



Australian Government

Department of Education, Employment and Workplace Relations

Acting Deputy Secretary
Michael Maynard

Our Ref ED10/013505

The Secretary
Standing Committee on Education and Employment
House of Representatives
Parliament of Australia
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Worthington

Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010

Thank you for your letter dated 28 October 2010 inviting a submission from the Department to the Standing Committee on Education and Employment regarding the Australian Government's proposed Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010.

On 29 September 2010, the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 was introduced to the House of Representatives. The Bill proposes to allow universities and other approved higher education providers to charge a compulsory student services and amenities fee.

As part of this arrangement, universities and higher education providers will also be required to offer eligible students access to a new element of the Higher Education Loan Program (HELP) to be called SA-HELP. As with the other HELP elements, HECS-HELP, FEE-HELP, and OS-HELP, SA-HELP will be an income contingent loan that is repaid to the Government through the taxation system. More information about the proposed fee and SA-HELP is at **Attachment A**.

I would also like to bring to the attention of the Standing Committee the range of documentation available from previous inquiries into the abolition of compulsory up-front student union fees. The Department's submission focuses on the current Bill and where relevant, has referenced previous reports and surveys. The Department would be happy to provide the Committee with copies of referenced documents if they cannot be otherwise sourced.

I hope this information is of use for the Committee. If you have any further questions regarding this submission, please contact Dr Lyndal Groom, Director, Legislation Team, Funding and Student Support Branch, ph. 02 6204 5839

Yours sincerely

Michael Maynard^e
8 November 2010

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

Background

The proposed Student Services and Amenities Bill provides for measures to allow higher education providers to charge a compulsory student services and amenities fee, as originally announced by the Hon Kate Ellis MP, then Minister for Youth on 3 November 2008, and reinforced in the Regional Australia Package announced in September 2010.

The Government's policy initiatives for higher education following the Bradley Review of Higher Education are underpinned by a desire to increase the participation and retention in higher education of under-represented students, particularly those from low socio-economic status (SES) and Indigenous backgrounds. The Government is also strongly committed to supporting students from rural and regional areas to access higher education. The participation ambitions set by the Government are that by, 2025, 40 per cent of 25 to 34 year olds attain a qualification at bachelor level or above; and, by 2020, 20 per cent of higher education enrolments at undergraduate level should be people from low SES backgrounds.

Since the introduction of voluntary student unionism (VSU) and the prohibition on charging any compulsory fees for non-academic services, universities have decreased their funding for many of the student services, amenities and activities that enhance and support students' learning experiences.¹ Previous inquiries into VSU and VSU post-implementation surveys have provided estimates of universities' expenditures on student services and amenities.² The submissions evidenced that universities funded a wide range of services from sports and recreation to welfare and counselling, whether directly administered by themselves or administered through various types of student-run organisations.

The large part of the funding spent on these services (estimated to be 98 per cent in 2005) was drawn from general services fees charged by universities to their enrolled students. According to the AVCC 2005 report, on average 83 per cent of income earned from general services fees was spent on student health and welfare (including counselling services), sporting and recreational amenities and activities, accommodation services, services specifically for international students, tutoring and study support programs and other non-political activities such as orientation programs. On average less than 12 per cent of fees-related funding, across all types of administering bodies, was spent on 'Advocacy, representation and political activity'. Even when including expenditure on clubs and societies, the overall average was less than 17 per cent of total expenditure.

A 2009 analysis of higher education institutions' expenditure in the United States of America shows that students from low SES backgrounds and those entering higher education with lower test scores benefit the most from additional expenditure on student services and activities that contribute to students' emotional and physical well-being and to their intellectual, cultural and social development outside of the institution's formal instructional program.³

¹ DEEWR (2008) *The Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students: SUMMARY REPORT*, www.deewr.gov.au.

² See for example, AVCC (2005), *AVCC report on Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005*, June 2005; submissions to the Senate Committee on Education, Employment and Workplace Relations Inquiry into the *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, http://www.aph.gov.au/senate/committee/eet_ctte/higher_ed/submissions.htm and submissions to the DEEWR 2008 survey of the impact of VSU available at www.deewr.gov.au.

³ Webber, D.A. and Ehrenberg, R.G. (2009), 'Do expenditures other than instructional expenditures affect graduation and persistence rates in American higher education', *Cornell Higher Education Research Institute Working Paper*, <http://www.ilr.cornell.edu/CHERI/>, downloaded 31 August 2009. Note: The report acknowledges that the analysis did not identify which student service expenditure sub-categories were the ones that most mattered.

These student services, which include student organisations, health services, sport and recreation, supplemental instruction as well as admissions and registrar's activities such as orientation and campus visit programs, also enhanced the rates of student retention and completion.

A similar effect for Australian students has been confirmed anecdotally by many of Australia's Vice-Chancellors. In support of this, most universities have shown a commitment to funding student services and amenities by drawing funds from other income including funding for teaching and learning to ensure that at least a minimum of priority student services and support activities can be maintained.⁴ While the cross-subsidisation of such services from other funding may be of concern in relation to supporting the highest quality of teaching, it indicates the systemic belief that higher education is much more than the teaching offered in a classroom.

University leaders have also argued that the additional student services and amenities provided through the former general services fees are most needed by regional and rural students, both those coming to study on a metropolitan campus as well as those studying on regional campuses.⁵ Regional students considering a move away from home to a metropolitan campus can require support services such as accommodation, campus open days, orientation programs, employment advice, and more broadly, access to social and sporting events that assist them in developing friendship and broader social networks to counteract the isolation from family and friends.

Regional university campuses play an important role in their broader communities. In addition to providing geographically accessible learning environments, they are also providers of community infrastructure and services through employment, clubs, amenities and facilities. Many submissions to previous inquiries argue that decreases in disposable income for these universities disadvantage their regional communities as well as the enrolled students.

Government funding initiatives post-VSU

At the time of introducing the legislation to prohibit compulsory student unionism, the previous Coalition Government addressed some of the concerns of the higher education community by funding three VSU transition programs. The funding for these programs was non-ongoing and all funds have been expended.

Support for Australian University Sport

Recognising the possible impact of the 2005 VSU legislation on university sporting and recreational facilities and activities and regional students, the previous Government provided a grant of \$10 million to *Australian University Sport* as the peak body responsible for organising regional, national, and international sports events for universities across Australia.⁶ The non-ongoing funding from 2006-07 to 2009-10 facilitated opportunities for regional university students to participate in sporting activities.

Support for Small Businesses on Regional University Campuses (SSBRUC)

The Government allocated \$10 million to the SSBRUC program over four years from 2006-07 to 2009-10. Funding was used to support small businesses to establish operations on regional campuses including accommodation services, health and counselling services, child-care services and food and beverage services. Funding was allocated to universities through two competitive, merit-based rounds in November 2006 and June 2007. A total of \$4.4 million was allocated for 20 projects including infrastructure developments such as renovations or rental subsidisation.

⁴ DEEWR 2008, *op cit*.

⁵ See for example, published comments from the Vice-Chancellors of the University of Western Australia and the University of New England.

⁶ <http://www.unisport.com.au/Pages/Home.aspx>

In July 2007, due to the SSBRUC program being underspent, \$5.6 million was transferred to the *Voluntary Student Unionism Transition Fund for Sporting and Recreational Facilities* which was heavily oversubscribed. All funding has been paid out for this program.

VSU Transition Fund for Sporting and Recreational Facilities

The VSU Transition Fund for Sporting and Recreational Facilities was set up in 2006-07 to assist Table A ('public universities') and Table B ('private universities') higher education providers listed in the *Higher Education Support Act 2003* with the construction and maintenance of sporting and recreational facilities. Proposals for projects were sought through two competitive funding rounds in 2007.

The total funds allocated under the VSU Transition Fund were \$85 million (including the \$5 million transferred from the above program) over three years from 2007 to 2009. Twenty-seven of the forty-one eligible higher education providers received funding under this program, with eight universities receiving funding for multiple projects.

Legislative actions to implement a student services and amenities fee

The first Bill to allow a student services and amenities fee, the *Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009* was introduced into the House of Representatives in February 2009. This Bill allowed for the Minister to make two sets of guidelines:

- Student Services and Amenities Fee Guidelines ('Fee Guidelines'); and
- Student Services, Amenities, Representation and Advocacy Guidelines ('Representation Guidelines').⁷

The policy content of these guidelines was publicly released for consultation with the higher education sector. However, the guidelines did not include administrative information about requirements for publishing dates, fee amounts and a lower fee for part-time students.

The Bill was subsequently referred to the Senate Standing Committee on Education, Employment and Workplace Relations which released its report on 10 March 2009.

The Bill was passed by the House of Representatives on 19 March 2009.

In May 2009, the former Minister for Youth, the Hon Kate Ellis MP released revised policy content documents.

In August 2009 the Bill was introduced, debated and voted down (34 to 34) in the Senate. During the debate, additional documents, in the form of letters, were tabled in the Senate about the compliance arrangements agreed with Senator Xenophon and minor amendments for the Guidelines agreed with Senator Hanson-Young.

On 9 September 2009, a new Bill with unchanged content, the *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009*, was introduced to the House of Representatives. This was passed on 26 November 2009 and introduced to the Senate on 30 November 2009 where it remained until prorogued.

⁷ The February 2009 and May 2009 versions of the Guidelines' policy content are available at <http://www.deewr.gov.au/highereducation/programs/studentssupport/voluntarystudentunionism/Pages/Home.aspx>. Guidelines made under the *Higher Education Support Act 2003* are legislative instruments and must be tabled in Parliament where they are subject to disallowance.

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

The *Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010* comprises some changes from the Bill that was prorogued before the 2010 election. The new Bill includes the list of non-prohibited (ie 'allowable') categories for the expenditure of a student services and amenities fee. The list had been previously proposed in the Fee Guidelines. With that change to the Bill, the Fee Guidelines were no longer required and references to those Guidelines have been removed from the Bill. Other administrative matters that were included in the Fee Guidelines are to be amendments to the existing Administration Guidelines.

The requirement to have a lower student services and amenities fee for part-time students as publicly stated by Minister Ellis during 2009 is to be included in the amendments of the Administration Guidelines.

The Bill would amend the *Higher Education Support Act 2003* to:

- allow higher education providers to choose to implement a compulsory student services and amenities fee capped at \$250 per student per annum (indexed to \$254 in 2011, afterwards indexed annually) to help provide student services and amenities as prescribed in the Bill;
- provide eligible students with the option of a loan for the fee through the establishment of a new component of the Higher Education Loan Program (HELP), SA-HELP;
- require higher education providers that receive funding for Commonwealth supported student places under the Commonwealth Grant Scheme to provide information on and access to basic student support services of a non-academic nature; and
- require higher education providers to ensure the provision of democratic student representation.

The Bill includes provisions that prohibit the fee being spent by a higher education provider on supporting a political party or candidate for election to the Commonwealth, State or Territory parliament or local government.

A higher education provider must also impose this prohibition on any person or organisation to which it pays any of the fee revenue.

The Student Services and Amenities Fee Bill will allow higher education providers to spend the fees on the following list of expenditures:

- providing food or drink to students on a campus of the higher education provider;
- supporting a sporting or other recreational activity by students;
- supporting the administration of a club most of whose members are students;
- caring for children of students;
- providing legal services to students;
- promoting the health or welfare of students;
- helping students secure accommodation;
- helping students obtain employment or advice on careers;
- helping students with their financial affairs;
- helping students obtain insurance against personal accidents;
- supporting debating by students;
- providing libraries and reading rooms (other than those provided for academic purposes) for students;

- supporting an artistic activity by students;
- supporting the production and dissemination to students of media whose content is provided by students;
- helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled;
- advising on matters arising under the higher education provider's rules (however described);
- advocating students' interests in matters arising under the higher education provider's rules (however described);
- giving students information to help them in their orientation;
- helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.

Higher education providers may choose to contract third parties to provide allowable services. In some cases, providers may contract student organisations to deliver some of these services. In providing funds from the fee to a third party, the Vice-Chancellor or Chief Executive Officer of the higher education provider will be required to ensure that the third party also complies with the requirements of the Bill in expending the funds.

The Government has stated on several occasions that it does not support a return to compulsory student unionism and this is reflected in the requirements of the Bill.

The proposed amendments do not change section 19-37(1) of the *Higher Education Support Act 2003* which prohibits a higher education provider from requiring a student to be a member of a student organisation.

Providers that chose to implement the fee will be able to charge the fee only after the legislation has been passed and guidelines are in place.

Higher education providers will be able to charge different fees or no fees for different groups of students, for example, a lower fee for students studying off-campus compare to the fee for students studying on-campus. The Administration Guidelines made under the Act will require providers, if they choose to charge a fee, to charge part-time students a lower fee than full-time students.

The Student Services, Amenities, Representation and Advocacy Guidelines

The Bill provides for the Minister to make the Student Services, Amenities, Representation and Advocacy Guidelines. These guidelines will be a legislative instrument and introduce for the first time:

- *National Access to Services Benchmarks* relating to the provision of information on, and access to, services such as welfare and counselling services and provision of advocacy services; and
- *National Student Representation Protocols* to ensure that students have democratically elected representatives to present the views of students to their higher education provider. The Protocols also require that providers must consult with their students on the uses of the student services and amenities fee.

Section 19-67(1) specifies that higher education providers in receipt of Commonwealth Grant Scheme funding (related to an allocation of Commonwealth supported places) must meet the requirements of the Student Services, Amenities, Representation and Advocacy Guidelines as a condition of their CGS funding, even if they choose not to charge a student services and amenities fee.

Under section 19-67(4), requirements of the Guidelines only apply to those higher education providers that receive funding from the Commonwealth Grant Scheme, and not the other approved higher education providers – also known as private providers – that only receive FEE-HELP funding.

Compliance arrangements

The Bill's proposed provisions on student services and amenities fees will be part of the 'quality and accountability requirements' in the *Higher Education Support Act 2003*, with which all providers must comply.

Section 22-15 of the Act empowers the Minister to revoke a body's approval as a higher education provider if the Minister is satisfied that the body has breached a quality and accountability requirement and that it is appropriate to revoke the approval.

Apart from the general requirement to comply with these requirements, compliance is also a condition of all grants to higher education providers under the Act. Section 54-1 of the Act empowers the Minister to determine that a grant to be made to a provider is to be reduced or an amount granted is to be repaid if the provider has breached a condition of a grant and the Minister considers it appropriate to take that action.

In both cases, the Act sets out matters which the Minister may consider and the process to be followed (including allowing the provider to make a submission on why the action should not be taken and considering that submission).

Monitoring determination of fees

Under proposed subsection 19-37(6), a higher education provider that determines a fee must publish 'enough information to enable a person liable to pay the fee to work out the amount of the fee'. The Administration Guidelines will specify the dates by which the publication must occur.

The Department of Education, Employment and Workplace Relations will monitor each provider's published information to ensure that the publication meets the requirements and that the fees that are determined do not exceed the maximum specified in proposed subsection 19-37(5).

Monitoring fees and expenditure of fee revenue

Each higher education provider is required under section 19-10 of the *Higher Education Support Act 2003* to provide an annual financial statement in a form approved by the Minister and a report on the statement by an independent qualified auditor (the relevant Auditor-General for public universities).

The financial statement guidelines issued by the Minister's delegate set out the form of the financial statement that is required. The guidelines will include new requirements for each higher education provider to report the amount of revenue from the student services and amenities fee and the expenditure of that revenue (in aggregate) on the purposes that are specified in the Act and any expenditure of that revenue on purposes not in accordance with the Act.

For students who choose to take out an SA-HELP loan for their student services and amenities fees, a higher education provider will be required to report to DEEWR the amount of the fee charged and the amount loaned.

In addition, each higher education provider will be required to provide an annual compliance certificate, signed by the Vice-Chancellor/CEO along the lines of : XYZ University charged student services and amenities fees strictly in accordance with the *Higher Education Support Act 2003* and the Administration Guidelines and revenue from the fee was spent strictly in accordance with the Act and only on services and amenities in the following categories as specified in the Act (with a tick list of the various categories).

Repayment arrangements for HELP loans

The HELP scheme currently comprises HECS-HELP, FEE-HELP, OS-HELP and VET FEE-HELP. These elements are all income-contingent loans repaid through the Australian taxation system. People who have incurred HELP debts start repaying their HELP debt when their repayment income is above the minimum repayment threshold for compulsory repayment. The repayment thresholds are adjusted each year to reflect any changes in average weekly earnings.

The minimum repayment threshold for the 2010-11 income year is \$44,911.

People may also make voluntary HELP debt repayments at any time and for any amount. If a person makes a voluntary repayment of \$500 or more, they receive a bonus of 10% of the repayment amount credited to their HELP debt.

When a person's repayment income is above the minimum repayment threshold for any particular year, the ATO will calculate their compulsory repayment for that year and include it in their income tax notice of assessment. Table 1 below contains the repayment thresholds and repayment rates for income earned during the 2010–11 income year.

Table 1: 2010–2011 repayment thresholds and repayment rates

Repayment income in the range:	Repayment rate (% of repayment income):
Below \$44,912	Nil
\$44,912–\$50,028	4.0%
\$50,029–\$55,143	4.5%
\$55,144–\$58,041	5.0%
\$58,042–\$62,390	5.5%
\$62,391–\$67,570	6.0%
\$67,571–\$71,126	6.5%
\$71,127–\$78,273	7.0%
\$78,274–\$83,407	7.5%
\$83,408 and above	8.0%

Accumulated HELP debts are indexed annually on 1 June each year to maintain their real value by adjusting debts in line with changes in the cost of living (as measured by the Consumer Price Index (CPI)). The indexation figure is calculated each year after the March CPI is released.

Indexation is applied by the ATO each year to the part of the HELP that has remained unpaid for more than 11 months.

There are a number of other minor consequential amendments required, within the *Higher Education Support Act 2003* and its associated Guidelines, and the *Income Tax Assessment Act 1936*. These are outlined towards the end of the Bill. The majority of changes are those related to including SA-HELP as a HELP element. The reference to amendments to the *Income Tax Assessment Act 1936* is to include reference to a student services and amenities fee in the objects of the system of tax file numbers.