



New Zealand Nurses Organisation

Submission to the Law Commission on the “Tribunals in New Zealand”

This Submission is made in response to the Law Commission's Issues Paper 6 “Tribunals in New Zealand” (January 2008).

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ABOUT THE NEW ZEALAND NURSES ORGANISATION

1. The New Zealand Nurses Organisation (“NZNO”) is a Te Tiriti o Waitangi based organisation. It is the leading professional body and nursing union in Aotearoa New Zealand, representing over 41,000 nurses, midwives, kaimahi hauora, students, health care assistants, and other health professionals. Te Runanga o Aotearoa NZNO comprises Maori membership and is the arm through which our Treaty based partnership is articulated.

2. On behalf of its members and in some instances on its own behalf, NZNO deals with several of the tribunals listed in Appendix 1 of the Issues Paper. These include:
 - (a) [Health Practitioner] Registering Authorities (“registering authorities), particularly the Nursing Council of New Zealand and the Midwifery Council of New Zealand;
 - (b) Health Practitioners Disciplinary Tribunal (“HPDT”); and
 - (c) Employment Relations Authority.

Question 1 Have you properly identified the problems in the current tribunal system?

Question 2 Are there any other problems you can think of?

Question 3 Which do you think are the most significant problems?

We respond to these questions together.

We agree with a number of the problems which the paper identifies. These problems vary significantly across tribunals, with some operating almost without problem.

We find some tribunals are consistently operating in an efficient and helpful manner. Others at times are difficult to deal with and seem to have little understanding of natural justice and fair process considerations.

We now comment specifically under the headings used in the paper.

1. Accessibility

These problems largely are not an issue for the tribunals we deal with.

2. Ease of initiating cases - Although there is some paperwork required, employees are relatively easily able to file cases in the Employment Relations Authority without legal representation. The filing fee is reasonably modest. The hearing fees for cases that go longer than a day are quite high and could be prohibitive.

3. Costs - In the HPDT significant costs can be awarded against individual practitioners; up in the tens of thousands of dollars range. These can be particularly difficult to pay for those who have been de-registered or suspended from practice by the Tribunal, and thus not able to work in their previous profession.

4. Ease of Understanding - For the tribunals we deal with, there is generally good information publicly available and/or sent to those involved in a case.

HPDT decisions are readily available on the web and in our experience are relatively widely accessed.

There are significant privacy issues involved in making registering authority decisions available (see our comments below under "Powers"). We oppose making such decisions more widely available, unless health professionals can be guaranteed anonymity.

5. Geographic Access – the Nursing Council has recently reduced the number of cities which some of its Committees will visit for hearings, making access to hearings more difficult and costly for people.

6. Membership and Expertise

Concerns have at times been raised regarding the expertise of some members of the HPDT panel and the Nursing Council and regarding the range of expertise available.

It seems that more training is needed for HPDT panel members.

We regard specialisation as being necessary in all the tribunals we deal with, in order for the decision makers to make appropriately informed decisions.

In terms of the need for legal expertise we are satisfied by the introduction under the Health Practitioners Competence Assurance Act 2003 ("HPCAA"), of a legally qualified person as the chair of the HPDT.

7. Independence

We have found decision makers appropriately declaring possible conflicts of interest. Unfortunately on some occasions these have not become

apparent until the last minute, leaving the health practitioner with a decision to accept a tribunal member despite a possible conflict or adjourn the hearing for a considerable period.

In our view, the introduction of lay representation onto registering authorities and the HPDT provides the public with sufficient confidence in these bodies.

- 8.** NZNO supports responsible self-regulation of health profession (see below under Question 4), including the election of a portion of the registering authority by the profession, in order to ensure that the profession has confidence in the authority.

- 9.** Procedure

We have experienced some difficulties regarding natural justice requirements when dealing with some tribunals. This includes receiving inadequate notice of hearings, and problems with disclosure.

We appreciate that informality is appropriate to some extent with tribunals, however, we believe that training in the principles of natural justice would be desirable for both administrative staff and decision-makers.

We accept that differences between procedures in different tribunals are necessary, as long as the principles of natural justice are understood and applied.

- 10.** Powers

We appreciate the principle of open justice. However, there are significant privacy issues involved in many hearings of registering authorities. This includes, for example, Nursing Council Health Committee meetings where a nurse's sensitive personal information (including health information) is being discussed. We would strongly oppose open hearings in such situations.

11. Appeals

It has become apparent from court decisions that there are limited appeal rights from some registering authority decisions under the HPCAA. This is particularly so regarding cases concerning a practitioner's competence. We support there being at least one appeal process or step from all aspects of decisions.

12. We question whether the review rights contained in Schedule 3, clause 18 of the HPCAA, provide a robust appeal system.

There is possibly more potential for conciliation to be used as an alternative dispute resolution process by Professional Conduct Committees of registering authorities.

We support appeals from the Employment Relations Authority being to the specialised Employment Court. We also support the availability of mediation through the Department of Labour to enable resolution of employment disputes, without such cases needing to be decided by the Authority.

13. Speed and Efficiency

Some tribunals which when established seem to provide speedy decision making, seem over time to lag behind, resulting in significant delays.

We support the use of Professional Conduct Committees under the HPCAA to ensure complaints are resolved at the earliest opportunity and lowest level. However, we are concerned that under the HPCAA, such committees have to be appointed on a case by case basis by the registering authority. In practice this has meant that cases which were otherwise ready to proceed have had to be adjourned (sometimes for substantial periods) when one of the originally appointed people is unable

to attend a schedule hearing. There seems to be no ability for a substitution to be made at short notice.

We have experienced significant issues with changes of administrative staff associated with tribunals, where institutional knowledge has been lost. It takes a considerable period of time, and associated difficulties for those dealing with the organisation concerned, to regain proper processes.

Question 4 Have you any views on how the problems of the current structure might best be addressed?

14. NZNO supports governance of (health practitioner) registering authorities by profession. There may be some scope for shared infrastructural support. However, the governance/decision making functions need to retain the appropriate specialisation, through maintenance of professional involvement.
15. The Nursing Council (and other health practitioner registering authorities), as well as the HPDT, already have lay person involvement, at what could well be considered to be an appropriate level.
16. We support the introduction of standardised processes and procedures across tribunals in order to remove disparities which exist. The introduction of a head of tribunals could well assist in ensuring consistency.
17. If tribunals were to be clustered, we consider that having divisions within a cluster to be necessary to ensure the appropriate specialisation.
18. We do not consider that a single unified structure or “super tribunal” is necessarily the right answer. The tribunals concerned have quite diverse functions. We would be concerned if an amalgamation of tribunals

resulted in a lack of specialisation by administrative personnel or decision makers, and thus a lower level of knowledge regarding the relevant tribunal and its functions, than is the case at present.

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