Chapter Three

University governance and management issues

> *It is very strange that a Liberal Government prefers 'bureaucratic central planning' with its attendant rigidities over a flexible, more devolved, mechanism which would be more responsive to market forces and student demand.*
>
> Professor Gavin Brown, Vice-Chancellor, University of Sydney.

1.1 This chapter deals with elements of the *Backing Australia's Future* policy on governance and the interface between the Government and the universities at both the ministerial and the administrative levels. It also describes the effect of policy transformation into legislation and the reaction of higher education stakeholders.

1.2 One of the most disturbing and completely unforeseen provisions in the Higher Education Support Bill is the extent of centralised control over universities which the Minister has proposed to operate through the Department of Education, Science and Training. As noted in the introductory chapter, there is some irony in the observation of an inverse relationship between Commonwealth funding and micro management of university operations: as the funding is reduced, the supervisory intrusion increases. The reasons for this will become evident through this chapter.

1.3 The extent to which the vice-chancellors were caught by surprise at this development was most forcefully enunciated in evidence to the committee from Professor Alan Gilbert, Vice-Chancellor of the University of Melbourne, and most outspokenly, a strong supporter of the deregulatory policy thrust which he had erroneously believed to be central to Government policy. His sense of betrayal is well captured in these comments:

> Because I regard the package at a policy level as a once in a lifetime opportunity for Australian higher education, it is with the deepest regret and with considerable astonishment that I have witnessed the gradual emergence of the guidelines that are being developed by DEST to implement the provisions of the Higher Education Support Bill 2003 should it become law. Unless there is some rethinking of these various guidelines—not all of which we have seen of course—which will impose a degree of bureaucratic complexity and micromanagement on Australian universities that is without precedent, the essential dynamism of the reforms will be lost. The interventionist regime that would be created by the IR guidelines is but a single example of across-the-board bureaucracy run riot. By not exercising enough control over the development of these guidelines I believe the government is in danger of losing control of its own agenda. It was launched with the minister assuring Australia's universities that the package would reduce the amount of red tape bedevilling the system. If that is, as I hope

> and believe, still the government's aim, then the higher education bureaucracy has let it down completely.[1]

1.4 Professor Gilbert is understandably aggrieved at 'the shifting of the goal posts', to use Professor Deryck Schreuder's expression, and the committee can only speculate as to how the situation came about that the principal supporters of the legislation, the vice-chancellors, were so wrong-footed. It can only speculate also on why the Government should choose to put off-side those who are its principal supporters. There is an inference in Professor Gilbert's evidence that the Minister has allowed DEST to run the legislative agenda without sufficient ministerial direction. If this is the case, the Government is paying the price of its ineptitude, with unfortunate consequences for the universities, as Professor Gilbert has argued.

1.5 Professor Gilbert's comments followed similar ideas expressed by the Vice-Chancellor of the University of Tasmania, Professor Daryl Le Grew, in one of those appearances before the committee which illustrated how much stronger and more focused opposition to parts of the bill became once its details were known. Professor Le Grew told the committee of the care taken by the university in shaping course offerings to meet state and national needs, all the while maintaining the closest links with business, the professions and government agencies. The vice-chancellor stated that the university expected to negotiate with the Government over courses and profiles, and he gave no indication to the committee that there had so far been any difficulties arising from this. But Professor Le Grew went on to state:

> What is a problem is the way in which the legislation is shaped. It gives potential for an overemphasis on control and for intrusion on the integrity and autonomy of the university. Remember, we have 1,000 years of history built on the charter of Bologna—something that all governments in the developed world have complied with—which guarantees universities internationally a sense of autonomy. We are reasonable about the way in which all of these things can be shaped in negotiation between the government and the university; we recognise the political realities. But there are limits, and we think that what is built into the legislation in terms of developing the potential to control us down to the course level is going too far. We have no problem with a negotiation about broad profile and direction, but we cannot accept absolute control at the course level.[2]

1.6 It is hard to imagine that the Government has been much influenced in its policy making by the Charter of Bologna. That is one interesting aspect of the problem. While vice-chancellors head institutions that are dedicated to the furtherance of knowledge and reason, these are not always valued by those who make public policy. Ramming square pegs into round holes is a recognised political accomplishment.

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1 Professor Alan Gilbert, *Hansard*, Melbourne, 2 October 2003, p. 3

2 Professor Daryl Le Grew, *Hansard*, Hobart, 26 September 2003, p. 3

The sub-text of micromanagement policy

1.7 In its governance and management issues paper the Government committed itself to reducing bureaucratic intervention in the management of universities. It stated that the extent to which this was possible depended on the confidence that it had, first, in university governance arrangements, and second in regard to whether agreements can be reached on outcome measures to replace unnecessary emphasis on 'process and inputs'.[3] The committee observes, that in the first of these conditions to do with university governance (which it deals with in a later section in this chapter), there is no connection that can be identified in the Higher Education Support Bill between the governance protocols and the reduction of red tape. As to the second condition, the bill sets out in explicit detail the increased and onerous obligations on university and makes no mention of how the arrangements legislated for may be altered by negotiation. The statement of Government policy in the issues paper has been shown to be both fatuous and irrelevant.

1.8 Professor Gavin Brown, one of the majority of vice-chancellors disappointed with the translation of *Backing Australia's Future* into legislation, described the potential of the legislation to frustrate the aspirational outcomes that should arise from the making of good higher education policy. As his submission states:

> Inasmuch as the intent of the package is to foster diversity of mission and to increase opportunities for universities to improve the quality and range of their activities, we endorse that approach, but the reality, translated through bureaucratic prescription and complexity, could easily become the opposite. For each of the measures in the package, the touchstone should be 'Does this improve flexibility, does it empower institutions to improve their performance, does it enrich the learning environment for students and does it make local policy-setting and management simpler and more effective?' In too many cases, the rules and implementation are either too clumsy and restrictive or mysterious and non-transparent. Good intentions will produce only wasted opportunities if Dr Nelson's commitment to reduce red tape cannot be honoured.[4]

1.9 What appears remarkable to the committee is the detail in which the extent of micromanagement is explicitly stated in the legislation. If parts of the bill read like a standard public service contract, it is only because that is what it is intended to be, albeit in 'model contract' form. DEST officials were asked by committee members why the word 'university' appeared so rarely in the text of the bill. The response was that not all institutes of higher education were universities, and that the use of the more generic term 'higher education provider' was much to be preferred. What they might have explained is that the use of the latter term is much more appropriate given the direction in which government policy is moving. The Government seeks to redefine the nature of the relationship between the government and universities.

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3 *Meeting the Challenges: The Governance and Management of Universities, Issues Paper,* DEST, August 2002

4 Submission No. 105, The University of Sydney, p. 3

1.10 Universities were once funded on the basis of their being within a sector of public education and for their contribution to the prosperity, welfare and advancement of the nation. The radically changed attitudes over the past six years have seen a diminution of Commonwealth grants to universities, and this is planned to accelerate. The terminology of Government engagement works along the lines of the 'purchaser-provider' model of funding. Grants formerly made on the basis of trust now come in the form of purchase orders with more conditions attached. The committee gains the impression that universities, being institutions of wisdom and learning rather than of cynicism and cunning, have not yet accustomed themselves to their changing relations with government.

1.11 This may change when the Government takes the next logical step of purchasing educational services from institutions of higher learning which are currently outside the ring of properly established universities. There are 36 universities and a handful of small and specialised institutes currently receiving funding. These are listed as Table A providers at clause 16-15 of the bill. There may be no good reason, by some lights, why services should not eventually be purchased from institutions not currently listed on Table A, currently two private universities and another handful of mainly theological or religious-based institutions, some currently eligible to enrol PELS recipients. Clause 16-25 gives very wide powers to the Minister to approve 'a body corporate' as a higher education provider. It is more than likely that, in the case of many of these institutions, there would be minimal objection to micro-management from DEST if their consolation was an income stream from HECS paying students.

1.12 The committee notes that the Council of Private Higher Education has called in its submission to the inquiry for the extension of targeted HECS-liable places to its member institutes, where they offer the best means of achieving particular public policy objectives.[5] It does not take too much imagination to see that the micro-management arrangements, combined with the more active provision for ministerial discretion will eventually see private higher education institutions (unlikely to be accepted as 'universities') receive Commonwealth funding on the same basis as universities.

Recommendation

That all clauses in Division 22 of the bill be redrawn in recognition of the operations of universities as public institutions.

Funding agreements: ministerial discretion and micro-management

1.13 Under the bill universities will be under intense pressure maintain rigorous surveillance over their enrolment numbers and course categories. A brief description

5 Submission No. 440, Council of Private Higher Education, p. 1

of some of the provisions reveals what vice-chancellors are describing as outrageous intrusions into areas of student administration.

Guidelines and micro-management

1.14 The committee has identified the following clauses of the Higher Education Funding Bill and provides some comment on them. The following points set out, in very detailed form, would normally not be required in legislation relating to established universities. The Government obviously believes that a tight rein will need to be exercised over newer and lesser institutions which are yet to be identified as private providers. Established public universities should not be subject to such intensive legislation. The following clauses are defective and/or likely to cause concern in operation:

- Clause 13–5 provides for Higher Education Provider Guidelines (to be disallowable instruments) issued by the Minister from time to time and which will detail 'quality and accountability requirements' of institutions. Drafts of the first set of these Guidelines (apart from IR guidelines) were released on November 3, 2003. Other guidelines will not be available, in some cases, for years, presumably when they are required. There is some ambiguity about the use of Guidelines in the case of this legislation. DEST advised the committee that the disallowance of Guidelines would not necessarily stop the implementation of arrangements which are provided for in the Guidelines as there was considered to be sufficient detail in the bill to guide administrative arrangements[6]. The question then arises, why is it necessary to make Guidelines at all. This may result in some interesting correspondence between the Minister and the Senate Committee on Regulations and Ordinances.

- 16 – 1 This clause states that a higher education provider is any corporate body approved to receive grants or whose students can receive scholarships or loans under the Act. The word 'university' is rarely used in the bill. This new catch-all terminology has two main effects:

  It emphasises a 'purchaser-provider' relationship between the Government as buying agency and institution as supplying agency, with the purchaser defining what it will (and will not) buy and the conditions under which it is prepared to buy.

  It avoids distinguishing universities as having particular academic characteristics, and having statutory identity, or traditions of autonomy, and having characteristics which, in the public mind, distinguish them from commercial enterprises.

  Hence, the framework of the entire legislation is shaped by the need to protect Government purchasers and student consumers in a deregulated environment where private providers operate.

6 Mr Bill Burmester, *Hansard*, Canberra, 17 October 2003, pp. 11012

- Clause 16–15 Table A providers (those institutions currently receiving general purpose funding under HEFA) have a particular status under the HEFA Act. They are deemed to have approval for the purposes of the Act (16-5.1) and they are exempt from the Tuition Assurance requirements (19-40.1) because those exemptions are made explicit, all other parts of the Act will apply to Table A universities.

The quality and accountability requirements

- Clause 19–1 sets out the 5 sets of requirements (financial, quality, fairness, compliance and fees).

- Clause 19–2 notes that the Act of itself does not compulsorily impose requirements on institutions; the requirements are conditional on the institution accepting the Government's terms of purchase.

- Clause 19–5 does not define the basic requirements: 'must be financially viable' and 'must be likely to remain financially viable'. The committee asks whether a university with an operating deficit over, for instance, two continuous years meet the requirements. What financial performance measures would an institution have to report against (eg. safety margin, liabilities; assets) and what would be the benchmarks for acceptable performance?

- Clause 19–10 prescribes the form of financial statements to be approved by the Commonwealth Minister for Education. No reference is made to consistency with reporting requirements of states, or the CAC Act. The annual financial statement must be provided together with an independent audit report within 4 months of the end of the reporting period. The committee notes that this may not always be a realistic timeframe, especially when there are negotiations over possible audit qualifications to statements.

- Clause 19–15 stipulates that the provider must provide 'an appropriate level of quality', but this is not defined. The question arises as to who will determine what is appropriate and against which criteria. This appears to be left to 'a quality auditing body', defined in the dictionary attached to the bill as 'a body listed in the Higher Education Provider Guidelines' as such a body). For universities this is likely to mean the AUQA. But AUQA currently operates as a quality assurance *verifying* agency; that is, AUQA assesses the extent to which universities deliver what they claim to deliver and apply the checks they say they apply. The universities, not AUQA, define 'appropriate level of quality' according to their missions. The bill suggests external standards may be applied.

- Clause 19–20 (c) provides that the Minister will have the power to direct a university to comply with any requirement the Minister imposes in order to implement the recommendations of a quality auditing body. This represents a significant shift from current practice, where the responsibility for responding to the findings and recommendations of AUQA rests with the university itself.

It would be possible for a university to be required to adopt an audit recommendation that it may have grounds for rejecting.

- Clause 19–25 requires a university to do all things required by a quality auditing body and pay all costs of an audit. There is no provision for a university to challenge the reasonableness of the audit body's proposals.

- Clause 19–35 (1) concerns benefits and opportunities for students. While fairness of treatment is laudable the meaning of the sub-clause is unclear. What is meant by the distinction between 'the benefits of, and the opportunities created by, the assistance are made equally available to all such students? Equality of opportunity can be achieved but equality of outcomes cannot be guaranteed by an institution.

- Clause 19-35 (2) & (3) relates to student selection decisions. While there is no in-principle difficulty with the text of the bill there is a potential for government intrusion into admissions autonomy through subsequent Guidelines issued under this part of the bill for the purposes of monitoring institutional compliance with 'open, fair and transparent procedures based on merit'. Internal allocations of grants (such as for promising researchers) could also be subject to scrutiny under this part of the bill if enacted and related Guidelines.

- Clause 19–45 requires that all providers must have student grievance and review procedures in place. Again, this normal function of university governance is being taken into Commonwealth law. Specifically; universities must have grievance and review procedures that 'comply with the requirements of the Higher Education Provider Guidelines'. Sub-clause 19-45 (6) implies that compliance with these requirements will be audited.

- Clause 19-50 and 19-55 requires the appointment of review officers. This would result not only in serious intrusion into university autonomy but would make universities liable to high compliance costs and duplicate a number of existing review processes.

- Sub-clause 19–60 (3) requires providers to comply with the requirements of the Higher Education Provider Guidelines relating to personal information about students. This is open ended and potentially could require universities to provide information to the Government about student behaviour and other characteristics that universities have traditionally safeguarded for the protection of students.

- Sub-clauses 19–65 (1), (2) & (3) are open ended: universities must comply with the requirements of the Act, regulations and Guidelines; must provide information required by the Minister; and must have administrative systems that support this compliance. This is too open-ended, and requires limits.

- Sub-clause 19–70 (1) requires universities to give the Minister any statistical or other information the Minister asks for about the provision of higher education and compliance with the requirements of the Act. And (2) says the information must be in a form approved by the Minister and 'in accordance with such other requirements as the Minister makes'. This power is open ended and apparently not reliant on Guidelines that are disallowable.

- Clause 19–75 requires universities to notify the Minister in writing about 'any event affecting the provider or a related body corporate of the provider' that *may affect* the provider's capacity to comply with the conditions of grant or the quality and accountability requirements. The significance of an event is not defined nor the amount of reporting detail.

- Clause 19–80 empowers the Secretary of DEST to appoint departmental officers or other persons who will have *access 'to any premises or records* of the provider for the purpose of conducting audit and compliance activities related to this Act'. This is an extraordinarily intrusive power (with no equivalent in HEFA) and it is even stronger than the provisions in the ESOS Act, which requires a magistrate to be satisfied that cause exists to issue a search warrant of a CRICOS registered provider. No such court authority is required here. Sub-section 19-80 (2) requires a provider to comply with the arrangements.

- Clauses 19–90 and 19– 5 requires universities to set tuition prices for students, to notify the Minister of the price for each unit of study offered in a year (in a schedule approved by the Minister) and to publish the schedule free of charge to all students and prospective students in ways that make clear to them how much they have to pay for each unit and for a course of study in a year.

- Clause 22– 5 gives the Minister power to revoke a body's approval as a higher education provider for the purposes of the Act where the Minister is satisfied the provider has breached a condition of grant or any one of the quality and accountability requirements. In considering a decision to revoke, the Minister may have regard, inter alia, to the impact of the breach on the reputation of Australian higher education or any other matter set out in the Higher Education Provider Guidelines. Clause 22-30 gives the Minister power to suspend approval of a provider under the Act. This is potentially able to cause a university to cease to function through lack of access to funds and an inability to enrol students in receipt of grants or loans from the Commonwealth.

- Clause 22-30 provides that the Minister may suspend a 'provider's approval' to operate pending a decision in clause 22 – 15.

- Clause 30–1 refers to the constitutional powers of the Commonwealth in respect of 'benefits to students' as the basis for funding student places at an institution. Sub-clause 30-1 (2) makes such grants payable on condition that the provider enters into a funding agreement with the Commonwealth.

- Clause 30–10 permits the Minister (‘may’) to allocate a number of Commonwealth funded places to an institution for a year. The Minister ‘must specify the distribution of those places between ‘funding clusters’. Clause 30-15 identifies 12 funding clusters, noting ‘The Commonwealth Grant Scheme Guidelines may delete, vary or add to the funding clusters’. This gives the Minister direct power to fund or not to fund specific curriculum areas in a particular institution. In the committee’s view the clause should require the Minister to consult universities and reach agreement with them on the number and mix of government supported places.

- Clause 30-25 of the Higher Education Support Bill sets out the conditions to which Commonwealth Grants are attached. The agreement may specify the minimum number of Commonwealth supported places in each year; the number of undergraduate and graduate places in each course year; the maximum number of places with a regional loading; the number of medical student places. There may be additional unspecified conditions imposed. The Commonwealth may also restrict the type of courses in which a university may offer Commonwealth supported places. Should a university breach a condition of the grant, the Commonwealth will make ‘adjustments’.

- Clause 33–15 makes increases in basic grants conditional on university compliance with ‘National Governance Protocols’ and workplace relations requirements. These requirements are specified elsewhere. Compliance activities are likely to require vice-chancellors to testify that all requirements are met (such as no union access to university intranet) and to be able to produce evidence to that effect as required (or have their premises, records and web sites open to random audit by departmental officers).

- Clause 33–25 provides for adjustments to the basic grant for a year where a university enrols more than 5 per cent above the agreed number of Commonwealth funded places or when actual student enrolments vary from the allocated distribution of places by funding cluster. Universities may well find it difficult to match their actual student enrolment to the prior allocated distribution of places by cluster.

- Clause 36-35 allows for 100 per cent of places in a course to be full fee paying, at the Minister’s discretion. This is unprecedented, and directly conflicts with the Government’s policy that specifies that only 50 per cent of any course can be occupied by full-fee paying students. This clause has the potential to lock poorer students out of some courses altogether.

- Clause 169-20 gives the Minister the power to determine that students may be exempt from student contribution amounts. This ministerial intervention comes over the top of the powers given to universities to determine the student contribution amount, adding another layer of discretion. Ministerial discretion should be deleted in regard to fee exemptions because it may be open to abuse. Transparent decision-making processes in universities should operate in relation to this matter.

1.15 The committee has heard a great deal about the opposition of universities to micro-management. The provisions summarised above give an idea of the administrative task in store for universities. No doubt they will require additional resources in DEST as well. The committee's view is that this extent of regulation, and the unfettered discretions of the Minister, are out of place in modern legislation, and certainly are contrary to a devolutionary trend in public administration. Professor Alan Gilbert told the committee, from a university perspective:

> I could imagine that all of those provisions would be defensible if the guidelines that supported them were minimalist and highly circumscribed the circumstances with which a minister would exercise those discretions. What concerns me is that the meaning of the legislation and its operation are going to depend on a very detailed structure of guidelines that accompany it and on current evidence we have reason to fear that all of those powers that you have referred to are going to be subject to wide discretion and represent, I think, an interventionist regime of the kind we have not seen before in Australian higher education.[7]

Recommendation

The committee recommends that the Government release the full and final set of guidelines before the Senate debates the bills, given that incomplete draft guidelines were provided on 3 November 2003, four days before the inquiry reporting date.

Recommendation

Existing appropriations under the Higher Education Funding Act (HEFA) are sufficient to allow for the full functioning of Australia's universities in 2004. It is therefore recommended that the Senate not be rushed into determining a position on these bills before the end of 2003, as this would inhibit the full and detailed consideration that they demand.

Recommendation

Funding agreements

That clause 30-25 be amended to remove ministerial discretion over the funding of specific courses, in order to prevent intrusion into the autonomy of self-accrediting institutions.

Recommendation

Clause 16-25 Approval by the Minister

That clause 16-25 be amended to provide that where private entities seek Commonwealth funding, that application is subject to an open process,

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7 Professor Alan Gilbert, op. cit., p. 4

conducted by DEST, and that the process be subject to parliamentary approval, and in accord with the National Protocols.

Recommendation

Defining financial benchmarks of viability

That clause 19–5 be amended to define the basic requirements of financial viability and to set financial performance measures against which an institution has to report, and to set benchmarks for acceptable performance.

Recommendation

Financial information that must be provided

That clause 19–10 be amended to reflect the consistency between Commonwealth and state reporting requirements and the extent of Commonwealth recognition of reporting requirements of states, or the CAC Act, and the timeframes within which these annual financial statement must be provided.

Recommendation

Defining criteria for assessment of quality

That clause 19–15 be amended to define 'an appropriate level of quality', as required by the act; and the authority or agency who will set the criteria against which this is to be assessed.

Recommendation

Requirement to comply with national protocols

That clause 19–20 (c) be amended to provide for universities to contest the veracity of AUQA audits and provide appropriate review processes.

Recommendation

Right to challenge audit reports

That clause 19–25 be amended to provide that a university may challenge the reasonableness of the audit body's proposals.

Recommendation

That clauses 19-50 and 19-55 in relation to the appointment of review officers be withdrawn on the grounds that they present a serious intrusion into university autonomy, make universities liable to high compliance costs and duplicate a number of existing review processes. Both clauses must be amended to include the same standards of judicial review, as exist in the ESOS Act, namely a

warrant granted by a magistrate must be obtained before search and seize missions can be launched on university premises.

Recommendation

Disclosure of personal information

That in order to protect students' personal information sub-clause 19–60 (3) be amended to specify the categories of information that universities may provide.

Recommendation

That sub-clause 19–70 (1) be amended to restrict the level of information required, because the provisions are too broad.

Recommendation

That clause 19–75, requiring universities to notify the Minister in writing about 'any event affecting the provider or a related body corporate of the provider' that may affect the provider's capacity to comply with the conditions of grant or the quality and accountability requirements, be amended to define the occasions where breaches have occurred, not when they may occur in the future.

Recommendation

Requiring a search warrant for DEST inspections

That clause 19–80 relating to search powers be amended to provide for the requirement of a search warrant issued by a magistrate in the event that departmental officers need to open the books of a provider against the providers wishes.

Recommendation

Process for national allocation of places

Amend 30-10 to establish a transparent process for the allocation of places on a national basis.

Recommendation

Discretion over Funding Clusters

That clause 30-15 giving the Minister direct power to fund or not to fund specific curriculum areas in a particular institution be amended to require that the Minister consult universities, and reach agreement with them on the number and mix of government supported places, and make public the reasons for the decisions.

Recommendation

Exempting students from HECS

That clause 169-20 be re-written, so that the Minister does not have discretion to exempt specific students from making HECS or other loans contributions.

Recommendation

That in order to recognise the status of universities, the phrase 'higher education providers' be deleted and replaced with 'universities' or 'universities and other providers' where necessary.

HEIMS

1.16 Mention should be made of the Higher Education Information Management System which DEST expects to become operational from 1 January 2005. The Government is to provide just over $10 million in 2003-04 for costs associated with the implementation of a computer program which will administer the students loan program and provide for the transfer of financial and statistical data between universities and DEST. A total of just over $20 million will be provided overall for this development project, which will extend to 2006-07.[8]

1.17 HEIMS is to become the instrument of micro-management. Each university is to be given $200,000 to cover implementation cost, or as one vice-chancellor indicated to the committee, less than the cost of 'an indecent consultancy'. One university singled it out as a source of concern.

> a. The magnitude and complexity of the system required to track SLE would result in major IT issues and costs in universities endeavouring to link their own systems to it, and would be likely to spawn a whole layer of bureaucracy to track and manage the data produced. The problems it is aiming to manage and rectify may well be less acute than the proposed cure. The transition costs for universities will be very large. Funding support proposed by the Government for HEIMS is minimal and the apparent lack of a cost/benefit analysis is of concern.[9]

1.18 The Vice-Chancellor of RMIT told the committee that one of the issues in the RMIT's experience with computerized student management systems was the extent of modification to the base software system. One of the most problematic areas was tuition calculation. According to her reading of the bill and her understanding the guidelines, there is huge complexity in the way that the tuition and financial arrangements are going to have to be implemented.[10] Professor Dunkin said she was anticipating significant extra costs would need to be met by universities for the implementation of HEIMS.

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8 DEST Portfolio Budget Statement 2003-04, p. 75

9 Submission No.103, Edith Cowan University, p. 4

10 Professor Ruth Dunkin, *Hansard*, Melbourne, 2 October 2003, pp. 623

1.19 The committee will be maintaining a watching brief on the development of HEIMS. The record of the Commonwealth in managing IT programs over the years has provided numerous case studies in what can go wrong with ambitious programs such as this. Whether the IT solution to the Government's plan is successful will depend ultimately on whether the policy is robust and has integrity at the level of human liaison. HEIMS may be called to do much to make up for deficiencies at that level.

University governance

1.20 The requirement in the bill for states and territories to amend their legislation which establishes the legal entity of the universities within their jurisdictions is also problematic. The required legislation will set a limit to the size of university councils or senates, remove student and academic staff representatives and ensure that external appointees will form a majority of the governing body. All state governments made submissions to this inquiry and all had senior departmental officers appear before the committee.

Remaking university governing bodies

1.21 University governing bodies currently remain strongly representative of the stakeholders in the universities as public institutions. Typically, the major stakeholders are the vice-chancellor and senior academics or officers of the university, academic staff representatives, general staff representatives and student representatives. Distinguished members of convocation and representatives of business and the community, as well as parliamentary representatives in some States and Territories, make up the typical core of outside appointees to councils and senates. These vary in size depending on the establishment legislation. The committee heard no evidence which suggested that any university, regardless of the size and composition of its governing body, was unhappy with its existing governance arrangements. For most universities which addressed this issue in submissions, the performance of their councils or senates was a matter of considerable pride.

1.22 The committee gained a strong impression that universities were rather nonplussed about the attention paid by the Government to the issue of the governance and the management of universities at the council or senate level. While no submission supported the Government's policies, few submissions speculated on the Government's intentions, or attempted any analysis of the relevant issue paper in the *Crossroads* review. A wide range of views were canvassed in the issues paper, but the official line which emerged later in the Minister's budget papers, was clearly evident. These are consistent with the core premise underlying the rest of *Backing Australia's Future*. Dr Nelson is fond of saying that the 'one-size fits all' approach is a threat to excellence and diversity. This is exactly the formula he is imposing on Governance.

1.23 The Government defines universities as 'providers of educational services'. This bleakly utilitarian view takes little account of scholastic values or the culture of teaching and learning which universities have developed over centuries. The Government appears to see its role in this legislation as assisting the transformation of

universities from what they see to be cloistered institutions toward a more entrepreneurial role. That the universities have been effecting this transformation themselves, over many years, without the need for Federal Government intervention, has apparently gone unnoticed.

1.24 The Government has decided that a shift away from public funding toward a 'user-pays' principle, associated with a more entrepreneurial approach to financial management requires a different stamp of governance. While the *Crossroads* issues paper stated that universities have to be regulated and monitored to ensure public accountability, it warns that:

> However, universities are also large-scale business organisations. Increasingly they are diversifying their sources of funding through revenue derived from fees, charges and investments. It is vital that they seize opportunities to commercialise intellectual property of the university through royalties, trademarks, licensing and equity ventures. They need corporate governance structures that can encourage and support such activities, including entering into commercial relationships with the private sector.
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> At present many universities feel constrained in the extent to which they can respond to, and capitalise on, business and innovation opportunities in timeframes appropriate to the commercial world. …Boards, Councils or Senates often remain unwieldy structures, unable to provide the support and advice necessary to Vice-Chancellors managing a large-scale organisation. Governing bodies … still average 21 members. Some of these members believe they are representing particular constituency interests rather than acting as the collective leadership of the university.[11]

1.25 The issues paper continues with the observation that appointments to governing bodies should be made on the basis of skills and attributes useful to the changing role of universities. This explains the provision for outside council members, preferably with business experience, and the elimination of student and staff representatives who may be more likely to oppose commercial operations which universities may choose to engage in. It is argued that there is a case for legally codifying members' duties, so as to prevent conflict of interest and to ensure that they act in the best interest of the university. There was a suggestion that members of governing bodies should be subject to legal sanctions for breaching their fiduciary duties, and be required to meet the standards set for company directors.[12] This provision managed to make it through to the Nelson protocols, which were part of the 2003-04 Budget package.

1.26 The Vice-Chancellor of the University of Sydney, in one of the few submissions which tackled this issue, called the protocols which eventuated from this

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11 *Meeting the Challenges: The Governance and Management of Universities, Issues Paper,* DEST, August 2002, p. ixx

12 ibid.

issues paper a 'knee jerk reaction' to concerns over issues of financial management at RMIT and Victoria University. Professor Brown was highly critical of measures to standardise governance arrangements across the sector. In relation to the curious notion that governing bodies should be like-minded teams of corporate energy and virtue, Professor Brown stated:

> The wording in the Nelson review concerning the governing body's direct responsibility for risk management could be construed as placing unreasonable demands on the individual members of that body, requiring them to overstep the conventional bounds of 'supervisory oversight' and precluding responsible delegation. That, in turn, could render the proper task of managing the institution unworkable and risk personal liability, including automatic dismissal for members of the governing body under some circumstances. A second concern is the role of elected representatives in placing the needs of the institution first. The wording of the government protocols fails adequately to incorporate a proper function for elected members in bringing forth the special concerns of a subgroup when a matter is being considered. The paramount duty of member of the governing body must be to the university but, subject to that, representation should not be precluded.[13]

1.27 The committee notes the good sense of Professor Brown's comments but has a different view on the governance issues paper. No vice-chancellor appearing before the committee expressed enthusiasm for being subject to a board of externally appointed bankers, stockbrokers, corporate investors and commercial lawyers. Nor would such people agree to be appointed, if Professor Brown's warnings are to be accepted.

1.28 It is interesting to note that the *Crossroads* issues paper on governance canvassed the idea of 'directors' fees' for governing body members, but then dismissed the suggestion as out of keeping with the traditions of university community service.[14] The committee presumes that no irony was intended in this observation, and it interested to know what fee a university would be prepared to pay for someone to assume fiduciary responsibilities equal to those held by members of bank boards, and whether there will be resignations from among current senates and councils if some of the Government's wilder ideas are ever drafted into legislation.

Effective governing bodies

1.29 The committee heard a number of interesting comments at hearings on the workings of governing boards, but it heard nothing which would support the views of the Government. Representation and diversity were the key words used to describe the operations of successful boards. As a Murdoch University academic told the committee:

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13 Submission No. 105, The University of Sydney, p. 4

14 *Meeting the Challenge*, op. cit., p. 22

> Universities and university councils, to be really successful, need a critical mass of skills. We definitely need external people and we definitely need internal people because they bring different kinds of skills and expertise. Staff are not simply representatives of other staff, although we might be elected from that constituency. What we bring to a university senate, aside from some fairly useful potential for whistleblowing, is internal knowledge and expertise about the education industry. Most corporate bodies have a predominant membership of people with expertise in the industry. By and large, the external members of university governing bodies do not have any expertise in education, so the students and staff members of those governing bodies actually comprise the industry expertise.[15]

1.30 The committee considers that there is a whiff of faddism in the Government's views on university management. It is always difficult to be convincing about the value of a 'reform' at a time when its moment is passing. The respect for 'corporate' values and principles has taken a battering in recent times, with spectacular examples of the collapse of companies with myopic vision, partly due to the absence of diverse opinions and an open culture of discourse. To impose on universities a structure which represents the very antithesis of what universities stand for is a highly presumptuous action by those whose thoughts and actions are almost always driven by political imperatives. At the core of this presumption is contempt for universities, what they stand for, and for those who run them.

1.31 The faddism of the Government is partly suggested by evidence heard by the committee in Brisbane about research done in the United States by Boston academics which, as the Deputy Vice-Chancellor of the University of Queensland pointed out, indicated that the Government was out of touch. The research indicated that there was evidence that governance improved where there were numbers of people who were intimately associated with the nature of the business. Professor Gardiner pointed out that it would perhaps be uncomfortable if private sector boards moved to recognise that larger numbers of both externals and internals were appropriate for effective governance 'when we were constrained to move in the other direction.'[16]

1.32 The need for diversity of membership on university governing bodies is obvious to anyone who understands the role and the culture of a learning institution. They have a far more diffuse role than do business corporations. If, as Professor Gardiner suggests from her reading, corporations are appointing non-business people to their boards in increasing numbers to broaden their management thinking, this practice must continue in universities. It is likely that members with no experience of university management would be at sea without the instructive presence of academic member colleagues. As one academic noted:

> I was constantly struck, from the day I joined our senate, by the way the external members relied on the internal members for expert knowledge—on a casual basis after dinner, before meetings and during meetings as well. In

15 Dr Jim Macbeth, *Hansard*, Perth, 30 September, 2003, p. 160

16 Professor Helen Gardiner, *Hansard*, Brisbane, 23 September 2003, p. 17

> the last few months in particular, a number of people commented—as we were raising these issues given this protocol—how they could not do their business without the internal members because they did not have that kind of knowledge of the institution and how it works.[17]

1.33 There was no evidence presented to the committee that university governing bodies are prone to disharmony in the working relationships between individual members. The committee believes that some Government thinking in this matter may have been influenced by the dissent within the council of the University of Melbourne some time ago over privatization issues. Councils come and go: matters are eventually resolved. This issue was not raised with the committee by Professor Gilbert, who will, as the committee notes, be dealing with a governing council of 30 when he takes up his position as Vice-Chancellor of the University of Manchester.

1.34 The issue of the size of a governing body also arose in evidence. The arbitrary limit of 18 members set out in the governance protocols appears to have no rational basis. The committee imagines that it may have something to do with a bizarre and dated idea about organizations having to be 'lean and mean' with the implication that small groups make better decisions quickly, and presumably, with less scope for dissent. Professor Gardiner also mentioned the issue of the Government's preference for the size of senates and councils.

> There are problems with the majority of the national governance protocols, as senators would be aware. The University of Queensland has the largest governing body among Australian universities. There is no evidence that we are poorly governed. Indeed, the evidence is to the contrary. We do not believe that specifications on the size and composition of the governing body will necessarily improve governance. Therefore, we question that level of specificity in those protocols.[18]

1.35 The committee believes that the Minister or those who advise him have not properly considered the issue of governing body size in the light of experience in the countries which they regard as setting higher education benchmarks. Mr Gavin Moodie provided in his submission a table showing the size of governing boards in leading British and American universities. As Mr Moodie pointed out, these international comparisons undermine the Commonwealth's case.

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17 Dr Jim Macbeth, *Hansard*, Perth, 30 September 2003, p. 161

18 Professor Helen Gardiner, op.cit., p. 16

Institution	Governing body	Members
Top US national doctoral colleges, in US News & World Report *rank order*		
Princeton	Board of trustees	40
Harvard	President and Fellows of Harvard College	7
Yale	Yale Corporation	19
CalTech	Board of Trustees	37
Duke	Board of Trustees	37
MIT	MIT Corporation	75
Stanford	Board of Trustees	35
University of Pennsylvania	Board of Trustees	60
Dartmouth College	Board of Trustees	16
Columbia	Board of Trustees	24
Northwestern	Board of Trustees	122
University of Chicago	Trustees of the University	47
Washington University	Board of Trustees	53
Cornell	Board of Trustees	64
Johns Hopkins	Board of Trustees	104
Rice	Board of Trustees	25
Brown	Corporation	54
Emory	Board of Trustees	35
Notre Dame	Board of Trustees	56
UC Berkeley	The regents	26
UK Russell Group universities in alphabetical order		
Birmingham		
Bristol	Council	32
Cambridge	Council	21
Edinburgh	University court	22
Glasgow	Court	25
Imperial College	Court	150
Leeds	Council	33
Liverpool	Council	46
Manchester	Council	30
Newcastle upon Tyne		
Nottingham	Council	28+
Oxford	Council	26
Sheffield	Council	35
Southampton	Council	30
Strathclyde	Court	27
University College London		
Warwick		

1.36 The committee heard from witnesses, mostly academics who made a number of relevant observations highlighting, to the committee's satisfaction, the fact that no case had been presented which warrants the changes proposed by the Government. Academics have generally taken an unfavourable view of the Minister's apparent doubts about their competence to be involved in the governance of universities. As one of them noted:

> When you suggest to academics that they are not capable of participating intelligently in any body, they tend to get very annoyed. If academics are marked by particular things, it is a high degree of independence and also pride, perhaps excessive pride, in the quality of their brains. So if somebody suggests that they do not want academics to give their input to and opinions on the management of their own institution—and, historically, for centuries literally the universities have been our institutions—and if you suggest that they are not fit to have their views taken seriously, academics get very indignant indeed.[19]

Student representation

1.37 The role of student representatives on university governing bodies has probably caused more anxiety for the Government than has academic staff representation. They would presumably be seen to be even more notoriously unworldly in their views than academics, most of whom at least have a degree of income security. But the committee has neither heard nor read evidence that student representatives have no place on governing bodies. The evidence was to the contrary.

1.38 One student representative on the University of Western Sydney told the committee:

> … I see a great deal of value in having staff and student representatives on university governing boards. At UWS we have quite a good board. It is very student friendly—at least at the moment, anyway—so we have been finding that things have been working quite well with them. But in the past we have had issues like the Goolangullia occupation, which essentially was to do with changes that were happening to our Aboriginal education centre. Our undergraduate student representative did massive amounts of work with our governing board to make them aware of the effect upon the Indigenous student community that these changes were highlighting, resulting in an excellent compromise within the university community as well. That helped solve that issue.
>
> The student and staff representatives are very much the primary stakeholders. They are the people on the ground. They can see what the effects of these changes are, and I think it is important that they be able to voice that to the university governing boards.[20]

1.39 It should also be noted that students benefit a great deal from serving on university councils and learning to play a role in running an important institution. Universities should provide civic experience for students and allow them to understand the nature of collective responsibility.

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19 Dr Margaret Lindley, *Hansard*, Hobart, 26 September 2003, p. 66

20 Mr Vijayalingham Nellailingham, *Hansard*, Sydney, 22 September 2003, p. 69

Parliamentary representation

1.40 This report does not avoid discussion of the merits or otherwise of parliamentary representation on university governing bodies. It records, moreover, that both the chair and the Government senator on this sub-committee are, or have been, appointees to the council of the Australian National University as provided for by the foundation act.

1.41 Some states have quite recently abolished parliamentary representation on governing bodies. Witnesses from New South Wales strongly supported the continuation of parliamentary representation because it was thought to be useful both to the universities and to the parliament. In the submission from the University of Sydney, the vice-chancellor stated that some of the parliamentarians who have served on the University of Sydney's Senate had made outstanding contributions and the university would at least want to have the capacity for Senate to choose to have a parliamentarian as a member in his or her own right.[21]

1.42 New South Wales Government officials also gave the committee an official view:

> The parliamentarians and the outside points of view are an important part of the balance that New South Wales sees as appropriate in governing bodies. There has to be a mixture of internal and external, and the external participants are very important in ensuring that there is public access and scrutiny. The ICAC and other issues very much lie behind the decision to proceed with commercial guidelines and regulatory activity for governing bodies to tighten up the functions, as I was outlining briefly before. A very important part of that is public scrutiny, and we would not want to see only internal representatives on those governing bodies.[22]

1.43 The Government does not favour the appointment of parliamentary representatives on university governing bodies. The committee presumes that this may be because parliaments appoint very few representatives to the boards of other institutions, so why single out universities? This is a reasonable question.

1.44 The committee would argue that whole parliaments may not be doing too many favours for universities in these appointments; parliament certainly gains some vicarious advantage in having a better idea of how these highly important institutions work. Parliamentarians learn much from their experience.

Recommendation

That the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill be amended to ensure that the ANU and AMC Acts do not prevent Members of parliament taking a seat on their governing bodies.

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21 Submission No. 105, The University of Sydney, p. 4

22 Ms Leslie Loble, *Hansard*, Canberra, 10 October 2003, p. 62