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**NATIONAL TERTIARY EDUCATION UNION  
SUBMISSION TO SENATE EMPLOYMENT,  
WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE INQUIRY INTO THE**

***HIGHER EDUCATION LEGISLATION  
AMENDMENT (2005 MEASURES NO.4) BILL  
2005***

**AND**

***EDUCATION SERVICES FOR OVERSEAS  
STUDENTS AMENDMENT BILL 2005***

The National Tertiary Education Union (NTEU) represents the professional and industrial interests of over 27,000 academic and general staff employed in Australian higher education institutions. NTEU welcomes the opportunity to provide comment to the Senate Employment, Workplace Relations and Education Committee Legislative Inquiry into the *Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005* (HELA No.4) and the *Education Services for Overseas Students Amendment Bill 2005* (ESOS Amendment Bill).

The first part of this submission will focus on the implications of the proposed amendments contained in the HELA No.4 Bill. The Union's concerns relate primarily to the provisions of the Bill that insert the category of Table C providers into the *Higher Education Support Act 2003* to enable foreign providers to establish Australian Branches and that allow these providers to access Commonwealth assistance.

This part of the submission will also touch on issues specifically relating to the process by which the Adelaide operation of Carnegie Mellon University (CMU), specified in the Bill as the first table C provider, has been accredited and its definition as a non-self accrediting training organisation able to use the title 'university'.

NTEU has no opposition to the amendments contained in HELA No.4 Bill, relating to tuition assurance arrangements for higher education providers and welcomes the additional protection that will be afforded to students as a result.

The second part of the submission will focus on the *ESOS Amendment Bill*, with particular reference to the implications of the Bill on the overseas student market and its relationship to the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005*.

## **1. Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005**

The application by CMU to establish a campus in Adelaide was made under *Protocol 2* of the *National Protocols for Higher Education Approval Processes*. It has also been assessed under *Protocol 3*, which deals with the accreditation of higher education courses by non-self accrediting providers.

The proposed amendments are aimed at incorporating CMU into the *Higher Education Support Act 2003*, and clarifying the provisions of that *Act* relating to it and other potential Table C providers. The amendments also provide definitions of Table C providers and the *Australian Branch* of a Table C provider. NTEU is concerned with the inconsistency between these definitions and the definition of a university in *Protocol 1* of the *National Protocols* and as specified by Section 16-25 (2)(a) of the *Higher Education Support Act 2003*.

The definition of an 'Australian Branch' of a Table C Provider, allows for an overseas provider to use the title university, even if the provider has not been approved to operate as a *university* in Australia. While a Table C provider needs to be an approved higher education *provider* in Australia, the definition of a Table C provider does not specify that a provider must be listed under the title by which it has been approved to operate in Australia.

In listing the name of the body corporate or the title under which an institution has been established in its country of origin under Table C, and defining the Australian Branch as the branch through which the body corporate listed in Table C conducts its higher education operations in Australia, the legislation fails to sufficiently protect the

standards and reputation associated with use of the title university in Australia.

The standard established in the *National Protocols* for the use of university title, including the ability to award qualifications across a range of disciplines and demonstrate a culture of sustained scholarship that informs teaching, learning and research, is vital to ensuring quality and consistency across Australia's university sector. These standards, protected by Australian law, are what distinguish universities from non-university higher education providers. They are vital to Australia's international reputation and must be maintained for both 'public' and 'private' institutions, whether they are domestic institutions or originate offshore.

Other countries, including the United Kingdom and the United States employ a broader definition of the title university and its use is therefore not necessarily transferable to the Australian context.

In allowing overseas institutions to operate in Australia, both domestic and international students need to be assured of the quality and reputation of the institution they are attending. Prospective students, particularly international students, come to Australia because they know what to expect and that they will receive a high quality education. It is only reasonable that overseas institutions approved to operate in Australia and listed under Table C should adhere to the same standards for use of the title university as that of Australian universities.

CMU is listed under Table C, under proposed sub-section 16-22 of the amendments, as "*Carnegie Mellon University, a non-profit organisation established under Pennsylvania law*".

NTEU understands that CMU's proposed Australian campus has been granted recognition as a university under the South Australian *Training and Skills Development Act 2003*. The more general point remains, however, that the amendments allow institutions to be listed in the proposed Table C under the name in which they have been established in their country of origin. This does not protect the title university from overseas 'universities' who do not meet the standards of Australian universities and have only been granted approval to operate as a registered training organisation or higher education provider.

It is essential that the Bill is clear about the accreditation status of Table C providers and that the titles which they are permitted to use conform with Australia's national standards. The Bill should therefore be amended to ensure Table C providers are listed under the title by which they have been accredited in Australia.

NTEU's other concern relates to the decision, implicitly endorsed by the Federal Government's amendments, to allow CMU to operate as a non-self accrediting training organisation able to use the title 'university'.

NTEU in no way disputes that CMU is a quality higher education provider, with an international reputation for excellence, including being placed 38 out of 200 on the *Times Higher Education Supplement* ranking of top universities in the world. Nor does NTEU deny the potential economic and educational benefits that the CMU Adelaide campus will bring to South Australia.

NTEU's concern relates to the South Australian Government's decision to allow the institution to operate as a non-self accrediting registered training organisation able to use the title 'university'. This breaks down the distinction in Australia between

university and non-university higher education providers, with serious implications for our higher education sector.

Australia's 37 public universities, as well as a small number of non-university institutions, are all self-accrediting institutions that can determine the content of their own qualifications and accredit their own courses. CMU has not been granted this status, primarily because universities in the US are not self-accrediting and need to seek approval for each course they run from an external authority. As a registered training organisation, the Adelaide campus of CMU is rightly compelled to participate in periodic review processes and the course accreditation requirements of the South Australian *Training and Skills Development Act 2003*.

While CMU's recognition as a university in the US has been attested to by an appropriate United States accrediting agency and the qualifications it is seeking to offer have been successfully assessed against the Australian Qualifications Framework, it is unclear how CMU's Adelaide campus meets the test required for use of the title university in Australia.

The South Australian Government has so far refused to publicly release key documentation relating to the CMU Adelaide campus, including the assessment panel report and CMU's application to operate. NTEU would argue that this information and community assurance of such is required by *Protocol 1, Protocol 2* and the *Guidelines For Declaration Of An Institution As A University For The Purposes Of The Training And Skills Development Act 2003*. The Union fears that this could also set a precedent for other State and Territory Governments in relation to similar applications.

The failure to release these documents also means there is a lack of information about CMU's intended research profile, commitment to community involvement and service, corporate, governance and administrative structures and local delivery arrangements. The information that is available on course offerings demonstrates that the Adelaide Branch of CMU, in offering only Masters degree programs in Information Technology and in Public Policy and Management, clearly fails the test of discipline breadth across a range of qualification levels.

While the South Australian Government's *Guidelines* state that in the case of recognised institutions established overseas, the "requirement for three broad fields of study may be satisfied by reference to all of the activities of the institution, wherever situated" this is conditional on providing evidence that "local students will not be unreasonably disadvantaged by geographical factors in pursuing their chosen course of study".

The current review of the *National Protocols* has explored the possibility of weakening the test for university status, particularly in relation to research and discipline breadth and depth, in order to allow the establishment of small specialist institutions. While the outcomes of this review are not yet known, allowing CMU to operate as a university without discipline breadth and depth within its Adelaide campus, sets a dangerous precedent for other accreditation bodies and for the outcomes of the review.

Discipline breadth enables universities to provide a range of interdisciplinary links that create the necessary synergies between research, teaching and learning that is required in the production and advancement of knowledge. It also ensures that teaching and research are independent and academically driven. Specialised institutions focusing on narrow field(s) of knowledge tend to be 'demand driven', that

is, overly sensitive to market requirements and therefore tailored for the specific needs of a particular industry or client. While this type of education has a particular function, it is generally at odds with the goals and objectives of a university education and the principles of academic freedom.

NTEU believes that CMU's failure to meet the Australian tests for use of the title university, and the Bill's failure more generally to adequately ensure that the Australian Branches of Table C providers are appropriately titled, has serious implications for Australia's higher education system. These relate to the future quality and reputation of Australia's universities.

As such, NTEU would urge the Senate to amend the Bill so that overseas 'universities' able to access Table C must meet the tests set out in *Protocol 1* of the *National Protocol For Higher Education Approval Processes* to be able to access university title in Australia.

#### **Recommendation 1**

**That the Senate amend the *Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005* to ensure Table C providers are listed under the title by which they have been accredited in Australia.**

#### **Recommendation 2**

**That the Senate amend the *Higher Education Legislation Amendment (2005 Measures No.4) Bill 2005* so that overseas 'universities' accessing Table C must meet the tests set out in *Protocol 1* of the *National Protocol For Higher Education Approval Processes* to be able to access university title in Australia.**

### **2. Issues relating to the *Education Services for Overseas Students Amendment Bill 2005***

The *Education Services for Overseas Students Amendment Bill 2005*, inserts clause 18(2) to ensure they are not prohibited by any other Acts, from continuing to charge fees to overseas students to cover the costs of providing a range of services to meet their obligations under the *Education Services for Overseas Students Act 2000*.

Under the Act, all registered education and training providers are also legally required to comply with the *National Code for Registration Authorities and Providers of Education & Training to Overseas Students*. Part C of this code obliges higher education providers to have appropriate student support services in place to help international students adjust "to life and study at an Australian institution", and to provide counselling to "resolve problems which could impede the successful completion of their study programs".

In addition, the *National Code* specifies that providers must ensure the provision of appropriate and inexpensive arrangements for independent grievance handling and dispute resolution, as well as information and counselling services in the areas of orientation, academic progress, further study and accommodation.

NTEU believes that the provision and protection of these services, as specified in the Act, is an important part of ensuring the responsible delivery of Australian higher education to international students. It is also crucial to protecting the reputation and integrity of Australia's higher education sector, an export industry worth over \$7 billion annually.

International students come to study in Australia because of the high quality of education they deliver and also because Australian campuses are accessible and supportive. As pointed out by the National Liaison Committee for International Students (NLC), *“the essential services that international students utilize, such as advocacy, counselling, women’s rooms and prayer rooms, international clubs and societies, and academic and grievance appeal representation are the difference between success or failure for many students”*<sup>1</sup>.

The proposed addition of 18(2) is only necessary because of new legislation being put forward by the Government, to prohibit the collection of fees for student services. The *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* not only attempts to prevent universities charging students a fee to go towards the cost of providing a range of essential services, but also to financially penalise any institution that tries to bypass the ban by charging their own fee to fund any facility or service that is not narrowly defined as relating to the academic nature of the student’s course of study.

NTEU believes that it is hypocritical to amend *Education Services for Overseas Students Act 2000* to counter the effects of the Government’s own legislation. It also demonstrates the Government’s complete lack of understanding about how a modern university operates and what constitutes an academic-related service. The Act and the *National Code* both acknowledge that the provision of student services are necessary to assist students to successfully complete their studies.

In addition, the Union believes this amendment will not adequately ensure the provision of services to international students required by the *National Code* if the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* is passed. In making the payment of fees to support services run by student organisations ‘voluntary’ for domestic students, the Federal Government is essentially undermining the funding base of student organisations and therefore their ability to provide such services. It is clear through the Government’s proposed amendment, that without the ability to charge a universal service fee, universities will not be able to afford to offer the range of services currently provided through student organisations.

The proposed alternative to universities providing services is a user-pays system, which allows students the choice to pay for the services they want. The problem is that there will be fewer services to choose from, as well as significant increases in the costs of such services. There is also the problem that decisions about what services are maintained or offered will be based on factors such as their potential to generate profit or their popularity within the broader student body.

Unfortunately, the services that support those students most in need and that help facilitate students’ capacity to attend university are the least likely to meet these criteria. This includes services such as childcare, personal, housing and financial counselling and assistance, careers and employment services as well as academic advocacy and advice, many of which are required by the *National Code*.

These services are essential not just to the ability of international students to adjust to life and study in Australia, but to the ability of many domestic students to participate in higher education. They are a vital part of campus culture for all students but they are essential in the sense that for some students, they are the difference

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<sup>1</sup> NLC Media Release, *International Students Ask Why Should We Study In Australia?*, March 2005.

between continuing their studies or dropping out or even the difference between deciding to go to university or not.

Reduced student organisation membership will mean significantly less funding and therefore less services, so that those students who continue to make a contribution are likely to be doing so at increased costs for reduced services. This relates particularly to international students who are likely to have to pay increased fees to cover the costs of services that universities are legally obliged to provide. Rather than the entire student body contributing towards the provision of such services, international students will be forced to cover the costs alone. They will also be forced to pay extra for additional services that were previously provided by student organisations, but which will only be provided on a user-pays basis once the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* is passed.

According to NLC, international students are among the highest users of student organisation services<sup>2</sup>. Without the provision of such services, there is a very real possibility that international students will choose to study in any number of other countries where such services are available. This could have a dramatic impact not only on the revenue of our public universities, but also on the wide range of cultural, social and economic benefits that international students bring to Australia, including sustaining some 50,000 jobs<sup>3</sup>. No comparable OECD country prohibits the collection of non-academic fees to support extra-curricular campus activities. In fact, virtually every University in the Commonwealth, the United States and Western Europe provides for the collection of a fee for such purposes.

NTEU would also question how this amendment would meet the *National Code* requirement that providers ensure the provision of appropriate and *inexpensive* arrangements for independent grievance handling and dispute resolution. Student organisations are best placed to offer students independent assistance and support for academic and other university processes, as they employ staff with specialised knowledge of university discipline and appeals policies and mechanisms. Should universities provide this service there would be a significant conflict of interest. If students are unable to be guaranteed independent support they could be forced to seek the services of legal practitioners. This will inevitably lead to a much more adversarial, confrontational and *expensive* experience for students and universities.

It is essential that international students are provided with the services required by the *National Code*, but believes that the proposed amendment of 18(2) will not be sufficient protection if the Government's *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* is passed. Even leaving the hypocrisy of the Bill in ensuring the provision of such services to international students and not to domestic students aside, NTEU believes that the abolition of compulsory student service fees for domestic students will prevent higher education providers from meeting their requirements under the *Education Services for Overseas Students Act 2000*.

Student organisations play a crucial and irreplaceable role in the provision of services that “*promote the successful adjustment by overseas students to life and study at an Australian institution*” and help assist students to successfully complete their studies. NTEU therefore believes that this amendment will be totally ineffectual without a

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<sup>2</sup> IBID

<sup>3</sup> Mr Michael Ferguson, House of Representatives Hansard, October 12, 2005.

guarantee that the Government will amend or abandon the *Abolition of Compulsory Up-front Union Fees Bill 2005*.

Without such services, Australia's international student market is at risk, as is the international reputation of Australia's higher education sector and the social, economic, employment and cultural benefits that this industry provides.

**Recommendation 3**

**That the Senate rejects the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005*, making the inclusion of clause 18(2) in the *Education Services for Overseas Students Amendment Bill 2005* unnecessary.**