

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Wednesday, 16 June 1998

TERTIARY STUDENTS ASSOCIATION VOLUNTARY MEMBERSHIP BILL

*Proposed Amendments*

TONY STEEL, in Committee, to move the following amendments:

*Clause 1:* To omit the words "Tertiary Students Association Voluntary Membership" (lines 5 and 6 on page 1), and substitute the words "Education (Tertiary Students Association Voluntary Membership) Amendment".

To omit subclause (2) (line 8 on page 1), and substitute the following subclause:

(2) Except as provided in **subsection (3)**, this Act comes into force on the day after the date on which it receives the Royal assent.

(3) **Sections 229A (1) (a) and 229B (1)** of the principal Act (as inserted by **section 3**) come into force on **1 May 1999**.

*Clause 2A:* To omit new paragraph (e) of section 171 (2) (lines 19 to 23 on page 2), and substitute the following paragraphs:

"(e) If membership of an association of students is voluntary, at least one person, but not more than 3 people, who are or have been students of the institution (whether or not they are or have been members of an association of students) and who are elected by all the students of the institution who choose to vote:

"(ea) If membership of an association of students is compulsory, at least one person, but not more than 3 people, who are or have been students of the institution and who,—

"(i) If the students at the institution belong to an association of students recognised by the Council of the institution and the students decide that the governing body of that association is to appoint the student member or the student members, are appointed by the governing body of that association; or

"(ii) In any other case, are elected by those students:".

To omit new subsection (8) of section 171 (lines 11 to 14 on page 3), and substitute the following subsections:

“(8) If membership of an association of students is voluntary and an election is to be held for membership of the Council of an institution, the election is to be held in such manner as is provided by statutes made by the Council and on a date to be determined by the Council.

“(8A) If membership of an association of students is compulsory, and an election is to be held for membership of the Council of an institution, the election must be held,—

“(a) In the case of an election of a student member where the students at the institution belong to an association of students recognised by the Council of the institution, in such manner as the governing body of that association determines; or

“(b) In the case of any other election, in such manner as is provided by statutes made by the Council.”

*Clause 3:* To omit this clause (line 17 on page 3 to line 11 on page 7), and substitute the following clause:

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

“PART 16A

“MEMBERSHIP OF ASSOCIATIONS OF TERTIARY STUDENTS

“229A. **Purpose of this Part**—(1) The purpose of this Part is to—

“(a) Provide that membership of an association of students is voluntary unless a referendum of students at an institution determines that membership at that institution will be compulsory:

“(b) Provide for different provisions of the Act to apply depending on the result of any referendum:

“(c) Ensure that referenda are conducted fairly.

“(2) **Subsection (1) (a)** comes into force on 1 May 1999.

“229B. **Membership of associations of students is voluntary**—(1) Membership of an association of students is voluntary, unless the result of a referendum under this Part is that membership at the relevant institution is to be compulsory.

“(2) **Subsection (1)** comes into force on 1 May 1999.

“229C. **Referendum on voluntary or compulsory membership of association of students**—(1) If a Council of an institution receives a request from 10% of students enrolled at that institution to conduct a referendum, the Council must conduct a referendum under this Part on whether membership of an association of students should be voluntary or compulsory.

“(2) After receipt of a request, a referendum must be held at the first opportunity, in accordance with **section 229D**.

“(3) A referendum must not be held more than once in any year.

“(4) If the result of the referendum is in favour of voluntary membership, **sections 229N and 229O** apply until the outcome of a further referendum is that compulsory membership is to be imposed.

“(5) If the result of the referendum is in favour of compulsory membership, sections 229P and 229Q apply until the outcome of a further referendum is that voluntary membership is to be imposed.

“229D. **Timing of referendum**—Every referendum must be held—

“(a) At the time of enrolment at the start of the academic year; or

“(b) At some other time, but only if the Council determines that the enrolment pattern of students at the institution is such that the alternative time would result in voting by a significantly larger number of students than would vote if the referendum were held in accordance with paragraph (a).

“229E. **Councils to conduct referenda**—(1) Referenda held under this Part must be conducted and paid for by Councils.

“(2) Councils must take reasonable steps to ensure that every referendum is conducted in a way that—

“(a) Ensures that each student has only one vote; and

“(b) Maximises the number of students likely to vote; and

“(c) Minimises the potential for voting irregularity; and

“(d) Ensures that voting is secret.

“(3) Councils may make statutes, not inconsistent with this Part, prescribing procedures for the conduct of referenda.

“(4) Councils must not use their resources or position to attempt to influence the outcome of a referendum, and must maintain an impartial stance during any referendum campaign.

“229F. **Voting Slip**—(1) The voting slip for a referendum must be—

“(a) Attached to the enrolment papers given to each student, if the referendum is held at the time of enrolment; or

“(b) Posted to each student, if the referendum is held at any other time.

“(2) Information on the voting slip must, in a clear and straightforward way,—

“(a) State that the slip is a voting paper for a referendum; and

“(b) State that the referendum is for the purpose of establishing whether membership of an association of students at that institution is to be voluntary or compulsory; and

“(c) Give instructions on the manner in which a vote may be cast; and

“(d) State the commencement date and the closing date of the referendum.

“(3) The voting slip must be in the following form:

Should membership of an association of students at this institution be voluntary or compulsory? Mark the box beside the option you choose.

Voluntary

Compulsory

**“229G. Disclosure, refund, and fixing of compulsory fees—**(1) The voting papers for a referendum must disclose—

“(a) The fee that will be payable if, as a result of a referendum, membership of an association is compulsory; and

“(b) The likely amount of any refund payable under subsection (2).

“(2) At an institution at which membership of an association of students is compulsory, if the result of a referendum is that membership becomes voluntary, then the association of students must refund to each student a proportion of the fees that the student has paid in respect of membership of that association.

“(3) The proportion of fees to be refunded under **subsection (3)** must be determined according to the following formula:

$$R = F \times \frac{M}{Y}$$

where—

R is the amount of the refund; and

F is the fee already paid by the student; and

M is the number of whole months between the date of the declaration of the result of the referendum and the expiry of the period to which the fee already paid relates; and

Y is 12 months multiplied by the percentage of a full year to which the fee already paid relates.

“(4) The fee advised with the voting slip in accordance with **subsection (1) (a)** is the fee for compulsory membership of an association of students at that institution until the result of a further referendum conducted is declared.

**“229H. Close, and declaration of result, of referendum—**(1) The closing date of a referendum must be one month after its commencement date.

“(2) The result of a referendum must be declared no later than one month after the closing date.

**“229I. Campaign funding to be equalised—**(1) The principle underlying this section is that if resources derived from student fees paid to associations where membership is compulsory are used to fund a campaign promoting compulsory membership of an association of students, then an equal amount of money should be provided to relevant campaigns promoting voluntary membership.

“(2) If an association of students (membership of which is compulsory) intends to use resources to campaign in favour of compulsory membership, then, to the extent that those resources derive from fees paid by students for membership of that association, the association must—

“(a) Determine the total value of all such resources it intends to use in the campaign; and

“(b) Pay, as soon as practicable, an equivalent amount to the Council of the institution, to be used in accordance with **subsection (4)**; and

“(c) Repeat the procedure in **paragraphs (a) and (b)** if it determines to increase the resources used for campaigning.

“(3) If a national association of tertiary students, or a national association of tertiary institutions, intends to use resources to campaign in favour of compulsory membership, then, to the extent that those resources derive from fees paid by members of associations of students where membership is compulsory, the national association must—

“(a) Determine the total value of all such resources it intends to use in the campaign; and

“(b) Resolve to make an equivalent amount of money available for campaign activity in favour of voluntary membership; and

“(c) Determine (on any reasonable basis which it considers will best promote the principle in **subsection (1)**) which Councils are to receive a proportion of that equivalent amount, and what that proportion should be in each case; and

“(d) Pay, as soon as practicable, the appropriate proportion of the equivalent amount to the relevant Councils; and

“(e) Repeat the procedure in **paragraphs (a) to (d)** if it determines to increase the resources used for campaigning.

“(4) A Council that receives money paid to it under **subsection (2) (b)** or **subsection (3) (d)** must, as soon as practicable, pay it to the group or groups of students that the Council is satisfied will most effectively campaign for voluntary membership of associations of students.

“229J. **Association to disclose value of resources used for campaign**—An association of students whose membership is compulsory must declare in its annual report—

“(a) The value and source of any resources used to promote compulsory membership of that association; and

“(b) The amounts paid to the Council under **section 229I**, and the sources of that money.

“229K. **Group receiving equalisation money to account for its use**—A group that receives money from a Council under **section 229I** must, at the request of the Council, present to it a written account and supporting evidence showing how the money was used.

“229L. **Undue influence**—No student, officer of an association of students, member of the Council, member of staff of the institution, or member of staff of an association of students may exert undue influence, directly or indirectly, on any student with intent to force or induce that student,—

“(a) In the case of an institution at which membership of an association of students is voluntary,—

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

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

“(iii) Not to become a member of an association of students; or

“(b) In the case of an institution at which membership of an association of students is compulsory, to apply or not to apply for exemption from membership.

**“229M. Complaints—**(1) Any student who, on reasonable grounds, considers that any person has exerted undue influence in breach of **section 229i**, may lodge a complaint with the Council.

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

“(3) Subject to **subsection (5)**, a student who lodges a complaint under **subsection (1)** is entitled to be heard on the matter by the Council and may represent himself or herself, or be represented by an advocate or representative chosen by the student.

“(4) An association of students in respect of which a complaint has been lodged under **subsection (1)**, is entitled to be heard on the matter by the Council and may be represented by a member of that association, an advocate, or a representative chosen by the association.

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

“(6) If the Council hears a complaint, it must deal with the 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 upon the complaint as it considers appropriate in the circumstances, and its decision on the matter is final.

**“229N. Provisions applying when membership of association of students is voluntary—**(1) This section and **section 229o** apply when membership of an association of students is voluntary.

“(2) Nothing in any statute made by a Council under section 194 has any effect to the extent that it requires any student—

“(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.

**“229O. Association of students may prescribe fee for membership, and Council may collect it—**(1) An association of students may prescribe a fee for students enrolling at an institution who wish to become members of that association.

“(2) The Council of the institution may, at the request of the association, collect the fees on behalf of the association.

“(3) If a Council agrees to collect fees on behalf of an association, the Council must pay any fee collected by it to the relevant association of students within one month of the receipt of the fee by the Council.

“(4) The Council must pay to the association an additional 10% of the value of any fee which is held by the Council for more than one month from its date of receipt by the Council.

**“229P. Provisions applying when membership of association of students is compulsory—**(1) This section and **section 229o** apply if membership of an association of students is compulsory.

“(2) A student who enrolls at an institution must be a member of the association of students recognised by the Council of that institution unless he or she is exempt under this section.

“(3) No student has to be a member of the association of students if he or she applies to the Council for, and is granted, an exemption from membership on the grounds of conscientious objection to membership, or hardship.

“(4) The Council must ensure that every student who enrolls receives adequate information about exemption from membership.

“(5) The Council must deal with applications for exemption from membership in a fair, timely, and consistent manner.

“229Q. **Association of students may prescribe fee for membership, and Council may collect it**—(1) An association of students may prescribe a fee for students who become members of the association as a consequence of enrolling at an institution.

“(2) The Council of the institution may, at the request of the association, collect the fees on behalf of the association.

“(3) If a Council agrees to collect fees on behalf of an association, the Council must pay any fee collected by it to the relevant association of students within one month of the receipt of the fee by the Council.

“(4) The Council must pay to the association an additional 10% of the value of any fee which is held by the Council for more than one month from its date of receipt by the Council.

“(5) Following a referendum at which membership of an association of students becomes compulsory, a Council that agrees to collect fees on behalf of an association of students must commence the collection as soon as is reasonably practicable.

*“Part to Apply to Private Training Establishments*

“229R. **Application to private training establishments**—(1) This Part also applies to private training establishments.

“(2) For the purposes of this section, every reference in this Part to an institution includes a reference to a private training establishment, and every reference to a Council includes a reference to the governing body of a private training establishment.”

*New clause 3B:* To insert, after *clause 3A* (line 17 on page 7), the following clause:

**3B. Arrangements in 1998 and 1999**—(1) No Council may conduct a referendum under **Part 16A** of the principal Act during 1998.

(2) Every Council must conduct a referendum under **Part 16A** of the principal Act before 1 May 1999; and this subsection applies despite **sections 229c (1) or 229d** of the principal Act.

(3) **Subsection (2)** does not apply to private training establishments.

(4) **Part 16A** of the principal Act applies to any campaign that is conducted in 1998 with a view to influencing the outcome of a referendum held in 1999.

## EXPLANATORY NOTE

This Supplementary Order Paper amends the reported-back Bill by providing that membership of an association of students is voluntary at all institutions from 1 May 1999, unless, at any time after 1 January 1999, the result of a referendum held at an institution is that membership at that institution is to be compulsory.

The Supplementary Order paper makes substantive changes to *clauses 1 and 3* of the Bill, makes consequential amendments to *clause 2A*, and inserts a new *clause 3B*.

*Clause 1* brings most of the Bill into force on the day after the date of Royal assent. Parts of new *sections 229A and 229B*, (as inserted by *clause 3*) come into force on 1 May 1999. The Short Title of the Bill is amended, to reflect the fact that it is an amendment to the Education Act 1989.

*Clause 2A* of the reported-back Bill makes consequential amendments to section 171 of the principal Act, which are necessary to provide for institutions when membership of an association of students is voluntary. This Supplementary Order Paper further amends section 171 by making provision for those institutions where membership is compulsory.

*Clause 3* of the Bill as introduced inserted a new *Part 16A* into the Education Act 1989. That Part provided that membership of an association of students would be voluntary in all tertiary institutions. It also provided that Councils could, on request, collect fees on behalf of associations of students, and that if it did, it must pay them promptly.

This Supplementary Order Paper substitutes a replacement *Part 16A*. The new Part continues to provide that membership of an association of students is voluntary, but it also provides for binding referenda to be taken on the issue by individual institutions. The original provisions relating to the collection of fees are made less prescriptive.

The new *Part 16A* contains the following sections:

- **Section 229A—Purposes of Part**

This section lists the purpose of this Part.

- **Section 229B—Membership of associations of students being voluntary**

Membership is voluntary unless a referendum held under this Part determines that it is to be compulsory. This section, and the relevant paragraph of *section 229A*, comes into force on 1 May 1999.

- **Section 229C—Referendum on voluntary or compulsory membership of an association of students**

A referendum must be held if 10% of students enrolled at an institution request it. Not more than one referendum can be held each year.

- **Section 229D—Timing of referendum**

Referenda must be held at the time of enrolment, or at some other time if the Council determines that it will result in voting by a significantly larger number of students. This second option is mainly relevant to polytechnics.

- **Section 229E—Councils to conduct referenda**

The Council must conduct and pay for any referendum. This provision sets out the basic principles for the conduct of the referendum, and provides that Councils must not attempt to influence the outcome of a referendum, and must maintain an impartial stance during campaigning.

- **Section 229F—Voting Slip**

This provision sets out the form of the voting slip and prescribes information to be included in it.

- **Section 229G—Disclosure, refund, and fixing of compulsory fees**

Voters must be told of the amount of any fee that will be imposed by an association of students if the result of a referendum is that membership of an association is compulsory. The fee so advised must remain the fee until a further referendum result is declared. Voters must also be told the likely amount of any refund if the result of a referendum is a change from compulsory to voluntary membership. If such a change occurs, the association of students must refund a proportion of any fee already paid, in accordance with a given formula.

- **Section 229H—Close, and declaration of result, of referendum**

A referendum must close one month after its commencement, and the result must be declared within one month of its close.

- **Section 229I—Campaign funding to be equalised**

Mechanisms are set out which ensure that the principle in *subsection (1)* is followed. That principle is that if resources deriving from student fees from associations where membership is compulsory are used to fund a campaign in favour of compulsory membership, then an equivalent amount should be set aside for campaigning in favour of voluntary membership. Specific obligations are placed on local and national associations of tertiary students, and on national associations of tertiary



institutions, to pay money, via individual Councils, towards campaigns promoting voluntary membership.

- **Section 229j—Association to disclose value of resources used for campaign**  
An association of students, membership of which is compulsory, must declare in its annual report the value and source of its campaign resources, and amounts paid to the Council under *section 229i*.

- **Section 229k—Group receiving equalisation money to account for its use**  
Groups receiving money under *section 229i* must, if requested, give an account to the Council showing how it was used.

- **Section 229l—Undue influence**

A range of people are prohibited from exerting undue influence on any student in matters relating to voluntary or compulsory membership of an association.

- **Section 229m—Complaints**

This provision provides a mechanism for dealing with complaints of undue influence.

- **Section 229n—Provisions applying when membership of association of students is voluntary**

In institutions where membership of an association is voluntary, statutes made by a Council are of no effect to the extent that they require any student to become, not become, remain, or cease to be a member of an association of students.

- **Section 229o—Association of students may prescribe fee for membership, and Council may collect it**

This provision applies when membership of an association is voluntary. An association may prescribe a membership fee, and a Council may agree to collect it. If it does, it must, within one month of their receipt, pay any fees to the association, and must pay a 10% penalty if it holds any fee for longer than one month.

- **Section 229p—Provisions applying when membership of association of students is compulsory**

In institutions where membership of an association is compulsory, every student who enrolls at the institution must be a member of the association, unless he or she is exempt on the ground of conscientious objection to membership, or hardship.

- **Section 229q—Association of students may prescribe fee for membership, and Council may collect it**

This provision parallels *section 229o*, but applies in institutions where membership of an association is compulsory.

- **Section 229r—Application to private training establishments**

This extends the application of *Part 16A* to private training establishments.

*Clause 3B* is a new provision. It prohibits Councils from conducting a referendum under *Part 16A* in 1998, but requires all Councils (other than those of private training establishments) to hold a referendum before 1 May 1999. *Part 16A* applies to any campaigning done in 1998.