

Supplementary Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into higher education funding and regulatory legislation

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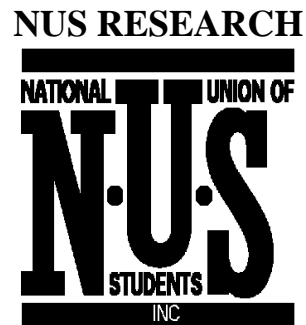
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October 13 2003

Matters Raised In Supplementary Submission

- 1. HECS-HELP Legislation**
- 2. Full Fee Cap Provisions**
- 3. Lifting the 2% over-enrolment limit to 5 %**
- 4. Treatment of scholarships for income support purposes**
- 5. Student Learning Entitlements**
- 6. Impact of the package on women**
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1. HECS-HELP Legislation

In our original submission to the Senate Inquiry NUS offered the scenario that due to the failure of the *BAF* package to fix the indexation problems associated with university funding that universities would have consumed the 30% fee windfall within several years and would be pushing to have the cap lifted on fee hikes.

The 25% increase in student: staff ratios over the last decade suggests that government hopes of further 'efficiency' improvements from university staff are at best marginal. The *BAF* package offers little to increase non student private contributions to university revenue. So student fees will become the sole significant price variable that universities can use to off-set declining funding per student from the Commonwealth.

Some universities such as the University of Sydney and the University of Melbourne have indicated that they will move rapidly to charging the maximum allowable 30% for most courses (apart the protected areas of from teaching and nursing), while others have admitted that they follow suit to keep up their brand image. Others, servicing disadvantaged communities will end up reluctantly following suit, albeit more slowly, due to the long term unsustainability of the package without further student fee increases.

The legislation is consistent with NUS's longer term prognosis of future HECS hikes. It does not contain a 30% legislative cap on HECS-HELP increases. Instead it just lists what the rates will be in 2005 (see *Higher Ed Support Bill 2003* Sect 93-5 (pp 86-8)). The question is what happens after then. Under Sect 238-10 (pp 193-4) the Minister has the power to create HECS-HELP Guidelines). The HECS-HELP Guidelines are not yet publicly available. Presumably the government's intention is to create the cap as part of the disallowable ministerial HECS-HELP Guideline.

The Minister has confirmed that there is no cap in the bills but added that he personally has no intention of allowing universities to increase their fees beyond 30%. Even if we accept the Minister's word it is unlikely that he will be Education Minister in several years time when the pressure from unis to lift the cap will mount again.

So we could then be in a situation where a future Education Minister could try to quietly slip through 2 or 3% increases in the maximum student contribution rate each year in the ministerial guidelines without all the scrutiny of the major legislative change to HECS that have arisen from the path that Senator Vanstone and Minister Nelson have pursued. A solid pro-student Senate could block it but depending on the balance of power the guidelines could be regarded as a minor responsible budgeting matter and be passed.

There is also the current dilemma for the Senate in passing bills without having seen the ministerial guidelines governing key matters like maximum student contribution levels - its like giving the minister a blank cheque.

Another matter that has not had much attention drawn to it so far is that the *Higher Education Support Bill* narrows eligibility for HECS-HELP to only Australian citizens and the holders of permanent humanitarian visas (Sect 90-5). This excludes New Zealand citizens and other permanent visa holders who currently can access HECS and PELS place. This tightened eligibility is also applied to the FEE-HELP (Sect 104-5) and OS-HELP (Sect 118-5) loans.

This is at odds with Sect 70-5 (3) which deals with the eligibility to the proposed Student Learning Entitlement which maintains the current eligibility criteria (ie, includes New Zealand citizens and all permanent visa holders).

Regardless of whether or not this is a drafting error NUS is concerned that New Zealand citizens and many permanent visa holders resident in Australia will be denied not only access to HECS-HELP but even access to a loans scheme to cover full fee entry (unless they are doing a bridging course for overseas trained professionals). It appears that the only way these categories of Australian residents will be able to access higher education is to pay full fees up front, essentially treating them in the same manner as international students.

2. Concerns with the full fee cap provisions

The *Higher Education Support Bill* does contain the legislation dealing with the caps on the percentage of full fee paying domestic students in a particular course. However, NUS is concerned that the legislation as it is currently drafted does not effectively provide the limited protections indicated by the Minister in *BAF*.

Section 36-35 deals with the percentage of Commonwealth supported places to be provided by Table A providers in their undergraduate courses. The section lifts the cap from 25% to 50% as the Minister outlined in *BAF*. However, 36-25 (1) (a) (i) could be

interpreted as a loophole clause which excludes courses from this provision if the course is one which “the provider must not enrol persons as Commonwealth supported students”.

There may well be legitimate reasons for there to be exceptions to the caps, ie employer funded courses where the student fee acts as a financial transfer from business to the university. However, as a recent *Sydney Morning Herald*¹ story highlighted the clause is open to a broader interpretation. The story claims that at least two unnamed Vice-Chancellors interpreted the clause as allowing universities to have some courses filled with students with full fees. One scenario could be that a future Education Minister could circumvent the cap in some high demand courses by designating them as full fee only courses, thus allowing prestigious universities to offer full fee only undergraduate courses in high demand courses like law.

A second issue is the cap on Medicine students. Under *BAF* the Minister indicated that for the first time universities would be able to enrol domestic students for undergraduate medicine degrees. Unlike other disciplines the Minister indicated that a 10% cap would be set, but there is no mention of this in the legislation. Clauses 36-35 (1) (b) and (2) deal with the cap for medicine students. Under these clauses the minister will determine in writing how many subsidised places will be provided by each provider and that they must make up at least 50% of the enrolment. This effectively allows the Minister the discretion to allow universities to admit up to 50% of their undergraduate medicine load as full fee paying.

3. Lifting the current two per cent over-enrolment limit to five per cent.

The reform package removed marginal funding for over-enrolments and imposed a two per cent limit within which institutions could enrol above their target number of students or face heavy financial penalties. This measure addressed concerns across the sector that over-enrolled places, which attract a large marginal funding rate, were putting pressure on quality and causing overcrowding. Institutions are currently over-enrolled at around eight per cent across the sector. The Vice-Chancellors expressed concern that it was difficult to accurately predict university enrolments within a 2% band on the March 31 census date. The Minister then announced that the cap would be lifted to 5%.

The measure partially addresses a concern that NUS discovered and ran with in the media. Under *BAF* the government will be providing funding to convert 25,000 of the 32,000 marginal funded over enrolments (in 2002) into fully funded places. This would be phased in over 3 years from 2005. However, some universities such as Sydney University, indicated that they would be embarking on sweeping cuts to marginal places immediately so that they would not get caught out by pipeline effects (ie, students once admitted need to have the place set aside for them to complete their degree – calculated to allow for attrition rates). NUS pointed that this gap could lead to a shortfall in the

¹ ‘Uni laws leave door open for full fees, *SMH*, 9/10/03

number of HECS-liable places for new students in 2004 and 2005 and push up entry scores. NUS estimated that theoretically 25,000 places were at risk (using the 2002 enrolment load).

HECS Places At Risk Under Original 2% Target Load (Theoretical)

University	2002 Marginal Load ²	2% Target Load (2004) ³	Gap between 2002 and target load ⁴
Charles Sturt	3907	182	3,725
Macquarie	1123	182	941
Southern Cross	364	102	262
Uni of New England	583	129	454
UNSW	1620	300	1320
Newcastle	1748	230	1518
Sydney	2061	412	1649
UTS	1037	231	806
UWS	659	342	317
Wollongong	926	148	778
NSW TOTAL	14,028	2,258	11,770
Deakin	762	260	502
La Trobe	1197	265	932
Monash	371	402	0
RMIT	850	261	589
Swinburne	904	102	802
Melbourne	894	344	550
Ballarat	271	61	210
VUT	809	171	638
VIC TOTAL	6,058	1,866	4,223
CQU	532	130	402
Griffith	908	315	593
James Cook	809	157	652
QUT	2239	360	1879
Queensland	1386	376	1010
USQ	479	132	347
Sunshine Coast	234	43	191
QLD TOTAL	6,587	1,513	5,074
Curtin	1025	236	789
ECU	896	214	682
Murdoch	443	117	326
UWA	367	180	187
Notre Dame	24	8	16
WA TOTAL	2755	755	2000
Flinders	729	144	585
Adelaide	854	170	684
Uni SA	346	265	81
SA TOTAL	1,996	579	1350
ANU	179	120	59
U Can	110	100	10
ACT TOTAL	265	220	69
U Tas	249	170	79

² DEST, Projected marginal funded places 2003, DEST Question No: E90_03 and E662_03, 2003, Senate Additional Estimates Hearing

³ 2% of undergraduate 2004 target load in DEST 2003-5 Triennium Report

⁴ Intended to be indicative of maximum 'a risk' effect. Will vary depending on pipeline formula used by campuses and future changes in target loads

AMC	0	11	0
Tasmania	249	181	79
Northern Territory	191	46	145
ACU	644	117	527
NATIONAL 2003	32,332	7,524	25,237

To Minister did respond to NUS's concern and expanded the over-enrolment band so that there was no requirement from the Commonwealth for the universities to scrap 12,000 of the HECS places theoretically at risk (DEST estimates, NUS estimate is 11,358). However, as some of those 12,000 notionally saved HECS places were at universities where which were already within the 2% target load, NUS estimates that this measure notionally saved 9,440 HECS place from being at risk of being scrapped - 25,237 (under original 2%) minus 15,797 (under new 5%).

HECS Places At Risk Under New 5% Target (Theoretical)

University	2002 Marginal Load ⁵	5% Target Load (2004) ⁶	Gap between 2002 and target load ⁷
Charles Sturt	3907	455	3,452
Macquarie	1123	455	668
Southern Cross	364	255	109
Uni of New England	583	323	260
UNSW	1620	750	870
Newcastle	1748	575	1173
Sydney	2061	1030	1031
UTS	1037	578	459
UWS	659	855	0
Wollongong	926	370	556
NSW TOTAL	14,028	5646	8,578
Deakin	762	650	0
La Trobe	1197	663	0
Monash	371	1005	0
RMIT	850	653	197
Swinburne	904	255	649
Melbourne	894	860	34
Ballarat	271	153	118
VUT	809	428	381
VIC TOTAL	6,058	4,667	2,025
CQU	532	325	207
Griffith	908	788	120
James Cook	809	393	416
QUT	2239	900	1339
Queensland	1386	940	446
USQ	479	330	149
Sunshine Coast	234	108	126

⁵ DEST, Projected marginal funded places 2003, DEST Question No: E90_03 and E662_03, 2003, Senate Additional Estimates Hearing

⁶ 2% of undergraduate 2004 target load in DEST 2003-5 Triennium Report

⁷ Intended to be indicative of maximum 'a risk' effect. Will vary depending on pipeline formula used by campuses and future changes in target loads

QLD TOTAL	6,587	3,782	2,803
Curtin	1025	590	435
ECU	896	535	361
Murdoch	443	293	150
UWA	367	450	0
Notre Dame	24	20	4
WA TOTAL	2755	1888	950
Flinders	729	360	585
Adelaide	854	425	429
Uni SA	346	663	0
SA TOTAL	1,996	1448	1014
ANU	179	300	0
U Can	110	250	0
ACT TOTAL	265	550	0
U Tas	249	425	0
AMC	0	28	0
Tasmania	249	453	0
Northern Territory	191	115	76
ACU	644	293	351
NATIONAL 2003	32,332	18,882	15,797

All this is theoretical – based on worst case scenarios. Universities rather than the Commonwealth determine how much they are prepared to over-enrol. In practice universities are now making their actual decisions how many HECS places that they will be cutting. Charles Sturt University is 40% over-enrolled but 3,011 EFTSU is part of a special arrangement for police training with NSW government. If this special arrangement is excluded the over-enrolment is 9% but CSU is negotiating to maintain this arrangement.

In response to media interest on the matter some NSW universities have announced the following cuts to their HECS-liable intakes next year: Sydney Uni – 500 places, UWS – 450, Wollongong – 200, Australian Catholic Uni (NSW) – 200. Newcastle Uni said that it should be cutting 200 places next year but was waiting to see if the bill would pass parliament.⁸ So while these cuts fall short of the worst case scenario in the tables above the loss of at least 1300 HECS places in NSW alone is a set back for the sector and paves the way for continued stagnation in opportunities for those who can't afford to pay full cost fees. These cuts for 2004 HECS places come on top of the estimated 10,000 HECS places that preliminary data seems to indicate have been lost this year as universities have pre-emptively moved to phase back their over-enrolment loads. While a precise number cannot be given until universities make their decisions about cutting their over-enrolment load these losses considerably outnumber the new HECS places coming on line out of the *Backing Australia's Ability* and regional initiatives for the last federal election. This combined with the loss of marginal funding may have severe implications for the some campus sites – for example the Lilydale campus of Swinburne University has close to half its enrolments as marginally funded over-enrolments.

⁸ Sydney Morning Herald, 16 Sept 2003

4. Treatment of fee exempt scholarships for income support purposes.

The G-8, AVCC and NUS have campaigned over the issue of FACS financially penalising students eligible for financial assistance for receiving university or commonwealth equity scholarships. Such as measures are treated as taxable income even when the student receives no actual income (as in the case HECS-free scholarships). For the small commonwealth scholarships this acts to effectively prevent them from supplementing their income with part-time work. In the case of the HECS-free scholarships the amount was enough to prevent them from receiving all or most of their Youth Allowance, AUSTUDY or ABSTUDY. Needy students were refusing to accept the university HECS-free scholarships because they made them worse off financially

The Minister's last minute sweetener offered an amendment which would make the HECS-free scholarships no longer regarded as taxable income. This is estimated to benefit about 2,000 students and is welcomed. However, it does not address the all the other scholarships where a student receives some direct financial aid such as the commonwealth scholarships created in the *BAF* package.

The Senate is still waiting for guidelines to cover such basic issues for the scholarship scheme as:

1. which students are eligible;
2. how decisions will be made about who receives scholarships;
3. the conditions that apply to scholarships;
4. the level of grants that specific universities will receive for scholarships;
5. how scholarships will be paid to students.

5. Student Learning Entitlements

The *Higher Education Support Bill* does add some detail of how the proposed learning entitlements.

Part 3-1 of the bill distinguishes between Ordinary Standard Learning Entitlements (five years) and Additional Student Learning Entitlements (Sect 73-20) but does not specify a formula for how much the additional learning entitlement will be. Presumably this will be in the yet unseen Student Learning Entitlement Guidelines. The Minister has indicated that the additional learning entitlement will be equivalent to one year full time study beyond the length of the degree. So for a five year program this would amount to a 5+1 entitlement (six years).

The government offers no rationale why students doing longer degrees are less likely to fail topics or need less subsidy to pursue further study. One concern is that it is a common practice in medicine that failing a single topic requires the student to repeat the entire year. Under this scenario a student failing a second topic would have to repeat that whole year and pay full fees – a very harsh call. There also is some concerns over how

students switching from ordinary degrees to honours degrees will be treated both in administrative terms and also whether the learning entitlement could act as a barrier to students seeking that path.

As well as all the objections we have previously made about the learning entitlements this is discriminatory against students doing longer or double degrees as they will only get one additional year of subsidy to allow for failed topics or doing further study. Students doing the standard three year bachelor receive two more subsidised years (3+2 making a total of 5 Equivalent Full Time Student Loads). Students who exceed the entitlement will have to complete their courses by paying full fees.

The bill is silent on whether the learning entitlements will be able to be replenished after a defined number of years. If it is not then the introduction of a finite learning entitlement becomes an even more serious obstacle to goal of creating an education system that encouraged life-long learning (as numerous reports have recommended).

There will be a reduction in Student Learning Entitlement if you are enrolled at the census date, meaning that if a student withdraws without failing after the census date, they will forfeit their SLE for the semester.

The guidelines for special circumstances, ie, for appealing against the loss of one's Student Learning Entitlement, have not yet been written. However, the university will make the determination about whether a student has faced special circumstances and have their Student Learning Entitlement reinstated or not. Students will be faced with the prospect not only of losing their HECS if they fail or withdraw, but also of losing their Student Learning Entitlement. These students will require the support of their student union to advocate on their behalf, even more than they do currently. This is the sort of situation which an individual student cannot envisage when they begin to study, and the sort of assistance which student unions provide may have been cut if the VSU legislation is passed.

The university will also have to deal with a large increase in the number of appeals from students, as failing a unit will have even greater financial consequences than now. Universities should envisage an increase in litigation over assessment where repeating a topic may involve the student having to pay full cost fees as they have exceeded their entitlement.

6. Impact of Package on Women

HECS deregulation and women:

All the major reforms in this legislation threaten the position of women in higher education. The deregulation of HECS fees will place an even greater HECS burden on women, who already face large debts which take them years to pay. The increase in fees

is justified by the 'private return' to university education, which is \$622 000 over a lifetime for men, but drops to \$412 000 for women⁹.

The difference between incomes for men and women and the fact that women spend more time outside of the paid workforce already means that women take longer to pay off their HECS debts. 93% of men will have paid their HECS debt by age 65, but only 77% of women will¹⁰.

The average starting salary for new male graduates is 37,000, that's \$2,000 more than the average for female graduates¹¹. These are people from the same system, which offers the same education. Closing this gap is not just a matter of having more women in 'non-traditional' areas, real economic equity demands that women are adequately paid in any career that they choose.

differential HECS and women:

The participation of mature part-time and external students were found in the suppressed DEST research to have fallen noticeably since the introduction of differential HECS. Many women study part-time and externally because they have so many roles as well as being a student. There is anecdotal evidence to suggest that if a women returns to study as a mature student she places great pressure on her family and relationship. Campus based caseworkers and advocacy officers working for regional student unions in particular are seeing an increase in the number of cases of mature women experiencing relationship breakdowns, and subsequent financial and study difficulties, when they take on study.

women and debt:

In addition to a large HECS debt, students often graduate with other debts incurred during their degrees. About one in ten students then have to obtain a loan in order to study and have loans on average of almost \$4000¹². Students relying on government income support are about three times as likely to take out a loan to continue their studies. Students from equity groups are also far more likely to take out a loan, including students with a disability, people who moved to study, those from low socioeconomic backgrounds, and women with children or Indigenous women.

learning entitlements and women:

The learning entitlement threatens to impact harshly on women and other equity groups, particularly people from low socio-economic backgrounds. The learning entitlement will place constraints initially on the types of courses which students feel comfortable choosing to study. There will be incentive for students to study shorter courses, for

⁹ DEST, *Setting Firm Foundations: Financing Australian Higher Education*, DEST, Canberra, 2002, page x.

¹⁰ Bruce Chapman, *The Australian Income-Contingent University Charge System*, ANU, Centre For Economic Policy Research, June 1996, page 3.

¹¹ Herald Sun, *Graduates Miss Jobs*, Wednesday 11/12/2002, page 14

¹² Michael Long and Martin Hayden, *Paying Their Way: A Survey of Australian Undergraduate Student Finances, 2000*, AVCC, October 2001, page 57.

example a three year as opposed to a longer or double degree, to give them more leeway in their learning entitlement, no matter what they want to study or what their aptitude is.

If a student does fail a course, or change courses because they find they did not make the best initial choice, then they will face significant financial penalties from paying full fees in order to complete their study. This will be a financial burden in particular to many women who know they will be able to command lower incomes over their lifetimes.

Individuals will receive an additional learning entitlement from the Commonwealth after a certain number of years, we still don't know how many. If the learning entitlement is not replenished, say for 15 or 20 years, this will have a major impact on people trying to access re-training. Obvious examples include women seeking to re-enter the workforce after time off child-rearing work or re-training due to the rapid changes to industry under globalisation.

extra costs faced by women:

A significant issue for women in their struggle to juggle university, employment and family commitments is the cost of and access to childcare, as women are still the primary care givers in our society. Women with children who are studying at university often face severe problems with lack of available childcare places on campus, and the cost of those places that are available. While a single parent receiving Youth Allowance or Austudy with one child receives \$395.30 a fortnight, or \$331.30 if they are in a relationship, childcare costs are as high as \$195 a week. Even with the full Childcare Benefit payment and other university based assistance it is estimated that childcare costs can account for 20 per cent of a student's expenditure every week¹³. Women are also particularly disadvantaged by the capping of work-related childcare assistance at 50 hours per week, as any combination of work, lectures, commuting and study time will require more than 50 hours a week¹⁴.

postgraduate women:

The proposed changes to charge an interest rate on top of fully deregulated postgraduate coursework fees are detrimental to the chances of women taking on postgraduate work. There are professions where a postgraduate qualification is necessary for specialisation. Amongst the nursing profession, midwifery is an obvious example of a profession dominated by women where a specialisation requires a postgraduate qualification. These will be subject to full-fees, plus an interest rate of 6.5 per cent, yet often the extra study is not reflected in significantly higher rates of pay.

The difference between postgraduate starting salaries for men and women is even greater than at the undergraduate level, women's salaries are only 76 per cent of their male counterparts¹⁵. A woman places herself at even greater income disadvantage simply by

¹³ Melbourne University Student Association, *Submission to the Senate Committee Affairs Committee Inquiry into Poverty and Financial Hardship*, January 2003, page 19.

¹⁴ *ibid*, page 21.

¹⁵ Australian Financial Review, *Graduate's salaries start below average*, Friday 6/12/2002, page 5.

furthering her qualification with postgraduate work. And she has a postgraduate loan on top of her HECS debt to show for it, one which will now attract an interest rate on top of inflation.

Postgraduate students will now borrow for their coursework fees within the FEE-HELP loans scheme. Under this scheme students can borrow up to a total of \$50,000. A woman wanting to undertake postgraduate study may have previously accessed part of her loan as a full-fee paying undergraduate, either by enrolling in a full-fee paying place, or because she used up their five-year entitlement to a HECS place. If this is the case she will only be able to borrow part, if any, of her fee.

Those women who go on to postgraduate coursework degrees, or those who take a full-fee paying place, face escalating levels of debt. The New Zealand government deregulated fees and introduced interest rates on student loans in 1992, and since then fees have spiralled and student debts are causing serious consequences for the community. The New Zealand Government has already had to implement changes to write off interest rate payments for low-income students after repayment times had stretched to 17 years for men by 1999, and a staggering 51 years for women. Despite interest rate write-offs, payments times are still estimated at 15 years for men and 29 years for women¹⁶.

There are further concerns that the level of student debt is impacting on graduate life choices, in particular in relation to child bearing and marriage, establishing business, paying for health care, and making provisions for retirement and superannuation¹⁷. In a survey of bank managers in New Zealand, the NZ University Students' Association found that around half of those who had declined finances from applicants with student loans considered those loans as a contributing factor. Graduates have reported being unable to secure loans because of their student loan debts combined with loan incomes, and some have not even bothered to apply for loans because of their level of student debt¹⁸.

7. Anti Student Organisation Legislation

The *Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) Bill 2003* prohibits higher education providers from making it a condition of enrolment that a person become a member of an association **AND** the collection as a condition of enrolment of any amount that does not relate directly to the course. This bill amends the *Higher Education Support Act* to insert VSU into the quality and accountability mechanisms required for Commonwealth subsidised institutions. The bill confirmed the widely tipped rumours that the Government is seeking to introduce 'WA-

¹⁶ NZ House of Representatives Education and Science Committee, *Inquiry into Student Fees, loans, allowances and the overall resourcing of tertiary education*, October 2001, page 42-43.

¹⁷ *ibid*, page 24-25.

¹⁸ New Zealand University Students' Association, *Student Loans Effect on Graduate Borrowing: A Survey of Bank Managers and Loans Officers*, September 2002, page 2-3.

style VSU', ie the state of affairs in WA from 1996 when the SOS funding was withdrawn until the legislation was repealed in 2002.

When a similar bill was introduced in 1999 it was opposed not only by the ALP, Democrats and Greens but also in some State Parliaments by Liberal MPs. The Tasmanian Liberal MPs were happy to back a bipartisan motion defending the existing arrangement they had established in 1994 at the University of Tasmania which had a compulsory fee with an opt-out conscientious objection provision for membership:

*'That this House expresses its concern at the Federal Liberal Government's attempts to outlaw compulsory student services and amenities fees and notes the detrimental effect that such a move would have on the ability of student unions to provide a wide range of essential services.'*¹⁹

In South Australia the then Liberal-controlled House of Assembly passed the following motion put forward by a Labor MP opposing voluntary student unionism:

'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'.*²⁰

The title of the bill, the *Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) Bill 2003*, points to a core government argument - that it is getting rid of the last up front fee – student amenities fees. This argument is a furphy, as virtually all student organisations have some form of deferred payment option which allows students repay over a year or longer. Unlike the HECS-HELP or FEE-HELP these loans do not attract a CPI increase or interest rate. If there are any exceptions NUS is happy to work with the parliament and campus student organisations to ensure that is a universal provision of deferred payment options for student amenities fees. There is no need to resort to this legislation to stamp out the last up front fees.

In this part of the submission we wish to address three more central issues:

- The false separation between academic and non-academic aspects of study;
- Freedom of Association;
- Market provision of Student Services

Role of Student Organisations in the University Education Process

Implicit in the logic of the bill is that there is an absolute separation between the delivery of education courses purchased by students and the 'informal' parts of campus life that this bill treats as an optional add on extra. NUS contends that student organisations act

¹⁹ Parliament of Tasmania, House of Assembly, Hansard, 25 March 1999

²⁰ Parliament of South Australia, House of Assembly, Hansard, 27 May 1999

in partnership with the formal academic side of campus life as part of the education process associated with a good universities. As such there is a public benefit from this flowing to all students. This separation is based on a fallacy that a good university education is just a series of discrete modules that the consumer can mix and match in any order to come up with the package they wish to purchase.

While students do exercise choice over which university they attend and what degree they enrol in it must be remembered that universities are transformative institutions engaged in a broad process of education. They are more than just vocational and credentialing institutions. Universities have education mission statements where they outline the attributes they aim to be associated with graduates of a university. Typically these features include teamwork, leadership skills and being able to be an active citizen and contributor to the community. Student controlled organisations work in partnership with the formal side of the university to sustain a campus culture where these attributes can develop. Chancellors and Vice-Chancellors have gone on the public record in this Inquiry and also when the government unsuccessfully attempted to introduce voluntary student unionism in 1999 to highlight the role that student organisations play in the broader education of university graduates:

“I seriously believe that experience in student politics or in the SRC – that kind of thing – is enormously valuable both to the individuals who participate in it and ultimately to the country in terms of the training and so on they get. Most people are prepared to settle for saying that we want sport, debating and food outlets, and we need to raise fees for that. I am prepared to go much further and say that you should provide students with the opportunity to be engaged in serious political involvement while they are students, because it is ultimately to the net benefit of society”

Professor Gavin Brown, Sydney Uni V-C, Sydney hearing of this Inquiry

The extracurricular activities provided by membership of a Students’ Union...provide the opportunity to develop skills in leadership, teamwork, representation and social interaction which are invaluable to students in their careers and in their roles as citizens
Former ANU Vice Chancellor, Professor Terrell, 1999

The student clubs and societies provide fora in which students mix with students from other disciplines, where they may join together to further a common interest in music or the arts, where they engage in debate on some of the social or political issues of the day. If Universities cease to be the venue for discourse or dissent, the next generation will be supine in the face of authority and our democracy will be a hollow incantation. Therefore membership of a students union has been traditionally regarded as a condition of membership of the University community.

Hon Sir Gerard Brennan, Chancellor University of Technology, Sydney, 1999, former Chief Justice of Australia

A university does more in offering education than offer course modules off the shelf. It offers a nurturing and supportive environment in which students can get the maximum benefit from the courses on offer and also from the experience of attending university.

The university experience is essentially a community one and students gain life skills as well as academic education. If students at ANU were to get no more from their time than their course-work materials and a graduation certificate at the end, then the university would not have done its job properly...ANU's view is that the full range of services, including those to encourage a healthy lifestyle, should be available, from which students can choose according to their changing needs. The ANU model encourages a wide range of extra-curricular activities to ensure that students are able to access them when and as their interests direct. The choice of which activities they do access is entirely theirs.
Former ANU Vice Chancellor, Professor Terrell, 1999²¹

At a time when the social fibre of the community is being atomised campus student organisations provide a valuable vehicle for the development of active citizenship. University student organisations are an example of an institutions which allow citizens to engage in the debate and activities of direct relevance to them - for example the number of arts community, politicians, journalists, community leaders and sports people who gained their initial experience in student organisations. They act as a social equaliser by allowing people outside of traditional professional circles to get their foot in the door – whether it is putting on a comedy revue, learning layout skill with the student paper, getting up in front of student meetings to argue a point, or becoming treasurer of the cricket club. The lectures are the theory, the campus culture is part of the practice - the start of training for how the future graduate can make a contribution to their society as an active citizen.

No university can compel that all its graduates must learn to become active citizens anymore than it can compel its students to attend every lecture and tutorial. But it is part of the education mission of the universities and it is legitimate that the students structurally have the opportunity do this on a universal basis. It should not just be an option designed for those from family backgrounds of active community involvement, the experience of VSU in Western Australia was that the bulk of those who took out membership were those from the wealthy backgrounds. The ‘optional extra’ style of argument, particularly for initial degrees, is really an elitist argument that we should have a first class university education for high aspiring wealthy people to become community leaders and that everyone else should settle for a second class university education as a meal ticket.

Much of the educational benefit from student organisations flows directly from the element of ‘student control of student affairs’. 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’ the universities are sending the message to their students that they are adults now and should be taking on responsibility for some aspects of their university experience. Both the graduates and the whole community benefit from breaking down a culture of passivism and paternalism.

²¹ Professor Terrell, Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee. Inquiry into Higher Education Legislation Amendment Bill 1999, Submission No. 186, May 1999

Both sides of the current parliament have former office bearers of student organisations in their ranks: the list includes the Hon. Eric Abetz, the Hon. Tony Abbott, the Hon. Peter Costello, Michael Danby, Julia Gillard, the Hon. Joe Hockey, Kerry Nettle, Tanya Pilbersek, the Hon. Chris Pyne, and Natasha Stott-Despoja.

Freedom of Association

The long standing argument used by VSU proponents is freedom of association. First of all it is important to be clear what right VSU proponents seek to defend. The freedom of association refers to the positive right of individuals to form associations with anyone whomsoever one pleases. Strictly what VSU proponents are referring to is the negative right of association (or dissociation) – the right not 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 in the context of repressive human rights and industrial laws. Many proponents of the negative right of dissociation try conflating their arguments with the legal and ethical arguments around the positive right of association. NUS believes that it is intellectually dishonest to conflate the two.

Secondly 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 compared 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. Public associations should be regarded differently from those associations established by individuals.

While NUS is not arguing that student associations are professional associations there is an important matter of principle transferable to these deliberations. If we take the James Cook University Students' Association, the organisation that was involved in the ACCC decision earlier this year, it is clearly 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 clearly performing public functions delegated to it by the James Cook University Council which in turn performs functions delegated to it by the Queensland parliament (the objects of the Association set out in its constitution are determined by the University Council). In short the James Cook University Students' Association is a public association carrying out delegated public functions. While not all student associations are established (or at least mentioned) in university acts, they are generally also created by University Councils under powers delegate from State parliaments. 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 dissociation arguments.

In Australia the juridical terrain associated with the universal membership of student organisations has been shaped by the courts through a series of juridical interventions launched by supporters of the Australian Liberal Students' Federation. One of these cases, *Clark v University of Melbourne No. 1* (widely known as the *Kaye* judgement), cast doubt on the power of the University to make statutes and regulations governing the levying and collection of fees for purposes other than of an academic nature. Supporters of the Australian Liberal Students' Federation launched a number writs against various universities. One such writ made it to court. It was taken against the University of NSW Union by a Liberal Student Federation supporter, Mike Farrell. The judgement in case of *Farrell v Mulroney and others* was handed down by Rath J in the NSW Equity Court.

The *Rath* judgement found that the University of NSW did have the power under the university's Act to impose a compulsory levy on students on behalf of the Students' Union and that the Union had the power to use the funds in accordance with its constitution.²² Rath stressed the corporate nature of the university, that the university was made up of different bodies with differing interests (ie, students, academics, administration). He cited favourably evidence given by an educational historian:

I have studied the operation of education systems and believe that the nature of the environment within which teaching takes place strongly influences the effectiveness and outcome of that teaching. One element is the provision of a favourable climate for teaching within tertiary institutions is the recognition and acknowledgment that students within these institutions have a corporate interest that differs from that of the teaching staff and the administration. In all tertiary institutions with which I have been associated this interest has been through the operation of an organisation representing student interests and run on participatory lines.²³

Farrell argued that the power for UNSW Council to levy charges was limited to facilities provided by the university. Rath rejected this and argued that the claim failed "to take into account and give due weight to the corporate nature of the University. A facility provided by its students may be as much a facility provided by the University as a facility provided by the (University) Council itself." Significantly Rath stressed the focal importance of the political/representative side of student organisation functions: "On the evidence in this case, particularly that regarding bodies representative of students as established features of university activity, there is in my view a clear nexus between the charge for the Students' Union and the objects and purposes of the University." He concluded:

In my view, having regard to the evidence and the aims of the Students' Union, it is an institution within the University, and that it is part of the corporate activity of the university. Its functions and purposes are incidental to the conduct of the University as a tertiary education establishment. That being so, the levy of charges for the compulsory payment of fees is reasonably incidental to the objects and purposes of the University, and that levy may properly be made pursuant to a by-law under s.20. (of the UNSW Act). The validity of payments that the Students' Union itself may make is to be determined in accordance with its constitution. The constitution is to be given a fair and reasonable construction. Its language is not to be restricted by *a priori* concepts of "non-University purposes".²⁴

²² *Farrell v Mulroney and others*, 1 NSWLR 221, 1978

²³ *Ibid.*

²⁴ *Ibid.*

The judgement awarded costs, including UNSW's legal representation, against Farrell. The *Rath* judgement stemmed the expected flood of legal action expected from Liberal students against other universities in the wake of the *Clark No. 1* judgement.

Inspired by the *Rath* judgement the University of Melbourne took the Clark case to the Full Bench of the Victorian Supreme Court. The Full Bench found that the judge in the original Clark case had erred and that universities were allowed to charge an automatic fee for non-academic purposes:

The essence of the University's powers is that they are powers of self-government affecting only those who choose to become members by enrolment or the acceptance of employment or office within the University. Their origin 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 cannot touch anyone who does not voluntarily bring himself (sic) within their reach. Both in a university and in a voluntary association or corporation formed by action of its members there will be those who consider that a particular statute, regulation or rule should not be passed, and may on enrolment or joining hold such a view. They are, however, bound, but only because they are or become members. There is no right under the general law in members of the public to be admitted to the University (though the university's own statutes and regulations may provide that defined persons will be admitted) which the University is regulating or controlling, or upon the exercise of which it is imposing conditions.²⁵

In essence the Full Bench argued that the individual opts to enter the University community, in this case is accepted as a student, and as such accepts the conditions of participation which includes the student service fee. The element of voluntarism, so crucial to the VSU case, is found to lie at the point of entry to the institutions since no-one is obliged to make that choice. The regulations governing automatic membership of student organisations only apply to those who have voluntarily chosen to come under their coverage by joining the university community.

The South Australian Supreme Court ruled in 1989 that the *Clark No. 2* case was the authoritative legal precedent on the issue of universal membership of student organisations. This judgement arose when an Adelaide University law student claimed that the University lacked the power in the University Act to require membership of the Adelaide University Union, to demand the payment of the Union Fee or to apply sanctions for the non-payment of the fee.²⁶ The student initiated the case as an "aggrieved individual" rather than as part of an orchestrated ALSF campaign but he did draw heavily on arguments used by the ALSF. He claimed that the relevant clause of the university's statutes was *ultra vires* to the University of Adelaide Act 1971-1978 and that the compulsory fees were objectionable. This was because they (a) constituted compulsory unionism, (b) constituted a tax, (c) contravened the *Universal Declaration of Human Rights* (d) were *ultra vires* because the university had no express power to act and could not use its powers over another incorporated body. The case of *Harradine v The University of Adelaide* was heard in the South Australian Supreme Court in 1988 by Justice Prior (*Harradine No.1*)²⁷ and on appeal to the Full

²⁵ *Clark v The University of Melbourne* (No. 2) VR 66, 1979

²⁶ Fairley, A., op. cit.

²⁷ *Harradine v The University of Adelaide* No. 321 of 1987, Judgement of Honourable Justice Prior, delivered 7 October 1988

Court (*Harradine No. 2*) in mid 1989.²⁸ He unsuccessfully petitioned to have the High Court take up the case in 1992.²⁹

Justice Prior's ruling in *Harradine No. 1* rejected the student's assertion that 'compulsory unionism' was an issue because the Adelaide University Union was not an industrial union. Drawing from *Clark v Melbourne University No. 2* Prior agreed that the relevant clause requires an undergraduate to belong to an association, but added that this requirement was a lawful condition attaching to his enrolment as a student at the University (presumably this equally applies to women). The student had signed an enrolment documentation agreeing to be bound by the Statutes and Regulations of the University which included the fee provisions.³⁰ This reaffirmed the key points of the *Clark no. 2* judgement:

1. That the point of voluntarism was at enrolment; there is no legal obligation to become a student.
2. That the Parliament had been well aware of the University Union and how it collected its fees since the Union was founded and hence implicitly supported the status of the Union.
3. That the nature of fee was not like a tax and did not require specific authorisation from the legislature.

Prior also found that the fact that the Union had a separate legal existence as an incorporated body did not detract from the capacity of the University to impose Union Fees because the Union "remains part and parcel of University life".³¹ Prior concluded that the imposition of the fee and the membership requirement were valid.

The student's appeal was heard by Justices King, Legoe and Bollen. They upheld the key aspects of Prior's judgement including his reliance upon the authoritative precedent established by the full bench of the Victorian Supreme Court in *Clark No.2*. The student's use of the Article 20 of the United Nations Declaration of Human Rights in the appeal received abrupt treatment. Justice Bollen stated that the declaration simply is not part of the domestic law of South Australia or any other Australian jurisdiction. Even if the UN Declarations had force the appeal is misplaced because Article 20 of the Declaration:

does not demand that there be no qualification for entry to a university as a student. Nor does it contemplate a "union" at a university. Moreover, no one is compelled to belong to the union, membership follows lawful entry to graduate study at the university.³²

Justice Legoe found that the student's claims about obligations under international law to be untenable. The student had argued from the 1948 UN Declaration for the existence of certain rights (the right not to pay a prescribed fee as a condition of enrolment voluntarily entered into) which despite having no existing statute in domestic law to give it force, can invalidate actually enacted legislation (the Union fee provisions).³³ The student continued to pursue the matter with

²⁸ *Harradine v The University of Adelaide* No. 688 of 1989. Full Court decision before King C.J., Legoe and Bollen J.J.. Delivered 31 October 1989

²⁹ Application for special leave to appeal to the High Court in *Harradine v The University of Adelaide*. No. A46 of 1989, lodged 21 November 1989 (High Court Application).

³⁰ A. Fairley, op. cit.

³¹ *Harradine No. 1*, op. cit, p. 4

³² *Harradine No. 2*, Judgement of Bollen, op. cit.,

³³ *Harradine No. 2*, Judgement of Legoe, op. cit.

a petition to the High Court but it was rejected in 1992. The judgement appeared to have put the question of the legal authority of universities to collect fees and disburse them to student organisations beyond question, short of specific legislative intervention such as the current bill.

More recently there has been a test case on whether the automatic membership of student organisations violated the *Trade Practices Act*. Earlier this year the ACCC adjudicated on whether James Cook University would be granted an exemption from the third line forcing provisions of the *Trade Practices Act* which would allow it to maintain its current arrangements regarding the collection of the James Cook University student service fees. The Commission used the ‘with or without’ test was to weigh up whether the public detriment of maintaining the current arrangements (i.e., a perceived diminishing of freedom of association) was greater than the public benefit (level and range of services and representation provided). The Commission ruled that the current arrangements should be maintained the public benefit outweighed the public detriment. The judgement ruled that that the university would not be able to maintain the same level of student services and facilities such as academic and welfare services, that if the university took over the service provision it would probably charge higher charges, and that “the Commission also considers that there is a benefit in relation to maintaining the current level of independent representation provided by the JCU Students Association”.³⁴

Full Market based provision of Student Services

Apart from freedom of association style arguments a new strand of argument has developed by VSU proponents in the nineties. It runs along the lines of introducing full market conditions for student service provisions will improve them by making them more responsive to the student customer. When Dr. Kemp introduced similar legislation in 1999 he argued that VSU will ‘improve the quality of services provided on campus. When campus organisations cannot take their customers for granted they will have to provide a better service or they will lose those customers’³⁵. Dr. Nelson argued that these services should be provided by voluntary organisations and commercial enterprises in the same way as that they are provided to the rest of the Australian community”.³⁶

Underpinning this style of argument for VSU is the belief in a pure student market competition as the most effective provider of student services. This simplistic argument puts forward the contention that under voluntary student unionism that the membership can be won in two ways: on the basis of price or on the basis of quality or product differentiation. If we take the former, price, then the argument goes that the membership fee will presumably adjust downward until the foreseeable benefits of membership exceed cost. An organisation forced to reduce its membership fee on the basis of price competition will either reduce its budget (thus reducing the range of services it has to offer) or accept membership from outside. If we take the latter, quality differentiation, then it would still inevitably be competing on the basis of price, with the purchase decision dependent on the value per dollar provided by the purchase. For example you might

³⁴ ACCC, Third line forcing notification lodged by James Cook University (N90962)

³⁵ Dr. Kemp, Second Reading Speech, House of Representatives, Hansard, 11 March 1999

³⁶ Dr. Nelson, second reading speech, House of Representatives, 17 September 2003

choose between a hamburger or a restaurant dinner - you will have purchased food but of different sorts.

One of the biggest flaws is the difficulty any individual would have in making an informed assessment of the costs and benefits of membership. While market theory seems to work when deciding between a Big Mac or a Whopper it is much more problematic when trying to assess the massive package of services and representative functions on offer from student organisations. It is possible to calculate the cash value of some services: interest free emergency loans, student concessions and discounts, campus entertainment, equipment hire, lobbying to prevent the introduction of a course material fee, etc. But the actual usage of any individual is much harder to predict. Other services are tangible but not calculable: advice on academic problems, help on avoiding preclusion, study skills or safe sex advice. Still others are largely unobserved and incalculable: such as lobbying for a new assessment policy or for more flexibility on deadlines. The benefit potentially flows to all but no cash changes hands.

A related issue is the 'feel good - it won't happen to me' factor. It is a common phenomenon that students feel elated at getting into university or at having completed a successful year or two of study previously. Most students don't start the year believing that something will go drastically wrong. Student life is not predictable - just because you feel good at enrolment doesn't mean that something will not go wrong. You can never anticipate that Dr. X will try to put his hand up your skirt, or that you will be falsely accused of plagiarism, or that your parent will suddenly die and that you will need to apply for special consideration, or that your course will change half way through the year, etc. How can a student predict their need for a service in the future? It is for this same 'it won't happen to me' factor that drivers are forced to take out third party insurance instead of just relying on voluntary insurance schemes.

Both these problems are further compounded by the transitional nature of the student population. While in a workplace over a number of months or years someone might be convinced in cost-benefit terms to join an association but it is hard to see how a first year who has never studied at university could make an informed choice of the benefits of membership at enrolment. Roughly 40% of students at a campus in any particular year are studying for the first time. The transitional nature of the student population makes it very difficult to establish the customer loyalty envisaged by the pure free market approach to student service provision.

Then there is the problem of the free ride. Economists refer to a category of intangible services called 'public goods'. They are non-rivalrous in that the consumption of a particular public good by one person does not reduce the amount to be consumed by another. Campus representational services may be considered a pure public good in that all can benefit irrespective of membership status. Changes to assessment policies would be an example of this. As these goods are non-excludable voluntary membership opens up the possibility of 'free riders' who take advantage of the benefits but do not pay for them. Even many services which are in theory excludable would find the cost of enforcing exclusion of non-members more expensive than the revenue collected. Free riders have the effect of putting up the price for those who do thus reducing the number of

people who will pay because of price sensitivity. Thus the free ride opens up a vicious cycle which can wreck even the most efficient organisation.³⁷

Then there is the inter-generational free ride problem. The 1999 survey by ACUMA found that student organisations had spent \$284.7 million on new university buildings over the previous ten years. It is sound management practice to take into account generational issues when dealing with long standing assets. If the VSU legislation was brought in it would represent a massive generational free ride for student enrolling next year and beyond. On top of that the 'free ride' students get on past generations they would be avoiding making a contribution towards the maintenance of the facilities for future generations of students. In the long term it means badly run down student facilities. If a future government reversed the legislation it would take an enormous amount to reverse the damage to campus infrastructure caused by a number of years of free riding. Former AVCC President, Professor Niland, correctly argued that WA-style VSU legislation represents an 'assault on our sense of inter-generational responsibility for the quality and diversity of campus life'.³⁸

Pure market theory would decree that student organisations should set out to service the needs of those with the most money. Providing services to the needy would not be the cost efficient option because they often consume more services than the amount of fee they would be able to contribute. Hence they would push the fee level up and cause overall membership rates to drop. It is anathema to pure market theory that the wealthy should subsidise the needy. Services such as childcare or lengthy advocacy cases are not efficient according to the market. In the 1999 debate a certain Senator commented that he thought that VSU legislation in WA was good because the childcare service had been replaced by a hairdresser. Fortunately this sort of view is not shared by the bulk of the community. The pure market is not always the most efficient allocator of resources. There needs to be room for democratic judgement to find a balance between market forces and what is seen as fair and reasonable equity measures that the invisible hand of the market is blind to. Both the Coalition and Labor Governments have often stated their commitment to ensuring greater equity in access in higher education. Student unions end up fixing up a lot of the problems for those who have fallen through the system either due to market failure or government/ university planning failure. We believe that it is quite appropriate for student organisations to try to keep the socio-economic disadvantaged studying regardless of how much it distorts the operation of a pure student market.

While rejecting the simplistic notion that a pure free market is the only efficient allocator of resources student organisations do value individual student choice. Student organisations do take very seriously market signals when planning the provision of student services. This is particularly true of organisations with substantial trading operations such as University Unions and Guilds.

Direct market signals have a huge impact on the planning of trading operations. Obviously resources are concentrated at areas of high demand and cut back or eliminated at areas of low demand. University Unions and Guilds regularly review their trading operations to accommodate changing student tastes. Poorly utilised services are discarded or modified (unless there is a good

³⁷ Strickland P & Treuren G, 'Voluntary Student Unionism - Democracy or Destruction for Student Representation', Monash Gippsland Student Union, 1994

³⁸ 'Voluntary campus fees won't tax minds', *Sydney Morning Herald*, 21 January 1999

case for retaining it) and new services are introduced and tried out. In some cases where student services can be delivered more effectively to the members through private enterprise the service is contracted out.

However, University Unions and Guilds are member organisations rather than existing solely to make profit. They need to balance profit making practices alongside other objectives that the members want (even if they conflict with the maximisation of earnings). For example the members might want the services to be provided in the evening, or in isolated faculties or small associated campuses even though they cannot be delivered profitably. They might want a broader diversity of food even though it would be cheaper to offer a narrow range. Student organisations that are engaged in substantial trading operations are hybrid organisations combining elements of market forces and democratic control by the members. Even in the area of University Union and Guild trading operations a pure student market is too crude and simplistic to deliver 'better services' to students. A University Union or Guild run solely for profit (as it would under VSU) would not deliver 'better services'. It will simply deliver far fewer services and only at times and locations when it is profitable to do so. The current situation where representatives from the entire student body and associated interests (taking into account the professional advice of trading managers and the democratic input of members) are able to form better judgements about the viability of services or whether they can be contracted out than just leaving it to blind market forces.

Job losses

A not insignificant factor is the job losses to the thousands of staff employed by student organisations to deliver professional services to students. The current precludes the university from collecting the revenue to keep even those jobs that it saw as essential for the good running of the university. There are 7,000 staff employed in student organisations in Australia. The Australian Campus Union Managers Association (ACUMA) estimate that more than 600 jobs will be lost in Victoria alone, and regional student organisations would be completely wiped out.

VSU and women

Unions, both staff and student, are vitally important to the prospects of women in universities – they help promote women's issues in an increasingly competitive, bureaucratic and masculine learning environment, and they facilitate women's organising and campaigning.

As with all regressive changes to the Higher Education sector, the impact of VSU legislation will not fall equally on all students. Student organisations are of specific and direct benefit to women students in a myriad of ways, therefore attempts to destroy them hit women particularly hard.

The support that student organisations provide in terms of Student Rights Officers/Welfare Officers, Women's Officers and Women's Research Officers are all threatened by VSU. Many women currently benefit from the assistance of student organisations, and there are many issues that impact on women's ability to study due to the sexism in society. Issues such as unplanned pregnancy, sexual harassment, the burden

of domestic responsibilities and eating disorders are all problems which prompt women to seek support from their student organisation.

NUS calls for these and many other reasons for the *Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) Bill 2003* to be voted down.

8. The Unseen Guidelines

Much of the impact of the legislation still cannot be known, as it must be written into guidelines which the Senate still has not seen. The principle question then becomes whether the Senate can pass this framework legislation and be confident that it can also safeguard the integrity of Australian universities through the system of guidelines.

NUS states again its belief that the legislation should be blocked. In particular, NUS is concerned that the Senate may be put in a position, now or in the future, of intense pressure to pass guidelines which are linked to university funding.

At the moment any delays to the passing of legislation do not jeopardise university funding, as the current *Higher Education Funding Act* continues to operate. If the new legislation is passed, however, funding will depend upon the passage of guidelines. Each year universities will need to negotiate with DEST over their funding arrangements, in accordance with the guidelines. If the guidelines are still being negotiated next year then the Senate will come under significant pressure, from universities, academics and students (who need guidelines passed to access loans), to ensure that universities are funded. This may mean that Senators are pressured to pass guidelines which they believe need further changes or re-drafting.

This danger inherent in passing legislation without seeing the guidelines will continue once the guidelines are in place. Any changes or re-working of guidelines will be pressured by the need to re-negotiate funding for each university every year. As a worse case scenario, guidelines held up in the Senate could mean that university funding is stopped, academics are not paid and students cannot access HECS-HELP, other loans, and scholarships.