Law Council
OF AUSTRALIA

Business Law Section

University Governance Principles and Recommendations

Expert Council on University Governance

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Introduction

1. This submission to the Expert Council on University Governance (**Council**) has been prepared the Law Council of Australia's Business Law Section (**BLS**). The BLS deals with business law matters and comprises approximately 1,000 senior members of the legal profession drawn from private practice, in-house legal departments, the bar and academia, and includes members with deep expertise in governance law and practice.

2. As members of a learned profession, lawyers are committed to advancing the proper and effective governance of universities. Beyond that, many BLS members are members of the Australian professoriate, current or former adjunct university faculty, or members of university governing bodies or advisory boards. Our members' ongoing engagement with universities informs this submission.

Summary of conclusions

3. Our submission concludes that new governance standards are needed that move beyond the University Chancellors Council (**UCC**) voluntary Code of Governance Principles and Practice for Australia's Public Universities (updated December 2024) (**UCC Code**) and voluntary Australian Universities Vice-Chancellor and Senior Staff Remuneration Code (adopted August 2022) (**UCC Rem Code**).

4. They should be replaced with new *University Governance Principles and Recommendations* (**UGPR**) with different content that better reflects the public purpose of universities, the unique laws under which they are structured and operated, and the distinctive organs that play a role in their governance. There should be a deliberate rebalancing of the relationship between the central or executive management of the university (represented by the Vice-Chancellor function) and its other governance organs.

5. We hope that the UGPR will change – not perpetuate – current governance practices in Australian universities and address the accountability and transparency deficits in the laws under which they operate. The UGPR must be sufficiently robust to restore public confidence in the capacity of universities to protect academic integrity, maintain financial viability, resist political, commercial and foreign interference, and operate lawfully and ethically. Some of our recommendations part company from the Education Ministers: Ten Priority Areas.

6. In particular, the UGPR should:

    a. Redefine the respective roles, responsibilities, and accountability of a university's four governance organs – its governing body, academic board, executive management (broadly, the Vice-Chancellor function) and faculty management (broadly, the Dean function) and the relationship between them

    b. Mandate that the university's governing body is of an appropriate size, includes only members with relevant skills and experience, engages effectively with stakeholders, properly organises and discharges its

functions through committees, and is accountable to the public for its collective performance

c. Define the role, composition and autonomy of the academic board as the governance organ for academic matters reporting directly to the governing body

d. Set clear rules for the appointment, remuneration and accountabilities of the university's senior management team (**SMT**) comprising its executive management (the Vice-Chancellor and his or her direct reports) and faculty management (the Deans) and the allocation of resources between the executive management and faculty management functions

e. Make overt the governance organs' shared responsibility for leading the culture of the university and protecting its academic integrity and independence, and for safeguarding the rights of its staff, students, and alumni

f. Tighten existing risk management practices (for both financial and non-financial risks) and require proper oversight of sustainability

g. Increase the transparency of university governance, including on remuneration and performance.

7. On balance, we think the UGPR should be developed and maintained by a panel comprising appropriately qualified people representing a range of perspectives on governance from within and outside the university sector. For now, we prefer a panel approach to having governance standards developed by a regulator although the efficacy of the panel approach should be kept under review. The manner by which the panel is assembled (as much as its composition) matters for its legitimacy. The Council may be acting as this panel for now but the panel's ongoing composition, operation and accountability for stewardship of the UGPR should also be considered as part of this consultation.

8. Universities should be required to report publicly against the UGPR on a "comply or explain" basis and Chancellors, Vice-Chancellors and Chairs of academic boards should be required to attest annually that the governance arrangements are adequate and have been adhered to. A regulator (see paragraph 20) should have powers to examine university governance arrangements and intervene if they are inadequate.

About this submission

9. The submission is provided to support the Council's work on a draft UGPR to be provided to Education Ministers. We understand this work to be part of the fifth priority action recommended in the Interim Report of the Australia Universities Accord released in June 2023, and that the UGPR is intended to replace the voluntary UCC Code and UCC Rem Code.

10. On 29 January 2025, the Senate Education and Employment Legislation Committee commenced an inquiry into the quality of governance at Australian

higher education providers.[1] The inquiry received 109 written submissions. On 20 March 2025 its reporting date was deferred from 4 April 2025 to 1 August 2025. We trust that the Council will take the work of the Senate Committee into consideration in developing the UGPR.

11. It is regrettable that the Council allowed only three weeks for this important consultation. We draw the Council's attention to the Australian Government's 2023 guidance for best practice consultation; acknowledging that it is not binding on the Council, we nevertheless think it should have been followed. This policy recommends a consultation period of at least 30 (and preferably 60) days.

12. More effective consultation could have been achieved had the request sent by the Council's secretariat included all relevant background material and more specific questions. It would have been helpful to clarify the relationship between the Council's work and the Australian Universities Accord's other recommendations and the ongoing Senate Committee inquiry. It would be helpful also to address the role of the Regulator (see paragraph 20) in formulating, monitoring compliance with, or enforcing (depending on the model) the UGPR. We note that the Council secretariat is being provided by the UCC; we are concerned about this apparent lack of independence, and that the time allowed for the Council's work may be insufficient.

13. We expect that the Council will conduct further consultation before it provides a draft UGPR to the Education Ministers. (The secretariat's note inviting this submission says this is an initial consultation.) If the (limited) purpose of this consultation is to determine whether the UCC Code and UCC Rem Code are a suitable platform for building the UGPR, and whether adopting the Education Ministers' ten priorities mentioned in paragraph 5 will resolve the problems with governance in Australian universities, our answer in both cases is no.

14. In this submission, we assume familiarity with the current legal and regulatory framework for university governance. This is usefully summarised in Part 1 of the submission made by the Tertiary Education Quality and Standard Agency (**TEQSA**) to the Senate Committee inquiry in March 2025, available here (**TEQSA Submission**). Our submission does not restate generally accepted principles of contemporary private and public sector governance that are usefully summarised, for example, by Commissioner Neville Owen in Appendix E to the final report of the Perth Casino Royal Commission, available here.

[1] The inquiry is into the adequacy of the powers available to the Tertiary Education Quality and Standards Agency to perform its role in identifying and addressing corporate governance issues at Australian higher education providers, with particular reference to: the composition of providers' governing bodies and the transparency, accountability and effectiveness of their functions and processes, including in relation to expenditure, risk management and conflicts of interest; the standard and accuracy of providers' financial reporting, and the effectiveness of financial safeguards and controls; providers' compliance with legislative requirements, including compliance with workplace laws and regulations; the impact of providers' employment practices, executive remuneration, and the use of external consultants, on staff, students and the quality of higher education offered; and any related matters.

15. Our submission also assumes a level of familiarity with the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (4th ed, 2017) (CGPR) and the recently concluded consultation on a proposed fifth edition of the CGPR. And we assume an understanding of the approach taken by the Australian Prudential Regulation Authority (**APRA**) to prudentially regulating the governance of financial institutions, and the current consultation being undertaken by APRA on proposed changes to its regulatory stance.[2]

16. We focus on university governance in the narrow sense of the organs and system of rules, practices and processes through which an individual university is controlled and operated. We do not address the broader theoretical question of "universities governance" in a social science sense (for example, the displacement of a collegial governance model by the New Public Management (**NPM**) approach of the Dawkins reforms, or the potential application of New Public Governance theory to universities). To be clear, we think that this broader theoretical question is of fundamental importance. But it seems to be outside the scope of this consultation, so we have focused our comments on the design and content of the proposed UGPR assuming the current paradigm.

17. Consistent with the Law Council of Australia's commitment to open consultation on matters of significant public interest, we look forward to this submission being published as soon as possible.

University governance

18. University governance poses a unique problem. Unreflectively applying corporate governance principles formulated for for-profit business corporations, charities or other not-for-profit entities, or government owned enterprises to universities is not the answer. A frequent criticism of NPM universities governance is that it turned universities into businesses, led by business people. Our observation is that nothing could be further from the truth. The problems identified in the TEQSA Submission (see paragraph 45 below) would not be tolerated in any credible business in which management is properly accountable to the board, and the board is properly accountable to shareholders and to regulators. Our submission refers to governance models adopted in the private sector and by business regulators only by way of illustrating some relevant concepts and issues, and not to suggest that universities should be treated as businesses.

19. Each university's governance arrangements are different. They are a function of hard and soft law, the formal practices and processes (consistent with that law) implemented by the university, and the university's culture. There are fundamental differences (including as to size, mission and significance) between Australia's 44 universities, and it is important to recognise these differences in developing the UGPR. This is particularly true for research active, systemically significant universities (**SSUs**). We think that APRA's approach to distinguishing between significant financial institutions (known as SFIs) and other APRA-regulated financial institutions is a useful model in this regard.

[2] Some of the governance challenges present in university governing bodies are similar to those in "equal representation" trustee boards in industry superannuation funds, making the APRA approach an interesting point of comparison.

20. Our submission includes observations about the functions of a "Regulator" in relation to the proposed UGPR. Currently, regulatory functions concerning the governance of universities are (mostly) with TEQSA but we note proposals to reform the regulatory arrangements for the broader research and tertiary education sectors including the creation of an Australian Tertiary Education Commission (**ATEC**). This would impact the regulatory oversight of university governance, as may findings of the current Senate Committee inquiry. We have some views about the ATEC reform proposal but note that it is also outside the scope of the Council's current consultation. We think the role of other regulators, including the Australian Charities and Not-for-profits Commission (**ACNC**), and of parliamentary oversight committees in the university sector also needs further examination.

Design of the UGPR

21. This part discusses preliminary design issues: who should make and maintain the UGPR, whether the principles and recommendations should be voluntary or mandatory, and how the UGPR can be meaningfully enforced.

A panel code model

22. We considered whether the UGPR should be framed as:

    a. a self-regulatory code (like the current UCC Code and UCC Rem Code)

    b. a code agreed and maintained by a representative or expert panel (like the ASX Corporate Governance Council (**ASX CGC**) or variations of it), or

    c. a regulatory document (like a prudential standard made by APRA).

23. We do not support a self-regulatory code, for example made by the UCC. While we acknowledge the important role of university Chancellors, we are concerned that the UCC is perceived as conflicted and not representative of all those whose views on university governance ought appropriately to inform the UGPR. Fair or not, this perception would undermine a self-regulatory code. (For the same reason, it is important that the Council itself is not perceived as captured by the UCC or by Universities Australia whose board members are Vice-Chancellors.)

24. The two other design options we considered were a "panel code" model (like the ASX CGC and CGPR) or a "regulatory standards" model (like APRA's prudential standards on governance). There are arguments for and against both options.

25. A panel code model identifies and brings together stakeholders who have a shared interest in, but different perspectives on, achieving effective governance. Perhaps this is the thinking behind the composition of the Council, which we understand was constituted by the Commonwealth. The limitations of a panel code model became evident in the recent consultation on a proposed fifth edition of the CGPR. We think there are important lessons from the CGPR process that should inform the Council's recommendations to the Education Ministers about who, in future, should have stewardship of the UGPR if one emerges from this process.

26. The success of a panel code model depends on having the right people on the panel, with a clear understanding of their role (whether as experts, nominees or

representatives) and clearly agreed goals. The model works better when different stakeholders represented in it share common ground as to the purpose and proper scope of the resulting code. It also requires an independent secretariat with adequate expertise and resources. Recent criticisms of the CGPR (including that it is too long, is concerned with matters other than governance, is too granular and uneven in areas of focus, contains too much commentary, and enshrines compromised rather than principled positions) and the ASX CGC (that its membership is too large, not appropriately balanced and not clearly accountable) point to the limitations of this model in a highly contested environment.

27. The other option we considered was a regulatory standards model. This model also has limitations – most obviously the risks of actual or perceived ineptitude, political interference and regulatory capture that exist with any regulatory agency.

28. Nevertheless, there are arguments in favour of having the Regulator set the governance expectations for the sector. Governance failures in universities give rise to *systemic* risk not just entity risk. The Australian community as a whole, not just the university sector's direct stakeholders, is exposed to that systemic risk. If confidence in the university sector is undermined by failures resulting from poor governance, the larger role that universities play in civil society (including as a bulwark against disinformation and populism) is harmed. Governance failures in one also have the potential to undermine all universities' economic contribution including to research and innovation,[3] vocational and professional education, and national income.[4] Accordingly, it is arguable that the governance risk in universities should be prudentially regulated in the public interest by an independent and appropriately qualified Regulator that is subject to effective and transparent parliamentary oversight. While we acknowledge the constitutional complexities in implementing this approach in Australia's federal system, TEQSA Threshold Standards Domain 6 provides a roadmap for how this might be implemented.

29. It may be that the risks of actual or perceived ineptitude, political interference and regulatory capture at an independent agency level can be addressed by design and oversight more readily than the balance and accountability risks in the panel code model. Of course, this depends on how the Regulator is constituted, staffed and resourced. But against that, universities remaining truly independent of government control *in carrying out their academic purpose* is an important societal value and, as recent international experience shows, a fragile one. For that reason, we incline towards the panel code model, but we think the charter and accountability of the panel must be clear.

30. If the panel code model is preferred over regulatory standards, we think the Council should include recommendations on a future panel's structure, process, secretariat and accountability as part of its report to the Education Ministers on the draft UGPR.

[3] A large percentage (by OECD standards) of Australia's total R&D expenditure occurs in SSUs: see https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Research_Papers/2024-25/RandD_and_innovation_in_Australia_2024_update.
[4] In 2023-24 international education (including at universities) contributed $51 billion to the Australian economy: https://www.education.gov.au/international-education-data-and-research/education-export-income-financial-year.

“Comply or explain” annual reporting and attestation

31. The principles in the UGPR should be expressed broadly so as to be suitable for, and followed by, all universities. They are mandatory in the sense that universities are expected to observe and give effect to them. The specific recommendations attaching to each principle should support a university operationalising each principle. Depending on their content, it may be appropriate for some of the recommendations to apply only to SSUs.

32. The second design question is whether the recommendations in the UGPR ought to be expressed as voluntary or mandatory. Unpacking this slightly, the voluntary option could be that the recommendations are intended only as guidance, or that following the recommendations is voluntary but comes with a mandatory reporting obligation. That reporting could be on an “if not, why not” basis (like the CGPR and ASX Listing Rule 4.10.3) or on “comply or explain” basis like the UK *Corporate Governance Code* (2024).

33. Having mandatory standards might go some way to restoring community confidence in university governance, but it creates the risks described in paragraph 27. If the recommendations were to be made mandatory, it is appropriate (for rule of law reasons) that they are formulated by the Regulator with the assistance of an expert advisory body. They must be adapted to suit both SSUs and other universities; APRA’s prudential standards on governance provide a model here, including as to how mandatory standards can be framed to apply both to very large and to other (including member owned, small and regional) entities.

34. We recommend making the principles binding on all universities and the making the recommendations binding unless the university can provide an adequate public explanation for departing from them (this is the difference between “if not, why not” and “comply or explain” reporting). A university should depart from a specific recommendation only if it is able publicly to justify doing so. Of course, this requires skill in formulating the principles and recommendations to ensure that they are neither over- nor under-prescriptive and that they achieve the outcome stated in paragraph 41.

Meaningful compliance and oversight

35. All universities should accept and follow the principles and implement the recommendations except where there is a credible reason not to do so. This should be underscored by mandatory “comply or explain” public annual reporting.

36. We said in paragraph 5 that the UGPR should aim to change university governance. For that to occur, there must be meaningful and not just performative compliance with them. Simply setting up policies and processes that are gamed or ignored will not achieve this. This will require a clear understanding of the consequences for a university that does not follow the principles, whose explanation for departing from the recommendations is inadequate, or whose culture and practices are at odds with its published governance statements and commitments.

37. We think rebalancing the roles of the governance organs – governing board, academic board, executive management and faculty management – will assist by setting up a dynamic interplay of checks and balances between them that helps address the accountability deficit. Enhanced transparency and regulatory oversight will also be important.

38. The annual public reporting should include a formal written attestation by the university's Chancellor, Vice-Chancellor, and Chair of the academic board that, in their opinion, the governance arrangements for the university are adequate and that they have been complied with (or if not, an explanation of the reasons for non-compliance).

39. The Regulator should be resourced to audit compliance with the UGPR periodically, and to challenge the explanations provided by universities for departing from specific recommendations. If a university is not complying with the UGPR, or its explanation for not adopting a particular recommendation is unsatisfactory, the Regulator should be able to take meaningful action (for example, imposing conditions or restrictions on the university's accreditation) to improve its governance.

UGPR content

40. There should be no more than eight principles; we suggest seven (eight if a separate principle on remuneration is included – see paragraph 70). The principles should be broadly expressed in terms that all universities accept and can follow. The recommendations should specify the measures that a university should apply (unless there are compelling reasons not to do so) to achieve the relevant principle.

41. The UGPR should supplement (but not displace) existing laws that regulate how a university is directed and controlled. Compared with other entities (such as public companies) these laws leave accountability and transparency deficits. The value of the UGPR is in identifying the gap between what a university is legally permitted to do in relation to its governance and contemporary, evidence-based best practice as to the factors and arrangements (within that legal framework) that are likely to result in sound governance – and then recommending measures to close that gap.

42. It is important to address the accountability and transparency deficits that exist in the laws under which universities are established and organised. For example:

    a. although members of governing bodies may be subject to duties similar to those applicable to company directors (at general law and often also under their enabling legalisation), failing enforcement of those duties by the body itself, there is no stakeholder or regulator able to do so

    b. there is likely to be no one other than the governing body itself with capacity to remove a member from office, and

    c. mandatory public disclosure of governance-related matters is limited.

43. For this reason, adapting the CGPR or similar documents as a model for the UGPR is problematic. The CGPR do not reflect the distinct public purpose of

universities or the unique legal settings in which they operate. Universities do not have shareholders who can de-invest if they are unhappy with their governance. In any event, there is now a debate over whether the CGPR in their current form remain fit for purpose.

44. The CGPR are predicated on the typical governance organs of a listed entity: a board, an executive management team (to which operational management of the entity is delegated by the board), and shareholders in general meeting. While there may be superficial similarities, these are not the governance organs of universities. To repeat, the legal and market accountabilities to which ASX listed entities and their officers are subject do not operate in the university context. The UGPR should be different. They should:

    a. address the accountability and transparency deficits that exist as a result of the unique legal settings within which universities operate, by recommending additional measures (beyond what is legally prescribed) to address them, and

    b. define the relationship between the different governance organs in a way that creates a dynamic system of checks and balances, rather than concentrating power in an executive management function inadequately overseen by a governing body that is under-resourced, captive or unworkable in its composition.

Problem statement

45. The UGPR should be ambitious in addressing the contemporary governance challenges of universities. The TEQSA Submission identified the following common governance challenges across the whole higher education sector, including universities.

    a. **Financial oversight and risk management.** Poor financial planning, a lack of transparency in financial reporting, and inadequate risk management.

    b. **Governing body effectiveness.** Limited expertise, over corporatisation, poor decision-making processes, poor management of conflicts of interest, challenges in exercising sound judgment on complex social, cultural or community issues and insufficient oversight of the management of key risks.

    c. **Regulatory compliance issues.** Weak self-assurance processes, and inadequate reporting that increases risks of non-compliance with the Threshold Standards.

    d. **Workforce and employment problems.** Over-casualisation of staff, executive remuneration concerns, and workplace law non-compliance.

    e. **Academic governance and integrity risks**. Weak oversight leading to research and academic misconduct risks, immature arrangements for course monitoring, review and reporting, and inadequate student support arrangements.

f. **Transparency and accountability**. Limited public reporting, poor student and staff engagement in governance, and insufficient independent oversight.

46. Other concerns commonly expressed in relation to university governance include the following.

    a. Governing bodies do not have the right mix of skills and expertise and are ineffective in holding university management to account in the public interest. The governing bodies are too large, not appropriately skills based, not sufficiently engaged, and not properly accountable.

    b. The academic board (or its equivalent) is too unwieldy and lacks autonomy and authority, becoming a rubber stamp for decisions already made by executive management and exposing universities to unacceptable risks in its academic functions.

    c. In management of the day-to-day running of the universities, there is an imbalance in the relationship between the executive function (represented by the office of the Vice-Chancellor) and the academic function (represented by the Deans). The executive function should exist to support and facilitate the academic function, but this relationship seems confused. There are related concerns about how this imbalance manifests in the allocation of resources, the locus of decision-making about discipline-specific educational and research matters, and remuneration policy.

    d. Concentrating power and resources at the administrative centre of the university, rather than dispersing them to the faculties, has created an autogenous bureaucracy that is not sufficiently focused on achieving the university's core purpose. Linked to this is the perceived proliferation of senior non-faculty appointments to thematic portfolios that consume resources without having clear performance indicators or lines of accountability. There is also a view that too many managerial or administrative (referred to in some universities as professional) staff are located outside the faculties and too few within them, resulting in an unreasonable administrative burden on academic staff to the detriment of staff health, student experience and (where relevant) research output.

47. Addressing these concerns should inform the Council's recommendations to Education Ministers about the UGPR.

Seven principles

48. We recommend starting with a blank slate, rather than trying to adapt the UCC Code or UCC Rem Code. We offer the following very general observations about what the UGPR might usefully contain. We recommend seven principles (and note that some also favour an eighth on remuneration – see paragraph 70), all of which involve changes to the status quo.

Governance framework

49. The first principle is that the university must clearly delineate the respective roles and responsibilities of, and relationship between, its "governance organs" comprising (in most cases) its governing body, academic board, central management function and faculty management function.

50. The associated recommendations should clearly set out the roles and responsibilities of each governance organ. They should require the charters of the governing body and the academic board and the accountability mapping for SMT members to be publicly available.

51. The recommendations should specify that the governing body is responsible for overseeing the university's strategy, performance, culture, risk management and compliance in the public interest, and explain the role of the academic board. The recommendations should provide mechanisms for ensuring meaningful stakeholder engagement. They should provide for regular review of the performance of the governing body, academic board, executive management and faculty management.

52. This governance framework is intended to create a system of internal checks and balances between the governance organs, to enhance transparency and accountability. This recognises that executive management (represented by the office of Vice-Chancellor, typically including C-suite functions such as finance, operations, human resources, legal, the provost function and in SSUs a small number of Deputy Vice-Chancellors) and faculty management (represented by the Deans) have separate but interconnected responsibilities in the day-to-day management of the affairs of the university. It also recognises the separate oversight and stewardship obligations of the governing body and the academic board.

Governing body

53. The second principle is that the governing body of a university must be of an appropriate size and collectively have the skills, commitment and knowledge of the university and the context in which it operates to enable it to discharge its duties effectively in the public interest.

54. The associated recommendations should deal with the structure and accountability of the governing body, including its committees. How members are appointed the governing body is determined by each university's statute. However, regardless of the manner of appointment, the governing body should be skills based. An important function of its nominations committee will be to identify the skills and attributes needed and work with appointers to ensure suitable candidates are available and equipped to serve, and are chosen on merit.[5] For the reason explained in paragraph 82, we think members should be paid (noting that

[5] Each university has different processes for appointment to its governing body. How they are appointed matters less than the skills members bring and their understanding of their role and duties. The approach taken by APRA to the composition of "equal representation" boards in the superannuation sector provides some useful guidance here.

members may choose to donate their fee back to the university). Member terms should be limited, for example to a maximum of six or 10 years.

55. The governing body should have between nine and twelve members, unless a compelling explanation exists for departing from that recommendation. Governance research suggests that larger bodies are less effective in exercising their oversight functions, because members' sense of individual "skin in the game" and capacity to influence is diluted. Over time, States and Territories should be encouraged to revise the universities' Acts to reflect this principle.

56. Whatever its size, one-third of the governing body's members should have direct experience in senior university roles outside that university, one-third should have advanced and specific governance expertise (for example, financial, accounting, legal, or business management) and one-third should bring other experience or perspectives that are considered important to the success of the university. This third group might include members who bring a staff, student, First Nations, regional, industry, or philanthropic perspective to the governing body where this would otherwise be missing. In SSUs, there may be a case for increasing the size of the governing body slightly to add expertise in research and innovation.

57. To be clear, we recommend against adopting specific quotas or designated positions based on personal attributes for university governance bodies.

58. All members of the governing body owe the same legal duties to the university, including to act with care and diligence, to manage their other duties or interests that may conflict with their duty to the university, and to exercise their powers in good faith in the best interest of the university. How those duties are (not) enforced is discussed in paragraph 84. We are concerned to hear that some members of governing bodies (including staff and student elected members) are being excluded from meetings or denied access to information relating to SMT remuneration and performance. This is inappropriate if their legal status is as members and not as observers. The UGPR should reflect the fact that, regardless of how or by whom a member is appointed, their duties are to the university and not to their appointer, and they are entitled to participate fully in the operations of the governing body.

59. The governing body should establish committees chaired by members with appropriate expertise. If appropriate expertise is not available on the governing body, the governing body membership must be adjusted to provide it. Assuming strategic matters concerning the core academic functions of the university – education and (where relevant) research – are overseen by the academic board or its equivalent, the committees should cover:

    a. people and culture matters (including staff and student rights and WHS)

    b. nominations and remuneration (see our comment in paragraphs 71 and 72 about SMT remuneration)

    c. audit, risk management and sustainability.

60. It may be appropriate to recommend that SSUs establish additional committees (for example, for research translation and innovation).

61. Committees may include non-voting external expert members where appropriate, but not for the filling gaps in skills and experience that ought to be represented on the governing body itself.

62. The UGPR should require an independent review of the performance of the governing body every three years and makes the results of that review public (see paragraph 80).

Academic board

63. The third principle is that the academic board of a university must be of an appropriate size and collectively have the expertise, commitment and authority to enable it to discharge its duties in overseeing the academic affairs of the university effectively in the public interest.

64. The recommendations should recognise the academic board as the principal academic body of the university responsible for approving academic proposals and for providing advice to the governing body on academic policy, academic strategy, academic standards and academic risk management (including TEQSA compliance). They could specify the academic board's decision-making authority (delegated by the governing body) for specified matters involving (where relevant) vocational education, higher education and research. These may include academic policies, procedures and regulations; research ethics; evaluation, accreditation and reaccreditation of courses; assessment policies; and requirements for the awarding of degrees, diplomas and certificates.

65. The academic board should comprise the university's Provost (in SSUs this role may be divided between a Deputy Vice-Chancellor Research and Deputy-Vice Chancellor Education), Deans, and elected professorial and non-professorial academic staff members of each faculty and research institute. It may include student representatives as members or observers. The Chair of the academic board should not be a member of the SMT.

Executive and faculty management

66. This principle is that the senior management (comprising the executive management and the faculty management) of the university must be appropriately structured, resourced and remunerated to ensure it can discharge its duties effectively in the public interest.

67. The recommendations should address the structure of the university's senior management and the appointment, remuneration and accountability of SMT members who manage either the centralised operations of the university or the operations of the faculties. We describe these as executive management (the Vice-Chancellor function) and faculty management (the Deans function). It should ensure an appropriate allocation of powers, responsibilities and resources between executive management and faculty management.

68. In broad terms a university's SMT comprises the Vice-Chancellor and his or her direct reports, and its Deans. The recommendations should limit the number of people who report directly to the Vice-Chancellor to ensure the executive

management function does not become too large. The recommendations should require clear reporting lines (including for Deans who may be responsible to the Vice-Chancellor on some matters and the academic board on others); provide for accountability mapping (like the Financial Accountability Regime for financial institutions); and require clear performance indicators for each function led by an SMT member. To ensure role clarity, it should specify that members of the SMT who are not otherwise entitled to it should not be given the title of professor.

69. The recommendations should deal with appointments to the SMT, including appropriate safeguards to address the risk of corruption and political interference in those appointments.

70. The UGPR should also make recommendations about SMT remuneration. We do not propose including in the UGPR a separate principle relating to remuneration (as appears in the CGPR) because we think that public universities should not have the kinds of complex remuneration arrangements (including incentive-based remuneration) that require this level of governance. However, there are arguments either way.

71. The UGPR should recommend that the university have a remuneration policy for SMT and make publicly available the (adapted) equivalent of a remuneration report required under s 300A of the *Corporations Act 2001* (Cth) annually. It should require universities to disclose publicly the remuneration of members of the SMT and disclose whether SMT members have received (non-trivial) remuneration from sources other than the university.

72. The recommendations should include that the remuneration of SMT members is explicitly linked to an appropriate benchmark, such as public sector salaries or the remuneration of professors. It should discourage complex remuneration arrangements that include at-risk or variable components. We do not think the UCC Rem Code does this effectively.

73. The UGPR should recommend an independent review of the university's remuneration policy every six years with the results of the report made public.

Culture

74. This principle is that the university must instil and continually reinforce a culture of acting lawfully, ethically and responsibly towards its staff, students and alumni and in its dealings with others, consistent with the purpose of the university and the public interest.

75. The recommendations should make clear that the governance bodies share oversight responsibility for culture. It should deal with codes of conduct, diversity and inclusion policies, and arrangements for safeguarding staff and student health and human rights.

Risk management and sustainability

76. This principle is that the university must have in place adequate arrangements to identify and manage financial and non-financial risks and to ensure that it operates sustainably.

77. The recommendations should expressly address risks to its academic integrity, financial viability, and independence from political, commercial or foreign interference. They should address technological risks including cyber and AI risks and workforce risks. This part should also deal with the impact on and of the university in climate change and the transition to net-zero; nature, biodiversity and the environment; and humans and societies.

78. The recommendations should include that the Chancellor, Vice-Chancellor and Chair of the academic board provide an annual attestation as to the adequacy of the university's risk management arrangements.

Transparency

79. This principle is that the university must operate transparently and have in place adequate arrangements to ensure the integrity of its public and statutory reporting.

80. The recommendations should address the transparency deficit that exists in the laws under which universities operate. They should include that the university publish the following on a dedicated governance webpage:

    a. its statutory reports

    b. a "comply or explain" annual report against the UGPR

    c. a statement of its governance framework

    d. the charters of its governing body and academic board

    e. the accountability map for its SMT

    f. a remuneration report equivalent to s 300A of the *Corporations Act 2001* (Cth)

    g. the attestations described in paragraphs 38 and 78

    h. the results of the independent reviews described in paragraphs 62 (performance of the governing body) and 73 (remuneration policy).

Officers' legal accountability

81. We make one further observation that concerns the legal accountability of a university's officers (that is, the members of the governing body and the SMT).

82. We think governing body members should be paid an appropriate fee (benchmarked to board fees for government owned enterprises of similar size and complexity), noting that some members may be in a position to donate their fee back to the university. This will help create a culture of accountability and anchor public expectations of the level of engagement, effort and accountability involved in the role. It will also ensure that governing body members are appropriately accountable under work health and safety laws. We note that SMT are already remunerated for their executive or faculty management roles, often at high levels relative to the general community or other staff of the university.

83. As a policy matter, we think there should be a proper debate about whether the officers of a university – and in particular an SSU – should be made subject to the same legal liability for breach of duty as officers of other entities (including commercial entities) of equivalent scale and significance. This is relevant in two important areas. The first is in relation to their duties *qua* officers. The second concerns their personal legal accountability in relation to matters – such as work health and safety, environmental impact, and public reporting – where the law imposes on officers specific and non-delegable "due diligence" or reasonable steps obligations.

84. The policy question is whether – given the systemic significance of universities as a whole and the lack of effective market or public oversight mechanisms to control poor governance – the *legal liability* of officers of universities ought appropriately to remain modified (compared, for example, with that of company officers) or excluded by their constituting Acts or by their status as entities registered with ACNC.

Business Law Section
7 April 2025

Annexure: About the Business Law Section of the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; and promotes the administration of justice, access to justice, and general improvement of the law.

The Business Law Section of the Law Council furthers the objects of the Law Council on matters pertaining to business law.

The Section provides a forum through which lawyers and others interested in law affecting business can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

The Business Law Section has approximately 1,000 members. It currently has 14 specialist committees and working groups:

- Competition & Consumer Law Committee
- Construction & Infrastructure Law Committee
- Corporations Law Committee
- Customs & International Transactions Committee
- Digital Commerce Committee
- Financial Services Committee
- Foreign Corrupt Practices Working Group
- Foreign Investment Committee
- Insolvency & Reconstruction Law Committee
- Intellectual Property Committee
- Media & Communications Committee
- Privacy Law Committee
- SME Business Law Committee
- Taxation Law Committee

The Section has an Executive Committee of 12 members drawn from different states and territories and fields of practice. The Executive Committee meets quarterly to set objectives, policy and priorities for the Section.

The members of the Section Executive are:

- Dr Pamela Hanrahan, Chair
- Mr Adrian Varrasso, Deputy Chair
- Dr Elizabeth Boros KC, Treasurer
- Mr Philip Argy
- Mr Greg Rodgers
- Mr John Keeves
- Ms Rachel Webber
- Ms Shannon Finch
- Mr Clint Harding
- Mr Peter Leech
- Mr Chris Pearce
- Ms Lisa Huett

The Section's administration team serves the Section nationally and is part of the Law Council's Secretariat in Canberra.

The Law Council's website is www.lawcouncil.au.

The Section's website is www.lawcouncil.au/business-law.