Minority Report of the Labor Senators

HIGHER EDUCATION FUNDING AMENDMENT BILL 2002

Introduction: summary

The bill that is the subject of the current Inquiry, the *Higher Education Funding Amendment Bill 2002*, goes to a number of measures connected with Commonwealth funding under provisions of the *Higher Education Funding Act 1988* (*HEFA*). The bill contains some routine and minor measures, including variations of program funding levels for technical reasons and funds for a new graduate program in Environment at the University of Tasmania, among others. None of these measures is opposed by the Labor senators.

One measure, however, has potentially profound implications for the future of higher education financing policy in Australia: the proposal to extend access to the Postgraduate Education Loans Scheme (PELS) to four additional higher education providers that are not currently listed on Table A or Table B of *HEFA*'s Section Four.

The threshold issue here is the Government's declared rationale in singling out these four institutions for favoured treatment in access to PELS, especially in the light of the current inquiry underway in higher education. This wide-ranging Commonwealth Government inquiry is considering, among other matters, the desirability of, and possible mechanisms for providing public subsidies to the 80 or 90 private providers of higher education in Australia. In this context, it is argued by Labor senators that a decision to extend access to the public subsidy inherent in PELS to a select group of private providers should be carefully considered: many stakeholder groups in the higher education sector have argued that such a move would pre-empt the outcome of the current review and, notwithstanding contrary possible outcomes to that process, would pave the way for future extension of Commonwealth subsidies to private higher education institutions.

Furthermore, the Government has failed to provide explicit or acceptable reasons for its decision to extend PELS access to students at the particular education providers listed in this bill – as opposed, for example, to selecting a different group. If there are pressing reasons for its decision, then these should be stated so that they can be examined.

The Government in its report identifies a number of issues that have arisen in the context of the current Inquiry. The first is the question of whether or not public subsidies should be provided to private higher education providers. In this Minority Report by Labor Senators it will be argued, first, that clear evidence has been presented to the Committee to the effect that a public subsidy is attached to the provision of access to PELS. If access to this scheme is made available to the four private providers listed in this context in the current bill, then it follows that these providers, as well as their postgraduate students availing themselves of PELS, will benefit from a significant taxpayer subsidy.

In public policy, a foundation principle is this: where public subsidies are provided, there must be public accountability.

It will be argued that these four providers are not currently subject to a level of public scrutiny and accountability arrangements that is comparable with the requirements attached to public subsidies going to public higher education institutions. This matter is also identified in the Government's report. In addition, these providers are not subject to the same legal

regime in areas such as discrimination and industrial relations. The detail and implications of this situation will be canvassed.

Proposals to formalise and regulate access to PELS and to other public subsidies for private higher education providers will be examined and discussed.

Process and criteria

Perhaps the most striking aspect of the proposal embodied in the legislation under discussion is the lack of any coherent rationale provided by the Government for it. In speaking to the bill in the House on 19 August 2002, Minister Nelson said:

> 'The rationale for those four institutions the amendment goes some way to addressing existing anomalies in the higher education system, at the same time increasing choices for students.' [Hansard, 19/08/02, p.4846]

The Minister went on to indicate that the Government's reason for extending PELS to students at Bond and Melbourne College of Divinity (MCD) is that these are the only two self-accrediting higher education institutions where access to the scheme is unavailable. With regard to the remaining two providers, Christian Heritage College (CHC) and Tabor College, the Minister alludes to the fact that these colleges are major providers of teachers for Christian schools. He adds,

> 'One would think that all sensible people would support anything to see more teachers coming into the teaching profession.' [ibid.]

In this section, the Government's stated reasons for the measure as proposed, and a possible underlying agenda on the part of the Government, are examined.

The Minister's comments point to a need to deal with 'existing anomalies' in the system with regard to PELS access. The Government report adduces evidence from the Department of Education, Science and Training, including reference to an election promise made by the Government in 2001, as follows:

> 'The government made that commitment in response to some anomalies and priorities that had been brought to their attention. The need for self-accrediting universities or institutions to be on a level playing field was one aspect. To provide access to teaching for the Christian school sector was another one. They were the priorities that the government settled on and committed to in their election platform.' [Transcript of Evidence, Mr Burmester, p.52]

This evidence essentially provides three grounds:

- Lobbying by the providers in question;
- An apparent anomaly in that two self-accrediting institutions are currently excluded from access to PELS; and
- The need to 'provide access to teaching for the Christian school sector'.

It is apparent that the providers have engaged in an intensive lobbying campaign over the last one or two years. Indeed, the institutions themselves have been quite open about the fact that they have been acting in this way. Tabor College, for example, included with its submissions and tabled evidence copies of letters to the previous Education Minister, Dr Kemp, requesting access to the student financing mechanisms (particularly HECS) for their students of Teacher Education.

The evidence of Mr Adrian McComb of the Council of Private Higher Education (COPHE) is clear on this point, on behalf of all four institutions:

> 'There was a question asked earlier: why these four institutions? The fact is that we have been making submissions to the Minister for several years and the promises that were made at the election, which the government won, are now being fulfilled by this legislation…' [Transcript of Evidence, Mr McComb, p.36]

This witness refers also to the federal election promise made by the Government prior to the last election. This was couched in the following terms:

> 'A re-elected Government will provide more students with access to higher education that targets their specific needs by placing several other teacher training institutions in the same position as the University of Notre Dame… the Coalition is announcing two new initiatives. We will […] provide the same arrangements as apply currently to the University of Notre Dame to Bond University, the Melbourne College of Divinity, Christian Heritage College and Tabor College by including them within the framework of the Higher Education Funding Act 1988 (HEFA) while maintaining their ability to have fee paying students.' [The Hon. David Kemp MP. Media release Expanding opportunities in higher education 31 October 2001]

It is remarkable that, in fact, the proposed measure under discussion is not what was promised, although the promise is cited by the Department in evidence to provide a rationale for the Government's decision. The election promise, as noted by the providers, went much further than providing access to a postgraduate student financing mechanism. In its initial submission (Submission 001), Tabor College expresses disappointment that the full promise had not been met, and calls on the Government to go further, by according it access to HECS-related places in Teacher Education, in exactly the way that the University of Notre Dame is funded by the Commonwealth:

> 'The bill does not make provision for the inclusion of the four mentioned higher education institutions to be placed in the same position as the University of Notre Dame. To achieve this, the four mentioned institutions would need to be listed in Table A of Section 4 of HEFA. […] We also recommend that further legislation to implement Dr Kemp's pre-election promise, indicated above, be considered as soon as possible.' [Tabor College, Submission 001, pp.1-2]

Two of the four providers (CHC and Tabor), in their submissions and in their oral evidence, present extensive material about the quality of their undergraduate Teacher Education courses. This is completely accepted by the Labor senators. Beyond this evidence, the two providers also assert that, because they provide undergraduate Teacher Education in a Christian context, they should be considered in some sense as unique suppliers of teachers to the growing Christian schools sector. The Minister's comments, referred to above, also go to these issues.

Unfortunately, neither matter is relevant (except in a tangential sense) to the debate about the access of these institutions to PELS. The Teacher Education courses of the two providers selected by the Government are almost exclusively provided at undergraduate level and thus the students in these courses are not eligible for PELS. On being asked how many postgraduate students were studying at Tabor College in Teacher Education, Mr McComb informed the Committee that, in 2000, the number had been just one [Mr McComb, *Transcript of Evidence* p.47]. The total number of postgraduate coursework students at Tabor in that year had been 19. Christian Heritage College offers postgraduate courses in

Teacher Education but the College's submission makes it clear (p.4) that the numbers in graduate programs, as opposed to those at undergraduate level, have been very small: only four graduate-entry students have graduated in Teacher Education since 1990.

Arguments about Teacher Education, then, whatever their merits in a general sense, are irrelevant to the issue at hand. Whether the providers ought to succeed in gaining access to HECS places for their Education students is an entirely separate issue: one that is not under discussion in the current context. The Government is well aware of the facts regarding the numbers of postgraduate Teacher Education students studying with these providers. Therefore the use by the Minister and the Government of arguments on this point is specious and disingenuous.

Labor senators consider, however, that the repeated use by the Government of arguments about the special role of, and excellence in, undergraduate Teacher Education of these colleges is revealing of an underlying agenda – one that should be exposed to public scrutiny and discussion. That is, that both the Government and the private sector providers generally regard the move to allow these few students access to PELS as a first step in gaining much broader access to public subsidies for all private, non-self accrediting higher education providers. Furthermore, it is apparent that peak lobby groups representing these education providers – which, according to the Government, number more than 80 – are seeking access not simply to PELS, but to the much more generous and extensive HECS scheme for undergraduate students. Failing that, the providers are likely to seek access to a PELS-style arrangement which does not involve direct Commonwealth funding. The potential student numbers, according to the peak body COPHE, are approximately 10 000 [COPHE, Submission no.007, p.2].

These aspirations of private providers are succinctly expressed by Mr Smith of the Australian Council of Private Education and Training (ACPET):

> 'I concede that if you talk about the extension of the HECS scheme to private providers – and that is what we really want; I guess that is our end objective – then you would be talking larger numbers.' [Mr Smith, Transcript of Evidence, p.42]

AS the following section of this report argues, PELS embodies significant public, taxpayer subsidies both to students and to providers. Given this, Labor senators draw attention to the cost implications for the Commonwealth of such a proposal.

The provision of access either to a PELS-like deferred payment scheme, underwritten by the Commonwealth, or to the even more expensive HECS direct subsidy, for all accredited private higher education providers also raises profound issues of public policy. These matters are central to the review of higher education, known as the *Crossroads* review, currently being conducted by the Minister, Dr Nelson. The measure contained in this bill clearly pre-empts the outcome of that review, which is examining, among other things, the question of the desirability of extending Commonwealth subsidies to private providers. The proposed provision would create an entirely new category of institutions to be recognised in the *Higher Education Funding Act 1988*, listed on a new Table. While the heading for that Table is at the moment proposed to read 'Unfunded Institutions', even under this rubric it would be possible in principle for the Government merely to seek to add further institutions to this list – although this would require amendment to the Act. The machinery would exist to enable a potentially long list of private providers to be added under this heading, and consequently provided with access to PELS. Further simple amendment would allow undergraduate, as well as postgraduate, students of these providers to gain access to PELS-style income-contingent loans. Thus, in advance of the full public debate that the Government has avowed commitment to, it would create the mechanism to set in place a radically different, new

system of student financing that provided public subsidies in a wholesale manner to private providers.

The Government has said, in the majority report on the bill,

> 'Finally, the Committee notes the progress of the Government's Crossroads review. While the Committee hopes that the evidence which this inquiry has placed on the public record will be useful to the Crossroads review, the Committee does not intend that its recommendations should be regarded as precedents for the Crossroads review. In this report, the Committee has considered the current bill on its merits. This report relates to the four institutions listed in the bill, and not the funding of private higher education institutions generally.' [Par.2.16]

Labor senators regard these comments as disingenuous. It is not possible to separate the issue of access of these four institutions to PELS from the larger issues canvassed in the *Crossroads* review. The only possible rationale for the Government's actions in introducing legislation of this kind is to establish a precedent and a mechanism for extending indirect public subsidies to private higher education providers more generally.

Provision of a public subsidy

A number of witnesses argued that PELS provides a subsidy to students, and not to providers. The Government senators agree with this assertion. Labor Senators, however, believe that there are sound reasons to support the view that, through PELS, a significant, if indirect, Commonwealth subsidy will be made available to the four providers in question. The Commonwealth subsidy, while indirect in that it is channelled through student financing arrangements, is nevertheless real: expert evidence supplied to the Committee by economist Dr Bruce Chapman makes this point in detailed form:

> 'In analysing the implications of this policy change it is critical to recognise that the postgraduate charge facing a student who can pay with an interest-free loan is necessarily different to the fee received by the university. This is because the university receives the money at the time of enrolment, but the student repays the debt later. Critically, the absence of a real rate of interest on the debt means that in financial terms the student will necessarily be facing a lower impost than the actual charge. In other words, there will be a government-financed subsidy.' [Bruce Chapman, submission 5, p.15]

With reference to the general issue of the public subsidy implicit in PELS, Dr Chapman goes on in his submission to explain that:

> 'The extent of the subsidy depends on how long before the student begins to repay the postgraduate loan, and the length of time taken to repay it once repayments begin. That is, among other things, the subsidy depends on students' expected future incomes and the level of outstanding HECS undergraduate debt at the time the postgraduate loan is taken. The latter is critical because the postgraduate obligation will only start to be repaid once other HECS obligations have been met.' [Chapman, p.16]

He estimates [pp.17-18] that, in general terms, the size of the taxpayer subsidy varies from around 17% to 45% of the amount loaned to students, depending on variables such as gender, and whether a particular graduate also possesses a HECS debt. Dr Chapman estimates that, in the case of the four private providers that are the subject of the current Inquiry, the subsidy would be approximately 12-15% [Committee *Transcript of Evidence*, 8 August 2002, p.17]. However, he explains that in some cases it would be much higher [p.17].

Mr Bill Burmester of DEST subsequently provided evidence [*Transcript of Evidence* p.50] that the Department had estimated a similar figure – 12% - as the implicit subsidy inherent in the Scheme.

Dr Chapman's evidence also emphasises one important consequence of providing access to PELS loans: providers, he says [pp.16 and 18-19], are highly likely to raise their fees in a context where a subsidised, income-contingent, default-protected loan was available. In such circumstances, a 20% nominal fee rise is a best approximation: this reflects in approximate terms the value of the subsidy to the student.

As this price rise occurs, the Commonwealth subsidy rises, because the loan period is prolonged. In that providers are benefiting from additional upfront fee income (paid on behalf of PELS beneficiaries to the institution by the Government), a subsidy is extended in turn to the provider itself.

The Government senators argue (par.2.7) that the measure would not be associated with a rise in tuition fees on the part of these providers, but instead would act to keep fees down by promoting competition. This flies in the face of accepted economic theory: the real drop in net present value of the fees, brought about by the delayed nature of payment, allows a real increase in fees without affecting demand, and it is highly likely that, for sound economic reasons, institutions would capitalise on this opportunity.

The National Union of Students noted in evidence [Ms Moksha Watts, *Transcript of Evidence* p.22] a further form of public subsidy, were PELS available to postgraduate students of these providers: bad and doubtful debt. Subsequently, in the Department's evidence, Mr Burmester testified that the Commonwealth's estimate for bad debt applying to PELS and HECS schemes was 19 per cent. Labor Senators calculate that, on the $18.7 million forecast to be handed out to additional students under this bill, assuming that bad debt ratios were on a par with other categories of loan beneficiaries under HECS and PELS, $3.6 million might never be recovered. It should also be noted that PELS debt, in general terms, is less likely to be repaid in full than HECS debt because often it will be higher than an average accrued HECS debt, and furthermore PELS debt is repaid only after any HECS debt has been discharged.

A proportion of the graduates of two, possibly three, of the providers in question (Bond University being the clear exception) are likely to earn relatively low incomes – they are members of the clergy, or are employed in other church positions where salaries are typically modest. Further, the postgraduate students at two of these colleges have unusually high average ages of up to 50 years. Therefore it may be that a significant proportion of these graduates in fact never repay their loans. Evidence from representatives of CHC and Tabor College gives support to this view. They state [pp.9-10] that graduates who enter the ministry enjoy starting salaries of $35 000 but that their taxable incomes plateau quite quickly at around $40 000. It is understood by Labor Senators that persons employed by churches in other capacities commonly receive similar incomes. Where these persons are also aged 50 or more, then the question of whether they will repay their debt before retirement (when repayment usually ceases) is a moot point.

The Department of Education, Science and Training in its submission ignores the issue. Instead, it claims that the measure will net the Commonwealth $1 million in income over four years:

> 'Under accepted accounting practice, the actual amount loaned to students is treated as a financial asset and therefore does not impact on Commonwealth expenses. The overall impact on the fiscal balance is positive and in the order of $1 million over four years.' [DEST, submission 12, p.4

Evidence provided by Dr Chapman counters the Department's claim:

> '…there is in reality an economic impact. The DEST submission says that under accepted accounting practice the loan to students is treated as an asset. That is true, but in economic terms it is not correct. The reason is that there will be [an] implicit subsidy.' [Transcript of Evidence p.17]

In evidence, Mr Burmester of the Department confirms that a subsidy exists. He provides [Transcript of Evidence p.50] a DEST estimate of the implicit subsidy in PELS of 12 per cent. The Labor Senators remain at a loss to explain the apparent inconsistencies in the Department's evidence, especially the view that an estimated $1 million in funds would actually be generated by the measure.

It is the *purpose* of the measure that matters, rather than its effect, according to Government senators (par.2.7). This they specify as 'a subsidy provided [to the student] for the specific purpose of transacting business with the education provider'. Labor senators regard this as a strange argument, and consider that intentions are far less relevant and important than the actual outcome, which, as argued, is to provide a subsidy not only to the student but, indirectly, to the provider as well.

For Labor senators, this issue of the inherent public subsidy in PELS is fundamental. It means that questions of accountability immediately arise in connection with the four providers. This issue is not a matter of essential distinctions asserted to exist between public and private educational provision. While it is true that three other private higher education institutions are currently in receipt of public subsidies of various kinds, including PELS, it must be emphasised that, in so far as these institutions – University of Notre Dame, Marcus Oldham College and Avondale College – receive public funds, they are obliged to submit themselves to the accountability and reporting requirements provided for in the *Higher Education Funding Act 1988*. This is the case by virtue of the fact that they are each listed on one of Table A or Table B of the Act (Section Four).

Under the proposed new arrangements, the four providers would be listed on a separate Table of Section Four of *HEFA* headed 'Unfunded Institutions', but, since they would receive no direct remit of funds from the Commonwealth, the reporting and other requirements would not apply to them. In the opinion of Labor senators, however, the effective access of these providers to substantial implicit subsidies of their postgraduate teaching operations renders their situation anomalous in comparison with that of all other institutions listed in the Act. The fact that their subsidies would be indirect does not alter the dollar value to the providers of the funds implicitly provided. In fact, the heading proposed for the new Table – 'Unfunded Institutions' – is misleading for this reason.

In return for their Commonwealth subsidy, the four providers would, under the plans contained in this bill, have placed on them no obligations or responsibilities whatsoever to the Commonwealth to account for the manner in which they provide postgraduate courses to their students.

The resulting questions about accountability and related matters arising from the PELS measure in the bill are the subject of the following sections of this minority report.

Accreditation issues

A key issue now arises: how can the Commonwealth assure itself that the four providers have the capacity and the appropriate structures and processes in place to ensure that they offer an educational experience on a par with that available at mainstream Commonwealth-funded universities?

The DEST submission refers to an election commitment made by the Government in 2001:

> '[A]ccess to grants and subsidies should be on the basis that a higher education provider:
>
> - is established by statute and included on the Australian Qualifications Framework register as a self-accrediting higher education institution; or
> - has been rigorously assessed as being capable of delivering educational outcomes of a prescribed standard, and
> - assures the Government of the probity of their governance arrangements and their continuing financial health.' [DEST submission no. 012, p.3]

The Department goes on to note that the Government intends to address the matter of how these principles can be put into effect through its current policy review. The question of the intersection between this proposed measure and the review process, currently in train, will be addressed later in this report.

In its report, the Government raises the question: should self-accrediting institutions be treated differently, with regard to access to PELS, from providers that are not self-accrediting. Labor senators now discuss this issue, in relation to matters including accountability and quality.

Two of the providers, Bond University and MCD, are self-accrediting institutions established under acts of state parliaments. The remaining two are subject to accreditation by state authorities – the Queensland Office of Higher Education, in the case of CHC, and the South Australian Accreditation and Registration Council for Tabor College (SA).

Do these facts of themselves, related to accreditation, allay concerns about accountability and quality assurance?

They do not. First, in the cases of the two self-accrediting providers, it is apparent that their acts of establishment differ in some important ways from those establishing mainstream public universities. Legislated provisions are much more sparse and considerably less specific than those applying to public universities. Crucially, neither the *Bond University Act 1988* nor the *Melbourne College of Divinity Act 1910* contains any requirements or specifications that go to the establishment of an academic board, as primary academic decision-making body separate from the supreme governing board or council. Neither act applies the rigorous public financial reporting and auditing standards that apply to public universities. Nevertheless, the relevant institutions have, in evidence, assured the Committee [*Transcript of Evidence* p.6] that both posses separate academic decision-making structures and bodies. Both will be, eventually, within a five-year cycle, audited by the Australian Universities Quality Agency (AUQA) though neither institution has been audited to date.

Finally, it should be noted that the submission from the Australian Vice-Chancellors' Committee (submission no.13) recommends that these two institutions, as self-accrediting and legislatively established bodies, should be admitted to access to PELS, but that the remaining two providers should not.

As far as CHC and Tabor are concerned, these providers are responsible to the state accreditation authorities that oversee their course provision. In terms of financial reporting, they are subject to the requirements of relevant corporations law: these are much less detailed and rigorous than the provisions applying to public universities. While the state authorities, in examining providers for the purposes of accreditation, assure themselves that the provider in question has the capacity to deliver a course to an acceptable standard, they do not specify

or scrutinise in detail the composition and structure of governing bodies, or the nature of institutional governance.

The process of accreditation applying to private, non-university providers is centred upon courses, not on the providers themselves. It is courses that are accredited, one by one, and hence this is understandably where the focus of accreditation agencies is concentrated. Aspects of the overall running of a provider are certainly considered – particularly in the case of Queensland – in terms of the capacity and suitability of the provider to provide the course in question at a satisfactory standard. Thus facilities, for instance, will be investigated, but only in so far as they are related to the particular course for which an application has been made. Financial probity of the provider is taken into account, but only to the level where the authorities are satisfied that the company or organisation is financially viable and sound.

It should be noted that procedures in the two relevant states, Queensland and South Australia, differ from each other in one important respect. In the former state an overall assessment of a provider *qua* higher education institution, over and above assessment of individual courses, does not currently take place in a formal sense. In South Australia, by contrast, assessment of providers as whole institutions does in fact occur as a formal part of the accreditation and registration process, though this appears in terms of emphasis to be ancillary to the examination of courses. Evidence to this effect is provided by representatives of the two colleges on the accreditation processes in their respective states on pages 10 and 11 of the Committee *Transcript of Evidence*.

It appears, however, that the South Australian whole-of-institution criteria for registration are taken from those applying to vocational education and training (VET) providers through the Australian Quality Training Framework (AQTF). This is alluded to by Reverend Slape in his evidence where he refers [p.11] to 'the registered training organisation [RTO] status' of his college. He reports that the former South Australian Education Minister 'declared [the College] as a higher education institution', based apparently on RTO criteria and procedures. An examination of these criteria reveals that they are designed to assess education providers in the VET sector, and do not necessarily address the specific nature of higher education provision and institutions. Implicit in the MCEETYA Protocols is the requirement that all courses, to qualify for accreditation as higher education courses, must have standards and characteristics commensurate with those available in Australian universities. An essential feature of a university, for example, is the existence of an active research culture which provides an appropriate intellectual context in which the course is taught. The AQTF standards, by which RTOs are assessed, do not make reference to this aspect. Nor do the AQTF Standards require that teaching staff have higher degree qualifications. Thus, Labor senators believe, these Standards and criteria may not be adequate for the purpose for which they are apparently being used.

Under the MCEETYA National Protocols it is the agreed role of state accreditation authorities to focus on courses rather than institutions *per se*. This fact is important in this context. It is not a pedantic point: it creates a problem when it comes to adjudging the credentials of non-self accrediting providers for the purpose of deciding whether they should have access to Commonwealth subsidies. A course-based focus averts attention from features of private providers that need to be taken into account by the Commonwealth and that, in the case of public universities, are examined by DEST through the educational profiles process and by means of a range of explicit reporting requirements, such as equity plans, research management plans and the like.

While the focus of state and territory authorities on courses, rather than on providers *per se*, may well be appropriate for accreditation purposes at state level, this emphasis has practical consequences for the legislation under discussion. As far as the procedures and practices of

these education providers are concerned, 'whole-of-provider' scrutiny by state authorities appears to be considerably less demanding and detailed than that applied to public universities through *HEFA*. This is particularly true in terms of discrimination – applying to staff and to students – and of employment practices. The apparent situation with the four providers in these regards is discussed below. In making this point, however, the Labor senators do not wish to imply that state accreditation bodies are not doing their job assiduously: it is simply that *their* job is *not* to assess non-self accrediting providers for access to Commonwealth subsidies. Instead, their role might be characterised as one of quality assurance and standards monitoring. The state authorities, through their accreditation and monitoring processes, provide guarantees to students, and their future employers, that the courses provided are of an acceptable standard. Their purpose is not to provide guarantees to the Commonwealth that the education providers are suitable for access to Commonwealth subsidies. The issue of whether or not it is appropriate for the Commonwealth to extend subsidies to additional private providers is a major question, and the criteria and circumstances under which this might occur should be explicit. The considerations appropriate to this question are not the same as those examined by state accreditation authorities in the proper exercise of their function.

Accountability

Evidence before the Committee contained extensive discussion on the issue of the public accountability of the four private providers, and on public accountability requirements applying to private higher education providers more generally. Labor senators were concerned that the four private providers, while to be accorded indirect public subsidies, were not to be subjected to the level of public scrutiny, particularly in terms of reporting requirements, that apply to other Commonwealth-subsidised institutions, including those in the private sector, by virtue of their listing on Tables A and B of *HEFA*.

The four providers were keen to discuss the issue in their submissions. It seemed to the Labor senators, though, that they all exhibited a fundamental misunderstanding about the nature of accountability requirements as they apply to public institutions. There was confusion between accountability *per se*, on the one hand, and quality assurance, on the other. For example:

> 'Bond University will participate in the audit process conducted by the Australian Universities Quality Agency (AUQA) in the same way as all public sector universities. As part of its ongoing, self imposed review of performance, Bond surveys teaching performance in every semester to obtain student feedback on syllabus and on the teaching performance of individual staff members. We have also surveyed satisfaction levels of graduating students over a number of years via the Graduate Careers Council of Australia Course Experience Questionnaire. Bond is in the process of developing its own instrument to obtain more meaningful feedback. Teaching performance is a major element of the annual performance review process for academic staff.' [Bond University, Submission no. 4, p.7]

The submission by Tabor College referred to the periodic audits of its courses undertaken by the South Australian Accreditation and Registration Council. These, once again, go largely to quality assurance and monitoring, rather than formal accountability. Beyond this process, the College described the market accountability of the institution and the internal formal mechanism by which it answers to its Board:

> 'As a higher education institution, Tabor College recognises that it must demonstrate a high level of accountability to its various stakeholders and seeks to exercise this accountability at all times in a responsible and ethical manner. The College is accountable to the Accreditation and Registration Council (ARC) in

> South Australia to deliver the programs that it is registered to deliver in line with prescribed standards; it is accountable to its students who invest time and money to take its courses; it is accountable to its Board of Directors for efficient and effective use of income and resources, and effective delivery of programs; and it is accountable to the wider community which it serves by releasing graduates equipped to serve that community in ways that enhance community life and make a positive contribution to the well-being of the Commonwealth of Australia.' [Tabor College, Submission no. 1a, p.7]

None of the four providers comes under the purview of the relevant State Auditor General or Ombudsman. Furthermore, since they are all established under various forms of companies legislation, the financial reporting obligations applying to them are considerably less rigorous and less detailed than those imposed on public universities.

During the hearing the four institutions were asked whether they would be prepared to submit themselves to the full range of accountability requirements applying to publicly-funded universities [*Transcript of Evidence* pp.6-8]. Only Bond University expressed reservations, though it is not clear that the other providers had detailed knowledge of the provisions of *HEFA* and other relevant processes. In reply to a question about the institutions' willingness to come under public scrutiny, Rev Slape of Tabor College said:

> '…I do not believe we would have any problems with that.' [Transcript of Evidence, p.8]

Pastor Millis, from CHC, also gave an assurance:

> '…We would have no problem with further measures of public accountability to the Commonwealth in relation to participation in PELS.' [Transcript of Evidence, p.8]

The MCD representative referred in this context to the AUQA, under whose aegis the College falls [*Transcript of Evidence* p.7]. It seems that a quality assurance process that consisted of self-auditing procedures was to some extent being conflated with the public reporting provisions of the Act, and this attitude featured also in some contributions to evidence from other witnesses.

Labor senators welcome the declarations of willingness to subject themselves to additional accountability and quality assurance measures evinced by the education providers in question.

Quality assurance

The issue of quality assurance has been alluded to in discussion of the question of accountability. Labor senators believe that current auditing arrangements applying to the two Christian colleges are probably satisfactory, although, in the absence of formal auditing by the AUQA (as opposed to the 2001 trial audit of the Queensland authority) of the two relevant accreditation authorities, it is not possible to state such a view with certainty. Pending these audits, Labor senators consider that there are not adequate grounds for making a definitive assessment on this question.

Bond University and MCD are self-accrediting institutions. They are also required to submit research management plan to DEST, as a *quid pro quo* for the receipt of Commonwealth research training places and research funding. Thus this aspect of their operations, at least, is under the monitoring eye of the Commonwealth. The two are also included in the list of institutions and agencies that will be audited by the AUQA. In this regard they have a lot in common with other publicly-subsidised institutions.

The four providers, particularly Tabor College, submitted independent evidence of the soundness and excellence of their courses. It is not doubted that this evidence is genuine. Tabor College and CHC also said [*Transcript of Evidence* p.7] that they would be prepared to submit to audit by the AUQA.

Where the Labor senators have reservations, however, is in the reliance – both direct and indirect – of the providers on the existing powers and processes of AUQA. If the Agency is to play a role in assuring quality in the case of these four providers, then the Agency and its *modus operandi* need to be reviewed, to ensure that it has the powers to perform this task effectively.

Governance

Institutional governance is an issue closely related to the matters discussed above. The governance of public universities reflects their status: the composition of their governing bodies (councils) is closely specified in legislation and includes a range of representatives and nominees of government, as well as persons from industry and other organisations. Also included are democratically elected representatives of staff, students and convocation (graduates). Public higher education institutions all boast a separate academic decision-making body, usually known as an academic board, which also includes elected representatives form the staff and student bodies. The proceedings of these councils and boards are published.

These provisions do not necessarily apply to higher education provider institutions located in the private sector. The Committee heard in evidence that Bond University has external representation on its supreme governing body and that the University has a separate academic decision making body [*Transcript of Evidence* pp. 6, 12]. Melbourne College of Divinity outlines its governance structure in its submission [Melbourne College of Divinity, Submission no.003, p.3] which refers to a governing council and a series of Boards of Studies. A perusal of the MCD Act, however [*Melbourne College of Divinity Act 1910*] reveals that the members of the supreme body of the College include internal representation from the staff and students, but otherwise all council members are nominated by the churches involved with the College. As with Bond, there are no government-appointed nominees.

The two remaining colleges, CHC and Tabor, are governed according to internal rules and practices that are internally constructed and specified. While obviously no disparagement is intended in making this observation, Labor senators would ask whether the principles of openness and transparency, were reflected in the governance structures of these providers in a manner commensurate with those of public universities.

Discrimination

Religious organisations are exempted from certain aspects of anti-discrimination legislation. This point is made by Government senators. Generally speaking, these include discrimination on the narrow basis of religious belief itself and also, more broadly, discrimination designed to avoid offending the 'religious sensibilities' of members. This means that, for example, the Catholic Church is not obliged to ordain women as priests. In both the narrow and the broader sense, the issue of discrimination has arisen during the Inquiry.

Both Bond's and MCD's enabling legislation include clauses proscribing discrimination in admissions policies. It is the understanding of Labor senators that these institutions are subject to relevant State anti-discrimination legislation (except where, in the case of MCD, any of the special provisions about religion may apply). The Federal *Human Rights and Equal Opportunity Commission Act 1986*, and the acts relating to discrimination on the basis

of sex, race and disability, all apply to these institutions, with the religious proviso in the case of MCD. The first of these pieces of legislation applies only to occupation and employment, and thus, Labor senators believe, does not apply to students as such.

The two remaining Christian providers can claim exemption from aspects of State and Federal anti-discrimination related to religion and religious sensibilities. In their hiring policies, both providers appear to confine themselves to those professing Christianity, as their websites attest:

> *'The lecturers are Christians…'* [Christian Heritage College website]

> *'Teachers and supervisors are selected on the basis of their Christian commitment, academic qualifications and experience…'* [Tabor College website]

Labor senators respect the right of colleges of a particular religious persuasion to seek out and appoint teaching staff who share the convictions of their religion. Such policies probably do not contravene anti-discrimination in either South Australia or Queensland, nor in the federal jurisdiction.

The issue of discriminatory policies applying to students is problematic. The two colleges (CHC and Tabor) assert that a practice of 'self selection' applies in their cases: students without Christian convictions would be extremely unlikely to be attracted to seek admission. This is probably true. It appears, however, that the colleges have in place policies that place barriers which render it very difficult for any such student to gain admission. CHC says, for instance:

> 'In relation to undergraduate teacher education programs and to ministry programs… the College would assert both a right and a responsibility to differentiate more actively: that is, not to accept an applicant on religious grounds in certain circumstances.' [Christian Heritage College, Submission no. 8, p.10]

It seems, that profession of, and active engagement in, the Christian religion is a requirement for at least some courses at CHC. In other courses, the College says:

> 'In its Business and Social Science programs, and in its postgraduate Education programs, the College might give preference, all other factors being equal, to applicants who provide evidence of their Christian convictions, but the College does not exclude from consideration applicants who do not provide such evidence.' [Christian Heritage College, Submission no. 8 p.11]

The College, in the course of this Inquiry, has not on any occasion taken the opportunity to clarify whether profession of a certain form of Christianity is, practically speaking, a requirement for admission.

Tabor College told the Committee [*Transcript of Evidence* Rev Slape, p.13] that it applied religious criteria for admission, but that it had on occasion waived one or more of these conditions. However, a perusal of its website shows that the application form requires applicants to state their date of 'Conversion, baptism or baptism in the Spirit'.

Both colleges state explicitly that they offer an education with a particular flavour and slant. Their website material assumes, or at least strongly implies, that students will be followers of the Christian religion. For example:

> 'Christian Heritage College's fully accredited academic programs offer you the opportunity to receive a quality education…. at the same time as you are equipping yourself to serve God.' [Christian Heritage College website]

Labor senators emphasise that they have no issue with a higher education provider that offers a religious-based education, provided that principles of free and open inquiry are observed. Several witnesses before the Inquiry raised the issue of whether such institutions should have access to Commonwealth subsidies.

Research activity and intellectual freedom

Access to PELS is confined to postgraduate students. At this level, original thought is essential to study: intellectual freedom is thus inherent to the concept of postgraduate education, whether this is applied to research training or to coursework. In her evidence the Vice-President of the Council of Australian Postgraduate Associations (CAPA) confirmed this:

> 'Senator Carr: Turning to the issue of the nature of postgraduate pedagogy, how important is intellectual freedom in postgraduate education?
>
> Ms Brankovich: Extremely important.
>
> Senator Carr: Is it possible to undertake postgraduate education where intellectual freedom is not the prevalent characteristic of the institution?
>
> Ms Brankovich: Certainly not. We would be opposed to limit intellectual freedom on postgraduate study.
>
> Senator Carr: Do you think the research culture within the institution has any bearing on the quality of the education provided?
>
> Ms Brankovich: Indeed it does. The more developed the research culture the more support there is for postgraduate research – although we are talking about postgraduate coursework, which does include to a certain extent research as well.' [Ms Jasmina Brankovich, *Transcript of Evidence*, p.30]

However, it would appear to Labor senators that, while there is clearly an active research culture, and the concomitant values of openness and intellectual freedom, at two of the four institutions – Bond and MCD – the situation of the remaining two providers remains unclear.

In fact, it seems that representatives of the colleges dispute that there is an essential connection between teaching and research. For instance:

> '… we would argue that we are primarily a teaching institution and we would contest the view that there is necessarily a nexus between… research, and standard setting in relation to our teaching.' [Pastor Millis, *Transcript of Evidence*, p.12]

Rev Slape of Tabor College made a similar point [pp.14-15], though he also pointed out that financial constraints limited the capacity of staff at Tabor to be active in research. While representatives of both providers expressed an interest in expanding their research programs, both tacitly admitted that research unambiguously took second place in terms of their missions.

While respecting the religious basis of the two colleges, their explicit orientation raises questions for the Labor senators. It is unclear that the context in which postgraduate education is offered in these colleges would meet the standards enshrined in the MCEETYA National Protocols as they apply to existing publicly funded institutions. This fact has obvious implications for the kind of postgraduate education that they are able to offer. Once again, the question is: while students should be free to undertake these courses, should this be subsidised by the Australian taxpayer?

Possible remedies

Hitherto there have existed no explicit criteria employed by the Commonwealth for inclusion of institutions on the Tables of *HEFA*.

Labor senators consider that the increasing emphasis of government policy on extending existing funding to private self-accrediting institutions and a range of non self-accrediting institutions has made it impossible to ignore the absence of due process in this regard. This point is made abundantly clear in a number of submissions received by the Committee (explicitly from ACPET and the Australian College of Theology and implicitly from COPHE) indicating that the inclusion of these four institutions should be the first of many such additions.

As noted earlier in this report, Labor senators believe that the criteria used to determine which institutions are eligible to receive a public subsidy (including implicit subsidies such as PELS) should be more stringent than those used to accredit institutions simply to offer qualifications.

A proposal that may be worthy of consideration is the development of nationally determined criteria, consisting of minimum standards to be met by providers in order to receive public subsidies. They might include:

- guaranteed minimum levels of quality and standards (as distinct from quality assurance mechanisms)
- non-discriminatory admissions policy and educational processes
- full public accountability and transparent governance structures
- commitment to free and open inquiry
- curriculum which exposes students to, and tolerates, a variety of perspectives.

The MCEETYA *National Protocols For Higher Education Approval Processes* might provide additional guidance. It has been suggested by the NTEU (in a supplementary submission, tabled) that an explicit process for the inclusion of a provider in *HEFA* should be set down. This might involve the establishment of a buffer body modelled on the style of the Higher Education Funding Council of England in the UK. At the very least, *HEFA* must include specifications of the conditions that will apply to providers listed, in terms of the obligations and responsibilities to be imposed upon them.

Conclusion

Labor senators consider that the issues raised in their minority report are serious. They have far-reaching implications for higher education policy generally, and for the use of taxpayer funds in providing subsidies without requiring appropriate levels of accountability and probity.

Therefore the Labor senators recommend that the bill should be amended to strengthen the quality assurance, accountability and reporting requirements to be applied to the four education providers intended to be given access to PELS for their students. In particular:

- quality assurance criteria should be consistent with the MCEETYA National Protocols for Higher Education Approvals Processes; and
- accountability and reporting processes should be commensurate with those applying to public universities, and should include the full range of requirements that apply to public higher education institutions.

Senator Kim Carr **Senator Trish Crossin**