Appendix 1a — Submission to Crossroads Inquiry

Submission 42
Adam Johnston – 24 June 2002

Adam Johnston

24 June 2002

Crossroads Inquiry,
Department of Education, Science and Training,
Canberra ACT 2600

Dear Sir,
This submission relates to consultative questions 11 to 14 of your discussion paper. I have had much cause to reflect on the bureaucratic structures which exist within universities. As my prior submission to your inquiry indicates, I have been seven years a part-time, double degree student.

At least, that is what I thought my degree program involved.

Now studying at the College of Law in St Leonards, 2002 has not only involved study, but a complicated and time-consuming appeal process with my university. We have been in dispute over my capacity to take out the double degree to which I thought I had every entitlement. Before going into the detail of my dispute in the current year, it is worth my while (and will assist your understanding of this submission) to set out my academic history at Macquarie University.

History
Having completed the New South Wales Higher School Certificate, I entered university in 1993. At the time, it was my ambition to be an economist, but it quickly became apparent that the required arithmetic calculations were not my strong suit. At the end of that year, the economics faculty strongly advised me that it was in my interest to consider a change of program. This was done and, I had much greater success in the politics faculty. Study in this area however, sparked my interest in law. In 1995, I was successful in an application to undertake cross disciplinary studies as a politics student permitted to enrol in first year law. The subject "Law 112: History and Philosophy of Law" was a unit which encompassed both semesters of 1995. Having continued success in this area, I decided to persue studies in the faculty of Law.
At no stage did anyone in the faculty (or elsewhere in the university) challenge my eligibility to stay in the faculty, or the rather obvious change in the focus of my studies. Of course, one says that change is obvious now, but this comment comes from someone who has seven years experience to draw on when being "wise in hindsight". At the time, still in my early 20s and, with the enormity of the institution still having the capacity to petrifie me, it was easy to believe that there were those in authority who knew infinitely better than I did. Therefore, if there was any problem with my record, someone (most probably the Registrar) would write to me, indicating that is was necessary to fill in another official form. For my own part, the University Calendar routinely stated that the institution encouraged students to take a broad range of subjects and engage in a well rounded tertiary education. That was certainly the policy and, it was emphasised in much of the literature provided by the Law School.

Whose agenda?
For example, during my studies in first year law, I was encouraged to purchase the legal education issue of the Australian Journal of Law and Society. This text, published in 1988-1989, was principally contributed to by Macquarie University law academics. In the Journal, they spent most of their time debating the necessity for a Law School to have a philosophical approach to the study and teaching of law. When you read this text, it quickly becomes apparent that university academics have taken it upon themselves to abandon any idea that they are responsible for preparing students for the outside workforce. This is epitomised in the stance taken by Professor PE Nygh, when contrasted with that of his colleague Drew Fraser. In a memorandum to Law School staff dated 5 July 1977, Professor Nygh writes in part:
"...In teaching our students I think we must remember what our task is. When I was appointed to

start the School of Law, I was given a mandate by the University Council to create a course of professional training. That mandate has been reaffirmed by the undertakings which I had to give on behalf of the School to the Supreme Court to secure recognition of the degree as a precondition to admission..." (1)
It is regrettable that Professor Nygh lost the ideological struggle. It is clear however, that he did indeed lose. The first thing you can cite is a memorandum dated only three days later from Professor Fraser. In arguing against the apparent homogeny and authority of the judiciary, Fraser opens thus:
"...Anyone who values the experience of free and open intellectual inquiry must respond with shock and dismay to Professor Nygh's recent memorandum on legal education. The clear import of that memorandum is that the primary obligation of this law school is to subordinate the value of free and open inquiry to the task of producing graduates who have been carefully insulated from over exposure to ideological influences which might lead them to reject the professional on occupational roles which would otherwise await them in the professional, managerial and administrative hierarchy of the corporate welfare state..." (2)
Professor Fraser further rages against the Australian legal order in a 1979 paper entitled "A Philosophy for the Law School?" Here, he says that the judiciary maintain control over interpretation of the law because judicial officers are able "to shape a form of legal discourse, the validity of which (is) always seem to rest on the standing and authority of the judges themselves".(3) In my view, there is nothing problematic in any of this; someone eventually has to make an authoritative determination on any question of law. This is what judges are both trained in, and ultimately expected to do, when appointed to the Bench.
More important, is where Professor Fraser takes his line of argument when relating it to University law schools. As such, the following is a particularly enlightening and important quotation:
"...The growth in the number and size of university law schools, the increased exposure of law teachers to the less authoritarian modes of discourse found within the university community generally and the fact that most law teachers will never have been subjected personally to the professional discipline imposed by the judiciary or members of the practising profession, are all factors in the developing erosion of judicial control over legal education..." (4)
This is a quotation I will come back to, a number of times, during this submission. For the time being, it is evidence for my first recommendation. This recommendation is that the Government form a panel of practising lawyers to assess whether university legal education is properly preparing students to work in the profession? My conclusion, after seven years, is that this is not the case. I make this judgment, based on my experience at the College of Law this year.

The College difference
Before attending the College, one had no concept of what a statement of claim was, what an affidavit was, and absolutely no idea how to draft either. Yet these, and other pre-hearing documents, are the basic tools of the trade in the hands of any competent advocate. In retrospect, it is incomprehensible that a comprehensive legal education failed to alert me to the basic procedural processes of our court system. Do some of our legal academics take such a despairing view of our legal system, that introducing its forms and mechanisms to students would be an anathema?
It is in this context that I strongly recommend the Government and the Law Society consider taking more responsibility for legal education. For example, historically, many professions established guilds and societies for the training and accreditation of individuals in a particular speciality. It is worth re-evaluating whether such a course may not be beneficial, to ensure a full and balanced training in the law. In many respects, the Law Society should consider expanding the role of the College of Law and, should cooperate with the Bar, to ensure that the training of solicitors and barristers is neither corrupted, nor unnecessarily delayed. It is clear in my mind that universities have their own agendas, perspectives and aims. This is not bad in and of itself, however, as I will explain later, the machinations of tertiary education have not been as beneficial as one might expect. This is a particularly important point, when you consider all the HECS payments that I (and thousands of other students like me) would have made to our institutions.
Equally, as I call upon the Law Society and the Government to consider changing the means of legal education, it is worth making a similar call to all other professions. Doctors, nurses, architects, engineers; indeed, any profession which values its standing and, wants to ensure that its graduates are competent, should seriously consider the role of universities in its training. Academia has its place, but it is not to unnecessarily denigrate the professions which students are training in, with an expectation of ultimate entry into those careers. At least, this was (and is)

the aim on my part. I am sure that many others, while perhaps not initially knowing what they want to achieve at university, ultimately come out the other end with a career goal in mind.

Administration!

But it is not as if the university sector goes out of its way to encourage its student population. The amount of paperwork involved in non-academic administration is incredible. For seven years, I had to set aside the better part of three-quarters of a day each year, just to undertake the annual enrolment process. Fortunately for me, as a student confined to a wheelchair, the administration eventually accepted the idea that it would be useful (and appreciated by me) if they provided someone to escort me through the long enrolment queues. For the last several years, thanks to the intervention of the university disability officer, this is exactly what happened.

Again, a clear contrast can be drawn between university administration and the conduct of administration at the College of Law. My application to the College was accessible over the Internet, could be printed out and returned to them by ordinary mail. I was then advised of my acceptance by letter and, also advised of an enrolment day. On that day, I attended a welcoming morning tea and address from the head of the course. A folder of course materials was provided, as well as computer CDs and volumes of the required College Practice Papers. Unlike university, there was no need to wait in a further queue to purchase textbooks; required materials came as part of the enrolment process. To me, this emphasises the ethos of efficiency and service which you will readily find in a private corporation like the College, as opposed to a public institution like the university. This experience only makes me more confident in my earlier recommendation that legal education should become the responsibility of a private guild, overseen by the legal profession.

If universities insisted that they wanted to maintain some role in legal education, perhaps a compromise solution is to engineer a situation where students have a clear choice. They can choose to become "academic lawyers" by attending a university, or they can choose to become practising professionals by attending the Law Society Guild and then the College of Law.

Earlier, I quoted Professor Fraser's claim that the benefits of the establishment of university law schools included the entry into jurisprudence of those who were not under the formal constraints of the profession and, were thus able to challenge "judicial control". It is in my experience however, that universities are equally capable of enforcing their own homogeny, which can be as insidious as that claimed for the judiciary. As indicated earlier, I study at the College of Law, but as of this date have not formally graduated from Macquarie University.

My case

This brings me back to the dispute first mentioned at the beginning of this submission. In August 2001, I wrote to advise the University Registrar of my desire to graduate in 2002. After examining the list of Law units listed in the University Calendar as being required to take out the degree, I concluded that I had completed all required units. It came as a surprise to me when he responded to the effect that such a graduation was impossible. This was because, much to my amazement, one was not enrolled in the law faculty. Despite having studied there since 1995, the Registrar said:

"...As you have not been enrolled in the combined BALLB, your record has not been checked for compliance with the combined degree rules which states that all students must complete a non-Law coherent area of study. Unfortunately, this is the requirement that you have neglected to satisfy. I refer you to Bachelor Degree Rule 41 (1) (c):

41 (1) (c) at least 33 credit points in units with the prefix other than LAW, which must (included) a coherent study of units at 300 level or above which has been approved for the degree of Bachelor; and...(2001 Undergraduate Handbook, p.86)..." (5)

I do not deny the validity of the above statement; nor am I completely without fault in failing to note its applicability. However, as indicated earlier, all these statements can be made in light of seven years experience within the institution. In 1998, when Academic Senate placed on my record that I had satisfied the requirements for the award of a BA, the notation did not seem that significant. Firstly, by this stage, my decision to complete my studies in law had been well and truly made. As I had been studying in the Law School since 1995, it didn't even occur to me that my progress down this path would generate future bachelor degree complications.

Equally, as stated earlier, for many years I readily concluded that those in academic authority knew far more than me. Again, if there was anything wrong, they would tell me. Besides that, I was studying in the law faculty and, near the end of every enrolment process, an academic from the Law School would "sign off" on my program. What would any reasonable student conclude

from these acts? My conclusion was that things were in order.
This was a point one made to the Council Standing Committee on Appeals, when I appeared before them recently.(6) At the meeting, one spent some time responding to paragraph 6 of a document entitled "Standing Committee on Appeals: Comments from the Registrar's Office". This document indicated that any expectation I had, that academic advisors would alert me to any problems, was unreasonable. I think it is worth repeating paragraphs concerned:
"...In Mr Johnston's letter of 12th March 2002...he indicates that from 1999 to 2001 he continued studying in the Division of Law and that at each enrolment process an academic advisor approved his program and that not one of the academics ever raised any concerns with him. Mr Johnston was enrolled in the BA from 1999 to 2001 not the BALLB program and academic advisors could not reasonably be expected to advise Mr Johnston that he should be undertaking non-Law units to qualify for the BALLB program -- a program in which he was not enrolled..."(7)

When is an institution responsible??
This line of reasoning surprised me on a number of counts. Firstly, as previously indicated, I had obtained special permission to enter the first year Law unit (Law 112) in 1995. Secondly, and more importantly, I drew the committee's attention to legal opinion which supported my case. In the matter of Hedley Byrne & Co Ltd vs Heller & Partners Ltd [1964] AC 465; [1963] 2 All ER 575 House of Lords, Lord Morris said:
"...(I)t should now be regarded as settled that if someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill for the assistance of another person who relies on such skill, a duty of care will arise. The fact that the service is to be given by means of, or by the instrumentality of, words can make no difference. Furthermore if, in a sphere in which a person is so placed that others could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, a person takes it on himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance on it, then a duty of care will arise..." (8)
Based on Lord Morris's commentary, in my opinion, there is an arguable case that academic advisors do (or should) have a higher duty of care to university students than is suggested by Macquarie's Registrar. Certainly, you can argue that the payment of significant HECS charges represent valuable consideration for a contract of service. I recommend that the Government draft a national charter of service for universities, in their relationship with students.
Such a charter must address the complexity of interpretation, when it comes to bachelor degree rules. While I admit that my understanding was perhaps naive and simplistic, my reliance on academic advisors is probably stereotypical of most other students. During the process of my appeal, it has surprised me how readily the University has been prepared to mark down oversights as my responsibility, yet (as in the earlier quoted advice to the appeal committee from the Registrar) take very little responsibility itself. This is somewhat annoying, as it seems reasonable to expect that university officers (particularly those holding themselves out as academic advisors) should be conversant in the bachelor degree regulations. Equally, it is just as reasonable to say that students will place great reliance on what these individuals recommend. Finally, due to their knowledge, I always expected that advice given would consider the totality of my record. This is clearly not the case.

Opps!
It is worth noting at this point, that quite obvious mistakes can be made by universities. In a letter to my local member of State Parliament, dated 26 February 2002, the Registrar indicated that my case had been considered by a subcommittee of the Undergraduate Studies Committee "and it was recommend that Adam Johnston transferred to the BALLB and undertake 9 credit points at 300 level in politics."(9) More importantly, the Registrar also said:
"...I regret no further action is possible..." (10)
Had I accepted such advice, I would have been denied the opportunity to appear before the Standing Committee on Appeals. Ironically, to lodge my appeal against the subcommittee's decision, it was necessary to write to the Registrar. This avenue only came to light after I wrote to all members of University Council, in terms similar to that of the letter of March 2 2002, to the Vice-Chancellor.(11)
A response came via e-mail from Professor Brian Orr.(12) He advised that I contact the Dean of Students, which was exactly what I did. Dr Dickson was the one who advised me to lodge the further appeal before the Standing Committee on Appeals.(13) By the time of reaching the Dean of Students, I had exchanged numerous e-mails with the head of the Law faculty, Dr

Atherton.(14) I related these to Dr Dickson in the following terms:
"...(T)here are a number of objections to be raised against Professor Atherton's claim that it was entirely my responsibility to tell the University (in 1998 or earlier) that I wanted to be a combined law student (see e-mail from 6th March 2002). No student, be they studying law or anything else, could reasonably be expected to be conversant with every clause of the Bachelor Degree Rules. By contrast, academics and others who work within a University can reasonably be expected to be very familiar with such Rules. Given that, as a student I have paid considerable HECS fees during my University career, one should expect some duty of care from the institution in return. To my mind, this must involve the provision of the academic advice/warning which was never furnished in my case.
Furthermore, even though the advice was not forthcoming, looking at my record today, I ask two questions: Why is the University Administration so surprised by my request a graduate? What did those in authority seriously think I was doing, other than trying to take out a combined degree?..." (15)
I repeat these, not so much to reargue my case; this is ultimately a matter for the University. Rather, they are placed on the record of this inquiry, to ask some vital questions. Firstly, should universities be so self-contained? Throughout my dispute, I have been referred to a variety of internal review mechanisms. Knowledge about these mechanisms is apparently scattered throughout the institution. As indicated earlier, the Registrar informed my Local Member of State Parliament that, after the consideration of the subcommittee of the Undergraduate Studies Committee, there was nothing further that could be done. This is clearly incorrect.

"Autonomy"
Furthermore, when I did ask my Member to approach the Hon John Watkins MP and the Hon Ron Dyer MLC, these members of the University Council declined to become actively involved in my case. Both variously referred to the University being "like other NSW universities...(in its) essentially autonomous (nature), with full control over its internal academic and administrative affairs, including the conferring of degrees."(16) While I note my appreciation to both men, as they alerted me to the possibility of appearing before the full Council, I nonetheless pause to consider their words.
Given the millions of dollars that universities obtain from the Federal Government in particular, claims of autonomy sound anachronistic and incompatible with the demands of modern, transparent management. Certainly, it is in the interests of taxpayers (as well as students) that autonomy be superseded by accountability. Earlier, I quoted Professor Drew Fraser, as he bemoaned judicial control over the interpretation of the law. I equally quoted his claims that the growth of University law schools would have a positive impact, in breaking down the homogeny of the judges. In particular, Professor Fraser claims that University law schools will be influenced by "the less authoritarian modes of discourse found within the university community generally."(17) What rot! During the passage of my dispute with the University, I have been very aware of an organisation with its own internal (and often *very* authoritarian) mechanisms. Obscure bachelor degree rules are quoted, inaccurate declarations are made that nothing further can be done in my case and, individuals appointed by Parliament to sit on the University's Council defer to a University's "autonomy". If Professor Fraser thought that the judiciary could be authoritarian, perhaps he should take a closer look at his institution?
Furthermore, it is not as if the bachelor degree rules remain constant. This became clear when reading Professor Atherton's e-mail to the Acting Registrar, regarding my case. In that e-mail, Dr Atherton said:
"...A student, Adam Johnston, has completed all the requirements for a law degree -- duly checked by Anne McGuigan here -- he did not signal at the correct time that he wanted to take out BALLB and this has been raised against him now. Through the Registrar's office. He came in as a quota student and we are able to switch (them) over much more effectively now after they have completed the first year units. He is a leftover from old days. However, he has done the required units and I do not think anything should prevent his graduation in law now..." (18)
So, I'm a leftover. Therefore, which version of the bachelor degree rules should I be judged under anyway; the old ones which were obviously in place when I entered the University, or the current ones? While that is an interesting question, it is posed more to emphasise the point that, given changes in bachelor degree rules over time, then the claim that students should be "on top" of these is even more unreasonable.

Recommendations from the administrative "leftover"

In this sense, one makes the following recommendations. Firstly, bachelor degree rules should not be determined by the universities, thanks to delegated authority contained in the legislation which created the institutions. The States and the Commonwealth, should extend the provisions which currently relate to quality assurance, audit and research matters.(19)
Rather, all responsible Ministers at the State and Federal level, should establish a Council of Australian Education Ministers. If one already exists as an adjunct to the COAG process, that it should be expanded and its functions augmented. The first thing I would have it do, would be to ratify all University regulations made by any tertiary institution's governing body. These regulations would not be effective until the Ministerial Council ratified them, which would involve tabling of the proposed regulations in both the Federal Parliament and the relevant State Parliament.
Furthermore, I recommend that the Ministers have drawn up a template of specimen University regulations. They would then work from this template, in determining whether any amendments or alterations proposed by a tertiary institution, were reasonably necessary. Furthermore, it is my understanding that under the GST funding agreement the Commonwealth has with the States, all jurisdictions had to agree for that compact to proceed. Equally, I would recommend that we should set a standard of unanimity on the Education Ministers Council. Therefore, should a tertiary institution propose any regulatory amendment which deviates from the Ministerial template, then all Ministers have to agree that it is necessary.
This recommendation is designed to achieve the ultimate end of a nationally coherent body of rules under which tertiary education is delivered and, degrees conferred. I see no need for each of Australia's universities to have its own governing body and set of bachelor degree rules. As indicated earlier, my experience has made me a firm opponent of any claims to universities being entitled to "autonomy". While appreciating that such recommendations will almost certainly involve the reference of some formal powers to the Commonwealth, in my opinion, these suggestions increase certainty and transparency for students. It has always amazed me that the enabling Acts which establish the universities are creatures of the State Parliament, but most practical funding issues are questions for the Commonwealth.
To address any concerns from the States that a further area of their authority is being eroded, it may be useful to make the reference of powers conditional on an agreement that they could be exercised concurrently. The requirement for unanimity on the Ministerial Council should minimise the instances of inconsistency between jurisdictions.
One also wishes to strongly recommend the establishment of a University Ombudsman. As I have stated, there have been times in my dispute with my University that I have found their processes inadequate, in error and far too much "in-house". For instance, even if one was to take the earlier cited advice of the Hon John Watkins MP, one is still only appealing to a Council which is still part of the University. Ultimately, my point in writing this submission, is not to establish whether I am right or wrong in claiming a BA LLB. I earlier conceded that there was fault on both sides of this argument.
The point is: it is unclear to me whether, over the past seven years, the tertiary education sector has served my educational or career ambitions. The fight over whether one holds an entitlement to the degree I thought I was studying, seems to optimise the clash between the aims of students and the agenda of academics. My quotation of Professor Fraser sought to bring some form to this question, as well as support my other recommendations, which involved the establishment of professional guilds, in preference to University education. Unless the universities do a lot more to make their administration more straightforward and, their Rules more consistent, then a "student customer" should have greater choice in achieving professional ends. This is the perfect rationale to set up the "Guild option". It should be persued urgently, by both Government and professional associations.

The Government has an important opportunity to achieve significant reform and, I call upon the Minister to be bold in his response to the *Crossroads* discussion paper.

Yours sincerely,

A Johnston

Adam Johnston
1. Editorial Board, *The Australian Journal of Law and Society*, Vol 5 -- 1988-89, Macquarie University Law School, Macquarie University, pp. 57-58

2. Ibid., p. 59
3. Ibid., p. 77
4. Ibid.
5. Letter from Mr B. J. Spencer (Registrar, Macquarie University) to Mr Adam Johnston, dated 21 August 2001, contained in the Appendix to this submission
6. *See* Macquarie University Standing Committee on Appeals*, Agenda and Notice of Meeting;* Friday 14 June 2002*,* contained in the Appendix to this submission (there is no need for this document to be considered confidential)
7. Registrar's Office, *Standing Committee on Appeals*: *14th June 2002*, Comments from the Registrar's Office, document contained in the Appendix to this submission
8. Luntz, Harold and David Hambly, *Torts: Cases and Commentary*, 4th edition, 1995, Butterworths, p. 815
9. Letter from Mr B. J. Spencer to Mr Andrew Humpherson MP (Member for Davidson), dated 26 February 2002, contained in the Appendix to this submission
10. Ibid.
11. *See* letter from Mr Adam Johnston to Emeritus Professor Dianne Yerbury AM, dated March 2nd, 2002, contained in the Appendix to this submission
12. *See* e-mail dated Monday, 11 March 2002, 5: 17 am, from Professor Brian Orr, contained in the Appendix to this submission
13. *See* e-mail dated Monday, 18 March 2002, 3:22 pm, from Dr Judith Dickson, contained in the Appendix to this submission
14. See a variety of e-mails between Dr Rosalind Atherton (Head, Macquarie University Law Division) and Adam Johnston, the latest dated Wednesday, 6 March 2002, contained in the Appendix to this submission
15. Letter from Mr Adam Johnston to Dr Judith Dickson (Dean of Students, Macquarie University), dated 12 March 2002, contained in the Appendix to this submission
16. Letter to Mr Andrew Humpherson MP from the Hon John Watkins MP, identifiable as document RML 02/1295, contained in the Appendix to this submission. Also note similar comments from the Hon Ron Dyer MLC, in a letter dated 18 March 2002, contained in the Appendix to this submission
17. Refer to footnote 4
18. E-mail from Dr Rosalind Atherton to Challice Moldrich (Acting Registrar), dated Thursday, November 1, 2001, 12:37 PM, contained in the Appendix to the submission of
19. *See* The Hon Dr Brendan Nelson MP, *Ministerial Discussion Paper*: *Higher Education at the Crossroads,* Department of Education, Science and Training, Commonwealth Australia 2002, p.40

Appendix 1b — Submission to Building University Diversity

-----Original Message-----
From: Adam Johnston
Sent: Saturday, 2 April 2005 18:20
To: Quality
Subject: ISSUES PAPER: BUILDING UNIVERSITY DIVERSITY

Dear Sir,

Developing the market in education

There are two things which I believe the Government should do as a matter of priority. Firstly, while it is understandable that you would want to ensure the economic viability of institutions providing tertiary education and research facilities, this may also act as a barrier to more open competition, flexibility and innovation. Therefore, I would amend the sixth dot point in Protocol 1 to state that financial and other resources only have to extend 'to the end of the current financial year'.[1] There is nothing wrong with an institution, be it a public or private educational provider becoming insolvent and being required (as the normal course of business events) to

close its doors. So long as student degrees, diplomas and the like were readily transferable and alternative institutions did not put up barriers to students from failed entities wishing to complete their course, an open market should work quite well.

However, this would introduce a new, but indeed most welcome element, into publications like the *Good Universities Guide* and the general 'campaign pitch' that universities provide to relatively naïve school leavers considering tertiary studies, while wandering through trade fares and career expos. When I did this as a Year 12 student, various NSW universities extolled the virtues of their courses, student facilities and academic standing. Nobody said anything about their institution's financial viability into the future, be that for six months, twelve months or longer. You may respond that these questions are not and need not be the immediate interests of prospective students. However, the prudent management of universities (be they public or private) should be of general concern to everyone who has dealings with them. It should not matter whether these are direct dealings as students, academics, contractors or employees, or the indirect dealings as that of the taxpayer providing for appropriations via Parliament.

To address this, universities should be required, if not by law then by the demands of competitive practice, to redesign their annual academic 'calendars' to students. These documents should not only fulfil course selection needs, but also act as a prospectus or annual report, containing audited information as to the institution's viability. For so long as the Government is prepared to blithely fund the current thirty six[2] members of a relatively select 'university club', change, reform and innovation (be this in terms of management structures, courses offered or research conducted) will necessarily be inhibited and somewhat inefficient. To draw an analogy, physicists and astronomers once accepted a theorem known as "the steady state universe", but this failed to account for consistent observations that galaxies were moving away from us at increasing speed, meaning the cosmos was expanding. Therefore, "the Big Bang" became more widely accepted as a more plausible explanation of the universe's origin. Similarly, maintaining the current thirty six into the future means that the Government has created a "virtual steady state university universe".

Making universities truly accountable

This may be easier to manage in a day-to-day policy sense, but it is bad in almost every other way. Firstly, management does not have to be as prudent as it might otherwise be. For example, while I was studying at Macquarie University in 1998, even one as notoriously disinterested in university politics as myself could not help but notice a definite rise in tension between both students and management and also academics and management. This was not just the standard argument over who would get what out of an allegedly diminished government funding pool, but a poisonous element had been introduced by the Vice-Chancellor's move into a grand new Chancellery.[3] Undoubtedly, this building had been planned for some time, however in the context of undergraduates and lecturers struggling in over-crowded, ageing facilities, "Fort Yerbury" symbolised the disenchantment many felt. Many jokes went around about armed guards, how you could not get in or out of the building without an appointment, and so on. One person suggested the Vice-Chancellor had her own private chef, while others suggested that the Chancellery had a lift installed so that the Vice-Chancellor Professor Di Yerbury could enter and leave the building completely unobserved.

What portion of this is true I cannot say; what is certainly true was that were no shortage of student and academic energy aimed at sharp criticism of the whole project. If the sounding of trumpets could bring down a city's walls in Old Testament times, the "bugles of bile" hurled at Macquarie University's Chancellery should have seen it reduced to rubble. But did anything happen – of course not. In terms of bricks and mortar nothing was ever going to happen. What disturbed me more was the financial investment in the first place and all the energy later expended in vitriol. While something like the HIH collapse shows that the corporate world is not immune from awarding itself incredible largesse, the market, mismanagement and ASIC eventually caught up with it. Will universities ever be held similarly accountable for as long as the Government maintains what I earlier dubbed "the steady state". I think not, which is why my recommendation would be that Australia adopt the British practice of only granting an

institution the title of "university" for a fixed period, requiring it to seek periodic renewal of that status.[4]

A proper division of responsibility

Furthermore, in my previous submission, I raised my concerns about the process of self-accreditation. Citing the highly public dispute between Professor Ted Steele and the University of Wollongong,[5] I suggested that there were a number of structural problems with the tertiary sector, requiring the complete separation of academic and administrative responsibilities, as well as specifying that the Australian Universities Quality Agency (AUQA) furnish the Governor with a report as to academic standards, before the Governor confers degrees upon students. As such, I reiterate these views and am attracted to the Netherlands' model of national accreditation which encompasses both public and private tertiary educational providers.[6] Expanding AUQA's role so that it can investigate and provide a mechanism to resolve disputes between educational providers not within the jurisdiction of State or Federal Ombudsmen, also aims to address the concern that:

> "…unlike publicly established bodies, private institutions are not subject to scrutiny by State Ombudsmen or through Freedom of Information legislation…"[7]

Requiring that institutions seeking accreditation also subject themselves to the requirements of FOI legislation should ameliorate the problem discussed in the second half of the quotation.

A truly international system, but reform must precede it

It would be unfortunate however, if the accreditation process became a restrictive and artificial 'educational tariff barrier'. Therefore, my conception includes many memoranda of understanding between different types of institutions across the nation and internationally, to recognise each other's courses, degrees and diplomas. It also means that the membership of AUQA has to change. I can only express my most profound disappointment to check AUQA's website only to find its board of directors comprised of senior civil servants and academics.[8] Where are the business leaders, doctors, nurses, lawyers, financiers, scientists and entrepreneurs who actually need the competent graduates in their employ and know a thing or two about the important difference between a theorist and someone who can apply their professional training? It is important that such people, and their perspectives, be deliberately included in the tertiary education debate. As I said in my *Crossroads* submission, a tertiary law degree left me woefully ill-prepared for training at the College of Law.[9] A responsive, relevant tertiary sector would not have permitted this to happen.

Where did it all go so wrong? From my reading, the Dawkins "reforms" were a distinctly backward step for tertiary education. With a long and distinguished academic career to draw upon, Professor David Flint has observed:

> "…Under the Menzies Government, universities had remained autonomous, fee-charging institutions. Commonwealth scholarships were awarded on merit, with students free to cash them by enrolling wherever they wished – in effect, they were vouchers. They also attracted a means-tested allowance. The scholarships were lost, or suspended, for poor performance. An ideal system, to which many think we should return, on the understanding that the number and level of the scholarships would be increased to reflect the present levels of Commonwealth expenditure…"[10]

And when you consider Professor Flint's assessment of Minister Dawkins' changes[11], it is little wonder that the previous arrangement had much to recommend it. Furthermore, what is to stop a voucher system from spreading throughout the tertiary education sector, being a fillip to those who may otherwise be disadvantaged, as well as breaking the centralised power of the Universities Admission Centre and the universities themselves in setting Tertiary Entrance Rankings for their courses? Firstly however, it is worth noting some of US experience with their

school voucher system. In this context, John Micklethwaith and Adrian Wooldridge provide an interesting commentary:

> "…(School) vouchers took off in Milwaukee because of an improbable set of circumstances. First, the city is home to one of the country's leading conservative foundations, the Bradley Foundation, which has been pushing for vouchers for years. Second, the local black population was tired of watching its children being bussed to the other side of the city so that white neighbourhoods could achieve the court-mandated goal of racial balance. Two prominent local blacks, Polly Williams, a state legislator, and Herbert Fuller, a former black basketball star who became superintendent of schools, argued that the solution to black education problems was not court-mandated schemes but parental choice. Third, voucher activists reached out to politicians of both parties. Both Tommy Thompson, the state's Republican governor and John Norquist, the city's Democratic mayor, supported the idea…"[12]

The application of a voucher system in Australia need not have any automatic relationship to underprivileged university applicants, though it could be used to address disadvantage. My first aim is to give students choice, and to this end, I would extend the Netherlands-style accreditation system not only to individual degree programs, but to component parts of programs. A student could therefore study some units of their degree at one institution, but readily move to another should they choose. The most important element would be maintaining a generally coherent degree program. This would become the responsibility of AUQA, in consultation with expert panels drawn from the professions and trades. I would want this to be an open, transparent and publicly debated process, which encouraged students to mix and match their academic program, so that their skills were developed and ambitions encouraged.

In particular, note the use of the phrase "professions and trades". There has been no shortage of media coverage lately regarding a skills shortage, especially in the trades. Partly to address this, I also advocate adopting the British decision to break the link between research and teaching in universities, as well as ending the requirement that institutions support a range of disciplines.[13] This will allow a number of new players into the tertiary education market[14], which could help to address the skills deficits expected to hit Australia's economy in the years to come.[15] However, unlike the example cited in footnote 14, I would not necessarily see non-university institutions having to collaborate with established universities. This would only serve to preserve the power of the latter to potentially stifle the innovation of the former, which is the antithesis of everything this submission writer hopes to achieve.

Rather, my aim is to expand the notion of education generally, and try to move away from some very strongly held preconceptions. Firstly, nowhere in this submission have I used that innoxious phrase "higher education". After spending almost a decade receiving "higher education", it is not a system I hold in reverence; rather it is a bureaucratic Goliath who had to be tackled in order to achieve professional goals.

It is also a system which, while attempting to attract international students to its courses, has not been nearly as flexible in facilitating domestic students travelling and studying overseas. Recently, a report in the *Sydney Morning Herald* caught my eye. Elite Australian teenage rowers were being offered scholarships to US universities; and these offers were being largely declined.[16] I found myself asking why ambitions to represent Australia were necessarily inconsistent with an overseas study tour, or why you would choose the significantly smaller domestic environment over a foray into the world's academic, economic and political Superpower.

With the Australian and United States Free Trade Agreement (AUSFTA) in place, the Government should aim to make US and Australian courses readily transferable between university, as well as non-university tertiary education providers. Indeed, if the Government was to reintroduce a Menzies-style scholarship system, it should also consider making the scholarship/vouchers redeemable at overseas institutions, by pushing for reciprocal arrangements between Australian and US scholarship schemes via the AUSFTA. Why shouldn't suitably ambitious and determined Australian students have such international

opportunities? After all, Australia has well-developed systems for welcoming overseas students to our shores.[17]

The Cold War of Ideas

Finally, as a former tertiary student and one of conservative tendencies, I have had a 'gutful of Marxism'. One thought, rather naively, that with the fall of the Berlin Wall, the political philosophy which kept it standing would also be largely in ruins. Not in Australia's universities! While I do not deny Marx his place in the historic and political spectrum, when he and his minions become the default interpreters of every academic question, the tedium is unbearable. We need a counterbalance in Australian academia, to foster individualism, liberty and capitalism against the left-wing orthodoxy. Such a movement has experienced growing success and influence over the past 20 to 30 years in the US. People have come to doubt the continuing value of President Roosevelt's New Deal style of government intervention,[18] while opponents have become better organised. For example, Micklethwaith and Wooldridge explain that in the US:

> "…(the) conservative foundations know exactly what they want – to change the world in a conservative direction. And they know exactly how to do achieve their aim – by bringing their ideas to bear on policy making. Their liberal rivals are woollier…"[19]

Australia has some 'conservative' foundations – the HR Nichols Society, the Menzies Research Centre, the Sydney Institute and the Centre for Independent Studies are probable examples. What these bodies lack is clear, formal linkages with each other and similar entities. This contrasts with the far more formalised opportunities for advancement and training in the US:

> "…A conservative thinker can now spend his or her entire life in the movement's warm embrace, starting as a student working on a campus newspaper funded by one of the foundations, becoming a young intern at (the) Heritage (Foundation) and ending up as a senior fellow at AEI (American Enterprise Institute), with diversions to the University of Chicago, a regional think tank and a spell in a Republican administration on the way…The *rive droite* provides fame and riches for its most successful members: columns in the newspapers, regular appearances on Fox, generous fees for giving speeches to conservative audiences…"[20]

As a counterweight to our predominantly left wing universities, and the HV Evatt Society, the Whitlam Institute and the Australia Institute, conservative Australia needs to be more organised. Space also needs to be made for it within our education system. Again, drawing on US experience, I note that the Cato Institute has established a Cato University.[21] I recommend, again with the AUSFTA in mind, that the Government encourage Cato and others to establish Australian teaching and research facilities. This would be a useful way to exchange ideas, the experience of the US think tanks bringing greater resources and professionalism to their Australian equivalents, as well as giving Australian tertiary students greater choice in the range of institutions they could study within.

Additionally, the think tanks could provide Australia with an opportunity to invite students from the Asia-Pacific region to come and experience how the West understands principles of democracy, institutional accountability and individual liberty. I understand that the Centre for Democratic Institutions at the Australian National University[22] already conducts numerous research and educational programs on strengthening democratic institutions in our region, however, it would seem to be in Australia's national interest (in an age of international terrorist threats) to do all we can to augment these efforts.

Conclusion

The Government needs to significantly alter the way tertiary education is delivered in Australia. The current "university club" needs to lose the certainty its members have in their continued existence. Allowing some to succumb to market forces will drive innovation and

efficiency. Also, allowing new players into the market is vital, to provide students with greater choice. Industry also needs a greater voice in what is taught and how it is taught, so that graduates have the skills to meet Australia's economic and social needs. AUQA, in its current form, will always reflect the tertiary education status quo back upon itself. Its structure and membership are untenable in the kind of reformed structure I have proposed.

Yours sincerely,
Adam Johnston

[1] *See* Department of Education, Science and Training, *Issues Paper: Building University Diversity*, Commonwealth of Australia, 2005, p. 6 available at http://www.dest.gov.au/highered/pubs/building_diversity/building_diversity.pdf
[2] *See* ibid, p.7
[3] *See* http://www.bgo.mq.edu.au/pdf/campus.pdf (Building E11A)
[4] *See* Department of Education, Science and Training, op. cit., pp. 35-36
[5] *See* email from Adam Johnston to backingaustraliasfuture@dest.gov.au, sent Wednesday, 26 January 2005 9:31 PM (see attachment)
[6] *See* Department of Education, Science and Training, op. cit., p.36
[7] Ibid, p.23
[8] *See* http://www.auqa.edu.au/aboutauqa/abouttheboard/boardmembers/index.shtml
[9] *See* Johnston, Adam, *Higher Education Review Submission 42 - Johnston –24 June 2002*, available at http://www.backingaustraliasfuture.gov.au/submissions/crossroads/pdf/42.pdf (pp. 2-3)
[10] Flint, David, *The Twilight of the Elites*, Freedom Publishing Company Pty Ltd, 2003, p.144
[11] *See* ibid, pp. 143-144
[12] Micklethwaith, John and Adrian Wooldridge, *The Right Nation: Conservative Power in America*, The Penguin Press, 2004, p.275
[13] *See* Department of Education, Science and Training, op. cit., pp. 35-36
[14] For example, see Julian Leembruggen, *College on Degree Trial,* The Manly Daily, 5 March 2005 (Cumberland Newspaper Group), available at http://www.manlydaily.com.au/common/story_page/0,7168,12441147%255E15721,00.html
[15] I recognise that making such a claim is contentious and while not wishing to enter the debate directly, it is something we should be mindful of when discussing tertiary education, perhaps ultimately doing away with the vocational/tertiary distinction. It may even be useful to have those seeking to enter tertiary education demonstrate some vocational aptitude first. Certainly, there does seem to be a body of evidence indicating that Australia will face a significant shortage some time soon. See, for example, Kerry O'Brien, *Manufacturing trades struggle with worker shortages*, 8 March 2005, available at http://www.abc.net.au/7.30/content/2005/s1318988.htm; Michael Brissenden, *PM rejects claims of skills training neglect*, 8 March 2005, available at http://www.abc.net.au/7.30/content/2005/s1318900.htm; Peter McCutcheon, *Skills shortage sees novel community approach*, 15 March 2005, available at http://www.abc.net.au/7.30/content/2005/s1324232.htm
[16] *See* Stevenson, Andrew, *Americans come a-calling for rich ore of talent*, March 21, 2005, available at www.smh.com.au
[17] *See* Baker, Jordan, *Counter culture shocks visiting US students*, 25 March 2005, available at www.smh.com.au
[18] *See* Micklethwaith and Wooldridge, op. cit., p.356
[19] *See* ibid., p.166
[20] Ibid., p.169
[21] *See* http://www.cato-university.org/
[22] *See* http://www.cdi.anu.edu.au

Appendix 1c — Research Quality Framework submission

Dear Sirs,

Submission Number RQF010047

I must admit some scepticism about the adoption of a Research Quality Framework (RQF). While I can only speak from "small scale" experience, my ultimately unsuccessful attempt to enter an Honours research program after completing my combined arts/law degree was one of the most bureaucratic processes I have ever attempted. While my aim was to undertake inter-disciplinary studies[1], which undoubtedly added administrative complexity, if you extrapolate from my experience with one institution and then overlay a national research framework, you could end up with a system where research lacks the one thing that makes it worthwhile – innovation – because it is run with a mindset more akin to Sir Humphrey Appleby than Galileo. And if we take the example of Galileo one step further, we realize that this gifted astronomer and thinker was ostracized by his contemporaries and threatened with torture by the Church, for proposing what was heresy in his age but ultimately astronomically correct; that the Earth orbited the Sun, rather than sitting at the centre of Creation.[2]

In the modern day, the response to an unorthodox thesis would hopefully be more measured and civilized, however Galileo's experience should alert us to the limits that may be put on research, if researchers become reliant on government funding. What "other" agendas may government have for funding (or not funding) particular projects? This question may be answered by making another inquiry; which interest groups have the government's ear? NSW Premier Bob Carr made this point during his outspoken advocacy for the development of stem cell technology in Australia.

After explaining that IVF embryos not used in assisted reproduction are thrown away, Mr. Carr said of those who would oppose their use in research:
"…People who choose to oppose something this benign have a problem. Some of the things they say strike me as attitudinising. It is almost time, I think, to recollect what happened to other great scientists pushing the boundaries of research, such as Galileo. History shows we must honour scientific inquiry over unbased fears (and subtle) shadings of theology developed in the 19th century should not censor or filter or slow down what happens in medical research.."[3]

As Appendices 2, 3 and 4 are designed to show collectively, I am very sceptical of state-controlled research and the state-funded tertiary education sector. This sector can incubate all sorts of political agendas, factions and administrative or academic Grand Pooh-Bah's, all of which can (and probably have) stymied many a good research proposal. And while it is a distant prospect at this time, I am concerned that Australia is developing a "Religious Right" much like the United States already has. Depending on its ability to organize politically, this too could having a chilling affect on the topics that researchers in the social and pure sciences are prepared to submit for funding grants. This is exactly the kind of filtering or censoring Mr. Carr alluded to in his article, quoted earlier.

---

[1] *See* Appendix 1, pp. 20-21

[2] *See for example* Jones, Barry, *Dictionary of World Biography*, 2nd ed., Information Australia, 1996, p.282

[3] Carr, Bob, *No time to waste in search for stem cells' secrets*, Sydney Morning Herald – Opinion, April 4th 2002, available at http://www.smh.com.au/articles/2002/04/03/1017206226477.html

Some may say that use of expert panels (particularly if international experts and leading minds from various disciplines are included) to assess research under the RQF. This may, to a certain extent, be true. However, Dr Jenny Stewart, a writer, academic and person with employment experience in both the public and private sectors, had some revealing things to say about the dynamics of committees in academia. Those which consider appointments elicit comments from Dr. Stewart which are worth repeating:
"...I have heard of academics getting jobs because they could play cricket or make up a bridge party. Selection committees are so large and so unwieldy, and the time taken to assemble them so inordinate, it is not really surprising that it is the candidate everyone remembers, rather than the one with the best qualifications, who tends to get the job…"[4]

Research plays an important part in the "phoney" campaign any academic launches if they want to reach these career highlights. Firstly, the academic's goal becomes publication in every scholarly journal they can possibly find.[5] Secondly, the pieces published need not be concise, read or even readable.[6] Finally, innovation and creativity are an anathema to much scholarly writing because this will count against their publication. Stewart says:
"…(Many), perhaps the majority of papers have very little to add to the existing body of knowledge: no interesting speculation, not even errors productive of further thought. They have been published precisely because they are safe. If they had something to say, there might be the risk that the author got something wrong. And editors of academic journals shrink from error as from the plague…"[7]

There already seems to be a rather stifling "research quality framework" by any other name in place in Australian universities. Therefore, we need to ask: do we want or need another one? From my own anecdotal experience as an undergraduate student (and one who has attempted to enter post-graduate study), the tertiary education sector presents itself as a world of idealism and critical inquiry; the *realpolitic* of getting grades in a particular subject is, more often than not, reading your lecturer's personal prejudices and writing your essays accordingly.

While this experience is not universal, its reality was brought home to me in a trail of red pen on an assignment, where one academic complained that I had not cited his book on international politics. Granted, this may have been a *realpolitic* faux pas and a research oversight on my part, but as I had about ten other references in my bibliography, it did not seem as important as the quantity of red pen would have suggested. And if the point of much academia is to reheat the intellectual left-overs (and they are often *left* in every sense of that word) of someone else and serve it up as an essay, what is achieved by this constant regurgitation of prose? To answer my own question, it appears that very little is gained.

Therefore, my principal recommendation to the Government is this: should it choose to proceed with the RQF, it needs to include people on research assessment panels who have nothing to do with academia. As I lamented in my submission to this

---

[4] Stewart, Dr. Jenny, *Decline of the Tea Lady: Management for Dissidents*, Wakefield Press, 2004, p.52
[5] *See* ibid
[6] *See* ibid., p.60
[7] Ibid., p.61

inquiry process dated 2 April 2005, a body like the Australian Universities Quality Agency is staffed by academics, themselves charged with overseeing other academics.[8] While peer review may have its place, it is also arguable that the current system for grading, employment, funding, publishing and the like in tertiary education is vulnerable to multiple charges of conflict of interest.

Furthermore, we have created a system which looks to the government and public money to sustain it. Academics will argue that it is in 'Australia's national interest' to support further education if we want to be 'the clever country'. I have heard such a mantra so often during my tertiary career that it is becoming a cliché to my ear. What angers me however, is that the arguments are equivalent to motherhood statements. No-one will ever argue that motherhood is bad, and academia effectively uses its version of the same strategy when the Federal Government comes to allocating funding. What government will *not* fund the incubators of the clever country's clever citizens, for fear of damaging the national interest?

Yet, it does not have to be like this. Private industry can be a source for public goods. In the US, private philanthropy plays a very significant role in funding libraries, galleries and the like. This is partly because American public 'culture' places emphasis on small, limited government, regardless of what the reality may be. This means that:
"…American school textbooks recounted tales of the practical genius of men like Henry Ford and Thomas Edison…The first instinct of policy makers has generally been to stand back and give businesspeople the room that they need to exercise their creative genius. America has been much more inclined to let public work be covered by private philanthropy than Europe has. The country's landscape is littered with monuments to business philanthropy; great universities like Stanford and Chicago; great galleries like the Getty and the Frick…"[9]

In considering an RQF, we should be concerned that government spending does not discourage private investors, or make private funds less attractive to researchers. Indeed, perhaps it would be useful to require researchers to seek at least partial private funding, before calling on the public purse. This could see the Government act more as a facilitator of private capital connecting with researchers, rather than the funding body. However, in making such a cultural and psychological shift in the thinking of researchers and universities, the State would probably have to spend some time and money training universities and researchers in basic business skills.

It is clear that Australia sits somewhere between the US and European examples. We are not as confident about private philanthropy, but in my view, this is partly due to a skills deficit. Dr Stewart tellingly observes:
"…The management of most Australian universities needs much closer attention. While state and federal public services have undergone a…managerial revolution, universities, in a desperate bid to bring in more cash, pursue offshore (and sometimes onshore) business ventures they have neither the expertise nor the experience to run

---

[8] See generally, Johnston, Adam, Submission: ISSUES PAPER: BUILDING UNIVERSITY DIVERSITY, sent to the Department of Education, Science and Training on Saturday, 2 April 2005 18:20. Acknowledged by Karen.WELSH@Dest.gov.au on Friday, 22 April 2005 2:19 PM

[9] Micklethwaith, John and Adrian Wooldridge, *The Right Nation: Conservative Power in America*, The Penguin Press, 2004, p.328

professionally. In most cases, the university has no idea whether the venture is making money or not, because the financial reporting and management accounting systems are simply not up to the task…"[10]

I would say that sometimes the academic "systems" are not there either. It was noteworthy that in my own case, a joint politics/law honours program while theoretically possible under the applicable academic rules,[11] had never been attempted before. Considering Appendix 1 now, perhaps I should have taken more notice of Dr. Jim Gillespie's email of 3 January 2005 where he said:
"…We have never had a joint Law/Politics honours program - in other areas you have to get admittance to both programs and then do half your coursework in each and do a thesis on a jointly supervised topic…."[12]

Ultimately, I referred the question of my "on again, off again" Honours proposal to the University seeking clarification.[13] Whether this brings success is not my reason for show you all that correspondence. It is to illustrate how difficult it is to initiate research ideas in the supposed incubators of Australia's intellectual future: our universities. We need to ensure that an RQF does not add to this complexity and actively discourage research. It is also important to ensure that an RQF does not lead to a growing dependence and expectation that the taxpayer will be the chief "research guinea pig" who allows the private sector to "opt out" of providing capital for innovation.

Yours truly,

Adam Johnston

[10] Stewart, op. cit., p.70
[11] *See* Appendix 1, pp. 17-18
[12] Ibid, p. 24
[13] *See* ibid., p.72-74