

**BELOW IS THE CURRENT VSU
PROVISIONS IN THE
TERTIARY EDUCATION ACT 1993**

AND

**THE IMPACT OF THE AMENDED
REPEAL VSU BILL IN THE LOWER
HOUSE**

Thursday October 25, 2000

LEGEND

<u>12C. Oth</u>	Repealed sections of the act
The parlia	Irrelevant sections in old VSU bill
<u>Provisio</u>	Additions in amended VSU repeal bill
<u>12E. Stu</u>	retentions in amended VSU repeal bill

The parliament of Victoria enacts as follows:

1. Purpose

The main purpose of this Act is to amend the Tertiary Education Act 1993 to-

- (a) make provision for voluntary student unionism at post-secondary education institutions; and
- (b) to provide for the spending of compulsory non-academic fees by post-secondary education institutions; and
- (c) provide for the disallowance by Parliament of Ministerial approvals to operate as a University.

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 10 is deemed to have come into operation on 18 May 1993.
- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation within the period of 12 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Definition

In section 3 of the Tertiary Education Act 1993 in the definition of "post-secondary education institution" after "limited to" insert "a TAFE college,".

4. New Division 3 inserted in Part 2

After section 12 of the Tertiary Education Act 1993 insert-

'Division 3-Voluntary Student Unionism'

12A.. Definition

In this Division-

"Organisation of students" means any person or body the object of which or one of the objects of which is to represent or serve the needs of students and-

- (a) the constituting documents of which require that its membership is to be constituted by a

- (b) the constituting documents of which provide for any student to be a member of the organisation without the requirement for the student to apply for and be accepted as a member of that organisation of students; or
- (c) the majority of the members of which are students; or
- (d) in the case of an organisation with an elected governing body, at the last general election for membership of that governing body the majority of members were elected at elections where the majority of voters were students.

12B. Application of Division

The provisions of this Division apply to the governing body of a post-secondary education institution despite anything to the contrary in-

- (a) any Act; or
- (b) a subordinate instrument within the meaning of the Interpretation of Legislation Act 1984; or
- (c) any document whatever relating to the post-secondary education institution.

~~12C. Other powers of the institutions not limited~~

~~Except as expressly provided in this Division, nothing in this Division limits the powers of the governing body of a post-secondary education institution to-~~

- ~~(a) impose or collect fees, subscriptions or charges from any student or prospective student of the institution; or~~
- ~~(b) exclude any student from the institution; or~~
- ~~(c) exclude any student from or discriminate against any student in respect of examinations or any other academic activities of the institution; or~~
- ~~(d) exclude any student from facilities, services or activities for students; or~~
- ~~(e) require the payment of a fine to the institution; or~~
- ~~(f) impose any other punishment,~~

~~12D. Membership of student organisation not compulsory~~

- ~~(1) The governing body of a post-secondary education institution must not require any student or prospective student of the institution to be a member of an organisation of students.~~
- ~~(2) The governing body of a post-secondary education institution must not impose on any student or prospective student of the institution a compulsory fee, subscription or charge for the membership of an organisation of students.~~
- ~~(3) The governing body of a post-secondary education institution must ensure that, as far as is reasonably practicable, if a compulsory non-academic fee, subscription or charge is imposed on any student or prospective student of the institution that the student is made aware before paying the fee, subscription or charge that the fee, subscription or charge does not confer membership of any organisation of students.~~

12D. Provision for declining automatic membership of a student organisation.

- ~~(1) The governing body of a post-secondary~~

provide for students to become members of an organisation of students as a consequence of, or at the same time as, enrolling in a course of study at the institution must ensure that those procedures provide for a student to indicate at the time of enrolment that he or she does not wish to become a member of the organisation of students.

(2) The governing body of a post-secondary education institution must ensure that a student who has indicated, in accordance with procedures referred to in sub-section (1), that he or she does not wish to become a member of an organisation of students is not made a member of an organisation of students as a consequence of, or by enrolling in a course of study at that institution.

12E. *Students who do not join student organisation*

The governing body of a post-secondary education institution must ensure that any student or prospective student of the institution who has paid the compulsory fees, subscriptions or charges of the institution but who is not or does not become a member of any organisation of students is not liable to-

- (a) exclusion from the institution; or
- (b) exclusion from or discrimination against in respect of examinations or any other academic activities of the institution; or
- (c) exclusion from facilities, services or activities for students which are wholly or partially funded by the compulsory fees, subscriptions or charges; or
- (d) pay a fine to the institution; or
- (e) any other punishment imposed by or on behalf of the institution-

because the student is not or does not become a member of an organisation of students.

12F. *Limitation on powers to spend funds from compulsory non-academic fees etc.*

- (1) The governing body of a post-secondary education institution must not spend or allow to be spent-
 - (a) any money paid to the institution by a student or a prospective student of the institution by way of a compulsory non-academic fee, subscription or charge; or
 - (b) any money which is profit made by the institution or an organisation of students in the course of providing facilities, services or activities funded wholly or partly by the money referred to in paragraph (a)-

except for providing facilities, services or activities of direct benefit to ~~the institution or~~ students at the institution.

- (2) The governing body of a post-secondary education institution must establish procedures and sanctions to ensure that any money referred to in sub-section (1) is spent or allowed to be spent in accordance with that sub-section and, if spent or allowed to be spent in contravention of that sub-section, is repaid to the governing body.
- ~~(3) Subject to the regulations, for the purposes of this section, facilities, services or activities of direct benefit to the institution or students at the institution means facilities, services or activities of direct benefit to the institution or students at the institution relating to the~~

- ~~(a) food and beverages;~~
- ~~(b) meeting rooms;~~
- ~~(c) sports and physical recreation;~~
- ~~(d) child care;~~
- ~~(e) counselling;~~
- ~~(f) legal advice;~~
- ~~(g) health care;~~
- ~~(h) housing;~~
- ~~(i) employment;~~
- ~~(j) visual arts, performing arts and audio-visual media;~~
- ~~(k) debating;~~
- ~~(l) libraries and reading rooms;~~
- ~~(m) Academic support;~~
- ~~(n) personal accident insurance for students;~~
- ~~(o) orientation information;~~
- ~~(p) support for overseas students.~~

~~(4) The regulations may-~~

- ~~(a) declare any facility, service or activity, in addition to those referred to in sub-section (3), to be a facility, service or activity of direct benefit to the institution or students at the institution; and~~
- ~~(b) declare any facility, service or activity referred to in sub-section (3) or declared by regulations made for the purposes of paragraph (a) only to be of direct benefit to the institution or students at the institution in specified circumstances; and~~
- ~~(c) provide for matters of a transitional or savings nature consequent on the making of regulations under paragraph (a) or (b).~~

~~(5) Nothing in this section applies to any agreement entered into before 28 April 1994 that is binding on the parties to the agreement.~~

12G. *Voluntary fees held on trust*

If the governing body of a post-secondary education institution collects money for voluntary fees, subscriptions or charges to be paid to an organisation of students-

- (a) for voluntary membership of an organisation of students; or
- (b) for the voluntary use of a facility, service or activity; or
- (c) for voluntary participation in an activity-
the governing body holds the money for the beneficial use of the organisation of students and is not entitled to retain any of the money except to defray the costs of administration of collecting, holding or transfer of the money and to pay bank and government fees and charges relating to collecting, holding or transfer of the money.

12H. *Offence*

A person must not persuade another person to become a member of an organisation of students by threats, intimidation or deception or attempt to persuade a person to become a member by any of those means.

Penalty: 10 penalty units.

12I. *Statement about compulsory fees etc.*

- ~~1) The governing body of a post-secondary education institution must ensure that, at the~~

~~submitted to the Minister, a statement about compulsory non-academic fees, subscriptions and charges is prepared, published and made, freely available to students and prospective students.~~

~~(2) The statement must specify-~~

~~(a) the amount of compulsory non-academic fees, subscriptions and charges collected by the institution from students and prospective students in the preceding financial year; and~~

~~(b) the purposes for which the institution spent those fees, subscriptions and charges or made them available and the amounts spent or made available; and~~

~~(c) the names of organisations of students to which the institution made the fees, subscriptions and charges available and the amounts of money which were made available to each organisation; and~~

~~(d) the purposes for which the organisations referred to in paragraph (c) spent the money made available to them including names of other bodies to which they made the money available and the amounts of money they made available.~~

~~(3) The governing body of the institution must ensure that the statement is audited.~~

12I. Statement about compulsory fees etc.

(1) The governing body of a post-secondary education institution must ensure that the institution's annual report under the Financial Management Act 1994 that is submitted to the Minister includes a statement about compulsory non-academic fees, subscriptions and charges payable in the preceding financial year.

12J. Universities not to accept certain Commonwealth grants

An institution specified in Schedule 1 must not-

(a) accept payment of any amount of financial assistance from the Commonwealth granted to the institution for an organisation of students or an organisation that represents the interests generally of students at the institution as a result of the, State taking or refusing or failing to reverse, action having effect, directly or indirectly, of preventing or hindering the imposition of fees for such a student organisation or collecting those, fees; or

(b) accept payment of any amount referred to in paragraph (a) on condition that the institution will pay that amount to the student organisation or pay that amount to the student organisation without undue delay; or

(c) accept payment of any advance on account of any amount referred to in paragraph (a) that is expected to become payable; or

(d) accept payment of an advance referred to in paragraph (c) on condition that the institution will pay that amount to the student organisation or pay that amount to the student Organisation without undue delay.

5 Consequential repeal

Section 7 of the Tertiary Education Act 1993 is repealed.

6. Approval of universities

"(1A) The Minister may, by Order published in the Government Gazette, approve an institution, other than an autonomous college or a TAFE college, to operate as university or part of a university."

(2) In section 10 (7) of the Tertiary Education Act 1993 after "may" insert, "by Order published in the Government Gazette,".

(3) After section 10 (10) of the Tertiary Education Act 1993 insert-

"(11) The power to make an order under this section is subject to the Order being disallowed by Parliament.

(12) A copy of every Order under this section must be laid before both Houses of Parliament on or before the 6th sitting day after the publication of the Order in the Government Gazette.

(13) Sections 6 and 6A of the Subordinate Legislation Act 1962 apply to an Order under this section as if the Order were a statutory rule within the meaning of that Act laid before Parliament under section 5 of that Act."

7. Higher education courses study

(1) In section 11 (1) (b) and (c) of the Tertiary Education Act 1993 after "higher education award" insert "whether the award is to be conferred by that institution or any other institution".

(2) After section 11 (1) (d) of the Tertiary Education Act 1993 insert-

"(da) in the case of an institution operated by a company established or controlled by a university, the governing body of the university has the power to control the standards and quality of the course of study offered by the institution and confers the award in relation to that course of study."

8. Repeal

(1) Section 20 of the Tertiary Education Act 1993 is repealed.

(2) The Ballarat College of Advanced Education Act 1976 is repealed.

9. Regulations

~~After section 22 (2) of the Tertiary Education Act 1993 insert-~~

~~"(3) Regulations made for the purposes of section 12F (4) (a) must be made on the recommendation of the Minister after the Minister has considered a proposal from any of the bodies representing Vice Chancellors of universities and Directors of TAFE colleges.~~

~~(4) Regulations made for the purposes of section 12F (4) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6 (2) of the Subordinate Legislation Act 1962.~~

~~(5) Disallowance under sub-section (4) must be taken to be disallowance by Parliament for the purposes of the Subordinate Legislation Act 1962."~~

10. Statute law revision

In section 32 of the Tertiary Education Act 1993 for "Vocational and" substitute "Vocational".