2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT (ABOLITION OF COMPULSORY UP-FRONT STUDENT UNION FEES) BILL 2005

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training the Hon Dr Brendan Nelson MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED
The Bill will make student unionism a voluntary activity in higher education institutions.

The Bill will amend the *Higher Education Support Act 2003*, to prohibit all higher education providers (public and private) from:

- requiring a person to become a member of a student association (union or guild)
- requiring a student to pay fees for non-academic student services

While the measures prohibit payment of an amount in respect of the provision to students of amenities or services that are not of an academic nature, an exception is made for payments of amounts for certain goods or services set out in proposed subsection 19-37(3). These exceptions are explained later in this Memorandum.

The Bill also provides for a formula to reduce a higher education provider’s basic grant amount for a grant year if they breach the voluntary student unionism requirements in proposed section 19-37 and for the reduction amount component of the formula to be indexed from 2007. As part of these arrangements, if the Minister becomes aware that a higher education provider has breached the voluntary student unionism provisions by requiring a person to pay money to the provider or another entity, then the Minister will be obliged to issue that higher education provider with a written notice to remedy the breach within 28 days by repaying those monies. Failure to repay within that period will result in a reduction of the provider’s basic grant amount for the grant year in question in accordance with the formula provided for in the Bill.

The Bill will also require Open Learning Australia to comply with these requirements as if it were a higher education provider.

These measures will ensure that a student cannot have their results withheld or face expulsion if they have not paid a fee to join a student organisation.

**FINANCIAL IMPACT**

Nil
Clause 1 - Short title

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

Clause 2 - Commencement

Provides for the Act to commence on 1 January 2006.

Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.
Schedule 1—Amendments

*Higher Education Support Act 2003*

**Explanation of the amendment**

The amendments made by this Schedule are intended to ensure the adoption of voluntary student unionism (including the elimination of compulsory student fees for non-academic services) by all higher education providers and new section 19-37 of the *Higher Education Support Act 2003* should be construed accordingly, other than in relation to payment of amounts set out in proposed new subsection 19-37(3).

**Item 1  After section 19-35**

Inserts a new section 19-37 after section 19-35 in Division 19 of Part 2-1 of Chapter 2.

**Proposed section 19-37  Requiring membership of associations and collection of amounts not directly related to courses**

Proposed subsection 19-37(1) provides that a higher education provider must not require a person to be or to become a member of an organisation of students (or of students and other persons) or 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.

Proposed subsection 19-37(2) provides that 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.

Proposed subsection 19-37(3) has the effect of providing that subsection 19-37(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:

- are essential for the course of study in which the person is enrolled or seeking to enrol; and
- the person has the choice of acquiring from (but does not acquire from) a supplier other than the higher education provider; and
- either are goods that become the property of the person that are not intended to be consumed during the course of study or consist of food, transport or accommodation associated with provision of field trips in connection with the course of study.
Item 1A Application provision

An application provision which has the effect of providing that section 19-37 of the Act does not apply to anything done by a higher education provider before 1 July 2006, unless:

- it is done on or after 1 January 2006 and relates to a person who is enrolled with (or seeking to enrol with) the provider; and
- the enrolment is (or will be) for a period of study starting on or after 1 July 2006; and 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.

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

Inserts a note at the end of subsection 33-20(2) which advises that a higher education provider’s basic grant amount for a grant year can also be adjusted in respect of that grant year under proposed section 33-37 (inserted by item 3).

Item 3 At the end of Subdivision 33-C

Inserts a new section 33-37 at the end of Subdivision 33-C of Part 2-2 of Chapter 2 to provide for the consequences of a breach of section 19-37.

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

Proposed subsection 33-37(1) provides that 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.

Proposed subsection 33-37(2) provides a formula for calculating an adjustment under subsection 33-37(1) to a higher education provider’s basic grant amount for a grant year.

Proposed subsection 33-37(3) provides that section 33-37 does not apply in relation to a breach of a condition imposed under section 19-37 by a higher education provider if:

- the breach consists of requiring a person to pay money to the provider or another entity; and
- as a result of the requirement, the person paid money to the provider or other entity; and
- the Minister has given a written notice to the provider under subsection 33-37(4); and
- the provider or other entity repays the money to the person within 28 days after the Minister gave the notice to the provider.

Proposed subsection 33-37(4) provides that if the Minister becomes aware that a higher education provider has breached a condition imposed under section 19-37 and the breach consists of requiring a person to pay money to the provider or another entity, then the Minister must give to the provider a written notice:

- 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
• stating that failure to repay any such money within that period will result in a reduction under section 33-37 of the provider’s basic grant amount for the grant year in question.

The notice may relate to more than one breach.

Proposed subsection 33-37(5) provides that a failure by the Minister to give a notice under subsection 33-37(4) in relation to a breach of a condition imposed under section 19-37 does not prevent section 33-37 from applying in relation to the breach.

Proposed subsection 33-37(6) provides that section 33-37 does not apply more than once in relation to a higher education provider’s basic grant amount for a grant year.

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

Section 54-5 deals with the appropriateness of requiring reduction or repayment of a grant and sets out a (non-exhaustive) list of matters that the Minister may consider in deciding whether it is appropriate to reduce or require repayment of a grant under subsection 54-1(1). Item 4 inserts a new paragraph 54-5(ba) which has the effect of providing that, if a 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 is one of the matters the Minister may consider in deciding whether it is appropriate to take particular action to reduce or require repayment of a grant under subsection 54-1(1).

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

Amends subsection 104-3(1) to reflect the insertion of subsection 104-3(5) by item 6. The heading to section 104-3 is altered by inserting “etc.” after “Guidelines”.

**Item 6 At the end of subsection 104-3(1)**

Inserts a new subsection 104-3(5) which provides that Open Learning Australia must comply with section 19-37 as if it were a higher education provider.

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

Section 198-5 contains a table that sets out the amounts that are to be indexed under the Act. Item 7 inserts a new table item 1A which has the effect of adding reduction amounts specified for the formula in subsection 33-37(2) to the amounts which may be indexed. The first year of indexation for these reduction amounts is 2007.