

House of Representatives

Supplementary Order Paper

Tuesday, 23 November 2010

Education Amendment Bill (No 2)

Proposed amendments

Hon Trevor Mallard, in Committee, to move the following amendments:

New clauses 12DA and 12DB

To insert the following clauses after *clause 12D* (after line 3 on page 25):

12DA Powers of Disciplinary Tribunal

Section 139AW is amended by adding the following subsections:

- “(4) Subject to the provisions of **subsection (5)** and of any other enactment, every sitting of the Disciplinary Tribunal dealing with any proceedings in respect of serious misconduct will be open to the public.
- “(5) The Disciplinary Tribunal may make any 1 or more of the following orders in **subsection (6)**, if it considers:
 - “(a) there is a real risk of prejudice to a fair trial:
 - “(b) there would be undue hardship to the victims:
 - “(c) publication would identify another person whose name is suppressed by order or by law:
 - “(d) publication would endanger the safety of any person:
 - “(e) publication would cast suspicion on other people that may result in undue hardship:
 - “(f) there would be extreme hardship to the teacher:
 - “(g) publication would be likely to prejudice the interests of the maintenance of law, including the retention, investigation, and detection of serious misconduct.
- “(6) The Disciplinary Tribunal may make any 1 or more of the following orders:

- “(a) an order forbidding publication of any report or account of the whole or any part of—
 - “(i) the evidence adduced; or
 - “(ii) the submissions made; or
 - “(b) an order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of the witness or witnesses; or
 - “(c) an order prohibiting the publication, in any report or account relating to any proceedings in respect of serious misconduct, of the name, address, or occupation of the teacher accused of, or found to have committed, serious misconduct, or of any other person connected with the proceedings, or any particulars likely to lead to any such person’s identification.
- “(7) An order made under **subsection (6)**—
- “(a) may be made for a limited period or permanently; and
 - “(b) if it is made for a limited period, may be renewed for a further period or periods by the Disciplinary Tribunal; and
 - “(c) if it is made permanently, may be reviewed by the Disciplinary Tribunal at any time; and
 - “(d) must take into account any views of a victim of the serious misconduct, or of a parent or legal guardian of a victim of the serious misconduct, conveyed in the same manner as if such a victim was a victim of offending in accordance with section 28 of the Victims’ Rights Act 2002.
- “(8) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 who commits a breach of any order made under **subsection (6)** or evades or attempts to evade any such order.”

12DB Offences

Section 139AZ is amended by repealing subsection (2) and substituting the following subsection:

- “(2) A person commits an offence, and is liable on summary conviction to a fine not exceeding \$100,000, if, without lawful excuse, he or she breaches an order made by the Disciplinary Tribunal under rules made under section 139AJ that—
- “(a) provide for a hearing to be held in private; or
 - “(b) provide for evidence at a hearing to be given in private; or

- “(c) impose restrictions on the publication of any information relating to a particular hearing.”

Clause 12E

To add the following subclause as subclause (2) (after line 5 on page 25):

- (2) Section 139AZB is further amended by inserting the following subsection after subsection (1A):

- “(1B) Any interested party may appeal to a District Court against a decision of the Disciplinary Tribunal made under **section 139AW(6)**.”

Explanatory note

This Supplementary Order Paper amends the Education Amendment Bill No 2 to clarify that the default position under this Act is that disciplinary proceedings are open and transparent, unless a suppression order is in place. The regime for suppression orders set out in these amendments is based on the principles set out in a recent Law Commission report. An earlier set of amendments to this effect in my name were considered by the select committee. This set of amendments is substantially redrafted to take into account the changes recommended by the Ministry of Education at select committee stage.
