
**NZEI TE RIU ROA
THIRD SUBMISSION
ON THE
NEW ZEALAND TEACHERS
COUNCIL PROPOSALS
REGARDING
A NEW POLICY ON
GOOD CHARACTER
AND FITNESS TO TEACH**

May 2007

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PRELIMINARY REMARKS

- 1 NZEI Te Riu Roa (“NZEI”) is the 123 year old professional organisation and industrial union representing 45,000 members working as
 - Teachers in the early childhood, primary and composite school education sectors;
 - Support staff in kindergartens and the compulsory schooling sectors;
 - Group Special Education staff within the Ministry of Education;
 - Advisors and reading recovery tutors in the teachers support services.

- 2 The main object of NZEI is to advance the cause of education generally while upholding and maintaining the just claims of its members individually and collectively.

EXECUTIVE SUMMARY

- 3 This submission does not precisely follow the format apparently required by the formal consultation document. The various sections of the policy document are omitted for brevity. NZEI has instead provided comment under each of the headings appearing in the draft policy.

- 4 NZEI notes that the Teachers Council’s formal consultation document seeks to limit comment by omitting spaces to comment on several parts of the policy document. NZEI considers those sections to be important and requiring comment, and comment has been included in this submission in the appropriate sections.

- 5 In this submission, NZEI -
 - Reiterates its previous dissatisfaction with the piecemeal nature of the consultation over the policy framework impacting on the registration and renewal processes;
 - Is disappointed that most of the key points it makes in this submissions have been already made in the two previous rounds of consultation on this policy, and sometimes in both;
 - Continues to object to the Council’s apparent confusion between its registration responsibilities and the disciplinary processes, which should be the strict preserve of the disciplinary bodies;
 - Objects to the Council’s apparent insistence on promoting loose and inaccurate notions of the legal environment in which it operates;

- Is dismayed that it must once more remind the Council that the profession has made it clear that the Code of Ethics is to be an aspirational document and must not be reduced to some regulatory tool;
- Supports in general the proposed definition of “good character and fit to be a teacher”;
- Continues to disagree that “fit to be a teacher” requires teachers to meet some arbitrary and abstract level of mental or physical fitness;
- Continues to be highly critical of much of the structure, drafting and content of the sections of the policy dealing with evidential requirements and decision-making;
- Reiterates previous suggestions about principles that should be explicitly referred to in the policy;
- Makes a number of suggestions about other matters that should be explicitly dealt with in the sections on evidence and decision-making; and
- Notes that further consultation will be required before this policy can be finalised.

6 Specific amendments are proposed under the relevant headings.

INTRODUCTION

7 NZEI notes that the two boxed paragraphs preceding the heading are also effectively introductory. While NZEI supports in principle the proposal to fit this policy within a wider policy on the requirements for registration and renewal of practicing certificates, NZEI has previously commented on its dissatisfaction with the piecemeal nature of the consultation on this policy development¹, and those comments are reiterated. NZEI is alarmed that the Council appears intent on finalising this policy with references to a policy on “Categories of Registration” before the appropriateness of such a policy has even begun to be discussed formally with stakeholders.

8 NZEI notes that the two paragraphs actually under this heading are accurate as statements of fact.

¹ NZEI has previously said: “It is difficult to comment further, in the absence of more detail about the other sections being proposed. For example it is unclear whether the three proposed divisions are the most optimal, and whether common threads or content might require other sections or subsections to draw them together. It would seem that the Council intends this wider policy not only to set out its interpretation of the legislative criteria for registration (and renewal), but also to detail how it will go about determining whether individual applicants meet those criteria. However, it is unclear whereabouts in this suggested structure, such content would most coherently fit.” (Paragraph 2.2 of NZEI's Second Submission on the New Zealand Teachers Council Proposals Regarding a New Policy on “Good Character and Fitness to Teach” August 2006).

PURPOSE

- 9 The primary purpose of this policy is to articulate the perspective and processes that the Council will use in determining whether applicants meet the statutory criteria of “good character” and “fitness to teach”, as part of its responsibilities to register teachers, to renew their practicing certificates and to issue Limited Authorities to Teach.
- 10 NZEI has already made two strongly worded submissions² about the need for the Council to avoid confusion between these registration responsibilities, and disciplinary matters. It is disappointing to note that this confusion is still present in this iteration of the policy.
- 11 To reiterate, matters of discipline are the strict preserve of the disciplinary bodies. Those bodies are not there to determine questions of character or fitness. Their function is to determine whether misconduct/serious misconduct has occurred, and what the appropriate professional response should be to individual cases. They are to operate at a distance from the Council. They are to regulate their own procedures and come to their own conclusions on the issues within their jurisdiction. It is inappropriate for the Council to purport to direct them in any way through its policies.
- 12 The statement of purpose should be confined to its legitimate scope. In particular there should be no reference to the disciplinary policies in paragraph 3(b).
- 13 NZEI would prefer to see more vigorous language being used in the statement of purpose, and suggests that the Council consider the use of “ensure” rather than “increase” in paragraph 3(b).

LEGISLATIVE CONTEXT

- 14 The list of “principal’ sections of the *Education Act 1989* is arbitrarily limited. Sections 126, 130C and 130D all appear to be as relevant.
- 15 NZEI notes that paragraphs 5 and 6 appear to deal with evidentiary matters that would more naturally sit under the heading “Evidence”.

OTHER RELEVANT LEGISLATION

- 16 Paragraph 7 is clumsy, ungrammatical and inaccurate. The responsibilities referred to arise from the legislation, not from the policy, which is something that must comply with the legislation. It would be neater to simply refer to the

² NZEI Submission on the New Zealand Teachers Council Draft Policy on Good Character and Fitness to Teach” February 2006, paragraphs 26-34; and NZEI’s (second) Submission, paragraphs 3.3 and 3.4.

list as (for example) “other legislation relevant to the Council’s processes for determining character and fitness”.

- 17 NZEI has previously commented that the Council has no “responsibilities” arising from the *Children Young Persons and Their Families Act 1989*³. To reiterate the point, nothing in that legislation imposes any legal obligation on the Council or on teachers. It is unacceptable for the Council to promote loose and misleading notions about the legal environment in which it operates.
- 18 The reference to the *Children Young Persons and Their Families Act 1989* should be deleted.

ETHICAL CONTEXT

- 19 While the individual sentences in paragraphs 8 and 9 are all factually correct, they add nothing constructive to this policy. The two sentences in paragraph 9 are each redundant⁴. Read together, they tend to suggest that evidence of compliance with the Code of Ethics is some part of the criteria under this policy.
- 20 NZEI has already made submissions about the Council’s inappropriate references to the Code of Ethics in earlier versions of this policy⁵. NZEI is dismayed that it has to make this point again. The profession gave the Council a very clear message during its consultation over the Code of Ethics, that it was to be an aspirational document and that it should not be reduced to any kind of regulatory tool.
- 21 Paragraph 9 should be deleted.

PRINCIPLES

- 22 NZEI has previously commented on the structural peculiarities of this section of earlier drafts⁶. Placing a “Principles” section before a definition implies that it will set out the principles underpinning that definition. However this section of the policy seems to be a partial explanation of how the Council will apply the definition, with the remainder of that explanation confusingly placed after the definition.
- 23 It is important that the policy sets out the Council’s definition of “good character and fitness to teach”, and explains how that definition will be

³ NZEI's (first) Submission, paragraph 35.

⁴ The first sentence in paragraph 9 is internally tautological in any event, but in overall terms, it merely repeats what is stated elsewhere in the policy. The second sentence merely repeats paragraph 8.

⁵ NZEI's (first) Submission, paragraphs 36 and 37.

⁶ NZEI's (first) Submission, paragraph 42, and NZEI's (second) Submission, paragraph 4.4.

applied. Jumbling those two matters together detracts from the coherence of both.

- 24 NZEI suggests that the policy first set out the definition, and then explain how the Council will go about determining whether or not applicants meet that definition. Such an explanation would naturally encompass the principles to be observed in the process, the sort of evidence that will be required, who will be involved in making decisions, and what avenues are open to applicants who object to a decision.
- 25 NZEI agrees that, in judging a teacher's character and fitness, the Council must observe natural justice and due process, and should be careful not to infringe that teacher's human rights.
- 26 However, paragraph 10 wrongly associates "due process" with "precedent". "Due process" is just that – the *procedural* aspects of coming to a decision. "Precedent" concerns the substantive outcome of a decision.
- 27 However NZEI has a deeper objection to any reference to "precedent" re-surfacing in this draft, having already made plain⁷ its objection to such references as unlawful. To make the point once more, under fundamental canons of administrative law, the Council is legally obliged to make decisions on each application on its own merits. It *cannot* be bound by "precedent".
- 28 The reference to "precedent" should be removed from paragraph 10.
- 29 NZEI remains concerned at the Council's references to "human rights". NZEI notes that the discussion document circulated by the Council in its second round of consultation on this policy, made obscure connections between this phrase and suggestions that teachers' rights might be compromised in favour of others. NZEI has in this submission made the assumption that the Council *is* referring to the avoidance of discriminatory decisions or practices, but in view of its earlier confusion, it would be useful for the Council to be more explicit.
- 30 Paragraph 10 inappropriately purports to set out an exhaustive list of the principles that will be used ("*[t]he principles of the policy are to be...*"). NZEI has previously commented that there are several other key principles that the Council is legally obligated to observe in coming to decisions as to character and fitness⁸. To reiterate, the Council must take a robust approach to the issues; must not dwell on the past but must focus on the teacher's present qualities; and must take due account of all the evidence about those present qualities.
- 31 The policy should not suggest that these principles are irrelevant or inapplicable. They are as important to the process as the principles enumerated in paragraph 10. The language of the paragraph needs to be

⁷ NZEI's (first) Submission, paragraphs 46 and 47.

⁸ NZEI's (first) Submission, paragraphs 48-52, NZEI's (second) Submission, paragraph 4.10.

revised accordingly, and explicit references should be made to these additional principles.

DEFINITION OF “GOOD CHARACTER AND FIT TO BE A TEACHER”

31 NZEI is pleased to see that many of its concerns about the Councils’ earlier drafts of this section have been addressed.

32 NZEI does have a continuing objection to the reference to mental and physical fitness. NZEI has previously commented⁹:

Either an applicant is capable of performing at the level required of a teacher (and therefore meets the other elements of this “wider policy”), or they cannot, in which case character and fitness does not need to be assessed. Making decisions in the abstract about whether a certain level of mental or physical fitness is acceptable, risks falling foul of the obligation not to discriminate on the basis of disability – in other words, the Council would be violating the very human rights this policy claims to be respectful of.

33 The statutory tests of character and fitness are aimed at ensuring that only those with the appropriate set of personal attributes are permitted within the profession. The individual’s ability to perform as a teacher is to be assessed under other criteria (eg “satisfactory recent teaching experience” or “likely to be a satisfactory teacher”). The Council has explicitly accepted that distinction, and (with this one exception) has removed the overlap that previously existed in the earlier versions of this policy.

34 The reference to mental and physical fitness should be deleted.

EVIDENCE

35 This section is incoherent and contradictory. It appears to be only partially drafted and is inappropriately phrased. A key paragraph (paragraph 16) is isolated under the subsequent heading.

36 Paragraph 13 implies that the Council will require extensive information in order to make any decision, but the following paragraphs imply that in the ordinary course of events, decisions will be made on the basis of certain specific information. NZEI has already expressed its support for the use of standardised evidence¹⁰, and NZEI continues to believe that most applications can be determined on the basis of a police vet and

⁹ NZEI's (second) Submission, paragraph 6.12

¹⁰ NZEI's (second) Submissino, paragraph 7.1

suitable testimonials. This should be appropriately reflected in the drafting.

- 37 Paragraph 14 appears to be an ungrammatical attempt to declare that the police vetting process itself will determine questions of character. That cannot be the case. The decision is one for the Council to make, and the police vetting service cannot make it for the Council. The disclosure of a criminal or police record through the vetting process cannot automatically lead to a decision that the applicant lacks “good character”. Nor can the Council ignore everything but the material in the vet. The Council must consider all aspects of the matter and come to its own conclusion.
- 38 Paragraph 15 suffers from similar problems.
- 39 The material between paragraphs 15 and 16 appears to list evidentiary requirements, but its meaning is unclear. It appears to imply (contrary to paragraphs 14 and 15), that the Council will routinely require more than a police vet and a testimonial, but it does not explain what else is actually required. What is the applicant for registration required to declare? What is the difference between a “testimonial”, an “endorsement”, and a “support endorsement”?
- 40 Furthermore, the policy fails to explain why are there to be differences between the requirements for registration, re-registration¹¹, moving to full registration and renewing a practicing certificate. NZEI accepts that there might be different requirements for different stages of the registration process, but these should be coherently set out and explained.
- 41 NZEI notes that there differences between the requirements for teachers and LAT applicants. LAT applicants should *not* face lighter evidentiary requirements as to character and fitness, and there should be absolutely no suggestion in this policy that this is the case. The explanations of the evidentiary requirements should be drafted accordingly.
- 42 It *would* be appropriate for the policy to explain the sorts of police vets and attestations or other evidence that would satisfy it as to character and fitness. Such a statement would then naturally lead on to an explanation of what sort of police vets might be of concern to the Council. It would also lead into an explanation of the sort of further information the Council might seek before coming to a decision where the police vet was of concern, or where the applicant was unable to provide the usual evidence.

¹¹ NZEI assumes that the reference to “re-application” is a reference to someone who has been registered, and is applying for registration again after it has expired, been cancelled or they have been de-registered.

- 43 NZEI has previously commented¹² about the need for this policy to deal explicitly with how it intends to approach the issues of character and fitness for teachers who have previously been through its disciplinary processes. NZEI believes that it will not be open to the Council to decline any application on the basis of any matter already dealt with by the disciplinary bodies, with any result short of cancellation of the registration or authority¹³. A prior cancellation itself cannot determine a new application, since of course the Council is required to focus on the applicant's *present* qualities¹⁴.
- 44 NZEI has also previously commented¹⁵ about the need to be explicit about how the Council will deal with potential disciplinary matters that come to light in these processes (eg through the police vet).
- 45 While these matters will affect only a small minority of applicants, it is critical that the procedures are transparently laid out and clear to everyone in advance, because it is precisely in these sorts of "difficult cases" that confusion can arise, both about procedure and about the appropriate substantive decision.
- 46 NZEI understands that this is intended as the final consultation on this draft policy, and it is unacceptable that the Council seems intent on leaving these important details to be resolved in some opaque and ad hoc fashion.

DETERMINATION

- 47 As noted above¹⁶, paragraph 16 appears misplaced at best. Paragraph 17 is bizarrely ungrammatical and adds nothing to the material in the introduction and the statement of purpose at the beginning of the policy. As a whole then, this section of the policy as drafted seems rather pointless.
- 48 Furthermore, it continues the confusion between the registration/LAT process and the work of the disciplinary bodies¹⁷, and even worse, it appears to assert that questions of character and fitness are relevant in dealing with complaints or mandatory reports about competency and impairment matters.
- 49 Paragraphs 16 and 17 should be deleted.

¹² NZEI's (first) Submission, paragraphs 58-62, and NZEI's (second) Submission, paragraph 7.3.

¹³ It would obviously be wrong for the Council to relitigate any question of whether an applicant should remain registered (or authorised) once that status has been left intact by the disciplinary bodies. An applicant's failure to comply with conditions etc is of course a different matter, and perhaps could justify a decision to decline.

¹⁴ See paragraph 30.

¹⁵ NZEI's (second) Submission, paragraph 7.4.

¹⁶ See paragraph 35

¹⁷ See paragraphs 10 and 11.

- 50 This section does obliquely indicate some hierarchy of processors or decision-makers, ranging from Council staff through to the full Council. It would be appropriate for the policy to coherently outline who would in fact be making decisions in what sort of circumstances.

FINAL REMARKS

- 51 NZEI is a key stakeholder in the Council, devotes considerable time and energy to its submissions, and strives to make them as thoughtful and constructive as possible. Most of the points that have been reiterated in this submission are not matters of policy, about which there might be legitimate differences of opinion. They are about fundamental technical matters. NZEI would welcome a constructive face-to-face meeting to resolve these differences.
- 52 NZEI understands that the Council intends this to be the final round of consultation on the draft policy. However the shortcomings of the draft highlighted by this submission mean that it will need considerable further work and further consultation will be necessary, at least amongst the key stakeholders. NZEI would also welcome an opportunity to discuss in more detail the comments made in this submission, as a prelude to any further consultation.
- 53 NZEI looks forward to being able to comment favourably on a further draft of this policy.

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Te Manukura

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