

# NZUSA Submission on the Review of the Legislative Settings for University Governance.

## **Part I: Overview**

- NZUSA believes that the proposed changes are wrong-headed and unnecessary, and inconsistent with international norms and international best practice. They risk undermining the integrity and the robust decision-making processes that are currently in place.
- NZ tertiary institutions are doing well, despite a chronic shortage of funds. Further, the claim that ITPs have performed better financially since the governance changes imposed on them is not borne out by the evidence.
- From our analysis of current Council membership we believe that making Council membership “more flexible” will lead to Councils that are dangerously unrepresentative of the communities that they are meant to serve.
- We believe that Councils have the capability to govern universities through the diversity of perspectives that are currently represented on them. Further, we believe that students are the stakeholder with the greatest interest in the long term performance of the University.
- We note that there is no contradiction between the duties and accountability of a Council member to the institution and that of their responsibility to be an advocate and a representative, as is the case for those on the Councils of territorial authorities or Members of Cabinet.
- Finally, we set out some good practice guidelines that we believe would further enhance the ability of students to participate in university governance. These have been sourced from an independent research project into enhancing the student voice for quality enhancement.

## **Part II: Background**

The NZ Union of Students’ Associations (NZUSA) is an incorporated society that has represented the interests of tertiary students in New Zealand across successive eras of change since 1929.

We provide support including training and the sharing of good practice for local students’ associations and student representatives, including student representatives on Councils. This submission incorporates feedback from such student representatives.

NZUSA does not currently have a representative structure that currently incorporates taura at wānanga, because wānanga do not have independent rūpu. Accordingly, although much of this submission would also be applicable to the question of representation on wānanga councils, we have not addressed the particular nature of those institutions directly.

## **Part III: Responding to the Consultation Questions**

### **1. What do you consider are the advantages/disadvantages of this proposal to decrease the size of university councils?**

We believe that there is nothing to be gained by having smaller Councils than is currently provided for in the Education Act. In fact, in assessing what is best and common practice amongst the world’s best universities (using the top 200 ranked universities under the QS rankings) we note that the lower end of the Minister’s proposal would make New Zealand universities have the **smallest** governing boards of any (see appendix 1). There are no highly-ranked universities with such limits on the number of perspectives that they consider in their strategic decision-making. In marked contrast, MIT has 72, Oxford 23 and Cambridge 25.

The rationale used behind having a smaller council is that it would be more 'nimble' and 'efficient'. The Minister has cited the example of ITPs performance. Yet this is inconsistent with the evidence. The improved financial performance of ITPs was a result of the Quality Reinvestment Programme of \$200 million over a four year period from 2005. In fact, from the time that the governing boards of ITPs were restructured in 2010, the operating surplus actually *decreased*.

We believe that New Zealand society has progressed to the point where we recognise and acknowledge the fact that there is indeed a range of different perspectives and lived experiences throughout New Zealand society, such as those based on gender, culture, age, and ability. This recognition necessitates acknowledgment and accordingly creates a need for increased representation of the different groups in society, such as on university Councils. To move forward constructively we need to be forward thinking. This proposal does the exact opposite.

The proposal to decrease the number of seats on university councils is a backwards move that narrows representation and further privileges society's dominant view. Universities are institutions in which education, diversity and understanding are fostered and encouraged. This proposal challenges the legitimacy of universities to provide these things and may result in international questioning of New Zealand's universities. Further, the opportunity cost and loss of not providing for the rights and responsibilities of young people to participate in university governance is irreplaceable.

The Minister seems to suggest that smaller boards have been effective in business, and universities should follow their example. Yet there have been colossal failures in business for precisely the reason that there were insufficiently diverse perspectives at the Board table, and they became dominated by "group think" – more likely to happen within a smaller, less diverse, Council. From our investigations, even Council members with backgrounds in corporate governance see flaws in this proposal as they recognise having diverse members allows for stakeholder perspectives to be incorporated into decision-making, and this ultimately leads to better governance. The Institute of Directors has also noted small is not necessarily better and that it is not unusual for key stakeholders to be represented on governing boards, where it is acknowledged that their perspective is crucial for good decision-making. The Institute of Directors' own Board is appointed on the basis of regional representation.

However, more importantly, universities are not businesses, and have other objectives besides narrowly defined efficiency. These are codified in the Education Act under s159, as well as the terms of reference of Council. It is precisely because of the broad range of objectives that Councils must balance that they need to have a broad range of perspectives to contribute to their decision-making.

The disadvantage of smaller Councils is that there is less opportunity to canvass the wide range of experiences that contributes to the best decision-making. If the proposal is genuinely concerned about size, then ministerial appointees should also be reduced pro rata, proportionate to the size of the council. This too would, however, be regrettable. A smaller Council means that either stakeholders or people appointed to fill skill gaps, both of which serve different but equally important purposes, will have to be removed from the equation.

Given that the ministerial appointees will not be reduced under the proposal, there will be a greater influence exercised by the government on universities. This will seriously undermine institutional autonomy, and will make universities subject to the whims of the current government. This is totally unacceptable and will dramatically undermine the standing of the New Zealand university system. There are statutory obligations under s.161 of the Education Act 1989 that outline the independence of universities. A model similar to businesses would also prioritise short-term objectives for the government or the private sector (especially if Council becomes politicised) and undermine equitable objectives and academic freedom.

## **2. What do you consider are the advantages/disadvantages of this proposal to make council membership requirements more flexible?**

We are concerned that University Councils under the proposal will become dangerously unrepresentative of the communities that universities serve, and of the New Zealand population as a whole. The claimed desire for “flexibility” will, given past experience, dramatically reduce the likelihood that Councils comply with the current provisions of the Education Act (section 171 (4)) that University councils should seek to reflect the “ethnic and socio-economic diversity of the community served” by each institution. Councils must thus not merely *represent* various interests but should also be properly *representative* of the wider community (i.e. in terms of gender, ethnicity and social backgrounds).

Ministerial appointments and those that the Councils have chosen to co-opt are drawn from an extremely small sub-set of the necessary skills and experience needed to govern a modern university, in particular in ensuring that appropriate perspectives are considered. In contrast, it is those who currently make their way to the Council table via Court of Convocation, and staff and student elections who provide the necessary diversity.

Our investigation into the make-up of current Councils suggests that the Minister has not usefully contributed to University Council’s responsibilities under section 171 (4) (let alone lived up to his own responsibilities with respect to equity) to ensure diversity, with only 16% of his appointments being women (5/30), only one Māori and no Pasifika. Further, two-thirds of his appointments have been CEOs, Company Directors or Accountants, a further 20% are lawyers, all commercial, just four come from some other professional background. This despite the fact that more than 90% of the graduates from our universities will head into professions or vocations other than those he has drawn almost exclusively from. Notably, there has not been the same focus on STEM backgrounds in his appointments that the Minister has been trying to encourage from the Universities.

The preponderance of people with financial and legal skills makes no sense to us, since every university has considerable financial and legal skills on their permanent staff, or available to give independent advice, and which is regularly called upon.

Further, those who are co-opted to Councils to “fill skills gaps” tend to come from exactly the same backgrounds as those the Minister appoints, adding to the lack of diversity on the Councils themselves. Of the nineteen people co-opted on to University Councils fifteen are men, and only one is Māori. Eleven of the nineteen are CEOs, hold multiple-directorships or are accountants. Two are lawyers. Four Councils have however used this capability to ensure that there are perspectives at the Council table that reflect where their graduates will end up, co-opting a librarian (the University of Auckland), an educator (the University of Waikato and Lincoln University), and a veterinarian (Massey University).

The backgrounds of those who Alumni have chosen to represent their interests on the University Councils are quite different. They are an important community with a specific interest in ensuring the continued high standards of the institution and who are increasingly being called upon (along with students) to fund it in the face of cuts in government spending. They are more male than female, though not the same extent as the Minister’s appointments, at twelve males and six females. They are also almost exclusively Pākehā. Yet, their employment backgrounds are much more diverse. Less than twenty-five percent are from a commercial background, the same proportion as lawyers. Since there is some overlap, together they are close to the percentage of graduates with these qualifications. In contrast to the Ministerial appointments and co-options, they tend to reflect the areas of specialist focus of the institution: people from government and with a background in music at Victoria, a farmer at Lincoln, and an engineer at Canterbury. These are important perspectives to have on the governing board.

The current group of student representatives are far more male than female, at twelve to three, but are the most diverse of any category in terms of ethnicity: eight Pākehā, four Māori and three others (two Asian and one African). The gender imbalance seems to be one-off; in 2014 there will be eight males and seven females, the same as there was in 2012.

Staff representatives on Councils are also much more reflective of the diversity they represent. Thirteen of the twenty-eight (46%) women, and they also reflect the multi-national nature of the New Zealand tertiary education workforce.

For the most part, however, Councils achieve ethnic diversity only through the appointment of targeted representation. This is how the only person representing the Pasifika community gets on to a University Council (at AUT). There are nine Māori on university councils, which is far less than proportionality would require. When one considers that four of these are there as student representatives, and three of the remaining five are there by virtue of a position reserved for someone appointed in conjunction with local iwi, the dangers of a model based on “increased flexibility” become apparent.

All five of the Council members appointed in conjunction with an employers’ organisation are male, two of the five appointed in conjunction with an organisation representing employees are female.

### **3. What do you consider are the advantages/disadvantages of this proposal to require the Minister and councils to appoint council members capable of governing universities?**

We believe that the current membership of Councils provides for the broad range of skills and perspectives to enable for the institutions to be well-governed.

There are two features of the current composition that deserve emphasis in this regard.

- (1) By being able to appoint four members, the Minister of Tertiary Education can ensure that all councils draw together people with certain kinds of skills that might otherwise be lacking. At the same time, the Minister’s appointees will always be in a minority, thereby reducing the risk that the Universities will be subject to unwarranted government interference.
- (2) The composition is deliberately inclusive and representative with all important internal and external stakeholders in the tertiary sector – including academic staff, general staff, current students, former students, and relevant community bodies – having a voice on Councils. This representative model reflects the European (especially British) origins of New Zealand’s educational institutions, including the emphasis on institutional autonomy, academic self-governance and collegial decision-making.

It is precisely the range of perspectives that are important. If there are deficiencies in the skills set of an individual Council member – for example someone appointed on the basis of their financial expertise but with insufficient grounding in the particular nature and character of the University, then this should be dealt with through the availability of training and induction.

The rejection of the current representative nature in favour of “expertise” is also a rejection of democracy. It is ridiculous that secondary schools would continue to have elected student representatives but that tertiary institutions would not. Similarly, should parliamentary and territorial democracy be replaced (on a broader basis than just in Christchurch) by panels of experts?

We believe that there is no better system of representation than direct representation. Without the opportunity for people to choose their own representatives through election, there can be no genuine test or guarantee of representativeness – nor the direct accountability of those

elected to their electors. Hence, if direct staff and student representation on the governing body of universities were to cease, this would inevitably reduce the quality of representation, irrespective of how many other vehicles for management-staff/student dialogue, communication, etc were put in its place. Further, the loss of direct representation would eliminate an important, and arguably desirable, form of university accountability.

Staff and student participation in decision-making and direct representation of such groups on the university council are not necessarily the same thing. Direct representation carries with it certain powers and responsibilities, the on-going guarantee of involvement in decision-making and the subsequent accountability to those who one is seeking to represent. Participation in university affairs, by contrast, is rather different. The level and nature of this participation will depend on the decisions of the management team and may vary significantly over time. Equally, a right to be heard contains no formal entrenched right to decide.

It is true that students represent a set of interests and that at times these may conflict with management interests. This is inevitable in an entity that has more than one purpose and many stakeholders. It is not appropriate to deal with this difference by removing stakeholders. Removing representatives from the Council will not reduce the differences in views between students and University management.

Having student representation provides for debate, and an expression of different views on important issues of policy. Representation from key stakeholders provides many different areas of expertise allowing for more balanced and equitable decisions. Having a representative Council legitimises decisions made by that Council.

Of all groups, students have the strongest interest in the long term interests of the University. Students have a vested interest in the future reputation of the University as their future prospects and income are at risk if their degrees are devalued. More than any group, students trade on the future reputation of the University. Thus, students have strong incentives to ensure that they receive a high quality education and that resources are being managed effectively and efficiently.

### **Alternative ways to contribute a student voice.**

In the process of changing Institute of Technology and Polytechnic governance, a seat for a staff member and a student representative was included until the final stages of the passage of the legislation, whereupon the positions were removed.

It was disheartening for ITP students and their representatives to see that their voice was to be excluded from their institutions' highest governing bodies. This proposal to exclude students from university governance sends the same message: that the student voice is not valued.

In the wake of the changes in the ITP sector, it was commonly expressed by the proponents of the legislation and institutions that regardless of the fact that there would no-longer be an ex-officio student position on the Councils, awareness of student issues and knowledge of how to effectively communicate and engage with students remain to be of high importance and would be included in the skills-matrix upon which Council members could be appointed. However, due to the fact that only one institution actually appointed a council member in a community representative position based on this premise (NMIT), it appears to be a cosmetic expression of interest in the student voice, rather than an explicit values-based commitment.

It was also said that effective student engagement was not defined by having a student seat on Councils; that genuine engagement is by necessity, deeper, and there are many ways to have the student voice feed into tertiary sector governance. However, the evidence from the ITP sector suggests that the promise of continuing to engage the student voice by alternative means is an empty one.

What we have seen instead is that with no incentive or assistance to be in touch with the student voice, a majority of institutions simply won't do it and if they do, it will be superficial.

When launching the Tertiary Education Strategy, the Minister suggested that "some people might call him old-fashioned" for believing that the most important stakeholder engagement, on a day-to-day relationship basis, for any tertiary education provider is with students, then staff, and then the wider community.

On the other hand some people might suggest the Minister is intent on councils losing sight of those number one stakeholders by seeking to exclude them from a seat at the top table of their institutions. Steven Joyce said he wants institutions to keep students at top of mind in everything they do, but if they are out of sight around governance and prevented from acquiring trusted skills, it is simply human nature that they won't be kept top of mind.

Students need to be returned to being involved as active participants in core decision-making processes. Some Institutes of Technology and Polytechnics directly circumvented student engagement in the setting of fees from the first year in which the ITP council governance changes were implemented by having the conversation and subsequently making the decision in closed committee. This practise is entirely inappropriate in the context of a decision which so directly affects the lives of students enrolled in the institutions in question.

The decision taken to ignore best practise and to exclude community, staff and student voice, flies in the face of current assurances that students will remain engaged as a priority stakeholder. If there is not a position on the Council for a student representative there is a substantial likelihood that students' issues will very quickly slip "off the radar" of other Council members and the institution's leadership in general.

#### **4. What do you consider are the advantages/disadvantages of this proposal to clarify the duties and accountabilities of individual council members?**

There has been an arbitrary distinction drawn between 'capability' and 'representation' – these are not mutually exclusive, in fact they can complement each other. No single individual can bring *all* the skills and perspectives needed for 'capable governance'; rather it is the amalgamation of sometimes subjective opinions and healthy debate that will result in the best outcome.

We note that on municipal Councils the regulatory framework (see appendix 2) acknowledges that Councillors have *both* the responsibility to be a representative and an advocate – for their wards, or for a particular community that they represent – and for the good governance of the Council as a whole.

There is no contradiction between being a representative and a Council member and the Councils are stronger and make better decisions through a membership that ensures that the necessary perspectives are present in their decision-making processes.

#### **Part IV: Further Observations**

##### **Good Practice**

Research confirms that student participation in the decision-making or governance level is valuable for learners themselves and for the organisations where they study (see Trowler (2010), Kear (2005) and Little *et al*, (2009)). This is supported and reflected in on-going work in Europe (Bollaert *et al*, 2007) and especially in Scotland (sparqs, n.d.).

The best practice for this participation is not from simply gathering student opinion; it is through the provision of an independent student voice. This independent voice *for* students

occurs where students have the capacity to collect and collate information from other students and work to represent the whole group rather than themselves or their associated groups. It is the focus of a major research project available from [www.akoatearora.ac.nz/studentvoice](http://www.akoatearora.ac.nz/studentvoice).

Although the tertiary landscape in Aotearoa/New Zealand is diverse, the research identified consistent features of good practice. Of pertinence at the governance level, these are the availability of a range of representative systems, with good links between them, and that students are resourced and supported so that they can undertake their work in a meaningful and knowledgeable way.

This research confirms that student representatives on Councils need to be seen as part of, and connected into a *system* of student representation, and that they need to be trained, given access to resources they can use to gather student opinion and perspective. It also identifies that the culture of listening to the student voice needs to be enshrined such that the student voice is legitimated, recognised and rewarded.

### **Current Practices**

We have identified, above, how canvassing student voice has failed at ITPs since the removal of student representation on their Councils. To some extent there is also a failure at universities under the status quo. Senate and Academic Board motions are debated and sent to Council but disregarded - it is therefore of absolute importance that robust debate can continue and there is a representative on Council holding others to account.

### **Rankings**

A major concern the Minister has raised is that New Zealand universities have been sliding in rankings. The above shows that current Council structures are not the obstacle towards high performance.

Instead, what has been an obstacle is persistent underfunding of universities. Evidence suggests that New Zealand universities are forced to operate at some of the lowest per student funding in the developed world. We have only half of the professional staff per student compared to Australian universities. These are all reasons, but not the size or composition of council, which would be a distraction from the real issue. The university is already operating at a level which is extremely efficient.

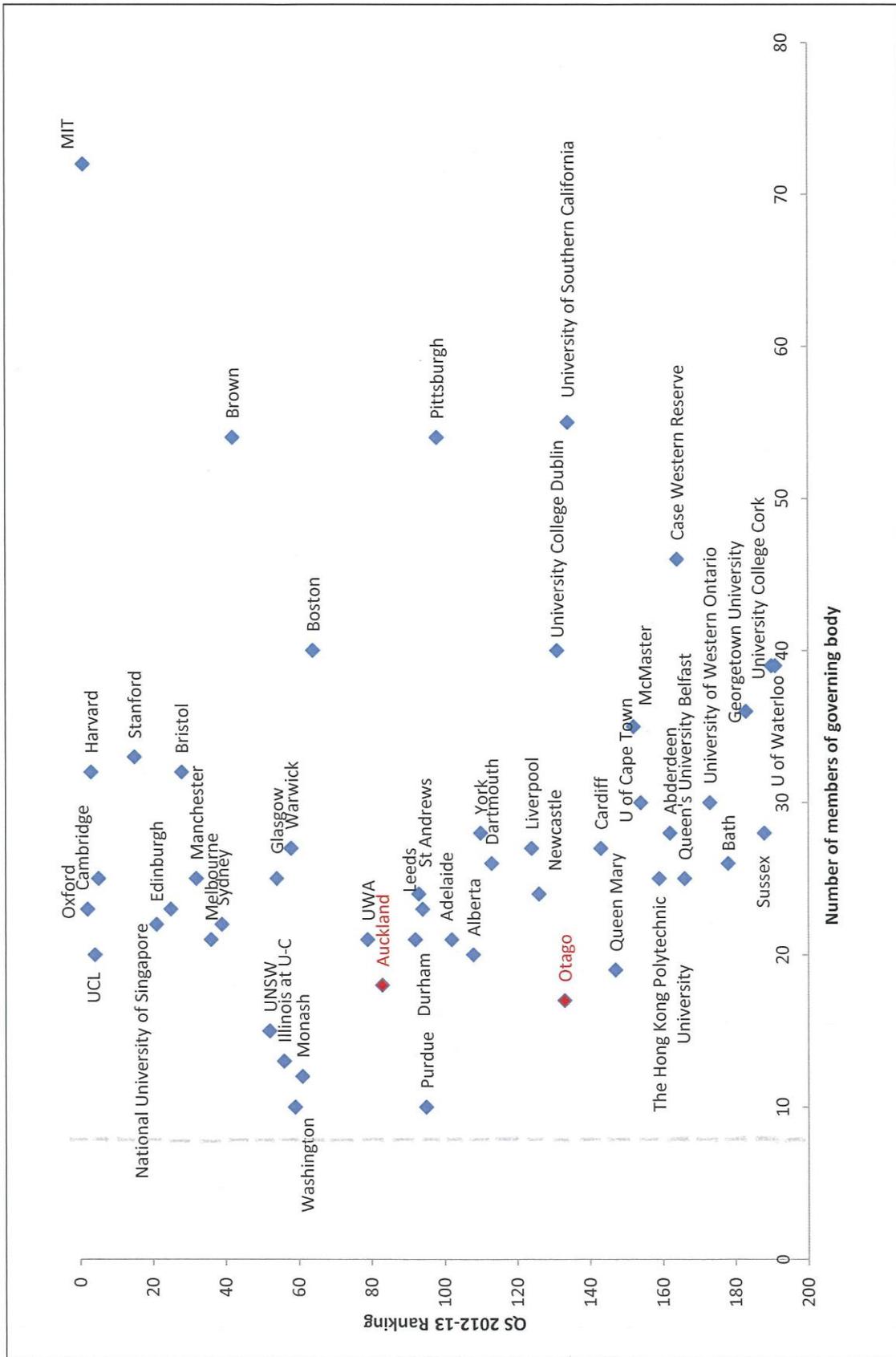
### **Alternatives**

The Minister already has a number of tools available for dealing with councils which are ineffective. This includes his own appointments, the ability for TEC to withhold funding for unsatisfactory performance and appointments of observers to the council under s 195C. As a last resort, the Minister may also dissolve councils and appoint a commissioner under s195D.

### **The Proposal**

The proposal is very vague. It has not provided evidence for its claims, nor is the proposal benchmarked against international norms and good practices. It does not explain how each proposed change would operate in practice when it becomes legislation. Moreover, the proposal appears to breach multiple sections of the Education Act, and each Council's existing terms of reference. There is a duty to provide detailed proposals and appropriate time-frames for review.

Appendix One:



## **Appendix Two:**

### **Councillor – Base role description**

#### **Collective duties of the council**

- Representing the interests of the council
- Formulating the council's strategic direction and relative priorities through the Long Term Council Community Plan (LTCCP), which determines the services and activities to be undertaken by council over a ten-year period
- Determining the expenditure and funding requirements of council activities through the LTCCP and annual planning processes
- Overseeing, developing and/or approving all council policies, administrative, legal, financial and strategic, including formal regional, city and/or district planning matters within the council's geographical area of responsibility
- Monitoring the ongoing performance of council against its stated objectives and policies (including formal sign-off of the Annual Report)
- Ensuring prudent use of council resources
- Law-making (bylaws)
- Overseeing council compliance with any relevant Acts of Parliament
- Employing, setting performance requirements for, and monitoring the ongoing performance of the council's Chief Executive. (Under the Local Government Act 2002, the local authority employs the Chief Executive who, in turn, employs all other staff on its behalf – elected members of council have no responsibilities for, and cannot direct, any staff employed by the council other than the Chief Executive.)

#### **Representation and advocacy**

- Bringing the views of the community into council decision-making processes
- Being an advocate for community groups and individuals at council meetings
- Balancing the need to advocate for specific interests against the needs of the wider community
- Listening to the concerns of local residents and ratepayers on issues pertaining to the council
- Maintaining contact with community representatives and other local stakeholders
- Participating in any relevant consultative processes with the local community and/or other organisations.

#### **Governance**

- Participating constructively and effectively in the good governance of the council as a whole
- Understanding and ensuring that basic principles of good governance are a part of the decision-making approach of the council
- Understanding and respecting the differing roles of Mayor (or Chair for a regional council), Deputy Mayor, committee chairs/portfolio holders and councillors
- Recognising that the governance role does not extend to operational matters or to the management of any implementation
- Having a good understanding of the council processes set out in the Standing Orders that determine how council meetings are run
- Developing and maintaining a working knowledge of council services, management processes, powers, duties and constraints
- Participating in the setting and monitoring of council policies, budgets, strategies and service delivery through annual and long-term planning processes
- Ensuring familiarity with agendas and other council reports before council meetings

- Being familiar with and complying with the statutory requirements of an elected councillor
- Complying with the Code of Conduct adopted by the council
- Identifying, being aware of and declaring any potential personal conflicts of interest, whether of a pecuniary or non-pecuniary nature.