

Teaching Council Submission on the Education and Training Amendment Bill (No 2)

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Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington

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Introduction

About Matatū Aotearoa | Teaching Council of New Zealand

Matatū Aotearoa | Teaching Council of New Zealand is the independent professional body for teachers working with and for around 150,000 registered and certificated teachers in New Zealand. The statutory purpose of the Teaching Council is “to ensure safe and high-quality leadership, teaching and learning for children and young people in early childhood, primary, and secondary schooling in English-medium and Māori-medium settings, and settings of other languages, through raising the status of the profession” (s478).

The Teaching Council has statutory obligations to (among other things):

- carry out the functions relating to teacher registration
- establish and maintain:
 - criteria for teacher registration
 - standards for ongoing practice
 - criteria for the issue of practising certificates
 - a code of conduct for teachers
- monitor and enforce the requirements related to mandatory reporting of conduct and competence matters
- perform disciplinary functions related to teacher misconduct and convictions
- perform the functions related to teacher competence
- prosecute breaches of the requirements of the Education and Training Act 2020

Process

The Teaching Council acknowledges that this submission will become public information.

Oral submission

The Teaching Council **does** wish to speak to this submission.

Teaching Council's position on proposed legislative changes

Clause 15 and 16 Education and Training Amendment Bill (No 2)

The Teaching Council supports the proposed legislative amendments described in clause 15 of the Bill. It is important to the Council that our functions support and strengthen the whole education system.

Similarly, the Council supports the amendments proposed in clause 16, which will strengthen transparency to the House of Representatives the teaching profession about how the Council has had regard to any Government Policy Statements.

Other amendments

The Teaching Council undertook an extensive review of its Teaching Council Rules 2016 relating to our professional disciplinary processes and competence evaluation processes. The amended rules took effect from 29 July 2023.

This review identified several desirable changes to the primary legislation, the Education and Training Act 2020 (the Act), to allow the Council to effectively perform the functions we have been assigned under s479 of the Act.

1. Specifying time periods on conditions imposed by disciplinary bodies and Competence Authority

Under s. 500 (1) (c) the Disciplinary Tribunal is required, when imposing conditions on the teacher's practising certificate or authority, to specify the period of time the conditions apply for. There is no equivalent requirement to specify a time period when the Complaints Assessment Committee or the Competence Authority impose conditions.

The Council supports the insertion of "for a specified period" in sections 497(3)(b) and 508(a)(i) of the Act to ensure consistency in how imposed conditions are issues.

2. Ability for the Teaching Council to annotate the Public Register and List

Under clause 8 and clause 21 of Schedule 3 of the Act, the Teaching Council may only annotate the public Register and List when certain actions are taken including when:

- an interim suspension is granted by the Disciplinary Tribunal
- an action by a disciplinary body is notified, for example, conditions are imposed on a teacher's practising certificate, or a suspension or cancellation by the Disciplinary Tribunal
- an action by the Competence Authority is notified, for example, when conditions are imposed.

These actions currently exclude situations where annotation of the Register and List is appropriate and necessary to ensure learner safety and the reputation of the profession. These situations have been outlined below.

The Teaching Council is required to cancel a person's registration or limited authority to teach for the following reasons:

- the Teaching Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for registration as a teacher
- the Teaching Council is satisfied on reasonable grounds that the registration was granted in error or obtained by fraud
- the Teaching Council is satisfied on reasonable grounds that the person no longer satisfies the requirements for holding a limited authority to teach
- the Teaching Council is satisfied on reasonable grounds that the authorisation was granted in error or obtained by fraud

Annotating a specified offence

A registered teacher or a LAT holder who has been convicted of one or more specified offences is referred to the Governing Council of the Teaching Council to approve the cancellation of the teacher's registration or authority unless the teacher has obtained an exemption. However, a cancellation due to a specified offence conviction is not listed as an action that can be annotated by the Teaching Council on the public Register or List under clause 8 or 21 of Schedule 3.

Annotating a voluntary deregistration

Clause 7 of Schedule 3 of the Act allows a teacher to seek voluntary deregistration. As long as the teacher is not under investigation the Teaching Council must approve their deregistration. A voluntary deregistration results in the removal of the teacher's record from the public Register or List. The legal advice we have received indicates the Teaching Council does not have the ability to annotate the public Register or List to reflect a voluntary deregistration.

Annotating a voluntary Undertaking Not to Teach

Where a case of potentially serious misconduct (that is, potential for harm to children and to the reputation of the teaching profession) has been reported, and where a likely outcome is either cancellation or suspension of the teacher's practicing certificate or authority, current practice is to seek the agreement of the teacher concerned to sign a voluntary Undertaking Not To Teach (UNTT), while the investigation proceeds, and to advise their current employer of this action.

The Teaching Council does not have legislative power to add, modify or remove any annotations or conditions to the public Register or List, including a voluntary UNTT.

Cancellation ordered by Competence Authority

There is slightly different wording used for the powers exercised by the Competence Authority and the Disciplinary Tribunal when ordering the cancellation of a teacher's registration, practising certificate or authority. We are not aware of any reason for the difference and recommend for the purposes of consistency that the same wording is used.

The Council supports the changes to clauses 8 and 21 of Schedule 3 of the Act that enable the Teaching Council to annotate the Register and List in the circumstances outlined above.

3. Imposing conditions on subsequent practising certificates or authorities

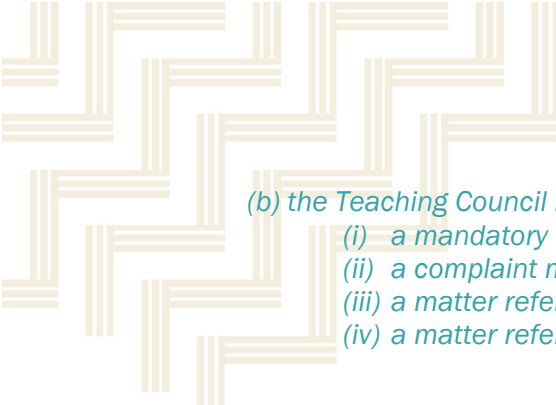
Both disciplinary bodies (the Complaints Assessment Committee and the Disciplinary Tribunal) and the Competence Authority have the power to direct the Teaching Council to impose conditions on subsequent practising certificates. Currently, only the Competence Authority has the power to direct the Teaching Council to impose conditions on a subsequent authority – being a limited authority to teach (LAT) granted under clauses 14 to 22 of Schedule 3 of the Act.

The Council supports the insertion of "or authority" in sections 497(3)(e) and 500(1)(j) of the Amendment Bill to ensure consistency in how imposed conditions are issued.

4. Modifying the voluntary deregistration process

A teacher is currently unable to seek voluntary de-registration if a matter is under investigation which occurs after a Triage Committee decision is made. The Council seeks to change this so a teacher may not voluntarily de-register from the point in time any report, complaint or other matter is received by the Council until that matter has been considered and an outcome determined. This would prevent a teacher applying to voluntarily deregister, as may currently happen, after a report, complaint or other matter is received by the Council but before a Triage Committee decision to refer for investigation has occurred.

The Council supports the below replacement of clause 7 Schedule 3 section 7(b) to reduce the risk of teachers choosing to voluntarily deregister when a report, complaint, or other matter is received and subsequently avoid potential disciplinary action.

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- (b) the Teaching Council is satisfied that the person is not the subject of any of the following:
- (i) a mandatory report under any of sections 489 to 493:
 - (ii) a complaint made under section 495(2) or section 506(2):
 - (iii) a matter referred to the Complaints Assessment Committee under section 496(2):
 - (iv) a matter referred to the Disciplinary Tribunal under section 497(5).

5. Clarifying the prosecution function of the Teaching Council

The Council's functions in s479 of the Act was amended by the Education and Training Act 2022 to include new subsection (pa) *to prosecute, as the Teaching Council considers appropriate, breaches of the requirements of this Act relating to teacher registration, practising certificates, and limited authorities to teach.*

Currently this includes offences relating to false representation under s662 of the Act but does not clearly cover s542 "Offence relating to failure to report certain matters to Teaching Council". The Council considers the expansion of s497(1)(pa) to include breaches relating to failure to report certain matters to the Teaching Council.

The Council supports the insertion of "mandatory reports to the Teaching Council" in s479(1)(pa) to clarify the prosecution function and powers of the Council.

6. Referral of matters from Complaints Assessment Committee back to Triage Committee

The amended rules that took effect in July 2023 allow a professional practice evaluator to refer a report or complaint back to the Triage Committee for reconsideration (Rule 11C (1)(c)). The Act does not currently provide an option for a report, complaint or other matter that has been referred to the Complaints Assessment Committee to be referred back to the Chief Executive or Triage Committee.

The ability to refer a report, complaint or other matter back is unlikely to be required but may be appropriate in cases where, for example, the Complaints Assessment Committee becomes aware of information that may justify a re-consideration of the appropriate pathway for the matter.

The Council supports the insertion of subsection (d) refer the matter back to the Teaching Council in s479(2) to ensure consistency in conduct and competence processes.