

# **SUBMISSION TO REVIEW OF AUSTRALIAN HIGHER EDUCATION**

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Australian higher education has been in turmoil in the 20-year period since the Dawkins reforms. Despite the proliferation of places and the opening up of access, which has contributed to democratisation, the calibre of education has been deleteriously affected by the new funding model, competition policy, privatisation and the user-pays policy.

My views are informed by many years of experience as a senior academic with experience in management, governance and research policy. I have also conducted research in all Australian universities, as well as in the UK, Canada and New Zealand on the impact of corporatisation, with particular regard to the legal academy.

Of particular concern in the post-Dawkins era is the distorting effect of the **market** on all facets of academic life so that entrepreneurialism and profit-making have become the modus operandi of the university. The values of teaching, research and governance have all been corroded by the market. The loss of independence in research is particularly worrying. It is imperative that the brakes be applied to this privatising trend to safeguard what is left of the idea of higher education as a public good.

## **Section 3.7 Higher education's contribution to Australia's economic, social and cultural capital (Qs 25-27)**

The emergence of the new knowledge economy, with support from the OECD, has induced the Australian Government to adopt an active role in the facilitation and production of research. Knowledge transfer refers to the dissemination of the outcomes of research and its application to solving the problems of the wider society.

While the Discussion Paper seeks to interpret knowledge transfer broadly, and I approve of this interpretation, the general focus of research policies and knowledge transfer tends to be on techno- and bio-science. These fields of endeavour are deemed to be the most lucrative sources of academic capitalism. The focus on what has use value in the market means that it is the economic and the applied rather than the cultural value of the knowledge that is regarded as all important.

Within the discourse of the new knowledge economy, areas of knowledge deemed to have little use value in the market are likely to be trivialised and even denigrated. The commodification of knowledge and the applied focus is highly destabilising for traditional university disciplines, including the humanities and social sciences, as well as for the more theoretical and less applied branches of the sciences, such as physics and pure mathematics. The withdrawal from the critical and the theoretical has caused the shedding of staff and the closing down of departments, including even entire faculties (eg Humanities at QUT). In areas such as law, socio-legal and critical scholars have been retrenched in favour of commercial lawyers who, it is believed, will better serve the market.

Unfortunately, the rapidity with which the Australian public higher education sector has had to shift from a system dependent on government funding to one based on enterprise in which it has been expected to generate approximately 60% of funding from other sources has been catastrophic in scholarly and academic terms. It has forced universities, especially the new ones, to interpret knowledge transfer almost solely in economic terms; anything else has been viewed as a luxury.

In terms of research, knowledge transfer means that consultancies and linkage projects are preferred over basic, pure or 'blue sky' research. The predilection towards particular outcomes by principals in applied research has blunted the independent and critical edge. However, the favouring of this type of research by government, as shown by rewarding applied research in the same way as basic research, has made it difficult to resist.

Universities hope to be the financial beneficiaries of knowledge transfer themselves through capitalising on IP, such as taking out patents. However, there is little evidence of the riches that universities hoped to secure, even when one looks to jurisdictions with a longer history of commercialisation, such as the United States (the Bayh-Dole Act was passed in 1980).

In Australia, one university has expended millions of dollars in litigation over a 20-year period trying to assert its rights over cancer therapies developed by a former professor of surgery (*UWA v Gray (No 20)* [2008] FCA 498). In the 20<sup>th</sup> law suit decided recently, Justice French of the Federal Court held that the duty of an academic researcher did not include a duty to invent. This result suggests that litigation could go on for years longer.

Litigation of this kind highlights the fact that universities are ill-equipped to undertake a major role in respect of the commercialisation of research. It not only pits universities against their own staff and vice versa, but it sets one university against another. Competition policy has already exercised a destructive effect on collaboration within the sector.

Such cases are salutary for universities, suggesting that chasing the dollar by construing knowledge transfer primarily in economic terms may be neither cost effective nor wise. Universities would be better off focusing on the public good associated with their traditional role, such as fostering relations with the local community and institutions of civil society, such as government, the courts and NGOs, and protecting the intellectual commons associated with basic research.

Focusing on the economic value of the IP associated with university research invariably leads to the privatisation of knowledge. Evidence suggests that commercialisation tends to allow privatisation-creep or an over-inclusive approach towards IP that may also include basic research.

There must be a vigorous notion of the intellectual commons in which the knowledge produced belongs in the public domain, not kept secret behind closed doors. The public conceptualisation of knowledge enables greater creativity and inventiveness to be built upon it. Knowledge transfer in a privatised and commercial sense thwarts

creativity. It is in direct conflict with the traditional role of the university as the guardian of the public good.

**Recommendations:** 1) *That the social, cultural and community value of knowledge produced in universities be stressed, not just its economic value;*

2) *That universities be encouraged to ensure that all basic research remains in the public domain. This could be effected as a condition of ARC and other government research grants policies;*

3) *That an Intellectual Property Centre be established, preferably under the auspices of the Federal/State Higher Education Commission (as suggested under Q 35 below). This body could facilitate technology transfer on behalf of all universities.*

*Such a centre could operate along the lines of the Copyright Agency Limited (CAL), acting on behalf of all universities, and distributing dividends annually. It could also have a dispute resolution centre to minimise the costs of litigation. Mediation would be the primary mode of dispute resolution. It could be funded in the first instance by a government grant, supplemented by a tax levied on a sliding scale according to private wealth generation.*

### **Q 35. Governance**

Universities have their origins in the middle ages as beneficent not-for-profit corporations. Neither their Acts of incorporation nor their modes of governance take cognisance of universities' contemporary entrepreneurial and profit-making roles. The grafting of norms associated with for-profit corporations onto the mediaeval idea of corporation established for the public good has not worked.

The old idea of the not-for-profit corporation is based on the collegiate principle, whereas the for-profit corporation is based on entrepreneurialism in the market and accountability to shareholders. As the principle of collegiality is now moribund and there are no shareholders in so-called public universities (public now being regarded as 'historic', Discussion Paper p 10), there is a lacuna in respect of accountability. Evidence regarding the number of disasters, including the loss of millions of dollars in public money from failed business ventures, travel rorts by vice-chancellors, etc, are now on the public record. In Melbourne alone, well known instances include La Trobe, Melbourne, Monash, RMIT and VU.

The idea of a federal/State overseeing body established on non-partisan lines is highly desirable. States contribute modest sums to their universities, which are, in almost every instance, established under State Acts, but the States play a minor role in their governance. The heavy reliance on a federal government with a particular political agenda proved to be disastrous under the Howard Government. Excessive micromanagement, direct political interference and arbitrary cuts in funding should not be allowed to continue as the modus operandi for the sector.

The abolition of a mediating body, such as the Commonwealth Tertiary Education Commission (CTEC) during the turbulent Howard years, is to be regretted. The

establishment of a joint federal/State body could obviate, or at least mitigate, the possibility of such catastrophes in the future.

**Recommendation:** *That a joint Federal/State commission of higher education be established to exercise a supervisory role over universities, to give advice to governments and to resolve internal disputes.*

### **University Councils**

While entrepreneurialism has induced a shift in the composition of councils from academics and the representatives of civil society to representatives of the business community in the belief that the latter might better manage entrepreneurial activities, this is not borne out by the evidence to date. The favouring of business people and the removal of almost all academic members has meant that councils may be populated by people who have little idea what a university is and what it is for. Far from denigrating academic members for their ‘representational and vested interests’, their expertise should be valued.

Business people do not necessarily understand the ramifications of selling courses off-shore, particularly when they are sub-standard. In one notable instance, the chair of a council finance committee said, ‘Whatever the Vice-Chancellor says is good enough for me’. In the university concerned, council members were even expected to ratify sight-unseen the annual accounts for audit by the State Auditor-General – an act of dubious legality. Although the councillors with business experience did not seem to find this extraordinary and approved it, whereas questioning by staff members led to reprisals. (Academic freedom is under threat in many sites of the university.) Limits need to be placed on the powers of vice-chancellors (and sometimes chancellors) who are tempted to take advantage of the gaps in the enabling Acts and the absence of legal limitations.

This is where the inclusion of new guidelines in the enabling Acts are highly desirable. Indeed, the inclusion of express principles or guidelines to assist administrators of legislation is now commonplace in new legislation. A reliance on conventions alone no longer suffices.

Another downside of a disproportionate number of business members on council is the potential for what the American literature refers to as ‘trustee interlocks’, whereby the trustees (council members in Australian parlance) communicate information about the university, including patenting opportunities, to other companies, where they sit on boards and vice versa. This issue has attracted little critical attention in Australia but can only serve to eviscerate further the traditional idea of the university and underscore its contemporary commodifying role (which is already detracting from its overseas reputation).

**Recommendations:** 1) *That State enabling Acts spell out the ambit of power of chancellors and vice-chancellors and place limits on the exercise of discretion;*

2) *That governance protocols specify the inclusion of council members with ‘substantial experience in higher education’;*

3) **That** the federal/State commission on higher education (or similar body) be entrusted to deal with disputes between chancellors and vice-chancellors, between members of council, between academic board and council and between other constituent elements of universities.

**Further Reading:**

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Thornton, M, 'The *Idea* of the University and the Contemporary Legal Academy' (2004) 26 *Sydney Law Rev* 481-502

\*The Neo-liberal University and the Governance Trap' (Autumn 2005) 3 Australian Prospect

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