

CHAPTER 7 INCREASES IN ASSISTANCE FOR HIGHER EDUCATION PROVIDERS MEETING CERTAIN REQUIREMENTS (Section 33-15)

7.1 PURPOSE

7.1.1 The purpose of this chapter is to set out the requirements known as the National Governance Protocols that higher education providers eligible for grants under the Commonwealth Grant Scheme need to satisfy under section 33-15(1)(a) of the Act and to specify a date for higher education providers to meet these requirements under section 33-15(1)(c) of the Act.

7.1.5 In this chapter, all references to the *Corporations Act* are to the *Corporations Act 2001* (Commonwealth) as in force from time to time.

7.5 NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION PROVIDERS LISTED IN TABLE A OF THE ACT

In the case of the Australian Catholic University, where a Protocol refers to enabling legislation, it is taken to mean its constitution and/or where applicable, the *Corporations Act*.

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

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

- (a) appointing the vice-chancellor as the chief executive officer of the higher education provider, and monitoring his/her performance;
- (b) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
- (c) overseeing and reviewing the management of the higher education provider and its performance;
- (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
- (e) 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*;
- (f) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
- (g) overseeing and monitoring the academic activities of the higher education provider;
- (h) approving significant commercial activities of the higher education provider.

7.5.10 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.

- 7.5.15 **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.
- 7.5.20 Duties of members must include the requirements to:
- (a) 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;
 - (b) act in good faith, honestly and for a proper purpose;
 - (c) exercise appropriate care and diligence;
 - (d) not improperly use their position to gain an advantage for themselves or someone else; and
 - (e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).
- 7.5.25 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*.
- 7.5.30 **Protocol 4:** each governing body must make available a programme 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.

- 7.5.35 **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.
- 7.5.40 **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.
- 7.5.45 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.
- 7.5.50 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.
- 7.5.55 **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.
- 7.5.60 **Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes.
- 7.5.65 **Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.
- 7.5.70 **Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:
- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - (b) 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;
 - (c) ensuring that the board adopts and regularly evaluates a written statement of its own governance principles;

- (d) 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
- (e) 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.

7.5.75 **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.

7.10 NATIONAL GOVERNANCE PROTOCOLS FOR HIGHER EDUCATION PROVIDERS NOT LISTED IN TABLE A OF THE ACT

- 7.10.1 **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.
- 7.10.5 **Protocol 2:** the governing body of the higher education provider must adopt a statement of its primary responsibilities, which must include:
- (a) appointing the chief executive officer of the higher education provider and monitoring his/her performance;
 - (b) appointing, where necessary, the secretary or public officer of the higher education provider;
 - (c) ensuring that the processes of the governing body are carried out in accordance with the constitution of the governing body;
 - (d) approving the mission and strategic direction of the higher education provider, as well as the annual budget and business plan;
 - (e) appointing an external auditor;
 - (f) appointing, where necessary, an audit committee that consists of at least three independent members (excluding the chair) of the governing body;
 - (g) establishing policy and procedural principles consistent with legal requirements and community expectations;
 - (h) 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*;
 - (i) overseeing and reviewing the management of the higher education provider and its performance as a higher education provider;
 - (j) overseeing and monitoring the assessment and management of risk across the higher education provider, including commercial undertakings;
 - (k) overseeing and monitoring academic activities of the higher education provider; and

- (l) approving significant commercial activities of the higher education provider.
- 7.10.10 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.
- 7.10.15 **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.
- 7.10.20 Duties of members must include the requirements to:
- (a) 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;
 - (b) act in good faith, honestly and for a proper purpose;
 - (c) exercise appropriate care and diligence;
 - (d) not improperly use their position to gain an advantage for themselves or someone else; and
 - (e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).
- 7.10.25 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*.
- 7.10.30 **Protocol 4:** each governing body must make available a programme 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.

- 7.10.35 **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.
- 7.10.40 **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.
- 7.10.45 **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.
- 7.10.50 **Protocol 8:** the annual report of the higher education provider must be used for reporting on high level outcomes required by the Commonwealth.
- 7.10.55 **Protocol 9:** the annual report of the higher education provider must include a report on risk management within the organisation.
- 7.10.60 **Protocol 10:** the governing body is required to oversee controlled entities by taking reasonable steps to bring about the following:
- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - (b) 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;
 - (c) ensuring that the board regularly adopts and evaluates a written statement of its own governance principles;
 - (d) 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
 - (e) 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.
- 7.10.65 **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.

7.15 DATE TO MEET THESE REQUIREMENTS (SECTION 33-15)

7.15.1 Dates to meet the National Governance Protocols and workplace relations requirements for a higher education provider to receive an increase in its basic grant amount for a year under the Commonwealth Grant Scheme are:

Grant year	Funding Increases	Dates for meeting the requirements
2005	2.5%	31 August 2004
2006	5.0%	31 August 2005
2007	7.5%	31 August 2006