

University councils, transparency and the Adelaide University merger

Accountability at Australia's public universities

Howard-era reforms to higher education have led to a lack of transparency and democratic accountability within the councils that govern Australia's public universities. These issues are epitomised in the proposed merger of the University of Adelaide with the University of South Australia, a case which shows why reform is needed.

Discussion paper

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Summary

In July 2023, the University of Adelaide and University of South Australia announced plans to merge. If the merger goes ahead, the new 'Adelaide University' will open in January 2026 and become the largest university in Australia, at least for domestic students. But the lack of transparency, including a refusal to release the business case for the merger, has led to a South Australian parliamentary inquiry.

The merger epitomises the governance problems that have engulfed universities across Australia since Howard-era reforms, including the 2004 *National Governance Protocols*. These reforms altered the composition and function of the councils entrusted with governing Australia's public universities, and introduced a requirement that a minority of council members have financial and commercial expertise. Councils were also made responsible for undertaking revenue raising and pursuing commercial activity. This raises fundamental questions about the purpose of Australia's public universities. These are public interest issues because councils make decisions about public money that is intended for public education.

This paper discusses two measures that would encourage transparency in university governance and ensure a renewed focus on education over profit:

- Requiring university councils to publish the minutes of their meetings;
- Ensuring that the majority of university council members are elected by university staff and students, and that they are drawn from candidates with expertise in education and the public sector.

The most effective way to ensure these reforms are effective is to amend the Acts of state parliaments that create and regulate Australia's universities. The Commonwealth Government's current review of higher education — the Australian Universities Accord process — presents another chance for reform. But, to be meaningful, the Accords need to be clear that the purpose of universities is education and research.

This paper also presents new polling conducted by the Australia Institute, which shows that the majority of Australians agree that the minutes of university council meetings should be made public, and that councils should focus primary on improving education for students. A separate Australia Institute poll presented in this paper shows that most South Australians want to see the business case for the proposed merger.

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Introduction

“Universities are not businesses, but [they] nevertheless manage multi-million-dollar budgets. As such, they need to be run in a business-like fashion.”
— Commonwealth Education Minister Brendan Nelson, 2003.¹

The story of Australia’s tertiary education system over the last two decades is one of ever-increasing commercialisation, and a prioritisation of business interests over academic ones. This industry has significantly increased in value. In 2000, education industry exports were worth \$4.1 billion, and by 2010, this had ballooned to \$18.7 billion.² Today, education is Australia’s fourth-largest export industry, worth \$26.6 billion in 2022.^{3,4} This is down from the historic high of over \$40 billion before the pandemic.⁵

The commercialisation of Australian universities arguably began with the Hawke government’s reintroduction of tuition fees, but the process really started in earnest with the Howard government’s *Higher Education Support Act 2003*⁶ and the associated *Higher Education Support Act 2003—Commonwealth Grant Scheme Guidelines (02/06/2004)*. Both pieces of legislation reflect that government’s deep ideological commitment to neoliberalism, a philosophy summarised neatly by Brendan Nelson in the quote above. The changes these Acts wrought to Australian universities—structural, cultural and ideological—are still being felt today. The proposed merger of the University of Adelaide with the University of South Australia is an exemplary case of how commercially-focused Australia’s universities have become.

¹ Nelson (2003a) *Our Universities: Backing Australia's Future*, Commonwealth of Australia, p 15, https://web.archive.org/awa/20040728090039mp_/http://www.backingaustraliasfuture.gov.au:80/policy_paper/policy_paper.pdf

² Australian Bureau of Statistics (2022) *International Trade: Supplementary Information, Calendar Year, 2022*, <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-supplementary-information-calendar-year/2022>

³ Australian Bureau of Statistics (2023) *International trade: Supplementary information, 2022*, <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-supplementary-information-calendar-year/latest-release>

⁴ Australian Bureau of Statistics (2023) *International trade in goods and services, Australia, April 2023*, <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-goods-and-services-australia/apr-2023>

⁵ Australian Bureau of Statistics (2022) *International Trade: Supplementary Information, Calendar Year, 2022*, <https://www.abs.gov.au/statistics/economy/international-trade/international-trade-supplementary-information-calendar-year/2022>

⁶ This Act replaced the *Higher Education Funding Act 1988*, which was previously the main legislation governing higher education in Australia.

THE HOWARD GOVERNMENT'S REFORMS...

Unlike other countries in which a profit-based model for higher education is firmly entrenched, the majority of Australia's universities remain public institutions: of the 41 accredited domestic universities, 37 are public.⁷ The governance of these universities is the responsibility of the state in which a university is based.

As such, the Commonwealth Government only has the direct authority to intervene in the governance of the Australian National University, which was created by an Act of the Commonwealth Parliament. However, while Canberra cannot directly legislate changes to state-based institutions, it nevertheless wields significant influence over their governance. This is because the Commonwealth Government is by far the largest single funder of the country's universities: in 2021, the most recent year for which data is available, total government funding for Australian universities amounted to \$20.2 billion, of which just \$836 million came from the states.⁸

This means that the Commonwealth can effectively hold universities to ransom by making continued funding contingent on implementation of whatever changes the Commonwealth Government desires. The Howard government did exactly this, making the receipt of funding contingent on compliance with Nelson's vision for universities as businesses, which was enshrined in the *Higher Education Support Act 2003*⁹ ("the Act") and the associated *Higher Education Support Act 2003 - Commonwealth Grant Scheme Guidelines (02/06/2004)*¹⁰ ("the Guidelines").

These Guidelines stipulated eight primary responsibilities for university councils, including a focus on commercial undertakings, which universities were required to incorporate. The Guidelines stated that governing bodies could not exceed 22 members, that they must include at least two members with "financial management expertise at a senior level", and at least one member with "senior level" commercial expertise.¹¹ They required "a majority of external independent members who are neither enrolled as a student nor employed by

⁷ Australian Government (n.d) *Study in Australia*, <https://www.studyaustralia.gov.au/en/plan-your-studies/list-of-australian-universities.html>

⁸ Australian Government (2023) *Finance 2021: Financial Reports of Higher Education Providers*, p 10, <https://www.education.gov.au/download/15003/2021-university-finance-summary-information/31457/document/pdf>

⁹ See April 2004 version, Section 33-15 of *Higher Education Support Act 2003*, Federal Register of Legislation, <https://www.legislation.gov.au/Series/C2004A01234>. Note that this act replaced the *Higher Education Funding Act 1988*, which was previously the main legislation governing higher education in Australia.

¹⁰ *Higher Education Support Act 2003 - Commonwealth Grant Scheme Guidelines (02/06/2004)*, Federal Register of Legislation <https://www.legislation.gov.au/Details/F2006B00696>

¹¹ Protocol 5, 7.5.35 of *Higher Education Support Act 2003 - Commonwealth Grant Scheme Guidelines (02/06/2004)*.

the higher education provider."¹² As a result of these changes all public universities were required to have a minimum of three council members with either commercial or financial expertise, and councils were made responsible for “approving significant commercial activities of the higher education provider.”¹³ These changes were designed to make Australian universities more commercialised, internationally competitive, and autonomous, and to give them “increased scope to raise revenue from diverse sources.”¹⁴

To be eligible for an increase in funding, universities had to implement the Guidelines’ stipulations. Unsurprisingly, all of Australia’s public universities did so, and similar policies were subsequently passed at the state level.^{15,16}

...AND THEIR LEGACY

Two decades later, the results of these reforms are clear to see. By the Commonwealth government’s own admission, “systemic issues persist across the higher education sector, including widespread underpayment of staff, suggesting governance arrangements could be improved.”¹⁷ Data from the Commonwealth Parliamentary Library shows that whereas in the year 2000 more than one-third of positions on university councils were elected, by 2020 it was down to one in four. Overall, there has been a 43% decline.¹⁸ The academics that have chosen to serve on university councils now sit with consultants and executives from the private sector, and there have been several cases in which academics have been pushed out for being critical of university governance.¹⁹

Notably for this paper, between 1991 and 2021 the University of Adelaide has gone from requiring eight academic staff to sit on its council, to just one. In the same period, the size of the council has halved.²⁰ The changes at the University of South Australia are smaller — in

¹² Protocol 5, 7.5.35 of *Higher Education Support Act 2003 - Commonwealth Grant Scheme Guidelines (02/06/2004)*.

¹³ Protocol 2, 7.5.5(h) of *Higher Education Support Act 2003 - Commonwealth Grant Scheme Guidelines (02/06/2004)*.

¹⁴ Nelson (2003b) *Speech, Pursuing Opportunity and Prosperity*, Media Centre, <https://melbourneinstitute.unimelb.edu.au/outlook/assets/2003/BNelson1.pdf>

¹⁵ See Jackson (2003) *Higher Education Support Bill 2003 (Bills Digest No. 56 2003–04)*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r1887

¹⁶ Section 33-15 of the *Higher Education Support Act 2003*.

¹⁷ Australian Government (2023) *Australian Universities Accord Interim Report*, p 115, <https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

¹⁸ Faruqi (2021) *The university of the future: higher education built on democracy and equity*, p 2, <https://greens.org.au/campaigns/uni-future>

¹⁹ Moore (2021) ‘Academy of Silences’, *The Saturday Paper*, <https://www.thesaturdaypaper.com.au/life/education/2021/11/27/academy-silences/163793160012955>

²⁰ See *University of Adelaide Act, 1971*, versions January 1991, and July 2021, South Australian Legislation, <https://www.legislation.sa.gov.au/lz?path=/c/a/university%20of%20adelaide%20act%201971>

1991 the council was required to have four elected academic staff, but this requirement is now just one — and the size of the council has reduced from 22-24 members to 15-16 members.²¹

Universities are characterised by a distinct lack of transparency in council-level decision-making. As noted above, universities receive a great deal of public money, and the way in which they spend that money is thus a matter of public interest. However, while councils are required to consider commercial and business interests, they are under no obligation to share their decision-making processes with the public. This is in contrast to most other government-created bodies. For example, the Reserve Bank of Australia regularly publishes the minutes of the Board meeting.²²

The problems that have been created by turning public education institutions into businesses are epitomised by the proposed merger of the University of Adelaide with the University of South Australia.

²¹ *University of South Australia Act 1990*, see versions 1991 and 2021, South Australian Legislation, <https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FUNIVERSITY%20OF%20SOUTH%20AUSTRALIA%20ACT%201990>

²² Reserve Bank of Australia (n.d.) *Monetary Policy Minutes*, <https://www.rba.gov.au/monetary-policy/rba-board-minutes/>

The Adelaide University merger

In July 2023, the University of Adelaide and the University of South Australia announced a plan to merge and become ‘Adelaide University’.²³ This came after years of on-again-off-again speculation about the merger, which has been considered since at least 2018.²⁴ It is reasonable to suggest that the state Labor government forced the two universities into the deal because, as part of their campaign for the 2022 election, they pledged to form a commission to look at how to make the merger happen.²⁵ After the Malinauskas Labor government was elected in March 2022, the two universities resumed merger negotiations²⁶ and, just over a year later, they announced their agreement to merge.²⁷ But, however significant the political pressure, the authority to approve the merger rested squarely with the councils of the two universities. The two universities involved have refused to make the business case for the merger public, arguing that it is “commercial in confidence”.²⁸ A South Australian Parliamentary inquiry has looked at various aspects of the merger, including governance.²⁹

Proponents of the merger argue that it will make money. This justification is telling in and of itself; surely the primary rationale should relate to academic standards. A press statement issued in July 2023 by the Office of South Australian Premier Peter Malinauskas—announcing that the South Australian government was planning to invest \$444.5 million in the merger—suggested that the new university would “generate an additional \$100 million

²³ Adelaide University (2023) *Adelaide University: A new university for the future*, <https://adelaideuni.edu.au/>

²⁴ ABC News (2018) ‘University of Adelaide and UniSA decide against merger’, *ABC News*, <https://www.abc.net.au/news/2018-10-23/unisa-and-adelaide-university-decide-against-merger/10418520>

²⁵ Malinauskas (n.d.) *A South Australian University Merger*, https://assets.website-files.com/5eec58442fe1bbc5463e0e44/6056d8af7eac7f0ebabd1ce9_Labor%20University%20Merger%20Policy%20Document.pdf

²⁶ ABC News (2022) ‘University of Adelaide and UniSA revive merger talks, with new combined uni pitched for 2026’, *ABC News*, <https://www.abc.net.au/news/2022-12-07/universities-of-adelaide-and-south-australia-move-to-merge/101746396>

²⁷ Richards et al (2023) ‘University of South Australia and University of Adelaide reach agreement to merge’, *ABC News*, <https://www.abc.net.au/news/2023-07-02/sa-adelaide-university-merger-deal/102547600>

²⁸ Kelsall (2023) ‘Not telling: Unis won’t name business case consultants’, *In Daily*, <https://indaily.com.au/news/2023/07/07/not-telling-unis-wont-name-business-case-consultants/>; In August, a 28-page ‘comprehensive summary’ was eventually released by the two universities, but it still excluded detail they considered to be ‘commercial in confidence’. See Joint Project Management Office (2023) *Feasibility Assessment*, <https://adelaideuni.edu.au/siteassets/docs/business-case-comprehensive-summary.pdf>

²⁹ Parliament of South Australia (2023) *Submissions open: joint committee on the establishment of Adelaide University*, <https://www.parliament.sa.gov.au/en/News/2023/07/11/01/31/Establishment-of-Adelaide>

in research revenue every year” and that, by 2034, it is forecast to contribute “an estimated additional \$500 million per year to the South Australian economy.”³⁰

Remarkably, despite pledging the best part of \$450 million to facilitate it, the South Australian government has been left in the dark about the details of the merger. The Department for Industry, Innovation and Science—which is responsible for higher education policy—was not consulted about the proposed merger.³¹ The Treasury Department has neither tested cost assumptions nor done a risk assessment.³² And Malinauskas himself admitted not long after the merger announcement that he had not seen the full business case for it: “The business cases are the properties of the universities themselves. ... the business cases are exclusively the work of the universities, and it is their intellectual property.”³³

The reason for the extensive secrecy is deeply intertwined with the two universities' business-minded approach to the deal. University of South Australia's Vice-Chancellor David Lloyd explained the extensive redaction of the business case by saying, “anything that's going to impact the competitiveness of the institution we're probably going to have to redact.”³⁴

Beyond the specifics of the merger, the Adelaide University situation illustrates several problems with university governance that extend beyond the two universities in question.

LACK OF TRANSPARENCY IN DECISION-MAKING

As noted above, the two universities involved have refused to make the business case for the merger public, arguing that it is “commercial in confidence”.³⁵ The University of South

³⁰ Government of South Australia (2023) *Historic agreement to create university for the future*, <https://www.premier.sa.gov.au/media-releases/news-items/historic-agreement-to-create-university-for-the-future>

³¹ Kelsall (2023) ‘Extraordinary’: No govt risk assessment of \$444m SA uni merger’, *In Daily*, <https://indaily.com.au/news/2023/08/09/extraordinary-no-govt-risk-assessment-of-444m-sa-uni-merger/>

³² Kelsall (2023) ‘No Treasury risk assessment of uni merger’, *In Daily*, <https://indaily.com.au/news/2023/09/05/no-treasury-risk-assessment-of-uni-merger/>

³³ Bevan and Feldhoff (2023) *ABC Radio Adelaide Breakfast*, Monday July 3

³⁴ Kelsall (2023) ‘Premier hasn't seen full uni merger business case despite huge funding pledge’, *In Daily*, <https://indaily.com.au/news/2023/07/03/premier-hasnt-seen-full-uni-merger-business-case-despite-huge-funding-pledge/>

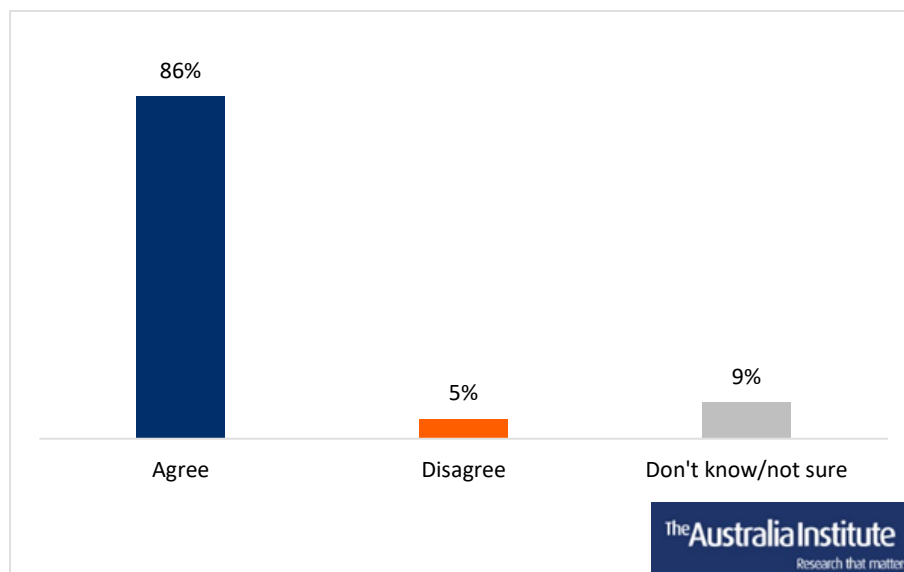
³⁵ Kelsall (2023) ‘Not telling: Unis won't name business case consultants’, *In Daily*, <https://indaily.com.au/news/2023/07/07/not-telling-unis-wont-name-business-case-consultants/>; In August, a 28-page ‘comprehensive summary’ was eventually released by the two universities, but it still excluded detail they considered to be ‘commercial in confidence’. See Joint Project Management Office (2023) *Feasibility Assessment*, <https://adelaideuni.edu.au/siteassets/docs/business-case-comprehensive-summary.pdf>

Australia’s council also refused the inquiry’s request to make public the results of the vote it held on the merger.³⁶

This raises serious questions about the motives behind the deal. Students, staff and the public may feel they have a right to know what the councils have agreed to and why — especially given the large amount of public money involved, and the fact that the merger’s viability apparently depends on that funding.³⁷ However, current legislation means that the councils are under no obligation to tell anyone what they talk about in their meetings. Is the merger in the best interest of staff and students? Is it in the interests of the public, and public education? It is impossible to say because none of the details of the council’s decision are available to the public.

Polling conducted by The Australia Institute between August and September 2023 asked South Australians to what extent they agree or disagree with the following statement: ‘The details of the business case for this merger should be made public.’ Figure 1 shows that 86% of South Australians agree that the details of the business case for this merger should be made public, including 44% who strongly agree.

Figure 1: Business case for the merger should be made public



Source: Polling of South Australians conducted by The Australia Institute (see Appendix for method)

A Freedom of Information Act request made by South-Australian-based news outlet *In Daily* led to the release of a heavily redacted copy of the minutes of the University of South Australia meeting during which the merger was approved. Only three of the 13 agenda

³⁶ Kelsall (2023) ‘Uni keeps ‘overwhelmingly positive’ merger vote secret’, *In Daily*, <https://indaily.com.au/news/2023/08/18/uni-keeps-overwhelmingly-positive-merger-vote-secret/>

³⁷ Kelsall (2023) ‘Uni merger in ‘unacceptable risk position’ without taxpayer funding’, *In Daily*, <https://indaily.com.au/news/2023/08/16/uni-merger-in-unacceptable-risk-position-without-taxpayer-funding/>

items—the meeting opening, acknowledgement of country and meeting closure—were unredacted, and the university claimed that making other details public would create “confusion and unnecessary concern” for the public,³⁸ and that redacting the majority of the council minutes satisfied the public interest test because releasing the information would “on balance, be contrary to the public interest”.³⁹

It is hard not to conclude that this approach reflects an attitude of two university councils that are focused first and foremost on business, and on which academic interests are not sufficiently represented. As the Australian Association of University Professors suggested in their submission to the South Australian Parliamentary Inquiry, “it is arguable that the proposal for a merger would not have reached the present stage had there been more appropriate governance drawing on academic experience and expertise.”⁴⁰

One notable detail that remained unredacted in the University of South Australia’s meeting minutes was that a representative of the consultancy firm Accenture was present.⁴¹ This is an example of how deeply involved consultants have become in the management of Australia’s universities.⁴² A few months later, the consultancy firm Deloitte was named as the “integration and transformation partner” contracted to manage the prospective merger. The Chief Executive of Deloitte Asia-Pacific, David Hill, was a member of the University of Adelaide’s council when it voted in favour of the merger.⁴³ Both Deloitte and The University of Adelaide have rejected any notion that this constituted a conflict of interest. Existing University of Adelaide regulations require council members to disclose conflicts of interest to the council, and any member of council with a “direct or indirect personal or pecuniary interest in a matter decided or under consideration by the council ... must not vote in relation to that matter.”⁴⁴

³⁸ Kelsall (2023) ‘REDACTED: UniSA blocks release of merger details’, *In Daily*, <https://indaily.com.au/news/2023/08/15/redacted-unisa-blocks-release-of-merger-details/>

³⁹ Kelsall (2023) ‘REDACTED: UniSA blocks release of merger details’, *In Daily*, <https://indaily.com.au/news/2023/08/15/redacted-unisa-blocks-release-of-merger-details/>

⁴⁰ Blackmore and Moore (2023) *Australian Association of University Professors Submission to the Joint Parliamentary Inquiry on the proposed merger of the University of Adelaide and the University of South Australia* (Submission 55), <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁴¹ Kelsall (2023) ‘REDACTED: UniSA blocks release of merger details’, *In Daily*, <https://indaily.com.au/news/2023/08/15/redacted-unisa-blocks-release-of-merger-details/>

⁴² Moore (2023) ‘The Big Four consultants have captured universities’, *The Saturday Paper*, <https://www.thesaturdaypaper.com.au/news/education/2023/06/17/the-big-four-consultants-have-captured-universities>

⁴³ Kelsall (2023) ‘Conflict concerns after Deloitte awarded uni merger contract’, *In Daily*, <https://indaily.com.au/news/2023/10/04/conflict-concerns-after-deloitte-awarded-uni-merger-contract>

⁴⁴ *University of Adelaide Act, 1971*, South Australian Legislation, <https://www.legislation.sa.gov.au/lz/path=/c/a/university%20of%20adelaide%20act%201971>

LACK OF ACCOUNTABILITY IN USE OF PUBLIC FUNDING

As noted above, Australian universities receive significant sums of public money. Like the rest of Australia's universities, both the University of Adelaide and the University of South Australia receive the largest portion of their funding from government. In 2021, the most recent year for which official figures are available, they received a combined \$1.1 billion dollars in Australian Government financial assistance, and \$34.9 million in state and local government financial assistance.⁴⁵

Public universities would not exist without this public funding, so it is entirely reasonable to say that the public should know what the councils that run universities do. However, their disclosure obligations regarding the use of that money are significantly less prescriptive than those applied to both other government bodies and private companies. As one commentator has noted, "If this was a proposed merger between two privately owned businesses, [a detailed business plan and other such information] would belong to the shareholders. But the two universities are public institutions, and the public of South Australia needs to know the answers because they are the losers if the merger fails."⁴⁶

Malinauskas has argued that "we [the South Australian Government] don't own the universities" and that "the universities' assets, including their intellectual property, are their own."⁴⁷ But, like every other public university in Australia, the Universities of Adelaide and South Australia only exist because the state government created them. Indeed, the proposed merged university can't exist until and unless the South Australian Parliament passes an Act to create it. As public universities are the product of state laws, it is disingenuous to suggest that the state government does not have the power and the right to see information about the decisions they make.

⁴⁵ Author's calculations; Department of Education (2023) *2021 Higher Education Provider Finance Tables*, <https://www.education.gov.au/higher-education-publications/resources/2021-higher-education-providers-finance-tables>

⁴⁶ Dodd (2023) 'Big questions go unanswered in SA's \$2bn university merger', *The Australian*, <https://www.theaustralian.com.au/higher-education/big-questions-go-unanswered-in-sas-2bn-university-merger/news-story/57e83e7c4128ae330433739ba98db52c>

⁴⁷ Bevan and Feldhoff (2023) ABC Radio Adelaide Breakfast, Monday July 3

Policy solutions

Commonwealth funding has not been contingent on compliance with the Howard-era Guidelines since the Labor party made an amendment to the law in 2008.⁴⁸ Despite this, all state governments have retained the changes to the composition and function of councils demanded by the Commonwealth Government in 2003. This means that the potential to reform university governance has been missed for 15 years. As the situation with the proposed Adelaide University merger demonstrates, this need for reform cannot be ignored any longer. The Australian Universities Accord, announced by Commonwealth Education Minister Jason Clare in November 2022, provides an opportunity to implement such reforms, and this section sets out our recommendations as to policy steps that should be taken to enact meaningful reform of university governance.

UNIVERSITY COUNCIL MINUTES SHOULD BE PUBLISHED

At present, there are no requirements—at the Commonwealth or state level—for any of Australia’s 38 public higher education providers to make the minutes of their council meetings public. Neither university staff, students, nor the public have the right to know the decision-making processes of the councils that govern Australia’s public universities. Just as this is a problem created by the policies discussed above, it is a problem that can be solved by amending those Acts.

Putting in place a legal requirement for the minutes of council meetings to be made public would immediately increase transparency and accountability, and also foster greater trust in our public universities. This would allow university staff, academics, and students, as well as the wider public, to be fully informed participating members of Australia’s public higher education institutions.

To begin with, the Tertiary Education Quality and Standards Agency (TEQSA), the regulatory agency for higher education in Australia, could enforce existing law. The *Higher Education Standards Framework (Threshold Standards) 2021* stipulates that university governing

⁴⁸ See the *Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008*, Federal Register of Legislation, <https://www.legislation.gov.au/Details/C2008A00089>; and the 2008 Parliamentary Library Bills Digest no. 74, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillsdgs%2FXTUP6%22>

bodies must “maintain a true record of the business of the governing body.”⁴⁹ While universities may be adhering to this, the Framework also states that governing bodies must “develop and maintain an institutional environment in which freedom of speech and academic freedom are upheld and protected, students and staff are treated equitably ... informed decision making by students is supported and students have opportunities to participate in the deliberative and decision-making.”⁵⁰ As the results of the National Tertiary Education survey discussed below shows, this is clearly not the case among staff at the two universities involved in the merger.⁵¹

A bill recently introduced in South Australia would explicitly ensure that university councils are more transparent and accountable to the public. The *South Australia Statutes Amendment (Universities) Bill 2023*, introduced by Greens Member of the Legislative Council Robert Simms in February 2023, proposes that an entirely new section relating to council meetings and minutes be added into the establishing Acts for all three public universities in South Australia. The bill also proposes that council minutes, including the notices and agendas of meetings, be accurate and publicly available. However, the bill includes an exemption from this requirement if the council considers it “necessary and appropriate” for defined reasons. This includes a ‘commercial in confidence’ justification, specifically if the council feels that doing so “could reasonably be expected to confer a commercial advantage on a person with whom the University is conducting, or proposing to conduct, business, or to prejudice the commercial position of the University.”⁵² This is exactly the reason the universities of South Australia and Adelaide have declined to present the business case for the proposed merger, and unless this bill goes further there would be nothing to stop a similar thing from happening again.

Policies regarding university council minutes have also been proposed at the national level. In her discussion paper *The University of the Future*, Australian Greens Senator Dr. Mehreen Faruqi suggests that “all members of a university community should have access to the decisions being made about them.”⁵³ She argues that “without transparency around university council operations and decisions, they [members of a university community] can’t

⁴⁹ Domain 6, Governance and Accountability of the *Higher Education Standards Framework (Threshold Standards) 2021*, Federal Register of Legislation, <https://www.legislation.gov.au/Details/F2022C00105>

⁵⁰ Domain 6, Governance and Accountability of the *Higher Education Standards Framework (Threshold Standards) 2021*, Federal Register of Legislation, <https://www.legislation.gov.au/Details/F2022C00105>

⁵¹ NTEU (2023) *Joint Committee on the Establishment of Adelaide University: NTEU submission* (Submission 9), <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁵² *Statutes Amendment (Universities) Bill 2023*, South Australian Legislation, [https://www.legislation.sa.gov.au/__legislation/lz/b/current/statutes%20amendment%20\(universities\)%20bill%202023_hon%20robert%20simms%20mlc/b_as%20introduced%20in%20lc/statutes%20amendment%20universities%20bill%202023.un.pdf](https://www.legislation.sa.gov.au/__legislation/lz/b/current/statutes%20amendment%20(universities)%20bill%202023_hon%20robert%20simms%20mlc/b_as%20introduced%20in%20lc/statutes%20amendment%20universities%20bill%202023.un.pdf)

⁵³ Faruqi (n.d.) *The University of the Future*, p 3, <https://greens.org.au/campaigns/uni-future>

be full participants in a democratic university. Live-streaming council meetings and promptly making meeting minutes accessible is the bare minimum needed.”⁵⁴

Models for greater transparency could also be drawn from universities in other countries. For example, the University of Turin (Italy) sets out in its General Principles a commitment to transparency based on the recognition that it is first and foremost a public entity.⁵⁵ The meetings of all its Collegial Bodies are held publicly—unlike in Australia, where under the auspices of commercial sensitivity such meetings are commonly held confidentially.⁵⁶

Adopting such a policy would not be a radical change: polling shows that doing so would simply reflect the opinions of university staff, students, *and* the public.

In the case of the prospective Adelaide University, most university staff, academics, and students are unsurprisingly concerned about the lack of transparency surrounding the merger. A National Tertiary Education Union survey of staff from universities in South Australia found that only 25% of respondents supported the merger, and 60% believed they had insufficient information with which to make an informed decision.⁵⁷ This lack of consultation continued right through to the announcement of the merger, which staff were first made aware of via an email sent on a Saturday night.⁵⁸

The majority of Australians agree that the minutes of university council meetings should be public. In polling conducted by The Australia Institute between August and September 2023, a nationally-representative sample of Australians were asked their level of agreement or disagreement with the statement that “the minutes of university council meetings should be made public”. Figure 2 shows that 80% of Australians agree that council meeting minutes should be made public, of whom 34% strongly agree.

⁵⁴ Faruqi (n.d.) *The University of the Future*, p 3, <https://greens.org.au/campaigns/uni-future>

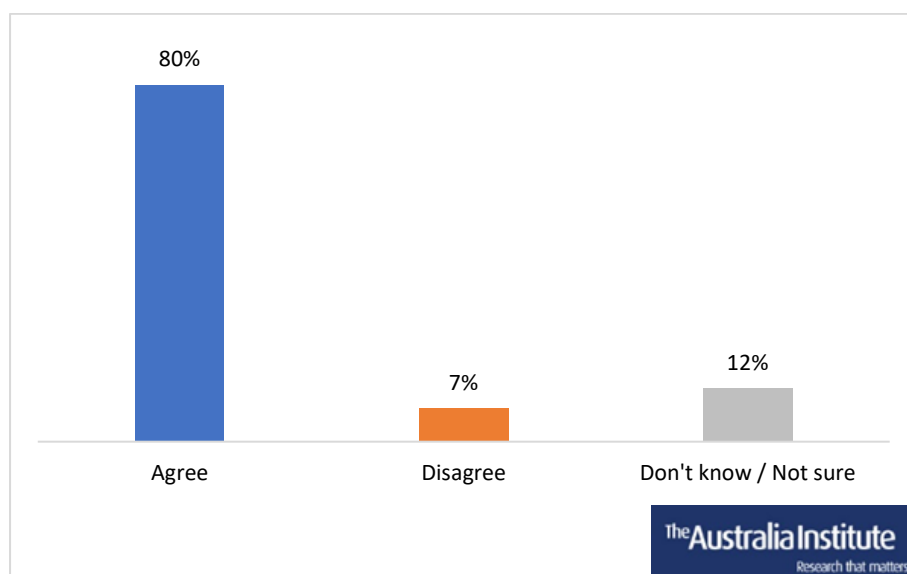
⁵⁵ Hil Thompsett and Lyons (2022) ‘Over the horizon: Is there an alternative to neoliberal university governance?’ *Social Policy*, https://socialalternatives.com/wp-content/uploads/2022/04/HIL-et-al-SA_41_1.pdf

⁵⁶ Hil and Connell (2022) ‘Raewyn Connell on why and how universities need to change, and soon: Interview with Richard Hil’, *Social Alternatives*, <https://www.proquest.com/scholarly-journals/raewyn-connell-on-why-how-universities-need/docview/2658311971/se-2?accountid=14757>

⁵⁷ NTEU (2023) *Joint Committee on the Establishment of Adelaide University: NTEU submission* (Submission 9), <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁵⁸ Kelsall (2023) ‘University of Adelaide, UniSA agree to merger’, *In Daily*, <https://indaily.com.au/news/2023/07/01/university-of-adelaide-unisa-agree-to-merger/>

Figure 2: University council minutes should be made public



Source: National polling conducted by The Australia Institute (see Appendix for method)

REFORMING UNIVERSITY COUNCILS

The composition of university councils should be reformed to ensure that they are more democratic, and that they primarily focus on education and research. In at least three places, the Universities Accord Interim Report states that “Australian governments should work together to strengthen university governing boards by rebalancing their composition to put greater emphasis on higher education expertise.”⁵⁹ This comes after the Howard-era reforms that stipulated that university councils must include members with commercial and financial expertise.⁶⁰

The Interim Report identifies a series of ‘Priority Actions’, the fifth of which is that “through National Cabinet, [the Commonwealth Government should] immediately engage with state and territory governments and universities to improve university governance, particularly focusing on ... membership of governing bodies, including ensuring additional involvement of people with expertise in the business of universities.”⁶¹

To do this properly, any new legislation must clearly define what is meant by the “business of universities”. Unless it is specified that “the business of universities” is education and research conducted in the public interest, and not increasing operating surpluses, there is no reason to expect a shift in focus. The Interim Report also states that “university

⁵⁹ Australian Government (2023) *University Accords Interim Report*, p 7; 30; 116,

<https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

⁶⁰ Chapter 7, *Higher Education Support Act 2003 – Commonwealth Grant Scheme Guidelines (02/06/2004)*.

⁶¹ Australian Government (2023) *University Accords Interim Report*, p 7,

<https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

governance could also be improved by drawing more members of governance bodies from people who deeply understand the functions of universities.”⁶² But unless it is clear that the ‘function’ of universities is education and research, there is no reason to expect this to be the focus.

The National Tertiary Education Union offers some ideas of how council membership could be reformed. It calls for a reduction in the “influence of corporate governance and executive power in our universities by reverting to a more collegial model of governance”⁶³ as well as for the development of “open and transparent mechanisms and structures that incorporate staff, students and local communities into their decision-making processes.”⁶⁴

Australian Greens Senator Dr. Mehreen Faruqi also has relevant ideas. She has asked if there should be “a minimum proportion of members of university councils from the university community that are democratically elected by staff and students.”⁶⁵ In South Australia, the *South Australia Statutes Amendment (Universities) Bill 2023* proposes changes to the composition of councils that would decrease the number of appointed members and increase the number of elected members. We agree that elected members should constitute a majority, and that a majority should have genuine expertise in higher education. The existing South Australian university Acts give considerable discretion to the chancellor and the council to determine who and how people are appointed and elected to the council. To give one example, undergraduate and postgraduate student members are “appointed or elected in a manner determined by the council.”⁶⁶ Unless these Acts are reformed to ensure the democratic election of the majority of council members, councils will continue to have the power to appoint their fellow members. The need for reform to how councils make appointments is clearly shown in the referral of the University of New

⁶² Australian Government (2023) *University Accords Interim Report*, p 19,

<https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

⁶³ MacDonald, McCarron and Barnes (2022) *2022-2023 Federal Budget Submission: An Alternative Future for Higher Education Policy*, p 5, https://treasury.gov.au/sites/default/files/2022-03/258735_national_tertiary_education_industry_union.pdf

⁶⁴ MacDonald, McCarron and Barnes (2022) *2022-2023 Federal Budget Submission: An Alternative Future for Higher Education Policy*, p 5, https://treasury.gov.au/sites/default/files/2022-03/258735_national_tertiary_education_industry_union.pdf

⁶⁵ Faruqi (n.d.) *The University of the Future*, p 2, <https://greens.org.au/campaigns/uni-future>

⁶⁶ *University of Adelaide Act 1971 (SA)*,

<https://www.legislation.sa.gov.au/lz/path=/c/a/university%20of%20adelaide%20act%201971>; *University of Adelaide Act 1990 (SA)*,

<https://www.legislation.sa.gov.au/lz/path=/c/a/university%20of%20south%20australia%20act%201990> In both acts, the requirement to consult with student associations when appointing or electing student members to council was taken out in the July 2005 versions, the same year the Protocols were introduced.

South Wales's to the NSW Independent Commission Against Corruption because of the way it appointed its vice-chancellor.⁶⁷

The *South Australia Statutes Amendment (Universities) Bill 2023* also proposes that appointed council members must “have qualifications and experience that, collectively, represent a reasonable balance across the public and private sectors.”⁶⁸ The bill does not propose to specifically delete the Protocol-era requirement for at least two council-appointed members to have senior-level financial management expertise, and at least one with senior-level commercial experience. There may be good reasons to include people with business and financial expertise on a university council, and having such expertise should not exclude someone from membership on a council. But, while a “reasonable balance” of qualifications and expertise from both public and private sectors seems justifiable, it does not signal a great departure from the original Protocols. Perhaps the two council members with financial management expertise and the one with commercial expertise should be elected by the staff and students that comprise a university, and not appointed. This would ensure that public and private sector experience could still be represented, but in a way that is accountable to university stakeholders.

The only way to ensure councils democratically represent the university community they represent and act in the public interest is for the Acts of state parliaments that create and regulate Australia's universities to be amended to ensure that the majority of university council members are elected by university staff and students, and that they are drawn from candidates with expertise in education and the public sector. As Constitutional law professor Luke Beck points out, “shareholders, who are the ‘members’ of a company, get to elect a company's board of directors. ... By contrast, the ‘members’ of the university do not choose university councils.”⁶⁹

Universities in other countries offer clear alternatives to Australia's approach to university governance. In her work *The Good University*, sociologist and University of Sydney Emeritus professor Raewyn Connell sketches several examples of better university governance informed by her experience working in seven different universities, including four abroad.⁷⁰ Instead of highly concentrated decision-making at the upper managerial level, Connell shows that university governance can be democratic and participatory. She cites “circulation of leadership, decentralisation of power, deliberative bodies, election of representatives,

⁶⁷ Morton (2023) ‘Exclusive: UNSW referred to ICAC’, *The Saturday Paper*, <https://www.thesaturdaypaper.com.au/news/education/2023/08/05/exclusive-unsw-referred-icac>

⁶⁸ South Australian Legislation, *Statutes Amendment (Universities) Bill 2023*, [https://www.legislation.sa.gov.au/lz/path=/b/current/statutes%20amendment%20\(universities\)%20bill%2023_hon%20robert%20simms%20mlc](https://www.legislation.sa.gov.au/lz/path=/b/current/statutes%20amendment%20(universities)%20bill%2023_hon%20robert%20simms%20mlc)

⁶⁹ Moore (2003) ‘The destruction of university faculties’, *The Saturday Paper*, <https://www.thesaturdaypaper.com.au/news/education/2023/08/26/the-destruction-university-faculties>

⁷⁰ Connell (2019) *The Good University: What Universities Actually Do and Why it's Time for Radical Change*, Monash University Publishing.

participatory decision-making, and inclusive discussions of policy” as ways in which the higher education sector could be democratised.⁷¹

In contrast to the Australian model, universities in other countries place a much higher value on experience in the higher education sector. At Maastricht University in the Netherlands, for example, the university council is comprised of 20 members, equally divided between students and staff (six academic staff and four support staff). These members are elected annually; students serve terms of one year, and staff serve terms of two years.⁷²

THE ROLE OF UNIVERSITIES

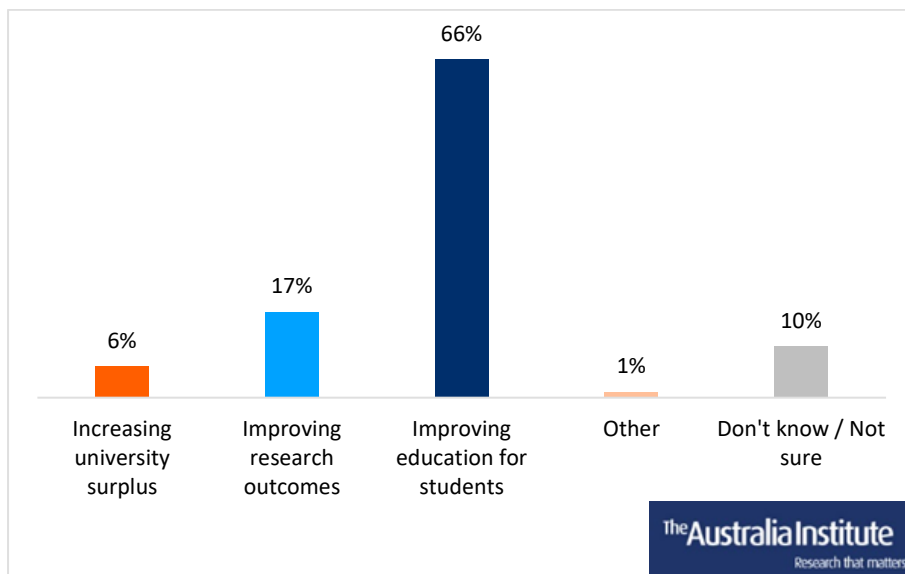
The debate around the Adelaide University merger reflects wider discussions about the role that universities should play in Australian society. Polling conducted by The Australia Institute between August and September 2023, a nationally-representative sample of Australians were asked to choose from a series of options as to what they felt the primary concern of university councils should be: increasing university surplus; improving research outcomes; improving education for students; other; and don't know/not sure. As Figure 3 below shows, two in three Australians (66%) think that improving education for students should be the primary concern of university councils. This echoes earlier polling conducted by The Australia Institute, which found that 83% of Australians were concerned about universities focusing on profit at the expense of education.⁷³

⁷¹ Hil and Connell (2022) “Raewyn Connell on why and how universities need to change, and soon: Interview with Richard Hil”, *Social Alternatives*, <https://www.proquest.com/scholarly-journals/raewyn-connell-on-why-how-universities-need/docview/2658311971/se-2?accountid=14757>

⁷² Maastricht University (2023) *Elections*, <https://www.maastrichtuniversity.nl/about-um/organisation/participation-representation/elections>

⁷³ Littleton (2023) *Public Attitudes on Issues in Higher Education*, p 2, <https://futurework.org.au/wp-content/uploads/sites/2/2023/07/Public-attitudes-on-education-FINAL.pdf>

Figure 3: Primary concern of public university councils



Source: National polling conducted by The Australia Institute (see Appendix for method)

Conclusion

Perhaps it is a good idea to merge the University of Adelaide with the University of South Australia. Perhaps the councils that run both universities are making a great decision that is in the best interest of all involved. However, as the councils are under no obligation to release the reasons behind their decisions, all anyone can do is guess as to what those reasons might be.

The air of secrecy with which the merger discussions have been conducted exemplifies fundamental problems with the way in which Australia's universities are run. These problems have their genesis in the Howard government's insistence on universities being seen as—and being run as—businesses. In 2023, Australia's universities are more business-focused than ever.

The university culture fomented by Howard-era reforms has become entrenched over two decades. There is no reason to expect that this will change unless there is government intervention to bring about change.

The Adelaide University situation demonstrates two measures that can and should be taken immediately to encourage transparency in governance and a renewed focus on education over profit:

- Requiring university councils to publish the minutes of their meetings. Legally requiring the minutes of council meetings to be made public would immediately increase transparency and accountability and instil greater trust in our public universities. This would allow university staff, academics, and students, as well as the wider public, to be fully informed participating members of Australia's public higher education institutions. As our polling shows, this is a move that the majority of Australians support.
- Reforming the composition of university councils to ensure that they represent the interests of the staff and students that comprise universities, and that their primary focus remains educational excellence. To this effect, the Acts of state parliaments that create and regulate Australia's universities should be amended to ensure that the majority of university council members are elected by university staff and students, and that they are drawn from candidates with expertise in education and the public sector. To ensure accountability, council members with financial management or commercial expertise could be elected rather than appointed.

Since the introduction of the National Governance Protocols in the early 2000s, public universities and their governing bodies have been increasingly shaped to resemble private businesses. The explicit requirement to have financial and commercial expertise and

external members on councils is a prime example of this change. Such requirements have increased the potential for greater focus on profit-generating activities and opportunities that are in line with corporate interests. This is happening in an environment of opacity, reduced public funding over time,⁷⁴ and increased reliance on revenue from international student fees.

The Adelaide University merger represents the logical conclusion of this process: it is driven by commercial interests, and so shrouded in secrecy that even South Australia's Premier has not seen the business case for the merger—despite agreeing to invest \$445.5 million of public money in the process. It also provides the impetus for the long-overdue changes needed to refocus Australia's universities on excellence in education, rather than excellence in increasing operating surpluses.

⁷⁴ Littleton (2022) *At the Crossroads: What is the post-COVID future of Australia's public universities?*, https://australiainstitute.org.au/wp-content/uploads/2022/04/At_the_Crossroads_-_FINAL_2.pdf

Appendix: Polling

Method

Between 29 August and 6 September 2023, The Australia Institute surveyed adults living in Australia and in South Australia, online through Dynata’s panel, with nationally representative samples by gender, age group and state/territory, and South Australian representative samples by gender and age group.

Survey dates and sample sizes are listed in the table below.

	National	South Australia
Month and dates	29 August to 1 September, 2023	29 August to 6 September 2023
Sample size	1,002 A further 406 South Australians and 127 Queenslanders were sampled to produce more precise results, but weighting was used to ensure that people from these states were not over-represented in national results.	605 The further 406 South Australians in the national sample are included as part of this SA sample.

Voting crosstabs show voting intentions for the House of Representatives. Those who were undecided were asked which way they were leaning; these leanings are included in voting intention crosstabs.

The research is compliant with the [Australian Polling Council Quality Mark standards](#). The long methodology disclosure statement follows.

Long disclosure statement

The results were weighted by three variables for the national results (gender, age group and state or territory) and by two variables (gender and age group) for the South Australian results, based on Australian Bureau of Statistics [“National, state and territory population”](#) data, using the raking method. Those who answered the gender identity question as “Non-binary”, “I use a different term”, or “Prefer not to answer” had their responses included with females for the purpose of reporting, due to constraints from weighting data availability. This resulted in an effective sample size of 1,138 for the national results and 575 for the South Australian results.

The margin of error (95% confidence level) for the national results is $\pm 3\%$. The margin of error (95% confidence level) for the South Australian results is $\pm 4\%$.

For the national data, results are shown only for larger states.

University councils, transparency and the Adelaide University merger

Voting intention questions appeared just after the initial demographic questions, before policy questions. Australian respondents were asked lower house voting intention only. For the South Australian respondents, lower house voting intention was asked first, followed by upper house voting intention. Respondents who answered “Don’t know / Not sure” for voting intention were then asked a leaning question; these leanings are included in voting intention crosstabs. “Coalition” includes separate responses for Liberal and National. “Other” refers to Independent/Other, and minor parties in cases where they were included in the voting intention but represent too small a sample to be reported separately in the crosstabs.



Detailed results

No preceding questions in the poll are expected to have influenced the results of the questions published here.

Government funding is the largest source of funding for public universities, which are owned by state and federal governments. Public universities usually have a university council, which makes decisions about how that university is run. To what extent do you agree or disagree with the following statement? ‘The minutes of university council meetings should be made public.’

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>	<i>SA</i>
Strongly agree	34%	37%	32%	37%	33%	32%	26%	31%
Agree	46%	45%	48%	47%	46%	46%	52%	48%
Disagree	6%	7%	6%	7%	8%	6%	4%	6%
Strongly disagree	1%	1%	1%	0%	1%	1%	3%	1%
Don't know / Not sure	12%	10%	14%	9%	13%	15%	15%	14%

	<i>Total</i>	<i>Labor</i>	<i>Coalition</i>	<i>Greens</i>	<i>PHON</i>	<i>Other</i>
Strongly agree	34%	35%	32%	32%	38%	38%
Agree	46%	45%	50%	48%	43%	38%
Disagree	6%	7%	6%	6%	4%	5%
Strongly disagree	1%	1%	1%	2%	0%	1%
Don't know / Not sure	12%	11%	11%	12%	15%	18%

The first three response options for the following question were randomised.

What do you think should be the primary concern of university councils?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>	<i>SA</i>
Increasing university surplus	6%	9%	4%	6%	5%	5%	9%	5%
Improving research outcomes	17%	17%	17%	21%	17%	16%	9%	16%
Improving education for students	66%	66%	66%	62%	65%	68%	74%	69%
Other	1%	1%	1%	1%	2%	1%	0%	2%
Don't know / Not sure	10%	8%	12%	10%	11%	10%	8%	8%

	<i>Total</i>	<i>Labor</i>	<i>Coalition</i>	<i>Greens</i>	<i>PHON</i>	<i>Other</i>
Increasing university surplus	6%	7%	6%	7%	7%	2%
Improving research outcomes	17%	20%	16%	15%	10%	12%
Improving education for students	66%	63%	69%	68%	68%	65%
Other	1%	1%	1%	0%	0%	4%

University councils, transparency and the Adelaide University merger

Don't know / Not sure	10%	10%	7%	10%	14%	17%
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The following question was asked only of South Australian respondents.

The University of Adelaide and the University of South Australia are planning to merge to become one institution. The South Australian Government has committed \$446 million in funding to the merger. To what extent do you agree or disagree with the following statement?

'The details of the business case for this merger should be made public.'

	Total	Male	Female	Metro	Regional
Strongly agree	44%	51%	37%	45%	43%
Agree	42%	37%	47%	41%	45%
Disagree	4%	5%	3%	5%	1%
Strongly disagree	1%	1%	1%	1%	2%
Don't know / Not sure	9%	6%	12%	9%	9%

	Total	Labor	Coalition	Greens	PHON	Other
Strongly agree	44%	43%	46%	39%	48%	52%
Agree	42%	42%	40%	51%	39%	35%
Disagree	4%	5%	4%	3%	10%	0%
Strongly disagree	1%	0%	2%	1%	0%	0%
Don't know / Not sure	9%	10%	9%	6%	3%	13%