



Coláiste na Tríonóide, Baile Átha Cliath
Trinity College Dublin

Ollscoil Átha Cliath | The University of Dublin

Initial Submission from Trinity College Dublin on
*Consultation Paper on Reform of
the Higher Education Authority Act, 1971*

Summary

Trinity College Dublin ('Trinity'), together with the other six universities in the Irish Universities Association (the 'IUA'), finds much with which it can agree in the proposals set out in the Consultation Paper issued by the Department. There are, however, significant elements of the proposals which appear to be at variance with the stated intent of this legislative initiative, as well as presenting fundamental difficulties from Trinity's perspective.

There is merit in bringing greater legislative definition to the engagement between the HEA and the institutions it funds, as well as properly facilitating the governance required to manage rapid change in the university sector. Similarly, Trinity fully subscribes to the principle that all Irish academic institutions should have a clear responsibility to operate in accordance with best practice, secure the best possible outcomes and account publicly for their performance.

We are also supportive of the ambition set out in the paper for a model that allows strong internal governance with a strengthened oversight and support role for the HEA of the sector as a whole. Unfortunately, the proposals set out in the Consultation Paper do not provide for such a model. The issues of concern highlighted in the response to the Consultation Paper by the IUA regarding the emphasis on control and the dangers created by an approach to regulation which unduly restricts the autonomy and flexibility of individual institutions are fully shared by Trinity College.

In addition, there are specific proposals in the Consultation Paper regarding the internal governance of higher education institutions which raise the most profound difficulties for Trinity. In particular, the specific shared governance model proposed in the Consultation Paper is unnecessarily prescriptive, given the stated objective of developing a culture of positive and effective governance and accountability within Irish academic institutions.

The proposed model of distinct executive, corporate and academic governance is one, but only one model and, in the experience of Trinity and many globally significant research-led institutions, not the most effective way of creating an appropriate relationship between the executive, corporate and academic dimensions of the life of a university.

Trinity College is deeply concerned that this highly prescriptive approach threatens to undo the characteristic structure and tradition of Trinity which has marked its flourishing and contribution to society since its foundation in 1592. It would be, to say the least, at variance with the stated intent to secure vibrancy and autonomy within the higher education sector if the proposed legislation had the effect of extinguishing the essential features of Trinity's legal structure and tradition. Moreover, we believe that this is not just a matter of terminating time-honoured traditions; it risks undermining a key to Trinity's strong performance in education and research as a globally significant institution which makes a remarkable contribution to national life and well-being.

In particular, the structure of College provides in its Board an explicit and effective approach to shared governance that combines the corporate, executive and academic strands. The Consultation Paper misunderstands the reality of strong academic and staff participation in Trinity's Board. While internal members are, for the most part, elected they function, not as sectional representatives, but bring their expertise and insights to the development of strategy and the direction of the University. In doing so, they mobilise the enthusiasm and vision of the academic community to perform to the highest standards in alignment with the goals of the University as a whole. Together with external members, they are not simply overseers of separate executive and academic activities but active shapers of thinking and decision-making in a structure which has served Trinity well over many decades.

It is, of course, right that governance arrangements and structures should be subject to critical review and, as has been the case in Trinity on a number of occasions, redesigned to reflect changing circumstances. It was precisely the recognition of the need for such

renewal that prompted the Board of Trinity to establish a comprehensive review of its own governance. The proposals emerging from our review process are fully capable of delivering the strong governance required to provide effective accountability and oversight, while strengthening the capacity for strategic leadership, without undermining the collegiate traditions and structures which are at the heart of Trinity's identity.

This initial submission elaborates on these crucial points and points towards a legislative settlement which can enable a renewal of Trinity's governance within its legal structures and traditions in ways that are consistent with the overall goals of the proposed legislation. The precedent created by the provision made in the Universities Act 1997 for a Private Bill to effect appropriate changes in Trinity's governance can again provide a basis for accommodating Trinity's legal structure and traditions within the framework of sectoral legislation.

1. Introduction

Trinity welcomed the establishment of the Department of Further and Higher Education, Research, Innovation and Science and now welcomes the opportunity provided by Minister for Further and Higher Education, Research, Innovation and Science, Simon Harris TD and his Department to contribute to this Consultation.¹

This submission represents an initial submission given the very short-time frame for consultation afforded.² We affirm the value of continuing regulatory dialogue and responsive regulation to inform optimal outcomes and the importance of further opportunities for stakeholder engagement as the proposals develop.

Aligning accountability with appropriate respect for autonomy is vital in a sector that is both established and evolving and is far from homogeneous in institutional make-up. Regulation must be carefully designed, and proportionality and fit are central when devising the extent and application of regulation. We believe that the success of this proposed measure as it develops will be measured by stakeholders across the higher education sector, and the nation at large, in terms of both anticipated and unanticipated outcomes. To avoid negative overreach in terms of impacts on effective institutional performance, much depends on employing deftness of regulatory approach and, where appropriate, flexibility of touch as the proposals take shape.

Responsive regulation recognises that a 'one size fits all' approach in legislation is not always the most suitable answer. A reflexive bottom-up approach recognises the value of

¹ Department of Further and Higher Education, Research, Innovation and Science *Update on the Reform of the Higher Education Authority Act, 1971: A Shared Approach* (February 19, 2021) <https://www.gov.ie/en/publication/46421-consultation-report-on-reform-of-the-higher-education-authority-act-1971/> (the 'Consultation Paper').

² The timeframe for responding to the Consultation Paper was just two weeks from 19 February to 5 March 2021 which did not allow us adequate time for appropriate levels of consultation with the many groups who have a legitimate interest in Trinity governance, including Fellows of the College, students, staff representative groups, and external stakeholders. This therefore represents an initial submission which may be supplemented by a further submission after further reflection and/or consultation has taken place.

continuing meaningful stakeholder involvement in determining regulatory fit. There is a great deal in the Consultation Paper. Reflecting upon it, this initial submission by Trinity highlights the critical importance of respecting Trinity's distinct legal structure and of recognising the value of its collegiate governance model. This submission is informed by a comprehensive internal governance review and reflection process that has been taking place within Trinity for more than a year now. Central to the work of the Board Review Working Group is recognition that an appropriate governance structure for Trinity "will be one that reflects its long and distinguished tradition of scholarship, and promotes its standing among the most successful research-led universities in the world."

2. General Observations on the Consultation Paper

- (i) Trinity affirms the value of transparency to underpin accountability for State investments, revenues derived from other funders including philanthropic donors, and fees paid by students;
- (ii) Trinity supports the importance of strong and transparent internal governance to underpin how universities function, including for Technological Universities as they continue to come on stream;
- (iii) Higher Education Institutions ('HEIs') are characterised as autonomous institutions within the Universities Act 1997, the Institutes of Technology Acts 1992 to 2006 and the Technological Universities Act 2018. Within the meaning of these Acts, as autonomous bodies they are responsible for their own day-to-day management and operational affairs;
- (iv) Trinity sees respect for institutional autonomy as fundamental to the success of higher education.;
- (v) Trinity considers that to be effective and beneficial, the proposed changes of

internal governance must be appropriate to how Trinity is structured and to best achieving good governance for it;

- (vi) In devising proportionate accountability frameworks Trinity believes that regard must also be had to the wider funding landscape in which HEIs operate including the diversity of models deployed to generate revenues. Exchequer funding covers only a minority (approximately 40%) of the operating costs of the College. This means that Trinity's Board must take on responsibilities for revenue generation while also optimally innovating and sensitively focusing on strategic direction within and beyond its core mission of education and research, without jeopardising that core mission;
- (vii) Governance is not only about accountability. Governance is usually taken to refer to supervision and monitoring on the one hand and setting strategic direction on the other. Trinity notes that a focus on oversight should not override the pivotal importance of having the institutional autonomy and governance composition to best identify opportunities to drive Trinity's national and global success and competitiveness;
- (viii) Legislative proposals should not inappropriately constrain a higher education institution in determining the scope of the functions of its governing bodies including its Academic Council (in Trinity, its University Council ('Council')) and Governing Authority (in Trinity, its Board);
- (ix) A regulatory strategy which is designed around a risk-based approach which is proportionate and fit for purpose should not extend beyond what is necessary to achieve its purpose;
- (x) Trinity affirms the governance value of its own internal Board review process and the appropriateness of integrating it within the proposed reforms by means of a Private Act.

3. The Legal, Organisational and Ownership Structure of Trinity College Dublin

The expressed aim of the proposed co-regulation model is “to ensure objective oversight and independence at institutional level. This will fully respect institutional autonomy but also provides for accountability and appropriate escalation of any issues not resolved at HEI level”.³ Getting the balance right is crucial in a co-regulation model. We strongly support the following principles expressed in the Consultation Paper:

- (i) the primary responsibility for governance of a HEI should reside within a HEI; and
- (ii) Institutional autonomy should be respected.⁴

It is vital to respect institutions’ chosen governing bodies and their functions and existing effective embedded practices that are clearly set out and that do fulfil good governance.

When setting out the general statutory framework for internal governance of HEIs the Consultation Paper does not expressly deal with the special legal position of Trinity. This arises by virtue of the additional relevance of its foundational and governing framework including its Charters and Letters Patent (as amended), the Trinity College Dublin (Charters and Letters Patent Amendment) Act 2000, and the Consolidated Statutes of the College and University (as amended) (‘Statutes’) which regulate the internal affairs of the College and provide for its governance structures. We contend that Trinity’s distinct context and legal heritage separates it from other institutions and demands careful attention in any legislative scheme.

First established by Charter in 1592 on the model of the Oxford and Cambridge Colleges, Trinity College Dublin is in legal form a body corporate or corporation with perpetual succession of the Provost, Fellows and Scholars of the College who in effect legally

³ Consultation Paper, p.5.

⁴ Consultation Paper, p.5.

embody the College.⁵ Later, in recognition of representation in governance, other members of Trinity's Board were added to this designation. The College Green site and adjacent lands were granted to "the Provost, Fellows and Scholars" and their successors in title in perpetuity by the Mayor and Corporation of Dublin on 21 July 1592. Trinity's governance in its Board is set out in the College Statutes and is based on a collegiate governance model involving election of members of the community to the Board, and pluralism underpinned by stakeholder representation.

Trinity has a centuries' old tradition of independence which has been respected by many governments over the years. That tradition cherishes academic excellence, education across the island of Ireland, freedom of thought and the views of the country's many minorities.

Over the decades, governments of many hues have adopted measures to respect Trinity's unique position in Irish life. Taoiseach Éamon de Valera was at pains to ensure Trinity's independence in the 1940s and this tradition continued into the 1990s and beyond. The reforming Universities Act 1997 (the '1997 Act') contained provisions which specifically permitted Trinity to be excluded from some aspects of the Act and allowed Trinity to institute its own reforms to the composition of its Board in order to preserve and respect the University's character and principles. Section 4(2) and (3) of the 1997 Act provided that certain sections of that Act would not apply to Trinity if within a three year period a Private Act was passed by the Oireachtas amending, in a manner consistent with the purpose and substance of those sections, the charters and letters patent under which Trinity College and the University of Dublin was incorporated. This resulted in a Private Act of the Oireachtas in 2000, initiated by Trinity, the Trinity College Dublin (Charters and Letters Patent Amendment) Act 2000 (the '2000 Act').⁶

⁵ The legal name of the College is 'the Provost, Fellows, Foundation Scholars and the other members of Board, of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin' (Section 2(2) on the Chapter on the Body Corporate in [the 2010 Consolidated Statutes of Trinity College and the University of Dublin](#)).

⁶ <http://www.irishstatutebook.ie/eli/2000/prv/1/enacted/en/print.html>.

Reflecting on the precedent of the 2000 Act, we advocate that it would be sensible for a similar mechanism that makes provision for adoption of a Private Bill to be included in drafting the scheme of the Bill under discussion in order to be sympathetic to Trinity's unique legal character when undertaking reforms. This would respect Trinity's distinct legal structure and enable Trinity's community to complete the internal reform process already in progress, and instigate those reforms as was done pursuant to the 1997 Act. This was successfully achieved in the 2000 Act.

Proceeding by way of a Private Act would allow Trinity the flexibility to make many of the changes proposed under the new legislation while retaining the collegiate governance structures that have served the University, the students and the Irish people well for centuries. Trinity's governance has been an important factor in its strong performance as Ireland's highest ranked university in all rankings.

Within a co-regulation model, the importance of respecting university autonomy and individuality is critical. While providing a framework to ensure good governance in the sector, the State must be careful not to undermine elements that already work well in Trinity and should take stock of internal reforms that are underway in Trinity detailed below. Otherwise the core objective to "maintain and enhance the reputation of the higher education sector, including international reputation"⁷ may not be attained.

4. Composition and Size of Governing Authority/Board

Given the responsibilities and fiduciary duties associated with being a member of a governing authority, a governing authority must be appropriately constituted. When formulating composition, board balance is a well-understood precept in corporate governance to aid optimal functioning and dynamics. An unbalanced board with the wrong make-up will not perform effectively in the range of its functions covering

⁷ Consultation Paper, p.4.

supervision, monitoring and strategy. Legislative intervention should avoid a prescription that assumes that a 'one size fits all approach' will operate evenly and uniformly across the HEI sector to improve governance. Similarly, it should respect the autonomy of a HEI to suitably organise and periodically review its governing authority's ability to effectively deliver good governance unless proven otherwise.

Any proposals that could indirectly significantly impede Trinity's stakeholder governance would be most unfortunate and undesirable both in principle and in practice as counter-productive in governance terms. Our experience is that Trinity's collegiate governance model works as a governance and accountability model. Trinity's experience of shared governance is not simply a matter of sharing out governance responsibilities through designating them as 'corporate' or 'academic' or 'executive'; governance is cross-cutting and all parts contribute to the mission of excellence in education and research.

For Trinity, providing for a majority of external representation would be contrary to long-established collegiate governance principles embedded in its Statutes. Having the collective buy-in of our College community to Trinity's governance gives it credibility and strengthens its effectiveness. All members of the Board make a declaration to act in the College's best interests and there is no evidence of elected members acting for vested interests. At the centre of this approach is a realisation of the importance of integrating stakeholders through democratic procedures of election.

Replacing Trinity's effective collegiate Board model with a very small Board with a majority of external members may have the potential to curb risk in an objective sense, but at what cost? Fellows of Trinity College have legitimately expressed the view that extreme care must be taken to avoid endangering the flourishing of this university to its full based on a tried and tested model of majority governance by internal members supplemented by the additional voices of a minority of external members chosen with reference to a Competency Framework approved by the Board. The world leader in governance, the UK Financial Reporting Council, highlighting the role of board culture,

has emphasised the importance of aligning mission, values and strategy in effectively achieving long-term sustainable performance.⁸ In Trinity a Board with a majority of external members would have its functioning impaired by the twin problems of a knowledge deficit and a representation and morale deficit.

The proposed size in the Consultation Paper of the Governing Authority composition of a maximum of 12 members goes far beyond the scope of the Technological Universities Act 2018 (the '2018 Act'). It is unclear what the impetus is for such a radical reduction in size. There is reliance in the Consultation Paper on the policy document *National Strategy for Education to 2030* published just over a decade ago in January 2011 concerning smaller governing bodies for HEIs.⁹ Subsequently, legislative preference in section 12) of the 2018 Act was for a more workable range of between 14-22 members which would enable more diversity while ensuring principles of composition are respected. We would suggest that this range is a more appropriate starting base for a Trinity Board. Trinity will be having further discussions at Board, and at the Board Review Working Group, on the position on the issue of size, but we believe that the size range in the 2018 Act could be acceptable to Trinity stakeholders in Trinity's governance, having regard to how Trinity is legally constituted and optimally functions for best performance and success across its education and research missions.

While acknowledging the potential to reduce Trinity's Board size and make other changes, to fail to allow a sufficient majority of internal members from among the Fellows and staff, as well as students, may indeed satisfy accountability but would not sufficiently enable the informed vision and insight of its staff needed for strategic direction as befits a university of Trinity's stature and ambition. We believe this deficit would not be remedied by the role played by Trinity's Council. Trinity's Board is not a mere supervisory Board, tasked solely with oversight and accountability. Pursuant to section 2(4) of the Chapter on Board in the College Statutes, Board is directed "to do all things necessary or

⁸ Financial Reporting Council, *Corporate Culture and the Role of Boards* (2016).

⁹ Consultation Paper, p.9.

expedient to further the objects and development of College” including those functions of a university contemplated in section 13 of the 1997 Act. For Trinity the discussion of strategic academic matters, and financial/corporate matters must happen together at the Board for a successful strategic plan to be devised, approved, and monitored to a successful conclusion. In relation to the proposals to vastly reduce the size of the Board and leave no more than 4 staff members, consultation is no substitute for a seat at the decision-making table of Trinity’s Board. Furthermore, affirming our commitment to stakeholder-inclusive governance, whose values we long share by tradition and experience, the suggestion in the Consultation Paper that “other participatory mechanisms can be provided to capture representational views which are compatible with good governance and accountability ... in the HEI”¹⁰ would be a retrograde one for Trinity given its governance model with rights of elected stakeholder participation set out in its Statutes.

Participating in leadership and risk management goes beyond formulaic accountability checks and balances. Trinity’s Board must understand Trinity from the inside out as well as from the outside in and be capable of dynamically steering Trinity in a globally competitive environment where risks and opportunities co-exist. We believe that the principles of competence and representation should be aligned and we support the value of a competence-based framework. This forms part of discussions on reforms through the work of Trinity’s Board Review Working Group.

Trinity does not believe that the proposed Ministerial appointment of external members to its Board with the approval of the institution represents best practice. We believe that a nominations committee of the Board should be tasked with the responsibility for finding suitably competent candidates for nomination, with reference to a Competency Framework approved by the Board.

¹⁰ Consultation Paper, p.16.

5. Reforms Initiated by Trinity College's Board

This Section outlines Trinity's current internal Board reform process. Section 3(5) of the 2000 Act allows its provisions relating to the Board of Trinity to be amended by the College's internal "statutes and ordinances for the governance of the College in accordance with the College's statutory procedures for such alterations and amendments" provided that such alterations must be consistent with "the purpose and the substance" of section 4(2) of the 1997 Act. Trinity is progressing a bottom-up approach in order to arrive at the right governance refreshment solution for Trinity. This process can be built on by the State in close partnership with Trinity in a Private Bill to ensure appropriateness of fit and buy-in within the Trinity community.

Establishment of the Board Review Working Group

Following a Board self-evaluation in accordance with Trinity's own Code of Governance, the Board decided to establish a dedicated Working Group to consider the key issues arising with a membership consisting of the Provost, Registrar, Board, Fellows,¹¹ other academic staff, students, alumni and an external Chair, [REDACTED]. The Board Review Working Group first met in November 2019 and reported to Board on a regular basis between January and June 2020 to update on progress and seek feedback on its work. Following the Working Group's progress update to Board in June 2020, a consultation process was launched to seek input and feedback from the College community to inform the Working Group's final report.

Below we describe the agreed outcomes to date of the Board Review Working Group's deliberations and consultations which include an entirely new Board-approved statement of (i) *Trinity's Governance Values and Principles* and (ii) *The Role and Responsibilities of Trinity's Board*. These were approved by the Trinity Board on 26 February 2020 and 22

¹¹ Fellows have prescribed rights of elected representation on Board under the College Statutes.

April 2020 and constitute the current thinking of Trinity on the purposes and objectives of the Trinity Board.

We then highlight key aspects of the current proposals that are at variance with the values and principles of governance required by Trinity, which we believe do not appropriately capture or align with the role and responsibilities of a Board of a leading research university operating under a collegiate governance model.

We begin by presenting the approvals granted by the Trinity Board regarding (a) Governance Values and Principles, and (b) the Role and Responsibilities of Board.

Statement of Trinity's Governance Values and Principles Approved by Board

Following discussion and feedback at Board, the text of the Values and Principles in Figure 1 below was approved by the Board on 26 February 2020 and is set out below. The intention is that all aspects of Trinity's governance structures and practice should be consistent with and judged against these Values and Principles.

Fig. 1 Statement of Trinity's Values and Principles Underpinning Our Governance as approved by the Trinity Board on 26th of February, 2020

Values and Principles Underpinning Our Governance

The mission of the University is¹²:

Civic Action - Through our teaching, research and public engagement, we courageously advance the cause of a pluralistic, just and sustainable society.

Organisation - We foster an effective and flexible organisation, which values all members of our community.

Research - Pursued at the frontiers and intersections of disciplines, our research benefits our students, Ireland, and the world.

Education – We challenge our students to think independently, communicate effectively, act responsibly, and develop continuously, equipping them for lives of active citizenship.

¹² Strategic Plan 2020-2025 as approved by Board

To that end, the following values and principles underpin our governance:

Governance Values

1. **Academic Freedom** - we preserve and promote the principle of academic freedom in the conduct of our internal and external affairs.
2. **Autonomy** - we value autonomy, allied with accountability, as the best way to advance our strategic mission in education and research, which benefits our students, Ireland and the world.
3. **Accountability** – we ensure full accountability to our diverse internal and external stakeholders, including students, staff, alumni, funders, government and local community.
4. **Engagement and impact** – our governance supports our strong record of contribution to society and provides a solid basis from which to shape our future impact in the world.
5. **Transparency** - we view transparency as essential to promoting confidence in our governance and decision-making.
6. **Collegiality and pluralism** - these values are grounded in our Statutes and informed by our unique legal structure.¹³ They are expressed in the participation in our governance by members of the Trinity community, whose range of experience and perspectives enhances the quality of our decision-making.
7. **Integrity** - we are committed to integrity in the pursuit of our mission in education and research and in ensuring the effective management of the University.

Governance Principles

1. The governance system, based on **autonomy allied with accountability**, is consistent with our unique legal structure and is appropriate to advancing the mission of the University, which is the cultivation and practice of excellence in education and research.
2. The governance system provides **direction and leadership**, and monitors and ensures progress towards achieving the strategic goals of the University.

¹³ (i) Charters and Letters Patent of the College - <https://www.tcd.ie/Secretary/corporate/legal-faq/>

(ii) Statutes - <https://www.tcd.ie/registrar/assets/Statutes-December-2020.pdf>

(iii) Trinity College Dublin (Charters and Letters Patent Amendment) Act, 2000 - <http://www.irishstatutebook.ie/eli/2000/prv/1/enacted/en/html>

(iv) Universities Act, 1997 - <http://www.irishstatutebook.ie/eli/1997/act/24/enacted/en/html>

3. The governance system enhances the University's capacity to **flourish as a globally significant institution**, including through the identification of strategic opportunities to realise its ambition.
4. The governance system provides **clarity regarding responsibility and accountability for key decisions**.
5. The governance system delivers **assurance regarding regulatory compliance**, protection of reputation and adherence to ethical standards of good practice.
6. The governance system ensures **institutional sustainability and underpins success** through effective systems of revenue generation, control and risk management.
7. The governance system supports **academic freedom** and includes academic governance that assures the highest standards of education and research.
8. The governance system **engages effectively** with internal and external stakeholders and secures support for the advancement of the mission of the University.

Statement of the Role and Responsibilities of Trinity's Board as Approved by the Board

Using the Values and Principles text approved by Board as a touchstone, the Board Review Working Group developed a text to capture the future role and responsibilities of the Trinity Board. The approach taken by the Working Group was informed by Trinity's unique legal structure and system of governance. It was also informed by the realities of the complex external environment within which a leading global University like Trinity must operate in order to flourish in its mission of education and research. In its work on this issue leading to the *Statement of the Role and Responsibilities of Trinity's Board* in Figure 2 below ultimately adopted by the Board, the Working Group examined and deliberated upon governance structures and practice in comparator universities nationally and internationally, as well as respected thinking (academic and practitioner) on the role of governance in supporting an organisation to flourish.

Fig. 2 The Role and Responsibilities of the Board in Trinity College Dublin as approved by the Trinity Board on 22nd April, 2020

The Role and Responsibilities of the Board in Trinity College Dublin

The primary function of the Board is to create, maintain and develop the conditions which enable the College community to flourish in its core mission of education and research. It does this by:

Strategy and Policy

1. Providing active direction and leadership to the University.
2. Setting Trinity's vision, mission, values and strategy and driving achievement of the University's strategic goals.
3. Providing support and constructive challenge to the Provost¹⁴ in the exercise of his/her functions and agreeing clear goals against which his/her performance can be measured.
4. Harnessing the diversity of perspectives and expertise among internal and external Board Members to enhance Trinity's capacity to compete and flourish in the global education and research landscape.
5. Being a proactive, energetic driver of Trinity's ambitions, identifying new strategic opportunities and competently anticipating and addressing challenges as they arise.
6. Promoting the financial wellbeing and resilience of the University and ensuring the rationale for major investment decisions and capital projects is grounded in robust analysis.
7. Fostering the trust of the diverse internal College community, as well as external parties, and ensuring that the University's obligations to all stakeholders are met.
8. Upholding Trinity's reputation and good name and acting in the University's best interests in the determination of all matters which come before it.

Accountability, Oversight and Control

1. Exercising collective and proactive responsibility for effective oversight of the management of the University to support the achievement of its strategic goals.
2. Holding the Provost to account for the academic, corporate and financial management of the University.
3. Ensuring that the University supports the general welfare of students and staff.
4. Establishing the appropriate risk appetite for the University in support of its strategic goals and ensuring that risks are properly identified and managed.

¹⁴ Note: The Provost, as Chief Officer, is chosen by College and appointed by Board following the outcome of the interview and election process set out in the Statutes. The Statutes note that the Provost is answerable to Board for the efficient and effective management of College and for the due performance of the functions of office and that if the Provost has significantly failed to meet these standards, then Board may after due enquiry, remove the Provost from office.

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| <ol style="list-style-type: none">5. Ensuring that appropriate systems of financial and operational control and accountability are put in place, which are effective and in line with best practice.6. Ensuring systems are in place to meet all of the University's obligations regarding statutory and regulatory compliance.7. Establishing processes to monitor and evaluate the performance of Board itself. |
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Following the consultation process among Trinity stakeholders throughout 2020, including deliberations at the College Board on five separate occasions, including deliberations on the work of the Board and on the size and composition of the Board, it is planned to bring a final report to the Trinity Board in 2021 including final recommendations on size and composition.

6. Comments on the Legislation under Review and the Relationship to Trinity's Governance Principles

While continuing to study the consultative proposals, Trinity believes that the following parts of the proposed Bill are not aligned with our core governance values and principles but we also believe that ways can be found to respect both the intentions of the legislative proposals and Trinity's governance principles, laid out in Figure 1 and Figure 2 above.

6.1. Principle of autonomy allied with accountability

It is proposed to give the Higher Education Authority ('HEA') the statutory function of developing and establishing Codes of Practice for the Governance of universities and the universities will have a statutory obligation to comply with any such Code of Practice. If the HEA concludes that a university is not compliant or not substantially compliant with the code, the HEA may direct the university to comply with the relevant code of practice. This conflicts with the principle of autonomy and does not institute effective accountability; rather it is a command-and-control mechanism that extinguishes autonomy. For example, the proposals change the current position whereby the HEA issues guidelines regarding numbers and grades. Under the current proposals the guidelines regarding

numbers and grades, and the proportion of the budget to be applied to the different activities of a university, would become binding. We believe that a stakeholder-centred approach is crucial in the higher education sector to ensure appropriate calibration of the autonomy-with-accountability principle, and this is reflected in how successful HEIs currently operate. Consequently, Trinity proposes that the current system of agreed Codes of Practice for Governance should be continued.

The proposals allow for the abolition of the provisions relating to the overall system of Visitor and visitation as set out in the 1997 Act and their replacement with extra powers to be given to the HEA in legislation. However, this would not bring to an end the separate Visitors' role in Trinity's Statutes and the 1997 Act did not impact upon it. The Visitor system in Trinity is distinctive in Irish higher education and provides a highly effective dispute resolution process which provides oversight to the decisions of the Trinity Board and avoids costly and time-consuming Court actions. Trinity believes that the current Visitor system in Trinity (with the Judicial Visitor continuing to be appointed by the Government) should continue.

6.2. Principle of direction and leadership

The proposals provide for a radical change in the provisions governing the appointment of the College Board. In Trinity's case, this would reduce the size of the Board from 27 (with 4 students and 2 external members) to 12 (with 7 external members, including 2 students). This would change the composition of the Trinity Board completely. As discussed above, while the case for some change is merited, we believe strongly that the principle of collegiality on which Trinity is founded, and the nature of how it is incorporated, requires appropriate elected representation from the Fellows and a range of College stakeholders. It also requires that a majority of Board members come from within the Trinity community, along with appropriate external expertise chosen by a Nominations

Committee of the Board in accordance with a Competency Framework approved by the Board.

Furthermore, the proposals separate academic and corporate governance functions which is also at variance with the principle of direction and leadership. In Trinity's case the Board provides academic leadership in Education and Research as the core mission of the University; certain academic policy matters and power to approve new courses of study lie with our Council but not overall academic strategy and resource allocation. Under the current proposals it is possible that there would be only 4 academic members (the chief officer and, perhaps, 3 of the 4 staff members). This would reduce academic membership to one third of the total and, we believe, this is not properly reflective of the importance of education and research in a university of the international reputation of Trinity.

The proposals allow for the apparent repeal of the provision that allows the Chief Officer to Chair the Governing Authority/Board. This would bring to an end the unique position of successive Provosts, chosen by the College Community, as Chief Officer and Chair of the Board under the College's Statutes. Many of the best-performing universities worldwide retain this provision, e.g. University of Oxford and University of Cambridge (ranked 5th and 7th respectively in the QS World University Rankings).

Finally leadership requires pluralism and openness to diversity, and this means not just gender diversity which has been achieved in Trinity's Board and Council; Trinity is committed to the Athena SWAN initiative and to taking further active steps to ensure ethnic and social diversity. However, this would be extremely difficult to achieve with a Board of 12 members. We submit that this requires further consideration. In addition, in a university context, diversity of disciplinary background is a distinct advantage.

6.3. Principle of flourishing as a globally significant institution

The proposals do not recognise the global nature of higher education as a borderless activity that flourishes through international networks. Bringing expertise on the global nature of higher education onto the Board is best achieved through a majority of academic staff (for example, currently 16 of the 27 members of the Trinity Board have international education or experience). The reservoir of international experience among the academic body is an advantage that we would wish to continue to avail of recognising that Trinity's reputation largely derives from international engagement and research. We do, however, recognise external members with experience from other domains (e.g., finance, marketing) could help Trinity to flourish as a university of global consequence and we support an increase in the number of external members.

6.4. Principle of clarity regarding responsibility and accountability for key decisions

(a) The proposals in the Consultation Paper distinguish between the corporate, academic, and executive functions, and propose to give responsibility and accountability for each to the Governing Authority, the Academic Council, and the Chief Officer respectively. While this approach might potentially be an improvement for other institutions (we do not take a position on this) it certainly would run counter to the leadership role of the Trinity Board which takes responsibility for strategy, including ensuring that adequate financial resources are available to achieve the strategy. Recent successes in internationalisation, commercial revenue and philanthropy are down to the ability of the Board to take a holistic College-wide view. The Council, on the other hand, is constituted on a Faculty basis and does its important work unconnected to financial or infrastructural concerns.

(b) The relationship between the Provost and the Board is highly effective and would become less-effective under the current proposals. The Board holds the Provost to account, but also, and often just as importantly, initiates discussions on

strategy with the Provost, and provides support to the Provost in achieving the University's goals.

(c) Present on the Board are also key academic leaders who ensure sufficient academic input into corporate-decision making (Vice-Provost/Chief Academic Officer, Bursar, and Registrar, in particular). This linkage between the academic and corporate functions on the Board is, more than any other feature, responsible for Trinity's success. In attendance are the Chief Financial Officer and the Chief Operating Officer.

Trinity believes that the proposed new powers to provide for a majority of external members appointed by the Minister to be disproportionate, especially in a scenario where State funding has steadily declined year on year and now accounts for approximately 40% of Trinity's funding.

6.5. Principle of assurance regarding regulatory compliance

There is no conflict here and the proposals are strong on this point. The question is now to balance achieving this principle with a governance structure that brings leadership and strategic direction.

6.6. Principle of institutional sustainability and success

In so far as the proposals address this principle, success seems to be defined around minimizing risk-taking and ensuring compliance issues do not arise, rather than success in the mission of education and research and the overall student experience.

6.7. Principle of Academic Freedom

The proposals are eager to state that academic freedom is protected and we see this as fundamental and underpinned by respect for institutional autonomy as seen in section 14(1)(b) of the 1997 Act which indicates that a university is "entitled

to regulate its affairs in accordance with its independent ethos and traditions." .

6.8. Principle of effective engagement

The proposals do potentially lead to improved engagement with external stakeholders by virtue of an increased number of external members and an external chair. The challenge is one of achieving this without diminution of the engagement with internal stakeholders, such as students and staff, who need to remain motivated in a highly resource-constrained environment.

7. Mechanism for Review of the Proposals' Effects on Trinity

As outlined above in this submission, Trinity has a distinctive status under law that sets it apart. The University has a different organisational structure (body corporate consisting of the Provost, Fellows, Foundation Scholars and other members of the Board) and an elected participative governance system of checks and balances to most other universities in the State. Indeed, legislation relating to Trinity's relationship with the State stretches back to 1592. In recognition of this, Section 4 of 1997 Act contained the following provision:

"(2) Sections 16 (1) to (7), 21 (6), 22, 23, 32 and 33 shall not apply to or in relation to Trinity College unless the Minister, by order made not earlier than three years after the commencement of Part III, declares that those provisions apply, in which case they shall apply as if a reference to the commencement of Part III were a reference to the date on which the order came into operation.

(3) The Minister shall not make an order under *subsection (2)* if, within the period of three years referred to in that subsection a Private Act is passed by the Oireachtas amending, in a manner consistent with the purpose and substance of the sections mentioned in that subsection, the charters and letters patent under which Trinity College and the University of Dublin are incorporated.

(4) An order made under *subsection (2)* may amend the charters and letters patent referred to in *subsection (3)* in such manner consistent with the sections mentioned in *subsection (2)* as is provided in the order.”

As discussed above, this measure effectively gave Trinity three years in which to agree and instigate internal reforms which met with approval from Trinity, the Government and the Oireachtas.

Trinity’s Board is already well advanced with a review and could agree to implement similar reforms over a similar timeframe if the new Act grants the university the space to do this. We believe that reforms could be introduced which respect the Government’s wishes while also preserving many of the best aspects of Trinity’s model.

8. Conclusion

While some of the foregoing is critical of the proposals, we would like to emphasise that we share the Department’s view of the value of underpinning transparency and accountability across the higher education sector. We instituted our Board Review Working Group in 2019 recognising similar challenges that the Minister and the Department have elaborated upon in this Consultation Paper. However, the higher education landscape in Ireland is far from homogenous. While technological universities are new to the sector, Trinity has been a leading university since 1592 with a well-honed governance model that has been regularly overhauled. Consequently to be effective a ‘co-regulation’ model must be carefully formulated so as not to displace the very institutional autonomy that enables Trinity’s effective functioning, differentiation and thus its success. We believe that sectoral legislation that respects institutional autonomy and academic freedom needs to actively respect these principles which are at the foundation of Trinity’s success and distinct character.

Within our education sector, Trinity is a globally recognised asset for our nation and vital to its vibrancy and competitiveness. Trinity is well aligned with national goals and contributes to Ireland's reputation for academic excellence on the world stage. In many areas it has led the way, whether it be in access, participation, research excellence, innovation and entrepreneurship, and it has done so motivated internally by a desire for excellence rather than having been driven to it by government mandates, external forces or regulation. It would be most unfortunate if the legislation under contemplation were to be drafted as an instrument constraining Trinity and removing collegiate decision-making power concerning its strategic direction and replacing it with a compliance model of governance formulated first and foremost for the avoidance of risk. Accordingly, any such legislation should not be unduly prescriptive and constraining in relation to the role of Trinity's governance structures. Time does not stand still and neither should Trinity. However, Trinity must remain able to make choices that it believes will best empower it to continue to be a leader on the national and global stage over the next century while retaining the confidence of its stakeholders in that shared vision - the people across the College who collectively work together to make that vision a reality and who have placed their trust in representative governance.

We have highlighted the progress of holistic internal governance reforms that are underway in Trinity based on the considered work of the Board Review Working Group and the Board and our view that a Private Act would represent a suitable path forward. To conclude, Trinity welcomes opportunities for further engagement and dialogue on the undoubtedly complex regulatory, governance and legal issues presented from Trinity's perspective given their fundamental importance to how Trinity is governed.

Trinity College Dublin

8 March 2021

[REDACTED], Provost

[REDACTED] Secretary to the College