
NZEI TE RIU ROA SUBMISSION

TO

**THE JUSTICE AND ELECTORAL SELECT
COMMITTEE**

ON THE

**LAWYERS AND CONVEYANCERS
AMENDMENT BILL (No2)**

July 2008

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Introduction

- 1 The New Zealand Educational Institute Te Riu Roa, represents some 43,000 members employed in early childhood education, primary, secondary and area schools, colleges/schools of education and the Specialist Education Services. Approximately 89% of these members are employed in schools.
- 2 The main objectives of NZEI are to:
 - Advance the cause of education;
 - Respect and uphold the professional status and individual rights of members;
 - Give honour and effect to the Treaty of Waitangi;
 - Promote and protect the professional, economic and educational interests of its members.
- 3 NZEI has pursued these objectives for over 120 years. The main objective of NZEI with respect to this submission is to ensure that it can continue to provide the full range of services it has provided to members during that time, including legal advice regarding members' rights and interests.

Executive Summary

- 4 The legal services most commonly provided to its members by NZEI are advocacy, representation and professional dispute resolution services.
- 5 These are the services (called reserved areas of work in the *Lawyers and Conveyancers Act 2006* hereinafter "the LCA") subject to most restriction in the LCA in respect of by whom they can be offered.
- 6 The LCA distinguishes between legal services that can be provided to an employer by in-house legal staff and those that can be offered to members of an employer. This distinction is artificial and meaningless for NZEI and its membership, but it has the effect of denying NZEI's membership access to the high quality advocacy and representation of their rights and interests that they have hitherto enjoyed.
- 7 Restriction on the offer of legal services to NZEI members in this way does nothing to advance the purposes or objects of the LCA.
- 8 The amendments proposed in the *Lawyers and Conveyancers Amendment Bill (No 2)* (hereinafter "the Bill") will cure this major defect in the LCA and enable NZEI's members to continue to receive legal services of the same standard that they have enjoyed in the past.

How the problem arises

- 9 NZEI currently offers a range of services to its members, including legal advice concerning members' rights, entitlements and obligations. It routinely gives legal advice to members about personal grievances, wage arrears cases, compliance actions and those issues which affect individual members in respect of employment and professional issues. It offers representation at employment and professional institutions (Mediation Service, Employment Relations Authority, Employment Court, Teachers Council).
- 10 NZEI has offered these services – in one way or another –since it was formed.
- 11 Like many other unions, NZEI also assists members before entities of relevance to its members as workers. An example is ACC Review Hearings (and District Court Appeals) in relation to work injury cover and entitlements under the *Injury Prevention, Rehabilitation and Compensation Act 2001*.
- 12 The LCA, in its current form, has the potential to cut awkwardly across this range of activity by restricting the legal services that unions such as NZEI have always provided, that have always been considered legitimate and that have always been central to the very purpose of unions – the pursuit, protection and enforcement of members' entitlements.
- 13 It does this by distinguishing between legal services (in particular advocacy and representation services¹) required by the organisation and those required by the organisation's members. The former can be legitimately offered but the latter are prohibited from being offered by in-house legal staff. Since unions such as NZEI regard themselves as indistinguishable from the interests of their members this distinction is artificial and mischievous.
- 14 This distinction, furthermore, is unnecessary to advance the purposes for which the new Act was passed. Amongst the purposes of the LCA are those to protect confidence in the provision of legal services and conveyancing services and consumers of those services².
- 15 In providing greater choice for consumers of conveyancing and real estate services the LCA has reduced or restricted the choices of consumers of other kinds of legal service – those who, through membership of a union, have the ability to choose whether to have their industrial and professional legal issues dealt with by their union or by private sector lawyers.
- 16 This anomaly can be corrected by the amendment of s 9(1) LCA (in the manner proposed by the Bill) to include union and employer organisations in

¹ LCA, s 10(1)(c) & (e)

² LCA, s 3(1)(a) & (b)

the list of employers of in-house lawyers able to provide regulated services. This is the effect of clause 6(1) of the LCA Amendment Bill (No2).

- 17 Since NZEI wishes only to continue to have the ability to offer legal services to its members, and not to the public at large, it accepts the necessity for the amendment suggested by clause 6(2)(b) of the LCA Amendment Bill (No2).
- 18 To ensure that NZEI can continue to offer advocacy and representation services to its members (as a non-lawyer) it accepts that it is necessary to ensure that it is not defined by those services – for the purposes of the offence provision of the LCA in s 24. For that reason it accepts the necessity for the amendment suggested by clause 8 of the LCA Amendment Bill (No2).
- 19 NZEI does not operate trust accounts of the kind referred to in the LCA. For that reason it accepts the necessity for the amendment suggested by clause 9 of the LCA Amendment Bill (No2).

Recommendation

That the *Lawyers and Conveyancers Amendment Bill (No 2)* is adopted by this Select Committee and passed into law by the Parliament so that unions can continue to provide legal services to union members in the same manner as they have done in the past.



Frances Nelson
National President
Te Manukura