

ISSUES IN UNIVERSITIES' CORPORATE GOVERNANCE

UNIVERSITY GOVERNANCE
and the Four R's
in an Entrepreneurial Context

Presentation to BHERT Governance Symposium

DI YERBURY

President, AVCC

**Vice-Chancellor and President
Macquarie University, Sydney**

UNIVERSITY GOVERNANCE: TOPICS ADDRESSED HERE

- **Part 1: Introduction and recent context**
 - *Four R's increasing as commercial activities increase*
 - *US approach to governing bodies*
- **Part 2: Commonwealth's recent approaches re governance**
 - *universities current concerns re intrusion*
 - *Minister's current proposals*
- **Part 3: NSW (State) Government's recent approaches re governance**
 - *as example of one State Government's concerns and involvement in a context of entrepreneurial activities*

PART 1: INTRODUCTION, AND RECENT CONTEXTUAL DEVELOPMENTS

- **The Four R's as part of accountability**
 - *in return for universities' relative autonomy*
- **Growing entrepreneurialism required, and commercial activities essential**
 - *given declining public funding*
- **Increasing need for strategic alliances, including with industry and commerce**
 - *seen as increasing the risk, and the importance, of governance and the Four R's*
 - *especially given the highly publicised failures in governance and risk management of some major corporations in Australia and overseas*

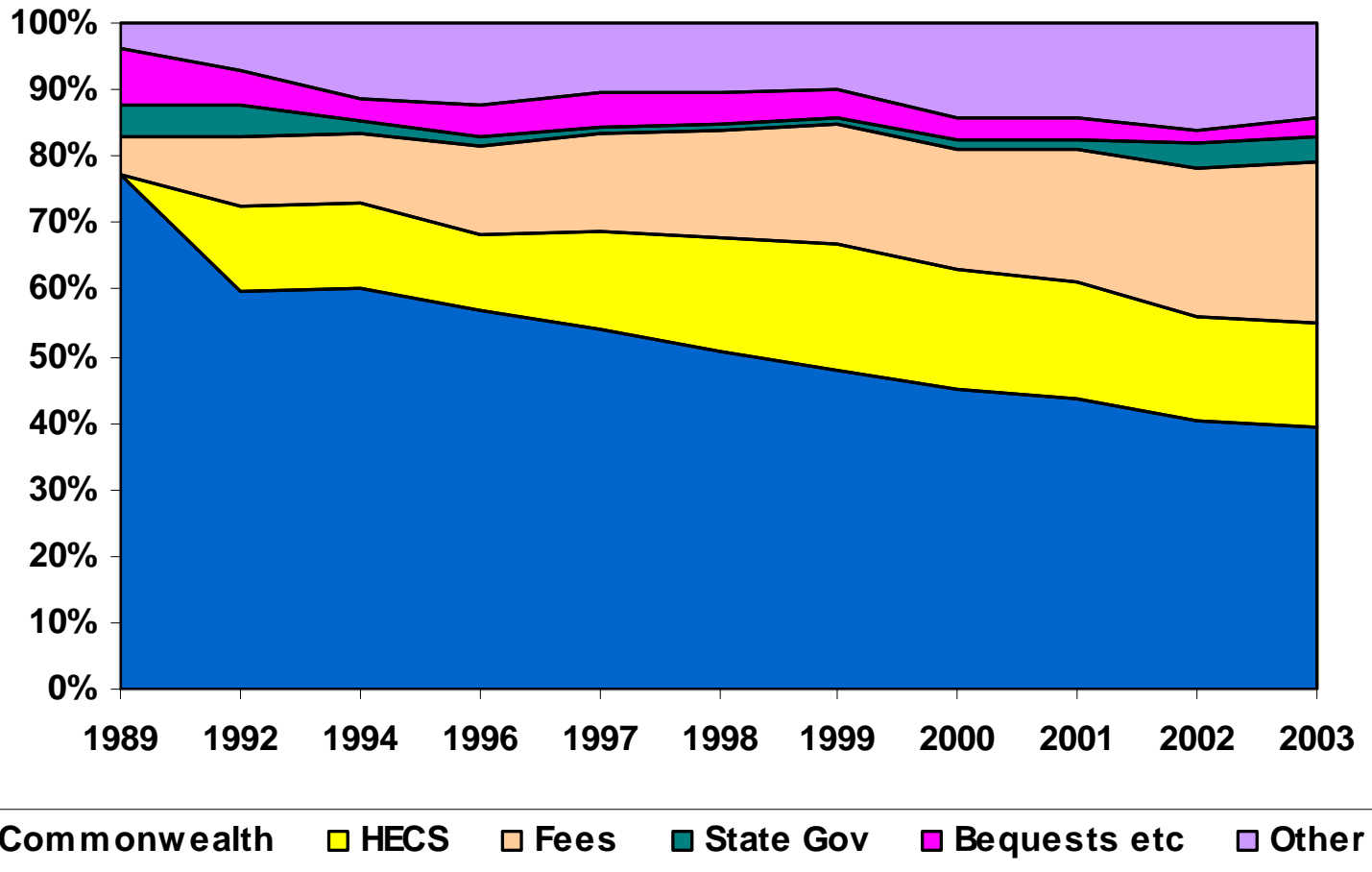
SUBSTANTIAL AUTONOMY BALANCED BY THE FOUR R'S

- Australian universities enjoy a lot of autonomy
- The other side of autonomy is accountability – indeed, overly onerous requirements re
 - Regulation
 - Reporting
 - Review
- Plus increasing emphasis on Risk Management
- The Four R's are very expensive in Australia
 - *exacerbated by three levels of government*
 - *increased new role of AUQA (in quality assurance)*
 - *the emphasis on governance and risk management has increased in private and public sectors*

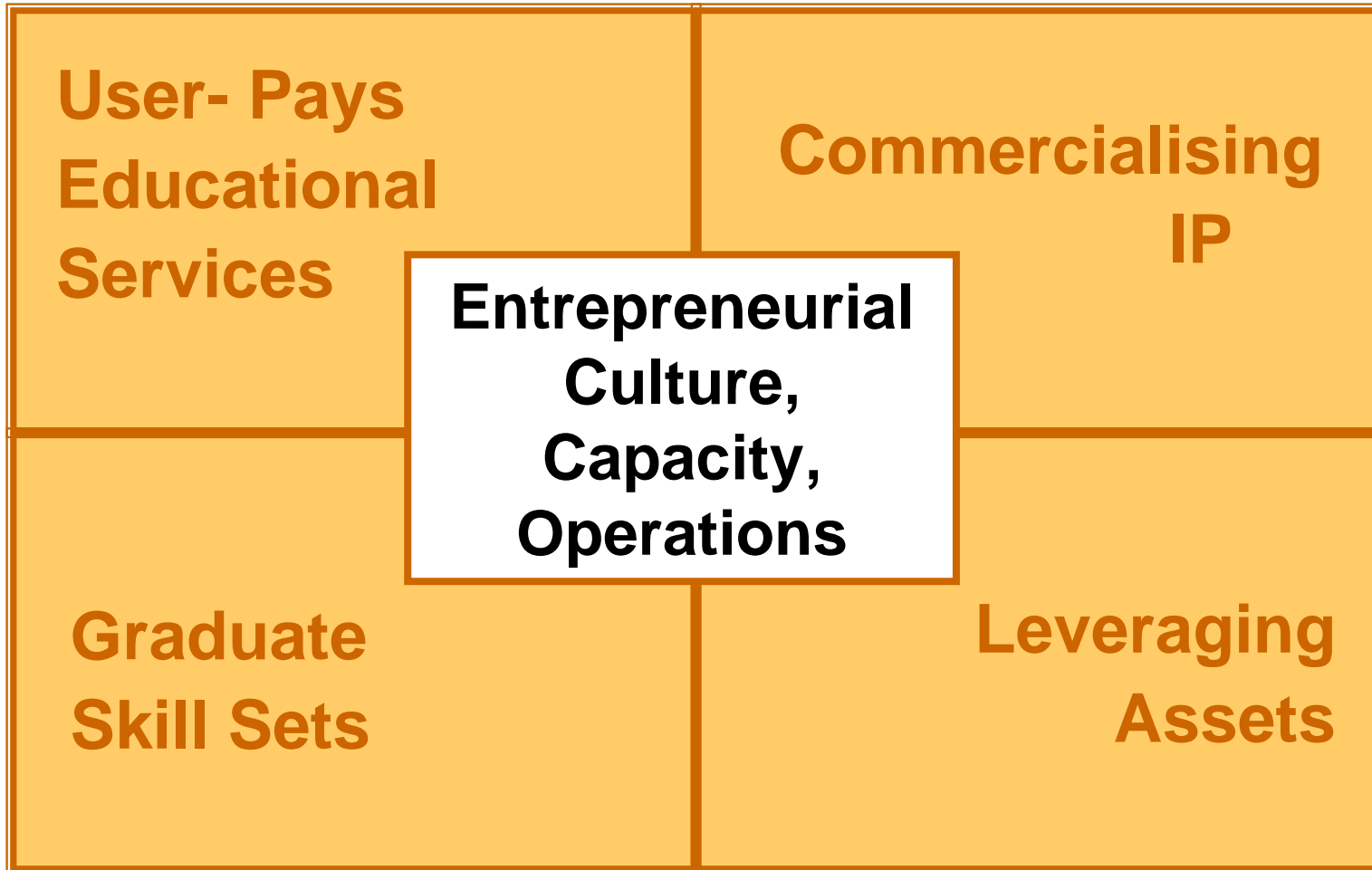
NEED TO SUPPLEMENT PUBLIC FUNDS WITH COMMERCIAL ACTIVITIES

- Overwhelming case for more public investment in higher education (*indexed for real value*).
- But public funding is unlikely ever again to be sufficient (*too little, too uncertain, too conditional*)
 - *Average dependence on public purse: 44%*
- To serve the academic mission – including community outreach – entrepreneurship is required (*helps direct public funds to Humanities, etc*)
- Threshold issue: serving the academic mission
- Extra regulation (especially by State Governments) because of commercial activities

CHANGING FUNDING SOURCES (%) 1989-2003



ENTREPRENEURIAL UNIVERSITIES SERVING THE ACADEMIC MISSION



ENTREPRENEURIAL UNIVERSITIES SERVING THE ACADEMIC MISSION

- Development and delivery of user-pays services to expanding markets in Australia and overseas
- Generation, protection, management and commercialisation of Intellectual Property in teaching and research
- Developing graduates with appropriate knowledge base and skill sets
- Leveraging off reserves, land and built assets to meet needs of market, including with Research Parks
- Developing entrepreneurial culture and capacity and operational approaches
 - *including appropriate governance and risk management arrangements*

DUTIES OF GOVERNING BODIES IN UNIVERSITIES (Ingram, a)

(NB. Tom Ingram wrote this as President of US Association of Governing Bodies in Universities and Colleges)



- Approve, bear in mind, and seek to further the University's mission
2. Advise the VC, using Trustees' diverse expertise, experience, contacts
 - *while not interfering in management*
3. Review, approve and monitor progress on the institutional strategic plans

DUTIES OF GOVERNING BODIES IN UNIVERSITIES (Ingram, b)

4. Be sufficiently informed (by VC) to be confident about institutional performance
 - *but note it is the VC who manages the institution, and reviews performance of individual managers*
5. Be sufficiently informed (by VC and Academic Board) to be confident of quality, and quality assurance processes
6. Ensure, through monitoring, good management and fiscal integrity
 - *use of standing committees, eg, Finance Committee and Audit Committee*

DUTIES OF GOVERNING BODIES IN UNIVERSITIES (Ingram, c)

7. Assist VC in ensuring adequate financial resources
 - *particularly in USA, fund-raising very important*
8. Hire, support and evaluate VC's performance
 - *evaluation is usually delegated to Chancellor*
 - *but full Council usually decides on new term*
9. Act as bridge and buffer, relating university to community, and vice versa
10. Assess Governing Body's own performance
 - *regular self-evaluations*

PART 2: COMMONWEALTH'S RECENT APPROACHES RE GOVERNANCE

- **Hoare Review, including re governance, 1995**
- **Establishment of Australian Universities Quality Agency, 2001**
- **Minister Nelson's 'Crossroads' Review, 2002**
- **Minister's draft legislation and Protocols, 2003**
- **AVCC's negotiation of acceptable Protocols, 2003**
- **Minister's proposal for Commonwealth to 'take over' responsibility for universities, 2004**

➤ *and to work with States to reduce 'red tape'*

THE GOVERNING BODY'S ROLE

(as recommended by Hoare Review of Higher Education Management, 1995)

“The governing body exists to oversee the development and adoption of institutional strategic plans and key policies, to monitor and review the institution’s overall performance and to bear ultimate responsibility for the institution. Its activities should be principally those of guidance and review, rather than executive management, and its members should recognise their overriding responsibility to bring diverse viewpoints together for the advancement of the institution rather than to represent sectional interests.”

HOARE: COMMON PROBLEMS RE GOVERNING BODIES IN AUSTRALIA

- **Size** (often 20-plus members, up to 35)
- **Several members elected by interest groups, including staff, students, alumni, Parliament**
 - *Vary considerably in ability to contribute (although they bring useful, diverse views)*
 - *Some are there for self-aggrandisement, not for the overall good of institution*
 - *Some operate with personal agendas and vested interests, even 'factions'*
 - *Some do not understand role*
 - *Some try to intrude in management issues, or use governing bodies as 'last appeals', or play 'power politics'*
- **Not enough senior business members**

UNIVERSITIES OWN ARRANGEMENTS FOR INTERNAL AND EXTERNAL REVIEW

- Universities' governing bodies oversee strategic planning and review performance against plans
- Academic Boards monitor academic programs and standards, and commission reviews
- All universities have reviews of their programs and activities (academic and other)
 - *usually with external experts*
 - *and extensive audits of activities*
- Most have external examiners of PhD theses, etc
- All undergo accreditation by the professions

AUSTRALIAN UNIVERSITIES' QUALITY AGENCY

- Commonwealth also set up AUQA from 2001 as independent body reporting to Minister
 - *audits all universities over 5-year period*
 - *publishes its reports*
 - *requires follow-up reports*
- AUQA is intended to accept as 'given' the institution's strategic directions and plans
 - *and to audit against them – but complaints of intrusion into missions and mgt. prerogatives*
- Four VCs sit on AUQA's Board
 - *nominated by AVCC members*

MINISTER NELSON'S VIEW OF REPORTING AND REGULATION IN 2002

- **Two levels of government requirements as part of the problem:**
 - *Including the co-existence of two levels (Federal and State) of reporting, sometimes entailing overlap*
 - *Commonwealth through DEST, 'requires of unis onerous reporting and acquittal data, not all of which ... are necessary ...'*
 - *'The resources used in meeting these requirements could be invested in teaching and scholarship'*
 - *'National consistency needed in legislation that regulates the commercialisation of intellectual property'*
- **Minister committed to reducing red tape**

MINISTER NELSON'S 'CROSS ROADS' REVIEW: 2002 - DEC 2003

- **Crossroads Review Secretariat's paper on 'Governance, Management and Workplace Relations' (August 2002)**
- **Seemed to accept AVCC's views**
 - *AVCC expressed these in submissions and publications*
- **Review Secretariat quoted CQU's submission :**
 - *' stifled by external rules (and different interpretations of these rules), procedures, reporting requirements, funding arrangements, and employment restrictions designed for a past era.'*

MINISTER NELSON'S ANNOUNCEMENT IN 2003 BUDGET OF NEW LEGISLATION

- Improvements (2.5% in 2005, going up to 7.5% by 2007) were tied to two conditions:
 - *compliance with National Governance Protocols;*
 - *compliance with unacceptable workplace requirements (reflecting anti-union ideology of many Commonwealth Ministers)*
- United rejection (including AVCC, AHEIA, Unions) of HEWRR: settled for AWAs
- Some concerns re National Governance Protocols – but these were fixed up

AVCC'S/CHANCELLORS' NATIONAL GOVERNANCE PROTOCOLS (1)

- AVCC/members reviewed samples of principles of governance, and existing framework
 - *Australian Stock Exchange principles*
 - *Institute of Directors principles*
 - *State-based reviews, reports and legislation on universities governing bodies*
- AVCC considered:
 - *Traditional stakeholder model*
 - *The corporate governance model*
 - *The trusteeship model (which seeks not just financial accountability but a multiple bottom line of learning, research and community service)*

AVCC'S / CHANCELLORS' NATIONAL GOVERNANCE PROTOCOLS (2)

- In response to Government's National Protocols
- AVCC and Chancellors negotiated their own Protocol
 - *seeking balance between external accountability and*
 - *each university's capacity to set strategic directions*
- Highlighted importance of:
 - *Governing body, independent of Government but responsible in the public interest*
 - *Universities' own objectives, established by governing body and drawing on senior management's advice*
 - *A VC and executive managers responsible to governing body for effective management.*
 - *an academic board, responsible to governing body for academic standards*
 - *Rejected 'one size fits all' approach*
- Minister agreed to use AVCC's/Chancellors' Protocol

IMPLEMENTATION OF BAF HAS INCREASED INTRUSION AND RED TAPE

- Implementation of HESA 2003 and new Guidelines involves extra intrusion
 - *an inadequate \$250,000 each is provided towards costs*
- Third amending statute is currently before Parliament – hopefully for passage this year
 - *without it, Summer Terms are jeopardised*
- Significant increases in reporting
 - *requiring changes to student systems*
- AVCC argues ‘intrusion’: Minister seems to see problem largely as two levels of government
 - *offered to take over responsibility from the states*
 - *offer from NSW to hand them over*

AVCC CURRENT REPRESENTATIONS TO MINISTER ABOUT RED TAPE

- **Scale back monitoring of Funding Agreement profiles by discipline**
 - *reduce to workable agreement on likely profile*
- **Establish review of red tape**
 - *and set realistic timetable for removing unnecessary reporting and intrusion*
- **Provide extra transition funds for implementation, closer to real average cost of \$1.2M each**
- **Consult with AVCC, States and Territories**
 - *re single approach to remove duplication and overlap*

PART 3: NSW (STATE) GOVERNMENT'S APPROACHES RE GOVERNANCE

- **'Commercial activities' legislation, 2001; and protected disclosures**
- **NSW Auditor-General's Compliance Review of Commercial Activities, 2003**
- **NSW Independent Commission Against Corruption's Review, 2002**
- **Need for legislative change by NSW Government**
 - *to comply with National Governance Protocols*
- **NSW Ombudsman's Reports, on alleged fraud, 'soft marking', etc**

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (1)

- Such activities are closely regulated by NSW Government – *as one State's example*
- **'Commercial Activities' legislation (March 2001)**
 - *increased investment powers*
 - *limited the powers of the controlled entities (eg, university companies) to those of the parent university*
 - *introduced new obligations re commercial activities*
- **New legislation requires:**
 - *compliance with guidelines approved by State Minister*
 - *maintenance of register of commercial activities*
 - *stronger oversight and risk management by Councils*

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (2)

- **Critical issues under new legislation:**
 - *identification and assessment of risk*
 - *including risk of corruption, and insurance of risk*
 - *IP evaluation and cost-benefit analysis*
 - *business plan and due diligence*
 - *professional legal and financial advice*
- **Minister strengthened requirements in July 2003**
 - *citing concerns re probity and public liability*
- **Teaching and research are no longer excluded, if conducted on a commercial basis**
 - *including overseas partnerships*

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (3)

- **Auditor-General's Compliance Review of Commercial Activities in NSW Universities, 2003**
 - *Concluded that university governing bodies face shortcomings in deciding about commercial risk*
 - *and resulting threats to their core business*
- **AG concluded universities' guidelines are faulty**
 - *eg, most required registration of controlled entities*
 - *but not the registration of commercial activities of controlled entities*
 - *registers not complete as yet*
- **Auditor-General's review of Outside Earnings Policies / Practices – *as major risk area***

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (4)

- Independent Commission Against Corruption (ICAC) issued report, August 2002
 - Corruption risk profile of NSW university sector, called 'Degrees of Risk'
 - concluded that 'number of areas of unmanaged risk'
 - 'some universities could be more proactive in identifying and managing those risks'
- Context of adverse publicity for universities
- ICAC's view that traditional culture of independence and autonomy in universities:
 - influences what staff identify and manage as 'corruption risk'

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (5)

- **ICAC's factors associated with 'corruption risk'**
 - *culture insensitive to 'corruption risk'*
 - *employees not recognising they have public duty*
 - *competitive environment which encourages entrepreneurship and risk-taking*
 - *reliance on non-govt income from myriad of sources*
 - *multi-campus nature reduces overall control*
 - *poor adherence to, and monitoring of, policies, procedures and processes*
 - *more links with private sector, including privately sponsored research*

TRENDS RE GOVERNANCE AND RISK MANAGEMENT IN NSW SECTOR (6)

- **ICAC's 'corruption risk' factors** *(continued)*
 - *culture of keeping problems 'in-house'*
 - *reactive approach to 'corruption risk'*
 - *low awareness of conflicts of interests*
 - *poor management / transparency re acquiring and acquittal of research and business centre funds*
 - *low attention to record-keeping and documentation*
 - *inadequate risk management of outdated or emerging technologies*
- **ICAC visited each university to discuss their practices** *(also reviewed Outside Earnings)*
 - *Council concerns heightened by ICAC*

MISMATCH BETWEEN NSW REGULATION AND COMPOSITION OF GOVERNING BODIES

- **Increased emphasis on the oversight and compliance responsibilities of governing bodies**
 - *But membership is not always appropriate*
- **NSW legislation has addressed need for changes to governing bodies, to comply with National Governance Protocols**
- **Previously only the Chancellor, VC and one co-opted person were selected by the Council itself at MQ (out of 19)**
 - *Minister appoints 4 (often through political links)*
 - *Parliament elects 2; Convocation elects 4*
 - *Academic staff elect 3; General staff elect 1*
 - *Students elect 1*
 - *Chair of Academic Board is elected by board members*

NSW OMBUDSMAN'S REPORTS ON UNIVERSITIES

- **Great media attention paid to alleged fraud, examples of inadequate risk management and issues of governance**
 - *especially re universities' own reviews of alleged 'soft marking'*
 - *alleged fraud and plagiarism by students and staff*
 - *and alleged academic misconduct*
- **Role of NSW Ombudsman's Office (as well as ICAC and Auditor-General)**
 - *Re protected disclosures*
 - *Freedom of Information legislation*
 - *Investigations*
 - *Public reports to Parliament*

ADDITIONAL FEDERAL AND STATE REGULATION (1)

- Funding does not increase along with increases in the four R's and 'social responsibility'
- Annual Reports to NSW Parliament
 - *as well as myriad of reports to Canberra*
- Auditing by NSW State Auditor-General
 - *as well as scrutiny of financial state by Canberra*
- EEO monitored at both levels, together with role of the NSW Anti-Discrimination Board
- NSW privacy requirements and Commissioner

ADDITIONAL FEDERAL AND STATE REGULATION (2)

- **NSW Administrative Decisions Tribunal**
- **OH&S requirements have increased**
- **Restraints re modes of employment increased by AIRC**
 - *exacerbated by impact of DEST's Workplace Reform Program on Enterprise Agreements:*
 - *coverage of issues in EA lessened management prerogatives, and complicated 'managing change'*
- **Likelihood of Canberra introducing increased IR requirements, using Senate majority**