



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

EDUCATION AMENDMENT BILL (NO 2)

30/04/2014

SUBMISSION ON THE EDUCATION AMENDMENT BILL (NO 2)

1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Education Amendment Bill (No 2) (Bill).
2. The Bill will establish the Education Council of Aotearoa New Zealand (Education Council).¹
3. Among the functions and powers of the Education Council set out in new section 382 are functions and powers relating to teacher registration, teacher discipline, misconduct and competence and generally “to perform any other functions conferred on it by this Act or any other enactment”.²
4. Section 388 provides that the Education Council must make rules providing for a complaints assessment committee, a disciplinary tribunal, the practices and procedures of disciplinary bodies, the procedures of the Education Council, the procedures relating to police vetting, and otherwise for any other purpose relating to the performance of the Education Council’s functions. When preparing rules, the Education Council “must take all reasonable steps to consult with those affected by the rules” (s 388(3)) and the rules are given the status of a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 (s 388(5)).
5. Extensive powers are being conferred on the Education Council to make decisions itself and to establish bodies that will make decisions affecting teachers, those wishing to become teachers, and also children and parents who make complaints. The rules of procedure will therefore be very important.
6. Section 382(3) provides that when performing its functions and exercising its powers, the Education Council “must act in accordance with the rules of natural justice”.
7. It is commendable that the Bill contains an express provision requiring the Education Council to act in accordance with the rules of natural justice. In practical terms, however, the only way to give effect to that statutory obligation will be through well-drafted and effective rules of procedure.
8. The Law Society submits that the powers to be given to the Education Council under section 388 to establish the complaints and disciplinary bodies and to make rules in relation to them are too wide

¹ Education Amendment Bill (No. 2), Part 32: clause 382

² Education Amendment Bill (No. 2), section 382(1)(p)

and unfettered. There should be provision for the rules to be made at a higher level (preferably by Order in Council), to ensure the rules receive independent scrutiny before they are finalised. There should also be more detail in the Bill itself regarding the processes and procedures governing complaints and discipline.

9. That would be consistent with the approach taken in the Education Act 1989, which provides for regulations to be made in relation to other processes and decisions in the education sector. For example, section 18AA of the Act provides that rules may be made by the Secretary of Education in relation to the powers of principals and Boards of Trustees to stand-down, suspend, exclude and expel students.³ It is appropriate that the rules of procedure are made by the Secretary of Education rather than by the decision-makers themselves.
10. It would also be consistent with the approach taken in other professional regulatory regimes, such as that applying to lawyers. Part 7 of the Lawyers and Conveyancers Act 2006 sets out very detailed provisions governing complaints and discipline.⁴ The New Zealand Law Society and the New Zealand Society of Conveyancers are given rule-making powers in relation to standards of professional conduct and disciplinary matters,⁵ but those rules must be made with Ministerial approval, following consultation with affected parties. Regulations are made by Order in Council in relation to the operation of the Lawyers Complaints Service and Standards Committees,⁶ and in relation to the Disciplinary Tribunal.⁷

Recommendation

11. It would be appropriate for the Bill to set out in more detail the complaints and discipline regime, and for regulations to be made by Order in Council in relation to the procedures of the Education Council and of the other bodies that will be under the control of the Education Council.

³ See ss 14 – 18, and the Education (Stand Down Suspension, Exclusion and Expulsion) Rules 1999.

⁴ Lawyers and Conveyancers Act 2006, ss 120 – 272.

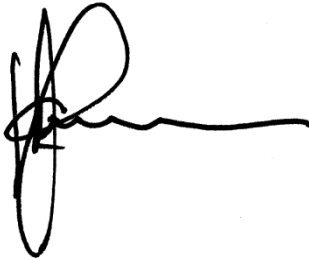
⁵ Lawyers and Conveyancers Act 2006, ss 94, 95, 108 and 122.

⁶ Lawyers and Conveyancers Act 2006, ss 94, 108 and 122.

⁷ Lawyers and Conveyancers Act 2006, s 339.

Conclusion

12. The Law Society does not wish to appear in support of this submission. However, the Law Society is willing to meet with the Committee or officials advising if the Committee considers that would be of assistance.

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Chris Moore
President
30 April 2014