

Education (Freedom of Association) Amendment Bill

Member's Bill

As reported from the Education and Science
Committee

Commentary

Recommendation

The Education and Science Committee has examined the Education (Freedom of Association) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill would amend the Education Act 1989 by removing any requirement for a student to join a students' association; preventing any person from exerting undue influence on a student to join or not join, or cease to be a member of, a students' association; and preventing a person from being required to pay a membership fee to a students' association unless that person chose to become or remain a member of that association. Its aim is to uphold the right of students to freedom of association.

This commentary covers the major amendments that we recommend.

Voluntary membership

We recommend that clause 6 be amended to substitute new sections 229A to 229CA for sections 229A to 229C of the principal Act; and that clause 7 be deleted. Clause 6 of the bill as introduced would replace section 229 of the Act, and clause 7 would repeal sections 229A to 229D. We agree with the submission by the New Zealand Law Society that the repeal of section 229 of the Act is unnecessary. We consider that the drafting of new section 229 is complex, and the wording of particular sub-clauses has the potential to create confusion as to their meaning and application. We consider that to minimise any uncertainty, and to ensure that the policy objectives of new section 229 are achieved, it is preferable for each of these policy objectives to be dealt with separately in sections 229A to 229CA.

New section 229A provides that no student or prospective student at an institution is required to be a member of a students' association.

Undue influence

New section 229B would prohibit a person from exerting undue influence on any student or prospective student to become or remain a member of a students' association, cease to be a member of a students' association, or not become a member of a students' association. This broadens the application of the prohibition on undue influence from that in the bill as introduced.

Complaints

The bill as introduced does not provide for a regime to enforce the prohibition on the exertion of undue influence. New section 229C would establish a complaints procedure to be followed when undue influence was considered to have been exerted. The new section is modelled on section 229L as introduced by the Education (Tertiary Students Association Voluntary Membership) Amendment Act 1998 and repealed by the Education Amendment Act 2000.

Payment of fees

New clause 229CA would clarify the categories of fees that may and may not be collected from students. It provides that no person is required to pay a membership fee to a students' association, or to pay money to any other person as an alternative to paying such a

membership fee, unless that person chooses to become or remain a member of that association. It would provide that a person who is not a member of a students' association may not be required to pay a representation fee to the association for any services that the association provides generally to the institution's student body. It further provides that neither of these provisions prevent a students' association from either charging a person who is not a member of the association for the provision of a specific service to that person, at that person's request; or being contracted by an institution or any other person to provide services to students of an institution.

The effect of these provisions would be to ensure that it was voluntary to pay to be a member of an association or to be represented by an association, while preserving the ability of associations to charge for services on a user-pays basis or to be contracted to provide general services to students on behalf of the institution.

Collection of fees

New clause 229CA would make it clear that institutions would be required, if asked by a students' association, to collect the membership fees of the association, but only if the council was provided with a copy of the association's current constitution and an independently audited set of the association's financial accounts for the last financial year; and that the council must pay all membership fees so collected to the association in a timely manner.

The new clause would also allow a council to decline a request to collect membership fees, or withhold all or part of any fees already collected, if it believed that either the terms of the association's constitution were being breached, or the accounts disclosed financial irregularities. The council would be able to retain any fees withheld until it was satisfied that all breaches of the terms of the association's constitution, and all financial irregularities, had been appropriately addressed by the association.

The council would be able to charge an association for the actual and reasonable costs incurred in collecting fees.

Miscellaneous and consequential amendments

Commencement date

We recommend that clause 2 be amended to provide for a commencement date of 1 January 2012. This would give students' associations about a year to prepare for the change to voluntary membership (which is the intent of clause 2 in the bill as introduced), and this date would also coincide with the beginning of a new academic year, which would be most administratively convenient for students' associations and institutions.

We recommend that new clause 9 be inserted to provide a transitional arrangement for students who are enrolled at an institution on 1 January 2012, being part-way through a summer school programme. Any compulsory membership of such students would continue until the end of that enrolment. Membership would be voluntary in respect of any subsequent enrolment at an institution.

Act will not bind the Crown

We recommend that clause 5 be removed. This would make this amending legislation consistent with the principal Act, which does not bind the Crown.

Student members of councils

We recommend that new clause 4A be inserted. This would make a consequential amendment to section 171(2)(e) of the principal Act, which would change the way the student members of an institution's council are chosen.

Private training establishments

We recommend that new clause 6A be inserted, to amend section 229D. This would ensure that private training establishments are included in the institutions to which the provisions of new sections 229A to 229CA would apply.

We recommend that new clause 8 be inserted. This would make a consequential amendment to section 236(1)(a)(i) of the principal Act, which concerns private training establishments.

New Zealand Labour Party minority view

The Labour Party opposes the Education (Freedom of Association) Amendment Bill on the grounds that it will destroy the representation, advocacy and services that tertiary students receive from student associations, and as a result will undermine the educational success and campus experience of many students.

Students Associations play a critical role in the success of students in tertiary institutions. We heard from many submitters about the important part that student associations have played in supporting students through their studies, in terms of direct welfare and pastoral support; advocacy with tertiary institutions, Government departments and other agencies, such as insurance companies; and the provision of sporting, cultural, entertainment, media and other services. These services are generally provided in a very cost-effective way, and are run by students for students.

Over the years student associations have been behind the creation and development of some of the major initiatives that have supported students such as Student Job Search, University Games, student newspapers and radio, student health and counselling services, hardship funds, subsidised bus transport, gym and recreation facilities, clubs and societies facilities, bookshops and much more.

We were told by tertiary institutions that student association's representative function is valued by them as an effective way of engaging with students. Minority groupings of students, including Maori and International students groups expressed to the Committee the valuable support they and their members receive from student associations.

The bill will effectively destroy student associations. They will struggle to attract and retain members, particularly at the time of enrolment when students are paying out a large amount in tuition fees. They will need to devote significant resources, time and attention to attracting members, which will come at the cost of the actual representation, advocacy, support and services they are trying to provide. The Committee heard that a survey conducted in Australia following the introduction of Voluntary Student Unionism there showed that 72 percent of associations had total or near total cuts to services, campaigns and student support programmes.

Student Associations will also have to put in place mechanisms for dealing with “freeloading” students who use services but are not members. Moreover there is no ability under the law to charge a representation fee, so if student associations achieve success in terms of representation it will automatically be received by non-members.

It is unrealistic to expect tertiary institutions that are already facing cuts to funding and restrained budgets to be able to redirect spending to student services. They will be forced to choose between only providing a fraction of the services that associations provide, or charging higher student service levies. These levies may in fact be more than student association fees because they will have to pay for what is now voluntary labour that is provided by students through the student association. Therefore the effect of the bill may well be that students will end up paying more for services.

Labour believes the premise of the bill is in fact incorrect. Student Association membership is not compulsory. Student Associations are democratic organisations which ensure that services are provided for students, by students. The law provides for conscientious objection to membership. It is highly regrettable that the National and ACT members of the Committee did not take the opportunity to improve aspects of the operation of the law such as the process for promoting objection to membership.

The bill in fact reduces the choice that students have. Under the current law whether a student association has universal or voluntary membership is up to students themselves. If 10 percent of students sign a petition a referendum has to be held on the nature of membership. Such a referendum has resulted in the University of Auckland having a voluntary student association, but others, such as the University of Otago choosing to stay with universal membership. It also prevents, as happened at Waikato University, an association after choosing to go voluntary to return to universal membership.

Labour members believe that this bill is an ideological exercise to target student associations because of their role in campaigns on issues that have affected students such as tertiary fees and student allowances and loans. It is also premised on isolated examples of improper behaviour in student associations to brand them as unaccountable. The reality is that student associations are incorporated societies which are required to produce accounts, and it is indeed through this process that occasional irregularities have come to light.

A number of useful suggestions were made during the submission process to improve accountability and transparency of student associations, which would have had widespread, and therefore enduring, support. It is unfortunate that these were not taken up by the Government members. Sadly this bill as it stands ignores pragmatic changes. It will spell the end of the activities of student associations which have been the life-blood of campuses for well over 100 years in many cases. It will reduce the quality of student experience, leave some students vulnerable and change control of student affairs from students to institutions.

For all of these reasons, Labour believes this bill should not proceed. Labour also takes this opportunity to note that should this bill become law, on a return to Government it would be our intention to move to repeal it.

Green Party minority view

The Green Party member can see no justification for this legislation and agrees with the majority of submitters that the likely outcomes will be damaging for the tertiary education sector.

With very minimal student or institutional demand, the bill appears an ideological solution in search of a problem. We believe an underlying objective of the bill is to weaken Students' Associations and undermine their membership and financial viability, and, in doing so, reduce student democracy, student participation, and students' voice on University and Polytechnic boards.

The bill would take away students' rights to choose the membership system best for them. It would take away the compromise agreement reached in 2001, which allowed students to choose whether they wanted to be voluntary or universal via a petition and a referendum.

The bill aims to uphold a debatable interpretation of the right to freedom of association, by ensuring that no student is compelled to join an association. The majority of Student Associations operate under a compulsory membership model where any student can—though a tiny fraction actually do—choose to opt out of their Student Association membership. If there is a problem to be fixed, then it is simply to make it clearer to students that they can opt out of existing associations under the existing legislation. The Green Party member notes

the Human Rights Commission considers that students' freedom to not associate is protected sufficiently under the current Act.

The overwhelming majority of submissions have been opposed to the bill and have cited considerable expected negative impacts on associations' ability to effectively deliver services, advocacy and representation—services which tertiary providers will not be able to provide with current budgetary constraints—as the major reasons to support the status quo. We agree with submitters' concerns that the impact on Student Associations membership and funding levels will be likely catastrophic and this will have long-term implications for the future of our universities, and indeed of our democracy.

Appendix

Committee process

The Education (Freedom of Association) Amendment Bill was referred to the committee on 23 September 2009. The closing date for submissions was 31 March 2010. We received and considered 4,837 submissions (including 4,418 form submissions) from interested groups and individuals. We heard 132 submissions, which included holding hearings in Dunedin, Christchurch, and Auckland.

We received advice from the Ministry of Education.

Committee membership

Allan Peachey (Chairperson)

Catherine Delahunty

Hon Sir Roger Douglas (to 8 September 2010)

Jo Goodhew

Colin King

Hon Nanaia Mahuta (to 18 November 2009)

Hon Trevor Mallard

Sue Moroney

Hon Heather Roy (from 8 September 2010)

David Shearer (from 18 November 2009)

Louise Upston

Gareth Hughes replaced Catherine Delahunty, and Grant Robertson replaced David Shearer, for this item of business.

Education (Freedom of Association)
Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Heather Roy

Education (Freedom of Association) Amendment Bill

Member's Bill

Contents

	Page
1 Title	1
2 Commencement	2
3 Principal Act amended	2
4 Purpose	2
4A Requirements as to constitutions of councils	2
6 New sections 229A to 229CA substituted	2
229A Membership of students associations voluntary	3
229B Undue influence	3
229C Complaints	3
229CA Students association membership fees	4
6A Sections 229A to 229C apply to private training establishments	5
8 Information, withdrawals, and refunds	5
9 Transitional provision	5

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education (Freedom of Association) Amendment Act **2009**.

- 2 Commencement**
This Act comes into force on 1 January 2012~~† year after the date on which it receives the Royal assent.~~
- 3 Principal Act amended**
This Act amends the Education Act 1989. 5
- 4 Purpose**
The purpose of this Act is to uphold students' rights to freedom of association, by removing any requirement for students to join students associations.
- 4A Requirements as to constitutions of councils** 10
Section 171(2) is amended by repealing paragraph (e) and substituting the following paragraph:
“(e) at least 1, but not more than 3, persons who must be appointed following an election (conducted in accordance with statutes made by the council) by the students at the institution.”. 15
- 5 Act binds the Crown**
~~This Act binds the Crown.~~
- 6 New ~~section 229~~sections 229A to 229CA substituted**
~~Section 229 is~~Sections 229A to 229C are repealed and the following ~~section~~sections substituted: 20
- ~~229~~ Voluntary membership of students' associations**
- ~~“(1) No person, including any tertiary institution or any association of students, may require any student or exert undue influence on any student—~~ 25
- ~~“(a) to become or not become a member of any association of students; or~~
- ~~“(b) to pay any money to any association of students, or to any other person in lieu of such fees.~~
- ~~“(2) No person, including any tertiary institution, may act in any way that conflicts with the spirit and intent of this section.~~ 30

“229A Membership of students associations voluntary

No student or prospective student at an institution is required to be a member of a students association.

“229B Undue influence

A person must not exert undue influence on any student or prospective student with intent to make that student or prospective student— 5

“(a) become or remain a member of a students association;
or

“(b) cease to be a member of a students association; or 10

“(c) not become a member of a students association.

“229C Complaints

“(1) A student or prospective student who, on reasonable grounds, considers that any person has exerted undue influence in breach of **section 229B** may lodge a complaint with the council of the institution. 15

“(2) A complaint must be in writing, and must specify the grounds on which the person believes that undue influence has been exerted.

“(3) A student or prospective student who lodges a complaint is— 20
“(a) entitled to be heard on the matter by the council; and
“(b) may represent himself or herself, or be represented by an advocate.

“(4) A students association in respect of which a complaint has been lodged— 25
“(a) is entitled to be heard on the matter by the council; and
“(b) may be represented by a member of the association or by an advocate.

“(5) The council may refuse to hear a complaint if it believes that no reasonable grounds exist for it to be made. 30

“(6) If the council hears a complaint, it must deal with that complaint in accordance with the principles of natural justice and the procedures (if any) prescribed by the council in statutes made under section 194.

“(7) The council may uphold, reject, or otherwise decide on the complaint as it considers appropriate in the circumstances, and its decision is final.

“229CA Students association membership fees

“(1) No person is required to pay a membership fee to a students association, or to pay money to any other person as an alternative to paying such a membership fee, unless that person chooses to become or remain a member of that association. 5

“(2) A person who is not a member of a students association may not be required to pay a representation fee to that association for any services that the association provides generally to the institution’s student body. 10

“(3) **Subsections (1) and (2)** do not prevent a students association—

“(a) charging a person who is not a member of the association for the provision of a specific service to that person, at that person’s request; or 15

“(b) being contracted by an institution or any other person to provide services to students of an institution.

“(4) The council of an institution must, if asked by a students association of the institution, collect the membership fees of that association, but only if the association provides the council with— 20

“(a) a copy of its current constitution; and

“(b) an independently audited set of financial accounts of the association for the last financial year. 25

“(5) The council must pay all membership fees collected on behalf of the students association to the association in a timely manner.

“(6) Despite **subsections (4) and (5)**, the council may decline a request to collect membership fees on behalf of a students association, or may withhold all or part of any membership fees collected, if the council believes that— 30

“(a) the terms of the constitution of the association are being breached; or 35

“(b) the accounts disclose financial irregularities.

- “(7) The council may retain any membership fees that have been withheld under **subsection (6)** until the council is satisfied that all breaches of the terms of the association’s constitution, and all financial irregularities, have been appropriately addressed by the association. 5
- “(8) The council may charge a students association for the actual and reasonable costs incurred by the council in collecting membership fees on behalf of that association.”
- 6A Sections 229A to 229C apply to private training establishments** 10
- (1) The heading to section 229D is amended by omitting “**229C**” and substituting “**229CA**”.
- (2) Section 229D is amended by omitting “229C” and substituting “**229CA**”.
- 7 Sections 229A to 229D repealed** 15
~~Sections 229A to 229D are repealed:~~
- 8 Information, withdrawals, and refunds**
Section 236A(1)(a)(i) is amended by omitting “, and including any students association membership fees”.
- 9 Transitional provision** 20
- (1) This section applies to any student who on 1 January 2012—
- (a) is enrolled at an institution or private training establishment; and
- (b) is a member of that institution’s or that private training establishment’s students association. 25
- (2) Despite **sections 229A to 229CA** of the principal Act (as inserted by this Act),—
- (a) a student to whom this section applies continues to be a member of the students association until the expiry of his or her current term of enrolment; and 30
- (b) the provisions of the constitution of the students association that existed when the student last joined or re-

**Education (Freedom of Association)
Amendment Bill**

joined the association continue to apply until the expiry
of that period.

Legislative history

20 August 2009
23 September 2009

Introduction (Bill 75-1)
First reading and referral to Education and Science
Committee
