

**House of Representatives**  
**Supplementary Order Paper**

**Wednesday, 8 December 2010**

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

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*Proposed amendments*

Grant Robertson, in Committee, to move the following amendments:

*Clause 4*

To omit “uphold students’ rights to freedom of association, by removing any requirement for students to join students associations” and substitute “ but allow periodic referenda to test this issue” (lines 7 to 9 on page 2).

*Clause 4A, section 171(2)*

To omit *new paragraph (e)* and substitute the following paragraph (lines 13 to 16 on page 2):

- “(e) at least 1, but no more than 3, persons who must be appointed to the institutions council—
  - “(i) following an election (conducted in accordance with statutes made by council) by the students at the institution where no student association exists at the institution; or
  - “(ii) by a student association where such an association exists at the institution.”.

*Clause 6, new section 229A*

To add “if a majority of students support voluntary student membership in a nationwide 2011 referendum” after “association” (line 3 on page 3).

*Clause 6, new section 229AB*

To insert the following *new section 229AB* (after line 3 on page 3):

**“229AB Initiating change relating to membership of students association**

- “(1) The council must conduct (and pay for) a vote of all students at the institution on whether membership of the students association should be voluntary every 5 years with the first vote being held in 2012.
- “(2) The council must make statutes setting out the procedures for conducting a vote under this section in consultation with—
  - “(a) the institution’s students association, if there is one; and
  - “(b) any associations that represent students and that the council considers should be consulted.

*Clause 6, new section 229AB*

To insert the following *new section 229AB* (after line 3 on page 3):

**“229AB Initiating change relating to membership of students association**

- “(1) The students of an association may request that the council conduct a vote of all students at the institution on whether membership of the students association should remain voluntary.
- “(2) A request under **subsection (1)** is not effective unless it is accompanied by a petition requesting the vote, signed by at least 8% (as calculated according to figures provided by the Ministry) of all students currently enrolled in the institution.
- “(3) A council that receives an effective request must conduct a vote as soon as practicable after receiving the request, but may not hold a vote more than once every 2 years.
- “(4) The council must make statutes setting out the procedures for conducting a vote under this section in consultation with—
  - “(a) the institution’s students association, if there is one; and
  - “(b) any associations that represent students and that the council considers should be consulted.

*Clause 6, new section 229B*

To insert after “or institutions” after “person” (line 5 on page 3).

*Clause 6, new section 229C(4)*

To insert “and any persons” after “association” (line 24 on page 3).

*Clause 6, new section 229C(5)*

To insert “or if the council believes the complaint is vexatious, frivolous, or made in bad faith” after “made ” (line 30 on page 3).

*Clause 6, new section 229CA(2)*

To omit subsection (2) and substitute the following subsection (lines 9 to 12 on page 4):

- “(2) A student association may collect a levy of fee from non-members where the activity or service is provided across the entire student body.

*Clause 6, new section 229CA(3)*

To add the following paragraph (after line 19 on page 4):

- “(c) charging a member who is not a member of the association for the provision of services or activities which are available to all students regardless of whether the student is a member of the association.

*Clause 6, new section 229CA(4)*

To add the following paragraph (after line 26 on page 4):

- “(c) if the association has been in existence and providing services during the last financial year.

*Clause 6, new section 229CA*

To add the following subsections (after line 8 on page 5):

- “(9) A council of an institution withholding membership fees under **subsections (6) and (7)** must write to the Tertiary Education Minister within 10 days of the date fee collection was declined or fees were due to be transferred requesting permission to continue refusing fee collection or withholding of fees and outlining—
- “(a) the grounds for refusing fee collection or withholding; and
- “(b) the period of time the council intends to refuse fee collection or withhold fees for; and
- “(c) what conditions and targets they have asked the association to achieve in order to meet the requirements of **subsection (6)(a) and (b)**.
- “(10) The Minister giving regard to **subsection (9)** must grant or decline a council’s request to continue refusal of fee collection or withholding of fees.”

*Clause 6, new section 229CA*

To add the following subsection (after line 8 on page 5):

- “(9) A students association which an institution’s council has refused to collect membership fees on its behalf or has withheld fees may write to the Tertiary Education Minister requesting intervention and the Minister must, having regard to **subsection 6**,—
- “(a) consider the validity of the council’s actions; and

- “(b) consider the impact on the students association’s ability to provide services to its members; and
- “(c) order the institution’s council to collect fees on the association’s behalf or pay fees withheld from the association; or
- “(d) set conditions for the association to achieve and order the council to collect fees on the association’s behalf or pay fees withheld from the association once the Minister is satisfied these conditions have been met.

#### *Clause 6*

To add the following sections after section 229CA (after line 8 on page 5).

#### “**229CB Contact details of members of students association**

The institution is to provide its students association with the following details of every student for whom any membership fee of the kind described in **section 229CA(1)** is collected from:

- “(a) full name; and
- “(b) contact address; and
- “(c) contact phone number; and
- “(d) email address.

#### “**229CC Information about students associations**

- “(1) Information must be provided by the institution to both prospective and current students about any students association at the institution for the purpose of informing the student about joining the association.
- “(2) The type of information referred to in **subsection (1)** includes—
  - “(a) the services the association provides members; and
  - “(b) the services the association provides non members; and
  - “(c) the fees and levies which apply to joining an association; and
  - “(d) the process of electing representatives of the association.”

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### **Explanatory note**

This Supplementary Order Paper amends the Education (Freedom of Association) Amendment Bill in the following ways:

- *Clause 4* : redefines the purpose clause to include the option of referenda.
- *New clause 4A* : corrects an oversight so that where a student association exists at an institution it holds responsibility for appointing student representatives to the institutions council.

- *Clause 6, new section 229A* : This amendment provides for a nationwide referendum of students to be held in 2011 to decide whether or not the bill should be repealed before 1 January 2012 when it comes into force.
- *Clause 6, new section 229AB* : These amendments adds provisions that provide for a referendum to be held on student membership every 5 years or when petitioned for by the student body.
- *Clause 6, new section 229B* : The bill as currently drafted only stipulates that a person must not exert undue influence on any student or prospective student with intent to make that remain or become a member of a students association. The amendment provides that an institution cannot exert undue influence either; this provides greater protection for students from undue influence
- *Clause 6, new section 229C(4)* : The bill as currently drafted states that only a students association is entitled to be heard by the council on the matter of a complaint of undue influence. The bill does not provide for the hearing or representation in front of the council of persons not associated with a student association this is an oversight as complaints of undue influence are not limited to students associations and all those accused of undue influence should have the right to be heard by the council. The amendment provides that an individual not associated with a student association to be heard by the council on the matter of a complaint of undue influence.
- *Clause 6, new section 229C(5)* : The bill as currently drafted allows the council to refuse to hear a complaint of undue influence if the council believes there are no reasonable grounds for it to be made. The amendment extends the grounds on which the council may refuse a hearing on to include complaints it believes are vexatious, frivolous or made in bad faith.
- *Clause 6, new sections 229CA(2) and (3)* : the bill as currently drafted removes the right of student associations to charge a levy or fee from non-member students. While this is the intent of the bill, it introduces an anomaly where by some services which are provided by a student association are shared by the entire student body while only the student association members are paying for them. This is an unfair situation which will be detrimental to student association finances and membership. The amendment addresses this situation by allowing respective students associations to charge a levy or fee for certain services or activities which cannot be confined to just the associations membership.
- *Clause 6, new section 229CA(4)* : the bill as currently drafted provides that an institution must collect membership fees on behalf of a students' association only if that association has a current constitution and independently audited financial accounts for the last financial year. This amendment allows institutions to collect fees on behalf of an association if that association has been in existence and providing services during the last financial year; this expands the conditions in order not to unduly restrict the establishment of new bodies.

- *Clause 6, new section 229CA* : the bill as currently drafted provides that an institution's council may decline a request by a students association to collect fees on its behalf or may withhold any part of membership fees collected if it believes that the terms of the association's constitution have been breached or financial irregularities are disclosed. This grants institutions significant control over associations and some form of oversight is needed to ensure that power is not being abused. The amendment provides that an institutions council must be granted permission from the Minister to allow it to hold fees or refuse fee collection.
- *Clause 6, new sections 229CB and 229CC* : the bill as currently drafted does not provide that an institution must supply information to current and prospective students about its students associations. This is an oversight as students need to be well aware about the benefits and costs of students association membership so they can make an informed decision about joining. The amendment to add *new section 229CB* provides that an institution must make information available to current and prospective students regards the costs and benefits of students association membership. The bill does not provide that an institution must provide its students association with contact details of the students whom elect to become a member of the association. This is an oversight as this information is needed in order to enable the students association to properly support and advocate for its members. The amendment to add *new section 229CC* provides that an institution must provide contact details of all students that enrol as members of its students association and defines what contact details should be provided.

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