

PREFACE

As a country of 20 million people, Australia's future will increasingly rely on ideas, innovation and technology.

The nation's universities will play a critically important role in driving that future.

The only benchmarks that will count increasingly are international ones. Meeting and exceeding the world's best standards of quality demands the nation's leaders examine the regulatory arrangements governing our universities.

This preliminary paper seeks to introduce an informed discussion of the potential benefits and risks of transferring primary legislative responsibility for universities from the states to the commonwealth.

If this is to ultimately occur it should be the product of consultation. The Australian Government neither can – nor should – coerce other governments in this regard. However, Australia faces different horizons from those of the two previous centuries. As such we have a responsibility to the future to carefully examine the regulatory framework within which Australian universities compete with the rest of the world.

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Minister for Education, Science and Training

ISSUES PAPER

RATIONALISING RESPONSIBILITY FOR HIGHER EDUCATION IN AUSTRALIA

INTRODUCTION

This paper seeks to provide a basis on which to start an informed debate around the issue of rationalising the responsibility for higher education in Australia.

It sets the scene by describing the evolving nature of Federal and State involvement in higher education and the implications of the current division of responsibilities between the Australian Government and the State and Territory governments.

There are 39 publicly funded higher education providers in Australia of which 37 have been accorded the title of university. In addition there are 3 private universities and a number of other self-accrediting and non self-accrediting institutions which provide higher education throughout Australia. There are 10 universities in New South Wales, 9 in Victoria, 8 in Queensland, 3 in South Australia, 5 in Western Australia, 1 in Tasmania, 2 in the Australian Capital Territory and 1 in the Northern Territory. One university operates in multiple States. Altogether they served 929,952 students in 2003. State and Territory responsibilities for

universities vary in, for example, funding and capital assistance, appointing Board members and some accountability requirements.

In essence, every Australian university must be mindful of requirements coming from both federal and state governments.

Against this context, and given we are a country with a relatively small population, it has been argued that a discussion is warranted as to whether Australia would be better placed in a competitive global economy if these jurisdictional arrangements for universities were rationalised.

Certainly there are complexities in the current shared arrangements, a lack of consistency to the largely historically determined nature of them, and limitations and constraints that result from having nine jurisdictions involved.

It is timely to consider the case for change, because there is a growing need for the Australian higher education sector to be recognisable as a truly national system, and recognised for its high quality, in the face of rapid globalisation of higher education. Duplication and ambiguity in regulation of the sector need to be minimised for Australia to be positioned to attract the best researchers, teachers and students and for Australian universities to be increasingly internationally renowned.

This paper has four sections. The first section offers an historical overview of increasing federal (Australian Government) involvement. This is seen as unsurprising as Australia matured from a series of independent colonies to a single nation now competing in a global economy.

The second section describes current arrangements in terms of federal and state responsibilities for universities, including differences between states. It paints a picture of a fairly high degree of complexity and of national consistency in some areas, but not in others.

The third section briefly outlines a range of international arrangements which illustrate a variety of approaches.

The fourth section lays out an overview of possible benefits and risks if universities were the responsibility of the federal government alone.

The second discussion paper will be released at the end of February 2005. The detailed discussion paper will also be informed by a number of pieces of work commissioned by the Australian Government.

The release of the second paper will be followed in March 2005 by a process of consultation with institutions, sector representatives, State and Territory governments, business and the community. This will include both a formal submission process and face-to-face consultation meetings.

If you wish to make a response to this paper or the discussion paper, please email it to backingaustraliasfuture@dest.gov.au (subject line should be marked "Rationalising responsibility") or send it to Location code 140, Higher Education Group, Department of Education, Science and Training, GPO Box 9880, Canberra City ACT 2601.

A SHORT HISTORY OF AUSTRALIAN GOVERNMENT, STATES' AND TERRITORIES' INVOLVEMENT IN AUSTRALIA'S HIGHER EDUCATION SECTOR

Overview

The history of jurisdictions' involvement in higher education is one of continuing greater involvement by the Australian Government from an initial situation where its role was minimal to the current situation where it effectively has full public funding and policy responsibility. This change reflects the growth in significance of education as a key determinant of Australia's economic, social, cultural and intellectual development. If anything, such an economic and social imperative will strengthen in the future as pressure for innovation and a knowledge based economy develops. Significantly, the initiative for all major reviews of the higher education sector after World War II has been taken by the federal Australian Government, and implementation of policy reforms has been funded by increasing Australian Government contributions.

a. 1851 - 1900: Establishment of Universities

The first universities in Australia were set up in the nineteenth century, under the colonial governments. The first was the University of Sydney in 1851. By Federation in 1901 there were four in what are now the States of New South Wales, Victoria, South Australia and Tasmania. Others followed – in Queensland in 1909 and in Western Australia in 1911. There are currently 39 universities, the most recent of which is the University of the Sunshine Coast in Queensland which was established in 1996.

b. 1901 – 1950: Dominance of States and Territories, but growing federal involvement

The Australian Constitution of 1901 made no specific reference to education. Section 96 of the Constitution, however, conferred on the new Commonwealth government the power to make grants to the states (the 'States grants' powers). This gave the Australian government, "the Commonwealth" a capacity to become involved in many education issues of national interest.

Prior to the Second World War, however, Australia's universities were primarily funded by State governments, student fees and private endowments, with a minor contribution from the Commonwealth Government in the form of assistance for research.

During the Second World War, the Australian Government took over sole responsibility for income taxation, thereby significantly reducing States' sources of revenue. The federal government's responsibilities during the War created an impetus for a major expansion of its direct involvement in education (DETYA 2001).

In 1942 the Australian Government introduced a programme of financial assistance to students in some faculties at universities to overcome a shortage of graduates, particularly in science and engineering (DEET 1993). In 1944 the Commonwealth Reconstruction Training Scheme (CRTS) was established to assist returned service personnel to undertake tertiary training. Under the CRTS the Australian Government provided capital and recurrent funds to universities and paid tuition fees and living allowances to full-time students (Smart 1982; NAA).

In 1946, the Commonwealth acquired the power to legislate in relation to provision of 'benefits to students' (section 51(xxiiiA)), following a Constitutional amendment. This power particularly supported income support payments to individual students.

University enrolments expanded significantly in the post-war period, from 14,236 in 1939 to 30,630 in 1950 (DEET 1993, p.8). Most of these additional enrolments were in existing institutions, although a number of new institutions were founded at that time. The expansion was financed primarily by State governments, with assistance from the Australian Government under the CRTS.

c. 1950 – 1959: Increasing national engagement

By the late 1940s, the combined effects of general financial pressures and a significant decline in federal assistance as a result of falling CRTS enrolments led university vice-chancellors to appeal for additional funding from the Australian Government.

The federal government's financial involvement in higher education increased in stages over this period, initially in response to the recommendations of three successive committees of inquiry. Smart (1978, p.23) suggested a number of reasons for the increased involvement of the Commonwealth Government in all levels of Australian education in the three decades from 1945: financial dominance of the federal government after the 1942 uniform tax legislation; rapidly rising federal tax revenues; emergence of education as a focus of public concern; problems of state governments coping with public demand for increased spending on education; electoral pressure at the federal level; personal commitment to education on the part of forceful leaders such as Menzies and Whitlam; and a range of forces towards a concentration of power at the federal level.

In 1951 the Australian Government appointed the Mills Committee to inquire into the finances of the State universities. The Government's response to Mills' recommendations led to commencement of federal recurrent funding to the States for universities under Section 96 of the Constitution, through the *States Grants (Universities) Act* of 1951.

In 1957, an inquiry headed by Sir Keith Murray (the Murray Committee) identified a range of shortcomings in Australia's universities and described universities' immediate financial situation as 'critical'. As a result, the Menzies Government significantly increased the level of Australian Government financial assistance for universities and set up the Australian Universities Commission to advise on university matters. It introduced a capital funding programme and made targeted grants in 1958, 1959 and 1960. Funding continued to be provided on a matching basis, that is, federal assistance was to be matched by funds from the States and Territories.

d. 1960 – 1986: Pressure for Australian Government action

The Australian Government came under increasing pressure to review the tertiary sector as a whole, in view of rapid growth in the number of university students over the 1950s, and the perceptions of non-university institutions that they were under-funded in comparison with universities. In 1961 the Australian Government announced the appointment of the Martin Committee to inquire into tertiary education in Australia. At that time, public funding accounted for around 80 per cent of universities' total income, with the Australian Government providing around 44 per cent (see Figure 1).

The Martin Committee argued that the current system placed an undue emphasis on university education and proposed that efforts be made to strengthen non-university tertiary provision. Its main recommendation involved a tripartite system of universities, technical colleges and teachers colleges. State coordinating bodies were to oversee the development of institutions in the two latter categories and a Tertiary Education Commission was to advise at the national level. It recommended federal provision of grants to the technical and teachers colleges on the same basis as for universities.

From 1967 the Commonwealth and States shared joint funding responsibility for Colleges of Advanced Education (CAEs), according to a similar formula to that used for universities. Most were formed from existing institutions – institutes of technology, agricultural and technical colleges – although some new institutions were set up. State teachers colleges remained largely the funding responsibility of State governments, until they were absorbed into the CAE sector in the early 1970s. The response to the Martin report thereby established the 'binary divide' between universities and CAEs which was a feature of the tertiary education sector landscape until the late 1980s.

Two important developments took place in 1974 - the incoming Whitlam Government assumed full funding responsibility for higher education and it abolished tuition fees in universities and CAEs. While States retained legislative and regulatory responsibilities, they were not required to provide general financial assistance.

The advanced education sector grew rapidly over the 1970s – over the three years to 1975 enrolments increased by 52 per cent while university numbers stabilised, and by 1980 student

numbers in advanced education had overtaken universities (DETYA 2001). CAEs began to offer degrees, and later, higher degrees and research programmes.

As the distinctions between universities and CAEs blurred, the Australian Government moved in 1977 to establish the Commonwealth Tertiary Education Commission (CTEC) to coordinate funding and development across the sector. The Commission had separate Councils for the three post-school sectors of university, CAEs and technical and further education (TAFE). Its Terms of Reference required it to consult with States before reporting to the Commonwealth, and other formal consultative structures were subsequently agreed on.

Following the Review of Commonwealth Functions in 1981, the Fraser Government consolidated 30 CAEs mainly involved in teacher education. CTEC's 1986 report on the *Review of Efficiency and Effectiveness in Higher Education* made a number of recommendations which increased the efficiency of the system.

e. 1987 – 1990: The Establishment of the Unified National System

A national review of higher education in 1987 and 1988 took place against a background of rising levels of unmet demand for higher education since the early 1980s, a questioning of the rationale for the binary divide between universities and CAEs and lobbying by the CAE sector for access to Commonwealth research funding. During this period some States used their legislative powers to establish universities in order to convert CAEs to universities. For example, in December 1986, the Western Australian Government converted the Western Australian Institute of Technology into the Curtin University of Technology.

The main features of the 1988 White Paper *Higher Education: a Policy Statement* were a commitment to growth in student numbers and resources and the replacement of the binary system by a Unified National System (UNS) of institutions with a minimum 2,000 Equivalent Full Time Student Units. Their missions were agreed with, and funded by, the federal government. State authorities and institutions were responsible for restructuring institutions to meet minimum size requirements for UNS membership. The Australian Government provided increased growth funding on a triennial basis through institutional operating grants, identification of national priority areas and introduction of educational 'profiles' as the basis for federal funding.

Joint Planning Committees with State and Commonwealth representatives were set up to enable States and Territories to provide advice to State and Commonwealth Ministers on issues including the source and distribution of higher education resources, mergers and rationalisation of institutions and campuses, and cooperation with the Technical and Further Education (TAFE) sector.

The CTEC was abolished in 1988, with its administrative functions transferred to the Australian Government Department of Employment, Education and Training and its advisory role to the Higher Education Council within the National Board of Employment, Education and Training.

In 1989, the Australian Government introduced the Higher Education Contribution Scheme (HECS) to underpin expansion of higher education. HECS acknowledged the public and private good achieved through higher education by a move to a user-pays principle, with an equity dimension allowing students to defer payment of their fees until they had the capacity to pay.

f. 1991-93: Direct Australian Government funding for Universities

In November 1991, the Commonwealth's financial responsibility for higher education was formalised in a Special Premiers Conference agreement whereby it was agreed that the Commonwealth have primary responsibility for the public funding of higher education, and responsibility for determining national policies and accountability of institutions through the profile process. It was also agreed that the States and Territories have legislative responsibility for the establishment and oversight of institutions including the maintenance of standards through controls on the use of terms such as "university" and "degree". The States were also to ensure that institutions met reporting obligations, financial management and accounting standards for public authorities.

The Special Premiers Conference also agreed that Commonwealth funds provided directly to higher education institutions, would no longer be regarded as payments to the States/Territories as had been done previously. This change recognised that the Australian higher education system was national in character, with accompanying national priorities and objectives. It sought to improve accountability by making higher education institutions, rather than the States, directly accountable to the Australian Government for the expenditure of public funds.

Since 1993 the Australian Government has funded institutions directly on the basis of:

- the "provision of benefits to students" power under Section 51(xxiiiA) of the Constitution;
- the "appropriations power" under Section 81 of the Constitution; and
- in the case of some research related grants, the implied "nationhood" power of the Commonwealth. (DEST 2004, p.5)

g. 1990s: Expansion, diversification of revenue sources

A number of major changes to the sector took place during the 1990s. There was massive expansion in student numbers from 534,510 student enrolments in 1991 to 929,952 in 2003.

It has been suggested that the most far-reaching policy change was the growth in self-earned income by universities, which changed the operation of universities and their relationships with government (Harman, in DEST 2003). From 1990 all new overseas students paid full fees (with some students sponsored). Opportunities for the expansion of domestic fee-paying services were opened up in 1994 in the postgraduate area, and in 1998 universities were enabled to charge fees to domestic undergraduate students.

From the first term of the Howard Government in 1996, a number of significant policy and funding changes were introduced, including changes to HECS, introduction of marginal funding for HECS-liable undergraduate places, reductions in foreshadowed future increases in institutions' Operating Grants from 1997 to 2000, and an increase in the funding for targeted research (Nelson 2002, p.64).

In 2000 the Australian Government and States and Territories agreed on a national Higher Education Quality Assurance Framework involving inter-governmental agreements on national protocols for the establishment of universities and accreditation of higher education providers, and the establishment of the Australian Universities Quality Agency. These are discussed further in the next section.

h. 2000 – 2004: Major Reform

As part of the 2003-04 Budget, the Australian Government announced the *Our Universities: Backing Australia's Future* package of reforms to the higher education sector. The reforms give universities access to increased funding to deliver world-class higher education, with a focus on quality learning outcomes. Laying the foundation for this is an increase in public investment in the sector of around \$2.6 billion over the next five years. Over the next ten years, the Australian Government will provide some \$11 billion in new support for higher education.

These reforms included significant changes to university governance arrangements which are discussed in more detail in the following section.

WHAT ARE THE CURRENT ARRANGEMENTS?

Overview

The evolution of federal and State roles in higher education provision has created a set of arrangements which are complex and lacking in transparency while, at the same time, requiring a significant investment in collaborative activity between the States and Territories, the Australian Government and universities, to ensure a measure of national consistency and quality. These arrangements have imposed significant transaction costs on universities and other higher education providers and have arguably created some limits to universities' capacity to seize opportunities, and for Australia to project an international image of a high quality system.

a. **The landscape: Thirty nine universities and higher education institutions**

Thirty six universities and higher education institutions in Australia are established by State or Territory legislation and publicly funded by the Australian Government. The legal ownership of these universities lies with the respective State or Territory Government. Three other institutions – the Australian National University (ANU) and Australian Maritime College (AMC), both established under Commonwealth legislation and the Australian Catholic University (ACU), a public company limited by guarantee of the Catholic Church - also have access to all the types of Commonwealth funding available for higher education institutions. The ACU has been given statutory recognition as a university by the *Australian Catholic University Act 1990* in New South Wales. Three other universities (Bond University, University of Notre Dame Australia and Melbourne University Private) have been established through State Acts, but have restricted access to Commonwealth funding.

In addition, there are a number of private higher education institutions which have had access to some federal funding programmes. Private higher education providers include theological colleges and providers with specialised interest in particular vocational or artistic fields. Mostly, these providers are companies established under the Corporations Act (eg. Sydney College of Divinity, Marcus Oldham College) or incorporated associations (eg. Tabor College Incorporated) established under relevant State or Territory legislation.

b. **Common features of institutions**

Universities have a number of characteristics and responsibilities that are common to all. Although established as separate statutory bodies, universities are authorised by legislation to be self-governing institutions. They are responsible for such matters as developing and implementing strategies for the future; appropriate management and governance structures; management of operations including budgets and internal allocation of resources; staff remuneration and conditions; student enrolment decisions; accreditation of their own awards; quality assurance; and development and evaluation of their curricula.

The thirty nine publicly funded universities and higher education institutions together had total assets of around \$30 billion with land and buildings reported to be valued at around \$16 billion at the end of 2003. Other physical assets such as property, plant and equipment were around \$4 billion and library assets were valued at \$2 billion. The sector had net assets of \$23 billion and cash and investments of \$5.6 billion that accounted for 19% of total assets or 25% of net assets. Cash and investments were more than 9 times the sector borrowings of \$0.6 billion.

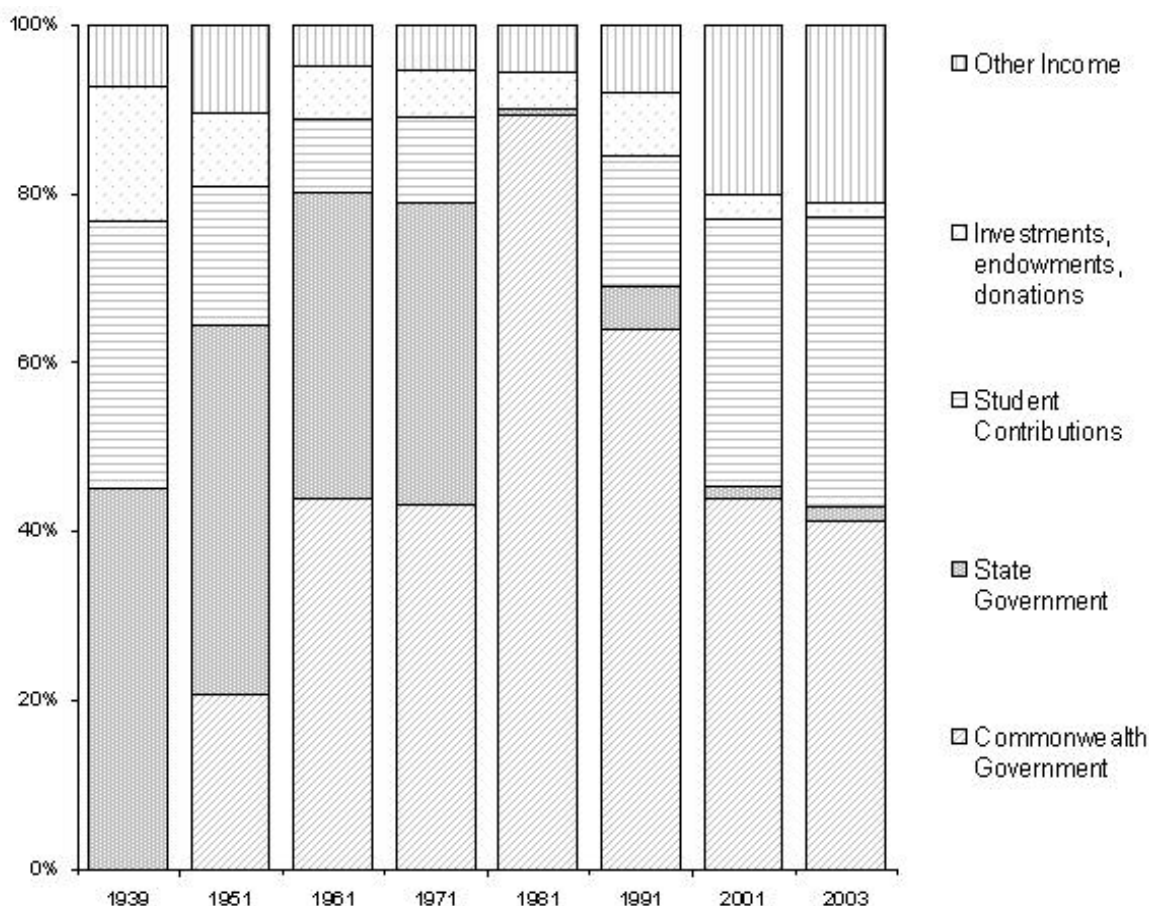
Universities currently generate income from a number of sources. Figure 1 below shows that in 2003, the Commonwealth provided 41 per cent of university revenue and student contributions accounted for an additional 34 per cent (16 per cent from HECS, 14 per cent from overseas fee-paying students and 4 per cent from domestic fee-paying students). State governments provided 2 per cent of total university revenue.

c. What is the Australian Government currently responsible for?

The Australian Government, through the provision of funding under the *Higher Education Support Act* and other supporting legislation, has established eligibility requirements for funding, and the policy and allocation arrangements for the provision of higher education places and research.

Through these funding mechanisms, the Australian Government has recently exercised influence over governance structures, accountability requirements and broad industrial relations in the sector.

Figure 1: Revenue by Source 1939 - 2003



d. What are the States and Territories currently responsible for?

State and Territory governments are responsible for the administration of university legislation, accreditation of new universities, accreditation of higher education courses

offered by non-self-accrediting institutions, appointing some members of university governing bodies, and auditing of university financial statements.

The State and Territory legislative instruments are not uniform and institutions are subject to disparate legislative arrangements with significant variations across the sector in terms of the governance arrangements, powers, objectives and functions. Some of the implications of this are discussed throughout this paper.

e. Key Areas of Difference between States' and Territories' Enabling Legislation for Universities

Land and other assets

The State based enabling legislation of most universities imposes restrictions to varying degrees on the acquisition, use and disposal of land. University land includes land that is provided to a university under statute; purchased on the open market; received under a will or trust; and Crown land held or used with the permission of the respective State or Territory government. There are some differences across State and Territory legislation regarding university land. For example, the universities in Queensland and Northern Territory have specific powers to vary the terms of a trust or gift, giving a degree of flexibility that is not available to universities in other jurisdictions.

Land is a major but only one class of asset owned by a university. Each university is likely to have invested significant funds in other assets such as including buildings. Fixed assets, mainly land and buildings, belong to the university, unless specifically encumbered. However, legal ownership of universities lies with the respective State or Territory, even though most funding to universities is from the Australian Government or private sources.

Governance

Governance is another key area of State or Territory legislation for universities.

The responsibility for the governance and management of a university is typically vested through State legislation in a governing body such as a Council or Senate, which may delegate some of its powers. Almost every university's enabling legislation provides for the governing body to have the overall control and management of the university.

Governance and management arrangements have not always been responsive to changes in the universities' operating environment over the past decade. Some of the changes in higher education have been significant - expansion in the provision of higher education, diversification of revenue sources, rapid growth in commercial activity, the expansion of consultancy services and the commercialisation of research, the export overseas of university education, and the impact of information and communication technologies. There have been a number of reviews of governance arrangements in the past years. The most significant of these are discussed below.

Hoare Review

The first significant review of university governance and management was conducted in 1995. The *Higher Education Management Review* by David Hoare (Hoare Review) identified shortcomings in university governance arrangements and recommended clarification of the role of the governing bodies, and changes to the size, composition and methods of appointments of members to the governing bodies.

Victorian Government Review of University Governance

In December 2001, the Victorian Government announced a Review of University Governance in regard to Victorian institutions. The panel reported in May 2002, recommending that Victorian universities define their objectives more precisely and strengthen the roles of governing bodies in monitoring systems of control and accountability. It recommended governing bodies have members who had appropriate skills and who recognised a duty to act in the interest of the university as a whole.

National Governance Protocols

By 2002, there was still substantial scope for improvement despite some changes effected by the State and Territory governments in cooperation with universities since the Hoare Review. In particular, some universities continued to have governing bodies which had bitter internal divisions, an inability to respond quickly to change, and a lack of the skills necessary to oversee major commercial undertakings. There was a wide variety of arrangements and little national consistency.

To expedite further reform, the Australian Government in its *Our Universities: Backing Australia's Future* policy statement in 2003 tied funding increases under the Commonwealth Grant Scheme (CGS) to adherence to a set of National Governance Protocols. These protocols were influenced by the outcomes of the Hoare and Victorian reviews. All universities have taken action to improve their internal governance processes, and State and Territory governments have agreed to make the necessary legislative changes in order to allow universities within their jurisdictions to comply with the Protocols. Funding increases under the CGS are not only conditional on adherence to the National Governance Protocols but also on compliance with workplace relations requirements.

Commercial activities

Public universities can and do engage in commercial activities and operations, although the general requirement is that the proceeds of their activities must be directed to the public purposes of their establishment. The legislative framework in a State or Territory regulates the powers of universities to undertake commercial activities, and this can vary between jurisdictions.

In addition, as statutory bodies, universities are subject to the differing financial administration Acts of the various States. This creates a different range of fundamental restrictions and controls on universities' financial operations, across the states and territories. This can limit inter-jurisdictional collaboration between otherwise willing university partners. Differences in State Treasuries in matters such as loan limits, fiduciary requirements and interest charges do not provide a level playing field for universities across Australia. In addition it applies a second level of control and reporting for the public funds emanating largely from the Commonwealth.

Workplace relations

Currently, in almost all universities, the workplace relations regime is based on the Australian Government industrial relations legislative framework. Although enterprise agreements at universities largely fall under the Australian Government legislative framework, the fact that universities are statutory bodies under State or Territory legislation means that a number of workplace issues are also dealt with at the Industrial Relations Commission of the relevant jurisdiction.

Accountability and reporting

Public universities, by virtue of being statutory bodies established under State and Territory legislation, have accountability requirements imposed by the State and Territory governments. They also have accountability requirements imposed by the federal government, the single most important source of their revenue.

Universities are generally accountable to the respective State or Territory Parliament and specifically to the State Minister for Education. In addition, State bodies such as the Auditor-General, Ombudsman and other specialist bodies oversee various aspects of university operations. Being statutory bodies, the universities are subject to more or less the same level and breadth of regulatory and accountability requirements as any other statutory body in the State. The difference is that, unlike other statutory bodies of the State, universities are funded not by the State or Territory government but predominantly by the Australian Government.

In terms of national accountability requirements, the Australian Government has developed a well-defined framework (the Institution Assessment Framework - IAF) for monitoring and assessing universities' performance in the following areas:

- § Organisational sustainability – ensuring that institutions have sound strategic direction and financial management, and that the Government can be assured that they will be able to continue delivering the services it is funding;
- § Achievements in higher education provision – institutions have delivered the places and services in accordance with the Government's higher education objectives;
- § Quality of outcomes; and
- § Compliance – ensuring that institutions have used their funds for the purposes for which they were provided and have complied with legislation.

Universities are required to provide their respective State and Territory Ministers with an annual report containing audited financial statements, performance information and information on specified financial and/or business dealings. The format of the annual reports is stipulated for statutory authorities in State/Territory legislation or regulations. The reporting framework may mandate that such matters as occupational health and safety, Freedom of Information requests, referrals to the Ombudsman, and other aspects of university's operations are to be included in the report.

The Australian Government issues a set of guidelines for the preparation of annual financial statements by universities. The guidelines are based on the accountability framework provided by Australian Accounting Standards Board. Some specific State requirements for statutory authorities have been found to be in conflict with the requirements of Australian Government guidelines, in relation to universities.

For example, the timeline for preparing audited financial statements differs between jurisdictions. Some States require university audited financial statements to be tabled as part of the annual report within 3~4 months of the end of the year while for other States the deadline is 6~12 months. More noteworthy is that universities in particular States have had their financial statements qualified by their State Auditor-General as a result of complying with Australian Government requirements, whilst institutions in other States have not.

The regulatory and reporting requirements for statutory bodies in a jurisdiction may not be the most appropriate for a university. Equally, the reporting and regulatory requirements vary considerably across the States and Territories. For example, in some States the requirements for annual reporting on university operations is modelled on 'directors report' good practice requirements but in other States there is limited direction.

Payroll tax

States and Territories collect payroll tax. One outcome of the involvement of two tiers of government in universities' operations is that States and Territories charge payroll tax on the payrolls of their own institutions. In effect, States charging payroll tax on the federal grants components of those payrolls is equivalent to an increase in the level of general Commonwealth grants to the States and thereby diverts Commonwealth monies appropriated for university purposes to general State revenue. While States often exempt growth industries from payroll tax in an attempt to provide an attractive investment climate, no State government offers an exemption to universities.

Payroll tax is a state tax calculated on wages paid by an employer to its employees. It is charged by all Australian States and Territories according to their own legislation. There is no standard rate of payroll tax and currently the rate varies between 4.5 – 7.0% across States and Territories. Overall universities in Australia contributed approximately \$300 million (5% of total employee benefits) within the higher education sector to their respective State or Territory Governments in 2003. Revenue from States and Territories to universities was

approximately \$200 million (2% of total revenue excluding deferred superannuation) within the higher education sector in 2003.

Consumer protection

Consumer protection approaches also differ by jurisdiction.

State and Territory Governments have established offices of the Ombudsman to protect consumers by providing for the independent review of the actions of public sector agencies, including those universities established by State and Territory legislation.

The New South Wales Ombudsman in the annual report for 2003-04 stated that over the past five years, formal complaints to it about NSW universities had more than doubled and also increased in complexity. The report advised that the Ombudsman had ongoing concerns about the complaint handling systems of several universities (NSW Ombudsman Annual Report, 2003-04, p.70).

Complaints by consumers about universities and other providers of higher education are often also referred to both the State and Commonwealth Education Ministers, but these Ministers do not have specific statutory powers to conduct investigations into individual complaints.

There is currently no requirement for privately established providers of higher education, other than those seeking access to Commonwealth support, to have in place either internal or external complaint handling mechanisms. Privately established bodies are not subject to the scrutiny of the State Ombudsman.

Protection of title 'university' and 'degree'

To protect the standing of Australian universities, nationally and internationally, the term "university" is protected in two ways:

- (i) by protection of the term university in State and Territory business names and associations legislation, and under the Commonwealth Corporations Act 2001;
- (ii) a legislative framework specifying consistent criteria by which an organisation may use the title "university", enacted in all jurisdictions.

Through regulation, States can take action to penalise 'degree mills' which may be falsely presenting themselves as Australian universities in order to trade on Australia's reputation for high quality higher education, and also to take action to prosecute the providers of 'fake' degrees. State Governments can vary in the actions they take to respond to 'degree mills' and 'fake' degrees.

Generally the Australian Government must rely on the States to prosecute unauthorised operators.

Endorsement of courses for overseas students

Related to their role as the authorities responsible for approving the operation of higher education institutions and courses, it is the responsibility of the States and Territories to endorse courses of study as suitable for overseas students, including higher education courses, in accordance with the requirements set out in the Commonwealth *Education Services for Overseas Students Act 2000* (ESOS). The purpose of the ESOS Act and associated legislation is to protect the interests of people coming to Australia on student visas and to support the integrity of Australia's immigration system. However, there are differences between States and Territories in their implementation of some provisions, and it is possible this lack of consistency can create confusion among students.

f. Current Federal-State coordination arrangements

In a number of cases, the Australian Governments and State governments have had to create complex coordination/collaboration arrangements to bring about greater national consistency. While these arrangements have been of benefit, it has been argued that they have some way to go, and do not reflect an optimal outcome in terms of a national higher education system.

The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) offers a mechanism for consultation and policy agreements between the jurisdictions. It brings together the Commonwealth, State/Territory and New Zealand Ministers with responsibility for education. MCEETYA normally meets once or twice a year. The second level of consultation is at a multilateral officials' forum – the Joint Committee on Higher Education (JCHE) – a working group of officials who are individually accountable to their Ministers. The third level is a bilateral officials' forum called Joint Planning Committees (JPCs), which are meetings between the officials of the Commonwealth and a State/Territory on planning and policy issues. The JPCs are expected to address Australian Government allocation of places and resources (especially for capital) in a particular State or Territory.

Outside this framework, the Australian Government has found it increasingly necessary to engage directly with other areas of State and Territory governments on a day to day basis

such as Auditor-Generals and State Treasuries on matters such as accounting practices and superannuation liabilities.

MCEETYA has agreed to a number of Commonwealth-State developments in recent years, including the following:

Australian Universities Quality Agency

One area where Australia has already recognised the need for a nationally consistent approach is that of quality assurance. Through the MCEETYA, the State, Territory and Commonwealth Ministers with responsibility for higher education own and partially fund the Australian Universities' Quality Agency (AUQA), which was established in 2000. The AUQA is an independent national body whose role is to conduct quality audits of self-accrediting institutions and State and Territory accreditation agencies, publish reports on its audits, report on the criteria for the accreditation of new universities and non-university higher education awards and report on the relative standards and international standing of the higher education system and its quality assurance processes. AUQA operates under the guidance of a Board of Directors which includes appointees of the State and Commonwealth owners and higher education institutions. This uniform national approach is directed at demonstrating to domestic and international students, employers and foreign regulatory authorities that Australian universities are adequately quality assured. The Australian Government has also indicated that it will be seeking to use AUQA to undertake audits of those private providers that become registered higher education providers under the *Higher Education Support Act* and to expand its overseas audit activities of Australian institutions operating off-shore.

Approval of higher education institutions and courses

The Australian Government and the States and mainland Territories jointly agreed to the *National Protocols for Higher Education Approval Processes* in 2000. These Protocols are designed to ensure that consistent criteria and standards are used across Australia in the approval processes for new institutions and courses. The Protocols cover the recognition of new universities; the operation of overseas higher education institutions in Australia; the accreditation of higher education courses offered by non self-accrediting providers; monitoring the delivery arrangements of higher education institutions where they involve other organisations; and the endorsement of higher education courses for overseas students. The Protocols assure consumers that providers of higher education in Australia have met certain criteria and standards.

According to recent research, while there is considerable collaboration and sharing between States and Territories regarding the implementation of the Protocols, there is still significant

variation in how they are implemented. This could result in confusion for consumers, and costs to providers seeking to operate in more than one State and Territory. Such inconsistencies could also negatively affect Australia's international reputation for quality and consistency.

INTERNATIONAL CONTEXT

A range of quite distinctive legislative and governance frameworks for higher education are in place internationally. Each country has its own unique system reflecting the historical, economic and social context in which it is located. Arrangements in a number of key countries are described briefly below.

United Kingdom

(source: <http://www.ibe.unesco.org/International/Databanks/Dossiers/mainfram.htm>,

<http://www.hefce.ac.uk/aboutus/history.htm>

Policy and overall funding for education in the UK is determined by four major departments: the Department for Education and Skills (DfES) in England; the Department for Education and Lifelong Learning in Wales; the Scottish Executive Education Department (SEED) in Scotland; and the Department of Education for Northern Ireland (DENI) in Northern Ireland. They dispense funding for education, either directly or through other bodies, such as the Higher Education Funding Council for England (HEFCE), established following the Further and Higher Education Act 1992. Four funding bodies were set up - for England, Scotland, Wales and Northern Ireland, and from 1 April 1993, these bodies have funded all higher education institutions in the UK.

Quality audits of institutions are undertaken by a separate agency, the Quality Assurance Agency for Higher Education (QAA).

United States of America (source: Guthrie et al. 2004)

In the US, States rather than the federal government have responsibility for higher education. Federal funding policies focus on subsidised loans and tax credits for students, and competitive research grants. States spend twice as much as the federal government to support higher education in the public sector, and these funds represent 25 per cent of total income for all institutions. States specify the characteristics of a university's mission and programmes, and universities must obtain permission from States to vary degree offerings. While State practices in respect of controlling the university title vary, most seek some control over degree-awarding powers.

There are six regional accrediting entities which accredit universities and colleges for recognition by the Council for Higher Education Accreditation, a private non-governmental national coordinating agency. Accreditation is peer-driven, self-regulatory, periodic and formally voluntary process. Guthrie et al. (2004) notes that there appears to be a trend in the USA towards increased government involvement in academic matters at local and federal levels in the name of accountability.

Canada (source: Guthrie et al. 2004)

Higher education is the responsibility of provincial governments which control use of the term “university”. The system is dominated by public institutions established by public legislation. Each provincial government has its own quality assurance mechanism, and to date there is little coordination between provinces of regulations along the lines of Australia’s National Protocols. There is no formal national recognition system of accreditation or recognition for post-secondary institutions, although some influential provinces are beginning to concert their efforts in this area.

New Zealand

(source: <http://www.ibe.unesco.org/International/Databanks/Dossiers/mainfram.htm>)

The Ministry of Education provides policy advice to the Minister of Education and allocates government funding to tertiary institutions (universities, polytechnics, colleges of education,) private training establishments and other providers of education services. The Ministry approves charters of tertiary institutions and negotiates their funding on an annual cycle.

The Tertiary Education Commission (TEC) is a new standalone Crown entity established under the provisions of the Education (Tertiary Reform) Amendment Act of 2002. The Commission is responsible for funding all post-compulsory education and training, including that offered by universities and polytechnics. The TEC will also oversee the implementation of the Tertiary Education Strategy and associated set of priorities.

THE BENEFITS AND RISKS OF CHANGE: SHOULD STATE/TERRITORY ENABLING LEGISLATION BE TRANSFERRED TO THE AUSTRALIAN GOVERNMENT?

Overview

In order to achieve national consistency in universities' legislative frameworks, it has been argued that it may be possible to transfer States' and Territories' enabling legislation to rest with the Australian Government. This may help address the many areas of inconsistency outlined above in the section on current arrangements. Many consider that differences across State/Territory legislation might be hindering efficiency and potentially Australia's international reputation in this area. At the same time, there may also be potential risks associated with changes of this magnitude.

The need for change needs to be viewed in the context of a rapidly changing *international environment*. As developed economies move into a period of "demographic drag", continued national economic growth will depend to a greater extent on innovation and knowledge-based industries. The existence of a vibrant, high quality and efficient higher education sector will be a vital ingredient to Australia's success in this regard. At the same time the globalisation of higher education and research in their own right will accelerate. Part of the emerging international trend is the creation of significant higher education systems in developed countries, and in Europe, a single transnational "system". The increased global mobility of students and professional workforces is also creating intense pressures for international qualifications recognition. This is leading to pressure for greater transparency in national higher education systems, particularly their accreditation, quality assurance, and credit transfer arrangements.

The picture from other countries, as described in the previous section, of their approach to the policy frameworks and administrative arrangements for their higher education sectors, is mixed. Clearly, a range of possible structures can be applied to suit particular circumstances. The value of these arrangements in an Australian context will be constrained by the differences of history and constitutional frameworks. The next discussion paper will set out in more detail the international developments in this area.

a. Benefits of change

As set out previously, the legislative and governance framework for universities currently involves a number of discrete and overlapping functions on the part of Australian Government and State/Territory governments, and significant variation between States and Territories in terms of the legal, regulatory and accountability requirements which they place on universities within their jurisdictions. There is also a lack of consistency in application of some nationally agreed requirements. Rationalisation of responsibility to the national level

could have a number of major benefits for universities, and for the efficiency and transparency of Commonwealth/State relations. These are set out below.

Reduction in reporting requirements

It has been argued that a transfer of responsibility would result in a major reduction of duplication in reporting arrangements, which would promote efficiencies in university operations. This would have quite wide ranging impact on universities as they would face only one level of reporting on financial performance. They would experience streamlined reporting on their quality and other performance affecting student outcomes.

It should be noted, however, that State/Territory governments would continue to require a level of reporting from universities, even if the Australian Government assumed sole responsibility for them. For example, universities as employers would continue to be required to report on occupational health and safety at State level.

Increased transparency

The Australian Government currently leverages its accountability over universities through provision of funding, and the States through legislation. Focusing accountability in one sphere of government may offer benefits in terms of transparency for universities. They would be able to align their reporting frameworks which should lead to increased transparency both for universities and their customers.

Increased international competitiveness- qualifications recognition and credit transfer

Responding to the international pressures is particularly important in Australia because we are a major player in the provision of transnational higher education. Australia's attractiveness to international students can only be maintained and grown if our qualifications are recognised internationally. Qualifications recognition is also important for our domestic students, many of whom now expect to work overseas at some point in their career. Increasingly qualifications recognition is reliant on having *nationally* transparent and consistent approaches to quality assurance and higher education accreditation.

Keeping Australian education globally competitive also requires widespread and easy to understand credit transfer between higher education institutions. In this, Australia is relatively weak. Some other systems are improving quickly. For example, the "Bologna" process in Europe is aiming to provide students in the European Higher Education Area with transparent credit transfer arrangements between 4000 universities in 40 countries. This will increase student mobility within Europe; it will also increase the attractiveness of European universities to international students.

A single national system could be of significant benefit in promoting international qualifications recognition. Universities within a well understood national system could also find it easier to progress credit transfer arrangements with universities in other countries. This would be particularly true if at the same time there was significant progress on strengthening credit transfer arrangements between Australian institutions and those overseas.

Increased protection for our national reputation.

Inconsistencies between States and Territories in for example, actions they can take over fake degrees and meeting requirements for off-shore operations could be removed. This could significantly enhance our international reputation. At present Australia is vulnerable to acting inconsistently, or at least not being seen as transparent by international players including potential international students.

Opportunities for strategic provision of higher education

Initiatives to improve the efficiency and effectiveness of the system currently have to be negotiated between nine jurisdictions. While MCEETYA provides a forum within which issues of significance to all jurisdictions can be addressed, of necessity, it requires consensus between the parties. This does not necessarily lead to the best possible outcome for national consistency in higher education in Australia. A move to a national system may offer improved opportunities to, for example, streamline arrangements in areas such as qualifications recognition and credit transfer, and ensure that the system catered to the needs of communities and consumers.

Opportunities to design a framework for the 21st century

It can be argued that the current legislative framework was developed in response to a mid-20th century collegial model of universities. This model is out of date in many respects. Rationalisation of responsibility for higher education to the national level would provide an opportunity to redesign the framework to reflect the increasingly corporate nature of modern universities, which are multi-million dollar enterprises, and to encourage universities to undertake commercial activities and engage in collaborative activities with other universities across State borders.

b. Risks and challenges

While the potential risks and challenges depend on the model of framework selected, some appear to operate at a more fundamental level.

Withdrawal of State/Territory government support

If the Commonwealth assumes full responsibility for universities, States and Territories could potentially withdraw financial and other support for universities within their jurisdictions. This could result in difficulties for individual institutions, depending on their particular circumstances and on the nature of state enabling legislation. Protections could be built into a new system, negotiated with States and Territories, which could minimise this type of risk.

Potential effect on diversity

A nationally consistent approach could be seen as stifling diversity if it is seen as a “one-size-fits-all” approach. Such an approach could potentially compromise the diversity of the higher education system or could be perceived to do so, perhaps in the areas of research, institutional character and local community engagement.

If there were to be a rationalisation of responsibility, the Australian Government would need to, for example, ensure inclusion of appropriate safe-guards to protect regional needs and interests. Each university has its own regional impact which it should be able to promote.

Perceived vulnerability

Universities may perceive that involvement by two spheres of government offers them protection in terms of checks and balances, particularly in terms of safe-guarding their special needs or circumstances. State and Territory governments are seen to have a comprehensive understanding of the needs of particular areas within their jurisdictions. There is a risk that a national system would not have the capacity to manage this issue in the same way.

Impact on the Federal Budget

The Australian Government may have to assume a range of additional functions currently provided by State and Territory governments, such as provision of Ombudsman services and university admission processes. The impact on the Commonwealth fiscal situation and possible implications in terms of Commonwealth grants to the States would have to be examined closely.

Dual sector institutions

An assumption of responsibility for higher education by the Commonwealth could involve operational complexities for dual sector institutions which offer both higher education and Vocational Education and Training qualifications. These institutions would effectively be split between the Commonwealth and the States in terms of legal, regulatory and accountability regimes. This could have implications for their long-term viability as dual sector institutions.

c. Conclusion

This paper has offered an outline of Australia's history in regard to federal and state involvement in universities. It has set out the current situation, which illustrates areas of significant differences between states and territories according to their differing enabling legislation for universities and such legislation's implementation. There are certainly issues to be weighed up in considering moving universities' enabling legislation to the federal sphere. There are also many potential benefits, for the Australian Government, States and Territories, but most importantly for universities, their communities and for students and their families.

This overview paper will be augmented by a detailed paper to be released in February 2005. Comments are welcome, and will also be sought following the later papers.

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