



Note:

This Digest replaces an earlier version dated 5 March 2009. It makes a minor revision on page 8.

Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009

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Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009

Date introduced: 11 February 2009

House: House of Representatives

Portfolio: Education

Commencement: The formal provisions commence on Royal Assent, Schedules 2 and 3 the day after Royal Assent. Schedule 1 commences six months from the day of Royal Assent or earlier by Proclamation.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Committee consideration

The Bill has been referred to the Education, Employment and Workplace Relations Committee for inquiry and report by 10 March 2009. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/eet_ctte/higher_ed/index.htm

Purpose

The Bill amends the *Higher Education Support Act 2003* (the Act) to:

- Allow higher education providers to charge students an annual capped compulsory student services and amenities fee from 1 July 2009
- Introduce a new Higher Education Loan Program (HELP) category for student amenities fees called Services and Amenities-HELP (SA-HELP)
- Broaden the application of the Higher Education Loan Program (HELP) category for Vocational Education and Training students called VET FEE-HELP, and
- Provide that officers of Tertiary Admission Centres (TACs) have the same status and duty of care as those of higher education providers in relation to processing student information.

The Bill also amends the *Income Tax Assessment Act 1936* to account for the new SA-HELP provisions.

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Background—Student services and amenities fee

The issue of student services and amenities fees, also called student union fees, has been before Parliament on many occasions most recently with the Higher Education Support Amendment (Abolition of Compulsory Upfront Student Union Fees) Bill 2005 which was passed by the Parliament in December 2005.¹ It was the third attempt by the Howard Government to abolish compulsory student union fees. The first was the Higher Education Legislation Amendment Bill 1999, which did not progress through the Senate. Then, in September 2003, the Howard Government introduced the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 as part of its higher education reform package, *Backing Australia's Future*. This Bill did not proceed beyond the second reading.²

Voluntary Student Unionism (VSU)

The effect of the *Higher Education Support Amendment (Abolition of Compulsory Upfront Student Union Fees) Act 2005*, is that section 19-37 of the *Higher Education Support Act* (the Act) prevents a higher education provider requiring a student to be a member of a student association, union or guild and prevents a compulsory fee for facilities, amenities or services that are not of an academic nature. Compliance with VSU legislation is a condition of continued approval as a higher education provider and a condition of Commonwealth grants to providers.

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1. More detailed background on this issue can be found in Kim Jackson, *Voluntary Student Unionism*, Parliamentary Library Background Note, SP006, 30 November 2004 http://libiis1/Library_Services/BN/Education/sp006.doc. This link is for internal Parliamentary users only. However, some of this background material is also available in the Bills Digest at <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd058.htm>

See also Peter McDonald et al, *VSU Impact Study: a Study on the Impact of Voluntary Student Unionism Legislation at Universities across Australia*, Australian University Sport, Milton Qld, February 2008, Chapter 4 Background to the VSU Legislation, http://www.acuma.org.au/Media/downloads/80_16200849022522_82.pdf accessed 20 February 2009.

2. In 1996 the Howard Government had also introduced the *Higher Education Funding Amendment Bill (No.2) 1996* to repeal provisions providing Commonwealth assistance to student organisations where State or Territory legislation had prevented the imposition of student organisation fees. The Bill was referred to the Senate Employment, Education and Training Legislation Committee, which reported in October 1996. The Committee recommended that the Bill be passed without amendment, although this view was disputed by the Opposition and Democrat Senators on the committee. The Bill did not proceed through the Senate.

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VSU Transition Funding

To allay concerns of National Party Senators and Senator Fielding on the impact of VSU on regional campuses and on recreational and sporting activities, the Howard Government provided \$100 million of transition funding to universities through three competitive funding programmes.³ The VSU Transition Fund for Recreational and Sporting Facilities, allocated \$85 million for 44 projects,⁴ the Small Businesses on Regional Campuses Fund allocated \$5 million for 19 projects,⁵ and the Regional University Sport Programme is providing \$10 million over four years to Australian University Sport (AUS).

However the Australasian Campus Union Managers' Association (ACUMA) and AUS concluded 'the grants available from the VSU Transition Fund do not address the shortfalls in recurrent funding and provide only temporary respite from the pressing capital needs of the sector'.⁶

Impact of Voluntary Student Unionism

In November 2007, after one year of VSU, AUS and ACUMA reported an annual reduction of \$166 million in funding from amenities and services fees (they expected this to rise to \$200 million in 2009), a loss of 1000 jobs (or a reduction in employment of 30 per cent), increased direct charges to students and user pays charges increasing in most cases above the Consumer Price Index (CPI).⁷

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3. 'PM steals victory on uni fees', *The Australian* 10 December 2005, A. Fraser, 'Student unions bill goes through', *Canberra Times*, 10 December 2005, D. Wroe, 'PM has win on student unions', *The Age*, 10 December 2005.
 4. For a list of the projects and funding committed see:
http://www.dest.gov.au/sectors/higher_education/programmes_funding/VSUUF.htm
accessed 23 February 2009
 5. For a list of the projects and funding committed see:
http://www.dest.gov.au/sectors/higher_education/programmes_funding/programme_categories/small_business_regional_uni/default.htm
 6. Australasian Campus Union Managers' Association (ACUMA) VSU impact study overview ACUMA website:
<http://www.acuma.org.au/DisplayPage.asp?pageid=4992> accessed 18 February 2009.
 7. Peter McDonald et al, *VSU Impact Study: a Study on the Impact of Voluntary Student Unionism Legislation at Universities across Australia*, (First draft release) Australian University Sport, Milton Qld, November 2007, pp. 1–4,
http://www.acuma.org.au/Media/downloads/53_09200704113409_16.pdf accessed 23 February 2009, and Peter McDonald et al, *VSU Impact Study: a Study on the Impact of Voluntary Student Unionism Legislation at Universities across Australia*, (Second draft release) Australian University Sport, Milton Qld, February 2008,

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In February 2008, the Hon Kate Ellis MP, Minister for Youth, undertook consultations with and invited submissions from stakeholders on the impact of the current VSU policy. The *Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students – Summary Report* concluded:

Most submissions concluded that the abolition of upfront compulsory student union fees had impacted negatively on the provision of amenities and services to university students, with the greatest impact at smaller and regional universities and campuses.

Many noted that the introduction of VSU had forced rationalisations, and that current levels of services were more limited than had previously been the case.

In many instances, assistance was provided by the university but these funds were redirected from other uses such as teaching, learning or research.

While a ‘user-pays’ model worked for some services (e.g. food and beverage outlets), it was reported that this type of delivery commonly resulted in increased costs to individual students.

Many submissions put forward the view that VSU had resulted in a lessening of the vibrancy, diversity and, to some extent, the attractiveness of university life.

VSU had commonly resulted in an increase in fees, which had led to a decrease in the number of clubs and/or in club membership.

While most submissions focussed on the negative effects of VSU on student services and amenities, some institutions did report some benefits. These included the streamlining and more efficient delivery of services to suit student needs, the opening up of the provision of services to a commercial model, and consultation with students to determine what could be defined as essential services.

Most submissions indicated that the capacity for student advocacy and democratic student representation had been significantly reduced since VSU.

Submissions reported that, at a number of universities, there was no longer a student union. In other instances, a number of student groups had been merged into one body.

pp. 1–4, http://www.acuma.org.au/Media/downloads/80_16200849022522_82.pdf accessed 23 February 2009.

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Some institutions commented that there had been benefits from VSU in terms of student representation and, in particular, that representation was now from a broader base.⁸

Basis of policy commitment

The Australian Labor Party in opposition promised to restore campus amenities, services and student representation ‘free from Government dictates and interference’. In the ALP’s white paper on education, shadow spokesperson, Jenny Macklin, proposed that the provision and funding of services would be formulated through ‘compact negotiations between the university and Government’, and that ‘the financial imposition on students will not increase.’ Additionally as part of the compact negotiations ‘universities would need to demonstrate that an independent, democratic and securely funded student representative body exists’.⁹

Following the ALP’s National Conference in May 2007 the shadow spokesperson Stephen Smith outlined the party’s policy:

I ...made it clear at the National Conference, and this was acknowledged by a number of delegates, that it wasn’t appropriate for Labor, and Labor would not be able to go back to the pre-Voluntary Student Unionism world and that was accepted by the Conference and accepted by delegates.

Labor’s priority here is to do two things as outlined in the Platform: Firstly, to ensure that students, if they so choose, can voluntarily organise themselves into representative organisations. Secondly, and more importantly, that all students have access to decent amenities and services, whether that’s sporting facilities, cultural facilities, child-care facilities and the like.

The funding of those services has been a matter of conversation between me and the Universities. I believe that the Commonwealth, the Government of the day, has a responsibility, together with the Universities, to fund those services and of course it’s also appropriate for students, if they so choose, to make a voluntary contribution to those services, or indeed to be charged a fee if that is

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8. Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students – Summary Report, DEEWR, Canberra, July 2008. http://www.dest.gov.au/NR/rdonlyres/0BC037DB-1F39-452D-8947-225E63A85DB1/22931/VSUMmaryReport_W2finalfromPublications3.pdf accessed 20 February 2009.
 9. *Australia’s universities: building our future in the world: a white paper on higher education, research and innovation*, Australian Labor Party, 2006, p. 74, http://parlinfo.parlInfo/download/library/partypol/1LBK6/upload_binary/11bk65.pdf;fileType=application%2Fpdf#search=%22amenities%20%20student%22 accessed 26 February 2009.

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appropriate when they use those services such as sporting facilities, gyms and the like.

To a journalist's question Stephen Smith stated 'I certainly do not have on my list an extension of HECS, either voluntary or compulsory, to fund these services. So I absolutely rule that out ... I believe that these services should be provided either by the Universities, or by the Commonwealth or both'.¹⁰

The Bill implements the general thrust of the policy to restore services and student representation without a return to the 'pre-Voluntary Student Unionism world'. However the compulsory fee, the proposed SA-HELP, the lack of government funding and the degree of government regulation and compliance are major diversions from the government's policy in opposition.

Following the government's consultation on the impact of VSU the Minister, the Hon Kate Ellis announced that

From 1 July 2009, universities will be allowed to set a compulsory fee, capped at a maximum of \$250 with indexation each year, to help rebuild student amenities and student services ... To help students manage the fee the Australian Government will provide access to a HECS style loan under the Higher Education Loan Program (HELP). SA – HELP will allow eligible students to defer the payment of the fee if they choose.

The Minister 'stressed that this was not a return to compulsory student unionism and the provision which prohibits a university from requiring a student to be a member of a student organisation will remain'. The Minister also announced a new requirement for universities to 'meet national benchmarks relating to access to student support services and fulfil new representation and advocacy protocols'.¹¹

The Bill is not proposing to reintroduce student union fees in that funds will be administered by higher education providers rather than student unions. Furthermore providers must not spend the collected funds to provide support to a political party

10. S. Smith (Shadow Minister for Education and Training), *Transcript of Doorstop, Subject: Voluntary Student Unionism; Mike Bailey, Government Extravagance*, media release, Parliament House, Canberra, 22 May 2007, http://parlinfo/parlInfo/download/media/pressrel/EY4N6/upload_binary/ey4n61.pdf;fileType=application/pdf#search=%222000s%20smith%20hecs%22 accessed 26 February 2009.

11. K. Ellis (Minister for Youth), *Rebuilding Student Support Services in our Universities*, media release, 3 November 2008, http://www.deewr.gov.au/Ministers/Ellis/Media/Releases/Pages/Article_081130_112847.aspx accessed 23 February 2009.

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or to support a candidate for political office.¹² However the Bill is proposing that a capped student amenities fee can be charged by a higher education provider and made compulsory. Consequently the reaction to the Bill is framed within the context of previous debates on compulsory student union fees. These debates go back to the Whitlam Government's proposal that the Commonwealth assume full responsibility for financing higher education. Tuition fees were to be abolished, but student representative council, union and sports fees would remain the responsibility of the student, to be collected by the institution.¹³

Journalist Charles Richardson, a life member of the Australian Liberal Students' Federation, argues 'VSU arouses political passions out of all proportion to its intrinsic importance. It is also a peculiarly fossilised debate, since positions on both sides were set some 30 years ago when university funding arrangements, not to mention the ideological landscape in general, were very different.¹⁴ Political passions have again arisen in the current debate with the Coalition describing the proposed legislation as having 'the same stench as Compulsory Student Unionism'.¹⁵

Position of significant interest groups

Australasian Campus Union Managers' Association (ACUMA), Australian University Sport (AUS) and Universities Australia have welcomed the Bill as a

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12. In 2005 universities collected \$172.8 Million from student amenities and services fees. 71 percent was distributed to student organisations, 14 per cent funded university run services and 15 per cent funded other bodies such as privately run student advocacy organisations. AVCC report on Higher Education Support Amendment (Abolition of Compulsory Up-front Student Fees) Bill 2005, AVCC, Canberra, June 2005, Table 6, http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/AVCC_report_HESABill-2005.pdf
 13. *Australian Government Digest*, 5 Dec 1972 - 31 March 1973: 158.
 14. Charles Richardson, 'Government returns to the student union minefield', Crikey, 23 February 2009 <http://www.crikey.com.au/Email/Preview/DailyEmailPreview.aspx?pid=f3c25373-ddff-404f-9565-213426414d1c#20ed102d-9724-4c8a-a055-999e63932221>
 15. S. Mirabella, *Labor's 'university tax' legislation needs scrutiny*, media release, 11 February 2009, http://parlinfo/parlInfo/download/media/pressrel/2JRS6/upload_binary/2jrs60.pdf;fileType=application%2Fpdf#search=%22mirabella%22 accessed 20 February 2009.
Arguments for and against Compulsory Student Unionism are covered in Kim Jackson, Voluntary Student Unionism, Parliamentary Library Background Note, SP006, 30 November 2004 http://libiis1/Library_Services/BN/Education/sp006.doc

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means of restoring student services.¹⁶ Universities Australia has called for the government to ‘implement the policy commitment to a new student services and amenities fee through successful negotiation of passage of the legislation and speedy implementation of the policy’.¹⁷

However successful negotiation of passage of the legislation may prove difficult. The Australian Liberal Students’ Federation is running an online campaign against the legislation and is reported to be pressuring cross bench senators to block the Bill.¹⁸ Other student groups, including the National Union of Students and the Council of Australian Postgraduate Associations are concerned over the provisions that prevent funds going directly to student associations.¹⁹ Their concerns have some support from the Greens who are also calling for more effective student advocacy.²⁰

The Coalition policy is to oppose the Bill.²¹ National Party Senators may be crucial to the passage of the Bill. Senator Barnaby Joyce crossed the floor in the 2005 vote on the Higher Education Support Amendment (Abolition of Compulsory Upfront Student Union Fees) Bill. In 2005 Senator Joyce supported the abolition of compulsory student union fees and prohibiting the use of fees for political activities but argued for fees to fund amenities and services such as those proposed in the current Bill.²² Senator Joyce is reported to again be considering crossing the floor ‘suggesting other Nationals may join him in abandoning the Liberal Party’s holy

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16. Australian University Sport (AUS) and Australasian Campus Union Managers’ Association (ACUMA) *Government introduces Bill in support of campus life*, Draft media release, 12 February 2009.
 17. Universities Australia ‘Response to the Review of Australian Higher Education (‘the Bradley Review’)', 17 February 2009, <http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/Bradley-Report-Response-Feb2009.pdf>
 18. Stop Student Taxes website: <http://stopstudenttaxes.com/?source=cmailer> accessed 23 February 2009; see also D. Harrison, ‘Liberal students seek fee block’, *The Age*, 16 February 2009.
 19. Council of Australian Postgraduate Associations (CAPA), *Postgrads cautiously welcome VSU fix*, media release, 3 November 2008.
 20. Senator Hanson-Young, *Greens concern over new VSU bill*, media release, 11 February 2009.
 21. Sophie Mirabella, Second reading speech: Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, House of Representatives, *Debates*, 24 February 2009.
 22. Senator Joyce’s amendments were negated and he subsequently voted against the bill. The bill passed however with the support of Senator Fielding. See [Senate Journals, SJ No 68, 9 December 2005](#),

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grail of voluntary student unionism because it had been a “fiasco” that had punished country students who enjoyed playing sport’.²³

Key issues— Student services and amenities fee

Should the fee be compulsory?

The Bill does not propose a return to compulsory student union membership. Therefore the argument that compulsory student union membership infringes upon the fundamental right to freedom of association in this respect is irrelevant. However it could be argued that the compulsory fee constitutes a subsidy for services that the student may not wish to utilise. For example, many part-time and external students may never use the facilities and services, but still have to pay the annual charge. Universities Australia argue that ‘not all students may use these services during their study, but is firmly of the view that it is better for all students to contribute to the provision of the services, which are then available to all, than to not have the services available to those who need them. Additionally, such services will provide a safety net for those students who had begun their study with no need for the services, but whose situations change for the worse during the course of their study’.²⁴

Should higher education providers control the funds?

The proposal not to return to a system where student unions received the bulk of the funds and provided most of the services is cause for debate. The Newcastle University Students’ Association (NUSA) point out that ‘this legislation does not prohibit universities from funding student organisations. However, student organisations which are properly performing their role, including holding universities to account, are unlikely to attract funding from the university as this represents a conflict of interest’.²⁵ The Council of Australian Postgraduate

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23. S. Maiden, ‘Liberals tell Barnaby Joyce to toe line over voluntary unionism’, The Australian online, 3 November 2008
<http://www.theaustralian.news.com.au/story/0,25197,24595307-601,00.html>
accessed 23 February 2009, see also S. Maiden, ‘Compulsory \$250 university student fee faces Senate fight’, The Australian online, 3 November 2008,
<http://www.theaustralian.news.com.au/story/0,25197,24593032-12332,00.html>
accessed 23 February 2009.
 24. Universities Australia, Submission to Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, Canberra, Universities Australia, February 2009,
<http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/UniAus-Student-Serv-Amen-Sub-Feb-09.pdf> accessed 24 February 2009
 25. Newcastle University Students’ Association (NUSA) Submission to Senate Committee Inquiry into the Higher Education Legislation Amendment (Student

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Associations (CAPA) argue that ‘student representation and academic advocacy can only be effective where it is truly independent, and that it cannot be truly independent where the university has discretionary control over 100% of student money under this fee.’²⁶ CAPA recommends that the Guidelines should require providers to make a fixed amount or proportion of the fee directly to student organisations and that provisions that prevent that should be deleted from the Bill.²⁷

Universities Australia welcomes the freedom to contract services to providers other than student unions as ‘the Unions may not be the most appropriate providers of these services and amenities envisaged by this Amendment.’²⁸

Will the fee be sufficient to restore essential student services and reinvigorate campus life?

A 2004 Australian Vice-Chancellors’ Committee survey found student services and amenities charges ranged from \$100 to more than \$350. The median was in the range \$200 to \$250.²⁹ The fees raised \$172.8 million of which \$24.8 million or 14 per cent was spent on advocacy, representation and political activity.³⁰ In 2007

Services and Amenities, and Other Measures) Bill 2009,
<https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=c6419102-6090-425b-b2c6-6a7938a121fb>

26. CAPA, *Draft Student Amenities Fee Guidelines Announced*, media release, 19 February 2009, http://www.capa.edu.au/mediarelease/2009/draft_guidelines accessed 24 February 2009 ; Council of Australian Postgraduate Associations (CAPA), Submission to the Senate Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, CAPA, Carlton South, February 2009, p. 8, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=b5f01f65-a2f1-4e0d-ba7b-295f7cb68820> accessed 24 February 2009.
27. Proposed subsection 19-67(3) prevents the Guidelines from requiring a provider to fund an organisation of students, or of students and other persons.
28. Universities Australia, Submission to Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, Universities Australia, Canberra, February 2009, <http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/UniAus-Student-Serv-Amen-Sub-Feb-09.pdf> accessed 24 February 2009
29. Similar fees were listed in a Table of Annual compulsory student services fees by institution, 2003, in B. Nelson (Minister for Education, Science and Training), *ACCC Decision Working Against Students*, media release, 1 May 2003, http://parlinfo/parlInfo/download/media/pressrel/BC796/upload_binary/bc7964.pdf;fileType=application/pdf#search=%22acce%20nelson%22 accessed 24 February 2009.
30. Australian Vice-Chancellors’ Committee, *AVCC report on Higher Education Support Amendment (Abolition of Compulsory Up-front Student Fees) Bill 2005*,

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there were 664,381 full-time students and 312,405 part-time students at Australia's public universities. Assuming universities charge full-time students \$250 and part-time students \$125 the fees would raise \$205 million. With the restriction on payments for political activity this should be sufficient to reinstate a range of services at most universities. Those universities which charged more than \$300 in 2004 may need to provide additional funds from other sources of income. ACUMA is concerned that the \$250 cap will be inadequate 'if the government's intent is that the capped fee also provide for the on-going capital infrastructure needs (inclusive of deferred maintenance liabilities on existing buildings and construction/acquisition of new buildings and grounds/facilities) of the campus services sector'.³¹

An alternative view is put by the University of Queensland Union which opposes the introduction of the services and amenities fee: 'VSU has not resulted in a lessening of campus culture or available services and activities ... The UQ Union has been able to maintain all essential representational and advocacy services that were provided before VSU and is constantly investing in new areas that will encourage further involvement and awareness of the Union's services'.³²

Will the guidelines clearly define activities that providers cannot fund?

The Bill in new section 19-38 proposes to prohibit student services and amenities funds supporting political parties or the campaigns of those seeking political office. Higher education providers will be given further guidance on the legitimate disbursements of funds in the proposed Student Services and Amenities Fee Guidelines (the 'Fee Guidelines').³³ The proposed Fee Guidelines, released by the Minister on 19 February 2009, allow support of a range of activities including

AVCC, Canberra, June 2005, pp. 5–8

http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/AVCC_report_HESABill-2005.pdf

31. ACUMA, Submission to Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=0e0b3a23-29f7-4ee4-bf31-697482ca5ea3>
32. University of Queensland Union, Submission to Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=f9616d3e-510a-4135-afc5-5280e829fd53> accessed 25 February 2009.
33. The Fee Guidelines will be made under section 238-10 of the Act and will be disallowable instruments as will any amendments made to them.

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‘clubs and societies’.³⁴ Universities may find they are in conflict with the new legislation if the activities of such clubs and societies are interpreted as supporting a political party. As the Australian Liberal Students’ Foundation points out: ‘There are numerous student organisations that are political in nature that will be eligible to receive monies compulsorily acquired from students, as the majority of political groups on campus would not meet these requirements ... In fact, the Australian Liberal Students’ Federation will not be prevented from obtaining money from a student organisation, as it is not a political party *per se*’.³⁵

Will the fee be a financial burden on students?

This may have been a legitimate concern if the amendment to introduce SA-HELP had not been introduced. Over a three year degree a full-time student will pay a maximum \$750. Universities Australia has calculated that this will represent 3.6% of the total HELP debt of a graduating student with an average HELP debt of \$20,579.³⁶

Background—VET FEE-HELP provisions

Income contingent loans (ICLs) for students such as those that have been available in the higher education sector for some time were extended to the vocational education and training (VET) sector in 2007 under the *Higher Education Support Amendment (Extending Fee-Help for VET Diploma, Advanced Diploma, Graduate Diploma and Graduate Certificate Courses) Act 2007*. The loan scheme was introduced by the Australian Government as part of its agenda to increase productivity, address skills shortages and assist students with the cost of studying. It has been introduced at a time when all governments operating within tight

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34. K. Ellis (Minister for Youth), *Securing the future of university support services*, media release, 19 February 2009; Student Services and Amenities Fee Guidelines <http://www.dest.gov.au/NR/rdonlyres/2B5C712C-FE76-451E-839F-22F8A377F162/25473/090218StudentServicesandAmenitiesFeeGuidelines.pdf>
 35. Australian Liberal Students’ Federation (ALSF), Submission to Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, p. 9 <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=0b961a68-cfe7-4a74-9c3e-bdb6c353366b> accessed 26 February 2009.
 36. Universities Australia, Submission to Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, Universities Australia, Canberra, February 2009, <http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/UniAus-Student-Serv-Amen-Sub-Feb-09.pdf> accessed 24 February 2009

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budgetary constraints have been looking to increase private sources of investment in VET to meet the skills and training needs of a growing economy.

However, VET FEE-HELP, as the loans are known, have been introduced in a limited way. They have only been made available for full-fee courses at the Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate level. Other conditions on accessing them include that the provider must be a corporate body and that arrangements need to be put in place between the approved VET provider and a higher education provider to credit the qualification towards a higher education award.³⁷

The amendments provided for in this Bill seek to broaden access to VET FEE-HELP essentially by reducing the level of legislative prescription on eligibility by allowing more flexibility through the use of the VET FEE-HELP Guidelines. Specifically the amendments relate to the value of the loan debt and the eligibility of courses and students. In future these requirements will be provided for in the VET FEE-HELP Guidelines. As legislative instruments, the VET FEE-HELP Guidelines do not require the same level of Parliamentary scrutiny as legislation, and can therefore be more flexibly adapted.³⁸

Measures that would allow for a reduction in the value of a student's loan debt and that would relax the credit transfer requirements for eligible courses are explicit in the amendments proposed by this Bill.

However, less explicit in the Bill and supporting documentation are the conditions under which the loan debts might be reduced, the credit transfer arrangements relaxed, and what might be the circumstances that would lead to establishing different requirements for different students or ones that may relate only to some students taking a particular unit of study. These details will only be clarified when the proposed new Guidelines are circulated for public consultation. At such a time any administrative issues associated with proposed changes may also become clearer.

The *Explanatory Memorandum* does however indicate that its immediate application would be to fulfil the Commonwealth's commitment to Victoria to

37. For an overview of the issues relating to the introduction of VET FEE-HELP see Carol Kempner, '[Higher Education Support Amendment \(Extending Fee-Help for VET Diploma and VET Advanced Diploma Courses\) Bill 2007](#)', *Bills Digest*, no. 11, Parliamentary Library, Canberra, 2007–08 and Senate, Education, Employment and Workplace Relations Committee, [Higher Education Support Amendment \(Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses\) Bill 2007 \[Provisions\]](#), 2007.

38. Although Guidelines are disallowable instruments.

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provide income contingent loans to ‘eligible students, studying Government-subsidised diploma and advanced diploma courses’.³⁹ This is being done in support of that State’s package of VET reforms; the Commonwealth has offered similar support to any other State that pursues reform in VET.⁴⁰ The proposed amendments would therefore enable the Guidelines to be redrafted to allow for government-subsidised students to receive these loans for specified courses.

Key issues—VET FEE-HELP provisions

Advocates of income contingent loans for VET regard their introduction into the sector as a matter of equity. They argue that VET students are disadvantaged by having to pay up-front fees because unlike higher education students, they have no access to such loans. On the other hand critics of their introduction into the VET sector have expressed their concerns that access to such loans would lead to substantial increases in what are currently, relatively low fees for VET students, thereby increasing the burden on individual VET students.⁴¹ They argue therefore that rather than expanding participation in VET they may act as a barrier.⁴²

In addition, the risk to the Commonwealth government associated with fee increases brought about by state and territory governments was acknowledged in one of the key reports advocating income contingent loans for VET:

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39. B. O’Connor (Minister for Employment Participation), *Speech: TAFE meets Parliament Skills Innovation 2020 Forum, 16 September 2008*, media release, Parliament House, Canberra, 16 September 2008, http://parlinfo/parlInfo/download/media/pressrel/5JKR6/upload_binary/5jkr60.pdf;fileType=application%2Fpdf#search=%22tafe%20victoria%20fee-help%22
 40. *Explanatory Memorandum*, p.3 and J. Gillard (Minister for Education), *Commonwealth will support States willing to reform VET*, media release, Parliament House, Canberra, 26 August 2008.
 41. See for example A. Trounson, ‘TAFE loans could go national’, *The Australian*, 18 June 2008, p. 23, http://parlinfo/parlInfo/download/media/pressclp/9BRQ6/upload_binary/9brq62.pdf;fileType=application%2Fpdf#search=%22chapman%20hecs%20tafe%22, accessed on 20 February 2009.
 42. F. Tomazin, ‘Canberra stalls on Brumby’s TAFE loan scheme: threat to low-income students: union’, *The Age*, 2 August, 2008, p. 9, http://parlinfo/parlInfo/download/media/pressclp/4W5R6/upload_binary/4w5r60.pdf;fileType=application%2Fpdf#search=%22canberra%20stalls%22, accessed on 20 February 2009.

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The Commonwealth government has traditionally not been directly involved in TAFE and it would need to be satisfied that the risks associated with, for example, the level of fees being raised, have been fully thought through.⁴³

At this stage the estimated fiscal impact provided in the *Explanatory Memorandum* of approximately \$5 million in each of the first two years (p.3) is only based on the application of the measure to Victoria, which at this stage, is the only State to have introduced such reforms.

There is no indication at this stage that VET FEE-HELP will be extended in the future to courses other than government-subsidised Diploma and Advanced Diploma courses. Despite the amendments in this Bill there would have to be further legislative changes if VET FEE-HELP were to be introduced for other than Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate level courses.

Financial implications

For the financial impact of the SA-HELP and VET FEE-HELP measures see the Explanatory Memorandum. The Tertiary Admission Centres measure will have nil financial impact.

Main provisions

Schedule 1—Student services and amenities

Schedule 1 amends the Act and deals with the proposed student services and amenities fee.

Item 4 adds three new subsections to section 19-37 of the Act. **Proposed subsection 19-37(4)** allows providers to charge a compulsory student services and amenities fee. **Proposed subsection 19-37(5)** defines the student services and amenities fee amount which must be determined in accordance with the Student Services and Amenities Fee Guidelines (the Fee Guidelines). The guidelines are

43. Bruce Chapman, Mark Rodrigues and Chris Ryan, 'HECS for TAFE: the case for extending income contingent loans to the vocational education and training sector', *Treasury working paper, 2007-2*, Treasury, 2007, p. 41, <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1252>, accessed on 20 February 2009.

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made under section 238-10 of the Act and are disallowable instruments. Proposed Fee Guidelines were released by the Minister on 19 February 2009.⁴⁴

Proposed paragraph 19-37(5)(e) sets an upper limit of \$250 for annual fees from 2010, though this limit is indexed.

The Bill does not change existing subsection 19-37(1) which prohibits a higher education provider requiring a person to be a member of a student organisation.

Item 5 proposes a **new section 19-38** that defines the spending of student services and amenities fees. The fees cannot be used to support, or to pay a person or organisation to support, a political party or the election of a person to a Commonwealth, State or Territory legislature; or to a local government body. 'Political party' is not defined under the Bill or existing Act. **Proposed subsection 19-38(3)** limits the spending of the student services and amenities fees to purposes specified in the Student Services and Amenities Fee Guidelines (the 'Fee Guidelines').

The Fee Guidelines will be vital if providers are to successfully comply with the legislation. The proposed Fee Guidelines include seventeen categories of allowable services and amenities and states:

Allowable uses of the fee in relation to services and amenities may include the categories listed below. In all cases the purpose would include but not be limited to, the direct provision of the service or amenity, the provision of infrastructure (including new construction) and subsidies that would reduce the price that students may have to pay.

Already Universities Australia and CAPA have identified a range of services that they consider should be added to the list. Consultation with higher education providers will be necessary to ensure the final Fee Guidelines introduced are not in a form that requires numerous amendments.⁴⁵

44. K. Ellis (Minister for Youth), *Securing the future of university support services*, media release, 19 February 2009; Student Services and Amenities Fee Guidelines <http://www.dest.gov.au/NR/rdonlyres/2B5C712C-FE76-451E-839F-22F8A377F162/25473/090218StudentServicesandAmenitiesFeeGuidelines.pdf>

45. Universities Australia, Submission to Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, Canberra, Universities Australia, February 2009, <http://www.universitiesaustralia.edu.au/documents/publications/policy/submissions/UniAus-Student-Serv-Amen-Sub-Feb-09.pdf> accessed 24 February 2009; Council of Australian Postgraduate Associations (CAPA), Submission to the Senate Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, CAPA, Carlton South, February 2009, p. 13,

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Item 6 proposes a **new section 19-67** requiring higher education providers that receive funding under the Commonwealth Grants Scheme to comply, from 2010, with Student Services, Amenities, Representation and Advocacy Guidelines (the 'Advocacy Guidelines'). The Advocacy Guidelines will detail the National Access to Services Benchmarks, and require providers to provide information on, and access to, non academic student support services. The Advocacy Guidelines will also include National Student Representation and Advocacy Protocols to ensure there are opportunities for students to be part of institutional decision making and have access to advocacy services.⁴⁶ The Advocacy Guidelines will be made under section 238-10 of the Act and will be disallowable instruments. **Proposed subsection 19-67(4)** states subsection 19-65(1) **does not** apply in relation to the Student Services, Amenities, Representation and Advocacy Guidelines. 19-65(1) of the Act states 'A higher education provider must comply with the requirements of this Act, the regulations and the Guidelines made under section 238-10'. The National Union of Students in its submission to the Senate Inquiry on the Bill expresses some concern that the Advocacy Guidelines are not legally enforceable: 'NUS is somewhat mystified why these Guidelines should be exempted from the compliance requirement of the Act'.⁴⁷ The National Tertiary Education Union (NTEU) also 'seeks clarification as to the purpose of clause (4) under proposed Section 19-67, which appears to remove the Student Services, Amenities, Representation and Advocacy Guidelines from compliance requirements for higher education providers'.⁴⁸ Certainly neither the Second reading Speech nor the Explanatory Memorandum provide any rationale for the exemption.

<https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=b5f01f65-a2f1-4e0d-ba7b-295f7cb68820> accessed 24 February 2009

46. Student Services, Amenities, Representation and Advocacy Guidelines
<http://www.dest.gov.au/NR/rdonlyres/7E49B522-3A12-4581-9D3C-CA3B4561A703/25471/090218StudentServicesAmenitiesRepresentationandAdv.pdf>
47. National Union of Students (NUS) Submission to the Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures Bill 2009), February 2009,
<https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=51cada71-42c5-48e5-8c70-caa0cbfdfa99>
48. The National Tertiary Education Union (NTEU), Submission to the Senate Committee Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures Bill 2009), NTEU, South Melbourne, 20 February 2009,
<https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=6130a3a7-09ac-4066-84f5-f2bf106e2d51>

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Item 10 proposes a **new Part 3-5** that introduces a new Higher Education Loan Program (HELP) category for student services and amenities fees called Services and Amenities-HELP (SA-HELP).

SA-HELP will allow eligible students to defer the payment of the student services and amenities fees if they choose and add it to other income contingent HELP loans taken during their study.

Schedule 2—VET FEE-HELP

Schedule 2 amends the Act and deals with with the broadening of access to VET FEE-HELP.

Items 1 and 2 would allow for the VET FEE-HELP Guidelines to specify the conditions under which a less than 120 per cent debt is incurred by a VET FEE-HELP loan. Currently the loan debt is 120 per cent, of which 20 per cent is a loan fee.

Items 3-7 in the Bill would effectively relax the credit transfer provisions. **Item 3** removes the credit transfer conditions from the Minister's requirements to approve a body corporate as a VET provider. These requirements will then be dealt with through guidelines.

The credit transfer arrangements for courses are also being relaxed. Currently under paragraph 45(1)(a) the course requirements for VET FEE-HELP assistance for a VET unit of study include that the unit 'is being undertaken as part of a VET course of study that meets any requirements set out in the VET FEE-HELP Guidelines relating to VET credit transfer arrangements'. **Item 5** removes the reference to credit transfer in paragraph 45(1)(a). **Item 6** then inserts a new section 45(1A) which would allow with respect to the arrangements for courses provided under the amended paragraph 45(1)(a), which are no longer limited by credit transfer arrangements, that the VET FEE-HELP guidelines can set out different requirements for different students and requirements that may relate only to some students taking a particular unit of study.

Schedule 3—Tertiary Admission Centres (TACs)

Schedule 3 amends the Act and deals with Tertiary Admission Centres (TACs)

Schedule 3 provides that officers of Tertiary Admission Centres (TACs) have the same status and duty of care as those of higher education providers in relation to processing students' personal information. According to the Department of Education, Employment and Workplace Relations this 'will ensure that student information may be shared between the Department, higher education providers,

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VET providers, and TACs as appropriate and be governed by the appropriate privacy safeguards.⁴⁹

Concluding comments

The issue of student amenities fees has historically generated passionate debate, both in parliaments and in the public domain, much of it centred on the issue of student unionism and the compulsory payment of fees to student organisations. The Bill implements a middle path in the policy debate. It meets a government promise to restore campus amenities, services and student representation – which have been heavily cut since the Howard Government enacted the 2005 voluntary student unionism legislation – without restoring compulsory student unionism. However it does propose a compulsory fee which will be administered by higher education providers who must in turn comply with the provisions of the *Higher Education Support Act* and the requirements of the Advocacy Guidelines and the Fee Guidelines made under the Act. The compulsory element of the fee will continue to generate debate of a philosophical and ideological nature. However Parliament may need to scrutinise the details in the Bill and the proposed Advocacy Guidelines and Fee Guidelines to ensure that higher education providers have clarity in their administration of the student services and amenities fees and compliance with the legislation.

49. Department of Education, Employment and Workplace Relations, Submission to inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, Canberra, 19 February 2009. <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=88a47aa4-1b68-49e2-849e-25d02cb507b0> accessed 25 February 2009.

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