

# Chapter 1

## Majority Report

1.1 On 11 August 2004, the Senate referred to the Legislation Committee for inquiry, the Higher Education Legislation Amendment Bill (No.3) 2004. The committee was due to report on 2 September.

1.2 Submissions were called for immediately and a public hearing was arranged in Melbourne for 19 August. Nine submissions were received.

### **Provisions of the bill**

1.3 The Higher Education Legislation Amendment (No.3) Bill is omnibus legislation which amends four acts. Among other provisions, the proposed amendments extend funding for radiation oncology training; they ensure the continuation of summer school arrangements; add Melbourne University Private Limited (MUPL) to the list of Table B providers eligible to access Commonwealth funding for research and FEE-HELP; and allow more flexible arrangements for students applying for financial assistance, including extension of access to assistance for students under the OS-Help scheme. Altogether, the amendments proposed in the bill will increase appropriations by over \$500 million.

1.4 The committee's consideration of the bill was limited to the inclusion of Melbourne University Private to the list of Table B providers. Matters were raised about the timeframe of the legislation in view of the Senate's crowded schedule of legislation, and the lead-times for the drafting of amendment bills following consultation with universities. While the committee recognises the obligation on governments to plan legislative measures well ahead of time, it is also sympathetic to claims from interested parties affected by legislation to ensure that consultation takes place and that governments are able to act on the best advice available. These requirements weigh more heavily on the Senate workload toward the expected end of a parliament.

### **Provision relating to Melbourne University Private**

1.5 The committee notes that government policy is to develop a more sustainable and diverse higher education system so as to meet the varying training and professional skills needs of industry. The flexible and multi-disciplinary delivery of academic courses is a challenge taken up just as readily in the private sector as in public universities. It is Government policy to encourage the private higher education sector to increase its share of that market.

***Relevant facts about Melbourne University Private***

1.6 Melbourne University Private Limited (MUPL) is an unlisted public company of which the University of Melbourne is the sole shareholder. The university was established in July 1998 under a Ministerial Order of the Minister of Education, renewable in five years.

1.7 During its inquiry into higher education in 2001, the committee received evidence from Melbourne University and its vice-chancellor at the time, Professor Alan Gilbert, about the potential of MUPL to use its competitive advantage, and the Melbourne University 'brand' and world-class expertise to generate revenue for the university. This would happen as a consequence of tapping into niche markets servicing the specialised needs of industry: markets which traditional universities could not meet because they lacked the course flexibilities required.<sup>1</sup> The committee notes that while capital growth projections may have been optimistic, MUPL has been successful in developing courses for government agencies and several foreign clients, including PETRONAS, the large Malaysian oil corporation, and for a number of foreign aid agencies.<sup>2</sup>

1.8 The committee notes advice from MUPL that it is a self-accrediting institution whose academic and commercial operations are focussed on its School of International Development, School of Applied Language Studies and its School of Enterprise. Around 130 full-time equivalent staff are employed, including staff placed overseas in joint ventures. MUP currently has 344 award students, over 1000 non-award students and a turnover of \$55 million in 2003-04.<sup>3</sup>

1.9 At the end of first three years of operation, the Minister for Education and Training in Victoria ordered a review by an expert panel to establish whether MUPL had met the MCEETYA principles known as the National Protocols for Higher Education Approval Processes. The committee heard evidence from Professor Simon Marginson, one of the accreditation panel members appointed by the Minister, that reaccreditation was recommended subject to MUPL developing a comprehensive research program.<sup>4</sup> The way was now clear for MUPL to apply to be placed on the Table B list of higher institutions eligible to accept FEE-HELP recipients, and recipients of Commonwealth funded research grants.

***Table B inclusion***

1.10 The *Higher Education Support Act 2003* provides for two ways for approving funding for institutions: either through an amendment to the act to list the institution on either Table A or B, or through identification and approval by the Minister as a

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1 Senate EWRE Committee, *Universities in Crisis, Report on Higher Education*, p.241

2 Submission No.4, Melbourne University Private, p.2

3 *ibid.*

4 Professor Simon Marginson, *Hansard*, Melbourne, 19 August 2004, p.2

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'higher education provider'. This second option, which is subject to disallowance by the either House, is not appropriate in the case of Melbourne University Private. A listing on Table B through legislative amendment will allow MUPL eligibility for research funding through the Institutional Grants Scheme and allow its teaching staff to apply for Australian Research Council grants. This amendment will allow the provisions that currently apply to some other private universities to apply also to Melbourne University Private.

1.11 Inclusion on the Table B list is dependent on a state legislative or executive instrument, as earlier described. The committee took evidence from the Department of Education, Science and Training (DEST). Officials told the committee that in the course of deliberations on the inclusion of MUPL on Table B, the minister had asked for assurances that MUPL's inclusion was consistent with the MCEETYA protocols. A financial viability check was done, including the adequacy of capital backing and sustainability, and possible issues that would bring into question MUPL's continued financial viability. The minister acted on the basis that there was adequate asset backing and that quality assurance processes met the required standard.<sup>5</sup>

### ***The independence of Melbourne University Private***

1.12 Government senators noted the extensive probing that their opposition colleagues made in relation to the independence of MUPL and its relationship with the University of Melbourne. There has been consistent ideological opposition to the establishment and continued operation of MUPL. The case against MUPL has been made at some length in evidence to the committee, although this cause has not been pursued with as much vigour by those associated with the higher education sector as it has been by the opposition. As the NTEU pointed out, they have members associated with MUPL.<sup>6</sup> While the opposition members of the committee take the view that MUPL is a failed institution approaching the end of its existence, the NTEU has stated that it has little argument with the importance or quality of the services offered by MUPL, and recognises its potential value as an income stream for its parent institution, the University of Melbourne.<sup>7</sup>

1.13 The issue of the independence of MUPL vis-a-vis Melbourne University is irrelevant to the issue of including MUPL on Table B. It is difficult to understand the link that the opposition is attempting to make. The MCEETYA protocols declare that institutions must be self-accrediting, as MUPL is, but they do not stipulate 'independence' as an essential criterion to be met. As the NTEU submission points out, MUPL is a wholly owned subsidiary of Melbourne University. The board of MUPL includes among its number the vice-chancellor of Melbourne University. The chairman of the board of MUPL is a University of Melbourne council member and the

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5 Mr William Burmester, *Hansard*, Melbourne, 19 August, p.45

6 Submission No.7, National Tertiary Education Union, p.2

7 *ibid.*

third (of a total of eight councillors) is a senior administrator of Melbourne University. The president of the academic senate of MUPL is appointed by the vice-chancellor of Melbourne University. So while MUPL is a self-accrediting institution, its role as an adjunct to Melbourne University remains. The Government has not regarded the status of MUPL – as compared to completely autonomous institutions such as Notre Dame or Bond universities – as being relevant to the issue of inclusion on Table B.

1.14 Opposition senators have suggested that the relationship of dependency between MUPL and Melbourne University means that MUPL has breached MCEETYA protocols and on these grounds is ineligible for Table B status. As DEST officials advised:

Regarding independence under the MCEETYA protocols, if you were seeking to be a self-accrediting institution or a university, it goes to your academic independence and your financial viability. Financial viability can be achieved through partnerships and arrangements with owners who have equity. The requirements under the new arrangements for Melbourne University Private mean that they establish their own independent academic board and committee to establish the qualifications that Melbourne University Private accredit. So they have independence in the accreditation of their award offerings.<sup>8</sup>

1.15 DEST officials were asked whether the independence of the course accreditation process was affected by the 'branding' of MUPL's courses. The response was that this was a commercial arrangement between the two institutions: that Melbourne University Private has the power and the responsibility to determine and accredit its own awards. If it then chooses to badge them with a Melbourne University crest, then it has to get certification for that award from the University. The fact that MUPL has chosen this course does not mean that they cannot change this approach and determine their own awards beyond that agreement. MUPL is entitled under Victorian law to make its own arrangements in regard to licensing agreements, just as it has the right to issue and accredit its own awards.<sup>9</sup> The committee sees this as meaning that the Commonwealth is bound to take that as a protocol met in full. The committee regards MUPL's decision to enter into these arrangements as determined by commercial considerations which are not relevant, in the case of this inquiry, to the committee's scrutiny of the bill.

### ***Recognition of state legislation***

1.16 As noted above, the MCEETYA protocols have legislative force in Victoria through the *Tertiary Education Act 1993*. This is the legislation under which the Ministerial Order is made to approve MUPL's operation as a university. The states are the 'gatekeepers' to the higher education sector. That is their role. As the submission from Melbourne University noted, Commonwealth funding vetos on universities

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8 Mr William Burmester, *Hansard*, Melbourne, 19 August, p.46

9 *ibid.*

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properly constituted under state acts, and meeting MCEETYA guidelines would effectively block new universities which lacked significant political patronage.<sup>10</sup> The submission continued:

It would create a situation in which state governments insist on research output while the federal government forbids new universities access to the funds required to produce this output. It is difficult for new universities to attract researchers and research students if they are denied access to research funding available to other (in this case, all other) universities.<sup>11</sup>

1.17 To take no regard for the decision of the state minister in extending accreditation, despite national agreement on the MCEETYA protocols, would be an unwarranted affront to all state governments by implication. Government senators note the inconsistent attitude of opposition senators in the view that they hold on this issue. In previous reports on higher education they refer to the Government's disregard for state prerogatives. Their action in recommending that MUPL be removed from Table B amounts to the same thing.

### ***Research issues***

1.18 A major condition in the 2003 Ministerial Order relates to research output. It is stipulated that Melbourne University Private must achieve an average research output of one DEST research point per equivalent full-time member of academic staff per year. The committee notes the claim that many universities do not meet this criterion, but that Melbourne University Private accepted this condition, and the research report to be presented to the Minister Kosky at the end of August shows that MUPL has surpassed this benchmark with 1.14 papers per full-time equivalent academic staff member. Government senators are prepared to accept that the research output conditions have been met if that has been the conclusion arrived at by the Victorian Government. As evidence from DEST officials made abundantly clear, this has nothing to do with the Commonwealth. They acknowledge only that MUPL is adhering to conditions laid down by the Victorian minister.

1.19 Opposition senators appear to find some of the research effort questionable, and identify the possibility that academics working across the two institutions, MUPL and Melbourne University, may have had their publications counted twice. It is not the role of this committee to engage in any speculation amounting to an audit of its own.

1.20 A reference was made during debate on this bill in the House of Representatives to the absence of the MUPL's 'research profile' and the 'sticking point' that has been raised with the Victorian Government.<sup>12</sup> As noted earlier, this 'sticking point' was easily resolved through the MUPL's ready acceptance of the MCEETYA research protocol. The committee notes the response to such comment from the vice-chancellor

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10 Submission No.3, University of Melbourne, p.2

11 *ibid.*

12 Ms Jenny Macklin MP, *Hansard* (HoR), 10 August 2004, p.32319

of Melbourne University, Professor Kwong Lee Dow, who submitted that such a research capacity could not be developed without funding.<sup>13</sup> The committee makes the point that few of the universities that we now refer to as the Group of Eight had any research capacity in the early 1950s. Capacity was developed through Commonwealth funding distributed on not dissimilar lines that that operated today by the Australian Research Council. The committee sees no reason why MUPL staff should remain ineligible for ARC grants, which are made against merit criteria.

1.21 Furthermore, the Council of Australian Postgraduate Association (CAPA) and the Federation of Australian Scientific and Technology Societies (FASTS) have tried to argue that the admission of MUPL to Table B will in some way 'dilute' the total research funding that is available to all the other universities.<sup>14</sup> This is a spurious argument given the number of institutions already eligible, and given that grants are based on merit. It cannot be argued on the one hand that MUPL lacks sufficient differentiation and autonomy from Melbourne University to be a Table B member, and at the same time ignore the fact that MUPL is a likely partner in research with Melbourne.

1.22 From the committee's perspective, the synergy that was intended to exist between the two institutions is capable of embracing research within the commercial relationship. The committee sees the objections of interest groups like CAPA, FAST and the NTEU as demonstrating a barely disguised ideological antipathy toward the kind of commercial experiment pioneered by Melbourne University and which is still evolving. The objection which the Government's critics have to the inclusion of MUPL on Table B is the impetus that this may provide for collaborative research efforts entered into by Melbourne University Private.

1.23 Finally, the committee notes comment from Professor Simon Marginson that the success of MUPL may encourage similar public-private arrangements by other members of the Group of Eight.<sup>15</sup> This is highly speculative. It is answered in part by comment in the submission from MUPL. New universities will only be established if they meet the MCEETYA protocols, which are a major disincentive to new entrants. Of six recent applications for university status, only Melbourne University Private has been successful.<sup>16</sup> More broadly, the peculiar business and political circumstances that saw the birth of MUPL are likely to arise infrequently. As Professor Marginson has observed, the issue of public benefit probably transcends the old argument about public versus private in the education sector. The committee regards community service obligation as befitting private institutions as well as public institutions, and, with Professor Marginson, notes the indigenous education work done in the Kimberleys by Notre Dame University as noteworthy in this regard.

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13 Submission No. 3, op. cit, p.2

14 Submissions Nos 5 and 8 respectively

15 Professor Simon Marginson, *Hansard*, Melbourne, 19 August 2004, op. cit., p.7

16 Submission No.4, MUPL, p.3

1.24 The committee believes that this work must begin somewhere. It looks to the long-term benefit likely to accrue to Melbourne University Private and to the beneficiaries of the research and the teaching it undertakes.

### **Other matters**

1.25 The committee received submissions relating to one other matter: amendments to the *Higher Education Support Act 2003* to facilitate out-of-semester full-fee undergraduate subjects. Submissions from the Australian Vice-Chancellors' Committee and the University of Melbourne gave strong support for this measure which has become necessary as a result of a review of the legislation. Under the act as it stands, most universities would be forced to discontinue their summer school programs, given that it is unlikely that students would choose to enrol for a fee-paying course if they could enrol as Commonwealth supported students. Universities would lack the additional income to cover the costs of the summer school.<sup>17</sup>

1.26 As noted at the beginning of the report, this amendment can be regarded as normal 'machinery' legislation, and its delay can be attributed to the exigencies of the legislative timetable at the end of a parliament.

### **Recommendation**

The committee commends this bill to the Senate and **recommends** its passage without amendment.



Senator John Tierney  
Chair

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17 Submission No.6, Australian Vice-Chancellors' Committee, p.3

