



# Education (Freedom of Association) Amendment Act 2011

Public Act 2011 No 80  
Date of assent 30 September 2011  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Education (Freedom of Association) Amendment Act 2011.

**2 Commencement**

This Act comes into force on 1 January 2012.

**3 Principal Act amended**

This Act amends the Education Act 1989.

**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.

**5 Requirements as to constitutions of councils**

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.”.

**6 New sections 229A to 229CA substituted**

Sections 229A to 229C are repealed and the following sections substituted:

**“229A Membership of students association 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—

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

- “(b) cease to be a member of a students association; or
- “(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.
- “(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—
  - “(a) is 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—
  - “(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.
- “(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.
- “(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.

- “(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
  - “(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—
- “(a) a copy of its current constitution; and
  - “(b) an independently audited set of financial accounts of the association for the last financial year.
- “(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—
- “(a) the terms of the constitution of the association are being breached; or
  - “(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.
- “(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.”

**7 Sections 229A to 229C apply to private training establishments**

- (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”.

**8 Information, withdrawals, and refunds**

Section 236A(1)(a)(i) is amended by omitting “, and including any students association membership fees”.

**9 Transitional provision**

- (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.
- (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
  - (b) the provisions of the constitution of the students association that existed when the student last joined or re-joined the association continue to apply until the expiry of that period.
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**Legislative history**

20 August 2009	Introduction (Bill 75-1)
23 September 2009	First reading and referral to Education and Science Committee
24 September 2010	Reported from Education and Science Committee (Bill 75-2)
10 November 2010	Second reading
8 December 2010, 16 February, 23 March, 3 August 2011	Committee of the whole House
7 September 2011	Reported from committee of the whole House
28 September 2011	Third reading
30 September 2011	Royal assent

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This Act is administered by the Ministry of Education.

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