

Managing university reputations

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Abstract There has been a failure to recognise the effects of commercial pressure on university administration, and a failure to recognise the different and incompatible goals of commerce and education. To the extent there is conflict and competition between the goals of education and commerce, short term commercial considerations seem to be paramount. Reputation management which brings short term commercial success includes suppression of dissent and criticism, and the covering up of misconduct and wrongdoing in universities. Reputation management which allows dissent and criticism leading to the exposure of wrongdoing, and then allows reform of university administrations, results in longer term improvement in the achievement of educational goals. A long term reputation for integrity may come at a short term commercial price. The competition for Asian students studying abroad has resulted in the compromise of standards of university integrity, and has spawned some spectacular financial losses on overseas campuses.

Key Ideas

- Universities have changed significantly and now compete in a global market for fee paying students, however the university systems of administration have not yet adapted to the new challenges and risks.
- University internal justice systems are focused on the protection of the university's reputation rather than on protecting the integrity of the university, or the human rights of students and staff.

Discussion Question 1 Should the right of a university to protect its reputation from criticism or damage be limited by ethical considerations?

Discussion Question 2 Do universities need a national independent judicial tribunal for issues of conduct and integrity in tertiary education?

Introduction

This conference is being held in New South Wales (NSW) where universities are statutory authorities delivering tertiary education on behalf of the government. In the Australian federal system tertiary education funds come largely from the national government but universities are administered by the states through state enabling legislation.

Older British universities have a system of colleges linked to professions and a 'court' whereas NSW universities were established relatively recently by legislation as arms of government, usually overseen by a Council with 20 to 30 members. The independence of universities includes an internal justice system administering university codes and policies within the framework of State and Federal law. The governance framework for Australian universities was reviewed by Coaldrake in 2003 'Issues in Australian University Governance'.*

There are very few other large organisations with independent internal justice systems in Australia. Religions and the military are two notable examples with universities and the military having publicly funded internal justice systems. The universities internal justice systems now cover hundreds of thousands of individuals in Australia.

The two major developments in Australian universities which in my view dominate how universities manage their reputations are commercialisation, and the recruitment of overseas students. These are overlapping priorities in that overseas fee paying students provide a large proportion of the revenue of some universities. To deal with overseas students and commercial enterprises some universities create 'controlled commercial entities'.

Controlled commercial entities are often incorporated companies where the university is the only shareholder. The commercial entities best illustrate the tensions in university administration where both the Corporations Act and university policies co-exist and where academic and commercial reputations compete.

Within increasingly commercialised universities there has been a reduction of staff tenure to 3 to 5 year employment contracts awarded on merit. The focus on the short term financial success of the university is matched by the short term employment roles. Longer term educational, research and academic performance are of diminishing relevance.

Some NSW universities are substantial financial entities with turnovers of about A\$1,000,000,000 per annum. A \$20m per week organisation is significant in NSW and collectively universities are a substantial sector of the NSW economy. Recent press reports regarding the treatment of Indian students in Australia have suggested "The international education sector, worth more than \$15 billion a year, is Australia's third-largest export earner behind coal and iron ore." (Sydney Morning Herald 31 July 2009)

* Referencing liberties have been taken and no formal system adopted in this discussion paper. Where searchable phrases and terms are not the author's they are referenced with quotation marks 'terms'. Where readers are referred to further reading the author surname and searchable title (in italics) are given as part of the text. Extended quotes are also in italics and double quotation marks "quote".

The recent media coverage of Indian students has included headlines such as "India losing interest in our universities, say agents" stating in part "Since the controversy began, they say inquiries by students wanting to study at Australia's top tertiary institutions have halved." (SMH 31 July 2009) The reports claim the 20,000 Indian university students studying in Australia each spend up to \$30,000 a year in university fees and contribute about \$2 billion to the Australian economy.

University education abroad is now a competitive international marketplace with Australian universities competing mainly with Canada, USA, Britain and New Zealand for fee paying enrolments of Asian students. Australian universities receive government assistance in promotion and marketing to foreign students, and some institutions are financially dependent on fee paying overseas students.

Reputation

The hierarchy of university reputations covers all levels from the national reputation of 'Australia's third-largest export earner' to the reputation of individual staff. Managing university reputations was reviewed by Roberts in 2007, 'Reputation Management for Universities Working Paper Series No 2, University League Tables and the Impact on Student Recruitment'. One major measure of a university's reputation is its ranking on national and international league tables.

League tables are a good introduction to the issue of the media and its role in university reputations. Newspapers and other media outlets often develop their own league tables and commentary from published psychometric and other university performance data. In coverage of recent issues in Australia involving Indian students, the Indian media has proved to be fearlessly outspoken in defence of students' rights.

Universities invest heavily in marketing an image, brand and profile to prospective students and staff. Reputation management includes a range of proactive and reactive strategies and investments. In Australia as an example of proactive marketing, one university runs a series of heavily branded annual schools assessments domestically, and in key foreign markets, resulting in millions of school age children being exposed to university promotional material from the age of eight years.

A key and unusual aspect of the management of universities' reputations are the links between collective and individual reputations. High profile successful researchers and academics enhance a university's reputation and there is competition to attract the best academic staff. Universities gain financially in a competitive commercial environment from high profile staff and the publicity surrounding research success.

Where universities are quick to benefit from individual staff reputations and their research and teaching efforts, adverse individual reputations can damage universities. Scandals usually involve the conduct of one or a few rogue university staff, but the damage can be widespread and the cover up can be the major component of the scandal.

Legal Framework

The state of NSW has adopted Equal Employment Opportunity (EEO) principles and has legislation regarding EEO and discrimination. It is notable that Australia does not have a Bill of Rights but is a signatory to the United Nations 'Universal Declaration of Human Rights'.

The UN Universal Declaration of Human Rights (1948) states in part: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law", (preamble) . . . "Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law . . . Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

There are also a number of legal principles applying to the administration and governance of universities such as the principles of 'Natural Justice and Procedural Fairness' and some universities quote these principles on their websites. The controlled commercial entities of universities are also subject to Corporations Law in Australia and there are NSW and Australian government policies including 'model litigant' policies binding on all government authorities.

Universities have traditionally been independent of government influence. In the case of NSW for example there is limited access by the state police force to university campuses, and there is often an internal university security force of university employees. The principles of academic freedom and independence assume that universities are largely free of commercial consideration and that universities have standards of conduct higher than the general community. University staff hold positions of public trust and the overall assumption is that universities require minimal oversight of both financial governance and staff conduct.

There are similar assumptions made regarding the conduct of the medical profession. The oversight of the medical profession is ill equipped to protect the community from rogue doctors such as Dr Harold Shipman in the UK who murdered hundreds of vulnerable people with impunity. There is a shared assumption of integrity for medical doctors, university staff and other professions and vocations. The commercial expansion of universities and 'promotion on merit' have tested these assumptions of university staff integrity.

Cases such as Dr Harold Shipman have highlighted an under-recognised risk that medical doctors and university staff can be the most accomplished of offenders based on high levels of education, skills, knowledge and experience. Dr Shipman was able to murder hundreds of people over decades without being caught because of both his position of trust in the community and the inadequate oversight of medical doctors (thoroughly documented by 'Dame Janet Smith' in the 'Shipman Inquiry').

High profile university staff operate with similar levels of public trust and impunity as that enjoyed by medical practitioners. Within universities the high level of trust results in a weak and secretive internal justice system often overseen by a single senior staff member. Senior university staff are often reluctant to get involved in the administration of justice and it may be left to volunteers to take control of

key roles in administering Codes of Conduct, Grievance Procedures, complaints handling and Protected Disclosures.

Internal university disputes spill over to the court system with no specialised tribunal as an intermediary step. If an internal dispute is not settled there may be an independent inquiry such as the 'Brennan Inquiry'. No matter how the disputes escalate they seem to move quickly to the Supreme Court and onto the Court of Appeal. Although the initial disputes may have been minor and should have been quickly resolved, the investigations, inquiries and legal battles can consume millions of dollars.

In NSW those with authority to investigate the conduct of universities include the Courts, the Administrative Decisions Tribunal (ADT), the NSW Audit Office, the NSW Ombudsman, the Independent Commission Against Corruption (ICAC), the Anti-Discrimination Board and the Human Rights and Equal Opportunity Commission. Universities operate nationally and internationally so the Australian government instrumentalities can also investigate universities.

The reputations of large universities are legally well defended. In the legal and government environments they are colloquially referred to as litigants with 'bottomless pockets'. Even the government oversight authorities have very limited resources compared to a large university. A litigant with bottomless pockets can silence dissent and criticism from most sources including the media, individuals, and even government authorities such as the NSW Ombudsman (NSW Ombudsman Annual Report 2005-06 p110) through legal action.

The sources of criticism which are less likely to be silenced by legal action include foreign media, the internet, parliaments, student groups and other entities which can resist pressure and retribution. Criticisms can start with disputes between university staff on relatively minor issues such as plagiarism, working employment conditions, discrimination, misconduct or favouritism. Issues between staff and students are often based on similar grounds with the addition of more of the abuse of workplace power issues such as sexual harassment, biased marking and intimidation.

University staff on short term employment contracts who criticise the university's administration or criticise other university staff risk retribution including the termination of their employment. This is particularly true when criticism is made of those in control of the internal justice system or those with close affiliation with those in power.

Response to Criticism

A primary function in maintaining the reputation of a university is to neutralise the negative impact of criticism. Criticism can come from various sources and can be aimed at individuals, groups of staff and students, or at the administration and governance of a university. Universities are subject to the laws of the state in which they operate but corruption and criminal activity are usually dealt with internally when university staff are involved.

Reactive investment in managing university reputations is seen in response to adverse publicity and media 'scandals'. The current government coordinated response to a series of violent attacks on Indian students in Australia is reactive management. The focus of the issues has however shifted from the assaults on

Indian students to the wider issues of corruption in tertiary education, particularly as it affects overseas students.

NSW universities have reacted to a number of scandals in recent years. The scandals have been wide ranging but are all consistent with inadequate oversight. Some of the headlines have included: 'sex for grades', grades for sale, sexual abuse of body parts by university staff, 'plagiarism scandals', prostitution rackets, immigration rackets, financial waste and mismanagement, and the 'UNSW Singapore campus'. There have also been scandals initiated by independent reviews such as the 'Brennan Inquiry', NSW Audit Office reports, Ombudsman reports and ICAC reviews and reports.

A consistent feature has been the failure of university internal oversight and justice systems to detect and rectify problems before they become public, despite repeated internal complaints. There is a mismatch between the regulatory and investigatory resources of universities and the sophistication of the wrongdoers. The increasing financial and other benefits and advantages available in universities is driving corruption in an environment which remains a safe haven for crooks.

Litigation is often a response to criticism. A search of caselaw on the NSW lawlink internet site in August 2009 gave 230 relevant judicial decisions when searched for "university in partname". A search on decisions by university name is only a guide to a university's total investment in litigation.

A search for individual universities in August 2009 disclosed the following numbers of judicial decisions:- 'University of New South Wales' 50 decisions, 'University of Sydney' 22 decisions, 'Macquarie University' 14, 'University of Newcastle' 9, 'University of Technology Sydney' 8, 'University of Western Sydney' 6, 'Charles Sturt University' 5 and 'University of Wollongong' 1 decision.

Indian students have also recently taken court action in Australia to try to protect themselves from exploitation by unscrupulous private education providers. Australian governments have been well aware of concerns about exploitation of foreign students for more than a decade but have not taken effective action. The failure of private commercial education providers in Australia is an example of collateral damage to universities' reputations.

The current interest in the disadvantage of Indian students in Australia will result in a further series of recommendations for reform. The issues currently being raised by Indian students and the Indian government are not new in Australian tertiary education but hopefully this new focus will result in meaningful long term reforms.

Competing and Conflicting Interests in Response to Criticism

Depending on the degree of commercialisation of a university, the commercial image and brand issues may be paramount over all other considerations of reputation and integrity. When a large proportion of university revenue is dependent on commercial activities such as foreign fee paying students, the focus tends to be on the commercial and employment consequences of damage to a university's reputation.

A university as an entity is governed by the Council, but in practice the servants and agents of the university take action, with or without the knowledge or approval of the university Council, and it is these actions of university staff which determine the reputation of universities, for better or for worse. Conflicting and competing interests include commercial interest versus integrity, university reputation versus individual benefit and advantage and cover up versus reform.

The standard public relations department response of 'spin, evasion and denial' is a short term cover up. A cover up is successful for as long as it lasts, but runs the risk of becoming the major aspect of the 'scandal' if the issue isn't 'killed'. Covering up an individuals' wrongdoing needlessly ties a university's reputation to the individual and their actions.

Enhancing and Promoting University Reputations

I have found it useful to try to describe the key factors in three words. The issue of child abuse by the clergy has been described as being supported by a culture of 'secrecy, deception and intimidation'. In my view all cultures which support the abuse of workplace power for personal benefit or advantage have 'secrecy, deception and intimidation' in common.

There is a substantial investment by universities in proactive promotion of university reputations and there are dedicated public relations sections producing a continuous feed of promotional material to the media on the achievements and breakthroughs by university staff. Advertising also plays a key proactive role in promoting universities with even employment advertising including promotional material. The promotion of courses is done through advertising, open days, media placement, etc. These are industry standard promotional investments.

An area where there is in my view often a lack of investment is in proactively avoiding the scandals which have caused so much recent damage to the reputations of NSW universities. The first issue is investing in counteracting the cultural features of corruption:

- Investment in transparency defeats secrecy – an open university welcomes independent review and implements advice from oversight authorities rather than shooting the messenger. A national tribunal on conduct and integrity in universities would end the bulk of wrongdoing by university staff and would add a risk of exposure and punishment to wrongdoing. A tribunal would also save millions of dollars of wasted public funds.
- Investment in honesty minimises deception – recruitment of university staff should recognise integrity and honesty as aspects of merit – it is in the collective interest of universities to resist the political response to criticism of 'spin, evasion and denial'
- Investment in equality avoids intimidation – I have campaigned for a national tribunal to handle conduct and integrity issues involving university staff. A tribunal would afford some equality to the more vulnerable groups in tertiary education such as foreign students and staff. Support for a public judicial tribunal on integrity and conduct in tertiary education would demonstrate a university's commitment to transparency and enforceable human rights.

A second major reform would be to remove the potential benefits and advantages which can result from wrongdoing. In universities merit selection has been introduced to an environment where most senior staff are in defined benefit superannuation schemes. This results in disproportionate financial rewards for promotion which can fuel undue and unfair competition for senior positions in an environment lacking objective measurable performance indicators, particularly in the senior administrative roles such as Vice Chancellor.

In a culture of corruption within a university the key roles are those deciding issues of integrity, conduct and complaints. A secret internal complaints resolution system allows retribution against whistleblowers and the protection of selected staff. Those in charge of university complaints systems have the added advantage of collecting 'dirt files' on prospective competitors for senior positions. Dirt files are also useful for exercise of covert political control.

True independence in university internal justice systems is vigorously resisted by vested interests. There is no reason why the key positions are held by university staff when a part time independent retired judge, for example, would be much better qualified, would do a better job, would educate the university community in legal matters and would free up expensive senior staff to further educational objectives.

Investment in sustainable long term reform of university administrative cultures will avoid future scandals and is in my view preferable to investing tens of millions of dollars per year on reactive protection of university reputations. A culture of corruption in one Australian university threatens the reputation of all Australian universities in an increasingly competitive international market.

Conclusion

My position for discussion is that universities should support an independent tribunal to deal with issues of integrity and conduct in Australian tertiary education. The reasons briefly are that many institutions do not have the human resources to implement an internal justice system adequately. The costs of an independent tribunal would be less than dozens of internal systems, and a tribunal would free up educational resources for education.

A tribunal would ensure at least some enforceable human rights for students and staff, and would demonstrate a commitment to equity and integrity. The reduction in corruption would stem the financial haemorrhage resulting from waste, mismanagement and maladministration in some institutions.

In my view an independent national tribunal would cost-effectively enhance the reputation of Australian universities, and distance the industry from the scandals involving the few rogues who inevitably get exposed in a multi-billion dollar industry employing over 100,000 staff. The current situation is dysfunctional largely because universities have failed to adapt to change.

The current system has resulted in a university litigating against the NSW Ombudsman and a university seeking to jail a former staff whistleblower for persistent criticism of the university. These are in my view abuses of power justified by the mistaken belief that a university's reputation can be protected by oppressing dissent and criticism. Oppression may benefit and advantage individuals but will damage the university's reputation in the longer term and extend the waste resulting from corruption.