



The Australian Law Students' Association

DISCUSSION PAPER (2015)

FEE-DEREGULATION AND LAW STUDENTS

**HOW PROSPECTIVE CHANGES TO THE FEE-REGULATORY SYSTEM MAY
AFFECT YOU**

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I Background:

Although recently struggling to pass both houses of parliament, fee-deregulation is the proposed policy of the former Federal Education Minister, Christopher Pyne, to deregulate university fees. As it stands, universities are locked into certain pricing arrangements. Law students, for example, have a maximum student contribution of \$10,266 for a year of full time study. Depending on the nature of the course taken, students have the option of taking a full fee-paying or a Commonwealth Supported Place ('CSP') (undergraduate) position to complete their tertiary education. If students are on a CSP (like most domestic undergraduates are), fees are partially deferred on a HECS-Help loan and partially covered by the Commonwealth government. For fee-paying students, fees are simply deferred with FEE-Help.

The government has previously proposed the deregulation of higher education fees as part of a greater higher education reform package. The package has changed substantially in its first two forms, and had included aspects of increasing interest on HECS-Help loans and removing funding from Higher Research facilities, that several

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universities rely quite heavily on. However, the gist remains the same, in that caps would be removed from the student contribution half of the fee set by the university. The effect of this is that the university itself is given greater freedom to set higher fees. These changes will only affect public institutions, and the government plans to give greater support to private operators.

The purpose of this discussion paper is to inform Australian law students of this policy, should it be passed or considered by the Federal Government, under the new leadership of Prime Minister Turnbull and his Federal Education Minister, Simon Birmingham. There are reports however that the Government will not be adopting this policy and will be exploring alternative policies.³

ALSA recognised the importance of producing this paper as responses received by ALSA through our *National Advocacy Survey* indicated that of 106 responses received only 35.8% of respondents were well informed on this proposed policy, while 44.3% were familiar with the policy and understood it to some extent. The Survey also revealed that 16.9% of respondents were vaguely familiar with the policy, although not possessing a sound understanding of it and 2.8% of respondents were not familiar or did not understand the proposed policy. This paper therefore seeks to address this gap in knowledge, to ensure that law students are well informed on how this proposed policy may affect them.

II Major Political Players, Opinions and Positions:

The former Federal Education Minister, Christopher Pyne, previously proposed the prospective changes to higher education, whereby after a recent debate in the Senate, he stated:

³ Eliza Borrello, 'University Deregulation plan could be dumped by Turnbull Government' *ABC News* (online), 23 September 2015 < <http://www.abc.net.au/news/2015-09-20/malcolm-turnbull-announces-new-cabinet/6790098>>

We will therefore bring back the higher education reform package for the parliament to consider...we will not give up. This reform is too important ... Great reform takes time.

The Liberal Party has previously demonstrated its strong support for the idea, as it promotes competition through a free-market, meaning a more consistent ranking, rather than the constantly fluctuating standings. The basis for this is that universities will be able to generate more income and, presumably, improve their standings in a global university market.

The Labor party however, have made it clear that they do not support the changes. Labor's Education Spokesperson, Kim Carr, believes the proposed higher education reforms are 'unfair, unnecessary and ideologically driven'. Their principle objection is that they believe that the price of degrees will generally rise. The increase in university fees could possibly broaden the wealth gap, and will make it substantially more difficult for students from lower socio-economic background to attend a highly ranked university, and could potentially act as a barrier for some to attend university at all. The Labor Government has also recently proposed its own Education policy, whereby they have suggested they will invest more money into universities. The policy can be read in full on their website.⁴

The Greens, similar to Labor, do not support the changes, for broadly similar reasons, but also acknowledge the funding dilemma that universities face, and suggest alternative methods of fundraising would be preferable to fee-deregulation.

The crossbench are split on the matter. Senators such as David Leyonhjelm, of the Liberal Democrat party, support the idea on the basis that it affords greater autonomy to universities, and thrusts higher education into a free-market. Others, such as Jackie Lambie, are concerned that the Higher Education Amendment Bill is creating a 'blue-tie aristocracy', and that Australia should follow the higher-education models of Northern Europe, where, in many cases, some degrees are free. Nick Xenophon stated, after the second failure of the bill, 'Albert Einstein once said the definition of insanity is doing the same thing over and over again and expecting a different result.'

⁴ Australian Labor Party, *Labor's Fairer Plan* <<http://www.nodebtsentence.org/laborsfairerplan>>.



The crossbench are generally against fee-deregulation, but acknowledge a need to do something about the higher education funding situation.

Universities_Australia and the Group of 8 appear to support fee-deregulation; however, Universities Australia has not yet been satisfied with the proposed funding models and their longevity. Both groups assert that there is a crisis in the current university-funding model, which will find Australian universities stagnating and being overtaken by their British or American counterparts.

The National Tertiary Education Union are actively against Fee-Deregulation, calling the recently rejected reforms 'unfair, unprecedented and unsustainable'. They also assert that the concerns of current students, their families, as well as future students and their families should be paramount when considering higher-education reform.

Finally, the National Union of Students staunchly opposes the proposed measures, for broadly similar reasons to the NTEU. They have also stated that the changes are not within the public interest, and claim that 80% of the population are against the deregulation of university fees.

III Benefits of Fee-Deregulation:

The benefits of Fee-Deregulation revolve mostly around the idea that universities will have increased funding if they are free to increase the amount they plan to charge for degrees. This comes about in two ways. Firstly, degrees will raise more money per student thus increasing raw funding to the university offering the proposed program. Secondly, it is expected that if universities are autonomously competitive, their objective 'quality' will increase, thus increasing the global standing of Australian institutions, and thus increasing the amount raised through foreign interest in Australian higher education. There is an ongoing concern that the restrictions placed on Australian universities mean that they are being 'left-behind' by their Ivy-league and Oxbridge counterparts. The other advantage is that increased competition in the university sector will mean that universities will have to compete in a more merits-

based manner than previously, thus ensuring that universities cater to a more specific student body. This argument appears flawed to the extent that placing all universities on an equal playing field is more likely to force universities to cater more exclusively to differentiate products of equal commercial value.

IV Drawbacks of the Proposed Policy:

The first and primary concern with Fee-Deregulation is the potential **cost of degrees**. Under the proposed model, universities are more than likely going to become more expensive, and the debt accrued by domestic students is bound to increase substantially. The arguments that competition within the education market could reduce costs do not take into account the nature of the tertiary education market, and the fact that selling products of an uncertain value means that suppliers differentiate on marketing grounds, rather than pricing. At a basic level, this will create issues for students who are already bound to struggle with extensive debt under the current model. One looks to the example of the American deregulated market and huge debts accrued by students there. Another issue is that, when the loans increased, the amount owed by students in general is also likely to increase. This becomes a problem when you consider the amount of unpaid HECS-debt that already exists, which would only be set to increase. This issue of increased debt becomes pertinent when considering the 'buy now, pay later' nature of a HECS-debt, and the fact that students, aged as young as 17, could be signing themselves up to extremely high-debts, without reasonably understanding the consequences, as consumers are likely to lose sight of the actual value of the service.

The greater effect of forcing universities to compete by charging more for a more prestigious service is that it will likely create a stronger and more worrying sense of elitism and class-division between institutions. More worryingly, it may also create a situation where some students cannot attend certain institutions, while others will not be able to afford to attend university entirely. Thus, ALSA's concern with Fee-Deregulation is that it is likely to act as a barrier to entry for a substantial part of the population, and will act to serve the needs of the more privileged.

V ALSA's Position on the Policy:

ALSA acknowledges the concerns of universities in the sustainability of the current Higher Education funding model; however we are not of the position that the Fee-Deregulation proposal, as designed by the former Federal Education Minister, is the ideal solution to the problems.

ALSA's position on this policy is primarily informed by the results of our *National Advocacy Survey* whereby of 106 responses received by ALSA, 74.5% of respondents indicated they were against the Federal Government's proposed Fee-Deregulation policy, with 51.88% of all respondents indicating that they are strongly against this policy in its proposed form. Of particular concern to students who answered our survey was the potential equity issues which may arise from this policy, whereby one respondent highlighted: "I would be in a far worse financial condition than I am already because the price/cost of the degree will be higher than what we could afford and the up-front costs would be excessive" and that "Rural and remote students, low social economic students will never be able to afford to follow their dream."

Thus, outside of the benefits and drawbacks mentioned above, there are several other concerns that ALSA has in relation to the proposed Fee-Deregulation policy.

1. Appropriate allocation of funding

Firstly, with an increase in fees comes a natural increase in funding, but it is unclear how that funding would be used. For example, as Law is a very lucrative discipline, it is likely that it would be a degree that would be set for a substantial price increase. However, there is little to ensure that any of that extra revenue would be used to increase the quality of legal education, and it is highly likely that Law degrees would be used to cross-subsidise other disciplines. The impending effect of the decision is that enrolment numbers may decrease due to reason of practicability, thus potentially addressing the problem of the oversupply of graduate law students. While ALSA is concerned about the over-supply of graduates, we are not of the position that fee-deregulation is a reasonable policy to address this issue and we are concerned about the possibilities of this policy further marginalising students from different backgrounds and lower socio-economic backgrounds.

2. Long term solutions and certainty

Secondly, although certain figures have been tabled, it is important to know how much the government contribution is going to decrease as a result of the increase in student-raised revenue. It is important that the government is searching for a long-term solution to funding problems, rather than simply shelving the responsibility unfairly onto students. For this to occur, ALSA has urged the government to consult with students and educational institutions to ensure a long term solution may be reached.

In addition, the extent to which fees are logically set to rise is not remotely clear. It is difficult to come out in support of any measure that has no upper limit. One can look to the United States as a clear example of how a deregulated system can result in absurdly expensive degrees and an elitist culture of higher education, serving only the needs of the most privileged.

3. The removal of the Fee-Help Cap

At the same time, ALSA is concerned by the current state of FEE-Help and believe that, for this system to be at all effective, the current caps on possible FEE-Help receivable would have to change to accommodate the higher fees. The reason for this is that the current cap on FEE-HELP precludes some of our legal graduates from accessing support to complete their PLT or further educational training. This is an issue which we would urge the government to consider addressing.

4. Higher fees in a tightening job market for law graduates limits social mobility and creates additional equity concerns

Finally, ALSA also acknowledges the prevalence of students engaged in unpaid internships or unpaid work experience opportunities during the degree – which they undertake to increase their employability. Imposing a stronger financial burden on students who are, in many cases, not getting paid for their work creates an impossibly large task for students to deal with when it comes to paying their debts.

VI Concluding Remarks

Therefore ALSA's does not currently support the proposed policies being put forward to deregulate fees. Although ALSA is urging for higher education reform which is aimed at continually improving the quality of teaching at law schools, and generally, universities more broadly; it cautions against measures which may marginalise or disenfranchise students from a variety of socioeconomic backgrounds from accessing legal tertiary education. Higher education fees and student debt particularly poses a threat to law students wishing to work in community legal centres or the broader public sector – a sector which has already faced widespread funding cuts by the Federal Government. These measures therefore, particularly undermine the wider communities' access to legal representation and justice, which we fear may cause wider ramifications and problems in the future.

ALSA continues to urge education providers and policy makers to consider viable solutions to the oversupply of legal graduates in the current employment market, and address this problem in a way which does not marginalise sectors of our community from accessing legal education or accessing legal representation and justice.

ALSA urges the Federal Government under the new leadership of Prime Minister Malcolm Turnbull to invite submissions and consult with education providers and wider organisations on the issue of higher education reform, so that future education reform bills better represent the interests of tertiary students and the wider community.