

Chapter 2

Opposition Senators' report

General comments

2.1 The Opposition has accepted the necessity and desirability of speedy passage of all provisions in this bill, with the exception of that contained in section 16-20, regarding Melbourne University Private (MUPL). However, the Government's decision to prorogue the 40th parliament means that any such speedy passage is precluded. The issues discussed in this report, and that are dealt with in the bill more generally, will now become a matter for the next parliament.

2.2 Opposition senators note the submission to the inquiry from the Department of Education, Science and Training and supporting evidence provided at the public hearing of 19 August 2004. It is accepted that, with the exception referred to in 2.1, the amendments to the four Commonwealth Acts proposed are reasonable and, in some instances, essential for the conduct of important functions and activities of higher education institutions. In particular, as the Australian Vice-Chancellors' Committee (AVCC) has pointed out, the amendments, contained in sections 36-10 and 36-11, designed to allow universities to continue to operate summer schools on a fee-paying basis (provided that units offered are also available at other times to Commonwealth-supported students), need to be enacted as soon as possible. To fail to do this would be to prevent universities from offering such programs during the coming summer break and would seriously affect many students. In making these observations Opposition senators draw attention to the fact that the central purpose of this bill is to deal with omissions, oversights and mistakes on the part of the Government in the formulation of its higher education legislative package of 2003. Some of these errors, especially that concerning the conduct of summer schools mentioned above, would, if unattended to, cause significant hardship and difficulty for universities themselves as well as for students.

2.3 It is unacceptable that this bill, seeking to redress these problems, was introduced so hastily, and at a point in the legislative cycle where severe time constraints would inevitably arise. Unfortunately, by introducing the bill so late in the life of the parliament, the Government has now ensured that universities and their students will be inconvenienced by delays in righting the oversights and errors of the legislation passed with such haste by the Parliament in December 2003. There is no reason discernible to the Opposition that these matters could not have been dealt with in a more timely fashion.

2.4 The legislative framework for higher education enacted in 2003 is, as Labor senators noted at the time, fraught with inconsistencies, administrative ambiguities and bad policy. It creates grave problems for universities in attempting to navigate its impossible provisions. The bill currently before the Parliament tries to deal with a few of the unworkable aspects of the legislation as enacted. The deal struck between the

Government and the four independent senators immediately prior to, and even during, the Senate debate of December 2003 bears the hallmarks of a rushed job which has neither internal consistency nor policy integrity. Concessions and amendments made on the run with independent senators in order to secure their support have left an unfortunate legacy that universities, their staff and students have to live with. The independent senators, for their part, pursued isolated issues and goals, apparently unable to see the legislation as a whole package that required internal coherence. The Government's deviousness and ruthlessness in pursuit of passage of the bill led to the unfortunate and entirely avoidable outcome of a weak, unworkable legislative framework.

2.5 Further, in accordance with common practice on the part of this Government, this bill attempts to introduce, alongside eight non-contentious provisions, one particular amendment to higher education legislation that is highly controversial: the matter of the addition of Melbourne University Private Limited (MUPL) to Table B of the HESA legislation. In this way the Government seeks to force the passage of this particular provision on the back of arguments that the remaining provisions are routine, desirable and even essential for the continued operation of various functions of universities. Opposition senators do not regard it as appropriate for the Government to try to secure by such means passage of a measure about which serious questions and doubts have been raised, and which is strongly opposed by major stakeholder groups and policy experts alike.

2.6 The issue of Melbourne University Private is extremely contentious. Ever since the initial establishment of this entity by the University of Melbourne in 1997, controversy has reigned about its nature, purpose and status. It is reported that the Board of the AVCC recently rejected an application by MUPL for membership of that body, apparently on the basis that MUPL was not a university independent of its parent, the University of Melbourne.¹ The question of the relationship between MUPL and the University of Melbourne has proved to be a crucial one for this inquiry. The independence and self-sufficiency of MUPL as an academic institution is a matter of central relevance to its capacity to meet the test of the MCEETYA Protocols.

2.7 Opposition senators have serious doubts about the capacity of this entity to comply with the MCEETYA Protocols as set out for universities, and in particular to meet the conditions laid down by the Victorian Minister for Education and Training, Ms Kosky, for the continuing accreditation of MUPL as a recognised university in that State. Of crucial concern is the status of MUPL's research profile, and the question of its standing as a site of scholarly research. Opposition senators contend that no institution that fails to measure up to the standards required by the MCEETYA Protocols should be recognised by the Commonwealth through listing on Table A or Table B of the *Higher Education Support Act 2003*.

1 Perry, Louise, 'Private uni to be snubbed by AVCC', *Australian*, 3 August 2004, p.2

2.8 Accordingly, Opposition Senators believe that the bill under consideration should be split to allow immediate passage of all amendments except that relating to the addition of Melbourne University Private to Table B of the *Higher Education Support Act 2003*.

2.9 The remainder of this chapter deals with the matter of Melbourne University Private's inclusion on Table B of the 2003 Act. Due to concerns regarding the independence and self-sufficiency of Melbourne University Private's operations, and a concern to ensure that the standards set out in the MCEETYA Protocols are upheld, Opposition senators believe that at this time it is inappropriate to include Melbourne University Private on Table B of the *Higher Education Support Act 2003*. As such it is recommended that the portion of the Bill to include Melbourne University Private on Table B should be opposed in the Senate.

Melbourne University Private: Conditions for continued recognition as a university

2.10 The committee received eight written submissions pursuant to this inquiry, and heard in addition evidence from five parties, including two expert witnesses. Aside from that of the Government, only two submissions (those of Melbourne University Private itself and its parent institution, the University of Melbourne) supported the addition of MUPL to Table B. Evidence provided at the public hearing, in particular the evidence offered by MUPL representatives, leads Opposition senators to conclude that Melbourne University Private should not be admitted to Table B. The Opposition believes that, given the provisions of the licensing agreement between the two parties, MUPL cannot be regarded either as a genuinely independent, self-accrediting university. Nor can it be regarded as a higher education institution that satisfies the standards and requirements of the MCEETYA Protocols as approved by all States and Territories and the Commonwealth in 2000.² The MCEETYA Protocols form the basis of the conditions set out by Victorian Minister, Ms Lynn Kosky, in her Ministerial Order of July 2003 granting the institution provisional approval for a further five years as a recognised university under the *Victorian Tertiary Education Act 1993*.

2.11 In her letter of July 2003 to Mr David Lloyd, Chief Executive Officer of MUPL, Ms Kosky makes the following statements regarding the conditions laid down:

I must emphasise that I will treat each and every one of these conditions, and their timelines very seriously. If they are not met by the times specified I would revoke MUPL's approval to operate as a university.

2.12 Opposition senators have paid close regard to the conditions and caveats associated with the Victorian Minister's Order. It is contended that the demonstrated

2 MCEETYA *National Protocols for Higher Education Approval Processes*, 2000

failure on the part of MUPL to meet all of these conditions by the times specified should cast grave doubt on the credentials of the entity, and its claim to university status.

Compliance with Ministerial Order on research output

2.13 During the public hearing of 19 August the committee devoted considerable time to an examination of the extent to which MUPL had met Condition One laid down by Minister Kosky. This condition set a deadline of July 2004 (taken by all parties to mean 1 July 2004) for the provision of a report on the research output of MUPL, as follows:

Condition One: As a condition of approval to continue to operate as a university there be by July 2004 from each of the three Schools evidence of at least one peer-reviewed externally-published research output per equivalent full-time (EFT) of academic staff, and that this level of research productivity constitutes the minimum for each of the subsequent four years.

Such research outputs should meet the specifications required by the Commonwealth Department of Education, Science and Training for its higher education research data collection.

2.14 The Opposition senators interpret this condition, in its reference to the DEST specifications, as referring directly to research outputs: that is to say, the Condition requires the *research outputs* (publications) to meet the DEST specifications as set out in its guidelines. Accordingly, the research outputs as listed by MUPL were examined closely in the preparation of this report.

2.15 In an answer to a question on notice, MUPL asserts that it had been advised by the Office of Higher Education in Victoria that:

...the condition referred to the total number of publications produced by staff in the University, provided that the total number divided by the total number of full-time equivalent academic staff was equal to or greater than one publication per academic staff member.

2.16 This statement does not refute the claims made below by Opposition senators on the status of MUPL's research publications vis-a-vis the DEST guidelines. This advice is immaterial to the issues discussed below: the condition referred to a requirement that the publications themselves meet the DEST criteria, and did not refer to point values to be assigned to the publications.

2.17 The publications are clearly required by Condition One to meet the DEST guidelines. Condition One does not specify that only some of the DEST guidelines are relevant, but refers to all the criteria. This matter does not go to what MUPL refers to in the same answer to a question on notice as 'the academic merit or social significance of research publications' except in so far as the academic merit of such publications is underpinned by the DEST criteria, including the requirement for

application of strict peer review processes. The DEST criteria go to issues of originality, scholarly achievement and contribution, and to the status of any given publication according to well-accepted measures such as the standing of journals and publishers in the academic community. It is a nonsense to assert, as MUPL tries to do, that reference to the DEST guidelines entails only that MUPL's research publications are to be counted according to DEST point values, and its staff weighted along DEST-approved lines, if the publications produced do not meet the other requirements set out in the guidelines: requirements that go to their acceptability in the academic community as bona fide scholarly works.

2.18 In the view of Opposition senators, there is very strong evidence that MUPL has failed to meet Condition One. If this evidence is sound, it entails the conclusion that MUPL is not a university, as defined by Victorian legislation. It is of course a matter for the Victorian Government to assess this evidence for itself. It is not the business of the Senate to examine the merits of the actions or decisions of any state government. The Commonwealth must look to its own interests. Whatever the position to be taken by Victoria, Opposition senators believe that the detail of the considerations that have come to light in the course of the inquiry bring into serious question the advisability of the Commonwealth's moving at this time to accord MUPL the status of a stand-alone university, satisfying the MCEETYA Protocols to the extent that it deserves inclusion on Table B of the Act.

2.19 Under detailed questioning about its research record and output, as presented to Minister Kosky pursuant to Condition One in its Research Report 2003-2004, MUPL representatives exhibited a disturbing ignorance of the DEST eligibility criteria for research publications, and in particular of the extent to which the research publications listed in the report met these criteria. For example, in the case of two undergraduate history textbooks co-edited by an academic staff member, the representatives asserted that the publications satisfied the criteria as set down.³ They appeared unaware that the DEST guidelines specify that books 'unlikely to meet the criteria' include 'textbooks, anthologies, edited works...and revisions/new editions'.⁴ Furthermore, the representatives seemed unaware that both books fitted all of these descriptions, meaning that the publications were extremely unlikely to meet DEST's criteria: they failed on four counts.

2.20 The representatives of MUPL also seemed unaware of the DEST specifications regarding author affiliation stated on research publications. Two publications by a second academic staff member of MUPL, listed in the MUPL Research Report, identified this staff member as employed by the University of Melbourne and not by MUPL. Comments made in answer to a question taken on

3 Dr Vin Massaro, *Hansard*, 19 August 2004, p.23

4 Department of Education, Science and Training, *Higher education research data collection: specifications for the collection of 2003 data* DEST, Canberra, December 2003, section 4.4.1 p.22

notice on this matter by MUPL representatives do not go to the salient issue: the DEST guidelines (4.3.2, p.19) specify that the author has to identify an affiliation with the relevant institution on or in the publication, or otherwise provide a statement that the publication was produced in that person's capacity as a staff member of the relevant institution.

2.21 The written answer says: 'So it is actually irrelevant whether [the staff member in question] lists himself as both Melbourne University Private and University of Melbourne'.

2.22 The point made by Opposition senators is that the staff member failed entirely to mention in the publications in question that he worked for MUPL in any capacity whatsoever or at any time: he identifies himself only as a staff member of the University of Melbourne.

2.23 Further matters were raised, including the nature and standing of a number of conferences held in Indonesia, China and Hong Kong. The representatives were unable to assure the committee that papers submitted for these conferences had been subjected to peer review processes equivalent to those followed in Australia. Subsequently, in an answer to a question taken on notice, MUPL stated that all publications, including conference papers, were 'properly referred by international academic peers'. Opposition senators have undertaken their own investigations on this matter and have satisfied themselves that, at least in the cases of two of four overseas conference papers to which a certain MUPL staff member contributed, refereeing processes were almost certainly much more lax and informal than those normally required in Australia. For example, no written referees' reports were required. The avowed inability of MUPL to produce referees' reports pertaining to these conference papers may be apposite to the issue.

2.24 It was put to the representatives that, of the twelve publications claimed by MUPL as contributing to its research output for the purpose of satisfying the Victorian Government's Condition One, only two items clearly met the required DEST criteria. Serious doubts existed about five further publications, while it seemed clear that five failed to meet DEST specifications.

2.25 Witnesses for MUPL told the committee that the research output listing had been audited by a firm of accountants, HLB Mann Judd.⁵ However, it was unclear from the comments made by MUPL representatives that the auditors had done any more than to examine the report to ensure that it included correct calculations of the number of effective fulltime academic staff and the point value that the DEST rules would ascribe to the publication, should the listing be submitted to the Department for its own research data collection purposes. As Dr Massaro said:

They are required to establish that we have followed the processes, the measures and the definitions which have been stated by DEST to be the

5 Dr Vin Massaro, *Hansard*, 19 August 2004, p.21

way in which a calculation is made of both the value of each publication and the number of academic staff.⁶

2.26 The Opposition senators note that Condition One attached to Minister Kosky's determination did not require MUPL to assign value points, as specified in the DEST guidelines, to its research publications as listed: the Condition went only to the criteria for eligibility for actual inclusion on the list as provided.

2.27 If the auditors actually examined the publications to assure themselves that the books and papers listed met the scholarly and other formal requirements to be included on the list as eligible research publications, then it is contended by Labor senators that their auditing processes failed to reveal the inadequacies and irregularities in the listed publications referred to here. While it is accepted that universities often engage accountants to audit their research reports, it would seem that, on this occasion, a thorough audit was apparently not conducted.

2.28 Subsequently DEST officers told the committee that, to their knowledge, MUPL had not submitted the listing to the Department.⁷ They pointed out that, because the institution was not listed on either Table A or Table B of the Act, MUPL was not required to submit the report to DEST. Therefore no claims could be made that the report had been approved in any sense by DEST.

2.29 It seems to Opposition senators that representatives of MUPL obfuscated the issues surrounding the compliance of its research report listing with the DEST criteria. They have tried to concentrate the committee's attention on technical issues concerning the allocation of point values and the calculation of fulltime equivalent staff numbers, rather than the real issue of the extent to which MUPL's research output measures up according to commonly accepted scholarly criteria. It is understood that the DEST specifications are well known by members of the Australian academic community, all of whom must prepare annual returns of their own research publications for submission to DEST. Therefore it is more than a little odd that the MUPL Research Report for 2003-2004 has been signed off by Professor Michael Webber as 'Vice-President and Provost'. It is difficult for Opposition senators to believe that Professor Webber would not have raised doubts about the advisability of including at least some of the publications listed in the report.

2.30 Labor senators contend it is more than likely that all five publications said to emanate from the School of International Development for the year 2003-04 fail to meet the DEST criteria as eligible publications. Thus it follows that MUPL has failed to meet the condition laid down that all three schools must produce eligible research outputs within the year. One school has failed the test.

6 *ibid.*

7 Dr Evan Arthur and Mr William Burmester, *Hansard*, 19 August 2004, pp.42-43

2.31 Opposition senators conclude that there is clear evidence that MUPL has failed to meet Condition One as laid down by the Victorian Government in that, by 1 July 2004, the institution could not provide a list of research publications, meeting the DEST criteria, including a number of eligible publications equal to or greater than the number of effective fulltime academic staff of MUPL. If it is accepted that the audited number of fulltime-equivalent staff is correct at 7.6, then, even were only the prima facie obviously ineligible publications excluded, the listing would number 7.0. If, as is much more likely, all or most of the five publications of doubtful status were examined in detail and found also to be ineligible, the ratio of publications to academic staff would fall further. MUPL would clearly fail the test of Condition One. Therefore there is unambiguous evidence that MUPL's research output does not measure up to that expected of a genuine university.

2.32 Under these circumstances, Opposition senators consider that the Commonwealth would be extremely ill-advised to proceed at this time to list Melbourne University Private on Table B of the Act. The future of MUPL as an accredited university that meets the MCEETYA Protocols must be in grave doubt.

2.33 MUPL in its submission, and the Minister, Dr Nelson, have both claimed that without listing on Table B of the Act, MUPL will have difficulty in achieving a satisfactory standard in terms of recognised research output. Dr Nelson put the argument as follows:

The Victorian government approved the operation of the university subject to it making ongoing improvements in its research profile. It should be remembered that while Melbourne University Private remains unlisted members of its academic staff are unable to apply for—or, indeed, to hold—grants from the Australian Research Council. The university cannot access funding under the Research Training Scheme or the Institutional Grants Scheme.⁸

2.34 Opposition senators point out that the other universities listed on Table B - University of Notre Dame and Bond University - were both required to attain appropriate research profiles prior to their recognition for Commonwealth research funding. Indeed, it was their standard and record in this regard that was considered in assessing those institutions for this purpose.

2.35 Finally, Government senators in their report say: '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'.

2.36 Opposition senators emphasise that, as at the date of tabling of this report, the Victorian Government has made no announcement that it has arrived at such a conclusion.

8 Dr Brendan Nelson MP, *Hansard* (HoR), 10 August 2004, p.32331

Governance and independence of MUPL

2.37 MUPL is a wholly owned subsidiary of the University of Melbourne. It was established essentially as a commercial entity to ensure a revenue stream to the University of Melbourne; to allow the University of Melbourne to avoid regulatory requirements of the former *Higher Education Funding Act 1988*; and to permit the University of Melbourne to conduct activities and accredit courses that might be narrowly commercial in focus.⁹ With regard to accreditation of courses, the licensing agreement between MUPL and the University of Melbourne states that the President of MUPL is to be appointed by the Board of Directors on the advice of the Vice-Chancellor of the University of Melbourne (who is also a member of the board). This was confirmed by MUPL at a public hearing.¹⁰ The NTEU told the committee that this significantly strengthens Melbourne University's hand on the board.¹¹ The Opposition also heard evidence that the accreditation and certification process as it currently stands makes it hard for MUPL to sustain the argument that it operates as an independent entity.¹²

2.38 The committee was told that MUPL is to deliver courses effectively only where they are certified by the University of Melbourne. MUPL informed the committee that the University of Melbourne certifies its courses, which are awarded using the brand name of Melbourne University Private with the Melbourne University crest: 'the purpose of the agreement is to ensure that whenever that crest is used as part of our awards, the award itself has been duly certified by the University of Melbourne in terms of the use of that crest'.¹³ It is difficult to imagine how, practically speaking, MUPL could deliver courses and make awards that were not so certified. The Opposition believes that this consideration undermines MUPL's claim of independence and indicates the nominal nature of its self-accrediting status.

2.39 The Opposition also notes that the AVCC has recently rejected an MUPL application for membership of that body. This is a significant development in its quest to achieve independent status and to attain recognition as a university of equal standing to other Australian universities. While MUPL could not advise the committee of any reasons why its applications had been rejected, Professor Simon Marginson told the committee that it was his understanding that the AVCC '...did not want to give the University of Melbourne two votes at the table and that until Melbourne

9 Mr Grahame McCulloch, *Hansard*, 19 August 2004 p.35, makes this last point.

10 Dr Vin Massaro, *Hansard*, 19 August 2004, p.28

11 Mr Grahame McCulloch, NTEU, *Hansard*, 19 August 2004, p.38

12 Professor Simon Marginson, *Hansard*, 19 August 2004, p.5

13 Dr Vin Massaro, *op. cit.*, p.26

University private has established its bona fides as a quite separate, independent institution the matter will not get to its first consideration'.¹⁴

2.40 Mr John Cain, appearing in a private capacity, told the committee that, in the establishment of MUPL, the concept of the university as funded entirely by the private sector was not discussed or properly examined. At a public hearing Mr Cain made reference to a remark by former MUPL CEO, Dr Barry Sheehan, who reportedly described to Mr Cain the establishment of MUPL as involving 'a certain amount of smoke and mirrors'. He told the committee there was a degree of deception surrounding the process for the establishment of MUPL because it was, and still is, promoted as a private university funded by the private sector.

2.41 Research carried out by John Cain and associate John Hewitt showed that, while 12 private companies were going to contribute to MUPL's establishment, no private capital was contributed:

Instead of it being a private university with three prestige, modern buildings on University Square that they would occupy...all the buildings were built at public expense. They borrowed from the National Australia Bank up to \$200 million...and it was a lemon. Do you know how many people from Melbourne University Private occupy those building? Six.¹⁵

2.42 Mr Cain concludes that MUPL is not a private enterprise partly occupied by the public university, but essentially a public enterprise which has drained resources away from the University of Melbourne. The important point is that the University of Melbourne's expenditure of \$180 million on new buildings for MUPL came at a time when it was restricting its capital expenditure for the public university. Other than of the need to finance the outward appearance of a 'stand-alone' private university subsidiary, according to Mr Cain the University of Melbourne would not have outlaid such a large amount of money, with a consequent annual interest bill of approximately \$18 million. It is acknowledged, however, that the University of Melbourne had other purposes in mind for some of the buildings constructed as part of this program, including housing for the Law Faculty.

2.43 The issue of the financial independence of MUPL is highlighted by an examination of the financial performance of the entity. MUPL generated substantial losses – in the millions of dollars – over a number of years until the University of Melbourne undertook a rescue mission: it 'restructured' its commercial entities by merging the financially successful Melbourne Enterprises International (MEI) with MUPL, masking MUPL's poor financial performance behind MEI's success. The new commercial entity, however, retained the name 'Melbourne University Private'.

14 *ibid.*, p.4

15 Mr John Cain, *Hansard*, 19 August 2004, p.13

2.44 Yet Mr Cain and others believe that the organisation continues to place a financial burden on its parent, the University of Melbourne. During the public hearing MUPL representatives were questioned about the stated operating result of \$132,000 claimed by the company in 2003 (despite the Annual Report's representation of this amount at \$140,000). This figure, whatever its true value, appeared not to take account of a loss of \$893,000 from foreign currency transactions, specified in the financial statement for that year.¹⁶ In evidence, Mr O'Keefe for MUPL assured the committee that this amount was included in the company's bottom line: 'All I can say to you is that if we have brought to account and declared in our financial accounts some foreign currency losses then of course they are included in the bottom line'.

2.45 Subsequently, in an answer to a question taken on notice, Melbourne University Private acknowledged that the foreign exchange deficit was not accounted for in the posted operating surplus of \$140,000 but that the amount of \$893,000 was treated as an extraordinary item and accounted separately.¹⁷ The committee cannot take the assurances given by the witnesses at face value. Witnesses gave unequivocal accounts that, at best, were confused. It may well be argued that the committee was misled and no amount of reference to accountancy standards changes the nature of the evidence given directly to the committee.

2.46 Further, this admission indicates that the company, although propped up financially by a previously profit-making subsidiary of the University of Melbourne, continues to be a potential financial burden on its parent institution. This has implications for the financial health of the University of Melbourne and thus for the considerable amount in taxpayers' funds made available annually to this University.

2.47 On the other hand, it might be argued that, while MUPL was propped up by a capital injection from the proceeds of the sale of another wholly-owned subsidiary of the University of Melbourne (Melbourne IT), it has not directly drained funds from its parent institution. However, the proceeds from the float of Melbourne IT could have been put to other uses by the University of Melbourne.

2.48 Labor senators believe that it is impossible to reconcile MUPL's insistence on its independence, which underpins the argument for inclusion on Table B, with its actual degree of practical, legal and financial dependence on Melbourne University. Attention is also drawn to the financial drain on the University of Melbourne of the commercial entity.

Compliance with MCEETYA Protocols

2.49 Turning to the MCEETYA Protocols, the committee was told that these protocols are very important to higher education and to Australia's global reputation

16 *Melbourne University Private Limited Annual Report 2003* p.15

17 Statement of Performance, *Melbourne University Private Annual Report 2003, Financial Report*, p.15

for higher education. Professor Marginson argued that under the protocols universities must measure up as doctoral institutions that are genuine academic operations not solely concerned with commercial revenues and whose degrees have international standing. The protocols have established norms and standards which have been subscribed by Commonwealth, state and territory governments.¹⁸

2.50 The Protocols require both that an institution have a broad research profile and that it be an independent entity, established in its own right. The Opposition does not believe that MUPL meets the definition of 'university' under the protocols. It takes particular note of the view of Professor Marginson, a member of the committee established by Victoria's Minister for Education, Hon. Lynn Kosky, to review the university and establish a broader set of criteria for MUPL's second phase:

My sense is that [MUPL] does not currently fulfil our understanding of what a university is. It is an exception which is an anomaly in the system. It does not have a substantial staff in its own right, and the tactic has been to point to the University of Melbourne staff as the supporting staff structure, when in fact that is the structure of a university separate from the one Melbourne University Private purports to be as a self-accrediting institution. Yet it is fully controlled by the University of Melbourne. So it is an odd beast.¹⁹

2.51 An institution that fails to meet the standards required by the MCEETYA protocols, according to the *Higher Education Support Act 2003*, cannot, under the provisions of that Act, be placed on Table A or Table B of the Act and is ineligible for Commonwealth funding.

Sector-wide implications

2.52 The committee heard evidence that admission of MUPL to Table B would set a precedent for other universities to establish adjunct private institutions under their own auspices. This would have major implications for the higher education sector as a whole. The concern is summarised by the NTEU:

The inclusion of MUPL in Table B would establish a major precedent, and open the way for a large number of small, niche providers to seek access to the funding tables of the Act. This would be all the more serious given the lack of open and transparent processes surrounding the Government's selection of MUPL, a scenario likely to be replicated by the Government in its choice of other candidates for inclusion in the Tables of the Act.²⁰

2.53 Professor Simon Marginson argued that if the Parliament were to legitimate MUPL as a Table B member with the capacity to build up its fee paying enrolments, it

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

19 *ibid.* p.2

20 Submission No.7, NTEU, p.4

would be inevitable that other major universities would be in a better commercial position to become full-fee chargers through similar mechanisms. The public sector would be transformed and weakened under this scenario in one of two ways. First, the public and private arms of higher education institutions would compete with each other for student enrolments, for research activity and for reputation:

In the world of higher education, money is important but reputation is the lodestar on which the whole thing turns. You would have a situation where the reputation of our strongest global competitors would be diminished by their own commercial child walking alongside them. That to me is a very odd situation – and I do not think it is a very productive one.²¹

2.54 The NTEU submitted that in the longer term, this situation would most likely drive down the quality of higher education across the sector by forcing established public universities to compete with smaller, boutique institutions with limited course offerings.²²

2.55 Second, fee-paying would become the normalised route to a prestigious, socially and economically advantageous education. This would mean that institutions on the metropolitan fringes which educate up to 50 per cent of higher education students, and the degrees which they award, would be considerably affected. The Opposition is therefore concerned about the implications of diluting public funding for higher education research, which were highlighted by the Federation of Australian Scientific and Technology Societies (FASTS).²³

2.56 Opposition senators are also concerned that, if MUPL is added to Table B, other higher education institutions will consider establishing parallel secondary institutions for additional benefits such as receiving a second vote at the Vice-Chancellor's Committee and a second allocation on Table B.²⁴ They also take into consideration concerns raised that placing MUPL on Table B would '...confuse, confound and ultimately undermine the existing basis of research funding'.²⁵ This is because of the double-counting which, it is argued, is directly, if not indirectly, taking place as long as MUPL relies upon Melbourne University staff.

2.57 The Opposition believes that any attempt to draw a comparison between the success of private universities in the US and the potential for the concept to mature in Australia is highly misleading. Professor Simon Marginson told the committee that it is a myth to describe American higher education as a market: 'It is a heavily

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

22 Submission No.7, National Tertiary Education Union, p.4

23 Submission No.8, FASTS p.1

24 Professor Simon Marginson, *op. cit.*, pp.2-3

25 Mr Grahame McCulloch, NTEU, *Hansard*, 19 August 2004, p..35

subsidised one, if it is one. It has competition...but it is heavily subsidised not only from government sources but from non-government sources of a non-market kind'.²⁶ Furthermore, a number of the elements involved in establishing a viable private university in the US do not exist in Australia. He pointed in particular to the range of alumni, corporate and donor-financed sponsorship schemes which are lacking in Australia: 'We cannot replicate the American structure that underpins the private sector...because we do not have the kinds of institutions which will support the remission of the fee cost for the majority of students...'²⁷

2.58 Opposition senators also reject the suggestion made by MUPL at a public hearing that opposition to MUPL's inclusion on Table B stems from a wider ideological opposition to the creation of private universities in Australia. This is simply not the case. The Opposition agrees with John Cain's assessment that there is a place for private universities in Australia: however MUPL does not provide a sound example of how to proceed in this endeavour. The implications of extending public subsidies to commercial entities should always be kept in mind.

2.59 The Opposition notes the important differences between MUPL and two other private universities, the University of Notre Dame and Bond University, and rejects any suggestion that MUPL's current status has created an anomaly in the higher education system. MUPL's status as a 'conditional university' is substantially different from that of either Notre Dame or Bond. Both of these private universities were established under state Acts and they operate under a not-for-profit status. According to Professor Marginson, Notre Dame is a well-run and independent private university which, unlike MUPL, is establishing a comprehensive research framework and a range of disciplines. It also is performing 'public good' roles in the Kimberley region in relation to indigenous education.²⁸

2.60 FASTS, in its submission, picks up on the concept of 'public good' by noting that a critical feature of public funding of research is the notion of the 'public interest', something which apparently is specified in the enabling legislation of Bond University.²⁹ The Opposition agrees, and notes further that no compelling case has been made that placing MUPL on Table B would be in the public interest.

2.61 Several witnesses and submissions drew attention to the fact that MUPL, unlike the three other institutions listed on Table B, is not established under its own act of state or federal parliament. The Opposition takes the point made by MUPL representatives, who have argued (in the MUPL submission) that the institution is in fact duly established under an act of parliament – that act being the Victorian *Tertiary*

26 Professor Simon Marginson, op. cit, p.10

27 ibid.

28 ibid., p.8

29 Submission No.8, FASTS, p.2

Education Act 1993. However, the provisional and temporary nature of the Victorian Government's accreditation of MUPL as a university is a stumbling block for its inclusion on Table B. The Opposition senators do not believe that any institution without full, unconditional accreditation by the relevant state or territory authority should be admitted to Table B of the Commonwealth Act.

Objections by MUPL to Senate scrutiny

2.62 In a letter to the committee following the public hearing of 19 August 2004, representatives of Melbourne University Private claimed that questioning in the Senate had caused damage to the reputation of the entity. These claims were subsequently reported in *The Age* newspaper of Sunday, 29 August 2004. Labor senators regard it as ludicrous to assert that proper parliamentary scrutiny of an institution seeking access to public funds is in itself dangerous or undesirable. In questioning representatives of MUPL as to the status of these institution, senators are performing their proper function. Universities other than MUPL take this process very seriously and respond with genuine efforts to provide prompt and accurate information to the Parliament.

2.63 If witnesses feel aggrieved about being subject to this kind of scrutiny, they are seeking to present themselves more like a commercial entity than a university. It has been the practice of Opposition senators over a number of years to ask uncomfortable questions of entities in receipt of Commonwealth funding, and those seeking such funding. A willingness to be publicly accountable is inherent to the seeking of public funds: it is an obligation. Representatives of MUPL, on the other hand, seem anxious to avoid the scrutiny of the Parliament.

Conclusion and recommendations

2.64 The reputation and standing of the Australian higher education system, at home and abroad, depend on the scrupulous and transparent application of appropriate standards to institutions aspiring for Commonwealth recognition for funding purposes. It is exactly because of the status conferred to institutions in this regard that Opposition senators believe Melbourne University Private has sought admission to Table B of the *Higher Education Support Act 2003*. While actual financial advantages in terms of research funding might be small in the short term, the symbolic value of inclusion in the Act would, however, be significant, as would admission of the institution to the Australian Vice-Chancellors' Committee—something that, it seems, the institution has been denied.

2.65 Therefore it behoves the Commonwealth to look long and hard at the academic and organisational credentials of any entity seeking implicit recognition through the Act. This inquiry has provided the Senate with an opportunity to consider the standing and credentials of Melbourne University Private against the MCEETYA protocols, and also against other criteria relevant to its claimed status.

2.66 The Opposition members of the committee find MUPL wanting in several respects. The institution fails to achieve the standards required by the MCEETYA Protocols, particularly with regard to research profile and output. Its representatives have failed to convince Opposition senators that the institution is a bona fide stand-alone entity that truly accredits its own degrees. It has an academic staff of approximately 13 persons, many of whom are also staff members of the University of Melbourne. Its income is derived overwhelmingly from commercial activities such as consultancy and English-language teaching, rather than the provision of undergraduate and postgraduate award courses. While MUPL may have met the requirement of the Victorian Government for a minimum of three per cent of students enrolled in award courses, this hardly makes it a genuine university. Further, it is financially dependent on its parent institution.

2.67 At the very least, the Opposition senators believe that the temporary nature of the institution's accreditation on the part of the Victorian Government would imply the advisability of delaying the admission of MUPL to Table B until such time as its accreditation is confirmed, in four years' time.

2.68 Inclusion on Table B of the Act would provide access for MUPL students to FEE-HELP loans. The capacity of the institution to grow its student base provided by FEE-HELP accessibility is a further real motivation for MUPL's request. This, as Professor Marginson noted, has significant and open-ended implications for public funding, especially if other commercial adjuncts of existing universities are allowed in the future to follow MUPL onto Table B.³⁰

2.69 For all of these reasons, Opposition senators do not believe it is in the interest of the Australian higher education system as a whole to admit Melbourne University Private to Table B of the *Higher Education Support Act 2003*. Nor is it in the public interest. Accordingly, it is recommended that the provision allowing this measure be opposed by the Senate.

Recommendation 1

That the *Higher Education Legislation Amendment Bill (No.3) 2004* be split to remove the section dealing with the admission of Melbourne University Private to Table B of the *Higher Education Support Act 2003*, and that, should the Government wish to proceed over the matter of Melbourne University Private, this should be dealt with separately from the bill as a whole.

Recommendation 2

That the provision of the *Higher Education Legislation Amendment Bill (No.3) 2004* admitting Melbourne University Private to Table B of the *Higher Education Support*

30 Professor Simon Marginson, *Hansard*, 19 August 2004, p.10

Act 2003 be opposed by the Senate. That, if the bill is split, as recommended, the ensuing legislation be opposed.



Senator George Campbell
Chair



Senator Kim Carr

