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The Parliament of the Commonwealth of Australia

Advisory Report on the  
Higher Education  
Legislation Amendment  
(Student Services and  
Amenities) Bill 2010

House of Representatives  
Standing Committee on Education and Employment

November 2010  
Canberra

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## Terms of reference

On 21 October 2010, the *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* was referred to the Committee. For a copy of the Explanatory Memorandum and Bill see Appendix B.



## List of abbreviations

ACUMA	Australian Campus Union Managers Association
ATN	Australian Technology Network of Universities
ANU	Australian National University
AUS	Australian University Sport
CAPA	Council of Postgraduates Australia
DEEWR	Department of Education, Employment and Workplace Relations
FEE-HELP	Higher Education Loan for Tuition Fees
HECS-HELP	Higher Education Loan for Student Contribution
HEP	Higher Education Provider
NTEU	National Tertiary Education Union
SA-HELP	Higher Education Loan for Student Amenities
SCU	Southern Cross University





# List of recommendations

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

### Recommendation 1

The Committee reiterates the finding of the 2009 Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009* and recommends that the Minister encourages that charges to international students be itemised, so that the potential for duplication of charges to international students be minimised.

### Recommendation 2

That the Minister release the Student Services, Amenities, Representation and Advocacy Guidelines as soon as possible to assist universities to prepare for the implementation of the legislation, should it be passed.

### Recommendation 3

That the Minister consider incorporating the loan into the existing FEE-HELP or HECS-HELP loan scheme, rather than as a separate SA-HELP.

### Recommendation 4

That the Minister consider allowing higher education institutions a period of grace in implementing compliance measures outlined under the proposed Student Services, Representation and Amenities Guidelines to allow time to consult with their students or to establish new services or procedures.

**Recommendation 5**

That the Minister consider allowing higher education institutions to use a portion of the revenue collected from fees to support the start-up costs of administrative and information technology services to administer the new program.

**Recommendation 6**

That the House of Representatives pass the Higher Education Amendment Legislation Amendment (Student Services and Amenities) Bill 2010.



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

## Referral of inquiry

- 1.1 The *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* (the Bill) was referred to the House Standing Committee on Education and Employment on 21 October 2010 for inquiry and report by the end of the Autumn sittings in 2011.<sup>1</sup>
- 1.2 The Bill was one of the first referred to standing committee under new arrangements in the 43<sup>rd</sup> Parliament. These arrangements were adopted on 29 September 2010.<sup>2</sup>

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<sup>1</sup> See House of Representatives, *Votes and Proceedings*, 21 October 2010, p. 111.

<sup>2</sup> See House of Representatives, *Votes and Proceedings*, 29 September 2010, p. 40 specifically, under Standing Order 222.

## Background

- 1.3 The Bill was introduced and the second reading moved in the House by the Minister for School Education, Early Childhood and Youth, the Hon Peter Garrett MP, on 29 September 2010. The Minister explained that the Bill provided for universities to impose charges on students in response to a shortfall of \$170 million in funding for student services and amenities.<sup>3</sup>
- 1.4 The shortfall in funding has been blamed on the *Higher Education Support Amendment (Abolition of Compulsory Up Front Student Union Fees) Bill 2005* which amended the *Higher Education Support Act 2003* to prevent universities from charging students a student fee.<sup>4</sup> This bill received assent on 19 December 2005.
- 1.5 Griffith University alone estimates that they have lost \$31.3 million in revenue since 2005.<sup>5</sup> The University projects that without student fees, it will need to redirect \$10 million a year to student support services and amenities, away from teaching and research. The Australian Technology Network (ATN) estimates that their five member universities have lost a combined total of \$15.5 million since 2005.<sup>6</sup> The Australian National University (ANU) also stated that student welfare and support services had been cut.<sup>7</sup> The Group of Eight submission outlined the reduced student services and amenities available across its member universities, and stated that money had been diverted from teaching and research to fund essential student services.<sup>8</sup> Southern Cross University welcomed the proposed Bill to help restore or provide amenities on regional campuses.<sup>9</sup> The University of Sydney estimates that \$38 million has been diverted from teaching and research over the last three years to fund non academic student support services and amenities.<sup>10</sup>

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<sup>3</sup> See House of Representatives, *Official Hansard*, 29 September, p. 95.

<sup>4</sup> This Bill had been referred to the Senate Committee on Employment, Workplace Relations and Education Legislation Committee. The Senate inquiry received one hundred and ninety two submissions on the issue, predominantly from student associations as well as individuals. See: [http://www.aph.gov.au/Senate/committee/eet\\_ctte/completed\\_inquiries/2004-07/highed\\_unionfees/submissions/sublist.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/2004-07/highed_unionfees/submissions/sublist.htm)

<sup>5</sup> Griffith University, *Submission No. 2*, p. 3.

<sup>6</sup> Australian Technology Network *Submission No. 13*, p. 1.

<sup>7</sup> ANU, *Submission No. 3*, p. 1.

<sup>8</sup> Group of Eight, *Submission No. 5*, p. 1.

<sup>9</sup> Southern Cross University, *Submission No. 14*, p. 1.

<sup>10</sup> University of Sydney, *Submission No. 18*, p. 1.

- 1.6 In 2009, the Government made two attempts to amend the *Higher Education Support Act 2009* to allow universities to charge a capped fee to students for the provision of student services on campus.
- 1.7 The first attempt occurred with the introduction into the House of the *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009* on 11 February 2009. On 18 August 2009, the final Senate vote on this bill was tied and so the proposal was negatived.
- 1.8 The second attempt to implement a fee for higher education services and amenities was introduced into the House as the *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009* on 9 September 2009. This bill passed the House on 26 November 2009. The bill was under consideration by the Senate at the prorogation of the 42<sup>nd</sup> Parliament on 19 July 2010.

## **Conduct of the Inquiry**

- 1.9 A call for submissions to the inquiry was advertised on the Department of the House of Representatives web site from 28 October 2010. A media release calling for submissions was also circulated on 28 October 2010. Direct invitations to submit to the inquiry were also sent to identified stakeholders including universities, student organisations, sporting organisations, and higher education representative bodies. Submissions closed on 4 November 2010.
- 1.10 The Committee received 36 submissions to the inquiry. Submissions are listed at Appendix A.
- 1.11 The Committee resolved the tight timeframe for the inquiry in order to facilitate the possibility of consideration of the Bill by both houses Parliament by the end of the 2010 sittings. If passed, the provisions of the amended Act could be implemented by higher education providers in the new academic year.

## **Other parliamentary inquiries into the measure**

- 1.12 At the time of referral of the Bill to this Committee, an inquiry into a very similar proposal by a parliamentary committee had been completed and another into precisely the same measure was current.

- 1.13 The first *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009* was referred to the Senate Education, Employment and Workplace Relations Committee on 12 February 2009. The Committee reported on 10 March 2009.<sup>11</sup>
- 1.14 A further Senate inquiry into New Student Fees was conducted by the Senate Select Committee on the Scrutiny of New Taxes.<sup>12</sup> The inquiry was referred by the Senate on 30 September 2009 for report by 30 November 2010.

## Outline of the Bill

- 1.15 The Explanatory Memorandum to the Bill outlines three principal objectives of the measure:

The Bill seeks to amend the Higher Education Support Act 2003 to allow higher education providers to charge a compulsory student services and amenities fee. The fee will be capped at \$250 per student per annum (indexed to \$254 in 2011, and thereafter indexed annually).<sup>13</sup>

The Bill also provides for the establishment of a new component of the Higher Education Loan Program (HELP): Services and Amenities-HELP (SA-HELP), which will provide eligible students with an option to access a loan for the fee through SA-HELP.<sup>14</sup>

In addition, the Bill will require higher education providers that receive funding for student places under the Commonwealth Grant Scheme, to comply with new benchmarks from 2011 onwards, for the provision of information on and access to basic student support services of a non-academic nature; and requirements to ensure the provision of student representation and advocacy.<sup>15</sup>

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<sup>11</sup> Information on the inquiry can be accessed at:

[http://www.aph.gov.au/Senate/committee/eet\\_ctte/higher\\_ed\\_amend/index.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/higher_ed_amend/index.htm)

<sup>12</sup> Senate Select Committee on the Scrutiny of New Taxes, Inquiry into Student Fees

[http://www.aph.gov.au/Senate/committee/scrutinynewtaxes\\_ctte/student\\_fees/info.htm](http://www.aph.gov.au/Senate/committee/scrutinynewtaxes_ctte/student_fees/info.htm)

<sup>13</sup> *Higher Education (Student Services and Amenities) Bill 2010 Explanatory Memorandum, Outline*, p. 2.

<sup>14</sup> *Higher Education (Student Services and Amenities) Bill 2010, Explanatory Memorandum, Outline*, p. 2.

<sup>15</sup> *Higher Education (Student Services and Amenities) Bill 2010, Explanatory Memorandum, Outline*, p. 2.

## Matters arising

- 1.16 Several issues emerged relating to the imposition of student fees on students of higher education institutions in evidence presented to this inquiry as well as the current and completed Senate inquiries on this matter.

### Scope of activities that can be funded by the fee

- 1.17 The Bill sets out the types of activities or services that could be funded by the student fee and specifically excludes funding for political parties, or elections to state, federal or local governments.<sup>16</sup> However, the Bill allows expenditure by the higher education provider of revenues raised by student fees on student clubs and associations.<sup>17</sup>
- 1.18 The issue of the potential for revenue raised by student fees to be spent on student clubs which have a political purpose was raised in submissions to the Senate Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*,<sup>18</sup> as well as in several submissions to the 2010 Senate Select Committee Inquiry into New Taxes,<sup>19</sup> and the Standing Committee on Education and Employment Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*.<sup>20</sup>
- 1.19 Griffith University suggested that the issue raised in the press by opponents of the Bill argued erroneously that student fees supported fringe political activity:

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<sup>16</sup> *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*, Schedule 1, Proposed sections 19-38(1) and (2), p.4

<sup>17</sup> *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*, Schedule 1, Proposed section 19-38 (4)(c), p.5

<sup>18</sup> For instance, Australian Liberal Students Federation *Submission No. 16*, p. 9, Senate Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*.

<sup>19</sup> For instance, Australian Liberal Students Federation *Submission No. 30*, p. 18, Morgan Forrest *Submission No. 35* p. 2, 2010 Senate Select Committee Inquiry into New Taxes.

<sup>20</sup> Name Withheld, *Submission No. 1*, p. 1, Cameron Sinclair *Submission No. 4*, p. 2, Michael Ayeling *Submission No. 8*, p. 1.



In the experience of Griffith University, this view is based on a fundamental misconception of the role of universities and student services. In any event there is clear historical and contemporary evidence that the airing of informed views and debate, including of unpopular or minority interests, is far more preferable than suppression for promoting a healthy and self confident democracy, a vibrant economy, and national security.<sup>21</sup>

1.20 The *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009* proposed the types of services and amenities that could be funded through a legislative instrument.<sup>22</sup> This has changed in the *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*, so that the types of services and amenities that can be funded are outlined within the proposed legislation itself as specific purposes which the Parliament would vote on.<sup>23</sup> The proposed section has removed a delegation of power to change the types of services and amenities to the Minister or the Department.

1.21 The Senate Standing Committee for Scrutiny of Bills endorsed the inclusion of specified types of services and amenities in the Bill:

the reintroduced version of the Bill increases Parliamentary scrutiny by listing in the Bill categories of approved purposes for the expenditure of student services and amenities fees. This replaces the previous approach in which it was left to the Minister to specify approved purposes in delegated legislation.<sup>24</sup>

1.22 In comparing the legislative proposals of 2009 and 2010, the inclusion within the Bill of purposes for which student fees can be spent is a positive development. The inclusion of expenditure on 'the administration of clubs most of whose members are students' is also supported.<sup>25</sup> This item directly addresses concerns raised in several submissions that revenue from fees would be used to fund non student organisations such as trade

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<sup>21</sup> Griffith University *Submission No. 2* p. 3.

<sup>22</sup> DEEWR, *Student Services and Amenities Fee Guidelines*, Revised May 2009. <http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Documents/SSAmenitiesFeeGuidelinesMay09.pdf> (accessed 2 November 2010).

<sup>23</sup> See *Higher Education (Student Services and Amenities) Bill 2010*, Schedule 1, Proposed section 19-38(4), p.5

<sup>24</sup> Senate Standing Committee for the Scrutiny of Bills, *Alerts Digest No. 8*, 27 October 2010 p. 39. <http://www.aph.gov.au/senate/committee/scrutiny/alerts/2010/d08.pdf>

<sup>25</sup> *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*, Proposed section 19-38 (4) (c), p. 5.

unions.<sup>26</sup> The Committee is satisfied that revenue would not be used to fund any organisations that do not have a student purpose.

- 1.23 The Committee commends the inclusion of proposed section 19-38 (4) that itemises the purposes that revenue raised by the student fees can be spent. This list, along with proposed section 19-38 (1) that prevents the revenue from being spent on political purposes, will specifically prevent the revenue from being spent on non-student activities, causes or political campaigning. This proposed section is a positive development that clearly indicates that the revenue can only be spent on student related activities.

## Potential to double charge international students for provision of amenities and services

- 1.24 The question of whether international students would be charged twice for access to services was raised by the National Liaison Committee for International Students during the 2009 the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*.<sup>27</sup> The issue was also raised in a submission to this Inquiry by the Australian and New Zealand Student Services Association Inc (ANZSSA).<sup>28</sup> The international student sector of the higher education industry is an important part of the Australian economy. This sector is already under pressure with a high exchange rate of the Australian dollar.
- 1.25 The Department of Education, Employment and Workplace Relations responded that under the *Education for Overseas Students Act 2003*:

The act currently prohibits charging any student, including an overseas student, a compulsory fee for non-academic service...

a provider can include within the tuition fee for an overseas student the costs of the provider meeting their obligations under the Education Services for Overseas Students Act. So the cost of providing the things that have to be provided under the national code under that act can be bundled into the tuition fee [but this

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<sup>26</sup> ALSF Submission No. 16 Senate Standing Committee on Education, Employment, and Workplace Relations, *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, p. 10, Alex Butterworth Submission No. 41, p.2 Senate Select Committee on the Scrutiny of New Taxes 2010

<sup>27</sup> National Liaison Committee for Overseas Students, *Submission No. 24*, p.4 to the Senate Standing Committee on Education, Employment, and Workplace Relations, *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*

<sup>28</sup> ANZSSA Submission No. 11, p. 2.

would not constitute a duplication of fee] because ... the national code is largely about providing access to services rather than providing the services themselves. In the guidelines for the fee, under this bill, we say that in respect of special services for overseas students they have to be over and above what is required under the national code.<sup>29</sup>

- 1.26 Universities Australia submission to the 2008 Department of Education, Employment and Workplace Relations inquiry into voluntary student unionism noted that:

Importantly any new arrangement should give consideration to ensuring no duplication of funding impost is levied on international students who currently contribute to student services through the tuition fees.<sup>30</sup>

- 1.27 A discussion paper circulated by the Department of Education, Employment and Workplace Relations and submitted as an attachment to its submission to the 2009 Senate inquiry outlined the types of services that tuition fees covered:

For overseas students, arrangements were made to ensure that universities could include in the tuition fees an amount to cover the costs for services required by the Education for Services for Overseas Students Act 2000. The National Code of Practice for Registration Authorities and Providers of Education and Training for Overseas Students requires that registered providers provide information and access to support services for overseas students such as those that assist them to make the transition to living in Australia – such as legal services, health services, complaints processes and a student contact officer.<sup>31</sup>

- 1.28 The relevant section of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 regarding services to be provided to overseas students states:

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<sup>29</sup> DEEWR in Report from the Senate Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*, pp. 15-16; Mr Manns, DEEWR, *Committee Hansard*, 4 March 2009, p. 99.

<sup>30</sup> Universities Australia *Submission No. 32* to DEEWR 2008, p. 2.  
<http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Pages/Submissions.aspx> (accessed 1 November 2010).

<sup>31</sup> DEEWR, *Submission No. 5*, Senate Standing Committee on Education, Employment and Workplace Relations, *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*, Attachment 1, Discussion Paper p. 3.

Services which address the mental, physical, social and spiritual well-being of overseas students. These services may include, through direct provision or referral, information/advice about: accommodation, counselling, crisis services, disabilities and equity issues, financial matters, legal issues, medical issues, mental health, peer mentoring, programmes promoting social interaction, religious and spiritual matters, and stress-management.<sup>32</sup>

- 1.29 The 2009 Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009* found evidence that international students often suffer severe depression while studying in Australia, and suggested that part of the student services and amenities fee that are collected from 'overseas students is directed towards international students for the benefit of international students.' That Committee also recommended that charges to overseas students be itemised.<sup>33</sup>
- 1.30 Under the current proposal, higher education institutions will be able to determine whether or not to charge international students the capped Student Services fee, in addition to fees already charged to international students for amenities in their tuition fees.

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<sup>32</sup> The legislative instrument, National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007, (7 March 2007) as amended made under subsection 33(1) of the *Education Services for Overseas Students Act 2000*.  
<http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/current/bytitle/26A0FFCCEE5D34A4CA2577120015FD9C?OpenDocument&VIEWCAT=item&COUNT=999&START=1>

<sup>33</sup> Report on The Senate Standing Committee on Education, Employment, and Workplace Relations, *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, pp. 15- 16.

## Recommendation 1

**The Committee reiterates the finding of the 2009 Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009* and recommends that the Minister encourages that charges to international students be itemised, so that the potential for duplication of charges to international students be minimised.**

### Charging external students for campus amenities and services

1.31 A distance student in particular expressed concern over being charged for university amenities and services that he was unlikely to ever use.<sup>34</sup>

1.32 Universities Australia addressed this issue in its submission:

Universities Australia appreciates that not all students may use these services during their study, but is firmly of the view that it is better for all students to contribute to the provision of the services, which are then available to all, than to not have the services available to those who need them. Additionally, such services will provide a safety net for those students who had begun their study with no need for the services, but whose situations change for the worse during the course of their study. The Bill requires universities to provide students with clear information regarding the services being provided through the Student Services and Amenities Fee. This information should encourage more students to utilise services which they may otherwise have not known existed.<sup>35</sup>

1.33 Individual higher education providers are developing plans to consult their students on the services that they would like to see provided under this scheme. Innovative Research Universities argue that:

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<sup>34</sup> Ben Allen, *Submission No. 8*, p.1 Senate Select Committee on Scrutiny on New Taxes, Inquiry into New Student Fees 2010 [http://www.aph.gov.au/Senate/committee/scrutinynewtaxes\\_ctte/student\\_fees/submissions.htm](http://www.aph.gov.au/Senate/committee/scrutinynewtaxes_ctte/student_fees/submissions.htm), see also name withheld *Submission No. 10* p.1 to the 2009 Senate Inquiry into the proposed *Higher Education Amendment (Student Services and Amenities and other Measures) Bill*, [http://www.aph.gov.au/Senate/committee/eet\\_ctte/higher\\_ed/submissions.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/higher_ed/submissions.htm)

<sup>35</sup> Universities Australia *Submission No. 6*, p. 2.

These funds would be used to support a range of student services. The particular allocation would vary from university to university based on university priorities as determined following consultation with students.<sup>36</sup>

- 1.34 Southern Cross University proposed to consult students and to tailor student services and amenities to all students according to the outcome of this consultation. They specifically plan to tailor services for external students.<sup>37</sup>
- 1.35 The Committee is satisfied that the proposed legislation allows scope for higher education providers to consult with students over their needs, and that provision of services to external students will be addressed by each higher education provider.

### Potential conflict of interest in student advocacy and representation being funded by universities

- 1.36 The Council of Postgraduate Associations (CAPA)<sup>38</sup> as well as NTEU identified a potential unintended consequence for student advocacy and representation in the proposed legislation regarding the legislative instrument, Student Services, Amenities, Advocacy and Representation Guidelines.<sup>39</sup> Proposed section 19-67 (3) of the Bill states that:

the Student Services, Amenities, Representation and Advocacy Guidelines cannot require a provider to fund an organisation of students, or of students and other persons.<sup>40</sup>

- 1.37 The NTEU has expressed concern that a minority of universities may choose not to fund their student representative body.<sup>41</sup> Other submissions from student organisations such as CAPA have suggested that some

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36 *Submission No. 44*, p.2 Senate Select Committee on Scrutiny on New Taxes, Inquiry into New Student Fees 2010  
[http://www.aph.gov.au/Senate/committee/scrutinynewtaxes\\_ctte/student\\_fees/submissions.htm](http://www.aph.gov.au/Senate/committee/scrutinynewtaxes_ctte/student_fees/submissions.htm)

37 SCU, *Submission No. 14*, pp. 1-2.

38 CAPA, *Submission No. 23*, p. 4 and NTEU, *Submission No. 5*, p. 5.

39 Student Services, Amenities, Advocacy and Representation Guidelines, DEEWR website, amended May 2009,  
<http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Pages/Home.aspx> (accessed 1 November 2010).

40 *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* p. 7.

41 NTEU, *Submission No. 22*, p. 3, 2009 Senate Select Committee on Education, Employment and Workplace Relations Inquiry into *Higher Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*.

universities had threatened a loss of funding to student services that were critical of the university.<sup>42</sup>

- 1.38 The draft legislative instrument Student Services, Amenities, Representation and Advocacy Guidelines is designed to provide a benchmark and protocols for democratically elected student representatives and advocacy services:

The Benchmarks and Protocols are intended to ensure that higher education providers give appropriate attention to a range of essential student support services and that enrolled students are able to participate in the decision making processes of the [Higher Education Provider] HEP through opportunities for democratically elected student representation.<sup>43</sup>

- 1.39 However, the current version of this legislative instrument is not yet available.

- 1.40 Several submissions from universities requested that the latest version of the Students Services, Amenities, Representation and Advocacy Guidelines be released as soon as possible for the preparation of the administration of the new compliance expectations.<sup>44</sup>

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<sup>42</sup> CAPA Western Region, *Submission No. 30*, pp. 1-2, Senate Select Committee on Education, Employment and Workplace Relations Inquiry into *Higher Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*.

<sup>43</sup> Student Services, Amenities, Representation and Advocacy Guidelines, DEEWR website, Amended May 2009, <http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Pages/Home.aspx> (accessed 1 November 2010).

<sup>44</sup> University of South Australia, *Submission No. 16*, p. 1.

## Recommendation 2

**That the Minister release the Student Services, Amenities, Representation and Advocacy Guidelines as soon as possible to assist universities to prepare for the implementation of the legislation, should it be passed.**

### Cost and time involved in administering a separate FEE HELP program

- 1.41 Several submissions suggested that the cost and effort to students and universities in administering a separate SA-HELP program, rather than an extension of existing FEE-HELP and HECS-HELP programs, was considerable, and that consideration should be given to extending existing programs instead.<sup>45</sup> Universities Australia<sup>46</sup> requested that the student amenities loan be incorporated into existing FEE-HELP and HECS-HELP rather than be established as a separate SA-HELP:

In addition, the deferred payment of the \$250 into SA-HELP rather than being part of HECS-HELP or FEE-HELP would seem to be an inefficient process given the compulsory nature of the fee.

Universities Australia would rather the SA-HELP was rolled into HECS and FEE-HELP so as to simplify administration of the debt and repayment process.

- 1.42 The University of Melbourne<sup>47</sup> also requested that the new fee be incorporated into the existing loans scheme to simplify the process for students and staff:

There is already student confusion over the different HELP schemes and their varying purposes, debt charges and maximum loans. Another loan scheme will add to this confusion, particularly as it will be far from clear to students why they need two loans schemes for what will, from their perspective, be one transaction. Duplicating loans schemes will also generate additional administrative and service costs to universities. Systems will need to be modified to incorporate the new SA-HELP and student

<sup>45</sup> ATN, *Submission No. 13*, p. 2, Universities Australia *Submission No. 6*, University of Melbourne, *Submission No. 15*, pp. 2-3.

<sup>46</sup> Universities Australia, *Submission No. 6* p. 3.

<sup>47</sup> University of Melbourne, *Submission No. 15* pp. 2-3.



amenities fee transactions, and staff time will have to be spent answering student questions about the new loan scheme.

- 1.43 The Committee notes the concerns of Universities Australia, The University of Melbourne and The Australian Technology Network regarding the extra administrative requirements of the new loan scheme.

### **Recommendation 3**

**That the Minister consider incorporating the loan into the existing FEE-HELP or HECS-HELP loan scheme, rather than as a separate SA-HELP.**

### **Regional campus concerns**

- 1.44 The loss of funding to regional campuses and subsequent loss of services to students such as welfare, support and sporting services since 2005 was highlighted in many submissions to the 2008 consultation run by DEEWR,<sup>48</sup> as well as this Inquiry.
- 1.45 The Australian University Sports Association (AUS) and the Australian Campus Union Managers Association (ACUMA) also supported the proposed legislation, and argued that sporting services to all campuses, particularly rural campuses, are under immediate threat because the Voluntary Student Union Transition Funding program is due to finish at the end of 2010.<sup>49</sup>
- 1.46 All higher education institutions, including those located in regional Australia, welcomed the proposed legislation. One regional university,

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<sup>48</sup> Victoria Central Highland Consultative Committee, *Submission No. 10*, p.1; AUS and ACUMA *Submission No. 47*, p.3; La Trobe University Guild of Students, *Submission No. 66*, p.7; University of Ballarat, *Submission No.7*, p.5; Southern Cross University Coffs Harbour Students Association, *Submission No. 51*, p.3; University of Southern Queensland Student Guild, *Submission No.93*, p.3, Charles Darwin University, *Submission No. 119*, p.2; Monash University Gippsland Students Guild *Submission No. 71*, p.6; Campus Central Ourimbah Campus Students Association, *Submission No. 120*, p.1; James Cook University Postgraduate Students Association, *Submission No.133*, p.1; Monash University, *Submission No. 26*, p.3 DEEWR consultation [.http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Pages/Submissions.aspx](http://www.deewr.gov.au/HigherEducation/Programs/StudentSupport/VoluntaryStudentUnionism/Pages/Submissions.aspx),

<sup>49</sup> AUS and ACUMA, *Submission No. 12*, p. 2.

however, had concerns about the timing of the implementation of the proposed legislation for smaller and newer regional campuses. Southern Cross University (SCU) suggested that the establishment of services on smaller regional campuses, or the negotiation and consultation with external students for more flexible delivery of services, required a delay in implementing the measures until mid 2011.<sup>50</sup>

#### **Recommendation 4**

**That the Minister consider allowing higher education institutions a period of grace in implementing compliance measures outlined under the proposed Student Services, Representation and Amenities Guidelines to allow time to consult with their students or to establish new services or procedures.**

- 1.47 SCU was also concerned that setting up the services required under the Student Services, Amenities, Representation and Advocacy Guidelines would result in extra administrative and IT costs to the university, and suggested that revenue raised from student fees be made available initially to cover the up-front development costs.<sup>51</sup> The University of South Australia also expressed concerns about the cost of administration and software in the setting up of the scheme. Universities do not currently have the software capabilities for this revenue collection.<sup>52</sup>

<sup>50</sup> SCU, *Submission No. 14*, pp 1-2.

<sup>51</sup> SCU, *Submission No. 14*, pp. 1-2.

<sup>52</sup> University of South Australia, *Submission No. 16*, p.2.

## Recommendation 5

**That the Minister consider allowing higher education institutions to use a portion of the revenue collected from fees to support the start-up costs of administrative and information technology services to administer the new program.**

## Concluding comment

- 1.48 There was overwhelming support for the proposed legislation from key stakeholders, including all universities through their peak organisation Universities Australia,<sup>53</sup> as well as sporting,<sup>54</sup> campus and student organisations.<sup>55</sup> Universities Australia believes that the provision of non academic support services and amenities assists all students, particularly those from lower socio-economic backgrounds and those from indigenous backgrounds, and disabled students, to complete their degrees successfully. Provision of career and counselling services, and opportunities to participate in extra-curricular activities at university, assists students in developing skills and experience to better enable them to pursue future careers.
- 1.49 Universities indicated that they had struggled to support student services and amenities since the abolition of higher education fees, and had diverted funding away from teaching and research in order to provide student services and amenities that they regard as vital to the support and development of students.<sup>56</sup> Many universities considered that their continued provision of student services and amenities was not viable in the long term without specific funding.<sup>57</sup>

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53 Universities Australia, *Submission No.6*, p. 1, Group of Eight *Submission No. 5*, p. 1.

54 AUS and ACUMA, *Submission No. 12*, p. 1.

55 CAPA, *Submission No. 23*, p.4; Arcunsw, *Submission No.17*, p.1, Undergraduates of New England, *Submission No. 43*, p.1 to the Senate Inquiry on Proposed Student Fees, ANU Students Association *Submission No.24*, p.1 to the Senate Inquiry on Proposed Student Fees 2010

56 Universities Australia *Submission No. 6*, p.1

57 University of Sydney, *Submission No. 1,8* p.2; University of Melbourne, *Submission No. 15*, p. 3; Griffith University, *Submission No. 2*, p. 3; Australian Technology Network, *Submission No. 13*, p. 1; ANU, *Submission No. 3*, p. 1; Group of Eight, *Submission No. 5*, p. 1; Southern Cross University, *Submission No. 14*, p. 1.

- 1.50 The University of South Australia stated that the proposed legislation will be effective in restoring essential student services and amenities as well as developing student outcomes:

UniSa considers that the Bill is likely to achieve its policy objectives. The proposed Student Amenities Fee will effectively contribute to the quality and richness of student experience that UniSa strives to deliver. A globalised future will involve greater connectedness and expanded flows of information, technology, capital, goods, services and people throughout the world. By providing services and activities on-campus, students will benefit through involvement in creativity, networking and relationship-building, and share in a stronger sense of collective purpose.<sup>58</sup>

- 1.51 La Trobe University stated that good student services contribute to the development of students as active citizens:

Good student services are vital for the effective participation, retention, and success of a larger and more diverse higher education student cohort. In the long term, these funds will contribute to the ability of the sector to produce graduates who are fit for life with a greater sense of community and active citizenship.<sup>59</sup>

## Recommendation 6

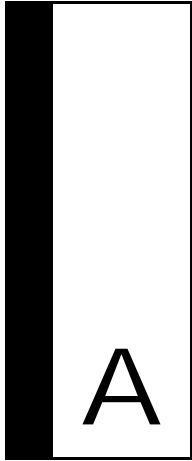
**That the House of Representatives pass the Higher Education Amendment Legislation Amendment (Student Services and Amenities) Bill 2010.**

**Amanda Rishworth MP**  
**Chair**

<sup>58</sup> University of South Australia, *Submission No. 16*, p. 1.

<sup>59</sup> La Trobe University, *Submission No. 20*, p. 3.

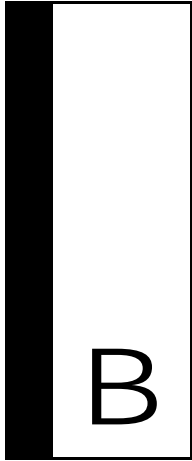




## Appendix A – Submissions

- 1 Name Withheld
- 2 Griffith University
- 3 Australian National University
- 4 Mr Cameron Sinclair
- 5 Group of Eight
- 6 Universities Australia
- 7 Ms Alyson Richards
- 8 Dr Michael Ayling
- 9 Ms Arabella Haddon-Casey
- 10 National Tertiary Education Union
- 11 Australian and New Zealand Student Services Association Inc  
(ANZSSA)
- 12 Australian University of Sport and Australasian Campus Union  
Managers' Association
- 13 Australian Technology Network
- 14 Southern Cross University
- 15 University of Melbourne
- 16 University of South Australia
- 17 ARC UNSW Student Life
- 18 University of Sydney

- 19 University of Tasmania
- 20 LaTrobe University
- 21 UQ Union
- 22 Mr Morgan Forrest
- 23 Council of Australia Postgraduate Associations Incorporated (CAPA)
- 24 LaTrobe University Guild
- 25 Students' Representative Council, University of Sydney
- 26 Australian Liberal Students' Federation
- 27 QUT Student Guild
- 28 University of Western Australia
- 29 National Union of Students
- 30 Melbourne University Liberal Club
- 31 SUPRA: Students working for students
- 32 Department of Education, Employment and Workplace Relations
- 33 Deakin University
- 34 University of Southern Queensland
- 35 Australian Olympic Committee
- 36 The University of Western Sydney



Appendix B – Higher Education Legislation  
Amendment (Student Services and  
Amenities) Bill 2010



2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT  
SERVICES AND AMENITIES) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and  
Workplace Relations, the Senator the Honourable Chris Evans MP)

# **HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010**

## **OUTLINE**

This Bill will amend the *Higher Education Support Act 2003* to allow higher education providers to charge a compulsory student services and amenities fee. The fee will be capped at \$250 per student per annum (indexed to \$254 in 2011, and thereafter indexed annually). The Bill provides for the establishment of a new component of the Higher Education Loan Program (HELP): Services and Amenities-HELP (SA-HELP), which will provide eligible students with an option to access a loan for the fee through SA-HELP if they wish. In addition, the Bill will require higher education providers that receive funding for student places under the Commonwealth Grant Scheme, to comply with new benchmarks from 2011 onwards, for the provision of information on and access to basic student support services of a non-academic nature; and requirements to ensure the provision of student representation and advocacy.

## **FINANCIAL IMPACT**

The estimated financial impact of SA-HELP over the period 2010-11 to 2013-14 is -\$50.498 million on fiscal balance.

# HIGHER EDUCATION LEGISLATION AMENDMENT (STUDENT SERVICES AND AMENITIES) BILL 2010

## NOTES ON CLAUSES

### **Clause 1 – Short title**

Provides for the Act to be cited as the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2010*.

### **Clause 2 – Commencement**

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3 and any provision not covered elsewhere in the table, to commence on Royal Assent; for Schedule 1 to commence on a day to be fixed by Proclamation, or for any provisions which have not commenced within six months of the Act receiving Royal Assent, the day after the six month period expires.

### **Clause 3 - Schedule(s)**

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

For ease of description, this explanatory memorandum uses the following abbreviation:

‘the Act’ means the *Higher Education Support Act 2003*.

## **Schedule 1 – Student services and amenities**

### ***Higher Education Support Act 2003***

#### **Items 1 and 2 – paragraph 3-10(c), after paragraph 3-10(c)**

Insert new paragraph (d) into section 3-10. Section 3-10 lists the assistance provided to students contained in Chapter 3 of the Act. New paragraph (d) adds SA-HELP assistance to the list of assistance provided under Chapter 3 of the Act.

#### **Item 3 – Subsection 5-1(2) (after table item 5)**

Amends the table titled ‘Application of Act to Table C providers’ contained in subsection 5-1(2) to include a reference to new Part 3-5 regarding SA-HELP assistance. This is a consequential amendment.

#### **Item 4 – At the end of section 19-37**

Inserts new subsections 19-37(4), (5) and (6) into section 19-37. Section 19-37 contains rules concerning higher education providers requiring membership of certain organisations or the payment of certain amounts.

Subsection 19-37(2) provides that a higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service. New subsection 19-37(4) provides an exception to subsection (2) and allows an education provider to require the payment of a ‘student services and amenities fee.’

New subsection 19-37(5) defines *student services and amenities fee*. A *student services and amenities fee* is:

- a fee imposed by a higher education provider on a person enrolled, or seeking to enrol with the provider to pay for a period on or after 1 January 2011 to support the provision to students of amenities and services not of an academic nature,
- determined by the provider in accordance with the Administration Guidelines;
- payable on a day determined by the provider in accordance with the Administration Guidelines; and
- an amount of not more than \$250 if the fee is for a calendar year starting on or after 1 January 2011 (note the first year of indexation will apply in 2011 altering the maximum fee for 2011 to \$254) and is worked out in accordance with the Administration Guidelines.

There are three notes at the end of new subsection 19-37(5).

Note 1 provides that the Administration Guidelines are made by the Minister under section 238-10 of the Act.

Note 2 provides that the maximum amount of the fee as prescribed in new paragraph (5)(e) as \$250 is indexed in accordance with Part 5-6 of the Act (commencing 2011).

Note 3 makes a reference to paragraph 19-102(3)(b) of the Act which prevents a student services and amenities fee from being a fee defined in section 19-102 of the Act.

New subsection (6) imposes obligations on higher education providers who require the payment of a student services and amenities fee. New subsection (6) requires providers to:

- publish, in accordance with the Administration Guidelines, enough information for a person liable to pay the fee to work out the amount of the fee, and notice of the day on which the fee is payable; and
- on request by a person who is, or may become, liable to pay a fee, inform the person of the amount of the fee and the day it is or would be payable.

#### **Item 5 – After section 19-37**

Inserts new section 19-38. This new section will limit the way higher education providers can spend the student services and amenities fees they receive.

New subsection (1) prevents a provider from spending an amount paid to them to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (2) requires that, where a higher education provider pays a person or organisation an amount paid to a provider as a student services and amenities fee, the provider must make the payment on condition that none of the payment will be spent by the person or organisation to support a political party or the election of a person as a member of the legislature of the Commonwealth, a State or a Territory, or a local government body.

New subsection (3) provides that a higher education provider must not spend any amounts received as student services and amenities fees for purposes other than those specified in the new subsection (4).

The effect of new subsection (4) is to require higher education providers to only spend amounts received as student services and amenities fees on the following services:

- 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
- advocating students' interests in matters arising under the higher education provider's rules
- giving students information to help them in their orientation
- helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

A note at the end of new subsection (4) gives the following examples of allowable expenditure under subsection (4):

- expenditure by the higher education provider itself where it directly provides the service in question
- expenditure by the higher education provider where it arranges for someone else to provide the service, or the provider subsidises that person's provision of the service
- expenditure by the higher education provider on infrastructure for the provision of the service.

The effect of new subsection (5) is to provide that, for the purposes of new paragraph 19-38(4)(d), a child of a student includes (but is not limited to) a child of a person within the meaning of the *Family Law Act 1975*.

New subsection (6) ensures that the provisions limiting the expenditure of the student services and amenities fee contained in new subsection 19-38 will apply to advances made to higher education providers on account of SA-HELP assistance.

New subsection (7) provides that subsection (6) does not limit subsection 164-10(2). Subsection 164-10(2) provides that where an advance on account is made, the conditions that would be applicable to a payment of the amount on account of which the advance is made are applicable to the advance.

#### **Item 6 – After section 19-65**

Inserts new section 19-67. New subsection 19-67(1) provides a higher education provider that receives a grant under Part 2-2 of the Act must, in each calendar year starting in 2012, comply with the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as they were in force on 30 June just before the year.

New subsection 19-67(2) prescribes what may be contained in the Student Services, Amenities, Representation and Advocacy Guidelines.

New subsection 19-67(3) prevents the Student Services, Amenities, Representation and Advocacy Guidelines from requiring a provider to fund an organisation of students, or of students and other persons.

New subsection 19-67(4) prescribes that subsection 19-65(1) does not apply to the Student Services, Amenities, Representation and Advocacy Guidelines.

### **Items 7, 8 and 9 – Section 65-1**

These amendments are consequential amendments to include references to the new SA-HELP assistance in the Table contained in section 65-1. This Table summarises Chapter 3 of the Act which contains the provisions relating to assistance to students.

### **Item 10 – At the end of Chapter 3**

Inserts new Part 3-5. New Part 3-5 contains the substantive provisions relating to SA-HELP assistance.

New Division 125 provides a description of new Part 3-5.

New Division 126 provides eligibility criteria for SA-HELP assistance. A student is entitled to SA-HELP assistance where the student:

- meets the citizenship or residency requirements under new section 126-5;
- is enrolled in a course of study with the provider or a bridging course for overseas-trained professionals on a day on which the fee is payable;
- meets the tax file number requirements; and
- has, on or before the day on which the fee is payable, completed, signed and given to an appropriate officer of the provider a request for Commonwealth assistance in relation to the fee.

New subsection 126-1(2) defines a *request for Commonwealth assistance* in relation to a student services and amenities fee. This is defined as a document in which a person requests the Commonwealth to provide assistance under the Act in relation to the student assistance and amenities fee for the period (and any student services and amenities fee imposed for a later period during which the person is enrolled in the course of study or bridging course for overseas-trained professionals) and is on a form approved by the Minister.

The citizenship or residency requirements contained in new section 126-5 require a student, on the day the fee is payable, to be either an Australian citizen or a permanent humanitarian visa holder resident in Australia. New subsection 126-5(2) provides that a permanent humanitarian visa holder does not meet the citizenship or residency requirements where the provider reasonably expects that the visa holder will not undertake in Australia any units of study with the provider.



New Division 127 provides how the amount of SA-HELP assistance to which a student is entitled is worked out. The amount of SA-HELP assistance to which an eligible student is entitled is the difference between the fee and the sum of any payments of the fee made on or before the day on which the fee is payable.

New Division 128 sets out how amounts of SA-HELP are paid. New section 128-1 provides that where a student is entitled to SA-HELP assistance the Commonwealth must lend the amount of SA-HELP assistance to the student and pay the higher education provider the amount lent.

New section 128-5 provides that a provider must repay an amount of SA-HELP assistance to the Commonwealth if new subsection 193-15(1) applies to the student. See Item 36 for new subsection 193-15(1).

Note 1 provides that subsection 193-15(1) applies to a person who does not have a tax file number.

Note 2 provides that the SA-HELP debt will be remitted if the higher education provider must repay the amount under section 128-5.

#### **Item 11 – Section 134-1**

Amends section 134-1 to include a reference to SA-HELP assistance. This is a consequential amendment.

#### **Item 12 – After paragraph 137-1(c)**

Amends paragraph 137-1(c). This amendment includes SA-HELP debts in the definition of HELP debts.

#### **Item 13 – After section 137-15**

Inserts new section 137-16. New section 137-16 provides for when SA-HELP debts occur.

New subsection 137-16(1) provides that a person incurs an SA-HELP debt where the Commonwealth makes a loan to the person and uses the amount lent to make a payment of the person's student services and amenities fee.

New subsection 137-16(2) provides that the amount of the SA-HELP debt is an amount equal to the loan.

New subsection 137-16(3) provides that an SA-HELP debt is incurred by a person immediately after the day on which the student services and amenities fee to which the loan relates is payable, whether or not the Commonwealth has made a payment in respect of the fee.

New subsection 137-16(4) provides that a person's SA-HELP debt is remitted if the provider must repay the Commonwealth the amount the Commonwealth paid the provider in relation to the fee.

**Items 14 and 15 – Subsection 140-5(1)**

Insert references to SA-HELP assistance into subsections 140-5(1) and 140-25(1A) respectively. These are consequential amendments relating to Item 13.

**Items 16 and 17 – Subsection 140-25(1A)**

Inserts references to SA-HELP assistance into subsection 140-25(1A). These are consequential amendments relating to Item 13.

**Items 18, 19 and 20 – Paragraph 154-55(1)(a)**

Are technical amendments relating to Item 21.

**Item 21 – At the end of paragraph 154-55(1)(a)**

Inserts new subparagraph 154-55(1)(a)(iii) to include a reference to SA-HELP assistance into paragraph 154-55(1)(a). This amendment extends the provisions which require higher education providers to give information in their possession relating to students to the Commissioner (if asked by the Commissioner) to information in their possession relating students who have applied for SA-HELP assistance.

**Item 22 – Subparagraph 169-5(1)(b)(i)**

Amends subparagraph 169-5(1)(b)(i) to insert a reference to the student services and amenities fee. Subsection 169-5(1) currently provides that a higher education provider must give notices, as required by the Administration Guidelines, to a person who is:

- enrolled with the provider for a unit of study and;
- who is seeking Commonwealth assistance under the Act for the unit or is a Commonwealth supported student for the unit.

This amendment will require higher education providers to also give notices as required by the Administration Guidelines in relation to student services and amenities fees.

**Item 23 – Section 169-30**

Is a technical amendment relating to Item 22.

**Item 24 – At the end of section 169-30**

Inserts new subsection 169-30(2). This new subsection provides that, in communications under (or for the purposes of) the Act between the Commonwealth and a higher education provider concerning a person who has had a student services and amenities fee imposed on them and has indicated they are seeking SA-HELP for the fee, then the provider must use any identifier for that person that the Secretary has indicated must be used in such communications. This amendment mirrors a provision which currently exists regarding other Commonwealth assistance.

**Items 25 and 26 – Section 169-35, at the end of paragraph 169-35(b)**

Amends section 169-35 to insert a reference to SA-HELP assistance. These are technical amendments relating to Item 27.

**Item 27 – At the end of section 169-35**

Inserts new subsection 169-35(2). This new subsection has the effect of limiting the period, during which a person can correct the information provided in the request for Commonwealth assistance made in relation to a student services and amenities fee where the effect of correcting the information gives rise to an entitlement to SA-HELP, to six weeks after the day on which a student services and amenities fee imposed on a person by a higher education provider was payable. This amendment mirrors the provisions which currently exist for other forms of Commonwealth assistance contained in the Act.

**Items 28 and 29 – Subsections 187-1(1) and (1A), subsection 187-1(3)**

Amends subsections 187-1(1), (1A) and 1(3). These are technical amendments relating to Item 30.

**Item 30 – After subsection 187-1(3A)**

Inserts new subsections 187-1(3B), (3C), (3D) and (3E). These subsections contain the tax file number requirements for obtaining SA-HELP assistance.

New subsection 187-1(3B) provides that a student will satisfy the tax file number requirements in one of two ways. Either by providing their tax file number to an appropriate officer of the provider and the provider being satisfied that the number is a valid tax file number or by giving the officer a certificate from the Commissioner of Taxation which states that they have applied for a tax file number.

New subsection 187-1(3C) provides that compliance by a person with the tax file number requirements in relation to the person's actual or proposed enrolment in a course of study or bridging course for overseas-trained professionals under subsection (3B) must be ignored in determining whether the person has complied with subsection

(3B) in relation to his or her actual or proposed enrolment in another such course or bridging course.

New subsection 187-1(3D) provides that a student does not meet the tax file number requirements for SA-HELP unless they comply with these requirements on or before the day the fee is payable.

New subsection 187-1(3E) provides that a student may include a notification under paragraph (3B)(a) in any request for Commonwealth assistance relating to a student services and amenities fee in connection with their enrolment in the course of study or bridging course for overseas-trained professionals.

### **Item 31 – Paragraph 187-1(4)(a)**

Amends paragraph 187-1(4)(a) to insert a reference to new paragraph 187-1(3B)(a). Subsection 187-1(4) provides that the Commissioner may issue guidelines about the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number for the purposes of paragraph 187-1(1)(a) or (3B)(a). This amendment will extend these guidelines to include SA-HELP assistance.

### **Item 32 – Transitional – guidelines issued under subsection 187-1(4) of the *Higher Education Support Act 2003***

Inserts transitional provisions regarding the guidelines made under subsection 187-1(4) relating to the circumstances in which a higher education provider is or is not to be satisfied that a number is a valid tax file number.

Subitem (1) provides that any guidelines made under subsection 187-1(4) prior to commencement of the amendments to that subsection will remain in force after commencement of the amendments.

Subitem (2) provides that subitem (1) does not prevent the repeal or amendment of the guidelines.

### **Item 33 – Subsection 187-1(5)**

Amends subsection 187-1(5) to insert a reference to new paragraph (3B)(b). Subsection 187-1(5) provides that a certificate issued by the Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student must be in a form approved by the Commissioner. This amendment will extend the requirement in subsection 187-1(5) to include SA-HELP assistance.

#### **Item 34 – After subsection 193-1(4)**

Inserts new subsections 193-1(4A) and (4B). New subsection 193-1(4A) provides that a higher education provider must notify a person in writing how to meet the tax file number requirements if:

- the person is enrolled in a course of study or bridging course with the provider; and
- the provider has imposed a student services and amenities fee on the person; and
- the person has (on or before the day on which the fee is payable) completed and signed a request for Commonwealth assistance in relation to a student services and amenities fee imposed for a period during which the person is enrolled in the course or bridging course; and
- in that request, the person requests SA-HELP assistance for the student services and amenities fee; and
- the request does not include a number that purports to be the person's tax file number.

New subsection 193-1(4B) provides that the provider must notify the person under new subsection 193-1(4A) either:

- on or before the day the student services is payable; or
  - within seven days after the person gives the provider the request for Commonwealth assistance;
- whichever is earlier.

#### **Item 35 – Paragraph 193-1(5)(a)**

Amends paragraph 193-1(5)(a) to insert a reference to SA-HELP assistance. Subsection 193-1(5) provides that section 193-1 does not apply to a person if the person (in the request for Commonwealth assistance) requests HECS-HELP assistance, FEE-HELP assistance or OS-HELP assistance, but the person is not entitled to the assistance. This amendment will extend these provisions to include SA-HELP assistance. That is, the tax file number requirements in section 193-1 will not apply to a person where they have applied for SA-HELP assistance but are not entitled to the assistance.

#### **Item 36 – At the end of Division 193**

Inserts new section 193-15. New section 193-15 provides circumstances in which there is no entitlement to SA-HELP assistance for students without valid tax file numbers. New subsection 193-15(1) provides that subsection 193-15(1) applies to a person if:

- a higher education provider has imposed a student services and amenities fee on a person; and
- the provider receives a notice under section 190-15 or 190-20 of the Act that the person does not have or no longer has a tax file number; and
- 28 days after the provider receives the notice the person does not have a tax file number, the provider has not been notified of a tax file number which the provider is satisfied is valid; and

- the person is entitled to SA-HELP assistance for the fees.

New subsection 193-15(2) provides that in deciding whether a tax file number is valid for the purposes of paragraph (1)(c) the provider must comply with the guidelines issued by the Commissioner under subsection 187-1(4).

New subsection 193-15(3) provides that where persons may be affected by subsection (1) applying to them, a higher education provider must comply with any requirements set out in guidelines issued by the Commissioner, relating to procedures for informing persons of the need to obtain a valid tax file number.

New subsection 193-15(4) provides that the guidelines issued under subsection (3) are legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

#### **Item 37 – Section 198-5 (before table item 1)**

Amends the table in section 198-5. This table sets out the amounts under the Act that are to be indexed and lists the first year of indexation. This amendment adds the student services and amenities fee as an amount that is to be indexed and lists 2011 as the first year of indexation.

#### **Item 38 – Subsection 238-10(1) (table item 1, column headed “Chapter/Part/section”)**

Amends item 1 of the table in subsection 238-10(1) to insert “Section 19-37;” before “Chapter 5” in the third column. The effect of this amendment is to allow the Administration Guidelines to provide for matters concerning the student services and amenities fee in addition to matters concerning Chapter 5.

#### **Item 39 – Subsection 238-10(1) (after table item 10)**

Inserts reference to the Student Services, Amenities, Representation and Advocacy Guidelines into the Table in section 238-10. This section provides that the Minister may, by legislative instrument, make Guidelines specified in the Table. This amendment provides the legislative basis for the Minister to make the Student Services, Amenities, Representation and Advocacy Guidelines.

#### **Item 40 – Subclause 1(1) of Schedule 1 (after paragraph (b) of the definition of *request for Commonwealth assistance*)**

Inserts paragraph (ba) into the definition of *request for Commonwealth Assistance* contained in Clause 1 of Schedule 1. This amendment includes the student services and amenities fee in the definition of *request for Commonwealth assistance*.

### **Items 41, 42 and 43 – Subclause 1(1) of Schedule 1**

Inserts definitions of *SA-HELP assistance*, *SA-HELP debt* and *student services and amenities fee* into subclause 1(1) of Schedule 1. These are consequential amendments.

### ***Income Tax Assessment Act 1936***

#### **Item 44 – Paragraph 202(c)**

Amends paragraph 202(c).

Section 202 provides the objects of Part IVA of the Act and includes, at paragraph (c), the establishment of a system of tax file numbers to facilitate the administration of legislation under which benefits are provided by the Commonwealth to students in relation to contributions or charges payable by students in respects of the costs of courses of study provided by higher education institutions. This amendment will extend the coverage of paragraph 202(c) to include the provision of benefits to students in respect of ‘costs of other services and amenities available to students in connection with [higher education] institutions.’ This amendment will include the student services and amenities fee under this section.

Normally an amendment to sections 8WA and 8WB of the *Taxation Administration Act 1953* (TAA 1953) is required to ensure that a person does not commit an offence when carrying out his or her duties with tax file numbers in respect of certain legislated purposes. This would entail excluding certain paragraphs of section 202 of the *Income Tax Assessment Act 1936* (ITAA 1936) from the offence provisions in the above mentioned sections of the TAA 1953. The amendment of section 202 merely extends the existing purposes of paragraph 202(c) of the ITAA 1936. The extended wording of paragraph 202(c) is automatically included in the exceptions to the offence provisions.

The purpose of the Schedule is to introduce a student services and amenities fee and to give students the option of deferring payment of the cost of other services and amenities connected with their education at institutions of higher education (SA-HELP). In order to facilitate the deferral and repayment of those debts the tax file number is to be used in a similar manner to that used under the HECS-HELP. This is consistent with other benefits provided by government where the tax file number is used to verify the identity of the debtor/recipient of a benefit and to facilitate the repayment of the debt/overpayment.

2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No.     , 2010**

*(Tertiary Education, Skills, Jobs and Workplace Relations)*

**A Bill for an Act to amend legislation relating to  
higher education, and for related purposes**





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1     **A Bill for an Act to amend legislation relating to**  
2     **higher education, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Higher Education Legislation*  
6                     *Amendment (Student Services and Amenities) Act 2010*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in Column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.  
12

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1 **Schedule 1—Student services and amenities**  
2

3 ***Higher Education Support Act 2003***

4 **1 Paragraph 3-10(c)**

5 Omit “study.”, substitute “study;”.

6 **2 After paragraph 3-10(c)**

7 Insert:

- 8 (d) SA-HELP assistance for meeting student services and  
9 amenities fees imposed by higher education providers.

10 **3 Subsection 5-1(2) (after table item 5)**

11 Insert:

12	5A	Part 3-5 (SA-HELP assistance)	Applies to eligible students of the *Australian branch of the provider who are enrolled at the Australian branch in a *course of study or *bridging course for overseas-trained professionals.
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13 **4 At the end of section 19-37**

14 Add:

- 15 (4) Subsection (2) does not apply to a \*student services and amenities  
16 fee that the higher education provider requires the person to pay.

17 (5) A *student services and amenities fee* is an amount:

- 18 (a) that a higher education provider requires a person enrolled, or  
19 seeking to enrol, with the provider to pay for a period starting  
20 on or after 1 January 2011 to support the provision to  
21 students of amenities and services not of an academic nature,  
22 regardless of whether the person chooses to use any of those  
23 amenities and services; and  
24 (b) that is determined by the provider in accordance with the  
25 Administration Guidelines; and  
26 (c) that is not more than the amount worked out for that period  
27 for the person in accordance with those guidelines; and  
28 (d) that is payable on a day determined in accordance with those  
guidelines; and

1 (e) that is such that the total of all amounts that are covered by  
2 paragraphs (a), (b), (c) and (d) for the same provider and  
3 person is not more than \$250, for amounts for periods falling  
4 wholly or partly within a calendar year starting on or after  
5 1 January 2011.

6 Note 1: The Administration Guidelines are made by the Minister under  
7 section 238-10.

8 Note 2: The amount of \$250 mentioned in paragraph (5)(e) is indexed under  
9 Part 5-6.

10 Note 3: Paragraph 19-102(3)(b) prevents a student services and amenities fee  
11 from being a fee as defined in section 19-102.

12 (6) If a higher education provider determines a \*student services and  
13 amenities fee, the provider:

14 (a) must publish, in accordance with the Administration  
15 Guidelines:

16 (i) enough information to enable a person liable to pay the  
17 fee to work out the amount of the fee; and

18 (ii) notice of the day on which the fee is payable; and

19 (b) must, on request by a person who is or may become liable to  
20 pay the fee, inform the person of the amount of the fee and  
21 the day on which it is or would be payable.

## 22 **5 After section 19-37**

23 Insert:

### 24 **19-38 Higher education providers' expenditure of student services** 25 **and amenities fees**

26 (1) A higher education provider must not spend an amount paid to the  
27 provider as a \*student services and amenities fee to support:

28 (a) a political party; or

29 (b) the election of a person as a member of:

30 (i) the legislature of the Commonwealth, a State or a  
31 Territory; or

32 (ii) a local government body.

33 (2) If a higher education provider pays a person or organisation an  
34 amount paid to the provider as a \*student services and amenities  
35 fee, the provider must make the payment on the condition that none

- 1 of the payment is to be spent by the person or organisation to  
2 support:
- 3 (a) a political party; or  
4 (b) the election of a person as a member of:  
5 (i) the legislature of the Commonwealth, a State or a  
6 Territory; or  
7 (ii) a local government body.
- 8 (3) A higher education provider must not spend, for a purpose other  
9 than that specified in subsection (4), an amount paid to the provider  
10 as a \*student services and amenities fee.
- 11 (4) Subsection (3) does not prohibit expenditure for a purpose that  
12 relates to the provision of any of the following services:  
13 (a) providing food or drink to students on a campus of the higher  
14 education provider;  
15 (b) supporting a sporting or other recreational activity by  
16 students;  
17 (c) supporting the administration of a club most of whose  
18 members are students;  
19 (d) caring for children of students;  
20 (e) providing legal services to students;  
21 (f) promoting the health or welfare of students;  
22 (g) helping students secure accommodation;  
23 (h) helping students obtain employment or advice on careers;  
24 (i) helping students with their financial affairs;  
25 (j) helping students obtain insurance against personal accidents;  
26 (k) supporting debating by students;  
27 (l) providing libraries and reading rooms (other than those  
28 provided for academic purposes) for students;  
29 (m) supporting an artistic activity by students;  
30 (n) supporting the production and dissemination to students of  
31 media whose content is provided by students;  
32 (o) helping students develop skills for study, by means other than  
33 undertaking \*courses of study in which they are enrolled;  
34 (p) advising on matters arising under the higher education  
35 provider's rules (however described);  
36 (q) advocating students' interests in matters arising under the  
37 higher education provider's rules (however described);
-



- 1 (r) giving students information to help them in their orientation;  
2 (s) helping meet the specific needs of \*overseas students relating  
3 to their welfare, accommodation and employment.

4 Note: Examples of expenditure for a purpose that relates to the provision of  
5 a service specified in subsection (4) include:

- 6 (a) expenditure by the higher education provider in directly  
7 providing the service; and  
8 (b) expenditure by the higher education provider in getting someone  
9 else to provide the service or subsidising the provision of the  
10 service by someone else; and  
11 (c) expenditure by the higher education provider on infrastructure  
12 for the provision of the service.

13 (5) Without limiting who is a child of a person for the purposes of  
14 paragraph (4)(d), someone is the *child* of a person if he or she is a  
15 child of the person within the meaning of the *Family Law Act*  
16 *1975*.

17 (6) To avoid doubt, subsections (1), (2) and (3) apply to an advance  
18 made to a higher education provider on account of \*SA-HELP  
19 assistance in the same way as they apply to an amount paid to the  
20 provider as a \*student services and amenities fee.

21 Note: An amount of SA-HELP assistance paid to a provider is an amount  
22 paid to the provider as a student services and amenities fee because,  
23 under section 128-1, the SA-HELP assistance is paid to discharge the  
24 student's liability to pay the fee.

25 (7) Subsection (6) does not limit subsection 164-10(2).

26 Note: Subsection 164-10(2) applies to an advance on account of an amount  
27 the conditions that would apply to payment of the amount.

## 28 **6 After section 19-65**

29 Insert:

### 30 **19-67 Special requirements for student services, amenities, 31 representation and advocacy in 2012 and later years**

32 (1) A higher education provider that receives a grant under Part 2-2 in  
33 respect of the year 2012 or a later year must comply in respect of  
34 the year with the requirements of the Student Services, Amenities,  
35 Representation and Advocacy Guidelines as those guidelines were  
36 in force on the 30 June just before the year.

Note: The Student Services, Amenities, Representation and Advocacy Guidelines are made by the Minister under section 238-10.

- (2) The Student Services, Amenities, Representation and Advocacy Guidelines may provide for:
- (a) requirements for providing students with information about services that are not of an academic nature and that support students; and
  - (b) requirements for providing students with access to such services; and
  - (c) requirements relating to the representation and advocacy of the interests of students.
- (3) However, the Student Services, Amenities, Representation and Advocacy Guidelines cannot require a provider to fund an organisation of students, or of students and other persons.
- (4) Subsection 19-65(1) does not apply in relation to the Student Services, Amenities, Representation and Advocacy Guidelines.

**7 Section 65-1**

Omit “3 kinds” (wherever occurring), substitute “4 kinds”.

**8 Section 65-1**

Omit:

- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3.4).

Substitute:

- OS-HELP assistance—assistance to a student who, as part of his or her course of study, is to undertake study at an overseas higher education institution (see Part 3-4);
- SA-HELP assistance—assistance to a student on whom a student services and amenities fee is imposed (see Part 3-5).

**9 Section 65-1**

1 Omit “and FEE-HELP assistance)”, substitute “, FEE-HELP assistance  
2 and SA-HELP assistance)”.

3 **10 At the end of Chapter 3**

4 Add:

5 **Part 3-5—SA-HELP assistance**

6 **Division 125—Introduction**

7 **125-1 What this Part is about**

8 A student may be entitled to SA-HELP assistance for a student  
9 services and amenities fee imposed on him or her by a higher  
10 education provider, if certain requirements are met.

11 The amount of the assistance is the amount of the fee, less any  
12 amounts of the fee paid on or before the day the fee is payable  
13 (except any SA-HELP assistance paid under this Part). The  
14 assistance is paid to the provider to discharge the student’s liability  
15 to pay the fee.

16 Note: Amounts of assistance under this Part may form part of a person’s  
17 HELP debts that the Commonwealth recovers under Part 4-2.

18 **Division 126—Who is entitled to SA-HELP assistance?**

19 **126-1 Entitlement to SA-HELP assistance**

- 20 (1) A student is entitled to \*SA-HELP assistance for a \*student  
21 services and amenities fee imposed on the student for a period by a  
22 higher education provider if:
- 23 (a) the student meets the citizenship or residency requirements  
24 under section 126-5; and
  - 25 (b) the student is enrolled with the provider in a \*course of study  
26 or a \*bridging course for overseas-trained professionals on  
27 the day on which the fee is payable; and
  - 28 (c) the student \*meets the tax file number requirements (see  
29 section 187-1); and

- 1 (d) the student has, on or before the day on which the fee is  
2 payable, completed, signed and given to an \*appropriate  
3 officer of the provider a \*request for Commonwealth  
4 assistance in relation to the fee.
- 5 (2) ***A request for Commonwealth assistance***, in relation to a \*student  
6 services and amenities fee imposed for a period on a person who is  
7 enrolled with a higher education provider in a \*course of study or a  
8 \*bridging course for overseas-trained professionals, means a  
9 document:
- 10 (a) in which the person requests the Commonwealth to provide  
11 assistance under this Act in relation to the fee for the period  
12 (and any student services and amenities fee imposed for a  
13 later period during which the person is enrolled in the course  
14 or bridging course); and
- 15 (b) that is in the form approved by the Minister.

16 **126-5 Citizenship or residency requirements**

- 17 (1) A student meets the citizenship or residency requirements under  
18 this section in relation to a \*student services and amenities fee  
19 imposed on the student by a higher education provider if the  
20 student is, on the day the fee is payable:
- 21 (a) an Australian citizen; or  
22 (b) a \*permanent humanitarian visa holder resident in Australia.
- 23 (2) Despite subsection (1), a \*permanent humanitarian visa holder does  
24 not meet the citizenship or residency requirements in relation to a  
25 \*student services and amenities fee imposed on the visa holder by a  
26 higher education provider if the provider reasonably expects that  
27 the visa holder will not undertake in Australia any \*units of study  
28 with the provider.

1 **Division 127—How are amounts of SA-HELP assistance**  
2 **worked out?**

3 **127-1 The amount of SA-HELP assistance for a student services and**  
4 **amenities fee**

5 The amount of \*SA-HELP assistance to which a student is entitled  
6 for a \*student services and amenities fee is the difference (if any)  
7 between:

- 8 (a) the fee; and  
9 (b) the sum of any payments of the fee (other than a payment of  
10 SA-HELP assistance under this Part) made on or before the  
11 day on which the fee is payable.

12 **Division 128—How are amounts of SA-HELP assistance**  
13 **paid?**

14 Note: Part 5-1 deals generally with payments by the Commonwealth under this Act.

15 **128-1 Payments to higher education providers of loans to students**

16 If a student is entitled to an amount of \*SA-HELP assistance for a  
17 \*student services and amenities fee imposed by a higher education  
18 provider, the Commonwealth must:

- 19 (a) as a benefit to the student, lend to the student the amount of  
20 SA-HELP assistance; and  
21 (b) pay to the provider the amount lent in discharge of the  
22 student's liability to pay the fee.

23 **128-5 Repayment by higher education provider if student does not**  
24 **have tax file number**

25 A higher education provider must repay the Commonwealth an  
26 amount paid to the provider under section 128-1 in discharge of a  
27 person's liability to pay a \*student services and amenities fee if  
28 subsection 193-15(1) applies to the person.

29 Note 1: Subsection 193-15(1) applies to a person who does not have a tax file  
30 number.

31 Note 2: The person's SA-HELP debt will be remitted if the higher education  
32 provider must repay the amount under this section: see subsection  
33 137-16(4).

1 **11 Section 134-1**

2 Omit “or OS-HELP assistance”, substitute “, OS-HELP assistance or  
3 SA-HELP assistance”.

4 **12 After paragraph 137-1(c)**

5 Insert:

6 (ca) \*SA-HELP debts;

7 **13 After section 137-15**

8 Insert:

9 **137-16 SA-HELP debts**

10 *Incurring SA-HELP debts*

11 (1) A person incurs a debt to the Commonwealth if, under  
12 section 128-1, the Commonwealth:

13 (a) makes a loan to the person; and

14 (b) uses the amount lent to make a payment of the person’s  
15 liability to pay a \*student services and amenities fee.

16 The debt is an *SA-HELP debt*.

17 (2) The amount of the \*SA-HELP debt is an amount equal to the loan.

18 *When SA-HELP debts are incurred*

19 (3) An \*SA-HELP debt is taken to have been incurred by a person  
20 immediately after the day on which the \*student services and  
21 amenities fee to which the loan relates is payable, whether or not  
22 the Commonwealth has made a payment in respect of the fee.

23 *Remission of SA-HELP debts*

24 (4) A person’s \*SA-HELP debt in relation to a \*student services and  
25 amenities fee imposed by a higher education provider is taken to be  
26 remitted if, under section 128-5, the provider must repay the  
27 Commonwealth the amount the Commonwealth paid the provider  
28 in relation to the fee.

29 **14 Subsection 140-5(1) (method statement, step 2, after**  
30 **paragraph (e))**

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1 Insert:

2 (ea) \*SA-HELP assistance for \*student services and  
3 amenities fees imposed on the person by one  
4 particular higher education provider; or

5 **15 Subsection 140-5(1) (method statement, step 2, note)**

6 After “(e),” insert “(ea),”.

7 **16 Subsection 140-25(1A) (method statement, step 1, after  
8 paragraph (e))**

9 Insert:

10 (ea) \*SA-HELP assistance for \*student services and  
11 amenities fees imposed on the person by one  
12 particular higher education provider; or

13 **17 Subsection 140-25(1A) (method statement, step 1, note)**

14 After “(e),” insert “(ea),”.

15 **18 Paragraph 154-55(1)(a)**

16 After “applied for”, insert “one or more of the following”.

17 **19 Subparagraph 154-55(1)(a)(i)**

18 Omit “or” (last occurring).

19 **20 Subparagraph 154-55(1)(a)(ii)**

20 Omit “and”.

21 **21 At the end of paragraph 154-55(1)(a)**

22 Add:

23 (iii) \*SA-HELP assistance for a \*student services and  
24 amenities fee for a period; and

25 **22 Subparagraph 169-5(1)(b)(i)**

26 After “unit”, insert “or for a \*student services and amenities fee  
27 imposed on the person by the provider”.

1 **23 Section 169-30**

2 Before “In”, insert “(1)”.

3 **24 At the end of section 169-30**

4 Add:

- 5 (2) In communications under, or for the purposes of, this Act between  
6 the Commonwealth and a higher education provider concerning a  
7 person who:
- 8 (a) has had a \*student services and amenities fee imposed on him  
9 or her by the provider; and
  - 10 (b) has indicated that the person is seeking \*SA-HELP assistance  
11 for the fee;
- 12 the provider must use any identifier for that person that the  
13 \*Secretary has indicated must be used in such communications.

14 **25 Section 169-35**

15 Before “If:”, insert “(1)”.

16 **26 At the end of paragraph 169-35(b)**

17 Add “other than \*SA-HELP assistance”.

18 **27 At the end of section 169-35**

19 Add:

- 20 (2) If:
- 21 (a) more than 6 weeks after the day on which a \*student services  
22 and amenities fee imposed on a person by a higher education  
23 provider was payable, the person gives the provider  
24 information in writing (the *correct information*) that  
25 establishes that information contained in or accompanying a  
26 \*request for Commonwealth assistance made by the person in  
27 relation to the fee was incorrect; and
  - 28 (b) the correct information establishes that the person was  
29 entitled to \*SA-HELP assistance for the fee;
- 30 this Act applies as if the person had never been entitled to the  
31 SA-HELP assistance.

32 **28 Subsections 187-1(1) and (1A)**

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1 After “Chapter 3”, insert “, except \*SA-HELP assistance,”.

2 Note: The following heading to subsection 187-1(1) is inserted “*Assistance other than*  
3 *SA-HELP assistance*”.

4 **29 Subsection 187-1(3)**

5 After “\*request for Commonwealth assistance”, insert “, except a  
6 request for Commonwealth assistance relating to a \*student services and  
7 amenities fee,”.

8 **30 After subsection 187-1(3A)**

9 Insert:

10 *SA-HELP assistance*

11 (3B) A student who is enrolled, or proposes to enrol, with a higher  
12 education provider in a \*course of study or \*bridging course for  
13 overseas-trained professionals ***meets the tax file number***  
14 ***requirements*** for \*SA-HELP assistance if:

15 (a) the student notifies his or her \*tax file number to an  
16 \*appropriate officer of the provider, and the provider is  
17 satisfied (in accordance with subsection (4)) that this number  
18 is a valid tax file number; or

19 (b) the student gives to the officer a certificate from the  
20 \*Commissioner stating that the student has applied to the  
21 Commissioner asking the Commissioner to issue a tax file  
22 number to the student.

23 (3C) Compliance by a person with subsection (3B) in relation to the  
24 person’s actual or proposed enrolment in a \*course of study or  
25 \*bridging course for overseas-trained professionals is to be ignored  
26 in determining whether there has been compliance by the person  
27 with subsection (3B) in relation to the person’s actual or proposed  
28 enrolment in another such course or bridging course.

29 (3D) If the student is seeking \*SA-HELP assistance for a \*student  
30 services and amenities fee, he or she does not meet the tax file  
31 number requirements for the assistance unless he or she complies  
32 with subsection (3B) on or before the day the fee is payable.

33 (3E) A notification under paragraph (3B)(a) may be included in any  
34 \*request for Commonwealth assistance relating to a \*student  
35 services and amenities fee imposed on the student in connection

1 with his or her enrolment in the \*course of study or \*bridging  
2 course for overseas-trained professionals.

3 **31 Paragraph 187-1(4)(a)**

4 After “paragraph (1)(a)”, insert “or (3B)(a)”.

5 Note: The following heading to subsection 187-1(4) is inserted “*Commissioner’s role*”.

6 **32 Transitional—guidelines issued under subsection 187-1(4)**  
7 **of the *Higher Education Support Act 2003***

8 (1) Guidelines in force under subsection 187-1(4) of the *Higher Education*  
9 *Support Act 2003* immediately before the commencement of the  
10 amendment of that subsection by this Schedule have effect after that  
11 commencement as if they had been issued under that subsection as  
12 amended by this Schedule.

13 (2) Subitem (1) does not prevent the repeal or amendment of the guidelines.

14 **33 Subsection 187-1(5)**

15 After “paragraph (1)(b)”, insert “or (3B)(b)”.

16 Note: The following heading to subsection 187-1(7) is inserted “*Commissioner’s guidelines*  
17 *are legislative instruments*”.

18 **34 After subsection 193-1(4)**

19 Insert:

20 *Requests for SA-HELP assistance*

21 (4A) A higher education provider must notify a person in writing how to  
22 \*meet the tax file number requirements if:

- 23 (a) the person is enrolled with the provider in a \*course of study  
24 or \*bridging course for overseas-trained professionals; and  
25 (b) the provider has imposed a \*student services and amenities  
26 fee on the person; and  
27 (c) the person has, on or before the day on which the fee is  
28 payable, completed, signed and given to the \*appropriate  
29 officer of the provider a \*request for Commonwealth  
30 assistance in relation to a student services and amenities fee  
31 imposed on the person for a period during which he or she is  
32 enrolled in the course or bridging course; and

- 1 (d) in that request, the person requests \*SA-HELP assistance for  
2 the student services and amenities fee; and  
3 (e) the request does not include a number that purports to be the  
4 person's \*tax file number.
- 5 (4B) The provider must notify the person under subsection (4A):  
6 (a) on or before the day the \*student services and amenities fee is  
7 payable; or  
8 (b) within 7 days after the person gives the provider the \*request  
9 for Commonwealth assistance;  
10 whichever is earlier.

11 **35 Paragraph 193-1(5)(a)**

12 Omit "or \*OS-HELP assistance", substitute " , \*OS-HELP assistance or  
13 \*SA-HELP assistance".

14 **36 At the end of Division 193**

15 Add:

16 **193-15 No entitlement to SA-HELP assistance for students without**  
17 **tax file numbers**

- 18 (1) This subsection applies to a person if:  
19 (a) a higher education provider has imposed a \*student services  
20 and amenities fee on the person; and  
21 (b) the provider receives notice under section 190-15 or 190-20  
22 to the effect that the person does not have, or no longer has, a  
23 \*tax file number; and  
24 (c) at the end of 28 days after the provider receives that notice,  
25 the provider has not been notified of a number that the  
26 provider is satisfied (in accordance with subsection (2)) is a  
27 valid tax file number; and  
28 (d) the person is entitled to \*SA-HELP assistance for the fee  
29 (ignoring paragraph 126-1(1)(c)).

30 Note: If subsection (1) applies to a person:

- 31 (a) the provider must repay any amount paid to the provider by the  
32 Commonwealth to discharge the person's liability for the student  
33 services and amenities fee (see section 128-5); and  
34 (b) the person's SA-HELP debt relating to the payment by the  
35 Commonwealth is remitted (see subsection 137-16(4)).

1 (2) A higher education provider must, in deciding whether it is  
2 satisfied that a number is a valid \*tax file number for the purposes  
3 of paragraph (1)(c), comply with the guidelines issued by the  
4 \*Commissioner under subsection 187-1(4).

5 (3) A higher education provider must comply with any requirements,  
6 set out in guidelines issued by the \*Commissioner, relating to  
7 procedures for informing persons of the need to obtain a valid \*tax  
8 file number, where the persons may be affected by subsection (1)  
9 applying to them.

10 (4) A guideline issued under subsection (3) is a legislative instrument.

11 **37 Section 198-5 (before table item 1)**

12 Insert:

1AA	Amount mentioned in paragraph 19-37(5)(e)	Section	2011
		19-37	

13 **38 Subsection 238-10(1) (table item 1, column headed**  
14 **“Chapter/Part/section”)**

15 Before “Chapter 5”, insert “Section 19-37;”.

16 **39 Subsection 238-10(1) (after table item 10)**

17 Insert:

10A	Student Services, Amenities,	section 19-67
	Representation and Advocacy Guidelines	

18 **40 Subclause 1(1) of Schedule 1 (after paragraph (b) of the**  
19 **definition of *request for Commonwealth assistance*)**

20 Insert:

21 (ba) in relation to a \*student services and amenities fee imposed  
22 on a person enrolled with a higher education provider in a  
23 \*course of study or \*bridging course for overseas-trained  
24 professionals—has the meaning given by subsection  
25 126-1(2); and

26 **41 Subclause 1(1) of Schedule 1**

27 Insert:

28 ***SA-HELP assistance*** means assistance payable under Part 3-5.

1 **42 Subclause 1(1) of Schedule 1**

2 Insert:

3 *SA-HELP debt* has the meaning given by section 137-16.

4 **43 Subclause 1(1) of Schedule 1**

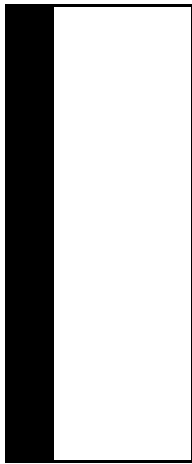
5 Insert:

6 *student services and amenities fee* has the meaning given by  
7 subsection 19-37(5).

8 ***Income Tax Assessment Act 1936***

9 **44 Paragraph 202(c)**

10 After “institutions of higher education”, insert “or in respect of the costs  
11 of other services and amenities available to students in connection with  
12 such institutions”.



## Coalition members dissenting report

### **Overview**

1. The Coalition maintains a long standing commitment to protect the right of individual choice. Australians, as individuals, have a basic right to be free in making choices about things that affect them. This Bill, by its very nature, strikes at the heart of that right by eroding the rights of students to make choices about services and facilities that affect them.
2. Despite assertions to the contrary, this Bill represents a return to the days of compulsory student unionism. Whether described as a fee, payment or levee, it represents nothing more than a thinly veiled compulsory student union tax. It has, at its heart, the effect of forcing students to pay a compulsory union tax which will support organisations to which they do not belong, and for services which both the evidence and history shows that they do not want.
3. This Bill also represents a serious attack on the rights and choice of students. It will create an acceptance of the notion that people do not have the right of choice and can be forced to subsidise things they do not want. It is contrary to the notion of fostering in young people an ability to make choices about things

that affect them, manage their own affairs, and to generally think for themselves.

4. Therefore the Coalition Members of this committee are unanimous in not supporting this Bill. We reject all of the recommendations of the Government majority members in their entirety.

## **Process**

5. Coalition Members take this opportunity to express a number of reservations in relation to the process by which this Committee has undertaken this inquiry.
6. Firstly, we are concerned that the length of the inquiry is too short. Although 36 submissions from interested persons were received overall, only twenty nine submissions were received by the nominated closing date. The nature of the Bill and its potential for wide impact suggests that in the normal course of events many more submissions would be received had an appropriate consultative time frame been available.
7. Secondly, this short time frame has not allowed any time for face to face interviews. Coalition Members believe that hearing the views of interested parties first hand would have provided a more rounded evaluation of the evidence placed before it.
8. We note that the Coalition Members opposed the process of a “short inquiry” and hold concerns about the broader nature of the Committee process in circumstances where there has been little time and limited mechanisms to discharge the obligations associated with membership of such a Committee. In our view, the use of an effective “guillotine” in standing committees would seem to be outside the much proclaimed new paradigm in the Federal Parliament.

## Previous Inquiry 2009

9. Owing to the limited time Committee members have had to examine and consider the evidence, Coalition Members have drawn upon the dissenting report tabled by Coalition Senators (hereinafter the "Dissenting Senators Report 2009") arising from an inquiry into *Higher Education Legislation Amendment (Student Services and Amenities and Other Measures) Bill 2009*. Coalition Members of this committee endorse the remarks of our Coalition colleagues contained in that dissenting report.
10. The Dissenting Senators Report 2009 drew particular attention to the emphatically clear commitment of Labor prior to the 2007 election rejecting a compulsory amenities fee. This policy appears to have changed in the 2010 election and has occurred deliberately by stealth. We note that there was certainly no effort to make either the public or the student community aware of this fact.

## The Evidence

11. The submissions can broadly be divided into two groups: those who stand to benefit financially from a compulsory payment (generally University institutions and student/staff unions); and those who will have to pay the fee (the students.)
12. With only one exception, all of those in the first group (some twenty six submissions) support the imposition of this fee. This is unsurprising as the Bill will, if passed, provide significant financial support to them.
13. Of those in the second group who will be forced to pay the fee (six submissions) not one supports the imposition of this fee. We also note that there are two additional submissions from Liberal Student bodies and one from the University of Queensland Union which do not support the Bill. There is one additional submission from the Department of Education, Employment and Workplace Relations.



14. Coalition Members also note that most of the submissions from the University/Union sector are substantially the same as presented to the Senate inquiry and so have had the opportunity to present personally (giving evidence) to a Committee of the Parliament. In contrast, all of the individual contributions appear to be new submissions and so are significantly disadvantaged by the lack of public hearings.
15. Given that all of the submissions supporting the imposition of the fee are organisations that stand to gain either services or financially from someone else's contribution, and that the submissions from individuals who will have to pay the fee are opposed to the Bill, the Coalition Members are convinced there is sufficient reason to believe students generally do not support the legislation. After all, it is the students themselves that will bear the financial brunt of this fee should the Bill pass.
16. The individual submissions are largely from students who have no wish to use the services which are proposed to be supported by this fee. In effect, these submissions raise the question of what possible use can 'on campus' services be to those who study externally or who never visit the campus. The Coalition Members particularly refer to submission 8 from Dr Michael Ayling who states *"it is not my intention to ever visit the UNE campus in Armidale."*
17. The Coalition Members note submission 10 from the National Tertiary Education Union which predicts the compulsory fee will raise \$143m a year and along with a number of other submissions laments the loss of income, organisations and services as a result of the VSU legislation introduced in 2005. While not meaning to, these submissions graphically illustrate that when students were given the opportunity to evaluate the services they received for their union fees they clearly decided the \$178m raised in the last year of compulsory payment (Submission 9, NTEU) was not money well spent and elected to forgo the expense and instead individually choose to purchase whatever services they thought necessary. This represents individual choice of those students who, as we have indicated from the outset, ought to be rightly free to decide what services they want and have a say about matters that affect them.
18. The Coalition Members believe that the Bill as drafted sends a message to students that they are incapable of making their own purchasing decisions and are unable to determine what is in their own interest. Such a message is

retrograde, condescending and fundamentally insulting to students. In addition, the imposition of a compulsory fee to support the activities of an association, union or guild, firstly creates an impression that it is acceptable to compulsorily demand a fee for services or representation that will perhaps never be accessed and, secondly, makes the payment of such a fee conditional upon attendance at a particular facility. These impressions are inherently dangerous to the right of individual choice and risks establishing a mindset that may be applied in other future circumstances, such as a compulsory requirement to join a trade union as a condition of being at a particular workplace.

19. Coalition Members also draw attention to the submission from the University of Queensland Union which highlights the efforts the union has gone to in providing what the market demanded and staying strictly relevant to the student's requirements and hold this to be a model others should emulate. We endorse this submission and the model it advocates.
20. As to the further aspects of compulsory unionism, the Coalition Members endorse the *Dissenting Senators Report 2009* and particularly draw attention to Item 5.4 which noted that

*"Students might not actually be forced to formally join a student association in order to attend university, but they will still have to pay a compulsory fee, which a University then passes to a student association. It is farcical to argue that students are thus not forced to support a union regardless of their wishes."*

21. We also highlight Item 6.2 of the *Dissenting Senators Report 2009*

*"While both the Bill and the Student Services Amenities Guidelines, prohibit the spending of monies collected from the fee 'to provide support for a political party or to support a candidate for political office' this does nothing to limit the use of the fees for other political activities or the revenues gained for the services supported by the fees being used on activities that are partisan in nature."*

22. We emphatically endorse the above observations in the context of this Bill.

## **Conclusion**

23. The Coalition Members firstly decry the lack of appropriate time for this Inquiry.
24. We do not believe there is a compelling case to support the introduction of a compulsory amenities fee and are extremely concerned that the push from the beneficiaries (universities and unions) is clearly not in the best interests of the students (the contributors).
25. Furthermore we are not convinced that the funds, a substantial share of which will be handed to the student bodies, represents anything but a return to compulsory unionism and will be used to fund de facto political campaigns.

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## **Recommendation**

**For the reasons outlined above, Coalition Members of this Committee recommend that the Bill be rejected.**

**Rowan Ramsey MP**  
**Deputy Chair**

**Karen Andrews MP**

**Alan Tudge MP**