

201 THE SIR ROBERT HIGHER EDUCATION ON



PROFESSOR SALLY WALKER AM

Professor Sally Walker was Vice-Chancellor and President of Deakin University from January 2003 – July 2010. Prior to that, she was Senior Deputy Vice-Chancellor at the University of Melbourne.

Professor Walker was educated at the Warrnambool High School and, after being awarded a boarding and tuition Scholarship, at Melbourne Girls Grammar School. Professor Walker holds the degrees of Bachelor of Laws (Honours) and Master of Laws from the University of Melbourne. She graduated with First Class Honours in her Law degree; she was placed first in her graduating class and was awarded the Supreme Court Prize, the Anna Brennan Memorial Prize and the inaugural Joan Rosanove Memorial Prize.

From 1978-March 1979, Professor Walker was an Associate to Justice Aickin of the High Court of Australia. In 1979 she worked as a Solicitor and, in 1980, an Associate Partner with Gillotts, Solicitors.

Professor Walker was Hearn Professor of Law, President of the Academic Board and a Pro-Vice Chancellor at the University of Melbourne. Professor Walker's teaching experience includes teaching Public Law, Commercial Law and Media Law. She developed a Graduate Diploma in Media, Communications and Information Technology Law.



Professor Walker has published widely in the field of Media Law. She is the author of the Law of Journalism in Australia which is published by the Law Book Company, Media Law: Commentary and Materials, (LBC 2000) and editor and principal author of the Communications Title for The Laws of Australia. She is also the joint author of The Law of Securities (5th edition) with Professor E I Sykes.

Professor Walker has undertaken a broad range of professional activities ranging from accepting invitations to sit on policy-making bodies, such as the Victorian Press Ownership Inquiry, Law Council of Australia committees and the boards of organisations such as the Communications and Media Law Association. In July 1990, Professor Walker was appointed by the Victorian Attorney-General as a member of a Working Party inquiring into the concentration of ownership of the print media in Victoria. She was the first Academic Secretary of the Victorian Attorney-General's Law Reform Advisory Council, a position she held from April 1993-April 1995.

In 2005, she received the Judges' Award in the Equal Opportunity for Women in the Workplace Awards and in 2011 she was made a Member of the Order of Australia in the Queen's Birthday Honours list in recognition of her contribution to education, to the law as an academic and to the advancement of women.

In 2010 Deakin University conferred upon her the degree of Doctor of Laws (honoris causa) in recognition of her distinguished contribution to Deakin University, to legal education and scholarship and to higher education in general. She was also made a Professor Emeritus.



2011 SIR ROBERT MENZIES ORATION ON HIGHER EDUCATION

DELIVERED BY EMERITUS PROFESSOR SALLY WALKER AM

I thank The Menzies Foundation and the University of Melbourne for inviting me to deliver the 2011 Sir Robert Menzies Oration on Higher Education. It is a great honour to be asked to join the impressive list of speakers who have delivered this Oration since it was established in 1991.

It is appropriate that an oration on higher education should be named in honour of Sir Robert Menzies who was a brilliant public speaker and a significant contributor to the development of Australian Universities. As he was both a graduate and Chancellor of the University of Melbourne, it is also proper that this great University should host the Oration.

As this Oration is delivered as part of a Graduation Ceremony, I want to add my congratulations to those who have graduated today. I hope you will enjoy the moment that this formal ceremony provides for you to contemplate your achievements and to thank those who have supported you in your studies.

Higher education in Australia is at the beginning of a period of significant change. The changes we will experience in the next decade or so have as their catalyst the Federal Government's response to recommendations made by the Bradley Review of Higher Education. The Government's reforms will lead to changes in the size, structure and scope of the sector. Most public universities will seek to expand, some will transform the way they deliver their programs and we are likely to see more private for-profit providers of higher education. The Government's policy settings will create an environment in which there is more competition for students and for the staff to teach and otherwise support them.

The proposition I want to put to you is that, in this changed environment, we will have to work hard to ensure that two fundamental values continue to influence the way higher education institutions operate. These are the related concepts of collegiality and academic freedom. Both depend on the culture that exists within institutions. That culture will be challenged in the environment in which higher education institutions will operate in coming years.

First, the changed environment. The 2008 Bradley Review concluded that Australia is falling behind other countries. Within the OECD in 2006 we were ninth out of thirty in the proportion of our population aged 25 to 34 years with degree level qualifications; a decade before we had been seventh.¹

The Government's response was to set a target: by 2025, 40 percent of Australia's 25 to 34 year olds will hold a qualification at bachelor level or above; the then attainment rate was said to be 32 percent. The Government calculated that the target will produce around 217,000 additional graduates by 2025.²

The 217,000 figure is contested. Some researchers calculate that the 40 percent target will require an additional 422,000 people with degrees.³ There are also problems regarding who is counted. A 2006 rule change means that international students are now classified as Australian residents if they are in Australia for twelve out of sixteen months, even if they have no intention of staying here.⁴ Growth recently counted towards the target may therefore be misleading.⁵ Indeed, the recent decline in the number of international students studying in Australia will make the 40 percent target harder to achieve if reliance is placed on it being met by those international students who do, in fact, become Australian residents.

Even assuming that the 217,000 figure is correct, it is important to understand the enormity of effort needed to achieve that outcome. According to a Victorian report, to contribute its share towards this outcome, "Victoria will need to increase undergraduate commencement numbers by about 10,000 – 12,000 students per year across the period to 2025."⁶ Perhaps the best way to understand the impact of this is to consider the current size of some Universities.

The University of Melbourne has approximately 34,000 Australian students; Monash – Australia's largest University – has some 38,000 Australian students. It is apparent that producing an additional 217,000 graduates by 2025 is going to require exponential growth in enrolments.

The first change that the new policy settings associated with the target will bring about is that the number of institutions offering higher education qualifications is likely to increase and there will be greater competition amongst them for students and staff.

2 Australian Government, Transforming Australia's Higher Education System, 2009, p 12..

3 See "Uni targets too high" The Australian 1 July, 2011; see also "Graduate target looking more elusive" The Australian 31 August, 2011, but see "Uni attainment target well in sights" The Australian 3 August, 2011 and "Australia reaches 35% attainment: OECD" The Australian 14 September, 2011.

4 See "Overseas students thwart uni target" The Australian 6 July, 2011.

5 See "Australia reaches 35% attainment: OECD" The Australian 14 September, 2011.

6 Victoria, "Report Advising on the Development of the Victorian Tertiary Education Plan" 2009 pp 37-38.

¹ Australian Government, Review of Australian Higher Education, Final Report, December 2008, pp xi and 9-13

When we think of higher education, we tend to think of programs offered by public Universities, but in the next decade we are likely to see more private, for-profit companies operating as higher education providers. Private operators may also increasingly offer distance education curricula to Australian students via on-line delivery.

In 2000 there were six private higher education providers operating in Australia with only 2,450 students or less than one percent of higher education enrolments. From 2005 the Australian Government introduced FEE-HELP to assist Australian students to meet the cost of tuition fees. A number of private higher education providers have been authorised to offer FEE-HELP. This has contributed to growth in enrolments. In 2007 there were 150 private providers with 53,060 enrolments or 5 percent of Australian higher education enrolments⁷ and by 2009 enrolments had increased to 77,680 or nearly 7 percent of Australian higher education enrolments. It is predicted that private higher education will be responsible for some 30 percent of enrolments by 2020 bringing Australia into line with global private higher education participation levels.⁸

The second change we will see in Australia arises from the fact that the 40 percent target will be unlikely to be achieved if we aim only to increase the number of students who undertake higher education studies straight from school. To achieve the target, we will have to encourage people who have undertaken lower level qualifications to up-skill at least to bachelor level and we will have to encourage those who have missed out on accessing post-secondary education to commence studies later in their lives.

These two changes – an expansion of the number of institutions offering higher education qualifications and an increase in the number of more mature students – are likely to contribute to a third change. This is an escalation in the number of students studying via distance education.

Distance education delivery is appealing to students who wish to combine work and study. The flexibility it offers is of obvious appeal to older students already in the work force. It also suits the technological skills and life-styles of younger students.

All Australian Universities are, rightly, making greater use of technology in their teaching.⁹ It is, however, a huge step from augmenting programs by the use of technology to full distance education delivery.

Universities that have been offering their programs for many years via distance education, first using printed materials and now, where appropriate, e-learning or a mixture of the two, understand what is required to make distance education delivery successful. It must be based on a deep understanding of the nature of student demand for distance education. It must be modified to take into account the type of distance learning suited to different programs. Regard must be had to the kind of on-campus support appropriate to the particular program and the students undertaking it. Distance education delivery cannot be achieved satisfactorily by simply making material available on-line.

While a number of Australian Universities are gearing up to offer programs via distance education, I am not sure that the duplication of effort necessary for a large number of Universities to enter the distance education market is the best use of public funds. One wonders whether the Australian Government might not be wise to pick two or three current operators in the distance education field and provide them with the funds necessary to offer high quality programs and high quality delivery taking a demand led approach.¹⁰

⁷ Mahsood Shah, George Brown "The Rise of Private Higher Education in Australia: Maintaining Quality Outcomes and Future Challenges".

⁸ JWT Education "Private Higher Education Market". See also Mahsood Shah and Chenicheri Sid Nair "Engaging with Quality: Quality Assurance and Capacity Building in Private Higher Education" at p 2.

⁹ See The Age, May 10, 2011 p 13 "Artful academics are new kids on the blog".

¹⁰ This approach might also avoid the pitfalls of the ill-fated UK e-University project – see House of Commons Education and Skills Committee, UK e-University, Third Report of Session 2004-05, 3 March, 2005.

In terms of their capacity to make a profit, private providers have a number of advantages over publicly owned Universities. They can be agile and nimble in responding to developments. Private providers are likely to have enterprise bargaining arrangements different from those of public Universities, adopting more flexible employment arrangements.

Private providers do not suffer from the ambiguity that pervades the operations of public Universities. On the one hand, public Universities are exhorted to make commercially wise decisions; on the other, they are expected to act with transparency and regard for the public impact of their decisions in ways that can be quite un-business like. There would be no complaint if the Board of a private provider treated a matter as "commercial in confidence" and it would be understood why a private provider would cease offering a course or subject that did not attract student enrolments. It is even likely that staff and students would expect to pay commercial fees for car parking.

In the coming years, Universities are likely to find themselves competing more amongst themselves and with private providers. They will be competing to attract students and to attract the staff to teach and otherwise support those students. This competition will be a good thing if it makes higher education providers review their actions with a view to improvement. Simply dismissing a successful competitor as being of 'low quality' is a sign of phony strength. In particular, a more competitive environment will encourage higher education providers to give expression to what really matters to them.

This does not mean that all institutions are the same. The University with which I am most familiar - Deakin University - has core commitments: to rural and regional engagement; to continuing education and life-long learning; and to equity and access. Although these were formulated only in 2003, they are axiomatic, going to the very essence of the University.

Deakin's core commitments are based on the University's geographical location, which is primarily in regional Victoria, and on its history as a University established to give people opportunities to access higher education or to up-skill their qualifications. The three core commitments, taken in combination, inevitably make Deakin's responses different from those of Universities that have different obligations. At Deakin we would continue to offer a course or subject, and even keep open a whole Campus, despite them making a loss, provided doing so could be demonstrated to be essential to the advancement of Deakin's core commitments. Another University, with different core commitments, faced with the same course or subject making a loss might decide to no longer offer it.

Properly framed statements of tangible core commitment – in contrast to broad puffery - help institutions to explain the difficult decisions they have to make. Without making hard decisions in relation to matters that are not core commitments we cannot engage in the cross-subsidisation necessary to support those core commitments. I do, however, doubt whether anyone will ever be able to bring about an understanding of why it is necessary to increase car parking fees!

The changed environment will encourage differentiation. Nonetheless, my hypothesis is that collegiality and academic freedom are fundamental values that should be kept at the forefront of what all higher education institutions do. These values will be tested in a more competitive environment, particularly one in which some competitors are driven by a profit motive.

Collegiality and academic freedom have in common that they rely on people who work together showing respect for one another's contribution. They also have in common that they are nebulous and ill-defined principles.

A collegial environment is one in which staff and students are united in a common purpose and show respect for each other's abilities to work towards that purpose. Collegiality involves staff and students being seriously engaged in the life of the institution.

In a collegial environment staff encourage 'their' students to apply for scholarships to continue their studies and they watch with interest and assist in the advancement of the careers of their students and their more junior colleagues. In a collegial environment current students happily assist with events such as Open Days; they want others to enjoy the same experiences they have enjoyed. One of the challenges of distance education delivery is creating a sense of connectedness as a basis for such a collegial relationship.

In the United States, litigation has tested the right of Universities to use collegiality as a formal performance factor. I fear that making collegiality a performance consideration could be open to abuse.¹¹ It is, however, wonderful working in an academic environment in which collegiality abounds and it is bleak working in one where it is not properly understood and does not fully exist. For staff and students to be seriously engaged in the life of their institution, the institution needs a life that is broader and richer than that of the formal teaching environment. This may not be of immediate appeal to a for-profit provider. Even newer public institutions struggle to establish the means to encourage this environment including public lecture series, art exhibitions, music recitals, sporting activities and so on. Research and collegiality also foster one another and research may not be a priority for some providers.

I am not suggesting that collegiality flourishes in all public Universities; neither am I suggesting that it cannot exist in private higher education institutions.¹² My point is that a culture of collegiality does not arise spontaneously; collegiality must be nurtured and developed, both at new institutions and at existing public institutions. Collegiality is nebulous. It is not amenable to being a line item on a balance sheet. This makes it difficult to make a case for collegiality - particularly in an environment in which institutions are focusing on competing for students and staff or on making a profit - and yet, ultimately, the benefits for students and staff are significant.

Professorial or Academic Boards are quintessentially collegial bodies. They bring together the leaders of all the disciplines to make decisions about the entire academic enterprise. It is important that every professor is entitled to attend such meetings, even if they decide not to attend. Including all professors means that, if an issue is of significance, academic leaders are able to attend to have their concerns heard. Indeed, it is when an Academic Board meeting is well attended that the management of the University realises that there is an issue that requires attention. Electing an Academic Board seems to me to detract from the collegial role of the body and to limit the capacity of professors to fulfil their responsibilities as academic leaders.

Turning to academic freedom. Academic freedom ensures that members of academic staff are free to teach, to research in their areas of expertise and to publish the outcome of that research even if that involves the dissemination of unpopular views. Like collegiality, academic freedom is not an asset that can be valued on a balance sheet. In a competitive environment, it may not be uppermost in the minds of those leading an institution. Nonetheless, it helps to achieve the primary aims of a University: it promotes the creation, advancement, transmission and application of knowledge and learning.

Academic freedom means that academic staff should be free to teach and to undertake research in their areas of expertise and to publish the outcomes of their research without suppression from their employer. The boundaries and scope of the concept are uncertain because they are tested only when an issue arises; even then, there is no recourse to a higher, binding authority to settle the meaning if there is any disagreement.

¹¹ See Robert D Hatfield, "Collegiality in higher education: towards an understanding of the factors involved in collegiality".

¹² Some of the world's greatest Universities such as Harvard University, Massachusetts Institute of Technology, and Stanford University, are private Universities.

Some may argue that it would be desirable to define the concept in legislation.¹³ I don't agree. It is impossible to foresee the different circumstances in which academic freedom might be relevant. Codifying a concept of this kind would inevitably lead to gaps. The Federal Government was well advised when it agreed to insert into the Higher Education Support Act 2003 (Cth)¹⁴ a requirement that Universities have in place a policy that "upholds free intellectual inquiry" in relation to learning, teaching and research.

When the new Tertiary Education Quality and Standards Agency is fully operational as Australia's regulatory and quality agency for higher education, it will register and quality assure the performance of higher education providers against a set of Standards. The public consultation draft of the Provider Standards requires all higher education providers to promote and protect "free intellectual inquiry and expression in its higher education learning, teaching and research activities" and to have in place policies and measures to "ensure that academic staff are free to make public comment on issues that lie within their area of expertise".¹⁵

The legislation and the Standards have in common that they adopt a wide concept - "free intellectual inquiry" – and leave the development of policies to each institution. This approach avoids the danger of the legislation or the Standards inadvertently limiting academic freedom.

Whether academic freedom is embraced by an institution depends on the culture that exists within that institution. In my time as Vice-Chancellor of Deakin University, academic freedom was raised as an issue several times and I will use these examples to illustrate what I see as the boundaries of the concept.

In 2005, an American Law Journal published an article written by two Deakin University staff members from the Law School. The article argued that torture is not always wrong. It asserted that torture is permissible where the evidence suggests that it is the only means, due to the immediacy of the situation, to save the life of an innocent person. This was, of course, a controversial argument.

The publication of the article prompted negative media coverage. The University received correspondence calling on it to censure the authors; there were similar calls from some staff members who found the controversy uncomfortable. In these circumstances it was important to make it clear that, whatever one's private views may have been about the quality of the article and the worth of the point of view it declared, the authors should be free from interference from the University in publishing it. The article dealt with matters within the field of expertise of the authors and the publication of it was not in breach of any laws. Some of the criticism failed to understand the difference between, on the one hand, publishing an article that argues that the law should be changed and, on the other, publishing something, the publication of which is unlawful. Unlike the latter, the former is quite permissible; indeed, most articles written by lawyers explore whether the law should be changed.

The best antidote to the publication of the views expressed in the torture article was not censoring or censuring the authors, it was the airing of well-formulated, contrary arguments. An academic who enjoys the freedom to undertake research and to publish research outcomes without suppression thereby subjects herself or himself to the possibility of others exercising the same academic freedom. The most powerful criticism of the torture article came from those who analysed and critiqued the arguments in a calm manner.

Some of the staff members who had called for action against the authors of the torture article became staunch advocates of academic freedom in a second case. This occurred when rumours arose that, because two Deakin University staff members had criticised the actions of a foreign government, that government would no longer employ Deakin graduates. In this case, staff members found it much easier to endorse the support the University

¹³ As it is in New Zealand - Education Act 1989 (NZ) s 161.

¹⁴ Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011 (Cth) Schedule 3.

¹⁵ Tertiary Education Quality and Standards Agency Draft Provider Standards - Consultation Draft - paras 4.2 and 4.3.

gave to the two staff members concerned. This kind of prejudiced response is inappropriate. Academic freedom is only really meaningful when someone publishes something with which you disagree, but, nonetheless, you support that person's freedom to publish it. If only popular views enjoyed academic freedom, academic freedom would be worth very little. One thinks of the phrase used to illustrate Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it." This also illustrates the connection between academic freedom and collegiality. In a collegial environment people who work together show respect for one another's contribution.

Academic freedom is not a defence to criminal or civil proceedings.¹⁶ When the Deakin Law Review proposed to publish an article the publication of which appeared to constitute racial vilification, academic freedom could not be used as an argument to force the University to publish the article.

For the sake of completeness, I should say that a staff member cannot refuse to teach on Friday afternoons and Monday mornings on the grounds, as one staff member suggested to me, that to be required to do so would infringe his academic freedom.

The legislation and the Standards that I mentioned earlier refer to free intellectual inquiry in relation to "learning". The question has been raised whether academic freedom applies to students.¹⁷ Some students have argued that it should so as to protect them against being given lower marks if they express views that differ from those of their lecturers. Of course, a student might be marked lower for expressing a view that differs from that of the lecturer if the view is unsupportable, but what some students have complained about is alleged political bias, asserting that they have been marked down for expressing views based on a different political orientation from that of their lecturer. In 2008 a Senate Standing Committee inquired into allegations of academic bias in universities and schools. ¹⁸ Some argued that students should be granted the protection of academic freedom so they could freely disagree with the point of view of their teachers and lecturers. This seems to me to confuse academic freedom with freedom from unprofessional conduct. I agree with the conclusion of the Senate Standing Committee that the issue raised was really that of poor teaching. ¹⁹

The characterisation of higher degree by research students is, however, often ambiguous. In many ways they are closer to academic staff than to undergraduate students. It would not be surprising to find that individual institutions apply their policies regarding academic freedom to higher degree by research students in relation to their field of expertise.

To conclude, in coming years, as most Australian Universities expand their enrolments, as distance education provision increases and the number of private for-profit providers grows, higher education in Australia will be significantly changed. There will be greater competition for students and for staff. The culture created by this competition and the for-profit environment may not encourage collegiality and academic freedom beyond the lip service that is necessary to satisfy the legislation and the Standards to which I have referred. Those of us who have enjoyed the rewards that come from working in an environment in which collegiality and academic freedom are understood, respected and fostered should encourage all higher education providers to see the benefits that can flow from promoting these fundamental and related values.

16 It may, however, support some defences such as qualified privilege and fair comment in defamation law.

17 The New Zealand legislation embraces students - see Education Act 1989 (NZ) s 161 – although the application of this section to so called "biased marking" is not clear.

18 Standing Committee on Education, Employment and Workplace Relations, "Allegations of academic bias in universities and schools" December 2008.19 Ibid p 22.

Sir Robert Menzies considered that his contribution to the development of universities might prove to be amongst the most lasting of his achievements for Australia. In recognition of this vision and in order to strengthen the role of higher education in Australia, the University of Melbourne and the Foundation established in 1991 the Sir Robert Menzies Oration on Higher Education.

The theme for the Oration is higher education policy and practice in Australia both in view of its national importance and also because of Sir Robert's attachment to both the extension of higher education and the wise development of it. The intention is for each Oration to be a contribution to intellectual debate in Australia.

MENZIES FOUNDATION

The Menzies Foundation was established in 1979 as a non-political, not-for-profit organisation to commemorate the life and achievements of Sir Robert Menzies by providing leadership and by supporting initiatives of public importance. In the years to 2011, the Menzies Foundation has been a quiet achiever, spending over \$25 million of investment income, from an initial publicly subscribed fund of \$6.2 million, to help establish and support:

- The Menzies School of Health Research, Darwin;
- The Menzies Research Institute of Tasmania, Hobart;
- The Menzies Centre for Health Policy, Canberra and Sydney;
- · Post-graduate scholarships in medicine, allied health sciences, law and engineering;
- The Sir Robert Menzies Oration on Higher Education;
- The Menzies Virtual Museum web site, www.menziesvirtualmuseum.org.au;
- Grants, seminars and lectures on public health related themes;
- The Menzies Memorial Scholars' Association;
- Restoration and maintenance of "Clarendon Terrace", East Melbourne.

For further details visit www.menziesfoundation.org.au

The Menzies Foundation

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MENZIES ORATION ON HIGHER EDUCATION

2010	Professor Glyn Davis AC	Vice-Chancellor and Principal, University of Melbourne To grow in the esteem of future generations: the Melbourne Model
2009	Emeritus Professor Richard Larkins, AO, MD, BS, Hon LLD (Melb), PhD(London), FRACP, FRACP, FRACPI, FAMM, FAMS	Former Vice-Chancellor, Monash University Universities: the Foundation of Civil and Successful Societies
2008	The Honourable Julia Gillard, MP	Deputy Prime Minister of Australia Minister for Education, Minister for Employment & Workplace Relations Minister for Social Inclusion
2007	Professor K C Li	Former Secretary for Education & Manpower Hong Kong SAR Government <i>'Education: Vision and Reality'</i>
2006	Professor James Wilkinson	Director, Derek Bok Centre for Teaching & Learning, Harvard University 'Undergraduate Education: What Good is it? An International Perspective'
2005	Professor Peter McPhee	Deputy Vice-Chancellor (Academic) University of Melbourne 'Faces in the crowd' - The Melbourne 'Experience' past, present, future
2004	Professor Stephen Leeder	Professor of Public Health & Community Medicine, The University of Sydney 'Global Health and the Future of Academic Medicine'
2003	Professor Alan Gilbert	Vice-Chancellor, University of Melbourne 'Some Heretical Ideas about Universities'
2002	Professor Bernard Shapiro	Principal and Vice-Chancellor, Mc Gill University 'The Research University: An Undergraduate Challenge'
2001	Dr John Hood	Vice-Chancellor, University of Auckland 'The Research-led University – Reflections from New Zealand'
2000	Professor Sir Alex Broers	Vice-Chancellor, Cambridge University 'University Partnerships – Sustaining International Competitiveness'
1999	His Excellency the Hon Sir Guy Green AC	Governor of Tasmania 'Governors, Democracy and the Rule of Law'
1998	Lord Ronald Dearing	Chancellor, Nottingham University 'A Time of Opportunity'
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