

**VOLUNTARY STUDENT UNIONISM: PROTECTING THE
RIGHTS OF AUSTRALIAN STUDENTS ?**

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ABSTRACT

On 11 March 1999, the Federal Minister for Education, Training and Youth Affairs, the Hon David Kemp MP, introduced the Higher Education Legislation Amendment Bill 1999 into the Commonwealth Parliament. The Bill was, partly, designed to implement what is known as 'voluntary student unionism' into the Higher Education Sector. Proponents of voluntary student unionism (VSU) believe that, upon enrolling at an Australian university, no student should be made, or made to become, a member of an association unless they choose to. It is also argued that no student should be required to pay money, directly or indirectly, to that association for services unless they wish to use those services. This Bulletin examines the background to the introduction of the Commonwealth Bill, the current situation of student associations in Queensland, the legislative provisions governing VSU in other Australian states and New Zealand and the issues raised by the Commonwealth's policy to introduce VSU nationally.

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1. INTRODUCTION

The Federal Coalition's Higher Education Policy for the 1998 federal election stated an intention to introduce what is known as 'voluntary student unionism' to the Australian Higher Education sector. Thus, on 11 March 1999, the Federal Minister for Education, Training and Youth Affairs, the Hon David Kemp MP, introduced the Higher Education Legislation Amendment Bill 1999 into the Commonwealth Parliament. Victoria introduced voluntary student unionism in 1993 though employing a different model. The Commonwealth Bill has adopted the Western Australian model which has been operating in that State since 1995. Since the introduction of this Bill, the Federal Opposition, the Australian Democrats, the Greens and the Independent Senators Harradine and Colston have announced that they will not support the Bill in the Senate.¹ This, therefore, puts in doubt the ultimate fate of the Bill. The Senate was due to debate this Bill in the week beginning 28 June 1999, but there is some uncertainty as to when, and if, the debate will occur.² However, the push to introduce voluntary student unionism in Australia has a long history and, thus, it is not likely that the prospect of the implementation of voluntary student unionism will disappear. Even if this Bill is passed, the Queensland Minister for Education, the Hon Dean Wells MLA, has signalled his determination to pursue all avenues to oppose its enforcement.³

1.1 COMPULSORY AND VOLUNTARY STUDENT UNIONISM (VSU)

Currently, on most university campuses around Australia, students, in order to be enrolled, must become members of the student association⁴ on their campus. In addition, they are also required to pay an 'amenities' or 'student services' fee to the university. The university then distributes some of these funds to the student association to provide for its operations. The rest of this funding goes to support the student services provided

¹ 'Firm stand on student unions', *Courier Mail*, 14 June 1999, p 7.

² Australian Broadcasting Corporation News, 'PM slams anti compulsory student unionism campaign', *ABC Online*, <<http://www.abc.net.au/news/newslink/nat/newsnat-28jun1999-28.htm>>, downloaded on 28 June 1999; Australian Broadcasting Corporation News, 'Student union legislation buried', *ABC Online*, <<http://www.abc.net.au/news/newslink/nat/newsnat-29jun1999-116.htm>>, downloaded on 30 June 1999.

³ Hon Dean Wells MLA, Minister for Education, 'Howard Puts Quality of Queensland Universities in Jeopardy', *Ministerial Media Statement*, 21 April 1999, p 1 and Hon Dean Wells MLA, 'Wells to convene national meeting on VSU', *Ministerial Media Statement*, 22 June 1999, p1.

⁴ In Queensland, these student associations are known as Student Unions, Student Guilds, Student Associations and Student Representative Councils.

by the university itself.⁵ This system is termed compulsory student unionism by proponents of VSU. However, it is important to note that there are provisions, in university statutes and student association rules, that allow those who wish to object to these requirements to do so.

Although this is the case, proponents of this Bill, and of VSU, argue that these alternatives do not provide enough recognition of the rights of students. While those who support the general concept of VSU accept or propose different frameworks to replace the current system, the changes promoted by this Bill are designed to introduce a form of VSU which will prevent all Australian universities from compelling their students to become members of a student association or to pay a student services fee.

2. SOME BACKGROUND ON HIGHER EDUCATION FUNDING

2.1 COMMONWEALTH FUNDING

Universities in Australia, though established under State legislation, are supported by Commonwealth funding. This funding is made available under the *Higher Education Funding Act 1988* (Cth) (as amended) (HEFA). The HEFA provides for the maintenance of the Higher Education Contribution Scheme (HECS) and the provision by the Commonwealth of various types of grants to these institutions. Of the 42 higher education institutions in Australia, 38 institutions receive Commonwealth funding under HEFA on a triennial basis. Another two institutions receive funding on a contract basis.⁶ In 1998, the Federal Government provided a total of \$5.5 billion in funding to Commonwealth-funded universities and the estimated total income for those institutions in the same year was \$8.05 billion, which included additional revenue from fees and other private activities.⁷ In 1999, Commonwealth grants, which are largely made up of grants for operating or limited operating purposes, amounted to \$3.266 billion.⁸

⁵ Ian Ireland and Kim Jackson, *Higher Education Funding Amendment Bill (No 2) 1996: Bills Digest No 11 1996-97*, Department of Commonwealth Parliamentary Library, Canberra, 26 July 1996, p 1 <<http://www.aph.gov.au/library/pubs/bd/1996-97/97bd011.htm>>, downloaded on 9 June 1999.

⁶ Commonwealth. Department of Education, Training and Youth Affairs, Higher Education Division, *The Higher Education Sector*, <<http://www.deetya.gov.au/highered/unis.htm>>, last updated on 26 November 1998, downloaded on 9 June 1999.

⁷ Commonwealth. Department of Education, Training and Youth Affairs, Higher Education Division, *The Higher Education Sector*.

⁸ *Higher Education Funding Act 1988* (Cth), s 17.

2.2 THE BLOCK OPERATING GRANTS PROGRAM

Grants for operating or limited operating purposes are made under the Block Operating Grants Program. The quantum of such grants ‘*is determined on the basis of each institution’s total load target*’, taking into account the mix of disciplines and levels that an institution provides.⁹ The ‘total load target’ is “*the total number of Commonwealth-funded student places that an institution is expected to deliver in a given year*”.¹⁰

Operating grants are made for general teaching and research purposes and consist of four components:

- Teaching Component - the largest component covering “*academic and general salaries, minor capital works, and non-salary items associated with teaching such as libraries*”;
- Research Component - activities related to research “*other than those directly related to teaching and research training*”;
- Aboriginal Support Component - services for Aboriginal and Torres Strait Islander Students; and
- Capital Works Component - for the “*maintenance and refurbishment of existing infrastructure*”.¹¹

2.3 LEGISLATIVE CONDITIONS ATTACHED TO OPERATING GRANTS

The conditions are set out in section 18 of the HEFA and include that the institution:

- spends the money in accordance with its ‘Educational Profile’ provided to the Minister at the time of the determination of the quantum of the operating grant;
- spends the money stated to be provided for various purposes on those purposes; and
- only charges their students fees in accordance with the Ministerial guidelines.

⁹ Commonwealth. Department of Education, Training and Youth Affairs, Higher Education Division, *Operating Grants*, <<http://www.deetya.gov.au/highered/opgrants.htm>>, last updated on 26 November 1998, downloaded 9 June 1999.

¹⁰ Commonwealth. Department of Education, Training and Youth Affairs, Higher Education Division, *Operating Grants*.

¹¹ Commonwealth. Department of Education, Training and Youth Affairs, Higher Education Division, *Operating Grants*.

3. RECENT LEGISLATIVE HISTORY OF STUDENT ASSOCIATION FUNDING

Over the past several decades, debate has surrounded the validity and fairness of compulsory student unionism at Australian universities. In 1992, the Federal Labor Government amended the HEFA to ensure that universities would receive Commonwealth funding on behalf of student associations if the universities were legislatively prevented from collecting fees for student services by State Governments.¹² This was possible because, despite the Commonwealth being financially responsible for the nation's higher education system, each University is established and governed by State legislation. The Federal Labor Government had previously tried to pass the same provisions in 1990.¹³ The 1992 amendments inserted section 25A into the HEFA which states, generally, that if the Minister is satisfied that a State has, directly or indirectly, prevented or hindered the university collecting fees for an association representing that university's students, the Minister can make any financial assistance deemed appropriate to that university.

In 1993, the *States Grants (General Purposes) Act 1993* (Cth) was passed which included provisions designed to enable the Commonwealth to recoup any financial assistance, paid under section 25A, from the State that introduced legislation referred to in that section.¹⁴ This provision is now contained in the *States Grants (General Purposes) Act 1994* (Cth).¹⁵

The *Higher Education Funding (Student Organisations) Amendment Act 1994* (Cth) introduced section 25B into the HEFA. This section was designed by the Commonwealth to override legislation that had been introduced by the Victorian and Western Australian Governments to introduce VSU in those States. It allowed the Federal Government to provide the funding assistance directly to the student associations themselves rather than to the universities to pass on. This was done because the Victorian and WA legislation prohibited the universities from accepting section 25A funding assistance.¹⁶ Section 25B overrode those State prohibitions, because under section 51(xxiiiA) of the Australian Constitution, the Commonwealth is able to legislate to provide benefits to students. The Commonwealth characterised section 25A funding as such a benefit. The Commonwealth also argued it had the power to "maintain funding

¹² Ireland and Jackson, p 4.

¹³ Ireland and Jackson, p 4.

¹⁴ Ireland and Jackson, p 4 and *States Grants (General Purposes) Act 1993* (Cth), s 20.

¹⁵ *States Grants (General Purposes) Act 1994* (Cth), s 15.

¹⁶ *Tertiary Education Act 1993* (Vic), s 12J and, for example, *University of Western Australia Act 1911* (WA), s 28A.

levels” to ensure the protection of “a national system of higher education”¹⁷ under section 81 of the Constitution.¹⁸ Sections 25A and 25B of HEFA and section 15 of the *States Grants (General Purposes) Act 1994* (Cth) established what was known as the Student Organisation Support (SOS) Program. Total grants made under this program amounted to \$14.578 million, including \$7.841 million in 1995 and \$6.737 million in 1996.¹⁹

Since the election of the current Federal Government in 1996, no further grants have been made under the SOS Program. In addition, the Higher Education Funding Bill (No 2) 1996 was introduced to repeal the legislative provisions establishing the SOS Program. It, however, did not proceed through the Senate.

The current Bill, not only proposes to repeal sections 25A and 25B of the HEFA and section 15 of the *States Grants (General Purposes) Act 1994* (Cth), but also to make it a condition of Commonwealth funding to Australian universities that the universities refrain from making it compulsory for students to join any campus student association and to pay the student services fee in order to become enrolled. Thus, the Bill proposes to introduce a complete framework of VSU across the country.

4. HIGHER EDUCATION LEGISLATION AMENDMENT BILL 1999

4.1 CURRENT STATUS OF THE BILL

The Higher Education Legislation Amendment Bill 1999 was introduced in the House of Representatives on 11 March 1999 by the Hon David Kemp MP, the Federal Minister for Education, Training and Youth Affairs.²⁰ On 31 March 1999, the Selection of Bills Committee agreed to refer provisions in the Bill regarding VSU to the Employment, Workplace Relations, Small Business and Education Legislation Committee for further consideration.²¹ The Senate received

¹⁷ Ireland and Jackson, p 4.

¹⁸ See Part 8 of this Bulletin for a further discussion.

¹⁹ Ireland and Jackson, p 4.

²⁰ Hon D Kemp MP, Federal Minister for Education, Training and Youth Affairs Second Reading Speech, *Commonwealth Parliamentary Debates*, 11 March 1999, p 3732.

²¹ Parliament of Australia, *Senate Bills List*, <<http://www.aph.gov.au/parlinfo/billsnet/billslst.pdf>>, last updated on 17 June 1999, Downloaded on 21 June 1999.

submissions from the public and held a one-day hearing on 7 May 1999.²² On 12 May 1999, the Bill was passed by the House and introduced into the Senate.²³ The Senate Committee's Report was tabled in the Senate on 25 May 1999.²⁴ The Opposition and the Australian Democrat Members of the Senate Committee each released dissenting reports on the Committee's findings with respect to this Bill. The Senate was scheduled to debate the Bill in the week beginning 28 June 1999 but it is now uncertain when, or if, this will occur.²⁵

4.2 WHAT DOES THIS BILL PROPOSE TO DO?

In order to introduce what the Federal Government terms voluntary student unionism, the Higher Education Legislation Amendment Bill 1999:

- repeals sections 25A and 25B of the Higher Education Funding Act 1988;²⁶
- repeals section 15 of the States Grants (General Purposes) Act 1994;²⁷ and
- amends section 18 of the Higher Education Funding Act 1988.²⁸

As the *Explanatory Memorandum* states, 'these amendments ... are intended to ensure the adoption of voluntary student unionism (including the elimination of compulsory student fees not directly related to education courses) by all institutions'.²⁹ The repealing of sections 25A and 25B is 'to remove the Minister's discretion to approve direct funding of student organisations under the Student Organisation Support (SOS) Program'.³⁰ The proposed repeal of section 15 of the *States Grants (General Purposes) Act 1994* (Cth) complements this by removing the ability of the Commonwealth to seek the reimbursement, via a deduction from the State's Grant, of any financial assistance provided under the Program.

²² Parliament of Australia. Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, *Higher Education Legislation Amendment Bill 1999*, <http://www.aph.gov.au/senate/committee/EET_CTTE/vsu/index.htm>. Tabled on 25 May 1999, Appendices 1 and 2.

²³ Parliament of Australia. House of Representatives, *Commonwealth Parliamentary Debates*, 12 May 1999, p 5182 and Parliament of Australia. Senate, *Commonwealth Parliamentary Debates*, 12 May 1999, p 4878.

²⁴ Parliament of Australia. Senate, *Commonwealth Parliamentary Debates*, 25 May 1999, p 5329.

²⁵ Hon Dean Wells, 'Wells to convene national meeting on VSU', p 1.

²⁶ Higher Education Legislation Amendment Bill 1999 (Cth), clause 3 and Schedule 4, clause 1.

²⁷ Higher Education Legislation Amendment Bill 1999 (Cth), clause 3 and Schedule 4, clause 3.

²⁸ Higher Education Legislation Amendment Bill 1999 (Cth), clause 3 and Schedule 5.

²⁹ *Explanatory Memorandum*, Higher Education Legislation Amendment Bill 1999 (Cth), p 8.

³⁰ *Explanatory Memorandum*, Higher Education Legislation Amendment Bill 1999 (Cth), p 1.

The amendments to section 18 of the HEFA aim to implement a form of VSU by preventing universities from making it a condition of student enrolment that the student be, or become a member of, an association or pay a fee which is not directly related to an educational course. In order to enforce VSU, the Commonwealth amendments to section 18 make adherence to the proposed provisions a condition of the university's funding from the Commonwealth. This means that, if a university fails to comply with these conditions, the Commonwealth may recover any financial grants they have made available to that institution.

The amendments to section 18 are proposed to take effect on the grants made by the Commonwealth for the year 2000 or any later year.³¹

5. CURRENT SITUATION OF STUDENT ASSOCIATIONS IN QUEENSLAND

5.1 GENERAL OVERVIEW

Queensland universities collect about \$24 million annually in compulsory student fees³² and students who wish to attend a Queensland university become a member of the student union, guild or association on their campus upon enrolment. Most Queensland universities provide avenues for students to object to being members of the student association but require all students to pay a fee for student services. The average compulsory student service fee imposed by Australian universities in 1999 was \$264.³³

The student associations are each run by a student executive which is elected annually by the student body.³⁴ Student associations can also affiliate with the National Union of Students (NUS). The University of Queensland, Queensland University of Technology, James Cook University and Griffith's Nathan Campus organisation are all affiliated.³⁵ The NUS raises about \$1.4 million a year from its affiliates.³⁶

³¹ Higher Education Legislation Amendment Bill 1999 (Cth), clause 3 and Schedule 5 clause 6.

³² Hon Dean Wells MLA, 'Howard Puts Quality of Queensland Universities in Jeopardy', p 1.

³³ Kim Jackson, *Higher Education Legislation Amendment Bill 1999: Bills Digest No 137 1998-99*, Department of Commonwealth Parliamentary Library, Canberra, 19 March 1999, <<http://www.aph.gov.au/library/pubs/bd/1998-99/99bd137.htm>>

³⁴ John Niland, 'The Case for Compulsion', *Age*, 22 January 1999, <http://www.vc.unsw.edu.au/sp_ssi/sp_vsu.shtml>, downloaded on 23 March 1999. See also Appendix C.

³⁵ See NUS Website, *Important Education Links*, <<http://cleo.murdoch.edu.au/nuse/assort/links.htm#nuscamp>>, last updated on August 1998.

³⁶ Guy Healy and Jane Richardson, 'Degree of Payback', *Australian*, 27 February 1999, p 24.

A Bills Digest, produced by the Commonwealth Parliamentary Library in relation to this Bill, stated that the collection of compulsory student fees around Australia roughly amounted to \$118 million nationally per year.³⁷ It goes on to say that

*The precise distribution of these funds is not known, although it is likely that around 15-20 per cent (or approximately \$20 million) is spent on student representation with the remainder (or approximately \$100 million) on amenities and services.*³⁸

5.2 SERVICES CURRENTLY PROVIDED BY STUDENT ASSOCIATIONS

Below is a list of the types of services currently provided by Queensland student associations:

- provision of food outlets;
- buildings, meeting rooms and toilet facilities;
- stationery and second-hand book shops;
- child-care services;
- legal services, welfare services; accommodation assistance, health and employment services;
- funding to student groups, including clubs and societies on campus;
- at the University of Queensland, the Schonell Cinema and Cement Box Theatre;
- student representation and educational advocacy;
- short and long term student loans; and
- student newsletters and newspapers.³⁹

³⁷ Jackson, p 3.

³⁸ Ireland and Jackson, p 3.

³⁹ See Jackson, p 1; University of Queensland, *UQ Student Support Services*, <<http://www.ems.uq.edu.au/student-services/carinto.htm>>, downloaded on 14 April 1999; University of Queensland Academic Board, 'UQ Academic Board opposed to Voluntary Student Unionism', *Press Release*, 8 March 1999; QUT Student Guild, 'Advice & Information', <<http://www.sg.qut.edu.au/guild/advice.htm>>, downloaded on 14 April 1999; USC Student Guild, 'Student Associations and Activities', <<http://www.usc.edu.au/campus/campus6.html>>, last updated on 7 May 1999, downloaded on 28 May 1999; CQU Student Association, 'What We Do For You', <<http://association.cqu.edu.au/about/whwedofoyo.html>>, downloaded 10 June 1999; Australian Vice-Chancellor's Committee, 'Attachment 2 - Student Organisations Policy Paper 1998', *AVCC Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee on the Higher Education Legislation Amendment Bill 1999*, <http://www.vc.unsw.edu.au/sp_voluntary.html>, downloaded on 28 June 1999. See also Appendix B.

5.3 POLICIES AND PROCEDURES OF QUEENSLAND STUDENT ASSOCIATIONS

5.3.1 The Fees Payable

Generally, the amount of fees payable depends on the student's ability to access the facilities, services and amenities provided by the organisation.

At the **University of Queensland** (UQ), fees are payable per semester and, in 1999, were

Full-time students	\$149
Part-time students	\$84.50
Remote students	\$28

A remote student is a student who lives outside Brisbane and does not attend classes on any UQ campus during the semester.⁴⁰ A discount of \$20 is available if the fee is paid before the due date.⁴¹

The student service fee is payable annually at the **University of the Sunshine Coast** (USC). For full-time students, it is \$150 and, for part-time students, \$75.⁴²

At the **University of Southern Queensland** (USQ), there are two campuses, one in Toowoomba and the other in the Wide Bay region. The students who attend the Wide Bay campus pay \$135 per year.

Toowoomba Campus⁴³

Full-time and new student	\$255
Full-time and continuing student	\$205
Part-time and new student	\$155.50
Part-time and continuing student	\$102.50
External student but within the 4350 postcode for Toowoomba	\$102.50

⁴⁰ University of Queensland, 'Student Information - Remote Student' <<http://www.uq.edu.au/student/getting-in/fees-and-aid/ssc-remote-student.html>>, last updated on 1 February 1999, downloaded 14 April 1999.

⁴¹ University of Queensland, *Undergraduate Studies Book*, University of Queensland Press, Brisbane, 1 October 1998, p 542 and University of Queensland, 'Student Information - Student Service Charge', <<http://www.uq.edu.au/student/getting-in/fees-and-aid/student-service-charge.html>>, last updated on 1 February 1999, downloaded on 14 April 1999.

⁴² University of the Sunshine Coast, 'Undergraduate Studies' <<http://www.usc.edu.au/apply/apply1.html>>, last updated on 8 March 1999, downloaded on 28 May 1999.

⁴³ University of Southern Queensland, 'Official Handbook 1999' <<http://www.usq.edu.au/handbook/1999/geninfo/10c.htm>>, downloaded on 25 May 1999.

External student and outside the postcode area \$65

James Cook University (JCU) charges students who have a limited attendance at either of their campuses, in Townsville or Cairns, a fee of \$60. For the others, the breakdown is as follows.⁴⁴

Townsville Campus

	New students	Continuing students
Full-time students	\$275	\$225
Part-time students	\$122	\$112

Cairns Campus

	New students	Continuing students
Full-time students	\$255	\$205
Part-time students	\$112	\$102

At **Griffith University (GU)**, students on all campuses except the Gold Coast pay two yearly fees. They are a Community Services Charge and a Student Representative Council Charge. These charges amount to:⁴⁵

Community Services Charge (CSC)

Full-time students	\$160
Part-time students	\$80
External students	\$16.50

Student Representative Council Charge (SRC Charge)

Full-time students	\$62
Part-time students	\$31
External students	\$12

At the Gold Coast Campus, GU students pay an initial fee of \$43 when they begin their course and an annual fee for each year they attend that campus. The annual fees for 1999 were:⁴⁶

⁴⁴ James Cook University, 'Admission and Enrolment Procedures, Admission Rules, Planning a Degree Course and Enrolment', *JCU Handbooks for 1999*, <<http://www.jcu.edu.au/handbooks/Jobs/005jcu/data/html/handbook.shtml>>, last updated on 23 April 1999, downloaded on 28 May 1999.

⁴⁵ Griffith University, *Schedule of Charges*, <<http://www.gu.edu.au/ua/aa/sta/fees/otherfee.htm>>, downloaded on 27 May 1999; and Griffith University, *Griffith University Calender*, Brisbane, February 1997.

⁴⁶ Griffith University, <<http://www.gu.edu.au/ua/aa/sta/fees/otherfee.htm>>.

Full-time students	\$210
Part-time students	\$105

External students of **Central Queensland University** (CQU) pay \$67 per year. The student services fees payable by all other students at CQU are set out below.⁴⁷

Rockhampton Campus

Full-time students	\$193
Part-time students	\$115

Bundaberg, Emerald, Gladstone and Mackay Campuses

Full-time students	\$155
Part-time students	\$93

And finally in 1999, students, at the various **Queensland University of Technology** (QUT) campuses, paid an annual Student Guild fee amounting to⁴⁸:

Full-time students	\$170
Part-time students	\$68
External students	\$20

5.3.2 Who Receives The Fees?

At all Queensland universities, it is the university that collects the student services fee upon enrolment and then distributes the funds. For example, the distribution at UQ in 1999 will see the UQ Student Union receive \$77 of the \$149 fee paid in each semester.⁴⁹ Money is also distributed to UQ Sport and the Gatton College Student Association.⁵⁰ Students at JCU have their fees paid into the Building Development Fund and to their

⁴⁷ University of Central Queensland, 'General Information: University Union', *University of Central Queensland University 1996 Handbook*, <http://www.cqu.edu.au/documents/handbook/current/gen_union.html>, last updated September 1995, downloaded on 24 June 1999.

⁴⁸ Queensland University of Technology Student Administration, *What's Hot in Student Administration?*, <http://www.qut.edu.au/publications/stud_admin_test/whatshot.html>, last updated on 21 January 1999, downloaded on 28 June 1999.

⁴⁹ University of Queensland Website, 'Frequently Asked Questions - Student Union', via <<http://www.uq.edu.au/faqs/index.asp?menu=0>>, last updated on 27 April 1999, downloaded on 22 June 1999.

⁵⁰ University of Queensland Website, 'Student Information - Student Services Charge', <<http://www.uq.edu.au/studnet/getting-in/fees-and-aid/student-service-charge.html>>, last updated on 27 April 1999, downloaded on 22 June 1999.

Student Union. For full-time students, \$50 from their payment goes to the Building Development Fund while part-time students have \$10 allocated.⁵¹

As noted earlier, where a student is permitted to opt out of joining the student association on their campus, they must still pay the student services fee. However, several universities provide alternatives for those who object to funding a student organisation. At CQU, QUT and USC, in this situation, the money is simply paid to the university itself.⁵² At USQ, the fee is paid into “*a fund approved by both the University Council and the USQ Student Association Board*”⁵³ and, at JCU, the fee is payable into the Building Development Fund.⁵⁴ As previously noted, the fee paid by GU students, at most of their campuses, is divided into two payments. The CSC is “*for the use of university facilities placed under the management of the Board of Community Services by the Council, or for the provision of services by the Board*”.⁵⁵ The SRC Charge is “*paid to the university, part or all of which may, at the discretion of the University Council, be transmitted to the SRC to be used to meet its responsibilities*”.⁵⁶ Where the student objects to their membership of the student organisation, their fee is to ‘be

⁵¹ James Cook University, ‘Admission and Enrolment Procedures, Admission Rules, Planning a Degree Course and Enrolment’, *JCU Handbooks for 1999*, <<http://www.jcu.edu.au/handbooks/005jcu/data/html/handbook.shtml>>, last updated on 23 April 1999, downloaded on 28 May 1999.

⁵² Central Queensland University, *Undergraduate Handbook 1999*, Rockhampton, 1 January 1999, p 61; and Queensland University of Technology, ‘Student Rules, Policies and Procedures’, *Student Handbook 1999*, <http://www.qut.edu.au/pubs/hbk_current/rules/10rules.html>, last updated on 19 November 1998, downloaded on 27 May 1999; and University of the Sunshine Coast Website, *Student Association and Activities*, <<http://www.usc.edu.au/campus/campus6.html>>, last updated on 7 May 1999, downloaded on 28 May 1999, p2.

⁵³ University of Southern Queensland, ‘Fees and Charges’, *1999 University of Southern Queensland Handbook*, <<http://www.usq.edu.au/handbook/1999/geninfo/10.htm>>, last updated on 13 May 1999, downloaded on 28 May 1999.

⁵⁴ James Cook University, ‘Admission and Enrolment Procedures, Admission Rules, Planning a Degree Course and Enrolment’, *JCU Handbooks for 1999*, <<http://www.jcu.edu.au/handbooks/005jcu/data/html/handbook.shtml>>, last updated on 23 April 1999, downloaded on 28 May 1999; and James Cook University Union, *Constitution of James Cook University of Northern Queensland Union*, Article 5.11.

⁵⁵ Griffith University, ‘Community Services Charge Rule’, *Griffith University Calender*, February 1997, p 52.10.

⁵⁶ Griffith University, ‘Student Representative Council Charge Rule’, *Griffith University Calender*, February 1997, p 52.30.

applied to other purposes directly related to the welfare of the students of the university".⁵⁷

5.3.3 Exemptions To Student Association Membership

Most Queensland universities have provisions in their Rules that allow students to object to membership of their campus student association. While most Queensland universities permit this exemption only on the basis of a conscientious objection, USC allows students to choose not to be members of their student guild. To do so the student must apply to the Student Guild Board for its permission.⁵⁸

CQU and QUT students are required to give written notice to their University Registrar outlining the nature of their conscientious objection.⁵⁹ Students at CQU must also notify the Student Association of their objection.⁶⁰ A student at USQ must satisfy the Registrar of a "*conscientious and bona fide religious belief*" that precludes them from being a member of the student association⁶¹ and, at JCU, a student must apply for and be granted by the Union Council an exemption on the basis of "*a bona fide conscientious or religious objection*".⁶² The Registrar of GU can exempt a student on the basis of their conscientious beliefs but must consult with the Chairperson of the SRC before doing so. Here, conscientious beliefs are not to be limited to "*religious beliefs or doctrines*" but it cannot simply be "*because of an objection to a particular policy or policies for the time being of the SRC*".⁶³

5.3.4 Current Situation At The University Of Queensland

Currently, there are no provisions in UQ Rules dealing with an objection by a student to either membership of a student association or the payment of a student services fee. The previous provisions relating to these matters were discarded, after 1994, when it was pointed out, by the Queensland Ombudsman, that the UQ provisions were probably in

⁵⁷ Griffith University, 'Student Representative Council Charge Rule', *Griffith University Calender*, February 1997, p 52.30.

⁵⁸ University of the Sunshine Coast, p 2.

⁵⁹ Central Queensland University, p 61 and Queensland University of Technology, p 1.

⁶⁰ Central Queensland University, p 61.

⁶¹ University of Southern Queensland, p 7.

⁶² James Cook University Union, *Constitution of James Cook University of Northern Queensland Union*, Article 5.11.

⁶³ Griffith University, 'Student Representative Council Charge Rule', *Griffith University Calender*, February 1997, p 52.30.

breach of the *Anti-Discrimination Act 1991* (Qld).⁶⁴ The UQ Rules had stated that a student could conscientiously object to the payment of a student services fee and object to membership of UQ Union and UQ Sport on the basis of a religious belief. Students who were granted such an exemption were required to pay a sum equal to 105% of the student services fee, payable by the other students, to a Student Amenities Fund.

When the UQ Senate rescinded these provisions, they requested that the UQ Union and UQ Sport also amend their Constitutions to allow students to object to membership **on any grounds**. Amendments to these Constitutions are necessary because, upon enrolment at UQ, a student is automatically provided with UQ Union and UQ Sport membership under their Constitutions. Neither Constitution has been amended to implement this request thus far.⁶⁵

6. PROVISIONS APPLICABLE TO UNIVERSITIES IN OTHER JURISDICTIONS

6.1 WESTERN AUSTRALIA

In WA, under the *Voluntary Membership of Student Guilds and Associations Act 1994* (WA), an enrolled student may be a member of a student association but it must not be compulsory to be so, nor to pay any fees to that association unless the student chooses to or wishes to use the facilities of the association. No academic benefit shall be denied or withheld because the student is not a member of the Student Guild.⁶⁶ The Act provides for a student association to collect fees from those students who choose to be members.⁶⁷

6.2 VICTORIA

VSU was introduced into Victoria by the *Tertiary Education Act 1993* (Vic). This model of VSU is different, however, to the WA model and that proposed by the Commonwealth Bill. In Victoria, membership of the student association is voluntary. However, students must pay a student services fee but the funds can only be used to provide services and facilities that are for the “*direct benefit to the institution or*

⁶⁴ See, in particular sections 7 and 8.

⁶⁵ Information provided by Mr Douglas Porter, Secretary and Registrar of The University of Queensland.

⁶⁶ For example, *University of Western Australia 1911* (WA), s 28(2c).

⁶⁷ For example, *University of Western Australia 1911* (WA), s 28(9).

students’’.⁶⁸ Such fees can also not be compulsorily imposed on students on the basis of acquiring membership of the student association.⁶⁹ Students must reasonably be made aware that the students services fee will not confer on them any membership rights in the student association unless they choose to become members.⁷⁰

The Victorian Act also provides that students who do not join student associations cannot:

- be excluded from the institution
- be excluded from or discriminated against in respect of exams or the institution’s other academic activities
- be excluded from any facilities, services or activities for students which are wholly or partially funded by compulsory fees
- pay a fine to the institution because the student does not become a member of a student organisation.⁷¹

In addition, it is an offence to use ‘*threats, intimidation or deception or attempt to persuade a person ... by any of those means*’ to become a member of a student organisation.⁷²

6.3 TASMANIA

Tasmania has, what the Australian Democrats termed, a form of ‘technical’ VSU.⁷³ In Tasmania, all students must pay initial and annual student services fees.⁷⁴ The fee can be paid in one of two ways.

- Where the student is a member of an association or where the student elects to have the money distributed in this way despite not being a member of the association, the fee shall be distributed as follows:
 - 17.5% to the SRC; and
 - 82.5% to the Management Committee.

Both of these bodies are part of the student association; or

⁶⁸ *Tertiary Education Act 1993* (Vic), s 12F(1).

⁶⁹ *Tertiary Education Act*, s 12D(2).

⁷⁰ *Tertiary Education Act*, s 12D(3).

⁷¹ *Tertiary Education Act*, s 12E.

⁷² *Tertiary Education Act*, s 12H.

⁷³ Senator Stott Despoja, p 2.

⁷⁴ Council of University of Tasmania, *Ordinance No 42*, Division II, ss 6 and 7.

- The whole fee can be paid to the Management Committee where the student has chosen not to be a member of the student association.⁷⁵

Students can elect not to be a member of the student association on their campus.⁷⁶

6.4 NEW ZEALAND

The *Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998* (NZ) became operative on 1 May 1999.⁷⁷ The general aim of that Act is to allow for students to have a choice as to whether they are members of a student association. However, this choice is to be exercised as a vote in a referendum on each university campus. The result of the referendum on each campus will be effective on that campus alone.⁷⁸ Students will have to decide whether or not, on a particular campus, the payment of student fees and membership of the student organisation will be compulsory. No “*undue influence*” is to be placed on students with regard to their votes in these matters.⁷⁹ However, the emphasis is that membership should be “*voluntary, unless the result of a referendum ... is that membership at the relevant institution is to be compulsory*”.⁸⁰

A referendum need only be held if the Council of a university receives a request from 10% of students enrolled at that institution to do so. Only one referendum can be held each year and it must be held ‘at the first opportunity’ after the institution receives the proper request.⁸¹ The ‘first opportunity’ will generally be “*at the time of enrolment, at the start of the academic year*” or:

... at some other time, but only if the Council determines that the enrolment pattern of students at the institution is such that the alternative time would result in voting by a significantly larger number of students than would vote if the referendum were held ...

at the start of the academic year.⁸²

⁷⁵ Council of University of Tasmania, Division II, ss 6(3) and (4).

⁷⁶ Council of University of Tasmania, Division III, s 13(6).

⁷⁷ *Education Act 1989* (NZ) (as amended), s 229A and s 229B.

⁷⁸ Education Act, s 229C.

⁷⁹ Education Act, s 229L.

⁸⁰ Education Act, s 229B.

⁸¹ Education Act, s 229C.

⁸² Education Act, s 229D.

The cost of these referenda will be borne by the Council of each university and the Council must remain impartial “*during any ... campaign*”.⁸³ Refunds will be paid to each student where the result of the referendum is that membership should change from compulsory to voluntary. The refund will be a proportion of the fees paid for that year.⁸⁴

Where fees are compulsory, any resources derived from those fees used to campaign must be shared equally between both sides of the debate.⁸⁵ The moneys paid to supporters of VSU must be paid to those who will most effectively be able to campaign on behalf of their position.⁸⁶

An obvious comment to make regarding this system is the cost and administrative burden of running these referenda, especially if they are held in addition to the elections for the student association’s executive. In addition, any student association’s ability to plan for future developments will be severely affected because their income may vary wildly from year to year.

6.5 OTHER OVERSEAS JURISDICTIONS

University students in the UK, Canada and the US all must be members of their campus student associations. The modes of funding differ in Canada and the US but both “*rely on a principle of compulsory funding with the option of opt out or conscientious objection*” to those funds going to the student associations.⁸⁷

In the United Kingdom, while students are required to join their student union upon enrolment, they do not have to pay a student services fee.⁸⁸ The activities of student organisations are funded from grants received by each university.⁸⁹ In 1983, the Thatcher Government decided not to introduce VSU because, as the Education Secretary, Sir Keith Joseph, argued:

... the student union is, mercifully, not the same as an industrial union. What we have in the students’ union is automatic membership and automatic access

⁸³ Education Act, ss 229E(1) and (4).

⁸⁴ Education Act, ss 229G(2) and (3).

⁸⁵ Education Act, s 229I.

⁸⁶ Education Act, s 229I(4).

⁸⁷ Senator Stott Despoja, p 1.

⁸⁸ Jackson, p 2.

⁸⁹ Jackson, p 2.

*to facilities ... and I do not see how we can, therefore, make membership voluntary.*⁹⁰

However, amendments were made by the *Education Act 1994* (UK) requiring the governing bodies of universities to ensure that student associations operated “*in a fair and democratic manner and were accountable for their finances*”.⁹¹ It also provided “*that governing bodies adopt codes of practice in relation to student organisations*”.⁹²

7. ARGUMENTS AND ISSUES RAISED BY VSU

7.1 FREEDOM OF ASSOCIATION

A belief that the current system violates the right of students to freedom of association was outlined by the Minister as one of the main reasons for the Federal Government’s introduction of this Bill.⁹³ The argument is that to require a person to be a member of a student association, in order to be enrolled at a university, breaches that right. The fact that students are compelled to fund the association is argued also to be contrary to that right. As the Minister has stated, students should have the same rights on campus that they enjoy off it. For example, the *Workplace Relations Act 1996* (Cth) provides for the right to freedom of association in the workplace.⁹⁴

This argument was also relied on by the Western Australian Government when they introduced identical legislation in 1994. The Court Government argued that compulsory student association membership and fee payment was contrary to Australia’s international obligations to ensure the protection of a citizen’s right to freedom of association.⁹⁵ This obligation could arise from, for example, Article 20 of the United Nations Universal Declaration of Human Rights, the relevant provisions of the International Covenant on Civil and Political Rights and the International Labor Organisation conventions concerning freedom of association.⁹⁶

⁹⁰ Christine Gillie, *Reform of Students’ Unions: The Education Bill [HL] 1993-94*, House of Commons Library Research Paper 94/57, 20 April 1994, p 9 quoted in Jackson, p 2.

⁹¹ Jackson, pp 2-3.

⁹² Jackson, p 3.

⁹³ Hon David Kemp MP, Second Reading Speech, p 3732.

⁹⁴ Hon David Kemp MP, Second Reading Speech, p 3732.

⁹⁵ See *Western Australian Parliamentary Debates: Legislative Council*, 12 August 1993: pp 2381-2.

⁹⁶ See *Western Australian Parliamentary Debates: Legislative Council*, pp 2381-2.

Opponents of VSU state in response that the current system does not breach a student's right to freedom of association and that this has been confirmed by some Australian courts. The Full Court of the Supreme Court of Victoria, in *Clark v the University of Melbourne* (No 2) [1979] VR 73, held that, under compulsory student unionism, there was no breach of a student's freedom of association because they were not forced to be a student at any university and, therefore, not forced to become a member of any association.⁹⁷ As the Court stated, 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*” and that “*they [the University] cannot touch anyone who does not voluntarily bring himself within their world*”.⁹⁸ Furthermore, in *Harradine v the University of Adelaide*,⁹⁹ the South Australian Full Court of the Supreme Court found that international covenants protecting freedom of association were not applicable to Australian students because the international covenants had not been enacted into Australian law and, therefore, did not give rise to any legally-enforceable rights.¹⁰⁰ The SA Court then went on to reaffirm the Victorian Court's conclusion in *Clark* regarding there being no breach of the student's freedom of association in any event.¹⁰¹

In addition, the SA Full Court rejected the notion that these provisions amounted to compulsory unionism. The student ‘union’ was “*not a union of the kind well known in the industrial and commercial world*” and membership was merely “*an adjunct of enrolment as an undergraduate*”.¹⁰² However, supporters of VSU argue that it is irrelevant that a student union is not the same as an industrial union, because the issue is the compulsion students are placed under to join an association they may not wish to.¹⁰³ They continue that this compulsion “*is not mitigated by the fact that ‘membership is an adjunct of enrolment’*” because, in practical terms, most students do not have a choice of the university they attend. They are constrained by “*financial and geographical*” considerations.¹⁰⁴

⁹⁷ Referred to in Jackson, p 5.

⁹⁸ Referred to in Jackson, p 5.

⁹⁹ *Harradine v the University of Adelaide*, Unreported Judgement of Supreme Court of South Australia, No 321 of 1987. Delivered 31 October 1989.

¹⁰⁰ *Harradine v the University of Adelaide*, Unreported Judgement of Supreme Court of SA, No 321 of 1987, referred to in Jackson, p 5.

¹⁰¹ *Harradine v the University of Adelaide*, Unreported Judgement of Supreme Court of SA, No 321 of 1987, referred to in Jackson, p 5.

¹⁰² *Harradine v the University of Adelaide*, Unreported Judgement of Supreme Court of SA, No 321 of 1987, referred to in Jackson, p 5.

¹⁰³ Jackson, p 5.

¹⁰⁴ Jackson, p 5.

It is also argued that the current system forces students to financially assist an association which may support political campaigns contrary to those students' beliefs. Following a Victorian decision expressing such a concern, the *Melbourne University (Amendment) Act 1978* (Vic) was passed stating that, at that university, it was "*the duty of the University to ensure that money made available to students' organisations is expended on services and amenities that [are] of 'direct benefit' to the University*".¹⁰⁵

To counter these concerns, opponents of VSU state that the vast majority of Australian universities provide safeguards for students to conscientiously object to student association membership. As the NSW Council of Civil Liberties stated in their submission to the Senate Committee, "*We consider that 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*".¹⁰⁶

However, the Senate Committee Majority Report concludes that:

*... the issue is that under the current compulsory scheme there will always be students or groups who are funding activities that they are morally opposed to. Only the Government's model of Voluntary Student Unionism can absolutely guarantee [this will not occur].*¹⁰⁷

7.2 CONSUMER CHOICE

The second major justification used by the Minister for this Bill is to protect a student's right to choose the services, facilities or activities they wish to use.¹⁰⁸ Under the current system, because the student service fee is compulsory, students are forced to pay for services that they may not want, need or have time to use. The Federal Government argues that the user-pays principle should apply to the provision of student services allowing students to decide for themselves which services they want to use.¹⁰⁹

¹⁰⁵ *Robert W Clark v The University of Melbourne and others* [1978] VR 457 referred to in Jackson, p 6.

¹⁰⁶ NSW Council for Civil Liberties, *Submission No 48*, p 1 referred to in Senator Natasha Stott Despoja, *Australian Democrats Dissenting Report*, Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, Canberra, 25 May 1999, <http://www.aph.gov.au/senate/committee/eet_ctte/vsu/democrats.htm>, p 5.

¹⁰⁷ Senator John Tierney, *Higher Education Legislation Amendment Bill 1999*, Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, Canberra, 25 May 1999, <http://www.aph.gov.au/senate/committee/EET_CTTE/vsu/index.htm>, Chapter 2, pp 3-4.

¹⁰⁸ Hon David Kemp MP, Second Reading Speech, p 3732.

¹⁰⁹ Hon David Kemp MP, Second Reading Speech, p 3732.

However, opponents highlight that students are members of a university community where all members must contribute to their communal facilities. An analogy is made to the role of local government and that student service fees are analogous to local government rates, that is, all residents pay local government rates, irrespective of their use of local government facilities and services.¹¹⁰ As the Opposition Report states, under the current system, “*students [have] benefited from cross-subsidised student services, in keeping not only with principles of fairness and equity, but in recognition of the idea of a university as a ‘community of scholars’*”.¹¹¹ Given that students annually elect the executive of their student association, this also means they have the same democratic rights as ratepayers to determine the expenditure of their contributions. The Australian Democrats have also accepted this analogy to local government.¹¹² However, the analogy was rejected by the Senate Committee Majority Report because “*the notion of a communitarian or collectivist tradition in universities, ... is now increasingly at odds with the needs and aspirations of contemporary students*”.¹¹³

7.3 RESPONSIVE AND ACCOUNTABLE STUDENT ASSOCIATIONS

If student associations are to take on the role of student government then it is important that they are responsive and accountable to their constituents. As Dr Kemp argued, in his Second Reading Speech, under VSU the need for student associations to attract membership will ensure that they are more responsive to the needs of students and, thus, will lead to the altering of the “*mix of services*” provided by student association and change the way they deliver services to ensure that membership is maintained.¹¹⁴ The Minister cites the changes in WA as examples of how this has occurred. He states that, at Curtin University, the Student Guild no longer offers aerobics classes but it now offers “*a casual employment register, assistance with resume writing and interview skills, and discounts at a range of on and off campus retailers*” and, at the University of Western Australia, two new cafes have opened.¹¹⁵

¹¹⁰ Healy and Richardson, p 1; Senator Kim Carr and Senator Trish Crossin, *Minority Report - A Report of the Committee*, Senate Employment, Workplace Relations, Small Business and Education Legislation Committee, Canberra, 25 May 1999, <http://www.aph.gov.au/senate/committee/eet_ctte/vsu/minority.htm>, p 4; and Senator Stott Despoja, pp 3-6.

¹¹¹ Senator Carr and Senator Crossin, p 2.

¹¹² Senator Carr and Senator Crossin, p 6.

¹¹³ Senator Tierney, Chapter 1, p 2.

¹¹⁴ Hon David Kemp MP, Second Reading Speech, p 3733.

¹¹⁵ Hon David Kemp MP, Second Reading Speech, p 3733.

It is asserted further that VSU will allow students to choose and lead to an improvement in the quality of services because, as the Minister states, “*the introduction of competition to other parts of the economy has seen service levels improve significantly. We can expect the same on campus*”.¹¹⁶ Further, it is pointed out that “*student organisations will prosper when they provide goods and services which students want*”¹¹⁷ not “*those wanted by the most vocal and effective lobby groups*”.¹¹⁸ But, as is explored in greater detail later in this Bulletin, opposition to VSU primarily rests in the implications VSU has for the provision of student services.

However, the Opposition Report points to a:

*... survey conducted by the Education Working Group [of the] National Youth Round Table [which found that] only 4% of respondents to the survey question on quality of service rated these as poor. Over 80 per cent rated services as satisfactory or better. Importantly, the survey showed that only 29% of students supported voluntary student unionism.*¹¹⁹

In addition, student association elected officials are, as is argued by the Minister, not representative of students because they are normally elected on low voter turn outs, usually less than 20 per cent of students.¹²⁰ Voting in these elections is not compulsory.

The Minister states that:

*In no real sense do the so-called representatives of the students have a mandate to speak on behalf of all students.*¹²¹

The Senate Committee Majority Report goes on to say that while student unions are accountable for spending money lawfully, they are not politically accountable for what purposes the money is spent on, that is:

... that such elected representatives, ..., are by reason of their short stay at university, limited to one term in office. In other words, student representatives do not expect to put themselves up for re-election. The outcome is that student politicians remain immune to student opinion and

¹¹⁶ Hon David Kemp MP, Second Reading Speech, p 3733.

¹¹⁷ Hon David Kemp MP, Second Reading Speech, p 3733.

¹¹⁸ Hon David Kemp MP, ‘Give students the right not to be coerced into unionism’, *Australian*, 26 February 1999, p 13. See also Appendix A.

¹¹⁹ Education Working Group, National Youth Round Table, *Submission No 264*, p 24 quoted in Senator Carr and Senator Crossin, p 4.

¹²⁰ Hon David Kemp MP, *Australian*, p 13.

¹²¹ Hon David Kemp MP, *Australian*, p 13.

*pressure as they know they will not be called to account for a previous term of office.*¹²²

Thus, it is believed that the responsiveness of student associations will improve because they will need to encourage students to join to remain viable.

7.4 REGIONAL CAMPUSES

Of particular concern to student organisations is the effect VSU may have on those associations located at campuses in regional Australia. Many argue that such student associations will be particularly hard hit because they are small and “*relatively new with outstanding loans for infrastructure development*”.¹²³ The submission of Rivcoll Union, from the Wagga Wagga campus of Charles Sturt University - Riverina, one such union, highlights their situation:

*It has been estimated that should voluntary student unionism be implemented Rivcoll Union would be liable for a payment of \$350 000 on redundancies, long-service leave and leave entitlements for its staff. Due to the nature of Rivcoll Union being a cash-based organisation, a payment of \$350 000 would make the organisation insolvent.*¹²⁴

In addition, in terms of the provision of certain services to students, the Australian Democrats pointed out that students would be adversely affected in these areas because of “*the relatively limited provision of free legal services in many regional areas*”.¹²⁵ The Democrats further point out that these concerns are shared by the Australian National University (ANU) Young Nationals in their submission to the Committee. The ANU Young Nationals urged the Federal Government to adopt the milder Victorian model of VSU because of the significant adverse impact the proposed model will have on students at regional campuses and from regional areas. They stated:

*We must keep the guild infrastructure. This important area is often accessed by people who have come from isolated areas and have no other means of support.*¹²⁶

¹²² La Trobe University Liberal Club, *Submission No 98*, p 1 quoted in Senator Tierney, Chapter 2, p 4.

¹²³ Senator Carr and Senator Crossin, p 7.

¹²⁴ Rivcoll Union Inc, *Submission No 107* quoted in Senator Carr and Senator Crossin, p 7.

¹²⁵ Federation of Community Legal Centres (Vic) inc, *Submission No 169*, p 4 quoted in Senator Stott Despoja, p 5.

¹²⁶ Australian Young Nationals at the Australian National University, *Submission No 173*, p 2 quoted in Senator Stott Despoja, p 7.

In addition, the many regional communities, in which these campuses are based, are concerned that they may also suffer if the student associations cut back on or eliminate the services and facilities they can provide. The Australasian Campus Union Managers' Association (ACUMA) points out that 82% of regional student organisations provide facilities that are used by the local community and that they provide around 1000 jobs and contribute \$100 million to regional economies.¹²⁷

The Minister argues in response that regional campuses will do well under this legislation:

Many of the student organisations at regional universities already have a reputation for serving their student bodies well, and this is likely to be rewarded with higher membership level under voluntary student unionism.

*Regional universities have a **further strength** in sharing some facilities with their local communities.*¹²⁸

The Majority Senate Committee Report agrees stating that it:

*... sees no particular disadvantage to regional and rural universities flowing from this legislation. ... User-pays principles will ensure the continued viability of services whether they are sold to students or to members of the local community. Furthermore, it is unlikely that regional universities will face the same level of competition as metropolitan university unions will face if union catering services are contracted out under new arrangements.*¹²⁹

7.5 ABILITY TO PAY

The Federal Government asserts that, given that many students survive on low incomes, these fees would appear to be an expense many may not be able to afford. Where students cannot afford the fee, there is the potential to deny that person a tertiary education. The Minister states:

*While they may want some services provided by student associations, the realities of managing on a limited budget mean the largely recreational activities financed by the fee should take second priority.*¹³⁰

Students may be forced to “drop out, defer their courses, ... borrow or delay other necessary expenditure” just to pay the fee.¹³¹

¹²⁷ Jackson, p 3.

¹²⁸ Hon David Kemp MP, Second Reading Speech, p 3733.

¹²⁹ Senator Tierney, Chapter 2, p 6.

¹³⁰ Hon David Kemp MP, *Australian*, p 13.

However, the Australian Democrats have suggested that, if one reason for these provisions is to remove a financial burden from students that may deter them from entering higher education, then a less drastic option could be considered. They acknowledge that one option could involve the Government making a loan to the University which would be the equivalent to the student services fee for those students unable to pay it upfront, and then the Government could recoup this money through the income tax system as with HECS contributions. This is a position supported by the Australian Vice-Chancellor's Committee (AVCC).¹³² The Australian Democrats would prefer to see the benefits currently paid to students increased to include a payment for student services fees.¹³³

7.6 RIGHT OF UNIVERSITIES TO OPERATE WITHOUT GOVERNMENT INTERFERENCE

The universities have argued that VSU represents a threat to their right to conduct their affairs without undue government interference. They continue on that the fees paid are a student's obligation on enrolment and that it does not matter whether the services are provided by student associations or in other ways by the University.¹³⁴ It is, therefore, their prerogative to determine their own conditions of enrolment.

7.7 STUDENT ADVOCACY AND REPRESENTATION

All universities benefit from the existence of representative student bodies whose members can serve on academic bodies and university committees of various kinds as the voice for the student body. However, it is pointed out that for a student organisation to do this effectively, they must be adequately funded which is only ensured by compulsory universal fees.¹³⁵ Adequate funding is important so that "*student representatives can have the administrative back-up needed to provide vice-chancellors and governing councils with properly prepared and researched contributions on a regular basis*".¹³⁶

¹³¹ Hon David Kemp MP, *Australian*, p 13.

¹³² Australian Vice-Chancellor's Committee Submission, p 9.

¹³³ Senator Stott Despoja, p 8.

¹³⁴ Jackson, pp 4 and 7.

¹³⁵ Niland, p 1.

¹³⁶ Niland, p 1.

However, many also fear what VSU will mean for the advocacy of student rights in the wider political context. As the new Chancellor of University of Technology, Sydney and the former Chief Justice of the High Court, Sir Gerald Brennan, observed:

*The Government proposes to introduce a condition on funding that 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.*¹³⁷

The Opposition Members of the Senate Committee agreed that they believed that the Government hoped with this legislation to weaken student activism.¹³⁸ The Australian Democrats argue that they believe that ‘*this Bill is part of the ongoing ideological campaign of the conservative Governments to silence the student voice, and that VSU has curbed the ability of students to protect their academic and political rights*’.¹³⁹

7.8 INTERNATIONAL STUDENT NUMBERS

With respect to this issue, the Senate Committee Majority Report stated that it saw ‘*no cause for alarm*’.¹⁴⁰ The concern is that the decline in services predicted to occur as a result of VSU will discourage international students from attending Australian universities. As evidence of their conclusion, the Senate Committee Majority Report points out that since 1994, when VSU was introduced into WA universities, there has been no decrease in the number of international students attending WA universities. In fact, they point out that the increase in the number of these students attending WA universities outstrips the increase, in the same period, in the number of such students attending NSW universities, which do not have VSU.¹⁴¹ However, the National Liaison Committee for International Students ‘*advised [the Senate Committee] that there was a strong need for a social support base for international students*’.¹⁴²

¹³⁷ Sir Gerard Brennan, ‘Vitality under threat: recent federal government moves have put universities at risk of compromise’, *Australian*, 24 March 1999, p 12.

¹³⁸ Senators Carr and Crossin, p 1.

¹³⁹ Senator Stott Despoja, p 1.

¹⁴⁰ Senator Tierney, Chapter 2, p 7.

¹⁴¹ Senator Tierney, Chapter 2, p 7.

¹⁴² Senators Carr and Crossin, pp 6-7.

7.9 VIABILITY OF STUDENT ASSOCIATIONS

7.9.1 What Has Happened In WA?

Given that the model of VSU the Federal Government proposes to introduce is that currently operating in WA, it is useful to examine what the effect has been on WA student associations and services. According to the AVCC submission to the Senate Committee, in WA, the levels of student guild membership have fallen dramatically since the introduction of VSU in that State, as the following current figures indicate:¹⁴³

Rough percentage of students who are members according to the AVCC

Curtin University	30%
Edith Cowan University	6%
Murdoch University	35%
University of Western Australia	30%

Services have been cut including those providing “*personal advocacy for students appealing against university decisions, child care services, cheap meals and recreational facilities, sports services and student loans*”.¹⁴⁴

However, the Senate Committee Majority Report believes the evidence from WA suggests that:

*A picture emerged of a continuing and dynamic sports culture, attracting increased support from the corporate sector.*¹⁴⁵

The Opposition Report, on the other hand, states that:

*...the Minister has not revealed ... the extent to which universities have had to step in to provide financial assistance to the guilds to ensure the maintenance of a basic level of student services. In the case of some services, the university has taken over the role of direct administration. The expense of this is borne by the universities, resulting in reduced funding for core academic programs like teaching and research. The Acting Vice-Chancellor of Edith Cowan ... advised the Committee that in 1998 the University provided \$100 000 to the Guild to support a limited range of representational, social and cultural activities and the orientation program.*¹⁴⁶

¹⁴³ Australian Vice-Chancellor’s Committee Submission, p 7.

¹⁴⁴ Senator Carr and Senator Crossin, p 8.

¹⁴⁵ Senator Tierney, Chapter 2, p 5.

¹⁴⁶ Edith Cowan University, *Submission No 69*, p 3 in Senator Carr and Senator Crossin, p 8.

The Australian Democrats also find that an unacceptable number of student support services are no longer available to university students in WA and acknowledge the university assistance to the Student Guild at Edith Cowan University.¹⁴⁷ Their report goes on to say that the Senate Committee Majority Report has based its assertions that VSU has not had a destructive impact on the WA student associations on statements, made in recruitment material circulated on behalf of the Edith Cowan Student Guild, “to students in Orientation week to the effect that the Guild was ‘vibrant’. This material is designed to encourage students to join their Guild and as such it attempts to portray the Guild in the most favourable light”.¹⁴⁸

7.9.2 Potential Effect Of VSU Nationally

Some commentators have pointed out that:

*... it is difficult to generalise about the impact of the Bill on student services and amenities [because some] universities may choose to maintain all or part of the subsidies and services from their own revenues ...*¹⁴⁹

While universities would not be able to use Commonwealth operating grants for this purpose, they do receive significant operating revenue from non-government sources.¹⁵⁰ However, there is a possibility that any loss of student services fees will result in cuts to services, job losses and the end to some campus infrastructure developments.

Based on the WA developments since 1994, it has been estimated that, under national VSU, the aggregate revenue of student associations would be reduced to about \$11 million annually which “*might be sufficient to cover the cost of student representative activities, [but] there would be little remaining funds for other services*”.¹⁵¹

JCU Union has outlined a list of services it will charge non-union members for if VSU is introduced:

A standard welfare consultation will cost non-members \$60. A standard academic consultation on HECS advice or an academic appeal will also cost \$60. Legal advice will cost \$1 per minute and faxes and telephone calls will cost considerably more for non-members. All these services will be free to

¹⁴⁷ Senator Stott Despoja, pp 2-3.

¹⁴⁸ Senator Stott Despoja, p 3.

¹⁴⁹ Jackson, p 3.

¹⁵⁰ Jackson, p 3.

¹⁵¹ Jackson, p 3.

*members, and a number of other services, like tenancy advice and emergency loans, will be available only to members.*¹⁵²

If services are cut, it is likely those that benefit disadvantaged groups will be the first to go including, for example, child care and legal and welfare services. As their usage is limited to a smaller group, such students are less able to argue for the retention of the services they use when funds are needed to ensure the survival of services aimed at the general body of students. It is these groups of students, though, that are perhaps the most in need of assistance from a student association and less likely to be able to get those services, affordably, elsewhere.¹⁵³

In addition, students can often encounter problems at university that they do not anticipate. Catholic Youth Services of the Archdiocese of Adelaide expressed its concern to the Senate Committee that “*the likely inability of university organisations to provide counselling and related social welfare services to students would have a serious impact on the workload of outside welfare agencies*”.¹⁵⁴

Even if services are not cut, problems arise for the student organisations in ensuring non-members do not ‘free-load’ on the services and facilities provided to members. While student organisations may be able to control access to some facilities and services, to do so in relation to others will be almost impossible, for example, with respect to union buildings or running tracks.¹⁵⁵

The ACUMA states that currently the provision of student services around the country employs more than 5000 full-time and 5000 part-time jobs.¹⁵⁶ They further state that VSU threatens more than half of these full-time jobs, as well as a further 2000 part-time positions.¹⁵⁷ However, with respect to these job losses, the Senate Committee Majority Report responds that:

*The Committee views this survey with scepticism. It takes no account of the redistribution of spending and of employment ... [that will occur as a result of VSU].*¹⁵⁸

¹⁵² James Cook University Union, *Submission No 216*, Appendix 2 quoted in Senator Carr and Senator Crossin, p 5-6.

¹⁵³ Senator Stott Despoja, p 4.

¹⁵⁴ Catholic Youth Services, Archdiocese of Adelaide, *Submission No 95*, referred to in Senator Carr and Senator Crossin, p 5.

¹⁵⁵ Senator Carr and Senator Crossin, p 6.

¹⁵⁶ Australasian Campus Union Manager’s Association, *Submission No 159*, p 7 referred to in Senator Carr and Senator Crossin, p 7.

¹⁵⁷ ACUMA, *Submission*, p 7 referred to in Senators Carr and Crossin, p 7.

¹⁵⁸ Senator Tierney. Chapter 2, p 6.

7.10 CONCLUDING COMMENTS OF THE SENATE COMMITTEE MEMBERS

The Government Members of the Senate Committee stated that they support this Bill because they view:

*... it as a measure likely to revitalise and modernise the non-academic sphere of university life. ... Although low student membership may be an immediate consequence of the bill it would be unfortunate if the trend was not arrested. The revitalisation of student unions is very important to the total experience of university life. ... Freedom of choice is the only basis upon which a truly representative student organisation can be built and a new culture of student government evolve.*¹⁵⁹

The Opposition Members concluded that the Bill should be rejected because:

*The Opposition is at odds with the Government on the more philosophical issues about what constitutes good student representation and government; a second issue of great concern to students and others is the more tangible issue of student services. On this score, the Opposition sees no practical justification for this Bill.*¹⁶⁰

The Australian Democrats believe that the best course of action on this issue is to ‘let students handle student issues’ which means a rejection of this Bill.¹⁶¹

8. CONSTITUTIONAL ISSUES

In its response to the Commonwealth Government’s introduction of this Bill, the Australian Vice-Chancellor’s Committee sought legal advice from law firm, Minter Ellison, on the constitutional validity of the proposed amendments should they be passed into law. That advice, which has been released publicly, concludes that a challenge 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.¹⁶² In response, the Minister has stated that the Australian Government Solicitor had advised the Government that it had the power to legislate VSU.¹⁶³ This advice has not been released publicly. The Australian Democrats note that the NSW Council for Civil Liberties also made

¹⁵⁹ Senator Tierney, Chapter 3, p 1.

¹⁶⁰ Senator Carr and Senator Crossin, p 9.

¹⁶¹ Senator Stott Despoja, p 10.

¹⁶² Denis O’Brien, *Higher Education Legislation Amendment Bill 1999*, Minter Ellison Lawyers, Canberra, 13 April 1999, <http://www.avcc.edu.au/avcc/mediarel/1999/avcc_1299a.doc>.

¹⁶³ Kate Hannon, ‘Legal doubt on student union Bill’, *Courier Mail*, 16 April 1999, p 2.

statements, in their submission to the Senate Committee, questioning the constitutional validity of the proposed amendments.¹⁶⁴

8.1 CONSTITUTIONAL VALIDITY OF THE HIGHER EDUCATION FUNDING ACT 1988 (CH)

The Higher Education Legislation Amendment Bill 1999 proposes to amend the Commonwealth's HEFA. The HEFA contains provisions that:

- allow for the Commonwealth to make direct financial grants to universities to conduct their operations (Chapter 2); and
- establish and govern the Higher Education Contribution Scheme (HECS) (Chapters 4 and 5).

In the early 1990s, the Commonwealth began funding Australian universities directly rather than via the making of States' Grants under section 96 of the Constitution.¹⁶⁵ The direct funding initiative began because it was agreed by the Commonwealth and the States, that this "*funding mechanism*" would better "*reflect the reality that universities ... [were] part of a national system of higher education and [that] the Commonwealth has primary responsibility for the public funding of that system*".¹⁶⁶ However, because of the nature of our federal system, the Commonwealth can only make laws with respect to matters which the Constitution specifically provides. Given that the Commonwealth is not granted specific powers under the Constitution to make laws with respect to higher education in Australia, other powers would have to be found to support the HEFA. It is argued that such powers are contained in sections 81 and 51(xxiiiA) of the Constitution.¹⁶⁷

8.1.1 Section 81

Section 81 of the Australian Constitution gives the Commonwealth the power to appropriate funds from Consolidated Revenue "*for the purposes of the Commonwealth*". The provision of financial grants to Australian universities could be supported by this section if the grants were considered appropriations for purposes of the Commonwealth. There has been some debate in the past as to how wide a power section 81 provides to the Commonwealth to do so, especially to appropriate monies for

¹⁶⁴ Senator Stott Despoja, p 9.

¹⁶⁵ O'Brien, p 2.

¹⁶⁶ O'Brien, p 2.

¹⁶⁷ O'Brien, p 3.

purposes not specifically within the grants of power under the Constitution.¹⁶⁸ However, in *Davis v Commonwealth* (1988) 166 CLR 79, the High Court held unanimously that an appropriation for a valid exercise of the executive power in section 61 (of the Constitution) was an appropriation for purposes of the Commonwealth.

The Court, in *Davis*, further considered the extent to which the executive power could support Commonwealth legislation covering matters outside the Commonwealth's enumerated Constitutional responsibilities. The case dealt with legislation that provided for the commemoration of the Bicentenary. The Court found that certain provisions were within the Commonwealth's executive power to make because they were matters which were "*preeminently the business and the concern of the Commonwealth*".¹⁶⁹ In addition, the advice of Minter Ellison argues that the Commonwealth's executive power "*encompasses powers inherent in the fact of nationhood*".¹⁷⁰ Therefore, it continues the constitutional basis for Commonwealth operating grants "*must largely depend upon the Parliament's incidental or inherent legislative powers with respect to the execution of the executive power*".¹⁷¹ The incidental or inherent legislative power resides in section 51(xxxix) of the Constitution which allows the Commonwealth Parliament to pass legislation relating to "*matters incidental to the execution of any power vested by this Constitution in the Parliament*". This power will support legislative provisions that are reasonably and appropriately adapted to the execution of an express power.¹⁷² For example, in *Davis*' case, the executive power extended to the incorporation of a body to promote the Bicentenary and the incidental matters to the exercise of that power included "*legislation that regulated that body's activities and protect the use of the names and symbols of the body*".¹⁷³ Therefore, the grant of financial assistance to Australian universities for operating and other purposes could find constitutional support in the Commonwealth Parliament's incidental or inherent legislative powers with respect to the execution of their executive power because these grants would be incidental to the Commonwealth's power to support a national system of higher education for which it has the primary responsibility.

¹⁶⁸ See, for example, *Attorney-General for Victoria; Ex rel Dale v Commonwealth* (1945) 71 CLR 237 ('*The Pharmaceutical Benefits*' case) and *Victoria v Commonwealth* (1975) 134 CLR 338.

¹⁶⁹ *Davis v Commonwealth* (1988) 166 CLR 79 at 94.

¹⁷⁰ O'Brien, p 3.

¹⁷¹ O'Brien, p 3.

¹⁷² O'Brien, p 3.

¹⁷³ *Davis v Commonwealth* (1988) 166 CLR 79 at 95, 99.

8.1.2 Section 51(xxiiiA)

The Higher Education Contribution Scheme (HECS) provides for the Commonwealth to make payments, on behalf of students, to Australian universities as a subsidy for part of their university course cost and as a loan for the remaining part of the cost which students must repay. It is argued that Commonwealth funding, under this scheme, can be supported by s 51(xxiiiA) of the Constitution which allows the Commonwealth “to make laws ... with respect to ... the provision of ... benefits to students” because such payments could be described “to be in the nature of benefits to students”.¹⁷⁴

8.2 CONSTITUTIONAL VALIDITY OF THE HIGHER EDUCATION LEGISLATION AMENDMENT BILL 1999

The advice of Minter Ellison states that “in short, we are of the view that, if the Bill were to become law, there would be a question about the constitutional validity of paragraphs 18(1)(da) and (db)”.¹⁷⁵ These are the paragraphs which place additional conditions on the provision of Commonwealth operating grants to implement VSU. The advice considered this issue in relation to three types of students:

- HECS liable students;
- full-fee paying Australian students; and
- international students.

This is an important consideration because, as it is argued, the Commonwealth’s power to make laws over HECS liable students is stronger, than that over other students, because the Commonwealth directly contributes to the cost of a HECS student’s course.

8.2.1 HECS Liable Students

Proposed paragraph 18(1)(da) seeks to make it a condition of Commonwealth operating grants that universities refrain from requiring a student to be or become a member of a student association in order to enrol. Therefore, the question raised is whether this proposed condition is reasonably and appropriately adapted to the Commonwealth’s power to make laws with respect to executive government. The advice of Minter Ellison argues that this is difficult to make out for several reasons.

The Minister’s Second Reading Speech does not offer any link to a Commonwealth power and states that the purpose of the paragraph is “to give students the right to

¹⁷⁴ O’Brien, p 2.

¹⁷⁵ O’Brien, p 1.

choose whether or not they belong to an association".¹⁷⁶ The advice goes on that "it is hard to see how [that] ... effectuates the expenditure of Commonwealth monies to promote a national system of higher education".¹⁷⁷ Secondly, "it is also hard to see how the proposed condition protects the purpose of the appropriation"¹⁷⁸ that is, the paragraph does not seem to act to protect the national system of higher education.

However, can this paragraph be supported because it is reasonably and appropriately adapted to the Commonwealth's power to provide benefits to students?

The Minter Ellison advice states:

*It is doubtful furthermore how the proposed condition supports the provisions for payment of benefits to students.*¹⁷⁹

The condition relates to membership of a student organisation while the power relates to the payment of student benefits.

Proposed paragraph 18(1)(db) aims to make it a condition of Commonwealth operating grants that Australian universities do not collect a fee from their students upon enrolment for student services. Therefore, is this condition reasonably and appropriately adapted to the Commonwealth's power to make laws with respect to executive government?

The advice raises an interesting comparison against which to consider the validity of this paragraph. Under the SOS Program, the Commonwealth made grants of financial assistance to student associations in Victoria and Western Australia to continue their activities after the introduction of VSU in those States. The advice argues that the Commonwealth's power to do so would be "found in the Commonwealth's power to fund a national system of higher education (student services being seen as an incidental part of that) and in its power to legislate for the provision of benefits to students".¹⁸⁰ The question raised then is whether that power can be extended to "make it a condition of grants to institutions that they **not collect** general service fees"?¹⁸¹

Again, the advice questions whether this can be established.

It states:

The proposed paragraph [18(1)(db)] does not seem to be related to the purposes of the appropriation [that is, support for a national system of higher

¹⁷⁶ O'Brien, p 4.

¹⁷⁷ O'Brien, p 4.

¹⁷⁸ O'Brien, p 4.

¹⁷⁹ O'Brien, p 4.

¹⁸⁰ O'Brien, p 5.

¹⁸¹ O'Brien, p 5.

education through the provision of operating grants]. *Rather, it is directed at stopping institutions from collecting payments from students for services for which the Commonwealth has chosen **not to appropriate** monies. There is no obvious relationship between the purposes of the appropriation and the payment with which the paragraph deals.*¹⁸²

That is, there is no connection between the operating grants and the student services fee necessary to make this condition incidental or inherent to the Commonwealth executive power.

Further, it is stated that “*on one view, paragraph 18(1)(db) might be seen in a similar light to paragraph 18(1)(d) of the Act in that it could be said to be aimed at controlling fees students are asked to pay*”.¹⁸³ Paragraph 18(1)(d) “*makes it a condition of financial assistance that the institution not charge any student fees, except as provided by section 13 [of the HEFA]. ‘Fees’ are defined in section 3 [of that Act] to mean **tuition or examination fees***”.¹⁸⁴ A general service fee can be charged under these sections. It is pointed out that paragraph 18(1)(d) “*is probably valid in that it supports HECS; [because] without this condition, the integrity of HECS would be at risk through students being liable to make course payments in addition to their contributions under HECS*”.¹⁸⁵ The advice questions whether a link can be drawn between the HECS payments, providing Commonwealth appropriation **to subsidise the cost of a student’s course**, and a measure to stop the payment of a fee for **non-academic** student services. There appears to be no risk to the integrity of HECS for which paragraph 18(1)(db) is intended to deal with.

In addition, does paragraph 18(1)(db) provide a benefit to students “*in that it removes an impost for which students would otherwise be liable*”?¹⁸⁶ The advice responds as such:

*It has been held that the reference in section 51(xxiiiA) to ‘the provision’ of benefits mans [sic] 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 Geriatric Hospital Pty Limited v Commonwealth (1986) 162 CLR 271, 281. A provision which has the effect of preventing a particular collection of money from a person could hardly be characterised as providing a Commonwealth benefit.*¹⁸⁷

¹⁸² O’Brien, p 5.

¹⁸³ O’Brien, p 5.

¹⁸⁴ O’Brien, p 4.

¹⁸⁵ O’Brien, p 4.

¹⁸⁶ O’Brien, p 5.

¹⁸⁷ O’Brien, p 5.

8.2.2 Other Students

In relation to the validity of these proposed amendments in their application to students, other than those who are HECS liable, the advice states:

*If there is a question about the constitutional validity of proposed paragraphs 18(1)(da) and (db) in relation to their application to HECS liable students, it seems to us that the question arises with greater force in relation to categories of students in respect of whose courses the Commonwealth makes no funding contributions.*¹⁸⁸

9. CONCLUSION

The Higher Education Legislation Bill 1999 has the potential to significantly affect student associations throughout Australia. These associations, the universities and other community groups fear that the effect will be so great that not only will many student support services disappear but that the associations themselves will struggle to continue. However, as the Minister, the Hon David Kemp MP, points out, the Bill is designed to protect the rights of students at Australian universities and voluntary student unionism is expected to lead to a revitalisation of student associations and student services.

¹⁸⁸ O'Brien, p 5.

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APPENDIX A

‘Give students the right not to be coerced into unionism’

By David Kemp, *The Australian*, 26 February 1999

LIKE all members of the community, students have a basic right to freedom of association. They should not be denied enrolment at a university or refused their results if they refuse to join a student union. To be enrolled at an Australian university, students are required to pay a union or student association fee.

That fee is not for their education - the Government on behalf of taxpayers gives a HECS loan for that. Rather, this fee is for non-educational services, often provided by student organisations. Either explicitly or implicitly, students are linked compulsorily to an organisation other than the university, regardless of their attitude to this organisation.

Many students object to this fee, and for a variety of reasons. Some simply cannot afford it. While they may want some services provided by student associations, the realities of managing on a limited budget mean the largely recreational activities financed by the fee should take second priority.

At present, however, no student can make this budget decision. They have to pay the fee, which can range from \$90 to more than \$300. A few may have to drop out or defer their courses; many more will have to borrow or delay other necessary expenditure.

Other students don't feel they get value for money. Those with the time and inclination to become involved in campus activities may be happy to pay a fee. They can enjoy a wide variety of subsidised facilities. But for students with other demands on their time, such as work, family responsibilities or simply a very strong commitment to their studies, the deal is not a good one. They are paying for services they don't, and perhaps even can't, use.

Supporters of the fee argue that if it were not compulsory some students would free-ride on the fee payers, using services they have not paid for. But this argument really works the other way. Because the fee is compulsory, a certain type of student - full-time, with few other commitments - can free-ride on the financial contributions of everyone else.

Even for students with money and time, the current arrangements are not necessarily the best ones. Under a voluntary user-pays system, the incentives would be much stronger to supply the services actually wanted by students, rather than those wanted by the most vocal and effective lobby groups.

The objections to the compulsory fee are not just about the money, however. Accompanying payment of the fee is often membership of the student organisation. Many students have no wish to be

“represented” by an organisation they were forced to join.

Student politicians are normally elected on low voter turn outs, usually less than 20 per cent of students. In no real sense do the so-called representatives of the students have a mandate to speak on behalf of all students. Only the compulsory membership structure allows them to maintain this fiction.

It is for this accumulation of reasons that the Federal Government has decided to legislate for effective freedom of association on campus. No student will have to join any organisation as a condition of enrolment. They will not have to pay any compulsory fees not related to education.

Contrary to the absurd views expressed in the past couple of days, this will not cause

any university to lose its government funding. There are already a number of conditions attached to university funding, and the law gives the minister the power to adjust funding if a university breaches these conditions.

This is necessary to protect students’ interests. Adjustment levels depend on the circumstances of the case. One option is to take from the university an amount equivalent to the union fees it charged and to give the money back to the students.

This would ensure the universities had no incentive to breach funding conditions and make the students no worse off for attending a university that was breaking the law. This debate should keep its focus on the real issue: giving students choice and guaranteeing their basic right to freedom of association.

David Kemp is federal Minister for Education, Training and Youth Affairs.

APPENDIX B

Source: Australian Vice-Chancellors' Committee The Council of Australia's University Presidents (A.C.N. 008 502 930), *AVCC Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee on the Higher Education Legislation Amendment Bill 1999* **Attachment:** AVCC Policy Paper on Student Organisations, <http://www.vc.unsw.edu.au/sp_voluntary.html>

STUDENT ORGANISATIONS

POLICY PAPER

1. The issue of nomenclature in relation to student organisations in Australian universities is important. The organised student body of a university is not similar to an industrial trade union and, therefore, the term "student union" can be misleading. The student body is more correctly described as a "student association" or a "student guild".
2. In every university there are essential services and facilities that are provided for students which are both an important element in the social and cultural life of universities and a part of the education process. Such services are often provided by student organisations, some of which have existed for many years, and are considered to be an integral part of university life.
3. Universities strongly support the view that fees charged for the provision of services for students are an obligation of enrolment, whether they are provided by student organisations or in other ways by the University. It is the prerogative of universities to determine conditions of enrolment.
4. Where student organisations provide an extensive range of services which the universities recognise as essential, their financial viability is fundamental. Services include the provision of food outlets, buildings, meeting rooms, toilets, stationery and second-hand book services, child care, legal services, health and employment services, assistance with accommodation and welfare services. As the student body changes, services directed to part-time and external students have become more important. Student organisations also encourage a broad range of activities by funding diverse groups reflecting student interests. Participation in these activities is educational in the broadest of senses, encouraging students to develop their social skills. Provision of these services is traditionally undertaken and funded by the student body, which is the direct beneficiary.

5. Student organisations accept banks, travel agencies, pharmacists, hairdressers, newsagents, clothes stores and others as tenants. These are areas in which the organisations cannot provide the same standard of service to the student community as the tenant can, and the income received subsidises other services.
6. It is essential that the student organisations continue to contribute to the ethos of the universities in this way. To do so, however, they must have adequate funds at their disposal.
7. The AVCC believes that representative student organisations work best when membership is universal, and therefore supports universal membership. All universities benefit from the existence of representative student bodies whose members can serve on academic bodies and university committees of various kinds. Universities recognise, nonetheless, that some students may not wish to be members of a student organisation.
8. The AVCC believes that it is in the interests of both universities and their students that the process related to exemption from membership of student organisations are clearly defined, including the grounds on which exemption will be considered and provided to students in written form, preferably in the university handbook. To be granted exemption, students should be expected to make a case in writing which is acceptable to the university.
9. Universities strongly support the view that fees charged for the provision of student services are an obligation of enrolment and must be paid, regardless of whether these fees are paid directly to the university or through a student organisation.
10. The responsibility for student services in the majority of universities, and therefore the entitlement to the associated fees, is vested in the student organisation. In cases where a student has obtained exemption from membership of a student organisation, the student should still be required to pay to a nominated source a sum of money equivalent to the membership fee levied by the student organisation so that there shall not be any financial incentive for the student to opt out of membership of the student organisation and so that a comparable range of services may be provided.

APPENDIX C

‘The Case for Compulsion’

by John Niland, *The Age*, 22 January 1999

For many years university students in Australia have paid an annual fee for services and facilities ancillary to the education process. Benefits range far and wide: catering infrastructure, sporting and fitness facilities, counselling services, student residences, support for participants at events such as world debating championships, etc. They also include student representative associations which have a role in putting student opinions directly to university councils, faculty boards and school committees, and which are often active in the wider social and political debates on campus.

Now, however, the Federal Government has announced its intention to legislate to remove the current obligation on the student body to contribute in this way. The ancillary services fee, or perhaps some part of it, would become optional in an arrangement the Government quaintly calls "voluntary student unionism" or VSU.

Although it is not yet clear how broad the Government intends its legislation to be, it will be working with the two precedents on VSU recently established in Victoria and Western Australia.

The Victorian model, while insisting that membership of a student representative group is optional, assumes that such student bodies will continue to play a role in providing services and in representing the interests of students. The WA model, on the other hand, denies student groups any representative legitimacy. The Victorian model does not rule out compulsory fees for services such as

catering, welfare, sports and some recreation and cultural activities, whereas the WA legislation makes it illegal to set compulsory fees for any 'non-educational' service or activity.

Naturally we all want as much freedom as possible in any democratic society. But if we want a fair and vibrant culture as well, there will be necessary limits on so called "voluntarism", and these apply equally to a community of students as they do to a nation of citizens.

The first and most obvious problem with unbridled "voluntarism" is the one of the 'free-rider'.

It is often impractical in a university community to administer services to ensure that only subscribers receive benefits. Sometimes the inequities are obvious, as when non-members receive discounts to which they are not entitled. The free rider benefits are less obvious but no less real when representatives they have not subsidised negotiate and achieve beneficial outcomes on behalf of the whole student body.

Australia's universities have policies that enable students to exempt themselves from membership of groups in cases of conscientious objection, similar to the exemption society can accord to compulsory voting. However, just as there is no conscientious objection to taxation, a theoretical right to political free association is less pure when, in reality, it simply comes through as the right to a free ride.

The second difficulty with "voluntarism" arises from the practicalities of representing student voices in university decision making. Student associations need to be adequately funded so that student representatives can have the administrative back-up needed to provide vice-chancellors and governing councils with properly prepared and researched contributions, on a regular basis.

If a probity issue arises in how the funds are handled and accounted for, those same councils can always withhold the fees or suspend their collection, but that is a worst case scenario.

The third main concern about "voluntarism" relates to the autonomy each university should have to define and shape the university experience for its students.

Given the challenge which universities increasingly face from on-line and low cost international degree providers, any restrictions on the ability of Australia's universities to maintain and promote the greater richness and diversity of the university experience will diminish our capacity to differentiate our product. This can not be good for Australia's currently healthy international education export market.

To be consistent with its emerging policy on up front fees, the Government should allow university governing bodies to determine their own approaches to mandatory fees for ancillary services. In the thinking of the Government, if we get it wrong the market will surely let us know.

The Government says its legislation will create better student groups by making them more responsive to consumer demand for their services. Perhaps, but it is difficult to see how student associations could be more responsive than they already are in most cases. Changes to services to meet student demand seem on-going; and

as far as the responsiveness of elected representatives is concerned, the Government might consider how much more responsive it itself would need to be if, like a student association, it faced a major election every year.

My biggest concern, and this brings up my fourth objection to VSU, is that the Government's legislation really represents the beginning of an assault on our sense of the inter-generational responsibility for the quality and diversity of campus life. To use the Prime Minister's recent apt expression, there is the issue of mutual obligation. At UNSW, for example, thousands of students today enjoy the facilities which have been made possible by the ancillary fees paid by tens of thousands of past students (myself included!). For all universities, an estimated \$300 million has been spent on buildings for student services in the past 10 years. Are we to so lightly relieve future generations from their responsibilities toward institution building?

Experience tells us that given the opportunity to avoid a voluntary charge, the opportunity will be accepted en masse. We can expect the Government's legislation, if passed, to leave a legacy of decline in the traditions of university life. This will be especially so the more closely it resembles the WA legislative model.

The first obvious change to university life with VSU may appear as a decline in the level of student activism, and true, no future government would suffer the same inconvenience of anti-Vietnam, anti-apartheid or pro-Timor protests. But perhaps this is the very point, for on these scores history has hardly judged the student stance of the day harshly.

Then, with VSU in place, infrastructure replacement in time will come up against hard commercial realities, which themselves are being underscored by the Government's own withdrawal of funding

support from universities. Without the support for facilities replacement and modernisation, services infrastructure will decline. And any free rides will be in third class.

[QPL Author's Note: John Niland is Vice-Chancellor of the University of New South Wales.]