

International Trends in University Governance: Some Implications for the UAE

Allan Schofield

Head, Higher Education Consultancy Group, UK

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Introduction

The **CAA Quality Series** comprises occasional publications, about two or three per year, on topics of interest to practitioners of quality assurance in higher education.

Specifically, the intent of the CAA Quality Series is:

- To contribute to the enhancement of quality practices in higher education in the UAE and more widely;
- To provide a means for sharing insights, research and analysis that is responsive to identified or emerging needs of those with responsibility for quality in higher education;
- To stimulate discussion and reflection on directions, evolution and progress in quality improvement relevant to UAE higher education;
- To provide contributions to the literature on quality assurance in UAE higher education that would otherwise not be available to a wide audience;
- To enhance public knowledge of QA, for agencies, for institutions and for the general public.

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Contributions, in Arabic or English, are invited from higher education quality assurance practitioners and educational leaders. The publications are expected to be scholarly and make a worthwhile contribution to thinking on or understanding of quality, addressing or responding to specific short-term policy issues as well as those of more general and longer-term relevance. They may be discussion papers, argue a particular case, or report the results of experiments or experiences. An indicative minimum word-length is 5000 words.

Anyone interested in contributing may contact the series editor, David Woodhouse, on david.woodhouse@mohesr.gov.ae.

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Summary

The last few years have seen major developments in many higher education (HE) systems in how institutional governance takes place. In the UAE, one major consequence of this is the increased attention given to governance in the 2011 CAA Standards. This short paper sets a context for developments in the UAE by examining recent international trends in HE governance, and exploring what some of the future implications might be for the UAE.

I Introduction

It is no exaggeration to say that governance in major public and private institutions is under review around the world. The global financial crisis, high profile corporate failures, and many other issues have raised important questions not only about the adequacy of private sector governance, but also about how the public sector has been run. Almost everywhere and in every sector there is increasing demand for better governance, greater transparency and accountability, more responsible use of resources, and so on, and no longer can even prestigious and successful institutions ignore the clamour for change. As a result governments and agencies are increasingly prioritising better governance, and this is as true for HE as elsewhere.

2 Background and Context

How these pressures for change in governance manifest themselves varies in HE depending on the legal and financial ways that universities and colleges have been established and governed to date. At its simplest, there are three broad kinds of institutions: those governed and controlled by the state; those funded mainly or partly by the state but with substantial institutional autonomy; and the rapidly growing number of private institutions whether for-profit or not-for-profit. Because of the context of the UAE this paper focuses on the last two.

Within HE systems characterised by the last two approaches to institutional governance, the growth of interest in governance has occurred for a number of reasons, including:

- The growth in government funding for HE in many countries, which has almost inevitably brought with it an increased requirement for universities and HE colleges to demonstrate accountability and value for money.
- Expectation from governments that universities (along with other bodies) should strengthen governance to match best practice elsewhere.

- The growth of competitive pressures on universities both national and global. Most universities now compete for students and research income, and ensuring institutional reputation is an increasingly important corporate concern in order to maintain a position in the HE market place. The growth of private HE has intensified such competition.
- The need to ensure the maintenance of quality of HE in a time of rapid expansion, particularly in HE systems with limited capacity for supporting such expansion.
- A substantial increase in the risk facing universities in some HE systems with a consequent need for better governance in a more volatile environment.
- An external environment which often requires major decisions to be taken quickly and in a way that doesn't easily fit with traditional approaches to university decision making.

Such trends have been reinforced in some countries by well-publicised failures of governance by a few universities and leading cultural institutions. To take just one example: in the USA the famous Smithsonian Institution in Washington has suffered major problems of governance. The challenge for it and all similar institutions (both within and outside the USA) was well summarised by the conclusion of the Independent Review Commission of the Smithsonian¹: "Unfortunately the problems at the Smithsonian are not unique. As the media and Congressional oversight committee have made clear, there have been similar problems at several large tax-exempt organisations, including major museums and universities, not to mention the income and expenses excesses and governance issues at for-profit companies. This raises the issue of effective management of non-profits and how governance at these entities should be structured, the responsibilities of their boards of directors and trustees, and how oversight of the organisations should be provided. The Commission believes that the boards of non-profits - especially large non-profits - should move to reform their governance structures to bring them into line with best practices that have been well documented". Similar conclusions have been drawn in other systems.

3 What does Governance in HE mean?

For universities with a substantial amount of autonomy, governance has traditionally been based on a model which in some form distinguished 'academic' governance from 'corporate' governance. The former has typically been carried out through a board or forum (the name varies depending upon the system - for example 'senate') consisting primarily of academic staff, thus ensuring that decisions on academic issues were taken primarily by those actually involved and thereby maintaining collegiality and generally ensuring academic freedom. On the other hand, corporate governance has usually been conducted by a board or governing body (or board of trustees in the USA) which has had explicit responsibility for all issues concerning resources and related matters. Increasingly this traditional distinction between 'academic' and 'corporate' is breaking down in

¹ See www.smithsonianirc.org

the face of the pressures set out in paragraph 3, and some of the implications for the governance of academic quality are summarised below.

Within autonomous HE systems there is broad agreement that - at a minimum - HE governance consists of general oversight, ensuring required accountability to funders, providing the necessary control to meet legal and regulatory requirements, and generally ensuring that government funded institutions provide public benefit. However, beyond this there is an increasing recognition in some HE systems that governing bodies have important responsibilities for approving and monitoring institutional strategy; assuring the achievement of institutional performance (often through key performance indicators or similar means); increasing institutional competitiveness; ensuring institutional reputation; as well as actively engaging in assuring academic quality and a satisfactory student experience. In short actively 'governing' rather than simply 'overseeing governance'. In this context governing bodies can make a positive contribution to institutional leadership, rather than just having a supervisory role, in a way that would be quite similar in operation to the boards of well governed private sector companies. Of course, some of the new private providers in HE already have governance arrangements of this kind which are very different from those of traditional universities, and they sometimes struggle to come to terms with the need for more transparent arrangements in relation to matters like quality assurance.

To try and get agreement about what governance in HE means (and therefore how its effectiveness can be assessed) substantial work has been undertaken internationally, most recently in the UK² with a number of volunteer universities. This resulted in a widely accepted framework through which effective governance in HE might be assessed, which consists of three inter-related elements:

- *The enablers of an effective board* which are the processes providing the foundations for effective governance, For example, a governance structure that is fit for purpose, appropriate board membership, and so on. Without the enablers in place it is highly unlikely that a board could be effective. However, the enablers, by themselves, do not ensure effectiveness, but rather create the circumstances to achieve it.
- *Working relationships and board room behaviour* which addresses not 'what boards do' but rather 'how boards work', and is concerned with the interactions between board members (or trustees) that underpin effective governance. There are crucial issues here, for example the relationship between a board and the head of institution. Such issues are obviously sensitive, but when things go wrong in governance they often do so because of the people and interpersonal issues involved, and the lack of mutual credibility among all parties.

² LFHE and CUC, 2010, *A Framework for Identifying Governing Body Effectiveness in HE at* www.lfhe.ac.uk/governance/reviewinggovernance/gbeffframework.pdf

- *The outcomes of an effective governing body* which are the factors that will determine ultimate effectiveness, including the extent to which a board actually 'adds value'. The UK framework lists eight potential outcomes from which boards can select those which most apply to their own circumstances, and thereby help to define their value in practice.

Notwithstanding all such developments, there is a generally recognised need to separate management and governance even though the boundaries may on occasion become blurred. The former is about the operational implementation of everything that follows from the institutional strategy, whereas the latter is about setting strategic direction and the necessary oversight of management in delivering it. To take just one example, whilst a governing body will have a strong interest in the overall academic quality of the institution and the extent to which it matches strategic aspirations, it should not get involved in detailed operational issues about academic programs or how the academic portfolio is managed. Rather it will seek assurance that such matters have been dealt with appropriately elsewhere.

To provide guidance to universities several countries have produced information which sets out the general expectations falling on governing bodies or trustee boards. Perhaps the two most useful examples in the context of the UAE are the Association of Governing Boards of Universities and Colleges' (AGB's) *Effective Governing Boards: A Guide for Members of Governing Boards of Public Colleges, Universities, and Systems*³ (published in the U.S.), and a similar volume produced in the UK called 'Guide for Members of Higher Education Governing Bodies in the UK'⁴. The latter has been particularly useful in ensuring greater understanding of the fact that (except in a small number of cases) the governing body of a UK university has "unambiguous responsibility for all matters concerning the institution", and also that it is the governing body and not the vice-chancellor or chief executive that has ultimate accountability to the main funding body.

Outside HE, as might be expected there is a substantial literature on board effectiveness, and of this perhaps the area of most relevance to HE concerns governance in partnership or cooperative organisations, whether for-profit or not. Internationally, organisations based on such structures are very much alive and well, and their governance is directly relevant to HE because in most cases a key element is how members or partners should be involved in governance, and how to balance participation with efficient board decision making - an issue which has a very strong parallel with that of the role of collegiality in HE governance. Typically such organisations have at least two tiers of governance, often a small executive board and then a larger more consultative council, and a possible development is for some universities and colleges to move in this direction.

³ AGB (2010), 'Effective Governing Boards: A guide for members of governing boards of public colleges, universities and systems', AGB Press, Washington DC

⁴ www.hefce.ac.uk/pubs/hefce/2009/09_14/

4 Development in HE Governance by Country

In order to provide a brief overview, developments relevant to the UAE in three countries are very briefly summarised: USA, UK, and Australia. A more detailed summary of trends in international governance is available in a UK-based report⁵, and a review of governance in relation to quality assurance has recently been produced by the OECD as part of its IMHE program⁶.

4.1 USA

Universities in the USA have a lengthy history of interest in enhancing HE governance, although generalisations about good practice are difficult because of the diversity of the sector, which is a mixture of public, private not-for-profit and private for-profit institutions. So far as public institutions are concerned, they are typically accountable to individual state legislatures, with limited federal intervention or oversight, resulting in a wide range of governance structures. Governance in these institutions has become particularly challenging because of financial pressures, the increasing politicisation of governance through the intervention of state legislatures, and the diversity of arrangements imposed on institutions (for example, in some states each university has its own governing body, whilst in others all HE institutions are under the jurisdiction of a single state wide governing body). In contrast, private institutions (which include some of the most famous universities in the USA) are autonomous, and subject only to regulatory oversight and the conditions associated with funding. It follows that examining the US experience requires careful scrutiny of the particular institutional contexts in order to draw meaningful conclusions.

However, a major change in the last few years has been a substantial growth in the regulatory environment in the US, and there is now an increasing set of expectations (legal, political, and social) that universities need to be able to demonstrate 'good' governance. There have been two particularly significant measures. First, tighter legal regulation was introduced in the US by the passing of the Sarbanes-Oxley Act, which sought to protect investors by improving accuracy and reliability of corporate disclosures, and which, in addition to improving auditing and financial reporting functions, dealt with the responsibilities of boards, their executives and outside advisors. US universities have had to meet the standards set out in Sarbanes-Oxley, and have also had to address subsequent related action by the US Inland Revenue Service on the need for explicit board practices on issues such as due diligence, the duties of board members, and the need for transparency in governance including board member compensation. Second, the prospect of greater regulation falling on US universities and their boards has increased with the passing of the Higher Education Opportunity Act, which requires substantially enhanced reporting and

⁵ Schofield A, 2009, *What is an Effective and High Performing Governing Body in UK Higher Education?*, LFHE and CUC, at www.lfhe.ac.uk/governance/reviewinggovernance/schofield-effgb.pdf

⁶ OECD, 2010, *'Governance and Quality Guidelines in Higher Education: A review of governance arrangements and quality assurance guidelines'* at www.oecd.org/dataoecd/14/18/46064461.pdf

record keeping for institutions seeking particular types of federal funding, and where compliance is a trustee board responsibility.

As a result of such developments, the Association of Governing Boards of Universities and Colleges' "Statement on Board Accountability"⁷ (referred to above) contains not only guidelines for a board's fiscal, academic and other responsibilities, but also a set of self-assessment questions for each area of its work. The statement further includes a section on board performance which covers aspects of the management of the governing body's business, as well as member selection and the assessment of their individual contributions to the governing body. AGB also publishes a number of other publications, including a bimonthly magazine (*Trusteeship*) which is a useful source of current information for trustees.

4.2 UK

Universities in the UK have always enjoyed considerable autonomy in comparison with those in many other European countries, and their legal independence has meant that there is an explicit institutional responsibility to ensure that effective systems of both governance and management are in place. The detailed constitutional and regulatory arrangements by which universities are governed vary between different types of institutions.

Governance in UK HE has changed substantially in recent years, and has become much more important in institutional life. All the bodies which fund UK HE have increasingly emphasised the importance of good governance, at least in part because it increases their confidence and therefore allows for the possibility of reducing central regulation on institutions. Such developments have been strongly supported by the Committee of University Chairs (CUC)⁸, an association for the chairs of university governing bodies (and the UK equivalent of the AGB in the USA). However, despite high levels of institutional autonomy, considerable central regulation and assurance remain, and all universities are expected to meet defined standards in relation to governance, audit, the management of risk, quality assurance, environmental policies, and many other areas.

As in other countries, the pressures identified in paragraph 3 have meant that problems with governance have occurred in a few universities, where a lack of effective oversight of institutional management by governing bodies has led to major problems which in a small number of cases have threatened the survival of the university concerned. In addition, now that HE is a matter for the four separate jurisdictions which make up the UK, there are signs that some of the devolved governments are exerting more pressure than previously on HEIs to support actively their new education policies, and such trends will inevitably lead to greater tension about institutional autonomy, and have a parallel with some developments in public HE in the USA.

⁷ AGB (2011) "Statement on Board Accountability", AGB Press, Washington DC

⁸ For details see www.bcu.ac.uk/cuc

As a result of such developments, the way that governance is being undertaken by UK HEIs is changing, and there is considerable innovation. Such developments include:

- A trend to smaller governing bodies meeting more regularly.
- A reduction in the size of board committee systems.
- An increase in the workload and expectations of governors.
- As noted above, a move away from restricting the governing role to just an 'oversight' role, to one which is much more actively concerned with ensuring strategic development, maximising institutional performance, and building competitive reputation.

At the institutional level perhaps the key driver for such changes tends to be the personalities of the individuals involved (particularly the chair of the governing body, vice-chancellor and the head of the university administration), and their experience of the benefits that effective governance can bring.

Inevitably such changes have brought with them a number of issues and challenges, which include:

- The generic tensions which afflict governance in all sectors, for example: the sensitivity of board - executive relationships; the dangers of governors confusing governance with management and a board becoming overly involved in operational issues; the difficulty of holding capable and high-performing CEOs and senior managers to account; ensuring the effective governance of risk; and the related challenge of providing constructive feedback on management performance.
- Criticisms from some academics of the greater involvement of external governors, as part of what some perceive to be the 'managerialisation' of HE. A particular issue here is that the benefits of effective governance are often relatively invisible, at least in the short term.
- The need to recruit high quality external governors and then support them. The availability of external governors to take on the role is increasingly a problem for some HEIs, with the attendant workload and liability issues. For this reason, remuneration for external governors is now being considered by some HEIs (it occurs in private sector boards), although to date it has not been widely adopted.

Numerous issues have been raised as to whether the knowledge base of external governors is broad enough to understand the complexity of many HEIs in order to undertake their role effectively. The issue is usually not one of personal capacity (in general the quality of individual governors has improved substantially in recent years), but rather the time available to absorb the necessary information, and often the administrative capacity of HEIs to provide it.

In the UK there is no reason to believe that such challenges will become less acute, rather the opposite is likely and effective governance will become more important to universities, particularly given the turbulent times ahead. Most UK

universities are having to make very difficult funding and strategic decisions in an unpredictable environment, in which governing bodies will need to be fully engaged.

4.3 Australia

Developments in Australian university governance bear close resemblance to the UK pattern, although there are differences - most particularly because HE in Australia is a shared federal and state responsibility. The 1995 Hoare Review⁹ made a number of criticisms of university governance, including the need to clarify the role of governing bodies, reduce membership size, ensure that members had relevant experience to equip them to serve as governors, and had access to a high standard of information to assist them in making decisions. Subsequently, other changes in governance have been prompted by concerns: over the negative effects of increased entrepreneurial and commercial activity by some universities; that a few vice chancellors and senior managers were perceived to be acting outside defined arrangements for ensuring accountability; and more general developments in corporate governance.

Two important documents subsequently followed. First, a discussion document produced by the Australian government in 2002 entitled 'Meeting the Challenges: the Governance and Management of Universities', followed by a policy document 'Our Universities: Backing Australia's Future'¹⁰. This proposed a number of measures to give effect to the proposals in the original Hoare Review, and also highlighted the need for HEI governing bodies to have greater representation from business, industry and the community, and that public funding should be tied to certain standards. Subsequently other policy changes have taken place which reinforce these developments.

5 Governance and Academic Quality and Standards

One of the most interesting developments in many HE systems is the increasing involvement of governing bodies in academic issues, particularly the nature of the overall student experience, academic quality, and academic standards. There are various reasons for this: demands for greater accountability from governments or quality assurance agencies; increasing competitiveness between institutions; increasing public scrutiny (particularly by students and parents in fee paying institutions); the rapid expansion of higher education with a range of new providers; the internationalisation of HE and the challenge of assuring quality in international partnerships and on overseas campuses; and in some countries concerns about quality in the face of rapid expansion. In all three countries cited above this means that matters concerning academic quality are no longer a matter solely for academic management and a system of committees led by a senate or

⁹ *Higher Education Management Review, (1995), Report of the Committee of Inquiry, AGPS, Canberra ACT*

¹⁰ *Australian Government Department of Education, Science and Training, (2003), Our Universities: Backing Australia's Future, Canberra ACT*

academic board (or important that the various responsibilities are clear and potential conflict is avoided).

Nonetheless, it is important to note that despite the greater involvement of many governing bodies, the key responsibility for core academic activities still rests with academic staff and not with governors, for example designing programs, delivering teaching and assessment, and a primary responsibility for academic quality assurance and upholding standards. Indeed, in the UK and Australia the head of institution is formally the 'chief academic officer' as well as CEO, and typically chairs the senate/academic board with a responsibility to the governing body for assuring the effectiveness of that structure, and in the USA a similar role is played by a chief academic officer (or provost).

Of course, the involvement of a governing body in this area has its critics, particularly those who see it as a potential - or real - invasion of academic freedom. However, in most universities such developments have not come about because of a wish of governors to intervene in academic matters, but because the traditional systems of academic governance have struggled to come to terms with the changing nature of modern university life, greater competition, the need for rapid decision making to seize external opportunities, the need to offer value to students, and not least the widespread move to devolved budgets by which middle managers (eg deans or heads of academic departments or equivalent) become resource managers and then tend not to look kindly on colleagues in other subjects trying to impose constraints on their activity.

Given the diversity of HE systems, there is no single approach to how governing bodies exercise their oversight in this area, and approaches include: boards having an academic affairs committee (or similar); operating a lead governor system with a designated board member providing assurance concerning academic issues; boards receiving an annual report on academic activities; regular items being placed on board agendas concerned with academic matters; special board meetings on academic topics; formal reporting from a senate (or equivalent) to the governing board; or making no special provision and just receiving relevant reports from the vice-chancellor or head of institution as required.

There are two useful sources of information for governors/trustees in this area. The first is a book by Peter Ewell¹¹ on the USA perspective which amongst other things identifies five 'principles' to help a university define a board's role in relation to academic quality. The second is a practical guide to assist governors address academic quality and standards issues from a UK perspective by Robin Middlehurst¹². Both set out a number of practical steps that boards can take in this area, as well as identifying key responsibilities, which broadly include:

¹¹ Ewell P, (2006), *Making the Grade: How Boards Can Ensure Academic Quality*, AGB at <http://agb.org/store/making-grade-how-boards-can-ensure-academic-quality>

¹² Middlehurst R, (2011), *Getting to Grips with Academic Standards, Quality and the Student Experience*, LFHE-CUC at www.lfhe.ac.uk/governance/publications

- Approving the academic strategy as part of the overall strategic plan on the recommendation of the vice chancellor or senior management team.
- Ensuring the financial viability and long term sustainability of the academic program.
- Ensuring that suitable staffing and human resource management strategies and policies are in place to support the academic strategy, for example that effective reward and promotion policies are in place to encourage high quality learning, teaching and assessment.
- Effectively addressing any reputational risk to an institution through the delivery of its academic portfolio is effectively addressed.
- In an increasingly 'global' HE system, having a responsibility for the strategic oversight of internalisation in its various forms.

6 Some Implications for the UAE

Most of the developments summarised above have implications for HE in the UAE. The importance of effective governance has been emphasised by its recognition as crucial for the future success of HE in the UAE (for example it is one of the five pillars on which the current Abu Dhabi HE policy is based¹³), and also by the CAA in its 2011 Standards for Licensure and Accreditation¹⁴. Although the funding of HE in the UAE may be different from that in the countries cited above, many of the strategic and quality challenges to HE are similar to those facing other systems, and effective governance is central to meeting them.

Therefore based on experience elsewhere, what might some of these challenges be? In summary, five key challenges are proposed, although this is not intended to be an exhaustive list. The first is likely to be the need to get agreement on what the roles and responsibilities of the board actually are in practice. This goes well beyond any formal legal statement of existing responsibilities, and requires all key parties to have a similar understanding of governance and its part in strategic development, monitoring reputational risk, ensuring that quality is assured, and so on. Experience in all three countries cited above suggests that without such clarification and agreement effective governance is difficult, and may become a battle between the various parties involved. To get such agreement may not be easy, and may raise some fundamental issues about decision making in HE institutions.

The second challenge is likely to be recruiting board members (particularly external ones) of appropriate expertise, and with the time, motivation and willingness to be effective in their role. This should not be underestimated as the move away from largely oversight boards to ones that actually govern brings with it greater demands on board members, particularly their ability to understand fully the

¹³ Abu Dhabi Education Council, 2010, *Abu Dhabi HE Strategic Plan*, at www.adec.ac.ae/English/Pages/HigherEducation.aspx

¹⁴ Commission for Academic Accreditation, 2011, *Standards of Licensure and Accreditation* at www.caa.ae/caa/DesktopDefault.aspx?tabindex=6&tabid=13

complexities of institutional life if they are to be able to assess management and institutional performance.

Third, 'modern' governance brings with it the need for high quality management processes coupled with strong administrative support for governance. An effective board needs high quality information and an efficient secretariat to produce and interpret it. All the three countries surveyed (plus others) have made substantial progress in introducing processes such as developing performance indicators, enhancing risk assurance arrangements and so on, which can be the basis for regular reporting to boards using a range of presentational methods to highlight issues of concern. Without such support being available boards are essentially acting in the dark.

Fourth institutions in the UAE will need to keep under review the structures by which governance takes place and ensure that they are fit for purpose. For example, as noted above in the UK and Australia boards are typically getting smaller and meeting more often as a response to the challenging circumstances found in many institutions. The CAA guidelines emphasise an established approach to board processes and membership which reflects the need to build reputation and the priority to be given to ensuring academic quality. This approach may be appropriate as a starting point for many institutions. However, governance structures should be reviewed, and as circumstances change institutions may benefit from adopting different approaches to governance.

Finally, in order to be effective in acting as one of the key elements of UAE HE policy, governance will need to justify its value both to individual institutions and to the UAE overall. The extent to which boards actually 'add value' is therefore something which needs to be kept under review and assessed from time to time. In this context the requirement of the CAA that "the board regularly evaluates its own effectiveness" (paragraph 1.3.8 of the Standards document) is important, and echoes similar recommendations in the three countries cited. There is substantial international evidence about conducting such reviews (and the challenges of doing so), and there will be a need to share good practice about how they might be undertaken.

Appendix A: USA Guidelines

The Governing Board's Basic Responsibilities: Effective Governing Boards¹⁵

The fiduciary role of the governing board of a public college, university, or system has many facets. Most notably, a board should recognize and accept these basic responsibilities:

- Ensure that the institution's mission is kept current and is aligned with public purposes. In the case of a multicampus system, ensure the alignment of each campus's mission with the system's vision and public purposes.
- Select a chief executive to lead the institution.
- Support and periodically assess the performance of the chief executive and establish and review the chief executive's compensation.
- Charge the chief executive with the task of leading a strategic planning process, participate in that process, approve the strategic plan, and monitor its progress.
- Ensure the institution's fiscal integrity, preserve and protect its assets for posterity, and engage in fundraising and philanthropy.
- Ensure the educational quality of the institution and its academic programs.
- Preserve and protect institutional autonomy, academic freedom, and the public purposes of higher education.
- Ensure that institutional policies and processes are current and properly implemented.
- In concert with senior administration, engage regularly with the institution's major constituencies.
- Conduct the board's business in an exemplary fashion and with appropriate transparency, adhering to the highest ethical standards and complying with applicable open-meeting and public-records laws; ensure the currency of board governance policies and practices; and periodically assess the performance of the board, its committees, and its members.

¹⁵ AGB (2010), *Effective Governing Boards: A guide for members of governing boards of public colleges, universities and systems*, AGB Press, Washington DC

Appendix B: Governance Code of Practice for Higher Education, UK¹⁶

This Code is voluntary and is intended to reflect good practice in a sector which comprises a large number of very diverse institutions. It is recommended that institutions should report in the corporate governance statement of their annual audited financial statements that they have had regard to the Code, and that where an institution's practices are not consistent with particular provisions of the Code an explanation should be published in that statement.

Role of the Governing Body

- Every higher education institution shall be headed by an effective governing body, which is unambiguously and collectively responsible for overseeing the institution's activities, determining its future direction and fostering an environment in which the institutional mission is achieved and the potential of all learners is maximised. The governing body shall ensure compliance with the statutes, ordinances and provisions regulating the institution and its framework of governance and, subject to these, it shall take all final decisions on matters of fundamental concern to the institution.
- Individual members and governing bodies themselves should at all times conduct themselves in accordance with accepted standards of behaviour in public life which embrace selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- The governing body shall meet sufficiently regularly, and normally not less than four times a year, in order to discharge its duties effectively. Members of the governing body shall attend regularly and actively participate.
- The institution's governing body shall adopt a Statement of Primary Responsibilities which should include provisions relating to:
 - approving the mission and strategic vision of the institution, long-term business plans, key performance indicators (KPIs) and annual budgets, and ensuring that these meet the interests of stakeholders
 - appointing the head of the institution as chief executive of the institution and putting in place suitable arrangements for monitoring his/her performance
 - ensuring the establishment and monitoring of systems of control and accountability, including financial and operational controls and risk assessment, clear procedures for handling internal grievances and for managing conflicts of interest
 - monitoring institutional performance against plans and approved KPIs, which should be, where possible and appropriate, benchmarked against other institutions.

¹⁶ Committee of University Chairs (2009), 'Guide for Members of Higher Education Governing Bodies in the UK', March 2009/14

- This Statement shall be published widely, including on the internet and in the annual report, along with identification of key individuals (that is, chair, deputy chair, head of the institution, and chairs of key committees) and a broad summary of the responsibilities that the governing body delegates to management or those which are derived directly from the instruments of governance.
- All members should exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency. The institution shall maintain and publicly disclose a register of interests of members of the governing body.
- The chair shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness. The chair shall ensure the institution is well connected with its stakeholders.
- The head of the institution shall be responsible for advice on strategic direction and for the management of the institution, and shall be the designated officer in respect of the use of Funding Council funds. The head of the institution shall be accountable to the governing body which shall make clear, and regularly review, the authority delegated to him/her as chief executive, having regard also to that conferred directly by the instruments of governance.

Structure and Processes

- There should be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. A governing body of no more than 25 members represents a benchmark of good practice.
- The governing body shall have a majority of independent members, defined as both external and independent of the institution.
- Appointments shall be managed by a nominations committee, normally chaired by the chair of the governing body. To ensure rigorous and transparent procedures, the nominations committee shall prepare written descriptions of the role and the capabilities desirable in a new member, based on a full evaluation of the balance of skills and experience of the governing body. When vacancies arise they should be widely publicised both within and outside the institution. When selecting a new chair, a full job specification should be produced, including an assessment of the time commitment expected, recognising the need for availability at unexpected times.
- The chair shall ensure that new members receive a full induction on joining the governing body, that opportunities for further development for all members of the governing body are provided regularly in accordance with

their individual needs, and that appropriate financial provision is made for support.

- The secretary to the governing body shall be responsible for ensuring compliance with all procedures and ensuring that papers are supplied in a timely manner with information in a form and of a quality appropriate to enable the governing body to discharge its duties. All members shall have access to the advice and services of the secretary to the governing body, and the appointment and removal of the secretary shall be a decision of the governing body as a whole.
- The proceedings of the governing body shall be conducted in as open a manner as possible, and information and papers restricted only when the wider interest of the institution or the public interest demands, including the observance of contractual obligations.

Effectiveness and Performance Reviews

- The governing body shall keep its effectiveness under regular review. Not less than every five years it shall undertake a formal and rigorous evaluation of its own effectiveness, and that of its committees, and ensure that a parallel review is undertaken of the senate/academic board and its committees. Effectiveness shall be measured both against the Statement of Primary Responsibilities and compliance with this Code. The governing body shall revise its structure or processes accordingly.
- In reviewing its performance, the governing body shall reflect on the performance of the institution as a whole in meeting long-term strategic objectives and short-term KPIs. Where possible, the governing body shall benchmark institutional performance against the KPIs of other comparable institutions.
- The results of effectiveness reviews, as well as of the institution's annual performance against KPIs, shall be published widely, including on the internet and in its annual report.

Appendix C: National Governance Protocols for Higher Education Providers, Australia

The National Governance Protocols were implemented under the Federal Government's reforms in higher education and became effective in June 2004¹⁷. They have two forms, one for 'Table A providers' (essentially, universities) and one for other institutions.

Form 1

Protocol 1: the higher education provider must have its objectives and/or functions specified in its enabling legislation.

Protocol 2: the higher education provider's governing body must adopt a statement of its primary responsibilities, which must include:

- appointing the vice-chancellor as the chief executive officer of the higher education provider, and monitoring his/her performance;
- approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- overseeing and reviewing the management of the higher education provider and its performance;
- establishing policy and procedural principles, consistent with legal requirements and community expectations;
- approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
- overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- overseeing and monitoring the academic activities of the higher education provider;
- approving significant commercial activities of the higher education provider.

The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

Protocol 3: the higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board (s) each member must be appointed or elected ad personam. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the higher education provider.

¹⁷ Walters, C. (2006), 'University Governance', Presentation to OECD/IMHE Seminar on 'Governing bodies of higher education institutions: Roles and responsibilities', Paris, 24-25 August

Duties of members must include the requirements to:

- act always in the best interests of the higher education provider as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- act in good faith, honestly and for a proper purpose;
- exercise appropriate care and diligence;
- not improperly use their position to gain an advantage for themselves or someone else; and
- disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

There should be safeguards, exemptions and protections for members of a higher education provider's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the Corporations Act. The higher education provider (with the exception of those subject to the Corporations Act) must have a requirement that the governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above included in its enabling legislation.

A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.

Protocol 4: each governing body must make available a program of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.

Protocol 5: the size of the governing body must not exceed 22 members. There must be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. There must be a majority of external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.

Protocol 6: the higher education provider must adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations

for the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.

Members so appointed must be selected on the basis of their ability to contribute to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a higher education provider and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the higher education provider's external community needs from that higher education provider.

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

Protocol 7: the higher education provider is to codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.

Protocol 8: the annual report of the higher education provider must be used for reporting on high level outcomes.

Protocol 9: the annual report of the higher education provider must include a report on risk management within the organisation.

Protocol 10: the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:

- ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- appointing some directors to the board of the entity who are not members of the governing body or officers or students of the higher education provider, where possible;
- ensuring that the board adopts and regularly evaluates a written statement of its own governance principles;
- ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
- establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

Protocol 11: A higher education provider must assess the risk arising from its part ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board),

partnership and joint venture. The governing body of the provider must, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.

Form 2

Protocol 1: the higher education provider must have its objectives specified in a constitution or such other document that establishes the higher education provider as a legal entity.

Protocol 2: the governing body of the higher education provider must adopt a statement of its primary responsibilities, which must include:

- appointing the chief executive officer of the higher education provider and monitoring his/her performance;
- appointing, where necessary, the secretary or public officer of the higher education provider;
- ensuring that the processes of the governing body are carried out in accordance with the constitution of the governing body;
- approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- appointing an external auditor;
- appointing, where necessary, an audit committee that consists of at least three independent members (excluding the chair) of the governing body;
- establishing policy and procedural principles consistent with legal requirements and community expectations;
- approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
- overseeing and reviewing the management of the higher education provider and its performance as a higher education provider;
- overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- overseeing and monitoring academic activities of the higher education provider; and
- approving significant commercial activities of the higher education provider.

The higher education provider's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

Protocol 3: the higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its constitution or other such document of the higher education provider. Other than the Chair of the Governing Body, Chief Executive Officer and the Presiding Member of the Academic Board (or the equivalent officer) each member must be appointed or elected *ad personam*. All members of the governing body must be responsible

and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the higher education provider.

Duties of members must include the requirements to:

- act always in the best interests of the higher education provider as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- act in good faith, honestly and for a proper purpose;
- exercise appropriate care and diligence;
- not improperly use their position to gain an advantage for themselves or someone else; and
- disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

There should be safeguards, exemptions and protections for members of a higher education provider's governing body for matters or things done or omitted in good faith. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the Corporations Act. The higher education provider (with the exception of those subject to the Corporations Act) must have a requirement that the governing body has the power to remove any member of the governing body from office if the member breaches the duties specified above included in its constitution or other such document of the higher education provider.

A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Corporations Act.

Protocol 4: each governing body must make available a program of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities. At regular intervals the governing body must assess both its performance and its conformance with these Protocols and identify needed skills and expertise for the future.

Protocol 5: the size of governing body must not exceed 22 members. There must be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. A majority of the members must be external independent members who are neither enrolled as a student nor employed by the higher education provider. There must not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.

Protocol 6: the higher education provider must adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected.

Protocol 7: the higher education provider is to codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.

Protocol 8: the annual report of the higher education provider must be used for reporting on high level outcomes required by the Commonwealth.

Protocol 9: the annual report of the higher education provider must include a report on risk management within the organisation.

Protocol 10: the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:

- ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- appointing some directors to the board of the entity who are not members of the governing body or officers or students of the higher education provider, where possible;
- ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
- ensuring that the board documents a clear corporate and business strategy which reports and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
- establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

Protocol 11: the higher education provider and its associated entities shall be audited by an external auditor and the auditor's report (including audit certification and management letter) provided to the higher education provider's governing body or the higher education provider's audit committee.