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Submission to the inquiry by the Senate Education and Employment Legislation Committee 'Quality of governance at Australian higher education providers'

10 March 2025

Dear Chair and Members of the Committee,

I thank the Committee for agreeing to hold this important inquiry.

My submission is presented in the form of this cover letter and the three parts A, B and C attached to this letter.

By way of introduction, I am most widely known for my role in the 2019 Four Corners episode 'Cash Cows' and the subsequent court case between myself and Murdoch University over my membership of Murdoch University's governing body, called Senate. I have significant governance experience, including through past or current memberships of the corporate and academic governing bodies and through chairmanship of the Academic Courses and Admissions Committee at Murdoch University.

I have also produced peer-reviewed articles on university governance, submissions to government inquiries and opinion articles in regards to topics relevant to the inquiry.

Further information is provided in [my CV](#)¹ (incl my affiliations and memberships) and in [my list of contributions to the public debate](#)².

Overall, my assessment is that – at least at some Australian universities or in some instances – governance is not of sufficient quality to provide the oversight needed to assure a high academic quality, to uphold appropriate standards or to ensure that legislated functions of a university are met. I am concerned that instances of the following have occurred at some Australian universities or that there is a risk of them occurring in potentially a frequent or widespread manner:

- Corporate and academic governance committees, and their individual members, not being sufficiently empowered, enabled, informed, fearless, independent, qualified or able to provide an adequate level of oversight and scrutiny to ensure that executive decision making and strategic directions are appropriate for a university and in the best interest of our students and society;

¹ <https://gerdschroeder-turk.org/biography/>

² <https://gerdschroeder-turk.org/highereducation/>

- Governance becoming a 'tick box' exercise for powerful and controlling executive university managements whose decision making practices exclude and alienate the academic body;
- Governance committees and governance structures being 'window dressing' for university management that, on paper, appears to have a robust system of independent governance but that in practice is disempowered and not effective in providing oversight;
- University governance organs ignoring concerns expressed to it by members of the university community or governance organs not having appropriate processes in place to receive and deal with concerns or complaints expressed to them;
- University staff members on governance committees being fearful that actions or expressions in their governance roles may have adverse consequences for their employment or career progression; and actions by university managements or governance board leaderships that stoke or at least not alleviate those fears or that could be seen as intimidatory or inappropriate; and
- A lack of independence between the governance organs of a university and the university's executive management or, in the extreme form, collusion between the governance and executive management in covering up issues or in managing issues and communications, potentially including in relation to TEQSA processes.

I restrict my further specific commentary in this submission to three particular areas:

- A. A recommendation for the committee to analyse governance at Murdoch University in the years 2018-2021 and TEQSA's actions in regards to Murdoch University as a case study relevant to several terms of reference of the inquiry;
- B. Commentary in regards to the composition of governing boards; and
- C. Commentary in regards to the use of non-disparagement clauses in university contracts, and their implications for transparency and accountability.

I am available and happy to provide further information or substantiating documents and to speak personally to the committee, either in a public hearing or in another form.

I thank the committee for considering acceptance of my submission despite the delay in submitting it for which I apologise.

Kind regards and best wishes

Murdoch University 2018-2021 as a case study for the quality of university governance and of the adequacy of TEQSA's powers or actions

I wish to recommend to the committee the case of Murdoch University during the period of the years 2018-2021 as a case study relevant to several of the terms of reference of the committee. During that period, Murdoch University's international recruitment practices were a matter of contention, and were one of the subjects of the 2019 Four Corners episode 'Cash Cows', and became the matter of TEQSA processes. I was a Senate member of Murdoch University during that time and an interviewee of the Four Corners program.

Specifically, I deem the following aspects to be of interest in relation to the terms of reference of the inquiry:

1. The adequacy of the processes and oversight by Murdoch University's Senate of international student recruitment practices in the years prior to 2019;
2. The actions taken by the Chancellor, the Senate (council) and the university management in relation to complaints and/or disclosures that I, as a member of Senate, made in June 2018, including the adequacy of behaviours towards me as the complainant;
3. The adequacy of court actions in the Supreme Court of WA (WASC 372, 2018) taken by Murdoch University in regards to a publication in an NTEU magazine;³
4. The descriptions provided in the 2019 ABC Four Corners episode 'Cash Cows' broadcast on 6 May 2019, including disclosures I made to the ABC that were broadcast in that program;⁴
5. The proposal of a motion to Murdoch University's Senate to remove me from the Senate on 8 May 2019 for alleged breach of duty in relation to my disclosures to the ABC;
6. The subsequent Federal court case WAD303/2019 Schroeder-Turk vs Murdoch University in the Federal court, particularly given that the claim was pursuant to 'whistleblower legislation' in the Public Interest Disclosure Act 2003 (WA) and to the FairWork Act and given that it related directly to a governance issue;
7. Murdoch University's processes, including any potential process involving external consultants, conducted to investigate international student recruitment matters, including in relation to matters raised in the Four Corners episode;
8. Murdoch University's counterclaim in the court case WAD303/2019, submitted in September 2019, in which Murdoch University sought 'equitable compensation' from me for 'revenue impact in the order of millions of dollars'.⁵
9. Murdoch University's dropping of the financial component of their crossclaim^{6,7} in close temporal proximity to ending the relationship with the recruitment agency named in the Four Corners broadcast;⁸
10. The settlement of the court case WAD303/2019 in June 2020;⁹
11. Two external reviews conducted in relation to governance at Murdoch University (with the first initiated in Murdoch University Senate meetings of 8 and 22 July 2020), and the Murdoch University Senate processes and discussions in relation to these reviews;

³ MURDOCH UNIVERSITY -v- GOODING [2018] WASC 372 (30 November 2018)

⁴ <https://www.abc.net.au/news/2019-05-06/cash-cows/11084858>

⁵ <https://www.theguardian.com/australia-news/2019/oct/22/fifty-top-professors-condemn-pursuit-murdoch-university-whistleblower-schroeder-turk>

⁶ "Mishandling a whistleblower", The Australian, Editorial, 15 January 2020

⁷ <https://www.theguardian.com/australia-news/2020/jan/14/murdoch-university-drops-plan-to-sue-whistleblower-over-student-exploitation-comments>

⁸ "Murdoch University cuts ties with Indian student agency", The Australian, by Victoria Laurie, 12 January 2020

⁹ <https://gerdschroeder-turk.org/2020/06/12/thank-you-for-your-help/>

12. Murdoch University's and TEQSA's processes, actions and behaviours in regards to the TEQSA compliance assessment concluded in October 2020;¹⁰
13. Murdoch University's actions and/or proposed actions in 2020 in regards to its teaching offerings in mathematics and statistics and in relation to my employment and the employment of other colleagues,¹¹ and TEQSA's actions in regards to a concern about the suspension of a teaching offering in mathematics;
14. Murdoch University's and TEQSA's processes, actions and behaviours in regards to the TEQSA provider reregistration process for Murdoch University which, as announced on 9 July 2021, initially led to a reregistration for a reduced period of 4 years which was later extended to the customary 7 years.¹²
15. The departures and appointments of Vice Chancellors at Murdoch University in 2021;
16. The processes and actions by TEQSA in regards to concerns expressed to it about processes or practices at Murdoch University, the processing time of these concerns, and the transparency of feedback or information provided by TEQSA.

If the committee decides to analyse these processes in more detail I am willing and available to provide more information and to speak to these matters in detail.

I wish to note that the above issues are not current issues; In this context, I note the outcomes of the 'Rebuild the Collective' initiative initiated by Murdoch University's Academic Council in December 2021 and concluded by a final report in circa March 2022, and also public commentary provided by the current Vice Chancellor.¹³

References to media reports and otherwise are included to provide the committee with contextual, but not definitive information about these matters. Court documents can be obtained from the Federal Court.

¹⁰ <https://www.teqsa.gov.au/about-us/news-and-events/latest-news/murdoch-university-compliance-assessment>

¹¹ "'STEM everywhere', but nowhere at Murdoch University", by Gerd Schröder-Turk, The Australian Newspaper, 8 December 2020

¹² <https://www.teqsa.gov.au/about-us/news-and-events/latest-news/murdoch-university-renewal-registration>

¹³ See "Murdoch Uni reviews controversial changes to STEM degrees", by Tim Dodd, The Australian, 31 May 2022; "New Direction for Murdoch leadership", Business News, 30 May 2022; "It's a high degree of difficulty for new uni boss", by Bethany Hiatt, The West Australian Newspaper, 29 May 2022.

The composition of the governing bodies and the representation of a university's academic staff on Council or Senate

Relevant term of reference:

1.a The composition of providers' governing bodies and the transparency, accountability and effectiveness of their functions and processes, including in relation to expenditure, risk management and conflicts of interest;

Observations and background

1. **Composition and subcommittees of councils:** I refer the committee to my paper "[A self-selection mechanism for appointed external members of WA University Councils](#)" (Australian Universities Review 63, 2020) which highlights the following problems in regards to the composition of WA Senates:
 1. the reduction in representation of elected representatives of the universities' academics to a single member on university councils (called Senates) in WA;
 2. the exclusion, by law or regulation, of elected representatives of a university on the powerful subcommittees of university councils in WA;
 3. the power of external appointees and the lack of power of elected academics in selecting new council appointees, and a risk of a self-selection bias that results;
 4. the apparent lobbying or advocating conducted by university managements in WA to change the selection of academic representatives on council from being 'elected' to being 'appointed'.
2. **External former university executives as council members:** Some universities have taken steps to increase the number of council members with experience in the higher education sector. Some universities have appointed current or former senior executives from other universities to their councils. While such appointments may have benefits over appointment of individuals without experience in higher education, such appointments should not be seen as a *per-se* increase of the representation of the academic community on the council.

Problem:

Based on my own experience of 6 years as a council member, I have formed the following view:

- A. A single council member elected by and from the academic staff is not sufficient to ensure that the views and the 'on the ground' experience of the academic staff are appropriately considered in council decision making. It is too easy for the university management to portray any view expressed by that single member as the view of an individual, and it is difficult for other council members to judge whether a view expressed by that member is that of an individual or a more widely held view. This is particularly relevant in cases where the views expressed are contrary to the narrative that the university management conveys to the council.
- B. The burden on the sole member elected by and from the academic staff is substantial, and is worsened by the confidentiality arrangements that surround council dealings.
- C. The ability of a council to provide active and effective oversight of concerns relevant to the academic body of the university (including of entry standards, of international student recruitment practices, of executive appointment practices, of the quality of education offered, of research and research integrity, etc) would be greatly enhanced by a larger number of council members by and from the academic staff – that is, of non-management staff who have direct experience on the ground.

Recommendation:

to enforce, by law, that at least 1/3 of the members of the governing body of any 'university' are elected by and from the academics of the university.

(This could be achieved through TEQSA or ESOS standards or through legislation governing government payments such as HELP/HECS or through the ARC Act. 'University' should here refer to institutions in the TEQSA provider category 'Australian University').

The use of non-disparagement clauses suppresses information about malpractice and adversely affects internal processes addressing problems

Relevant term of reference:

1.d The impact of providers' employment practices, executive remuneration, and the use of external consultants, on staff, students and the quality of higher education offered; and

1.a The composition of providers' governing bodies and the transparency, accountability and effectiveness of their functions and processes, including in relation to expenditure, risk management and conflicts of interest;

Observation

3. Some Australian universities use contractual arrangements (such as termination agreements or executive contracts) that contain non-disparagement clauses that prevent both the university and the other party, usually a staff or executive, to make critical statements about each other (disparaging statements or statements that may injure each other's commercial reputation).
4. It is believed that such non-disparagement clauses are widely used, if not ubiquitous, in employment termination agreements at Australian universities.
5. The effect of these agreements is that they suppress the expression of information relevant to malpractice and poor process, both internally and externally.
6. Such deeds may state that both parties have entered voluntarily into these deeds. De facto, however, when faced with termination, few staff have the means to forgo the financial incentives that such deeds offer (ex-gratia payments, etc).

Problem in regards to accountability and transparency:

These non-disparagement clauses are, in my view, a substantial accountability and transparency problem, for the following reasons

- A. Where a staff, manager or executive departs the university with a suspicion or allegation of misconduct or otherwise inappropriate behaviour or performance, the risk of disparaging the departed employee makes it complicated for the university to run transparent internal processes to address what went wrong. The non-disparagement clause creates a legal risk that the departing staff may sue the university, which in turn may suppresses transparent and accurate internal communication or processes.
- B. The use of non-disparagement clauses in termination agreements removes, de facto, the ability of the departing staff member to express criticism of the university, its management, or its processes. This enables the universities to 'buy the silence' of staff who were critical of their processes by managing the staff out, e.g. by demoralising them to the point where they feel a departure is their only remaining option. In such cases, such deeds could be seen to trade the departing employee's academic freedom to criticise processes at an institution for another benefit (such as an ex-gratia payment).

Recommendation:

to find a mechanism to ban the use of non-disparagement clauses from university contracts.

(Could this be achieved, in parts, by requiring through TEQSA Standards that universities treat academic freedom as an inalienable right of academics?)