

Legal Challenges relating to Student Unions in Australian Universities

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Introduction

A number of events over the past 25 years have given rise to this article:

- First, at least three legal challenges have been made to the nature of student unions on university campuses.
- Second, the present Federal Coalition Government has shown a particular dislike of what it describes as ‘compulsory’ student unionism, and has previously introduced a bill to prohibit it and introduce voluntary student unionism.¹ The support for ‘voluntary’ student unionism was part of the Liberal Party’s Higher Education Policy Statement in the 2001 election.² The current report by the Federal Minister for Education “Our Universities: Backing Australia’s Future” also includes voluntary student unionism as an objective, and indicates that the government intends to introduce legislation ensuring membership is optional and prohibiting universities from collecting fees not directly related to course provision.³ The Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth) was subsequently introduced into Federal Parliament in September 2003, and may well become law in the second half of 2005 following the Federal Coalition Government’s return and its control of the Senate.

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¹ The Higher Education Amendment Bill 1999 (Cth). The voluntary student unionism provisions were not enacted.

² *Investing in Higher Education*, Liberal Party Policy Statement, 2001, p 5, <<http://www.liberal.org.au/archive/2001%20election/policy/highered.pdf>>, (2 September 2003).

³ Nelson B, *Our Universities: Backing Australia’s Future* (The Nelson Report), Commonwealth of Australia, May 2003, p 45.

- Third, in December 2001 James Cook University notified the Australian Competition and Consumer Commission (ACCC) of the details of its enrolment conditions. In October 2002 the ACCC issued a draft notice proposing to revoke the university's notification because it would expose the university to a potential breach of the third line forcing exclusive dealing provisions in s 47 of the *Trade Practices Act 1974* (Cth) (*TPA*). In the event, the ACCC did not revoke the university's notice.⁴

This article describes the above matters and then focuses on whether compulsory student unionism could breach s 47 of the *TPA* and, if so, whether universities should notify the ACCC of the details of their relationships with their respective student unions. This in turn requires an analysis of the public benefits claimed to flow from compulsory student unionism.

The types of relationships under discussion are where enrolment at a university is conditional on a student joining a student representative council, student guild, or other union such as a university union or sporting union. In this article these are described collectively as "student unions", and where enrolment is conditional on joining one this is termed "compulsory student unionism", even though universities give students a conscientious right not to belong. The term "voluntary student unionism" when used herein refers to situations where legislation prohibits the automatic enrolment of students in student unions and, in its more extreme form, outlaws the collection of fees from students except as directly related to academic activities.

Challenges to student unionism: the court cases of the 1970s

Compulsory student unionism has been under attack for many years in Australia. Three serious legal challenges to it were mounted in the late 1970s in Victoria, New South Wales and South Australia. The first of these cases was *Clark v University of Melbourne*⁵ and the

⁴ Australian Competition and Consumer Commission, *Press Release* MR 87/03, 30 April 2003.

⁵ *Clark v University of Melbourne* [1978] VR 457.

subsequent appeal in *Clark v University of Melbourne (No 2)*.⁶ Clark, a member of the Liberal Party, argued that the levying of an annual general services fee (payable to the Students' Representative Council) by the University of Melbourne was in the nature of a tax charged by a public authority, and hence could not be levied unless expressly permitted by an Act of Parliament. This argument was accepted by Kaye J in the Supreme Court of Victoria, but unanimously rejected on appeal. In the Full Court, Young CJ, Lush and Jenkinson JJ held:

[T]he essence of the University's powers is that they are powers of self-government affecting only those who choose to become members by enrolment or the acceptance of employment or office within the University. ... The regulation now under consideration does not levy money to the use of the Crown, because the University is neither the Crown nor a body substituted for the Crown to perform a Crown or executive function.⁷

Accordingly, the imposition of a general services fee was a valid act of the University Council. The requirement to join a student union was incidental to the decision to enrol in a particular university and was a consequence of that decision. In the words of the National Union of Students when describing this case, “[there was] no legal obligation to become a student or enrol at a particular university.”⁸

In the same year, Farrell, a student at the University of New South Wales, unsuccessfully sought a declaration that the imposition of fees by the university was beyond its legal power. In *Farrell v Mulrone*y,⁹ Rath J emphasised the corporate nature of a university and found “a clear nexus between the charge to the Students' Union and the objects and purposes of the University.”¹⁰ The functions of the Student Union were “incidental to the conduct of the University as a tertiary educational establishment.”¹¹

⁶ *Clark v University of Melbourne (No 2)* [1979] VR 66.

⁷ *Clark v University of Melbourne (No 2)* [1979] VR 66 at 73.

⁸ National Union of Students, *Submission to the ACCC re Exclusive Dealing Notification by James Cook University*, April 2002, p 2.12.

⁹ *Farrell v Mulrone*y [1978] 1 NSWLR 221.

¹⁰ *Farrell v Mulrone*y [1978] 1 NSWLR 221 at 235.

¹¹ *Farrell v Mulrone*y [1978] 1 NSWLR 221 at 236.

The third case was *Harradine v University of Adelaide*.¹² Relying on the decision of the Full Court of the Supreme Court of Victoria in *Clark v University of Melbourne (No 2)*, the court affirmed the university's power to collect fees and distribute them to a student organisation.

These three unsuccessful challenges illustrate that opposition to compulsory student unionism is not a recent event. Of particular interest is that one of the litigants, Clarke, has maintained his strong opposition. What Clark was unable to achieve in court he later achieved as a member of parliament. Clarke was subsequently elected to the Victorian State Parliament, and was a very active member of the Liberal Government that introduced a form of voluntary student unionism through the *Tertiary Education Act 1993 (Vic)*. This legislation is described in the next section of the article.

Challenges to student unionism: legislation in Victoria and Western Australia, and the Higher Education Legislation Amendment Bill 1999 (Cth).

Section 12D of the *Tertiary Education Act 1993 (Vic)* prohibited any university provision that required students to join a student union or charged students a union membership fee.

Section 12D of the Act provided:

- (1) The governing body of a post-secondary education institution must not require any student or prospective student of the institution to be a member of an organisation of students.
- (2) The governing body of a post-secondary education institution must not impose on any student or prospective student of the institution a compulsory fee, subscription or charge for the membership of an organisation of students.

Section 12E prevented any form of discrimination against students who were not members of student unions, while s 12F specified the ways of spending the fees collected. They could only be expended on

¹² *Harradine v University of Adelaide*, unreported, SC (SA), No 321, 7 October 1988. On appeal, *University of Adelaide v Harradine*, unreported, SC (SA), No 688, 31 October 1989.

certain matters such as child care and counselling. Notably, political causes were excluded.¹³

The Labor Government in Victoria subsequently amended this legislation by the *Tertiary Education (Amendment) Act 2000* (Vic). A new s 12D allows students to opt out of joining a student union and removes the categories of permissible expenditure.¹⁴

The 1993 Victorian legislation illustrates one of two models pursued by governments hostile to compulsory student unionism. The Victorian method did not prevent the charging of a student services or amenities fee, it simply imposed rigid controls on how that money could be used. The other model was the Western Australian model. The *Voluntary Membership of Student Guilds and Associations Act 1994* (WA) inserted clauses such as the following into university statutes in that state:

It is not compulsory for any student or person seeking enrolment as a student:

- (a) to make a subscription or pay any fee required by the Guild, either directly or indirectly, or to pay an amount in lieu of such a subscription or fee; or
- (b) to pay an amount required by the University for the provision of any amenity, facility or service which is not, or not directly related to, an educational course provided by the University,

¹³ The full list of allowable matters in s 12F was: (a) food and beverages; (b) meeting rooms; (c) sports and physical recreation; (d) child care; (e) counselling; (f) legal advice; (g) health care; (h) housing; (i) employment; (j) visual arts, performing arts and audio-visual media; (k) debating; (l) libraries and reading rooms; (m) academic support; (n) personal accident insurance for students; (o) orientation information; (p) support for overseas students.

¹⁴ Section 12D now provides:

Provision for declining automatic membership of a student organisation

- (1) The governing body of a post-secondary education institution that has procedures to provide for students to become members of an organisation of students as a consequence of, or at the same time as, enrolling in a course of study at the institution must ensure that those procedures provide for a student to indicate at the time of enrolment that he or she does not wish to become a member of the organisation of students.
- (2) The governing body of a post-secondary education institution must ensure that a student who has indicated, in accordance with procedures referred to in sub-section (1), that he or she does not wish to become a member of an organisation of students is not made a member of an organisation of students as a consequence of, or by enrolling in a course of study at that institution.

unless that person has chosen to join the Guild or to make use of the amenity, facility or service.¹⁵

This legislation subsequently became the basis for the Higher Education Legislation Amendment Bill 1999 (Cth), and is also the model for the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth).

In 2002, the Labor Government in Western Australia enacted the *Acts Amendment (Student Guilds and Associations) Act 2002* (WA) which repealed the 1994 provisions.¹⁶ The Act also introduced a compulsory student amenities and services fee. The Labor Government described the effect of the amending legislation¹⁷ as follows:

15 *Murdoch University Act (1973)* WA s20(2c). This sub-section has now been repealed.

16 To show that the issue is alive the Liberal opposition has indicated it, in turn, will repeal this legislation if it wins government: *Position Statement: Parliamentary Liberal Party Student Unionism : Defending The Right To Choose*, February, Office of the Leader of the Opposition Western Australia, 2003.

17 As an example of the effect of this legislation, the *Murdoch University Act (1973)* WA provides:

20. Guild of Students

- (1) The Guild of Students of Murdoch University shall be established as a body corporate under that name, and by virtue of this section, on 1 September 1976, unless prior to that date the Guild is so established as a body corporate by the Senate, which the Senate is hereby empowered to do.
- (2) The Guild shall be an organized association of students for the furthering of the common interests of its members, and shall be the recognised means of communication between students and the Senate, in accordance with any Statutes that the Senate makes.
 - (2a) Any student is eligible to be a member of the Guild.
 - (2b) The University shall not act in a way that may dissuade or discourage a student, or person seeking enrolment as a student, from being or becoming a member of the Guild.
 - (2c) *repealed*
 - (2d) No academic benefit, right or privilege shall be denied to or withheld from any student by reason of that student not being a member of the Guild.
- (3) The functions of the Guild, its powers and duties, authorities, obligations and privileges shall be prescribed by Statute together with such other matters as are considered by the Senate to be necessary or desirable to ensure the effective exercise of those functions.
- (4) When established as a body corporate the Guild in its corporate name shall have perpetual succession and an official seal, may sue and be sued and, subject to the Statutes, may do and suffer such other acts and things as bodies corporate may by law do and suffer.

The guild shall be the recognised means of communication between students - or members of the guild - and the senate or council of the university in accordance with such statutes as the senate or council shall prescribe. Any enrolled student is eligible to be a member of the guild. A student becomes a member of the guild upon enrolment, for the period of enrolment. A student may elect at the time of enrolment not to become a member of the guild, and an enrolled student may resign at any time as a member of the guild. In other words, guild membership is not compulsory, and the [Act] therefore cannot be said to offend the principle of freedom of association.¹⁸

In 1999 the Commonwealth Government introduced into Parliament the Higher Education Legislation Amendment Bill 1999 (Cth) adapting the 1994 Western Australian model. Had this legislation been passed, s 18 of the *Higher Education Funding Act 1988* (Cth) would have been amended. The effect of such amendment would have been that financial assistance would only be granted to a university provided that it did not require students to become members of an association as a condition of enrolment, or make a payment in a course where that payment was not directly related to that course.

The Senate referred the Bill to its Employment, Workplace Relations, Small Business and Education Committee. A major purpose of the Bill was “to make voluntary student unionism a condition of Commonwealth grants to higher education institutions.”¹⁹ The

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- (5) A student becomes a member of the Guild upon enrolment, for the period of enrolment, unless at the time of enrolment that student elects not to become a member.
 - (6) Subject to subsection (7), a student becomes a member of the Guild upon enrolment, for the period of enrolment.
 - (7) A student may —
 - (a) elect at the time of enrolment not to become a member of the Guild; and
 - (b) resign at any time as a member of the Guild.
 - (8) A student cannot hold an elective office of the Guild unless that student is a member of the Guild.

¹⁸ Hon Graham Giffard, Second reading speech,

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[311023057?opendocument](#)> (6 September, 2003).

¹⁹ Senate Employment, Workplace Relations, Small Business and Education Committee, *Higher Education Legislation Amendment Bill 1999 Senate Inquiry*, Parliament House, Canberra, 1999, Chapter 1, p 1.

committee issued a majority report, dominated by Government Senators, recommending that the Senate pass the legislation, and two minority reports, one containing the Labor Party's views and the other those of the Democrats.

The majority report emphasised freedom of choice and association, and claimed that student unions were "clearly not representative" and had used their control of student bodies to advance particular causes.²⁰ The report was influenced by the claim of the Australian Liberal Students Federation (ALSF) that there was 'poor' voter turnout in student union elections.²¹ It also drew analogies to trade unions and the government's enactment of the *Workplace Relations Act 1996* (Cth), an Act claimed to protect the rights of employee, and argued that the Bill complemented that legislation.²² The Australian Vice-Chancellors' Committee (AVCC) argued before the committee that university student unions were different: they represented a community of scholars permitting levies for the common good. The majority report rejected this argument, stating:

[T]he claim [was made] that universities are "communities of scholars", and that they are by virtue of this able to justify a levy on community activities in the interest of the "common good". Analogies [were] made with the obligations of rate-payers to local government authorities. The Committee rejects this argument and this analogy ... [The Committee] takes the admittedly unromantic view that the personal identification of students with their universities *as institutions* is rather tenuous ...²³

This view appears not to accord with the many university statutes that, as a matter of law, make students members of their universities.²⁴ The

²⁰ Note 19, Chapter 1, pp 1 and 2.

²¹ Senate Employment, Workplace Relations, Small Business and Education Committee, *Higher Education Legislation Amendment Bill 1999 Majority Report*, Parliament House, Canberra, 1999, Chapter 1, p 2.

²² Note 21.

²³ Note 21, Chapter 2, p 2.

²⁴ This is discussed in Jackson J and Cowley J, "Blinking Dons or Donning Blinkers: Fiduciary and Common Law Obligations of Members of Governing Boards of Australian Universities" (2002) 6 *Southern Cross University Law Review* 8, pp 45-46.

majority report preferred the pragmatic vocational view of a student who claimed that “Uni as far as I understand it involves the following: bus - lectures - bus – home.”²⁵

The majority report spoke of likely resistance from full fee paying students, and cited with approval ALSF representatives who claimed the student union fee at one university was “a tax on the poor to pay for the wealthy’s cheap drinks.”²⁶ The majority report also stated “the ways for protecting the rights of conscientious objectors may be flawed”. This seemingly favoured the views of the ALSF over the AVCC, which had confirmed that all universities provided the choice to opt out of student organisations.²⁷ Finally, the majority report voiced its belief that voluntary student unionism would ensure maximum competition and cost effectiveness for the benefit of consumers, whereas the compulsory model contained restrictive trade practices.²⁸ The “new order” proposed by the majority report “[will] require the emergence of leadership skills of a different kind. ... includ[ing] entrepreneurial skills and public relations skills.”²⁹

Two minority reports were presented, one by the Labor Senators, and the other by the Democrats Senators. Both reports stressed the existence of a right of conscientious objection, and affirmed that students had successfully managed their democratic processes. Malcolm Fraser, former Liberal Minister of Education and Prime Minister, was quoted as authority for the proposition that the remedy for those who oppose the uses to which student funds are put lies “in the normal democratic processes”.³⁰ Voluntary student unionism “substantially undermines an Australian tradition of university autonomy in the day to day running of their institutions.”³¹ The reports rejected the competition arguments advanced by the government, noting that for-profit university unions would “simply deliver far fewer services and only at times and locations when it is

25 Note 21, Chapter 2, p 2.

26 Note 21, Chapter 1, p 3.

27 Note 21, Chapter 1, p 3.

28 Note 21, Chapter 1, p 3.

29 Note 21, Chapter 2, p 1.

30 Senate Employment, Workplace Relations, Small Business and Education Committee, *Higher Education Legislation Amendment Bill 1999 A Report by Opposition Members of the Committee*, Parliament House, Canberra, 1999, p 1.

31 Note 30, p 3.

possible to do so.” Similarly, the “bus – lectures – bus - home” view, they argued, ignored “the need for extra curricular activities or support services.” They supported submissions that “[the removal of these services] would have a serious impact on the workload of outside welfare agencies.”³² Labor was also concerned about the potential bankruptcy of a number of student organisations,³³ loss of jobs,³⁴ a shifting of the service burden to universities already strapped for money,³⁵ the effect on smaller campuses and regions where reliance on the market would be unlikely to sustain services, and the problem of ‘freeloaders’.³⁶ The Labor Senators pointed to Western Australia’s legislated voluntary student unionism as evidence of how universities in that state had to cross-subsidise student unions, and how those services had dramatically declined.³⁷

To a degree the government and opposition positions were consistent with their respective philosophies. On the Liberal side, freedom of association (as they define that concept) and reliance on the market to provide services; on the Labor side, the notion of a tax in the form of a fee to provide a fair and equitable distribution of services, in a similar way to that provided by local government and governments generally. Democratic processes would remove union management not meeting its mission.³⁸ Less consistent with Liberal Party philosophy was the inherent centralism and interference with both states and universities contained in the Bill.

Speaking in the House of Representatives a Labor member, Lindsay Tanner, thought the legislation merely represented a “petty ideological” vision of Peter Costello, the Treasurer. Costello had been a Liberal Party student leader at Monash University in the late 1970s

32 Note 30, p 4.

33 Note 30, p 5.

34 Note 30, p 5.

35 Note 30, p 7.

36 Note 30, p 5.

37 Note 30, p 6.

38 Note 30, pp 3 and 4.

and was, according to Tanner, obsessed with student unionism and with its control by the left.³⁹

The Democrats made the same point in their minority report:

The Australian Democrats found that this Bill is part of the ongoing ideological campaign of the conservative Governments to silence the student voice, and that voluntary student unionism has curbed the ability of students to protect their academic and political rights.⁴⁰

And later:

The Australian Democrats have little sympathy for Liberal Students who, having not managed to gain election to positions of influence within their student organisations, have resorted to parliamentary intervention to destroy that which they cannot control.⁴¹

The Democrats also believed that the legislation involved parliament in an attempt to “sort out old feuds and involve itself in the settling of political scores for former and current members of the ALSF who have failed to gain the electoral support of their fellow students.”⁴² If this was so, the government was putting at significant risk the positive benefits of student unionism for party political reasons.

The Democrats made many of the same arguments against voluntary student unionism as the Labor Party. They noted that compulsory student unionism operated in the United Kingdom, Canada and the United States of America. They claimed the introduction of voluntary student unionism in Western Australia meant that an unacceptable number of student services had been withdrawn. The withdrawn services included emergency loans, accident insurance, student

39 Higher Education Legislation Amendment Bill Second Reading Speech <<http://www.lindsaytanner.com/990512%20HIGHER%20EDUCATION%20LEGISLATION%20AMENDMENT%20BILL%201999.pdf>>, (6 September, 2003).

40 Senate Employment, Workplace Relations, Small Business and Education Committee, *Higher Education Legislation Amendment Bill 1999 Australian Democrats Dissenting Report*, Parliament House, Canberra, 1999, p 1.

41 Note 40, p 7.

42 Note 40, p 8.

lounges, computer lounges, education and welfare advice, certain shops, academic grievance advocacy, women's and parenting rooms, orientation camps, newsletters, and clubs and societies.⁴³ They also feared for the future of campus childcare, legal and welfare services. Voluntary student unionism was seen as a funding cut to universities. The ultimate effect would be to place on universities the burden of funding these organisations.⁴⁴

Australian Vice-Chancellors' Committee's submission

Funding was also a concern of the AVCC in its submission to the Senate Committee. The AVCC opposed the legislation, suggesting that the Commonwealth Government was interfering in areas of state responsibility: "The Commonwealth is effectively telling the States and Territories that it can determine, wherever it sees fit, the content of the legislation which governs universities."⁴⁵

The AVCC's opposition included many of the reasons discussed above. It highlighted that the government had paid "much attention" to the political nature of student unions, yet they represented only "a very small percentage of the total funding disbursed from student fees."⁴⁶ The AVCC stressed that choice currently existed as to

43 Note 40, p 2.

44 Note 40, p 4.

45 Australian Vice-Chancellors' Committee's Submission to the Senate Employment, Workplace Relations, Small Business and Education Committee on the *Higher Education Legislation Amendment Bill 1999*, Parliament House, Canberra, 1999, p 2. These words were quite prophetic in the light of what was to follow in the Commonwealth's proposals in the Nelson Report: Nelson B, *Our Universities: Backing Australia's Future*, Commonwealth of Australia, May 2003, which among other proposals again flags that the government will be introducing legislation banning compulsory student unionism (p 45).

46 Note 45, p 6. Furthermore the extent to which student unions engage in political activities may be exaggerated. In *Kemar v Pritchard & Anor* (1989) EOC 92-267 a student at Monash University claimed that the University had discriminated against him because of his political beliefs when his continued enrolment was threatened because he had not paid a student union fee. He eventually paid the fee under sufferance and took the matter to the Equal Opportunity Board of Victoria. His claim of discrimination was rejected, the Board finding that membership *per se* did not represent political activity, that involvement in political activities was not compulsory and that it was well known that the union represents the views of a small number of members (at 77,671).

whether to join student associations, and it predicted a loss of essential services if the legislation was passed, highlighting the previously described events in Western Australia. A matter of obvious concern to the vice-chancellors was that they would be forced to contribute scarce funds to the upkeep of student services previously provided by student unions.⁴⁷

A significant contribution made to the debate by the vice-chancellors was a legal opinion suggesting that there were constitutional doubts regarding clause 18 of the Bill. This was because a condition of a Commonwealth Government university grant would be that the university was not to require students to become members of an association, or to collect general services fees from students.

The legal opinion stated that the prohibition on association membership was of “questionable validity”:

In our view, there is a question whether such a condition would be regarded as falling within the Parliament’s incidental or inherent powers. It is hard to see how the proposed condition effectuates the expenditure of Commonwealth moneys to promote a national system of higher education. It is hard to see how the proposed condition protects the purpose of the appropriation. It is doubtful furthermore how the proposed condition supports the provisions for payment of benefits to students.⁴⁸

The legal opinion also regarded the prohibition on collection of general fees as questionable.⁴⁹

47 Australian Vice-Chancellors’ Committee, *VSU legislation is a Threat to Campus Based Education*, Media Release, 11 March, 1999.

48 Legal Opinion from Minter Ellison, dated 13 April, 1999, p 4, attached to the Australian Vice-Chancellors’ Committee’s Submission, note 45.

49 Note 48.

Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth)

Any possible constitutional challenge to the Higher Education Legislation Amendment Bill 1999 (Cth) had to wait because the Bill failed to pass the Senate. However, the legal opinion as to its constitutional validity remains particularly important given the introduction and likely passage of the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth), which again seeks to prohibit compulsory student unionism. This Bill would amend the *Higher Education Support Act 2003* (Cth) by adding a Division 19-37:

- (1) A higher education provider must not have as a condition of its enrolment of a person with the provider a requirement that the person be or become a member of an association.
- (2) A higher education provider must not collect from a person enrolled with, or seeking to enrol with, the provider any amount that:
 - (a) is required to be paid as a condition of enrolment of the person in a course with the provider; and
 - (b) does not relate directly to the course.

This requirement would need to be satisfied before the Minister could approve a body corporate as a higher education provider. Thus, the constitutionally questionable condition on funding will remain if this becomes law. It is interesting to note that the proposed legislation was introduced in a separate Bill. Perhaps this was to ensure that any constitutional challenge did not strike down the balance of the government's funding reforms, and further to ensure that the Higher Education Support Bill 2003 (Cth) would pass the Senate.

The arguments made for and against compulsory student unionism to the Senate Committee resurfaced in an application by James Cook University to prevent the ACCC's proposed revocation of the university's notification under s 93(1) of the *TPA* because of the provisions of s 47 of the *TPA*. This represented a novel use of s 47

and a surprising new forum, competition law, for opponents of compulsory student unionism to again seek its prohibition.

Challenges to Student Unionism: the *Trade Practices Act 1974 (Cth)*

The matter now under consideration is whether compulsory student unionism breaches s 47 of the *TPA* and, if so, whether universities should notify the ACCC of their relationships with student unions so as to gain protection under s 93 of the *TPA*. Section 47(6) and (7) of the *TPA*⁵⁰ prohibit third line forcing, a subset of the general prohibition in s 47(1) against “exclusive dealing”. Third line forcing occurs where a supplier of goods or services makes it a condition of dealing with a person that the person will acquire (or not acquire) goods or services from another person.

In December 2001 James Cook University, pursuant to s 93(1) of the *TPA*, notified the ACCC of the details of its enrolment conditions. In October 2002 the ACCC issued a draft notice proposing to revoke the university’s notice, subject to a pre-decision conference. The ACCC’s reason for revocation was that under s 93(3A) of the *TPA* the likely benefit to the public would be outweighed by the likely detriment.⁵¹ Revocation of the notice would have exposed the university to a potential breach of s 47 of the *TPA*. In the event, the ACCC did not revoke the notice.⁵² Nevertheless, the issue remains as to whether compulsory student unionism could breach s 47 and, if so, whether

⁵⁰ Previously it has been argued by one of the co-authors that the *Trade Practices Act* applies to Universities: Jackson JG, “The Marketing of University Courses under Sections 52 and 53 of the *Trade Practices Act 1974 (Cth)*” (2002) 6 *Southern Cross University Law Review* 106, pp 112 – 116. Little needs to be added to those comments here. Even if an argument was made successfully that enrolment for a HECS based student may not be a trading corporation matter the same could not be said for a full fee local or overseas student. Furthermore once it is accepted that a university is a trading corporation for some purposes it will be such for all purposes. Accordingly, universities should not rely only on some perceived notion of constitutional protection, particularly where for other purposes a university has argued successfully that it is a trading corporation: *Quickenden v Commissioner O’Connor of the Australian Industrial Relations Commission* [2001] FCA 303 (23 March 2001).

⁵¹ Australian Competition and Consumer Commission, *Draft Notice: Notification lodged by James Cook University Date: 21 October, 2002*, Australian Competition and Consumer Commission, 2002, Canberra.

⁵² Note 4.

universities should notify the ACCC of the details of their relationships with their respective student unions, and of the public benefits claimed to flow from the compulsion to join a student union.

Section 47(1) of the *TPA* provides:

Subject to this section, a corporation shall not, in trade or commerce, engage in the practice of exclusive dealing.

The prohibition against third line forcing is contained in s 47(6) and (7). Section 47(6) reads:

A corporation also engages in the practice of exclusive dealing if the corporation:

- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation;

on the condition that the person to whom the corporation supplies or offers or proposes to supply the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person.

Section 47(7), a mirror image of s 47(6), catches the refusal to supply. Section 47(7) reads:

A corporation also engages in the practice of exclusive dealing if the corporation refuses:

- (a) to supply goods or services to a person;
- (b) to supply goods or services at a particular price to a person; or

- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a person;

for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person.

The essential elements in the third line forcing prohibition in s 47 are:

- A corporation must supply, or *refuse* to supply, goods or services.
- On condition that, or *unless*, the purchaser will acquire goods or services directly or indirectly from another person. Thus, there must be three separate legal entities: a corporation (the supplier), the purchaser, and another person (the forced supplier).
- The goods or services must be of a particular kind or description.

If conduct falls within s 47(6) or (7), s 47(10) provides that there is no need to prove “the engaging by the corporation in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition.” It is not a defence to the section that the conduct either adds to competition or is in the public interest. Under s 93(1) a notice describing the conduct can be given to the ACCC, and while the notice remains in force under that section the corporation will not be engaging in the practice of exclusive dealing.

The essential elements

The need for three legal entities

Recently the AVCC surveyed its membership⁵³ to ascertain various matters in relation to student organisations. There were two initiating factors for this: the Federal Coalition Government's continuing attempt to legislate for voluntary student unionism, and the draft notice from the ACCC revoking the s 93(1) notification by James Cook University.

The survey reported, "in most cases student organisations were regarded as separate entities, usually incorporated under the relevant state or territory law."⁵⁴ Of the 30 universities that responded to the survey, four said student organisations were part of the university, 18 that they were separate entities, and eight that they were related entities. The survey concluded that "most student organisations appear to be incorporated even when they are regarded as part of the university."⁵⁵

Usually, such organisations will be incorporated under the *Corporations Act 2001* (Cth) or its predecessors, or pursuant to the *Associations Incorporation Acts* of the various states and territories. The question of "incorporation" is important for the operation of the third line forcing provisions in s 47 because *three* separate legal entities are required. If the student organisations are in fact simply part of the university, having no status as separate legal entities, s 47 will not apply because the requisite *three* separate legal entities will not be established. Of the eight described above as "related entities", seven were established by the university council.⁵⁶ Given that it is unlikely that the council had the legal power to establish a separate legal entity (unless it was expressly conferred by parliament or the organisation was validly created under the university act or regulations⁵⁷), it may

⁵³ Australian Vice-Chancellors' Committee, *AVCC Survey on University Student Organisations*, Canberra, 2003.

⁵⁴ Note 53, p 1.

⁵⁵ Note 53, p 1.

⁵⁶ These were: UNE, UNSW, Sydney, UTS, Flinders and Tasmania. The survey at Note 53 states 7 universities but only names 6: Australian Vice Chancellors' Committee, *AVCC Survey on University Student Organisations*, Canberra 2003, p 1.

⁵⁷ As an example of this, see *Murdoch University Act 1973* (WA) s 20, reproduced at note 17.

well be that many of these student bodies are in law a part of the university. Where this is so, the section will not apply.

If they are separate legal entities but are in fact controlled by the university, this ownership will not, of itself, stop the operation of s 47. Section 47(12) states:

Subsection (1) does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.

However, in third line forcing situations, it is the dealings of the purchaser, not the related body corporate, that are being restricted. Accordingly, s 47(12) will not apply.

It appears that for s 47(6) and (7) to have any application, the student organisation must be a separate legal entity, not merely a department, committee or other organisational unit of the university. This will be so even if the student organisation has its 'own' budget or some perceived, but not legal, separate status under a council resolution. Groups of academics or students cannot, on their own motion, constitute a separate legal entity. The formation of a separate legal entity comprising a number of individuals requires an incorporation process governed by statute. Separate legal entity status cannot be obtained under private law.

Characterisation and the requirement of a condition under s 47

In *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd*,⁵⁸ Brennan J stated:

[The sub-sections require] two contracts or arrangements: the first, between the corporation which supplies and the person who acquires goods or services; the second, which may be made

⁵⁸ *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd* (1986) 162 CLR 395.

directly or indirectly, between the person who acquires those goods or services and a third person.⁵⁹

In that case, hotel licensees and other beer retailers were required to use a carrier designated by the brewer. However, because the contract was characterised as a single one between the brewer and the hotel licensee for the supply of delivered beer, the requisite second contract was absent. The plaintiff (a competing carrier) argued that even though there was no contractual arrangement between the carrier designated by the brewer and the hotel licensees, the carrier nevertheless obtained the benefits of such a contract, and because those benefits were “forced onto” the beer retailers, the commercial reality was that s 47(6) was breached.⁶⁰

Chief Justice Gibbs, rejecting the plaintiff’s argument, noted:

No doubt in a loose sense the retailer received a benefit from the services, but in truth what the retailer acquired was the beer and not the services of the carrier. Certainly there was no condition that it should acquire (even in the sense of accept) those services.⁶¹

Later, Gibbs CJ made it quite clear that the provision in the contract between the brewer and the hotel licensees was a penal provision. If parliament’s intention was to interfere with ancient and well known common law rights for a supplier to arrange delivery by itself or its agent, this needed to be done in clear language.⁶² Though not stated in his judgment, this interpretation generally protects common law rights to sub-contract or appoint an agent from the operation of third line forcing. What is critical to the operation of such protection is that the person appointed to perform the supplier’s obligation must be at law the supplier’s agent, not the reverse. In the reverse situation, where the supplier is the agent of the supplier whose goods or services are being

⁵⁹ *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd*, Note 58 at 405.

⁶⁰ *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd*, Note 58.

⁶¹ *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd*, Note 58 at 400-401.

⁶² *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd*, Note 58 at 401.

forced (the forced supplier) onto the consumer, the requisite two contracts or arrangements would come into operation. The first contract would be between the consumer and the supplier, while contained within that contract would be the right of the supplier to act as agent for the forced supplier, thereby creating a second contract, this time between the consumer and the forced supplier.

Agency was discussed in *Paul Dainty Corporation Pty Ltd v The National Tennis Centre Trust*.⁶³ In that case, Paul Dainty Corporation Pty Ltd (the corporation) wished to hire a tennis venue for a pop concert by Pink Floyd and Mick Jagger, and use a related corporation to conduct ticket sales. However, the National Tennis Centre Trust (the trust) used Bass to conduct ticket sales. The corporation argued that this requirement to use Bass was a breach of the third line forcing provisions. The response from the trust was that they were providing a complete service in their contract, namely, a venue plus ticketing. Because the corporation was not in any contractual relationship with Bass, the trust argued that the corporation was not being required to use the services of Bass.

The Federal Court of Australia found for the trust, stating:

There is, in our view, no reason to assume that a relationship of principal and agent arises between promoter and venue for purposes of ticket sales. The contract for the hire of the venue is, on its face, a contract between principals for the hire of a ticketed venue – one which provides all its own ticketing facilities. It is a ‘package deal’ which, in addition to ticketing, covers such matters as catering, program selling and security services.⁶⁴

The limitations of s 47 were recently stated in *Australian Competition and Consumer Commission v IMB Group Pty Ltd (ACN 050 411 946) (in liq)*:⁶⁵

⁶³ *Paul Dainty Corporation Pty Ltd v The National Tennis Centre Trust* (1990) 22 FCR 496.

⁶⁴ *Paul Dainty Corporation Pty Ltd v The National Tennis Centre Trust* (1990) 22 FCR 496 at [42].

⁶⁵ *Australian Competition and Consumer Commission v IMB Group Pty Ltd (ACN 050 411 946) (in liq)* [2002] FCA 402 (5 April 2002), per Drummond J.

In order to establish third line forcing, there must be two discrete products or services, with the supply of the first being conditional on the purchaser acquiring another product or service directly or indirectly from a third person. But the courts have refused to find that exclusive dealing is made out where a single package of products or services is supplied, even though different, unrelated organisations produce the various products or services making up the package and even though there is no reason, apart from the lead supplier's insistence on supplying only a bundled package, why the purchaser could not have made separate arrangements for acquisition of the different components of that package.⁶⁶

Not surprisingly, McEwin has made the point that third line forcing turns on a characterisation of the goods or services:

The provision can be avoided by the supplier acquiring the service and supplying the tying and tied products together as one product. This result depends on the characterisation of the product as a single product. If it is characterised as two then the behaviour would come under the normal tying prohibition which is subject to the competition test.⁶⁷

The decision in *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd* has been criticised⁶⁸ as one allowing form to prevail over substance. Nevertheless, the judgments reveal that by taking a little care the s 47(6) and (7) issues can be avoided. Applying this to universities and student unions certain matters become very obvious. The contract formed on enrolment⁶⁹ should make no reference to a condition requiring the joining of a student union, and the university should not act as agent for the student union. The university may collect a student services fee, provided this does not

⁶⁶ *Australian Competition and Consumer Commission v IMB Group Pty Ltd (ACN 050 411 946) (in liq)* [2002] FCA 402 (5 April 2002), per Drummond J at [72].

⁶⁷ McEwin RI, "Third Line Forcing in Australia" (1994) 22 *ABLR* 114, p 134.

⁶⁸ Hurley AC, "The Castlemaine Toohey's Case and the Interpretation of 'Third Line Forcing'" (1987) 61 *ALJ* 415, p 419 cited in McEwin RI, note 67, p 115.

⁶⁹ As to this contract, see note 50.

breach any prohibition on the levying of fees of this kind.⁷⁰ If the university chooses to levy a fee to cover student services this is merely one contract, and the fact that those fees are then distributed to student organisations for service purposes is irrelevant.

The AVCC survey revealed that “a little over half the responding universities indicated that membership of the student association or guild was not a condition of enrolment”, though later it was stated, “in almost all cases membership was automatic.”⁷¹ Furthermore, all responding universities except one indicated that students could opt out of membership “usually on conscientious grounds.”⁷² In such situations a fee had still to be paid either into general university revenue or to non-association student services.⁷³ In half of the responding universities membership of the student association was free.

These responses, if borne out in fact, suggest that the necessary condition under s 47 of the *TPA* may not be met. It is insufficient for the purposes of s 47 that the university collects a fee in its own right and then chooses to distribute some or all of it to the student union.

As noted above, the situation may differ where the university collects the fees as agent for a student union that has determined the fee. It would be better to alleviate any notion of agency in this situation. This can be done by:

- (i) automatically enrolling all students as members of the relevant union, but then having opt out provisions, so that a student can choose not to join a student union. As noted above, the Victorian legislation requires this;
- (ii) ensuring that the university determines the fee to be collected for student services and allows the respective unions in that university to bid for an allocation from the central pool of funds; and

70 This was precisely the prohibition the 1999 Bill would have introduced; as noted above it was not the model used in the Victorian legislation.

71 Note 53, p 1.

72 Note 53, p 1.

73 Note 53, p 2.

- (iii) severing any link between (i) and (ii) so that a student can choose to opt out of joining the union but has to pay fees to the university, not to the student union.

The requirement for goods or services under s 47

Section 47(6) and (7) operate in relation to the “supply” of “goods or services”. “Services” are defined non exclusively in s 4 and include “rights ... benefits, privileges or facilities that are, or are to be provided, granted or conferred *in trade or commerce ...*” (emphasis added). A number of examples of “services” are listed, none of which are relevant for this discussion.

Precisely what are the “services” that are being forced onto a student in a university that has an enrolment condition that a student must join a student organisation? For the purposes of this discussion let us assume that the student organisation is a separate legal entity from the university. Is the requirement of membership the acquiring/supplying of services? It *is* the case that membership will certainly entitle the student to services, some of which are of a commercial nature, but it is not these services that are being forced onto the student. The student is not obligated to use those services. It is important not to confuse the requirement of joining with the benefits of membership. It is the forced membership by itself that must either meet or fail the definition.

As noted previously, the definition of “services” in s 4 of the *TPA* is not an exclusive one. The membership requirement⁷⁴ may be the forcing of a “right”, “benefit” or “privilege” within the definition. However, strictly speaking, only the membership is forced, not the rights, benefits or privileges of membership. Moreover, the definition requires the services to be “provided ... in trade or commerce.” It is arguable that a bare requirement to become a member of a student union (as opposed to being forced to use the membership benefits) is not *in trade or commerce*, even if the original enrolment of the student at the university is itself *in trade or commerce*.⁷⁵ The right of conscientious objection adds further weight to this argument because it seems inconsistent with a “trade or commerce” obligation. In trade or

⁷⁴ Future life membership of a club as a potential forced service was rejected by Drummond J in *Australian Competition and Consumer Commission v IMB Group Pty Ltd (ACN 050 411 946) (in liq)* [2002] FCA 402 (5 April 2002) at [68].

⁷⁵ Itself a matter not without doubt: see note 50, pp 112-16.

commerce the right to object to the duty to perform a legal obligation, based solely on conscience, is extremely uncommon if not unknown. Conscientious objection as a right is therefore much more consistent with concerns about being forced to join a club or a society that has political, religious, trade union or other affiliations, not one providing *services in trade or commerce*. The right of conscientious objection removes the likelihood that the services are those provided *in trade or commerce*.

Although the definition of “services” is not an exclusive one, nevertheless, the caution expressed in *Queensland Aggregates Pty Ltd v TPC*⁷⁶ should be noted:

In the view we take, the sweepingly general provisions of the definition of “services” contained in sec. 4 of the Act should not be given an expansive construction.⁷⁷

It would be “an expansive construction” if the need for services to be supplied *in trade or commerce* was removed from the definition, and would cause the following question to be raised. If this was the intention of parliament, why were the words *in trade or commerce* included in the definition in s 4? It is submitted that the services under discussion in this definition are services of a commercial nature. Thus, they do not include a requirement that as a condition of the supply of services a person must join a particular political organisation, or a university enrolment condition that a student must join a student union.

Public interest/public detriment debate

As noted in the Introduction, a corporation can give notification to the ACCC of conduct that may constitute a breach of s 47(6) or (7). This right is contained in s 47(10A), and while that notice remains in effect the corporation will not be in breach of s 47. The ACCC can revoke such notification on the basis of the test in s 93(3A) that the likely benefit to the public would be outweighed by the likely detriment. In

⁷⁶ *Queensland Aggregates Pty Ltd v TPC* (1981) ATPR 40-236.

⁷⁷ *Queensland Aggregates Pty Ltd v TPC* (1981) ATPR 40-236 at 43,143.

relation to James Cook University, the ACCC issued a draft notice proposing to revoke the university's notification.⁷⁸

The arguments made in support of the public benefits of compulsory student unionism were:

- *Provision of services*

Not all services could be provided at their current level without compulsory student membership with its attendant finances collected through student fees.⁷⁹

- *Independent student representation and student control*

The best interests of students do not always coincide with the best interests of the university. Accordingly, independent student representation through a viable student organisational structure was an imperative.⁸⁰

- *Market failure*

The National Union of Students submitted that the transitional nature of the student population would work against students choosing to join, and that the costs of limiting membership benefits to members would be prohibitive.⁸¹

- *Competitiveness on the international front*

The Australian Campus Union Managers Association and James Cook University claimed that the need to be internationally competitive meant that adequate levels of support needed to be maintained for international students.⁸²

- *Regional and small campuses*

In regional and small campuses viable alternative resources may not be available to students in the absence of student unions.

78 Australian Competition and Consumer Commission, *Draft Notice: Notification lodged by James Cook University Date: 21 October, 2002*, Australian Competition and Consumer Commission, Canberra, 2002, p iii.

79 Note 78, p 10.

80 Note 78, p 12, 14.

81 Note 78, p 13.

82 Note 78, p 13.

In its determination the ACCC applied the “future with-and-without test” developed by the Australian Competition Tribunal in *Re Queensland Independent Wholesalers Limited*.⁸³ This, it stated, required:

A comparison of the public benefits and detriments resulting from the position which would, or would be likely to exist in the future if the notification was allowed to stand with the position if the notification were revoked.⁸⁴

The ACCC reviewed submissions made by the vice-chancellors of public universities in Western Australia to the 1999 Senate Committee Inquiry into the Higher Education Amendment Bill 1999 (Cth), and concluded that voluntary membership of the James Cook University Student Association would most likely result in “a significant reduction in membership.”⁸⁵ Subsequently, representatives from James Cook University indicated to the ACCC that a notification of revocation would result in the charging of a student amenities fee payable directly to the university. As indicated in this article, such a charge would not breach s 47 of the *TPA*. The ACCC seemed to agree with this legal position:

The Commission accepts that if the notification were revoked the most likely outcome is that JCU would restructure its arrangements so as to avoid a contravention of the Act, while maintaining the services and facilities currently provided by JCU SA.⁸⁶

The ACCC indicated in its draft notice that the public detriment consisted of the restriction of student choice, limiting freedom of association. In relation to public benefit, the ACCC stated: “many of the claimed benefits do not flow from the notified conduct itself and, indeed, will exist with or without the notified conduct.”⁸⁷ It found that the benefits flowed from the provision of services and facilities on

83 *Re Queensland Independent Wholesalers Limited* (1995) ATPR 41-438.

84 Note 78, p 15.

85 Note 78, p 16.

86 Note 78, p 17.

87 Note 78, p 22.

campus for students, and not from students being required to join the James Cook University Student Association as a condition of enrolment.⁸⁸ It was also of the view that the university had an incentive to provide services and facilities regardless of the enrolment condition, and that it would restructure to avoid a breach of the *TPA*. Applying “the future with-and-without test”, in October 2002 the ACCC reached the conclusion that the public benefit did not outweigh the public detriment. Accordingly, the ACCC issued its draft notice of revocation.

However, on 30 April 2003 in a press release, Professor Fels, Chairperson of the ACCC, indicated a significant change of heart:

Since the draft decision, new information was put to the ACCC as to why this conduct is in the public interest, including that there may be benefits in retaining the current arrangements which at least ensure the independence of James Cook University Student Association in its representation of students and which avoids the uncertainty associated with any change. For this reason, the ACCC will allow the university’s current enrolment policy to continue.⁸⁹

With due respect to the chairperson, the press release overstates the legal role of the ACCC. It is not a question of that body “allow[ing]” conduct to continue. At law, even if the ACCC had revoked the s 93 notice, the ACCC or some other plaintiff would need to have commenced proceedings in the Federal Court and proved a breach of s 47(6) or (7) on grounds different to the benefit/detriment test just described. As noted earlier, on present interpretations of s 47 it may be very difficult to prove that compulsory student unionism breaches the *TPA*. Even if it does, as highlighted by the ACCC⁹⁰ and in this article, a “restructuring of arrangements” would avoid any such breach.

⁸⁸ Note 78, p 22.

⁸⁹ Note 4.

⁹⁰ Note 78, p 17.

Conclusions

This article has described a 25-years battle over compulsory student unionism or voluntary student unionism, terms used by both sides in an entrenched fight in the courts and in State and Federal Parliaments. Compulsory student unionism has been restored in those states where it was removed. The battle is not yet finished. The indications are that State and Federal Liberal Parties will maintain their efforts to introduce one or other of the forms of voluntary student unionism described in this article, initially legislated for, and subsequently removed, in Victoria and Western Australia. This was demonstrated by the introduction of the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth). The Bill had not been passed prior to Federal Parliament being prorogued in August 2004. However, it will almost certainly become law when the Coalition Government regains control of the Senate in mid 2005.

Had the ACCC decided to revoke the James Cook University notification a further battle may have been joined. The fact that it did not do so indicates that for its part the competition authority does not find much about compulsory student unionism that is especially offensive. Furthermore, the preceding analysis of s 47(6) and (7) indicates that universities have little to fear from this section given the narrow interpretations adopted by the courts. Naturally, universities should take their own advice on the matter and keep a watching brief on future court interpretations. That said, in the opinion of the authors they would be better advised to spend their scarce funds on students rather than on s 93 notifications.

Recommendations

Universities can further reduce the likelihood of action against them by adjusting their student union arrangements.

- It should be clearly specified that opt out arrangements exist. Not only would this reduce the possibility that membership could be seen to constitute “services” *in trade or commerce*, and deny the “condition” requirement in s 47, but also it would remove much of the credibility of arguments opposing student unionism on freedom of association grounds. This human right is surely not breached if a student, without having to provide reasons, can decide *not* to join a student

organisation. It follows that there is at least a moral imperative on a university to publicise this right. In Victoria and Western Australia amendments have ensured this is a legal imperative.

- Universities should sever the link between forcing membership and charging a student union fee. A student amenities fee should be charged, not a student union fee. If the university chooses to allow student organisations to bid for the fees collected and provide the student services on the university's behalf, it will do so without offending s 47 because no notion of forcing remains. An obvious difficulty with this suggestion is that it may offend the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 (Cth) if it becomes law.

Much has been written about compulsory student unionism in this article. Arguments on both sides of this fierce debate have been canvassed, in relation to both the Senate Committee Inquiry and the James Cook University notification. These provide a useful resource for any university that decides to lodge a s 93 application.

A major issue is the challenge to university autonomy, and the too ready acceptance of the narrow "bus – lectures – bus - home" mentality in the Liberal Senators' view of universities. This narrowly constructed vocational view misses a further and important point. Even the ratbag right or lunatic left clubs on campus are engaging, albeit unintentionally, in developing vocational skills in their members, including such matters as budgeting, meeting procedure, marketing, journalism, oral and written communication, advocacy and pure politics. These are all skills that will subsequently be valuable in the workplace.

University autonomy, that is, freedom from interference by church or state, is a vital element in the enhancement of academic freedom and the acquisition and dissemination of knowledge. Part of this freedom comes at a price, namely, the small percentage of union fees that goes to the various clubs and societies in which that freedom is developed and encouraged in students. The willingness of staff and students to speak out on certain topics, such as politics or religion, will likely have a direct relationship with the extent to which they perceive their institution to be independent of church or state. In a sense, the price

paid by students for their union fees is a small tax guaranteeing the existence of a range of benefits, clubs and societies on university campuses throughout Australia. These play their role in the development and maintenance of the Australian democracy.