

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

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

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HIGHER EDUCATION FUNDING (STUDENT ORGANISATIONS) AMENDMENT BILL 1994

(Amendments to be moved on behalf of the Government)

OUTLINE

The Higher Education Funding (Student Organisations) Amendment Bill 1994 (the Bill) was introduced into the Senate on 21 September 1994, having passed the House of Representatives on the same day. The 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 tertiary 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.

These amendments to the Bill would provide for minor technical alterations to the proposed definitions of permitted purposes and student organisations contained in proposed subsection 25B(6) to be inserted by clause 4 of the Bill.

PURPOSE OF THE AMENDMENTS

The amendments are a direct result of the *Voluntary Membership of Student Guilds and Associations Bill 1994* (the Western Australian Bill) currently before the lower house of the Western Australian Parliament. In essence the Western Australian Bill follows similar Victorian legislation (*Tertiary Education (Amendment) Act 1994*) passed by the Victorian Parliament which purports to abolish compulsory student unionism. The Western Australian Bill purports to prevent student organisations and associations from accepting direct Commonwealth funding. This conflicts with the intention of the Bill.

Advice from the Attorney-General's Department confirms that the Bill would override the Western Australian Bill so that the Commonwealth would not be prevented from funding the student organisations directly. However the Attorney-General's Department has also advised that in order to strengthen the Commonwealth's position in the event of a legal challenge, a technical amendment is proposed to the definition of "permitted purposes" in proposed new subsection 25B(6) to be inserted by clause 4 of the Bill so that the purposes referred to in paragraphs (a) and (b) of the subsection are limited to lawful purposes.

An amendment is proposed to the definition of "student organisation" in proposed new subsection 25B(6) of the Bill to take account of any diminished membership levels in the various student organisations as a result of the States' actions to abolish compulsory student union membership. The amendment is required because under the current definition, if membership falls, the student organisations may be taken to no longer "represent the interests generally of students" at an institution. The words

"student organisation" would now be defined to mean an organisation which has as one of its objects or purposes the furthering of the interests generally of students at an institution.

FINANCIAL IMPACT

There would be no financial impact on the Commonwealth arising from these amendments.

NOTES ON CLAUSES

Amendment

Clause 4: Substitution of proposed subsection 25B(6)

The amendment would replace the proposed sub-section 25B(6) to be inserted by clause 4 of the Bill. The new provision is substantially similar to the current proposed new subsection 25B(6). However the definition of permitted purposes is altered to ensure that it is clear that the purposes for which payments may be made pursuant to the Act that fall within the definition are limited to lawful purposes. Those purposes are:

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

The definition of student organisation is altered to remove the requirement that the organisation be representative of the interests generally of students. The words "student organisation" would now be defined to mean an organisation that has as one of its objects or purposes the furthering of 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.