

## The Hidden Costs of VSU Legislation

David Noble

Manager, VSU Transition Project  
Southern Cross University  
Phone: 02 6620 3683  
david.noble@scu.edu.au

### Abstract

Voluntary Student Unionism (VSU) legislation was passed by Australian Federal Parliament on December 9<sup>th</sup> 2005. The prescriptive nature of the legislation has unshackled the decades-long relationship between universities and their students. The collection of compulsory fees for distribution to student associations ended July 1<sup>st</sup> 2006. Universities are now heavily restricted in respect to their financial arrangements with incorporated student bodies.

The consequences of the legislation are visible at a variety of levels, but the author posits there are hidden consequences of this legislation of which university administrators should be aware. These include: the potential for an exponential escalation in vexatious complaints to university management; a disconnection between students and academics that unit surveys cannot mitigate if student representation is not maintained; an increase in common law actions involving injured students; and elite athletes "giving up" university due to lack of support.

The author will model the costs should universities fail to adequately address these and other issues. Costs include the impact on university administrators, a decrease in the relevance of unit offerings (with consequential impact on marketing), university legal departments tied up in a variety of common law cases, and loss of marketing potential through elite athlete students.

Australian Universities should consider closely their response to VSU legislation and avoid the temptation to withdraw funding altogether from certain critical areas of student life. Failure to adequately address these issues will have short and long term consequences on university communities.

### Introduction

*"The voice of dissent is the bell of freedom"*. This phrase has been quoted several times by senior Howard Government minister, Senator Amanda Vanstone<sup>1</sup>. Yet at the same time, the dissenting voices on Australian University campuses have been potentially smothered by the passage of Voluntary Student Unionism legislation. When the compulsory collection of funds from all tertiary students in Australia is banned,

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<sup>1</sup> Vanstone's favourite phrase:

<http://www.facs.gov.au/internet/minfacs.nsf/0/3c59f007f47fbbfbc256a6100232f4e?OpenDocument> ;

[http://www.minister.immi.gov.au/media/speeches/Age\\_29\\_06\\_04.htm](http://www.minister.immi.gov.au/media/speeches/Age_29_06_04.htm) ;

<http://www.theage.com.au/news/National/Protest-at-house-unfair-Vanstone/2005/03/23/1111525210751.html>>, all accessed on 05/05/06..

around \$161 million<sup>2</sup> will be removed nationally from student organisations from July 1<sup>st</sup> 2006.

In the New Zealand context, Voluntary Student Membership has been a reality for the last 6 years or so. The NZ experience appears slightly less prescriptive than the Australian, in that each University may conduct a referendum to decide whether student association membership will be compulsory or voluntary. In Australia all compulsory membership is outlawed and Universities are forbidden to collect fees on behalf of student associations.

Ironically, Australian VSU legislation was passed within five years of the centennial anniversary of the first compulsory fees for student organisations in Australia. Some sources even suggest that 2005 was the centennial year<sup>3</sup>.

The *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005*, commonly referred to as VSU legislation, was passed by the Australian Parliament on December 9<sup>th</sup> 2005. More than a decade of discussion, argument, threat and aborted attempts had preceded the legislation. It took the Howard Government's historic fourth term in office, with control of both houses, to enable or it to achieve a long-held ideological goal.

To understand the context in which the VSU legislation was birthed, let's look briefly at its historic antecedents.

The first tertiary student organisation in Australia was established at Sydney University in 1874<sup>4</sup>, followed by The University of Melbourne 10 years later<sup>5</sup>. However, the compulsory nature of student associations isn't evident until around 1911 when the University of Melbourne commenced charging students an "*Amenities and Services Fee*" in order to subsidise the activities of the student organisation.

The original intention of the student organisations was (in the case of Sydney University) to promote debating, and (in the case of the University of Melbourne) to promote the "*common interests of students and assist in social interactions between its members*". Over the years, complementary organisations such as Student Representative Councils gradually came into being at universities around Australia, developing the pattern we have today.

Student organisations enjoyed bipartisan political support for the first eight decades or so of their existence. However a collision trajectory was adopted in the 1960's as student organisations became radicalised during the Vietnam era, and effectively aligned with left wing political forces. Conservative students became increasingly frustrated with what they saw as the misuse of their compulsory contributions. In some cases they took legal action in attempts to prevent student funds being used for, among other things, bail for anti-Vietnam war activists.

Thirty years ago the frustration of conservative students was with the left-wing politics of student organisation elected representatives. These days, on many campuses, it has more to do with the perceived hijacking of SRC resources for the exploitation of some special interest causes.

Either way the current crop of conservative politicians have long memories, and have pursued the dream of silencing student organisations assiduously for nearly thirty years. At times the legal system has been the mechanism used, at other times the

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<sup>2</sup> Jon Reid, "Members only", Sydney Morning Herald, (May 13th 2005)

<sup>3</sup> Greenleaf <http://www.greenleft.org.au/back/1999/353/353p30.htm>, Accessed 05/06/06.

<sup>4</sup> [http://en.wikipedia.org/wiki/University\\_of\\_Sydney\\_Union](http://en.wikipedia.org/wiki/University_of_Sydney_Union) 05/06/06.

<sup>5</sup> [http://en.wikipedia.org/wiki/Dean\\_McVeigh](http://en.wikipedia.org/wiki/Dean_McVeigh) 05/06/06.

political. Both Victorian and Western Australian universities were affected by changes made within their state political scenes in the 1970's. With the Howard Government's ascension to political dominance in both houses of Parliament on July 1<sup>st</sup> 2005, the stage was set for change on a national basis. What has eventuated is what one writer has described as "...a structural change..."<sup>6</sup>.

## **Consequences**

I want to focus on four areas that have the potential to seriously effect the operation and viability of Universities. These are:

1. the potential for an exponential escalation in vexatious complaints to university management;
2. a disconnect between students and academics that unit surveys cannot mitigate if student representation is not maintained;
3. an increase in common law actions involving injured students; and
4. elite athletes "giving up" university due to lack of support.

### ***Vexatious complaint handling***

I first became aware of the potential for escalation in what I have called "vexatious complaints" in discussions with one of our student associations. During discussions with the association's committee I was struck by a comment that a large number of niggles and minor complaints are handled at the association's office. It sounded to me as if they were describing a quasi student ombud or grievance handling role. When I pressed them to describe it more I discovered that approximately 80% of student niggles and minor complaints are resolved by the association's staff and committee, with only one-in-five issues making it to complaint status with University staff.

I checked my observations with association staff and also University staff. To my surprise they were confirmed. Discussions with another association also independently produced similar figures, although their estimate was 90%. I wish I had data to back up this claim, but the anecdotal evidence I've received has been from what I consider to be reliable sources, not generally given to hyperbole.

The observations led me to reflect on a scenario without student associations – what would happen if the associations disappeared altogether? Our Vice Chancellor's (VC) email address is incredibly simple – vc@scu.edu.au and is easily obtained on our web site. We all know how readily some students will fire off an email to the VC or to the Director of Student Services! Each complaint must be treated seriously and responded to appropriately and comprehensively. How would our administration cope with a five-fold increase in student complaints?

Southern Cross University has a well-defined complaint framework, but most complaints simply arrive in a letter or email to the VC, the individual Faculty/School, or Student Services. Many complaints are handled at Faculty or School level, and some university officers direct initial complainants to the student associations for independent advice.

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<sup>6</sup> Norton, Andrew, Issue Analysis: *The free market case against Voluntary Student Unionism (but for Voluntary Student representation)*, The Centre for Independent Studies, August 2005, p. 2

Complaints tend to fall into the following categories:

Administrative	Academic
Standard process	Standard process
Litigious process	Litigious process

Figure 1. Complaint categories

How can we model the cost of complaints? Any model will be flawed, but I have endeavoured to describe the progress of an Administrative complaint as it proceeds through our University when received by our VC's office:

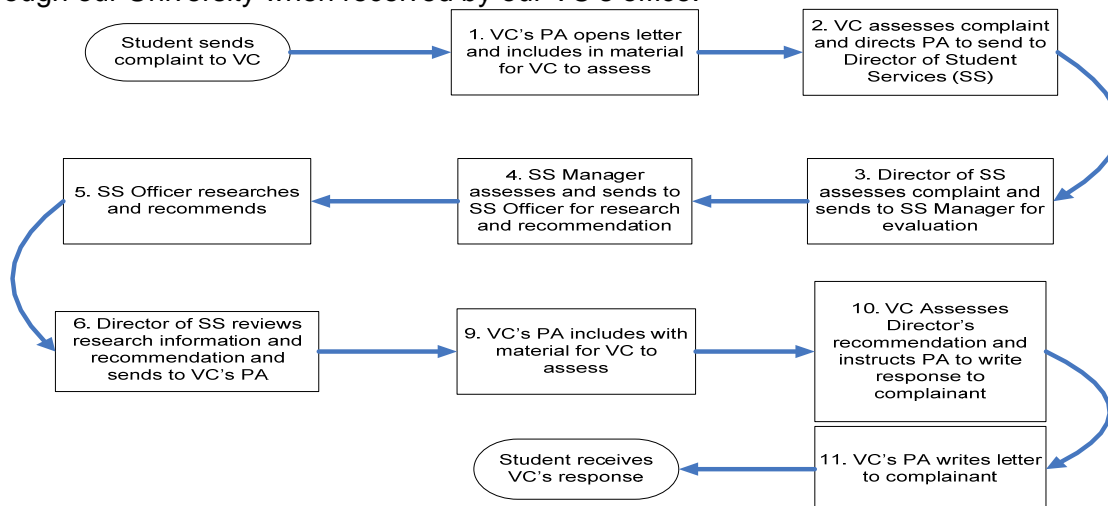


Figure 2. Complaint resolution process

Sometimes its only when one maps the process that one sees how convoluted it is! However, while the above process is very general, it has some relevance for our purposes. Occasionally there are two additional steps (7 & 8) which include the activity of the University legal officer and further action by the Director of Student Services. Conversely, there may not always be quite so many steps depending on where the complaint is received – some complaints, for instance, go directly to the Director of Student Services or Faculty.

How do we cost this? I've estimated an average handling time for the above components, and checked these with some experienced people at Southern Cross. The following table provides some indication of the costs we currently experience for complaints directed to the VC.

	Number of complaints	Total hours per complaint	Complaint hours	Average cost per hour	Total Complaint cost
<b>Pre VSU standard</b>	16	2.08	33.33	\$ 50.94	\$ 5,820
<b>Pre VSU litigious</b> (incl. steps 7 & 8)	4	9.83	39.33	\$ 50.41	\$ 23,547
<b>Total</b>	<b>20</b>				<b>\$ 29,367</b>

Table 1. Cost of complaints before VSU

However, based on the premise that complaints are likely to increase if student organisations are not around to intercept them, the post VSU scenario could easily look like the following table:

	Number of complaints	Total hours per complaint	Complaint hours	Average cost per hour	Total Complaint cost
<b>Post VSU standard</b>	80	2.08	166.67	\$ 50.94	\$ 29,098
<b>Post VSU litigious</b> (incl. steps 7 & 8)	20	9.83	196.67	\$ 50.41	\$ 117,737
<b>Total</b>	<b>100</b>				<b>\$ 146,835</b>

Table 2. Potential cost of complaints after VSU

This represents a five-fold increase in costs associated with complaints – if student associations are not around to deal with the little niggles and issues that inevitably arise on campus. Perhaps your institution could absorb an extra \$120,000 in costs, but I'm sure we could do without it.

### ***Disconnect between academics and students***

The last 15 years has seen an increasing use of student surveys to obtain feedback from students about their university experience. However, while student surveys may be useful, nothing jars an academic more than a face-to-face confrontation with an articulate student about deficiencies in offerings or delivery, or student-related gaps in student processes.

Student survey information is often treated confidentially and compiled by a separate teaching and learning centre prior to release to the Faculty. Is there a Head of School out there with enough time on their hands to go through each survey in detail to assess the efficacy of each lecturer, or unit offering? Is there a lecturer out there who will go to their Head of School to highlight negative comments about their own teaching?

An examination of unit surveys, in an economics faculty environment, by Dr Nigel Miller at the University of York, concluded that less than half of student surveys invite the student to rate the overall quality of modules and lectures. And asking students to rate the overall quality of the lecturer is rare<sup>7</sup>.

<sup>7</sup> Miller, Nigel J., The Handbook for Economics Lecturers, *Questionnaires*, edited by David Newlands, University of Aberdeen, available from [http://www.economicnetwork.ac.uk/handbook/printable/questionnaires\\_v5.pdf](http://www.economicnetwork.ac.uk/handbook/printable/questionnaires_v5.pdf)

Andrew Norton from the Centre for Independent Studies in Melbourne makes the comment that universities, unlike retailers, have difficulty in obtaining feedback about their offerings, delivery or processes. Norton notes that most universities have provision for student “voice” in the form of representation on committees, providing clear, direct, and often unambiguous feedback to various sections of the university<sup>8</sup>. However he also diminishes the importance of this representation by maintaining that the students who get themselves onto university committees are only those who are politically motivated. While this may be true to a certain extent, universities need articulate, feisty students to participate meaningfully in committees.

Norton additionally maintains that student surveys can replace student voices. However, this ignores the passive role that surveys play. Surveys are constructed by university staff and therefore are potentially subject to unconscious bias, no matter how well-intentioned the survey designer may be. Direct representation, on the other hand, has an unmediated intensity of its own that will jar and confront. One example I am aware of is the case of a student who happened to be a representative on University Council. The student discovered a serious issue regarding graduation eligibility and raised it at Council. This initiated a comprehensive review by a university working party which significantly changed the mechanism for identifying students eligible to graduate. The same outcome would not have eventuated if we relied only on student surveys.

Norton also pretends that market forces will inform universities about their product. He says that international students will provide an indication of whether we are doing OK by the levels of their enrolments. In other words, they will vote with their feet about our universities. However, this approach suggests that a group of students with divergent cultural outlooks is all that we need to provide sufficient feedback - through their absence from our campuses. Yet, as was clearly evident during the Asian Economic Crisis and with the increase in the Australian dollar over recent years, fluctuations in international enrolments may have more to do with external factors than the quality of the education we offer.

Norton – and other conservative elements – may like to silence student representation through legislation. Yet this flies in the face of the European experience. A survey conducted in 2003 received responses from 21 European countries, from groups such as student organisations, academic research communities and government departments<sup>9</sup>. The survey showed a positive attitude towards increased student influence in higher education governance from all participating groups, regardless of the present level of student influence in the differing countries<sup>10</sup>. In fact, most of the countries represented in the survey have a legislative requirement that students are represented in the governance of universities<sup>11</sup>. Student influence in European universities is strongest on social, environmental, pedagogical and content issues<sup>12</sup>.

A Canadian report by Ratsoy & Zuo, published in 1999 in *The Canadian Journal of Higher Education*, concluded that, apart from benefits for students for their human growth and career prospects, students provide important feedback that helps university administrators improve the quality of their decisions<sup>13</sup>. The writers did note that with the growing financial crises of many universities, there is likely to be a move away from direct student representation to survey-driven feedback.

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<sup>8</sup> Norton, 2005, page 8

<sup>9</sup> Annika Persson, *Student participation in the governance of higher education in Europe*, Steering Committee On Higher Education And Research, Working Party On The Bologna Process, Strasbourg, 14 May 2003

<sup>10</sup> Persson 2003, p. 5

<sup>11</sup> Persson, 2003, p. 7

<sup>12</sup> Persson, 2003, p. 10

<sup>13</sup> Ratsoy, E.W., Zuo, B., *The Canadian Journal of Higher Education, Student participation in university governance*, 29/1 (1999)

How will universities assess the value of their Unit and Course offering if they no longer have students providing open and frank input to committees? What size of marketing loss could your university withstand? What would be the bottom line effect if your university suffered a drop in enrolment numbers? The following table shows some potential impacts on a small university under the Commonwealth Grant Scheme:

	<b>Effects of under-enrolment</b>				
	<b>TARGET</b>	<b>Under enrolled?</b>			
		<b>-2.5%</b>	<b>-5.0%</b>	<b>-7.5%</b>	<b>-10.0%</b>
EFTSL	5,800	5,655	5,510	5,365	5,220
CGS grant	\$ 40,000,000	\$ 39,000,000	\$ 38,000,000	\$ 37,000,000	\$ 36,000,000
Fee income	\$ 40,460,800	\$ 39,449,280	\$ 38,437,760	\$ 37,426,240	\$ 36,414,720
<b>Total income</b>	<b>\$ 80,460,800</b>	<b>\$ 78,449,280</b>	<b>\$ 76,437,760</b>	<b>\$ 74,426,240</b>	<b>\$ 72,414,720</b>
<b>Shortfall</b>		<b>\$ 2,011,520</b>	<b>\$ 4,023,040</b>	<b>\$ 6,034,560</b>	<b>\$ 8,046,080</b>

Table 3. Potential impact of under-enrolment on a small university

Silencing the voice of dissent and challenge may make life more comfortable in the short term. However, ignoring the valid objections, criticisms and suggestions of the education consumer may ultimately lead to an introspective self-congratulating group of academics without students to teach.

### **Common law actions - the importance of insurance**

Australian universities have traditionally enjoyed the benefits of blanket insurance cover for all students and in many cases staff as well, for a minimal cost of around \$1.75 per student. The insurance provides cover for accidents while on university-related activities, ranging from breaks on the rugby field to slipping on wet stairs. While the amounts covered aren't huge – typically up to about \$10,000 – they do cover the costs of hospital and medical expenses for the majority of injuries. The good news for universities is that in most cases the cost of this insurance has historically been borne by student organisations in one way or another.

But in an environment where student organisations don't have money, and in some cases will cease to exist, who will pick up the tab for this insurance?

If universities take an expense minimisation approach and refuse to pick up the tab for student insurance, they may pay in other ways. It is acknowledged that we live in an increasingly litigious society, and there is enormous potential for injured students to sue universities for breach of duty of care should they be injured on university property or activities.

The figures quoted earlier about the cost of administering complaints are likely to pale into insignificance if insurance is not addressed adequately on our campuses. Can universities afford the cost? Fortunately my university has taken an enlightened view of this matter and has negotiated a blanket policy for all students on all campuses.

### **Elite athletes, governments and universities**

In late 2004 the Australian Sport Commission, the Australian Vice Chancellors Committee and the Federal Government heralded the "Elite Athlete Friendly Universities Network". The motivation for athletes to join the program is to gain the cooperation of universities for a flexible study program, and the opportunity to access

quality university training facilities. A motivation for universities to join the program is to access high profile athletes with the potential to be ambassadors for their university.

The Federal Government has allocated \$80 million to sports and recreation infrastructure at Australian universities over the next three years. The removal of double that amount on an annual basis from the same universities, in student body fees, places their own initiative in jeopardy.

Quite apart from the impact on individual elite athlete students, the impact for universities could be quite profound in terms of eliminating potential marketing opportunities. Additional funding for sports facilities and promotion from outside sources, attracted by the presence of elite athletes, is also likely to dry up, placing further pressure on universities trying to develop and maintain quality sporting facilities and environments.

Elite athletes are by their very nature a small group. Yet there is often a flow-on effect when change occurs. If we use the same funding table used earlier, but estimate the negative enrolment impact at only 1% because of lost elite athletes, we still see a substantial impact on our institution. To put it into human terms, the shortfall could represent the jobs of ten people.

<b>Effects of under-enrolment</b>			
	<b>Under-enrolled</b>		
	<b>TARGET</b>		<b>-1.0%</b>
<i>EFTSL</i>		5,800	\$ 5,742
CGS grant	\$	40,000,000	\$ 39,600,000
Fee			
income	\$	40,460,800	\$ 40,056,192
<hr/>			
Total			
income	\$	80,460,800	\$ 79,656,192
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<b>Shortfall</b>	<b>\$</b>	<b>-</b>	<b>\$ 804,608</b>

Table 4. Potential impact of 1% under-enrolment on a small university

### **Summary**

Despite these areas of concern, there are some rays of hope. Many student organisations have approached the VSU environment with initiative, creativity and innovation. Some prepared for the introduction of the legislation by developing multiple budgets allowing for a variety of contingencies. These are likely to be the survivors, albeit in quite different configurations.

Many Australian universities have taken a cooperative and imaginative approach to the issue, and have involved students in the process. These universities are likely to maintain the quality of the “university experience” which so many talk about and is now something of a given in terms of student retention.

However, universities who choose to use VSU legislation to unilaterally withdraw funding from student organisations in the hope that they will silence the voice of dissent, may find that the bell of freedom is instead a death knell for their institution’s vitality, if not their life.

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