

**SUBMISSION TO THE:**

**EDUCATION AND SCIENCE SELECT  
COMMITTEE**

**ON**

**EDUCATION (FREEDOM OF ASSOCIATION)  
AMENDMENT BILL**

**BY**

**NEW ZEALAND YOUNG NATIONALS**

  
youngnats

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Education and Science Select Committee  
Parliament Buildings  
Wellington



**25 March 2010**

Dear Members of Parliament,

The New Zealand Young Nationals (Young Nats) are the Youth Wing of the New Zealand National Party. We are made up of branches throughout the country, and at most university campuses. The Young Nats have a long history of advocacy on youth and education issues.

The *Education (Freedom of Association) Amendment Bill* (the bill) is the third bill relating to student unionism on which the Young Nats have submitted since the early 1990s. We are extremely glad it has been brought to the committee's attention for review and resolution.

The current law, which protects the ability of Students' Associations to compel membership, is a crucial and controversial issue. It impacts the more than 100 000 tertiary students currently forced to join a union without consultation and costs the taxpayer millions of dollars every year.

The current law clashes with two key clauses of the New Zealand Bill of Rights Act 1990 (BORA), with Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

On a practical level, compulsory levies remove the incentives for associations to provide value for money and services targeted to student needs. They also lead to regular instances of financial negligence, serious fraud, and misappropriation of funds.

Britain and Australia, both countries with similar education systems to New Zealand, have reviewed compulsory membership legislation in recent years. It is time for New Zealand to catch up.

The Young Nats support the *Education (Freedom of Association) Amendment Bill*. We commend it to the committee. It would be my pleasure to appear before the committee to speak to this submission.

Yours sincerely,

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## ***1. INTRODUCTION***

The Young Nats have resolved to support the *Education (Freedom of Association) Amendment Bill* to move tertiary students' associations to a system of voluntary membership. Currently, student union membership is compulsory in New Zealand for most university students. Students are the only group in society still forced to join a union. The Young Nats believe students deserve the same choices as all other New Zealanders.

It is important to note that the Young Nats strongly support student associations at our tertiary institutions and encourage student involvement on our campuses. Our organisation has a history of working proactively with students' associations throughout New Zealand to build a stronger extra-curricular culture at our universities and polytechnics, and promote Youth Advocacy. In recent years, we have campaigned with NZUSA to keep the purchase age for alcohol at 18, and to oppose legislation banning the use of BZP.

The Young Nats respect the valuable contributions made by students' associations in many spheres of university life and the on-campus advocacy roles students' associations can play. We also appreciate the close relationships of many associations with their institutions, and with cultural and sporting groups on campus.

The Young Nats are not anti-students' associations. It is merely the legal protection for them to compel membership with which we take issue. Compulsion to join a union in order to enrol as a student is at odds with the way every other sector of society works. It is unfair, unnecessary, and unacceptable.

We do not believe the proposed legislation threatens the most crucial contributions of students' associations. Most crucial student services are already run not by associations, but by tertiary institutions and other voluntary groups. Effective advocacy is also easily achievable without access to large amounts of guaranteed revenue. This has been demonstrated at Auckland University, which currently operates under voluntary membership.

Voluntary membership would hold associations to account financially, encourage them to provide services and support as it was wanted and needed by students, and avoid the contentious human rights issues and soaring administrative waste which currently characterizes students' associations in New Zealand.

The Young Nats maintain that, though some core interest groups may need to adjust or find alternative sources of revenue, the large majority of students would benefit from the implementation of voluntary membership.

## ***2. COMPULSORY MEMBERSHIP***

Just some of the problems and impracticalities created by compulsory membership include:

### **2.1 Compulsory levies are a financial burden on students.**

Annual association levies vary between academic institutions, but fall broadly between a low of \$80 and a high of \$140 for each academic year.

An average student enrolled in a four-year course will incur between \$320 and \$560 of extra debt due to association levies. This is also a financial burden on the Government.

## **2.2. Levies cannot be exempted.**

Levies cannot be exempted, even in the circumstances of conscientious objection students receive no refund of their levy.

## **2.3. Students are forced to pay a levy regardless of whether they will use the services.**

Students are forced to pay a levy regardless of whether they will use the services their fee provides. Extramural and many on-campus students pay hundreds of dollars over the course of their study for services they will never use.

## **2.4 The services provided by associations rarely relate to the primary purpose of tertiary study.**

The services provided by associations rarely relate to the primary purpose of tertiary study, and the student loan scheme – a quality education.

## **2.5. Compulsory levies add millions to student debt every year.**

## **2.6. Compulsory membership removes financial accountability from Students' Associations.**

As association incomes are guaranteed regardless of the services provided or actions taken, students' associations are left with few incentives to provide well-targeted or quality services, charge reasonable levies, or respond to student needs.

## **2.7. Compulsory levies provide funding for political campaigns regardless of members individual views.**

## **2.8. Students' associations lack the democratic accountability of governing bodies.**

Due to extremely low democratic participation, students' associations lack the democratic accountability of governing bodies. It is normal for a student election to attract a turnout of below 10 percent of eligible voters.

## **2.9. Compulsory membership breaches the Bill of Rights Act.**

BORA clearly outlines the individual right to determine membership of organizations and freedom of expression.

Section 14 (Freedom of Expression) states: "Everyone has the right to freedom of

expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”<sup>1</sup>

Section 17 (Freedom of Association): Everyone has the right to Freedom of Association.”<sup>2</sup>

## **2.10. Students’ Associations have often been linked to fraud, financial waste and irresponsibility, and public embarrassment.**

Examples include:

- AUSA offering a \$10,000 reward for the citizens' arrest of Condoleezza Rice (2008).
- Refusal by VUWSA to lay a wreath at the 2009 ANZAC Day ceremony (2009).
- Burning of the New Zealand flag by the 2008 VUWSA President.
- Then Compulsory Auckland University Students' Association spent \$225,000 on seven full-page ads in the NZ Herald protesting government policy (1993).
- Compulsory OUSA lost \$30,000 on non-refundable airline tickets purchased for University Games (2003).
- Compulsory OUSA lost \$50,000 in a managed flatting scheme (1999).
- Office manager of compulsory Massey University of Wellington Students' Association jailed for fraud of \$203,000 (2003).
- Without authority, the president of compulsory VUWSA spent \$22,222 to upgrade the association's van (2007).
- The treasurer of the compulsory Victoria University Maori Students' Association (Ngai Taurira) jailed for theft of \$161,000 (2005).
- Office manager of compulsory Christchurch Polytechnic Students Association jailed for theft of \$175,000 (2009).

## **3. VOLUNTARY MEMBERSHIP**

### **3.1. Voluntary membership ensures students’ associations have accountability.**

Voluntary membership ensures students’ associations have the accountability vital with any public funds as students who do not feel they are getting value for money can leave.

### **3.2. Saves students money.**

Students could save hundreds of dollars over the course of their degrees if they chose not to join their student union. This would reduce their student debt.

### **3.3. Provides only the services students want and need.**

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<sup>1</sup> New Zealand Bill of Rights Act 1990, s14.

<sup>2</sup> Ibid, s17.

Voluntary membership gives students the ability to actively choose the services which best suit their needs, be they provided by the association, the tertiary provider, other community organizations, or commercially.

Credible students' associations which provide valued services to their members have nothing to fear from this legislation. If students value the services provided as much as claimed by students' associations, they will want to join.

### **3.4. Complies with BORA**

Voluntary membership is necessary to remove the current inconsistencies with BORA.

### **3.5. Steps towards voluntary membership have also been made in Britain and Australia.**

Steps towards voluntary membership have also been made in Britain and Australia following similar concerns about poor value for money and clear inconsistencies with basic political rights.

A change to voluntary membership in New Zealand would make our legislation consistent with BORA, our major trading partners, and all other parts of New Zealand society.

## ***4. DEBUNKING THE MYTHS***

### **4.1. Conscientious objection makes the current system fair.**

Students remain the only group in New Zealand denied the right to choose whether or not they join a union. Students deserve the same rights and freedoms as all other New Zealanders.

Critics are misrepresenting the facts when they claim the current situation is made fair as students can withdraw from the union by conscientious objection. Exemptions are rarely granted, and the few that are receive no refund. Union membership needs to be an opt-in choice, not an opt-out alternative.

It is no different to state that conscientious objection from students' associations equates to choice for students than it is to compare military conscription to voluntary enlistment because of compassionate exemption.

### **4.2. This legislation is an anti-students' associations bill.**

By talking about the need to protect the long heritage and strong advocacy roles of students' associations, critics are trying to portray this legislation as an anti-students' associations bill. However, the great thing about advocacy is that it costs very little money. Students' Association do not need millions of dollars of unaccountable funds to speak out about tertiary education issues.

With the nature of many public statements coming from students' associations often the cause of controversy or offence, it is not appropriate for students to be forced to partake in that representation if they do not wish to.

This bill will have no significant impact on the ability of students' associations to have a voice. It will simply ensure that students who disagree will not need to be misrepresented.

Students' associations are the only non-Government organisations in New Zealand with the legal right to compel membership. If other sectors of society enjoy adequate advocacy without compulsory membership, why would students be any different?

#### **4.3. Voluntary membership will cost students more than compulsory.**

*Save Our Services* claim that voluntary membership would leave students to 'pay more for less'.<sup>3</sup> They have justified the claim by suggesting universities would increase service levies to account for the additional services they would need to provide.

There are, however, two key issues with the justification offered by *Save Our Services*. Firstly, as demonstrated in by the diagram (**Appendix 7.1**), tertiary institutions already provide significantly more student services than students' associations. Typically, the services provided by institutions also deliver better value for money.

If we look at the rates charged at VUW for institution-provided services we see that there is already an established precedent for effective, high value service delivery. The combined cost of institution service levies is just over \$200.00 per annum for a full-time student.

These annual institution levies cover vital welfare and health services; educational, career, and accommodation support; recreation, leisure, cultural, and social facilities and maintenance; financial support; and access to internet and computers. From the diagram we can therefore see that the vast majority of services regularly used by students are already catered for by the tertiary institution, and at a total cost only marginally greater than the levy VUWSA charges to provide significantly less.

This disparity in value for services highlights the second key issue with the justification offered by *Save Our Services*. Students associations are critically inefficient, and struggle to provide value for money after covering cumbersome administration costs.

**Table 1** shows a basic breakdown of VUWSA's 2009 budget. The table shows expenses on administration totalling \$970,712.80 before executive expenses. When executive expenses are included in the administration figure, the total spent on administration amounts to \$1,111,618.80, or 72.5% of all VUWSA expenditure.

#### **Table 1: VUWSA Budget 2009<sup>4</sup>**

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<sup>3</sup> [www.saveourservices.org.nz](http://www.saveourservices.org.nz)

<sup>4</sup> 2009 VUWSA budget, available on [www.vuwsa.org.nz](http://www.vuwsa.org.nz), 15/03/2010.

<b>Description</b>	<b>2009 Budget</b>
Publications	-\$ 160,205.29
Activities Department	-\$ 6,000.00
VUWSA Administration	-\$ 970,712.80
Other Admin Areas	-\$ 900.00
Welfare	-\$ 18,250.00
Education	-\$ 10,420.00
Executive Expenses	-\$ 140,906.00
Campaigns Officer	-\$ 9,500.00
Clubs Department	-\$ 25,850.00
Clubs - Grants Pools	-\$ 94,900.00
International Officer	-\$ 2,000.00
Environment Officer	-\$ 2,400.00
Women's Rights Officer	-\$ 4,320.00
Rep Groups Pool	-\$ 85,000.00
Queer Officer	-\$ 1,150.00
<b>Total Expenses</b>	<b>\$1,532,514.09</b>

Students are not receiving value for money under compulsory membership. Without the basic financial accountability mechanisms removed by compulsory membership, associations lack incentives to provide services in a manner which is efficient or well-targeted.

**4.4. Students in New Zealand are already free to choose whether or not their students' association has compulsory or voluntary membership.**

If well-resourced students' associations cannot get 10% of their members to vote in an election at all, it is not realistic to expect un-resourced students of a single position to gather the same number of people for a referendum.

Beyond this point, decisions made by the slight majority of the marginal number of students who exercise their right to vote in student elections in no way constitutes free choice. This choice should belong to each and every student, not the collective.

**4.5. Student Services, Sporting, Cultural, and Social activities will be wiped out by voluntary membership.**

**4.5.1. Student Services**

Advocates of compulsory membership have typically supported their position with the argument that crucial student services would be endangered by the loss of a guaranteed revenue stream for students' associations.

The Young Nats challenge the absolute positions advocated by associations that voluntary membership would mean an end to these services, to student advocacy, or extra-curricular activity. Inevitably, without a guaranteed revenue stream, some services previously administered by associations may need to be administered by tertiary institutions, by other voluntary groups, or on a commercial basis. However, it is important to take an in depth look at exactly what is and is not provided by associations, and how essential compulsory membership is to what they do provide.

#### **4.5.2. What associations do and do not provide**

The NZUSA run 'Save our Services' campaign claims that the cost of voluntary membership will be the loss of a range of student services including: "welfare and advocacy services, representation on a plethora of institution committees, recreation & leisure facilities, student publications, and a wide range of entertainment and social activities."<sup>5</sup>

Despite the claims of NZUSA, students' associations provide only a portion of the services students regularly use. The diagram (**Appendix 7.1**) uses VUWSA as an example of the respective services provided by the students' association and the tertiary institution at Victoria University.

#### **4.5.3. Welfare**

The diagram demonstrates that at Victoria University, contrary to the position of NZUSA, crucial welfare services are not provided by its students' association, but by the institution itself. Accommodation services, career support, counselling, disability support, crèches, financial support, health, and learning support are all provided independently of VUWSA.

#### **4.5.4. Recreation & Leisure Facilities**

As demonstrated in the diagram, recreation and leisure facilities are not provided by the students' association, but by the tertiary institution via a separate amenities levy. These facilities include clubrooms for social and cultural groups, and the recreation centre for physical activities and sports groups.

The costs of bus ticket subsidies are shared between the university and the students' association. The health centre and gymnasium are heavily subsidized by the institution-run levy, and charge small additional fees to users.

*Vicbooks*, the university bookshop, is privately owned and operated. All cafeterias are privately owned and operated. Payphones, vending machines, and banking are all provided commercially.

#### **4.5.5. Advocacy**

Advocacy is a role provided by the students' association at Victoria University. Advocacy is undertaken in several forms. Primarily these include political advocacy directed by volunteers and members of the VUWSA executive, and on-campus advocacy relating to the services provided to students and respective fees.

The provision of political advocacy is one of the primary concerns compulsory membership raises. This form of advocacy is often undertaken with little consultation of members, or initiated at 'Student Representative Council (SRC)' meetings.

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<sup>5</sup> [www.saveourservices.org.nz](http://www.saveourservices.org.nz)

Meetings of the SRC have a quorum of fifty members, equating to consultation of less than 0.25% of members in a compulsory system.

As students of all political persuasions are members under compulsory membership, many are necessarily misrepresented. This is a clear breach of the BORA, which says:<sup>6</sup>

*'Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.'*

On campus advocacy relating to fee increases, academic grievances, and student consultation is less controversial. However, this form of advocacy is in no way dependent on the guaranteed flow of income provided by compulsory membership.

#### **4.5.6 Institutional Representation**

Again using Victoria University as an example, we can see that students are represented to the university management by the President and Vice-Presidents of the students' association, as well an elected university council representative.

VUWSA, NZUSA, or other students' associations are yet to demonstrate how such representation depends upon the revenue stream guaranteed by compulsory membership, or is jeopardized by this legislation. The total cost of campaigns accounted for a nominal 0.6% of the VUWSA budget in 2009.<sup>7</sup>

### **5. LESSONS LEARNT – VOLUNTARY MEMBERSHIP IN AUSTRALIA**

#### **5.1. Critics and the Australian Legislation**

Critics of the bill have been quick to point to the problems of the legislative changes in Australia made in 2005, which included provisions making membership of student unions voluntary.

*Save our Services* claim that the voluntary membership in Australia 'devastated services on Australian campuses and failed to achieve any of the professed aims of pro-VSM campaigners.'<sup>8</sup> However, these critics have neglected to declare that the Bill before the New Zealand House of Representatives is comparable to only one subsection of the Australian legislation, and is significantly more moderate.

The Australian *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act* represented a broad revision of the way student services, both those provided by associations and by tertiary institutions, could be funded and provided.

#### **5.2. The New Zealand and Australian Legislation are not the same**

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<sup>6</sup> New Zealand Bill of Rights Act 1990, s 13.

<sup>7</sup> 2009 VUWSA budget, available on [www.vuwsa.org.nz](http://www.vuwsa.org.nz), 15/03/2010.

<sup>8</sup> [www.saveourservices.org.nz](http://www.saveourservices.org.nz).

Section 19-37 of the Australian legislation (see **Appendix 7.2**) includes three primary subsections. Subsection 19-37(1) resembles the current New Zealand bill, and removes the legal right for students' associations to compel membership or payment of levies.<sup>9</sup> However, the Australian legislation differed significantly by the inclusion of two further subsections not included in the New Zealand Bill.

Subsection 19-37(2) removes the right of tertiary providers to charge universal levies for basic student services:<sup>10</sup>

*'A higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount for the provision to students of an amenity, facility, or service that is not of an academic nature, unless the person has chosen to use the amenity, facility, or service.'*

If applied to the New Zealand legislation, subsection 19-37(2) would be the equivalent of removing the ability of tertiary institutions to provide universal support for health, counselling, disabilities, careers, accommodation, financial hardship, child supervision, or recreation facilities. Thankfully, no clause like this exists in the New Zealand bill.

Critics are correct when they say the legislation passed in Australia damaged student services. But they are not correct when they say that the voluntary membership of student unions section was the cause of that damage.

As demonstrated earlier in this submission, the vast majority of core services are provided not by students' associations but by tertiary institutions. The ability of tertiary institutions to cater for core student services is not altered by the New Zealand bill.

The Australian legislation devastated student services in Australia because it removed the ability of institutions to provide them, not because it made students' associations voluntary.

## **6. CONCLUSION**

For the reasons outlined in this submission the Young Nats support the *Education (Freedom of Association) Amendment Bill* and commend it to the committee.

Compulsory membership denies students' associations of the accountability crucial with public funds, denies students value for money and the services they actually need and want. It denies students the basic right to choose whether or not they join a union, and basic civil rights protected in the law.

Voluntary membership is the only viable way to provide financial accountability, political fairness, and value for money for struggling students.

Students deserve the same rights and freedoms as all other New Zealanders. The system is broke, so let's fix it.

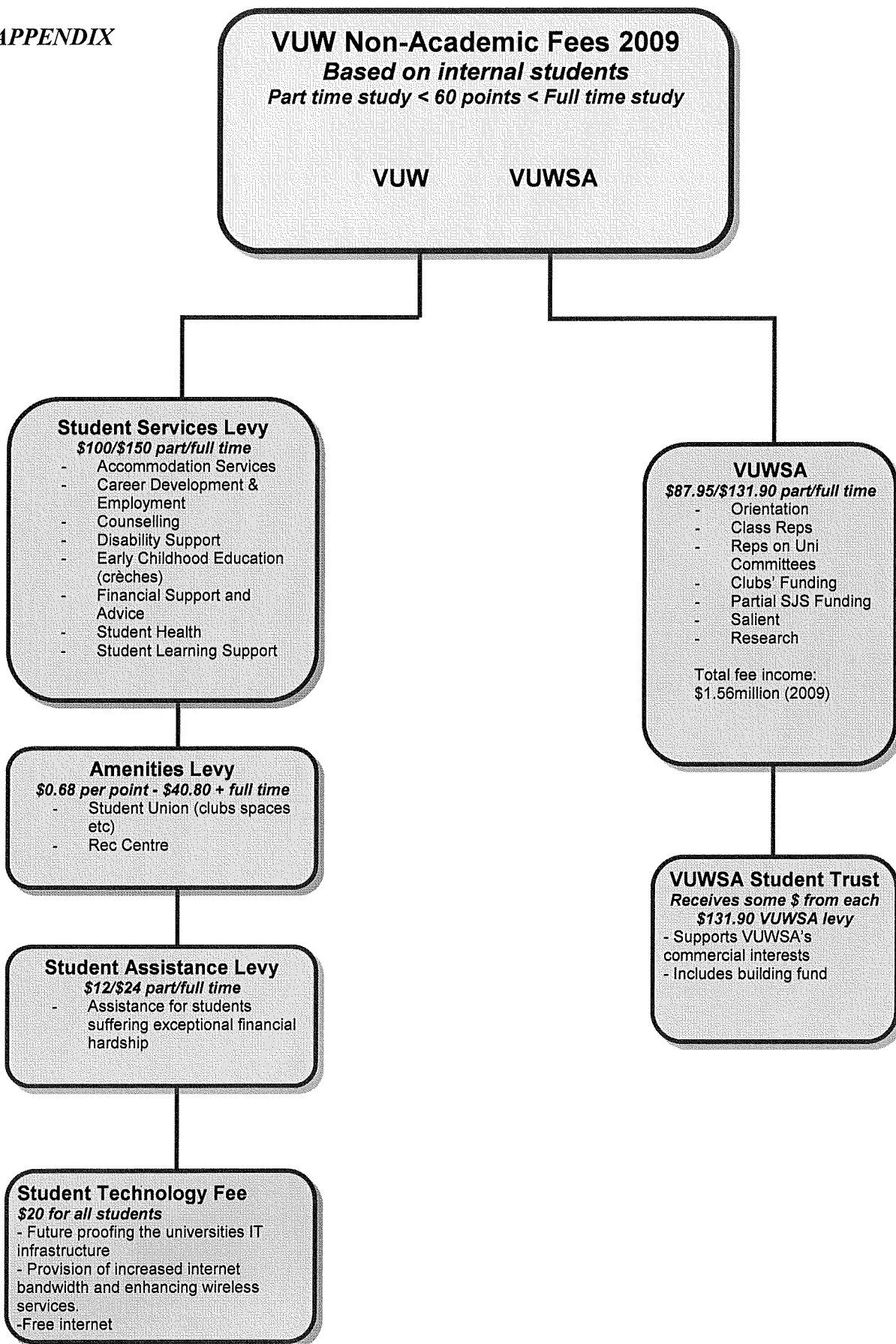
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<sup>9</sup> Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act, s 19-37(1).

<sup>10</sup> Ibid, s 19-37(2).

7. APPENDIX

7.1. APPENDIX



## 7.2 APPENDIX



# **Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005**

**No. 159, 2005**

**An Act to amend the *Higher Education Support Act 2003*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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# Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005

No. 159, 2005

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## An Act to amend the *Higher Education Support Act 2003*, and for related purposes

[Assented to 19 December 2005]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2005*.

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## **2 Commencement**

This Act commences on 1 January 2006.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### ***Higher Education Support Act 2003***

#### **1 After section 19-35**

Insert:

#### **19-37 Requiring membership of certain organisations or payment of certain amounts**

- (1) A higher education provider must not:
  - (a) require a person to be or to become a member of an organisation of students, or of students and other persons; or
  - (b) require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount in respect of an organisation of students, or of students and other persons;unless the person has chosen to be or to become a member of the organisation.
- (2) A higher education provider must not require a person enrolled with, or seeking to enrol with, the provider to pay to the provider or any other entity an amount for the provision to students of an amenity, facility or service that is not of an academic nature, unless the person has chosen to use the amenity, facility or service.
- (3) Subsection (2) does not apply to an amount that the higher education provider requires the person to pay if the amount is for goods or services that:
  - (a) are essential for the course of study in which the person is enrolled or seeking to enrol; and
  - (b) the person has the choice of acquiring from, but does not acquire from, a supplier other than the higher education provider; and
  - (c) either:
    - (i) are goods that become the property of the person that are not intended to be consumed during the course of study; or

- (ii) consist of food, transport or accommodation associated with provision of field trips in connection with the course of study.

### 1A Application provision

Section 19-37 of the *Higher Education Support Act 2003* as amended by this Act does not apply to anything done by a higher education provider before 1 July 2006, unless:

- (a) it is done on or after 1 January 2006; and
- (b) it relates to a person who is enrolled with, or seeking to enrol with, the provider; and
- (c) the enrolment is, or will be, for a period of study starting on or after 1 July 2006; and
- (d) the person is not enrolled with, or seeking to enrol with, the provider for a period of study in 2006 starting before 1 July 2006.

### 2 At the end of subsection 33-20(2)

Add:

Note: A higher education provider's basic grant amount for the grant year can also be adjusted in respect of the grant year under section 33-37.

### 3 At the end of Subdivision 33-C

Add:

#### 33-37 Adjustments for breach of section 19-37

- (1) A higher education provider's \*basic grant amount for the grant year is reduced by an adjustment in respect of the grant year if, on one or more occasions during the grant year, the provider breaches a condition imposed under section 19-37.
- (2) The adjustment under subsection (1) is an amount worked out using the formula:

Reduction amount  $\times$  Total places allocated

where:

*reduction amount* is \$100.

Note: The reduction amount is indexed under Part 5-6.

*total places allocated* is the total number of Commonwealth supported places allocated under section 30-10 to the higher education provider for the grant year.

- (3) This section does not apply in relation to a breach of a condition imposed under section 19-37 by a higher education provider if:
- (a) the breach consists of requiring a person to pay money to the provider or another entity; and
  - (b) as a result of the requirement, the person paid money to the provider or other entity; and
  - (c) the Minister has given a written notice to the provider under subsection (4); and
  - (d) the provider or other entity repays the money to the person within 28 days after the Minister gave the notice to the provider.
- (4) If the Minister becomes aware that:
- (a) a higher education provider has breached a condition imposed under section 19-37; and
  - (b) the breach consists of requiring a person to pay money to the provider or another entity;
- the Minister must give to the provider a written notice:
- (c) requiring repayment, within 28 days after the notice is given, of any money paid to the provider or any other entity as a result of the requirement; and
  - (d) stating that failure to repay any such money within that period will result in a reduction under this section of the provider's \*basic grant amount for the grant year in question.
- The notice may relate to more than one breach.
- (5) A failure by the Minister to give a notice under subsection (4) in relation to a breach of a condition imposed under section 19-37 does not prevent this section from applying in relation to the breach.
- (6) This section does not apply more than once in relation to a higher education provider's \*basic grant amount for a grant year.

#### **4 After paragraph 54-5(b)**

Insert:

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**Schedule 1 Amendments**

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- (ba) if the breach is a breach of a condition imposed under section 19-37—the amount of any adjustment under section 33-37 in relation to that breach, or any other breach by the body, during the same year;

**5 At the end of subsection 104-3(1)**

Add “or with subsection (5)”.

Note: The heading to section 104-3 is altered by inserting “etc.” after “Guidelines”.

**6 At the end of section 104-3**

Add:

- (5) \*Open Learning Australia must comply with section 19-37 as if it were a higher education provider.

**7 Section 198-5 (after table item 1)**

Insert:

1A	Reduction amount	Section 33-37	2007
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*[Minister's second reading speech made in—  
House of Representatives on 16 March 2005  
Senate on 7 December 2005]*

(51/05)

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