



## **NUS Submission To**

Department of Education, Employment and Workplace Relations  
Review:

*The Impact of Voluntary Student Unionism on Services, Amenities  
and Representation for Australian University Students*

DISCUSSION PAPER

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## INTRODUCTION

The issue of universal membership and financial contributions of student organisations has been far more controversial in Australia over the last thirty years than anywhere else in the developed world. The issue has led to about a dozen state and federal legislation Acts, several unsuccessful Bills, numerous court cases including two Supreme Court judgements, and even the a case before the Australian Consumer and Competition Commission.

On the final sitting day of 2005, December 9, the Howard Government with the assistance of Family First passed the *Higher Education (Abolition of Compulsory Upfront Student Union Fees) Act 2005*. The legislation for the first time since the 1920s made both the membership of Australian student organisations and the requirement on students to financially contribute to the provision of student organisations and campus student services a purely voluntary matter.

The legislation effectively overrode the existing state base legislation regulating student organisation membership and income in Victoria (*Tertiary Education Act 2000*) and in Western Australia (*Acts Amendments (Student Guilds and Associations) Act 2002*). The two state acts were partial repeals of more draconian legislation passed by previous conservative governments.

In 2006 the Howard Government amended the national code obligations under the *Education Services for Overseas Students Act* to bolster the requirements on universities to provide support services for overseas students such as those that assist them to make the transition to a new life in Australia, legal services, health services, complaints and appeals processes, and a student contact officer. Universities have funded these services by charging international students a higher tuition fee than full fee paying domestic students in the same course. Universities have no obligation to pass any of this income to student-governed organisations.

NUS, despite being severely affected itself by the impact of the VSU legislation, has continued to monitor the legislation's devastating impact. Last year we produced our *First Annual Report into the Effect of Federal VSU Legislation* and a series of *Next Step* reports that looked at levels of university financial support to campus representative organisations to offset the lost income. These reports are available on request from [research@nus.asn.au](mailto:research@nus.asn.au)

The new Rudd Labor government has committed to “ensuring that university students have access to “independent and democratic student representative bodies” and the “amenities and services they need including childcare healthcare, counseling and sporting facilities.”

As part of our contribution to this review NUS is submitting

- (a) a summary of our consultation with campus presidents and NUS office bearers on

- key aspects of what the new arrangements should contain;
- (b) an examination and assessment of historic and international student organisation funding and membership frameworks, including NUS' new preferred option, which synthesises the best elements of these frameworks.

## **THE NATIONAL UNION OF STUDENTS PREFERRED MODEL**

The NUS Preferred Model is a synthesis of the positive aspects we have gleaned from looking at various other options, listening to the views of our affiliates and taking into account the stated intentions of the government. It has three core elements, discussed below, which are only effective if introduced simultaneously with each other.

### ***PART 1: Deferred Student Support and Services Levy***

The introduction of a universal & deferred Student Support and Services Levy, which includes student organisation membership with an opt-out provision.

All universities will be required to have membership opt out provisions integrated as part of the enrolment process, with all potential applicants to receive information about the benefits of membership. Non-members will still pay an amount equivalent to the Student Support and Services Levy, which will go into the Campus Community Facilities Fund (see part 2).

The Student Support and Services Levy will not be standardised between universities. Universities will set the fee level after receiving a recommendation from their student organisations. The Commonwealth, however, will set maximum and minimum limits; initial limits will be determined after consultation with Universities Australia and the national peak student organisation bodies. Cap limits will be indexed annually with the Higher Education Index. Each university and its student organisations will determine the appropriate categories of students that will pay a discounted fee.

The Levy will be delivered via a deferred HECS-style payment for all HECS or FEE-HELP eligible students. The Commonwealth will fund university/student organisation by an amount equivalent to the deferred payments. There should be an up-front payment option, however, - to be collected at enrolment by Universities and promptly transferred to student organisations.

The Student Support and Services Levy shall be used for all essential student services, which shall include (but not be limited to): representation, advocacy, counseling, legal aid, media, orientation, clubs & societies, sports clubs (not facilities), events and activities, welfare services and assistance, international student support, second hand book services, student meeting rooms (including religious and equity spaces), and other purposes as determined by the student body. The list is meant to be indicative rather than prescriptive. 10% of the Student Support and Services Levy will be set-aside for the Campus Community Facilities Fund (see part 2).

It is anticipated that the Student Support and Services Levy will be lower than pre-2006 fee levels. Data from Australian Campus Unions Managers Association showed that in 2005 the total expenditure on advocacy, representation, specialised international student services, health and welfare amounted to about only a third of student organisation expenditure.

## ***PART 2: Campus Community Facilities Fund***

The Commonwealth, universities and student organisations shall enter into formal partnerships to fund the maintenance and construction of major campus facilities such as student amenity buildings, sporting grounds and facilities, computer labs, bookshops, cleaning and repairs. This form of tri-partite partnership is common in Swedish universities.

Each university will maintain the Campus Community Facilities Fund that will consist of university revenue, Commonwealth contributions, 10% of the Student Support and Services Levy income from member students and the whole Student Support and Services Levy from students opting out of membership. This financial contribution reflects that students should continue to be stakeholders who should have a say in the running of the student-orientated infrastructure.

Major new projects will require the approval of the Department of Education, University and relevant Student Organisation/s on campus.

## ***PART 3: Restoring Student Services & Representation Transition Fund***

Commonwealth to provide short term transitional funding (grants for up to two or three years) to help several campuses that have been most affected by VSU to restore effective and adequately resourced student representation, advocacy and student driven campus culture.

This includes "start-up grants" for Universities to create independent, democratic student organisations where they have closed as a result of VSU. University run student service companies shall only be eligible for this funding for the purposes of making a transition to student governance.

### *Commercial Trading*

Student organisations or university companies or private providers will continue to operate commercial trading operations such as food outlets and bars. Overall these operations should pay for themselves (despite the issues of operating during long semester breaks and on small satellite campuses) and should not be subsidised by drawing on the Student Support and Services Levy. There may be some cases (extraordinary circumstances or an equity concern to provide subsidised food for very low income earners) where some subsidy could come from the Student Support and Services Levy.

### *Monitoring*

The Commonwealth, through the audits conducted by the proposed higher education quality agency, will monitor that universities have effective and adequately resourced systems of student representation, student advocacy and student-driven culture.

## **SUMMARY OF NUS CONSULTATION WITH STUDENT ORGANISATIONS IN AUSTRALIA**

NUS put forward a series of consultative questions to student organisations, including NUS' own state and national departments to gauge if there was consensus around some key features of any new support arrangement for student services and representation.

The respondents were: Curtin University Student Guild, Deakin University Students Association, Edith Cowan University Student Guild, Flinders University Campus Community Services, La Trobe Student Representative Council, Monash Students Association, Newcastle University Student Association, NUS Sexuality Department, Queensland University of Technology Student Guild, RMIT Student Union, Tasmania University Union, University of Melbourne Student Union, University of NSW Arc, University of Sydney Student Representative Council, University of Sydney Union, University of Western Australia Student Guild, NUS Western Australia Branch, NUS Queensland Branch and the Wollongong University Students Association.

There was near unanimous support for the return to some form of universal student levy. Only two respondents argued that the most preferred option was for the government to directly fund student organisations rather than add another financial cost to students. One notable trend in the responses was the strong support by the Western Australian organisations to return to the fee arrangements that operated in that state between 2002 and 2006. Under this voluntary membership/ compulsory fee model the money received by the student guilds was proportional to the members who joined but with a safety net where if membership fell below 50% the university would make up the revenue up to the 50% mark. Compulsory fees collected from non-members would go to university services.

All but one respondent were concerned that ongoing direct Commonwealth funding may compromise the capacity of students to speak out critically against the government. Some argued that direct Commonwealth funding would fundamentally change the nature of student organisations. Other concerns included: onerous reporting requirements attached with Commonwealth funding, that it would be easier for a hostile government to de-fund the program, that the funding would be subject to the budget vagaries, and that there may be a political backlash over the use of taxpayer funds for some student organisation activities. However, there was some support for Commonwealth establishing a transitional fund to rebuild student governed representative organisations on campuses that had been most severely affected by VSU. It was also suggested that the regulations associated with any Commonwealth funding should contain explicit clauses that protected the independence of democratic student organisations.

There were similar concerns regarding a direct university funding option, even on campuses where current relationships between university administrations and student representatives are fairly positive. Issues raised included the tensions that effective student representation and advocacy may create with university administrators, universities being overly prescriptive in funding agreements that leave little scope

democratic student governance, excessive levels of bureaucracy and high levels of 'administrative' fees taken by the university from the allocations.

All respondents who were in favour of a compulsory student levy also supported the notion that students should have some mechanism to defer these fees, particularly in the case of low-income earners. Most universities already have arrangements where payments can be spread over the year rather than paid up front at enrolment. However, more than three quarters of respondents argued that students should also have the option of deferring the repayments until after graduation through HECS-style arrangements. One respondent suggested an alternative where students could defer their textbook costs through the HECS system and use that money instead to pay their student service fees through existing arrangements.

There was little support for a standard national student service fee across the country with only two respondents supporting this idea. Many of those opposed argued that the considerable difference in campuses and costs of service provision made this impractical. There were a couple of other respondents who raised the idea that the government could regulate the fees by setting a minimum and maximum fee level. One issue raised about a fee cap was how it would be indexed, and that maybe NUS could have an oversight role in ensuring that fair fee levels were set.

Most campuses have a fee schedule that sets different fee levels for different categories for students (externals, postgraduates, international, undergraduates, part-time, students at small sites) that reflect their capacity access to on-campus services, or, in the case of international students, payments for some of these services within tuition fees. There is also considerable campus variation in what categories receive lower fees, and this is reflected in the suggestions of what should occur in the future. A couple of respondents also suggested that youth allowance, equity scholarship holders and other low SES groups could be given fee reductions.

There was also a mixed response regarding the level of safeguards needed to protect accountability and transparency over the use of student funds. Most supported the view that the current arrangements (an external independent auditor, annual published reports, annual democratic elections, annual financial reporting to university councils) are fairly stringent and adequate. Several respondents were prepared to countenance an additional financial reporting mechanism to a Commonwealth body, particularly in the case where Commonwealth funds are used. One suggestion was that NUS and CAPA representatives should be on this body along with government and university representatives.

NUS asked respondents to identify essential services that needed to be provided by student governed organisations rather than the government or university. A number of respondents said that they had problems with dividing existing services into essential and non-essential (organisations have already had to go through hard choices about what to maintain under VSU). However, all did offer a list of essential student run services. There was a near universal consensus that it should include a range of representative

activity and safety-net student support (academic rights advocacy, welfare, housing and legal services). About half of the respondents also saw a range of student community building services as essential (clubs, student media, student run space and facilities).

There was a broad consensus that students should have the formal right to opt out of membership but not to have a free ride with regard to paying the student service fee (or an equivalent amount that goes to a university service rather than to the student organisation). A few argued for an opt-out of membership option on the enrolment form, alongside with information about the benefits of membership. Some wanted a more stringent opt option where the student needs to do something more active than ticking a box, such as writing a letter to the Registrar or student organisation to apply to opt out.

International students now form a very large proportion of the student body. The issue of international students is complicated by the requirements of the Commonwealth that the universities provide student support and induction according to the ESOS Act despite the introduction of VSU. The extent to which the costs of ESOS compliance have been included in the higher tuition fee paid by international students compared to full fee paying domestic students in the same courses is unclear. Nevertheless the issue needs to be unpicked so that international students do not get double charged under new fee arrangements. The National Liaison Committee for International Students in Australia will be making a submission.

### **Our Additional Comments on National Representative Bodies**

The three main national student representative bodies – NUS, the National Liaison Committee for International Students in Australia and the Council of Australian Postgraduate Associations all are heavily reliant on affiliation fees paid by campuses that have voted to affiliate (in the case of the NLC much of its funding comes from NUS). A flow on effect from the campus VSU legislation has led to a severe reduction in the level of affiliation fees that most campuses are able to pay. The situation has been exacerbated by some university administrators who refuse to allow affiliation fees to be included in their funding agreements with campus organisations so they are not seen to be ‘political’.

In actuality bodies like NUS are no more or less political in nature than campus based student representative bodies. It is a way that the 40 or so campus representative organisations can pool their resources together rather than having to set up 40 different secretariats to do national lobbying and organising. Government and other peak bodies also prefer to have a single body to work with rather than 40 contending voices.

NUS was a member of the Hawke-Keating era Higher Education Council, and even under the Howard Government was regularly invited to participate in ministerial forums, Senate Inquiries and to make submissions to ministerial reviews. NUS is looking forward to providing the new government with constructive advice on higher education reform drawn from our 22 year history of working in the sector. The NLC has had a long history of working with many state and federal bodies and played a major role in the recent changes to the ESOS Act.

However, the funding cuts have severely reduced both our research and our funding to bring members concerns to the national spotlight. Currently NUS can only afford to employ one part-time researcher, with NLC similarly reduced to one part-time researcher. Even changes that restore campus funding in 2009 will not benefit the peak bodies until 2010. Some stop-gap measures will be needed to restore and strengthen effective and democratic national peak bodies until 2010.

## **ALTERNATIVE OPTIONS FOR REFORM AND NUS' CONCERNS REGARDING THESE ALTERNATIVE MODELS.**

Our preferred model was developed following both consultation with our members and research into established models internationally. In this section NUS will examine eight alternative, inferior models for student organisation funding derived from historic and international examples. We will list commonly used argument for and against the options, followed by our own assessment. Our new model is effectively a synthesis of the strengths of some of the following models.

### **OPTION ONE**

#### **Reintroduction of universal membership with students paying compulsory fee**

##### *DESCRIPTION:*

Under this model students make some direct up front financial contribution to meet the costs of running student representation, advocacy, activities and support services. There is a separate specified fee in addition to the tuition fees or HECS. Students have universal rights to access these services and also democratic control over how some or all of these functions are provided. The separate fee keeps university bureaucrats at arms length from the revenue pool although they do play a role in regulatory role such as ensuring that proper financial auditing processes are followed. Each university would have a conscientious objection provision that would allow individuals to opt out of membership but not allow a free ride by requiring that the student make an equivalent financial contribution to a charity or university building fund.

##### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

This is the model that was in place for 80 years in Australia and continues to be the normal model in most of the comparable higher education systems in the Western world such as Western Europe, USA and Canada. Usually governments take a hands-off approach and have left universities to work out these matters. However, in Finland and Sweden the student membership of their student union is compulsory by law. In Sweden the student body is so integrated into the running of higher education that a third of places on most university decision making bodies are reserved for student representatives.

The North American higher education system is very diverse. Once again the state and federal governments have taken a hands off approach to these matters. Nevertheless most public universities, and the leading private universities in Canada and the USA have a system similar to the pre-2006 situation in Australia – a compulsory fee with an opt-out membership provisions for conscientious objection. America's most prestigious private university, Harvard University, sees its student government structures and student services as so important to its education mission that it currently charges a universal annual student services levy of \$US1908 (about \$2500 in our dollars) and this doesn't cover additional fees for residential board or health services (this puts some perspective

on the \$100-\$400 fee typical at pre-2006 Australian universities). The US student government associations are generally perceived as auxiliaries of their university administration but many universities allow a considerable scope for student governance with student service fee revenue (less so with their considerable commercial and alumni income).

*Compulsory Student Service Fees At Selected North American Universities (2005)*

Harvard University \$US1908

Uni of Illinois \$US 1859

Boston College \$US 1389 (includes medical insurance)

Uni of Michigan \$US 698

Uni of British Columbia \$CAN 656

Uni of New Brunswick \$CAN 339

At a few North American universities there has been state or campus legislation to restrict the use of compulsory funds for political activism, or to let students decide which campus organisations they wish to direct their funds to.

NUS is aware of two international variations. In the United Kingdom the government effectively pays the student organisation contribution of domestic students. In New Zealand there is legislation that gives the right to conduct a referendum on whether or not there should be a universal student contribution at that university. These are considered below in Options 3 and 4.

*COMMON ARGUMENTS FOR AND AGAINST:*

For:

- This option is the one that provides the highest degree of independence from the university administration and government while maintaining a stable funding base. This enables student representatives to fearlessly present student views without impacting on future funding negotiations. Student representatives from organisations dependent on an external body for their funding report that they engage in self-censorship even if there have not been threats from administrators of the external funding body.
- This model provides financial stability for student organisations. As long as normal reporting and external auditing requirements are met the funding is guaranteed and there is a stable base of funding to plan for the future.
- Financial stability puts student organisations in a stronger position to recruit and retain talented professional staff.
- Universal membership provides a sense of community ownership and

responsibility for the student estate; part of the civic education that universities wish to impart in all its graduates rather than just a minority who are already civic-minded.

- The minority of students with strong ideological or religious objections to being a member of a student organisation may abstain from membership without opening up a free ride option.
- Student representatives on VSU campuses report that they spend often as much of their time on promotion and membership recruitment matters as they do on their core responsibilities. This is further exacerbated as now most members of the student executives (sometimes even the President) are unpaid or receiving only a token honoraria at a time when the required workload has doubled from the pre-VSU context.

Against:

- VSU proponents will continue to campaign for the return of VSU. They will argue that the conscientious objection provisions are inadequate to meet their concerns over the rights of individuals to dissociate from student organizations.
- There are many students, such as those wholly dependent on Youth Allowance, Austudy or Abstudy who find it difficult to pay any fee up front, particularly early in the academic year when there are textbook, course note and equipment costs. This can also contribute to the broader concern of up front costs deterring students from going to university.
- Political viability of seeking to reintroduce the old system. Neither the Coalition nor the ALP currently support a return to the pre-2006 situation in Australia.

*NUS ASSESSMENT:*

This model was the tried and trusted method of funding student organisations for eighty years. It provided student organisations with considerable independence to represent the student interests to government and university administrators. It also provided a stable and predictable source of funding with the university having a financial oversight role. This is the one option, however, that the government has ruled out.

Until the 2007 NUS National Conference, this had been NUS' preferred option. NUS' current position, however, is that it is prepared to work with the government to develop a new framework but one that doesn't jeopardise independent student governance or stable and adequate funding for student organisations. NUS' preferred model addresses two of the regressive flaws in this option.

Firstly, it addresses the equity concerns with charging students up to \$500 at the beginning of the academic year. A more progressive system would allow students the option to defer repayments until after graduation by adding the debt to the HECS or FEE-HELP debts.

Secondly, even before the federal VSU legislation a number of universities were diverting most of the student service fee revenue into university run student services or university student service companies. This fundamentally undermined the post-Whitlam rationale of why students were paying a separate student service fee (i.e. for democratic student governed representation and services). Under the old system the reserve powers of a university to dish out the money as it sees fit led to considerable confusion over what the purpose of the fee really was. The new arrangements should make it clear that the most of the student levy funds should be used for student-governed activities.

## OPTION TWO

### Voluntary Membership and Voluntary Fee

#### *DESCRIPTION:*

This is the “full blown VSU” that is the current Australian situation. Under this model, universities are prohibited from requiring that a student become a member of an organisation of students. This model also prevents universities from charging any fees for an amenity, service or facility that is not of an academic nature unless the student has chosen to use the amenity, service or facility. Either the university or the student organisation is allowed to collect voluntary contributions from students to fund non-academic student services and student representation. Under the idealised voluntary student guild model the student organisation also controls substantial commercial trading operations or leases that make up for lost income and are able to offer financial discounts to encourage the recruitment of members.

#### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

This is current state of play in Australia. On the final sitting day of 2005, December 9, the Howard Government with the assistance of Family First passed the *Higher Education (Abolition of Compulsory Up-front Student Union Fees) Act 2005*. The legislation for the first time since the 1920s made both the membership of student organisations and the requirement by students to financially contribute to the provision of student organisations and campus student services a purely voluntary matter. Similar legislation had stalled and then lapsed in the Senate in 1999 and 2003 due to the opposition of most non-Coalition parties and independents to VSU.

The Act took effect from the middle of 2006, although universities with annual fee collection arrangements were able to charge for a whole year at the beginning of 2006. 2007 was the first year when all universities operated on a voluntary fee basis.

The early student organisations in Australia prior to the 1920s were voluntary. Basically they were amalgams of sporting, cultural, and faculty clubs with universities seeking wealthy alumni and other benefactors to pay for the construction of student facilities. However, the universities were much smaller and narrower with only a few hundred students almost exclusively from wealthy backgrounds.

The first example of this “full-blown” VSU legislation was introduced in Western Australia over 1993-4. The Western Australian legislation for the first time made both membership and entire guild fee a voluntary charge:

*Acts Amendment (Student Guilds and Associations) Act 1994* (WA, so called 'full blown VSU')

- It is not compulsory for any student to be a member of a student association;
- It is not compulsory for a student to pay any fees to a student association or any service not directly related to an educational course provided by the university;

- Criminal penalties for anyone who discriminates against non-members;
- The removal of the Guild President as a member of University Council

Students had to tick for opt-in clauses on the enrolment (or later in the year in the Guild offices) if they wished to become members of the Student Guilds. The financial impact of the VSU legislation was muted during 1995 and 1996 as the Guilds received compensatory 'SOS' funding from the Commonwealth (see Option Six for more details).

Even before VSU, the structure of the student organisations in Western Australia was unusual in that all campuses had unitary Student Guilds (combining representation, commercial services and recreation/sporting clubs into a single body) rather than split representation/commercial trading/ sporting structures common at many interstate campuses. In VSU terms this provided one advantage in that the student organisations did not have to go through the painful and protracted process of mergers in order to be able to offer students a straightforward membership package combining representation and services.

The full impact of VSU came into force in WA in 1997 after the withdrawal of the SOS funding. Guild membership rates fluctuated between 35% to 6% membership rates. The Guild fees were halved to around \$80-\$100 and there was an emphasis on members discounts and price incentives to join the Guild. Membership rates were highest amongst first years and dropped in later years. In 1999 the membership rates were:

Edith Cowan 6%

Curtin 30%

Uni of WA 30%

Murdoch 35%

Most of the commercial services continued to operate after 1997 but the profits were insufficient to continue to the comprehensive range of non-cost recovery services, publications and advice/support normally offered by the guilds. At the University of WA Guild student activities were reduced in line with the membership take-up rates, which meant across the board cuts of about 70%. In some cases the universities had to step in to provide financial assistance to the guilds to ensure the maintenance of a basic level of student services, and in the case of Edith Cowan the university took on the role of direct administration after the Guild collapsed. 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 University advised a Senate Inquiry that in 1998 the university had provided \$100,000 to the Guild to support a limited range of representational, social and cultural activities and the orientation program. While this put pressure on funding for its academic program, the university saw no alternative to this expenditure if the university was to remain competitive locally, nationally, and internationally. The university made significant financial commitments to the student newspaper, an education and welfare, research officer, postgraduate support staff, international student council, sport facilities, personal accident insurance, off campus housing advice and student amenities.

The Murdoch Guild of Students, which in 1999 had the highest membership base, told the *Campus Review* that its financial status was ‘stable but heavily reliant on university income’. The university funded the orientation week, sport affiliations, and also some postgraduate and international student support. At the University of Western Australia the university took over the sport facilities and the women’s research/sexual harassment support was integrated into the university’s equity office. Curtin University took direct control of campus tours and provided funding for international and postgraduate students.

The full blown VSU legislation was partially repealed by the ALP Western Australian Government in 2002, while retaining some voluntary membership provisions. The post-2002 Western Australian model is outlined in Option Seven.

The only overseas universities that we are aware of that had similar voluntary membership and fee arrangements arising from state or national legislation was the University of Auckland Students’ Association and the Waikato Student Union. Waikato has subsequently returned to a universal fee arrangement and while Auckland has made its membership free. The New Zealand context is discussed below in Option Three.

#### *COMMON ARGUMENTS FOR AND AGAINST:*

For:

- Students with conflicting viewpoints to the direction of the organisation can choose to separate themselves from the organisation, freedom of dissociation
- Students who join may have a greater commitment to the organisation than those forced to join.

Against:

- On many campuses student organisations are unable to deliver effective representation and not-for-profit services based on voluntary member income. A user-pays system for welfare related services is completely against the purpose of welfare support at universities (i.e. it is not accessible to all students).
- Student organisations are unable to focus on core activities as they have to be consumed than membership recruitment
- Low uptake and lack of economies of scale makes operation costs a larger part of budget
- Vicious circle - lower resources makes it more difficult to provide services for members which makes it harder to recruit the next batch of students

- Erosion of support services will impact on the most vulnerable students
- The campus experience will be significantly diminished; a private shopping mall experience is a poor substitute for a vibrant student driven campus culture
- Students will turn elsewhere for advice and advocacy and incur substantial fees;
- Greater resort to adversarial litigation rather than mediated outcomes within university resolution processes
- Harder to represent student body and interests to University and Government etc. with only a minority of students as members
- Will need supplementary funding as core business is not chargeable.

*NUS ASSESSMENT:*

The current VSU legislation has clearly been a failure. With the exception of a couple of Western Australian Student Guilds no student organisations have been both self-sufficient and able to offer a comprehensive range of services and representative activities. They have faced the dilemma of financial ruin or dependence on direct university funding with strings attached.

NUS has comprehensively documented the negative experience of VSU in our "First Annual Report into the Impact of Federal VSU Legislation" and our periodic "Next Steps" documents.

NUS believes that all students to be members of their student organizations and be able to access student organisation services. However, our consultations demonstrated that most of our members are prepared to countenance some form of opt out voluntary membership so long as it does not jeopardise the financial base of student organisations.

## **OPTION THREE**

### **Student Referenda Decides If Compulsory**

#### *DESCRIPTION:*

A referendum is conducted where current students at a university can vote to determine if student organisation membership and financial contribution arrangements should be voluntary or compulsory. The referendum could be a one-off, held at regular intervals (say every three years in line with the average undergraduate degree) or could be held when petitioned by a certain percentage of students at a university.

#### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

There is only one known contemporary precedent of this approach although it does reflect the spirit of the early Australian student organisations where the student body voted to introduce a universal contribution. In those days the student body was small enough to have a fair proportion of the enrolled students at a general student meeting.

In New Zealand the previous conservative government introduced the *Tertiary Students' Association Voluntary Membership Amendment Act 1998*. The national party had wanted to ban the collection of a universal student fee but a compromise with New Zealand First Party (needed to pass the legislation) allowed the student body the option of conducting referenda on whether or not there should be a compulsory fee. While the default position was a voluntary fee the students could opt to hold a referendum for a compulsory fee if the university received a request from 10% of students enrolled at that institution. At all but two institutions the student body requested and voted for a compulsory fee.

The Waikato Student Union went voluntary but the student body reversed the decision in a 2002 referendum - under VSU the student union was forced to sell off most of its assets and there was a near complete collapse of their campus student services. Auckland University is now the only VSU campus in NZ. The initial ballot in 1999 was fiercely contested and the VSU position won by only a few hundred votes out of around 11,000 cast.

The Auckland University Students' Association operated on a model where it supplemented its commercial trading income with a \$NZ30 annual voluntary members contribution and a small grant from the university of about \$NZ250K. The member fee prior to VSU had been \$NZ120. Membership fell from 20,000 in the days to universal membership to 4,000 initially and to 2,700 in 2002. Many staff positions were abolished. A new arrangement came into place in 2003 where the university increased its grant to \$NZ1 million in exchange for the membership becoming free. The funding agreements are negotiated annually.

Auckland student representatives say that they feel much more compromised over their ability to act as if they are in charge of an independent "real" students association with control over its buildings and financial resources. It is not so much a case of threats from

university management. Rather it is a case where student representative automatically self-censor to avoid conflict with the university lest it sour future funding or building use negotiations.

*ARGUMENTS FOR AND AGAINST:*

For:

- Students may feel a greater sense of collective involvement and ownership if they have made the fundamental decision on the nature of their student organisation and levels of representation and services.
- If the referendum for universal membership is successful then many of the benefits of an independent and properly resourced student organisation will flow to members.
- Student representatives will be empowered by such a clearly demonstrable mandate from the membership.

Against:

- If the referendum is lost then many of the negative effects of VSU will occur (such as lack of financial sustainability or the compromises associated with dependence on university funding agreements)
- VSU proponents may continue argue that their rights to dissociate are being violated even if the decision to have universal membership has been taken by a democratic majority. Their political remedy, to win the next referendum, at least takes it away from government legislation.
- If the referendum is more than a one off, it will undermine the capacity for long term planning, investment and attractiveness to recruit and retain professional staff (only able to offer short term contracts); resources and energies will be taken away from core business to focus on referenda and preparations just in case VSU gets voted up.

*NUS ASSESSMENT:*

In New Zealand this was a compromise to ward off the so-called “full-blown” VSU. The option has some superficial appeal in its democratic nature but really has the potential to be as de-stabilising as the current arrangements in Australia. At the one New Zealand campus with a fiercely contested political culture, Auckland University, the referendum is held every two or three years. Even if a referendum to create universal membership was passed, the organisation could not make long term plans as the decision could be

reversed in a couple of years time. Given the much higher level of political contestation over VSU in Australia, it would be a recipe for a permanent crisis and a massive diversion from performing core activities.

## **OPTION FOUR**

### **Government Funds Student Organisations Via Specific Funding**

#### DESCRIPTION:

The Commonwealth sets up a specific fund that would provide Commonwealth funding to student organisations or universities to make up for loss of income due to voluntary student unionism. The funding levels could be benchmarked to 2005 levels or at a new negotiated level of core services and representation provision. The funding could go to student organisations directly or be part of university grants. The funding could also be used to fund university run student services but the Commonwealth could require that an appropriate share went to student governed organisations and activity.

#### HISTORIC AND INTERNATIONAL PRECEDENTS:

In the 1970s when the Whitlam ALP Government abolished tuition fees and took over direct funding of universities it also explored taking over the funding of student organisations to remove all fees. On closer examination it soon became clear that there would be some areas of potential conflict between what students wanted and what a minister could politically get away with approving. The Government took the advice of Australian Union of Students to retain the fee and maintain student governance of student services and representation.

In the past, Commonwealth funds have sometimes provided major capital works that have housed student organisations at new universities. For example, when Flinders University was established in the 1960s much of the funding for the construction of the Union Building came from a capital grant from the Commonwealth (then run by the Liberal Government) to the university. Until 2006 universities charged a compulsory building levy on first year students, which would be accumulated over many years to fund the renewal and expansion of student union buildings.

There have also been two programs established by the Commonwealth to deal specifically with the loss of income arising from the introduction of VSU. In the 1990s the federal Keating Government found itself confronted with two state Liberal governments that had introduced voluntary student union legislation. While VSU was being debated in WA parliament the ALP Federal Government inserted a section in the *State Grants (General Purposes) Act 1993* to 'protect the right of higher education institutions to decide the most appropriate range and level of services and amenities for their students'. The Commonwealth would compensate student organisations for income lost due to state VSU legislation and also gave itself the power to reduce its grants to the offending state by that amount. This effectively meant that state Liberal governments would themselves be compensating the student organisations for income lost due to the legislation.

In 1995 the Student Organisation Support Program funding provided the Murdoch University Guild of Students with \$725,328, the Edith Cowan University Student Guild with \$1.54m and the Uni of WA Guild of Undergraduates with \$1.56m. The

corresponding SOS income in 1996 was Murdoch (\$693,657), Edith Cowan (\$1.2m), Curtin (\$1.82m), and the Uni of WA (\$1.66m). In the other VSU state, Victoria, the Melbourne University Student Union received \$1.23m, and Swinburne Student Union (\$71,619). In 1996 the Ballarat Students' Association received \$117,133, Victoria University of Technology Western Institute Student Union (\$53,686) and La Trobe Students' Representative Council (\$573,436). The SOS funding was suspended following the election of the Howard Government, although the payments for 1996 were made to those campuses that submitted their applications before the change.

A second program was introduced by the Coalition as part of the final "deal" to get the current federal VSU legislation through the Senate. The National Party was put under pressure from regional communities that they would be losing access to community facilities provided by student organisations, such as sporting and gym facilities. The small concession that the National Party extracted from the Liberals was a VSU Transition Funding for Sporting and Recreational Facilities. \$80m was allocated for three years commencing in 2007. The stated aim of the fund was to provide higher education providers with transitional funding from the Commonwealth to offset the impact of lost fee income while universities developed alternative income streams to maintain and construct expensive sporting and recreational infra-structure. Student organisations are not allowed to apply for the funds even though in most cases they are the body that is responsible for running sport and recreation on campus. The fund cannot be used for transitional arrangements for other areas that universities and students see as core student services such as representation or welfare services.

There is some international precedence for government funding from the United Kingdom. Unlike in Australia when the central government took over funding of universities, in the United Kingdom the government also is responsible for funding student facilities. In the United Kingdom students are required to join their student organisation upon enrolment but they do not have to pay a student services fee. This is because the activities of student organisations are funded by the grants received by each university from the government. The Thatcher Government in the 1980s decided against introducing VSU because as the Education Secretary, Sir Keith Joseph argued: *"..the student union is, mercifully, not the same as an industrial union. What we have in the students' union is automatic membership and automatic access to facilities...and I do not see how we can, therefore make membership voluntary."* Instead of VSU the Tory Government did eventually adopt an alternative regulatory approach in its *Education Act 1994*. The Act required the governing bodies of universities to ensure that student associations operated 'in a fair and democratic manner' and were accountable for their finances and 'that governing bodies adopt codes of practice in relation to student organisations'. Apart from requiring responsible governance both political parties have taken a hands off approach to student unions and facilities in the UK and have left it for universities and their students to handle the student estate.

## *ARGUMENTS FOR AND AGAINST:*

### For:

- This model provides medium term financial stability for student organisations. As long as reporting, external auditing and any additional requirements determined by the Commonwealth are met the funding is guaranteed within the budget cycles of government (perhaps on a tri-ennium basis).
- Financial stability puts student organisations in a stronger position to make medium term financial plans and to recruit and retain talented professional staff.
- Universal membership provides a sense of community ownership and responsibility for the student estate; part of the civic education that universities wish to impart in all its graduates rather than just a minority who are already civic-minded.
- Independence from university administrations
- Student representatives are able to focus on core activities rather than membership recruitment
- No direct cost to students

### Against:

- Potential loss of independence and capacity to represent students (for example NGOs participating in the Job Network are required to have their media releases approved by the Minister)
- Financial levels subject to changing budget priorities of government
- Easier for a hostile government to suspend funding for a program than to get new VSU legislative change approved by Parliament.
- Could get caught up in clash between government and university over reform agendas (for example industrial relations)
- Risk of standardisation of what gets funded and a one size fits all approach
- Risk of a narrow suite of services being funded by the government as opposed to a broader service provision if the funds are from students for students
- Additional layer of reporting (to Commonwealth) could be onerous for smaller organisations with limited administrative support

- There is a possibility that the university could siphon off much of the funding into its own student service functions if not stipulated that the funding goes to student governed services.

*NUS ASSESSMENT:*

NUS is concerned that a shift to a system where student organisations were mainly funded by direct grants from the Commonwealth would change the fundamental nature of student organisations. Even with the best of intentions there would be serious points of conflict that would compromise student organisations, increase the bureaucratic obstacles to student activity and potentially embarrass the Minister. For example in 1995 the Keating government copped a lot of flak from the tabloid media over the use of Commonwealth "SOS" funding for controversial student media articles on drug use, sexuality and shoplifting. This led the Education Minister threatening to de-fund student media that didn't meet appropriate community standards.

Also the direct funding model will only provide medium term financial certainty for student organisations. It is usually much easier for a hostile government to cut funding for programs than it is get VSU legislation approved by the Senate. If student organisations had previously relied on government funding, they would have been completely de-funded in 1996 rather than 2006.

However, we can envisage a limited role for Commonwealth funding for some student services and facilities that do not have to be student governed and for a transitional fund for the most VSU affected campuses. This is outlined in our new preferred model.

## **OPTION FIVE**

### **University Funds Student Organisations From General Revenue**

#### *DESCRIPTION:*

Universities provide funding from general revenue to student organisations on top of voluntary member fees and commercial income streams. Universities and student organisations sign negotiated funding agreements where student organisations receive funding to operate core service and representative functions at agreed levels. The Commonwealth may also try to regulate and monitor the funding agreements to ensure that public universities are providing the core levels of services and representation expected by Australian students. The proposed expanded universities quality agency could look at these agreements in its quality audits.

#### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

The first part of the model is the current state-of-play at most Australian universities. Universities provide support for student organisations through funding agreement contracts. At some universities, the agreements specify key performance indicators that the student organisation needs to achieve to maintain funding. The second part of the option where the government acts as a regulator ensuring that basic standards of service and representation which operate at all public universities has not been tried before in Australia.

#### *ARGUMENTS FOR AND AGAINST:*

For:

- Provides financial stability for the organisation for the duration of the funding agreement; maintains jointly agreed levels of representation, service and campus culture
- No direct cost to students
- Independence from direct Commonwealth funding
- Students are able to conscientiously object to membership
- Student representatives are able to focus on core activities rather than membership recruitment to maintain core funding (many student organisations with funding agreements now offer a premium voluntary membership package of discounts and additional services to supplement the core funding from the universities).

Against:

- Considerable time spent negotiating funding levels, conditions and key performance indicators with the university
- Uncertainty for planning and employment arrangements associated with short cycle funding agreements (many are annual agreements so student organisations have many staff on recurring one year contracts, which NUS feels is bad industrial practice)
- Possible loss of independence from university administration; student representatives will tend to self-censor to avoid conflict with their university
- Possible loss of independent student governance via university requirements for university oversight of certain decisions or services.
- Current universities are funding student organisations out of money that had been earmarked for other activities; current situation is untenable for many universities in the long term.
- Enormous diversity in the funding universities have been prepared to provide (ranging from nothing to full funding equivalent to the pre-2006 levels); the Commonwealth would need some regulatory mechanism to ensure that student expectations about a basic level of representation, advocacy, support and campus experience are met at all public universities (perhaps via the new quality agency).

#### *NUS ASSESSMENT:*

Most student organisations have become dependent on some form of direct university funding since the introduction of VSU. Some universities have been quite generous and fairly hands off with their funding agreements. Others have been unwilling or unable to fund a comprehensive range of student governed representation and services or have wanted to micro-manage the service delivery. If the government wanted to go down this path it would need to have some mechanism to compel universities to fund at least a core range of services. Presumably the Commonwealth would also have to provide some funds for universities who couldn't afford to keep funding this indefinitely. NUS is also concerned that such funding will change the independent nature of student organisations as student representatives will tend to self-censor even if independence is guaranteed in the funding agreement. However, we can envisage a limited role for direct university funding for some student services and facilities that do not have to be directly student governed. This is outlined in our preferred model.

## **OPTION SIX**

### **Universal student organisation contributions re-introduced as part of deferred HECS payments**

#### *DESCRIPTION:*

Universal contribution arrangements are restored (with opt-out or conscientious objection provisions). Students who could not or did not want to pay up front could defer their payments through the HECS or FEE-HELP system rather than deferring through a university/student organisation run loan arrangement.

#### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

We are unaware of any international and historical precedents for this model. It is worth noting that under the pre-2006 arrangements at nearly all campuses students did not have to pay up front at enrolment. There was usually some mechanism where the payment could be deferred or there was a student organisation administered loan. In cases of genuine financial hardship the payments could usually be deferred until graduation, and in many cases the fees were eventually waived.

#### *ARGUMENTS FOR AND AGAINST:*

For:

- Similar benefits as outlined in Option 1 but with the bonus measure of deferring repayment until after graduation and therefore reducing up front financial burden on students.

Against:

- Several categories of students are not eligible for HECS or FEE-HELP (international students, New Zealand citizens and permanent residents (other than those on a humanitarian grounds or doing bridging studies for overseas qualifications as they are HECS or FEE-HELP eligible). Some postgraduate are also not on FEE-HELP such as PhD students.
- Commonwealth may regard the revenue it provides to offset deferred payments as its own money. This could lead to issues over independence, reporting and standardisation.
- Depending on whether the revenue goes to the university or student organisation directly, the university could siphon off much of the funding into its own student service functions.
- Student debt concern – although the increase would be minimal (less than 5%)

considering current HECS debt levels.

- If the deferred payments are rolled together the casual student may be unaware that they are members of a student organisation

*NUS ASSESSMENT:*

NUS supports the inclusion of this option in our preferred model, as long as democratic and independent student governance is restored. This guarantee would need to be enshrined in the legislation to prevent ministerial interfering in student organisation activity. University-based deferred payment arrangements for students not eligible for HECS or FEE-HELP should be put in place where they do not already exist.

## **OPTION SEVEN**

### **Universal contributions but Government specifies range of activities that can be funded by the fee**

#### *DESCRIPTION:*

There is a universal financial contribution but the range of activities that can be funded from that revenue is regulated by a parliamentary Act or ministerial regulation. Student organisations are free to use other voluntary and commercial income streams to fund the full range of activities.

#### *HISTORIC AND INTERNATIONAL PRECEDENTS:*

This has been most common form of VSU legislation in Australia. It is usually initiated by conservative state or federal governments seeking to prohibit the use of funds for political causes or anti-Coalition political activity while not jeopardising the viability of uncontroversial campus sporting, social and support services.

In the 1970s Western Australian and Federal Coalition Governments, after intense lobbying from the Australian Liberal Students' Federation, introduced so called VSU legislation, which targeted the national student body of the time, the Australian Union of Students. The legislation was widely seen as a political payback as AUS had successfully blocked the attempts by the Fraser Government to reintroduce university tuition fees in 1976 and 1981:

*Acts Amendment (Student Guilds and Associations) Act 1977.* (Western Australia). Passed in 1977. Retained compulsory student fee. Prevented use of compulsory student funds to be used for membership payments to the Australian Union of Students.

*Australian National University (Amendment) Act 1981; Canberra College of Advanced Education (Amendment) Act 1981 (ACT)* The ACT campuses were under the legislative jurisdiction of the Commonwealth. The Fraser Government passed legislation banning student organisations from paying membership fees to AUS and prohibited the use of the services and amenities fees being used for socio-political activities.

This legislation was repealed as Labor Governments swept into office during 1982-3 federally and in four states. The Kennett Liberal Government in Victoria took a different approach to regulating student organisation expenditure. Rather than proscribing affiliation fees or off-campus socio-political expenditure the government developed a list of approved activities. The list could be amended by the Education Minister but only after receiving a recommendation from the state's vice-chancellors.

#### **Tertiary Education Amendment Act 1994**

- Universities and TAFEs were still able to charge compulsory student service fee for services, but the services can only be those listed in the Act or specifically approved by the Education Minister.

- Automatic membership of student organisations was banned, students would tick on a box at enrolment to say if they wished to be a member of the student organisation, they were still required to pay the fee for the approved services
- It was unlawful for the university to discriminate against non-members provided they have paid the approved fee.
- The approved services were: food services, meeting rooms, sports and physical recreation, child care facilities, counselling, health care, legal, health, housing and employment services, visual and performing arts and audio-visual media, academic support and overseas student services.

The legislation was aimed at student representation, particularly areas that might criticise government policy, non-sporting clubs, women's support services and student media. Students at the time argued that this legislation violates the principle of no taxation, without representation. The regulations required universities to negotiate funding agreements with the student organisations to ensure compliance with the Act. In 1995 the approved services were expanded by the *Tertiary Education (Student Representation) Regulations 1995* to include the conduct of student elections to university council and its committees, and other management committees of the institution.

The Bracks ALP Government decided to retain voluntary membership but took a much less prescriptive approach to what could be funded out of the compulsory fee. The *Tertiary Education Act 2000* substantially amended Kennett's VSU Act - including removing the section prescribing the list of approved activities. The new arrangements became:

- post-secondary education institutions are allowed to charge a compulsory amenities fee so long as it was used to provide 'facilities, services or activities of direct benefit to students at the institution';
- post-secondary education institutions must ensure that a student who does not wish to be a member is provided with an opportunity to do this at the time of enrolment;
- that the governing body of a post-secondary education institution must ensure that the institution's annual report includes a financial statement about compulsory non-academic charges payable in the preceding financial year.

The Bracks "VSU-lite" option was consistent with there being funding for student representation and student media and affiliation fees to national bodies with aims and objectives substantially similar to the campus representative bodies (although obviously pitched at a federal rather than campus level). NUS is not aware of recent court cases that might clarify exactly how broadly the legal interpretation of: 'facilities, services or activities of direct benefit to students at the institution' can be extended to.

*ARGUMENTS FOR AND AGAINST:*

For:

- Provides stable funding for at least some or many student services depending on the scope of the allowable activities.

Against:

- A form of paternalism that undermines democratic, independent student decision making and the civic education aspect of university education; debates over some areas of controversial funding are more educative (and creates a public good) when put in the perspective of the usually nominal amounts of money concerned
- More restrictive forms of this approach (such as the Kennett-era Victorian VSU) that prevent the funding of student representation from compulsory fees is taxation without representation and undermines the whole logic of a separate student contribution.
- Little consensus on what should or not be allowable activities; anyone can draw up their own ad hoc list but it should be up to students to democratically determine how their money is used.

*NUS ASSESSMENT:*

This option provides stable funding for approved activities, but essentially de-funds non-approved activities. NUS is opposed to this option as it violates student governance of student funds and services.

## **OPTION EIGHT:**

### **Funding Linked To Democratic Mandate**

#### *DESCRIPTION:*

The university collects a universal financial contribution from students but the student organisation income from this is dependent on some benchmark of member involvement (such as the percentage of students opting for membership or voter turnout in student elections).

#### *HISTORICAL AND INTERNATIONAL PRECEDENTS:*

One variation on this model is to link funding to voter turnout in campus elections. The first use of this kind of legislation was by the Liberal government in Victoria in the late 1970s with the *University of Melbourne (Amendment) Act 1978*. It maintained the university's power to levy a compulsory fee but added that the fees had to be spent on *bona fide* purposes of direct benefit to the university. The Student Representative Council, however, could also not use money from the compulsory fee unless 25% of students voted in its elections. This kept the money flowing to sports and facilities but made the representative functions subject to a strenuous test of democratic mandate. The *Post-Secondary Education (Amendment) Bill 1981* extended the Melbourne Uni provisions to other Victorian campuses (where voter turnouts were much lower due to a less heated level of political contestation). The Bill was passed by both houses but had not been enacted by the Governor when the Cain Labor Government was elected and then repealed the legislation.

Denmark has a variation on this. While all Danish universities have a student union they do not have compulsory membership. The bulk of their funding comes from the university and government (Ministry of Science). This funding is linked to the percentage of votes cast at the annual campus elections. Some student unions also charge a voluntary membership fee and have commercial trading operations.

The other variation is to link funding to the number of students who opt to become members but unlike “full-blown” VSU there is a safety net to ensure student organisations and services remain viable.

The prime example of this variation is from the partial and protracted repeal of the VSU legislation following the election of the current ALP Government in Western Australia. There was a common view amongst Labor MPs that a full repeal would mean that as soon as the Liberals returned to power they would reinstate full VSU thus putting the Guilds in a state of permanent restructuring. The Liberals remained committed to full VSU but the 2002 repeal legislation was framed in terms of voluntary membership but a compulsory fee with the Guild receiving fee income equivalent to those who chose to join. NUS and CAPA employed a series of VSU project officers and consultants to assist Guild representatives with the lengthy process of the repeal. The final fruit of these efforts was the *Acts Amendments (Student Guilds and Associations) Act 2002*.

- It is not compulsory to be a member of the Student Guild;
- An annual amenities and services fee shall be set at an amount approved by the University Council, after receiving a recommendation from the Student Guild;
- The amenities and services fee is payable to the university council by each enrolled student, except students exempted from doing so, or made ineligible by statute;
- The University Council shall pay to the Student Guild a percentage of the amenities and services fee collected that is not less than the percentage of enrolled students who are members of the Guild;
- Regardless of the number of enrolled students who are members of the student guild, the percentage of the collected amenities and services fee paid to the Student Guild must exceed 50% of those fees;
- The part of the amenities and services fee not paid to the student guild is to be spent on student amenities and services in the manner agreed by the Council and the Student Guild

*ARGUMENTS FOR AND AGAINST:*

Pro:

- Creates an imperative for student organisations to actively engage their members
- If there is a base funding then some core services will be maintained
- VSU proponents will support the member-based funding as it will allow them to opt-out of membership and fee payment (they will oppose the voter-turnout model as it violates their freedom to dissociate).

Against:

- Past experience of unrealistic benchmarks being set for the voter turnout model (25% is unrealistic for other voluntary voting systems such as local council elections).
- A large proportion of the budget is not guaranteed which will impact on long term planning and professional staff recruitment/retention
- Student representative activities diverted to membership recruitment; or expensive voter inducement gimmicks to get voters out

*NUS ASSESSMENT:*

NUS is opposed to linking funding to voter turn-outs. This option could make funding unstable and unpredictable. The alternative model where funding to the organisation reflects the level of voluntary membership (paying a universal fee) with a funding safety

net has the support of our Western Australian affiliates and is slightly similar to aspects of our preferred model.