

NEW ZEALAND BUSINESS ROUNDTABLE

Education (Freedom of Association) Amendment Bill

March 2010

1. Introduction

- 1.1 This submission is made by the New Zealand Business Roundtable, an organisation of chief executives of major New Zealand businesses. The purpose of the organisation is to contribute to the development of sound public policies that reflect overall New Zealand interests.
- 1.2 The Business Roundtable believes membership of students' associations should be voluntary and supports the bill.

2. General

- 2.1 Compulsory students' association membership (CSM), as opposed to voluntary students' association membership (VSM), is an anachronism. Students' associations are incorporated societies formed by members with common interests and are akin to the Automobile Association, the Consumers' Institute, staff associations and sporting clubs. Like many other associations, they have two basic roles: the provision of services to members and a representational and advocacy function. Similar associations operate without compulsory membership. Over the last 20 years there have been moves away from compulsion in the few cases where it has applied eg membership of trade unions, Federated Farmers, the Post-Primary Teachers' Association and the former New Zealand Society of Accountants. There have to be exceptional circumstances (eg consumer protection in the case of professions such as medicine) to justify compulsory membership of any association.¹ No such circumstances apply with students' associations.
- 2.2 Whatever the strict legal position (eg in relation to United Nations conventions), compulsory membership of students' associations does not sit comfortably with the principle of freedom of association in a democratic society. This is especially true of higher education which is – or should be – characterised by an environment of individual and

¹ The case of lawyers is interesting. Full membership of the New Zealand Law Society is voluntary, and all lawyers are eligible for full membership. The power to regulate lawyers is separate, in Part 4 of the Lawyers and Conveyancers Act.

intellectual freedom. Three counter-arguments in defence of compulsion that are sometimes put forward are unconvincing:

- (i) It is sometimes claimed that tertiary institutions (through their councils) should be free to determine whether students' association membership should be compulsory or not. To deny them this opportunity is claimed to be a denial of free choice. Given the quasi-monopoly position in higher education enjoyed by state institutions and the unequal basis of competition with the private sector, this claim is spurious. It is quite contrary to democratic principles to vest powers of coercion in non-elected state-controlled institutions. Individual autonomy should prevail over institutional autonomy. Decisions about voluntary or compulsory membership of students' associations at institutions in which the vast majority of tertiary students in New Zealand are obliged to enrol in order to gain a degree or diploma should properly be the responsibility of parliament.
- (ii) A variant of this idea is the claim that if a majority of students at an institution support compulsory membership, they should not be prevented from adopting such a rule for their association. Again this is the inverse of normal practice in a free society.² Nobody should be compelled to join any association as a result of a 'tyranny of the majority' unless there is an exceptional case for coercion. It is most unlikely, for example, that academic staff would accept such a rule for their associations. For this reason the idea of holding referenda to determine whether membership should be voluntary or compulsory is also undesirable.

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Freedom of association is an individual right, not a collective right. For example, if a majority of students at Otago University vote that every student must become a member of Young Labour or the Young Nationals, that would be an obvious infringement upon the rights of the minority. Moreover, the idea of a 'majority of students' is misleading. Typically students' association elections are attended by a minority of students with a special interest in the organisation, resulting in a totally unrepresentative vote. For example, Waikato students 'voted' to return to CSM in 1999 in an election on the first three days of exam study leave, with one day's notice and a turnout of 10 percent. This was after other elections with much higher turnout rates had resulted in huge majorities voting for VSM. As a less extreme example, elections at VUWSA typically have a turnout rate of around 5-10 percent. The most recent VUWSA Student Representative Council was barely able to make a quorum of 50. The results of these elections and meetings cannot realistically be held to represent the views of the majority of students.

- (iii) It is sometimes claimed that compulsory membership does not breach freedom of association principles because conscientious objection provisions apply. A first response is that gaining exemption on those grounds often involves arduous and time-consuming procedures for no financial benefit. Students are not normally refunded their fees; rather, the fees are donated to a charity of the students' association's choice. One such charity at Victoria University of Wellington is the 'VUWSA Foodbank', meaning that if a student opts out of VUWSA, the money can in fact be re-directed into a VUWSA charity: so much for conscientious objection. Much more importantly, it would be absurd to argue that all motorists should be forced to join the AA unless they were exempted on grounds of conscientious objection. Attending a tertiary institution is not remotely comparable to being drafted into the military or sent to war.

2.3 In summary, attempts to justify compulsion on the basis of legal and democratic principles rest on very shaky grounds.

3. Other arguments for compulsory membership

3.1 Support for compulsion often arises because a narrow group of students (particularly those involved in student politics) receive disproportionate benefits and lobby vigorously to maintain them, while the costs are diffused among the student body at large. This means there is little incentive for individual students to resist association pressures. To determine whether there are compelling practical arguments for retaining compulsory membership, it is necessary to:

- examine the nature of the services actually provided by students' associations;
- consider whether they might improve or deteriorate if membership became voluntary; and
- evaluate the trade-offs (if any) involved.

– ***Provision of services***

- 3.2 The first role that students' associations have assumed, as identified above, is the provision of services such as cafeterias, bars, newspapers, recreation centres, creches and campus clubs. All of these services can be directly charged for, and commonly are, in whole or in part. They can also be financed by voluntary club subscriptions. They do not have to be financed through compulsory fees, as non-members can be excluded from benefiting from the services. There are off-campus alternatives to virtually all these services and some on-campus ones as well.
- 3.3 A move to voluntary students' association membership would not necessarily decrease significantly the revenue available to students' associations. They would have an obvious incentive to ensure continuing membership. Thus one of the most important effects of VSM would be to incentivise students' associations to provide high quality services so that students actually wish to become members in the first place. This will have the dual effect of making students' associations better serve students' needs while at the same time sustaining revenue. Proponents of CSM insist that the services provided by students' associations are valuable, provided more efficiently than is possible with private services, and are beneficial to all students. If this is the case there is no obvious reason why students presented with an information pamphlet would decline to opt in.
- 3.4 Even if fewer students become members under VSM, the following beneficial changes would be likely to occur:
- (i) Greater efficiency in the provision of services: contrary to the above claims, some of those provided by students' associations have been notoriously badly run and have often lost money. For example, we understand that some 70 percent of the 2009 VUWSA budget comprised administration costs. Some services may be sold or contracted out. It is likely in general that costs will go down.

- (ii) More efficient and fairer charging policies. At present many students do not use many of the services for a variety of reasons – they are located on campuses away from the campus at which they are studying; they are caregivers, mature students or part-time students with little time or desire to avail themselves of students' association facilities; they prefer off-campus alternatives, and so forth. Yet at present they are obliged to subsidise such services through the association fee. Greater recourse to user charges and voluntary subscriptions would not only be fairer but also encourage those running the services to be more responsive to students' more diverse needs. Associations could continue to subsidise services from membership fees if they wished. One likely strategy would be to apply higher charges for non-members and discounted rates for members as an inducement to membership.
- (iii) Reconsideration of whether some services should be provided at all by the association, for example if they were unprofitable and/or if substitute services were available. However, if services were at risk of being discontinued, and if the institution considered they were an essential part of its package of educational offerings, it could finance them from its own resources or from a special levy or a general amenities levy. A number of institutions fund services such as health and counselling through a levy on students which is totally separate from the students' association levy. Even a hardship fund could be provided in this way.
- (iv) Greater competition between students' associations. Currently, numerous organisations exist on campuses such as Maori students' associations, mature students' associations, and particular faculty organisations such as law students' or engineering students' societies. Some of these are associated with the major students' associations and some are not. However, the major students' associations have a monopoly

over the provision of certain services due to their much higher budgets. Under a system of VSM, Maori students' associations, for example, could split from and compete against the major students' associations for members. This again creates greater efficiency in the provision of services, which can be tailored to the specific needs of members. The approach and needs of a Maori student in the case of a grievance or dispute may be markedly different to the needs of a non-Maori student, which may be different again to the needs of an international student. Another example is of students who attend classes away from the main campus of their universities. These students often feel alienated from their students' associations – for example, VUWSA typically does not put up notices advertising their elections at the Faculty of Education, which is situated far from the university's other campuses. Under VSM, separate associations could exist for the Otago University Faculty of Education in Invercargill, AUT's North Shore and Manukau Campuses, and VUW's Pipitea and Te Aro Campuses, all of which contain distinct student bodies with distinct needs. It does not seem appropriate, for example, that Victoria's Te Aro-based students effectively fund bus passes between the Pipitea and Kelburn campuses, which Te Aro students will rarely, if ever, have need of.³

- 3.5 Thus we see no reason to suppose that valuable student services would be curtailed with voluntary membership and every reason to suppose they would be provided on a fairer and more efficient basis. Voluntary associations and tertiary institutions would between them clearly have means of ensuring students are not denied access to services because of hardship. The services in question are largely private goods and we believe they would be provided more effectively in a voluntary membership environment.

³ Moreover, the problem is not simply that monopolies exist, but where separate associations already exist there is a significant overlap of services. There will be gains in efficiency where students are no longer required to pay twice to receive the same service.

– ***Representation and advocacy***

- 3.6 The second main role of students' associations is to provide representational and advocacy services. Many of these are also in the nature of private goods and the benefits can be restricted to association members. Advocacy in the event of a grievance, for example, benefits the student concerned. Advocacy services could be provided by an association and be an inducement to membership. Alternatively, a student might go instead to a relative, a lawyer or another professional. Where the service is more in the nature of a public good, in that the benefits (eg of the work of an education officer) accrue to non-members as well, there is no reason why it would not be supported voluntarily by many students who value it. For example, most universities have a 'Class Representative' system where a volunteer from each class acts as a liaison, or 'first point of call', between any and all students in that class and the lecturer. The majority of student-lecture grievances that arise can be dealt with via this voluntary system.
- 3.7 It does not follow even in the case of pure public goods that compulsion is necessary. The Business Roundtable, for example, provides no core services that could be charged on a user-pays basis to individual member companies. It is engaged only in research, policy analysis and representation and advocacy functions. The benefits to its members of its contribution to promoting better public policies are indirect and long-term in nature. It has to attract membership from the chief executives of major companies. Some who do not belong have, in effect, been 'free-riders' on policy improvements that it may have helped to bring about. Its purely voluntary nature means that it has to perform effectively to maintain support and that it genuinely represents its membership – anyone who disagrees with its views is free to leave or form an alternative organisation. Thus the so-called 'free rider' problem associated with voluntary organisations producing services of a public goods nature is often overstated. Those who get value from a service have an

incentive to contribute to it if they want it to be continued or enhanced.

- 3.8 One of the major difficulties with compulsory students' association membership is that associations cannot effectively represent student opinion on many topics. Student opinion is often diverse, yet compulsion means students have no means of disassociating themselves from the views of their 'representatives'. This problem has become more troublesome as students' associations have become involved in many issues removed from the campus. Examples include VUWSA's rejection of an offer to lay a wreath at the ANZAC Day parade in 2009; VUWSA's offer of \$10,000 to any person who performed a citizen's arrest on Condoleezza Rice during her New Zealand visit; OUSA's support in 2006 of smoking cannabis on campus as an act of protest; AUSA's refusal in 2009 to allow a 'Pro-Life Club' to operate on campus; and AUSA's attempt to pass a motion that National MP Melissa Lee is "racist".
- 3.9 Often it is critical that student bodies *do* speak out on political issues, for example in relation to government policy on tertiary institutions. There is no way to encourage this without also encouraging students' associations to take a stance on political issues which are only loosely, or not at all, related to education. If membership were voluntary they should be free to do so if their members wished, and in that event they would be clearly accountable to their membership for their stances. It is abhorrent that students who may disagree strongly with the positions taken by their association on sensitive political, social or moral issues are forced to contribute resources to it. The problem is compounded by the typically low turnout for students' association elections and meetings. This cannot be taken to indicate apathy or acquiescence in association affairs; more likely it is an indication that many students have a different set of priorities. Getting involved in student politics – attending meetings, cultivating allies, organising voters and so forth – is not one of them. Their reasons for enrolling in tertiary institutions are primarily educational.

3.10 Our conclusion on representational and advocacy services is that they would be supported by many students on a voluntary basis if associations were effective and responsive to their needs and views. While membership might fall, the 'representative' quality of associations would rise – politicised elements of the student body would find it harder to impose their views on others. If the main association did not reflect student views it would suffer membership losses and alternative associations could be established. The discipline of membership losses, however, would be more likely to lead to adjustments in the association's stance than to fragmentation of representation because of the economies associated with running a larger body.

4. Other issues in the debate

Claims have been made that without compulsory membership tertiary institutions would have difficulty knowing how to obtain student representation or input – on councils, academic boards, faculty committees and the like. However, there are many formal and informal ways in which institutions can obtain student input. For example, if student representation on councils is continued, one simple option would be to hold an election to select the student representative(s). There is no difficulty obtaining staff representation on councils without membership of staff associations being compulsory. Like good private enterprises, tertiary institutions should make a point of having good communications with their stakeholders in a variety of ways; they should not consider the task is fulfilled simply by dealing with one 'representative' elected group.

4.1 A final important argument for the introduction of voluntary membership is to help preserve freedom of thought and debate on campuses. As associations have become more politicised they have frequently attempted to suppress expressions of views that run counter to official association thinking. An example is the issue of voluntary membership itself. Voluntary membership would be likely to foster a more open and tolerant culture on campuses, and one less

prone to excesses of 'political correctness' which are inimical to free thinking and expression.

5. Conclusion

- 5.1 We have no doubt that students' associations would survive and flourish in a voluntary environment. Claims that were made about the demise of trade unions if their monopoly privileges were removed were shown to be unfounded. The unions that quickly accepted the need to adjust and to tailor their services to their members' needs have been the most successful. Membership of students' associations might well fall, like membership of trade unions, but in both cases membership in a voluntary environment would consist of those who obtained genuine benefits from their fees – there would no longer be 'forced riders'.
- 5.2 Despite the fact that there is a great deal of support by students for voluntary membership, we expect students' associations and the councils of universities and other tertiary institutions will oppose the present bill. As one study of the issue concluded:

University councils are extremely conservative, if not reactionary, bodies. Like public monopolies, they seek "modest profits and a quiet and comfortable life" and aim to foster peace and stability in the affairs of the university – even at the expense of human rights. This means not upsetting vested interests like student unions which will create such an uproar should their compulsorily-extracted income be replaced by an income dependent on their actual appeal to students.⁴

Similarly, Peter Costello, former deputy leader of the Liberal Party in Australia and himself a former students' association president, once wrote:

Although universities jealously guard their independence, their rights to free enquiry, and their rights to free speech, it seems they are all too willing to compromise their students' rights to freedom of association ... University administrators (including vice-chancellors) have been all too willing to play bag-men in this enterprise.⁵

- 5.3 The National-ACT Confidence and Supply Agreement expresses the support of those parties for individual freedom, which embraces freedom of association. We hope other parties represented in

⁴ Stephen Kirchner, 'Implementing Voluntary Student Unionism', *Compulsory Student Unions: Australia's Forgotten Closed Shop*, p 58.

⁵ *Ibid.*, p vii.

parliament will also support freedom of association (which includes the freedom *not* to associate) in this context. Such a stance would be consistent with the New Zealand Bill of Rights Act 1990, which guarantees the right to freedom of association. The removal of compulsory trade union membership has not been reversed by subsequent governments. We urge the Committee to support the bill and remove one of the last vestiges of forced association in New Zealand today.