Introduction

RMIT welcomes this opportunity to contribute to the discussion on re-aligning Commonwealth-State responsibilities. This response outlines our concerns and identifies a workable framework to address the fragmented higher education regulatory environment. This submission is framed around the specific questions set out in the Discussion Paper, Building Better Foundations for Higher Education in Australia.

The Government’s desirable pursuit of a flexible, diverse and robust higher education system can best be met by requiring that any governance changes explicitly provide for some of the organizational forms and practices that have emerged to meet current and continuing expressions of need. In particular simplified regulatory provision for cross sectoral institutions with recognized academic and business autonomy is essential.

The following is a brief summary of the key issues identified by RMIT and outlined in the proceeding pages:

- RMIT is concerned that the full implications for dual sector institutions of any shift in the regulatory framework of public higher education institutions remains ambiguous and largely unexplored. More particularly, RMIT seeks confirmation that any regulatory changes will explicitly support dual sector institutions largely in their current form should ownership transfer to the Commonwealth.

- RMIT is concerned that changes to the governance of public higher education institutions retain formal recognition of institutions’ academic autonomy. The RMIT Act currently defines not only our governance structure and composition, but also our mission, and it is imperative that the integrity of our individual mission is not compromised by any change in governance arrangements.

- RMIT views wholesale ownership and funding of public higher education institutions by the Commonwealth as an inappropriate mechanism for dealing with the disparity in regulatory environments. This would be far better addressed through dialogue and subsequent agreements between State and Commonwealth Governments on the standardizing of appropriate legislation across the States and Territories.

- It is critical that public universities have the same competitive freedoms as other higher education providers (regardless of ‘university’ status). Further, regulatory changes should seek to maximise resources in teaching and research by reducing the current administrative burden in compliance. Any discussions or reports examining these issues needs to explicitly consider the issues presented by the particularities of dual sector institutions.

- RMIT recommends immediate commencement on the establishment of an autonomous national regulatory body with overarching responsibility for national accreditation and quality assurance functions for the higher education sector in Australia. This issue is seen as an imperative for ‘brand Australia’ in the global market for education.
Recommendations

RMIT recommends that any further consideration of Commonwealth ownership of higher education institutions be preceded by a direct inquiry into potential impacts on dual sector institutions, the results of which need to be explicitly considered before any consolidation of Commonwealth ownership is undertaken.

RMIT recommends that MCEETYA establish a clear agenda for Australian post-compulsory education, explicitly articulating directions and commitment to cross sectoral pathways and acknowledging the potential impact of the transference of ownership of public higher education institutions on the viability of these pathways.

RMIT recommends that the Commonwealth Treasurer, supported by MCEETYA, establish terms of reference for the Productivity Commission to inquire into and provide recommendations on an appropriate and nationally consistent regulatory framework for commercial activities in higher education (including reflections on the potential content of any uniform cooperative legislation). Further, that the Commonwealth engage with the States and Territories to garner support for the process and commitment to the establishment of an implementation plan upon receipt and discussion of the report at the proceeding Ministerial Council meeting.

RMIT recommends that individual institutions be empowered to determine their own governance processes within the broad framework of the National Protocols in order to allow for appropriate expression of their institutional mission within the governance domain.

RMIT recommends that MCEETYA, in consultation with public higher education institutions, undertake an immediate review of reporting and regulatory requirements for universities with a focus on eliminating duplication and streamlining regulatory and reporting requirements. This process will require explicit consideration of the reporting burden of State and Commonwealth funding requirements on dual sector institutions. This process will also need to recognise and consolidate the work that has already been undertaken by a number of States and Territories in conjunction with their public universities.

RMIT recommends the immediate commencement on the establishment of an autonomous national regulatory body with overarching responsibility for national accreditation and quality assurance functions for the higher education sector in Australia.
1. Is ownership (legislative and/or physical assets) of the public universities an issue that needs to be considered for re-alignment? If so, what might be an appropriate mechanism for re-alignment?

From the outset, it should be recognised that the current inquiry has been instigated on the premise that inefficiencies and disparities exist in the regulatory environment of universities that need to be addressed. RMIT acknowledges and values the opportunity for discussion of these issues. RMIT does, however, note that centralisation will not necessarily provide a panacea for these issues, and may in fact serve to limit institutional authority and create significant re-distribution costs that far exceed any potential gains.

This is particularly true for the transfer of assets to the Commonwealth. The process for transferring these assets is likely to be complex given the myriad of legislative provisions governing the disposal of university assets. It is acknowledged that “under existing State legislation, restrictions are imposed on ability of universities to access capital through the disposal of fixed assets (land and buildings) and that a Commonwealth framework could provide greater flexibility for universities to dispose of land and buildings”. It is however, uncertain as to why the transfer of assets needs to occur at all. A simpler solution would be for the Commonwealth and States to work together through MCEETYA to streamline the regulatory requirements, particularly around the disposal of assets, in a way that ensures that universities have the maximum flexibility to ensure the ongoing viability of their operations, while also maintaining explicit accountabilities and governance processes for assets under their control.

The transfer of assets however, is not RMIT’s primary concern with the changes proposed around the legislative and physical ownership of public higher education institutions. RMIT has concerns regarding the shift in the balance of power resulting from any transfer of authority to the Commonwealth and the consequent changes in State-Institutional relationships. With respect to the former, there are genuine concerns around Commonwealth control of both the funding and establishment Acts of public higher education institutions. Complete Commonwealth control over these areas has the potential to create an imbalance of power whereupon the autonomy and independence of the universities may be compromised by the agenda of the Minister/Government of the day. Further, any shifting of power or responsibilities may potentially allow for Acts of the Universities to be altered, whereupon the unique mission of each institution and institutional foci, and their corresponding governance arrangements may be threatened. The absence of specifics regarding how the Commonwealth might enact the ownership exacerbates this concern.

With respect to the State-Public Higher Education Institutions relationship, RMIT is concerned to maintain its current relationship with the State. As noted by Phillips KPA (2005)¹,

> “State and Territory Governments have a legitimate interest in the institutions within their jurisdictions because they provide financial and in-kind assistance to them and because the institutions impact directly on regional and State economies and intersect with schools and vocational education and training systems”

The continuity of the States and Territories’ interest in higher education institutions is valuable, not only in financial terms but also in terms of encouraging the alignment of interests between State and higher education institutions, particularly around post compulsory education and pathways. The legislative relationship ensures a constructive dialogue with the State on issues of local and regional importance.

The relationship with the State is of particular relevance to RMIT as a dual sector institution. As noted in ‘Rationalising Responsibility for Higher Education in Australia’, Commonwealth ownership of

universities implies that VET and Higher Education Institutions would be split between the States and the Commonwealth, with implications for the long term viability of dual sector institutions and cross sectoral pathways. Wholesale ownership and funding of the sector by the Commonwealth is therefore a significant concern for RMIT and for other dual sector institutions. RMIT believes that dual sector institutions serve a unique and important role in addressing national skills shortages through the provision of industry relevant and flexible educational pathways. Their demise should not be a consequence of this debate. In the absence of any direction on how the transfer of ownership might proceed, potentially serious repercussions exist for RMIT’s ongoing viability as a dual sector institution.

Any further consideration of Commonwealth centralisation of ownership of higher education institutions must therefore be preceded by a direct inquiry into potential impacts on dual sector institutions, the results of which need to be explicitly considered before any further development is undertaken.

RMIT recommends that any further consideration of Commonwealth ownership of higher education institutions be preceded by a direct inquiry into potential impacts on dual sector institutions, the results of which need to be explicitly considered before any consolidation of Commonwealth ownership is undertaken.

RMIT recommends that MCEETYA establish a clear agenda for Australian post-compulsory education, explicitly articulating directions and commitment to cross sectoral pathways and acknowledging the potential impact of the transference of ownership of public higher education institutions on the viability of these pathways.

2. Is there a need for greater national consistency between jurisdiction and individual institutions in respect of powers to operate in a commercial environment? Do individual institutions operate on an uneven playing field in their efforts to diversify their revenue sources in this manner? How could a more even playing field be best achieved?

Ensuring equal commercial opportunities for all public higher education institutions is imperative in the current climate of decreasing Commonwealth funding, and increasing competition in the global market for students. Any legislative changes should therefore ensure competitive parity between all Australian universities and should position the education sector to maintain its export market (currently Australia’s fourth biggest export earner) and protect existing investment in infrastructure.

Within this context universities require the flexibility to manage their own assets and to have access to flexible financial instruments. The issue of borrowings is a good case in point: not only do existing limitations constrain current opportunities, but they also serve to limit future innovation and commercialisation through the perpetuation of a risk averse culture.

Universities require the ability to diversify revenue sources, which in part, is dependent on their capacity to easily and quickly respond to appropriate commercial opportunities. The current State legislative environment is consistent with the misplaced assumption sometimes held by State Treasuries that universities are first and foremost publicly funded organisations, despite the fact that between 50% and 75% of their revenue comes from other sources. The current regulatory framework should recognise, reflect and support the changing funding mix of universities. There is therefore an urgent need to undertake a nationwide analysis of the current regulatory environment for commercial activities in public sector universities and to determine an appropriate and consistent regulatory framework for commercial activities in higher education institutions.

RMIT recommends that the Commonwealth Treasurer, supported by MCEETYA, establish terms of reference for the Productivity Commission to inquire into and provide recommendations on an appropriate and nationally consistent regulatory framework for commercial activities in higher education
(including reflections on the potential content of any uniform cooperative legislation). Further, that the Commonwealth engage with the States and Territories to garner support for the process and commitment to the establishment of an implementation plan upon receipt and discussion of the report at the proceeding Ministerial Council meeting.

3. Would a trustee model assist university governing bodies to operate effectively? How can we continue to improve the governance of public universities? Which governance model will provide the most appropriate framework? Is there a benefit in developing models of best practice to further improve governance in universities?

The value of the trustee model of governance is not self evident. The trustee model as described in Building Better Foundations is largely consistent with the contemporary environment, with its quality assurance practices around governance and the ongoing engagement of stakeholders through regular forums and boards. It should be noted that a Board member will not cease to behave as a delegate by virtue of a change in title to Trustee, and the question will still remain as to the appropriate composition of the board.

If the Commonwealth is concerned with limiting the representation of internal stakeholders on the Board then Council would be composed solely of external individuals, who may or may not fully appreciate the complexity of the university environment, and are just as likely to act as delegates for their own interests. RMIT highly values the representation of internal stakeholders on the Council board for their practical insight into the likely impact of any council recommendation and their ‘frontline’ appreciation of the operational realities.

The Protocols already standardise governance arrangements through a one-size-fits-all approach that stifles the flexibility of the university and reduces diversity, while concurrently restricting the capacity of the universities to appropriately respond to their unique institutional mission through appropriate representation. Further attempts to impose a one-size fits all approach to governance could create a reactive and risk-averse governance culture in Australian higher education.

RMIT recommends that individual institutions be empowered to determine their own governance processes within the broad framework of the National Protocols in order to allow for appropriate expression of their institutional mission within the governance domain.

4. Is there a need for greater national consistency for Higher Education Providers in areas where their activities are regulated by general purpose legislation of the relevant jurisdiction? (E.g. privacy, financial management and audit, consumer protection, industrial relations).

General

As noted by the AVCC in Room to Move, Commonwealth and State regulation of universities (2005),

“Universities operate in a wide range of areas making them very distinctive in the range and extent of legislation to which they are subject. Each piece of legislation has some rationale, indeed a strong rationale in many cases, but collectively they inflict on universities a massive administrative workload to ensure compliance”.

RMIT supports the assertion that there is a strong rationale for much of the State based legislation, yet also recognises the need for greater national consistency (in both definitions and applications) in areas of commonality across the States and Territories (acknowledging any potential State specific concerns). This common framework is necessary to ensure a more level playing field, streamlined regulatory processes and a clear and transparent regulatory framework.
RMIT believes that the most appropriate approach to achieving this consistency is through dialogue between States, the Commonwealth and public higher education institutions. This dialogue would be undertaken with the specific intention of reaching a national agreement to establish common legislation in the States in areas where it is practicable and appropriate.

**Funding and Reporting**

It was observed in *Building Better Foundations* that public higher education institutions have consistently requested a reduction in requisite reporting from the Commonwealth. The capacity and/or the willingness to reduce the reporting burden has not been apparent in Commonwealth funding arrangements, which has evidenced reporting creep despite reductions in overall funding. These arrangements have done little to reassure RMIT that the best way to reduce the current regulatory burden is to place State legislative authority in Commonwealth hands. RMIT supports reduced reporting requirements and urges both the Commonwealth and State Governments, in dialogue with universities, to find appropriate ways to reduce the reporting burden of universities.

The need for a reduction in public universities’ reporting burden is a particularly pressing issue for dual sector universities, which are subject to two separate sets of funding and reporting requirements. Both State and Commonwealth Governments have a responsibility to minimise unnecessary reporting requirements imposed on Australia’s public higher education institutions, and particularly Australia’s dual sector institutions. This will allow institutions to maximise the resources available to undertake their core teaching and research functions. This should be a priority for both the Commonwealth and the State (in relation to TAFE) in light of increasing demands for productivity and efficiency gains in the sectors.

Finally, RMIT is particularly concerned with the issue of State taxation of universities. According to the Commonwealth issues paper, RMIT had a net outflow to the State of $8.1 million and $6.7 million in 2002 and 2003 respectively. This is a significant impost at a time when the Higher Education sector is being required to diversify and compete locally, nationally and globally with an increasing number of overseas and private providers.

The ongoing financial viability of RMIT and other public institutions in an environment of reduced government funding is dependant on its capacity to diversify its funding sources, minimise costs and concentrate on its core functions without being burdened by inefficient and onerous reporting and compliance requirements.

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5. Is there a need for national consistency between jurisdictions in recognition of universities and accreditation of higher education courses and qualifications? Would there be benefits in bringing the National Protocols under Commonwealth responsibility? If so, would a national regulatory body be an appropriate mechanism through which this could be undertaken?

In light of the Bologna process and other regional agreements, national consistency in recognition of universities and more particularly, in accreditation of higher education courses and qualifications is no longer optional, but rather an imperative of the global education market. The existence of a transparent, national approach to accreditation and the clear regulation of university branding are critical to the reputation of the Australian university in the global market. This process would reassure potential students of the application of consistent quality assurance processes and would provide a clear demarcation of recognized courses and institutions. Further, a nationally consistent accreditation process will be essential if Australia is to move to implement a national credit transfer system, a key marketing tool of the Bologna process. The absence of a consistent national accreditation system is currently one of the impediments to a national credit transfer system.

A key issue remains as to how to best ensure the viability of such a system, where, according to the Commonwealth, the prevailing State interpretation and administration of the protocols have proved inadequate. RMIT therefore supports the establishment of an autonomous national regulatory body as outlined in Craven Phillips and Wade (2005) Regulatory Frameworks and Government Responsibilities for a Diverse Higher Education Industry. Such a system would ensure the effective separation of accreditation and funding, which, in turn, may act to deter incumbent governments from utilizing conditional funding as leverage for further intervention in the autonomy of an institution in determining the composition and creation of courses and qualifications. This is particularly important in the current climate of Commonwealth intervention premised largely on the primacy of vocationally based higher education and which is largely indifferent to broader educational goals, and regional/community specific needs.

An autonomous structure would present a positive approach to prevent State/Commonwealth conflict around divesting State authority in this area. The governance of such a structure could be determined by the State in conjunction with the Commonwealth and public higher education institutions, and thus reassure both States and higher education institutions that the transfer of authority would not result in a decrease in the autonomy of public higher education institutions. Therefore, despite potential hurdles around possible lags in establishment and costs, such an approach would increase the probability of successful implementation of a national system, which, as noted above, can no longer be viewed as optional.

RMIT recommends the immediate commencement on the establishment of an autonomous national regulatory body with overarching responsibility for national accreditation and quality assurance functions for the higher education sector in Australia.