

GOVERNANCE IN AUSTRALIAN UNIVERSITIES: WHERE NEXT?

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Introduction

In 2004 a set of National Governance Protocols were established for universities in Australia (DEST 2004) because there had been some significant breakdowns that had damaged reputations, caused tens of millions of dollars in losses and led some universities to the brink of bankruptcy. In February 2008, the Australian government decided to separate the National Governance Protocols from funding requirements, in effect making these protocols voluntary and the three-year review of the protocols then underway redundant. However, there is evidence that there are still significant governance issues prevalent throughout the Australian higher education sector (Austin 2008; Blackman et al. 2008; BIHECC 2007; GPSC2 2009a; GPSC2 2009b; NIG 2007, 2008a, 2008b, 2009; Walters 2006) and that there needs to be consideration as to how such challenges can be addressed.

Background

The National Institute of Governance (NIG) has a long-standing interest in university governance. Its founding director was author of *Review of New Zealand Tertiary Education Institution Governance* (Edwards 2003). The institute was contracted as national coordinator of the University Governance Professional Development program by the association of chancellors (Swansson, Mow and Bartos 2005). Concurrently the institute has conducted a range of research projects building an Australian ev-

idence base for innovations in university governance. The institute has made submissions to the review of the National Governance Protocols (NIG 2007) and three further reviews/inquiries since 2007 (NIG 2008a, 2008b, 2009). Most recently governance disputes waged in public have prompted a New South Wales parliamentary committee to establish an inquiry into university governance in that state in November 2008 (NIG 2009) at which a further submission was made. In each case concerns have been raised that governance is weak, poorly managed and that more formal systems of governance might be advocated. However, there is a question as to whether more “hard” forms of governance (Kocourek, Burger and Birchard 2003) will overcome the problems being identified.

The concern about university governance has both general and specific causes. The public attention in the wake of large enterprise failures (whether public organisations or companies) has generally required governments to reconsider governance arrangements that were “not long ago regarded as either excellent or at least as not presenting serious policy problems” (Kirkpatrick 2004, 14). Since 1995 the Australian government, as the sector’s primary public funder, has had concerns regarding the skills and capacity of university governing bodies (generally called councils) to manage the organisational and financial risks of what were by then very large enterprises (Hoare 1995).

Such doubts were apparently justified, with a series of reviews and inquiries (Hoare 1995; Storey 1997; West 1998; Hamilton 2002; Cameron 2003; AGO 2005). Concerns initially questioned the operating effectiveness of university governing bodies, with particular concerns about the perceived lack of focus on corporate and strategic issues and structures that hamper management and deter institutions from being aware of their costs or to minimize them (Hoare 1995; Storey 1997; West 1998). Specific failures and multimillion dollar losses within universities or subsidiary companies in their control prompted a series of reviews and inquiries (Hamilton 2002; Cameron 2001; Cameron 2003; AGO 2005). Examples include (but are not limited to):



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- The impact of losses by Melbourne University Private Limited (up to \$4 million per year to 2001) on the University of Melbourne. MUPL's annual losses were forecast to increase despite increasing revenue, posing a potential loss of capital and revenue to the university and reducing services sold to MUPL. A particular concern was the overlap and hence competition with University of Melbourne services (Cameron 2001).
- From 1999 Royal Melbourne Institute of Technology experienced a 22.5 percent growth in revenue but a 42 percent increase of expenditure. In addition to general costs and losses associated with overheads, research activities, the TAFE division and a large property portfolio, one significant factor was the mismanagement of the Academic Management System, whose \$47 million implementation cost was nearly four times the original budget while delivering less than the required functionality, significantly disrupting services to students. Inadequate governance arrangements included contract management practices and unreliable information inhibiting effective review of the performance of management by the Council (Cameron 2003).
- In New South Wales, public audits of 2004 financial reports identified five with operating deficits and three with a liquidity ratio too low to provide financial safety for cash flow. Key issues identified included risks associated with subsidiary companies and off shore activities as fund-raising activities (AGO 2005).

In the early 2000s the view of both state and Commonwealth governments reflected the international emphasis on the capability of institutions to be responsible for themselves. The essence of the Victorian Review of University Governance (Hamilton 2002) was to distance the state from responsibility for the financial losses of universities constituted under their legislation, and strengthen the responsibility and capability of councils for their institutions and subsidiaries. The following year the Commonwealth government introduced the National Governance Protocols (NGP) as a conditional component of funding in the Higher Education Support Act (HESA) 2003. The NGP offered a significant financial incentive for universities to significantly improve their governance and were aimed at culture change (Bishop 2006).

The eleven National Governance Protocols were negotiated by the government with the sector including

vice-chancellors and chancellors. These protocols impose obligations on Australian universities and other higher education providers for (DEST 2004):

- definition of institutional objectives and governing body purposes and duties (nos. 1, 3);
- systematic professional development programs and performance evaluations of governing bodies (no. 4);
- systematic procedures for composition of the governing body, including limits on size (some were as large as 90) and specifications of expertise (nos. 2, 5, 6); and
- codification and reporting of business practices of the university and subsidiaries (nos. 7, 8, 9, 10, 11).

What have the National Governance Protocols achieved?

All universities were required to annually report compliance against NGP to receive (certain) funding, with a transition period to allow for legislative changes to Acts. All universities have been assessed for the years 2004 to 2007 and deemed compliant. From this it can be inferred that all universities made the required structural changes and documented roles and responsibilities in legislation and ancillary documents. There has been a significant reduction in risk due to controlled entities and offshore operations, due in part to better identification of existing controlled entities and in part to a move towards stricter procedures for creating controlled entities. Acknowledgement of poor business models for some business-type activities led to good practice: closing loss-making operations.

In 2006 the UGPD Program conducted a survey of university governors' responses to the National Governance Protocols (UGPD 2006). The survey data showed greater than 80 percent thought their institutions well placed to satisfy the requirements of the NGP, and in general Australian universities were better placed in corporate governance than rhetoric might suggest. However, this was self-assessment and evidence shows that there may be too much complacency within the system.

What have the National Governance Protocols not achieved?

"The compliance assessment entails an examination of whether required actions have been taken and criteria have been met. *It cannot measure behaviours*

and the extent to which good practices have been embraced” [emphasis added] (Walters 2006).

The compliance framework of the protocols can be criticized for generating a tick-a-box culture (see NIG 2008b) and within a few years the Commonwealth government was expressing concern that the protocols were being perceived by university Councils as “an invitation to accept the lowest common denominator” (Bishop 2006). Before 2003 academics and corporate regulators already recognised that closed systems of compliance, with penalties and/or incentives, have a tendency to degenerate into boilerplate being less meaningful as well as incomplete (JCCG 2001; Conglianese et al. 2004; ASX CGC 2006). Individual or institutional behaviour can be either malevolent or negligent, either intending to “comply with the letter of the law but circumvent its underlying purpose” (Conglianese et al. 2004, 3) or failing to “focus on the particular needs, strengths and weaknesses of the company” (ASX CGC 2006).

Contemporaneously the focus in corporate governance has shifted from compliance to performance (e.g., Nadler 2004; Young 2006). There is now a growing body of evidence confirming that corporate governance exerts an important influence on growth prospects. The most fundamental task of any institution, and therefore its governing body, is to ensure its sustainability as a strong, viable and competitive organisation against a background of a changing environment. “This focus on regulation rather than performance has arisen despite the fact that more value is lost through strategic mismanagement than through fraud and malpractice” (Young 2006).

Data from the 2006 NIG survey of university governors suggests that university governing bodies are still more oriented to compliance than performance and that satisfying the National Governance Protocols was not too formidable a task (NIG 2008b). Furthermore, individual comments reveal discrepancies or shortcomings, including (but not limited to):

- The overall prescriptiveness of the protocols;
- The lack of definition of, as the main example, “controlled entities”;
- The limited definition of “expertise” as financial;
- The difficulty of operationalising some protocols (e.g., succession planning) in the external environment (where ministerial appointments of council members take many months).

- The absent, or recent, knowledge of institutional responses to the protocols.

Fate of the National Governance Protocols

In 2007 the protocols themselves were due for a three-year operation review. At the same time the Victorian state government commenced a review of its higher education legislation, some enabling acts being over 100 years old. Both of these reviews were overshadowed by two actions of the new Australian government in the first months of 2008.

In March it announced a wide ranging review of Australian higher education whose terms of reference included regulation of the sector and governance of individual universities. A month earlier the Australian government decided to separate the National Governance Protocols from funding requirements, in effect making these protocols voluntary and their review redundant (JCHE 2008). In some respects this is an unintended consequence of the fulfillment of a general election promise to revoke the previous government’s policy on employment relations, which for this sector were contained in the same section of HESA 2003 as the NGP. Subsequent to this change the Australian government is seeking to replace the NGPs with a voluntary code that will be owned and mandated by the higher education sector. The Australian government is seeking to develop the code with Universities Australia, the vice-chancellors’ group, and the University Chancellors’ Council (DEEWR 2009).

What problems will a voluntary code attempt to solve?

Crises of governance continue in Australian universities, and recent disputes within governing bodies have hit headlines in two states and prompted a parliamentary inquiry into governance of NSW universities.

- UNSW vice-chancellor attributes the approximately \$50 million loss on failed establishment of a UNSW-Asia campus in Singapore to poor governance, particularly lack of financial skills on the part of council (GPSC2a 2009);
- Former UNE chancellor, also former chief executive and chairman of construction firm, describes the university as poorly managed and financially vulnerable, stating that “As recently as last year the university was to all intents and purposes technically insolvent” (GPSC2b 2009); and
- VU chancellor and Supreme Court judge engages the Victorian government solicitor to write a let-

ter to council member and state president of the National Tertiary Education Union president for breach of the council's code of conduct for writing critically of the university's leadership in a letter to state and federal members of parliament (Austin 2008).

Professional approaches to governance and management appear to still be a problem. There is evidence that there is a lack of skills and that the senior committees do not develop and encourage challenge. The complexity of the legal framework of universities especially creates ambivalence toward fiduciary duties of university councils and individual members. The now revoked National Governance Protocols required the insertion of fiduciary duties equivalent to statutory duties in corporate law into individual university enabling acts (DEST 2004). Otherwise, in Victoria at least, university council members are subject to neither corporate nor public sector standards of financial responsibility (NIG 2008a). In this context one Victorian vice-chancellor has argued against the incorporation of universities under the Corporations Act 2001 from the perception of a functional immunity from insolvency (BIHECC 2007).

University governance and knowledge management

So the question is – why is university governance still such a problem? A research study undertaken by NIG explored why these governance breakdowns may still be occurring and considered what strategies would need to be adopted in future if governance is to improve. The study built upon work undertaken by Blackman et al. (2006), where it was argued that how knowledge was understood and managed would actively impact upon organisational outcomes and the effectiveness of an organisation. The argument in this context is that as universities become increasingly interested in improving governance to achieve strategic outcomes, the relationship between good governance and good knowledge becomes central. Understanding the nature and role of knowledge processes and systems is a central concern in the current global interest in governance. Corporate governance has always used financial, physical-plant and intellectual capital to build value (Keenan and Aggestam 2001), and university governance should be no different.

Our interest in this research is in the way in which knowledge is being created, recognised, harnessed,

stored and transferred in support of the governance and strategic development in the university. This interest emerges as a result of the growing acceptance that it is the knowledge held within institutions which enables them to develop and grow (Earl 2001; Teodorescu 2006). The literature on governance and board effectiveness emerges from the corporate sector (Newton and Sackney 2005), but its application to universities and other educational settings is acknowledged by bodies which recognise that: "The university is no longer a quiet place to teach and do scholarly work at a measured pace and contemplate the universe as in centuries past. It is a big, complex, demanding, competitive business ..." (OECD 2007).

The importance of knowledge development as a strategic concern in organisations is established as an important issue for corporate governance (Keenan and Aggestam 2001), whilst in Australia there has been a strong impetus in recent years for university governance to maintain a focus on strategic development in contexts of increasingly fast-paced change. This focus is reflected in the council protocols for many Australian universities, although some continue to publish governance protocols that restrict council and board roles to approving, supporting, and overseeing policy systems.

Even in instances where there is an espoused role for university councils in the development of strategic direction, the practice in governing bodies still lags, with councils maintaining the heuristics and habits that reflect governance in less turbulent times (Blackman et al. 2007). This limited engagement with strategic activity by council has been linked with perspectives of knowledge that reflect somewhat outdated notions of the nature and diversity of knowledge in organisations (Blackman et al. 2006) and the claim is made that strategic success in the university is dependent upon richer understandings of the role of knowledge and its management in governance decision making.

Study methodology

The study sought to determine how knowledge is created, shared and transferred within university structures in order to identify whether possible weaknesses in this process might be leading to breakdowns in governance. In order to gather rich data about perceptions of the knowledge creation and transfer processes in place, the research drew on observations and semi-structured face-to-face interviews with

members of academic board and council. Five observations of each committee were undertaken, totalling in excess of 40 hours of observation. The observers used protocols designed to record where knowledge was recognised as being used, shared or created. They then noted the type of knowledge being discussed, from where it emerged and to where it was transferred. Five interviews were undertaken with members of council and academic board (all those interviewed sat on both committees). The interviewees were chosen to give a range of views of the committees – they included a staff elected member, a student member, two previous chairs of academic board and the vice-chancellor. Between them, these participants had sat on a range of council subcommittees including finance, information technology, campus development and resources, and academic board subcommittees including education, admissions and student services. Three of the interviewees had also been members of a vice chancellor’s advisory committee which, while not a formally constituted committee, had been highly influential in university decision making. Each interview took one hour and followed a semi-structured format in which participants were asked about their role in council; how they understood knowledge; where, in their view, knowledge was created within the university structure; and the impacts of the way knowledge was or was not created and transferred upon effective corporate governance.

Observations of committee meetings and transcripts of interviews were transcribed and analysed using the NVivo™ qualitative analysis tool. Two major themes emerged in the data and these were further investigated through interrogation of the full data set: firstly, *how* was the way that knowledge was (or was not) created and disseminated through the governance structures affecting strategic decision making and, secondly, *who* was driving knowledge, innovation and strategy implementation within the governance structures.

Findings and discussion

Creation and dissemination of knowledge in university governance structures affecting strategic decision making

Observation and interview data demonstrated that there was little knowledge creation or transfer occurring at the major decision making forums of the university. According to those interviewed this was

not a problem as they argued that their role was to ratify and confirm knowledge and decisions that have been transferred to them; knowledge creation should happen in the subcommittees that feed into council and academic board. Members of these committees discussed the need for innovation, for “think tanks”, new strategies and collaboration; however, these were discussed in terms of the committees’ role in arranging workgroups to do this thinking and collaborating. There was no discussion in board or at council that indicated these groups considered these active development roles to be ones they should assume.

A concern that emerged was that the intended model for knowledge development and transfer, whereby knowledge created within subcommittees would be transferred to relevant governance structures in the university, was not actually occurring. Subcommittees might be creating useful knowledge and using this to make recommendations and decisions; however, the recording mechanisms reduce the transfer to bare information, stripped of the context and process of knowledge production and of any meaning. What was finally reported and ratified at university council and academic board was a series of decisions, which enabled control but not knowledge development.

We would argue that this is having a serious affect upon the strategic decision making of the university. University councils are widely (if not universally) claimed to be the overarching decision making body of the university. However, what is clear here is that this cannot be the case. Moreover, during the observations it was clear that very few of those involved in the meetings actively took part – in most meetings only a handful of those present spoke and often any opportunities for debate were stifled. In fact it became clear that the processes at academic board and at council were focused on attempting to restrict the impact of external change on the organisation by increasing control mechanisms, rather than by innovating to adapt to environmental turbulence. Examples obtained through observation highlighted the committees’ preoccupation with monitoring the progress of draft policy and approving decisions made elsewhere, with very little comment or challenge. Presentation of reports, feedback from committees and papers tabled for review consumed the vast majority of time and effort in both committees. While there was some development of definitions, which required minimal creative discussion, generally the committee process limited knowledge development, placing the focus instead on information transfer. This focus was

reinforced within the committees, members being censured at times for challenging the information presented to the group.

The structures' focus on cementing process and maintaining stability is in direct contradiction to the current theoretical discussion of appropriate knowledge strategies in environments of flux. These strategies, similarly, appear antithetical to improvements to the university's progress in increasingly uncertain times. In terms of effective governance, it became clear that unless the way that the council protocols were interpreted changed in terms of knowledge management principles (Blackman et al. 2008), many major strategic decisions would not be made within the expected frameworks.

Who drives knowledge, innovation and strategy implementation?

An important implication of the lack of knowledge transfer between committees is that any new knowledge created resides solely within the individuals who took part in any decision-making process – mostly tacit and usually unrecorded. When new decisions are being made, dialogue in committees will only enable previous knowledge to be used, provided those individuals are still with the organisation and they are involved in the decision-making process. If not, the competitive advantage that such knowledge might provide will be lost. This means that not only is the actual decision-making taking place outside the key governance bodies, those within the governance bodies who helped frame the decision will be likely to hold undue influence over others within the committees. Observations led to the conclusion that so few members of the committees were contributing because they were ill-equipped to do so. Interviews confirmed this with participants commenting that they often did not have the knowledge of where ideas had emerged from or that decisions were made elsewhere and they were not encouraged to challenge them. It was clear that senior university management saw the council as a place to get their previously agreed decisions ratified. This led to a concern for effective governance in terms of the way the agency relationship was being framed.

An agency relationship is one where one party or principal employs another to manage and run their company or other organisation for them. An agent will be paid to reflect the best interests of those employing them who should be primarily focused upon

the best outcomes for the organisation (Frankforter et al. 2007) and the governance systems should be in place to ensure that the employers maintain control over the agent. However, there has been concern raised over the years as to the efficacy of such relationships and their ability to deliver the best outcomes for the organisation and its sustainability (Frankforter et al. 2007; Eisenhardt 1989). There is a tendency in such relationships for their success to be based upon short-term successes and self-interest (Hill and Jones 1992) as this enables those taking part to understand the benefit of the decisions that they are taking. Moreover, as the agent needs to justify their decisions this will be more likely if either (a) the benefit to the principal is clear or (b) the task is difficult and there is a high level of trust in the agent. There are concerns with the latter, however, as it means that the agent may be able to become the major decision maker and the governance systems may not prove to be adequate checks and balances.

We would argue that in a situation where there is limited knowledge shared or there are potentially under-skilled individuals undertaking the governance roles, it is highly likely that the effective of the governance will be undermined. We would argue that this is the case in many Australian university governance systems at present.

Implications

In this paper we have argued that there are still considerable problems with governance in Australian universities. It was stated earlier that the focus of the protocols was upon “hard” governance and we now consider whether the two themes identified here lead to a greater recognition for managing the “soft” side of governance. According to Kocourek, Burger and Birchard (2003) there are seven elements to “soft” governance:

- Select the right directors;
- Train them continuously;
- Give them the right information;
- Balance the power of the CEO and directors;
- Nurture a culture of collegial questioning;
- Gain from directors an adequate commitment of time; and
- Measure and improve.

We would argue that these can be undermined by both of the elements outlined in this paper. Having

the appropriate directors may be considered in terms of skills but also needs to be considered in terms of how open they are to developing, acquiring and challenging new knowledge. There will be a need not only for not a range of business skills, but also life and thinking skills enabling an ongoing and robust debate. Without discussion no new knowledge can be transferred and no novelty will emerge (Cook and Brown 1999). The need for ongoing training and development also supports the need to develop new skills and create informed debate. The balancing of power is directly related to the issues of agency power, and without a culture that enables and supports challenge, the agent's power will become steadily stronger.

Consequently, we contend that the issues pertaining to knowledge development and transfer, both in terms of how it is done and who drives it are crucial to the effective development of governance both within universities and elsewhere. We call for a much greater focus upon the research into “soft” wiring governance in place of the increasingly common compliance model and seek research that links differing, but related, areas of organisation studies to governance in order to develop new models of both structures and implementation.

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