

Ministerial Briefing

TO:	Hon David Seymour, Associate Minister of Education
COPY:	Hon Erica Stanford, Minister of Education
FROM:	Clive Jones, Tumu Whakarae Chief Executive - Acting, Teaching Council
SUBJECT:	Implications of Limited Authority to Teach as an option for charter schools
FOR:	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Discussion <input checked="" type="checkbox"/> Information

Recommendations

It is recommended that the Minister:

- Notes that this briefing responds to his request on 12 February 2024 for further information on how the Limited Authority to Teach (LAT) provision would work as an option for charter schools,

Agree / Disagree

- Requests that the Teaching Council of Aotearoa New Zealand | Matatū Aotearoa (the Council) begin developing specific provisions for LATs that can be used in charter schools and work with the Ministry of Education to advise on what if any law changes should be sought to facilitate this.

Yes / No

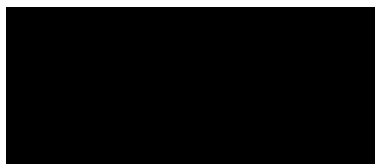
Proactive Release

Agree that the Teaching Council release this briefing in full once policy decisions on charter schools have been taken.

Agree / Disagree



Clive Jones
Tumu Whakarae | Chief Executive - Acting
Teaching Council of Aotearoa New Zealand
29 / 02 / 2024



Hon David Seymour
Associate Minister of Education

26/5 / 2024



Purpose

3. This briefing is intended to respond to your request on 12 February 2024 for further information on how the Limited Authority to Teach (LAT) provision would work as an option for charter schools.

Background

4. Following a briefing note submitted on 8 February 2024, the Council met with you on 12 February 2024 to discuss your plans for charter schools and put the case that both learners and the charter school sector would be best served by maintaining a requirement that charter schools (like state schools and private schools) use only certificated or authorised teachers i.e. holders of a practising certificate or a LAT.¹
5. As part of this, it was proposed that if policy-makers and the management of charter schools sought flexibility from certification requirements, then this could largely be achieved through expanded use of LATs, noting that this might require some policy adjustments.
6. In response, you requested further information on how the Limited Authority to Teach (LAT) provision would work as an option for charter schools.
7. On 25 February 2024, in response to separate advice from the Ministry of Education (the Ministry) (METIS 1322727), you agreed that unregistered teachers would need to hold a LAT to teach at charter schools, subject to contract restrictions.

The evolving role of the LAT provision

8. The provision for teachers in some circumstances to be authorised to teach via a LAT, rather than registered and certificated², was introduced in 1996. It was initially very much seen as facilitating short-term response to teacher shortages facing a school, and LAT-holders were tied to a particular school.
9. In practice, however, there were always a significant group of LAT-holders, most notably itinerant music teachers, who did not fit well with this short-term/transitionary purpose. The law and rules were changed in 2015 to better reflect this role of the LAT provision. Authorised teachers now held a LAT in their own right, rather than being tied to a particular school. And a 'specialist skill' category of LAT was introduced for people with "a high level of expertise in a specific subject area that is not widely available among registered teachers, for example, musical instrument, language or guidance counselling"³.
10. LATs are also used by student teachers in employment-based initial teacher education programmes, such as Ako Mātātupu Teach First NZ.

Specific features of a charter schools LAT

11. You have indicated to the Ministry that, unlike for State schools, LAT holders in charter schools would not need to demonstrate they have a specialist skill in an area not widely available among

¹ The Education and Training Act 2020 calls the holder of a LAT an 'authorised person' and includes them within the statutory definition of teacher (cf. section 10).

² A teacher must be registered in order to be certificated so in this briefing the term 'certificated teacher' is used to encompass the registration requirement as well.

³ <https://teachingcouncil.nz/getting-certificated/for-limited-authority-to-teach/>.

registered teachers, or a skill that is in short supply. This will be important to enable LATs to be used more extensively in charter schools than state schools.

12. Currently, prospective employers and applicants need to establish either a specialist skill (requiring a qualification that is at least or equivalent to Level 6 on the New Zealand Qualifications Framework or above) or a skill shortage in the local teaching supply. This presupposes an expectation that schools seek to fill all positions with a certificated teacher as a preference, which might not have aligned with the policy settings for charter schools.
13. As an alternative to this, it would be possible to establish a new category of LAT that allows any fit and proper person with skills and experiences that are appropriate to advance students' learning to teach in a charter school.
14. This would give more freedom to charter schools in their hiring practices but would place a restriction on the teachers involved, since (in order to avoid undermining LAT policy for state schools) teachers with this category of LAT would only be permitted to teach in charter schools. Teachers with other categories of LAT would still be able to teach in either charter schools or state schools.
15. The descriptions in the following section, while largely relevant to LATs in general, reflect this prospective new LAT category rather than the direct application of existing categories to charter schools.
16. You have also indicated that LAT holders should be able to be employed by charter schools for any length of time. This does not relate to the category of LAT but rather to a statutory restriction on authorised teachers that since they do not hold a practising certificate, schools are prohibited from appointing them to a permanent teaching position (Education and Training Act 2020, section 92(2)). (Partnership schools between 2014 and 2018 were not subject to this provision.)

Applying for a LAT

17. While the process of obtaining a LAT is relatively straightforward, it does require some effort on the part of the applicant. They would need to provide:
 - a full curriculum vitae that: shows relevant experience; details any curricula or assessment knowledge, or skills; and should demonstrate an understanding of -
 - the official curricula in the area they want to teach, and
 - appropriate assessment tools and strategies;
 - a certified copy of any relevant qualification (or New Zealand Qualifications Authority international qualifications assessment);
 - consent for the Council to apply to New Zealand Police for a police vet, and a declaration about any relevant matters for which they are currently under investigation;
 - a declaration that they do not have a condition that would affect their ability to teach safely and satisfactorily; and
 - evidence that they are competent in English and/or te reo Māori (which for many applicants may be New Zealand University Entrance, or all primary schooling and at least three years secondary schooling completed in the English language and while living in New Zealand).
18. Applicants must also declare that they are committed to the values and expectations in Ngā Tikanga Matatika | The Code of Professional Responsibility (discussed further below) and to honouring Te Tiriti o Waitangi in the learning environment and supporting the aspirations of Māori learners.

19. It is expected in most cases that the applicant has already had an engagement with an employing school. Proof of the applicant's identity is required and in most cases their identity referee needs to be a school principal or other professional leader who holds a practising certificate. The applicant also needs a written reference from one of their employers, or a practitioner in a relevant industry or field attesting to their knowledge and skills. For an application for a charter school, this might be the principal or a professional leader from the employing school.
20. A LAT application tends to be more complex than a simple registration application. It often involves requesting further information once assessed, and this can cause delays. The Council has a target turn-around time on LAT applications (not taking into account delays from external factors such as identity references and police vetting) of ten days; in recent months turn-around times have been shorter than this. Taking into account external factors, the average monthly processing time has ranged between 8 days and 23 days.
21. The cost for a three-year LAT at present is \$353.87. However, this may not fully reflect the unit cost of the application process and would probably need to be reviewed if there were a significant increase in volumes to ensure it still reflects the actual and reasonable cost of processing applications. (By contrast, a beginning certificated teacher pays \$464.37 for teacher registration and a provisional practising certificate valid for three years, with standard renewals costing the same amount and the transition from provisional to full certificate costing an extra \$48).

Operating with a LAT

22. The requirements on authorised teachers (LAT-holders) are similar, but not identical to the requirements on certificated teachers, but quite different from those on other staff in a school. This is consistent with a widespread public expectation that teachers should be held to a higher standard in important respects than a member of the public, given that they are in a position of power and trust.
23. On the other hand, the requirements on authorised teachers do have implications for individuals, which are set out below.

Adherence to Ngā Tikanga Matatika | The Code of Professional Responsibility

24. Authorised teachers must adhere to Ngā Tikanga Matatika | The Code of Professional Responsibility set by the council in consultation with the teaching profession. Certificated teachers must also adhere to Ngā Tikanga Matatika | The Code, but in addition are also subject to Ngā Paerewa mō te Umanga Whakaakoranga | Standards for the Teaching Profession, which do not apply to authorised teachers.
25. Ngā Tikanga Matatika | The Code sets out the high standards of ethical behaviour expected of all members of the teaching profession. It serves to provide learners, their families and whanau, their communities and the public with trust and confidence in teachers and the profession; and to honour teaching as a profession of high trust and integrity.⁴
26. It encompasses making four commitments, to:
 - The teaching profession ('I will maintain public trust and confidence in the teaching profession')
 - Learners ('I will work in the best interests of learners')

⁴ *Our Code, Our Standards | Ngā Tikanga Matatika, Ngā Paerewa*, p. 6, <https://teachingcouncil.nz/assets/Files/Code-and-Standards/Our-Code-Our-Standards-Nga-Tikanga-Matatika-Nga-Paerewa.pdf>.

- Families and whānau ('I will respect the vital role my learners' families and whānau play in supporting their children's learning'), and
 - Society ('I will respect my trusted role in society and the influence I have in shaping futures').
27. Each of the four commitments has between three and six components setting out more specific behaviours the teacher will undertake to advance each commitment. A hard copy of *Our Code, Our Standards* | *Ngā Tikanga Matatika, Ngā Paerewa*, has been provided to your office.
28. Any wide-ranging set of commitments has the potential to be contentious with some portion of a wide-ranging professional community. The certificated or authorised teachers that have declared a commitment to the values and expectations in *Ngā Tikanga Matatika* | *The Code* worked in schools as diverse as Gloriavale Christian School, Al-Madinah School, Diocesan School for Girls, Crimson Global Academy, Green School New Zealand, eleven Rudolf Steiner schools, and a network of kura.

The disciplinary system - conduct

29. *Ngā Tikanga Matatika* | *The Code* is the benchmark that confirms the expected standards of conduct for members of the profession and is often referenced in investigations into conduct complaints.
30. However, this does not mean that the Council becomes involved any time a teacher is alleged to have breached *Ngā Tikanga Matatika* | *The Code*.
31. A significant proportion of cases dealt with through the Council's disciplinary system for teacher conduct, which comprises the Complaints Assessment Committee and the Disciplinary Tribunal, are for 'serious misconduct'. In particular, the vast majority of cases that reach the Disciplinary Tribunal are for 'serious misconduct'.
32. 'Serious misconduct' is defined in Section 10 of the Education and Training Act 2020 (the Act) as conduct by a teacher
- (a) that—
- (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
 - (ii) reflects adversely on the teacher's fitness to be a teacher; or
 - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.
33. The requirement to meet both clause a and clause b means that 'serious misconduct' is further limited by the criteria for reporting serious misconduct in Rule 9 of the Teaching Council Rules 2016, i.e..
- (1) . . . a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:
- (a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:
 - (b) emotional abuse that causes harm or is likely to cause harm to a child or young person:
 - (c) neglecting a child or young person:
 - (d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:
 - (e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher:

- (f) viewing, accessing, creating, sharing, or possessing pornographic material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:
 - (g) acting dishonestly in relation to the teacher's professional role, or committing theft or fraud:
 - (h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:
 - (i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:
 - (j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
 - (k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.
- (2) The conduct described in any of paragraphs (a) to (e) and (k) of subclause (1) may be—
- (a) a single act; or
 - (b) a number of acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial.
34. Although the rules do allow for the possibility of a 'a serious breach of the Code of Professional Responsibility' that does not include one or more of the types of conduct described in paragraphs (a) to (k), these paragraphs set a clear threshold for the seriousness of breach to be considered. Moreover, in practice, the Complaints Assessment Committee and the Disciplinary Tribunal have almost never defined 'serious misconduct' except by reference to paragraphs (a) to (k).
35. In summary, therefore, it is the breaches set out in Rule 9, rather than the precise wording of Ngā Tikanga Matatika | The Code, that determine what constitutes serious misconduct.
36. Misconduct, other than serious misconduct, is not defined in the Act or the Rules, and would usually be left to an individual charter school to make decisions on.
37. The main exception is where a teacher is dismissed or leaves a school partway through a misconduct process or before a misconduct complaint is raised. In these circumstances, there is mandatory reporting to the Council who will make an assessment, and the concern may be referred to the Complaints Assessment Committee. Because of this, the Complaints Assessment Committee may sometimes censure a teacher or impose conditions on their LAT (including requiring them to undergo supervision or professional development) for a lesser offense than serious misconduct. Only the Disciplinary Tribunal however can cancel or suspend a LAT or practising certificate on conduct grounds, and only in very rare circumstances would the Tribunal do this in instances other than serious misconduct.
38. The Council may also receive a complaint directly from a complainant, and, while it would usually direct the complainant back to the school's internal processes, may sometimes investigate where a complainant can establish on reasonable grounds that a conflict of interest will prevent the school from dealing with complaint effectively, or in other exceptional circumstances.

The disciplinary system - competence

39. Although not mentioned in our 8 February 2024 briefing, the law does also provide for authorised teachers to be subject to the Council's disciplinary procedures in relation to competence.
40. In practice, however, we haven't developed guidelines for this (the competence of certificated teacher is referenced against Ngā Paerewa mō te Umanga Whakaakoranga | Standards for the Teaching Profession, which we have deemed not to apply to authorised teachers). There are generally only around 20-30 competence reports against certificated teachers that require some further investigation (a similar number get referred back to the school), compared with around 600 conduct reports, and to date this has not been an issue for authorised teachers. Most competence reports originate from principals or another professional leader within the school, and they may be less inclined to initiate a mandatory report against teachers on temporary contracts.

41. If this situation were to change as a result of more authorised teachers employed via charter schools for longer periods, then the Council could develop a fit-for-purpose competence approach for this group.

Mandatory reporting

42. A charter school (like a state school or private school) is legally required to make a mandatory report about either an authorised or certificated teacher in the following situations:
- Reason to believe teacher has engaged in serious misconduct
 - Any dismissal of a teacher for any reason
 - A teacher resigning 12 months or less after a conduct or competence issue has been raised
 - Complaints about teachers who recently left
 - Competence - if, after taking steps to address the problem, the school believes the teacher hasn't reached the required competence level.
43. Teachers in temporary positions may tend not to trigger mandatory reporting requirements, since they are less likely to be deemed to have 'resigned' or been 'dismissed'. Once again, if charter schools are permitted to hire authorised teachers in permanent positions, this is likely to increase the incidence of mandatory reports regarding authorised teachers.
44. For an authorised teacher the main implication of a mandatory report is that it may trigger the Council's disciplinary process. In particular, it means that any concerns raised about their conduct or competence at one school can have implications for them even once they have left that school. In many instances, however, the Council may refer competence concerns in particular back to the teacher's new school to consider and resolve.
45. Prospective employers do not have access to mandatory reports about teachers. Unless the Council has annotated or placed conditions on their authorisation for a period of time (which can be viewed on a public register during that time period), the prospective employer is unlikely to have information from this process. The circumstances in which the Council will share information with employers is extremely limited.

Retaining a LAT

46. Charter schools LATs would need to be reissued with a timeframe to be determined, but possibly every three years (practising certificates are also subject to renewal every three years). Assuming consistency with current arrangements, this would require authorised teachers in charter schools to provide a statement from the professional leader of their school attesting that their skills/knowledge remain current for the learners they are working with, in addition to many of items they provided previously.⁵ As noted previously, the current cost is \$353.87.
47. There are no professional growth cycle provisions for authorised teachers and no external process for them to grow and develop in the profession. Despite this, however, some authorised teachers and some charter schools may want to have development options, including possibly a pathway from authorised teacher to certificated teacher. This is of course possible in principle at present, but the prerequisites in terms of initial teacher education can be challenging for someone already

⁵ Specifically: a certified copy of any relevant qualification (or New Zealand Qualifications Authority international qualifications assessment); a police vet, and a declaration about any relevant matters for which they are currently under investigation; a declaration that they are committed to Ngā Tikanga Matatika | The Code and to honouring Te Tiriti; a declaration that they do not have a condition that would affect their ability to teach safely and satisfactorily; and evidence that they are competent in English and/or te reo Māori.

in fulltime employment. It is possible that some employment-based initial teacher education programmes might be developed in response to the needs of authorised teachers at charter schools. The Council is also investigating possible options around practising certificates with particular scopes of practice, which might in time provide an additional pathway.

Leadership of learning

48. The Council believes the role of a school Principal and their leadership team have important influence over the teaching, learning and achievement in the school. Our advice is that the person with overarching responsibility for the teaching and learning in the school is a registered and certificated teacher.
49. If the ability for charter schools to employ authorised teachers permanently in teaching position extends to the principal of the school then this would have particular implications.
50. Our *Requirements for Teacher Registration* stipulate that, where the principal of a school does not themselves hold a practising certificate, processes need to be put in place “to enable professional judgements about teaching practice to be made by a fully certificated teacher in a senior role, including whether a teacher meets the Standards | Ngā Paerewa as required for their practising certificate type.”⁶
51. This needs to be a proactive process, undertaken at the point where a school employs an authorised person as principal. In the Council’s view, in this circumstance the principal’s responsibilities in relationship to a wide range of professional leadership roles including oversight for Ngā Paerewa | The Standards being met across the school should be formally delegated to a designated ‘Leader of Learning’ who is a certificated teacher.
52. Rather than risk this being done as an ad hoc manner when endorsements of teachers’ practicing certificates become due, we recommend that the Act be amended to require the designation of a leader of learning for schools where the principal is not a certificated teacher. (This would primarily apply to charter schools, but would also be useful safeguard for instances where the principal of a state school is an authorised teacher for a period of time.)

Legislative implications

53. In addition to the change recommended in the previous paragraph, legal advice would be required about whether we could establish a specific category of LAT for charter schools under current legislative provisions, or whether some legislative amendments might be preferable. Although a charter schools category as described in this briefing would be consistent with clause 16 of Schedule 3 of the Act, this may be complicated by the purpose of LATs as set out in clause 14, which specifically references ‘specialist skills’ and ‘skills that are in short supply’. Ideally, if any legislative changes were needed, these could be sought through the amendment bill re-establishing charter schools.
54. There are likely be other aspects of the operation of LATs that need to be revised to reflect the charter schools context and/or a potential increase in the scale of LATs that are being issued. Many aspects of the necessary changes could be adjusted by the Council itself, by amending our Rules or procedures. However, consideration would be needed as to what law changes should be sought to facilitate this.

⁶ Teaching Council, *Requirements for Teacher Registration, Practising Certificates and Limited Authority to Teach*, April 2020 (updated 12 July 2022), p. 32, https://teachingcouncil.nz/assets/Files/Registration-and-certification/TC-Requirements-for-Teacher-Registration-Practising-Certificates-and-Limited-Authority-to-Teach_2022.pdf.

55. As noted previously, section 92(2) of the Act prohibits schools from appointing authorised teachers to a permanent teaching position. While this does not relate directly to the responsibilities of the Council, this provision would presumably need to be amended in light of your view that authorised teachers should be able to be employed by charter schools for any length of time.

Next steps

56. We would invite you to consider this briefing and indicate whether you would like to request that the Council begin developing specific provisions for LATs that can be used in charter schools, and work with the Ministry of Education to advise on what if any law changes should be sought to facilitate this. We would then work with the Ministry to set out an implementation timeline for charter schools that works in with your legislative and operational timeframes, while also taking into account the need to consult our operational changes with the teaching profession.