



UNIVERSITY OF
CANBERRA

AUSTRALIA'S CAPITAL UNIVERSITY

19 September 2013

The Chair
ACT Remuneration Tribunal
PO Box 964
CIVIC SQUARE ACT 2608

Chancellor
John Mackay AM

Dear Ms Cahill Lambert

This submission is made on behalf of the University of Canberra (UC) Council ('Council') in relation to the Remuneration Tribunal's annual review of remuneration and allowances for part-time holders of statutory and non-statutory offices. This submission requests a review of remuneration paid to Council members.

The *University of Canberra Act 1989* (ACT) provides for the appointment of 15 members to the Council, with eight of these members being appointed by the Chief Minister (s. 11) and establishes the Council as the 'governing authority of the university' (s. 9). Council acts 'in all matters concerning the university' (s. 10.2). The functions (s. 6) and powers (s. 7) of the University are extensive. A copy of sections 6 and 7 of the Act is provided at Attachment A.

Council creates the basis for management excellence by developing the University's mission statement and setting the strategic direction, as well as approving the annual budget. It is responsible for ensuring the systems and processes to direct and control the University's operations are in place and working effectively. Council fosters a culture which allows the University to deliver to all of its stakeholders outcomes in line with its mission and strategic goals. Council appoints the Vice-Chancellor of the University and has the power to terminate their employment in cases of poor performance and sets the remuneration and conditions of employment for the Vice-Chancellor and the senior executive of the University. A copy of Council's Powers (reserved) is included at Attachment B.

Various Council members also chair, or sit on, seven specialist Committees of Council, including a Finance Committee, Audit and Risk Committee, Environment and Works Committee, Legislation Committee, Campus Development Board, Honorary Degrees Committee and Nominations and Senior Appointments Committee.

In 2006, the *Remuneration Tribunal Act 1995* (ACT) was amended to include those members of Council appointed by the Chief Minister. At that time the Remuneration Tribunal (the Tribunal) determined that the Council be classified as a Management Board and Advisory Committee. However, the University was not consulted nor informed of the inclusion of Council members in the Remuneration Act and specifically, the classification as a Management Board and Advisory Committee.

Over the years, the matter of remuneration has been discussed by Council and the Nominations and Senior Appointments Committee and it is our contention that the initial classification decision was incorrect and that at the time Council should have been considered a 'governing board' and remunerated on this basis.

Since the 2006 decision by the Tribunal, the higher education sector has undergone significant change and reform and been subject to an increasingly complex regulatory environment. Some of these reforms include:

- The Bradley Review (2008) which implemented an accountability framework placing primary accountability for performance with an institution's governing body; and
- The introduction of mandatory registration and performance standards under the *Tertiary Education and Quality Standards Agency Act 2011* (Cth) and the *Higher Education Standards Framework (Threshold Standards) Act 2011* (Cth).

The University sector is also experiencing a period of significant change. A study of Australia's higher education sector conducted by Ernst & Young¹ noted the drivers of change that needed to be considered by university councils are:

1. **Democratisation of knowledge and access** – The massive increase in the availability of 'knowledge' online and the mass expansion of access to university education in developed and developing markets will mean a fundamental change in the role of universities as originators and keepers of knowledge.
2. **Contestability of markets and funding** – Competition for students, in Australia and abroad, is reaching new levels of intensity; at the same time as governments face very tight budgets. Universities will need to compete for students and government funds as never before.
3. **Digital technologies** – Digital technologies have transformed media, retail, entertainment and many other industries – higher education is next. Campuses will remain, but digital technologies will transform the way education is delivered and accessed, and the way 'value' is created by higher education providers, public and private alike.
4. **Global mobility** – Global mobility will grow for students, academics, and university brands. This will not only intensify competition, but also create opportunities for much deeper global partnerships and broader access to student and academic talent.

¹ Ernst & Young, 2012, *University of the Future*, available at http://www.ey.com/AU/en/Industries/Government---Public-Sector/UOF_Change-will-be-driven-by-five-trends

5. **Integration with industry** – Universities will need to build significantly deeper relationships with industry in the decade ahead – to differentiate teaching and learning programs, support the funding and application of research, and reinforce the role of universities as drivers of innovation and growth.

These reforms have implications for the governance of the University and specifically, the skills and experience required from Council members. The Act requires Council Members to have skills in finance, management, commerce, law or teaching (s. 11A (3)(a)) and have an appreciation of the values of a higher education provider, its core activities of teaching and research, its independence and academic freedom and the community's needs (s. 11A (3) (b)).

UC has adopted the *Voluntary Code of Best Practice for the Governance of Australian Universities*² which requires members to exercise their duties and responsibilities at the same standard as that imposed upon directors under Corporations Law. A copy of the Code has been included at Attachment C for your information. Council members are also accountable for compliance with a variety of federal, state and territory laws in areas such as privacy, taxation, environmental matters, intellectual property, work health and safety and industrial relations.

In addition, the current remuneration paid to Council members is not representative of rates of remuneration in the education sector. A recent report by the Australian Institute of Company Directors³ shows that the average fee paid to directors in the Not-for-Profit education section is \$29,000 p.a. In 2012/13 the average remuneration paid to Council members was \$3,800. It should also be noted that UC remunerates Council members. Therefore, any decision by the Tribunal to increase the rates paid to Council members will not impact the ACT Budget.

UC has ambitious strategies for improvement and growth. Council has recently approved the implementation of a new strategic plan "Break Through" which will position UC as one of Australia's most innovative tertiary institutions; world-ranked, with regional, national and international reach.

The Canberra campus will be the engine room from which UC will provide tertiary education directly to local communities and in partnership with other institutions, to students around Australia and internationally. When combined with a commitment to deeper internationalisation and improvements which will see UC break into world rankings in research and teaching performance, UC will become a major new model university of which everyone who has been associated with us since our foundation could be proud.

² Universities Australia, 2011, *Voluntary Code of Best Practice for the Governance of Australian Universities*, available at <http://www.universitiesaustralia.edu.au/resources/684/1328>

³ Australian Institute of Company Directors, 2013, *2013 Australian Board Remuneration Survey*, available at <http://www.companymdirectors.com.au/remunerationsurvey>

Future development of the campus will see a number of new facilities built, including a new public hospital, a GP super clinic and a 'Sporting Commons', housing the Brumbies Super Rugby team and community sporting organisations. These facilities will be integrated into teaching and research and provide new avenues for the University to serve its community. The information below provides some context to the scope and complexity of the business of the University:

- In 2012, the University had total revenue of \$225 million, assets in excess of \$384 million, over 2,000 staff and in excess of 11,000 domestic and international students;
- Student numbers are forecast to increase to 16,500 over the next five years;
- In 2012 and 2013, the University's activities included:
 - The establishment of the University of Canberra Public Hospital and GP Super Clinic on campus;
 - The development of the 'Sporting Commons', a new sports hub established on campus providing a home to the ACT Brumbies and bringing together elite and community sports teams, students and researchers to share in world class facilities;
 - The construction of a large indoor sports facilities, to help promote the 'physical literacy' of people in the ACT region;
 - The development of accommodation for 220 students in Belconnen and the construction of a new 400 bed complex on campus; and
 - The establishment of the Centre for Quality Teaching and Learning, which will deliver professional skills and applied, practice-led research to support the introduction of the Government's National Plan for School Improvement reforms.

The ACT Government has acknowledged that the University contributes 'significantly to the economy and well-being of citizens through employment opportunities, community engagement and the attraction of students from interstate and overseas'⁴.

I contend that the present remuneration set for Council members does not adequately reflect the extent of the statutory and administrative duties and responsibilities, particularly having regard to the number, variety and complexity of matters presented to Council for decision. It is on this basis that I submit to you that Council member's remuneration be increased to equate to the remuneration paid to members of similar governing bodies.

⁴ ACT Government, 2008, *Capital Development – Towards our second century*

To assist with your deliberations, I would be pleased to meet with you to discuss any further information the Tribunal might require in order to consider this submission.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'John Mackay', written in a cursive style.

Dr John Mackay AM

Chancellor

University of Canberra

University of Canberra Act 1989 (ACT)

Part 2 University of Canberra

6 Functions of university

- (1) The functions of the university include—
- (a) to transmit and advance knowledge by undertaking teaching and research of the highest quality; and
 - (b) to encourage, and provide facilities for, postgraduate study and research; and
 - (c) to provide facilities and courses for higher education generally, including education appropriate to professional and other occupations, for students from within Australia and overseas; and
 - (d) to award and confer degrees, diplomas and certificates, whether in its own right, jointly with other institutions or as otherwise decided by the council; and
 - (e) to provide opportunities for people, including those who already have post-secondary qualifications, to obtain higher education qualifications; and
 - (f) to engage in extension activities.
- (2) In the exercise of its functions, the university must pay special attention to the needs of the ACT and the surrounding regions.

7 Powers of university

- (1) Subject to division 3.2, the university has power to do all things that are necessary or convenient to be done for, or in connection with, the exercise of its functions.
- (2) The powers of the university under subsection (1) include, but are not limited to, the following powers:
- (a) to buy, take on lease, or otherwise acquire, real and personal property, and to sell, grant leases of, or otherwise dispose of, real and personal property;
 - (b) to develop commercially any discovery, invention or property;

- (c) to make charges for work done, services rendered and goods and information supplied by it;
 - (d) to join in the formation of companies;
 - (e) to subscribe for and buy shares in, and debentures and other securities of, companies;
 - (f) to enter into partnerships;
 - (g) to participate in joint ventures and arrangements for the sharing of profits;
 - (h) to enter into contracts;
 - (i) to erect buildings;
 - (j) to occupy, use and control any land or buildings owned or leased by the Commonwealth or the Territory and made available for the purposes of the university;
 - (k) to employ staff;
 - (l) to invest money of the university, and to dispose of investments;
 - (m) to make loans and grants to students;
 - (n) to accept gifts, grants, bequests and devises made to it;
 - (o) to act as trustee of money and other property vested in it on trust;
 - (p) to exercise any other function given to it under this Act or another territory law; and
 - (q) to do anything incidental to its functions.
- (3) Despite anything contained in this Act, any money or other property held by the university on trust must be dealt with in accordance with the powers and duties of the university as trustee.
- (4) The functions of the university may be exercised outside the ACT and Australia.

COUNCIL'S POWERS

The powers of the University are set out in Section 7 of the *University of Canberra Act 1989*. Council is authorised to delegate any of its power, except the power to make statutes (Section 17). The exercise of the powers listed below is reserved to the Council.

1. Appointing:
 - a) the Chancellor;
 - b) the Deputy Chancellor;
 - c) the Vice-Chancellor;
 - d) the Deputy Vice-Chancellor.
2. Extending the Vice-Chancellor's appointment or terminating his or her appointment.
3. Appointing an acting Vice-Chancellor when the Vice-Chancellor is absent for more than four weeks.
4. Determining guidelines for the remuneration and conditions of service of the Vice-Chancellor and members of the senior executive.
5. Nominating a member of Council for inclusion on professorial selection committees.
6. Recommending any changes to the University's enabling Act.
7. Making, amending and/or repealing statutes and rules.
8. Approving the University's strategic plan.
9. Approving the annual University's budget and budget parameters.
10. Authorising certification of the University's annual financial statements.
11. Approving the University's Annual Report and authorising its transmission to the Legislative Assembly.
12. Developing or acquiring a new campus or new location.
13. Adopting a master plan for the University campus.
14. Establishing and disestablishing faculties and other bodies of the University.
15. Naming rights, including buildings and academic posts.
16. Approving the formation of companies and joint ventures.
17. Adopting the University's logo.

18. Authorising use of the University's official seal.
19. Determining which degrees, diplomas and certificates the University offers and their award titles.
20. Approving guidelines for the award of University medals.
21. Approving the form of the University testamur.
22. Authorising the conferring of awards.
23. Determining fees and charges.
24. Determining Council's standing orders.
25. Establishing Council committees and appointing their members.

Endorsed Council Meeting No 110 6 December 2006 Resolution C110/11



VOLUNTARY CODE OF BEST PRACTICE FOR THE GOVERNANCE OF AUSTRALIAN UNIVERSITIES

- 1: A university should have its objectives and/or functions specified in its enabling legislation¹.
- 2: A university's governing body should adopt a statement of its primary responsibilities, to include:
- (a) appointing the Vice-Chancellor as the Chief Executive Officer of the university, and monitoring his/her performance;
 - (b) appointing other senior officers of the university as considered appropriate;
 - (c) approving the mission and strategic direction of the university, as well as the annual budget and business plan;
 - (d) overseeing and reviewing the management of the university and its performance;
 - (e) establishing policy and procedural principles, consistent with legal requirements and community expectations;
 - (f) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
 - (g) overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
 - (h) overseeing and monitoring the academic activities of the university;
 - (i) approving significant commercial activities of the university.

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

- 3: A university should have the duties of the members of its governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board, each member should be appointed or elected *ad personam*. All members of the

¹ In the case of a university established under the *Corporations Act*, a reference to enabling legislation is taken to mean its constitution and/or, where applicable, the *Corporations Act*.

governing body should be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body should always act in the best interests of the university.

Duties of members should include the requirements to:

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

There should be safeguards, exemptions and protections for members of a university's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the *Corporations Act*. A university (with the exception of those subject to the *Corporations Act*) should have a requirement included in its enabling legislation that its governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above. A member should be required, automatically, to vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the *Corporations Act*.

- 4: If permitted by its enabling legislation, a university should develop procedures;
 - a) to provide that the Chancellor and Deputy Chancellor hold office subject to retaining the confidence of the governing body; and
 - b) to deal with removal from office if the governing body determines that such confidence is no longer held.
- 5: Each governing body should make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities.
- 6: On a regular basis, at least once each two years, the governing body should assess its performance, the performance of its members and the performance of its committees. The Chancellor should have responsibility for organising the assessment process, drawing on external resources if required. On an annual basis, the governing body should also review its conformance with this Code of Best Practice and identify needed skills and expertise for the future.
- 7: The size of the governing body should not exceed 22 members. There should be at least two members having financial expertise (as demonstrated by relevant

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

- 8: A university should adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations for the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.

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

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

- 9: A university should codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
- 10: The annual report of a university should be used for reporting on high level outcomes.
- 11: The annual report of a university should include a report on risk management within the organisation.
- 12: The governing body should oversee controlled entities by:
- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - (b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;
 - (c) ensuring that the board of the entity adopts and regularly evaluates a written statement of its own governance principles;
 - (d) ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an

annual business plan containing achievable and measurable performance targets and milestones; and

- (e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

- 13: A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of a university should, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.
- 14: A University should disclose in its Annual Report its compliance with this Code of Best Practice and provide reasons for any areas of non-compliance.

This Code was approved out-of-session by the Ministerial Council for Tertiary Education and Employment on 27 July 2011.