

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005**

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### *Executive Summary*

This submission contends that the thrust of the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill<sup>1</sup> (hereafter ‘the VSU Bill’) is to undermine student unions as vehicles for collective democratic student involvement.

This endeavour has been masked by the government’s rhetorical references to ‘freedom of association’. Overseas legal interpretations of ‘freedom of association’ illustrate that when used as a ‘negative freedom’ of the individual,<sup>2</sup> freedom *from* association can actually diminish collective freedoms *to* associate that universal union membership maintains.

The submission demonstrates that the Federal pursuit of VSU, despite the Commonwealth not possessing explicit powers over student unions, as a dangerous appropriation of the historic powers of the States and the autonomy of the universities. However, the ultimate violation is on the collective rights of students.

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<sup>1</sup> The Parliament of the Commonwealth of Australia, House of Representatives Bills 2004-2005.

<sup>2</sup> On negative freedoms, see: Isaiah Berlin (ed Alan Ryan) *The Idea of Freedom: Essays in Honour of Isaiah Berlin* (1979).

## ***1. Introduction: Constraining association under VSU***

Universal student union fees support a dynamic and inclusive university experience where students are part of the collective decision-making process, which is discussed in the first part of this submission. Student alienation will flow from VSU, as campus life will be driven by an economic, rather than a community rationale.

This submission contends that ‘freedom of association’ rights proclaimed under the VSU Bill is a deceptive misrepresentation of the government’s intention to limit association by curtailing universal fees. International courts have ruled that freedom of association should be kept as a right of the collective to pursue common goals rather than of the individual to disassociate, otherwise grave consequences will bear on associations.

The Federal government seeks to intrude on traditional State rights to achieve its national goals of withering away collective rights, which is addressed in the third part of this submission. The current VSU Bill, which is opposed by Labor governments that govern all Australian States, will utilise the Commonwealth’s funding powers in the Constitution as a means of pursuing ulterior ideological purposes and thereby trample on the domain of State government. The majority of states have passed acts that allow university governing bodies to charge union fees and set the terms of these fees in their by-laws. The removal of State rights essentially undermines university autonomy in this area.

## ***2. The value of universal student union membership***

Student unions are controlled by the student members, based on the common values that are invoked by universal membership. Except when VSU existed in Western Australia (WA) and Victoria, universities have set fees, in consultation with the student union, and collected them on behalf of the union as a condition of enrolment. Student unions have three arms that usually operate as separate entities: representation and advocacy,

commercial services, and sport and recreation. Each arm has compulsory membership and manage their affairs autonomously and according to majoritarian democracy that underpins the Australia's parliamentary system. All students are eligible to stand and vote in student union elections. A portion of the fee is paid by student unions to the peak body, the National Union of Students (NUS) (successor of the AUS), to provide a national voice for university students. All students also have the right to stand in NUS elections and vote for delegates. In addition, student unions fund clubs and societies, usually on the condition that their constitutions and practices meet democratic requirements.

Allegations that student unions are undemocratic are linked more to ideas of economic choice rather than democratic rights. Liberal student Macor alleges, 'Students are conscripted to political causes they may not believe in, a situation contrary to strongly held liberal notions of freedom of association and individual choice'.<sup>3</sup> Students are not forced to engage in any union activities and are free to express their opposition. In a 1989 case before the Victorian Equal Opportunities Board, in which Peter Costello represented a student claiming discrimination for being compelled to join a union that held contrary views to his own, the Board found that fee requirements applied equally to all students enrolling and involved no compulsion to adhere to a set of political values.<sup>4</sup>

The only exception to compulsory membership is a student's right to conscientiously object, which is available at all universities in varying forms.<sup>5</sup> The 'opt-out' or conscientious objection clauses have been cited as evidence of voluntary nature of student union membership. The NSW Council of Civil Liberties has stated, 'the existing 'opt out' clauses, where individual students can resign from a student union, are an adequate safeguard for those who conscientiously object to belonging to a union'.<sup>6</sup>

Representative roles provide students with an invaluable opportunity to learn the values of democratic decision making. This is evidenced by the number of former student

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<sup>3</sup> Nikki Macor, 'Core Values: Liberating Our Students' (2004) *Neucleus* 13 at 14.

<sup>4</sup> *Kenmar v Pritchard and Monash University* (1989).

<sup>5</sup> Kelly-Anne Collins, 'Voluntary Student Unionism: Protecting The Rights Of Australian Students?', *Queensland Parliament Research Bulletin*, No 7 (1999) at 13.

<sup>6</sup> NSW Council for Civil Liberties, *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*, No 48 (1999) at 1.

leaders who have moved on to prominent positions in politics and the legal profession, including NSW Supreme Court judges and Justice Michael Kirby of the High Court. This is also true of the sports sphere. The administration of university sports has been described by Australian University Sport as an area for developing vital skills in decision-making, in management, in committee roles and in officiating.<sup>7</sup>

Apart from the representative positions, student unions provide a rich culture of participation. They instil and develop values of community service through a wide range of cultural clubs and societies, sports programs, catering outlets, welfare and support services, academic appeals advice and advocacy and political activities. Sir Gerard Brennan claims the stimulation from campus life warrants union membership a ‘condition of membership of the University community’:

The student clubs and societies provide a 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.<sup>8</sup>

Student unions also offer a voice for students that is autonomous. Independent student newspapers and other media allow students the capacity to express views that may not otherwise receive coverage. Voluntarism, as Brennan points out, will ‘emasculate the liberality of university education and quell the dissent that has been so often and so usefully a burr under the saddle of authority’.<sup>9</sup> Furthermore, compulsory student unionism ensures the independence of students representation without having to meet conditions of external funding sources. The VSU experiences in Victoria and WA expose the threats to autonomous student unions, particularly advocacy, when they become reliant on conditional funding from universities, governments or corporations. The Victorian *Tertiary Education Amendment Act 1994* (Vic) that outlawed compulsory fees for membership of student unions and ‘political’ services, such as student publications,

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<sup>7</sup> Australian University Sport, *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*, No 82 (1999). Also see: Bruce Ross, ‘Voluntary Liquidation’, *The University of Sydney Gazette*, April 2005 at 20-21.

<sup>8</sup> Sir Gerard Brennan, ‘Vitality Under Threat’, *The Australian*, 24 March 1999 at 40.

<sup>9</sup> *Ibid.*

clubs and societies, student elections and NUS affiliation fees<sup>10</sup> induced the Federal Labor Government to fund ‘political’ services as part of its Student Organisation Support (SOS) Scheme. Then Minister for Education, Mr Simon Crean, gave assurances that funding was unconditional.<sup>11</sup> However, in 1997 the Federal government brought a court case against the Victorian La Trobe Student Association for an unclassified article published in its newspaper *Rabelias* on shoplifting. The editors of *Rabelias* were charged and the Federal government withdrew funding from La Trobe Student Association for the edition.<sup>12</sup> The same article on shoplifting was published previously in the Macquarie University student newspaper, *Arena*, which is funded through student fees, but did not elicit a government response.<sup>13</sup> This reflects the constraints placed on students’ autonomy and the additional scrutiny when student unions are not self-funded.

In Western Australia, the *Voluntary Membership of Student Guilds and Associations Act* 1994 introduced the full-scale VSU model, similar to the current Federal bill, which outlawed compulsory membership of student organisations and non-academic services. Consequently, universities were forced to step in to provide basic student services and in some cases took over the role of direct administration.<sup>14</sup> The VSU Bill will make it difficult for universities to comply with requirements under the Federal legislation without independent unions. For example, the *Education Services for Overseas Students Act* 2002 (Cth) creates provisions for a National Code that requires independent grievance and dispute handling mechanisms for International Students.<sup>15</sup> Without

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<sup>10</sup> Misha Ketchell, ‘Caught in the Act’, *Arena Magazine*, January 1996 at 11.

<sup>11</sup> Cited in Id at 12.

<sup>12</sup> Actions were brought under the ‘objectionable publication’ provisions of the *Classification of Films and Publications Act* 1900 (Vic) and the ‘incitement’ provisions of the *Crimes Act* 1958 (Vic). See: *Brown and others v Classification Review Board* [1998] 319 FCA (Merkel J).

<sup>13</sup> Nadya Haddad, ‘Rabble-rousing and *Rabelais*: fear of lawless shoplifting students’ (1998) 8(2) *Polemic* 32 at 33.

<sup>14</sup> See: Edith Cowan University, *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*, No 69 (1999) at 3; Kim Carr and Trish Crossin, *The Minority Report*, Senate Employment, Workplace Relations, Small Business and Education Standing Committee on Higher Education Legislation Amendment Bill 1999 (1999) at [1.35]: < [http://www.aph.gov.au/senate/committee/eet\\_ctte/completed\\_inquiries/1999-02/vsu/report/d01.htm](http://www.aph.gov.au/senate/committee/eet_ctte/completed_inquiries/1999-02/vsu/report/d01.htm)> (22 March 2005).

<sup>15</sup> *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students*, Code 45.

accessible and independent advice and advocacy that student unions currently provide, these procedures would be undermined.<sup>16</sup>

Although incoming Labor governments in both WA and Victoria have since largely repealed the VSU legislation,<sup>17</sup> the funding shortfall as a result of the WA VSU has been widely recognised. The Australian Vice-Chancellor's Committee (AV-CC) estimated that an extrapolation of the WA VSU experience would result in a 75 per cent reduction in student service fees.<sup>18</sup> Therefore, rather than granting students greater choice, VSU will mean students have no choice to access the breadth of university cultural and representative opportunities that they currently enjoy.

### ***3. Freedom of Association***

Student unions provide a venue for association that promotes collective activity, discourse and dissent. As discussed, VSU will compromise the rights that emanate from universalism. Therefore, the language of 'freedom of association' that the Federal government champions is the antithesis to the right of freedom *to* association that international law upholds. The government's use of 'freedom of association' is commensurate with individual freedoms in the market place. This section interrogates the terminology in the VSU Bill to illustrate the government's broad agenda to infuse market concepts of individual rights into collectives. Legal scholars and court decisions recognise the dangers for associations when the janus of 'freedom to association' faces towards negative rights of the individual.

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<sup>16</sup> Interviews with Adrian Cardinali, Student Adviser, Sydney University Postgraduate Representative Association (22 March, 2005) and James Campbell, Welfare Research Officer, University of Sydney Students Representative Council (24 March 2005).

<sup>17</sup> *Tertiary Education Act 2000* (Vic) and *Acts Amendment (Student Guilds and Associations) Act 2002* (WA).

<sup>18</sup> Australian Vice-Chancellors' Committee *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*, No 89 (1999) at 8.

### ***A. Individual freedoms & free riders***

When VSU legislation was first introduced to Federal parliament in 1999,<sup>19</sup> the then Education Minister, Dr David Kemp, explained that the main motivation was to give students the freedom to join an association.<sup>20</sup> In 2005 when Minister Nelson commended the VSU Bill to parliament he reiterated that students are ‘denied the right to freedom of association’.<sup>21</sup>

However, the real freedom that voluntarism provides is to the ‘free rider’. The ‘free rider’ notion holds that the market fails to account for public or collective goods by virtue of their non-excludable nature. This is because the forces of demand and supply do not exclude those who do not contribute to the collective good. These non-paying beneficiaries are known of ‘free riders’.<sup>22</sup> VSU will give a ‘free ride’ to students who use non-excludable union provisions, such as advocacy and amenities, without becoming union members. Students who pay membership fees will subsidise the free ride of others. Therefore, the negative freedom, based on protecting the rights of the rational consumer, holds little weight in terms of collective goods that unions provide. What does bear weight is that free riders will undermine the collective spirit that exists at universities.

### ***B. Australian case law: freedoms of student unions***

Australian courts have rejected freedom of association arguments invoked by Liberal students to challenge the legality of compulsory union fees on the basis that students make a choice to attend university and that student unionism is at the heart of university life. The Full Court of the Supreme Court of Victoria, in *Clark v University of Melbourne (No. 2)*<sup>23</sup> held that students were not forced to enrol at any university and, therefore, not

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<sup>19</sup> Commonwealth of Australia, House of Representatives, *Higher Education Funding Bill No. 1 1999*.

<sup>20</sup> Second Reading Speech, Commonwealth of Australia, House of Representatives, *Official Hansard*, 11 March 1999 at 3732.

<sup>21</sup> Commonwealth of Australia, House of Representatives, *Votes and Proceedings (Hansard)*, 16 March 2005 at 2.

<sup>22</sup> Tim Dixon & Thalia Anthony, *Environmental Economics* (2<sup>nd</sup> ed, 2000) at 32.

<sup>23</sup> [1979] VR 73 (hereafter *Clark*).



forced to become a member of any association. Voluntarism exists at the point of choosing to become a university student, and upon doing so students become part of the whole university experience that includes the activities of student organisations. The joint judgment of Young CJ, Lush and Jenkinson JJ held that universities have autonomy to impose conditions on those who chose to enrol:

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 .... they cannot touch anyone who does not voluntarily bring himself within their reach.<sup>24</sup>

In *Harradine v University of Adelaide*,<sup>25</sup> the Full Court of the South Australian Supreme Court affirmed the decision in *Clark* that freedom of association was not breached with compulsory student unionism, as it represents 'an adjunct of enrolment as an undergraduate'. The position of their Honours in *Clark* was that the student union went hand in hand with belonging to a university. Notwithstanding that 'there will be those who believe that a particular statute, regulation or rule should not exist', as is the case with a voluntary association or corporation formed by its members, students are bound, 'but only because they are or become members'.<sup>26</sup>

### ***C. International law: a right to associate***

As a point of international law, Australian courts have not been in a position to interpret the 'freedom of association' provisions, since, as established in *Harradine*, international treaties such as the Universal Declaration of Human Rights that guarantee this right have not been enacted into municipal law.<sup>27</sup> Nonetheless, since the language of 'freedom of association' is derived from international law, it is worth considering the position of overseas courts where this provision has been enacted. International human rights jurist,

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<sup>24</sup> Id at 72.

<sup>25</sup> *Harradine v University of Adelaide*, Unreported Judgment of Supreme Court of South Australia, No 321 (1987).

<sup>26</sup> *Clark*, above n52 at 73 (Young CJ, Lush & Jenkinson JJ).

<sup>27</sup> Liberal students brought a case against compulsory unionism in reliance on international 'freedom of association' obligations under Article 20 of the U.N. Universal Declaration of Human Rights (1948) and Convention 87, International Labour Organisation, Freedom of Association and Protection of the Right to Organise Convention, 1948: *Harradine*, above n54.

Simon Rice, has pointed out that ‘freedom to associate’ is a guarantee that governments will not constrain people’s collective pursuit of common goals, and the Federal government’s purpose to outlaw compulsory fees misrepresents its intended authority.<sup>28</sup>

Courts in comparable jurisdictions have pointed to the fact that extending ‘freedom to association’ to ‘freedom from association’ based on voluntarism can actually undermine associations. The Supreme Court of the United States of America held in 1937 that ‘collective action would be a mockery if representation were made futile by interference with freedom of choice’.<sup>29</sup> Even though the US has enshrined freedom of association in the First Amendment to the Constitution, its leading universities compulsorily collect student union fees.<sup>30</sup> Test cases in England have upheld compulsory student unionism because of the public rights that universal membership sustains.<sup>31</sup>

The unanimous decision of the Canadian Supreme Court in *Lavigne v Ontario Public Service Employees Union*<sup>32</sup> held that compulsory union fees were not in breach of ‘freedom of association’ where members were allowed to express views contrary to the union. The Court comprehensively explained that the freedom protects individuals from the vulnerability of isolation and allows effective participation in society, whereas ‘an opting-out formula could seriously undermine the unions’ financial base and the spirit of solidarity so important to the emotional and symbolic underpinnings of unionism’.<sup>33</sup> La Forest, Sopinka and Gonthier JJ stated that ‘freedom of association’ was ‘certainly not’ intended to protect against association, but to ensure a ‘modern democratic community’. Accordingly, compulsory fees produced a greater social benefit than the personal preference not to belong:

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<sup>28</sup> Simon Rice, ‘More than a simple matter of choice’, *The Australian*, 27 April 2005 at 35.

<sup>29</sup> *NLRB v Jones & Laughlin Steel Corp.* 301 U.S. 1 (1937) at 34 (Hughes CJ). For a critique of this interpretation, see: Charles W. Baird, *On Freedom of Association* (2000).

<sup>30</sup> Paul Ceyssens, ‘Freedom from the Ideological Association: The Trade Union, the Corporation, the Bar Association and the Student Society’ (1988) 13 *Queens LJ* 54 at 93.

<sup>31</sup> Graham Hastings, *Student Organisations in Australia: At Risk with Anti Student Organisation Legislation*, National Union of Students Background Paper, March 2005 at 31.

<sup>32</sup> [1991] 2 S.C.R. 211 (hereafter *Lavigne*).

<sup>33</sup> *Lavigne*, above n61 at 227 (La Forest, Sopinka and Gonthier JJ).

Dues are used to further the objects of the Union, and are essential to the Union's right to “maintain” the association ... which can be used to assist causes unrelated to collective bargaining ... to enable unions to participate in the broader political, economic and social debates in society, and to contribute to democracy in the workplace.<sup>34</sup>

The decision in *Lavigne* was affirmed in by the Court in *R. v Advance Cutting & Coring Ltd.*<sup>35</sup> The judgment of L'Heureux-Dub J stated that the positive right of freedom to associate based on collectivist aspirations cannot be broadened to a negative right based on individualism:

Negative rights are viewed as individual rights embodying individual goals: an individual is given the constitutional right not to belong to an association. If the fundamental purpose of freedom of association is to permit the collective pursuit of common goals, then the very concept of a “negative freedom of association” becomes suspect. The collective pursuit of “common goals” in such a context leads to an abstraction which is difficult to justify.<sup>36</sup>

Judicial views in Australian and overseas therefore show the weakness of the ‘freedom of association’ discourse of the government. The cases brought before the Canadian Supreme Court resonate with the intentions of the Australian Federal government in terms of VSU. In those cases, their Honours upheld the freedoms to association not only as a positive right of the collective, but also made it clear that interpreting it as a negative right would undermine the democratic intentions that ‘freedom of association’ rests on.

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<sup>34</sup> Ibid.

<sup>35</sup> [2001] 3 S.C.R. 209.

<sup>36</sup> Id at 264.

#### ***4. Jurisdictional appropriation***

##### ***A. VSU as an intrusion on the rights of States and universities***

Universities exist at the behest of State enactments and regulations,<sup>37</sup> and accordingly State legislation provides universities the right to levy union fees on students. This historic right of states has been recognised by the Liberal Party when in State government, as reflected by its implementation of VSU in WA and Victoria. However, other than the brief State VSU experiences, the majority of states have respected the autonomy of universities' to collect student union fees as a condition of enrolment since the first student union was elected in 1906.<sup>38</sup> The *University of Sydney Act 1850* (NSW) s16(j), for example, grants the university Senate the power to impose fees, and in turn allows the Senate to make by-laws under s36(1)(n)(viii) for the payment of fees to student organisations. Student union fee arrangements, including fee setting, are determined according to the needs of various campuses.<sup>39</sup> Recent statements by the AV-CC reflect the ongoing desire by universities to continue the arrangement whereby universities compulsorily collect fees in recognition of the critical role student unions play.<sup>40</sup>

Therefore, the Federal VSU Bill seeks not only to wrest state powers, but also remove the traditional autonomy of universities to charge compulsory fees. In 2005 the High Court has upheld that universities have autonomous powers in *Griffith University v Tang*. In deciding that certain decisions of university governing bodies are non-justiciable as they are made according to their own rules and not statutes, the majority claimed that

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<sup>37</sup> Universities are established under state and territory Acts, except for the Australian National University and the Australian Maritime College.

<sup>38</sup> Hastings, above n60 at 16.

<sup>39</sup> Kim Jackson, *Higher Education Legislation Amendment Bill 1999: Bills Digest No 137 1998-99*, Department of Commonwealth Parliamentary Library, Canberra, 19 March 1999 at 4, 7.

<sup>40</sup> Australian Vice-Chancellor's Committee, 'University Services Set to Fall Apart', Media Release, 16 March 2005.

charging fees represented *inter alia* the autonomy of universities.<sup>41</sup> This section considers the illegitimate coercion of the Federal government by making university funding conditional on VSU implementation.

### ***B. Containing collectives through creative constitutionalism***

The Federalist intentions of the Commonwealth government in relation to student organisations are without express constitutional powers. Rather, the government intends to quash historical, constitutionally-based agreements with the States in order to push through its anti-collective values. In 1973 the Whitlam Federal government made a commitment that constitutional change to allow the Federal government to fund universities would not undermine the States' protection of student unions.<sup>42</sup>

### ***C. Constitutional concerns with VSU***

Legal advice sought in relation to a similar VSU bill in 1999 raised doubt on the constitutional validity of the bill. The advice provided by the law firm Minter Ellison to the AV-CC concluded that a challenge to the bill could be based on the seeking of a declaration that the new provisions, should they be enacted, are beyond the legislative powers of the Commonwealth,<sup>43</sup> This was also raised by the NSW Council for Civil Liberties.<sup>44</sup> The Queensland Attorney-Generals Department and the University of Sydney has committed to seeking legal advice in respect of the current bill. The degree to which the VSU Bill can be seen as ulterior to constitutional provisions is described below.

Given that the Commonwealth is not granted specific powers under the Constitution to make laws with respect to higher education in Australia, the Commonwealth relies on ss81 and 51(xxiiiA) of the Constitution to make provisions for HECS and

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<sup>41</sup> *Griffith University v Tang* [2005] HCA 7 (3 March 2005) at [7] (Gleeson CJ).

<sup>42</sup> Universities Commission, *Sixth Report*, 1975.

<sup>43</sup> Denis O'Brien (Minter Ellison Lawyers) *Higher Education Legislation Amendment Bill 1999* <[http://www.avcc.edu.au/avcc/mediarel/1999/avcc\\_1299a.doc](http://www.avcc.edu.au/avcc/mediarel/1999/avcc_1299a.doc)> (12 April, 2005).

<sup>44</sup> NSW Council for Civil Liberties, above n30 at 4.

Commonwealth grants under the *Higher Education Support Act* 2003 (Cth).<sup>45</sup> Section 81 gives the Commonwealth the power to appropriate funds from Consolidated Revenue ‘for the purposes of the Commonwealth’. There has been some debate in the past over the scope of the s81 power, and whether it extends to Commonwealth appropriations of monies for purposes not specifically within the grants of power under the Constitution.<sup>46</sup> The VSU Bill may rest on shaky ground if it is not seen to be related to the purposes of the appropriation, that is, support for a national system of higher education through the provision of operating grants. This is certainly the case since the bill is directed at stopping institutions from collecting payments from students for services the Commonwealth has chosen not to appropriate monies. The SOS Program relied on s81 to provide assistance to under-funded unions as a result of State VSU. However, this was supported by the Commonwealth’s power to fund a national system of higher education, with student services as an incidental part, and its power to legislate for such benefits to students. It would be difficult to inversely make it a condition of grants *not* to collect general services fee.<sup>47</sup>

Section 51(xxiiiA) supports HECS, which provides for the Commonwealth to make payments to Australian universities to subsidise part of student’s education and to collect repayments from students for the remaining part. This section allows the Commonwealth ‘to make laws ... with respect to ... the provision of ... benefits to students’. It is questionable whether VSU can be conceived as a student benefit, given the misgivings discussed above relating to the government’s ‘freedom of association’ rhetoric. Furthermore, courts have regarded ‘the provision’ in s51(xxiiiA) to mean the ‘provision of money benefits by the Commonwealth or provision of things or services provided as a result of money payments by the Commonwealth’: *Alexandra Private v Commonwealth*.<sup>48</sup> It would be difficult to characterise the prevention of university compulsory fee collection as a ‘provision’ of Commonwealth benefit.<sup>49</sup> Lastly, it is uncertain whether this power could be used for non-HECS liable students, for instance

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<sup>45</sup> O’Brien, above n81 at 2-3.

<sup>46</sup> *Attorney-General for Victoria; Ex rel Dale v Commonwealth* (1945) 71 CLR 237 and *Victoria v Commonwealth* (1975) 134 CLR 338.

<sup>47</sup> O’Brien, above n81 at 5.

<sup>48</sup> *Alexandra Private Geriatric Hospital Pty Limited v Commonwealth* (1986) 162 CLR 271 at 281.

<sup>49</sup> O’Brien, above n81 at 5.

full-fee paying domestic or international students and students on scholarships such as the Australian Postgraduate Award. These issues, in addition to threats to university autonomy over fees, provide an unstable foundation for eliminating compulsory student unionism at a Federal level.

## ***5. Conclusion***

Voluntary Student Unionism is part of a broad agenda to wind back the rights of collectives that have had a prominent role in campus life, industry and society at large. This submission has argued that the impetus behind the VSU Bill regarding ‘freedom of association’ represents an attempt to weave economic freedoms of the individual into notions of association. Such individual freedoms can betray the value of associations in our democratic society. Indeed the passage of the VSU Bill is likely to weaken the collective spirit on campuses, and promote an environment based on individual economies of scale and free riders. As such, the Coalition advances an economy based on individual consumers rather than a society of collective participants.

## *Appendix A: The range of student services provided by student unions*

The following is an inventory of the major functions of student unions across Australian universities, although there are variations on individual campuses:<sup>50</sup>

1. Academic advice and advocacy (undergraduate and postgraduate):
  - Academic appeals over assessment, results and supplementary exams
  - Enrolment exclusions
  - Illegal course material fees
  - Disability access and support
  - Discipline hearings
  - Research supervision problems
  - Intellectual property disputes
  - Degree confirmation
  - Applications for recognition of prior learning
  - Conduit for other academic/library complaints
  
2. Student welfare and equity services
  - Income support advice
  - Financial assistance: emergency and other loans and scholarships
  - Personal counselling
  - Employment services
  - Work rights advice
  - Tenancy advice
  - Childcare
  - Sexual harassment support and sexual assault referral services
  - Women's services and rooms
  - Parenting rooms
  - Student support and integration programs for international, marginalised and mature-age students
  - Discrimination complains
  - Peer mentoring schemes
  - Legal advice and services<sup>51</sup>
  
3. Promotion of culture, the arts and sports

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<sup>50</sup> Collated from information predominantly acquired from: Hastings, above n60 at 6-8; Adrian Cardinali & James Campbell, above n40; Natasha Stott Despoja, *Australian Democrats Dissenting Report*, Senate Employment, Workplace Relations, Small Business and Education Standing Committee on Higher Education Legislation Amendment Bill 1999 (1999) at [2.2]:  
<[http://www.aph.gov.au/senate/committee/eet\\_ctte/completed\\_inquiries/1999-02/vsu/report/d02.htm](http://www.aph.gov.au/senate/committee/eet_ctte/completed_inquiries/1999-02/vsu/report/d02.htm)> (22 March 2005).

<sup>51</sup> On the importance of these services for equity see: Federation of Community Legal Centres (Vic) Inc, *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*. No 169 at 4; University of Sydney Students' Representative Council, Redfern Legal Centre, NSW, *Submission to Senate Inquiry into Higher Education Legislation Amendment Bill 1999*. No 190 at 5.



- Social and political debates in the university community
  - Student media: campus newspapers, newsletters, magazines, radio and films
  - Sporting clubs and events
  - Discount tickets for local cultural and sporting events
  - Funding for university clubs, faculty groups, postgraduate groups and postgraduate seminars and conference
  - Art galleries, competitions and festivals
  - Multicultural events
  - Concerts
4. Campus buildings, infrastructure and amenities
- Free shuttle buses
  - Computer labs and access
  - Photocopying and fax services
  - Conference and Meeting Rooms
  - Function spaces
  - Locker hire
  - Catering, bars and bistros
  - Second hand bookshops and exchanges
  - Binding services
  - Bookshops and retail outlets
  - Facility Upkeep and Maintenance
  - Gymnasiums and sporting facilities
5. Student development workshops:
- Study skills
  - Journal article writing
  - Thesis proposals and production
  - Time management.
6. Other
- Student accident insurance
  - Information and Inquiry Services
  - University Diaries
  - Orientation camps, trips and tours
  - Academic dress
  - The provisions of national student bodies (NUS, Council of Postgraduate Associations and Australian University Sports and a range of national faculty bodies such as the Australian Law Students Association), including conferences, services and national competitions (University Games, national mootings tournaments).