



Australian Government

Department of Education, Employment and Workplace Relations

Acting Secretary
Kathryn Campbell

Our Ref ED10/013435

The Secretary
Senate Select Committee on the Scrutiny of New Taxes
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hawkins

Inquiry into compulsory student fees

Thank you for your letter dated 15 October 2010 inviting a submission from the Department to the Select Committee on the Scrutiny of New Taxes regarding the Australian Government's proposed Student Services and Amenities Fee.

On 29 September 2010, the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 was introduced to the House of Representatives. The Bill proposes to allow universities and other approved higher education providers to charge a compulsory student services and amenities fee.

As part of this arrangement, universities and higher education providers will also be required to offer eligible students access to a new element of the Higher Education Loan Program (HELP) to be called SA-HELP. As with the other HELP elements, HECS-HELP, FEE-HELP, and OS-HELP, SA-HELP will be an income contingent loan that is repaid to the Government through the taxation system. More information about the proposed fee and SA-HELP is at **Attachment A**.

I understand that the Chair considers this Bill to be within the terms of reference as 'any other related matter', not as a new tax. The fees and student contribution amounts required under the *Higher Education Support Act 2003* would not be considered taxes as they constitute payments for educational services to be provided by a higher education provider to the person enrolling in its courses.

The Bill which provides for the fee and the loan scheme similarly does not have the purpose of raising general revenue for the Government. The proposed student services and amenities fees would be paid directly by a student to his or her university or other approved higher education provider unless the student is entitled to and requests an SA-HELP loan for any remaining amount that the student pays in discharging his or her liability to pay the fee. The Commonwealth must then pay the remaining amount to the provider as a loan to the student. The loan is then repaid through a combination of voluntary repayments (if any) and compulsory repayments through the Commonwealth income tax system. This is the same process as applies to any other HELP payment made by the Government. This Bill does not look to raise revenue for the Commonwealth and the monies to be paid are not payable for a public purpose of the Commonwealth.



The Bill does provide for amendments to the objects of Tax file numbers (TFN) in the *Income Tax Assessment Act 1936* to cover using TFNs when applying for SA-HELP. More information regarding the TFN objects is at **Attachment B**.

I mention also that on 21 October 2010 the Selection Committee of the House of Representatives referred the Bill to the House Standing Committee on Education and Employment which has asked for submissions by 4 November 2010.

I hope this information is of use for the Committee.

Yours sincerely

Kathryn Campbell
November 2010

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The Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010

The proposed Student Services and Amenities Bill provides for measures to allow higher education providers to charge a compulsory student services and amenities fee, as originally announced by the Hon Kate Ellis MP, Minister for Youth on 3 November 2008, and reinforced in the Regional Australia Package announced in September 2010.

The Government's policy initiatives for higher education following the Bradley Review of Higher Education are underpinned by a desire to improve access to higher education by under-represented students, particularly those from low socio-economic status (SES) and Indigenous backgrounds. It is also committed to supporting students from rural and regional areas in accessing higher education.

Since the introduction of voluntary student unionism (VSU) and the prohibition on charging any compulsory fees for non-academic services, universities have decreased their funding for many of the student services, amenities and activities that enhance and support students' learning experiences.¹

Quantitative research from the United States of America shows that students from low SES backgrounds are those that benefit the most from additional expenditure on student services and activities that contribute to students' emotional and physical well-being and to their intellectual, cultural and social development outside of the institution's formal instructional program.² These student services also enhanced the rates of student retention and completions. A similar effect for Australian students has been confirmed anecdotally by many of the Vice Chancellors of universities affected by VSU. And in support of their beliefs, most universities have shown a commitment to funding student services and amenities by drawing funds from other areas such as teaching and learning to ensure that at least a minimum of priority student services and support activities can be maintained.

The Government has stated on several occasions that it does not support a return to compulsory student unionism and this is reflected in the requirements of the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010.

The Bill would amend the *Higher Education Support Act 2003* to:

- allow higher education providers to choose to implement a compulsory student services and amenities fee capped at \$250 per student per annum (indexed to \$254 in 2011, afterwards indexed annually) to help provide student services and amenities as prescribed in the Bill;
- provide eligible students with the option of a loan for the fee through the establishment of a new component of the Higher Education Loan Program (HELP), SA-HELP;
- require higher education providers that receive funding for Commonwealth supported student places under the Commonwealth Grant Scheme to provide information on and access to basic student support services of a non-academic nature; and
- require higher education providers to ensure the provision of democratic student representation.

¹ DEEWR (2008) *The Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students: SUMMARY REPORT*, www.deewr.gov.au.

² Webber, D.A. and Ehrenberg, R.G. (2009), 'Do expenditures other than instructional expenditures affect graduation and persistence rates in American higher education', *Cornell Higher Education Research Institute Working Paper*, <http://www.ilr.cornell.edu/CHERI/>, downloaded 31 August 2009.

The Bill includes provisions that prohibit the fee being spent by a higher education provider on supporting a political party or candidate for election to the Commonwealth, State or Territory parliament or local government.

A higher education provider must also impose this prohibition on any person or organisation to which it pays any of the fee revenue.

The Student Services and Amenities Fee Bill will allow higher education providers to spend the fees on the following list of allowable expenditures:

- providing food or drink to students on a campus of the higher education provider;
- supporting a sporting or other recreational activity by students;
- supporting the administration of a club most of whose members are students;
- caring for children of students;
- providing legal services to students;
- promoting the health or welfare of students;
- helping students secure accommodation;
- helping students obtain employment or advice on careers;
- helping students with their financial affairs;
- helping students obtain insurance against personal accidents;
- supporting debating by students;
- providing libraries and reading rooms (other than those provided for academic purposes) for students;
- supporting an artistic activity by students;
- supporting the production and dissemination to students of media whose content is provided by students;
- helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled;
- advising on matters arising under the higher education provider's rules (however described);
- advocating students' interests in matters arising under the higher education provider's rules (however described);
- giving students information to help them in their orientation;
- helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

Higher education providers may choose to contract third parties to provide allowable services. In some cases, providers may contract student organisations to deliver some of these services. In providing funds from the fee to a third party, the Vice-Chancellor or Chief Executive Officer of the higher education provider will be required to ensure that the third party also complies with the requirements of the Bill in expending the funds.

The proposed amendments do not change section 19-37(1) of the *Higher Education Support Act* which prohibits a higher education provider from requiring a student to be a member of a student organisation.

Providers that chose to implement the fee will be able to charge the fee only after the legislation has been passed and guidelines are in place.

Higher education providers will be able to charge different fees for different groups of students, for example, a lower fee for students studying off-campus compare to the fee for students studying on-campus. The Administration Guidelines made under the Act will require providers to charge part-time students a lower fee than full-time students.

The Student Services, Amenities, Representation and Advocacy Guidelines

The Bill provides for the Minister to make the Student Services, Amenities, Representation and Advocacy Guidelines. These guidelines will be a legislative instrument and introduce for the first time:

- *National Access to Services Benchmarks* relating to the provision of information on, and access to services, such as welfare and counselling services and provision of advocacy services; and
- *National Student Representation Protocols* to ensure that students have democratically elected representatives to present the views of students to their higher education provider. The Protocols also require that providers must consult with their students on the uses of the student services and amenities fee.

Higher education providers in receipt of Commonwealth Grant Scheme funding must meet the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as a condition of their CGS funding, even if they choose not to charge a student services and amenities fee.

Compliance arrangements

The Bill's proposed provisions on student services and amenities fees will be part of the 'quality and accountability requirements' in the *Higher Education Support Act 2003*, with which all providers must comply.

Section 22-15 of the Act empowers the Minister to revoke a body's approval as a higher education provider if the Minister is satisfied that the body has breached a quality and accountability requirement and that it is appropriate to revoke the approval.

Apart from the general requirement to comply with these requirements, compliance is also a condition of all grants to higher education providers under the Act. Section 54-1 of the Act empowers the Minister to determine that a grant to be made to a provider is to be reduced or an amount granted is to be repaid if the provider has breached a condition of a grant and the Minister considers it appropriate to take that action.

In both cases, the Act sets out matters which the Minister may consider and the process to be followed (including allowing the provider to make a submission on why the action should not be taken and considering that submission).

Monitoring determination of fees

Under proposed subsection 19-37(6), a higher education provider that determines a fee must publish 'enough information to enable a person liable to pay the fee to work out the amount of the fee'. The Administration Guidelines will specify the dates by which the publication must occur.

The Department of Education, Employment and Workplace Relations will monitor each provider's published information to ensure that the publication meets the requirements and that the fees that are determined do not exceed the maximum specified in proposed subsection 19-37(5).

Monitoring fees and expenditure of fee revenue

Each higher education provider is required under section 19-10 of the *Higher Education Support Act 2003* to provide an annual financial statement in a form approved by the Minister and a report on the statement by an independent qualified auditor (the relevant Auditor-General for public universities).

The financial statement guidelines issued by the Minister's delegate set out the form of the financial statement that is required. The guidelines will include new requirements for each higher education provider to report the amount of revenue from the student services and amenities fee and the expenditure of that revenue (in aggregate) on the purposes that are specified in the Student Services and Amenities Fee Guidelines and any expenditure of that revenue on purposes not in accordance with those Guidelines.

For students who choose to take out an SA-HELP loan for their student services and amenities fees, a higher education provider will be required to report to DEEWR the amount of the fee charged and the amount loaned.

In addition, each higher education provider will be required to provide an annual compliance certificate, signed by the Vice-Chancellor/CEO along the lines of: XYZ University charged student services and amenities fees strictly in accordance with the *Higher Education Support Act 2003* and the Administration Guidelines and revenue from the fee was spent strictly in accordance with the Act and only on services and amenities in the following categories as specified in the Act (with a tick list of the various categories).

Repayment arrangements for HELP loans

The HELP scheme currently comprises HECS-HELP, FEE-HELP, OS-HELP and VET FEE-HELP. These elements are all income-contingent loans repaid through the Australian taxation system. People who have incurred HELP debts start repaying their HELP debt when their repayment income is above the minimum repayment threshold for compulsory repayment. The repayment thresholds are adjusted each year to reflect any changes in average weekly earnings.

The minimum repayment threshold for the 2010-11 income year is \$44,911.

People may also make voluntary HELP debt repayments at any time and for any amount. If a person makes a voluntary repayment of \$500 or more, they receive a bonus of 10% of the repayment amount credited to their HELP debt.

When a person's repayment income is above the minimum repayment threshold for any particular year, the ATO will calculate their compulsory repayment for that year and include it in their income tax notice of assessment. Table 1 below contains the repayment thresholds and repayment rates for income earned during the 2010-11 income year.

Table 1: 2010-2011 repayment thresholds and repayment rates

Repayment income in the range:	Repayment rate (% of repayment income):
Below \$44,912	Nil
\$44,912-\$50,028	4.0%
\$50,029-\$55,143	4.5%

Repayment income in the range:	Repayment rate (% of repayment income):
\$55,144–\$58,041	5.0%
\$58,042–\$62,390	5.5%
\$62,391–\$67,570	6.0%
\$67,571–\$71,126	6.5%
\$71,127–\$78,273	7.0%
\$78,274–\$83,407	7.5%
\$83,408 and above	8.0%

Accumulated HELP debts are indexed annually on 1 June each year to maintain their real value by adjusting debts in line with changes in the cost of living (as measured by the Consumer Price Index (CPI)). The indexation figure is calculated each year after the March CPI is released.

Indexation is applied by the ATO each year to the part of the HELP that has remained unpaid for more than 11 months.

Proposed amendments to the *Income Tax Assessment Act 1936*

The objects of the system of Tax file numbers are described in section 202 of the *Income Tax Assessment Act 1936*. It is proposed to amend item 202(c) to include the words 'or in respect of the costs of other services and amenities available to students in connect with such institutions' [of higher education].

The legislation referred to in (c) is the *Higher Education Support Act 2003* which currently allows for the Higher Education Loan Program schemes, HECS-HELP, FEE-HELP, OS-HELP and VET FEE-HELP. The Act specifies the eligibility requirements for the loan schemes and also the repayment arrangements for any HELP debts. As part of the eligibility and repayment arrangements, students must provide their tax file numbers to their higher education provider to be forwarded to the Australian Taxation Office as part of the HELP debt reporting and repayment requirements.

The amendment to section 202 (c) below is intended to cover the new loan element, SA-HELP.

Current un-amended section 202 (c).

Part VA—Tax file numbers

Division 1—Preliminary

202 Objects of this Part

The objects of this Part are, by means of the establishment of a system of tax file numbers:

- (a) to increase the effectiveness and efficiency of the matching of information contained in reports given to the Commissioner under this Act or the regulations with information disclosed in income tax returns by taxpayers; and
- (b) to prevent evasion of liability to taxation under the laws of the Commonwealth relating to income tax; and
- (c) to facilitate the administration of any legislation enacted by the Parliament under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respect of the costs of courses of study provided by institutions of higher education; and
- (d) to facilitate the administration of any legislation enacted by the Parliament to impose charge equal to any shortfall in the amount spent by employers on training employees; and
- (e) to facilitate the administration of a provision of an Act, being a provision which authorises the collection of a tax file number as a condition to the giving of personal assistance within the meaning of the *Data-matching Program (Assistance and Tax) Act 1990*; and
- (f) to facilitate the administration of the *Data-matching Program (Assistance and Tax) Act 1990*; and
- (g) to facilitate the administration of any legislation enacted by the Parliament in relation to the imposition of charge on an employer's superannuation guarantee shortfall; and
- (ga) to facilitate the administration of the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*; and [etc.]