

Submission to the Education and Workforce Select Committee

Teaching Council submission on the Education and Training Bill 2019

14 February 2020

Introduction

Thank you for the opportunity to comment on the Education and Training Bill 2019.

The Teaching Council requests an opportunity to speak at the Education and Workforce Committee in person about our submission.

About the Teaching Council

The Teaching Council is the independent professional body for registered teachers from early childhood education through to primary and secondary schooling in English and Māori medium. There are currently around 136,000 registered teachers in New Zealand. The statutory purpose of the Council, set out in section 377 of the current Education Act 1989 (the Act), is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

The Council acts in the interests of registered teachers to:

- enable and support leadership to teachers and direction for the profession
- establish and maintain criteria for teacher registration, standards for ongoing practice and criteria for the issue of practising certificates
- monitor and maintain the requirements relating to teacher conduct and competence
- establish and maintain the Code of Professional Responsibility and Standards for the Teaching Profession | Ngā Tikanga Matatika mō te Haepapa Ngaiotanga me ngā Paerewa mō te Umanga Whakaakoranga (the *Code* | *Ngā Tikanga Matatika* and the *Standards* | *Ngā Paerewa*)
- establish and maintain standards for qualifications that lead to teacher registration and approve teacher education programmes.

Executive Summary

We generally support the objectives of the Education and Training Bill 2019, especially:

- changes to the physical force legislative framework
- providing for re-entry into the teaching profession
- clarifying the right to a free State education and improving compliance with related international obligations

Our vision is to
maximise the success
of every learner in
Aotearoa New Zealand
through highly effective
leadership and teaching.



- removing the requirement for the Teaching Council to audit teacher appraisals
- amendments aimed at giving better effect to Te Tiriti o Waitangi
- providing for the appointment of a Deputy Chairperson of the Teaching Council
- improving oversight of the home-based early childhood education sector through changes to ERO powers and police vetting
- improving the legislative structure by grouping provisions in an order based on the student's journey through the education system.

We recommend changes in the following areas:

Substantive changes / policy implications

- involving the Teaching Council in the development of rules and guidelines on the use of physical force
- clearly differentiating between the processes for pursuing and resolving a serious dispute between a student and the student's school, and allegations about a teacher's conduct or competence
- strengthening New Zealand's commitment to international obligations related to the right to education by requiring the Minister to consider relevant UN conventions when issuing a statement of national education and learning priorities
- exploring options for how legislation may enable the Teaching Council to apply published inflation index adjustments to Teaching Council fees on an annual basis, in-between full reviews and consultations of fees undertaken every three years, or similar models, to reduce the administrative burden and costs associated with consulting annual fee adjustments

Governance matters relating to Teaching Council

- clarifying the boundaries between governance and management by including reference, where applicable, to the governing body of the Teaching Council as the 'Governing Council'
- removing the reference to elected members of the Teaching Council as 'representing' specific sectors
- including a provision for the training of members of the governing body of the Teaching Council

Technical drafting changes

- reinstating the purpose statement for the Teaching Council - Ministry of Education have advised the omission of the purpose statement is a drafting error
- removing the reference to 'chairperson' in relation to appeals of the Disciplinary Tribunal's decisions
- retaining the current wording relating to powers of the Complaints Assessment Committee to provide the current flexibility around the timing of referrals of investigations
- retaining the current restriction on voluntary deregistration while under investigation by the Teaching Council and ensuring that it only applies to those investigations undertaken by the Teaching Council
- applying consistency in the references to court reviews of appeals against Teaching Council decisions
- applying greater consistency in the use of terms 'schools' and 'registered schools', especially in relation to clauses 94 and 95 about corporal punishment and use of physical force
- retaining the definition of 'general education system'
- shifting the requirement for the Teaching Council to coordinate Police vetting from Schedule 18 to Part 5 subpart 4 of the main Act
- removing references to the completion of forms

Proposed changes to definitions and clauses that make existing requirements more explicit



- making explicit the requirement for a principal to hold a current practising certificate by including this requirement in a board's responsibilities when appointing principals
- amending the definition of 'teacher', and other applicable clauses, to clarify limited authority to teach
- amending the definition of 'teaching position' to provide clarity to employers about when to apply restrictions and about what positions may be considered by the Teaching Council to be equivalent to teaching positions for the purposes of 'satisfactory recent teacher training'
- amending the definition of 'principal' to make the second part of the definition clearer

This submission focusses on the proposals that have the highest impact on the teaching profession and their ability to provide high quality teaching and leadership to maximise success for every learner. We have not commented on all proposals in the Bill.

We cover the proposals in the order of significance to the teaching profession. We have attached for convenience an appendix of all our recommendations on clauses in the order they appear in the Bill – see Appendix 1.

We request an opportunity to speak at the Education and Workforce Committee in person about our submission.

Teaching Council's strategic direction

The Teaching Council wishes to indicate that as part of its ongoing strategic assessment of the education sector and reviewing the most effective way of delivering its functions and responsibilities, the following areas are ones that may need legislative review in the future:

- revisiting the purpose of the Teaching Council to incorporate a greater commitment to education pathways that incorporate Māori and Pacific languages immersion
- exploring options for extending the right to education to the early childhood education sector - while acknowledging there are differences between State and private early childhood arrangements, the Teaching Council considers these differences shouldn't be at the cost of ensuring all children have the right to access early childhood education
- reforming aspects of the framework for referrals from the Complaints Assessment Committee to the Disciplinary Tribunal and the requirement for the Complaints Assessment Committee, in the case of a finding of misconduct that is not serious misconduct, to obtain the agreement of the teacher and the complainant before the Complaints Assessment Committee exercises its powers.

Corporal punishment and physical force

The Teaching Council notes in the Bill's Explanatory Note the intent to 'address the lack of certainty in the schooling sector about when and how school staff can use physical restraint'.

The Teaching Council **supports** the proposals to improve the workability of the physical restraint legislative framework by making it clear that physical force can be used, but only as a last resort, to keep people safe from harm. The teaching profession has clearly and consistently advised the Teaching Council of concerns and confusion arising from the changes to the framework in 2017. Teachers have said that under the provisions of the current Act, they are wary of using any type of physical contact in case it is misconstrued as physical restraint, given the breadth of the definition of physical restraint, and in fear of breaching either the current Act or the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa*. Teachers are concerned the confusion has resulted in putting more people, including children, at risk of harm compared with prior to the 2017 framework being introduced. The changed wording in clauses 94-97 of this Bill help clarify the situation for teachers.



Teachers have told us the current legislation is inconsistent with the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa* that require them to consider the safety and well-being of all the learners in their care. Early de-escalation of complex situations is likely to enable a healthy learning environment for all. In contrast to this, the current legislation has led to teachers stepping back until a serious and imminent threat is likely.

The Teaching Council recognises the concerns of some sectors regarding the proposed wording changes. From the perspective of the teaching profession, the intent is for teachers to have greater clarity about when they can exercise their judgement to apply sensible interventions to de-escalate a situation. Clause 95 (2) (b) makes clear that physical force can only be applied when it is necessary to prevent imminent harm and ‘there is no other option available in the circumstances to prevent the harm’ – the Teaching Council continues to fully support the intent that physical force is applied only as a last resort.

Clause 23 – Prohibition on corporal punishment and seclusion in early childhood services

Clause 94 – Prohibition on corporal punishment and seclusion in schools

The Teaching Council notes two separate provisions have been created to allow the prohibition on corporal punishment and seclusion to be reflected in the two parts of the Bill relating to Early Childhood Education (Part 2) and Primary and Secondary Education (Part 3).

The Teaching Council **supports** these clauses.

Clause 95 – Limits on use of physical force at registered schools

The Teaching Council **supports** the change in wording from ‘physical restraint’ to ‘physical force’. It clarifies how this Bill interacts with the Crimes Act 1961 which uses the terminology of ‘force’. The wording change now reflects the wording used under proposed clause 94 about corporal punishment and in the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa* which guide the behaviour of all teachers. There are effective processes already in place if a teacher inappropriately applies their judgement and/or transgresses the high ethical standards expected of all registered teachers as set out in *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa*, via the Council’s conduct and competency framework under the *Teaching Council Rules 2016*.

The Teaching Council **supports** sub-clause 95 (3) which defines harm as “harm to health, safety, or well-being of the student or the person, including any significant emotional distress suffered by the student or person”. The use of the term ‘harm’ and its definition provides greater clarity for teachers than the current use of the term “serious and imminent risk”. The recognition of ‘significant emotional distress’ is important and allows teachers to take into account the emotional impact on all children when exercising their judgement.

Clause 96 – Rules on use of physical force at registered schools

The Teaching Council agrees with the general intent of this clause. We consider that as the voice of the teaching profession, we can provide relevant input into the development of the rules prescribing the practice and procedure to be followed by employers, principals, teachers, and authorised staff members relating to the use of physical force. The Teaching Council notes the Regulatory Impact Assessment on this subject says the Ministry of Education ‘... will work with the Teaching Council to develop scenarios and examples of behaviour that promotes or does not promote learners’ wellbeing in situations of physical restraint or force’¹.

Recommendation: The Teaching Council recommends sub-clause 96 (1) is amended (see underlined text) to include the involvement of the Teaching Council as follows:

- 96 (1) The Secretary, in consultation with the Teaching Council, must make rules prescribing the practice and procedure to be followed by employers, principals, teachers, and authorised staff members relating to the use of physical force at registered schools.

¹ Impact Summary: improving the workability of the physical restraint legislative framework’, Ministry of Education, 31 October 2019, page 13



Clause 97 – Guidelines on use of physical force at registered schools

The Teaching Council agrees with the general intent of this clause. We consider that as the voice of the teaching profession, we can provide relevant input into the development of the guidelines in the form of practical examples and scenarios, designed to provide preventative strategies and how to identify issues early to prevent escalation of behaviour. The guidelines should include scenarios based on a range of settings, situations, children's ages, learners in environments new to them, and children who are more vulnerable because of disabilities, neurodiversity and additional learning needs. The guidelines should be supported by professional development and training for teachers, focusing on prevention and de-escalation techniques.

Recognising the physical force changes are of significant interest to the disability community, the Teaching Council recommends the guidelines and training package are consulted with representatives of that community to ensure best practice for managing diverse needs and behaviours are referenced.

Recommendation: The Teaching Council recommends new sub-clauses are included (see underlined text) as follows:

- 97 (1) The Secretary must, in consultation with the Teaching Council, develop guidelines on the use of physical force at registered schools.
- 97 (2) The Secretary must make reasonable efforts to consult with the disability community in the development of the guidelines.

(The proposed sub-clauses relating to guidelines are retained and re-numbered.)

Dispute resolution

Clauses 202 to 211

The Teaching Council notes in the Bill's Explanatory Note the intent to enable the Minister to establish independent external local complaint and dispute resolution panels to help students and their whānau "... who have not been able to resolve serious **rights-based** disputes with the school" (our emphasis). The Teaching Council notes Cabinet Paper 2 on the reform of the Tomorrow's Schools system '... highlighted the need for an accessible, independent complaints and dispute resolution scheme so that enrolled students could enforce their right to attend school fulltime.'²

The Teaching Council also notes the 'Regulatory Impact Assessment: Establishing dispute resolution panels' mentions under the problem definition and context areas, students' legal right to a free state education³. Other parts of the report refer to the impact of exclusions and expulsion from schools, poor board performance and complaints relating to children with learning support needs⁴. This suggests the Regulatory Impact Assessment is to resolve issues relating to the enrolment, learning support and exclusion or expulsion of students.

However, the Assessment also discusses complaints received by the Ministry of Education, the majority of which relate to health and safety and bullying, and governance matters involving the Board of Trustees, principals and staff⁵.

The Teaching Council has not been consulted about the proposed dispute resolution process and became aware of it only when the Tomorrow's Schools reforms were announced. While acknowledging the desire to provide a suitable dispute resolution process for students and their whānau on matters related to the student's right to education, the Bill's clauses 202 to 211 as currently drafted raise some significant concerns on the part of the Teaching Council.

² Cabinet paper 'Reform of the Tomorrow's Schools system – Paper 2: legislative provisions, 16 October 2019, page 12

³ Regulatory Impact Assessment: Establishing dispute resolution panels', Ministry of Education, 31 October 2019, pages 1 and 6

⁴ Ibid, pages 7 and 9

⁵ Ibid, page 8



The Teaching Council considers the definition of ‘serious dispute’ as proposed in clause 203 has potential to overlap with the Teaching Council’s well-established procedures for considering complaints about a teacher’s conduct and competence.

Clause 203 – Meaning of serious dispute

A serious dispute is defined in the Bill as follows:

In this subpart, serious dispute means a dispute between a student or, in the case of a student aged under 16 years, the student and the student’s whānau and the student’s school about—

- (a) the student’s right to enrol at or attend the school;
- (b) the student’s rights to education under this Act generally;
- (c) the learning support the student receives at the school;
- (d) the standing-down, suspension, exclusion, or expulsion of the student by the school;
- (e) any racism or other discrimination that is a prohibited ground of discrimination specified in section 21 (1) of the Human Rights Act 1993 experienced by the student while at the school;
- (f) the student’s physical or emotional safety while at the school;
- (g) any physical force used on the student by a teacher or authorised staff member employed or engaged by the school.

Clause 10 of the Bill defines serious misconduct.

serious misconduct means 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.

The Teaching Council is responsible for establishing, monitoring and maintaining standards and processes relating to teacher conduct and competence. These responsibilities exist in legislation (the current Act and as proposed in this Bill), *Teaching Council Rules* and the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa*. Collectively these are an important part of maintaining and enhancing the credibility of the teaching profession.

Under the current *Teaching Council Rules*, the criteria for reporting serious misconduct is defined in section 9 (1) as:

A teacher’s employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed 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; for example—
 - (i) engaging in an inappropriate relationship with the child or young person:
 - (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:
- (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.

It is possible that issues relating to a teacher's or teachers' conduct or competence may meet the definition of a serious dispute as currently defined in the Bill, under any sub-clause but especially under sub-clauses (e) - about racism and discrimination, (f) - impacting on a student's physical or emotional safety, and (g) - use of physical force. Complaints about a teacher's conduct or competence are usually made first to the teacher's employer. There are mandatory reporting requirements in the current Act and in clauses 461 to 465 of the Bill, that place obligations on the teacher's employer to refer reports to the Teaching Council if a teacher -

- is dismissed
- engages in serious misconduct
- was advised by their employer that they were dissatisfied or intended to investigate any aspect of the teacher's conduct or competence within the 12 months prior to the teacher resigning or leaving a fixed-term position
- ceases to be employed but the employer receives within 12 months a complaint about the former teacher's conduct or competence while a teacher
- fails to reach the required level of competence, despite competency procedures being undertaken.

It is critical the process for pursuing and resolving a serious dispute clearly differentiates between a serious dispute between a student and the student's school, and misconduct (which may or may not be defined as 'serious') by a teacher. It is also critical the serious dispute resolution process identifies if any aspect of a serious dispute has arisen from or involves aspects of a teacher's competency. This clarity is required to ensure the dispute resolution process proposed in the Bill does not usurp - inadvertently or otherwise - the Teaching Council's functions, powers and processes in relation to teachers' conduct or competence.

The Teaching Council believes clarification is required about how the serious dispute resolution process described in the Bill will interact with the Teaching Council's role, especially about the following matters:

- confusion about the appropriate body and process to consider an alleged claim or dispute
- the potential for delays in the processes undertaken by the Teaching Council if matters are referred through the dispute resolution process
- the possibility a teacher may be subjected to a range of investigative or review processes which may compromise natural justice



- how information arising from a referral to a dispute panel and any aspect of a dispute panel's review or investigation or recommendations or agreements/decisions/settlements will be shared with the Teaching Council if the dispute raises issues, at any stage of the process, relating to a teacher's conduct or competence
- how to communicate to students, parents, whānau, Boards, principals, teachers and the school community the differences between and options for pursuing different types of disputes, and the mandatory reporting requirements.

The following scenario is based on an actual case referred to the Teaching Council, and provides an example of the range and complexity of the situations that arise, and involve the conduct or competence of a teacher but which may fall also within the definition of 'serious dispute' as currently proposed in the Bill.

Scenario 1

This is an example where, at first reading, the issue relates to a staff member and a student and does not include a teacher. However, it becomes apparent that the actions (or non-actions) of a teacher has significant impacts which amount to serious misconduct.

The conduct related to Teacher Y's handling of a complaint about an inappropriate relationship between a staff member (not a teacher) and a student. It was alleged that teacher Y failed to undertake a disciplinary investigation after a complaint that a staff member was engaging in an inappropriate relationship with a Year 11 student (Student A), including exchanging inappropriate text messages and giving the student a gift; used a restorative justice process to respond to the complaint; and failed to promote the physical, emotional, social, intellectual and spiritual wellbeing of the student.

The Tribunal found serious misconduct and that there was not, and should have been, a disciplinary investigation initiated, at the very least, in accordance with the School's disciplinary policy. The Tribunal stated that while they were not suggesting that mediation would never be an appropriate means by which to resolve an issue, it is "incumbent upon principals and [Boards] to first turn their minds to their existing (and standard) disciplinary policy and procedures". The Tribunal found a reasonable principal in the respondent's shoes would have carefully assessed whether it was appropriate to depart from the procedures set out in the School's disciplinary policy, particularly when an expert's advice was that the Board should be informed and procedures should be followed, and where the School did not have a policy that mandated the use of restorative justice to address a complaint about something as serious as an inappropriate relationship.

The Tribunal found cancellation would be disproportionate and imposed censure and conditions requiring the appointment of a mentor and disclosure of the decision to employers. Non-publication orders were made relating to the respondent, the student, the School, and the staff member. The respondent appealed the Tribunal's decision to the District Court, and then the Court of Appeal. The appeals were both dismissed.

The Bill's Explanatory Notes state that "panels will resolve disputes by mediation and determination and can make recommendations and, with the prior consent of both parties, binding decisions (the latter can be enforced by the parties through the courts)". Binding decisions may uphold, reverse or modify the school's decision, and make related orders to give effect to those decisions. Mediated settlements and orders made through determination can be enforced by the parties through the courts. The Teaching Council is unsure how effective the dispute resolution process will be if parties are unable to reach a mediated settlement and do not consent to a binding decision. The Teaching Council supports early monitoring and evaluation of the dispute resolution panel process to identify if it is addressing the problems it seeks to resolve.

The Teaching Council also notes reference to the existing dispute resolution process within the early childhood education sector. If the proposed dispute resolution process is found to meet the needs of the



parties to a dispute, we suggest the current early childhood education dispute model is replaced with the new model. Having one dispute resolution process covering the early childhood, primary and secondary sectors would provide consistency and transparency for students and their whanau and ensure they know where to go.

The Teaching Council notes clause 607 provides for 'Regulations relating to dispute resolution panels' and especially 607 (d) 'providing for any matters contemplated by subpart 9 of Part 3, necessary for its administration, or necessary for giving it full effect'. The Teaching Council considers that regulations cannot be drafted until there is greater clarity about the intent and scope of the issues to be referred to the proposed dispute resolution panel.

Recommendation: The Teaching Council recommends that further consideration is given to clauses 202 to 211 to clarify the matters that can and cannot be referred to a dispute resolution panel, and to clarify how matters that are the responsibility of the Teaching Council relating to teacher conduct or competence are kept separate from the proposed dispute resolution process.

Purpose of Teaching Council

Absence of purpose statement

Section 377 of the current Act describes the purpose of the Teaching Council but there is no equivalent statement in the Bill. The Ministry of Education has advised the omission of the purpose statement is an error. As the Teaching Council is not a Crown Entity like other agencies under the current Act and this Bill, the Teaching Council considers the purpose statement important for supporting and reinforcing the strategic direction and functions of the Teaching Council.

Recommendation: The Teaching Council recommends that immediately prior to clause 451 "Functions of the Teaching Council", the following clause (see underlined text) is re-inserted:

(clause number) **Purpose of the Teaching Council**

The 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 and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.

Setting Teaching Council fees

Clause 452 - Powers of Teaching Council

Subpart 4 'Teaching Council' clause 452 'Powers of Teaching Council' allows the Teaching Council, by notice in the *Gazette*, to fix fees for a range of goods and services such as fees for registration, limited authorities to teach, practising certificates, provision of professional leadership and costs relating to performing disciplinary functions.

The Teaching Council is currently consulting with its membership about increases to fees which have not been changed for 10 years. Government funding for the Teaching Council ends on 30 June 2020, from which point we are expected to achieve financial sustainability in performing our statutory functions by generating non-government revenue to cover all our costs. No final decision on an increase will be made until teachers have been consulted and their views considered, consistent with our statutory obligations. Those statutory obligations arise from clause 451 (2) which states that: "when performing its functions and exercising its powers, the Teaching Council must act in accordance with the rules of natural justice".

The Auditor-General's 'Good Practice Guide - Charging fees for public sector goods and services' (*Good Practice Guide*) outlines principles for setting fees. The Auditor-General 'usually expect(s) a public entity to



disclose its costs and charging practices to give the public an opportunity to comment on and question them⁶. The *Good Practice Guide* further details expectations around consultation:

'For the consultation to be effective, the public - with an emphasis on current or potential consumers - should be provided with enough information to understand the policies and the underlying cost data from which the fees have been determined. The consultation process should allow enough time to enable genuine and considered feedback, and be more than mere prior notification. The feedback obtained from the consultation should be considered by the public entity with an open mind before final decisions on charges are made.'⁷

The Good Practice Guidelines also recommend that fees are reviewed regularly to ensure fees remain appropriate and suggests a review takes place at least every three years.

'The appropriate timing for the reviews will need to be determined by the public entity, considering the particular circumstances and changes in costs and demand. The entity should also take into account the costs involved in the review itself.'⁸

Under clause 452 (2) (c) the *Gazette* notice fixing fees is a disallowable instrument which means that, if a person submits a complaint about a fee-setting notice issued by the Teaching Council, it may be reviewed by the Regulations Review Committee.

With a membership comprising over 100,000 teachers, the consultation process is a significant undertaking for the Teaching Council. The consultation process is expected to generate a significant amount of feedback which is being gathered using a survey tool. Full analysis of the feedback will be undertaken for the Teaching Council's governing body to consider before a final decision is made.

The Teaching Council fully accepts the need to review fees regularly and appreciates that setting fees that are to come into effect in future years will necessarily be based on projected costs and therefore involve uncertainty. We understand why there is reluctance to support legislative approaches that fix fees for future years based on projections of future costs, or proposed increases in future years to be fixed and gazetted in advance.

The Teaching Council has taken into account, based on the Auditor-General's recommendations, the timing of reviews (suggested at least every three years) and the costs of undertaking reviews.

The preference of the Teaching Council is to apply a full review and consultation every three years, with an inflation adjustment applied annually to the two years in-between. The fees would be adjusted according to the movement of published price index data for the previous 12 months. The annual adjustment to the fees is therefore not a projection but based on the actual inflation adjustment for the 12-month period immediately prior. In order to adjust fees from 1 July each year, the relevant inflation index data for the 12 months ending either 31 December or 31 March prior would need to be used. This would provide time to access the published inflation index data, publish a *Gazette* notice, advise members, and apply the adjusted fees throughout the Teaching Council's policies, procedures and systems.

The inflation adjustment can be based on an appropriate mix of relevant inflation index data. Applying a model such as this would provide members with knowledge in advance of how the fees will be set but the *Gazette* notice is issued only at the time the fees take effect. The inflation index adjustment would apply only for two years before a full review and consultation process is repeated.

The Teaching Council understands this is an approach that is not currently applied in legislation relating to the setting of fees. The Teaching Council has considered the cost of undertaking full fee reviews every year. The Teaching Council is keen to investigate the available options for providing certainty to members about the basis for any fee adjustment, for ensuring any fee adjustment is based on published relevant inflation index data, for meeting the requirement for *Gazette* notices to be published at the time of the

⁶ Charging fees for public sector goods and services', Contoller and Auditor-General, June 2008, page 13

⁷ Ibid, page 13

⁸ Ibid, page 12



fee adjustment, and for a full review and consultation process to be undertaken every three years in accordance with the Auditor-General's recommendations.

Recommendation: The Teaching Council recommends consideration is given under clause 452 to how legislation may enable the Teaching Council to apply published inflation index adjustments to fees on an annual basis in-between full reviews and consultations of fees undertaken every three years, or similar models.

Appointment eligibility criteria for principals

Clause 584 - Minister must issue eligibility criteria relating to appointment of principals

The Teaching Council notes in the Bill's Explanatory Note the intent to issue minimum eligibility criteria for appointments to school principal roles 'to help strengthen leadership in the schooling system'.

In 2018 the Teaching Council launched, with the Minister's support, the Leadership Strategy for the Teaching Profession of Aotearoa New Zealand | Te Rautaki Kaihautū mō te Umanga Whakaakoranga o Aotearoa (the *Leadership Strategy*) and the Educational Leadership Capability Framework (the *Capability Framework*). These were developed through an intensive two-year research and consultation process led by the Teaching Council that included academics, representative bodies, key Government agencies involved in the education sector and the profession itself.

The Regulatory Impact Assessment discusses the *Leadership Strategy* and *Capabilities Framework* for leaders and states '... but (the strategy or framework) does not mandate any specific capabilities for school leaders'.⁹ The current *Capability Framework* has been designed for three leadership spheres - 1) leading organisations, 2) leading teams, and 3) expert teacher, leadership of curriculum or initiative. The 'leading organisations' sphere is designed to include early childhood education settings and schools. The Teaching Council believes the *Leadership Strategy* and *Capability Framework* provide foundational material for developing eligibility appointment criteria for principals that ensures a common language and framework continues to be applied across the profession.

The report 'Reform of the Tomorrow's School system' states:

'The Government intends to invite the Teaching Council to establish its activities in this area as a Leadership Centre. Our intention is that the Teaching Council will continue to provide leadership to teachers and direction for the education profession, including as the 'standard setter' for the teaching profession, and setting an overall strategy for the profession.'¹⁰

Recommendation: The Teaching Council **endorses** the intent to establish the Leadership Centre within the Teaching Council.

Recommendation: The Teaching Council **recommends** the development of minimum eligibility criteria for appointment to school principal roles under clause 584 reflect the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa*, and the *Leadership Strategy* and the *Capability Framework*, which have been developed for and by the teaching profession, to ensure a common language and framework relating to standards and leadership continues to be applied across the profession.

Complaints Assessment Committee

Clause 469 - Powers of the Complaints Assessment Committee

Section 401 (2) of the current Act has been split into two sub-clauses in the Bill - clause 469 (2) and (3). The numeric change seems unnecessary. The section relates to the powers of the Complaints Assessment

⁹ Impact Summary: Principal Appointment Eligibility Criteria, Ministry of Education, 31 October 2019, page 3

¹⁰ Supporting all schools to succeed: reform of the Tomorrow's schools system', Ministry of Education, November 2019, page 16



Committee and is set out in a similar manner to section 404 of the current Act or clause 472 of the Bill – Powers of Disciplinary Tribunal.

The wording ‘Following an investigation, the Complaints Assessment Committee may do 1 or more of the following’ is required before the wording ‘if the Complaints Assessment Committee makes a finding of misconduct that is not serious misconduct...’ By splitting the existing sub-clause in two, the link between an investigation being required prior to the finding of misconduct is removed.

Clause 469 (4) has had the term ‘at any time’ deleted. The inclusion of this term in the current Act allows the Complaints Assessment Committee to refer a matter to the Disciplinary Tribunal for a hearing at any time, not just following an investigation. The original wording is preferred.

Recommendation: The Teaching Council recommends sub-clause 469 (3) is included in sub-clause 469 (2) as sub-clause (d) as per the current wording and structure of section 401 of the current Act, with consequential changes to the numbers of the following sub-clauses.

Recommendation: The Teaching Council recommends the term ‘at any time’ is retained in clause 469 (4) to allow the Complaints Assessment Committee to refer a matter to the Disciplinary Tribunal for a hearing at any time, not just following an investigation.

Disciplinary Tribunal

Clause 476 - reference to chairperson of Disciplinary Tribunal

The Teaching Council notes clause 476 of the Bill relating to appeals from decisions of disciplinary bodies has added a new reference to the chairperson of the Disciplinary Tribunal in clauses 476 (1) and 476 (2).

The *Teaching Council Rules 2016* state under section 54 (4) about the Chairperson of the Disciplinary Tribunal:

(2) The Teaching 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.’

The Teaching Council considers the inclusion of ‘chairperson’ to be inconsistent with the way appeals against other decisions of bodies are described – for example appeals against decisions by the Teaching Council’s Competence Authority and the NZQA. Updating the clause to reflect the provisions of the *Teaching Council Rules* relating to deputy chairpersons to perform all the functions and exercise all the powers of a chairperson would complicate the clause unnecessarily.

Recommendation: The Teaching Council recommends the reference to ‘the chairperson or’ is deleted from clauses 476 (1) and (2).

Voluntary deregistration

Clause 7 of Schedule 3 - Voluntary deregistration

Section 358 (b) of the current Act requires the Teaching Council to deregister a person, upon written request from that person, if satisfied the ‘person is not the subject of an investigation under Part 32’. Part 32 relates to the Teaching Council and includes provisions relating to mandatory reporting, disciplinary functions and review of competence.



Clause 7 of Schedule 3 of the Bill has the same requirement relating to the Teaching Council being satisfied a person is not the subject of an investigation, but it does not limit the investigation to the area of the Teaching Council's responsibilities:

'(b) the Teaching Council is satisfied that the person is not the subject of an investigation.'

The removal of the reference to the section of the Bill detailing the Teaching Council's functions relating to mandatory reporting, disciplinary functions and review of competency, means an investigation is not limited. This will oblige the Teaching Council to consider investigations undertaken by third parties such as a school or Police which is not within the Teaching Council's current mandate.

Recommendation: The Teaching Council recommends clause 7 (b) of Schedule 3 is amended to limit investigations to those conducted by the Teaching Council (see underlined text) as follows:

(b) the Teaching Council is satisfied that the person is not the subject of an investigation under Part 5 subpart 4.

Principals required to hold practising certificate

Clause 124 - Boards may appoint principal

The Bill (nor the current Act) does not explicitly state that a principal must be a registered teacher or hold a practising certificate, although this can be confirmed by analysing the following definitions and clauses of the Bill:

- a teaching position means a position held by a professional leader (clause 10 (1) definition)
- a professional leader includes a principal (clause 10 (1) definition)
- an employer cannot employ a person in a teaching position (*ie a professional leader, which includes a principal*) who does not hold a practising certificate (clauses 88 (2) and 89 (3)).
- a practising certificate must show that a teacher is registered (clause 10 (3) of Schedule 3).

It is recognised within the profession that a principal must be a registered teacher and this requirement is reflected in the policies and practices of the Teaching Council and other education agencies. The Teaching Council notes the Regulatory Impact Assessment on principal appointment eligibility criteria confirms '...the Education Act 1989 requirement that the person appointed as a principal is a registered teacher and holds a current practising certificate'¹¹.

Recommendation: The Teaching Council recommends the legislation explicitly states that a principal must hold a practising certificate by adding a new subclause (4) under clause 124 (see underlined text) as follows:

124 Boards may appoint principal

(4) A principal appointed by a board must hold a current practising certificate.

Appeals from decisions

Clauses 5 and 19 of Schedule 3

Reviewing clause 19 of Schedule 3 has made the Teaching Council aware that section 369 of the current Act may refer to incorrect sections. Further review of the appeal provisions indicates there appear to be inconsistencies in the grounds on which an appeal may be based in relation to registration, practising certificates and limited authorities to teach.

¹¹ 'Impact Summary: Principal Appointment Eligibility Criteria', Ministry of Education, 31 October 2019, page 2



369 Appeals from decisions (*in relation to limited authority to teach*)

- (1) Any person who is dissatisfied with all or any part of a decision of the Teaching Council under **section 368** (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teaching Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court.

Section 368 is the provision on 'Determining character or fitness to hold limited authority to teach' and describes how the Teaching Council takes into account and gives due weight to good character and fitness to teach.

The Teaching Council believes section 369 should more accurately refer to the ability to appeal decisions in sections 366 (about the decision to grant a limited authority to teach) and 367 (about the cancellation of a limited authority to teach).

A comparable appeal provision applies for decisions made regarding registration and practising certificates in section 356 –

356 Appeals from decisions of Teaching Council

- (1) A person who is dissatisfied with all or any part of a decision of the Teaching Council under **section 353, 357, or 361** (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Teaching Council or any longer period the court, on application made before or after the end of the period, allows, appeal to the District Court against the decision.

Section 353 refers to decisions regarding the granting of registration, section 357 to decisions regarding the cancellation of registration and section 361 to decisions regarding the granting of practising certificates. It is noted that section 362 refers to the decisions regarding cancellation of practising certificates, but this is not referenced in the appeal provisions under section 356.

Further, there is an equivalent provision in the registration provisions relating to determining good character and fitness to be a teacher in section 355 (equivalent to section 368, determining character or fitness), but this is not specified in section 369 as grounds for an appeal.

In the Bill, clause 5 of Schedule 3 states:

5 Appeals against decisions of Teaching Council

- (1) A person who is dissatisfied with all or any part of a decision of the Teaching Council under **clause 3, 6, or 10** (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Teaching Council or any longer period the court, on application made before or after the end of the period, allows, appeal to the District Court against the decision.

Clause 3 refers to determining whether training is satisfactory, clause 6 to cancellation of registration as a teacher, and clause 10 to issuing of practising certificates. The Teaching Council believes the clauses that should be referenced under clause 5 (1) are: clause 2 (registration of applicants as teachers), clause 6 (cancellation of registration as a teacher), and clause 10 (practising certificates).

Although not provided for in the current Act, the Teaching Council considers it is appropriate that clause 11 (about the cancellation of practising certificates) should also be included as a ground for an appeal.

In the Bill, clause 19 of Schedule 3 states:

19 Appeals from decisions (*in relation to limited authority to teach*)

- (1) Any person who is dissatisfied with all or any part of a decision of the Teaching Council under **clause 18** (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving



notice of the decision from the Teaching Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court.

Clause 18 refers to determining character or fitness to hold limited authority to teach. To be consistent, the Teaching Council believes the clauses that should be referenced under clause 19 (1) are: clause 16 (limited authority to teach) and clause 17 (cancellation of limited authority to teach).

Recommendation: The Teaching Council recommends clause 5 (1) of Schedule 3 relating to appeals from decisions of the Teaching Council is amended (see underlined and strikethrough text) as follows:

5 Appeals against decisions of Teaching Council

- (1) A person who is dissatisfied with all or any part of a decision of the Teaching Council under clause 2, 3, 6, 10 or 11 (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Teaching Council or any longer period the court, on application made before or after the end of the period, allows, appeal to the District Court against the decision.

Recommendation: The Teaching Council recommends clause 19 (1) of Schedule 3 relating to appeals from decisions of the Teaching Council is amended (see underlined and strikethrough text) as follows:

19 Appeals from decisions *(in relation to limited authority to teach)*

- (1) Any person who is dissatisfied with all or any part of a decision of the Teaching Council under clause 16, 18 or 17 (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teaching Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court.

Appeals to District Court

Clause 476 (4) - appeals from decisions of disciplinary bodies

Clause 478B (3) - appeals from decisions of Competence Authority

Clause 19 of Schedule 3 - appeals from decisions *on limited authority to teach*

The highlighted text below indicates areas of inconsistency within the Act and the Bill.

The wording of the current Act:

- Section 369 (2) relating to appeals from decisions on limited authority to teach states: "Section 356 (2) to (6) applies to every appeal under subsection (1) of this section as if it were an appeal under section 356 (1)."
- Section 409 (4) relating to appeals from decisions of disciplinary bodies states: "Section 356 (3) to (6) applies to every appeal under this section as if it were an appeal under section 356 (1)".
- Section 412A (4) relating to appeals from decisions of the Competence Authority states: "Section 356 (3) to (6) applies to every appeal under this section as if it were an appeal under section 356 (1)".

The wording proposed in the Bill:

- Clause 476 (4) relating to appeals from decisions of disciplinary bodies: "Clause 5 (3) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under section 476 (1)".
- Sub-clause 478B (3) relating to appeals from decisions of the Competence Authority adds sub-clause 5 (2): "Clause 5 (2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3".



- Schedule 3 Clause 19 (2) relating to appeals from decisions on limited authority to teach states: “Clause 5 (2) to (6) applies to every appeal under subclause (1) of this clause as if it were an appeal under clause 5 (1)”.

Section 356 (2) of the current Act and Clause 5 (2) under Schedule 3 of the Bill relates to the court hearing an appeal as soon as possible.

It appears there has been a drafting error that exists under the current Act as the Teaching Council believes sections 369 (2), 409 (4) and 412A (4) should all apply the same subclauses of section 356 (2) to (6). It appears this has been partially corrected in the Bill with the clause relating to appeals from decisions of the Competence Authority amended to include subclause (2) but not to the clause relating to appeals from decisions of disciplinary bodies which does not include subclause (2).

The title of the appeal provisions generally names the process which are subject to appeal, except for clause 19 of Schedule 3 relating to limited authority to teach.

Recommendation: The Teaching Council recommends clause 476 (4) relating to appeals from decisions of disciplinary bodies is amended (see underlined and strikethrough text) as follows:

476 (4) Clause 5, ~~(3)~~, (2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under ~~section 476 (1)~~ clause 5 (1) of Schedule 3”.

Recommendation: The Teaching Council recommends clause 19 of Schedule 3 relating to appeals from decisions about limited authorities to teach is amended (see underlined text) as follows:

19 Appeals from decisions about limited authority to teach

19 (2) Clause 5 (2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under clause 5 (1) of Schedule 3.

Definitions

Clause 10 (1) - Definition of ‘teacher’ and ‘authorised person’

The current Education Act 1989 and the Education and Training Bill 2019 both include the term ‘authorised person’ to cover different scenarios:

- persons authorised to enter and inspect early childhood education services and schools (clauses 589 to 593)
- persons granted an authority to inspect hostels (clauses 594 to 596)
- persons granted a limited authority to teach (clauses 14 to 22 of Schedule 3).

The definition of ‘teacher’ in both the Act and the Bill refer to an ‘authorised person’ but does not mention ‘limited authority to teach’.

For most of the sections and clauses relating to the limited authority to teach in both the Act and the Bill, the full term ‘limited authority to teach’ is used. In a small number of clauses of the Bill, the term ‘authorisation’ or ‘authorised’ is used.

For the purposes of clarity, the Teaching Council recommends that any reference to ‘authorised person’, ‘authorisation’ or ‘authorised’ in the Bill, when referring to a person granted a limited authority to teach, uses the full description of a limited authority to teach. This would require a change to the definition of ‘teacher’ and changes to a small number of clauses within the Bill.

Appendix 2 sets out the clauses that contain the terms ‘authorised person’, ‘authorisation’ or ‘authorised’ that should be amended to refer to the limited authority to teach.



Recommendation: The Teaching Council recommends the definition of ‘teacher’, and other applicable clauses, are amended (see underlined text) as follows:

teacher includes—

- (a) a registered teacher; and
- (b) a former registered teacher; and
- (c) a person granted a limited authority to teach; and
- (d) a person previously granted a limited authority to teach.

There are consequential changes to other clauses and sub-clauses of the Bill if the term ‘limited authority to teach’ is consistently applied. These are attached as Appendix 2.

Clause 10 (1) - Definition of ‘registered school’

Under clause 10 (1):

‘Registered school means a State school, a State integrated school, or a private school’.

‘School’ is not defined.

Throughout the Bill reference is made to ‘schools’ and ‘registered schools’. Examples include:

- clause 94 - Prohibition of corporal punishment and seclusion in schools
- clause 95 - Limits on use of physical force at registered schools.

The Teaching Council is not clear about the rationale for distinguishing between ‘schools’ and ‘registered schools’, especially in situations such as those applying to clauses 94 and 95 which we assume are both meant to be applied equally to the same group of schools.

Recommendation: The Teaching Council recommends consistency in the application of the terms ‘schools’ and ‘registered schools’ throughout the Bill and particularly in relation to clauses 94 and 95.

Clause 10 (1) - Definition of ‘general education system’

The Teaching Council notes the term ‘general education system’ has been removed. The current Act defines ‘general education system’ as:

‘General education system means the system of education provided in -

- (a) registered schools; and
- (b) early childhood services; and
- (c) other educational institutions and services established or deemed to have been established, or provided for, under this Act or the Education Act 1964.’

The term ‘general education system’ is a key definition applied by the Teaching Council to several policies, including the ‘Requirements for teacher registration, practising certificates and limited authority to teach’ policy.

The term ‘general education system’ has been removed from the definition of ‘satisfactory recent teaching experience’ in clause 12 (2) of Schedule 3 of the Bill and replaced with ‘a school, early childhood service, or other educational institution in New Zealand’.

The term has also been removed from the definition of ‘teaching position’ in clause 10 (1) and replaced with ‘a registered school or licensed early childhood care service’. The term ‘other educational institution’ has not been included as it has in clause 12 (2) of Schedule 3, yet subclause (c) of the ‘teaching position’ definition still mentions ‘...the professional leader of an ... other educational institution’.



It appears there is some inconsistency with terminology, with 'school' being referred to in clause 12 (2) of Schedule 3 but 'registered school' used in the definition of 'teaching position' in clause 10 (1). There is also inconsistency in the terms referring to the early childhood sector.

Recommendation: It is the Teaching Council's preference that the definition of 'general education system' is retained, but if not, the replacement wording needs to be consistent and refer to 'other educational institutions'.

Clause 10 (1) - Definition of 'teaching position'

The Bill defines 'teaching position' as:

teaching position means a position (in) a registered school or licensed early childhood care service that—

- (a) requires its holder to instruct students; or
- (b) is the professional leader, deputy professional leader (however described), or assistant principal of a school; or
- (c) is the professional leader of an early childhood service or other educational institution.

Under clauses 88 and 89, the Bill describes the restrictions that apply to the appointment or continued employment of persons to a teaching position. These restrictions apply to appointing or continuing to employ a person to a teaching position whose:

- registration has been cancelled
- practising certificate has been suspended or cancelled
- limited authority to teach has been cancelled or suspended.

Under the current Act (section 348) and under clause 10 (9) (b) of Schedule 3 of the Bill relating to satisfactory recent teacher training, the Teaching Council can apply discretion in recognising what is a teaching position:

'10 (9) (b) ... in a position (or positions) that (or each of which) in the Teaching Council's opinion was equivalent to a teaching position in an educational institution in New Zealand approved by the Teaching Council for the purposes of this schedule'.

It is critical there is clarity around what a teaching position is to ensure employers know when to apply restrictions and so the Teaching Council can consider what positions may be equivalent to teaching positions. The requirement for a teaching position to be held by a person who is a registered teacher with a current practising certificate or a current limited authority to teach is not explicit in the definition as currently worded.

Recommendation: The Teaching Council recommends a new sub-clause is included in the definition of 'teaching position' under clause 10 (1) (see underlined text) as follows:

teaching position means a position in a registered school or licensed early childhood care service or other educational institution that—

- (a) requires the holder to be a registered teacher and to hold a current practising certificate or a current limited authority to teach; and'

(The proposed sub-clauses are retained and re-numbered.)



Clause 10 (1) - Definition of 'principal'

Under clause 10 (1):

principal means the chief executive of a State school and, in relation to a school, a person enrolled at the school, or the enrolment of a person at a school, means the principal of the school; and except in section 115 (1) (c) includes an acting principal

The Teaching Council believes the definition relating to the chief executive of a State school is clear. However, we believe it is desirable for the definition to be clearer in the way it describes a principal in relation to a school, a person enrolled at the school or the enrolment of a person at a school.

Recommendation: The Teaching Council recommends the definition of 'principal' is re-drafted to provide greater clarity.

Right to education

The Teaching Council notes in the Bill's Explanatory Note the intent to clarify the right to a free State education, to help students and whanau understand and realise their right to education, and to improve New Zealand's compliance with international related obligations.

Clause 5 - Minister may issue statement of national education and learning priorities

Reference to United Nations charters and declarations

The Teaching Council **supports** the intent of clause 5 for the Minister to issue a statement of national education and learning priorities for early childhood education, primary education, and secondary education, and particularly endorses the objectives set out in sub-clause 5 (4).

The Teaching Council notes the Children's Act 2014 requires under section 6C (b) that the responsible Minister, when adopting or changing a strategy for improving children's well-being, must have regard to specified child-related principles which include:

"children's rights in New Zealand law (including children's rights that are derived from the UNCROC (United Nations Convention on the Rights of the Child) or the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities)) must be respected and upheld."

The UNCROC includes among 54 Articles:

- Article 12 - about the rights of a child who is capable of forming his or her own views to express those views freely in all matters affecting the child, and the views of the child being given due weight in accordance with the age and maturity of the child
- Article 23 - about the rights of a mentally or physically disabled child to enjoy a full and decent life, and have access to and receive a range of services, including education, training and preparation for employment, conducive to the child achieving the fullest possible social integration and individual development
- Article 28 - about the rights of children to education
- Article 29 - about directing education towards the development of the child to their fullest potential; to respect human rights, their parents, their own cultural identity and the natural environment; and preparing the child for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and
- Article 30 - about the right of a child of an ethnic, religious or linguistic minority or of indigenous origin to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.



The UNCRPD includes among 50 Articles:

- Article 7 - about ensuring the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children
- Article 8 - about raising awareness throughout society, including fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities
- Article 17 - about every person with disabilities having a right to respect for his or her physical and mental integrity on an equal basis with others
- Article 21 - about persons with disabilities exercising the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others
- Article 24 - about the right of persons with disabilities to access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.

The Children's Act does not reference the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). New Zealand endorsed this declaration in April 2010. The UNDRIP includes among 46 Articles:

- Article 14 - about the right to establish and control educational systems and institutions providing education in their own language, and indigenous children having the right to all levels and forms of education of the State without discrimination
- Article 22 - about particular attention being paid to the rights and special needs of specified groups within indigenous peoples, including children.

The Teaching Council believes it is important to have a similar reference to UNCROC and UNCRPD in this Bill to demonstrate New Zealand's commitment to both Conventions in their entirety and as they relate to the education of children. In addition, it is recommended reference is also made to UNDRIP. The inclusion of these three documents ensures Ministers are considering New Zealand's adoption of comprehensive human rights treaties that enshrine specific children's rights in international law in the development and promulgation of strategies and statements relating to children in this country, including children with disabilities and indigenous children. Their inclusion would allow a 'human rights lens' to be considered across the Education Work Programme and is consistent with provisions in the current Children's Act 2014.

Recommendation: The Teaching Council recommends clause 5 (3) is amended to include an additional sub-clause (see underlined text) as follows:

(3) A statement issued under subsection (1)–

- e) must have regard to respecting and upholding children's rights in New Zealand law (including children's rights that are derived from the UNCROC (United Nations Convention on the Rights of the Child) or the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities) or the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples)).

Clauses 32 to 35 - relating to right to and requirements for attendance

The Teaching Council **supports** the intent to strengthen the right to education by confirming the right to education and compulsion to attend education at the primary and secondary level for children between the ages of 6 and 16, through the following clauses:

- Clause 32 - Right to free enrolment and free education at State schools
- Clause 33 - Students with special educational needs have the same rights to education at State schools as others
- Clause 34 - Domestic students aged between 6 and 16 years must be enrolled at a registered school
- Clause 35 - Students of registered schools required to attend whenever schools are open



Governing body of Teaching Council

Clause 448 - Composition of Teaching Council

The only references to the governing body of the Teaching Council in the current Act are in Schedule 21 in sections 3 (4) (a) (relating to removal from office) and 10 (4) (a) (relating to conflicts of interest) where the term 'board' is used. The Bill in clauses 3 and 12 of Schedule 3 replaces the term 'board' with 'Teaching Council'.

It is noted that other organisations within the Bill - such as Education New Zealand, NZQA (New Zealand Qualifications Authority) and TEC (Tertiary Education Commission) - all have references to boards.

To clarify the boundaries between governance and management, the Teaching Council recommends clause 448 relating to the composition of the Teaching Council is expanded to include the words 'Governing Council'.

Recommendation: The Teaching Council recommends clause 448, and other applicable clauses, are amended to include the words 'Governing Council' (see underlined text) as follows:

448 Composition of Teaching Council Governing Council

- (1) The Teaching Council Governing Council comprises 13 members as follows:
 - (a) 6 members appointed by the Minister in accordance with section 449:
 - (b) 7 elected members, being—
 - (i) to (vii) *unchanged*
- (2) *unchanged*
- (3) *unchanged*
- (4) The elected members of the Teaching Council Governing Council must be nominated and elected in accordance with rules made under section 458.

There are consequential changes to other clauses and sub-clauses of the Bill if the term 'Governing Council' is applied. These are attached as Appendix 3.

Placement of Police Vetting clause

Clause 13 of Schedule 18 - Teaching Council must co-ordinate Police vetting

Schedule 18 comprises clauses relating to the operation of the governing body of the Teaching Council. Clause 13 relates to the coordination of Police vetting.

Under the current Act, section 413 about Police vetting sits in Part 32 in the main Act following the provisions relating to mandatory reporting, disciplinary functions and review of competence. As a key function of the Teaching Council, we believe police vetting should be included under Subpart 4 of the Bill along with other Teaching Council functions such as mandatory reporting, disciplinary functions and review of competence.

Recommendation: The Teaching Council recommends that clause 13 of Schedule 18 "Teaching Council must coordinate Police vetting", is shifted into the main Bill under Subpart 4 'Teaching Council'.

Labelling elected members to Teaching Council as representatives

Clause 448 - Composition of Teaching Council

Clause 448 (1) (b) describes each of the 7 elected members as 'representing' specified education sectors.



The Teaching Council has previously recommended deleting the word 'representing' to avoid risks in creating an environment in which members of the Teaching Council governing body are focused on advocating on behalf of their own sector and prioritising its interests, rather than acting in the interests of the profession as a whole¹².

We note the State Services Commission Guidelines for the appointment of boards recommend that effective induction programmes cover briefings on the Crown entity environment and the expectations of Ministers, including "the need for board members to recognise that they should not let advocacy of particular interests override or undermine governance responsibilities or duties as a member"¹³.

Recommendation: The Teaching Council recommends that sub-clause 448 (1) (b) is amended by removing the words 'representing the' (see strike-through and underlined text) as follows:

- (b) 7 elected members, being-
- (i) 1 ~~teacher representing the~~ early childhood education sector teacher, elected by teachers from that sector; and
 - (ii) 1 ~~teacher representing the~~ primary education sector teacher, elected by teachers from that sector; and
 - (i) 1 ~~teacher representing the~~ secondary education sector teacher, elected by teachers from that sector; and
 - (ii) 1 teacher educator, elected by registered teachers working in the fields of initial and ongoing teacher education; and
 - (iii) 1 ~~principal representing the~~ primary education sector principal, elected by principals from that sector; and
 - (iv) 1 ~~principal representing the~~ secondary education sector principal, elected by principals from that sector; and
 - (v) 1 early childhood education service leader, ~~representing leadership in the early childhood education sector~~, elected by leaders from that sector.

Training Teaching Council members

Clause 448 - Composition of Teaching Council

Clause 448 (2) requires that each elected member must be a registered teacher holding a current practising certificate, except for the teacher educator position.

Clause 449 "Ministerial appointment as member" under sub-clause (4) (b) requires the Minister, when considering whether to appoint a member to the Teaching Council governing body, to have regard to the collective skills of the Teaching Council governing body 'including (but not limited to) the candidate's knowledge and experience in any of the following areas:

- education
- governance
- leadership experience and skills
- financial skills
- understanding of the partnership principles of Te Tiriti o Waitangi.'

The Teaching Council considers there cannot be criteria imposed on elected members, but we believe all members of the Teaching Council's governing body should have some experience in these important skill areas, to make sure they are able to participate in the Teaching Council's governing body effectively and constructively¹⁴. We have previously recommended a legislative requirement for members to receive some

¹² Education Council Submission on the Education (Teaching Council of Aotearoa) Amendment Bill, 29 March 2018, page 6

¹³ State Services Commission Board Appointment and Induction Guidelines, updated October 2015, page 41

¹⁴ Education Council Submission on the Education (Teaching Council of Aotearoa) Amendment Bill, 29 March 2018, page 2



training once they are elected, like the provision for the training of elected members provided for in the legislation governing District Health Boards¹⁵.

Recommendation: The Teaching Council recommends that the following sub-clause is added to clause 448 (see underlined text) as follows:

(8) Training for elected members

If any Teaching Council member or members are not familiar with the obligations and duties of a member of a board, or with the issues associated with education, governance, leadership, financial skills and Treaty of Waitangi, then the Teaching Council must fund and to the extent practicable, ensure members undertake and complete training approved by the Chairperson of the Teaching Council relating to those matters the member or members are not familiar with.

Applying on forms

Schedule 3 of Clause 15 - Applications for limited authority to teach

The Teaching Council notes that in relation to applications for registration as a teacher, 'on a form provided by the Teaching Council for the purpose and signed by the applicant' which exists in section 352 of the current Act has been deleted in Schedule 3 clause 1 of the Bill.

The Teaching Council **supports** this deletion and notes that a form is still mentioned in Schedule 3 under clause 15 relating to applications for limited authority to teach - this should also be deleted.

Recommendation: The Teaching Council recommends clause 15 of Schedule 3 of the Bill is amended (see strike-through text) as follows:

- 15 Applications for limited authority to teach
Any person may apply to the Teaching Council, ~~on a form provided by it for the purpose,~~ for a limited authority to teach.

Performance of teachers

566 - Performance of teachers

The Teaching Council supports the comments made by NZIE in their submission on this Bill, objecting to the retention of provisions empowering the Secretary to prescribe matters that employers are to take into account in assessing the performance of teachers. We refer also to our earlier comments about the importance of a common language and framework relating to standards and leadership continuing to be applied across the teaching profession.

¹⁵ New Zealand Public Health and Disability Act 2000, Schedule 3: clause 5.



Appendix 1

Recommendations and comments on clauses in the order they appear in the Bill

Part 1 - Preliminary provisions

Clause 5 - Minister may issue statement of national education and learning priorities

Recommendation: The Teaching Council recommends clause 5 (3) is amended to include an additional sub-clause (see underlined text) as follows:

(3) A statement issued under subsection (1)–

- e) must have regard to respecting and upholding children’s rights in New Zealand law (including children’s rights that are derived from the UNCROC (United Nations Convention on the Rights of the Child) or the UNCRPD (United Nations Convention on the Rights of Persons with Disabilities) or the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples)).

Clause 10 - Interpretation

Clause 10 (1) - Definition of ‘general education system’

Recommendation: It is the Teaching Council’s preference that the definition of ‘general education system’ is retained, but if not, the replacement wording needs to be consistent and refer to ‘other educational institutions’.

Clause 10 (1) - Definition of ‘registered school’

Recommendation: The Teaching Council recommends consistency in the application of the terms ‘schools’ and ‘registered schools’ throughout the Bill and particularly in relation to clauses 94 and 95.

Clause 10 (1) - Definition of ‘principal’

Recommendation: The Teaching Council recommends the definition of ‘principal’ is re-drafted to provide greater clarity.

Clause 10 (1) - Definition of ‘teacher’ and ‘authorised person’

Recommendation: The Teaching Council recommends the definition of ‘teacher’, and other applicable clauses, are amended (see underlined text) as follows:

teacher includes–

- (a) a registered teacher; and
- (b) a former registered teacher; and
- (c) a person granted a limited authority to teach; and
- (d) a person previously granted a limited authority to teach.

There are consequential changes to other clauses and sub-clauses of the Bill if the term ‘limited authority to teach’ is consistently applied. These are attached as **Appendix 2**.



Clause 10 (1) - Definition of 'teaching position'

Recommendation: The Teaching Council recommends a new sub-clause is included in the definition of 'teaching position' under clause 10 (1) (see underlined text) as follows:

teaching position means a position in a registered school or licensed early childhood care service or other educational institution that—

- (a) requires the holder to be a registered teacher and to hold a current practising certificate or a current limited authority to teach; and

(The proposed sub-clauses are retained and re-numbered.)

Part 3 - Primary and secondary education - Other restrictions and attendance

Clause 96 - Rules on use of physical force at registered schools

Recommendation: The Teaching Council recommends sub-clause 96 (1) is amended (see underlined text) to include the involvement of the Teaching Council as follows:

- 96 (1) The Secretary, in consultation with the Teaching Council, must make rules prescribing the practice and procedure to be followed by employers, principals, teachers, and authorised staff members relating to the use of physical force at registered schools.

Clause 97 - Guidelines on use of physical force at registered schools

Recommendation: The Teaching Council recommends a new sub-clause (see underlined text) is included for the involvement of the Teaching Council as follows:

- 97 (1) The Secretary must, in consultation with the Teaching Council, develop guidelines on the use of physical force at registered schools.
- 97 (2) The Secretary must make reasonable efforts to consult with the disability community in the development of the guidelines.

(The proposed sub-clauses relating to guidelines are retained and re-numbered.)

Part 3 - Primary and secondary education - Subpart 5 - Administration of state schools - Functions and powers of boards

Clause 124 - Boards may appoint principal

Recommendation: The Teaching Council recommends the legislation explicitly states that a principal must hold a practising certificate by adding a new subclause (4) under clause 124 (see underlined text) as follows:

124 Boards may appoint principal

- (4) A principal appointed by a board must hold a current practising certificate.

Part 3 - Primary and secondary education - Subpart 9 - Resolving serious disputes

Clauses 202 to 211 - Resolving serious disputes

Recommendation: The Teaching Council recommends that further consideration is given to clauses 202 to 211 to clarify the matters that can and cannot be referred to a dispute resolution panel, and to clarify how matters that are the responsibility of the Teaching Council relating to teacher conduct, competence and impairment are kept separate from the proposed dispute resolution process.



Part 5 – Performance, funding and support – Subpart 4 – Teaching Council

Clause 448 – Composition of Teaching Council

Recommendation: The Teaching Council recommends clause 448, and other applicable clauses, are amended to include the words ‘Governing Council’ (see underlined text) as follows:

448 Composition of Teaching Council Governing Council

(1) The Teaching Council Governing Council comprises 13 members as follows:

(a) 6 members appointed by the Minister in accordance with section 449:

(b) 7 elected members, being—

(i) to (vii) *unchanged*

(2) *unchanged*

(3) *unchanged*

(4) The elected members of the Teaching Council Governing Council must be nominated and elected in accordance with rules made under section 458.

There are consequential changes to other clauses and sub-clauses of the Bill if the term ‘Governing Council’ is applied. These are attached as **Appendix 3**.

Recommendation: The Teaching Council recommends that sub-clause 448 (1) (b) is amended by removing the words ‘representing the’ (see strike-through and underlined text) as follows:

(b) 7 elected members, being-

(i) 1 ~~teacher representing the~~ early childhood education sector teacher, elected by teachers from that sector; and

(ii) 1 ~~teacher representing the~~ primary education sector teacher, elected by teachers from that sector; and

(i) 1 ~~teacher representing the~~ secondary education sector teacher, elected by teachers from that sector; and

(ii) 1 teacher educator, elected by registered teachers working in the fields of initial and ongoing teacher education; and

(iii) 1 ~~principal representing the~~ primary education sector principal, elected by principals from that sector; and

(iv) 1 ~~principal representing the~~ secondary education sector principal, elected by principals from that sector; and

(v) 1 early childhood education service leader, ~~representing leadership in the early childhood education sector~~, elected by leaders from that sector.

Recommendation: The Teaching Council recommends that the following sub-clause is added to clause 448 (see underlined text) as follows:

(8) **Training for elected members**

If any Teaching Council member or members are not familiar with the obligations and duties of a member of a board, or with the issues associated with education, governance, leadership, financial skills and Treaty of Waitangi, then the Teaching Council must fund and to the extent practicable, ensure members undertake and complete training approved by the Chairperson of the Teaching Council relating to those matters the member or members are not familiar with.

New clause – Purpose of Teaching Council (immediately prior to clause 451)

Recommendation: The Teaching Council recommends that immediately prior to clause 451 “Functions of



the Teaching Council”, the following clause (see underlined text) is re-inserted:

(clause number) **Purpose of the Teaching Council**

The 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 and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.

Clause 452 - Powers of Teaching Council

Recommendation: The Teaching Council recommends consideration is given under clause 452 to how legislation may enable the Teaching Council to apply published inflation index adjustments to fees on an annual basis in-between full reviews and consultations of fees undertaken every three years, or similar models.

Clause 469 - Powers of the Complaints Assessment Committee

Recommendation: The Teaching Council recommends sub-clause 469 (3) is included in sub-clause 469 (2) as sub-clause (d) as per the current wording and structure of section 401 of the current Act, with consequential changes to the numbers of the following sub-clauses.

Recommendation: The Teaching Council recommends the term ‘at any time’ is retained in clause 469 (4) to allow the Complaints Assessment Committee to refer a matter to the Disciplinary Tribunal for a hearing at any time, not just following an investigation.

Clause 476 - reference to chairperson of Disciplinary Tribunal

Recommendation: The Teaching Council recommends the reference to ‘the chairperson or’ is deleted from clauses 476 (1) and (2).

Clause 476 (4) - appeals from decisions of disciplinary bodies

Recommendation: The Teaching Council recommends Clause 476 (4) relating to appeals from decisions of disciplinary bodies is amended (see underlined and strikethrough text) as follows:

476 (4) Clause 5 (2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under ~~section 476 (1)~~ clause 5 (1) of Schedule 3”.

Part 6 - Administration of education system - Subpart 4 - Employment matters - Employment of others

Clause 584 - Minister must issue eligibility criteria relating to appointment of principals

Recommendation: The Teaching Council **endorses** the intent to establish the Leadership Centre within the Teaching Council.

Recommendation: The Teaching Council **recommends** the development of minimum eligibility criteria for appointment to school principal roles under clause 584 reflect the *Code | Ngā Tikanga Matatika* and the *Standards | Ngā Paerewa*, and the Leadership Strategy and the Capability Framework, which have been developed for and by the teaching profession, to ensure a common language and framework relating to standards and leadership continues to be applied across the profession.

Schedule 3 - Teacher registration, practising certificates, and other matters

Clause 5 - Appeals against decisions of Teaching Council

Recommendation: The Teaching Council recommends clause 5 (1) of Schedule 3 relating to appeals from



decisions of the Teaching Council is amended (see underlined and strikethrough text) as follows:

- (1) A person who is dissatisfied with all or any part of a decision of the Teaching Council under clause 2, 3, 6, 10 or 11 (whether a decision to act or a decision to refuse to act) may, within 28 days after receiving notice of the decision from the Teaching Council or any longer period the court, on application made before or after the end of the period, allows, appeal to the District Court against the decision.

Clause 7 - Voluntary deregistration

Recommendation: The Teaching Council recommends clause 7 (b) of Schedule 3 is amended to limit investigations to those conducted by the Teaching Council (see underlined text) as follows:

- (b) the Teaching Council is satisfied that the person is not the subject of an investigation under Part 5 subpart 4.

Clause 15 - Applications for limited authority to teach

Recommendation: The Teaching Council recommends clause 15 of Schedule 3 of the Bill is amended (see strike-through text) as follows:

- 15 Applications for limited authority to teach
Any person may apply to the Teaching Council, ~~on a form provided by it for the purpose~~, for a limited authority to teach.

Clause 19 - Appeals from decisions *(in relation to limited authority to teach)*

Recommendation: The Teaching Council recommends clause 19 (1) of Schedule 3 relating to appeals from decisions of the Teaching Council related to limited authority to teach is amended (see underlined and strikethrough text) as follows:

- (1) Any person who is dissatisfied with all or any part of a decision of the Teaching Council under clause 16, 18 or 17 (whether a decision to act or a decision to refuse to act) may, within 28 days of receiving notice of the decision from the Teaching Council or any longer period the court (on application made before or after the end of the period) allows, appeal against the decision to the District Court.

Clause 19 - appeals from decisions (in relation to limited authority to teach)

Recommendation: The Teaching Council recommends clause 19 of Schedule 3 relating to appeals from decisions about limited authorities to teach is amended (see underlined text) as follows:

- 19 Appeals from decisions about limited authority to teach
19 (2) Clause 5 (2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under clause 5 (1) of Schedule 3.

Schedule 18 - Teaching Council

Clause 13 - Teaching Council must co-ordinate Police vetting

Recommendation: The Teaching Council recommends that clause 13 of Schedule 18 "Teaching Council must coordinate Police vetting", is shifted into the main Bill under Subpart 4 'Teaching Council'.



Appendix 2

Changes to ‘authorised person’, ‘authorisation’ and ‘authorised’

Recommendation: For the purposes of clarity, the Teaching Council recommends that any reference to ‘authorised person’, ‘authorisation’ or ‘authorised’ in the Bill, when referring to a person granted a limited authority to teach, uses the full description of a limited authority to teach.

This appendix sets out those clauses that would need to be amended if this proposed change is adopted. Deletions are struck-through and additions are underlined.

10 - Interpretation

Clause 10 (1) changed to:

teacher includes—

- (a) a registered teacher; and
- (b) a former registered teacher; and
- (c) ~~an authorised person~~ a person granted a limited authority to teach; and
- (d) a ~~former authorised person~~ previously granted a limited authority to teach.

Clause 10 (1) changed to:

employer in relation to a teacher or ~~authorised person~~ a person holding a limited authority to teach in a teaching position, means any one of the following who employs, or intends to employ, 1 or more teachers or ~~authorised persons~~ holding a limited authority to teach in a teaching position:

- (a) the board of a State school
- (b) the managers of a private school
- (c) the person or body that appoints staff at an early childhood education and care service
- (d) the Secretary, in the Secretary’s capacity as an employer under section 581.

Part 3 - Primary and secondary education / Subpart 3 - Teaching, learning, and well-being

88 - Restriction on appointment of teachers

(1) An employer may not appoint the following persons to a teaching position:

- (c) a person whose ~~authorisation~~ limited authority to teach has been cancelled and who has not since—
 - (i) been ~~authorised~~ granted an limited authority to teach again; or

89 - Restrictions on continued employment of teachers

(1) An employer may not continue to employ the following persons in a teaching position:

- (c) a person whose ~~authorisation~~ limited authority to teach has been cancelled and who has not since—
 - (i) been ~~authorised~~ granted an limited authority to teach again; or
 - (ii) been registered as a teacher:



(2) An employer may not continue to employ in a teaching position a person who holds neither a practising certificate nor an ~~authorisation~~ limited authority to teach if the person is not under the general supervision of a person who holds a practising certificate.

(3) An employer may not, in any calendar year, continue to employ a person who holds neither a practising certificate nor an ~~authorisation~~ limited authority to teach in any teaching position, if the sum of the following periods is not less than the period specified in subsection (4):...

92 - Further provisions relating to registration of teachers, practising certificates, and authorities to teach

92 - Further provisions relating to registration of teachers, practising certificates, and limited authorities to teach

The registration of teachers, the issue of practising certificates, and the grant of limited authorities to teach must be done in accordance with Schedule 3.

448 - Composition of Teaching Council

- (6) The electors specified in subsection (1)(b)(i), (ii), (iii), (v), and (vi) must be—
- (a) registered teachers with current practising certificates; or
 - (b) ~~currently authorised~~ persons with a current limited authority to teach.

457 - Code of Conduct

(6) The code of conduct prepared under this section is binding on all teachers who hold a practising certificate and on all ~~authorised~~ persons who hold a limited authority to teach.

465 - Mandatory reporting of convictions

- (1) Every holder of a practising certificate and every ~~authorised person~~ holder of a limited authority to teach who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Teaching Council.

469 - Powers of Complaints Assessment Committee

- (1) If the Complaints Assessment Committee makes a finding of misconduct that is not serious misconduct, by agreement with the teacher and the person who made the complaint or report or referred the matter, it may do 1 or more of the following:
- (e) annotate the register or the list of ~~authorised~~ persons who have limited authority to teach in a specified manner:

472 - Powers of Disciplinary Tribunal

- (1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:
- (f) annotate the register or the list of ~~authorised~~ persons who have limited authority to teach in a specified manner:

478A - Powers of Competence Authority after finding required level of competence not attained

Following any investigation of a complaint or other matter by the Teaching Council under section 477, or of a



report by the Teaching Council under section 478, and referral to the Competence Authority, the Competence Authority may, if satisfied that a teacher has not attained the required level of competence,–

(a) do any 1 or more of the following:

(iii) annotate the register or the list of ~~authorised~~ persons who have limited authority to teach in a specified manner, in relation to any action taken under subparagraph (i):

Schedule 3 - Teacher registration, practising certificates, and other matters

16 - Limited authority to teach

a person who has previously been ~~authorised~~ granted a limited authority to teach may be ~~authorised~~ granted a limited authority to teach again, before or after the expiry or cancellation of the previous ~~authorisation~~ limited authority to teach.

17 - Cancellation of limited authority to teach

the Teaching Council is satisfied on reasonable grounds that the ~~authorisation~~ limited authority to teach was granted by mistake or obtained by fraud;

20 - Period of authorisation

20 Period of ~~authorisation~~ limited authority to teach

(1) A person's ~~authorisation~~ limited authority to teach expires after 3 years.

(2) Despite subclause (1), the Teaching Council may grant the ~~authorisation~~ limited authority to teach for a period of less than 3 years.

22 - Fees and costs for granting limited authority to teach

(5) If the Teaching Council cancels a limited authority to teach, it may, by written notice to the person concerned, require the person to pay the Teaching Council any reasonable costs specified in the notice that were incurred by the Teaching Council in dealing with the proposal to cancel the ~~authorisation~~ limited authority to teach or with the cancellation itself.



Appendix 3

Including reference to Teaching Council's governing body

Recommendation: To clarify the boundaries between governance and management, the Teaching Council recommends clauses in the Bill relating to the governing body of the Teaching Council are amended to include the words 'Governing Council'.

This appendix sets out those clauses that would need to be amended if this proposed change is adopted. Additions are underlined.

Part 5 - Subpart 4 - Teaching Council

447 - Continuation of Teaching Council

- (1) The Teaching Council of Aotearoa New Zealand is continued.
- (2) The Teaching Council is a body corporate with perpetual succession and is capable of—
 - (a) holding real and personal property; and
 - (b) suing and being sued; and
 - (c) otherwise doing and suffering all that bodies corporate may lawfully do and suffer.
- (3) Schedule 18 sets out provisions regarding the Teaching Council Governing Council.

448 - Composition of Teaching Council

- (1) The Teaching Council Governing Council comprises 13 members as follows:
 - (a) 6 members appointed by the Minister in accordance with section 449;
 - (b) 7 elected members, being—
 - (i) 1 teacher representing the early childhood education sector, elected by teachers from that sector; and
 - (ii) 1 teacher representing the primary education sector, elected by teachers from that sector; and
 - (iii) 1 teacher representing the secondary education sector, elected by teachers from that sector; and
 - (iv) 1 teacher educator, elected by registered teachers working in the fields of initial and ongoing teacher education; and
 - (v) 1 principal representing the primary education sector, elected by principals from that sector; and
 - (vi) 1 principal representing the secondary education sector, elected by principals from that sector; and
 - (vii) 1 early childhood education service leader, representing leadership in the early childhood education sector, elected by leaders from that sector.
- (2) Each of the elected members must be a registered teacher holding a current practising certificate, except the teacher educator, who need not hold a current practising certificate but must—



- (a) be a registered teacher; and
 - (b) have 5 or more years of experience in the field of initial teacher education or ongoing teacher education, or both; and
 - (c) be currently working in one of those fields.
- (3) The Minister—
- (a) must appoint one of the members appointed or elected under this section as chairperson; and
 - (b) may appoint one of the members appointed or elected under this section as a deputy chairperson.
- (4) The elected members of the Teaching Council Governing Council must be nominated and elected in accordance with rules made under section 458.

Clause 449 - Ministerial appointment as a member

- (1) The members of the Teaching Council Governing Council appointed by the Minister must be persons nominated after notification of the Teaching Council Governing Council vacancy in the *Gazette* and consultation by the Minister undertaken in accordance with subsection (3).
- (2) *unchanged*
- (3) *unchanged*
- (4) When considering whether to appoint a member of the Teaching Council Governing Council, the Minister must—
- (a) take into account each candidate's ability to carry out the duties of a member of the Teaching Council Governing Council and represent the public interest; and
 - (b) have regard to the collective skills, experience, and knowledge making up the overall composition of the Teaching Council Governing Council, including (but not limited to) the candidate's knowledge and experience in any of the following areas:
 - (i) education;
 - (ii) governance;
 - (iii) leadership experience and skills;
 - (iv) financial skills;
 - (v) understanding of the partnership principles of Te Tiriti o Waitangi.

Clause 450 - Disqualification from office

- (1) The following persons are disqualified from being members of the Teaching Council Governing Council:
- (a) to (f) *unchanged*
 - (g) an elected member of the Teaching Council Governing Council—
 - (i) who ceases to be registered as a teacher; or
 - (ii) who ceases to hold a current practising certificate; or
 - (iii) whose registration as a teacher is suspended; or
 - (iv) whose practising certificate is suspended.



456 - Advisory committees

The Teaching Council Governing Council may establish advisory committees for specific aspects of its operation or for particular issues as it sees fit.

457 - Code of conduct

- (1) The Teaching Council must establish and maintain a code of conduct for teachers.
- (2) When preparing the code of conduct (and any amendments to it), the Teaching Council—
 - (a) must take all reasonable steps—
 - (i) to consult those who are to be bound by it; and
 - (ii) to consult the State Services Commissioner; and
 - (b) must have regard to any relevant minimum standards of integrity and conduct or code of conduct that the State Services Commissioner sets or issues under section 57 of the State Sector Act 1988.
- (3) The code of conduct must be signed by the chairperson of the Teaching Council Governing Council, and—
 - (a) notice of it must be given in the Gazette; and
 - (b) the notice must say where copies of the code may be obtained free of charge; and
 - (c) the notice must give the date on which the code comes into force, which must be a date on or after the date of the Gazette notice; and
 - (d) the Teaching Council must take all reasonable steps to ensure that those bound by the code are aware of its existence and are able to obtain copies of it, including (but not limited to) publishing the code on an Internet site maintained by or on behalf of the Teaching Council.
- (4) The Teaching Council may amend the code of conduct, and every amendment—
 - (a) must be notified in the *Gazette*; and
 - (b) forms part of the code on the date specified in the notice as the date on which it is to come into force.
- (5) The code of conduct, and every amendment of it, is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (6) The code of conduct prepared under this section is binding on all teachers who hold a practising certificate and on all authorised persons.

458 - Teaching Council to make rules

- (1) The Teaching Council must make rules providing for—
 - (a) the conduct of elections for electing members to the Teaching Council Governing Council, including the election process; and
 - (b) a Complaints Assessment Committee to—
 - (i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
 - (ii) carry out any other function, and exercise any power, given under this Act or delegated to it by the Teaching Council; and
 - (c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and



- (d) a Competence Authority to consider reports and complaints about teacher competence and to exercise the powers given under this Act; and
 - (e) the practices and procedures of the disciplinary bodies and the Competence Authority; and
 - (f) the procedures of the Teaching Council for dealing with reports received under the mandatory reporting provisions in sections 461 to 465; and
 - (g) the procedures relating to Police vetting, and in particular the rights of persons who are vetted.
- (2) The Teaching Council may make rules for any other purpose relating to the performance of its functions.
- (3) When preparing rules (and any amendments to them), the Teaching Council must take all reasonable steps to consult with those affected by the rules.
- (4) When rules are made under this section,—
- (a) notice of them must be given in the *Gazette*; and
 - (b) the notice must say where copies of the rules may be obtained free of charge; and
 - (c) the notice must give the date on which the rules come into force, which must be a date on or after the date of the *Gazette* notice; and
 - (d) the Teaching Council must take all reasonable steps to ensure that those affected by the rules are aware of their existence and are able to obtain copies of them.
- (5) Rules made under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

459 - Delegations

- (1) The Teaching Council Governing Council may delegate any of its powers (other than this power of delegation), either generally or specifically, as it sees fit.
- (2) Despite subsection (1), the Teaching Council Governing Council may not delegate its powers—
- (a) to appoint a chief executive;
 - (b) to make rules;
 - (c) relating to voluntary deregistration;
 - (d) relating to cancellation of registration, practising certificates, or limited authorities to teach;
 - (e) to establish and maintain a code of conduct for teachers under section 457.

460 - Chief executive and employees

- (1) The Teaching Council Governing Council may appoint a chief executive and any other employees it thinks necessary for the efficient performance of its functions.
- (2) A person appointed under subsection (1) may not be a member of the Teaching Council Governing Council.



Schedule 18 - Teaching Council

Title of Schedule 18

Schedule 18 – Teaching Council Governing Council

2 - Removal of members

- (1) The Minister may remove an appointed member of the Teaching Council Governing Council under clause 1(1).
- (2) The Minister may remove an elected member of the Teaching Council Governing Council under clause 1(2).

3 - Removal from office

- (1) The Minister may revoke the appointment of a member of the Teaching Council Governing Council for just cause.
- (2) The Minister may, after consulting the Teaching Council Governing Council, remove an elected member of the Teaching Council Governing Council for just cause.
- (3) The revocation or removal must be made by written notice to the member with a copy to the Teaching Council Governing Council.
- (4) The written notice must state—
 - (a) the date on which the removal takes effect, which must be no earlier than the date on which the notice is received; and
 - (b) the reasons for the removal.
- (5) In this section, *just cause*—
 - (a) includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the Teaching Council Governing Council or the individual duties of members (depending on the seriousness of the breach); and
 - (b) in the case of a member who held a practising certificate under clause 10 of Schedule 3 when appointed, includes—
 - (i) ceasing to hold the certificate; and
 - (ii) the suspension of the certificate.
- (6) The Minister may remove a member with as little formality and technicality, and as much expedition, as is permitted by—
 - (a) the principles of natural justice; and
 - (b) a proper consideration of the matter.
- (7) A Judge may be removed as a member in accordance with the removal provisions of this Act for a breach of the Teaching Council Governing Council's collective duties, but only if all of the other members are being removed for the same breach at the same time (and the removal does not affect the Judge's tenure as a Judge).
- (8) A member of the Teaching Council Governing Council is not entitled to any compensation or other payment or benefit relating to the member ceasing, for any reason, to hold office as a member.

4 - Continuation in office

- (1) Each member of the Teaching Council Governing Council continues in office (unless the member ceases to hold office under subclause (4)) until a successor is appointed or elected.



- (2) A member may resign from office by written notice to the Minister (with a copy to the Teaching Council Governing Council) signed by the member.
- (3) The resignation is effective on receipt by the Minister of the notice or at any later time specified in the notice.
- (4) A member of the Teaching Council Governing Council ceases to hold office if the member—
- (a) resigns; or
 - (b) is removed from office; or
 - (c) becomes disqualified from being a member.

5 - Extraordinary vacancies

- (1) An extraordinary vacancy occurs when a member dies or ceases to hold office.
- (2) If an extraordinary vacancy occurs within 6 months of the expiry of the vacating member's term,—
- (a) the Minister, in the case of an appointed member, may—
 - (i) appoint a replacement; or
 - (ii) leave the vacancy open;
 - (b) the Teaching Council Governing Council, in the case of an elected member, may—
 - (i) appoint a replacement; or
 - (ii) leave the vacancy open.
- (3) If an extraordinary vacancy occurs more than 6 months before the expiry of the vacating member's term,—
- (a) the Minister, in the case of an appointed member, must appoint a replacement;
 - (b) the Teaching Council Governing Council, in the case of an elected member, must—
 - (i) appoint a replacement; or
 - (ii) hold an election for a replacement.
- (4) A person appointed or elected to fill an extraordinary vacancy holds office only for the remainder of the vacating member's term.

6 - Chairperson

- (1) The Minister must appoint one of the members as chairperson by notice in writing stating the date on which the appointment takes effect.
- (2) The chairperson holds that office until—
- (a) the chairperson resigns from that office; or
 - (b) the chairperson is removed from it by the Minister; or
 - (c) the chairperson ceases to hold office as a member; or
 - (d) the term of office specified on appointment expires.
- (3) A person may be reappointed as chairperson for a further term.
- (4) The chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Teaching Council Governing Council).
- (5) The notice of resignation must state the date on which the resignation takes effect.



(6) The Minister may, after consultation with the person concerned, remove a chairperson of the Teaching Council Governing Council from that office by written notice to the person (with a copy to the Teaching Council Governing Council).

(7) The notice of removal must state the date on which the removal takes effect.

7 - Deputy chairperson

(1) The Minister may appoint one of the members as deputy chairperson by notice in writing stating the date on which the appointment takes effect.

(2) If the chairperson is absent, the deputy chairperson may exercise the powers of the chairperson.

(3) The deputy chairperson holds that office until—

- (a) the deputy chairperson resigns from that office; or
- (b) the deputy chairperson is removed from it by the Minister; or
- (c) the deputy chairperson ceases to hold office as a member; or
- (d) the term of office specified on appointment expires.

(4) A person may be reappointed as deputy chairperson for a further term.

(5) The deputy chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Teaching Council Governing Council).

(6) The notice of resignation must state the date on which the resignation takes effect.

(7) The Minister may, after consultation with the person concerned, remove a chairperson of the Teaching Council Governing Council from that office by written notice to the person (with a copy to the Teaching Council Governing Council).

(8) The notice of removal must state the date on which the removal takes effect.

8 - Administrative provisions

(1) The powers of the Teaching Council Governing Council are not affected by any vacancy in its members.

(2) The Teaching Council Governing Council may appoint committees to advise it on any matters relating to the Teaching Council's functions and powers.

(3) All questions arising at any meeting must be decided by a majority of those members present with the chairperson having a casting vote or, if the chairperson is absent, with the deputy chairperson having a casting vote.

(4) Except as otherwise provided under this or another Act, the members may regulate their own procedure.

9 - Collective duties

(2) The Teaching Council Governing Council must act in a manner consistent with its functions, duties, and powers.

(3) The Teaching Council Governing Council must ensure that it performs or exercises its functions, duties, and powers efficiently and effectively.

(4) The Teaching Council must ensure that it operates in a financially responsible manner and, for this purpose, that it prudently manages its assets and liabilities.



10 - Individual duties

(1) A member of the Teaching Council Governing Council may not contravene, or cause the contravention of, or agree to the Teaching Council contravening, this Act.

(2) A member of the Teaching Council Governing Council must, when acting as a member, act with honesty and integrity.

(3) A member of the Teaching Council Governing Council must, when acting as a member, act in good faith and not pursue the member's own interests at the expense of the Teaching Council's or the Governing Council's interests.

(4) A member of the Teaching Council Governing Council must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the Teaching Council; and
- (b) the nature of the action; and
- (c) the position of the member and the nature of the responsibilities undertaken by the member.

(5) A member of the Teaching Council Governing Council who has information in the member's capacity as a member that would not otherwise be available to the member may not disclose that information to any person, or make use of, or act on, that information, except—

- (a) in the performance of the Teaching Council's functions; or
- (b) as required or permitted by law; or
- (c) when the member is first authorised to do so by the Teaching Council and the disclosure, use, or act in question does not, or is unlikely to, prejudice the Teaching Council or the Governing Council.

11 - Personal liability

A member of the Teaching Council Governing Council is not personally liable for any act done or omitted to be done by the Teaching Council Governing Council or any loss to the Teaching Council Governing Council arising out of any act done or omitted to be done by the member if the act or omission was (so far as the member's involvement is concerned)—

- (a) in good faith; and
- (b) in performance or intended performance of the functions of the Teaching Council.

12 - Conflicts of interest

(1) A person is interested in a matter if the person—

- (a) may derive a financial benefit from the matter; or
- (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
- (c) may have a financial interest in a person to whom the matter relates; or
- (d) is a partner, director, officer, board or council or committee member of a person who may have a financial interest in a person to whom the matter relates; or
- (e) is otherwise directly or indirectly interested in the matter.

(2) A member who is interested in a matter relating to the Teaching Council must disclose to the Teaching Council Governing Council details of the interest as soon as practicable after the member becomes aware that the member is interested.



(3) The details that must be disclosed are—

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

(4) A member who is interested in a matter—

- (a) may not vote or take part in any discussion or decision of the Teaching Council Governing Council or any of its committees relating to the matter, or otherwise participate in any activity of the Teaching Council Governing Council that relates to the matter; and
- (b) may not sign any document relating to the entry into a transaction or the initiation of the matter.

(5) In this section, matter means—

- (a) the Teaching Council's or the Governing Council's performance of its functions or exercise of its powers; or
- (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Teaching Council or the Governing Council.

