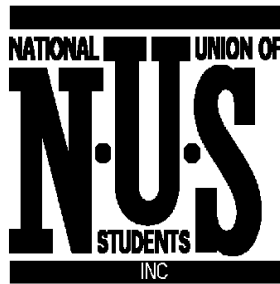


*NUS Research*



**Submission To Select Committee on New Taxes  
Inquiry into Proposed Student Fees**

**Presented by NUS President: Carla Drakeford**

**Prepared by NUS Research Co-ordinator: Graham Hastings**

**October 2010**

NUS welcomes this opportunity to present our views to the Select Committee on New Taxes and thanks the Senators for their interest.

After an opening comment on the nature of the fee we will briefly address the impact of the current arrangements on student organisations (more detail is contained in the Appendix). Then we will move onto the consideration of alternative and international models. This sets the stage the final section where we will outline our critique of the proposed legislation.

### **1. Is It A Tax?**

NUS is somewhat perplexed by the reference of a university fee to a tax committee. While like HECS the HELP component for students who defer payment is repaid to the tax office the fee revenue goes to the university. Our understanding is that HECS is legally defined as a fee for service and not a tax. We can see no reason for treating a university student amenities fee as different for these purposes as HECS or FEE-HELP. In short it is a new fee, not a new tax.

That said NUS always welcomes the opportunity to present our views on this legislation to any parliamentary committee.

### **2. Impact of *Higher Education Support (Abolition of Compulsory Up-front Student Union Fees) Bill 2005***

The devastating impact of the *Higher Education (Abolition of Compulsory Up Front Student Union Fees) Act 2005* on campus life, student support, student representative and advocacy resources was initially documented with the NUS *First Annual Report Into The Impact of Federal VSU Legislation*. Subsequently there was the DEEWR Summary Report *The Impact of Voluntary Student Unionism on Services, Amenities and Representation* and then to the Report of the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the 2009 legislation.

We feel that this Bill has been well canvassed by these three reports and as such we will not go into great detail about the impact of VSU in the main body of this submission. For those Senators interested in the campus by campus details we have attached as an Appendix our submission to last year's Senate Standing Committee on Education, Employment and Workplace Relations Inquiry. However, we will offer this brief précis of what has happened since 2005.

*The Higher Education Support (Abolition of Compulsory Up-front Student) Union Fees Bill 2005* was passed on the final sitting day of 2005 and began to take effect in the second semester of 2006. ACUMA/ASF estimated that the income collected from membership fees amounted to \$178.7 million in 2005. Initially many universities attempted to collect a voluntary fee. The voluntary membership income collected in 2007, the first full year of VSU, amounted to \$12.7 million.

In many cases the amount collected was barely worth the cost of collection, recruitment and marketing. Except for three student guilds in Western Australia the voluntary fee did not become a significant source of income. Where they do exist outside of WA they are in the form of nominal premium memberships for additional excludable services and discount packages.

This is not surprising for similar reasons why taxation is not voluntary. Services, campus life and having a voice in university decision making may be valued by students but much of what is offered is not excludable and open to the free ride problem. Also the transitory nature of student life makes it hard to build the on-going loyalty that could be involved with trade union membership or established volunteer community groups.

The partial exceptionalism of the Western Australian experience, where state based legislation was introduced in the 1990s is covered in the attached appendix.

Nevertheless the outcome was that during 2007 and 2008, campus student organisations, including the Western Australian Student Guilds, began signing funding agreements with universities to maintain funding for some core service and representative activities. In other cases the university allowed the student organisations to collapse and established their own student service companies. In a

few cases such as Charles Darwin University and University of Sunshine Coast the student services, outside of the minimal provision from university departments, were allowed to collapse.

In short while voluntary student unionism legislation outlawed compulsory fees the reality is that it has not led to self funded voluntary student organisations able to deliver a comprehensive range of safety net and campus life functions. Exhortations that students will voluntarily join the organisations if they deliver effective services at the right price have proven to be fanciful.

The actual campus outcomes since the passage of the Australian VSU legislation fall into three broad categories:

- General collapse of student campus life, support structures and representative functions.
- University takeover of major service providers and subsidised from university revenue with either a student advisory committee within the university company or a small independent student representative/advocacy organisation funded by the university through a service level contract.
- University funding to maintain comprehensive student service and representative bodies through a service level contract.

The problem with the current university funding system include:

- That the university funding for student services, amenities, representation and advocacy is unfunded apart from possible future grants for student amenities under the Higher Education Investment Fund. This means that universities are diverting funds from other areas of university activity. Loss of income due to the decline of international student enrolments may impact on discretionary funds that universities have to maintain even the current levels of subsidy.
- There is a huge variation in the amount of discretionary funding the universities have in their budgets to divert (i.e. compare the funding agreements of some elite Group of Eight universities with small regional universities). This builds

further structural inequalities and disadvantages into the higher education system and the student experience.

- Since 2005 there has been a massive shift from universities from exercising broad regulatory control over student organisations to micro-managing student service delivery either through the establishment of university companies to deliver services or detailed service level agreements with student organisations. This has led to a loss of student-driven culture and the weakening of independent representation and advocacy services.

Another aspects that should be taken into consideration is transitional funding. In response to concerns from regional communities the National Party was able to gain funding for about \$100 million of competitively allocated transitional funding for university sport:

- The VSU Transition Fund for Recreational and Sporting Facilities;
- Small Businesses on Regional Campus Fund;
- Regional University Sport Programme.

These programmes come to an end in 2010 so the real impact on university sport and sporting facilities will come into play from 2011.

## **2. VSU Models and International Comparisons**

The terms of reference ask about international comparisons and also whether there are policy alternatives. There are policy alternatives to both the *status quo* and the proposed bill.

Our first response is to point to the long standing tradition of universal membership of student organisations that has been a cornerstone of the great universities in the Western Liberal tradition.

The first English student union came into existence at Cambridge University in 1815. Similarly the system of 'student government' began to evolve around this time at US universities. The etymology of the term "union" pre-dates the contemporary association with trade unionism as the workers associations of the time were known as craft guilds. Instead the term referred to a place where people met

to debate and discuss issues. The persistence of the term University Unions at some Australian universities refers to this Cambridge, and later Oxford and Harvard tradition of providing opportunities outside their classroom and faculty where students could engage, debate and collaborate with their peers.

There were voluntary student organisations at Australian universities in the 19<sup>th</sup> century. However, they were aimed at the leisure and sporting activities of a very small number of wealthy students who attended universities back then. In 1906 the University of Melbourne became the first Australian university to charge an annual compulsory levy on students for campus activities other than tuition (initially for sport).

The founder of the Liberal Party Sir Robert Menzies, was a prominent student politician, President of the Student Representatives Council in 1916, at the University of Melbourne during the ensuing years when student politicians on both sides supported expanding the scope of things beyond sport that could be funded by the compulsory fee. Menzies was one of the students who helped create of the system of universal student governance in Australia and a supporter of student organisations through his political life. The perils of 'compulsory student unionism' was something discovered only after his death.

Universal membership and contribution arrangements became general across Australian universities by the 1920s. Typically it was the students themselves who banded together to push the universities into levying a small fee to create a student life on campuses beyond lectures and laboratories.

Soon they also wanted to have a voice on faculty and university bodies that led to the creation of Student Representative Councils. For five decades there was bipartisan support (ALP and Conservative) for the principle of automatic membership to student organisations. Governments were quite happy to leave the operation of student organisations up to the universities. Like their counterparts at other good international universities such as Oxford, Cambridge, Princeton and Colombia the universal levy was seen as part of a getting a well rounded education.

One of the key reports during the Liberal-National-Country Party

Menzies Government's modernisation of Australian universities in the 1950s and 1960s was the Murray Report. It noted:

*"In universities of the Australian type, the importance cannot be overstressed of the provision of some adequate meeting ground for students from all faculties. The Students' Union should be the focus for extra-curricular activities, both social and intellectual, of the student body. It could prove one of the most potent influences in developing that corporate life which is urgently needed if the modern tendency for the average student to be exposed throughout his university course to nothing but purely vocational interests is to be corrected."* (Murray Report 1957, Sir Keith Murray was Chair of the British University Grants Committee).

The Vice-Chancellors' submission to the Committee stressed the importance of the activities of student organisations:

*"the University Union (is) a significant feature, for it is from the activities of the Union that the average student get much of the benefits of the communal life as are possible for one not in residence. This has been appreciated by university governing bodies and one of the features of Australian student life is the existence of strong Union Boards, active Student Representative Councils, and an extensive series of clubs and societies."*

When the Commonwealth took over the most of the funding and co-ordination of the state governments in 1974 there was a debate on whether or not the Commonwealth should directly fund student organisations so that there would be no fees for study at higher education.

However, the Universities Commission took the position that Commonwealth funding had the potential to compromise the important independent advocacy and representative role of student organisations:

*'Student bodies provide basic facilities such as food services, meeting rooms, amenities, commercial services and sporting and recreational facilities which are essential parts of the functioning of the university; and they provide a framework for the social and cultural development of the students...The unions and other student bodies rightfully prize their freedom and independence from political intervention. Moreover*

*by relying on fees as the main source of their income, student bodies retain the power to determine the direction, pattern and extent of their own development and have regard to their own priorities. Accordingly the Commission does not advocate the abolition of fees charged by student bodies...The introduction of recurrent assistance for student bodies would not be justified in the light of other needs and priorities. Moreover the Commission is not convinced that such a form of support would be in the best interests of the bodies themselves as it could, in the long run, lead to direct government involvement in their affairs. The Commission proposes to continue its policy of support for universities in the provision of medical and other student services and for student bodies in the provision of the basic buildings and sports facilities necessary for their operations.” (Sixth Report of the Universities Commission, 1975).*

When the Commonwealth took over the authority to fund higher education it made an agreement with the states governments that included the following undertaking:

*“student representative council, union and sports fees will continue as the responsibility of the student on the understanding that the institutions will make payment of these fees compulsory for all students.”*

Following the peak of student activism in the early seventies, some student sections of the Liberal Party began campaigning in 1975 to end the bipartisan consensus around student organisation fee arrangements in order to restrict perceived excesses by left-wing student activists.

This led to a thirty five year ideological battle fought out in the courts, state parliaments (most universities are established under state legislation), and since the 1990s, in the federal parliament. An observer from outside of Australia would be perplexed at how many days of federal parliamentary sittings have been dominated in the last 15 years by a matter that does not involve Commonwealth funds or Commonwealth delivered programs except when it has been welded onto unrelated funding.

The demands of VSU proponents also escalated from attempts to restrict expenditure on perceived left wing causes and affiliation fees to the Australian Union of Students to bans on universities collecting



any mandatory contribution from students for any non-academic services (even for university run services). This long battle has thrown up various models for regulating student membership of student organisations and how they are funded.

**A: The Current Legislation (The No Fee Model)**

**(*Abolition of Compulsory Upfront Fees Bill 2005*, similar bill in WA from 1993 up till 2002)**

- voluntary membership of student organisations
- theoretical voluntary fee for all university and student organisation non-academic services but in practice universities provide varying levels of funding through service level contract agreements, only three student guilds in WA collect substantial voluntary fee revenue)

**B: Bracks-era Victorian VSU legislation (The Direct Benefit To Students Model)**

**(*Tertiary Education Act 2000*)**

- voluntary membership of student organisations
- compulsory fee that must only be used for expenditures of direct benefit to students at that institution

**C: Kennet-era Victorian VSU legislation (The Government Proscribed Activity Model)(*Tertiary Education Act 1994*)**

- voluntary membership of student organisations
- compulsory fee that can only be used for expenditures for a proscribed list of activities approved by parliament. The list of allowable activities in Victoria in the original 1993 Kennet legislation was: food services, meeting rooms, sports and physical recreation, child care facilities, counselling, health care, legal, health, housing and employment services, visual and performing arts and audio-visual media, academic support and overseas student services.

Later the list was amended to include: “student publications, including student newspapers that meet generally accepted community standards including accuracy and fairness”, “clubs and societies for students”, “student elections” and “opinion surveys, research, and other facilities, services and activities that provide for the consideration of issues relevant to student welfare”.

The current *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* is the latest variation on this approach with a slightly amended list of proscribed activities.

#### **D. The 2002 Western Australian Legislation (The Proportionate Allocation Model)**

##### ***(Acts Amendment (Student Guilds and Associations Act 2002)***

- voluntary membership of student organisations
- university able to collect compulsory services and amenity fee from all students, the university passes onto the Student Guild an amount that is proportional to the number of students who decide to become members of the Guild, the rest of the money goes to university amenities and services, in early years there was a safety net of 50% revenue guarantee till membership levels stabilised, remaining money to be spent by university on student services

#### **E. The University of Melbourne (Amendment) Act 1978, only in operation for one year (Demonstrated Electoral Mandate Model)**

- voluntary membership of student organisations
- university required to ensure that compulsory fees were spent on *bona fide* activities of direct benefit to the university
- the Student Representative Council was only able to receive funding from the compulsory fee if at least 25% of enrolled students voted in the annual election (a target that was reached by the SRC)

#### **F. The Traditional Arrangement (Student Control of Student Affairs Under University Regulation Model)**

- universal membership of student organisation and payment of student amenities fee to university
- university council determines the allocation of student amenities fee between university directly run services, campus student organisations and student service companies, student organisations required to submit audited financial reports to university council
- student control over their slice of the allocated fees subject to normal legal and financial requirements of incorporated associations

By way of international comparison the current voluntary student unionism legislation stands in isolation. NUS is unaware of any national government of a country with universities based on the Western (Cambridge-Harvard-Oxford) tradition to have enacted legislation that banned non-academic services from being supported by a some form of universal student or public contribution (either as a separate levy or included as part of tuition fees/specified government grant).

In the United Kingdom students are required to join their student organisation upon enrolment but they do not have to pay a student services fee. This is because the activities of student organisations are funded by the grants received by each university from the government. The Whitlam Government explored adopting a similar approach in Australia . The Thatcher Government in the 1980s decided against introducing VSU because as the Education Secretary, Sir Keith Joseph argued:

*"..the student union is, mercifully, not the same as an industrial union. What we have in the students' union is automatic membership and automatic access to facilities...and I do not see how we can, therefore make membership voluntary."*

Instead of VSU the Tory Government did eventually adopt an alternative regulatory approach in its *Education Act 1994*. The Act required the governing bodies of universities to ensure that student associations operated 'in a fair and democratic manner and were accountable for their finances and 'that governing bodies adopt codes of practice in relation to student organisations'.

The North American higher education system is very diverse. Nevertheless most public universities, and the leading private universities in Canada and the USA have a system similar to the pre-VSU situation in Australia – a compulsory fee with opt out membership provisions for conscientious objection. A few US universities allow students to designate which campus activities they wish to fund (ie sports, campus life, representation, clubs) but still collect a universal fee.

America's most prestigious private university, Harvard University, sees its student government structures and student services as so important to its education mission that it currently charges a universal annual student services levy of \$US2,190 per full time student (for conversion purposes at the time of writing the

Australian dollar was very close to parity with the US dollar) and this doesn't cover additional fees for residential board or health services

A more comparable university to the average Australian public university is a public research university such as the University of Illinois. The annual student service fees for two semesters amount to \$US1,068 with additional optional charges for health and dental services. A comparable Canadian public university is the University of British Columbia which charges \$CAN550 for two semesters also with additional optional charges for health and dental services.

This puts some perspective on the \$100-\$A400 fee that were typical at Australian universities before 2006 and the current funding level agreements provided by universities. Even under the \$250 cap proposed under the *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* would lead to Australian universities falling well behind international benchmarks in the provision of student services, representation and campus life.

The only Western country that is moving towards a more limited form of Voluntary Student Unionism is New Zealand, driven by the close Trans-Tasman links between conservative student groups. The previous National Party government introduced the *Tertiary Students' Association Voluntary Membership Amendment Act 1998*. Rather than banning the collection of a student fee the legislation allowed the student body the option of determining whether or not it wanted a compulsory fee. While the default position was a voluntary fee students could opt to hold a referendum for a compulsory fee if the university received a request from 10% of students enrolled at that institution. At all but two institutions (University of Auckland and University of Waikato) the student body requested and voted for a compulsory fee.

Currently the *Education (Freedom of Association) Amendment Bill 2010* is before the New Zealand parliament and has gone through the select committee stage (NUS testified to the committee). The effect of the legislation is to prohibit compulsory membership of any association of students, or to require a student to pay any money to any association of students. Notably the legislation is targeted at student unions and is not directed at university run non-academic services or university student service companies. A compulsory fee

can still be collected by the university but won't go to student controlled entities.

### **3. Current Bill and Second Reading Speech**

#### *Freedom of Association*

*The Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* maintains the voluntary membership principles behind the *Higher Education (Abolition of Compulsory Up Front Student Union Fees) Act 2005*.

Many of the opponents of the current VSU legislation have been content to cede to the philosophical argument on freedom of association so they can move onto revenue issues. However, NUS continues to believe that the pro-VSU arguments presented, however sincerely held, are wrong and that student associations have a legal basis as public associations.

The most common argument in favour of voluntary student unionism membership is that universal membership causes a public detriment in that it restricts student choice by requiring them to become members of the student association and thereby limits their freedom of association. VSU proponents are fond of claiming that student unions are an historical anachronism, the 'last closed shop' (conveniently forgetting all the closed-shop professional associations such as the Australian Medical Association).

Typically VSU proponents in Australia have looked for moral backing for their position by citing United Nations conventions relating to freedom of association. Regardless of a utilitarian approach (such as that Australian Consumer and Competition Commission employed in their 2003 ruling that the public benefit outweighed public detriment) there are fundamental philosophical flaws in this style of freedom of association argument.

First of all it is important to be clear what issue of public detriment is at stake here. The freedom of association refers to the positive right of individuals to form associations with anyone whomsoever one pleases. Strictly what the proponents of VSU are referring to is the negative right of association (or dissociation) – the right not to be

compelled to associate with other person's against one's will. The distinction is important because there is a considerable body of law, human rights conventions and ethical argument in favour of the positive right to form associations, particularly in the context of repressive human rights and industrial laws in countries with oppressive regimes.

Many proponents of the negative right of dissociation try conflating their arguments with the widespread support for legal and ethical arguments around the positive right of association. Legal and ethical issues around the right of dissociation are different and should not be simplistically conflated with rights of freedom of association.

Secondly public associations should be regarded differently from those associations established by individuals. There is a considerable body of case law, particularly in Europe, which draws an important distinction between associations of a private character (including political parties and trade unions) as contrasted to organisations formed pursuant to statute or of a public character. For example the European Court of Human Rights and other courts have upheld the compulsory membership provisions of various professional associations as they were public institutions, established by legislation to take measures in the public interest.

Similar arrangements are in place in Australia such as the compulsory membership provisions of professional registration bodies such as the Australian Medical Association that produce the public benefit of ensuring that professionals meet and maintain peer standards.

This distinction between public and private associations is critical when considering the negative right of dissociation. If I set up a chocolate appreciation club on campus I could not compel everyone to become a member and pay money to me. If I attempted to I would be rightfully chastised for violating the right of dissociation of my fellow students.

However, the student organisations on campus we know as Guilds, Student Associations, Student Representative Councils, Sports Associations or University Unions, are different in that they are public associations established to perform functions for good

running the university (and in some cases created explicitly by state government legislation).

While NUS is not arguing that student associations are professional registration associations there is an important matter of principle transferable to these deliberations. For example the James Cook University Students' Association in Australia is a public association (explicitly established by the Queensland Parliament through a division of the *James Cook University of North Queensland Act 1970*). It is also performing public functions that have been delegated to it by the James Cook University Council that in turn performs the functions delegated to it by the Queensland parliament (the objects of the Association are set out in its constitution and are ultimately determined by the University Council). In short the James Cook University Students' Association is a public association carrying out delegated public functions.

In test cases in Sweden and England the public nature of the student associations has been upheld in courts as a key principle behind the retention of universal membership of student organisations in the face of freedom of association arguments.

Many student organisations are not explicitly created by Acts of state parliament but instead are created by statutes and regulations of University Councils. In these cases the public character of these student organisations flows from the powers delegated by state parliaments to university councils. The authoritative legal precedent in Australia was set in 1978 by the Full Bench of the Victorian Supreme Court in the *Clark v University of Melbourne* case (dealing with the universal membership provisions of the Melbourne University Student Representative Council). The court agreed that (1) public associations should be regarded differently from private associations for this purpose and (2) that the public character of student organisations could be granted by the university:

*(The) origin (of the University's powers) in an Act of Parliament places them on a different footing from the powers of the Committee of a voluntary association or of a corporation formed by the action of its members, but they have this in common with the latter powers that they cannot touch anyone who does not voluntarily bring himself within their reach.*

*The public character of the association is restricted in that it could only be extended to those who voluntarily chose to become students at that university.*

A third argument is that the retention of universal student membership of student organisations *per se* will continue to only confer rights rather than obligations on its members. For example it is a common practice at many Australian universities that students on admission to the university are also automatically made a member of their faculty. This 'compulsory membership' of faculties confers to students the right to elect or stand for election in faculty representative structures. It is an nonsense to argue that this 'membership' is somehow oppressing students.

Similarly the universal membership provisions of student organisations confer to members a right to have input into the decision making processes of student organisations or the university including the right to have a say in the nature of student services and facilities provided at the campus. NUS contends that automatic membership does not in itself establish a case that there is a public detriment.

It could be argued that a public detriment could arise if a public association compelled its members to take part in political activities that some of them did not support.

There was a legal case in 1989 in Victoria that shed some light on this matter. Stephen Kenmar, a Liberal student from Monash University, claimed to the Victorian Equal Opportunity Board that he was discriminated against by compulsory student unionism in a manner that violated the *Equal Opportunity Act*.

Kenmar was represented to the EO Board by legal advocate Peter Costello (later the Federal Treasurer). During the preliminary conference with the EO Board on 22 April 1989 Kenmar objected to the payment of the general service fee on the basis that the fee was in part payable to the Monash Association of Students (M.A.S.). He based his argument on his political view that both the freedom of the individual to associate with those groups that he chose and his opposition to compulsory unionism put him at odds with the M.A.S., i.e that the M.A.S. pursued political lines and activities he was totally opposed to. Kenmar argued that the University by refusing to allow



him the option of paying only that part of the Student Amenities Fee that did not go to the M.A.S. (ie the enrolment fee minus the \$42.34 that was allocated to the M.A.S.) effectively denied him both admission to the university and access to all the facilities of the University.

The Commission in dismissing Kenmar's case that he was discriminated against ruled that:

*"The M.A.S. is not a political body in the sense that a political party or some trade unions could be said to be in that its very nature of politics is capable of changing from one side of the political arena to the other depending upon the active members within it. The former bodies are inherently representative of one particular view of politics and their bodies reflect this... This feature of the M.A.S. was illustrated by evidence in this case that during 1986/7 the M.A.S. was effectively "controlled" by the Liberal Party of the university and after the elections in the middle of 1987 they lost control to the Labor Party. This very factor points up an essential difference between the M.A.S., a political party or a trade union... We consider that if union membership involves only minor participation in political activity, membership alone may not amount to engaging in political activity within the meaning of the Act... That involvement in the Union's political activities is not compulsory nor does it have any ramifications whatsoever for a student who does not involve himself (sic) in these activities. There are no sanctions upon any member who fails to go to student general meetings or involve themselves in elections or in any committees of the M.A.S. "*

NUS acknowledges that there are some exceptional circumstances where a small number of students may experience a public detriment through universal membership provisions. For example some religions do not allow their adherents to become members of any association apart from their church. NUS recognises that it is appropriate that conscientious objection provisions are in place to deal with genuine conscientious objections to membership but that do not allow a free ride. In summary NUS contends that as the student organisations:

- (1) are public associations;
- (2) and that universal membership of student organisations *per se* confers only rights (such as a right to vote or stand in election) rather than obligations, that there is no real public detriment arising from universal membership (with conscientious objection provisions).

This view was reinforced by the 2003 ACCC judgement arising from a complaint raised under the *Trade Practices Act* that universal membership of student organisations breached trade provisions (ie compelling a person to purchase a student organisation membership if they wished to study at a university). The Australian Competition and Consumer Commission (ACCC) took a utilitarian approach to looking at the question of freedom of association and VSU in the 2003 ruling on the James Cook University “third line forcing” case.

The ACCC applied a public benefit vs public detriment test and ruled in favour of allowing the universal membership provisions to be maintained. As well as welfare support the key for the ACCC was the independent representation provided by the James Cook University Students’ Association: *“Since the draft decision new information was put as to why this conduct is in the public interest, including that there may be benefits in retaining the current arrangements which at least ensure the independence of the James Cook University Students Association in its representation of students.”*

Voluntary student unionism was introduced in Australia due to numbers in a parliament rather than due to any compelling ethical or legal argument over the misnamed “freedom of association”. Regardless of the philosophical arguments over freedom of association, the actual financial impact of VSU legislation in Australia has been very different from that advocated by proponents of the legislation.

### *Impact on democratic representation*

Student representation on university and faculty decision making bodies has become a regular feature at most Western universities. Students participate in decisions over matters such as such as course fee costs, scholarships, university welfare provision, course approvals, access and equal opportunity processes, student grievance and appeals procedures, course material fees, student discipline statutes, library services, after hours/ access and safety, enrolment and orientation issues, and more broadly in decisions that shape the future direction of the university.

Students through affiliated national bodies like NUS and CAPA also

present the student view to the external bodies such as state and federal governments, education, welfare, immigration and public transport departments, quality agencies, parliamentary committees, Universities Australia and other peak sector bodies, and the media.

Student involvement in decisions that directly impact on the student body improve the quality of those decisions. Student organisations, because of their relative autonomy from the university administrations, have been able to fearlessly raise matters that might be embarrassing to the university administration. For example student representatives regularly work closely with Australian Universities Quality Agency on their campus quality audits as one of the few campus voices independent of the university administration chain of command. Overall this will lift the quality of Australian higher education but along the way there will be some conflicts and disputes between student representatives and university administrations.

Some commentators such as Andrew Norton have argued that student representation is no longer needed as decision makers can use surveys and focus groups to gauge student views. There is a place for these methodologies but they do end up almost invariably reflecting biases of those who have set up the survey and focus groups. The real value of effective student representation is get to the underlying causes of a problem and maintaining a dialogue between the affected students and decision makers to develop remedies. In recent times the demands from the sector and local/state/federal governments for this dialogue with student representatives from affected communities has actually been rapidly increasing.

Some recent examples NUS has been directly involved in include: the many forums around safety and consumer protections for international students, the NUS hosted forum of Indigenous student leaders from around the country who met with the Bradley review panel to unpack the real issues behind the operation of ABSTUDY and other Commonwealth support programs, the long standing advocacy and lobbying by NUS around student income reform that eventually led to several positive changes from both the Howard and Rudd Governments, the work with quality bodies and universities on bringing the 'student experience' to decision-makers and also making the information available to students in the new demand driven paradigm. Affordable accommodation is a massive issue with our

members and we have put together the first comprehensive national survey of university residential and student focused off campus accommodation. The NUS President has recently been put on the DEEWR Rural Tertiary Hardship Fund Taskforce.

Far from being outdated, we are being asked to do more and more but operating on reduced resources due to the impact of VSU on our affiliate's capacity to pay membership fees (the NUS budget was reduced by 75%). We will leave it to campus affiliates to talk about what they are doing.

The legislation excludes student representation from the list of allowable activities. Instead it will be dealt with in the unseen Student Services, Amenities, Representation and Advocacy Guidelines that may provide for "requirements relating to the representation and advocacy of the interests of students".

NUS disagrees with the basic premise in the legislation that campus based student representation should not be funded from the compulsory student fee but instead by unallocated university revenue. Most of the activities conducted by student organisations are done in partnership with the university or to meet its broad objectives. The one area where there is potential conflict is student representation. The interests of students are not always the same as the interests of the university administration.

The reliance on direct university funding, rather than student fees, makes it potentially much easier for Vice-Chancellors to cut or reduce funding agreements with student representatives who don't toe the university's promotional line. More common cases involve student representatives self-censoring just in case there might be consequences in later funding agreement negotiations. **We believe that student representatives will be in a better position to fearlessly argue for student interests if student representation is funded out of the SSAF.**

If we end up going down the path outlined in the legislation then the protocols for student representation will need to be strengthened. The bill makes no mention of 'democratic' or 'independent' student representation. The experience of finding agreements post-VSU has been that some universities have been happy to provide substantial funding for independent representation and have kept at an arms

length. Others have tried to micro-manage every aspect of student organisation activity, others have provided only a minute level funding for what is effectively a student club that provides advice to university controlled student service providers, others have allowed representation to collapse.

The Student Representation Protocols associated with the 2009 legislation did specify: “that enrolled students are given the opportunity to participate in decision making processes of the HEP through opportunities for democratically elected student representation”, ...“HEPs are expected to consult with elected students with the form of student representation to be adopted at that HEP”, ...“In meeting this obligation a HEP is to meet the reasonable and necessary costs of conducting valid and transparent polls for this purpose”, ..“a HEP must provide adequate and reasonable support resources and infra-structure for student representatives to carry out their functions on behalf of students. Resources and infrastructure, might include office space and IT equipment”.

While by themselves the obligations on the HEP through the protocols seem adequate, the question is whether they are sufficient for effective student governance structures at a large multi-campus university serving disparate communities. A HEP could have complied with 2009 protocols by electing a volunteer student to sit on the HEP Council and providing them with access to a computer in the corner of an office.

This minimalist approach may be appropriate for a small non-self accrediting private college offering a small range of courses in a single rented CBD building to a few hundred students. However, this is not appropriate for the complexities of large public universities. If we to go down the path of student representation protocols then there should be greater obligations placed on self-accrediting universities to provide for student representative organisations and to ensure that they are resourced to function effectively. NUS will be happy to facilitate consultations between parliament and student representative organisations to achieve robust protocols.

The 2009 NUS President, David Barrow, told last year’s Senate Education, Employment and Workplace relations Committee Inquiry into the very similar legislation (*Higher Education Legislation*

*Amendment (Student Services and Amenities, and Other Measures Bill 2009) that:*

*... we are disappointed by this legislation. Student representation has been hit hardest by the introduction of VSU. This new law will not be good enough to restore the student voice on campus. It has long been our position that students should decide how their money is spent on campus and to politically organise to activate those views. They will not have the ability under the new legislation to do this. In fact, this law may act as a disincentive to voluntary membership on campus—voluntary membership that could fund an independent voice.”*

This reflects our disappointment that the legislation did nothing to pressure universities to restore effective student representative structures or restore campus driven student culture on campuses where student services are run by a mix of a university company and tendered private providers leading to a sterile shopping mall campus experience.

The reference to voluntary membership refers in particular to the three Western Australian Students Guilds that do collect significant voluntary fee revenue to fund amongst others things independent student representation. Western Australian students are unlikely to pay an additional voluntary fee on top of the \$250 SSAF. This will leave the Guilds in the position where they will lose their independence and potentially become like other Australian campuses where funding of student representation is left to the whim of the Vice-Chancellors so long as the minimum criteria in the guidelines are met.

#### *Academic or non academic services*

A positive outcome of the proposed bill is that it will break down the artificial distinction between so called ‘academic services’ and ‘non-academic services’ that operates, against the advice of virtually the entire higher education sector, but shamefully entrenched in the current legislation to legitimate the unbundling of core university functions.

This is a bogus divide. What happens in the classroom is affected by what happens outside. For example if you want to increase retention of disadvantaged groups then a HEP needs to build an inclusive campus culture and have welfare support. Most HEPs want to go beyond the provision of vocational training; they also see their education mission to seed their graduates with desirable attributes such as teamwork or the potential to become active community participants and leaders. This is a normal part of the Western tradition of higher education provision. Other examples include the independent academic rights staff to help students through cases of preclusion, assessment appeals, plagiarism or grievances with supervisors. Under the current arrangements they were quite bizarrely regarded as 'non-academic services'. At least under the proposed legislation they are now seen as a legitimate use of SSAF revenue.

Vice-Chancellors have repeatedly gone the public record to defend the role of what happens outside of the classroom in education missions of universities:

*In every university there are essential services and facilities that are provided for students which are both an important element in the social and cultural life of universities and a part of the education process. Such services are often provided by student organisations, some of which have existed for many years, and are considered to be an integral part of university life.*

**Australian Vice Chancellors' Committee Policy on Student Organisations 1998. Reaffirmed December 2004**

*"We believe the educational experience for university undergraduates is much more than can be acquired in lecture theatres, from text books or from the internet. It also consists of the broadening experience that comes from social interactions, sporting activities and extracurricular activities in clubs and societies that expand perspectives, build intercultural understanding and develop life-long friendships and interests.* **Professor Richard Larkins, Monash Vice-Chancellor 2005**

The South Australian Liberal Party in 1999 also stood with the students and the Vice-Chancellors and formally recognised the role that student organisations played in the education processes of the university and supported the following motion in the state

House of Assembly:

*That this house -*

*(a) is committed to ensuring that South Australian university programs and students are not disadvantaged and is therefore opposed to voluntary student unionism; and*

*(b) recognises the valuable contributions that student organisations make to academic studies, acknowledges that university community encourages participation and development of tomorrow's community, social and business leaders and supports the universal contribution of all students in recognition of the services which are provided for the benefit of all students.*

**Motion passed with bipartisan support in the then Liberal controlled South Australian House of Assembly, 1999**

Empirical evidence from a study commissioned by a federal government department adds weight to key role student organisations play in the civic education of many young people. A study commissioned by National Youth Affairs Research Scheme (FACS, *Youth and Citizenship*, NYARS, Manning B and Ryan R, March 2004) looked at the disparate education-based civic education and citizenship initiatives around the country.

It found that there was a move towards school programs encouraging 'active' and 'participatory' citizenship around the country. The study also conducted a survey of 13- 25 year olds and found that:

*'The third most common response to the survey question on what the respondents thought would be helpful to support young people to be meaningfully involved in society, was for programs that encourage youth participation in government and in schools to be more widespread and more genuinely participatory.'*

The survey found that in terms of perceptions of political power that more young people (77.9%) felt that they were affected 'a great deal' by decisions made by education institutions than any other institution. This contrasted with 68.2% for family, 46.8% for the federal government and 5.4% for religious groups. The survey also asked which methods of political participation they had participated in and which were seen to be effective.

The top three forms of participation the respondents had participated in were petitions (74.2%), community groups (72.1%) and student representative bodies (69.4%). Student representative



bodies were ranked as the most effective form of youth participation. 71.5% of respondents rated them as 'effective' or very 'effective'. The next closest were 'youth rep panels/organisations' (70.1%) and 'voting in elections' (67.7%). By contrast only 25.5% believed that 'writing to politicians' was very effective/effective.

The evidence points to the important role that student organisations play as a practical adjunct to the 'active and 'participatory' civic training programs in schools. In particular there is a clear civic educational benefit flows directly from the element of 'student control of student affairs'.

No-one is pretending that student organisations are perfect or that they are not susceptible to the same foibles as most other democratic institutions. However, students do not learn to become active citizens by being passive consumers of student services. By allowing an element of 'student control of student affairs' public universities are sending the message to students that they are adults now and should be taking on responsibility for some aspects of their university experience beyond being mere consumers.

Students can also learn quite a lot in the process of disagreeing with some of the activities that a current leadership team of a student organisation are supporting. They learn that they can get a petition together to call a general student meeting or referendum to change a policy or form a ticket to run in elections on an alternative platform or that there ways to sack a particularly bad leadership team. Students can get involved in a more on-going way through getting involved in running a club or an action group, or learning how to run the student newspaper or radio station or the faculty society's magazine.

University student organisations are an example of an institutions which allow citizens to engage in the debate and activities of direct relevance to them - look at the number of arts community, politicians, journalists, community leaders and sports people who gained their initial experience in student organisations.

In short, graduates are being educated that they can and should take control of their own destinies through democratic and participatory processes. The replacement of student control of most of their services and facilities with paternalistic direct control by the

university administration is sending a message that university students should be regarded as children unable to take responsibility for any part of their university experience outside their course choice.

Both graduates and the wider community benefit from breaking down a culture of passivism and paternalism. The nation benefits both from the development of community leadership skills of our graduates and through a more active and engaged polity.

NUS sees this an important part of an initial undergraduate degree. We recognise a large number of students such as part-time postgraduates coming onto campus in the evenings and external students aren't privy to this, or already have had the experience previously. This will be addressed below.

### *Escaping The Prism of History*

Perhaps the biggest problem is that so many parliamentarians and their advisers are so trapped in prism of the history of this 35 year old ideological debate that the possibilities for sound policy investigation are somewhat restricted. Even the proposed legislation is stuck in the paradigm of amending Jeff Kenett's Victorian Liberal legislation to find a working compromise that has a chance of getting through both houses.

A better starting point would to go back to basic principles. What are the essential bundle of safety net services that students may need regardless of whether they are at a small private college or a sandstone public university? We would suggest things like independent academic or grievance rights advice, orientation information, financial or welfare counsellors, international student support, some form of independent student representation and policy support to raise student concerns through official channels. This safety net should be funded from a universal fee. Some of these services you may hope you never need to access, but like compulsory third party insurance, are essential for institutions to meet their pastoral and duty of care obligations and remain responsive to the needs of their students.

Then there is a second bundle of student services related to campus life and engagement such as sports, clubs, cafeterias, galleries, activities. Not all HEP providers want to offer this campus life experience, nor are they compelled to do so. However, the folly of the current arrangement is that it prohibits all Australian HEPs, even those aspire to offer a model of education similar to leading world universities, from having a revenue stream to fund this.

VSU is a legislative chain to entrench extra-curricular mediocrity on Australian higher education compared to the leading universities of the world. Those who are genuine about creating more diversity, student choice and having world class universities in Australia should assist in this by repealing the current legislation.

## **Appendix**

### **Separate pdf**

Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures Bill 2009)*

Includes campus by campus breakdown of impact of VSU up to 2009. One change in 2010 is the collapse of the Ballarat University Students Association.