Refereed Article

Australian Public Universities: A crisis of governance*

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In dialogue with other articles within this special issue, in this article we argue that the financial crisis triggered by the onset of COVID-19 is revealing a failed governance structure within Australian public universities that has ultimately enabled the conditions that led to the crisis currently before us. We suggest that the impact of COVID-19 has laid bare a series of problems that were in the process of unfolding years before the pandemic hit. Finally, we will examine this failure of leadership through the lens of the statutory nature and governance structures of Australian public universities, cast against the current rhetoric that metaphorically equates universities with commercial corporations, to determine the extent to which such a metaphor is accurate, and ultimately (we contend) detrimental to an effective and efficient university sector.

KEYWORDS: Australian universities, university governance, history of Australian universities, university reforms.

Introduction

Since the beginning of the COVID-19 pandemic in 2020, it was widely predicted that Australia's higher education system would be hit hard due to the closure of the country's borders to international students and many universities' reliance on that revenue to remain financially viable. Most tertiary education analysts responded that this would precipitate a crisis in the system. Although the extent of the financial losses to universities has not been nearly so bad as most analysts had predicted, with many public universities recording cash surpluses at the end of 2020 (Guthrie and Lucas, this issue), most university executives have used the pandemic as a pretext to cut jobs, courses and subjects, and to rationalise faculty, departmental and school structures (Lucas 2021c).

The Australia Institute recently revealed that over 40,000 tertiary education jobs disappeared over a year, between May 2020 and May 2021 (Littleton and Stanford 2021). These numbers equate to 20% of the total pre-COVID-19 workforce, a percentile contraction two to three times higher than the average of total jobs lost in Australia since the onset of the pandemic (which, according to the Australian Bureau of Statistics, is estimated to be around 7.5%). This disproportionate loss of jobs had been justified on the basis of the predicted loss of revenue across the sector, blamed on 'reduced international student revenue and income from investments, such as dividends' (Hurley et al. 2021a, 2021b). However, the actual loss of revenue, cast against an initial prediction of A$3 to 4 billion (Marshman and Larkins 2020), has been recently estimated more accurately around A$1.8 billion, equating to an overall decline of 5.2% in total revenues (Marshman and Larkins 2021). While the loss of revenue is staggering, the disproportionate reduction (in percentile terms) of lost jobs is perhaps even more concerning, particularly since a recent report by the NSW Auditor-General revealed that NSW universities have spent more money in redundancies and job cuts than they lost in international student revenue (Ross 2021a; cf. Audit Office of New South Wales 2021).

Moreover, the Vice-Chancellors overseeing such job cuts continued to command salaries among the highest in the OECD. After reaching an average of just above A$1 million dollars in 2019, even with the relative cuts that have occurred as a result of the pandemic current salaries still far exceed the pay of any other public servant (including that of the Prime Minister) and, on average, are 11.26 times the average salary of Australian academics (more than twice their UK counterparts, where the ratio is 5.7 to 1) (Rowlands and Boden 2020).

At the same time, recent research starkly reveals an unprecedent shift toward a culture of managerialism. Croucher and Woelert (2021) show that, over the past 20 years, the number of people employed in (HEW defined) support roles has decreased by 70% and the number of people employed in regular professional roles has increased by 37%. Over the same period, there has been a staggering growth in middle and senior management, of 144% and 110% respectively, a symptom of the regressive effects of New Public Management as discussed by Guthrie and Lucas (this issue).

Although university Annual Reports have shown a consistent growth of both revenue and expenditures (as well as assets) over the past two decades, paralleling the growth in student numbers, this rapid growth has not been matched by a similar growth of permanent academic positions. This has led to a dramatic increase in staff–student ratio. No Australian university currently features among the top 100 universities for the best staff–student ratio (Times Higher Education 2021). On the contrary, while the average students-to-staff ratio among the top 100 ranked universities is 5.22 students to 1 academic, the average ratio among Australian public universities is six times higher, at 30.5 to 1.

The stark and deeply inequitable picture of the current state of Australian public universities is matched by a host of additional problems. Courses and subject offerings are being increasingly cut while the costs of some degrees have increased. Students are increasingly diverted to 'self-directed' online modules, a trend that is only partly attributable to the impact of the COVID-19 pandemic on campus life. This is accompanied by a decrease of direct contact-time with lecturers and tutors, notwithstanding the very clear student dissatisfaction with such a trend (TEQSA 2020) and the concerns expressed by some professional associations in relation to the quality of education (Schröder-Turk and Kane 2020). Democratic and inclusive committee-based decision-making processes in academia have increasingly been replaced by more managerial structures and processes, and concerns about the decline of academic freedom have led to the recommendation of a Model Code by former Chief Justice Robert French (2019). Bullying and wage theft consistently appear in recent news reports, while the casualisation of the workforce has reached unprecedented proportions: for example, the University of Melbourne, Australia's richest tertiary institution, for example, has been recently reported by the ABC as employing 72.9% of its staff on insecure terms (Duffy 2020). Moreover, structural changes within individual institutions occur at an increasingly rapid pace (often as a result of a new executive member being appointed to a particular portfolio), while academics lament an overall decline in the rigour and quality of the education, notwithstanding the proliferation of reporting forms and protocols allegedly designed to ensure the opposite.

That Australian universities are facing an unprecedented crisis is evident. However, while this crisis has been repeatedly construed as a financial one and has been blamed on the financial losses associated with the decline of international student numbers as a result of the COVID-19 pandemic (Marshman and Larkins 2020; Hurley et al. 2021a, 2021b; cf. Ross 2021b), the above data renders such justification unsustainable, for several reasons. Firstly, the job losses discussed above appear to be utterly disproportionate to what other sectors of the Australian economy have been experiencing. Secondly, university executives, over the past decade, have relied heavily on an international student 'market' when such reliance was not (and still is not) necessarily required by the legislative framework that establishes and regulates Australian public universities (Howard 2021). Such a choice, made and endorsed by university governance bodies, is predicated on a 'growth' mentality that supports, justifies, and ultimately ends up relying upon staggering marketing expenditures and often lavish capital investments (Lucas 2021a, 2021b, 2021c). This mentality appears to differ radically from that of most of the world's tertiary systems (Hil et al., this issue), with the immediately observable result that universities in most other countries do not appear to have been as badly affected by the current COVID-19 crisis as Australian universities have been.

In this article we argue that the financial crisis triggered by the onset of COVID-19 has laid bare the intrinsic failure of the governance structures of Australian public universities, the effects of which have been unfolding for years before the pandemic hit. We examine this failure of leadership through the lens of the statutory nature and governance structures of Australian public universities, cast against the controversial rhetoric that metaphorically equates modern universities with commercial corporations (cf. *contra* OmbudsmanSA 2021/02707), to determine the extent to which such a metaphor is accurate, and ultimately (we contend) detrimental to an effective and efficient public university sector.

Australian universities today – a legal overview

In order to fully contextualise the current 'crisis' of Australian public universities, we begin by asking the question of what a university is, in legal terms. Universities have a long heritage as corporate entities (Russell 1993), having been structured as such for centuries (Compayré 1893). Therefore, unsurprisingly, the enabling legislation of all Australian public universities confers upon universities the capacities and powers of a body

corporate. However, it is important to note that the body corporate status of Australian public universities is created for special public purposes specifically designed to advance higher education, and thus, universities exist as *sui generis* corporate entities and should not be confused with general commercial corporations registered under the Corporations Act 2001 (Cth).

The establishment of a university as an autonomous entity provides a level of independence from government interference, as well as from direct control by government departments (cf. Hannah Forsyth 2014). It also means that a university has perpetual succession and exists separate from its governing body or members. Unlike Australian registered companies (governed by the *Corporations Act*), however, individual universities are created by special enabling legislation that also articulates the structure and membership of a university's governing body. Furthermore, while all Australian public universities (with the exception of ACU),[1] are statutory corporations, they are exempt from the general provisions of the Corporations Act, defined as 'exempt public authorities' for the purposes of S. 57A (Orr 2012).

Moreover, Australian universities are charitable institutions created to advance higher education and research for the benefit of the public. While it is possible that the legal status of Australian public universities as charitable organisations may not generally be well acknowledged by the public, by the universities themselves, nor, perhaps, by their governing bodies, the legal meaning of the term 'charity' is well established and relies on the pursuit of charitable purposes as defined by reference to the Preamble to the *Statute of Charitable Uses 1601* (43 Eliz 1, c. 4 Parliament of England). In the context of Australian universities, their charitable status stems from their charitable purpose to advance higher education.

To be recognised as a charitable entity, Australian universities are required to be registered with the Australian Charities and Not-for-profits Commission (ACNC 2022). All Australian universities, established by both special legislation or by general companies' legislation (such as Bond University and the Australian Catholic University), are registered charities in accordance with the *Charities Act 2013* (Cth) and the ACNC. Indeed, the ACNC Charities Register records the main charitable purpose of Australian universities as advancing education and/or, higher education and research.

The enabling legislation of Australian public universities reaffirms and reasserts such a mandate. The most recent version of the *University of Sydney Act 1989* (NSW), for example, states the primary object of the University of Sydney (the oldest Australian university) is 'the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence' (s6(1)), with a number of 'principal functions for the promotion of its object' (s6(2)). Any additional functions, including the exercise of commercial functions, the generation of revenue, and the provision of other services to the community are explicitly defined as ancillary 'as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University' (s6(3)(c)). Most other public Australian university statutes articulate very similar (if not always identical) goals and functions.

Governance structures

While some similarities exist between registered companies and universities, their governance differs in relation to their decision-making organs. Registered companies possess two decision-making bodies (a general meeting of shareholders/members, and a board of directors as their governing body), whereas universities do not hold a general meeting of their members (which, as we will discuss further below, are their staff, their students and their graduates). Instead, enabling legislation confers all the powers of a university to their governing body, the meetings of which are generally not held publicly. This governing body, generally known as a university Council (although, in a number of cases, it is defined as the university Senate, and, in the case of Western Sydney University, as a Board of Trustees), has absolute responsibility for providing oversight of a university's management, its strategic planning and its legal accountabilities concerning its educational, financial, and commercial duties and liabilities. This governing body is assisted by entities generally known as Academic Boards (or, in some cases, and somewhat confusingly, as Academic Councils or Academic Senates), which are meant to provide advice on academic matters. All operational matters are entrusted to a figure known as the Vice-Chancellor (although the moniker President has become increasingly common, and the figure has been even expressly called, in one case, 'CEO').

Like all statutory bodies corporate, enabling legislation requires these decision-making bodies to govern in accordance with the statutorily defined objects and/or functions of the university described above (as well as all corollary legislation, such as, for example, the *Tertiary Education Quality and Standards Agency Act 2011* (Cth)). Furthermore, the enabling legislation of all but one Australian public university[2] impose duties on members of a university's governing body to ensure care and diligence is undertaken, and that university governors act in good faith, in the best interest of the university and for a proper purpose when carrying out their functions

and exercising their powers for and on behalf of their university. The definition of 'the best interests of the university' is strictly intertwined with the definition of who the members of a university are, with enabling legislation consistently defining universities as comprised of their governing body, the professors and full-time members of the academic staff, the graduates and students, and all other members or classes of members of the staff as by-laws may prescribe (often meant to include permanent professional staff of the university). It logically follows that, in addition to statutorily prescribed goals and functions, the 'best interests' of a university ought to be construed as representing those of the groups of members thus identified.

Parliaments have seen fit to draft and impose statutory duties on university governors in a similar fashion and language to the well-established duties owed by directors of companies registered under the *Corporations Act 2001* (see, for example, ss180-183), and undoubtedly the interpretation given by courts as to the words used in expressing the statutory duties owed by university governors leans heavily upon cases that have examined those duties owed by directors and officers of registered corporations (Orr 2020). However, while the general and statutory law duties imposed on university governors are similar to those imposed on directors of registered companies in Australia, those of university governors should be interpreted in accordance with the specific language used in each university's enabling legislation.

When examined more closely, the actual composition of the governance bodies of Australian public universities reveals an interesting picture. At the time of writing this article (1 September 2021), of the total 564 members of the governance bodies of the 37 Australian public universities (from now referred to as Council members), only 185 (32%) were elected from within their respective institutions (this includes elected student and staff members and the Chairs of Academic Boards, or equivalent, but excludes Vice-Chancellors). Moreover, the professional expertise of each Council member can be evinced by the public profiles on each university's public website. Of this total, only 182 (32%) have any academic experience (this includes the completion of doctoral research, even without any further academic pursuit, but excludes undergraduate and Masters coursework), and only 179 (31.5%) have any experience working in the tertiary sector (including TAFE). At the same time, 342 (61%) come from different fields of employment, with 188 (33%) alone from the broad field of finance, management, business, corporate and industry. That means that the number of people with corporate expertise but no expertise in the tertiary sector, *by themselves*, surpasses the number of people who possess any direct experience in the sector they govern. By way of contrast, a similar examination of registered companies such as Rio Tinto, Telstra or CSL (as examples of large registered companies), reveals that 73%, 72% and 78% respectively of Board members have prior experience in the sectors they operate in.[3] Furthermore, the cultural diversity of Council members fails to reflect the expected cultural diversity of Australia as a whole, including a notable absence of Indigenous representation, of people with disabilities and those from diverse cultural and ethnic backgrounds.

If universities are *not* commercial corporations, and if their governance bodies ought to be guided by goals and functions whereby the commercial component is only ancillary to their primary mandates, one may reasonably expect to see a predominance of expertise related to the primary statutory goals and functions of universities among the members of their governance bodies. Such, however, is not the case. Therefore, there exists an inevitable disjuncture between the collective professional understanding of universities' governing bodies and the actions taken by university executives in relation to a host of academic matters. The question then reasonably arises as to whether such a disconnect between the expected and actual expertise of university Council members is related to the crisis experienced by Australian universities discussed above. We argue that it is.

University legislation: a synoptic overview of university 'reforms'

If universities are *not* commercial corporations under Australian law, where does the justification for needing *business* people running universities like *businesses* come from?[4] In the late 1980s, the Hawke Labor Government began a process of radically restructuring Australia's higher education system by 'rationalising' the number of higher education providers throughout the country and abolishing one of the key policy reforms of the Whitlam Labor Government in the early 1970s: free university tuition (Lake et al. this issue; Guthrie and Lucas, this issue). The main architect of these radical moves was then Federal Education Minister John Dawkins. In the years immediately following the introduction of the so-called 'Dawkins reforms' and the passage of the *Higher Education (Amalgamation) Act 1989* (Cth), several new universities were created through the amalgamation of colleges of advanced education, agricultural colleges, nursing schools, art schools, and TAFE colleges (either *ex novo*, or through incorporation within existing universities). With similar motivations to those pursued in the UK's higher education system at the same time, the long-term goal of the reform was to increase the number of student places and lay the foundations for a mass tertiary education system (cf. Russell 1993).

Through the vehicle of the *Employment, Education and Training Act 1988* (Cth), the Dawkins plan also

involved the abolition of the Commonwealth Tertiary Education Commission in 1988, which had in its various manifestations steered tertiary education policy throughout most of the post-war period (University of Melbourne 2021). A direct and intended consequence of these 'reforms' was that the Federal Government was now able to exert direct control over Australian universities in return for university funding, rather than being guided by the diverse range of expertise that had informed the Commission and its predecessors. This included the Federal Government granting itself the power to exert greater control over university governance, which had traditionally been a State government responsibility. The *Higher Education (Amalgamation) Act 1989* obliged State governments to 'harmonise' university-specific acts throughout the country in order to make their legislation consistent with the Federal reforms.

Consequently, in the years that immediately followed, all of the State-based university legislation (as well as the federal legislation governing the territory-based universities: ANU, the University of Canberra and Charles Darwin University) began to impose restrictions on how university governing bodies should be constituted. Although a wide variety of university governing body structures had been allowed under State and federal legislation prior to the Dawkins reforms, in the years that followed the number of elected staff and student members on those bodies was limited to minority representation. Subsequent amendments to the governance sections of public university acts have in most cases further reduced elected staff and student representation on university governing bodies and imposed a variety of different corporate-style governance requirements on those bodies.

The rationale provided by successive federal governments for the progressive loss of autonomy Australian universities have subsequently experienced is that they needed to become more 'modern', 'accountable', and 'responsive to community needs'. This was the expressly stated rationale for changing the governance structures of Australian universities in the Dawkins Report of 1988:

> there are some governing bodies which are too large for effective governance, and too often a tendency for members of governing bodies to see their primary role as advocates for particular interests. Often in these cases there is a confusion of roles and objectives, to the detriment of strong and decisive management. While some members may feel responsibility to represent the views of particular sections of the institution or the wider community from which they are drawn, they have an overriding responsibility to act in the best interests of the institution (DET 1988: 102).

Such sentiments were repeated in the Report of the *Committee of Inquiry/Higher Education Management Review* (the 'Hoare Report'), commissioned by the Keating Federal Government in 1995, and were fully crystallised by Federal Minister for Education, Brendan Nelson, under Liberal Prime Minister John Howard in the so-called 'Nelson Report' (also known as *Our Universities: Backing Australia's Future*), where he further advanced the notion that universities are commercial corporation-like entities:

> Universities are not businesses but nevertheless manage multi-million-dollar budgets. As such they need to be run in a business-like fashion (DEST 2003: 15).

Nelson was able to realise his vision for Australia's public universities with the successful passage of the *Higher Education Support Act 2003* (Cth). The original version of the *Higher Education Support Act* empowered 'the Commonwealth Grant Scheme Guidelines [to] impose on higher education providers requirements to be known as the National Governance Protocols' (s 33(1.a)), specifically requiring these protocols to be incorporated by State and Territory governments into existing university legislation. Protocol S, the most significant protocol with respect to university governance, removed the requirements for nominated members to have tertiary or local community experience, and prohibited State and Federal MPs from sitting on university governing bodies, while further reducing the ability of staff and students to participate in university decision-making processes:

> the size of the governing body must not exceed 22 members. There must 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) … There must be a majority of external independent members who are neither enrolled as a student nor employed by the higher education provider (7.5.35 Protocol S).

Although in 2008 the newly elected Rudd Federal Government repealed the Coalition's higher education legislation of 2004, including the National Governance Protocols, with the passage of the *Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008* (Cth), the 'Nelson protocols' have nevertheless continued to shape all of the university governance

structures in place throughout Australia, including the provision that a majority of members should be external appointees. Furthermore, the legislated processes and membership for Council subcommittees guarantee that external appointed members exert greater influence in determining future external appointments, potentially leading to a solipsistic mechanism of self-selection (Schröder-Turk 2021).

It should therefore be clear from this brief history of changes to university governance that the bipartisan erosion of university autonomy and of the ability of staff and students to have any substantive input into the management of Australian universities was accompanied by the emergence of a commercial discourse around tertiary education that undercut and arguably marginalised the (still current) statutory mandates of the universities' enabling legislation.

Reforming university governance: consequences

With the above context laid bare before us, we can now turn our attention to the consequences of a university governance system underpinned by the commercial corporate metaphor that has emerged over the past few decades. The composition of university governing bodies and the professional background, expertise and ideological expectations of their members have consequences that extend beyond governance processes alone.

Although legally incorrect, Australian universities are routinely conflated, within the Australian discourse, with the commercial corporate sector (cf. *contra* OmbudsmanSA 2021/02707). This conflation occurs either directly – by asserting that universities are *de facto* corporations – or indirectly – asserting that universities must operate with the same principles of efficiency and efficacy as corporations. In a recent open letter, the Vice-Chancellor of the University of South Australia, Dublin-born and chemist-educated Professor David Lloyd unapologetically asserted the following:

> I am not going to make any apologies to any ideological purists reading this, let's be clear, we are a business, we are a $700m not-for-loss organisation, and our successful performance as a business directly enables the employment of a shade over 5000 people in full and part time continuing, fixed-term and casual roles (Lloyd 2021).

A casual reader may wonder whether Professor Lloyd's disciplinary background in such a different field of professional expertise qualifies him to make such an assertion, and consequently wonder whether the ideology he laments is not, in fact, his own. However, more importantly, these words are reflective of the Dawkins and Nelson aspirations discussed above.

Nevertheless, despite increasing levels of managerialism and the business and financial expertise among the majority of Council members, the governing bodies of Australian public universities have failed to convert the significant surpluses they earned between 2008 and 2019 into sufficient reserves in the event of a crisis such as the current one (Guthrie and Lucas, this issue). By the very metrics of efficacy and efficiency that require universities being run 'like businesses', they have failed abysmally to operate either effectively or efficiently. We contend that the emphasis on running universities as 'businesses' relegates the (statutorily mandated) primary functions of universities to a second place, as exemplified by the precipitous increase of academic casualisation and the concomitant ills of poor conditions, insecure work and wage theft (Lucas 2021c; Lucas and Eltham 2021).

After all, the bases of all sound decision-making are clear understanding and experience. Yet, it is hard to comprehend how governance arrangements that, *contra* the recommendations of both Bologna's *Magna Charta Universitatum* (1988) and UNESCO (1997), favour the appointment of Council members without adequate professional expertise are the *most effective* way to ensure the most appropriate academic (as well as economic) decisions are made. The results are multifaceted and often antithetical to long-standing academic traditions. For example, the application of a 'business mindset' is likely to emphasise the 'CEO-like' functions of Vice-Chancellors at the expense of their role as Academic President or Principal, a more traditionally 'first among equals' role.

As Michael Tomlinson suggests, it is highly likely that external Council members 'characteristically feel they know little about higher education quality, and so will defer to management on these matters' (2021), at the expense of the collective knowledge traditionally expressed by the academic collegium in the majority of the world's tertiary education systems. Equally, the widespread use of quantitative performance metrics (sometime mandated by external regulatory bodies such as TEQSA) to determine the effectiveness of a university may be misleading when cast against the primary functions to be performed by a public university (Moore 1995). Against the expectations common within the private sector, in the case of *public* universities financial sustainability is certainly a necessity, but a very poor indicator of any successful performance against the legislated functions of advancing higher education and research.

At the heart of these issues is the difficulty to assess the 'best interest of the university', a phrase interpreted radically differently by different Council members, with the result that such 'best interests' are often construed on the basis of imaginary (primarily commercial) stakeholders. The *Higher Education Act (2005)* (Cth) requires that university Council members have an 'appreciation of the values of a university', while the Australian Institute of Company Directors recognises, in 'Principle 3: Board composition', that directors should be appointed 'in alignment with the purpose and strategy' of the organisation concerned (AICD 2019). The current dominance of governing bodies by members without substantial professional experience in higher education and without close connections to the tertiary sector is inherently and inevitably bound to reduce the governing bodies' ability to fully act 'in the best interest of the universities' as required by statutory mandates.

Furthermore, universities operate as quasi-market not-for-profit organisations. As a result of their enabling legislation, they do not have a body corporate comprised of controlling owners/shareholders. The result is that current structures are not fully capable of holding university governing bodies to account. Whereas in the case of registered companies' boards of directors are directly accountable to the company shareholders, the lack of clearly established 'shareholders' in public universities shifts the focus onto a much broader collection of 'stakeholders', arguably including the government, students, their parents, the business community, and society at large. As a result, such a wide and diffuse stakeholder group has, *de facto*, no effective mechanism or cohesiveness to effectively hold university governing bodies to account. Consequently, these bodies are not effectively accountable to either the members of the universities they govern (as these members are effectively removed from most – if not all – decision-making processes), or to the general tax-paying public that originally established universities as public statutory bodies with public functions. Moreover, the appointment protocols of Council members are such that the majority of appointments are made (either directly, or indirectly via the mechanism of providing suggestions to the relevant appointing Minister/government, who very seldom departs from such suggestions) by the governing bodies themselves. This creates a *de facto* autocratic loop, an inherently self-perpetuating oligarchy that further diminishes overall accountability.

Conclusion

Given the large annual revenues of our universities and the massive public investment that supports their operation, there is no doubt that university management requires appropriate financial skills. Equally, universities also greatly benefit from close connections to the communities (and the broader society) they serve, through the inclusion of members who represent those interests on their governing bodies. University strategy, decision-making, management oversight and risk management can, and do, greatly benefit from the views and expertise of external Council members with significant distance from the university and the higher-education sector. However, the utter preponderance of such expertise has come at the expense of the professional expertise and experience required to further the distinctive goals and functions for which universities have been legally constituted. Moreover, years of reforms to the Australian higher education sector have shifted the focus of tertiary institutions from equipping young adults with the skills necessary for the pursuit of knowledge and the advancement of society to a product to be traded on the open market. The result is the crisis that universities are now facing, a crisis exposed by COVID-19 but that was, in fact, many years in the making.

We acknowledge that the historical justification for the narrative that equates universities with 'businesses' is inherently and inextricably linked to the progressive reduction of public funding for the tertiary sector. However, the problems currently faced by Australian universities can be directly connected to the unique features of a governance system that inhabits a liminal terrain. That terrain not only does not mirror the corporate sector it aspires to emulate, but also it is clearly failing to fulfil its public functions as enshrined in existing statutory mandates.

In conclusion, we contend that the main problem facing Australia's public universities today is not a lack of revenue, nor is it a lack of disposable assets to withstand the crisis engendered by the current pandemic (cf. Guthrie and Lucas, this issue). Rather, the main problem is a governance regime that, together with an overall lack of transparency and accountability, has progressively reduced the ability to fulfil the statutory mandates (and century-old purposes) of universities (Cahill 2020; Lucas and Eltham 2021; Guthrie 2021; Lucas 2021b, 2021c). Therefore, these two issues must be located at the centre of any attempt to reform (or re-form) the Australian higher education system.

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Notes:

***** This article has been written in dialogue with – and in connection to – all other themed articles within this special issue. As a result, it is best read as part of the issue as a whole.

1. The only public university not established by special statute is the Australian Catholic University (ACU), which was incorporated under the general incorporation legislation, *Companies (Victoria) Code*; incorporated as a company limited by guarantee. Note the *Companies (Victoria) Code* has been repealed and is now part of the *Corporations Act 2001* (Cth) and recognised by special statute as a public university; See *Australian Catholic University Act 1990* (NSW); *Australian Catholic University (Queensland) Act 2007* (Qld); *Australian Catholic University (Victoria) Act 1991* (Vic).

2. Dawkins (1987, 1988) and other papers and reviews continue to nod toWith the exception of the Australian National University, where the legal duties imposed on members of ANU's governing body (its Council) are not found in the university's enabling legislation but in associated general legislation, the *Public Governance, Performance and Accountability Act 2013* (Cth).

3. The staggering lack of professional tertiary expertise on the part of the majority of Council members is not a reflection of any individual's proclivities. Indeed, in the experience of many of the authors, fellow Council members are committed individuals who dedicate their (often, although not always, free) time to a cause they believe in. However, Council members, however motivated, skilled, committed and astute they may be, the data indicate, simply have no *professional* expertise in the sector they govern.

4. It is worth noting that it is the radical and almost militant nature of the discourse to be here under scrutiny, not the suggestion that *some* degree of financial acumen is needed to run universities.

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