

Submission

to

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Legislation Committee

Higher Education Support Amendment (Abolition of Compulsory Up-Front Union Fees) Bill 2005

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National Liaison Committee
For International Students
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Inquiry into
Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees)
Bill 2005

Prepared and Submitted by

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Executive Summary

NLC welcomes the opportunity to make a submission with regards to the implication of *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005* on international students studying in Australia. This legislation will have a major impact on international students education experience in Australia.

You shall also find in the following pages the implication of the proposed legislation on international education as such and also the impact it had on Western Australia and Victoria. The issues dealt in this submission encompass international student support services, regional areas, offshore quality, internationalisation of campuses and individual development.

Although, this legislation will make it possible for international students to choose whether they want to be part of student organisations, it will increase their expenses significantly, reduce the student participation on campuses and in the long-term will reduce the competitiveness of Australia as international education provider.

NLC hopes that Employment, Workplace Relations and Education Legislation Committee and Federal Government will look into the implication of this legislation more thoroughly in terms of international education and the economic contribution that international students make to the Australian community. This legislation will have more severe implication on the quality of education then any other legislation on Higher Education has ever had.

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Introduction

The Federal Government's determination to change the face of Higher Education sector was displayed again on March 16, 2005. The Hon. Dr Brendan Nelson, the Federal Minister for Education, Science and Training introduced an amendment to the Higher Education Support Act in the House of Representatives on March 16, 2005, *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005*, which is commonly known as 'Voluntary Student Unionism (VSU) Bill. The idea to implement VSU has been in Australia for almost two decades if not more and it seems that the debate about the VSU will not go away as long as student associations still exist within universities.

NLC believes that the student and student association's participation and contribution to the social framework of University campuses are a vital component to a complete University experience. The proposed bill will undermine this notion and will adversely affect the overall development of international students. It is quite disappointing to see that the Australian Government is introducing a bill, which will effectively destroy welfare activities and constructive representation, which are given great importance within Australian society. The introduction of VSU bill suggests that there is a perception that international students are rich "gold mines" who can afford any amount that is asked of them for an education and their contribution with little or no regard for the success or outcome of their experience. This report will seek to outline the impact of the *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005* on international students.

Voluntary Student Unionism (VSU)

Voluntary student unionism is a model that proposes students should have the right to decide whether they want to be a member of a student association/guild/union. The proponents of VSU suggest that students should have freedom of association and freedom of choice. A user-pays system is most equitable, as only students who wish to use the services will take the membership of the student organizations.

Whereas, the opponents of VSU debate that students need a unified representative voice within the education institution and also access to services and facilities that are essential for maintaining the quality of education and to achieve positive educational experience. In other words, a compulsory student service fee is similar to a tax system of the country where people pay the tax though they may not use every service.

Arguments for VSU

Freedom of Association

The Hon. Dr. Brendan Nelson mentioned in the Parliament while introducing the legislation on March 16, 2005 that currently Australian university students do not have the right to freedom of association as any other member of the Australian society and to correct that situation VSU bill has been introduced. The basis of the Federal Government argument is that universities as a part of enrolment within the university program require student to pay certain amount as fees to be the member of the student associations.

According to Di Yerbury, President of AVCC, “at least six universities have no requirement for membership, while at least a further 19 provide exemptions for students who do not wish to belong”.¹ In other words, students have a choice not be the member of student associations and therefore, there is no breach of the right to freedom of association.

The Supreme Court of Victoria, in *Clark v University of Melbourne*, mentioned that under compulsory student unionism, there was no breach of a student’s freedom of association. The court stated that the “essence of the University’s power is that they are powers of self-government affecting only those who choose to become members by enrolment”.²

In another case *Harradine v the University of Adelaide*, the South Australian Supreme Court found that the student union was “not a union of the kind well known in the industrial and commercial world and membership was merely “an adjunct of enrolment as an undergraduate”.³ They also ruled that Universal Declaration of Human Rights (UDHR) is not part of domestic law in any Australian jurisdiction.

Freedom of association (Article 11) is closely related to European Convention on Human Right (EHR) Articles 9 and 10 and therefore article 11 should be considered as an extension of Article 9 and 10.⁴ Freedom of expression includes cultural, artistic, social, religious and political expressions, which help in developing and building strong intellectual environment. The VSU legislation thus needs to be considered from both freedom of association and freedom of expression perspectives.

The arguments that student associations are like trade unions and compulsory membership does not allow freedom of association have been dismissed not only by the court as shown above but also by noted experts. According to Van Dijk and Van Hoof, “a professional organisation established by the Government and governed by public law, which as a rule is intended not only to protect the interests of the members, but also

¹ Di Yerbury, Canberra Times, p 19

² Kelly-Anne Collins, Research Bulletin, p.18

³ Kelly-Anne Collins, Research Bulletin, p.19

⁴ P. van Dijk and G.J.H. van Hoof, p.586

certain public interests, is not an ‘association’ in the sense of Article 11”.⁵ As student associations are part of the university, they do not fall under the definition set by Article 11 of EHR or Article 20 of UDHR. Cases such as *Le Compte, Van Leuven and De Meyere* with regards to the *Belgian Ordre des médecins*, *Sigurdur A. Sigurdsson v Ireland* and *Association X v Sweden* provide clarification about private and public associations and trade unions.

The rulings made by Australian Courts with regards to student association membership are consistent with the ruling made by the European Commission for Human Rights (ECHR) in *Association X v Sweden (1977)*. In this case Commission mentioned freedom of association is “a general capacity for the citizens to join without interference by the state in associations in order to attain various ends”.⁶ The Commission also stated that student association is a part of the university and provides a formal way to organise student participation within university administration, so Article 11 was not applicable.⁷ Student associations in Australia are incorporated under each state law and also guided by each university statute and are primarily formed to promote common goals and freedom of expression within the university.

Choice to pay

Proponents of VSU have mentioned that students should pay only for the things that they want or will use. This is to save students from paying for anything they object to or do not see important. This argument though seems fair does not sit well when one looks at the local council rates and government taxes, which are spent on activities and services that many citizens do not use. Does that mean citizens should only pay when they need to use the services or activities?

Historically, universities have always been seen as a community where everyone has equal opportunity and access to services and facilities same as any ‘real’ world society. These services and facilities are maintained through the service fee that is paid by every single student enrolled and used by those who time to time require using such services. Many students who pay the fees do not use every service but they know when they require it is there for them to be used. This helps foster a community feeling and develops individuals who care about others and contribute positively through their knowledge and support and make society a better place to live.

Internationalisation

Australian Universities are working on internationalisation of campuses. Internationalisation has become a major focus of universities in recent years and they are

⁵ P. van Dijk and G.J.H. van Hoof, p.592

⁶ P. van Dijk and G.J.H. van Hoof, p.592

⁷ Paul Sieghart, p.345

becoming aware of the positive contribution of cultural exchange and understanding. The objective of internationalisation for universities is to develop and sustain cultural diversity on campus through teaching and learning and services. The idea is to make international students feel at home in a foreign country and local students become accepting and tolerant of international students and different cultures. This is one element of extending the concept of duty of care. The cultural diversity and understanding can be achieved through interaction in an environment that sustains intellectual discussions, knowledge and uniqueness of a culture and not from increasing the student numbers. Australian universities provide such an environment through student organisations on campuses. The activities organised on campuses bring both staff and students closer to understanding each other much better.

It would be appropriate to quote Volet and Ang who said, “The presence of international and multicultural student bodies on Australian campuses create ideal social forums for fostering the development of cross-cultural awareness and communication skills as well as social cohesion”.⁸

Impact on International Education

International education contributes \$5.9billion to the Australian economy. International student fees make up approximately 14 per cent or \$1.7billion of total university revenue in Australia whereas Federal Government funding stands at roughly 40 per cent. International students constitute about 25 per cent of the total student population. In some universities, international students' tuition fees contribute from 25 to 40 per cent of the total university revenue.

Universities have always promoted themselves and Australia as a preferred destination on the basis of multiculturalism and student support services available on campus. Under VSU, support services will be costly and expenses for international students will increase, which will make Australia less competitive. The tuition fee which is already high for many programs and is equal to the US, coupled with medical fees and the highest visa charges, it is anyone's guess how many international students Australia will attract in coming years. The numbers are already slowing down and international students are already indicating that Australian education is not giving them the value for money. With such major issues looming over international education sector, introduction of VSU bill is self-destroying.

The Australian Vice-Chancellors Committee (AVCC) student survey done in 2002 indicated that international students are the biggest user of most of the services available on campus. Approximately, 90 percent of student organizations support international clubs and societies. Under VSU, though not all but many of these services and clubs and societies will be lost due to lack of funding. This will be a major blow to the universities,

⁸ S. E. Volet and G. Ang, p. 5

as they will have nothing to differentiate themselves other than academic qualifications and subsequently lose prospective international students to other regional competitors such as New Zealand, Singapore and Malaysia.

International students do not have the same support network as domestic students such as family and friends' networks. Also, they are unaware of the new challenges within a different educational system and culture. In addition international students face a major challenge- language barrier. These issues make it more important that international students should have access to support systems that can help in adapting and adjusting to their new environment. The student support services such as accommodation, part-time employment, academic appeal support, in some cases language support, legal advice especially regarding tenancy and counselling help them survive and adapt to their new environment. Computer facilities provided by some student organizations are invaluable to those international students who cannot afford to buy a computer to do their assignments and rely entirely on the student organizations and universities computer labs. These computer labs are a welcome addition to already stretched universities computer resources.

International Student Organizations and international clubs and societies provide much-needed social environments to develop friendships with different groups and learn new culture. For many overseas students, country based clubs such as Malaysian, Singaporean, Indian, Indonesian, Japanese and Chinese clubs are the first point of contact where they meet their peers and learn about adjusting to the new country. It will be naïve to think that international students organisations and clubs and societies are purely social clubs as many times it has been mentioned by the representatives of Education Minister Dr. Brendan Nelson. These organisations are more than just social clubs as they provide ongoing support and advice to its membership on various issues such as finding new accommodation, finding the right bank, car, employment, etc.

International Students Organisations assist students and make representations to universities to ensure that university is in constant touch with the new emerging issues related to international students experiences on campus. International student representation is well accepted within student associations and universities. International students organisations provide a much-needed feedback to the university on its programs, services and other operations that affect international students. Such feedback allows university to improve its activities to cater to international students more effectively. If such a channel disappears under VSU then the university has to depend on the market forces to give it any indication of change, which will be too late for university and Australia.

It is well known that international students seek their fellow students to find a solution to any issue before going to the university administration. These organizations are generally the first place where international students come and seek opinion and support. In short, these clubs make new students feel at home and strive to further enhance the cultural understandings and social networks between Australian and international students.

Many international students organizations print “international students survival handbook or guide” which proves to be a one-stop information outlet for international students. This booklet provides all the necessary information regarding the university, city, state, country and culture. This booklet will be difficult if not impossible to print due to lack of funding under VSU.

Similarly, many sports clubs provide a well-needed break and chance to pursue one’s goal of representing their university in a particular sport. Many sports clubs have very big presence of international students especially in soccer, ice hockey, basketball and hockey. If these clubs are not provided funding then one of the ways to entertain and relax will be lost for international students. International students may have to take membership of the community based sports groups. This means community based groups may come under pressure due to insufficient facilities for accommodating sudden increases in the membership.

Personal development with strong academic qualification is a high priority for many international students and their families who come from major source countries for Australia. Personal development means maturity, interpersonal skills and a favourable environment that helps in developing these values. Participation in various extra-curricular activities and acquiring interpersonal skills such as leadership, teamwork, etc. by serving in student organizations are very much valued and also experience of governing the organization will help international students in their careers.

The initiative from Federal Government to attract international students for study in regional areas will be affected too. Many of the regional universities and regional communities depend on the student organisations for various support services. Due to changes in immigration policy to attract more international students to regional areas, the VSU legislation will make this incentive negative. Due to limited support and infrastructure available to handle large number of international students, universities with the help of student organizations make sure that international students do not face any problem in assimilating within the local community. Student organisations in such places play a vital role in promoting cross-cultural understanding. VSU will make this very hard if not impossible and we will see in the coming years more pressure on regional support structure, which will find presence of different cultures too difficult to handle. In many regional campuses social activities organised by the clubs and societies are the most important way of entertainment or social interaction for international students.

NLC believes that the VSU bill will have severe implications on international students. Under VSU, NLC believes on a very conservative estimate approximately between 10-35 percent of international students will be affected in one way or the other. The majority of students will suffer due to lack of advocacy services and independent academic appeal support within universities. Therefore, if the VSU legislation comes in to effect it will reduce already declining students participation on campus and will affect the face to face interaction that is so crucial for an effective educational and cultural experience of international students.

Indirect impact on Offshore quality and services

Australian Government's initiative to promote offshore quality will be indirectly affected by this legislation. The support services for international students are quintessential for their academic success and these services distinguish Australian education from its competitors. This legislation will provide Australian Higher Education institution an excuse not to invest on or promote support services on offshore campuses. Also, partners of Australian education providers offshore will not be ready to provide services themselves due to the cost involved. This means due to lack of these services, students on offshore campuses will face difficulty in succeeding in their academic endeavour and will be restricted in their personal development. This will reflect adversely on Australian education.

Support Services for International Students

This is the list of some of the services that are widely used by international students and NLC fears that they may be lost or drastically reduced.

1. Advocacy
2. Counselling
3. Representation in various faculties and universities committees
4. Academic Appeal Support
5. Accommodation Support
6. Legal Advise
7. Employment Service
8. Second Hand Bookshop
9. Emergency Loans
10. Sporting facilities
11. International clubs and societies
12. Welfare Services
13. Computer Facilities

The most important question that the Federal Government has to ask itself is who will be responsible for providing these support services in the absence of student associations. Currently, student associations provide many of the vital support services as universities are already hard pressed for funds. In fact, Education Services for Overseas Students Act, 2000 (ESOS Act) does not indicate who is responsible for providing the services mentioned in the National Code.

User-pays system

User-pays system will make it difficult for people to be treated equally within universities. This system will be difficult to implement in many of the services or

activities listed above. For example, academic appeal support, which allows students to navigate through the various tenancy or work related requirements. Is it possible to provide such support only to those students who are willing to pay for student association's membership? How can we ascertain a value to those non-revenue generating services, which are difficult to promote to new students or any students who would not see the reason for paying in advance until they need it. Many of these services if paid independently will cost more than what they cost currently. This means universities will find it very hard to justify to prospective international students to come and study in Australia when they can study anywhere else in less than the amount they shall pay to come to Australia.

This user-pays model will be abused and available only to those who are ready to pay a higher amount just like a highest bidder in an auction. Those who cannot afford to pay such unforeseen cost will have to follow the consequences of unscrupulous landlords, real estate and employers. In other words, international students will be indirectly asked to pay more for the same services, facilities and activities that are currently available at a subsidised cost.

The Education Minister Dr. Brendan Nelson mentioned that international students could be charged services fees as this is the requirement under ESOS Act. But this raises a series of questions. First of all, the proposed bill does not allow any provider to charge fees from any student whether international or domestic. Subsection (2) of section 19-37 of the proposed bill mentions:

“A higher education provider must not 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 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”.

It is quite apparent that education providers will not be allowed to charge international students services fees and if the legislation is amended to allow this, then there is a chance that these fees will be quite high to cover services and amenities. The international students could either be subsidising services and amenities for everyone within the universities or using services only available to international students. This is discriminatory and in the long-term will have two major implications:

1. Division between international and domestic students
2. Decline in the number of international students in Australia universities due to high expenses.

The division between international and domestic students will not only further reduce the valuable interaction and exchange of knowledge but also further increase the chances of discrimination. Similarly, as mentioned above if international students are allowed to be charged fees then it will mean they may have to pay higher fees to sustain the services and facilities which should be available to all students as clear differentiation will be difficult

if not impossible.

NLC is very sceptical of the changes and does not believe a user-pays model will work effectively or fairly within the university structure. Few subsidies will be available to international students compared to the amount they pay to come to Australia and above all international students will have limited opportunity to interact with Australian and other students to develop better cross-cultural understanding. Therefore, NLC does not see how VSU will benefit international students whose expenses will be increasing and will be losing out on skill-building experiences outside of the academic context, which are so valued as part of graduate outcomes.

Experiences in Western Australia and Victoria

Western Australia

Western Australia was first exposed to VSU in 1994. The Western Australian model of VSU prohibited universities to charge any fees unless student chooses to be a member of the student association. During early period of VSU almost every student association went into liquidation and many services and facilities were either closed or drastically reduced. International students enrolment also plummeted which affected the campus life and cross-cultural interaction. In 2003, state government allowed universities to charge students compulsory service fees. Since then there is a revival in the student associations operation and now more services and facilities are available then before with the help of universities. The student support services under Western Australian model did not increase but were significantly reduced.

Between 1996-2002, the number of onshore international students in Western Australia fluctuated quite significantly compared to other states, which saw regular increase in their onshore international student numbers. Western Australia saw a decrease in onshore international students number from 6984 in 1996 to 6871 in 1997 with the introduction of VSU legislation. The average growth in WA for the period 1997-2002 was 856 international students. This number would be significantly reduced if the year 2002 were not taken into consideration when there was an increase of 3470 students over 2001. The average increase in the international student numbers between 1997 and 2001 in WA was 333 compared to 2594 in NSW, 2557 in Victoria and 2336 in Queensland during the same period. The year 2002 was an extraordinary year for Australian international education when there was an unprecedented growth in the sector, which could be due to global issues such as September 11. The impact of VSU on WA clearly shows that if VSU legislation comes into effect Australian universities will see the decline in their international student numbers.

Victoria

Victoria faced VSU in 1993. In Victoria membership of the student association is voluntary however students have to pay student fees, which can only be used for the purposes of services, facilities and activities that are of “direct benefit to students at the institution”⁹. The *Tertiary Education Act, 1993* of Victoria also clarifies that students should be reasonably made aware that compulsory students services fees does not mean membership of student association unless they decide to become a member.¹⁰ During VSU in Victoria the nature of student representation and student services changed. Also, during that time neither services increased nor decreased. Status quo was maintained but student representation was almost gone.

Future of the Australian Universities

The traditional role of a university is a centre for learning, research and teaching, which should be preserved. If the VSU bill comes into effect it will make universities a private corporation rather than a centre of learning. There is no doubt that once service fees are made voluntary, students will be reluctant to pay and Federal Government will see its action justified but as soon as the infrastructure development issue arise, universities will have to make a choice between business and education objectives. In the process, university life and experience will be lost due to lack of support and funding from the Federal Government. The impact of such a change will be phenomenal on the society, which will receive students who have the degree but not the requisite skills to be a better member of the society. Is community ready to accept such individuals who cannot contribute with their skills to the society, especially in regional areas? This is the question that every member of the society and Federal Government has to answer as time and again it has been demonstrated that regional areas require special attention and support.

This bill will limit the freedom of expression or opinion to debate, to voice concerns on issues related to policies- government and university, to discuss the artistic and cultural issues and to participate in those matters within university. It is also a common knowledge that there is a very limited interaction between international and domestic students on campus. The efforts that universities have put in to promoting internationalisation on campus and to increase cross-cultural understanding will be wasted, as there will be limited or no opportunity to express concerns collectively within the university.

Universities will also suffer from the loss of income and therefore the quality of education will be affected. This legislation will take the autonomy of the universities and the freedom of expression that is so valued within the university community. The representation on university council, committees and faculty are an integral part of university life and are important for the development of intellectual inquest and vigorous

⁹ Tertiary Education Act, 1993 (Victoria), s12F (1)

¹⁰ Tertiary Education Act, 1993 (Victoria), s12D (1) and (2)

debate for the betterment of society.

Conclusion

NLC is of the opinion that the introduction of the *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005* will result in a further decline in participation of students, as well as the opportunity to participate in activities that contribute to the vibrant campus life. We are also worried that vital services for international students will disappear due to their intangible nature.

NLC understands that there are student associations where mismanagement occurs or are occurring and the Federal Government wants better monitoring and use of funds in student associations. If there is one bad apple in a basket then one should get rid of bad apple rather than throwing away the whole basket. Introduction of the VSU bill will create chaos and destroy the university life and graduates coming from university will have academic qualification but no social or personal skills expected by prospective employers or society. This bill also undermines the ability of universities to administer their own activities and also restrict the exchange of ideas and information, which are vital for the development of both university and students.

Therefore, NLC strongly urges the Federal Government to reconsider the government's intention to implement VSU, as it will have major implication on international students and international education in Australia. The face of international education will be changed significantly and NLC doubts that will be for the better.

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