

SUBMISSION TO THE SENATE
EDUCATION AND EMPLOYMENT
LEGISLATION COMMITTEE
INQUIRY INTO THE QUALITY OF
GOVERNANCE AT AUSTRALIAN
HIGHER EDUCATION
PROVIDERS

DEPARTMENT OF JOBS,
SKILLS, INDUSTRY AND
REGIONS

FEBRUARY 2025



This submission to the Senate Education and Employment Legislation Committee (the Committee) inquiry into the quality of governance at Australian higher education providers (the inquiry) is made by the Victorian Department of Jobs, Skills, Industry and Regions.

It seeks to outline the:

- Victorian Government's roles and responsibilities in relation to university governance, including as set out in state legislation, which sit alongside the responsibilities of the Tertiary Education Quality and Standards Agency (TEQSA); and
- Importance of engaging with Victoria in any reform of the sector.

Victorian universities are important public institutions that contribute knowledge for our community, educate our workforce, engage globally, and drive innovation and productivity supporting Victoria's economic growth. Good governance supports the success and sustainability of Victoria's universities and their accountability to the communities they serve.

These universities operate in a complex and inter-connected tertiary education ecosystem within the state, delivering education alongside other providers including public TAFEs, private higher education providers, and registered training organisations. Four of Victoria's public universities operate as dual sector institutions, delivering both vocational and higher education.

In recent years, the Victorian Government has prioritised engagement in the governance of Victorian universities, including in response to concerns relating to student and staff safety, workforce matters and governing councils' accountability and diversity. This focus has been reflected in Victoria's contributions to the Australian Universities Accord and its close engagement with the Commonwealth Government, Victorian universities and other stakeholders.

In its interim report, released in July 2023, the Australian Universities Accord expert panel recommended a priority action for the Commonwealth Government to immediately engage with state and territory governments and universities to improve university governance, with a focus on student and staff safety, universities being good employers, and membership of governing bodies.

This recommendation highlighted the need for Australian governments to work together, reflecting their shared roles and responsibilities and the need for close engagement on reform of the sector. The Committee's inquiry complements the Accord Panel's recommendation to focus on strengthening university governance, which has led to the establishment of an Expert Council on University Governance tasked with developing new principles and recommendations for the sector, to be agreed by Education Ministers.

The Victorian Government welcomes the inquiry's focus on TEQSA's role in identifying and addressing corporate governance issues at Australian higher education providers. As the Committee considers the effectiveness of TEQSA and of the governance and regulation of higher education providers more broadly, it is important to take account of the shared responsibilities across the Commonwealth and states and territories.

The Victorian Government has previously emphasised the need for established forums for dialogue and shared decision making on higher education matters among Commonwealth, state and territory governments. Given the shared responsibilities for university governance, it is important that the Commonwealth and Victorian Governments engage collaboratively on any proposals for reform of higher education governance and regulation.

Notwithstanding this, while the Victorian Government has a role in university governance, it should be recognised that universities are independent and self-governing institutions, with the Commonwealth Government holding primary responsibility for policy settings, funding, regulation and oversight of higher education in Australia.

Victoria's role in university governance

There are 10 universities in Victoria that operate under standalone State legislation: 8 public universities; one private university; and one multi-jurisdictional university established as a corporation in State legislation.

The individual State Acts that establish the 8 Victorian public universities outline relevant powers and responsibilities held by the Victorian Government. Under these establishing Acts, Victoria's public universities must further adhere to other relevant state legislation, including but not limited to:

- *Education and Training Reform Act 2006 (Vic)*, which provides powers over crown land and student organisations/membership provisions;
- *Financial Management Act 1994 (Vic)* and the *Audit Act 1994 (Vic)*, in relation to financial reporting;
- *Gender Equality Act 2020 (Vic)*, which requires universities to take positive action towards achieving workplace gender equality and requires gender equality to be reflected in their policies, programs and services; and
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, which requires public authorities, including Victorian universities, to act consistently with the Victorian Charter of Human Rights and Responsibilities.

A number of Victoria's TAFEs are also registered with TEQSA as Institutes of Higher Education to deliver higher education qualifications, including: Box Hill Institute; Chisholm Institute; Holmesglen Institute; Melbourne Polytechnic; and William Angliss Institute. Governance arrangements for Victorian TAFEs differ to those of universities.

While the Commonwealth holds primary responsibility for policy, regulation, funding and oversight of higher education in Australia, Victoria maintains specific powers and responsibilities in relation to the 8 public universities. These powers and responsibilities primarily relate to university governing councils, key financial decisions and land transactions and are outlined in further detail below.

Appointments

The Victorian Government and the relevant portfolio Minister have legislative responsibility for making some appointments to the university council of each of the 8 public universities. Specific requirements set out in each Act mandate that:

- The council's membership is to be comprised of government-appointed, council-appointed, official and student and staff elected members.
- The council must have at least 4 government appointed members, of which at least one is appointed by the portfolio Minister and at least one is appointed by the Governor in Council.
- Financial experience must be prioritised when selecting government-appointed members, at least 2 of whom must have financial expertise with relevant qualifications or experience in financial management, and one of whom must be a person with commercial expertise at a senior level.
- A range of other attributes must be considered in the government's appointment of members, including relevant knowledge, skills and experience, appreciation of a university's values, and recognition of the needs of the community served by the university.

The Victorian Government is not involved in the council's appointment of members, the election of members by staff and students, or the appointment of official members including the Chancellor and Vice-Chancellor.

Remuneration ranges for university councils are set by the Minister and are outlined in the *Appointment and Remuneration Guidelines* issued by the Department of Premier and Cabinet. Universities set the remuneration of council members within these ranges. There is no role for the Victorian Government in determining executive remuneration at universities, including for Vice-Chancellors.

Financial reporting

Victoria's public universities have financial reporting obligations that promote transparency and fiscal accountability. The *Financial Management Act 1994 (Vic)* outlines annual reporting requirements for each university, including tabling requirements in the Victorian Parliament. Each year, the Minister for Skills and TAFE tables each university's annual reports in the Victorian Parliament.

Each university's annual report must adhere to a range of reporting requirements and capture information of relevance to the scope of this inquiry, including:

- Organisational structure, including executive salaries;
- Spend on consultancies;
- The nature and range of services provided including communities served;
- Workforce disclosures;

- Financial statements; and
- Compliance with relevant legislation, subordinate instruments and policies.

The Victorian Auditor General's Office (VAGO) audits the financial reports of the 8 Victorian public universities and their Australian controlled entities (also known as subsidiaries). VAGO also prepares an annual report on the results of its audits, which is tabled in the Victorian Parliament. VAGO's report provides an assessment of the financial results and outcomes in the Victorian university sector, including trends and the sector's financial sustainability.

Land assets and commercial activities

Through state legislation, the Victorian Government holds some specific powers over the acquisition and disposal of university and crown land, which directly impact a university's ability to buy, sell and lease land.

The Victorian Government's land transaction policies, which apply to some university land transactions, have been designed to ensure that land transactions are managed consistently and benefit the public. This includes, but is not limited to, ensuring continued delivery of education.

The relevant Victorian Minister also has the power to approve, request or reject amendments to university commercial guidelines.

Borrowing limits

Under the university establishing Acts, the Victorian Treasurer, in consultation with the relevant portfolio Minister, sets limits and other conditions as appropriate for university borrowings.

Workplace laws and regulations

Victorian universities are subject to both state and Federal workforce laws.

The Victorian Government has referred most of its industrial powers to the Commonwealth, most recently via the *Fair Work (Commonwealth Powers) Act 2009 (Cth)*. The result of this referral is that, unless expressly preserved by federal legislation or a matter within the State's legislative capacity, industrial relations matters are primarily regulated by the Commonwealth Fair Work laws.

The Victorian Government, however, supports and advocates for industrial relations practices that are based on:

- A fair, comprehensive safety net of wages and conditions, good faith collective bargaining and the right to take lawful industrial action;
- Consultation and co-operation between employers, their workforce and their unions;
- Respect for a person's choice to join a union and be properly represented in the workplace; and
- Supporting fair, cooperative and safe workplaces.

The Victorian Government has also introduced a number of laws within its legislative capacity, that seek to better protect Victorian workers including via the *Long Service Leave Act 1992 (Vic)* and *Labour Hire Licensing Act 2018 (Vic)*.

In June 2021, the Victorian Government passed legislation creating new criminal offences relating to the underpayment of staff and improper record keeping. Under the *Wage Theft Act 2020 (Vic)*, employers, directors and officers may be criminally liable for underpayments of wages and other employee benefits, as well as for failures to keep records of employee entitlements.

In December 2023, following the introduction of equivalent laws under the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)*, the Victorian Government announced plans to repeal the state's wage theft offences.



Victorian efforts to strengthen engagement on university governance

Addressing governance issues in the higher education sector remains a priority for the Victorian Government. Good governance makes a critical contribution to ensuring Victoria's universities remain world-class, enabling students to achieve their full potential, ensuring student and staff safety and wellbeing, and demonstrating their accountability and transparency to the communities they serve.

A number of issues have become prominent in the university sector in recent years, including underpayment of staff, casualisation of the workforce and the safety of students and staff both on and off campus. These issues have been attributed, at least in part, to failures of governance.

The Victorian Government is engaging closely on these issues and examples of initiatives to address and respond to such challenges are outlined below.

Government appointments to university councils

The Victorian Government is committed to increasing the diversity and representation of people with relevant lived experience on university councils and the governing bodies of other public institutions. Diversity of skills and expertise, and the perspectives and lived experiences of people from different backgrounds, contribute to good governance and help ensure that boards are making decisions in the interests of the community.

The Victorian Government has made a commitment to increase diversity on public boards. Coupled with its legislative powers to make government appointments to university councils as outlined above, this has driven collaboration with the state's public universities to promote more diverse appointments.

A key tool to support achievement of the goal to increase diversity on public boards is the application of two sets of guidelines:

- The *Appointment and Remuneration Guidelines* prescribe best practice approaches to making appointments, including the use of open and competitive processes, conducting probity checks, management of conflicts of interest and obtaining declarations of private interests.
- The *Diversity on Victorian Government Boards Guidelines* are a companion to the *Appointment and Remuneration Guidelines* and exist to support the commitment to increasing diversity on public boards. They provide advice on matters such as identifying cohorts that may experience barriers to participation, making advertisements accessible to a wider audience and using a diversity matrix to aid identification of gaps in representation.

Workforce issues

The Victorian Government's expectations for Victorian universities extend beyond the institutions' legal obligations and include an understanding that universities will demonstrate the highest ethical standards as civic leaders and major employers in the Victorian community.

While noting the regulation of university employment, including casual work, is the responsibility of the Commonwealth Government, in recent years, the Minister for Skills and TAFE has engaged regularly with Victorian Vice-Chancellors to highlight the importance of secure employment and underline the expectation for universities to comply with their legal obligations.

The Minister for Skills and TAFE has engaged with universities to seek assurances on how they are addressing systemic issues relating to staff pay, including the underpayment of wages, penalty rates, superannuation, leave entitlements, or making unauthorised deductions from employee pay. Through these exchanges, relevant universities have provided assurances and outlined practical steps they have taken. These include, but are not limited to, undertaking audits to ascertain the nature and size of the problem; making firm commitments to repay staff in full; and working with relevant unions.

At the direction of the Minister for Skills and TAFE, all Victoria's public universities have reported additional workforce data relating to casual employees annually since 2021, increasing the transparency around the use of the casual workforce in the sector.

Additionally, despite the referral of most industrial relations matters to the Commonwealth, workers in Victoria are supported by a number of Victorian Government initiatives that aim to minimise the systemic impact of such workforce issues, including:

- Wage Inspectorate Victoria – which investigates complaints, carries out a range of enforcement functions, and gives practical advice, information and support to employees and employers;

- The Voluntary Fair Conduct and Accountability Standards – to promote fairness and transparency between on-demand platforms and non-employee gig workers in Victoria;
- A labor hire licensing scheme and establishment of the Labor Hire Authority – to protect Victorian labour hire workers from exploitation and to improve the transparency and integrity of the labour hire industry; and
- The Victorian Fair Jobs Code – that seeks to promote fair labour standards, encourage compliance with employment, industrial relations and workplace health and safety obligations and promote secure employment and job security.

Student safety

Just as good governance supports the success and sustainability of Victoria's universities, it also supports the safety of its staff and students. The Victorian Government takes a strong stance against all forms of violence, including sexual discrimination, harassment, and assault within universities.

Racism of any kind, including antisemitism, is not acceptable in any circumstance, including within Victorian universities. The Minister for Skills and TAFE worked closely with Vice-Chancellors to understand the steps being taken to proactively ensure the safety of students, staff and the broader community.

The Minister for Skills and TAFE has also engaged with universities in light of the results reported from the 2021 National Student Safety Survey.

The National Student Safety Survey results showed that sexual assault and harassment occur both on campus and in other non-university settings (such as casual jobs, public transport and social settings). The report found a high prevalence of sexual assault and harassment, which was being under-reported by Australia's university students.

The Minister for Skills and TAFE has engaged with Victorian universities as they have undertaken initiatives to improve safety for students and ensure that university staff and reporting systems respond to incidents appropriately, in the best interests of victim-survivors. The Victorian Government has also funded Our Watch to support Victorian universities to implement Educating for Equality, a whole-of-university approach to prevent gender-based violence in – and through – universities.

The Victorian Government engaged closely in the development of the national Action Plan to address gender-based violence in higher education and has emphasised the need for ongoing engagement through its implementation with a focus on delivering considered and meaningful outcomes that will benefit Victorian students. The principles that underpin the Action Plan reflect and align with Victoria's existing policies, such as Victoria's 10-year plan for ending family violence, and the Plan will complement work already underway in Victoria.

The Victorian Government has also invested in a range of initiatives to address gender-based violence at Victorian universities. One example is the grant provided to Monash University's Safe and Equal @ Work and Access to Justice programs for critical research, the creation of workforce pathways and better legal support for family violence victim-survivors.