



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

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

**Date introduced:** 29 September 2010

**House:** House of Representatives

**Portfolio:** Tertiary Education, Skills, Jobs and Workplace Relations

**Commencement:** The formal provisions commence on Royal Assent. Schedule 1 commences six months from the day of Royal Assent or earlier by Proclamation.

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 (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 ('on or after') 1 January 2011, and
- Introduce a new Higher Education Loan Program (HELP) category for student amenities fees called Services and Amenities-HELP (SA-HELP).

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

### Background

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 Legislation Amendment (Student Services and Amenities, and other Measures) Bill 2009 which was defeated in the Senate in August 2009; and with the Higher Education Legislation Amendment (Student Services and

Amenities) Bill 2009 which lapsed at the end of the 42<sup>nd</sup> Parliament.<sup>1</sup> The Bill is largely unchanged from the two previous bills.

## Voluntary Student Unionism (VSU)

Compulsory student union fees were abolished with the passage of the Howard Government's Higher Education Support Amendment (Abolition of Compulsory Upfront Student Union Fees) Bill 2005.<sup>2</sup> 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.

### 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. The VSU Transition Fund for Recreational and Sporting Facilities, allocated \$85 million for 44 projects, the Small Businesses on Regional Campuses Fund allocated \$5 million for 19 projects, 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'.<sup>3</sup>

ACUMA reported 'a projected net loss of income from amenities and service fees for 2009 will be approximately \$200 million GST-inclusive (further to losses projected or experienced in 2008, 2007

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1. More detailed background on this issue can be found in K Jackson, *Voluntary student unionism*, Background note, SP006, 30 November 2004, Parliamentary Library, Canberra, 2004, [http://libis1/Library\\_Services/BN/Education/sp006.doc](http://libis1/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>
  2. It was the fourth attempt by the Howard Government to abolish compulsory student union fees: In 1996 the Howard Government 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 did not proceed through the Senate. In 1999 the Higher Education Legislation Amendment Bill 1999 did not progress through the Senate. In September 2003, the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2003 did not proceed beyond the second reading.
  3. Australasian Campus Union Managers' Association (ACUMA), *VSU impact study overview*, ACUMA website, viewed 11 October 2010, [http://www.acuma.org.au/resource\\_library/vsu/index.htm](http://www.acuma.org.au/resource_library/vsu/index.htm)

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and part of 2006) compared to funding levels from this source which would have existed had VSU not been introduced'.<sup>4</sup>

In February 2008, Kate Ellis, 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.

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.<sup>5</sup>

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4. Australasian Campus Union Managers' Association (ACUMA), *VSU impact study overview*, ACUMA website, viewed 13 October 2010, [http://www.acuma.org.au/resource\\_library/vsu/index.htm](http://www.acuma.org.au/resource_library/vsu/index.htm)

5. *Impact of voluntary student unionism on services, amenities and representation for Australian university students – Summary report*, DEEWR, Canberra, July 2008, viewed 10 October 2010, [http://www.dest.gov.au/NR/rdonlyres/0BC037DB-1F39-452D-8947-225E63A85DB1/22931/VSUSummaryReport\\_W2finalfromPublications3.pdf](http://www.dest.gov.au/NR/rdonlyres/0BC037DB-1F39-452D-8947-225E63A85DB1/22931/VSUSummaryReport_W2finalfromPublications3.pdf)

## 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'.<sup>6</sup>

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 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'.<sup>7</sup>

Following the government's consultation on the impact of VSU the then Minister, Kate Ellis, announced in November 2008 that

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6. *Australia's universities: building our future in the world: a white paper on higher education, research and innovation*, Australian Labor Party, Canberra, 2006, p. 74, viewed 13 October 2010, [http://parlinfo.parlInfo/download/library/partypol/1LBK6/upload\\_binary/1lbk65.pdf;fileType=application%2Fpdf#search=%22amenities%20%20student%22](http://parlinfo.parlInfo/download/library/partypol/1LBK6/upload_binary/1lbk65.pdf;fileType=application%2Fpdf#search=%22amenities%20%20student%22)
  7. S Smith (Shadow Minister for Education and Training), *Voluntary student unionism; Mike Bailey; government extravagance*, media release, Parliament House, Canberra, 22 May 2007, viewed 13 October 2010, [http://parlinfo.parlInfo/download/media/pressrel/EY4N6/upload\\_binary/ey4n61.pdf;fileType=application/pdf#search=%222000s%20smith%20hecs%22](http://parlinfo.parlInfo/download/media/pressrel/EY4N6/upload_binary/ey4n61.pdf;fileType=application/pdf#search=%222000s%20smith%20hecs%22)

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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’.<sup>8</sup>

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 or to support a candidate for political office.<sup>9</sup> 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.<sup>10</sup>

Debate on the previous bills was grounded in the ideological arguments of the previous thirty years. The coalition’s opposition was largely grounded in the belief that the proposed legislation was compulsory student unionism by another name. Senator Abetz described the services and amenities fee as compulsory student unionism: ‘It does not matter how you try to dress it up; it is an infringement on individuals’ rights and liberties, especially the right to a tertiary education. To be denied the right to a tertiary education because you do not want to pay a student union fee, now dressed up as an amenities fee, is abhorrent to every instinct within me’.<sup>11</sup>

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8. K Ellis (Minister for Youth), *Rebuilding student support services in our universities*, media release, Canberra, 3 November 2008, viewed 13 October 2010,

[http://www.deewr.gov.au/Ministers/Ellis/Media/Releases/Pages/Article\\_081130\\_112847.aspx](http://www.deewr.gov.au/Ministers/Ellis/Media/Releases/Pages/Article_081130_112847.aspx)

9. By comparison 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, viewed 13 October 2010, [http://www2.uniaus.edu.au/documents/publications/policy/submissions/AVCC\\_report\\_HESABill-2005.pdf](http://www2.uniaus.edu.au/documents/publications/policy/submissions/AVCC_report_HESABill-2005.pdf)

10. *Australian government digest*, 5 December 1972–31 March 1973, p. 158.

11. E Abetz, ‘Second reading speech: Higher Education Legislation Amendment (Student Services and Amenities, and other Measures) Bill 2009’, Senate, *Debates*, 17 August 2009, p. 5048.

## Policy position of non-government parties/independents

Coalition senators in their dissenting report to the Senate committee inquiry in 2009 argued the fee was an unnecessary added expense for students. They also expressed concern that the bill provided inadequate protection against political activity and inadequate mechanisms for students to scrutinise expenditure.<sup>12</sup> Shadow spokesperson, Senator Brett Mason, stated the opposition would continue to oppose any attempt to re-introduce 'compulsory student unionism by stealth'.<sup>13</sup>

In the previous Parliament, National Party senators were prepared to support an amended bill. Senators Joyce, Williams and Nash moved an amendment to restrict the amenities fee to the funding of sporting and recreational facilities, but the amendment was defeated.<sup>14</sup> National Party senators did not cross the floor and the bill was defeated. They will again be crucial if the Bill is to pass the Senate before July. At a meeting of the Federal Council of the National Party in 2009 the party agreed to 'support[s] the introduction of a deferrable, compulsory tertiary student services fee for the purposes of funding sport and healthcare at universities, but recommends that discounts or exemptions be considered for external students'.<sup>15</sup>

The Greens have concerns regarding the lack of student involvement in the decision making and disbursement of funds.

Independent, Tony Windsor MP, spoke strongly in support of the previous bill.<sup>16</sup>

## Position of major interest groups

Australasian Campus Union Managers' Association (ACUMA), Australian University Sport (AUS) and Universities Australia welcomed the previous bills as a means of restoring student services. Universities Australia supports the legislation arguing that:

without proper support for student-sensitive services such as advocacy, counselling, health, and legal support, students may become vulnerable to dropping out of university studies should they face significant upfront costs in accessing these services ... The Senate has been misguided in

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12. See: Coalition Senators, Dissenting report, Senate Education, Employment and Workplace Relations Committee, *The Higher Education Legislation Amendment (Student Services and Amenities, and other Measures) Bill 2009 [Provisions]*, The Senate, Canberra, March 2009, pp 21-27, viewed 13 October 2010, [http://www.aph.gov.au/Senate/committee/eet\\_ctte/higher\\_ed/report/d01.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/higher_ed/report/d01.htm)
  13. B Mason, *The Coalition against compulsory student fees*, media release, 1 October 2010, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F267705%22>
  14. Senate, *Debates*, 17 August 2009, viewed 12 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2009-08-17%2F0000%22>
  15. The National Party of Australia, *The Nationals Federal Council 2009: motions carried*, Canberra, 22-23 August 2009, p. 2, viewed 10 October 2010, <http://www.nationals.org.au/LinkClick.aspx?fileticket=MmK2vPLUq1A%3d&tabid=126>
  16. T Windsor, 'Second Reading Speech: Higher Education Legislation Amendment (Student Services And Amenities) Bill 2009', House of Representatives, *Debates*, 23 November 2009, p 12472, viewed 20 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-11-23%2F0096%22>

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thinking that a student services fee will disadvantage students from lower socio-economic backgrounds. Students from lower socio-economic backgrounds or rural and regional areas are the ones particularly needing access to these services - and they are less likely to have established networks of support outside the university community.<sup>17</sup>

The Australian Liberal Students' Federation ran an online campaign against the previous bills and continues to oppose the Bill.<sup>18</sup>

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.<sup>19</sup> The NUS told the Senate Committee hearing into the previous bill that:

We are disappointed by this legislation. Student representation has been hit hardest by the introduction of VSU. This new law will not be good enough to restore the student voice on campus. It has long been our position that students should decide how their money is spent on campus and to politically organise to activate those views. They will not have the ability under the new legislation to do this. In fact, this law may act as a disincentive to voluntary membership on campus—voluntary membership that could fund an independent voice.<sup>20</sup>

In a press conference after the introduction of the Bill, NUS President Carla Drakeford, expressed no disappointment with the Bill. She focussed on the impact of VSU on regional students and urged the National Party to support the Bill.<sup>21</sup> However elsewhere she states

this legislation is not perfect, but it's a start ... it does not restore the student voice on campuses at universities, which have let their representative student organisations collapse ... There would be no legislative measure that forces universities to direct funds from the compulsory \$250 fee to independent student organisations that provide these services. There is also no way of guaranteeing that students will be consulted in the division of their money. The National Union of Students has been pushing for an amendment to rectify this exact concern. And early signs from Greens Senator Sarah Hanson-Young are that the party will introduce such an amendment in the Senate.<sup>22</sup>

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17. Universities Australia, Student Services and Amenities website, viewed 13 October 2010, <http://www.universitiesaustralia.edu.au/page/policy---advocacy/student-services---amenities/>; Universities Australia, *Student services and amenities underpin the university experience*, media release, 17 August 2009, viewed 13 October 2010, <http://www.universitiesaustralia.edu.au/page/media-centre/2009-media-releases/student-services-and-amenities-/>
  18. Stop Student Taxes website, viewed 13 October 2010, <http://stopstudenttaxes.com/?source=cmailer>
  19. Council of Australian Postgraduate Associations (CAPA), *Postgrads cautiously welcome VSU fix*, media release, 3 November 2008.
  20. D Barrow, Senate Education, Employment and Workplace Relations Committee, *The Higher Education Legislation Amendment (Student Services and Amenities, and other Measures) Bill 2009 [Provisions]*, Hansard transcript, 4 March, 2009, p 15, viewed 12 October 2010, <http://www.aph.gov.au/hansard/senate/commtee/S11833.pdf>
  21. C Evans, *Higher Education Legislation Amendment Student Services and Amenities Bill 2010*, press conference transcript, media release, Canberra, 29 September 2010, viewed 12 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F267713%22>,
  22. C Drakeford, *Fees will restore vital student services*, *National Times*, 1 October 2010, viewed 12 October 2010, <http://www.nationaltimes.com.au/opinion/politics/fees-will-restore-vital-student-services-20100930-15yz5.html>

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## Committee Consideration

On the 30 September 2010 the Selection of Bills Committee deferred consideration of the Bill to its next meeting.

## Financial implications

The Explanatory Memorandum states 'the estimated financial impact of SA-HELP over the period 2010–11 to 2013–14 is -\$50.498 million on fiscal balance'.<sup>23</sup>

## Main issues

### 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, should it be levied, 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.<sup>24</sup> Universities Australia argue that 'not all students may use these services during their study, but [they are] 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'.<sup>25</sup>

### Is SA-HELP necessary?

Professor Jane den Hollander, convenor of Universities Australia Deputy Vice-Chancellors Committee, describes the proposed SA-HELP as complex, 'complicated and confusing for students and annoying and time consuming for everyone'.<sup>26</sup> There is some argument for reducing duplication, administration and cost through incorporating the loan for the \$250 amenities fee into the existing

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23. Explanatory Memorandum, p. 3.

24. In 2008 there were 313 805 external students and 206 307 part time internal students. *Selected higher education statistics: students, 2008*, Table 25, Canberra, DEEWR, <http://www.deewr.gov.au/HigherEducation/Publications/HEStatistics/Publications/Pages/Students.aspx>

25. 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, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=143ca4e0-16f8-425f-b278-50a30cda2ca2>

26. J den Hollander, '2025: getting the focus sharper', *Campus Review*, 14 April 2009, p. 9.

HECS-HELP system. Academic, Andrew Norton, argues that ‘anyone who needs to borrow \$250 will also need to borrow for tuition fees under HECS-HELP or FEE-HELP, and it would be preferable that they only needed to use one loan scheme for what is effectively the one transaction’.<sup>27</sup> Universities Australia CEO, Glenn Withers, expressed hope that delay in the passage of the previous bill would give the Government time to reconsider the introduction of the separate SA-HELP.<sup>28</sup>

### 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’.<sup>29</sup> The Council of Australian Postgraduate 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.’<sup>30</sup> 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.<sup>31</sup> 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.’<sup>32</sup>

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27. A Norton, *The wrong way of financing student amenities*, Andrew Norton blog, 29 September 2010, viewed 13 October 2010, <http://andrewnorton.info/2010/09/29/the-wrong-way-of-financing-student-amenities/#more-4672>
  28. J Ross, ‘Silver lining in Senate delay: UA’, *Campus Review*, 7 July 2009, p. 2.
  29. Newcastle University Students’ Association (NUSA), Submission to Senate Committee, *Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=c6419102-6090-425b-b2c6-6a7938a121fb>
  30. Council of Australian Postgraduate Associations (CAPA), *Draft student amenities fee guidelines announced*, media release, 19 February 2009, viewed 12 October 2010, [http://www.capa.edu.au/mediarelease/2009/draft\\_guidelines](http://www.capa.edu.au/mediarelease/2009/draft_guidelines) ; 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, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=b5f01f65-a2f1-4e0d-ba7b-295f7cb68820>
  31. **Proposed subsection 19-67(3)** prevents the Guidelines from requiring a provider to fund an organisation of students, or of students and other persons.
  32. 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, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=143ca4e0-16f8-425f-b278-50a30cda2ca2>

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## 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.<sup>33</sup> The fees raised \$172.8 million of which \$24.8 million or 14 per cent was spent on advocacy, representation and political activity.<sup>34</sup> In 2008 there were 676 005 full-time students and 313 805 part-time students at Australia's public universities. Assuming universities charge full-time students \$250 and part-time students \$125 the fees would raise \$208 million which should be sufficient to reinstate a restricted 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'.<sup>35</sup>

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'.<sup>36</sup>

## Will activities that providers can fund be clearly identified?

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. In the previous bills higher education providers were to be given further guidance on the legitimate disbursements of funds in proposed Student Services and Amenities Fee Guidelines.<sup>37</sup> The Bill in new **proposed section 19-38(4)** (rather than in guidelines) lists the services that can be provided from the fee. As the

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33. 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, viewed 12 October 2010, [http://parlinfo/parlInfo/download/media/pressrel/BC796/upload\\_binary/bc7964.pdf;fileType=application/pdf#search=%22acc%20nelson%22](http://parlinfo/parlInfo/download/media/pressrel/BC796/upload_binary/bc7964.pdf;fileType=application/pdf#search=%22acc%20nelson%22)
  34. Australian Vice-Chancellors' Committee, *AVCC report on Higher Education Support Amendment (Abolition of Compulsory Up-front Student Fees) Bill 2005*, AVCC, Canberra, June 2005, pp. 5–8.
  35. ACUMA, Submission to Senate Committee, *Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=0e0b3a23-29f7-4ee4-bf31-697482ca5ea3>
  36. University of Queensland Union, Submission to Senate Committee, *Inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=f9616d3e-510a-4135-afc5-5280e829fd53>
  37. K Ellis (Minister for Youth), *Securing the future of university support services*, media release, 19 February 2009; Student Services and Amenities Fee Guidelines, viewed 12 October 2010, <http://www.dest.gov.au/NR/rdonlyres/2B5C712C-FE76-451E-839F-22F8A377F162/25473/090218StudentServicesandAmenitiesFeeGuidelines.pdf>

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Guidelines could have been disallowed by either chamber of Parliament the move to inclusion in the Act will provide certainty. However any change to include or preclude an activity, or more precisely define an approved activity, will now require an amendment to the Act.<sup>38</sup>

### 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.<sup>39</sup>

## Key provisions

### Schedule 1

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 Administration Guidelines. The Administration Guidelines are made under section 238-10 of the Act and are disallowable instruments.

**Proposed** paragraph 19-37(5)(e) sets an upper limit of \$250 for annual fees from 2011, 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 nineteen purposes specified in **proposed subsection 19-38(4)**. The nineteen purposes are largely unchanged from the

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38. Although possibly refining a definition could be done via regulations.

39. 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.

seventeen categories in the previous draft guidelines.<sup>40</sup> The Bill has included the 'advising on' and 'advocating students' interests' in matters arising under the higher education provider's rules. Some Universities may find they are in conflict with the new legislation if the activities arising from the support of some services such as (c) 'the administration of a club most of whose members are students'; (k) 'debating by students' or (n) 'production and dissemination to students of media whose content is provided by students' are interpreted as supporting a political party or a candidate in a Commonwealth State or local government election.

There seems to be an inconsistency between the Bill's enforcement provisions and its provisions exempting it from the Act's enforcement provisions.

**Item 6** proposes a **new section 19-67** requiring higher education providers that receive funding under the Commonwealth Grants Scheme to comply, from 2012, 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.<sup>41</sup> The Advocacy Guidelines will be made under section 238-10 of the Act and will be disallowable instruments.

**Proposed subsection 19-67(4)** states that the existing subsection 19-65(1) of the Act **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'. Section 238-10 of the Act deals with disallowance.

The National Union of Students in its submission to the Senate Inquiry on the previous bill expressed 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'.<sup>42</sup> 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

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40. See: Student Services and Amenities Fee Guidelines, viewed 12 October 2010,

<http://www.dest.gov.au/NR/rdonlyres/2B5C712C-FE76-451E-839F-22F8A377F162/25473/090218StudentServicesandAmenitiesFeeGuidelines.pdf>

41. Student Services, Amenities, Representation and Advocacy Guidelines, viewed 12 October 2010,

<http://www.dest.gov.au/NR/rdonlyres/7E49B522-3A12-4581-9D3C-CA3B4561A703/25471/090218StudentServicesAmenitiesRepresentationandAdv.pdf>

42. 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, viewed 12 October 2010, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=51cada71-42c5-48e5-8c70-caa0cbfdfa99>

providers'.<sup>43</sup> CAPA recommended 'that, unless there is any justifiable administrative purpose for the clause, subsection 19-67 (4) be struck from the Bill currently under consideration'.<sup>44</sup>

Certainly neither the Second reading Speech nor the Explanatory Memorandum provide any rationale for the exemption, however it should be noted that compliance with the Advocacy Guidelines is required under **proposed 19-67(1)**. If the compliance requirements of the Act do not apply to the Advocacy Guidelines this may negate a criticism of the Bill that it forces universities to provide services and advocacy determined not by universities but by government.

**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.

## 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.<sup>45</sup> 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 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 to ensure that higher education providers have clarity in their administration of the student services and amenities fees and compliance with the legislation.

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43. 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, viewed 12 October 2010,  
<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=6130a3a7-09ac-4066-84f5-f2bf106e2d51>

44. 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. 9, viewed 12 October 2010,  
<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=b5f01f65-a2f1-4e0d-ba7b-295f7cb68820>

45. The University of Queensland Union seems to be the exception to the general consensus that student services have been heavily cut since the introduction of VSU.

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