

TERTIARY STUDENTS ASSOCIATION VOLUNTARY MEMBERSHIP BILL

EXPLANATORY NOTE

General Policy Statement

THIS bill attempts to achieve 5 aims; they are:

- (a) To make the membership of student associations voluntary rather than compulsory;
- (b) To enable associations of students to prescribe fees for students who wish to become members of such associations;
- (c) To require Councils to pay all fees received from students who decide to become members of student associations to the association in the month following the receipt of the fees and to penalise Councils if they do not;
- (d) To provide for the student representative on the Council to be elected by all students who choose to vote, rather than be elected or appointed by an association of students;
- (e) To apply to same provisions to private training establishments.

Background

Councils of tertiary institutions currently may levy fees on students for educational services and the use of educational facilities. Councils may also impose and collect fees from students for the benefit of recognised associations of students. Where a Council of a tertiary institution has made a statute regarding fees of students becoming members of student associations, all students enrolling are required to become members of a student association. For this they have to pay a fee. Under section 229 of the Education Act 1989 the fee is determined and collected by the Council of the tertiary institution.

Section 229 of the Education Act 1989 also requires Councils to pay student associations the fee collected from the students. However there is no time limit by which such fees should be paid. In at least one instance a Council is refusing to pay such fees to the student association in a timely manner. The association relies on such fees for its daily operations and cannot undertake its administrative tasks effectively without them. There must be a mechanism that the fees will be received by the association shortly after being paid to the Council.

Councils are effectively acting as trustees with respect to such fees and therefore they have a fiduciary obligation to ensure that the fees are paid over to

the association according to need, and certainly in a manner which does not disadvantage the association.

Nature of Amendments

It is proposed that section 229 of the Education Act 1989 be repealed and a new Part inserted into that Act which deals with all aspects of voluntary membership of student associations. The new Part will make membership of student associations voluntary and prevent undue influence being exerted against any student to require him or her to become, or cease to be, a member of a student association. The provisions of sections 6 and 8 of the Employment Contracts Act 1991 have in part been used as a precedent.

As the fee to be paid by students is for their membership of a student association, the association should have the statutory right to prescribe the fee. Currently it is Councils that prescribe the fees through statutes. Councils already have the authority to prescribe fees to be paid by domestic students for use of non-educational facilities (section 227 (2) (b) of the Education Act 1989). This also applies to foreign students (section 228 (1) (c) of the Education Act 1989). It is not considered appropriate for Councils to prescribe the fee for membership of association of students for the use of non-educational facilities under section 229 of the Education Act 1989. Associations of students should be able to do that. Collection will still have to be through the Council for administrative reasons.

Because membership will be voluntary it is important to ensure that no person will be able to exert undue influence over any student who does not wish to become a member of the association or by requiring that student to pay a fee to charity in lieu of the student association fee.

If any member of the Council, or staff of the institution or staff of the association of students, or indeed any other student or person attempts to influence in any way a student from becoming, or ceasing to be a member of a student association, the student may make a complaint to the Council. The Council must investigate the complaint, follow the rules of fairness and natural justice and make a final decision. That decision cannot be appealed against.

It is intended that all fees prescribed by associations and paid through the Council by students who wish to become members of a student association must be paid by the Council to the student association in the month following the date they were received by the Council. If the Council fails to pay such fees to the student association a 10% penalty is added to those fees.

Currently the student representative on a Council can be either appointed or elected by members of a student association. This mechanism is appropriate because membership is compulsory. It is not considered to be appropriate where membership is voluntary. The association may not represent the majority of students at an institution. Therefore, it should not have the statutory right to appoint or elect one or more of its members as a representative on the Council. All of the students at an institution should have that statutory right whether or not they are members of an association of students.

There is no good reason to exclude private training establishments from the provisions of this bill and therefore all of the provisions apply to private training establishments with the appropriate changes in terminology.

Clause Analysis

Clause 1. It is intended that this Amendment Act will be part of the Education Act 1989. It is proposed that the Act come into force on 1 January 1999.

Clause 2. This adds a new definition to section 159 of the Education Act 1989. Section 159 is the interpretation section for all parts of the Act relating to tertiary

institutions, private training establishments (and other parts not relevant to this particular bill).

The new term that has been defined for the purpose of the new Part to be inserted in the Education Act is “association of students”. This intended to cover all types of student bodies throughout tertiary institutions and private training establishments.

Clause 3. This clause inserts into the Education Act 1989 a new Part 16A dealing with the voluntary membership of associations of students. Five new sections are inserted in the Act under this new Part. They are:

229A. This proposed section specifies the purpose of this new Part of the Education Act 1989. It is intended to emphasise the point that membership of association of students is to be voluntary which is contrary to the current position which requires all students to be members of associations when enrolling at institutions where Councils have prescribed a fee for membership. It enables associations of students to prescribe membership fees rather than Councils and makes the point that Councils, who receive the fees on behalf of associations, must pay promptly to associations the fees collected for membership. Councils are penalised if they do not make prompt payment.

229B. This new section will make it quite clear that membership of an association of students is voluntary. It applies to becoming a member, remaining a member of an association, or ceasing to be a member. The section has been based for the most part, on section 6 of the Employment Contracts Act 1991 which relates to unions of employees.

229C. This proposed section ensures that no person shall exert undue influence on any student to become or remain a member, or indeed cease to become a member of an association of students. This intended section is based on section 8 of the Employment Contracts Act 1991. It is not proposed to incorporate any penalty for any such undue influence. It is intended that a student may complain to the Council if any undue influence is exerted on a student. If a student is subject to undue influence by a staff member of the institution, the Council can take appropriate action in terms of the employment contract with the staff member. If undue influence is exerted by any staff member of the association or indeed any other student, the Council can take the appropriate action under statutes made by the Council under section 194 of the Education Act 1989 which deal with the good government and discipline of the institution. Undue influence in this section also includes any requirement imposed on a student to make a donation to charity in lieu of paying a membership fee. Currently, the only exemption from joining an association is one of conscientious objection. That will no longer be necessary as membership will be voluntary and not compulsory.

229D. Councils currently have the authority to prescribe a fee on all students enrolling at an institution. Students are required to pay such fees and thereby become members of an association of students. It is now intended that associations of students rather than Councils be given the statutory authority to prescribe association membership fees. Such fees would be paid through Councils to associations. To ensure that the association of students can operate on a daily basis this proposed section requires Councils to pay the fees to the association in the month following their receipt. If Councils fail to do that they are required to pay a 10% penalty on the amount that should have been paid to the association for that month.

229E. Any person who believes he or she has been subject to undue influence may under this proposed section make a complaint to the Council of the institution. The Council is required to investigate that complaint, use the procedure specified in its statutes, if any, and apply the rules of fairness and

natural justice to any such complaint. The student will be entitled to present the complaint to the Council or to present his or her case through an advocate. It is intended that such matters be dealt with internally by the Council and therefore no appeals from the Council's decision are proposed.

Clause 4. This clause amends section 171 of the principal Act which relates to the constitution of Councils. It removes the statutory right for associations of students to appoint or elect one or more of its members as a representative on the Council, and provides that student representatives shall be elected by all students who choose to vote. Students do not have to become members of an association of students before they can vote.

Clause 5. This clause applies voluntary membership of associations of students to private training establishments and makes a consequential change to section 236A of the Education Act 1989 which deals with the ability of private training establishments to impose fees on students enrolled at such establishments.

Clause 6. This repeals the current section 229 of the Education Act 1989 which deals with fees payable to associations of students.

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TERTIARY STUDENTS ASSOCIATION VOLUNTARY MEMBERSHIP

ANALYSIS

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PART 16A	
VOLUNTARY MEMBERSHIP OF ASSOCIATION OF STUDENTS	
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A BILL INTITULED

An Act to amend the Education Act 1989

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Tertiary Students Association Voluntary Membership Act 1997, and is part of the Education Act 1989 (“the principal Act”).

(2) This Act comes into force on 1 January 1999.

10 **2. Interpretation**—Section 159 (1) of the principal Act is amended by inserting, in the appropriate alphabetical order, the following definition:

15 “‘Association of students’ means any association, society, or other body, whether corporate or unincorporate, recognised by the Council as representing the interests enrolled at an institution or private training establishment:”.

3. New Part inserted—The principal Act is amended by inserting, after Part XVI, the following Part:

“PART 16A

“VOLUNTARY MEMBERSHIP OF ASSOCIATION OF STUDENTS

“229A. **Purpose of this Part**—The purpose of this Part is to make membership of association of students enrolled at institutions voluntary rather than compulsory, to enable associations of students rather than Councils of institutions to prescribe fees for students who wish to become members of an association, and to require Councils to collect such fees and to require Councils to pay promptly to associations of students such fees. 5
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“229B. **Membership of association of students to be voluntary**—Nothing in any statute, made by a Council under section 194, shall require any student—

“(a) To become or remain a member of any association of students; or 15

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

“(c) Not to become a member of any association of students. Cf.1991, No. 22, s. 6

“229C. **Undue influence**—No member of the Council, or staff of the institution, or staff of the association of students, or any student, or other person shall exert undue influence, (including a requirement to make a donation to charity in lieu of paying a membership fee) directly or indirectly, on any student with the intent to induce that student— 25

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

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

“(c) Not to become a member of an association of students. Cf.1991, No. 22, s. 8 30

“229D. **Association of students may prescribe fee for membership**—(1) An association of students may prescribe a fee for students enrolling at an institution who wish to become members of that association. 35

“(2) Where an association of students has prescribed a fee under subsection (1), the Council of that institution shall collect such fees on behalf of that association.

“(3) The Council of an institution must, on the 20th day of each month, pay to the association of students all fees paid by students who become members of that association during the preceding month. 40

“(4) Any Council that fails to pay such fees by the 20th day of each month must pay to the association of students a penalty of an additional 10% of the amount of such fees paid in that preceding month.

5 “229E. **Complaints**—(1) Any student who, on reasonable grounds, considers that any member of the Council, or staff of the institution, or staff of the association of students, or any student has exerted undue influence under **section 299c** may lodge a complaint with the Council.

10 “(2) Such complaint must be lodged, in writing, specifying the grounds upon which the student believes that undue influence has been exerted.

15 “(3) Any student lodging a complaint under **subsection (2)** is entitled to be heard on the matter by the Council and may be represented by himself or herself or by an advocate or representative of his or her choosing.

20 “(4) The Council must deal with the complaint to the principles of fairness and natural justice and the procedures (if any) prescribed by the Council in its statutes made under section 194.

“(5) The Council’s decision on the matter is final.”

4. Requirements as to constitutions of Councils—

25 (1) Section 171 of the principal Act (as inserted by section 37 of the Education Amendment Act 1990) is amended by omitting subsection (2) (e), and substituting the following paragraph:

“(e) At least 1, but not more than 3, people, whether or not they are or have been students of the institution, who are elected democratically by all the students of the institution who choose to vote:”

30 (2) Section 171 of the principal Act (as so amended) is amended by omitting subsection (8), and substituting the following subsection:

“(8) Where an election is to be held for membership of the Council of an institution,—

35 “(a) In the case of an election of the student representative, the election is to be held on a date to be determined by the Council in consultation with an association of students:

40 “(b) In any other case, on a date to be determined by the Council—

and in both cases in a manner as is provided by statutes made by the Council.”

5. Application to private training establishments—

(1) Sections 229A to 229E (inclusive) of the principal Act, (as inserted by section 3 and section 4) apply to private training establishments, and every reference to an “institution” in those sections is to be read as a reference to a “private training establishment”, and every reference to “Council” is to be read as a reference to the “governing body of a private training establishment”. 5

(2) Section 236A (1) (a) (i) of the principal Act is consequentially amended by inserting, after the words “The total fees”, the words “(including any fee for students to become members of an association of students)”. 10

6. Repeal—Section 229 of the principal Act is consequentially repealed.