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Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington



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Education and Training Amendment Bill 2024

Introduction

1. About Matatū Aotearoa | Teaching Council of New Zealand

Matatū Aotearoa | Teaching Council of New Zealand (the Council) is the independent professional body for registered teachers | kaiako from early childhood education through to primary and secondary schooling in English and Māori medium and settings of other languages. The statutory purpose of the Council, set out in section 478 of the Education and Training Act 2020, is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

The Council’s role is to create and uphold the standards of conduct and competence of the teaching profession, which includes registered teachers, as well as holders of limited authorities to teach (LATs) which give schools the flexibility to employ people with specific technical skills into teaching roles.

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

- establish and maintain:
 - criteria for teacher registration
 - standards for ongoing practice and the criteria for practising certificates, including limited authorities to teach
 - a code of conduct for teachers and those with an authority to teach
- monitor and maintain the requirements relating to conduct and competence
- prosecute breaches of conduct for teachers including those with a limited authority to teach.

In June 2024 there were just over 114,000 teachers with current practicing certificates and 2,211 persons with a Limited Authority to Teach (LAT). In the financial year 2023/24, over 6,000 applications were processed to register new teachers.

2. Process

The Council acknowledges this submission will become public information.

3. Oral submission

The Council wishes to speak to this submission.

General comment on the Bill

The Council's first preference is always for people in teaching positions to be registered teachers with a practising certificate.

Teaching is a challenging profession and as with lawyers and doctors, requires a high degree of specialised training and expertise – including gaining degree-level qualifications from an Initial Teacher Education provider along with two years induction and mentoring in the classroom before teachers are fully recognised as a teacher. Subject-matter knowledge alone is not sufficient to be a teacher. A teacher also needs to understand how learners learn, how the overall curriculum fits together, and the pedagogy that guides the techniques that can be used to get the best for each individual learner. Additionally, there are many situations teachers deal with that require skills beyond pedagogical, including responding to increasing diversity and ways of learning in the classroom, and managing complex behaviours.

The Council acknowledges the Government's intention to establish a new model of charter schools and to allow state schools to become charter schools. For the Council, the bottom line for charter schools is that the profession and the public must have the assurance that safety measures are in place so that all of those employed as teachers are of good character, fit to teach, and are accountable.

With the entry of the charter school model, people who are not registered teachers will be able to take on teaching roles. The Council already has a mechanism in place that gives schools greater flexibility in terms of appointing people with specific technical skills into teaching roles, and importantly keeps learners safe, and that is the Limited Authority to Teach (LAT).

We are pleased that the Education and Training Amendment Bill (the Bill) proposes that this mechanism is adopted for charter schools (Clause 35). This is an improvement on previous charter schools legislation.

Using the LAT mechanism for charter schools is a safeguard, in part because LAT holders are subject to the *Code of Professional Responsibility | Ngā Tikanga Matatika* which applies to all teachers. The Council has a robust system to manage the granting of LATs and which is in the interests of all schools and members of the profession, as they are in positions of power and trust. This also provides assurance to the public about the paramount importance of the safety of learners.

The Council is also pleased that the Bill requires that charter schools will, at minimum, need to designate a certificated teacher as the 'leader of learning' if their principal is not a certificated teacher (new Section 2120 (d)). It is imperative that the person with overarching responsibility for the teaching and learning in a school should be a registered and certificated teacher. This is reflected in our *Requirements for Teacher Registration*, which stipulate that, where the principal of a school does not themselves hold a practising certificate, processes need to be put in place "to enable professional judgements about teaching practice to be made by a fully certificated teacher in a senior role, including whether a teacher meets the *Standards | Ngā Paerewa* as required for their practising certificate type."

Our submission is based on ensuring the proposed changes align with the values of the teaching profession and are focused on delivering the best outcomes for the teaching profession and the communities it serves.

Clause-by-Clause Discussion

The appendix provides comment on the proposed changes to the Act and recommends some further changes which the Council believes will provide greater clarity about the employment of LATs within charter schools.



Appendix: Matatū Aotearoa | Teaching Council New Zealand clause-by-clause comments on the Education and Training Amendment Bill 2024

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 4 – amends section 10

10 - Interpretation

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

- (a) the board of a State school:
- (aa) **a sponsor:**
- (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 614

We **agree** with this amendment which ensures sponsors' responsibilities in relation to Charter School LAT (Limited Authority to Teach) holders are equivalent to those of employers who employ other types of LAT holders* (except for competence-related matters), eg:

- section 92 – restrictions on appointment of teachers
- section 93 – restrictions on continued employment of teachers
- section 95 – restrictions on teachers subject to interim suspension
- section 489 – mandatory reporting of dismissals and resignations
- section 490 – mandatory reporting about former employees
- section 491 – mandatory reporting of possible serious misconduct
- section 542 – failure to report certain matters to the Teaching Council
- section 662 – offences relating to false representations.

Please see our comments below recommending consequential changes to sections 490, 492 and 542 to clarify that sponsors' responsibilities under these sections do not apply to the competence of Charter School LAT holders.

* Other types of LAT are:

- Specialist Skills LATs (eg music or language specialists)
- Skills Supply Shortage LATs (including relievers)
- Employment-based ITE (Initial Teacher Education) LATs

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 35 - amends section 92

92 - Restrictions on appointment of teachers

- (2) An employer may not permanently appoint a person to any teaching position if the person does not hold a practising certificate.
- (3) *Despite subsection (2), an employer who is a sponsor may permanently appoint to a teaching position a person who is the holder of a limited authority to teach.*

Within the context of current Charter School policy, we **agree** with this amendment. (The Council's first preference, however, is always for teachers to be registered and hold a practising certificate.)

We recognise that a decision to continually employ a person as a teacher is an employment matter. However, we also note that any teacher or LAT holder must continue to apply for and/or renew their certification or authorisation in accordance with Teaching Council requirements, regardless of whether their teaching role is temporary or permanent. These requirements require an applicant for a new or renewed practising certificate or authorisation to, among other things, demonstrate their fitness to teach, including by renewing their police vet [at least] every three years.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 44 – amends section 497

497- Powers of Complaints Assessment Committee

- (2) Following an investigation, the Complaints Assessment Committee may do 1 or more of the following:
- (a) resolve to take the matter no further;
 - (b) refer the teacher concerned to a competency review;
 - (c) refer the teacher concerned to an impairment process, which may involve either or both of the following:
 - (i) assessment of an impairment;
 - (ii) assistance with an impairment.

(2A) Subsection (2)(b) and (c) does not apply to persons employed in charter schools who hold a limited authority to teach.

We **partially agree** with this proposed amendment.

We **agree** that section 497(2)(b) should not apply to a Charter School LAT holder as it is proposed they are not subject to the Teaching Council’s competency provisions.

However, referral to an impairment process under section 497(2)(c) occurs most often in response to a conduct matter, not just a competence matter. The intent – which we fully support – is that Charter School LAT holders are subject to the Code of Conduct and mandatory reporting requirements and the professional disciplinary processes associated with conduct that does not meet the expectations of the teaching profession.

The impairment process is an important mechanism allowing for support to be provided to teachers, including LAT holders, who may be going through difficult periods of their life or who have made poor decisions with low impact, but who still have the potential to perform their roles effectively and remain within the profession.

It is important to achieve a consistent approach with the principle that all LAT holders, regardless of the type of LAT they hold, are subject to the same standards of conduct and the same professional disciplinary processes undertaken by the Teaching Council.

We recommend clause 44, which introduces a new subsection 497(2A) about the powers of the Complaints Assessment Committee, is amended to delete the reference to subsection (2)(c) to ensure referral to an impairment process is available as an option for Charter School LAT holders who come before the Teaching Council on conduct matters. Our recommended deletion is shown in *blue text*.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 45 – amends section 500

500 - 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:
- (a) any of the things that the Complaints Assessment Committee could have done under section 497(2):
 - (b) censure the teacher:
 - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
 - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - (e) annotate the register or the list of authorised persons in a specified manner:
 - (f) impose a fine on the teacher not exceeding \$3,000:
 - (g) order that the teacher's registration or authority or practising certificate be cancelled:
 - (h) require any party to the hearing to pay costs to any other party:
 - (i) require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:
 - (j) direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.

(1A) However, in respect of persons employed in charter schools who hold a limited authority to teach, the Disciplinary Tribunal may not under subsection (1)(a) ~~only resolve to take the matter no further.~~ refer the teacher concerned to a competency review.

The comments made above in relation to impairment provisions under clause 44 also apply here. The amendment as currently worded will remove the discretion of the Disciplinary Tribunal to refer a Charter School LAT holder subject to a professional disciplinary process arising from a conduct matter to an impairment process.

The Disciplinary Tribunal should retain its discretion to do what the Complaints Assessment Committee may do under section 497(2) which includes resolving to take the matter no further or referring the teacher concerned to an impairment process. The only restriction on the Disciplinary Tribunal should be the same restriction proposed for the Complaints Assessment Committee, which is that neither disciplinary body can refer a Charter School LAT holder to a competency review.

We **recommend clause 45, which introduces a new subsection 500(1A) which limits some of the Disciplinary Tribunal powers, is reviewed and amended** to ensure the Disciplinary Tribunal retains its discretion to refer a teacher, including a Charter School LAT holder, to an impairment process as the Complaints Assessment Committee may do for conduct matters. Our recommended deletion and addition are shown in *blue text*.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 46 – new section 504A

504A - Application of competence provisions to holders of limited authority to teach in charter schools

The following provisions of this Act do not apply to persons employed in charter schools who hold a limited authority to teach:

- (a) section 506: (Complaints about competence)
- (b) section 507: (Investigation by Teaching Council of mandatory reports relating to competence and referral to Competence Authority for decision)
- (c) section 508: (Powers of Competence Authority after finding required level of competence not attained)
- (d) section 509. (Appeals against decision of Competence Authority)

We **support** this amendment on the grounds that competence provisions do not apply to Charter School LAT holders.

Please see our comments below recommending consequential changes to sections 490, 492 and 542 to clarify that sponsors responsibilities under these sections do not apply to the competence of persons employed in charter schools who hold a limited authority to teach but that sponsors have obligations relating to reporting conduct matters associated with Charter School LAT holders.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 60 – amends subclause 14 of Schedule 3

Schedule 3

14 - Purpose of limited authority to teach

- (1) The purpose of granting a limited authority to teach is to enable employers to have access to skills that are in short supply and to enable those with specialist skills but who may not have a teaching qualification to teach.
- (2) ~~Despite subclause (1), a limited authority may be granted to sponsor may employ a person who meets the characteristics set out in clause 16 who is employed by a sponsor with a limited authority to teach in a charter school even if the person's skills are not in short supply and are not specialist skills.~~

We **support** what we understand to be the intent behind this amendment, however we **suggest alternative wording** for greater clarity.

We believe this subclause should focus on the “granting of a limited authority” in keeping with the wording used in subclause 14(1). We also consider the new subclause 14(2) should refer to the criteria for the granting of a Charter School LAT as proposed in the clause 60 amendment to subclause 16 (1A) of Schedule 3 – see below. The focus then is on what characteristics apply to the granting of a Charter School LAT rather than to removing restrictions on a charter school from employing someone once they have been granted a LAT (no such restrictions exist as Clause 35 makes clear).

We **recommend an amendment to clause 60, which inserts a new subclause 14(2) of Schedule 3**, to refer to the proposed subclause 16(1A) requirements for a Charter School LAT holder. Our recommended amendment is shown in *blue text*.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

Clause 60 – amends subclause 16 of Schedule 3

Schedule 3

16 - Limited authority to teach

- (1) The Teaching Council must grant a limited authority to teach if it considers that the applicant is of a suitable disposition and—
- (a) the applicant has the skills and experience appropriate to advance the learning of a student or group of students; or
 - (b) the applicant has skills that are in short supply.
- (1A) The Teaching Council must grant a limited authority to teach if—
- (a) the limited authority to teach relates to **a charter school**s;
 - and
 - (b) the Teaching Council considers that the applicant—
 - (i) is of a suitable disposition: and
 - (ii) has the skills and experience appropriate to advance the learning of a student or group of students.

We **support** the intent of this amendment but note a restriction that we believe may be unintentional.

As currently worded the amendment limits the Charter School LAT holder to a particular school. The Teaching Council issues practising certificates and other limited authorities to teach based on the category of teaching, not to a specific place of teaching.

We **recommend an amendment to clause 60, which inserts a new subclause 16(1A)(a) of Schedule 3**, to allow a Charter School LAT holder to work in any charter school rather than a particular charter school. Our recommended amendment is shown in *blue text*.

Proposed amendment <i>(ETAB1 changes shown in red text)</i> <i>(Teaching Council changes shown in blue text)</i>	Comment
<p><u>Clause 40 – new subpart 6A of Part 3</u></p> <p>2120 - Duties of sponsors</p> <p>A sponsor must—</p> <ul style="list-style-type: none"> (a) govern the school so as to ensure that every student is able to attain the highest possible standard of educational achievement; and (b) ensure that every governing member of the sponsor remains a fit and proper person to operate the school; and (c) ensure that a safe physical and emotional environment is provided for students and staff; and (d) appoint— <ul style="list-style-type: none"> (i) a chief executive to be responsible for the day-to-day management of the school; (ii) a person to be responsible for teaching and learning, <u>who may or may not be the same person as the chief executive,</u> at the school who is appropriately qualified and holds a current practising certificate; and 	<p>We support the intent of this amendment but recommend an amendment to subsection 2120(d)(ii) to clarify that some roles could be held by the same person.</p> <p>In possibly the majority of situations, where the chief executive of a charter school is appropriately qualified and holds a current practising certificate, they could therefore also be the person responsible for teaching and learning (as occurs in State and private schools). We suggest this option is clarified so that it is explicit and misconceptions do not arise that these must, or ought to, be separate roles in these situations.</p> <p>We therefore recommend an amendment to clause 40, which inserts a new section 2120 (d) (ii), to clarify that a chief executive and a person responsible for teaching and learning may be the same person. Our recommended amendment is shown in blue text.</p>

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

CONSEQUENTIAL CHANGES

We recommend the following sections are amended to provide clarity to both sponsors who are employers, as well as employers of other LAT types*, of their reporting obligations in relation to conduct and competence matters.

We acknowledge the proposed amendments technically achieve this but believe being more explicit in the sections listed below will help employers and sponsors better understand their obligations.

* Other types of LAT are:

- Specialist Skills LATs (eg music or language specialists)
- Skills Supply Shortage LATs (including relievers)
- Employment-based ITE (Initial Teacher Education) LATs.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

CONSEQUENTIAL CHANGE

490 Mandatory reporting of complaints received about former employees

- (1) The former employer of a teacher must immediately report to the Teaching Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives a complaint about the teacher's conduct or competence while the teacher was an employee.
- (2) A report must be in writing and must include,—
 - (a) for an oral complaint, a description of the aspects of the teacher's conduct or competence complained of; and
 - (b) for a written complaint, a copy of the complaint; and
 - (c) a report of what action (if any) the employer took with respect to the matters complained of.
- (3) *This section does not apply to former employers who are sponsors in relation to complaints about the competence of persons employed in charter schools who hold a limited authority to teach.*

Complaints under section 490 relate to conduct or competence matters.

The wording needs to retain the requirement for employers to submit mandatory reports relating to the competence of other types of LAT holders.

The wording also needs to ensure sponsors are aware whether they have an obligation to report complaints about former Charter School LAT holders related to conduct matters.

We **recommend section 490 is reviewed and amended** to achieve the intent that sponsors are not required to submit mandatory reports related to the competence of a Charter School LAT holder. Our recommended amendment is shown in *blue text*.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

CONSEQUENTIAL CHANGE

492 Mandatory reporting of failure to reach required level of competence

- (1) The employer of a teacher must immediately report to the Teaching Council if the employer, despite undertaking competency procedures with the teacher, is satisfied that the teacher has not reached the required level of competence.
- (2) A report must be in writing and include—
 - (a) a description of the competence issues leading to the report; and
 - (b) a description of the action that the employer has taken in relation to it.
- (3) *This section does not apply to sponsors in relation to issues about the competence of persons employed in charter schools who hold a limited authority to teach.*

Section 492 relates to competency matters.

The changes proposed in this Bill exclude Charter School LAT holders from competence processes within the Act.

We consider section 492 can be clarified so sponsors clearly see they are excluded from this section but that an employer of other types of LAT holders understands their continued obligation to submit mandatory reports for competency matters.

We recommend section 492 is reviewed and amended to achieve the intent that sponsors are not required to submit mandatory reports related to the competence of a Charter School LAT holder. Our recommended amendment is shown in *blue text*.

Proposed amendment

(ETAB1 changes shown in *red text*)

(Teaching Council changes shown in *blue text*)

Comment

CONSEQUENTIAL CHANGE

542 Offence relating to failure to report certain matters to Teaching Council

- (1) An employer or a former employer commits an offence, and is liable on conviction to a fine not exceeding \$25,000, if it fails without reasonable justification to report to the Teaching Council in relation to any matter of conduct as required under section 489, 490, or 491.
 - (2) An employer or a former employer commits an offence, and is liable on conviction to a fine not exceeding \$5,000, if it fails without reasonable justification to report to the Teaching Council in relation to any matter of competence as required under section 489, 490, or 492.
- (2A) Subsection (2) does not apply to employers or former employers who are sponsors in relation to matters of competence relating to persons employed in charter schools who hold a limited authority to teach.

Subsection 542 (1) creates an offence if employers or former employers fail to report to the Teaching Council a matter related to a teacher's conduct – teachers include all LAT holders.

Subsection 542 (2) creates an offence if employers or former employers fail to report to the Teaching Council a matter related to a teacher's competence.

The changes proposed in this Bill exclude Charter School LAT holders from competence processes within the Act. We consider section 542 can be clarified so sponsors have a better understanding of the possible consequences of failing to report conduct matters associated with a Charter School LAT holder.

We **recommended section 542 is amended** to insert a new subsection (2A) to clarify that sponsors are not required to report competence matters relating to Charter School LAT holders, but they do have an obligation to report conduct matters relating to Charter School LAT holders. Our recommended amendment is shown in *blue text*.