



Education Council Rules 2016

Pursuant to section 388 of the Education Act 1989, the Education Council of Aotearoa New Zealand, after consulting in accordance with subsection (3) of that section, makes the following rules.

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Rules

- 1 Title**
These rules are the Education Council Rules 2016.
- 2 Commencement**
These rules come into force on 1 July 2016.

Part 1 Preliminary provisions

- 3 Interpretation**
- (1) In these rules, unless the context otherwise requires,—
- Act** means the Education Act 1989
- chief executive** means the chief executive of the Education Council
- child or young person** means a person—
- (a) who is under the age of 16 years; or

- (b) who is, or was at the relevant time, a student at a school or an early childhood education service

competence assessor means a person appointed by the Education Council to act as a competence assessor under these rules

Competence Authority means the group of persons to whom functions relating to teacher competence are delegated by the Education Council under section 389 of the Act and these rules

complaint means a complaint described in rule 7(2)

Complaints Assessment Committee means the Complaints Assessment Committee established under the Act and these rules

disciplinary body means the Complaints Assessment Committee or the Disciplinary Tribunal

Disciplinary Tribunal means the Disciplinary Tribunal established under the Act and these rules

Education Council means the Education Council of Aotearoa New Zealand established under the Act

impairment means an aspect of a teacher's mental or physical health or disposition that may adversely affect the teacher's ability to carry out his or her functions as a teacher competently and safely (for example, an addiction, a mental health condition, or a personality trait)

impairment process means a process established by the Education Council for assessment of, and assistance with, impairments

initiator means a person who makes a report or complaint to the Education Council

investigator means a person appointed by the Education Council to act as an investigator under these rules

list of authorised persons means the list of persons who have a limited authority to teach, kept under section 371 of the Act

panel means a panel of the Complaints Assessment Committee or the Disciplinary Tribunal, as applicable

register means the register kept under section 359 of the Act

report means a mandatory report described in rule 7(1).

- (2) A term that is used in these rules and defined in the Act but not defined in these rules has the same meaning as in the Act.

4 Overview

- (1) These rules—

- (a) provide preliminary provisions (*see* this Part); and

- (b) set out how to make a mandatory report or a complaint to the Education Council about a teacher (*see* Part 2); and
 - (c) set out the criteria for reporting serious misconduct (*see* Part 3); and
 - (d) provide a procedure for the chief executive to deal with reports and complaints about teachers in the first instance (*see* Part 4); and
 - (e) provide for the practices and procedures of the disciplinary bodies when dealing with reports, complaints, and other matters (*see* Parts 5 and 6); and
 - (f) provide for the practices and procedures of competence assessors and the Competence Authority when dealing with matters relating to competence (*see* Part 7); and
 - (g) establish the disciplinary bodies and the Competence Authority and include provisions about their membership and operation (*see* Part 8); and
 - (h) provide for procedural requirements for Police vetting of applicants for registration as a teacher or for an authority to teach (*see* Part 9); and
 - (i) revoke various rules (*see* Part 10).
- (2) This rule is by way of explanation only, and, if any other provision in the Act or rules conflicts with it, the other provision prevails.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

6 Notices

- (1) A notice, advice, or any other communication that is given or provided to a person under these rules may be given or provided—
- (a) by delivering it personally or by an agent (such as a courier) to the person; or
 - (b) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
 - (c) by sending it by fax or email to the person's fax number or email address provided by the person for that purpose.
- (2) In the absence of proof to the contrary, a notice, advice, or any other communication given or provided to a person must be treated,—
- (a) in the case of delivery by post under subclause (1)(b), as having been given or provided to the person when it would have been delivered in the ordinary course of post and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:

- (b) in the case of delivery by fax or email under subclause (1)(c), as having been given or provided to the person on the second working day after the date on which it was sent.

Part 2

Making report or complaint to Education Council

7 Application of this Part

- (1) This Part applies to mandatory reporting to the Education Council of the following matters:
 - (a) a dismissal or resignation of a teacher, under section 392 of the Act;
 - (b) a complaint about a teacher who is a former employee, under section 393 of the Act;
 - (c) possible serious misconduct of a teacher, under section 394 of the Act;
 - (d) a failure of a teacher to reach the required level of competence, under section 395 of the Act;
 - (e) a conviction of a teacher, under section 397 of the Act.
- (2) This Part also applies to complaints to the Education Council about the following matters:
 - (a) the conduct of a teacher, made under section 399 of the Act;
 - (b) a teacher's competence, made under section 410 of the Act.

8 Form of report or complaint

- (1) In addition to the requirements specified in the Act, a report or complaint must—
 - (a) identify the teacher who is the subject of the report or complaint; and
 - (b) identify the initiator; and
 - (c) specify the matter that the report or complaint is about; and
 - (d) if possible, be accompanied by information that provides evidence of, or relates to, the matter that the report or complaint is about; and
 - (e) if possible, describe the outcome sought by the initiator, if any.
- (2) The chief executive may decline to take any action on a report or complaint that does not comply with the requirements in subclause (1)(a) to (c).

Part 3

Criteria for reporting serious misconduct

9 Criteria for reporting serious misconduct

- (1) For the purposes of section 394 of the Act, an employer of a teacher must immediately report to the Education Council if it has reason to believe that the teacher has engaged in any of the following kinds of serious misconduct:
 - (a) physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):
 - (b) sexual abuse of a child or young person (which includes sexual abuse carried out under the direction, or with the connivance, of the teacher):
 - (c) psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment:
 - (d) an inappropriate relationship with a person under the age of 16 years:
 - (e) an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact as a result of his or her position as a teacher:
 - (f) neglect or ill-treatment of a child or young person in the teacher's care:
 - (g) neglect or ill-treatment of an animal in the teacher's care:
 - (h) theft or fraud:
 - (i) manufacture of, cultivation of, supply of, dealing in, or use of controlled drugs:
 - (j) permitting, or acquiescing in, the manufacture of, cultivation of, supply of, dealing in, or use of controlled drugs by a child or young person:
 - (k) viewing, accessing, or possessing pornographic material while at a school or early childhood education service or engaged in the business of a school or early childhood education service:
 - (l) viewing, accessing, or possessing pornographic material that depicts children or young persons or that depicts animals engaged in sexual acts with humans:
 - (m) breaching the standards or rules of the school or early childhood education service concerning the use of alcohol at the school or while engaged in the business of the school or early childhood education service:
 - (n) any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
 - (o) any act or omission that brings, or is likely to bring, discredit to the teaching profession.

- (2) Physical, sexual, or psychological abuse is reportable whether it occurs as—
 - (a) a single act; or
 - (b) a number of acts forming part of a pattern of behaviour, even if some or all of those acts, viewed in isolation, are minor or trivial.

Part 4

Investigation and referral of report, complaint, or other matter by chief executive

10 Application of this Part

This Part applies to—

- (a) reports; and
- (b) complaints; and
- (c) matters relating to teacher conduct that the Education Council may refer to the Complaints Assessment Committee of its own motion under section 400(2) of the Act; and
- (d) matters relating to teacher competence that the Education Council may investigate of its own motion under section 410(3) of the Act.

11 Investigation and referral of report or complaint by chief executive

- (1) On receipt of a report or complaint, the chief executive may do any or all of the following:
 - (a) request further information from any person in order to assess what further action, if any, to take:
 - (b) appoint an investigator to make an initial investigation of the report or complaint:
 - (c) refer the report or complaint, or part of the report or complaint, to the Complaints Assessment Committee, a competence assessor, the Education Council, or the teacher's current employer, as applicable:
 - (d) take no further action.
- (2) This rule does not limit the power of the Education Council (acting through the chief executive) to investigate and refer matters of its own motion in accordance with section 400(2) and 410(3) of the Act.
- (3) When a matter is referred to the Complaints Assessment Committee or another body in accordance with section 400(2) or 410(3) of the Act, it is to be treated as if a report or complaint had been made, subject to all necessary modifications in procedure.

12 Notification to teacher and current employer of referral of report or complaint to Complaints Assessment Committee, competence assessor, or Education Council

- (1) If a referral is made to the Complaints Assessment Committee, a competence assessor, or the Education Council, the chief executive must notify the teacher concerned that a referral has been made.
- (2) The notice of referral to the teacher must—
 - (a) include sufficient details so that the teacher understands the nature of the matter that the report or complaint is about (to the extent possible from the information received by the chief executive); and
 - (b) inform the teacher—
 - (i) of the next steps in the process; and
 - (ii) that the teacher may make submissions to the Complaints Assessment Committee, the competence assessor, or the Education Council, as applicable; and
 - (iii) that the teacher’s current employer is being notified of receipt of the report or complaint, if applicable.
- (3) The teacher’s current employer must also be notified that a referral has been made unless the chief executive considers that notification is not appropriate.

Part 5

Procedures of Complaints Assessment Committee for dealing with reports and complaints that relate to teacher conduct

13 Application of this Part

This Part applies to reports and complaints about teacher conduct referred to the Complaints Assessment Committee.

Process for investigation of reports and complaints

14 Referring reports and complaints to Complaints Assessment Committee and allocation to investigator

- (1) If the chief executive refers a report or complaint to the Complaints Assessment Committee, the chief executive may—
 - (a) allocate the report or complaint to an investigator, who must investigate the report or complaint on behalf of the Complaints Assessment Committee and report to the Complaints Assessment Committee for a decision; or
 - (b) refer the report or complaint to the Complaints Assessment Committee without first allocating it to an investigator.

- (2) The chief executive may allocate a report or complaint to an investigator who also conducted an initial investigation of the report or complaint under rule 11.
- (3) The chief executive has the discretion to decide—
 - (a) which panel of the Complaints Assessment Committee to refer the report or complaint to; and
 - (b) the composition of any particular panel of the Complaints Assessment Committee to consider a report or complaint, subject to rule 51.

15 Investigator to carry out investigation

- (1) An investigator to whom a report or complaint has been allocated under rule 14 must—
 - (a) carry out an investigation of the report or complaint; and
 - (b) provide an opportunity for the teacher to comment on the report or complaint or provide evidence; and
 - (c) prepare an investigation report on the report or complaint for the Complaints Assessment Committee, and the report may include recommendations to the Complaints Assessment Committee as to the appropriate outcome.
- (2) An investigator is appointed by the chief executive to conduct investigations for the Complaints Assessment Committee and must not be a member of the Complaints Assessment Committee.
- (3) The investigator may require information to be provided to him or her under section 400(4) or 401(6) of the Act.

16 Teacher's response to investigation report

- (1) The teacher concerned must be notified before the meeting at which the investigation report will be considered.
- (2) The teacher must be provided with the investigation report and documentation that will be provided to the Complaints Assessment Committee.
- (3) The teacher must be given an opportunity to comment on the investigation report before the Complaints Assessment Committee makes a final decision.

Procedure of Complaints Assessment Committee

17 Meeting of Complaints Assessment Committee regarding report or complaint

- (1) At a meeting of the Complaints Assessment Committee, the Complaints Assessment Committee must consider—
 - (a) the matter that the report or complaint is about; and
 - (b) in the case of a report or complaint that was allocated to an investigator, the investigator's report; and

- (c) the teacher's response, if any.
- (2) A request for a teacher to be heard in person must not be unreasonably refused.
- (3) Before taking any action available to it under section 401 of the Act, the Complaints Assessment Committee may—
 - (a) adjourn the matter for further consideration; or
 - (b) refer the matter back to the investigator for further investigation.
- (4) Meetings of the Complaints Assessment Committee—
 - (a) may be in person, by telephone conference or video link, by exchange of email, or by any other means that are necessary or convenient; and
 - (b) must proceed as hearings on the papers, unless the Complaints Assessment Committee directs otherwise.
- (5) If the Complaints Assessment Committee decides that it will hear from the teacher concerned or the initiator, or another person, it may hear from him or her by telephone conference or video link, or by any other means that are necessary or convenient.
- (6) In the case of a complaint of misconduct that the Complaints Assessment Committee is satisfied is not serious misconduct, the Complaints Assessment Committee must use reasonable efforts to reach agreement between the teacher and the initiator on the course of action to be taken.

Notice of decision and referral to Disciplinary Tribunal

18 Notice of Complaints Assessment Committee's decision

A notice of the Complaints Assessment Committee's decision must be sent, as soon as practicable,—

- (a) to the teacher; and
- (b) to the initiator; and
- (c) to the teacher's current employer, unless the Complaints Assessment Committee considers that sending the notice is inappropriate.

19 Referral to Disciplinary Tribunal

- (1) If the Complaints Assessment Committee refers a report, complaint, or other matter to the Disciplinary Tribunal, the Committee must—
 - (a) prepare, sign, and file the charge; and
 - (b) prosecute the charge before the Disciplinary Tribunal.
- (2) In proceedings before the Disciplinary Tribunal, the Complaints Assessment Committee may be represented by counsel appointed by the chief executive (who may be an employee of the chief executive or external counsel engaged by the chief executive).

20 Notice of charge or referral

- (1) A charge of serious misconduct that is referred to the Disciplinary Tribunal must—
 - (a) contain particulars that will clearly inform the teacher concerned of the substance of the grounds on which the Complaints Assessment Committee is referring the matter to the Disciplinary Tribunal; and
 - (b) specify the particulars of the charge.
- (2) A notice of referral must set out the details of the matter that is being referred to the Disciplinary Tribunal, and the reasons for the referral.
- (3) At the same time as a charge or notice of referral is sent to the Disciplinary Tribunal, a copy must be sent to—
 - (a) the teacher concerned; and
 - (b) the initiator; and
 - (c) the teacher's current employer.

Part 6**Proceedings in Disciplinary Tribunal****21 Application of this Part**

This Part applies to the proceedings of the Disciplinary Tribunal when it conducts a hearing of—

- (a) a charge of serious misconduct; or
- (b) another matter referred to it by the Complaints Assessment Committee.

Who conducts hearing and who are parties in Disciplinary Tribunal

22 Who conducts hearings

A charge laid with, or matter referred for hearing to, the Disciplinary Tribunal must be allocated by the chairperson—

- (a) to the Disciplinary Tribunal for a hearing; or
- (b) to a panel of the Disciplinary Tribunal for a hearing.

23 Parties

- (1) The parties to a hearing are—
 - (a) the teacher concerned; and
 - (b) the Complaints Assessment Committee, which acts as prosecutor.
- (2) The parties to a hearing are entitled to appear and be heard, in person or by a representative, at the hearing.

*Procedure of Disciplinary Tribunal***24 Disciplinary Tribunal regulates own procedure**

- (1) The Disciplinary Tribunal may, subject to the Act and these rules, regulate its own procedure in relation to hearings as it thinks fit.
- (2) Without limiting subclause (1), the Disciplinary Tribunal may—
 - (a) determine the time at which hearings may be held; and
 - (b) adjourn a hearing; and
 - (c) determine the place at which a hearing may be held; and
 - (d) determine whether a hearing is to be in person, by telephone conference or video link, or by any other means that is necessary or convenient; and
 - (e) determine who may attend a particular hearing; and
 - (f) determine that a person attending a hearing may do so by way of telephone conference or video link, or by any other means that is necessary or convenient; and
 - (g) prescribe or approve any forms for the purposes of hearings.

25 Procedural and administrative orders

The chairperson of the Disciplinary Tribunal, or a chairperson of a panel, may make any procedural or administrative order that the Disciplinary Tribunal may make that is preliminary or incidental to a hearing, including (without limitation) the following:

- (a) an order for discovery or inspection of documents;
- (b) an order for the filing of briefs of evidence;
- (c) a timetabling order;
- (d) an order relating to the way in which a witness may give evidence;
- (e) an order by consent of the parties.

26 Power to amend charge or notice of referral

- (1) The Disciplinary Tribunal may, before or during the hearing of a charge or notice of referral, amend the charge or notice of referral in any way.
- (2) However, the Disciplinary Tribunal may, at the request of the teacher concerned, adjourn the hearing if it is of the opinion that the teacher would be disadvantaged in his or her defence by reason of an amendment made or proposed to be made under subclause (1).

27 Notice of hearing

- (1) Notice of a hearing must be sent to—
 - (a) the parties to the hearing; and
 - (b) the teacher's current employer.

- (2) The notice must give the following details:
 - (a) the names of the parties;
 - (b) the date, time, and place of the hearing;
 - (c) the names of the members of the Disciplinary Tribunal who are assigned to conduct the hearing.
- (3) The teacher concerned must also be sent information explaining the procedure of the Disciplinary Tribunal and the teacher's rights and obligations in relation to the hearing.

28 Replacement of member if conflict of interest

- (1) A party may, by notice in writing sent within 5 days after receiving notice of the hearing, object to a member of the Disciplinary Tribunal who is assigned to conduct the hearing on the grounds that the member made the complaint or otherwise has a conflict of interest.
- (2) The chairperson of the Disciplinary Tribunal, or a chairperson of a panel, must determine whether the grounds of objection are valid and, if they are, must replace the member objected to with another member in accordance with rule 63.

Restrictions on who may be present when hearing held in private

29 Persons who may be present when hearing held in private

If a hearing or part of a hearing is held in private in accordance with section 405(4) of the Act, only the following people may be present:

- (a) members of the Disciplinary Tribunal; and
- (b) any administrative officers that the chairperson considers are necessary; and
- (c) the parties and their representatives; and
- (d) the initiator (if any); and
- (e) the witness presenting evidence, and the witness's support person; and
- (f) any other person expressly authorised by the Disciplinary Tribunal to be present.

Revocation of order prohibiting publication

30 Application for revocation of order prohibiting publication

- (1) Any person may apply to the Disciplinary Tribunal for revocation of an order prohibiting publication made under section 405(6) of the Act.
- (2) The Disciplinary Tribunal may grant the application if it is of the opinion that it is proper to do so, having regard to the interests of any person (including the privacy of any initiator) and to the public interest.

*Evidence and powers of investigation of Disciplinary Tribunal***31 Evidence**

At a hearing, the Disciplinary Tribunal may receive as evidence any document, record, or other information that may in its opinion assist it to deal with the matter before it, whether or not the document, record, or information would be admissible in a court of law.

32 Powers of investigation

- (1) For the purpose of dealing with a matter before it, the Disciplinary Tribunal, or a person authorised by it in writing to do so, may inspect and examine any documents, records, or other information produced at a hearing.
- (2) The Disciplinary Tribunal may require that any information produced to it be verified by statutory declaration or as otherwise specified by the Disciplinary Tribunal.
- (3) The Disciplinary Tribunal may of its own motion, or on the application of any party,—
 - (a) order that all or any part of any documents, records, or other information produced to it be supplied to any person appearing before the Disciplinary Tribunal; and
 - (b) impose any terms and conditions on the supply and use of the documents, records, or other information supplied.

33 Service of summons

- (1) A witness summons may be served—
 - (a) by delivering it to the person summoned, personally or by an agent; or
 - (b) by delivering it to the address of the person summoned, by a postal or courier service that receives acknowledgement of receipt at the address.
- (2) If a summons is served under subclause (1)(a), it must be served at least 24 hours before the attendance of the witness is required.
- (3) If a summons is served under subclause (1)(b), it must be served so that it is received at the address,—
 - (a) if the address is in New Zealand, at least 3 working days before the date on which the attendance of the witness is required; or
 - (b) if the address is outside New Zealand, at least 10 working days before the date on which the attendance of the witness is required.

34 Special protection for certain witnesses and vulnerable people

- (1) This rule applies to a person—
 - (a) who is a child or young person; or

- (b) who is a person on whom, or in respect of whom, sexual acts are alleged to have been performed; or
 - (c) who is alleged to have been compelled or induced to perform sexual acts; or
 - (d) whose evidence before the Disciplinary Tribunal, in the Tribunal's opinion, relates to some other matter that may require the person to give intimate or distressing evidence.
- (2) Before a person described in subclause (1) begins to give evidence in the Disciplinary Tribunal,—
- (a) the person must be advised that he or she has the right to give evidence in private; and
 - (b) the person must be asked whether he or she would like to give evidence in private; and
 - (c) the Tribunal must consider whether it is proper to make an order, in accordance with section 405(6) of the Act, prohibiting publication of the name or particulars of the affairs of the person.
- (3) The Disciplinary Tribunal, in its discretion, may arrange for a person described in subclause (1) to give evidence by way of video link or any other alternative means.
- (4) If evidence before the Disciplinary Tribunal includes details relating to a person described in subclause (1), the Tribunal must consider whether it is proper to make an order, in accordance with section 405(6) of the Act, prohibiting publication of the name or particulars of the affairs of the person.

Orders of Disciplinary Tribunal

35 Orders of Disciplinary Tribunal

- (1) Orders of the Disciplinary Tribunal must be in writing.
- (2) An order, other than a procedural or an administrative order made by the chairperson of the Disciplinary Tribunal or the chairperson of a panel, must—
 - (a) be signed by the chairperson; and
 - (b) include the reasons for the decision; and
 - (c) be notified to the following persons:
 - (i) the parties and their representatives; and
 - (ii) the teacher's current employer; and
 - (iii) the initiator; and
 - (d) be published on the Education Council Internet site, unless an order is made that prohibits publication.

- (3) Every order takes effect on the date on which the order is received by the teacher concerned, unless a later date is specified in the order, in which case it takes effect on that later date.
- (4) Nothing in this rule prevents the Disciplinary Tribunal from making oral interlocutory orders immediately before, during, or immediately after a hearing for the purposes of ensuring compliance with these rules by any person.

Interim suspension

36 Determination of application for interim suspension

On receipt of an application for interim suspension under section 402 of the Act, the chairperson of the Disciplinary Tribunal must consult, by telephone, email, or another method that is reasonably available, with at least 2 other members of the Tribunal as to whether the teacher's practising certificate or authority to teach should be suspended.

37 Notice of interim suspension

- (1) Written notice of an order suspending a teacher's practising certificate or authority to teach must be sent immediately to—
 - (a) the teacher concerned; and
 - (b) the teacher's current employer; and
 - (c) the Complaints Assessment Committee; and
 - (d) the initiator; and
 - (e) the Education Council.
- (2) The notice must be in writing and must—
 - (a) specify the period of suspension; and
 - (b) give reasons for the suspension; and
 - (c) in the case of the notice sent to the teacher, include a description of the teacher's right to apply to have the order lifted or revoked.

Part 7 Competence

38 Application of this Part

This Part applies to a matter concerning a teacher's competence that has been referred by the chief executive to a competence assessor or directly to the Education Council.

*Investigation and report regarding competence issues***39 Process before investigation**

A matter concerning a teacher's competence must be investigated only if it cannot, or appears unlikely to be able to, be dealt with satisfactorily by the teacher's current employer.

40 Investigation by competence assessor

- (1) When investigating a report or complaint referred to him or her, a competence assessor must determine whether he or she is satisfied that the teacher concerned has not attained the required level of competence, and, in doing so, the competence assessor may take any of the actions in subclause (2).
- (2) The competence assessor may take any steps that the competence assessor considers are necessary, including 1 or more of the following:
 - (a) conducting, or arranging for, an evaluation or assessment of the teacher's competence:
 - (b) arranging and, if necessary, attending meetings between the teacher and other people:
 - (c) seeking further information from the teacher or the initiator:
 - (d) referring the teacher to an impairment process:
 - (e) requiring the teacher's employer or former employer to provide information in addition to information that has already been provided under section 411 of the Act.

41 Report prepared by competence assessor

- (1) The competence assessor must prepare a report after completing the investigation.
- (2) The report must include an assessment from the competence assessor as to whether the teacher has attained the required level of competence.
- (3) If the assessment is that the teacher has not attained the required level of competence, then the report may recommend an appropriate outcome (as set out in section 412 of the Act).
- (4) A copy of the report must be provided to the teacher.

*Actions following report prepared by competence assessor***42 Actions following report prepared by competence assessor that recommends conditions be imposed**

- (1) This rule applies if a report prepared under rule 41 recommends that—
 - (a) conditions be imposed on—
 - (i) the teacher's practising certificate or authority to teach; or

- (ii) any subsequent practising certificate or authority to teach issued to the teacher; or
 - (b) conditions be imposed under paragraph (a)(i) and the register or list of authorised persons be annotated in a specified manner in relation to the conditions imposed.
- (2) The competence assessor must use reasonable efforts to reach agreement with the teacher in order to impose conditions (and annotate the register or list of authorised persons, if applicable).
- (3) If the competence assessor is unable to reach agreement with the teacher, the competence assessor may refer the report to the Competence Authority.

43 Actions following report prepared by competence assessor that makes other recommendations

- (1) If a report prepared under rule 41 recommends that—
 - (a) the teacher be referred to an impairment process, the competence assessor may refer the teacher to an impairment process; or
 - (b) the teacher’s practising certificate or authority to teach be cancelled, the competence assessor may refer the report to the Education Council; or
 - (c) there be no further action, the competence assessor may refer the report to the chief executive for a decision.
- (2) In any case, and instead of taking an action specified in subclause (1), the Chief Executive may refer the teacher directly to the Competence Authority.

44 Teacher’s response if report referred to Competence Authority or Education Council

- (1) If a report is referred to the Competence Authority or the Education Council, the teacher concerned must be notified of the meeting at which the report is to be considered.
- (2) At the time of notification, the teacher must also be provided with the report and any documentation that is to be provided to the Competence Authority or the Education Council.
- (3) The teacher must be given a reasonable opportunity to be heard, in person or by counsel or another representative, at a meeting of the Competence Authority or the Education Council.

45 Meeting of Competence Authority

- (1) On receiving a report from a competence assessor, the Competence Authority must consider the report at a meeting of the Competence Authority.
- (2) A meeting of the Competence Authority must include at least 3 members, and at least 1 of the members present must be from the same sector as the teacher (that is, early childhood, primary, or secondary).

- (3) If the Competence Authority is satisfied that a teacher has not attained the required level of competence, it may decide to—
 - (a) impose conditions on the teacher’s practising certificate, a subsequent practising certificate, the teacher’s authority to teach, or a subsequent authority to teach; or
 - (b) annotate the register or list of authorised persons; or
 - (c) take no further action; or
 - (d) adjourn the matter for further consideration; or
 - (e) refer the matter back to the competence assessor for further consideration; or
 - (f) report to the Education Council; or
 - (g) refer the teacher to an impairment process.
- (4) A meeting of the Competence Authority may be in person, by telephone conference or video link, by exchange of email, or by any means that are necessary or convenient.

46 Meeting of Education Council

- (1) On receiving a report from a competence assessor or the Competence Authority, the Education Council must consider the report at a meeting of the Education Council.
- (2) The Education Council may—
 - (a) decide to carry out any actions it has authority to take under the Act; or
 - (b) take no further action; or
 - (c) adjourn the matter for further consideration; or
 - (d) refer the matter back to the competence assessor for further consideration.

47 Conditions imposed

- (1) Any conditions imposed in accordance with the Act and these rules may include conditions designed—
 - (a) to improve the teacher’s competence; and
 - (b) to restrict the teacher’s practice.
- (2) The chief executive must monitor whether the teacher complies with the conditions and the chief executive may refer the teacher to a competence assessor if it appears that the teacher is not complying with or meeting the conditions.
- (3) If the chief executive is satisfied that a teacher has satisfactorily complied with the conditions imposed, the chief executive may release the teacher from the conditions.

- (4) The chief executive may approve the removal of any annotation on the register or list of authorised persons.

Notice of decision and disposal of matter

48 Notice of decision of Competence Authority or Education Council

The chief executive must, as soon as practicable, give written notice of the decision of the Competence Authority or the Education Council (as the case may be) to the following people:

- (a) the teacher concerned; and
- (b) the teacher's current employer; and
- (c) the initiator.

Part 8

**Establishment, membership, and operation of disciplinary bodies
and membership and operation of Competence Authority**

Complaints Assessment Committee

49 Establishment of Complaints Assessment Committee

- (1) A Complaints Assessment Committee is established.
- (2) The Education Council must appoint the members of the Committee, subject to section 398 of the Act.
- (3) The Complaints Assessment Committee must comprise at least 5 people.

50 Powers of Complaints Assessment Committee

- (1) The Complaints Assessment Committee may exercise any or all of the functions and powers of the Education Council necessary for the Complaints Assessment Committee to deal with matters under these rules.
- (2) Subclause (1) does not restrict the ability of the Education Council to exercise any of its functions or powers.

51 Operation of panels of Complaints Assessment Committee

- (1) A panel of the Complaints Assessment Committee must comprise at least 3 people.
- (2) The majority of members in a panel must be teachers with a current practising certificate.
- (3) A panel may perform and exercise, in relation to a matter allocated to it, all the functions and powers of the Complaints Assessment Committee.

52 Validity of proceedings

- (1) The validity of proceedings or a decision of the Complaints Assessment Committee is not affected by—
 - (a) a defect or deficiency in the appointment of a member of the Committee or a panel; or
 - (b) the temporary absence from a hearing of a member who is conducting the hearing.
- (2) However, all members must be present during the deliberations.

*Disciplinary Tribunal***53 Establishment of Disciplinary Tribunal**

- (1) A Disciplinary Tribunal is established.
- (2) The Education Council must appoint the members of the Disciplinary Tribunal, subject to section 398 of the Act.
- (3) The Disciplinary Tribunal must have at least 5 members.

54 Chairperson of Disciplinary Tribunal

- (1) The Education Council must appoint as chairperson of the Disciplinary Tribunal a person who—
 - (a) is not a member of the Education Council; and
 - (b) is a lawyer who has held a practising certificate issued under section 39(1) of the Lawyers and Conveyancers Act 2006 for at least 7 years.
- (2) The Education Council may appoint 1 or more deputy chairpersons.
- (3) A deputy chairperson must be qualified under these rules for appointment as the chairperson of the Tribunal.
- (4) A deputy chairperson may perform all the functions, and exercise all the powers, of the chairperson during the period of the deputy chairperson's appointment.

55 Operation of panels

- (1) A panel of the Disciplinary Tribunal must consist of 3 members of the Tribunal, unless the chairperson directs that there be more than 3 members.
- (2) If a panel does not include the chairperson or deputy chairperson of the Tribunal, the chairperson of the Education Council must appoint a member of the panel to act as chairperson for the hearing.
- (3) Members of the Tribunal may be on more than 1 panel at a time.
- (4) A panel may perform and exercise, in relation to a matter allocated to it, all the functions and powers of the Tribunal.

- (5) The chairperson of the Tribunal may remove a member of a panel, and may substitute a different member, in order to comply with this rule or if it is otherwise in the interests of the just and efficient disposal of the proceedings before the panel.

56 Validity of proceedings

- (1) The validity of proceedings or a decision of the Disciplinary Tribunal is not affected by—
 - (a) a defect or deficiency in the appointment of a member of the Tribunal or a panel; or
 - (b) the temporary absence from a hearing of a member who is conducting the hearing.
- (2) However, all members must be present during the deliberations.

Competence Authority

57 Membership of Competence Authority

- (1) The Education Council must appoint the members of the Competence Authority.
- (2) The Competence Authority must have at least 5 members.
- (3) All members of the Competence Authority must hold a current practising certificate under the Act.

58 Powers of Competence Authority

- (1) The Competence Authority may exercise any or all of the functions and powers of the Education Council necessary for the Competence Authority to deal with matters under these rules.
- (2) The Competence Authority must follow any guidelines and procedures that the Education Council publishes.
- (3) Subclause (1) does not restrict the ability of the Education Council to exercise any of its functions or powers.

Investigators and competence assessors

59 Powers of investigators and competence assessors

- (1) An investigator or a competence assessor may exercise any or all of the functions and powers of the Education Council necessary for the investigator or competence assessor to deal with matters under these rules.
- (2) Subclause (1) does not restrict the ability of the Education Council to exercise any of its functions or powers.

60 Investigators and competence assessors not personally liable and indemnity

- (1) An investigator or a competence assessor is not personally liable for an act or omission of the investigator or the competence assessor acting in his or her capacity as an investigator or a competence assessor and in good faith.
- (2) The Education Council must indemnify an investigator or competence assessor for acts or omissions done in his or her capacity as an investigator or a competence assessor and in good faith.

*Appointments to disciplinary bodies and Competence Authority***61 Term of appointment to disciplinary body or Competence Authority**

- (1) A term of appointment to a disciplinary body or the Competence Authority must be no longer than 3 years.
- (2) Before appointing a person to a disciplinary body or the Competence Authority, the Education Council must—
 - (a) consult with interested representative groups and persons; and
 - (b) consider the person's personal attributes, including—
 - (i) his or her knowledge of, and experience in, the matters likely to come before him or her; and
 - (ii) his or her knowledge of, and experience in, the type of work that he or she is likely to engage in if appointed; and
 - (c) consider the extent to which the person's appointment ensures a spread of experience and a balance of skills on the disciplinary body or the Competence Authority, as the case may be.
- (3) A person who is a member of a disciplinary body or the Competence Authority may be reappointed as a member of that body.
- (4) However, the person may not be reappointed to that body for more than 3 consecutive terms (or a lesser period determined by the Education Council).

62 Ceasing to hold position on disciplinary body or Competence Authority

- (1) The Education Council may notify a member of a disciplinary body or the Competence Authority that, subject to the procedure in subclauses (2) and (3) being followed, he or she is to cease to hold office as a member on the date specified in the notice.
- (2) The notice to the member must state—
 - (a) the date on which it is proposed that the person is to cease to be a member; and
 - (b) the reasons why it is proposed that the person should cease to be a member; and

- (c) that the member has an opportunity to respond to the proposal and that the Education Council must consider any response made before deciding whether to proceed with the proposal.
- (3) A person who has been notified in accordance with subclauses (1) and (2) ceases to be a member only after the person has had an opportunity to respond to the proposal and the Education Council has considered the person's response before deciding whether to proceed with the proposal.
- (4) Subclause (5) applies if a person who is a member of a disciplinary body or the Competence Authority ceases to hold office (whether in accordance with subclauses (1) to (3), or because he or she has resigned, or because his or her term or appointment has expired).
- (5) With the written agreement of the chairperson of the Education Council,—
 - (a) the person remains in office until a successor is appointed; and
 - (b) even after a successor is appointed, the person may continue to serve as a member, for the purpose of completing a matter or thing that the member was involved in before ceasing to hold office.
- (6) A person who ceases to be a member of a disciplinary body or the Competence Authority is not entitled to any compensation or other payment or benefit relating to the person's removal from office, irrespective of the reason for that removal.

Conflicts of interest and confidentiality

63 Conflict of interest

- (1) A member of a disciplinary body, the Competence Authority, or the Education Council must not be involved in a matter if the member was the initiator.
- (2) Subclause (3) applies if a matter has been allocated to a panel of a disciplinary body or to the Competence Authority in which a member was the initiator or has a conflict of interest.
- (3) The chief executive must provide a replacement member if necessary to ensure that the panel or Authority consists of the required number of members.

64 Confidentiality

- (1) Information disclosed to, or held by, a competence assessor, the Competence Authority, or the Complaints Assessment Committee in respect of a report or complaint or other matter is confidential.
- (2) Despite subclause (1),—
 - (a) the Education Council may advise that a person is before the Complaints Assessment Committee or is subject to an investigation into his or her competence; and

- (b) the Education Council may publish anonymised decisions of the Competence Authority and the Complaints Assessment Committee.

Part 9

Police vetting of applicant for registration as teacher, practising certificate, or limited authority to teach

65 Procedures for Police vetting of applicants

- (1) The Education Council must obtain a Police vet of the following applicants for the following purposes:
 - (a) an applicant for registration as a teacher, to help determine whether the applicant is of good character and fit to be a teacher;
 - (b) an applicant for a practising certificate or renewal of a practising certificate, to fulfil the requirement that the applicant must have had a satisfactory Police vet within the past 3 years;
 - (c) an applicant for a limited authority to teach, to help determine whether the applicant is of good character and fit to hold a limited authority to teach.
- (2) The Education Council must, in relation to an applicant for whom a Police vet is required,—
 - (a) advise the applicant that his or her application will not be considered unless a Police vet is obtained; and
 - (b) request from the applicant the information necessary for the Police vet to be carried out.
- (3) If an applicant does not consent to a Police vet or does not provide the information necessary for a Police vet to be carried out, the Education Council must not take any further steps in relation to his or her application, including obtaining a Police vet.
- (4) The Education Council must establish and maintain with the Police secure information-sharing processes that relate to Police vets.

66 Rights of person being vetted in relation to personal information

- (1) The Education Council must ensure that strict confidentiality is maintained for the information obtained through a Police vet.
- (2) The Education Council must not take any adverse action as a result of the information obtained through the Police vet until the applicant—
 - (a) has validated the information contained in the result; or
 - (b) has been given a reasonable opportunity to refute the information, but has failed to do so within a reasonable period.

- (3) In determining whether to take adverse action as a result of the information obtained through the Police vet, the Council must have regard to—
- (a) the safety of the children in the relevant school or early childhood education service; and
 - (b) the reputation of the teaching profession.

Part 10 Revocations

67 Revocations

The following rules are revoked:

- (a) New Zealand Teachers Council (Amendment and Replacement of Rules) Rules 2004 (SR 2004/141):
- (b) New Zealand Teachers Council (Competence) Rules 2007 (SR 2007/306):
- (c) New Zealand Teachers Council (Conduct) Rules 2004 (SR 2004/143):
- (d) New Zealand Teachers Council (Impairment Process) Rules 2009 (SR 2009/108):
- (e) New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (SR 2004/144).

Schedule 1 Transitional, savings, and related provisions

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Part 1 Provisions relating to these rules as made

1 Continuation of matters begun before 1 July 2015

- (1) This rule applies to a report, complaint, or other matter under the rules listed in rule 67(b) to (e) that—
- (a) was begun before 1 July 2015; and
 - (b) is yet to be determined or completed on the commencement of these rules.
- (2) The report, complaint, or other matter must be determined or completed by the Education Council in accordance with the rules in force immediately before the commencement of these rules as if the Education Council were the Teachers Council.

2 Continuation of matters begun on or after 1 July 2015 and before commencement of these rules

- (1) This rule applies to a report, complaint, or other matter under the rules listed in rule 67(b) to (e) that—
 - (a) was begun on or after 1 July 2015; and
 - (b) was begun before the commencement of these rules; and
 - (c) is yet to be determined or completed on the commencement of these rules.
- (2) The report, complaint, or other matter must be determined or completed by the Education Council in accordance with the rules in force immediately before the commencement of these rules as if the Education Council were the Teachers Council.
- (3) Despite subclause (2), the teacher who is the subject of a report, complaint, or other matter under a rule listed in rule 67(b), (c), or (e) may, with the agreement of the Education Council, elect to have the report, complaint, or other matter determined or completed in accordance with the alternative process described in subclause (4).
- (4) The alternative process is that the report, complaint, or other matter is determined or completed by the Education Council under these rules, from the point in the process it has reached, as if it had been made under these rules.

Dated at Wellington this 25th day of May 2016.

Barbara Ala'alatoa,
Chairperson of the Education Council of Aotearoa New Zealand.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These are the Education Council Rules 2016 (the **Rules**).

The Rules come into force on 1 July 2016. They revoke and replace the following rules:

- New Zealand Teachers Council (Competence) Rules 2007:
- New Zealand Teachers Council (Conduct) Rules 2004:
- New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.

The Rules cover a number of areas relating to reports, complaints, and other matters concerning teacher conduct and competence. The Rules also contain provisions about Police vetting. In summary, the Rules—

- set out how to make a mandatory report or a complaint to the Education Council about a teacher; and
- set out the criteria for reporting serious misconduct and competence issues; and
- provide a procedure for the chief executive of the Education Council to deal with reports and complaints about teachers in the first instance; and
- provide for the membership of a Competence Authority, and for competence assessors, to carry out functions of the Education Council relating to competence matters; and
- provide for investigators to investigate matters concerning a teacher's conduct; and
- establish a Complaints Assessment Committee to investigate matters relating to misconduct and reports of convictions; and
- establish a Disciplinary Tribunal to conduct hearings relating to misconduct and convictions; and
- provide for the practices and procedures of the Complaints Assessment Committee and the Disciplinary Tribunal; and
- provide for procedural requirements for Police vetting of applicants for registration as a teacher or for an authority to teach.

The Rules also revoke the following rules, which are not replaced:

- New Zealand Teachers Council (Amendment and Replacement of Rules) Rules 2004;
- New Zealand Teachers Council (Impairment Process) Rules 2009.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 2 June 2016.

These rules are administered by the Education Council of Aotearoa New Zealand.