



Legislative Changes Affecting the Governance of Australian Universities

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Australian universities are established and governed by Acts of Parliament. These Acts regulate the size and composition of university governing bodies (Council, Senate, Board, etc.), which can then be affected when new legislation is introduced or current legislation is updated. The following summarises changes that have taken place in national and state legislation since 2010 that have had an effect on governance within Australian universities, particularly the size and structure of governing bodies.

COMMONWEALTH (NATIONAL)

In 2010, the 'Voluntary Code of Best Practice for the Governance of Australian Universities' was developed by Universities Australia. This code was endorsed by both Universities Australia and the University Chancellors Council (UCC) in 2010, and then by the Ministerial Council for Tertiary Education and Employment in 2011.

The code states guidelines regarding the size and structure of governing bodies within Australian universities and, although it is not legislation, has been widely implemented. The following summary from the Code (Universities Australia 2010) details these guidelines:

Size and structure of governing bodies:

- The size of the governing body should not exceed 22 members;
- There should be at least two members with financial expertise (if the governing body is limited to less than 10 members, one member with financial experience will meet requirements);
- There should be at least one member with commercial expertise;
- Membership of the governing body should be a majority of external independent members (neither enrolled in nor employed by the university); and
- 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.

See Appendix 1 for a national view on the current size and composition of governing bodies within Australian Universities.

AUSTRALIAN CAPITAL TERRITORY

There have been no formalised changes to legislation affecting university governance in recent years, however a review of the *Australian National University (ANU) Act 1991* (Cth) was completed in June 2015 and is now being reviewed by the Government.

The following summary (Deloitte 2014) details the recommendations provided regarding the structure of ANU's governing Council:

Size and structure of the governing body:

- Two official members (the Chancellor and the Vice Chancellor);
- Between three and six members appointed by the council (with at least one of these being external to the University);
- Between three and six external members appointed by the Minister. This number must be equal to or greater than the number of Council appointed members;
- At least two members must have financial expertise; and
- At least one member must have commercial expertise.

Other recommendations for council membership:

- Up to half of the members can be appointed by the Council (excluding official members). This can include staff and students;
- The Council should have a majority of external members (not enrolled at or employed by the University);
- Council members (other than University staff) should be paid. University staff members should have time-release from their usual roles; and
- There should be a balance of skills, expertise, gender, ethnicity, nationality and age among members.

The below table shows the current composition of university governing bodies within the ACT.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Australian Catholic University	6	8	4	1	0	19
Australian National University	2	7	4	2	0	15
University of Canberra	3	8	2	2	0	15
Average	4	7.7	3.3	1.7	0	16.3
Minimum	2	7	2	1	0	15
Maximum	6	8	4	2	0	19

Table 1: A summarised view of the composition of university governing bodies within the ACT.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

NEW SOUTH WALES

In 2011, the *Universities Governing Bodies Act 2011* (NSW) was implemented, which brought in rules on governance bodies for all ten NSW universities governed by an Act. This Act implemented the following regulations:

Size and structure of governing bodies:

- Governing bodies must have between 11 and 22 members;
- The total number of members will be determined by each governing body in a resolution passed by at least two-thirds of its members;
- Governing bodies are to include official members, elected members, members appointed by the governing body, and members appointed by the Minister;
- At least one member must be a member of the university's academic staff, elected by members of the academic staff;
- At least one member must be a member of the university's non-academic staff, elected by members of the non-academic staff;
- At least one member must be a student of the university who is elected by the students of the university and is not employed by the university;
- At least one member must be an external person who is a graduate of the university;
- The governing body may appoint a number of external members as prescribed by the university's constitution;
- The Minister may appoint between two and six external members, as prescribed by the university's constitution;
- Official members must consist of the Chancellor, Vice Chancellor and the President of the Academic Board (if not the Vice Chancellor) or the Deputy President of the Academic Board (if the President is the Vice Chancellor);
- At least two members must have financial expertise; and
- At least one member must have commercial expertise.

Other regulations for governing bodies:

- The majority of governing body members should be external (not enrolled at or employed by the university). The Chancellor may be counted as an external person; and
- The number of members in any category (official, elected, etc.) must not constitute a majority of the total governing body membership.

The below table shows the current composition of university governing bodies within NSW.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Charles Sturt University	3	8	2	1	2	16
Macquarie University	4	6	4	1	4	19
Southern Cross University	3	5	3	1	0	12
University of New England	3	7	2	1	2	15
University of New South Wales	3	7	3	2	0	15
University of Newcastle	3	8	3	1	0	15
University of Sydney	3	7	5	1	5	21
University of Technology Sydney	3	10	3	2	0	18
University of Wollongong	3	8	3	2	1	17
Western Sydney University	3	11	2	2	0	18
Average	3.1	7.7	3	1.4	1.4	16.6
Minimum	3	5	2	1	0	12
Maximum	4	11	5	2	5	21

Table 2: A summarised view of the composition of university governing bodies within NSW.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

NORTHERN TERRITORY

No legislative changes affecting university governance have been made in the Northern Territory in recent years. The *Charles Darwin University Act 2003* (NT) states the following in regards to the governance body:

Size and structure of the governing body:

- Chancellor, Vice Chancellor and Chairperson of the Academic Board;
- Eight members appointed by the Administrator;
- One member of the university's academic staff, elected by the academic staff;
- One member of the university's full-time TAFE staff, elected by the TAFE staff;
- One undergraduate student of the university, elected by the undergraduate student body;
- One postgraduate student of the university, elected by the postgraduate student body;
- At least two members must have financial expertise; and
- At least one member must have commercial expertise.

Other regulations for governing body:

- Members of the governing body must represent between them a broad range of community interests.

The below table shows the current composition of the Charles Darwin University governing body.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Charles Darwin University	3	7	2	2	0	14

Table 3: A summarised view of the composition of university governing bodies within the NT.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

QUEENSLAND

There have been no changes to Queensland legislation affecting university governance in recent years. The current structure of Queensland University governing bodies varies greatly regarding the numbers of appointed members, staff, student and alumni, as shown below.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Bond University	0	10	0	0	0	10
CQUniversity	3	9	2	1	0	15
Griffith University	2	11	3	2	0	18
James Cook University	3	10	5	3	1	22
Queensland University of Technology	3	10	5	2	2	22
University of Queensland	3	10	3	2	3	21
University of Southern Queensland	3	8	2	1	0	14
University of the Sunshine Coast	3	9	3	2	0	17
Average	2.5	9.6	2.9	1.6	0.8	17.4
Minimum	0	8	0	0	0	10
Maximum	3	11	5	3	3	22

Table 4: A summarised view of the composition of university governing bodies within QLD.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

A review of all Queensland university Acts was announced in 2013 by the Queensland Minister for Education, Training and Employment. Although the Review was suspended by the LNP Government in 2014 and then resumed by the Labor Government in 2015, it was speculated as per initial communications from the Minister in early 2015 to include the following changes to legislation over University governing bodies (Kern 2015):

- One Governor-in-Council appointment must be retained;
- The majority of governing body members must be independent (not enrolled at or employed by the University);
- Universities can determine their own process for appointment of members; and
- Universities are allowed to remunerate governing body members.

SOUTH AUSTRALIA

There have not been any changes to South Australian legislation affecting university governance within recent years. The current structure of the governing bodies in South Australian universities is fairly consistent, with the major difference being in the number of appointed members (government-appointed and governance body-appointed), as shown below.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Flinders University	3	9	4	2	0	18
University of Adelaide	3	6	2	3	3	17
University of South Australia	5	7	2	2	0	16
Average	3.7	7.3	2.7	2.3	1	17
Minimum	3	6	2	2	0	16
Maximum	5	9	4	3	3	18

Table 5: A summarised view of the composition of university governing bodies within SA.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

TASMANIA

The implementation of the *University of Tasmania Amendment Act 2012* (TAS) brought in the following rules regarding the size and structure of the University's governing body:

Size and structure of governing body:

- Between 10 and 14 members (preferably operating at 12 members), including a minimum of:
 - Three ex-officio members (Chancellor, Vice Chancellor and Chair of the Academic Senate);
 - One elected member of the academic staff (previously three members);
 - One elected member of the general staff;
 - One appointed student (previously two members);
 - Two members appointed by the Minister (previously four members), including one graduate; and
 - Between two and six members appointed by the council (previously four members).

Other regulations for governing body:

- There must be a consideration of gender, regional and skill balance within the membership.

The below table shows the current composition of the University of Tasmania governing body.

	Official Members	Appointed Members*	Staff	Students	Alumni**	Total Members
University of Tasmania	3	8	2	1	0	14

Table 6: A summarised view of the composition of university governing bodies within TAS.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

** One appointed member must be of the University's alumni.

VICTORIA

There have been two Acts passed in recent years affecting legislation of University governing bodies within Victoria. The first of these was the *Education Legislation Amendment (Governance) Act 2012* (VIC), which brought in the following regulations for all Victorian universities governed by an Act:

Size and structure of governing bodies:

- Between 11 and 21 members; and
- Removed the requirement for elected staff and students to be included within university councils.

Other regulations for governing bodies:

- Universities have the ability to request further changes to the size and composition of their governing bodies;
- The number of government-appointed members must not be less than the number of council-appointed members (these previously had to be the same); and
- Members of Parliament and Executive Officers cannot be appointed as director of a governing body.

Unions associated with the Victorian universities gave criticism regarding the removal of elected staff and student positions within councils due to the above Act. As such, the *Education Legislation Amendment (TAFE and University Governance Reform) Act 2015* (VIC) was implemented, which re-instated these positions and provided the following new regulations:

Size and structure of governing bodies:

- Between 13 and 21 members (raised the minimum membership from 11);
- Universities will individually determine the size of their governing bodies, within the above stated range (as of 1st July 2016);
- At least one elected member of staff;
- At least one elected student;
- At least four government-appointed members;
- At least two members with financial expertise; and
- One person with commercial expertise.

Other regulations for governing bodies:

- Elected staff and students are entitled to remuneration, if eligible; and
- 50% of all new appointments to paid Victorian public entity boards must be women.

The below table shows the current composition of university governing bodies within Victoria.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Deakin University	3	10	1	1	0	15
Federation University	3	10	1	1	0	15
La Trobe University	3	8	0	0	0	11
Monash University	3	10	1	1	0	15
RMIT	3	8	1	1	0	13
Swinburne University of Technology	3	8	1	1	0	13
University of Melbourne	3	8	3	2	0	16
Victoria University	3	10	1	1	0	15
Average	3	9	1.1	1	0	14.1
Minimum	3	8	0	0	0	11
Maximum	3	10	3	2	0	16

Table 7: A summarised view of the composition of university governing bodies within VIC.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

WESTERN AUSTRALIA

The *Universities Legislation Amendment Act 2016* (WA) was assented on 19 October 2016. This Act is yet to be reflected within the individual university Acts, however it will alter legislation for each Western Australia university (with the exception of the University of Notre Dame) to provide the following structure for university governing bodies:

- Chancellor;
- Vice Chancellor;
- Chairperson of the Academic Board;
- 3 members appointed by the Governor;
- 1 academic staff member;
- 1 professional staff member;
- 2 enrolled students (one undergraduate and one post-graduate for Curtin, Edith Cowan and Murdoch Universities);
- 2 alumni (the University of Western Australia must have four alumni in total – two elected by the alumni of the University and two within other membership categories); and
- Up to 5 members co-opted by the university's governing body.

Additionally, the *Universities Legislation Amendment Act 2016* (WA) details that each of the Western Australia universities (with the exception of the University of Notre Dame) must have a Nominations Committee consisting of up to six members appointed by the University's governing body. This committee will recommend potential governing body candidates to both the Minister and the governing body.

The current structure of the governing bodies in Western Australian universities shows a general consistency in terms of size and structure, with the University of Notre Dame being the major exception, as shown below.

	Official Members	Appointed Members*	Staff	Students	Alumni	Total Members
Curtin University	3	10	4	2	0	19
Edith Cowan University	2	9	2	2	1	16
Murdoch University	2	8	4	2	2	18
University of Notre Dame	1	18	0	0	0	19
University of Western Australia	2	7	5	3	4	21
Average	2	10.4	3	1.8	1.4	18.6
Minimum	1	7	0	0	0	16
Maximum	3	18	5	3	4	21

Table 8: A summarised view of the composition of university governing bodies within WA.

* Appointed members consist of members appointed/elected by the governing body as well as government-appointed members. For a more detailed view of governance body composition, see Appendix 1.

HISTORY OF GOVERNING BODY SIZES IN AUSTRALIAN UNIVERSITIES

Membership numbers within Australian university governance bodies remained fairly consistent for most universities between 1990 and 2000, with nine universities decreasing the size of their governing body by more than five members (see table 9). The minimum membership number stayed very consistent between 1990 and 2000 (averaging between 16 and 18 members), while the maximum membership saw a drop during this period from 44 to 34 members. The average membership also saw a drop from 26.5 in 1990 to 21.4 in 2000.

By 2015, numbers within university governance bodies around Australia had begun to fall. Within this period, the minimum membership fell from 16 members to 10, the maximum membership fell from 34 members to 22, and average membership fell from 21.4 to 16.6. This could be attributed to multiple factors including the National Governance Protocols that were implemented in 2003 [*Higher Education Support Act 2003 (Cth)*], the Voluntary Code of Best Practice for the Governance of Australian Universities (Universities Australia 2010) and state legislation alterations which enforced a maximum membership of 22 persons (21 in Victoria, 14 in Tasmania). New South Wales and Victorian legislation also enforced a minimum membership of only 11 persons, whilst Tasmania enforced a minimum membership of 10 persons. This allowed university governance bodies to cut back on numbers if desired.

Membership numbers have not changed significantly in the past year, however the University of Sydney is considering a re-structure of its Senate, which would see membership drop from 22 members to 15.

	1990 Total	1995 Total	2000 Total	2015 Total
Australian Catholic University	-	29	16	18
Australian National University	44	22	22	15
Bond University	-	-	-	10
Charles Darwin University	21	21	20	15
Charles Sturt University	20	20	19	15
CQUniversity	-	22	22	15
Curtin University	18	20	21	17
Deakin University	23	25	21	17
Edith Cowan University	-	21	21	21
Federation University	-	23	22	13
Flinders University	35	34	21	21
Griffith University	24	25	25	18
James Cook University	34	35	26	22
La Trobe University	33	35	21	13
Macquarie University	19	19	19	19
Monash University	43	39	21	15
Murdoch University	25	25	25	19
Queensland University of Technology	22	22	22	22
RMIT	-	34	22	10
Southern Cross University	-	-	-	15
Swinburne University of Technology	-	30	22	11
University of Adelaide	35	35	21	21
University of Canberra	17	22	21	15
University of Melbourne	38	40	19	16
University of New England	21	19	19	17
University of New South Wales	21	21	21	15
University of Newcastle	19	18	19	16
University of Notre Dame	-	-	-	12
University of Queensland	36	36	34	22
University of South Australia	-	24	21	16
University of Southern Queensland	-	21	22	14
University of Sydney	22	22	21	22
University of Tasmania	30	24	24	14
University of Technology Sydney	19	21	21	17
University of the Sunshine Coast	-	-	-	18
University of Western Australia	25	26	22	21
University of Wollongong	21	18	18	19
Victoria University	-	-	-	13
Western Sydney University	24	26	17	18
Average - total	26.5	26	21.4	16.6
Average – total for original 26 universities in 1990	26.5	25.8	21.5	17.7

Table 9: National Comparison of Council Sizes – Years 1990, 1995, 2000 & 2015 (Kern 2015)

APPENDIX 1: COMPARISON OF AUSTRALIAN UNIVERSITY GOVERNING BODIES

Current as at June 2016.

	Official Members	Government Appointed Members	Governing Body Appointed Members	Academic Staff	Professional Staff	Undergraduate Students	Postgraduate Students	Alumni	Total Members
Australian Capital Territory									
Australian Catholic University	6	0	8	3	1	1	0	0	19
Australian National University	2	7	0	3	1	1	1	0	15
University of Canberra	3	8	0	1	1	1	1	0	15
Average	4	5	2.7	2.3	1	1	0.7	0	16.3
New South Wales									
Charles Sturt University	3	2	6	1	1	1	0	2	16
Macquarie University	4	2	4	3	1	1	0	4	19
Southern Cross University	3	2	3	2	1	1	0	0	12
University of New England	3	2	5	1	1	0	1	2	15
University of New South Wales	3	2	5	2	1	1	1	0	15
University of Newcastle	3	2	6	2	1	1	0	0	15
University of Sydney	3	6	1	4	1	1	0	5	21
University of Technology Sydney	3	2	8	2	1	1	1	0	18
University of Wollongong	3	2	6	2	1	1	1	1	17
Western Sydney University	3	6	5	1	1	1	1	0	18
Average	3.1	2.8	4.9	2	1	0.9	0.5	1.4	16.6
Northern Territory									
Charles Darwin University	3	7	0	2	0	1	1	0	14
Average	3	7	0	2	0	1	1	0	14
Queensland									
Bond University	0	0	10	0	0	0	0	0	10
CQUniversity	3	5	4	1	1	1	0	0	15
Griffith University	2	7	4	2	1	1	1	0	18
James Cook University	3	8	2	3	2	2	1	1	22
Queensland University of Technology	3	8	2	3	2	2	0	2	22
University of Queensland	3	7	3	2	1	1	1	3	21
University of Southern Queensland	3	5	3	1	1	1	0	0	14
University of the Sunshine Coast	3	5	4	2	1	2	0	0	17

	Official Members	Government Appointed Members	Governing Body Appointed Members	Academic Staff	Professional Staff	Undergraduate Students	Postgraduate Students	Alumni	Total Members
Average	2.5	5.6	4	1.8	1.1	1.3	0.4	0.8	17.4
South Australia									
Flinders University	3	0	9	2	2	1	1	0	18
University of Adelaide	3	0	6	1	1	2	1	3	17
University of South Australia	5	0	7	1	1	1	1	0	16
Average	3.7	0	7.3	1.3	1.3	1.3	1	1	17
Tasmania									
University of Tasmania	3	2	6	1	1	1	0	0	14
Average	3	2	6	1	1	1	0	0	14
Victoria									
Deakin University	3	5	5	1	0	1	0	0	15
Federation University	3	5	5	0	1	1	0	0	15
La Trobe University	3	4	4	0	0	0	0	0	11
Monash University	3	5	5	1	0	1	0	0	15
RMIT	3	4	4	1	0	1	0	0	13
Swinburne University of Technology	3	4	4	0	1	1	0	0	13
University of Melbourne	3	4	4	2	1	1	1	0	16
Victoria University	3	6	4	1	0	0	1	0	15
Average	3	4.6	4.4	0.8	0.4	0.8	0.3	0	14.1
Western Australia									
Curtin University	3	7	3	3	1	2	0	0	19
Edith Cowan University	2	5	4	2	0	2	0	1	16
Murdoch University	2	5	3	3	1	2	0	2	18
University of Notre Dame	1	0	18	0	0	0	0	0	19
University of Western Australia	2	4	3	4	1	2	1	4	21
Average	2	4.2	6.2	2.4	0.6	1.6	0.2	1.4	18.6
National									
Average	2.9	4	4.7	1.7	0.8	1.1	0.4	0.8	16.4
Minimum	0	0	0	0	0	0	0	0	10
Maximum	6	8	18	4	2	2	1	5	22

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University of Southern Queensland Act 1998 (QLD).

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University of Tasmania Act 1992 (TAS).

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University of Technology Sydney Act 1989 (NSW).

University of the Sunshine Coast Act 1998 (QLD).

University of Western Australia Act 1911 (WA).

University of Wollongong Act 1989 (NSW).

Victoria University Act 2010 (VIC).

Western Sydney University Act 1997 (NSW).