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STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS

Reference: Academic freedom in school and higher education

THURSDAY, 16 OCTOBER 2008

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**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

Thursday, 16 October 2008

Members: Senator Marshall (*Chair*), Senator Humphries (*Deputy Chair*), Senators Arbib, Cash, Jacinta Collins, Crossin, Fisher and Siewert

Participating members: Senators Abetz, Adams, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Eggleston, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Cash, Fifield, Humphries, Kroger, Marshall and Mason

Terms of reference for the inquiry:

To inquire into and report on:

The current level of academic freedom in school and higher education, with particular reference to:

- a. the level of intellectual diversity and the impact of ideological, political and cultural prejudice in the teaching of senior secondary education and of courses at Australian universities, including but not limited to:
 - i. the content of curricula,
 - ii. the content of course materials,
 - iii. the conduct of teaching professionals, and
 - iv. the conduct of student assessments;
- b. the need for the teaching of senior secondary and university courses to reflect a plurality of views, be accurate, fair, balanced and in context; and
- c. ways in which intellectual diversity and contestability of ideas may be promoted and protected, including the concept of a charter of academic freedoms.

WITNESSES

BENDLE, Dr Mervyn Frederick, Private capacity 8
JACKSON, Professor Jim, Private capacity..... 16
LOPEZ, Dr Mark, Private capacity 1

Committee met at 10.00 am

CHAIR (Senator Marshall)—I declare open this public hearing of the inquiry into academic freedom. This issue was referred to the Senate Education, Employment and Workplace Relations committee on 24 June 2008, and the committee has agreed to report on 27 November 2008. The terms of reference include consideration of intellectual diversity and an indication of ideological, political or cultural prejudice in regard to teaching content and conduct. The committee has also been asked to consider the need for a charter of academic freedoms.

Before the committee starts taking evidence, I advise that all witnesses appearing before the committee are protected by parliamentary privilege with respect to their evidence. This gives them special rights and immunities because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of the evidence given before the Senate or any of its committees is treated as a breach of privilege. Witnesses may request that part or all of their evidence is heard in private. However, I also remind witnesses that the giving of false or misleading evidence to the committee may constitute contempt of the Senate.

[10.01 am]

LOPEZ, Dr Mark, Private capacity

Evidence was taken via teleconference—

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Dr Lopez—I have been involved in the private tutoring business for 18 years, which has given me an exquisite perspective on what is really going on in the education system at both the secondary and tertiary level. I am able to observe things without the observers knowing they are observed, via the experiences of my students.

CHAIR—Thank you for your submission which you have sent to the committee. I invite you now, if you wish, to make an opening statement or speak to your submission, to be followed by questions.

Dr Lopez—What I am also able to look at is trends in curriculum development in various subjects. I am also able to look at the experiences of my students, how they are treated by their assessors, the biases and perspectives of the assessors, biases in course content and the outcomes. I also specialise in helping students deal with these problems and giving them coping skills so that they can triumph rather than fall into the pitfalls.

CHAIR—Does that conclude your opening remarks?

Dr Lopez—Yes, it does.

Senator HUMPHRIES—Dr Lopez, thank you for appearing today. I want to ask you about the way in which you became involved in, as it were, a business dealing with tutoring. You mention that your business was actually set up to address the issues of ideological bias and teacher quality.

Dr Lopez—Yes.

Senator HUMPHRIES—Can you describe how that came about—did parents come to you with these complaints?

Dr Lopez—No, it started out with my own experiences in the education system. What happened was that when I was doing my postgraduate study, I needed to find some employment to make ends meet. I started private tutoring in 1990 working for other people, other companies. What I found was the prevalence of these problems and that I had to develop means for the students to cope with them. When I set up my own business in 1997 and started in early 1998, that is precisely what I was doing. I was very well aware of the nature of what was going on by the time I set up my own business.

Senator HUMPHRIES—What sorts of issues were raised by people that led you to make the decision to provide this business? Did they comment particularly on the bias of curriculum or was it about the bias of teachers? What kind of bias were they talking about?

Dr Lopez—It was not so much that there was comment, it was what I noticed needed to be done, the circumstances in which the students found themselves and the kinds of predicaments that they were in. In a sense I am so aware of the prevalence of the bias in the system that I teach them about it almost immediately. If they have had problems it was before they met me, afterwards we understand the dominance of the politically correct Left in the curricula, the teaching profession and in the assessment process, and so we are forewarned and forearmed.

Senator HUMPHRIES—Do you think that the problem of the bias is more prevalent in the government school sector than the non-government sector?

Dr Lopez—No, it is identical across all denominations, private and public.

Senator HUMPHRIES—What would you put that down to?

Dr Lopez—I think it is the nature of the teaching profession. It seems that people with particular beliefs tend to congregate in particular professions at various times in history. The politically correct Left have concentrated in this profession. The prevalence of this bias being both systematic and widespread in no way implies that there is a conspiracy or anything deliberate, but, if you get a whole lot of people of a like mind who share the same predispositions, it could have the appearance of that without actually being that. All they have to be is themselves, sharing their enthusiasms with their students and rewarding the things that they like to see in the students' work and it happens to form a pronounced pattern.

Senator HUMPHRIES—Is that a problem that you have observed to be prevalent pretty well equally in all states of Australia, or are there some states which are worse than others?

Dr Lopez—I am Victorian focused, but you can make analogous comparisons. From what I know of curricula in other states, and from what I know of the education debate, I would be surprised if there were anything terribly different in any of the states and territories.

Senator HUMPHRIES—Thank you very much.

Senator FIFIELD—In terms of bias, I guess there is the curriculum which might lean in a particular direction and also the staff. To what extent do you think that the education faculties at universities are guiding future staff in a particular direction?

Dr Lopez—I tutor mostly secondary, but also a lot of tertiary students. I have also tutored students at teacher training college. In that way I became acquainted with the curricula at a couple of those colleges. There is a preponderance of theoretical material that is what you might call postmodern, or you might give it a label like critical theory, but you could also look at it ideologically in terms of values that come up a lot. Certainly, the politically correct Left is very favoured in the types of approaches preferred and also in the assessment processes. If the students take a particular ideological line, they are going to do quite well in their studies.

Senator FIFIELD—Do you have a prescription on how to cure education faculties at that university?

Dr Lopez—What we are dealing with is human nature; people like like-minded people. When you have, say a politically correct Left teacher, tutor or lecturer—I am definitely not saying that they are bad people; I am saying that they are just sharing their enthusiasms and responding to what they like—they are going to like the things that are compatible with what they like. It is just the way of human beings. I do not think you could effectively legislate, force or restrict these people. At a certain level I do not even want to do it, but what would be a solution would be more diversity of the people involved in these professions so that the colonisation of these parts of our education and intellectual framework by the politically correct Left can be watered down by the presence of people with different views and perspectives. I think that would be the way to go.

Senator FIFIELD—Would late career recruitment into the teaching profession of people who have had other professional lives beforehand be one way of doing that?

Dr Lopez—You bet. The union has a stranglehold on who gets in and who gets out and there are lots of people with immense ability who could be brought in and who would do wonderful jobs. They could create more ideological diversity in the complexion of the educational staff in these areas that would be better in terms of corresponding to the diversity that is in the mainstream community.

Senator FIFIELD—Another suggestion has been that instead of having a four-year Bachelor of Education degree where if you are going to be an English teacher you may take a component of English subjects it would be better if teachers firstly did an undergraduate degree in a particular discipline—say three years in Science or in English or in Maths and then a DipEd afterwards. Do you think putting more of an emphasis on a particular discipline in the first place and then moving into methods of teaching would help?

Dr Lopez—I am not sure whether it would because who is running those courses? What would be the content of the courses? Are you going to recruit just the same kind of like-minded people who fit into the existing community, or will it become more diverse? If more diverse people come in, there might be a prevalent bias in the system so that they are edged out or made to feel a little unwelcome.

Senator FIFIELD—The suggestion is that the education academics would not have control over the whole four years.

Dr Lopez—That would be a damn good idea.

Senator FIFIELD—Thank you, Dr Lopez.

Senator MASON—Good morning. I read your interesting article in the *IPA Review* about how one of your students could not believe the existence of non-Left poets?

Dr Lopez—Yes.

Senator MASON—What about Murray? He is a non-Left poet in Australia, is he not?

Dr Lopez—You are absolutely correct, but he was never in the experience of my student, who had difficulty fathoming that there was non-Left literature at all. We happened to be studying poetry at the time; hence for me to honestly and accurately recount that anecdote I had to mention poets because that is what the student said, but our conversation did go broader. He had difficulty comprehending that there was any non-Left literature at all.

CHAIR—He had never been to a library.

Dr Lopez—He had more of an emphasis on the non-arts in terms of his scholastic direction, so the arts side tended to come from the school system, you see.

Senator MASON—You write about the left-wing domination of year 12 English. Let us take that as a given for a second. Does it matter?

Dr Lopez—That is an interesting question. If everything was wonderful it may not. You could probably make a case that this ideological group should dominate this profession, but there are concerns about bias and teacher quality that do create injustices. I forewarn the students so their unfortunate experiences are before they have met me, so my students all produce politically correct left-wing essays all the time.

Senator MASON—Is the problem that students may be marked down if they do not adopt that left-wing agenda?

Dr Lopez—Not an ‘if’.

Senator MASON—You are saying that they will be marked down if they do not adopt—

Dr Lopez—The people who are doing this would not even recognise themselves as having a bias. They are just sharing their enthusiasms and responding to what they like. They would not even have the analytical categories to categorise something as conservative or left wing; they are just responding to what they like. When they see what they like they go into a very positive frame of mind and they are more in a position to reward. If the student is talking about our planet being dependent on addressing the global warming issue and humanity is at stake, the teacher is going to go into a more favourable frame of mind. They are not necessarily thinking, “I must indoctrinate this student”. It probably never enters their head.

Senator MASON—This is a failure of critical self-awareness.

Dr Lopez—We could say something like that.

Senator MASON—One of the issues is that people may be marked down, or they will be marked down, in your evidence. Are you concerned that students, particularly secondary students—

Dr Lopez—Or you could put it another way, they are marked up if they reflect the biases of their examiners.

Senator MASON—I follow that. Are you also concerned that there is bias in the teaching and that may be reflected in the marking, but also that students may be—to use a cumbersome term—brainwashed? Is that a concern? It is different issue; it is a different question.

Dr Lopez—It is a very interesting question. The kids have retained a remarkable degree of freedom of thought behind the scenes. If they are trying to brainwash the kids they are failing monumentally because the kids are having the last laugh. Kids are quite happy to go through the ideological supermarket aisle putting into their basket whatever appeals to them—‘I will take something from the left of the aisle and something from the right of the aisle,’ and many of them are doing that. The teacher might be politically correct Left, and hot and bothered about the war in Iraq and global warming, and they might take some of that on board, but they may not as well.

Senator MASON—You mentioned that the solution is ideological diversity or greater pluralism in universities.

Dr Lopez—That also provides a refuge for some of the kids who may have non-Left views, to find a sympathetic staff member which would be very confirming and reassuring to them.

Senator MASON—There is a bit of a paradox here, Dr Lopez, that I am sure you can see. In one sense you say that there should be greater ideological diversity or pluralism in secondary schools and tertiary institutions, and universities constantly talk about diversity of race, ethnicity, gender and sexuality—diversity on everything except ideological questions.

Dr Lopez—Yes, the colour of your skin does not matter as long as we all think the same.

Senator MASON—It is a sort of internal paradox.

Dr Lopez—They can go out of their way against the discrimination of a student on the basis of his Asian ethnicity, but then discriminate against him because of his liberal beliefs.

Senator MASON—Indeed.

CHAIR—Except that you said earlier that you do not think that people are discriminating in the sense that they are not—

Dr Lopez—I do not think they are doing it consciously. That is in the submission. I think they are just being themselves. Often they can be very nice people creating an atmosphere in their classroom that is quite friendly and enjoyable. They would see their marking down of, say, an essay with economic rationalist views, but they would simply see that essay as faulty in its thinking. They do not think, ‘I’m going to get this Liberal kid.’ That would never enter their head. In their mind they do not make the distinction between the objective and the subjective, they just think, ‘Of course that’s wrong, global warming is the issue of today.’

Senator MASON—You have ably pointed out the existence of bias and so forth, but the committee is struggling with solutions. You mention diversity, but your own evidence is that the teaching profession does not necessarily attract that level of diversity. Perhaps that might even be more the case in tertiary education where the political bias is also manifest, but also that the culture in universities again is quite homogenous. To actually fix the problem is quite difficult.

Dr Lopez—To deal with the bias, I show my students how to create a psychological profile of their examiner, so everything they put in their essay can be calculated to pay a dividend in grades. In doing this we do it under the categories of ideology, values, ethics, interests, preferred forms of language, character and persona. Then they get a page of checkpoints so they know who they are dealing with. In 18 years of working with students I have only come across one high school teacher who was not politically correct Left. There is an incredible prevalence for a particular viewpoint in this profession.

Senator MASON—Thank you.

CHAIR—I think people would probably consider me to be left wing even though I consider myself to be straight down the line. I guess it depends on where you sit. I think my views are the right views and the normal views, but others would describe me as left wing. After my tech school I did HSC in those days at a high school and I failed, but I had very strong left-wing views then, so why did I fail?

Dr Lopez—There are other variables involved. The bias is not the only variable.

CHAIR—I think that is the point I wanted to make.

Dr Lopez—I am very glad you made it.

CHAIR—Some people will fail because, as in my case, they do not apply themselves. In other cases, they simply may not have had the ability. There are a whole range of factors why people may in fact be marked down.

Dr Lopez—Absolutely. I am very glad that you raised that issue and put that on the record.

Senator FIFIELD—You have partly addressed this already, Dr Lopez, in terms of the psychological profile you mentioned that you encourage your students to develop about their teachers. Could you just outline a little more how you guide your students to determine the bias of a teacher.

Dr Lopez—A lot of this information is going to be communicated anyway. There is a lot that is overtly communicated and a lot that is communicated as a subtext. There is a lot of stuff that you just pick up by being a human being relating to the world. What I am alerting the students to is the importance of this in the way that they are going to be treated and how to organise and use it effectively. If the first thing their teacher says when she walks in the room is that she contacted her union to say that they should not send bulletins in the mail because it wastes paper, they should send it electronically to save trees, it is very easy to pick up that there is a preference for environmental concerns. My students will then pick up on that and write pro-environmental essays.

Senator FIFIELD—It is know your market and know to whom you are selling.

Dr Lopez—Absolutely.

CHAIR—Thank you, Dr Lopez, for your submission and presentation to the committee today.

Dr Lopez—Thank you very much.

[10.26 am]

BENDLE, Dr Mervyn Frederick, Private capacity

Evidence was taken via teleconference—

CHAIR—I welcome our next witness. Are you with us, Dr Bendle?

Dr Bendle—Yes, I am. I am appearing as a private citizen but also as an academic with extensive experience in teaching at universities.

CHAIR—Thank you, Dr Bendle. I invite you to make some opening remarks to be followed by questions.

Dr Bendle—Thank you very much. I would like to begin by thanking the committee for the opportunity to speak to them and assuring them that I greatly value the work that they are doing. This is a really important topic. Academic freedom in my opinion is crucial to any liberal democracy and its proper functioning. Academic and intellectual diversity is crucial to Australia's future as one of the world's leading multicultural societies with nearly one in four Australians born overseas.

In my opinion, there is a major need to integrate all our citizens into Australian society and to encourage respect for our institutions and values. There is a very high level of need for social cohesion. This is difficult if our universities and schools encourage and promote an intellectual monoculture that involves a view of Australia and mainstream society that is negative and destructive, one for example that promotes the view that Australian society is somehow irredeemably racist, sexist, Islamophobic, genocidal and so on. All of these messages that, I think, we send out work against the high levels of social integration and social cohesion that we need. At the time of economic and political crisis that we have entered into there is a need to promote the greatest possible diversity of intellectual views within the universities and consequently throughout the education system, thus ensuring social cohesion and integration going forward.

I will now spend a minute or so having a quick look at my submission. I have tried to emphasise the diversity of my own background. I have not been a lifelong academic; I have had extensive experience outside the universities. Within the universities I have taught in a very wide range of areas to thousands of undergraduate students, many of them coming straight from schools, and I have a very clear grip on how they see the education system. I am also one of the few people who have actually undertaken a study of the origin and development of this intellectual monoculture that dominates in Australian universities. I have traced the history of that monoculture back 40 years to the 1960s, when it first emerged, and I have published that in various articles, which are listed in the submission.

Part of the submission is a case study of an attempted suppression of academic freedom involving an attack on me by another academic over issues of terrorism. I do not want to spend too much time on this, although I am perfectly happy to discuss it with the committee if it wants

to. The point of including this as part of the submission is to indicate to the committee how the traditional conventions of intellectual debate can so easily be derailed or ignored in contemporary Australia. Note that, as that part of my submission indicates, I could easily sue my opponent for the very damaging things he said about me to my vice-chancellor and my head of department, but I do not intend to do so and have not intended to do so precisely because I respect the conventions of academic freedom that make it possible for people to enter into robust debate, really have a go at each other and test each other's ideas. I think this is very important; it is something we have to promote and that we cannot afford to lose.

In part 3 of my submission I go through some general reflections on academic freedom in Australia in point form to emphasise the key elements. I think that there I identify the components of this intellectual monoculture that, it is possible to show quite easily, dominates in Australian academic institutions. I am not suggesting that this involves any sort of conspiracy; rather, I am talking about the all-pervasive effects of a dominant intellectual culture that has been in place for some 40 years. The effects of this can be largely unconscious and are part of the simply taken-for-granted intellectual world that academics inhabit, which is why they get so offended and defensive when it is challenged.

Towards the end of my submission, I talk about ways in which intellectual diversity and the contestability of ideas may be promoted and protected, and I have some suggestions there. I generally endorse the idea of an academic charter as long as it is properly drafted to ensure that it is not abused. The other thing that I would emphasise is that universities be required to demonstrate that they promote and maintain a culture of academic diversity, just as they are required to promote and maintain other forms of diversity going forward. I think that this would, over a period of time, organically help offset some of the problems that we have at the moment with the intellectual monoculture that presently dominates in our universities.

CHAIR—Thank you. Is the monoculture you talk about in particular areas or is it across the board?

Dr Bendle—I am really talking about the arts, the humanities, the social sciences, education and perhaps to some extent law, where we have things like critical legal studies and so on. It is in those humanities and arts areas that it has its greatest effect.

CHAIR—Through this inquiry we seem to have run across a lot of academics who are engaging in diversity. There has been a debate about this particular issue, and you and others are in it. Why do you say that there is not that diversity there now?

Dr Bendle—When you look at the textbooks, at what actually happens on the ground and at what kids are taught in the schools, when you go to the conferences and listen to what is discussed, and when you read the titles of the papers that are presented at conferences and that appear in the various academic journals, you will find that there is a preoccupation with gender, class and race that squeezes out a whole range of other things that we really should be talking about as well. There is not only a preoccupation with those topics but also a very predictable focus or direction that these discussions take.

CHAIR—Yes, but there is still diversity of opinion about that being expressed is there not?

Dr Bendle—No, I do not think there is and that is my point. I do not think there is anything like the level of diversity being expressed in universities that there should be, and this is reflected in the textbooks, publications, conference proceedings and so on that are being put out by the universities.

Senator HUMPHRIES—Dr Bendle, thank you for appearing today and for your submission. I looked at the account you gave of that altercation you had with Dr Burke and Dr Pickering in terms of their attack on you and their suggestion that you should be disciplined by James Cook University. Without dwelling on the circumstances of that particular incident, could I ask you to reflect on how much that incident was symptomatic, if at all, of retaliation by the monoculture you spoke of against people who do not participate in or share that dominant intellectual culture. Is there an active or even subliminal process of pressuring people within the system who are not part of that monoculture as you put it?

Dr Bendle—There is certainly a subliminal dimension to it. This is the way in which this thing operates. As I indicated at the beginning, the approach I have adopted towards this is to apply the academic method to the study of the origins and development of our particular intellectual culture as it is at the moment. This is the same sort of study that you would do if you were studying the rise of fascism, communism, liberalism, enlightenment, or any other period of intellectual change. All I am doing is the same thing I would do if I were studying any other period of intellectual culture. I have applied it to Australia and what you see is the emergence of what I am calling this intellectual monoculture.

It is basically far Left and it has emerged since the 1960s and its origins lie very much in the 1960s. It has become so all pervasive and taken for granted that people just think it is the way that the world is and they do not believe it can be criticised. They do not believe it should be criticised, they think it is inherently right. Consequently, when somebody comes along and criticises its effect, as I did in the area of terrorism studies, people who adhere to it, who are committed and who think it is the right way to look at the world, get very upset. In this case they got so upset that they decided to try to get me sacked or at least severely disciplined and threatened me with legal action, all because I drew attention to the effects of this intellectual monoculture on terrorism studies.

It is subliminal, it is all pervasive, it is part of the intellectual milieu and atmosphere within which all these people operate, within which we all operate, and we take it for granted or they take it for granted and we are not prepared to tolerate any challenges to it. All I did was challenge it and what I am suggesting is that it should be challenged a lot more. It is very difficult to challenge it because the universities are pretty well committed to it, and that is why we need greater intellectual diversity and intellectual freedom to protect that.

Senator HUMPHRIES—What do the academics who do not share the dominant intellectual culture tend to do when their views clash with that culture? Do they tend to take a high profile response to it as you arguably have done? Do they tend to shut up, put their head down and not excite attention? Do they tend to get out of academia? What exactly happens to them?

Dr Bendle—One of the things that we have to recognise is that people are leaving academia and people will be entering academia. People who will be entering academia now and over the next decade or so are people who have been brought up on this diet of intellectual monoculture.

To be perfectly honest, I do not think that we are any longer attracting the best people into the arts and humanities in Australian universities. If there is a feeling that it is a crisis at the moment, there is going to be a real crisis in five, 10, 15 or 20 years as that effect works its way through the system.

I do not think there is an enormous number of people who dissent from intellectual monoculture. I think they basically do keep their heads down and shut up or they move into more marginal areas in academia where it is not crucial. There are very few people prepared to take a public position on a lot of this. My experience has been that, when I have taken a public position on this, I got attacked. It is rather unrewarding, to be perfectly honest.

Senator HUMPHRIES—I want to ask about the reason this culture persists. You trace the origins of this to the intellectual turmoil of the 1960s and you say it embedded a radical orthodoxy in Australian universities. The rest of the world to some extent has moved on. You might say that the political centre of gravity has moved since then. Why is it that universities have not reflected that? Why do they have this isolation from broader political trends in the rest of the world?

Dr Bendle—Universities in America and England, where we take most of our lead from, are well to the Left in the arts, the humanities and the social sciences. Various surveys have indicated that something like 70 to 80 per cent of all academics will vote towards the Left—they will vote for Labor and will vote for the Democrats overseas—and probably the same sort of thing goes on in Australia. I think Australia reflects that to a considerable extent. The other problem Australia has got is that we are a small country. Our intellectual culture is comparatively shallow. We do not have the big private foundations that have been set up overseas, especially in America, to sustain a dissenting view, to sustain a conservative view. We tend to rely on our universities.

Because we are a small country with a small population and a shallow intellectual culture, this view I am talking about is able to dominate. We do not have an enormous range of publications in which people can put forward their dissenting views. There are probably only half a dozen in the whole country in which you can put any view at all and there are probably only one or two in which you can put a dissenting view and rely on it getting published. The shallowness of our intellectual culture means that the effects of this intellectual monoculture are ramified and magnified right through the culture.

Senator HUMPHRIES—Thank you very much indeed.

Senator FIFIELD—Last week we had evidence presented from Universities Australia, formerly known as the Vice-Chancellors Committee. The Chief Executive Officer of Universities Australia stated that the mere existence of this inquiry was an infringement on academic freedom. I was a little surprised by that. Are you surprised that that is the view of Universities Australia?

Dr Bendle—No, I am not at all surprised. It is interesting that they all style themselves as CEOs and that sort of thing. They have corporatised themselves and adopted a managerial approach to universities and tertiary education. I do not know whether the vice-chancellors are in any position whatsoever to say what is going on at the grassroots level of their universities.

Senator FIFIELD—I want to turn to topic 3 of your paper where you canvass an academic charter. I am someone who has a natural suspicion of charters and bills of rights. As you point out, the Victorian bill of rights has been misused. Do you think it is possible to establish an academic charter, a charter of academic freedom, which reinforces rights without taking away academic freedom?

Dr Bendle—This is really one of those questions that has to do with the role that common law plays in English based societies and so on. To a large extent, what we have got to have is a recognition of conventions. There has to be an acceptance of conventions, of civil behaviour, of civilised behaviour, of the need to have robust intellectual debate. We have got to get recognition of that ingrained—or re-ingrained, if you like—in our academics and academic staff. What we really require the universities to do is not just pay lip service to it but actually accept and promote the existence of these conventions, and protect them. And I should say here that I am very proud of the fact that my university, James Cook University, backed me up in the dispute that I had with my opponent. They were prepared to say: ‘This is a matter of intellectual freedom; you guys sort it out between you. We’re not going to get dragged into this.’ I think that was very laudable and I am very proud that they did that—and I think that is the way to go.

A charter should really be seen as a sort of second-level or backup instrument. It should not be seen as the primary means of ensuring intellectual freedom and diversity. If we have one at all, it should be there just to state the principles upon which the whole thing should be based, and then it should be up to the universities—they should be required—to promote and protect these conventions of intellectual freedom and to actively promote intellectual diversity, not just say, ‘Oh, it’s there; don’t worry about it. Let us look after it.’ That is just rubbish.

Senator FIFIELD—So it should be more of a voluntary code which the universities would subscribe to?

Dr Bendle—More of a voluntary code that the universities would subscribe to and based on the history of conventions of freedom of speech and intellectual debate that have been in place quite some time—centuries, probably—and backed up with real action. They should be required to put in place programs within the universities that ensure that there is intellectual diversity so that the students are not all channelled into studying Michel Foucault and Jacques Derrida or issues to do with feminism, issues to do with radical environmentalism and so on—sex, gender, race, class and so on. They should not all be channelled into those; they should be channelled into other things. There is a whole range of human experience that universities simply do not concern themselves with anymore, and students pick up on this and they just switch off; they turn off.

Senator FIFIELD—You also mentioned that the institutions should be able to demonstrate a high level of diversity of academic theories and methods. At the institution I studied at, the University of Sydney, the staff in the economics department could not reach agreement so they split and they had two competing departments—I think they probably still do—one of political economy and one of more traditional economics. Something similar happened in the philosophy department and the English department, and the university administration effectively just recognised the facts on the ground and said, ‘Fine; we’ve got competing departments.’ Do you think that that might actually be a way for institutions to ensure diversity—if the university administration itself says, ‘We will have competing departments, each of which will have a

different dominant world view ‘? Is that one option, do you think, for establishing academic diversity?

Dr Bendle—It is a possible option. The history of Sydney university is probably notorious—the way in which it broke up those major areas, philosophy and then economics. As I recall the situation at Sydney, the whole political economy side of things had more of a Marxist emphasis. I do not know how relevant that is. My concern there would be that we attract idealistic, intelligent young students into universities and allow them to end up in a place like that where their talents might just be wasted. It was the same with the philosophy department. That had a lot to do with personalities and accommodating a really radical far-Left fringe within the philosophy department, and I am not sure if that situation still exists down there.

One of the other things I mention under topic 3 in my submission is the need to avoid the waste of human talent. Do we really want bright students attracted into areas of the university where they spend all their time studying Michel Foucault or Jean Baudrillard—who argued that the first Gulf War did not actually happen because it was all just a media event—and all those crazy people? Do we really want our best and brightest, the increasingly few who are actually going into the humanities and arts, to waste their time studying these people who are really concerned with very marginal and largely irrelevant issues, or would we be better off to encourage them into other areas where they are able to study more mainstream issues?

Ideally, I think what we should have is diversity within particular schools or departments. We should have a situation where you can walk into a staffroom and spot somebody across the room sitting down and having a cup of coffee and feel free to go up to them and say, ‘I read your article the other day. I really respect the work you are doing but I have a few problems with it. Maybe we can set up a time when we can have a proper debate about this.’ As I said in my submission, why aren’t we having these debates and why aren’t we opening them up to the public so the public can come along and see what their tax dollars are paying for—the best and the brightest arguing about things that matter to them.

CHAIR—Thanks, Dr Bendle. You indicated that it is just generally accepted that in universities 70 per cent of academics would be left wing and 70 per cent of them vote Labor. But I do not actually see the Labor Party as a left-wing party. I see it as a very mainstream party. I certainly sit on the Left of Labor Party politics, but I can assure you that there are plenty of people further to the Left in the political spectrum than I am. Why shouldn’t I see you from my perspective, which I think is very mainstream, as an ultra-conservative? And why shouldn’t I be concerned about your bias?

Dr Bendle—First of all, if there were mainstream, far Left parties then I think a very large number of academics would be supporting them. They probably come to rest at the Labor Party because it is as Left as you can get and still be part of mainstream politics. Although a lot of them vote Green now and are attracted to the Greens. As far as being ultra-conservative, I do not think I am ultra-conservative at all. You will notice that what I am proposing, what I am seeking to promote, is intellectual diversity. I have not said a word about ensuring that there is some preoccupation with anybody on the far Right, any far Right thinker. What I am suggesting is that there be greater diversity. What I am attacking is what I see as an intellectual monoculture. In another age this could be a fascist far Right intellectual monoculture and it would do just as much damage to our society as a left-wing or far Left intellectual monoculture. It is not so much

the politics of the thing; it is the fact that it is an intellectual monoculture, that it is one voice being heard over and over again unrelentingly. There is not enough diversity. I am promoting diversity. To be perfectly honest, I am probably what you would call a liberal conservative not a far Right conservative, but that is not what I am concerned about. What I am concerned about is promoting intellectual diversity and academic freedom to support that diversity.

Senator KROGER—We have heard from many people in evidence that their view is that the mainstream of students have the ability to be very discerning in judging for themselves the content that they are being taught. Are you aware of any process at James Cook, for instance, where students can sufficiently make their complaints known as to their views about a lack of academic diversity being taught?

Dr Bendle—As far as my own university is concerned, I think that there are a range of opportunities for students to voice their complaints. But I think the bigger problem is that this is all dished up as just a taken for granted way these disciplines should be. For example, sociology is dished up in a certain way and history is dished up in a certain way. It is not so much that students are going to be desperately alarmed by what they are being taught, which will provoke them to get up in arms and lodge complaints and so on. It is rather more that, as I said before, they are just being fed this intellectual monoculture that has become all pervasive through the humanities, arts and social sciences. That is the real problem. It is not that they are being exposed to extremist views that are going provoke them into complaining to the administration. It is rather more that they are being fed this steady diet which, by the way, is a continuation of what they were taught in schools. And the reason for that is that the teachers they get in schools are people who are products of exactly the same tertiary system.

They are bored with it. The students are bored with it. Basically, they vote with their feet and they just tune out. As I said before, we face the danger that we are going to lose access to the best and brightest in the arts, humanities and the social sciences over the next few years because they are just not being attracted to what is going on in those disciplines.

Senator KROGER—My understanding is that it is the academic boards that determine the course structures of the universities, is that right?

Dr Bendle—Yes. It is a complex process of consultation and so on and so forth, but, yes.

Senator KROGER—What is the vice-chancellor's input into those academic boards? What influence do they have?

Dr Bendle—That would vary greatly from university to university. I could not really speak for the university system as such but, basically, there is a complex system of delegation with various vice-chancellors and other senior executives overseeing various aspects of course development and curricula. To a large extent, they rely on the advice they get from within the departments that are ultimately teaching all of this. As I said before, the problem is that this intellectual monoculture is so pervasive that we are all caught up in a situation where we feel this is the only range of things that we can teach. Whatever we put forward to the academic board as new courses is likely, very much, to reflect this intellectual monoculture. We have got to break that up and encourage universities to encourage diversity within their departments. Open the whole thing up, and let's hear some other voices.

Senator MASON—I will be quick. I want to touch on your discussion with the Chair, Senator Marshall, before. I will get straight to the point. I had a few questions but let me just make one point if I can. Your argument would be that the monoculture taught at universities would not reflect the political mainstream in Australia which would be, for example, the coalition and the Australian Labor Party. That is right isn't it?

Dr Bendle—Yes.

Senator MASON—I raised that point because I do not think it is a matter really of the monoculture in Australian universities being, in a sense, centre Left, that is not the point. The monoculture is, as you describe in your submission, social constructionist, cultural relativist, it has a hatred of the mainstream and a love of the marginal, deviant and anti-scientific. You could not describe the Australian Labor Party as that, could you?

Dr Bendle—No.

Senator MASON—I want to make that point, Chair, because, as far as I am concerned, the monoculture that Dr Bendle is talking about has little to do with the Australian Labor Party, which is very mainstream. Thank you, Dr Bendle.

Dr Bendle—I endorse that entirely.

Senator HUMPHRIES—You have written about the 1960s a bit. Was it your impression that in the 1960s the student protests that used to happen on campus there very widely in America, Britain, France and Australia were partly motivated by a perception of bias on the part of their then lecturers and tutors?

CHAIR—I am going to have to ask you to be quite brief, Dr Bendle, if you could just answer that question.

Dr Bendle—No. The whole thing in the sixties reflected the massive development of the tertiary education system at the time, the massive influx of new students and academic staff into that system at the time of the cultural revolution of the sixties, a time of the anti-Vietnam war movement and a major questioning of the whole basis of Western society. We have never fully overcome that or really dealt with that bias that was introduced into the system right at its origins.

CHAIR—Thank you, Dr Bendle, we are out of time. Thank you for your submission and thank you for your presentation to the committee today.

Dr Bendle—Thank you very much.

[11.00 am]

JACKSON, Professor Jim, Private capacity

CHAIR—I welcome to this hearing our next witness, Professor Jim Jackson. Do you have anything to say about the capacity in which you appear before the committee today?

Prof. Jackson—I am a professor of law, but I am not here to represent my law school or my university.

CHAIR—Thank you for your submission. I invite you to make some opening remarks, to be followed by questions.

Prof. Jackson—Thank you. I will keep them fairly brief because I have made a very detailed submission and I have also given you a copy of my PhD on legal rights of academic freedom in Australian universities and something like six different journal articles, so if you want the depth behind some of my comments it is contained in there. I would like to thank the senators for the opportunity to address the committee and also Jo Woodbury and John Carter for their professional assistance prior to this appearance.

I will not attempt to restate the years of work that have gone into the research in a few minutes. Clearly my take on academic freedom in universities is that it is directly related to the knowledge, discovery and dissemination objective of every Australian university and to the professional application of this objective by academics in their teaching and research. The work that I have done is that of a lawyer—I already stressed that—trying to construct academic freedom as a legal concept in Australian universities, so I am not really speaking about academic freedom from a sociological or philosophical perspective; I am speaking about it from a fairly strictly legal perspective. I submit all the work I have done to your committee for its consideration.

I have not written on academic freedom as it relates to students at a university in Australia or as it relates to teachers or students in schools, but because I have not said much about this before I will just make some brief comments relating to, first of all, university students. The university statutes that talk about free inquiry—for example, the ones in New South Wales—impose an obligation on universities to provide the conditions for academic freedom or free inquiry. Indeed, I would stress that I believe all university statutes do that—if not expressly then impliedly. To the extent that universities deny that right to students, they may well be acting unprofessionally—I am now talking about the individual academics—but this is a very broad statement.

The academics themselves are controlled by the curriculum in the course they teach. There is no unrestricted right to teach anything at all. There are restrictions imposed by qualifying professional authorities—for example, for doctors, lawyers, accountants, nurses, teachers et cetera—and also by the university itself, because universities are self-accrediting institutions and they have to approve, control and check the curriculum that is being taught. So a teacher in a

university who chooses to ignore that curriculum might put accreditation and professional recognition at risk, and in my opinion could perhaps therefore be acting unprofessionally.

When we talk about academic freedom for students, what do we mean? What are we actually getting at? Is it a right of the students at a university to choose their curriculum? That is unlikely, because in most courses the curriculum will be set, indeed, by professional bodies to which the universities are ultimately responsible or by the university itself. Having said that, I say that in many universities students do take part as representatives on curriculum-type committees, programs committees, academic boards and the like.

So is academic freedom to a right of students to choose assessment? Again, I would say that is quite unlikely. Thirdly, I would say: is it a right of students to resist political indoctrination? In this case, I would say yes, there is such a right, and pure political indoctrination might well equal unsatisfactory performance on the part of the academics, which is best tested by misconduct processes in the university itself. But the difficulty here is distinguishing between speech of an academic which is simply provocative—which is designed, for example, to stimulate classroom debate—and that which is purely political.

Another source of student rights at a university apart from what might be contained in a university statute is their enrolment contract with a university. I would suggest that may well include an express right of a student to study the approved curriculum and not some excursus put in place by an individual academic. The university may also have a code of conduct or a statement of rights and responsibilities of students, from which the students could perhaps set up an estoppel against the university if the university tried to deny those rights to the student.

Finally, a word about schools: I am not convinced that the academic freedom notion even applies in that context. Remember that I am trying to approach it from a legal perspective. What precisely are we talking about? It has a meaning at law in universities because of statutes setting up the universities, codes of conduct or enterprise agreements. It does not flow in Australia from a bill of rights such as in the United States, where you have the first amendment guaranteeing speech rights. Speech rights are not well protected in Australia, so when your inquiry talks about academic freedom in schools I struggle to find law which currently supports that at either the teacher or the student level. So I draw quite a distinction between universities and schools. My final comment is this: the matters before the committee may well be better considered in the context of a bill of rights guaranteeing fundamental freedoms in Australia, including speech rights.

CHAIR—Thank you, Professor.

Senator HUMPHRIES—You have raised quite a few interesting points, but you mention in your submission that there is no absolute or unqualified legal right of academic freedom in Australian universities. You talk about the attendant obligations that go with academic freedom. To what extent do academics in general not understand that concept of freedom and the obligations that go with the exercise of that freedom? If you say in response to that that the number of academics who do not understand that is quite small relative to the bulk of those in Australian universities, does it matter if only a small proportion fail to exercise those freedoms in the appropriate understanding of the obligations that go with them?

Prof. Jackson—There is quite a bit in that question. Let me take the first part first—do academics understand it in the terms that I have expressed it in? I would probably suggest no. That is a fairly succinct attempt on my part to create a legal concept, and I have linked it back to their employment contract. I think academics generally have a good understanding of what it is like to be professional at a university, but as for my take on academic freedom—linking it specifically to their contract of employment to act professionally—academics may well agree if they thought about it for a while but they would not instantly jump to that conclusion. They would probably see academic freedom as some sort of reasonable speech right with not too many restrictions upon it. When I talk to my fellow academics, I do not get an understanding that they really clearly understand the concept at all. Indeed, it took me some four years to get to that position, so it is perhaps not surprising. Please remind me of the second part of your question?

Senator HUMPHRIES—It was that, if there are only a few academics who are not conversant with that sort of balance, does it matter if those rules are effectively disregarded in the case of only a few academics in any given year, for example?

Prof. Jackson—I think it matters a lot. If academics are exploiting their positions in universities to indoctrinate without any substantive or good-quality reason behind doing that, I would not want my kids at university to be exposed to pure indoctrination. I would want them exposed to good academic thought—thinking based on a teaching and research nexus from a substantiated position, not from mere opinion based political stuff. I think it matters a lot that academics understand what their professional role is. I would also suggest it is important that academics do not feel too constrained in the classroom about what they say. The Americans talk about the chilling effect of that. That has a chilling effect on knowledge discovery and knowledge dissemination. Sometimes we impose the worst chilling effects on ourselves.

Senator HUMPHRIES—I will ask you about the idea of legal remedies for breach of what you describe as a student's right to resist political indoctrination. We have heard a fair bit in the inquiry about the imbalance of power between the academics and the students they teach. Some have suggested that a lot of students may detect or rile against bias in the teaching of courses or whatever but very few are prepared to make formal complaints about it or use existing structures to take the issue up. Would that be any different if there were some kind of established legal remedy for them, such as the estoppel you spoke before?

Prof. Jackson—There are bits and pieces of legal remedies out there. The big problems for students these days are the problems of time and cost. Unlike perhaps when I was at university, students these years are working up to 27 hours a week, perhaps even more, to get their way through university. Time is a major resource problem for students. Cost is another form. For a student to run the sort of sophisticated estoppel argument I just spoke about would be a very difficult and very costly matter because universities would resist such notions and fight them all the way. It is very important that students have access to cheaper remedies, including access to state ombudsmen or good grievance procedures within their own universities.

I might just add as an aside that a group of colleagues and I are currently doing a nationwide study on student grievance and disciplinary procedures, funded through what was a Carrick Institute grant, but it is a little early for us to start giving our outcomes on that. I will say that one of the things we are starting to discover is that, unless students have access to low-cost remedies,

they will not in most cases take them unless they have a very serious financial interest in doing so. We have had one student take a matter all the way to the Australian High Court. I do not know what the cost to that particular person was.

Senator HUMPHRIES—Indeed. Thank you very much.

Prof. Jackson—Thank you, Senator Humphries.

Senator FIFIELD—Regarding the concept of academic freedom, many of our academic witnesses have, I think, sought to broaden that concept to cover things which I would not have envisaged, such as citing workload and increased student numbers, as impinging on academic freedom. From your evidence—correct me if I am wrong—you seem to be saying that academic freedom is actually a much more limited concept which really goes to the freedom to publish and the freedom to debate and express ideas.

Prof. Jackson—I would not be too keen to tie it up in the issues around workloads. They can become excuses for a whole bundle of things. But I will say this: the voice of casual academics in Australia is probably significantly restricted. In one of my papers I actually make a reference to the casualisation of the workplace in Australian universities. To some extent our capacity to engage in the wonderful new idea or to follow the idea through to its logical conclusion, and in particular the capacity of that group of employees to do so, is severely limited by time. That particular group of academics—that is, the casualised academics in Australian universities—can really say that they are struggling to just get the classes prepared and the marking done, let alone think the wonderful thoughts and take them to the next stage. I guess that would be my response to that. My take on academic freedom is always linked to professionalism and the employment contract itself, so one has to look to that contract to determine precisely what is required of the academic.

Many of those casual academics I spoke about, for example, are only engaged to teach; they are not engaged to research. That has its own problems in the context of what we academics talk about as the teaching-research nexus—that is, teaching should be informed by research.

Senator FIFIELD—Thank you for that. I just note in passing that there was another threat to academic freedom which was identified the other day by some academics. That was, apparently, the very existence of this inquiry, which was curious.

Prof. Jackson—I certainly welcome the inquiry because I want the broad academic freedom debate to occur.

Senator FIFIELD—Thank you. You mentioned individual academic bias. I think the construction that you put on that is that, as much as anything, where that occurs it is really a case of an academic not operating in a professional manner and that there are mechanisms to address that, both in terms of opportunity for students to use grievance procedures and for the institution itself to deal with the individual and their conduct. In relation to curriculum, which is cited as the other potential source of academic bias, do you think that there is in the arts, humanities or education faculties any sort of bias in curriculum?

Prof. Jackson—I have not come across it if it exists. I do see my colleagues occasionally talk in very controversial ways to stimulate what might otherwise be a rather dull class to provoke students. I think it is rather different though to pure bias of the sort you were describing. I really have not seen the latter. I have certainly seen the former and I applaud it.

Senator FIFIELD—Certainly in your area of law, you are not aware of any curriculum bias or bias in the faculty of any sort?

Prof. Jackson—Certainly not in my faculty. I have seen stuff that others may regard as bias. It comes down to what you mean by bias. I have a particular view that a student trawling their way, for example, through a law degree should encounter a whole bundle of different academics with different thought processes—perhaps coming from the Left, perhaps coming from the right. I would hope that, for example, in my discipline, the law discipline, the entire curriculum is not biased in a particular direction or other, and I do not see that it is, but I think it is critical that in any university experience, in any degree, students are exposed to the myriad of thought within that discipline. That is very important as part of the education process.

Senator FIFIELD—That there is that diversity of views available for students to be exposed to.

Prof. Jackson—Absolutely, and to accept and to have the right to reject as well.

Senator FIFIELD—Thank you for that.

Prof. Jackson—Thank you, Senator.

CHAIR—Professor, thank you for your submission to the committee and for your presentation today.

Prof. Jackson—I thank the senators for the opportunity. All the best with your inquiry. I hope it goes really well. I look forward to reading your outcomes.

CHAIR—Thank you.

Committee adjourned at 11.19 am