

# SUBMISSION TO THE NSW ROYAL COMMISSION

## INTRODUCTION

1. This submission is made by the NSW Independent Education Union. The union has approximately 18,500 members, made up of Principals, teachers and support staff in non-government schools, educational institutions, early childhood centres and private business and English colleges. The majority of its members are in Catholic and independent schools in New South Wales and the ACT.
2. The IEU represents its members in both professional and industrial circumstances. Relevant to the issues before the Royal Commission, the following roles are central:
  - (i) The union negotiates grievance procedures with Catholic and independent schools and their representatives, and represents its members who are dealt with under such dispute/grievance procedures. Typically, such processes include employer instigated reviews/enquiries into employee professional or personal behaviour and practice, including following complaints being laid or raised by or with the school authority. Access to the conciliation and arbitration processes of industrial tribunals is available as part of the processes, or by way of appeal.
  - (ii) The union is active in representing teachers in various forums in relation to the professional standing and practices of teaching.

For instance, the union is represented on the NSW Board of Studies (including its Registration Sub-Committee which deals with the registration of schools and the appropriate qualifications of teachers) and the Ministerial Advisory Council on the Quality of Teaching (which currently is dealing with the issue of teacher registration in New South Wales).

3. This submission of the NSW IEU supports the testimony given to the Royal Commission on 26 February 1997 by Patrick Lee, the Deputy General Secretary of the union. Following that occasion, the democratic forums of the union have considered matters arising in the Royal Commission with implications for schools, teachers and other educational staff, and it is considered important to briefly contribute further to the deliberations of the Royal Commission as it finalises its report.

## 4.0 Current Practice and Structures

### 4.1 Schools

There are some 3,500 schools in NSW (out of approximately 10,000 nationally) and about 950 are non-government schools. Of these, about 500 are Catholic systemic schools, grouped in eleven Diocesan systems. Each system is autonomous, with a central employer.

Matters of child protection, and industrial processes, are mandated and controlled from the central authority, the relevant Diocesan Catholic Education Office.

Other schools, over 400, are independent or non-systemic, and are generally controlled by a School Council or Board, or a religious order, or a community/parent association or a Church. Some are loosely grouped, such as Catholic independent schools (about 50 of

these, supported by a Catholic Industrial Office), Christian schools (two groups), Anglican Schools Board schools (about 7 schools).

In the Catholic systemic schools, student welfare/industrial processes begin at school level, but are quickly taken over by system authorities if serious. Independent schools must deal with issues themselves or very often with the assistance of the Association of Independent Schools as a support organisation.

#### 4.2 Registration of Schools

Non-government schools must be registered (for the compulsory years of schooling) and accredited (to offer the year 10 and year 12 public credentials) by the Board of Studies. The Education Reform Act 1991, at Section 42, sets out the criteria for registration. The criteria require compliance with local Council zoning and health, etc. regulations, implementation of Board of Studies curriculum requirements, and since January, 1997, adoption of a school discipline policy which excludes corporal punishment. In relation to requirements for staffing qualifications, the criterion is expressed thus:

Section 47 (b) teaching staff with the necessary experience or qualifications (or who are regularly supervised by teaching staff with the necessary experience or qualifications) for the school.

#### 4.3 Teachers' Qualifications

Hence, there is no legal requirement in NSW for a teacher to be registered as such, nor to have undertaken any teacher training - or any training. The Board of Studies is currently considering its standards in relation to "appropriate" qualifications or experience, or supervision by people with appropriate qualifications or experience.

There is no statutory legal requirement for commonality in the required qualifications for teachers in government and non-government schools, and no common machinery to deal with such matters.

Government schools are not registered through this process, and matters of qualifications or other pre-requisites for teaching in government schools are exclusively controlled by the Department of School Education processes (including through a Teachers' Qualifications Advisory Committee).

#### 4.4 Employment and Dismissal of Teachers

In almost all cases, the usual employment of teaching and other staff is by appointment by the Principal (or Business Manager/Bursar for some non-teaching staff in large independent schools) Even in Catholic systems, where the employment contract is with the central authority, appointment is local. Over recent years, Catholic systems have implemented lists of "employable" teachers - where teachers have subscribed to a statement of employment principles. Casual teaching is locally appointed. Schools typically check with previous principals.

No act of deregistration is available in NSW where dismissal or forced resignation occurs in circumstances where the fitness to teach again might be an issue. Accordingly, some 400 separate employing authorities (with appointments being made by some 950 Principals) rely on various formal and informal processes to assess staff at the point of employment.

### 5.0 **Registration of teachers**

In general terms, the IEU supports the notion of a state-wide system of teacher registration. Attached is an article published on behalf of the union in the Sydney Morning Herald on 6 March 1997 which canvasses this issue.

The union's support for registration of teachers however is qualified, and is dependent on the overall scheme which would apply. The general professional advantages for the quality of teaching that a system of teacher registration could bring are discussed in the union's journal "Independent Education" (attached).

The union believes that the key stakeholders in education in NSW (such as those represented on the Ministerial Advisory Committee on the Quality of Teaching) should co-operate in establishing such a structure, and to that end, the Minister for Education should release the Discussion Paper for public consultation that has been prepared by the Advisory Council. In the union's view, it is essential that such a public process of consultation should occur, to ensure the widest understanding of, and support for, a suitable scheme which could enhance the quality of teaching in NSW.

As noted below, a scheme imposed on teachers, without such a process of consultation, having certain features of the Nurses Act and the Health Care Complaints Commission Act would be opposed by this union.

Accordingly, the union proposes that the Royal Commission recommend that the Minister for Education release the Discussion Paper and support a process of consultation around the issue of teacher registration in NSW.

## **6.0 Investigation of Complaints against Teachers**

As indicated in direct evidence to the Royal Commission, the NSW Independent Education Union, in principle, supports the notion of an external investigative authority to enquire into serious allegations against teachers where such allegations relate to sexual assault or serious physical violence.

Currently, of course, there exist two external agencies with certain powers in relation to the investigation of teachers and other staff at schools, namely the Department of Community Services in relation to notifiable matters and the Police Force in relation to any assault, and in particular sexual assault involving students 16 years and older.

The union has supported the application of mandatory notification laws to non-government schools and it should be noted that the legislative error in 1996 which effectively removed mandatory notification provisions from non-government schools made no practical impact as this error was not widely known. It has now been reversed.

Evidence before the Police Royal Commission has revealed the insufficiency of the procedures of the Department of Community Services and also the Police. The union also has from time to time had occasion to express its disquiet at the handling of matters by the Department of Community Services.

For instance, in 1996 a member of the union discovered that he had been notified to the Department of Community Services under an allegation arising from his former school. He

was not told of this notification. His attempts to seek permanent employment in a range of Catholic schools were frustrated, as Principals checked with the Principal of his former school to be told that he was the subject of such a notification. However, for over six months the Department did not enquire into his circumstances. When it did, it was quickly

discovered that the wrong teacher had been identified - indeed he had not been at the school in the year that the alleged offence occurred. This teacher suffered irrefutable harm to his teaching career and to his reputation across a wide number of schools.

The union supports investigation into allegations against teachers of a notifiable kind by an investigative unit. Such an investigative unit can either be specific to educational employees in government and non-government schools or could be a unit with a wider brief in terms of the general welfare and protection of children, including students. The latter is probably the most effective from the point of view of public policy, however, the union believes that the Royal Commission could recommend that specialist staff in such a unit be assigned to deal with circumstances arising in schools. This would enhance the efficiency and effectiveness of the investigations and to ensure that staff are competent to implement procedures with all due sensitivity to the human and legal rights under due process of persons the subject of an allegation.

If, contrary to this view, the Royal Commission were to recommend a specialist investigatory unit in schools, then the IEU submits that this unit should be related to a teacher registration authority and, though autonomous in its normal operations, would be oversighted by such an authority comprised of stakeholders across the whole school education sector.

The IEU submits that the nature of the allegations which would be notifiable to such an independent investigatory unit or tribunal should be carefully defined and circumscribed. The union does not envisage such an investigatory unit having the wide brief to investigate all professional complaints, such as the Health Care Complaints Commission has as its brief. In the absence of a fully professional scheme of teacher registration in New South Wales, as is currently the case, the union support is for the external investigation of allegations of sexual or physical assault of a serious nature. Other professional complaints or complaints of a more minor nature which may have a potential sexual or physical dimension should be investigated and dealt with by the employing authority and be subject to the usual industrial and legal processes of review.

The outcomes of the investigation by such an external investigatory unit could include reference to the police for police prosecution, a decision not to prosecute and closing of the file, or perhaps a reference of aspects of the file to the employer for further consideration of appropriate disciplinary action. As indicated above, the union does not at this stage support the establishment of a structure such as the Health Care Complaints Commission with its full professional brief and its separate capacity to act as prosecutor before the specialist tribunal. If, however, the Royal Commission were to suggest the establishment of a specialist tribunal to hear complaints formally, following investigation, in the strongest terms the union would object to provisions such as those currently applying to nurses, where costs are regularly awarded in such hearings other than in cases which are vexatious.

The IEU believes that submissions made to the Parliamentary Committee by the NSW Nurses Union as to various oppressive aspects of the operation of this scheme, have very considerable merit and we would ask that the Royal Commission acquaint itself with this submission prior to making any recommendations of this kind.

## **7. The Registration of Teachers or a Register of Excluded Teachers**

In Section 5 above, the union has indicated its support for a general scheme of professional registration. Such a scheme would see the maintenance of a register of teachers entitled and qualified to teach in New South Wales. Such a scheme would presumably involve the implementation of suitable forms of probity review prior to a teacher being fully or

provisionally registered to teach. A person could not be employed to teach unless admitted to the register.

However, the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA), at its sixth meeting in Melbourne in March, saw the "in principle" support by all Ministers for Education across the Australian States and Territories for a scheme that involved a register of persons deemed unsuitable for teaching because of criminal convictions in certain areas or because of dismissal for relevant offences.

The IEU believes that the most appropriate way of dealing with the outcomes of criminal or disciplinary investigations is the deregistration of teachers. However, if the Royal Commission is to formulate recommendations based on the approach currently being suggested by the Education Ministers, then the union's views are as follows:

- A registration authority could include a small probity unit which would maintain the register of excluded persons. This unit should be independent of the Department of School Education and any non-government employing authority, but accessible by them under defined protocols.
- Persons to be included on the register should be restricted to those convicted of a sexual offence or other offence of violence against a student or child, and persons who have been dismissed or forced to resign in similar circumstances. It should not include persons who have remained employed but who have had warnings or penalties imposed following allegations, and it should not be a register for recording the outcome of formal disciplinary actions, other than in the circumstances already noted.
- No person should be notified to the register in the case of dismissal or forced resignation (in the absence of a criminal conviction) unless the person has had access to a process of appeal and has had the opportunity to contest the fact and nature of the notification to the register. Such notification should be appealable.

In relation to the proposals by MCEETYA, it should be noted that these proposals would continue on foot some of the processes exposed in the public hearings of the Royal Commission as inadequate. The proposals really envisage control of the probity and investigative process by Departments of School Education around Australia and locate disciplinary processes in the Department. There is little understanding of the complexity of such a scheme when one considers that there are 2,500 non-government schools in Australia and over 900 of these in New South Wales. Even where these schools are grouped together in systems for employment purposes (for example the Sydney Catholic Education Office covering 154 schools), each of the Principals of these schools appoint staff as opposed to central appointment of staff.

The MCEETYA scheme would involve these thousands of Principals having to access on a regular basis the register of excluded names, and the likelihood of reasonable provisions of privacy being maintained is highly doubtful. Indeed the general effectiveness of such a scheme is questionable.

## **CONCLUSION**

The NSW Independent Education Union has strongly criticised the NSW Minister for Education and Youth Affairs for his failure to release a discussion paper on teacher registration prepared by his Ministerial Advisory Council. The union urges the Royal Commission to recommend that the Minister release that paper. The union submits that such a recommendation would be strictly relevant to the terms of reference to the Royal Commission in this area because it is responsible to assume the implementation of a proper scheme of registration could allow questions of ethical standards and the welfare of students to be progressively dealt with more effectively through inclusion of such issues in mandatory pre-service course, inservice courses, and be dealt with

through other professional processes at forums sponsored by such a registration authority. The heightened professional awareness and commitment to the relevant ethical and professional standards would be of benefit to the welfare of students and children generally.

The union is and has been concerned with the “witch hunt” climate which has accompanied some of the reporting of the public hearings before the Royal Commission. The union wishes to draw the Royal Commission’s attention to an Internet site which advises students to falsely accuse teachers of sexual offences as a means of settling other scores with such teachers.

The union urges the Royal Commission to be highly sensitive to principles of justice and fair process in any recommendations that it might make.