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## Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003

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Higher Education Support Amendment (Abolition of  
Compulsory Up-front Student Union Fees) Bill 2003

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10 November 2003

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# Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003

**Date Introduced:** 17 September 2003

**House:** House of Representatives

**Portfolio:** Education, Science and Training

**Commencement:** Operating provisions commence at the same time as those in the Higher Education Support Bill 2003.

## Purpose

To prohibit higher education providers from requiring students to join associations or to pay fees on enrolment that do not relate directly to their courses.

## Background

This Bill is part of a package designed to establish the new higher education funding system that was announced in the 2003-04 Budget. The other bills in the package are the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003. This Bill will amend the Higher Education Support Bill 2003 to insert an additional condition for higher education providers who wish to receive Commonwealth assistance.

The Government has had a long-standing commitment to prohibit compulsory student unionism in higher education institutions. The last attempt to do so was the Higher Education Legislation Amendment Bill 1999. That Bill was subject to a report by the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee<sup>1</sup> and did not progress through the Senate.

## Previous State Legislation

Two states have enacted legislation on voluntary student unionism. The Western Australian *Voluntary Membership of Student Guilds and Associations Act 1994* amended the establishing acts of state universities so as to prohibit them from:

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- requiring students to join a student association (or guild) as a condition of enrolment; and,
- imposing any fee that was not directly related to a course of study.

The Victorian *Tertiary Education (Amendment) Act 1994* also prohibited state higher education institutions from requiring students to belong to a student organisation or pay a compulsory membership fee to such an organisation, but it permitted institutions to collect amenities and services fees. These fees had to be used for defined activities of direct benefit to the students at the institution.

The Bill adopts the Western Australian approach.

### **Arguments for and against Compulsory Student Unionism <sup>2</sup>**

#### Freedom of Association

The principal argument against compulsory student union membership is that it infringes upon the fundamental right to freedom of association. This is the argument used by the former WA Government when introducing its legislation on the subject:

"Australia is a signatory to three international agreements specifically outlawing the practice of compulsory association. Article 20 of the United Nations Universal Declaration of Human Rights states that 'everyone has the right to freedom of peaceful assembly and association'. Australia is also a signatory to the International Covenant on Civil and Political Rights and the International Labor Organisation's convention concerning freedom of associations. These conventions specifically denounce the practice of compelling individuals to become members of associations. UN General Assembly resolution 217(iii) of 10 December 1948, in addressing these statements on human rights, stipulates that 'every individual and every organ of society should strive to secure their universal recognition and observance'. Governments have an obligation to protect the rights and liberties of their citizens. As legislators, we have an obligation to uphold and defend those rights and freedoms which have been universally recognised, including the right to freedom of association."<sup>3</sup>

Opponents of this view argue that compulsory student union membership does not constitute an infringement of freedom of association and that this has been confirmed in the courts. In *Clark v. The University of Melbourne (No. 2)* the Full Court of the Supreme Court of Victoria held that the 'essence of the University's powers is that they are powers of self-government affecting only those who choose to become members by enrolment' and that 'they cannot touch anyone who does not voluntarily bring himself within their reach'.<sup>4</sup>

In *Harradine v. The University of Adelaide*, the Full Court of the Supreme Court of South Australia stated:

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"The suggestion that the Universal Declaration of Human Rights is at all relevant to the issue here is not sound. That Declaration is not part of the domestic law of South Australia. In any event CL8 of Statute XXV does not deny the rights in Article 20 to anyone. The Article does not demand that there be no qualification for entry to a university as a student. Nor does it contemplate a 'union' at a university. Moreover, no one is compelled to belong to the union. Membership follows lawful entry to graduate study at the university. And, of course, membership produced by payment of a fee can be ignored, never exercised."<sup>5</sup>

The Full Court went on to reject the notion that the requirement to join a student association was the equivalent of compulsory unionism:

"The Adelaide University Union is a body providing services to members of the University. The learned trial Judge said it is 'not a union of the kind well known in the industrial and commercial world.' Again His Honour correctly said 'It is the Student's Club providing facilities for eating, sport and other activities'. Certainly the learned trial Judge was correct in rejecting the contention that the clause imposes compulsory unionism. No doubt CL8 requires an undergraduate to belong to an association. But membership is an adjunct of enrolment as an undergraduate."<sup>6</sup>

Critics of these conclusions could argue that it is irrelevant that an association of students is not the same as an industrial union, as it is the element of compulsion that is offensive. This is not mitigated by the fact that "membership is an adjunct of enrolment" because students may have little or no practical choice as to where they enrol. Financial and geographical constraints may require them to attend the nearest institution or the subjects they wish to study may be offered at only one local university.

### Contributions to Political Causes

Opponents of compulsory student unionism have argued that it is wrong to require a person to pay fees to a union which may in turn, make financial contributions to political campaigns which run contrary to that person's beliefs. This question generated great controversy in the 1970s, when the Australian Union of Students (AUS) advanced a series of hard-line pro-PLO resolutions and organised a speaking tour of PLO students.<sup>7</sup>

Many students were opposed to paying union fees of which a portion went, through affiliation, to help pay for AUS and its campaigns. Such students were threatened with expulsion or non-enrolment by a number of universities. The radicalism of AUS, and the determination of universities to enforce the payment of affiliation fees, led to action by the Western Australian and Commonwealth Governments on the issue.

In 1977 in Victoria, a student challenged Melbourne University on this issue in the courts. The judgement of Kaye, J. in the case of Robert W. Clark v. The University of Melbourne and Others cast doubt on the power of the University to make statutes and regulations governing the levying and collection of fees for purposes other than of an academic nature. The *Melbourne University (Amendment) Act 1978 (Vic)* was designed to rectify this

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situation. The Act provided that the University could make statutes and regulations fees for non-academic services and amenities. However, it also stipulated that moneys raised by the University for the provision of amenities and services were not to be expended by students' representatives' council unless its governing body had been elected in an election at which not less than one-quarter of eligible students voted (ss.17.3). Under ss.17(4) it was the duty of the University to ensure that money made available to students' organisations is expended on services and amenities that were of 'direct benefit' to the University. These provisions (ss.17.3 and 17.4) were repealed in 1981.

The Act also stated that 'No person shall be required to be a member of any body or organisation in order to entitle him to be admitted as a student of the University or to graduate thereat' (ss.43.2).

Some of the responses of those who dispute the view that compulsory student unionism is undemocratic and unfair (in that one is forced to make a financial contribution to policies that one may oppose) are as follows:

- it is the nature of democracy that there are winners and losers, and that the taxes (or fees) of the loser will be spent on the winner's agenda;
- there is nothing to prevent one from becoming politically involved in order to change policies one disagrees with; and
- students can choose to attend a university where one can claim conscientious objection to the payment of fees.

It could also be argued that the political and administrative structure sustained by compulsory membership and fees provides one of the few avenues for young people to gain real experience in practical political economy: the distribution of resources between competing needs, negotiation and compromise, and campaigning for support. Critics of this view would argue that it is not the role of universities to be political nurseries and that it would be more productive if students expressed their political aspirations through community organisations and affairs.

### Subsidisation of Services

Even where membership of a student union or guild is voluntary students may be required to pay an amenities and services fee. This has been objected to on the grounds that it constitutes a subsidy for services that the student may not wish to utilise. For example, many part-time students may never use the Union or sports facilities, but still have to pay the annual charge. It would not be difficult to issue cards to those who wish to use such services and are willing to pay for them. This would prevent 'free-riders'. It has also been argued that it would be more efficient if services were left to private enterprise, rather than provided by student organisations with little managerial and commercial experience.

Against these views, the following arguments have been made:

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- the concern over 'subsidies' is selective and self-serving. All students benefit from massive subsidies from the taxpayers (the majority of whom have not had the benefit of a higher education). Students who enrol in Arts, Economics or Law are subsidising those undertaking Dentistry and Medicine through HECS.<sup>8</sup> Thus students who demand 'user-pays' student services should also be demanding the right to pay tuition fees which cover the full cost of their courses - as the same principle is involved.
- There are many campuses where there is no viable alternative to subsidised union amenities and services. Campuses can be located far from shops, and franchises may not be sufficiently profitable (unless subsidised). Many students are willing to provide voluntary assistance under a union system, but this would soon cease if such activity was simply increasing the profits of a private operator.
- The social recreational and cultural life of a campus is dependent upon the operations of student associations. If fees were voluntary, the infrastructure necessary to support these activities would soon disappear.

This argument was expanded by the administrators of WA tertiary institutions as follows:

"The wide range of student extra-curricular activity supported through the amenities and services fee is an important component in the life and character of each institution. The students are given real opportunities for constructive co-operative activity, whether in the administration of the Guild itself, in purposeful representation of student interests in institutional decision-making, or in the affairs of affiliated bodies which bring together students from a variety of facilities and courses and from other institutions throughout Australia. We repeat our considered view that a change to voluntary fee would reduce the direct interest of students in Guild and institutional affairs and would create a climate in which minorities would seek to manipulate the Guilds to further their own political and other ends."<sup>9</sup>

The response to these points is that if students do not wish to provide their own time or money in support of a service or activity, then it is both paternalistic and authoritarian to compel them to do so. The fact that three-quarters of the student population in WA have chosen not to join the guilds could be taken as a rejection of this view by the students themselves. It might also be argued that if university authorities regard the activities supported by amenities and services fees as necessary and important, then they should fund them from their own revenues.

#### **Institutional Autonomy**

It is often argued that institutions should be left to determine their own policies on this subject, and that to legislate to enforce voluntary student unionism is to infringe 'institutional autonomy' or 'academic freedom'.

The response to this argument is that Parliament is ultimately responsible for the policies governing publicly funded statutory institutions, not the administrators of such institutions.

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In addition, 'freedom of association' is a far more basic and important right than 'institutional autonomy'. 'Academic freedom' is concerned with the right of university staff to organise and define their academic activities; it does not provide a justification for academics to interfere in the lives of their students outside this arena.

It has also been argued that an attempt by the Commonwealth to impose voluntary student unionism would represent an unacceptable extension of central authority over universities. In response, it could be argued that the HEFA system has permitted extensive Commonwealth interference in the internal affairs of universities since 1989.

## Main Provisions

Schedule 1 inserts proposed new section 19-37 which will prohibit higher education providers from requiring students enrolling with the provider to become a member of an association or to pay fees that do not directly relate to their courses.

## Endnotes

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- 1 The report can be obtained from [http://www.aph.gov.au/Senate/committee/eet\\_ctte/vsu/report/contents.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/vsu/report/contents.htm)
- 2 This section has been taken from the Bills Digest for the Higher Education Legislation Amendment Bill 1999.
- 3 WA Legislative Council. *Hansard*, 12 Aug. 1993: 2381–2.
- 4 [1979] V.R. 73.
- 5 Unreported Judgement of the Supreme Court of South Australia. No. 321 of 1987. Delivered 31 October 1989.
- 6 Ryan G. et al. *Compulsory Student Unions Australia's Forgotten Closed Shop*, Australian Institute of Public Policy, 1987, p. 52.
- 7 *ibid.*, pp. 39–44.
- 8 This is because the HECS payment for Arts, Economics and Law is a higher proportion of the actual cost of those courses than is the HECS payment for Medicine and Dentistry. See Department of the Parliamentary Library Research Note No.54, June 1997, *Tuition Fees and University Funding*, Table 1: Fees, HECS and Costs.
- 9 "Compulsory fees basic to the student system", *The West Australian*, 18 January 1982.

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