

COALITION SENATORS' DISSENTING REPORT

1. Executive Summary

1.1 This Bill represents a return to compulsory fees being levied on university students for non-academic purposes. It is another in a long line of broken election promises from the Labor Government.

1.2 The previous government enacted the *Higher Education Support Amendment (Abolition of Up-Front Compulsory Student Union Fees) Act 2005* to relieve university students of the financial burden of upfront amenities fees and the compulsion to join a student union. Previously, students were forced to fund student unions and services irrespective of whether they wished to join the union, or use the services provided.

1.3 This Bill represents a backward step in that it:

- Reintroduces compulsory student unionism through students being forced to fund the activities of student unions;
- Slugs students with a compulsory fee regardless of their need or even ability to access the services it purportedly funds, and regardless of their means;
- Almost certainly ensures the return of compulsory levies funding and supporting marginal and extreme political activities.

2. Labor's broken promise

2.1 In her Second Reading speech on the *Higher Education Legislation Amendment (Student Services and Amenities, and other measures) Bill 2009* the Minister for Youth, the Hon Kate Ellis MP, claimed that the government was delivering on an election commitment to “*rebuild important university student services and to also ensure that students have representation on campus*” through reintroducing compulsory non-academic fees.

2.2 The Minister is using a selective version of the history on this matter as the introduction of this legislation represents the clear breach of a Labor commitment.

2.3 Labor's election promise was both in principle and in detail – rejecting both the reintroduction of non-academic fees as well as any form of loans scheme to fund them. The then Shadow Minister for Education and Training Stephen Smith MP was explicit about this on 22 May 2007:

“... I'm not considering a compulsory HECS-style arrangement and the whole basis of the approach is one of a voluntary approach. So I am not contemplating a compulsory amenities fee.”¹

¹ Mr Stephen Smith MP. Transcript of doorstep interview; Parliament House, Canberra, 22 May 2007

2.4 This legislation breaches both of these election commitments. The fee outlined in the Bill will be dedicated to non-academic services, it will be universal and compulsory, and it will be paid off in the very 'HECS style' arrangement that Mr Smith had explicitly ruled out.

2.5 This legislation therefore represents a clear and unambiguous breach of a specific election commitment by the Labor Party.

3. Slugging students

3.1 This legislation represents a substantial increase to students of the cost of undertaking a course of higher education.

3.2 As the fee is indexed along with accumulated loans, it increases in nominal value and adds additional time to the period taken to repay student loans.

3.3 If, as expected, Universities levy the full \$250 fee allowed by the Bill, it will likely represent nearly \$1000 additional for the shortest 3 year degree course. For a more expensive 5 year degree, the total cost of the fees when deferred approaches \$2000.

4. No evidence of need

4.1 The government has not demonstrated a need to reintroduce compulsory fees for non-academic services. Students have neither clamoured for the reintroduction of compulsory fees nor turned away from Universities on the account of the purported decline in services since the introduction of VSU.

4.2 The committee heard evidence from the University of Queensland Union that student bodies have been able to continue to provide services to students since the abolition of up-front fees in 2005.

Mr Young—In short, instead of shrivelling and dying, as was predicted by those with vested interests, we have actually increased the services that we offer and are flourishing under a VSU environment... More importantly, it is also in the interests of students, because they have the opportunity to enjoy a vibrant campus culture as well as representation without the need to be slugged \$250 for it.

The introduction of voluntary student unionism has forced student bodies to provide a more efficient and attractive service to students in order to attract and increase membership.

4.3 Coalition Senators believe that the failure of some organisations to adapt should not be seen as a failure of VSU, rather it is a failure of the organisation to adapt to the need to attract students' support. Again, this was supported by the experience of the University of Queensland Union:

Mr Young—The fact of the matter remains: many student union organisations throughout Australia have failed to address the underlying inefficiencies in their own organisations, have failed to listen adequately to what students want—and this is reflected in the very low voter turnout and membership rates of these organisations—and have lacked the entrepreneurial and hardworking spirit to turn things around. We are now in a situation where we can do one of two things: we can force students to cough up \$200 and endorse the poor and wasteful management that has existed and still exists within student organisations, or we can go back to a system that works and is fair to students. Again, I view the former to be in the interests of student unions and the NUS but definitely not in interests of students in general.

4.4 Coalition Senators believe that non-academic services provided on campus should be funded by students who choose to and are able to utilise them and that VSU need not to threaten the provision of such services; indeed properly managed it will make them more responsive to students' needs.

4.5 Where there is a shortfall in revenue for the provision of these services, the Coalition believes that there is no justification to make this up by levying all students, including those who do not, or cannot use these facilities. This was supported by evidence tendered by the UQ Union.

Mr Young—If the university wants to have services and amenities to attract more students to that campus, they really should fund it themselves.

4.6 Coalition Senators believe that if we can trust students to choose the university course they undertake and their study and work arrangements, it is ridiculous to argue that they are incapable of choosing which non-academic services they need to access and make the choice accordingly.

4.7 Furthermore, doubt remains as to the ability of the great bulk of students to access the services funded from the fees that this Bill will see levied. It would be unfair to levy all students a fee to subsidise facilities or services that were incapable of actually being accessed by the great bulk of students.

Such services or facilities might include exclusive sports facilities or services that are tightly rationed or limited in terms of the numbers of students who may access them.

5. Undermining Freedom of Association

5.1 Coalition Senators recognise that this Bill provides only for fees to be levied by Universities. However, this does not represent a significant change from that which was in place prior to the introduction of VSU and it is misleading to claim otherwise.

5.2 In most cases prior to 2005, non-academic fees were similarly levied by the institution – with funds then being passed onto a student union, guild or association.

5.3 This legislation does nothing to limit funds being passed on in this way. It simply seeks to limit the purposes for which fees may be levied.

5.4 [This represents a clear breach of the commitment to freedom of association. Students might not be actually forced to formally join a student association in order to attend university, but they 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.]

5.5 The attempt by the Government and various vested interests to claim this Bill represents a radical change from the administrative arrangements that existed prior to VSU is sophistry aimed at concealing the truth – students will once again be required to contribute to the activities of student unions.

6. Inadequate protection against political activity

6.1 This key principle of freedom of association is further threatened by the Bill's inadequate protections against the collected monies being used to support political activity.

6.2 While both the Bill and the Student Services and Amenities Guidelines, prohibit the spending of monies collected from the fee '*to provide support to a political party or to support a candidate for political office*'² this does nothing to limit the use of the fees for other political activities or the revenues gained from the services supported by the fees being used on activities that are partisan in nature.

6.3 Although institutions and other entities that receive compulsory non-academic fee funds from the institution will be restricted from directly funding political parties or candidates for public office, funding to other campaigns of a political nature by third-parties that casually assist particular parties or candidates will still be permissible.

6.4 Under what has been described as the former Victorian model, compulsory non-academic fees could not be used to fund the National Union of Students, but cross-subsidisation of commercial trading by student unions could result in revenues from 'subsidised' services ending up in the hands of overtly political organisations such as the National Union of Students.

6.5 Student unions will inevitably find ways to bypass the guidelines. Therefore the only way to prevent the unions from misusing the compulsorily acquired fees is to deny these fees to the unions altogether.

6.6 A number of the areas of the Guidelines lack sufficient specific detail to have confidence in them preventing inappropriate use of compulsory fees. The specific

² *Student Services and Amenities Fee Guidelines*, DEEWR

example of funding for legal services was raised during the hearings of the Committee:

Senator RYAN—I recall an incident quite a while ago where students held a protest. It reached a degree of violence, the police intervened and several students were arrested and charged. The student union legal services funded their defence or contributed to the funding of their defence. There is no restriction whatever on how these legal services can be used; it is just the provision of legal services, isn't it?

Mr Manns [representing DEEWR]—There is no further specification than is proposed there.

6.7 The Guidelines as released by the Department do not prevent compulsory fees being used for political purposes, although they propose restrictions on partisan activities.

6.8 Coalition Senators believe that both the Bill and the Guidelines fail to protect the basic right of freedom of association in that students will again be compelled to fund political activities through compulsory non-academic fees.

7. Inadequate mechanisms for students to scrutinise expenditure

7.1 Coalition Senators are also concerned that there is no provision for students to scrutinise those activities for which they are being compulsorily levied fees.

7.2 The National Student Representation and Advocacy Protocols do not contain any detailed requirements for student organisations funded out of the compulsory fee to be transparent.

7.3 Having no formal mechanisms in place to bring political expenditure to the attention of the minister gives students, particularly politically marginalised students, very little power to ensure political expenditure does not occur.

7.4 In the hearing, President of the National Union of Students David Barrow made it clear that students would not have a say in how the compulsorily acquired money would be spent.

Senator CROSSIN—I see. How will students guarantee that the moneys are well spent under this legislation?

Mr Barrow—That is our argument—that is, that students have no guarantee. If students do not have control of the funds then there is no guarantee that they will be spent wisely.

7.5 Coalition Senators agree with the sentiment expressed above – but believe that students should be viewed and treated as individuals and continue to be able to make their own, individual decisions about how their money is spent.

7.6 Under the proposed regime, the Minister is the only person with ability to police the Student Services and Amenities Guidelines and would be responsible for punishing institutions that fund activities outside the guidelines.

7.7 The discretionary power afforded to the Minister would make the ban on partisan political expenditure dependant on the Minister's whim.

7.8 The proposed regime does not guarantee that political expenditure will be visible, meaning students have little scope to hold their unions to account or ascertain what their compulsorily acquired fees will be spent on.

8. Labor cannot be trusted

8.1 In her second reading speech the Minister stated that "*universities that choose to levy a fee will be expected to consult with students on the nature of the service and amenities and enhanced advocacy that the fee would support.*"³

8.2 Coalition Senators have concerns about the ambiguity of this proposal. At no point in the guidelines does the Minister clarify which organisation or individuals will be consulted. This has the potential to lead to universities consulting small groups with pecuniary interests, with the great majority of students having no voice.

8.3 In a media release on 3 November 2008 the Minister said "*The Rudd Government will continue to work in partnership with universities and students.*"⁴ What this is likely to mean is that universities and those with vested interests in the fees, for example institutions, students organisations and student unions, will be consulted but the majority of students will have no say.

8.4 Coalition Senators believe that the Government has only consulted a narrow range of views and interests in making the decision to re-institute compulsory non-academic fees. This is shown by the Australian Democrats Youth Poll 2008 which stated that 59% of students surveyed believed compulsory fees should not be reintroduced.⁵

8.5 There are also concerns about the use of guidelines rather than legislation to provide the protections the Minister has outlined. The Government and some groups in favour of the legislation argue that the guidelines will provide robust protection against student money being used for political purposes.

³ The Hon. Kate Ellis MP, 'Higher Education Legislation Amendment (Student Services and Amenities, And Other Measures) Bill 2009 Second Reading Speech', House of Representatives, *Debates*, 11 February 2009

⁴ The Hon. Kate Ellis MP, *Rebuilding Student Support Services in our Universities*, 3 November 2008, accessed at <<http://www.kateellis.com.au/newsroom/86/>>, accessed 5 March 2009

⁵ The Australian Democrats, *Australian Democrats Youth Poll 2008*, accessed at <http://www.natashastottdespoja.com/cms_resources/Youth%20Poll%202008%20final.pdf>, accessed 5 March 2009.

8.6 These guidelines are easily changed and this protection can be removed at the Minister's prerogative. Under the previous compulsory fee regime the National Union of Students spent more than \$250,000 on political campaigns in the period leading up to the 2004 election.⁶ It is impossible under a compulsory fee regime, regardless of the guidelines, to protect against students' money being used in this manner.

9. Conclusion

9.1 As a result of the introduction of Voluntary Student Unionism by the previous government, those organisations which were unable to meet the needs of students declined in membership. It is ironic that the current government seeks to reintroduce legislation to once again force students to fund inefficient and unresponsive organisations they would not otherwise join or support with their monies.

9.2 The introduction of VSU has not seen a collapse in student services or life on campus. It is patronising in the extreme to assume that students need a student union to enjoy a full university experience.

9.3 This Bill represents an attempt by vested interests to once again be able to rely on the force of law to compulsorily collect \$250 million from Australian students, to fund services and activities that students themselves will have no say over.

9.4 Furthermore, it represents a clear and unambiguous breach of a specific commitment by the Labor Party.

Recommendation

Coalition Senators recommend that the Bill be rejected.

Senator Gary Humphries
Deputy Chair

Senator Scott Ryan

Senator Michaelia Cash

Senator Mary Jo Fisher

Senator Brett Mason

⁶ Australian Electoral Commission, *Third Party Return of Electoral Expenditure for the Election held on 9 October 2004- National Union of Students*, accessed at <<http://electiondisclosures.aec.gov.au/return/12246/FAD06/34.pdf>>, accessed 5 March 2009