

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

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

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Australian Government

Department of Education, Science and Training

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Compulsory Up-front Student Union Fees) Bill 2005**

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Introduction

The purpose of this submission is to provide information on the implications of the *Higher Education Legislation Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005* (“the Voluntary Student Unionism Bill” or “VSU Bill”) on Australia’s higher education sector. It provides the Committee with factual information on the provisions of the VSU Bill and on some matters that come within the Terms of Reference of the Committee’s Inquiry.

Voluntary student unionism (VSU) is a matter of Australian Government policy. This policy has been outlined in the Second Reading Speech given in the House of Representatives by the Hon Dr Brendan Nelson MP, Minister for Education, Science and Training. The Australian Government has sought to implement this policy in previous parliaments through the *Higher Education Legislation Amendment Bill 1999* and the *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003*.

Overview of the VSU Bill

The Government introduced the VSU Bill on 16 March 2005. The VSU Bill amends the *Higher Education Support Act 2003* (HESA), to insert additional ‘fairness’ provisions into the Quality and Accountability requirements that apply to all ‘higher education providers’ (within the meaning of that term in HESA).

The new fairness requirements

These fairness requirements specify that a higher education provider must not:

- require a person to be or to become a member of an organisation of students, or of students and other persons, unless the person has chosen to become a member of the organisation [Subsection 19-37(1)(a)]; or
- require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount in respect of an organisation of students, or of students and other persons, unless the person has chosen to become a member of the organisation [Subsection 19-37(1)(b)]; or
- require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount for the provision 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 [Subsection 19-37(2)].

Open Learning Australia (now Open Universities Australia) must also comply with these new fairness requirements as if it were a higher education provider.

The exception for incidental fees which are essential for a course of study

The VSU Bill provides for an exception to the requirement of subsection 19-37(2). It seeks to ensure that providers would not breach the requirement by charging for goods and services that are essential for a course of study but may not be regarded as being of an academic nature.

This exception ensures that the VSU Bill does not affect the operation of Chapter 12, *Fees for Goods and Services Incidental to Studies*, of the Commonwealth Grant Scheme Guidelines. These Guidelines allow providers to levy charges (incidental fees) that are additional to the student contribution amounts and tuition fees which providers are required to charge under HESA. The payment of these additional charges may not be deferred by students accessing a HECS-HELP loan (previously known as a HECS loan) or a FEE-HELP loan.

Most incidental fees are for goods and services which a student chooses to use. Students do not choose to use the goods and services for which charges may be levied under paragraph 12.5.1(c) of Chapter 12 of the Commonwealth Grant Scheme Guidelines, as these are goods and services which are essential for a person's course of study.

Under the VSU Bill, a person may be charged for such goods and services only if they have the choice of acquiring them from a supplier other than the higher education provider, and have chosen not to acquire them from this other supplier. The goods and services must also:

- be goods that become the property of the person and are not intended to be consumed during the course of study; or
- consist of food, transport or accommodation associated with the provision of field trips in connection with the course of study.

The exception contained in subsection 19-37(3) ensures that paragraph 12.5.1(c) of Chapter 12 of the Commonwealth Grant Scheme Guidelines is not overridden by subsection 19-37(2) of the VSU Bill.

Consequences of breaching the new fairness requirements

Compliance with the new fairness requirements will be a condition of the grants that are made to higher education providers under HESA. In addition, the Minister may revoke a provider's approval as a higher education provider under HESA if that provider breaches the new requirements contained in the VSU Bill.

Finally, the VSU Bill introduces a non-discretionary penalty for a breach of the new fairness requirements.

- The penalty is to be applied in all cases where the breach relates to requiring a person to be a member of an organisation of students (or of students and other persons).
- In cases where the breach of the provisions involves a provider requiring a person to pay money to it or another body for purposes prohibited under the VSU Bill, the provider is to be given an opportunity to correct the breach. Once the Minister becomes aware of this type of breach, the Minister must give the provider a notice requiring the money to be repaid to the person within 28 days of the date of the notice. If the money is repaid to the person within this timeframe, the non-discretionary penalty for this breach will not be activated.

The non-discretionary penalty is a reduction in the amount a provider receives under the Commonwealth Grant Scheme equivalent to \$100 for each student place allocated to the provider under section 30-10 of HESA.

The non-discretionary penalty may only be applied once in a calendar year. The Minister also has a broad discretion to reduce (or further reduce) a provider's Commonwealth grants for breaching the new fairness requirements.

Background to the compulsory leverage of student union fees

Under current law, higher education providers are required to charge a domestic student who is enrolled in a course of study a 'student contribution amount' or a 'tuition fee'. Domestic students who are Commonwealth supported (previously known as HECS students) pay a student contribution amount. Other domestic students who choose to pay full-fees for their studies pay a tuition fee.

Eligible domestic students who choose to defer the payment of a student contribution amount or a tuition fee by obtaining a HECS-HELP or FEE-HELP loan from the Australian Government are not required to repay their loan until they are earning more than \$36,184 in 2005–06. This amount is indexed annually.

The terms student contribution amount and tuition fee are defined in HESA. HESA stipulates that certain types of charge may not be included in a tuition fee. These include charges:

- payable in respect of an organisation of students, or of students and other persons;
- payable in respect of the provision to students of amenities or services that are not of an academic nature;
- payable in respect of residential accommodation; and
- determined, in accordance with guidelines issued by the Minister, to be a fee of a kind that is incidental to studies that may be undertaken with a higher education provider and meets the criteria specified in the Commonwealth Grant Scheme Guidelines.

Currently under HESA, higher education providers may impose these charges in addition to student contribution amounts and tuition fees, but students are unable to defer payment of any additional charges by obtaining a HECS-HELP or FEE-HELP loan from the Australian Government. The HESA does not prevent a provider from making the payment of such a charge compulsory. As a result, students face a compulsory up-front student union fee of up to \$590 a year.

It is common practice for higher education providers to require students to pay for the provision of amenities and services that are not of an academic nature. Frequently this fee also includes an amount for membership of an organisation of students. It is not easy to distinguish the component of the fee which is for membership of an organisation of students from the component of the fee which is for other non-academic services, as the latter services are frequently delivered by some form of organisation of students.

Limited public information on the collection and use of the compulsory up-front fees collected by universities on behalf of student organisations and unions may be found on some of their websites. Some of this information is contained in the annual reports of universities. In a limited number of cases, student organisations also make reports publicly available on websites. However, the publicly available information is generally not comprehensive.

Current arrangements for collecting compulsory up-front fees

Students studying at Australia's public universities currently pay between \$100 and \$590 per year in compulsory up-front fees. Generally, higher education providers collect these compulsory fees as a condition of enrolment. Some universities appear to have set up companies that collect the fees on their behalf. With the exception of the Australian National University, universities are established and operate under State or Territory legislation. Currently, there is no State or Territory legislation which requires higher education providers to make the payment of these fees voluntary.

The consequences for students failing to pay the compulsory up-front fee vary according to the higher education provider at which a student is studying. In a majority of universities, a student may have their enrolment cancelled or have their academic results withheld if they do not pay the fee. They may also be denied access to university services such as access to the university intranet, email, and other IT resources.

Some higher education providers allow for a student to choose whether to join the student organisations funded by the compulsory up-front fee. In these cases, the payment of the fee is not tied to membership of student organisations.

In some other cases providers have 'compulsory' membership but allow 'conscientious objection'. The compulsory fees collected from conscientious objectors may be used to fund services or facilities unrelated to student organisations, for example the amount may be paid into a charitable account or special fund. In other cases, compulsory fees collected from conscientious objectors may be provided to student organisations, or used to fund the services or facilities provided by student organisations.

In most cases where a student declines membership of a student organisation, the student is still required to pay the same compulsory fee as a student who takes up membership of the student organisation.

Current use of compulsory up-front fees

The manner in which compulsory up-front fees are allocated to student organisations and services varies according to the higher education provider. A typical pattern is that the funds are allocated to:

- an undergraduate student representative body (eg Student Representative Council, Student Association);
- a postgraduate student representative body (eg Postgraduate Student Association);
- an organisation that is the main student service provider (eg Student Union);
- an organisation that provides sporting/recreation facilities and coordinates student sporting/recreation activities.

The limited public information does not show that all of the funds obtained from compulsory up-front fees are distributed to such bodies. Some providers may retain an amount for other purposes. Legislation clearly provides for this to occur in Western Australia.

Major types of services and activities which appear to be funded through compulsory up-front fees include:

- Food, beverage and catering services
- Health and welfare services
- Sport and recreation services and activities
- Student representation and advocacy (including political activity)
- Other commercial services and activities (eg. shops)

Structure and accountability of student organisations

There are differences in the organisational structure of the various student organisations which are allocated funds from compulsory up-front fees. Information on these structures is not always available publicly. There appears to be a mix of incorporated associations, companies limited by guarantee, and unincorporated associations. A considerable number appear to operate semi-autonomously within universities.

It appears that there are no standard accountability or reporting requirements, though these may exist in some States or Territories. Depending on their structure, student organisations may be required by law, or by virtue of their own constitutions or the rules of the relevant university, to present financial statements or audited reports to their members.

Most student organisations do not make annual reports or financial statements publicly available on their websites. There is little information available on websites from which general conclusions could be drawn about participation in decision making within student organisations.

Comments against the Inquiry's Terms of Reference

1. Assessment of the likely effect of the legislation on the provision of student services, and related consequences

Under the VSU Bill provisions, student organisations, like most other representative bodies, will need to attract members and collect membership fees on a voluntary basis. Student services will need to be provided on a similar basis to the services that are provided by other voluntary organisations, cooperatives and commercial enterprises in the general Australian community, that is by providing services for which there is demand, on a value for money basis.

The VSU Bill of itself will not, nor does it propose to, change the structure of student organisations. As long as students continue to see a benefit and purpose in student organisations, they will continue to contribute to their funding.

Recent research suggests that student services will continue to be well supported. Research conducted by the University of Adelaide revealed that 84% of students strongly support the payment of a compulsory fee to fund services and amenities. (Media release of 30 May 2005, *84% Student Support for Services Fee*). This research suggests student services will continue to attract considerable financial support into the future.

The existing high levels of support for the services and amenities of student organisations may translate to high levels of voluntary payment. In other cases student organisations may need to revise their services to students to ensure that they are delivering the services wanted by students. Greater innovation and entrepreneurialism may be required to make services attractive to students. This will benefit the student body in the long term.

The publicly available information suggests that some student organisations will continue to attract considerable revenue from sources other than compulsory fees. There are student organisations, mainly those providing student services, which receive a considerable portion, if not a majority of their funds from sources other than compulsory student fees. Examples include:

The University of New South Wales Union received \$5,774,815 from "membership fees" in 2003. This represented 29 per cent of the \$19,619,183 in total revenue from ordinary activities of the UNSW Union in 2003 (*University of New South Wales Union Annual Report 2003*).

Wollongong UniCentre (located at the University of Wollongong) received \$3,010,908 from "members' fees" in 2003. This represented only 19 per cent of the \$15,865,505 in total revenue from ordinary activities of Wollongong UniCentre in 2003 (*Wollongong UniCentre Annual Report 2003*).

The University of Southern Queensland Student Guild received \$1,627,784 from "membership fees" in 2003. This represented 29 per cent of the \$5,545,056 in sales revenue from ordinary activities of USQ Student Guild (*USQ Student Guild Annual Report 2003*).

The University of Tasmania Student Association Incorporated received \$954,755 from "services and amenities fees" in 2003. This represented 33 per cent of the \$2,871,926 in revenue from ordinary activities of the University of Tasmania Student Association Incorporated in 2003 (*University of Tasmania Student Association Incorporated Annual Report 2003*).

A range of services which are open to students as part of the broader Australian public will continue to be available. The Department notes that:

- The Australian Government supports a large number of services for eligible Australians including health care and childcare. These services will continue to be available following the introduction of VSU.
- The Government provides substantial funds (around \$19.8 million in total in 2005) to higher education providers to support and promote equality of opportunity for higher education students through programmes such as the *Higher Education Equity Support Programme*, the *Indigenous Support Programme* and the *Higher Education Disability Support Programme*.
 - The *Higher Education Equity Support Programme* (ESP) will provide \$10.8 million in 2005 to eligible higher education providers to undertake activities that assist in removing barriers to access for disadvantaged students. Grant funds must be spent on initiatives which target disadvantaged students and encourage, in particular, sustainable access to and participation in higher education for these students.

- The *Higher Education Disability Support Programme* (DSP) will provide around \$6.5 million to eligible higher education providers to undertake activities that assist in removing barriers to access for students with disabilities. It has components which fund additional support for students with disabilities, as well as Regional Disability Liaison Officers. A component of funding is distributed on a performance basis.
- The *Indigenous Support Programme* (ISP) will provide around \$2.5 million to assist eligible higher education providers meet the special needs of Indigenous Australian students and advance the goals of the National Aboriginal and Torres Strait Islander Education Policy.
- The Government has provided about \$1.1 billion to sport at both elite and community levels, since 1 July 1996, through organisations such as the Australian Sports Commission, and the Department of Communications, Information Technology and the Arts.
 - Through the Australian Sports Commission (ASC), the Government provides funding to Australian University Sport (AUS) to support the preparation and competition of Australian athletes participating at the World University Games. Around \$240,000 was provided for this purpose in the last two financial years.
- HESA requires that higher education providers have grievance procedures for dealing with student complaints about academic and non-academic matters. Providers must treat fairly all of their students and all persons seeking to enrol with them.
 - Commonwealth, State and Territory Ombudsmen may also investigate complaints by students about the conduct of public higher education providers.
- Higher education providers are required to make available to overseas students the services specified under the *Education Services for Overseas Students Act 2000* (ESOS Act) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (National Code).
 - All providers who wish to be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) or to remain on CRICOS must comply with Part C of the National Code.

The Department of Education, Science and Training is not able to predict the services for which there will be sufficient student demand to justify the ongoing provision of services. The range of services offered by higher education providers and student organisations will vary between institutions.

2. Consideration of the experience of universities and students where legislation has been adopted to regulate student unions, such as in Victoria and Western Australia.

Brief history of VSU in Western Australia

In 1994, the Western Australian Parliament passed the *Voluntary Membership of Student Guilds and Associations Act 1994*. This legislation provided that:

- no student could be required to be a member of a student organisation as a condition of enrolment;
- no student could be required to pay a fee, directly or indirectly, to a student organisation;
- no student could be required to pay a fee for services that are not directly related to their course.

During 1995 and 1996 the Australian Government provided financial assistance to four student organisations in Western Australia through the Student Organisation Support (SOS) programme. Funds paid under this programme were recovered from the general revenue assistance provided by the Commonwealth to the State. Grants totalling \$5.5 million in 1995 and \$5.4 million in 1996 were provided to student guilds of Western Australian universities. No payments were made under the SOS programme after 1996.

Following the introduction of VSU in Western Australia in 1994, guild membership decreased from near 100% to between 6 and 35 per cent, according to the Western Australian Government's figures. From 1999 to 2001, take up was 35% at Murdoch University, 30% at the University of Western Australia, 30% at Curtin University and 6% at Edith Cowan University. [These figures were used by the Hon Alan Carpenter MLA, Minister for Education: "*University Student Union Fees: Grievance*" Hansard, Legislative Assembly, August 2001. They were also used in the minority report of the 1999 Senate Committee Inquiry into VSU.]

Student union fees appeared to reduce considerably. There was greater differentiation in fees – providing different fees for full time students, part time students, semester membership and external/distance students.

Despite the decreases in guild membership, student organisations continued to represent students, and services generally continued to operate, although they may have been limited to union or guild members, ensuring access for those who wanted to use them.

In its 1999 Annual Report, Edith Cowan University stated:

"In May 1999, the Western Australian Supreme Court appointed Provisional Liquidators to assist the Student Guild to deal with its financial difficulties and to attempt to ensure its solvency. To achieve this, it has been necessary for the Student Guild to discontinue its commercial activities, and the University has taken steps to ensure that important services for students continue to be provided on campus."

In its 2000 Annual Report, Edith Cowan University stated:

"Since the introduction in Western Australia of 'voluntary student unionism' legislation in 1994, local universities have faced a challenge to ensure representation for students. Membership of ECU's Student Guild suffered a disturbing decline, but I am pleased to report the year 2000 saw a healthy reversal in this trend. The Guild was restructured and provided with some targeted funding by the University to enable it to offer some essential services to students.

Being an enterprising University, ECU found new ways to achieve student representation through both formal and voluntary groups."

The Western Australian VSU legislation was amended in 2002 by the Western Australian Government to implement 'partial' voluntary student unionism, similar to the model introduced in Victoria in 1993. The *Acts Amendment (Student Guilds and Associations) Act 2002* provides that:

- it is not compulsory to be a member of a student guild;
- an annual amenities and services fee shall be set by the university council on recommendation from the guild;
- all students shall pay the fee to the university (regardless of student guild membership status);
- the university shall then pay to the student guild a percentage of the amenities and services fee collected that is not less than the percentage of enrolled students who are members of the guild;
- the percentage of the collected fee which is paid to the guild must exceed 50% of those fees; and
- the part of the fee not paid to the student guild is to be spent on student amenities and services in a manner agreed by the university council and the student guild.

Brief history of VSU in Victoria

The Victorian Parliament passed the *Tertiary Education (Amendment) Act 1994*. This legislation provided that:

- no student could be required to be a member of a student organisation and no penalties could apply to a decision not to be a member of a student organisation;
- no student could be required to pay a compulsory fee to a student organisation;

- a student could be required to pay a fee for a designated set of services that provided facilities, services or activities of direct benefit to students at the institution.

The list of facilities, services and activities of direct benefit to students included:

- food services;
- meeting rooms, libraries and reading rooms;
- sports and physical recreation;
- child care facilities;
- counselling, health care, legal, housing and employment services;
- visual and performing arts and audio-visual media;
- academic support, orientation information and overseas student services; and
- student elections to committees of the institution.

During 1995 and 1996 the Federal Government provided financial assistance to six student organisations in Victoria through the SOS programme. Funds paid under this programme were recovered from the general revenue assistance provided by the Commonwealth to the State. Grants totalling \$2.3 million in 1995 and \$1.4 million in 1996 were provided to student organisations of Victorian universities. No payments were made under the SOS programme after 1996.

The list of facilities, services and activities of direct benefit to students was extended in 1999 to include:

- student publications, including student newspapers that meet generally accepted community standards including accuracy and fairness;
- clubs and societies for students;
- student elections; and
- opinion surveys, research, and other facilities, services and activities that provide for the consideration of issues relevant to student welfare.

In 2000, the *Tertiary Education (Amendment) Act 2000* was passed. It removed the list of facilities, services and activities of direct benefit to students and introduced new arrangements under which institutions:

- may charge a compulsory amenities fee as long as it is used to provide facilities, services or activities of direct benefit to the students at the institution;
- must ensure that a student who does not wish to be a member of a student organisation is provided with an opportunity to do this at the time of enrolment; and
- must ensure the annual report of its governing body includes a financial statement about compulsory non-academic charges payable in the preceding financial year.

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