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## **A CREATIVE SOLUTION TO THE DILEMMA OF VOLUNTARY VERSUS COMPULSORY STUDENT UNION FEES**

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### **Abstract**

This essay examines the various arguments in support of compulsory and voluntary student union fees for Australian universities and concludes there is merit in both sides of the debate. It is suggested that a creative solution to this dilemma, and one that would maintain the viability of student unions at Australian universities, would be to reconstitute such unions as local government entities. [Abstract not included in published version of article].

### **Article**

For the current Australian Government, the introduction of voluntary student unionism (VSU) is something of a statement of faith. The Liberal Party of Australia may well be a party that in practice is very much wedded to corporate Australia. Yet, in theory at least, the Liberal Party likes to champion the importance of the individual and the importance of free choice. It is thus not surprising that now, having gained control of the Senate, the Government is seeking to overturn the long-held practice of the imposition of compulsory up-front student union fees and to replace this with a system of voluntary fees and voluntary student unions. It is also not surprising that this move should be opposed by the Australian Labor Party. Student unions may not be unions in a traditional sense and may have no formal affiliation with the Australian Labor Party. Yet the Labor Party is a political party with a strong historical association with the union movement, and support for student unions through compulsory student unionism (CSU) is consistent with this. What makes this debate so interesting, however, is that there are strong philosophical arguments in support of both contending positions.

Before examining the philosophical positions, some mention should be made of more recent developments. The National Party is, of course, the partner in the Liberal-National Coalition, and there have been some indicators that, now with the control of the Senate assured, the National Party is prepared to be more assertive in matters of policy. With voluntary student unionism, the National Party has expressed some concerns upon the impact of the abolition of up-front fees on universities in regional Australia, located in the core constituency of the National Party. The National Party nevertheless supports voluntary student unionism, conditional upon obtaining additional funding for regional universities. The Labor Party has recently amended its approach, suggesting a student amenities fee as a so-called compromise. This fee

would, nevertheless, still be a compulsory fee directed towards student unions and thus the fundamental division still remains.

The philosophical argument in support of voluntary student unionism is perhaps the most obvious, based largely on the right of free association. The right of free association has been enunciated perhaps most clearly in Article 20 of *The Universal Declaration of Human Rights* and in International Labor Organization Convention 87, *Freedom of Association and Protection of the Right to Organize*. It does seem that positive associational rights do imply negative associational rights, that is, if there is a right to associate with others, then this right would be meaningless unless there is a concomitant right not to associate. In other words, the right to associate does not mean there is an obligation to associate. It is true that, at a legal level, the formal statement of the right of association does not necessarily designate a right not to associate. Australia, however, does not have a formal Bill of Rights, and thus what might be the legal interpretation of the right of association is not necessarily relevant. Beyond this, at an ethical level, few would argue that the right to associate with others implies a right not to associate. Put simply, if one has the right to join a union, then one ought also to have the right not to join a union.

The philosophical argument against voluntary student unionism (and for compulsory student unionism) is more complex, and rests upon the assertion that student university unions are providers of services, in much the same way as local government entities provide services. Student union fees are indeed often officially described as student service fees. Just [19/20] as one cannot opt out of paying fees to governments (by way of taxes or rates), so too one ought not to be allowed to opt out of fees to the provider of services at a university. There is also the practical argument that compulsory up-front student fees have been traditional in Australia, and without these student unions will not be able to provide the services taken for granted in the past. The analogy with local government itself is an interesting one, and it is this analogy which suggests the possible resolution of the problem proposed later in this essay.

The above arguments, for and against, were well canvassed within the Senate inquiry into the proposed legislation to abolish compulsory up-front student union fees<sup>1</sup>. Yet one of the complicating factors in this debate is the political nature of student unions in Australia. Students unions are dominated by those of the progressive side of politics. Thus conservatives naturally see compulsory student union fees as a means whereby funds from students are diverted, without their individual consent, towards activities and organizations hostile to conservative politics. The student unions themselves, on the other hand, rightfully point out that persons and groups of all political persuasions are free to contest student union elections. The fact that conservative individuals and groups are generally not elected to representative positions on student unions merely reflects the lack of appeal of such conservatives to the student electorate, and student unions thus see the current attempt to abolish compulsory up-front fees as an attempt by conservatives to limit (and even destroy) the influence of democratically elected and progressive student organizations in Australia.

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There is no doubt that the operation of university student unions in Australia can at times be rather anarchic. Student union newspapers often operate on the edge of obscenity and libel laws, and it is perhaps only the fringe nature of such publications that protects them from more frequent legal action. Conflict between student unions and university administration is not uncommon. Yet one could argue that it is this controversial aspect of student unions which makes them so valuable. Student unions also offer a range of creative and recreational activities which help make a university more than merely a place to gain knowledge, but a cultural precinct. Voluntary student unionism threatens to destroy the viability of student unions, and thereby much of the richness and diversity of the traditional university experience in Australia. The pressure of economic rationalism has indeed already done much to encourage the commodification of knowledge, with tertiary education increasingly viewed as only a means to obtain a degree. However, arguably the abolition of compulsory student union fees will only exacerbate this situation. Ultimately, it is in the interests of maintaining the quality of Australian universities that viable student unions be encouraged, and it is difficult to see the abolition of compulsory student union fees as doing anything else than dramatically weakening the quality of university education in Australia.

What then is the solution to this problem? What I would like to suggest is simply that student unions be constituted as a form of local government. There is some logic to this, as both student unions and local government are service providing entities. There is some indirect precedence for this kind of action. For some time, local government status has been accorded to Aboriginal and Torres Strait Islander communities in Australian states, commencing with Queensland in 1978<sup>2</sup>. The establishment of Aboriginal and Torres Strait Islander communities as local government entities has not been without problems, as this means that the resources of the local government entity may be very limited. However this historical action does demonstrate that there is a great deal of flexibility in how State Governments designate what is a local government entity. The fact that local government is not mentioned in the Australian Constitution actually assists with this flexibility, in that what is designated local government is left entirely up to the relevant State Government. Moreover, the fact that all State Govern- [20/21] ments in Australia are currently under the control of the Australian Labor Party would also assist with this initiative.

It would therefore be possible for State Governments to legislate that a particular physical area within the grounds of a university be designated as a local government area, in much the same way as State Governments have previously legislated that Aboriginal and Torres Strait Islander communities be constituted as local government entities. The specific area could comprise the area within the university grounds where the student union offers services and the legislation could be called the Local Government (Student Centre) Act or the Local Government (Student Council) Act. The constituents of the particular local government would be the enrolled students of the relevant university and governance would be through an elected Student Council. Enrolled students would be eligible to choose representatives through democratic elections and enrolled students would also be able to stand for election to the Student Council.

The beauty of this arrangement is that contentious issues could be resolved through democratic means. For instances, fees (rates) would be payable by the enrolled students at the university in question. Initially these could be set at a rate equivalent to existing student union fees. However if the student body as a whole desired for there to be reductions in fees and expenditure, then the way would be clear for the election of a Student Council that would support such policies. Just as at a national and state level, democracy gives the option for the election of low-tax and low-expenditure governments, then so too at a local level this option would be available to the voting student population. One might well argue that if student unions were constituted as local government entities, then they would not be financially responsible. Yet at the present time, student unions or councils must operate within budgets. In this regard the new arrangement would be no different - except that it would be more formally democratized.

This leads to the issue of the resourcing of student local government. What makes this aspect of the overall proposal practical is that universities are governed by state legislation. It would be possible for State Governments to pass amending or separate legislation, requiring the relevant university to provide details of enrolled students to relevant Student Council, in order for that Council to levy fees. There could also be a provision that, upon request from the Student Council, the relevant university would be required to withhold details of results from a student, or even to withdraw enrolment. This might seem draconian, yet this is no more than what universities currently do in the collection of student fees. Normally, local government has the option and deterrent of seizing and selling land to obtain payment of rates. Without a similar option and deterrent, students might simply opt not to pay student fees. The student fees would be thus levied by the Student Council, at a level determined by democratically elected Student Council. The action taken in regards to non-payment would be similar as to what happens now with student fees.

Ultimately, of course, very little might change, except the status of the student representative body. The suggested solution might also not satisfy ideologues on either side of the debate. And yet the value of constituting student representative bodies as local government entities would be significant. Such bodies would then be public institutions, with all the accountability and expectations associated with this. John Rawls suggested<sup>3</sup> that a well ordered society was characterized by basic social (public) institutions, which not merely act according to certain precepts, but which, significantly, are understood as acting according to certain precepts. The constituting of student representative bodies as local government would therefore be a means of dealing with the problem of legitimacy for existing student unions. This is not to say that such newly constituted student bodies would necessarily be any less politically or culturally radical. The newly constituted student representative bodies would be, nevertheless, democratically elected bodies, operating under legislation and under transparent procedures. If there remained those who did not like what the student representative body was doing, then those individuals would themselves have the opportunity of challenging this through democratic elections. This is, after all, how our system works at a federal and national level. It is perhaps appropriate to think about more formally applying and constituting this at a student representative level.

**[End of 21]**

**References [40]** [references located on separate page to article]

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3. Rawls, John. 1972. *A Theory of Justice*. Oxford: Clarendon Press.