

STUDENT SERVICES & AMENITIES FEE COMPLAINT GUIDE

AUSTRALIAN LAW STUDENTS' ASSOCIATION



The Australian Law Students' Association acknowledges the First Nations peoples as the traditional custodians of Australia. We recognise, respect and celebrate the cultural distinctions of First Nations peoples and value their rich and positive contribution to broader Australian society.



VICE PRESIDENT'S WELCOME

On 11 October 2011, the Australian Parliament passed legislation, which allowed universities to charge a fee for student services and amenities of a non-academic nature, the Student Services Amenities Fee (SSAF). This fee can then be spent on non-academic aspects including, recreational activities, child care, financial advice and food services. It is not compulsory for institutions to charge this fee to their students.

In 2018, Council identified that there was a lack of transparency in the distribution of SSAF and that law societies faced difficulties in gaining SSAF funding for their activities. In response to this, the education portfolio undertook an investigation of the SSAF reporting process across Australian universities and reached out to the Department of Education for information on SSAF. This guide is the result of that work.

This guide is intended to provide initial guidance to LSS/As about obligations on institutions under the SSAF framework, and how to navigate discussions with individual universities and the Department of Education. As a general rule, universities are able to self-administer their SSAF, so long as it accords with the Department of Education guidelines. The first step for any society with concerns about SSAF at their university is to speak directly with the university administration. If serious concerns are raised through this process or not abated, this guide contains resources to facilitate discussions with the Department of Education as well.

It would be prudent to investigate the current information on SSAF distributed by the Department of Education to ensure you have the most accurate and up to date information.

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CONTENTS



1. Legislative Background



2. Assessing whether a serious breach has occurred



3. Process of rectifying the potential serious breach



4. Email template



i. Legislative Background

Legislation

On 11 October 2011, the Australian Parliament passed the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2011* (Cth) ('the Act'), allowing Higher Education Providers ('providers') to charge a Student Services and Amenities Fee ('SSAF') of a non-academic nature.

The amendment allowed for providers to charge any student who is enrolled or seeking to enrol in their institution SSAF. Students studying a part-time basis cannot be charged more than 75% of the maximum amount that students studying on a full-time basis are charged.¹ Providers may deliver the SSAF themselves or contract a third party to deliver the services on their behalf.²

The Department of Education and Training has clarified that 'the fee may be spent by higher education providers on items such as sporting and recreational activities, employment and career advice, child care, financial advice and food services.'³ More specifically, a provider that charges a SSAF will only be able to spend the fee on the provision of the following services:

- Providing food or drink to students on a campus of the higher education provider;
- Supporting a sporting or other recreational activity by students;
- Supporting the administration of a club most of whose members are students;
- Caring for children of students;
- Providing legal services to students;
- Promoting the health or welfare of students;
- Helping students secure accommodation;
- Helping students obtain employment or advice on careers;
- Helping students with their financial affairs;
- Helping students obtain insurance against personal accidents;
- Supporting debating by students;
- Providing libraries and reading rooms (other than those provided for academic purposes) for students;
- Supporting an artistic activity by students;
- Supporting the production and dissemination to students of media whose content is provided by students;
- Helping students develop skills for study, by means other than undertaking courses of study in which they are enrolled;
- Advising on matters arising under the higher education provider's rules (however described);
- advocating students' interests in matters arising under the higher education provider's rules (however described);
- Giving students information to help them in their orientation; and
- Helping meet the specific needs of overseas students relating to their welfare, accommodation and employment.⁴

¹ *Higher Education Support Act 2003* (Cth) s 2.10.

² Australian Government Department of Education and Training, 'Student Services and Amenities Fees' (12 January 2018) Australian Government Department of Education and Training <<https://www.education.gov.au/student-services-and-amenities-fee>>.

³ *Ibid.*

⁴ *Ibid.*

The Guidelines

The Minister for Education has subsequently enacted guidelines which outline the SSAF requirements for providers with Commonwealth supported students. These were enacted under ss 238 – 10 of the Act, and are referred to as the *Student Services, Amenities, Representation and Advocacy Guidelines* ('the Guidelines').⁵

The Guidelines state that universities are required to have a formal process of consultation with democratically elected student representatives and representatives from major student organisations at the university regarding the specific uses of proceeds from any compulsory SSAF.⁶ These consultations must include:

1. publishing identified priorities for proposed fee expenditure and allowing opportunities to comment on those priorities by students and student associations and organisations; and
2. meeting with democratically elected student representatives and representatives from major student organisations at the university to consider the priorities for use of fee revenue.⁷

Where requisite student consultation has taken place and the revenue is used for allowable items under the Act, decisions on the expenditure of SSAF revenue, including the timing of expenditure, are at the discretion of the provider.⁸ Once consultation has occurred, the provider must provide students public access to information on the established priorities, proposed heads of expenditure and projects to be funded.⁹ At the completion of the annual budget cycle, the provider must also provide a publicly available report on the actual annual expenditure.

Each year, as part of the financial statements process, universities complete a compliance certificate signed by the Vice Chancellor or Chief Executive Officer Confirming that SSAF revenue was raised and expended in accordance with the legislative requirements.

⁵ Australian Government Department of Education and Training, 'Student Services and Amenities Fees' (12 January 2018) Australian Government Department of Education and Training <<https://www.education.gov.au/student-services-and-amenities-fee>>.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ *Student Services, Amenities, Representation and Advocacy Guidelines 2011* (Cth) cl 3.2.5(c).

ii. Assessing a breach

In determining whether a breach has occurred under the guidelines there are three main areas which you should consider:

1. failure to adequately consult,
2. failure to be transparent,
3. failure to publish report.

Consultation

Is your university failing to fulfil their requirements of consultation?

It is a requirement that your university conduct a formal process of consultation with democratically elected student representatives and representatives from major student organisations at the university regarding the specific uses of proceeds from any compulsory SSAF. This would likely mean that the LSS/A and/or the Student Union are consulted in relation to the distribution of funding. It is important to consider whether you are aware of any such consultation process occurring. This may take the form of a meeting, a survey or another consultative process.

Transparency

Is your university failing to fulfil their transparency requirements?

If your university does consult student representatives, you should consider whether this process adheres to the legislative requirements reflected under cl. 3.2.2(a) of the Guidelines. Your university is required to publish identified priorities for proposed fee expenditure, and to subsequently provide an opportunity in which student representatives may comment on those priorities. Your university must advise you of avenues available to be involved in the decision-making processes, including by publishing the details of the consultation mechanisms on their website and in their annual report. Following this, you should consider whether your university is making this information publicly accessible pursuant to cl 3.2.5(c). This should include providing students with public access to information on the established priorities, proposed heads of expenditure and projects to be funded through SSAF.

Publication of Report

Has your university failed to provide a publicly available SSAF report?

You should consider whether your university has a report which it publishes to students regarding annual expenditure and the distribution of SSAF. It is likely that any such report would be included in the annual university report at the end of the academic year. This may be available on the website or be distributed to students via email.

iii. Process of Rectifying a Serious Breach

It is the responsibility of each provider that charges SSAF to ensure that the requirements of the legislation are met. Potential breaches of the legislation are considered a serious matter, and therefore if you believe a breach has taken place, you should act immediately.

First step – Approaching your university

In the first instance, you should raise the matter directly with your university and the department which manages the distribution of SSAF.

It is encouraged that this step be done by arranging a face to face meeting with your university. Do not look at this as an adversarial meeting, rather an opportunity to create an open dialogue and raise your concerns as a representative of your peers.

When attending the meeting, you may consider asking some of the following questions, depending on what is relevant to your situation:

1. Does our university have a policy which describes the process in which the faculty consults and distributes SSAF? Is there a way in which we can view a copy of this policy?
2. What is the process of determining how SSAF is distributed at our university?
3. Is there a way in which our LSS/A can be involved in the consultation process?
4. Is there a way in which we can access the findings of the consultation process?
5. Does our university publish a report containing the identified priorities for proposed SSAF expenditure and where can we access this report?
6. Are students provided the opportunity to comment on and contribute to the proposed SSAF expenditure following the publication of any report? If so, how are students able to do so?
7. Does our university publish a report on annual SSAF expenditure and where can we access this report?
8. Is there a way in which we can access a breakdown of the annual distributed expenditure for SSAF?

Final step – Complaining to the Department

If you are having difficulty communicating with your university or are concerned that they are not providing the information they are obligated too, you may consider opening an investigation with the Department of Education and Training.

An investigation may be opened by contacting the Department via email at SSAF@education.gov.au. In emailing the Department, you should provide as much detail as possible and clearly substantiate your allegations.

iv. Template for Making a Complaint

If you believe that your university has committed a serious breach, you should email the Department of Education and Training.

In order to enable the Department to assess the allegations raised, it helps if you can provide:

- your name and contact information (the Department will not reveal this information to the relevant provider unless given specific permission by the complainant);
- the name of the university involved;
- as much detail as possible about the alleged breach – i.e. when, where, how the alleged breach occurred, and how the complainant became aware of it (as relevant);
- the provision of the governance framework believed to have been breached (if the complainant knows);
- any evidence they have to support their allegation that a breach has occurred;
- what action you have already taken regarding the alleged breach.

Below is a template which can assist you in making a complaint to the Department. Please note, the email should only be viewed as a tentative guideline for a submission. Please customise the email to suit your individual concerns and university.

Email template:

Dear Sir/Madam,

My name is **[FULL NAME]** and I am the **[POSITION]** of **[LAW SOCIETY]** at **[UNIVERSITY]**.

I am writing regarding the distribution of SSAF at **[UNIVERSITY]**, as we believe that our university has committed a serious breach of their obligations under **[RELEVANT CLAUSE]** of the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2011* (Cth) ('the Act').

A. Process of SSAF Distribution

At **[UNIVERSITY]** the distribution of SSAF is managed by **[UNIVERSITY DEPARTMENT]**. The current process for distribution of SSAF is **[provide an overview of the process of consultation, distribution and feedback surrounding SSAF]**.

B. University Response

In the first instance, we have approached **[UNIVERSITY DEPARTMENT]** to discuss this issue.

In response to us raising these concerns, our university has stated... **[Provide a detailed explanation of the process of consultation with your university. What were the concerns which you raised, what was the response of your university and their explanation? Why do you believe this approach was unsuccessful and require the Department to investigate further?]**.

B. Alleged Breach

We believe that **[UNIVERSITY]** has failed to fulfil the **[REQUIREMENT]** requirement which are reflected under **[RELEVANT SECTION]** of the Act.

In particular, the breach relates to our university's failure to **[DELVE INTO SPECIFICS OF BREACH AND THE OMISSION OF YOUR UNIVERSITY]**.

We appreciate your support in investigating this potential serious breach of SSAF obligations.

If you wish to discuss this matter further, please do not hesitate to contact me via email or telephone at **[PHONE NUMBER]**.

We look forward to your response.

Kind regards,

[NAME]

[TITLE/DETAILS]



Australian Law Students' Association 2019

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