Australian Government

Tertiary Education Quality and Standards Agency

TEQSA

TEQSA Guidance Note: Corporate Governance

Overview

Broadly defined, corporate governance is the framework of roles, relationships, systems and processes within and by which authority is exercised and controlled in high education providers, in order to achieve their objectives and meet the Threshold Standards.

This Guidance Note reflects TEQSA's interpretation of the Threshold Standards in their entirety as they relate to this important topic, with particular regard to specific standards and accepted (and demonstrated) practice within the Australian higher education (HE) sector.

The purpose of this Guidance Note is to provide insight into how TEQSA interprets the requirements in the Threshold Standards as they may apply to different cases.

Points of Guidance

Governance frameworks in higher education

Overall, institution-wide decision-making frameworks in higher education institutions have three principal components:

▶ **Corporate governing body** – sets overall strategic directions and the framework of policies and procecdures necessary to achieve institutional objectives. It is ultimately responsible (to shareholders and/or stakeholders) for both corporate and academic outcomes.

▶ **Academic governing body** – sets and oversees the policies and processes necessary to achieve intended academic outcomes (quality and integrity) consistent with the provider's overall strategic directions. Sets academic standards and monitors academic outcomes. Its ultimate responsibility and accountability is to the corporate governing body. A separate Guidance Note has been prepared on academic governance.

▶ **Executive management** (vice-chancellor/chief executive officer and other senior executives and managers, including executive deans/deans/academic directors and heads of schools/departments) – implements policies, programs and processes, including through decisions about staffing, budgets and infrastructure. Its ultimate responsibility and accountability is to the corporate governing body for effective implementation of both corporate and academic objectives.

These components have interdependent and overlapping functions to some degree but, as the Threshold Standards require, their principal roles and responsibilities need to be defined and as distinct as possible to ensure that governance is effective. At the same time, there is an equally clear need for effective communication, cooperation and collaboration between the three principal components of institutional governance: that is, there are shared responsibilities necessitating a balance between separation and cooperation.

This separation is best, or preferably, achieved by formal delegations and/or authorisations from the corporate governing body which has overarching responsibility for all higher education

operations. At the very least, there needs to be some clear, documented statement of roles and responsibilities, formally adopted by the corporate governing body.

Corporate Governance Issues

The governing body, its composition and its role

The governing body needs to use a full range of expertise including higher education and independent financial expertise (Provider Registration Standard (PRS) 3.2). This might seem to imply that the board must include members with all the relevant types of expertise. However, the Standard permits the range of expertise to be derived from external advisors in addition to board members. The members of the governing body cannot thereby absolve themselves from responsibility for oversight of higher education operations, and advisors may share some of the legal responsibilities of directors where the directors repeatedly act on their advice.

PRS 3.2 also stipulates that the governing body has a majority of 'external' members. This can widen board deliberations by introducing external perspectives and can guard against managers (or internal board members) acting with too much regard to their own interests. TEQSA interprets 'external' to cover members who are not employees, owners or officers of the registered entity. In the case of entities that are wholly-owned subsidiaries of a corporate group, the board of the entity might to a large extent comprise group managers, and the requirements for external members could be satisfied through the top-level board of the group.

Under the Corporations Act 2001 (s198D), the board of a legal entity can delegate its powers of management to other individuals. Consequently the Board of a registered provider (which itself might not meet the requirement for a majority of external members) could delegate oversight of all its higher education operations to another board or council which did have a majority of external members through a formal instrument or charter, thereby meeting the requirements of PRS 3.1 and PRS 3.2.

It is good practice to delegate operational decisions to managers and for board members to attend to setting strategic directions, strategic plans and budgets, to monitoring progress towards their achievement and to monitoring the performance of senior management. PRS 3.3 does not require a complete separation between governance and management (for instance it is common for a CEO to be a member of a corporate governing body). But it does require that the distinction between these responsibilities be made clear. PRS 3.7 requires a further distinction between corporate and academic governance. This would normally be achieved through separate bodies for corporate and academic governance, and could be infringed in circumstances where an owner was a member of the academic governing body and in a position to overrule or inhibit the collegial process. This is further addressed in the Guidance Note on academic governance.

PRS 6.8 requires the provider to have student representation within its deliberative and decision-making processes, and to encourage students to participate. Students need not necessarily be members of a governing body but where they are not, the provider should be able to demonstrate other ways in which they effectively participate in decision-making.

Responsibilities of the governing body

A number of specific responsibilities of the governing body are referred to in the Provider Registration Standards, and are commonly cited in corporate governance standards and guidelines for other sectors. These include:

▸ **Risk management** (PRS 3.4). A governing body cannot delegate responsibility for this function to managers or to other boards, but needs to periodically review the major higher education risks (e.g. to the quality of student experiences and outcomes, or to meeting the requirements of the Threshold Standards) which have been identified and whether the organisation is adequately protected against them. Where the scale and complexity of risks facing an organization warrants it, the Board may delegate some oversight of risk management to a sub-committee. Risk management is considered in more detail in a separate Guidance Note.

▸ **Delegations** (PRS 3.5). The distinction between governance and management is likely to be clearer and to be more closely observed, if the boundaries between decisions that can be made by managers and decisions that must be made directly by the governing body are formulated through a charter or set of delegations, or incorporated within the terms of reference of boards and committees, formally approved by the governing body.

▸ **Strategic Planning** (PRS 3.6). In pursuit of its responsibility to set directions, the governing body must approve an effective strategic plan, which is reviewed periodically to ensure that it is current, and the governing body needs to periodically review how the organization is progressing against defined targets or performance indicators.

▸ **Academic Standards**. Corporate governing bodies have a responsibility to ensure that the provider has structures and processes in place to maintain academic standards (PRS 3.8). These will include robust processes for setting appropriate assessment and for ensuring that students achieve the learning outcomes specified for each award and for the level of each award as specified in the AQF. The measures should include appropriate internal and external moderation of student assessment outcomes.

▸ **Quality assurance arrangements** (PRS 3.8) are the subject of a separate guidance note. The corporate governing body has a responsibility to ensure that they are in place and operating effectively. They primarily consist of cycles of monitoring, review and improvement.

▸ **Directors' Duties.** Directors of corporations are bound by law to act in the best interests of the corporation as a whole (as opposed to their private interests or the interests of a particular constituency), to act in good faith and to exercise care and diligence. These duties are prescribed through specific Acts of Parliament (in the case of public universities) or through the Corporations Act 2001 (ss 180-184).

▸ **Threshold Standards.** Governing bodies have a responsibility to ensure that providers observe all the requirements in the Threshold Standards, including the requirements in the Category Standards for the commitment to free intellectual inquiry, engagement with advanced knowledge and inquiry and maintaining the appropriate level of scholarship and (where engaging in research student supervision) research.

Resources

Other relevant references

Corporate governance principles and recommendations, ASX Corporate Governance Council, 3rd edition (2014)

Governance and quality guidelines in Higher Education: A review of governance arrangements and quality assurance guidelines, Fabrice Hénard and Alexander Mitterle, OECD (2010)

Guide for members of higher education governing bodies in the UK, Committee of University Chairs, Higher Education Funding Council for England (2009)

OECD Principles of Corporate Governance (2004)

UK Quality Code for Higher Education (2012), The Quality Assurance Agency for Higher Education (UK)

Voluntary Code of Best Practice for the Governance of Australian Universities, Universities Australia (2011), available from: https://www.universitiesaustralia.edu.au/efficiency-and-governance/legislation-and-governance/University-Governance

TEQSA Contact

For further information about or discussion of *corporate governance* please contact your case manager in the first instance.