

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HIGHER EDUCATION FUNDING (STUDENT ORGANISATIONS)  
AMENDMENT BILL 1994**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Employment, Education and Training, the  
Hon Simon Crean, MP)



## HIGHER EDUCATION FUNDING (STUDENT ORGANISATIONS) AMENDMENT BILL 1994

### OUTLINE

The *Higher Education Funding Act 1988* makes provision for grants of financial assistance to higher education institutions and other bodies for higher education purposes, establishes the Higher Education Contribution Scheme (HECS) and the Open Learning Deferred Payment Scheme (OLDPS) and makes provision for the repayment of monies lent by the Commonwealth to students under those Schemes.

This Bill amends the *Higher Education Funding Act 1988* to make provision for grants to student organisations for financial support in circumstances where a State takes action which affects the ability of institutions to receive financial assistance for a student organisation, or which places a limitation on the purposes to which the student organisation may apply those funds.

### PURPOSE

The purpose of this Bill is to amend the *Higher Education Funding Act 1988* in accordance with Commonwealth Government responsibilities in respect of providing benefits to students within Australian higher education institutions.

The Bill provides for the continued support of existing student services within Australian higher education institutions through an amendment to the Act which will allow the Commonwealth to make payments to student organisations directly and recover funds from the States' general revenue assistance if necessary. The Bill will also allow the Commonwealth to make payments to student organisations directly for certain permitted purposes. The recovery of funds will be possible under the provision contained in Section 15 of the States Grants (General Purpose) Bill 1994. This mechanism ensures that there will be no additional budgetary implications.

The provisions contained in the Bill will override the provisions of any State law or any other action the State may take to the contrary.

The amendment is a direct result of the *Tertiary Education (Amendment) Act 1994* (the Act) passed by the Victorian Government and the actions of the Tasmanian State Government towards the University of Tasmania.

The Victorian Act purports to abolish compulsory student unionism while protecting the provision of specified services to students. While the provisions of this Act were being debated in the Legislative Assembly amendments were made, after considerable pressure from the Australian Vice-Chancellor's Committee and the National Union of Students to increase the range of services funded from non-academic fees. While the Victorian

Minister may add to the list of approved services by regulation there is a danger that the list specified by regulation will limit the services and amenities available to students.

For example, a number of activities and services such as student newspapers, student advocacy and generally activities of a representational nature will not be provided for. The Victorian Act also places restrictions on the use of profits from activities funded from the compulsory non-academic fees.

Whilst the Victorian Government has legislated against student organisations, the Tasmanian Government has used the Victorian Act as a precedent to exert pressure on the University of Tasmania to conform to State Government demands. The University of Tasmania has agreed to amend the University Ordinances relating to the payment and use of fees for student association membership at the University. All students will continue to pay a compulsory student association fee but any student who objects to their funds being directed to the Student Representative Council (SRC) will have their fee dedicated to the provision of student services.

Traditionally the role of the SRC has been important in meeting a range of non-academic needs of students on campus. The Commonwealth Government will challenge the State Governments to protect the rights of students.

Actions taken by the Tasmanian and Victorian Governments have the potential to affect the culture and quality of services and amenities at Universities. Their intervention is a direct attack on the autonomy of higher education institutions. Institutions and student organisations should jointly be able to make decisions about the imposition, collection and use of fees for the provision of services and amenities, independent of government interference.

By restricting students' expression of views on public issues the Victorian Government has cynically flouted the International instruments and principles which it had originally claimed to be the basis of its legislative action. Making the expenditure of fees collected by the institution dependent upon State Governments' views of what is 'appropriate' effectively amounts to the choking of open debate of Government policies as they affect the institution and the student body.

The value and need for compulsory student unionism has been endorsed by the Australian Vice-Chancellors' Committee and student organisations around Australia. This principle is in accordance with the International Covenant on Civil and Political Rights (ICCPR), Article 22 concerning freedom of association. Furthermore, most if not all institutions have allowed for conscientious objection to the membership of student organisation in their statutes.

The Victorian Act prohibits the acceptance by universities of financial assistance from the Commonwealth for a student organisation as a result of the State preventing or hindering

the imposition or collection of fees, a provision currently contained within section 25A of the Act.

This amendment to the *Higher Education Funding Act 1988* will allow the Commonwealth to make payments directly to student organisations for the purpose of enabling those organisations to continue to provide "benefits" to students and maintain funding support at a viable level.

The Commonwealth, through this amendment, will ensure that institutions maintain an environment that fosters the necessary culture and atmosphere for students to exchange ideas, hold and express opinions in a free and unimpeded manner.

## FINANCIAL IMPACT

As the recovery of any funds determined to be payable by the Minister directly to the student organisation will be recovered from the State's general revenue assistance under section 15 of the *States Grants (General Purposes) Act 1994* and in any subsequent States Grants (General Purposes) legislation, there will be no additional budgetary implications arising out of the measure.

## NOTES ON CLAUSES

### Clause 1 - Short Title

Clause 1(1) sets out the short title of the proposed amending Act.

Clause 1(2) provides that in the amending Act "Principal Act" means the *Higher Education Funding Act 1988*.

### Clause 2 - Commencement

Clause 2 provides that the amending Act is to commence on 31 December 1994.

### Clause 3 - Grants to support student organisations - payments to institutions

Section 25A(1) of the *Higher Education Funding Act 1988* (the Act) provides that if, in respect of a year, the Minister is satisfied that a State has taken, or refused or failed to reverse, action having the effect, directly or indirectly, of preventing or hindering:

- (a) the imposition, by the governing body of an institution, of fees for an organisation that represents the interests generally of students at the institution; or
- (b) the collection of the fees so imposed;

there is payable to that institution in respect of that year for that organisation such an amount by way of financial assistance as the Minister determines to be appropriate.

Clause 3 amends section 25A to make it clear that the Minister, once he or she is satisfied that a State has taken, or refused or failed to reverse, action having the effect, directly or indirectly, of preventing or hindering the imposition by an institution of fees for a student organisation or the collection of those fees, has a discretion in relation to whether he or she proceeds to make a determination that an amount of financial assistance is payable to an institution.

### Clause 4 - Insertion of section

Clause 4 inserts a new section 25B before section 26 of the Principal Act.

New subsection 25B(1) will allow the Commonwealth to make payments to student organisations directly. New subsection 25B(1) provides that if, in respect of a year, the Minister is satisfied that a State has taken, or refused or failed to reverse, action having the effect, directly or indirectly, of preventing or hindering:

- (a) the acceptance by an institution, or payment by an institution to a student organisation, of such amount of financial assistance as the Minister determines, or proposes to determine under section 25A(1); or
- (b) the application for one or more permitted purposes, by the institution or student organisation of fees imposed, or imposed and collected, on behalf of a student organisation;

the Minister may authorise payment to the student organisation in respect of that year of such an amount, by way of financial assistance, as the Minister determines to be appropriate.

New subsection 25B(6) defines "permitted purposes" and "student organisation" for the purposes of section 25B. "Permitted purposes" means:

- (a) the purposes of providing benefits to student within the meaning of paragraph 51(xxiiiA) of the Constitution; or
- (b) purposes that otherwise further the objects of a student organisation.

"Student organisation" means an organisation that represents the interests generally of students at an institution and that is:

- (a) a financial corporation or trading corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) an incorporated body or an unincorporated body of any other kind.

New subsection 25B(2) provides that the total amount determined by the Minister under new section 25B(1) for payment to the student organisation must not exceed:

- (a) where the State has placed a limitation on the acceptance by an institution or payment by an institution to a student organisation of an amount of financial assistance such that paragraph 25B(1)(a) applies - an amount that the Minister determines would have been imposed, or imposed and collected, by that institution for the student organisation in respect of that year but for the State's action or omission; or
- (b) where the State has placed a limitation on the purposes to which the institution or the student organisation may put the fees imposed, or imposed or collected on behalf of a student organisation such that paragraph 25B(1)(b) applies - an amount that the Minister determines would have been available for application by the institution or the student organisation in respect of the permitted purposes in respect of that year but for the State's action or omission.

New subsection 25B(3) and subsection 25B(4) imposes conditions on the receipt by a student organisation of funding under section 25B. The student organisation must:

- use the financial assistance for the permitted purposes referred to in new subsection 25B(6); and
- give to the Minister, not later than 30 June next following that year, a statement by a qualified auditor, in an appropriate form, certifying that the financial assistance was used in accordance with the permitted purposes set out in new subsection 25B(3)(a) of the Act

New subsection 25B(5) emphasises that section 25B has effect despite the provisions of any law, whether written or unwritten, of a State to the contrary.

Consequential amendments will be included in the States Grants (General Purposes) Bill 1994 to adjust the amount of financial assistance provided to a State to reflect any amount paid by the Commonwealth directly to student organisations under section 25A or new section 25B of this Act.