



**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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No. 159, 2005

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*.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

- (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)
