

Chapter One

Introduction

There are a number of obvious deficiencies in the package of reforms outlined in the Nelson review: (i) there is the ill-conceived commitment to Voluntary Student Unionism; (ii) there is an overly tight straitjacket for the distribution and re-distribution of government subsidised university places; (iii) there is an excessive degree of control inherent in the discipline mix, with the potential for gross intrusion upon university autonomy, academic freedom and student choice; (iv) there is a totally illogical link between increased funding and ideological components of industrial relations and unduly formulaic changes in governance; and (v) there are new taxes on international activities which only serve to provide funds for additional government regulators. However, the most significant defect is the lack of an effective mechanism for indexation of the government contribution. The proposals in this package are not sustainable in the medium to long term and there will continue to be an inbuilt degradation factor and an ongoing need for episodic injections of additional funding.

Professor Gavin Brown, Vice-Chancellor, University of Sydney¹

1.1 On 26 June 2003 the committee was asked by the Senate to inquire into the policy and principles underlying the Government's higher education package, as set out in the ministerial statements entitled *Our Universities: Backing Australia's Future*.

Characteristics of the inquiry

1.2 The committee was asked to report by the end of October 2003 but, in view of the tight timeframe of the inquiry, it was agreed to extend this tabling date to 7 November 2003. It is unusual for a references committee to deal with legislation, but when the inquiry began the expected legislation had not been introduced. The committee decided that it was appropriate to commence work on examination of the policy documents forming the Higher Education Review 2002 package, which was presumed to be the basis for the legislation that would eventually appear. It was fortunate that this process was followed because, as events transpired, it would not have been possible for the legislation committee to deal with the bills in the time that elapsed between their introduction to the House on 17 September 2003 and the end of the sitting year, by which time the Government hoped to have the legislation pass the Senate.

1.3 The committee received 486 submissions, in addition to supplementary submissions. This number was considerably greater than the 364 submissions the committee received for its higher education inquiry in 2001. This inquiry dealt with

1 Submission No. 105, University of Sydney, p. 3

issues that have considerable and immediate implications for current students and academic staff. They had deep reservations about the policy upon which the legislation would be based and, as the evidence revealed, many of the important stakeholders were taken aback by a number of policy details which appeared to be ‘tacked on’ to the anticipated core financial provisions. Two points should be noted about the submissions and inquiry process.

1.4 First, in contrast to the 2001 inquiry, the sources of submissions were much more clearly focused: limited essentially to those potentially and directly affected by the proposed legislation. In this inquiry there have been very few submissions from organisations outside of the education sector or from members of the public at large. On the other hand, student unions and representative councils have made a collective contribution to evidence that in many cases has been remarkably scholarly and well documented. In addition there has been a concerted effort by student associations to encourage individual submissions, most notably the scores of letters received from medical students at Sydney University and the University of New South Wales. The Council of Postgraduate Students Association (CAPA) and the National Union of Students (NUS) and their state branches have been active, along with, as might be expected, the National Tertiary Education Union (NTEU), both centrally, and through state affiliates. The states and territories have clear responsibilities for universities: most universities are established under state or territory legislation. All state governments have made submissions and all have been represented at public hearings.

1.5 Second, it may be noted that, of the 486 submissions received, very few indeed were steadfast in their support for the *Backing Australia’s Future* package in all aspects. It should be noted that a significant number of submissions were received after the legislation was finally introduced on 17 September. Two or three of these later submissions took the line that, while the promised reforms were worthwhile, the Government had jeopardised its chances of putting them through as a result of bad judgement on the detailed provisions contained in the bill. This was also the view of some vice-chancellors. Submissions to parliamentary inquiries can generally be relied upon to take a view contrary to the policy under examination. What makes this general rule remarkable in this instance is the number of submissions, most of them from universities, which praise the general policy direction but damn the detail and the implementation strategy. It was difficult for committee members to ignore the sense of disillusionment which was exhibited by university administrators who found themselves faced with legislative detail setting out all the ways in which their educative work would be made more onerous, their financial management tasks more precarious, and their institutions more fragile as a consequence of the passage of legislation which they did not anticipate would emerge from the amicable consultations which marked the preceding *Crossroads* process. As understanding of the actual legislation grew, the tone of response became increasingly concerned and alarmed.

1.6 Further to this, particular mention should be made of the university submissions. Most universities responded through their vice-chancellors, and their number exceeded the committee’s expectations. It was anticipated that the Australian Vice-Chancellors’ Committee (AVCC) would represent the views of all universities.

There appears to have been a strategy planned within the AVCC for the organization to present a united front of vice-chancellors to a Senate inquiry that was not regarded with much enthusiasm by the AVCC. This attempt quickly collapsed, in part for the reason that the funding projections issued by the Department of Education, Science and Training (DEST) established a pecking order of winners and losers which put an end to ideas of university solidarity. The committee found itself in receipt of submissions from universities whose hopes for additional funding arising from the 'reform' package had been dashed by the DEST projections. The second reason for the collapse of the AVCC's unity was the doggedness with which certain key players failed to gauge the mood of the organisation's membership and continued to pursue the strategy of unquestioning support for the Government's position.

1.7 While all universities may claim to have been disadvantaged in some way by the proposed new regime, the most obvious disadvantage was evident in the serious funding cuts affecting the University of Western Sydney, Victoria University and the University of South Australia. All of these are relatively new universities serving outer metropolitan areas and lower socioeconomic level communities. Clearly, the Government failed an early test of its professed concern for equity in overlooking the inevitable wave of criticism that would come, as it did, from the wider community in those regions affected by the proposed funding reductions. As the committee was told in Parramatta, the population of Western Sydney, already higher than Western Australia (with its four universities), is expected to grow by half a million in the next 15 years.²

1.8 The tenor of such criticism became infectious, such that submissions received from universities late in the day were more forthright in their adverse comment than those received earlier. Some of this had to do with a gradual realisation that an earlier support for *Crossroads* principles could not be reconciled with the policy detail which subsequently emerged in stark form in the actual legislation. This explains why nearly all submissions from universities commenced with a ringing endorsement of the Government's reform policy in general terms, while the bulk of each of the submission tore apart the details of implementation, notably the role of DEST in university micro-management, the extremely parsimonious equity and student income support provisions, and the matters considered extraneous or 'ideological', like industrial relations. An aggrieved chair of the Australian Vice-Chancellors' Committee described the Government's actions as 'changing the goalposts'.³

1.9 A concern to the committee is the timing and status of the guidelines which pertain to the legislation. The guidelines are delegated legislation and therefore subject to parliamentary disallowance. At the time of the DEST appearance before the committee on 17 October 2003, only one set of the ten guidelines planned for tabling had been made public, with several others promised in the time that would elapse before debate on the bill in the Senate. The committee was advised by DEST that

2 Submission No. 468, Western Sydney Regional Organisation of Councils, p. 3

3 Professor Deryck Schreuder, *Hansard*, Canberra, 17 October 2003, p. 66

some guidelines would not be made until they were needed, as far off as 2006. Yet the attitude of the Government to the making and purpose of its guidelines is remarkable. The committee learned, for instance, that disallowance of the workplace relations provisions by the Senate would result in the contingent financial grants being withheld. On the other hand, disallowance of some other guidelines would have little effect for reasons which were explained:

But there are other provisions within the bill so that, if the guidelines are not agreed by the parliament, there is adequate detail and the basis of the arrangements in the bill. A number of those cases have sufficient detail in this bill to understand the way the system will work, and they are not dependent on subsequent guidelines.⁴

1.10 The committee is interested in why the Minister and the department make regulations if they are not needed to implement policy. The committee assumes, on the contrary, that the various guidelines, as an integral part of the package, are essential to an informed consideration of the legislation by the Parliament. As the guidelines are to detail the 'quality and accountability requirements' on which funding is to be made conditional, and in doing so specify the intrusions of DEST into university operations, it is imperative that they be made available to the Senate in complete and final form before debate commences on the legislation.

1.11 Apart from receiving submissions and several petitions, the committee heard from some 147 witnesses from all states and territories. As usual, witnesses were selected on the basis of written submissions and in order to ensure a wide representation of opinion. Public hearings commenced on 22 September 2003 in Parramatta and concluded in Canberra on 17 October 2003. The committee visited all states, and where possible conducted public hearings at universities. A list of witnesses and hearing venues can be found at Appendix 2.

1.12 Characteristics of submissions noted previously have an echo in the tenor of evidence presented at public hearings. As the implications of the legislation began to be felt soon after its introduction to Parliament, the weight of opinion quickly began to harden against it. Vice-Chancellors who had previously supported *Backing Australia's Future*, and who were cautious rather than critical in their written submissions, were unexpectedly robust and emphatic about the weaknesses in the legislation by the time of their appearance before the committee. Yet, even at this point there was a glow of optimism shining through this evidence: that somehow reason would prevail, and that the Government would be persuaded to make badly needed changes. This optimism extended to almost extravagant hopes, as in the case of vice-chancellors wanting to believe that the Minister could be persuaded to restore the indexation of the Commonwealth Grants Scheme. The committee never learned the basis for such optimism.

1.13 The vice-chancellors presented the committee and the Senate with an interesting and extremely difficult challenge, to which there are several elements. First the committee was told that the bills should pass because there was too much of value in them to be discarded. The core financial provisions needed to be implemented. Second, the vice chancellors appeared to agree that some provisions in the bills were totally unacceptable, and should be discarded. Third, the legislation must pass in 2003 if universities were to plan their futures effectively. The issue of whether the Government might withdraw its legislation if frustrated over what the universities might regard as expendable clauses was not raised. Evidence from Professor Deryck Schreuder sums up this plea to the committee:

We are not for a package in whatever form; we are for the right package. We have been making recommendations as to how the amendments should be, we will make further recommendations, once we have worked through the legislation even more closely, and we rely on the Senate's very close scrutiny of this to establish the right package. I may be really naive; in the end, we would like to see a bipartisan, across-the-parliament resolution of commitment to Australia's universities and so put a line in the sand. This is the reform time, and hereafter we build the kind of world-class system that our students and our community deserve.⁵

1.14 It was pointed out on a number of occasions to vice-chancellors that there was a diminishing time-frame for the Senate's consideration of the legislation. There was uncertainty about the Minister's own time-frame for changes, and the committee heard of a more relaxed time-frame for delivery to the Minister of final advice from the AVCC. The committee is concerned that there is pressure on the Senate to pass legislation flawed in both conception and detail, simply to satisfy vice-chancellors who live in hope that something will come along in due course to fix up all the unworkable provisions. It agrees with the Government (which at last has accepted the committee's view) that the status quo is indefensible. It takes the view, however, that 'reform' should be worthy of the name, and for this reason recommends deferral of consideration of the legislation.

1.15 This legislation is universally agreed to represent the biggest change to higher education legislation since 1987. As such, it requires that the Minister needs to schedule more time to consider it. Above all, bills like this need parliamentary time. The committee draws the conclusion that the Minister and his advisors have failed to understand that policy and legislative implementation is a continuing rather than a compartmentalised process and one which does not conclude with the tabling of the bill in the House. Nor can false expectation be raised without cost to policy credibility. Essentially, as the ensuing discussion makes clear, the committee believes that the provisions of the Higher Education Support Bill 2003, and the policies underlying it, are seriously flawed both in terms of principle and in potential practical impact. Even those few who continue to support the policy direction taken by the 'reform' package consider that the policy miscalculations and procedural errors associated with the

package threaten to turn the *Backing Australia's Future* legislation into a failure of both policy and political process.

Overview of policy

1.16 The Government's higher education 'reform' package represents a profound threat to Australia's university system. It would fundamentally alter the relationship, with regard to university governance and regulation, between individual universities and the Commonwealth, and between the Commonwealth and the states and territories. Most seriously, the Government's policies, given form in the Higher Education Reform Bill 2003, allow Commonwealth intrusion at the most basic of levels – right into the personal and academic records held by universities on students, and as far as the tutorial room and the lecture theatre.

1.17 The extent to which this package and legislation allow the Minister and his or her agents to intrude into the day-to-day affairs, as well as the major decision-making, of public universities is unprecedented. It goes far beyond the powers accorded to the Minister and department under the current legislative regime set out in the Higher Education Funding Act 1988. The entry and search powers of the bill are much more draconian than those applying under the Commonwealth's ESOS (international education) regime: the latter requires that a magistrate's order be obtained before such powers can be exercised against an education provider, while the HESB provisions carry no such requirement. The grounds offered by the department's evidence for this departure from the judicial process are spurious. While it is true that the consequences of investigations under the ESOS Act might amount to criminal charges or to actions under the Migration Act, those arising from this higher education legislation could be equally serious: the withdrawal of all Commonwealth funding or, presumably, the laying of criminal charges for defrauding the Commonwealth and similar offences. These powers must be checked by means of a judicial process.

1.18 Furthermore, from all possible political perspectives, the policy package is a disastrous failure. For those who were seeking radical deregulation of the sector, the bill provides the opposite of what they asked for: it allows a massive increase in regulation of universities' activities and accords to the Minister unprecedented powers to intrude into the affairs and decisions of universities.

1.19 From the perspective of those supporting a strong public higher education sector, the package also fails because it shifts a much more significant share of the cost of university study onto individual students and their families. Already, Australian students pay a greater proportion of the cost of public higher education than in almost any other country: this package potentially leads the world in privatising the financing of 'public' higher education.

1.20 In revolt against the intrusive and draconian powers bestowed on the Minister and his department in this bill, many key conservative commentators and most university heads have either publicly disowned the package, or have appealed to the Government just as publicly to make fundamental and detailed changes to it. University of Melbourne Vice-Chancellor, Professor Alan Gilbert, previously an

outspoken supporter of the Government's deregulatory agenda, has now declared that the industrial relations provisions contained in the bill are so intrusive that the new regime was 'not worth the money'.⁶

1.21 The disappointment of individual vice-chancellors, each eyeing the legislation for its potential impact on their own institution, is palpable. Aside from the divisive, destructive and entirely unnecessary changes to the industrial relations regime, the new administrative and reporting requirements and costs it imposes are regarded as exceptionally onerous. The potential intrusions into academic decision-making and into the personal privacy of students and staff are regarded with alarm: they threaten a tectonic shift in the relationship that has existed between government and universities in Australia for 150 years.

1.22 While the custodians of our universities – individual vice-chancellors – have almost all come quickly to realise that the new golden age, promised by the Government, is not to be, in their collective manifestation as the Australian Vice-Chancellors' Committee the realisation has been slower and less complete. The AVCC has now expressed its disappointment in the bill, but it remains essentially beguiled by the Government into thinking that there is hope that the flawed package can be patched up by means of rational discussion, conducted behind closed doors. This view is delusory because it fails to appreciate that the fundamentals of the Government's approach are inimical to its soundness or its practical workability.

1.23 To underlie its reform package, the Government promised four principles: sustainability, quality, equity and diversity. It has failed on all counts.

1.24 The package is not sustainable, either financially or from a policy perspective. Financially, it contains a reliance on market forces in terms of pricing while at the same time imposing rigid and exacting regulation that will not allow the benefits of flexibility and independence to flow to institutions. Relations between universities and government are completely one-sided: the purchaser-provider split as constructed accords all power in the market to the 'purchaser' of services – the Commonwealth. Meanwhile, the shift to commercialisation of provision through increased fee-charging places and partial deregulation of HECS charges is destabilising for most institutions, creating financial uncertainty and threatening the financial viability of some. Coupled with the failure to provide better indexation arrangements to allow for increases in salary costs, this regime will inevitably drive tuition fees higher and will eventually put inordinate pressure on the ceiling on HECS charges. The fact that this ceiling is determined annually by the Minister potentially relieves the pressure on universities – but only by placing it on students by effectively removing the limitations on what the majority of them can be asked to pay.

1.25 Also unsustainable is the deregulation of the full fee-charging regime, accompanied by a cap on the amount that students can borrow from the

6 Martin C and Dodd T, 'Unis Revolt Over IR Demands', *Australian Financial Review*, 25 September 2003

Commonwealth to finance their studies. Inevitably, this will lead to upfront fees that will price many less advantaged students out of the market.

1.26 The package does virtually nothing to serve the objective of improved and guaranteed quality. It potentially opens up access to Commonwealth funds, through the Commonwealth Grants Scheme, to hundreds of private providers of varying types, sizes and missions. Realising the need to ensure quality of provision in an unfamiliar and uncertain universe, the Government has framed its entire legislative package from this perspective – failing to recognise that Australia’s public universities have a long tradition of robust processes and standards which render the intrusion into, and policing of, their activities unnecessary and unproductive. In fact, applying the petty and punitive regime of this legislation to established universities – with their internal safeguards already mostly in place – is counterproductive.

1.27 The role envisaged for the Australian Universities Quality Agency (and, apparently, other similar ‘quality auditing bodies’) is inappropriate and well outside the current brief of AUQA. As a quality assurance agency, AUQA is charged with examining and reporting on the *processes* of universities designed to ensure that quality as claimed is delivered: actual standards and levels of quality are defined by the institution itself. Performing quality *audits* is not the brief of AUQA as it stands, nor of any other body within the Commonwealth jurisdiction.

1.28 As for the goal of equity, this package undermines that principle in two major areas: institutional equity (equity of provision) and individual equity (equality of opportunity). The funding model contained in the package has vastly differential effects on institutions, with adverse consequences for several outer-metropolitan based universities in predominantly low socioeconomic areas. It appears that the regional campus loadings – essentially a bandaid measure which tacitly recognises the unsatisfactory nature of the CGS as an allocative mechanism – would be applied in an ad hoc manner, in apparent response to political considerations. Already advantaged universities will be able to cash in on their location and reputation to charge higher tuition fees in the deregulated market, leaving newer institutions lagging behind.

1.29 For individual students, the package clearly provides greater opportunities to those for whom financial considerations weigh less heavily: they can choose a fee-paying place, even where fees exceed the \$50,000 cap on FEE-HELP loans. A single class will contain students admitted on fundamentally different bases, with HECS-related students required to meet tougher entry criteria than their fee-paying classmates. Those in regional and outer-metropolitan areas will enjoy fewer options in higher education: the ‘equity’ measures announced as part of the package are completely inadequate in scope to accomplish more than window-dressing in this regard.

1.30 The model on which financing aspects of this policy package is founded is clearly an American one. The American approach to public policy in general, and in education in particular, is profoundly foreign to Australia and Australians. An environment where what we might regard as public services are differentially

available, directly proportional to personal wealth, is anathema to the egalitarianism which underlies an Australian approach to the provision of public services.

1.31 Finally, the Government avows a commitment to greater diversity of provision. This would entail a parallel commitment to endow all types of universities with genuinely adequate financial support, and with parity of esteem and treatment. By creating an environment where, in the throes of competition, resource-rich, established universities can systematically trample on the rest, the scene is set for the less advantaged institutions to wither into oblivion. At best, some may linger on as ‘teaching-only’ undergraduate degree factories where the preconditions for a vibrant academic culture – an active research base and a competitive resource environment - have vanished. The differential effects of the deregulated fee-charging regime and of the absence of indexation will hit the many and leave the few to capitalise on the advantages they can seize.

1.32 The higher education policy developed by the Government through *Backing Australia's Future* and its associated legislation rests on two doubtful assumptions. The first is that higher education benefits flow overwhelmingly to the direct recipients of learning: that the benefit is primarily an individual one, albeit with flow-on benefits to society. It follows that the recipient, as the principle beneficiary, must pay a high price for the learning from which he or she will gain. Thus the cost of higher education is to be gradually shifted in ever increasing proportions from the public purse to the individual student.

1.33 The second assumption is that universities will not only survive on a radically altered funding diet; they will thrive. This second assumption was the issue most commonly addressed in evidence to the committee. The vice-chancellors committee appeared to be divided between those of its members from long-established Group of Eight universities who appeared for the most part to believe that in fee-charging, as distinct from in Commonwealth grants, lay the hope of expansion of high-quality higher education. It is generally conceded that some of the Group of Eight universities, though not most, will benefit financially from the proposed changes. Other vice-chancellors from lesser known, smaller, newer and rural universities were under no illusions. Neither DEST nor universities possess a sound empirical base to form accurate estimates of the level of demand for full-fee courses. This policy thus represents a leap into the unknown. It is rare that important domestic policy is implemented on such a basis.

1.34 The flaws in this policy are not difficult to identify. First, the willingness of students and would-be students to borrow money to pay for their education is a matter of doubt. Those from middle class backgrounds accustomed to living with substantial levels of debt may have few problems. For the majority of students the debt burden, in the light of more accustomed debt for houses and family needs, will be a disincentive for university study. Nor is the likely pool of wealthy potential fee-paying students very large. While the committee majority objects to the enrolment of fully fee-paying students in principle, it recognises that in any event, the ‘pickings’ here are likely to be slimmer than the Government would have us believe.

1.35 Finally, the simple transfer of the funding burden from the public purse to the private pocket, even incrementally over time, is unlikely to occur as the Government intends. In its 2001 inquiry resulting in *Universities in Crisis*, the committee heard strong evidence that increased private investment in universities could not be used to substitute for lost Commonwealth grants. This private investment was in a sense ‘tied grants’ for specific purposes, which did not include general infrastructure maintenance.⁷ The committee also believes that the level of private investment is to some extent determined by the extent of continuing public investment. Declining public investment is most obvious in the run-down state of university infrastructure. This is most obvious in science and engineering research investment. It is also very real, if less obvious, in the decline in undergraduate and postgraduate core (or ‘enabling’) science and mathematics courses which are dependent on Commonwealth grants. Industry will not invest unless the ground is prepared. A cost transfer for the benefit of the taxpayer is not only poor social policy, it is poor economics.

1.36 It is not only the survival of universities that is under investigation in this inquiry, but their survival in a recognised form. Traditionally, universities are a collective or community of students and academics who form a compact for the purposes of teaching, learning and research. This radically altered funding diet and the administrative changes accompanying it will affect the quality of this relationship. It will also, paradoxically, alter the relationship between the government and the universities because, while the Higher Education Support Bill points the way toward an ever diminishing level of Commonwealth financial support, it provides for an unprecedented level of intrusive micro-management by DEST of university program arrangements and ministerial discretion over individual programs. These measures, alongside the measures to curb the representative nature of university governing councils and to dictate the terms and conditions of workplace arrangements in ostensibly independent statutory public entities, are policies at odds with the principle of academic freedom and the goal of diversity.

1.37 Universities should serve the public good. This policy package carries the potential significantly to reduce the number of participants in the experience of higher education, giving rise to frustrated expectations of individuals, the weakening of the national skills base, declining average incomes and a widening socio-economic gulf between those with access to wealth and those without. Thus, while the proposed legislation may be accurately described as ‘radical’ in that it presages social and economic change, it is not to be regarded as ‘reforming’ because the likely changes appear to point toward less equitable social and economic outcomes.

1.38 Higher education has traditionally been the path to higher incomes, better living standards and improved national economic performance. The close relationship between private and public benefit has been assumed. A high proportion of educated individuals in the population are perceived to ensure a high degree of economic and social stability and a respect for civil society. The role of the state in the provision of education at all levels has long been accepted as important in the maintenance of both

7 Senate EWRE Committee, *Universities in Crisis*, Canberra 2001, p. 77 *passim*

social stability and prosperity. There is no tension between private and social benefit in maintaining a public education system because it aims at developing talent, knowledge and responsibility to the benefit of all levels of society.

1.39 The committee's twin philosophical objections to the legislative outcome of *Backing Australia's Future* therefore go to the core of the policy. The first of these is the vision of the diminishing role of the state in funding higher education and the greatly increased burden placed on the 'individual purchasers' of educational services - students and their parents - who in many cases will need to weigh the costs and benefits of a university education. This will be a challenge not faced in more than two generations. It will thrust a cost burden on individuals and will result in a squeeze on personal borrowings not anticipated by economic planners and lending institutions. Its effects on regional and rural areas will be profound, as the multiplier effect on their economies is very considerable. The Government will come to realise in time that the worth of the social capital generated by universities, and their role in creating employment and in stimulating the creation of wealth, far exceeds the current value of the very modest expenditure of public funds⁸. It should be emphasised that this policy direction is exactly the opposite of international trends for comparable developed countries.⁹

1.40 The second philosophical objection goes to the unprecedented extent of the intrusion on the part of the Commonwealth into the functions and activities of universities that is sanctioned by this legislation. The committee finds it difficult, under this scenario, to envisage Australia's universities of the future as vibrant, intellectually open, politically independent centres of teaching, learning and research.

Issues of contention

1.41 Since the committee is fundamentally opposed to this legislation, it follows that there are few divisions in the bill to which it agrees. While the Government claims that its provisions may be benchmarked against the criteria of sustainability, quality, equity and diversity, it is clear to the committee that they cannot, and that this is a rhetorical catchphrase: part of the package merchandising whereby the expectation is that people will take at face value all that is claimed.

Indexation

1.42 Nearly all those submissions dealing in detail with university finances called for a return to full indexation of funding levels under the new Commonwealth Grants Scheme. All vice-chancellors emphasised its importance. For some it was an issue upon which the long-term survival of their universities depended.

8 David Johnson and Roger Wilkins, *The Net Benefit to Government of Higher Education: A 'Balance Sheet' Approach*, Melbourne Institute of Applied Economic and Social Research, University of Melbourne, May 2002

9 OECD *Education at a Glance*, 2003, table B2.2, p 210

1.43 As will be detailed in a later chapter, the Australian Vice-Chancellors' Committee (AVCC) placed concerns about the lack of proper indexation at the top of the list of university grievances. The accumulated loss of income would gradually result in a deterioration of salary levels and infrastructure, threatening the sustainability of universities as they currently operate. The strongest statements about the lack of financial sustainability in a system where there is effectively no indexation came from Professor Gavin Brown, whose submission (and subsequent appearance before the committee) confirmed the committee's view of the basic funding flaw in the package.

1.44 Professor Ross Milbourne told the committee that he could not understand why universities were not treated in the same way as schools in regard to the levels of indexation they were allowed on their Commonwealth grants. He argued that, were that policy to be adopted, most of the contentious financing issues that might come out of this package would evaporate because the extent to which universities would have to vary average HECS levels would diminish and they could do more within that framework for equity and diversity.¹⁰

1.45 For a few, the unlikely event of any return of satisfactory indexation arrangements was a reason for favouring radical deregulation of the fee-charging regime. Professor Alan Gilbert, Vice-Chancellor of the University of Melbourne put it to the committee that it was unlikely that governments, whatever their party political background and whatever other exigencies they faced, would agree to maintain an absolute priority for keeping higher education well funded. Professor Gilbert, when invited by Government senators to criticise the Opposition higher education policy, declined to do so on indexation, stating that its commitment to full indexation was one of the strengths of the policy. Professor Gilbert nevertheless held to his belief in complete fee deregulation.¹¹

1.46 The committee notes the comments of Professor Bruce Chapman on the inadequacy of the package's indexation provisions and their likely effect of making HECS rises inevitable. The committee accepts this assessment, despite the brave intentions of some universities to delay this as long as possible. Indexation has been a silent but ever present issue in this inquiry in so far as the inadequacy of current arrangements is the reason for proposals for a new funding model.

1.47 Finally, the committee believes that the Government's refusal to maintain full indexation is part of an undeclared industrial relations strategy to reduce, over time, the proportion of staff on long-term contracts. Full indexation would allow long-contract positions to be routinely filled upon resignation and retirement of incumbents and for new positions to be created. The Government's preference is for more 'flexibility' despite the adverse effects of this on universities.

10 Professor Ross Milbourne, *Hansard*. Sydney, 22 September 2003, p. 2

11 Professor Alan Gilbert, *Hansard*, Melbourne, 2 October 2003, p. 7

1.48 The committee joins all universities in urging that indexation, based on the Wages Cost Index, be restored as the most effective financial assistance that can be offered to universities.

HECS increases

1.49 The committee found considerable opposition to HECS increases from students and from universities whose enrolment catchment areas have a high proportion of students coming from low socioeconomic groups. Such universities would be reluctant to raise HECS charges, and would do so only when they had no other funding option. Group of Eight universities were broadly in favour of being able to gain access to increased funding through higher HECS imposts.

1.50 The committee has heard from Professor Bruce Chapman that in the absence of any changes to the indexation system no institution would be able to survive 'down the track' without increasing the HECS charges. That is because for every year that they do not do so there is a potential two per cent shortfall coming from the lack of full supplementation.

The system with its current arrangements must inevitably mean that if there is no change to the indexation then this price instrument [increased HECS] will cause a radical change in the burden of financial resources. No institution will be able to survive down the track without increasing the HECS charges. ... All the institutions down the track will ... have higher HECS arrangements.¹²

1.51 Some universities have already announced that they will increase HECS by the full 30 per cent.

1.52 One of the dangers of partial deregulation of HECS is illustrated in the early announcement by the University of Sydney that it will raise its HECS fees by the full 30 per cent, while other universities have said that they will do so to a lesser percentage. The continuing evolution of a hierarchy of institutions will accelerate as a result of this provision. As one submission pointed out, this will create a new 'binary' division which could eventually lead to a more restricted choice of university education.¹³ It is for this and for equity reasons that the committee majority is opposed to partial HECS deregulation. A much more equitable way to deal with the needs of universities for the additional funds that would be raised by increasing HECS is to index Commonwealth grants adequately. This solution is proposed in Labor's 2003 higher education policy, *Aim Higher*.

1.53 The committee heard of a number of anomalies and problems that will arise from the partial deregulation of HECS. First, this policy would put pressures on universities that would force them to discount their HECS rates in order to retain their student load or to maintain the quality of their student load at acceptable levels. In the

12 Professor Bruce Chapman, *Hansard*, Canberra, 10 October 2003, p. 29

13 Submission No. 308, Deakin University Student Association, p. 5

case of regional institutions, the level of discount would have to be a very small amount below the standard HECS rates for the cut rates to eliminate completely their regional loading. This might eventually result in the development of a seriously inequitable system.¹⁴

1.54 Another issue arises in relation to the difference in entry-score cut-off for HECS-related students and for those paying full-fees - the decisions that will have to be made by universities at student entry level which might keep high-performing students out of the HECS streams.¹⁵ There are serious equity decisions at stake here.

1.55 There are also serious equity issues in relation to disadvantaged students, who are more likely to be averse to the prospect of debt. Higher fees will further discourage them from taking out loans. The committee notes commentary that varying fee regimes in different universities and in different courses may further restrict the choice of courses for disadvantaged students.¹⁶

1.56 The committee is persuaded by arguments put forward in a number of student submissions that increased HECS burdens are likely to be excessively onerous for a high proportion of graduates, especially those who will be working in occupations which are not highly remunerated.

Student loans and full-fee payments

1.57 The deregulation of university fees represents the most significant policy shift in higher education by a government in memory. But John Howard has not sought or received a mandate for these radical changes. Four years ago the Prime Minister was assuring the House of Representatives:

I can also inform the House that we have no intention of introducing a loans scheme. I make it very clear that any attempt by the Australian Labor Party to run a scare campaign on the basis of a loans scheme or real rates of interest will fail because there will be no real rates of interest.¹⁷

...That means, in particular, a clear rejection of vouchers for post-secondary education, a clear rejection of the deregulation of university fees...¹⁸

1.58 The following day, the Prime Minister confirmed this message:

We have taken a decision yesterday that was reported to this parliament, and I think widely welcomed throughout the Australian community, to maintain the existing higher education system. We have no intention of deregulating

14 Stokes, *Hansard*, Melbourne, 2 October 2003, p. 17

15 Professor Bruce Chapman, op. cit., p. 32

16 Phillips Curran, *Independent Study of the Higher Education Review: Stage 2 Report*, vol 2, p. 72

17 Hon John Howard MP, *Hansard (House of Representatives)*, 18 October 1999, p. 11718

18 *ibid.*, p. 11725

university fees. We have no intention of altering the current HECS arrangement.¹⁹

1.59 The Prime Minister had earlier denied, in an answer to a question from one of his backbenchers, that the Government would be introducing an ‘American style’ education system, and that there would be no \$100,000 university fees under his government.²⁰ Yet it was known at that time, as a leaked paper from the then Department of Employment, Education and Training, revealed, that the current Minister was working on a document which would pave the way for a policy change along the lines that we have come to see in *Backing Australia’s Future*.

1.60 The committee is also opposed to the enrolment of full-fee paying Australian undergraduate students. There are two reasons for this. First, this policy poses a serious threat to the principle of merit entry to universities. Second, there should be no additional cost burdens placed on academically eligible students. HECS places should be found for all students who meet university entry requirements, even if not at the university of their first choice.

1.61 Universities will be able to offer a full-fee paying quota of up to 50 per cent of student places in a particular course, and as market forces operate, this quota will enable some universities, for some courses, to set fees that may be very much higher than the HECS fee. Well-established universities may well be able to charge students at rates which far exceed the cost of delivering the course.²¹ As Professor Chapman remarks, this is a long way from the theoretical ideal of course charges reflecting costs and government subsidies reflecting externalities.²²

1.62 The committee received a very large number of submissions opposed to full-fee entry. Many objected on the grounds that it threatened the standard of university courses. The view was expressed that a fee for a place was not far removed from a fee for a degree. While universities assured the committee that matriculation entry points were likely to be only a few points lower than the HECS cut-off, it is not satisfied that this will be the view in years to come if the hierarchy of universities begins to operate on the American model. The committee has heard evidence in its 2001 inquiry into the state of higher education about the unethical practice of ‘soft marking’ in the case of foreign fee-paying students, and is not satisfied that quality assurance processes will always be effective in relation to fee-paying non-performers.

1.63 Another problem with full-fee arrangements is their discriminatory effect. Despite the income-related nature of the repayment regime, debt averse students are less likely to take advantage of this arrangement which appears to have been designed

19 *Hansard (House)*, 19 October 1999, p. 11817

20 *Hansard (House)*, 14 October 2003, p. 11616-17

21 Submission No. 403a, Professor Bruce Chapman, p. 22

22 *ibid.*

for students aiming either at jobs which pay very well soon after graduation or at students with access to considerable private funds. On this basis it is inequitable.

1.64 A related issue is FEE-HELP, access to which is available to students to pay full-fees. The interest rate on this loan, being close to market rates, has invoked considerable criticism. The committee notes research by Professor Bruce Chapman in which he concludes that the FEE-HELP rate of interest is inferior to the current HECS arrangement, and that it could be easily replaced by an additional impost in the form of a HECS supplement. This would both reduce the interest burden on students and be far easier to administer. The committee majority is opposed to FEE-HELP in principle, just as it is opposed to the arrangements in the legislative package – the extension of full-fee paying - that make FEE-HELP necessary for the package to operate.

Learning Entitlements

1.65 Under these arrangements students are entitled to five equivalent full-time years of university study. The committee believes the rigidities of the five year limit will involve considerable cost, inconvenience and deprivation for a large number of students.

1.66 As the Phillips Curran report pointed out, there are many paths taken by students through university. Some drop out early in a course and return later to finish it. Students may for good reason change courses in mid-stream. Some wish to study for a double degree or a second degree. All of these choices are affected by the limitation posed by the five-year Learning Entitlement.

1.67 Student comment was particularly adamant on this issue. A typical student response was that learning entitlements were a threat to life-long learning; there would be a discriminatory effect on low-SES level and mature aged students; the policy discriminated against those who had changed their study or career preferences through the course of their studies.²³

1.68 The committee's view is that all the objections to the learning entitlement are valid. Principally, the issue is one of inequity, but the policy also falls down on the issue of diversity because it ignores the need for life-long learning. University course offerings are likely to be restricted over time through limitations placed by the learning entitlement. The Government is trying to address this through ad hoc announcements of exceptions to this restriction, but a piecemeal approach has concomitant dangers. Finally, the committee sees the policy as a measure to trim Commonwealth expenditure on higher education by removing opportunities for individuals to improve their educational standing. It sees this policy as another show of indifference to the social utility of universities in serving to broaden the national skills base and the knowledge base generally.

23 Submission No.437, RMIT Student Union, p. 41

Governance issues

1.69 As detailed in a later chapter, one of the most disturbing aspects of the Higher Education Support Bill is the extent of the Government's intervention in the governance and administration of universities. While it was obvious from the policy papers that preceded the bill that much tighter control was sought by the Government, as a condition of Commonwealth grants, many commentators and stakeholders failed to foresee how far these intrusions were intended to go. The committee regards this basket of issues as central to any evaluation of the legislative package.

1.70 There are two main elements. First, the so called 'governance protocols' which set new guidelines for university governing bodies – councils and senates – whose appointments are subject to state and territory legislation.

1.71 The second element is the very detailed administrative arrangements for Commonwealth funding which are specifically legislated for in the Higher Education Support Bill and in a number of legislative instruments called Guidelines. Some, but not all of these Guidelines were released on 3 November. Under these, universities will come under much more stringent and direct supervision by the Department of Education, Science and Training (DEST) for all matters relating to course approval and course mix, the allocation of funded places and other matters.

1.72 In its discussion paper on governance and management issues the Government committed itself to reducing bureaucratic intervention in the management of universities, but the existence of the protocols in the new legislation has made nonsense of the Minister's earlier assurance that he would cut 'red tape'. He stated that the extent to which this was possible depended on the confidence of the Government, first in university governance arrangements, and second with regard to whether agreements could be reached on outcome measures to replace unnecessary emphasis on 'process and inputs'.²⁴ There is no apparent connection between the altered structure of senates and councils and the reduction in 'red tape'. Governing bodies would not be expected to concern themselves with such matters. As is later explained, the real purpose for the shake up of senates and councils is to impress on them their corporate and fiduciary responsibilities. Minister Nelson sees them as dynamic boards of directors with 'top end of town' credentials. For many reasons, both the committee majority and the overwhelming majority of submissions addressing this issue are in complete disagreement with the Minister's perspective. Universities are not corporations, and 'top end of town' appointees to university senates would be the first to recognise this fact.

1.73 As to the second element, the bill sets out in explicit detail the increased and onerous obligations on universities and, contrary to the Ministers assurance in the relevant issues paper, makes no mention of how the arrangements legislated for may be altered by negotiation. Vice-chancellors have been outraged by the intrusions

24 *Meeting the Challenges: The Governance and Management of Universities, Issues Paper*, DEST, August 2002.

which their universities will face into areas of student administration over which they are no longer to have discretion.

1.74 It is the Minister's discretion that has been markedly increased, including the discretion to allocate a specified number of Commonwealth supported places to each university, and their allocation and distribution between funding clusters. Clauses in the bill set out numerous conditions attached to Commonwealth grants. Nothing is left to chance, that is, to the universities. As one vice-chancellor has stated:

I could imagine that all of those provisions would be defensible if the guidelines that supported them were minimalist and highly circumscribed the circumstances with which a minister would exercise those discretions. What concerns me is that the meaning of the legislation and its operation are going to depend on a very detailed structure of guidelines that accompany it and on current evidence we have reason to fear that all of those powers that you have referred to are going to be subject to wide discretion and represent, I think, an interventionist regime of the kind we have not seen before in Australian higher education.²⁵

1.75 The governance protocols fail on the grounds that they attack the diversity of the university sector. The Government appears to assume that they will operate in the same way, and cater to the same kinds of students, in all instances. It may deny this, but the governance provisions - setting a size limit of 16 members and ousting student and academic staff representation – appear to confirm what the Government would deny. The Governments protocols are aimed to standardise the operations of universities in a way that no self-respecting university should tolerate. The committee totally rejects all the clauses in the bill relating to governance.

Recommendation

That the Governance Protocols be rejected as a simplistic 'one size fits all' approach to the complex and differentiated task of governing diverse universities serving different communities.

Industrial relations provisions

1.76 The Government's intention to link \$404 million in funding in 2004-06 to the acceptance of its industrial relations clauses, providing for the offer of Australian Workplace Agreements, has been a highly emotive issue within universities, causing some bewilderment in the wider community as well. The difficulty which the Government has in relation to the industrial relations clauses is that of convincing anyone that they are relevant to higher education 'reform'.

1.77 It is clear to the committee that the Government's determination to make AWAs available in universities has much to do with its disapproval of the role of the National Tertiary Education Union's influence in the enterprise bargaining

25 Professor Alan Gilbert, op. cit., p. 4

negotiations. It claims that the NTEU acts as the ‘gatekeeper’ in negotiations²⁶ and that the union runs a pattern bargaining campaign over salaries and conditions, which is a claim answered in Chapter 4 of this report. The committee believes that the maintenance of a floor under salaries and conditions is at least one way of ensuring that there is some base standard of quality of education offered across the diverse sector.

1.78 The Government’s insistence that Australian Workplace Agreements be offered to university staff in any round of enterprise bargaining has the potential to cause disruption, or at least disharmony, throughout the sector. Indeed, it has already done so, with enterprise agreements on hold following a joint ministerial statement on 22 September 2003 confirming the Government’s intention to impose financial penalties on universities which do not comply with the provisions of clause 33-15 of the bill. It is little wonder that vice-chancellors have been highly critical of these provisions in the bill. The inclusion of this provision, together with the governance provisions have made it far harder for the Government to win the support of those from whom they would normally receive support. One of these supporters, Professor Alan Gilbert, has described the IR provisions as ‘bureaucracy run riot’.

1.79 What makes these provisions inexplicable is the current atmosphere of industrial harmony in universities. National Tertiary Education Union members who appeared before the committee described how this had been achieved, and why it had been sustained. Productivity gains had been real, and the myth of the indolent academic had long been dispelled. Performance was being rewarded. The committee gained a sense that university administrations had learned much over immediate past years about maintaining industrial harmony. It was evident that vice-chancellors, in the main, had earned the goodwill of university staff, although issues of disagreement inevitably remain.

1.80 As the committee argues in Chapter 4, the industrial relations issue must be understood in the context of a wider Government agenda: that of ensuring that universities are placed on the same footing as any other workplace for the purposes of negotiating salaries and conditions. Any claims that universities may have for being ‘special’ or having a ‘unique culture of collegiate relationships’ is apparently not a valid consideration.

1.81 The committee is opposed to the workplace relations provisions on principle. It notes the evidence from several vice-chancellors that common law contracts are used in particular circumstances, especially for senior personnel and these are much more flexible and less cumbersome than AWAs. It notes also the views of the NTEU which has warned of the potential for administrators to force AWAs on university employees, particularly those who are young and female and engaged in general clerical duties. The committee accepts that some employees will be more vulnerable than others: a common workplace experience. For these reasons alone it opposes these provisions in the bill.

26 *Meeting the Challenges*, op. cit.

State and regional issues

1.82 The committee notes from the outset that, if particular parts of the university sector are struggling now to stretch their budgets to cover the needs of all their students and to serve the varying needs of their regions, the changes proposed in the Higher Education Support Bill will in almost every instance make the task more difficult.

1.83 The reason for this, as the core arguments in this report makes clear, is that it is a discriminatory package, aimed, however haphazardly, at establishing a more clearly delineated hierarchy of universities. It is aimed at allowing those institutions best equipped through accumulated assets and tradition to become beacons of entrepreneurial learning success so that they will be even less dependent on Commonwealth funding. Their role is to set the pace for the rest.

1.84 Nearly all of the beacon universities are close to the centres of metropolitan cities. The metropolitan regional universities and the rural universities may constitute a majority of enrolments, but the government's policy was not written primarily for them. The committee has taken notice of some of the serious problems they face. They are a diverse group. The outer metropolitan universities need to deal with large population growth and a demand for enrolments not matched by the allocation of funded places. Rural universities, the largest employers in their regions, have in common with outer metropolitan universities a lower socioeconomic base from which to draw students, except that in the case of rural universities the income levels are even lower. Rural universities also pay a premium for their relative isolation. Travel and freight costs are an impost on students and an addition expense to the university. Slow and inconvenient rail links, where they exist at all, are a deterrent to enrolments of prospective students from the metropolitan areas.

1.85 The Government's response to the higher costs of university education in rural areas is the regional loading, which excludes many students from the University of New England and the University of Southern Queensland who are enrolled as distance learning students. The committee notes the misleading title of this allowance in so far as it is a rural rather than a regional loading. The committee also notes the arbitrary classification of 'regional' loading. The University of Wollongong lobbied hard to be included, and it succeeded. On the other hand the University of Newcastle (twice the distance from Sydney than is Wollongong) was considered too close to Sydney to qualify for the loading. This demonstrates the wonder that is ministerial discretion.

1.86 The committee also heard evidence from the University of Tasmania and the three universities in South Australia that also highlighted the concerns of institutions in states with static population levels and difficulties in maintaining a satisfactory rate of economic growth. Both Tasmania and South Australia lose a higher than average number of their matriculating school leavers to universities in Victoria where course offerings are much broader and where more funded places seem to be available.

1.87 The evidence appears to be very strong that students from rural and remote areas remain particularly disadvantaged. If they are able, and are offered HECS places at universities in the city, they are often liable to considerably high living expense. The cost of living in a residential college, institutions that offer the security that young undergraduates from the country need, is very high. Professor Bruce Chapman has suggested that a HECS loan top up to pay for miscellaneous up-front expenses would be a very practical initiative which could be achieved at very minimal cost. The committee agrees.²⁷

Student participation in student organisations

1.88 That other obsession of the Government, the abolition of automatic student organization fees, is again introduced, this time in the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003. The bill requires that universities do not collect student organisation fees as a condition of enrolment.

1.89 Several members of this sub-committee recall dealing with the first attempt by the Government to abolish automatic membership of student organisations in 1999. The arguments have not changed since then. This, like the AWA issue briefly discussed above, is a matter of ideological concern to some members of the Government who place a higher value on the claims of an individualist libertarianism than on a community amenity funded by an obligatory levy. That this is a wildly impractical stance to take is easily demonstrated to the overwhelming number of university stakeholders.

1.90 The committee opposes this provision because any examination of the issue on its practical merits falls down. There is no other way for a satisfactory level of service to be provided for students except through student organisations which, as they run at cost, depend on the fees paid by all students to operate the range of services that they provide. Given the peculiar circumstances of running services on campus it is highly unlikely that any contracted private provider or business could offer the range or quality of service that students currently enjoy. Student organisations are a 'natural monopoly', the removal of which would result in a marked deterioration in student services and a considerable loss to university life and culture.

1.91 Evidence to the committee indicated the severe consequences to campus and community life, based on the Western Australian experience. The financial costs to universities in maintaining, in the absence of student organisations, even minimal student amenities would be considerable.

27 Submission No.403a, Professor Bruce Chapman, p.27

Conclusion

1.92 The committee identifies a consistent policy theme threaded through this proposed legislation. It is radical without being reformist; it is both deregulatory in policy intent and highly regulatory in its processes. It is based on false assumptions about the role and purposes of higher education and it exhibits profound ignorance of the way universities operate and perceive their responsibilities. This is evident from the way in which the Government managed to unite all university opinion against it – an achievement almost without precedent. Government may have won some plaudits for the conduct of the *Crossroads* inquiry. It has forfeited this praise because it is now obvious that either it did not listen to the stakeholders, or what is worse, it put them through a charade; a pretence at consultation.

1.93 Finally, the committee believes that none of the divisions of the bill meets the criteria of sustainability, quality, equity and diversity. First it is a package that lacks the sustainability that indexation of grants would provide. Second, there is no guarantee, in the absence of increased direct funding, that infrastructure costs and staffing costs can be met so as to ensure high quality teaching and research. Third, the legislation is inequitable now, and will become increasingly so over time as enrolment numbers are threatened by increased fees; and fourth, the legislation aims at a rather ruthless conformity rather than diversity, as university autonomy is diminished.

Recommendation

Important features of the nation's higher education system are being fundamentally reshaped and redefined by the Higher Education Support Bill. Such a radical assault of the fundamentals of the system was not foreshadowed nor discussed during the review process. The sector and the broader community do not support discarding university autonomy and academic freedom.

These bills will initiate a regime which will shift costs to students. It will stifle student choice and impose a heavy burden on families. These bills will deepen inequities in society, and undermine economic and social prosperity.

The bill is so badly flawed, at both a philosophical and technical level that it should not be given a second reading.