

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005**

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**AUSTRALIAN LAW STUDENTS'  
ASSOCIATION**



**SUBMISSION TO THE SENATE  
EMPLOYMENT, WORKPLACE RELATIONS  
AND EDUCATION LEGISLATION  
COMMITTEE**

**INQUIRY INTO THE PROVISIONS OF THE HIGHER EDUCATION  
SUPPORT AMENDMENT (ABOLITION OF COMPULSORY UP-  
FRONT UNION FEES) BILL 2005**

## EXECUTIVE SUMMARY

- The Australian Law Students' Association (**ALSA**) is opposed to the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005 (the Bill)*.<sup>1</sup>

### **Terms of Reference 1: Effect of the Bill on the Provision of Student Services and Related Consequences**

- ALSA believes the Bill will have a detrimental effect both on the continued existence of strong Law Student Societies and the quality of legal education.
- The user-pays model is inappropriate for the provision of those student services that are non-excludable or involve the provision of public goods – free-riding is an unavoidable consequence of such an approach.
- The Bill will have serious adverse ramifications for Law Student Societies, six of which have indicated they will cease to exist under the legislation.
- This will have deleterious effects on the representation of law students and the activities and education of law students in Australian law schools.
- ALSA will experience a concomitant decrease in affiliation funding and will be forced to cut the vital services it provides to Australia's 28,000 law students.
- Universities will be forced to fund or administer essential student services that student organisations are unable to provide in a climate of reduced funding.

### **Terms of Reference 2: Experience of Universities and Students where Legislation has been Adopted to Regulate Student Unions**

- Western Australian student organisations suffered massive cutbacks, and the ECU Student Guild was forced into liquidation as a result of the State VSU legislation in the late 1990s.
- Western Australian Universities were forced to fund or administer essential student services to make up for the short-fall in funding.
- The Victorian model had far less impact on the provision of student services at Victorian universities, but had an adverse impact on the representation of student interests.

### **Alternative Models**

- ALSA believes the Government should consider other models with less deleterious consequences, such as the present Western Australia Voluntary Student Unionism model or the previous Victorian Voluntary Student Representation model.

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<sup>1</sup> The Parliament of the Commonwealth of Australia, House of Representatives, *Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) Bill 2005*.

# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>CONTENTS.....</b>	<b>4</b>
<b>1. THE AUSTRALIAN LAW STUDENTS' ASSOCIATION.....</b>	<b>5</b>
<b>2. TERMS OF REFERENCE 1: THE EFFECT ON STUDENT SERVICES AND RELATED CONSEQUENCES .....</b>	<b>6</b>
2.1    THE IMPACT OF THE BILL ON STUDENT SERVICES.....	6
2.2    THE IMPACT OF THE BILL ON LAW STUDENTS .....	7
2.2.1 <i>The Impact on the Funding of Law Student Societies.....</i>	7
2.2.2 <i>The Impact on the Representation of Law Students.....</i>	8
2.2.3 <i>Law Student Society Activities.....</i>	8
2.3    THE IMPACT OF THE BILL ON UNIVERSITIES.....	9
2.4    THE EFFECT OF THE BILL ON THE AUSTRALIAN LAW STUDENTS' ASSOCIATION .....	10
<b>3. TERMS OF REFERENCE 2: EXPERIENCE OF UNIVERSITIES AND STUDENTS WHERE LEGISLATION HAS BEEN ADOPTED TO REGULATE STUDENT UNIONS....</b>	<b>12</b>
3.1    WESTERN AUSTRALIA.....	12
3.2    VICTORIA.....	13
<b>4. ALTERNATIVE MODELS.....</b>	<b>14</b>
4.1    WESTERN AUSTRALIAN MODEL.....	14
4.2    VOLUNTARY STUDENT REPRESENTATION.....	14
<b>5. CONCLUSION .....</b>	<b>15</b>

## **1. THE AUSTRALIAN LAW STUDENTS' ASSOCIATION**

The Australian Law Students' Association (ALSA), established in 1978, is the peak national representative body for Australia's 28,000 law students. All 31 Law Students' Societies in Australia are members of ALSA. ALSA's primary objective is to represent and promote the interests and concerns of all Australian law students. ALSA is politically unaligned, but represents the interests of its constituent Law Student Societies and law students in Australia to a variety of different bodies on higher education and legal education issues.

As the peak national representative body for law students, ALSA is able to extract and collate information from its constituent Law Student Societies relating to the provision of legal education in Australian universities. ALSA uses this research to formulate policy and lobby stakeholders on a wide range of issues relating to legal education. In doing so, ALSA represents student interests to the legal profession, legal education forums, and relevant government inquiries – places where law students otherwise have no effective voice.

## **2. TERMS OF REFERENCE 1: THE EFFECT ON STUDENT SERVICES AND RELATED CONSEQUENCES**

### **2.1 THE IMPACT OF THE BILL ON STUDENT SERVICES**

ALSA believes that student guilds and student unions provide Australian students with essential and invaluable services which will be drastically reduced or withdrawn as a result of the Bill. These services include:

- Academic advice and advocacy;
- Policing of illegal fees;
- Student welfare and equity services;
- Financial assistance;
- Employment services;
- Personal counselling;
- Healthcare and Childcare;
- Promotion of culture, clubs and societies; and,
- Campus buildings and infrastructure.

A similar impact will be felt by university sports associations, which are similarly reliant upon the funding provided by upfront fees.

These contentions are exemplified by the effect that similar legislation has had in Western Australia, which is addressed fully in Part 3 in relation to the Committee's second term of reference. However, this is also the logical and inevitable effect of the legislation. The Bill unashamedly adopts a 'user-pays' approach towards services provided by student unions. The vast majority of these services are non-excludable and therefore subject to free-riding. For example, at the University of Western Australia, students are saved more than the total cost of their annual student union fee (which is presently set at \$120) by the active policing of illegal university fees by the Student Guild, and all students would benefit from this service whether or not they paid union fees. Indeed, all students did benefit from this service throughout the period of State-legislated voluntary student unionism in Western Australia.

While ALSA appreciates that not every service provided by student unions will benefit all students, ALSA maintains that all students should contribute to the provision of services by student unions as all ratepayers contribute to local government services that they may not solicit. All students benefit from a range student services during their university careers, but – more importantly – all students benefit from the assurance of services they will hopefully never need: emergency

loans; personal counselling; sexual assault referral centres; academic appeals; legal advice and many more.

The basis of ALSA's opposition to the Bill is that it will lead to a reduction in funds and support available to student associations and other student organisations to provide valuable services. The argument that if students value the services provided to them by their student association they will be willing to contribute financially to that service is not well-founded. Students often benefit from the services provided by their student association without being aware of the direct involvement of their association. Students do not always differentiate between the services provided to them by the university, the student association, faculties and other student organisations. This is evident in the example of policing illegal fees identified above.

The analogy with government again holds true: if taxpayers valued the services provided by the Government then they would be willing to contribute voluntarily to the provision of Government services without compulsory rates and taxation. Put simply, Government services could not be adequately provided without compulsory rates and taxes because of the nature of Government services: the provision of public goods, the provision of non-excludable services and otherwise providing for the public generally. The nature of student services is similar and the logic for compulsory contribution is precisely the same. If there are concerns about the manner in which these fees are being utilised or discontent with the organisations responsible, the answer is to increase accountability and regulation – not the total abolition of upfront fees, which simply equates to the abolition of non-market supported services entirely.

## **2.2 THE IMPACT OF THE BILL ON LAW STUDENTS**

### **2.2.1 The Impact on the Funding of Law Student Societies**

ALSA represents Australia's 31 Law Student Societies, which all receive significant funding from their student organisations and unanimously oppose the Bill. These Societies provide crucial services to Australia's 28,000 law students, including careers services, academic services, and educational representation. At ALSA's most recent Council meeting in April 2005, six Law Student Societies indicated to ALSA that they would cease to exist under the proposed Bill, as their primary or only source of funding is their student organisation. These Societies were predominantly regional, and as such serve the interests of Australia's most disadvantaged law students. Further, it was also clear at the April Council meeting that the Bill would force many other Law Student Societies to reduce their services to their members, often

substantially. Consequently, ALSA believes that the Bill will have significant negative impacts on Australian law students.

In addition to direct funding, less tangible forms of support are also provided by student associations to Law Student Societies. Typically these include: computer and software facilities and support; the provision of office and recreational space; the availability of such administrative assistance as mailing services; reduced rates on food, drink, equipment and function venues for social events; and the necessary infrastructure for the representation of students to the faculty, university and general public. A key service which is often provided by student organizations is the insurance of Law Student Societies under the umbrella of their student organisation. The loss of this insurance would seriously undermine the ability of Law Student Societies to offer many services to their members, particularly social services. Thus, it is clear that without student union funding and support services the activities of Law Student Societies would be restricted in number and compromised in quality.

### **2.2.2 The Impact on the Representation of Law Students**

Law Student Societies have an important role to play in student representation within their faculty, university, locally and federally. The contribution of students on faculty and university committees is highly valued by staff and students. Consequently, most Law Student Societies enjoy broad representation on key committees including curriculum, information technology, library, enrolments, the law faculty and boards of the faculties generally. All students benefit from the results of this representation and consultation. Law Student Society representatives are democratically elected by the student body. Therefore, all law students can have a say in who represents their interests, and further, to which services and activities funds are allocated. The introduction of the Bill and its dramatic consequences for Law Student Societies will have obvious ramifications on the representation of law students such as to make services less, rather than more, responsive to student needs.

### **2.2.3 Law Student Society Activities**

Law Student Societies are reliant upon financial and other support to assist them in providing a multiplicity of services to students. Law Student Societies organise and run group and individual tutorial programmes for students; study-skills workshops; career seminars and fairs; community legal centres; conferences; mootings, client interview, witness examination, negotiation and paper presentation competitions; and the production of such publications as career guides, orientation handbooks, year books, magazines, academic journals and alternative law handbooks. These activities should be distinguished from the party-political activities conducted by some student



organisations that feature in Government statements on VSU. The loss of these services would radically devalue the educational experience law students gain while at university.

Law Student Societies also organise a range of social activities to enhance the enjoyment of, and facilitate the greater incorporation of students into, university and faculty life. These activities include law balls, first year camps and dinners, cocktail parties, cruises, regular lunches and BBQs and sporting events. A major consequence of VSU will be to decrease the funding available to societies that are currently reliant on support from their student association. Law Student Societies will be forced to reduce radically the range and quality of services they currently provide to students. This will not only have an effect on the social experience of law students, but the educational value they derive from their time at university.

Due to time and financial constraints under which Law Faculties currently operate, Law Student Societies are relied upon to provide practical education experiences through organising and administering mooting, trial advocacy, negotiation and client interview competitions, the running of community legal centres and the provision of tutorials. With a decrease in funding Law Student Societies will no-longer be able to provide this broad range of educational opportunities to students. Universities have made it clear (through the Australian Vice-Chancellors Committee) that they are not able to commit any funding to take up the short fall for these essential services. Consequently, VSU will decrease the quality of legal education received by students.

Many of the services provided by Law Student Societies are unprofitable and would not survive on a user-pays basis. Moreover, Law Student Societies reject the notion that their worth can be reduced to a question of economic sustainability. They take pride in the quality and range of the services, activities and publications they provide to students. Law Student Societies reject the notion that the funding they receive from student unions is spent on activities that law students do not want. While not all law students take advantage of all the benefits offered by their society, all students rely on at least some of these services. All students will suffer the consequences of these services not being provided, as will universities and the employers of graduates from Australian law schools.

### **2.3 THE IMPACT OF THE BILL ON UNIVERSITIES**

ALSA believes that if the Bill is introduced, Australian universities will be forced to make up the shortfall for the provision of students services on campus. This was the Western Australian experience of VSU, where universities were forced to take over

the financing, and in some cases the administration, of many basic student services. Student guilds and unions were unable to provide many essential services or provide them at an affordable price to students, and universities were forced to provide these services themselves or fund student organisations to provide them. At a time when both sides of politics agree that universities are facing a funding crisis, it is irrational and irresponsible to shift the cost of these services to higher education providers.

Moreover, the radical reduction in student services, on-campus life and the ability of student organisations and faculty societies to service their members will make Australian universities a less attractive option for overseas students. This will have further deleterious effects on university income and the Australian economy. It is noteworthy that the leading UK, North American and western European universities, including Oxford, Cambridge and Harvard, have universal student unionism and compulsory student fees as an accepted norm.<sup>2</sup> In New Zealand, to legitimise its VSU legislation, the government held a referendum of its students in each university on whether to retain a universal levy. In all but one case the students voted in favour of the levy. Similar support was recently demonstrated at Adelaide University. Therefore, we urge the government to consider alternatives to the draconian model proposed in the Bill.

## **2.4 THE EFFECT OF THE BILL ON THE AUSTRALIAN LAW STUDENTS' ASSOCIATION**

ALSA's activities include:

- The organisation of events such as the Annual Asia-Pacific Conference and the Australasian Legal Education Forum;
- Organising, coordinating and running national mootings, trial advocacy, client interview, negotiation, international humanitarian law mootings and student paper competitions;
- Education policy development and research;
- The provision of critical careers information and services, including the ALSAnet national job-search website which will become operational in July;
- The publication of numerous resources for law students;
- The provision of unique products and services to members; and
- The facilitation of communication and information exchange between Law Student Societies within Australia and internationally.

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<sup>2</sup> In those jurisdiction the "the payment of a compulsory student fee is widely accepted as the best way of providing student support services and representation." Australasian Campus Union Managers Association, *Submission to 1999 VSU Senate Committee*, No.159 at 4.

While ALSA is not directly funded by a student union or association, we do rely financially on our members paying their annual affiliation fees. These fees are determined on the basis of the number of law students at each particular university. Affiliation fees range from \$260 to \$440 per Law Student Society. Law Student Societies that are substantially funded by their student union rely on this financial assistance to be able to pay their affiliation fees. While ALSA has waived the affiliation fees of struggling Law Student Societies in the past, such as that of the Northern Territory University, this is an unsustainable practice. ALSA would not be able to operate effectively if all Law Student Societies substantially affected by the introduction of the VSU withdrew their fees and membership, or simply were unable to attend Council Meetings and the annual Conference.

Furthermore, by being forced to withdraw their membership or simply being unable to participate in the activities of ALSA, the students at the law schools would be forced to forego valuable opportunities such as taking part in national competitions run by ALSA, attending the Australasian Legal Education Forum and having access to ALSA publications.

### **3. TERMS OF REFERENCE 2: EXPERIENCE OF UNIVERSITIES AND STUDENTS WHERE LEGISLATION HAS BEEN ADOPTED TO REGULATE STUDENT UNIONS**

#### **3.1 WESTERN AUSTRALIA**

The deleterious impact of the Bill for the provision of student services is exemplified by the consequences of the *Acts Amendment (Student Guilds and Associations) Act 1994 (WA)* for Western Australian universities. Initially, the Commonwealth compensated student organisations for lost income due to state VSU legislation, and reduced grants to offending states.<sup>3</sup> However, once Commonwealth compensation ceased and the full effects of the State VSU legislation were felt from 1997 onwards, the Edith Cowan University Student Guild collapsed, and the remaining student guilds were forced to make massive cutbacks to student services. Moreover, Universities were forced to take over direct administration and financing of many basic student services. In summary, the effects on UWA, Curtin, Murdoch and ECU Guilds were as follows:

- An inability to meet wages and operational expenses;
- Widespread redundancies and subsequent staffing shortages in key areas;
- Reductions in student services, facilities, representation and capital;
- Massive budget cuts across key areas, notably academic, welfare, on-funding of faculty and other societies, and representation budgets;
- The sale of key organisation assets, including sports associations; and,
- Low membership take-up rates (UWA – 28%; ECU – 13%; Murdoch 38%; and Curtin – 10%) despite an increasing demand for guild services, which was indicative of rampant free-riding.

For example, the University of Western Australia Guild of Undergraduates made the following cutbacks as a result of the legislation:

- 28 Guild employees lost their jobs;
- The sexual assault referral centre was closed;
- The Guild cancelled 24hr/365 day personal accident insurance for all University students;
- The Guild was forced to close the Guild computer lounge;
- The Guild cut its student representation budget by 80%;
- The Guild cut its student welfare budget by 35%;
- The Guild cut its textbook subsidy scheme by 70%;

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<sup>3</sup> *State Grants (General Purposes) Act 1993 (Cth)*.

- The Guild was forced to cut activities on campus, and club and society funding by approximately 50%; and,
- The Guild was forced to sell numerous valuable assets to stay afloat, including the Guild Shop, the UWA Sports Association, and most of its office space.

### 3.2 VICTORIA

The *Tertiary Education Amendment Act 1994* (Vic) retained a compulsory student service fee which could be utilised on the following services: food services; meeting rooms; sports and physical recreation; child care facilities; counselling; health care; legal, health, housing and employment services; visual and performing arts; and audio-visual media, academic support and overseas student services. In 1995, the regulations were extended to include the conduct of student elections to university council and its committees, and other management committees of the institution. In sharp contrast to the Western Australian experience, Victorian student organisations generally continued to offer a comprehensive range of services, adequate student representation and maintained staffing levels. Furthermore, voluntary membership levels remained high, and in 1996 ranged from 60-70%, with the highest membership rate being at Melbourne University (85%).

The effects of the Victorian VSR model were far less dramatic than in Western Australia. Student organisations were able to maintain their primary services and core functions under the legislation, although representation of student interests necessarily suffered. However, the Victorian model did expose the need for independent and self-funded student organisations. This was exemplified by the oft-cited incident when the Federal Government's replacement funding was withdrawn from the La Trobe Student Association over a publication in *Rabelias*, the student newspaper.

## **4. ALTERNATIVE MODELS**

### **4.1 WESTERN AUSTRALIAN MODEL**

Under the *Acts Amendment (Student Guilds and Associations) Act 2002 (WA)*, Western Australian universities collect a modest amenities and services fee from all students, which is allocated to student unions, sports associations and to the provision of other amenities and services. For example, at UWA the fee is \$60 per semester. However, membership of WA student organisations is voluntary and students may choose whether or not to join their student organisation. Fees paid by students choosing not to join student organisations are used by the University to help fund service provision.

ALSA urges the Government to consider adopting this alternative model in preference to the model proposed in the Bill. This model ensures that vital student services are maintained and that universities are not subject to the additional financial pressures of providing or funding student services formerly provided by student organisations. This model is similar to that recommended by the AVCC, which proposed that “the current legislation be amended to enable universities to charge a compulsory student services and amenities fee. This would allow universities to continue to provide the following student services and amenities: health and dental services; computing, photocopying and library services; welfare services and child care services; sporting facilities and clubs; non-political student societies; international student services”.

### **4.2 VOLUNTARY STUDENT REPRESENTATION**

Under the Victorian model of Voluntary Student Representation (VSR) introduced by the Kennett Government in 1994, student organisations collected a compulsory fee but were prohibited from using these compulsory fees to fund political services and representation. While ALSA considers student political representation to be an essential aspect of the work of student organisations and does not support Federal VSR, it regards this more limited legislative provision as preferable to the model proposed in the Bill, which will have the multifarious unintended ramifications for students and universities identified throughout this submission.

## **5. CONCLUSION**

ALSA strongly opposes the Bill and maintains that it will have numerous drastic and unintended consequences for student organisations, students, and universities. The model is draconian and is likely to produce similar results to the legislation which devastated Western Australian student organisations during the latter half of the 1990s. The Government should consider alternative models that will ensure the continued provision of essential student services or abandon the legislation altogether.

ALSA is willing to provide further information or comment in relation to the above submission should the Inquiry consider it worthwhile.