

7 August 2006

Dr Peter Lind  
Director  
New Zealand Teachers Council  
Level 7  
93 the Terrace  
**WELLINGTON**

Dear Peter

### **NZEI Response to Proposals Regarding Reporting of NZTC Decisions**

- 1 Thank you for your letter of 16 June 2006. Your proposals have been carefully considered by our national executive. NZEI would like to make the following comments. For convenience, our position is summarised immediately below, followed by sections expanding on each point in more detail.

#### **Executive Summary**

- 2 The Teachers Council has made three proposals:
  1. that its Complaints Assessment Committee (CAC) proceedings will not be reported;
  2. that full Council decisions on applications for registration/practicing certificate renewal will be reported by way of anonymous “head notes”;
  3. that its Disciplinary Tribunal decisions be reported “in full”.
- 3 The third proposal appears to be a significant departure at least from current practice, and possibly the Council’s current Rules. NZEI supports the proposal to publish reports of the Tribunal decisions. NZEI opposes the inclusion in such reports of teacher’s names, or any details leading to their identification, except where the Council is legally obliged to do so.
- 4 NZEI recognises that the first two proposals are essentially a continuation of the status quo. However NZEI believes that teachers with a legitimate interest in the detail of such cases should have access to them.
- 5 NZEI suggests that the Council’s website needs to be reconfigured to avoid users being overwhelmed by information on disciplinary decisions.

## **Council Publication of Disciplinary Tribunal Proceedings**

- 6 So far, the Council has not published Tribunal proceedings in any form.
- 7 The Council offers five reasons to support its proposal, some of which NZEI would take some issue with<sup>1</sup>. However among them are several good reasons for NZEI to support the Council's reporting of Tribunal decisions.
- 8 NZEI acknowledges the public interest in seeing that the profession has a robust and effective system for dealing with "serious misconduct" by teachers.
- 9 NZEI acknowledges that such reporting has an educative function within the profession, underscoring positive messages about ethics, appropriate professional boundaries, and the limits of acceptable behaviour.
- 10 NZEI, as one of the main advocates for teachers in the disciplinary system, has a substantial interest in convenient access to the jurisprudence/case law that is developing around the definition of "serious misconduct" and the disciplinary processes.
- 11 NZEI understands that some other stakeholders have in the past criticised the Council's reporting of disciplinary decisions on the basis that it has encouraged or pandered to prurient interest and inaccurate media coverage. NZEI would observe that this criticism has some foundation. Some past decisions reported by the Council have not been as well structured as NZEI would expect, and have lent themselves to prurience<sup>2</sup>.
- 12 NZEI's support for the reporting of Tribunal decisions is given on the basis that any reported decision is constructed as should be expected of judicial decisions of this nature.

## **Anonymity**

- 13 The current Rules require that if the Council does publish any report of Tribunal proceedings, they must be in anonymous form (ie not identifying the teacher), unless there is an express Tribunal order to the contrary<sup>3</sup>.
- 14 It is unclear whether the Council is effectively proposing to reverse those Rules, so that accused teacher's names will be published in reports, unless there is a positive suppression order. NZEI would not support such a proposal.

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<sup>1</sup> For example, the Council uncritically asserts a public interest in "transparency", which appears to be a form of shorthand for identifying the teachers who has been prosecuted. The Council does not appear to have analysed the benefits of a publicly visible system, separately from arguments for and against publication of names. The Council's letter appears to have been written without any reference to the current Rules dealing with publication of names, or reporting of proceedings by the media. Critically, the Council has uncritically assumed the value of "aligning" with other professions' disciplinary processes, with no examination of the similarities and differences between the circumstances of teaching and other professions.

<sup>2</sup> For example, some past reports of decisions exhaustively repeated the allegations made against teachers, but gave minimal coverage of rebuttals or mitigating arguments put forward by the teacher, and set out little or no systematic analysis of the strengths and weaknesses of the relevant evidence.

<sup>3</sup> R 32 New Zealand Teachers Council (Conduct) Rules 2004. It should also be noted that the R 31 currently prohibit the reporting of Tribunal hearings by any other agency, except by the express consent of the Tribunal.

- 15 It is accepted that in general, full reporting (including the name of the accused) is appropriate in criminal proceedings and the like. Such cases concern notions of “justice” and punishment, and laws that are of universal application. However, cases before the Disciplinary Tribunal concern “laws” that are internal to the profession. The key issue in each such case is really whether the profession would consider it appropriate for the teacher to remain a member.
- 16 There is a clear difference between the “public interest” in seeing that the profession has a robust system for determining such issues, and the “public curiosity” about prurient aspects of specific cases.
- 17 Section 129 (5) Education Act 1989 requires the Council to take all reasonable steps to inform employers of the names of teachers who have had their registration cancelled. NZEI considers that automatic publication of an accused teacher’s name in any other circumstances would be unduly punitive, especially where the Tribunal dismissed the matter or decided to take no action.
- 18 There may well be circumstances in which it is appropriate for an accused teacher to be publicly identified, even though they have not had their registration cancelled. The Tribunal’s existing powers to authorise or require publication are adequate and appropriate to deal with such situations.

### **Reporting of Council Decisions and CAC Investigations**

- 19 NZEI believes that the jurisprudential or “case law” rationale equally extends to these decisions.
- 20 Council decisions on applications for registration or practicing certificate renewal are at least quasi-judicial, and have obvious implications for applicants’ career aspirations. The Council is required to approach every application on its individual merits, but that approach should be (and be seen to be) consistently principled.
- 21 The CAC process is in the first instance investigatory, but it is largely aimed at a resolution of all but the most serious matters, and the CAC is similarly required to operate in a consistently principled manner.
- 22 NZEI is comfortable with the Council’s proposal to continue its limited public reporting of these cases. However teachers facing such proceedings (and of course their legal advisors) should be able to access past cases to ensure that robust advice can be given and that submissions are properly informed. NZEI suggests that access to full but anonymous versions of these cases should be provided to teachers with a legitimate interest in them. The Council’s obligations under the Official Information Act would be relevant to individual requests for such information, but NZEI suggests that a systematic approach is preferable.

### **Council Decisions about Teacher Competency?**

- 23 It is unclear whether the Council’s proposals to continue “current arrangements” for reporting decisions about registration, include its practices regarding decisions

on recommendations from the competency assessor. At present these do not appear to be reported at all.

- 24 NZEI's suggestion regarding access to full but anonymous versions of such decisions is equally applicable here.

### **Reconfiguring the Council's Website**

- 25 NZEI believes that the core tasks of the Council<sup>4</sup> are the provision of leadership to the profession, the encouragement of best practice, and the efficient administration of the registration system. Teachers should be able to quickly and easily access information about those matters from the website. However many searches of the website for such professional information, are warped by the volume of material about disciplinary decisions that is included in responses from the search engine.
- 26 Accessing core information therefore tends to be unwieldy. Of course, searches can be limited to avoid such outcomes, but most teachers will be using fairly generalised search terms and will not know in advance that they need to limit their searches.
- 27 In NZEI's view, this also creates a negative and unbalanced impression of the Council's purpose and operation, at a time where it is important for the Council to consolidate the positive reasons for its existence.
- 28 NZEI suggests that the website should be reconfigured, so that disciplinary decisions are only included in search results where they are explicitly searched for.

Yours sincerely

Irene Cooper  
National President  
Te Manakura

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<sup>4</sup> As suggested by the ordering of the Council's functions in s 139AE Education Act 1989.