToR 6, 7)

Principles

Given the substantial impact of the Chancellor on Council culture, relationships and overall effectiveness, it is important that Councils have access to a process for dealing with poor performance of a Chancellor. The process outlined below, although it may seem lengthy, would only be pursued in full in the most extreme cases. The evidence from my study indicates that it would be rare for the process to progress past the second step. While it is conceivable that, in the case of the failure of a no-confidence motion, the process could enter a continuous loop, it is in practice highly unlikely that the Council would

proceed with such a motion if it were not to succeed by the required margin. In the case of persistent problems and an intransigent Chancellor, however, a reasonable level of consensus would be expected and thus the motion would pass by the required margin, resulting in the Chancellor's dismissal.

Recommendation 7

Protocols for addressing a Chancellor's poor performance should include the following steps:

17. Initial informal approaches, in which the VC and/or a representative group of members express the Council's concerns directly to the Chancellor, and seek an undertaking that these concerns will be addressed, over an agreed time period.
18. If no improvement is discernable after the agreed time period, a further informal approach, suggesting that the incumbent should consider resignation if concerns are not addressed over a further agreed time period.
19. If the Chancellor refuses to acknowledge a problem, or refuses to resign, the Vice-Chancellor and/or a representative group of members compile a written statement of members' concerns. This should be presented to the Chancellor with a request that the incumbent respond in writing to the concerns raised and present this response in camera to the next full Council meeting. Note that this may require provision in standing orders to enable a motion of dissent from the Chair to be put to the meeting.
20. If the Council regards the Chancellor's response as satisfactory, the process is suspended until such time as the Council reactivates it on the grounds of continued poor performance. In this case, the process begins again at step iii) (presentation of concerns in writing) If the Council regards the Chancellor's response as unsatisfactory, it may proceed with a no-confidence motion in camera.
21. If the no-confidence motion is carried by a significant majority of the membership (for example, at least two-thirds), the Chancellor is dismissed and the position declared vacant until such time as a new Chancellor can be selected and appointed. In the meantime, the Deputy Chancellor or another external member elected by the Council should assume the Chancellor's role in an acting capacity. Ideally, this would be handled with discretion, avoiding undue media attention.
22. If the no-confidence motion is defeated, or carried by an insufficient majority, the process is suspended until such time as the Council reactivates it on the grounds of continued poor performance. In this case, the process begins again at step iii) (presentation of concerns in writing).

Legislation

Arguments in favour of a protocol for dealing with poor Chancellor performance, that includes the process described in Recommendation 7, include the following:

- Deliberations are maintained in camera until the final step of dismissal is reached, thereby avoiding unwanted media attention. The risk of information leaking from the Council does not pose a *greater* risk than do current ad hoc processes.
- Apart from placing this protocol in legislation, by-laws or regulation, the Government and Minister play no part in the decision-making, thus empowering the Council.
- The iterative process provides natural justice by ensuring that the Chancellor has an opportunity to respond to the concerns raised by setting out a plan to change his or her behaviour and then to demonstrate improvement.
- The need for a 2/3 or 3/4 majority for a motion of no confidence acts as a safeguard against the vote being taken on a factional or political basis, as it is unlikely that any one group would form a large enough bloc to pass the motion in the presence of genuine and substantial dissent.

Recommendation 8
That a protocol including the process outlined in Recommendation 7 be adopted to guide the management of poor Chancellor performance, and that this be embedded either in university enabling Acts or required in by-laws by regulation.

The Chancellor should take responsibility for regular review of not only the Council (already mandated by the National Governance Protocols, which, although no longer in force, continue to have an impact), but also of individual members of the governing body. Due to the sensitivities around evaluating the performance of members who are essentially volunteers, individual reviews should primarily be of the formative (developmental) rather than summative (evaluative) type.

Specifying this responsibility in legislation has the added advantage of specifying an aspect of Chancellor performance against which a report must be made. This is important because there are few mechanisms available for review of a Chancellor's performance, and even fewer sanctions, and this in turn is problematic because of all Council members other than the VC, the performance of the Chancellor usually has the greatest impact on the effective functioning of the Council. That is, while Councils are not significantly impeded in their effectiveness by the poor performance of an individual ordinary Council member, if the Chancellor's performance is insufficient or unsatisfactory, there is great potential for damage to the Council's capacity to govern effectively.