

Professional disciplinary processes and competence evaluation processes for the teaching profession

Consultation on proposed
changes to Teaching
Council Rules 2016

20 March to 14 April 2023



**Teaching
Council of
Aotearoa
New Zealand**

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Overview

The Teaching Council of Aotearoa New Zealand (the Council) would like your feedback on proposed amendments to the current Teaching Council Rules 2016 which set out procedures relating to our professional disciplinary processes and competence evaluation processes.

The amendments flow from changes made to our overarching legislation, the Education and Training Act 2020 (the Act) made by the Education and Training Amendment Act 2022 (2022 Amendment Act). The amendments affect some of the ways our professional disciplinary processes and decision-making bodies work and take effect from 29 July 2023.

While working on these changes we've taken the opportunity to reflect on what we have heard from key stakeholders to help us identify and remove anomalies and improve consistency.

Our overarching aim is to improve the fairness, timeliness and consistency of the processes that ensure the safety of children and young persons, and to respect the mana of all involved in these processes.

Note about draft wording

All proposed wording in this consultation document is draft only. It is presented in the style of the current Teaching Council Rules 2016 to help make clear what changes are proposed.

Proposed rules and wording may change as a result of feedback received during the consultation period. It should be noted that any final wording is determined by the Parliamentary Counsel Office, which is responsible for drafting legislation, including these rules.

How to have your say

The Council welcomes feedback from all teachers, professional leaders, peak bodies, and other stakeholders, including members of the public and ECE and school communities, who may be interested in or potentially affected by the proposed amended rules and policy changes.

How to provide feedback

The deadline for feedback on this consultation is **Friday 14 April 2023**.

A survey on our website poses high-level questions about the support for the proposed changes. This is designed for members of the profession and members of the public who are not familiar with the details of our professional disciplinary processes and competence evaluation processes.

If you wish to provide more detailed feedback, in response to this consultation document and other material available on our website, please send written comments to tcccr@teachingcouncil.nz.

What we will do with your feedback

The Council will analyse and consider your feedback before making decisions on the proposed new rules. An analysis of the submissions will be published. The Council is required to consider any request to release the submissions under the Official Information Act (OIA). Any submissions released under the OIA will be anonymised. You cannot veto the release of your submission under the OIA, but you can let us know if there are specific reasons why you would like your feedback to remain confidential, and we will consider those reasons before making a decision on any OIA request that is received.

How to read this consultation document

We acknowledge members of the profession and the public may have different levels of understanding about the purpose of professional disciplinary and competence processes for the teaching profession, how these processes operate, and the potential outcomes of such processes.

A video on our website discusses the proposed changes and the reasons for them.

We suggest options below for how to read this consultation document based on the reader's familiarity with the teaching profession's disciplinary and competence processes.

School | kura and ECE service communities and members of the public

Section One – “Setting the scene” provides introductory information about the Teaching Council's regulatory role in establishing and maintaining professional disciplinary processes and competence evaluation processes.

This section is likely to be of interest to those unfamiliar with the Teaching Council's role and how the professional disciplinary and competence evaluation process operates. Reading this section first may be helpful in understanding Section Two “Proposed rule changes”. Section Three “How do the proposed rule changes work towards achieving our objectives?” describes the impact we think the proposed rule changes will have. Section Four “Comparison between current rules and proposed rules” provides more details about the proposed changes and a direct comparison with the current rules.

Members of the profession

For those members of the profession not familiar with the Teaching Council's role and how the professional disciplinary and competence evaluation process operates, reading Section One – “Setting the scene” is likely to help in understanding Section Two “Proposed rule changes”. Section Three “How do the proposed rule changes work towards achieving our objectives?” describes the impact we think the proposed rule changes will have. Section Four “Comparison between current rules and proposed rules” provides more details about the proposed changes and a direct comparison with the current rules.

Key stakeholders and representatives of the teaching profession

For those familiar with the Teaching Council's role and how the professional disciplinary processes and competence evaluation processes operate, Section Two “Proposed rule changes” and Section Four “Comparison between current rules and proposed rules” are likely to be of most interest. Section Three “How do the proposed rule changes work towards achieving our objectives?” describes the impact we think the proposed rule changes will have.

Everyone is welcome to complete the survey on our website which poses high-level questions about the support for the proposed changes. This is designed for members of the profession and members of the public who are not familiar with the details of our professional disciplinary processes and competence evaluation processes. We also welcome detailed feedback in response to this consultation document and other material available on our website - please send written comments to tcccr@teachingcouncil.nz.

Flowchart of disciplinary and competence evaluation processes

Pages 21 and 22 of this document provides an image of the current and proposed disciplinary and competence evaluation processes.

Glossary

This consultation document uses terms that may be unfamiliar to those who have not engaged with the professional disciplinary and competence process.

| Term | Meaning |
|---------------------------------|--|
| 2022 Amendment Act | Education and Training Amendment Act 2022 |
| the Act | Education and Training Act 2020 |
| Authority | See “limited authority to teach” |
| Code | Code of conduct established and maintained under sections 479 and 485 of the Act – currently in the form of Ngā Tikanga Matatika Code of Professional Standards. They set out the high standards for ethical behaviour that are expected of every teacher. |
| Competence Authority | The Competence Authority is an independent body established under the Act to consider reports prepared by professional practice evaluators in response to mandatory reports, complaints and other matters related to competence. The Authority is made up of experienced, registered teachers from across the education sector and laypeople to represent the public. |
| Complaint | A complaint made by a person about the conduct or competence of a teacher. In the first instance a complaint is to be made to the teacher’s employer, unless the specific circumstances described in the Act exist (section 495). |
| Complaints Assessment Committee | The Complaints Assessment Committee is an independent body established under the Act to consider reports prepared by investigators in response to reports, complaints or other matters related to conduct. The Committee is made up of experienced registered teachers from across the education sector and laypeople to represent the public. |
| Council | Teaching Council of Aotearoa New Zealand |
| Disciplinary Tribunal | The Disciplinary Tribunal is an independent quasi-judicial body established under the Act to consider matters, referred by the Complaints Assessment Committee, of serious misconduct by teachers that may result in the cancellation of registration, practising certificate or a limited authority to teach. It must have a minimum of five members, the majority of whom must be registered teachers, and is chaired by a lawyer. |
| Disciplinary body | Means either or both of the Complaints Assessment Committee or the Disciplinary Tribunal |

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| Investigators | Investigators are Teaching Council staff members who investigate alleged misconduct of teachers on behalf of the Complaints Assessment Committee. |
| Impairment process | An impairment process investigates anything about a teacher's physical or mental health, or disposition, that may have affected their conduct or competence at the time of a report, complaint or other matter. The impairment process will be reviewed separately. |
| Limited authority to teach | An authority issued by the Council that allows a person who has specialist skills or skills in short supply to teach in limited situations. |
| Mandatory report | A report that must be submitted to the Teaching Council by an employer about the conduct or competence of a teacher. A teacher must submit a self-report of conviction if they are convicted of an offence which is punishable by a term of imprisonment for 3 months or more. The grounds for submitting a mandatory report are set out in the Act (sections 489 to 493) |
| Other matters | <p>Matters about a teacher's conduct or competence that come to the attention of the Teaching Council outside of a mandatory report or complaint. These include, among other sources of information:</p> <ul style="list-style-type: none"> • information received from other agencies/organisations that the Teaching Council has information sharing agreements with such as Police, Oranga Tamariki, the Ministry of Education and the Education Review Office (ERO) • notifications from the courts • when new allegations arise out of an investigation into a mandatory report or complaint • when convictions or comments are entered in a Police vetting report, disclosed to the Teaching Council as part of a teacher's practising certificate renewal process • information included in media articles. |
| Own motions | The Teaching Council may consider and refer any matters related to teacher conduct or competence of its own motion as it sees fit. Own motions are an action generated in response to other matters that have been brought to the Teaching Council's attention outside of mandatory reports and complaints – see 'other matters'. |
| Panel | A panel of Complaints Assessment Committee members, or Disciplinary Tribunal Members or Competence Authority members established to undertake the functions and exercise the powers of the relevant body. |

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| Professional practice evaluator | Professional practice evaluators are Teaching Council staff members and seconded practitioners who are experienced, registered teachers from across the sector. They evaluate the information and assess a teacher's competence against Ngā Paerewa the Standards of the Teaching Profession on behalf of the Competence Authority. |
| Referral threshold | Term used to describe the threshold used to refer matters from the Complaints Assessment Committee to the Disciplinary Tribunal |
| Report | See 'mandatory report' |
| Standards | Standards established and maintained under section 479 of the Act for ongoing practice – currently in the form of <i>Ngā Paerewa Standards for the Teaching Profession</i> . They describe the expectations of effective teaching practice. |
| Teacher | Includes: <ul style="list-style-type: none"> • a registered teacher; and • a former registered teacher; and • a person who holds a limited authority to teach; and • a person who formerly held a limited authority to teach. |
| Triage Committee | A Triage Committee is established by the chief executive to make an initial assessment of any complaint or report, or other matter received about a teacher's conduct or competence to help determine the most appropriate pathway to be undertaken. |

EXECUTIVE SUMMARY

Professional disciplinary processes and competence evaluation processes are about how the profession holds their peers to account for meeting the ethical behaviour and effective teaching practice expected of all teachers, as set out by the profession itself in *Ngā Tikanga Matatika | Code of Professional Responsibility* and *Ngā Paerewa | Standards for the Teaching Profession*.

The Education and Training Act 2020 gives the Teaching Council responsibility for these functions and establishes independent decision-making bodies to consider conduct and competence matters. The Teaching Council Rules 2016 describe how these bodies operate

The rules are now changing to give effect to recent changes in legislation and to improve our processes.

The proposed rule changes are just one part of our journey towards continually improving our professional disciplinary processes and competence evaluation processes. These rule changes form part of Phase One.

Phase One consulting, drafting, and publishing new and amended rules to take effect from 29 July 2023, designing a transition process and establishing the internal processes and system changes to give effect to the rules. **These are the changes described in this document.**

Phase Two a review of the impairment processes and further design work on creating a tikanga-based approach in 2023-24.

Phase Three consideration of future law change to give effect to those areas of design, especially related to tikanga Māori that cannot be incorporated within existing legislation.

Section Two 'Proposed rule changes' of this document sets out the rationale for the proposed changes to the current rules.

This Executive Summary describes how we think the proposed rule changes (set out in Section Two) will address:

- the issues heard through stakeholder feedback and hui:
 - cultural appropriateness
 - timeliness
 - costs to profession
 - transparency
 - confidentiality and privacy
- the key Council strategic objectives:
 - integrating ngā uara | the values of the teaching profession
 - giving voice to teachers and protecting their mana
 - protecting the mana of all involved persons
 - embedding tikanga Māori
 - enhancing natural justice principles
 - applying a restorative and rehabilitative approach as appropriate
- the commitments given to the Royal Commission into Abuse in Care.

Integrating ngā uara | values of the profession

Ngā uara | the values of the profession and the Council are the same. Te Whare o te Matatū Aotearoa | the House of the Teaching Profession is held up by ngā pou o te whare | the pillars of the house. The four central pou are:

- **Whakamana**
Empowering all learners to reach their highest potential by providing high-quality teaching and leadership.
- **Manaakitanga**
Creating a welcoming, caring and creative learning environment that treats everyone with respect and dignity.
- **Pono**
Showing integrity by acting in ways that are fair, honest, ethical and just.
- **Whanaungatanga**
Engaging in positive and collaborative relationships with our learners, their families and whānau, our colleagues, and the wider community.

Cultural appropriateness

We acknowledge we are at the beginning of our journey to better reflect a Te Ao Māori perspective throughout the rules and in the policies and practices we use to support our professional disciplinary and competence processes.

Under Phase One we believe the following proposed rule changes can start to strengthen obligations to honour Te Tiriti o Waitangi and begin the process of embedding tikanga Māori.

We propose: to insert a new rule to require persons exercising discretion or powers under these rules having regard to the Act's requirements to honour Te Tiriti o Waitangi and Māori-Crown relationships.

For more: see proposed new rule 4A under Part 1.

We propose: to add to the chief executive's existing discretion when considering the composition of a Complaints Assessment Committee panel, the need to consider te reo Māori or tikanga Māori expertise.

For more: see proposed amendment to rule 14 under Part 5.

We propose: to insert a new rule to specify that the Disciplinary Tribunal may consider tikanga Māori when it is regulating its procedures.

For more: see proposed new rule 24 (2) under Part 6.

We propose: to insert a new subclause in rule 61 to require the Council to consider a person's attributes in terms of Te Tiriti o Waitangi, te reo Māori, tikanga Māori or Māori medium education when appointing them to one of our bodies.

For more: see proposed amended rule 61 under Part 8.

Under Phase Two we have committed to further design work on creating a tikanga-based approach. The Council is working with Kaupapa Māori stakeholders to create a vision for alternative pathways. This will involve exploring options that meet the different and diverse needs of those involved in the professional disciplinary processes and competence evaluation processes. These developments will not only be culturally validating but also more humanising for everyone involved in these processes.

Timeliness and costs to the profession

The Council advocated for changes to the referral threshold in the 2022 Amendment Act to allow the Complaints Assessment Committee to consider matters related to misconduct and serious misconduct. By referring to the Disciplinary Tribunal, those matters the Committee considers could result in suspension or cancellation of registration and/or a practising certificate and/or an authority to teach, we expect the number of matters to be referred to the Disciplinary Tribunal to decrease.

The costs associated with convening the Disciplinary Tribunal reflect its nature as a quasi-judicial body, involving lawyers who are the Disciplinary Tribunal chairperson and the lawyers acting as prosecutors

on behalf of the Complaints Assessment Committee. The costs of convening Complaints Assessment Committee panels, involving experienced teachers and laypeople, are not as significant.

It is anticipated that over time a decrease in the number of referrals to the Disciplinary Tribunal will save costs, and will reduce the time taken to complete a matter for most teachers whilst still ensuring that professional matters are determined by the profession themselves.

We propose: to amend subclause (6) of rule 17 to reflect the changes introduced to the referral threshold by the 2022 Amendment Act.

For more: see proposed amended rule 17 under Part 5.

Transparency

We propose: to amend Rule 11 to include a new subclause 1A to allow the chief executive to refer a report or a complaint to the Triage Committee.

For more: see proposed amended rule 11 under Part 4.

We propose: to include the establishment and role of the Triage Committee in new rules 11A and 11B.

For more: see proposed new rules 11A and 11B under Part 4.

We propose: to provide transparency about the involvement of persons in Competency Authority meetings.

For more: see proposed amended rule 45 under Part 7.

Confidentiality and privacy

We propose: to amend rule 64 to clarify the situations in which the Council may provide notification of Complaints Assessment Committee and Competence Authority decisions.

For more: see amended rule 64 under Part 8.

Giving voice to teachers and protecting the mana of teachers and those involved in our processes

We propose: to insert a new rule 4A to require a person or body exercising discretion or performing a function under these rules to have regard to the personal circumstances of a teacher who is the subject of a report or complaint, or a complainant, or a witness (which may include a complaint) who gives evidence at the Disciplinary Tribunal.

For more: see proposed rule 4A under Part 1.

We propose: to include a reference to the Protected Disclosures (Whistleblowers Protection) Act 2002 in the proposed new rule 11B and include appropriate definitions in rule 3 'Interpretation'.

For more: see proposed new rule 11B under Part 4.
see new definitions in rule 3 'Interpretation' under Part 1.

We propose: to amend rule 14 to require the chief executive to consider the particular context of a teacher or initiator when exercising discretion about the composition of a panel of the Complaints Assessment Committee.

For more: see proposed new rule 14(4) under Part 5.

We propose: to amend rule 17 to insert a new subclause 17 (5) to provide clarity around the role of a support person/s if the Complaints Assessment Committee has decided to hear from a teacher, an initiator or another person, at a Complaints Assessment Committee meeting.

For more: see proposed new rule 17 (5) under Part 5.

We propose: to amend rule 29 (e) to clarify that a witness presenting evidence at a Disciplinary Tribunal hearing can have one or more support persons.
For more: see proposed amended rule 29 (e) under Part 6.

We propose: to amend rule 41 to insert a new subclause 41 (3A) to require a professional practice evaluator to provide an opportunity for a teacher to comment on a report before the report is finalised.
For more: see proposed new rule 41 (3A) under Part 7.

We propose: to amend rule 44 to insert new subclause 44 (4) and (5) to entitle a teacher to have one or more support persons with them if the Competence Authority approves the teacher's request to be heard in person. And for rule 45 to describe who may attend a Competence Authority meeting which may include a teacher's support person/s.
For more: see proposed new rule 44 (4) and (5) under Part 7.
see proposed new subclause rule 45 (5) under Part 7.

Enhancing natural justice provisions

The Council is required under section 479 (6) of the Act to act in accordance with the rules of natural justice when performing its functions and exercising its powers. Section 494 (7) applies this same obligation to the disciplinary bodies and section 505 (9) applies it to the Competency Authority.

We propose: to insert a new rule 15(1)(c) requiring an investigator to consider whether further information is required from an initiator or complainant, for example in situations where different versions of events have been provided.
For more: see proposed rule 15 (1) (c) under Part 5.

We propose: to insert a new rule 20C (4) about the procedure of the Disciplinary Tribunal when conducting a review of a Complaints Assessment Committee decision which must be consistent with the rules of natural justice.
For more: see proposed rule 20C (4) under Part 5A.

We propose: to amend rule 31 about Disciplinary Tribunal evidence to reference section 494 (7) of the Act. This is consistent with the approach to the 'any evidence rule' in other professional bodies tribunals, which expressly makes the evidence subject to the principle of natural justice.
For more: see proposed rule 31 under Part 6.

Applying a restorative and rehabilitative approach as appropriate

There is a desire to consider a restorative justice approach within the professional disciplinary and competence process. We acknowledge the current legislation limits such an approach but our ongoing work in this area is aiming to identify appropriate future legislative changes that would allow a greater focus on restorative and rehabilitative approaches. It is valuable for the Triage Committee and other bodies to be aware of any restorative justice processes that have been undertaken to assist with consideration of a report, complaint or other matter that is referred to the Council.

We propose: to amend rule 8 about the form of a report or complaint to include, where possible, information about any restorative justice process that has been undertaken.
For more: see proposed rule 8 under Part 2.

Meeting commitments given to Royal Commission into Abuse in Care

We propose: to amend rule 17 to introduce a new subclause 17 (5) to provide clarity around the role of a support person. We propose to amend rule 45 to introduce a new subclause 45 (5) (d) to allow a teacher support person/s to attend a hearing of the Competence Authority.

For more: see proposed new rule 17 (5) under Part 5.
see proposed new rule 45 (5) (d) under Part 7.

We propose: to include in rule 31 a new subclause (2) that applies the Evidence Act 2006 to the Disciplinary Tribunal, subject to necessary modifications.

For more: see proposed new subclause 31 (2) under Part 6.

We propose: to amend rule 34 by including a new subclause (5) allowing the Disciplinary Tribunal to have regard to the powers of suppression applying under the Criminal Proceedings Act 2022.

For more: see proposed new subclause rule 34 (5) under Part 6.

SECTION ONE – SETTING THE SCENE

This section provides high-level information about the Teaching Council Rules and the reasons why changes are being proposed.

Introduction

What are the Teaching Council Rules?

The [current Teaching Council Rules 2016](#) focus primarily on the procedures relating to our professional disciplinary processes and competence evaluation processes. They sit under the Education and Training Act 2020 (the Act), which provides for the establishment of the disciplinary bodies (the Complaints Assessment Committee and Disciplinary Tribunal) to consider and determine conduct matters and the establishment of the competence body (the Competence Authority) to consider and determine competence matters.

These bodies are independent of the Council with their powers described in the Act. Their decisions are not influenced by the Council. The rules that govern these processes sit in ‘secondary legislation’ and provide greater detail about how these bodies are constituted and their practices and procedures. The rules also include procedures relating to the Registration Panel, Police vetting and teacher refresh processes for people wishing to return to the teaching profession.

The rules are not intended to detail every part of these processes. They provide high level guidance about procedures and practices. The Council is committed to having clear and helpful information available to all teachers and leaders about how these disciplinary and competence functions are enacted.

In technical terms, the Teaching Council Rules are secondary legislation established under [s.486](#) of the Act that requires the Council to prepare, consult and make rules that set out procedures and practices for some of its functions described in the Act.

Why are the current rules being changed?

In 2022, the [Education and Training Amendment Act 2022 \(2022 Amendment Act\)](#) introduced changes to parts of the professional disciplinary processes – particularly to the powers of the Complaints Assessment Committee, as well as a new provision allowing for the review of Complaints Assessment Committee decisions by the Disciplinary Tribunal.

The Council advocated for the change to the powers of the Complaints Assessment Committee to help ensure that only the most serious cases are being referred to and considered by the Disciplinary Tribunal.

While most of the 2022 Amendment Act came into effect on 1 August 2022, it also provided 12 months for the changes to the professional disciplinary processes to take effect. In addition to allowing us time to update the rules to reflect the changes to the Act, this has provided an opportunity for the rules to be reviewed to identify other changes that may be desirable.

Amongst changes we propose to make, we aim to address several issues that emerged through previous kōrero and hui with key stakeholders, feedback via the fees and levy consultation, and submissions made through the select committee process about the legislative changes in the 2022 Amendment Act. These include:

- **Cultural appropriateness**

Our current processes are not meeting the needs and expectations of Māori and Pacific teachers. We recognise our processes have developed with a euro-centric and legalistic focus. **We are working to develop professional discipline and competence evaluation processes that acknowledge mana.** We are proposing rule changes to make it clear that we honour Te Tiriti o Waitangi and tikanga Māori in all our policy and processes – this will not only be culturally validating but more humanising for everyone involved. How this is enacted will continue to develop. Our next phase is working with Kaupapa Māori stakeholders to develop a vision of a future tikanga-based regulatory approach that would bring more significant changes.

- **Timeliness**

It is a crucial concern for all that the timeliness of our processes is improved. We recognise processes such as these create stress and uncertainty for the teacher and others involved. **Where we do have control over timeframes, we wish to improve them as much as possible while still ensuring transparency and quality decision-making.**

Not all of the timeliness issues can be addressed through rule changes. Sometimes our processes are interrupted by external factors such as criminal investigations, which must be completed before our processes can resume. We are also dependent on the timeliness of the provision of information and responses by other parties involved.

Timeliness is also a function of the people resources that the Council employs to facilitate the professional disciplinary processes and competence evaluation processes. In introducing these changes, we are intending to improve timeliness without employing any further resources.

- **Costs to profession**

Our analysis shows that the Council's disciplinary processes comprise approximately 43% of the estimated total annual costs to deliver all Council functions. These costs are reflected in the fees and levy charged to teachers. Included in the current levy calculation is an estimate of savings of \$200,000 we expect to make in the three-year fee and levy setting period July 2022 to July 2025. Savings relate to reduced legal costs from 2024/25 and reduced Disciplinary Tribunal hearing costs from 2023/24. **It is anticipated that over time a decrease in the number of referrals to the Disciplinary Tribunal will save costs,** and will reduce the time taken to complete a matter for most teachers whilst still ensuring that professional matters are determined by the profession themselves.

- **Referral threshold**

The Act requires certain matters to be referred from the Complaints Assessment Committee to the Disciplinary Tribunal – this is referred to as the 'referral threshold'. If we set the threshold at the wrong place, we risk either not giving due attention to serious cases, or alternatively referring less serious cases to the Disciplinary Tribunal when they could be more effectively and efficiently dealt with at a lower level. Prior to the law change, teachers were held to account in a very public way, even for relatively low-level conduct matters.

Currently the referral threshold is based on whether the Complaints Assessment Committee believes the conduct "may possibly constitute serious misconduct" (as defined in section 10 of the Act). **This referral threshold has not proved to be ideal, with many 'minor' serious misconduct cases being referred to the Disciplinary Tribunal. The 2022 Amendment changes the threshold to a higher threshold where the conduct could result in suspension or cancellation of practising certificates, and/or limited authorities to teach and/or registration. The new referral threshold will apply to reports, complaints or other matters received by the Council on or after 29 July 2023.** See Part 5 'Procedures of Complaints Assessment Committee for dealing

with reports and complaints that relate to teacher conduct' for further information on this change.

- **Lack of transparency around triage process**

The triage process and the Triage Committee determine what action is taken after receipt of a report, complaint or other matter. Neither the triage process or Triage Committee are mentioned in the current Act or rules. **We are keen to include information about the triage process in the rules to provide transparency about this important part of the professional disciplinary processes and competence evaluation processes.** See proposed new rules 11A and 11B under Part 4 "Investigation and referral of report, complaint or other matter by chief executive" for further information.

- **Confidentiality and privacy**

Respecting the confidentiality and privacy of all involved in the professional disciplinary processes and competence evaluation processes is both a legal and moral obligation. **The Council recognises the care and balance needed between protecting confidential and private information while providing the transparency and reassurance demanded by the public to maintain and protect the integrity of the profession.** The Council understands that confidentiality and privacy is important to ensure teachers engage fully in these processes. See proposed amendments to rule 64 "Confidentiality" under Part 8 "Establishment, membership, and operation of disciplinary bodies, Competence Authority, and Registration Panel" for further information.

Section Three provides information about how we believe the proposed rule changes address these issues.

What is the purpose of professional disciplinary processes and competence evaluation processes?

Professional disciplinary processes and competence evaluation processes are about the profession holding their peers to account for meeting the expected high level of conduct and competence that the public and the profession deserve from teachers. It acts as a deterrent against professional misconduct and incompetence. Professional disciplinary processes and competence evaluation processes provide authoritative, independent, and transparent processes that, when working properly, enables the public and profession to have confidence that the ethical behaviour and effective teaching practice expected of the profession, as set by the profession itself, are being upheld.

Professional discipline is distinct from criminal law. While criminal law is aimed at behaviours or omissions falling short of what is expected of people in society generally, professional discipline focuses on what is expected of a member of a profession. For the teaching profession this focus is on the safety of children and young people and the delivery of high-quality teaching practice.

Behaviours may be both criminal and disciplinary. In such cases, the Council's disciplinary processes are placed on hold until the outcome of any criminal process is determined. If criminal processes against a teacher do not continue or a teacher is acquitted of any charges, it is important a professional disciplinary process still occurs. A teacher who is found to be not guilty of an offence under criminal law may still have behaved in a way that does not meet the expectations of the teaching profession and may still justify professional disciplinary intervention.

It is the responsibility of the Council to consider whether a teacher may have breached *Ngā Tikanga Matatika* | *the Code of Professional Responsibility* or is not meeting *Ngā Paerewa* | *Standards for the Teaching Profession*. It may be necessary to apply our professional disciplinary processes and competence evaluation processes to determine whether they are safe to continue as a member of the

profession or whether any conditions should be attached to their registration or practising certificate or limited authority to teach.

Competence evaluation processes are focussed on assessing a teacher’s competence against *Ngā Paerewa | Standards for the Teaching Profession*. Their purpose is to confirm a teacher can demonstrate effective teaching practice that delivers safe and high-quality learning for children and young people.

The Act sets out the professional sanctions that may be imposed by the disciplinary bodies, the Competence Authority and the Council – these sanctions are distinct from the types of sanctions and outcomes that may result from an employment or criminal investigation.

How many reports and complaints are received and managed by the Teaching Council?

Below is a summary of the number of mandatory reports and complaints received and managed by the Council. In providing this data, we need to acknowledge that it is currently contained in three separate information management systems which are currently being transitioned into a single cloud-based secure integrated document management and information system. This transition has challenged our ability to maintain consistent and accurate data about matters moving through different parts of our disciplinary and competence processes. However, once complete the transition will allow us to provide more timely and accurate information in the future.

Financial years 2017/18 to 2021/22

| | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 2021/22 |
|---|----------------|---------------|----------------|----------------|---------------|
| Number of registered teachers with a practising certificate and people holding a limited authority to teach | 102,800 | 105,286 | 106,788 | 108,992 | 109,441 |
| Mandatory Reports, complaints, self-reports & own motion referrals received | 619 (0.6%) | 647 (0.6%) | 544 (0.5%) | 537 (0.5%) | 638 (0.5%) |
| Teachers on conditions | 100 (0.1%) | 119 (0.1%) | 148 (0.14%) | 120 (0.11%) | 59 (0.05%) |
| Registrations cancelled | 26 (0.025%) | 21 (0.02%) | 26 (0.02%) | 24 (0.02%) | 10 (0.01%) |
| Practising certificates cancelled | | 2 (0.002%) | 1 (0.001%) | 1 (0.001%) | 1 (0.001%) |

Calendar year 2022

- **Triage**

In the 2022 calendar year the Council received 653 mandatory reports, complaints, self-reports for convictions, and other matters such as police referrals. Of these, 186 conduct cases were referred to the Complaints Assessment Committee, and 27 competence matters referred to a professional practice evaluator. The Triage Committee agreed to take no further action for 273 matters. For the outstanding referrals, further information has been sought or, in a few cases, placed on hold pending police investigations.

- **Complaints Assessment Committee**

In the 2022 calendar year the Complaints Assessment Committee made decisions on 165 cases. Of these, 31 cases had a finding of misconduct. For the remaining cases, no further action was taken on 52 matters, 81 cases were referred to the Disciplinary Tribunal, and in one case, the matter was referred to the impairment process. An impairment report was produced and provided to the Committee to reconsider. Forty-one matters have been scheduled or are being scheduled for Complaints Assessment Committee hui in 2023.

- **Disciplinary Tribunal**

As of 15 December 2022, 72 cases have been filed with the Disciplinary Tribunal where the teacher has been charged with serious misconduct and/or misconduct.

Between February 2022 and December 2022, 55 decisions were received, with 13 of these decisions relating to cases filed in 2022.

N.B: The Disciplinary Tribunal can impose one or more penalties upon a teacher, meaning the number of penalties imposed will not add up to the number of decisions received from the Tribunal.

Of the 13 decisions for 2022, six teachers were ordered to contribute costs, six teachers received a censure, five teachers had their registration cancelled, four teachers received conditions on their practising certificate, two teachers had their entry on the register annotated, two cases were withdrawn by the Complaints Assessment Committee and one teacher had the charged dismissed by the Disciplinary Tribunal.

For the remaining 42 decisions issued in 2022, 32 teachers received a censure, 28 teachers were ordered to contribute costs, 28 teachers received conditions on their practising certificate, 20 teachers had their entry on the register annotated, eight teachers had their registration cancelled, five teachers were suspended, and two teachers had the charge dismissed by the Disciplinary Tribunal. In addition, one teacher had their charge stayed by the Disciplinary Tribunal before it proceeded to a hearing.

- **Competence**

During the 2022 calendar year 27 cases were referred to the competence evaluation process from the Triage Committee. The professional practice evaluators completed evaluations for 54 matters (which included finalising many cases referred prior to 2022).

The evaluation outcomes were 31 no further action, 10 were referred to the employer, and 14 resulted in agreed conditions on the practising certificate. Five matters were referred to the Competence Authority. During the year, eight teachers were released from competence conditions.

Who are the decision-makers in these processes?

While the Council's staff are involved in the administration, triaging and investigation of reports, complaints or matters related to conduct or competence (some of whom are registered teachers), decisions that impact on a teacher's registration, practising certificate or limited authority to teach are made by independent bodies comprised mainly of members of the profession.

The bodies involved with decision-making about conduct and competence matters operate in panels. This allows panels to be formed that can reflect, as much as possible, the sector the teacher works in and factors such as location.

The Complaints Assessment Committee who considers reports, complaints and other matters related to conduct, has 30 members of whom 26 are members of the profession.

The Disciplinary Tribunal considers more serious reports, complaints and other matters related to conduct that have been referred by the Complaints Assessment Committee. The Tribunal is a quasi-judicial body chaired by lawyers. Nineteen of the 30 members are members of the profession.

The Competence Authority who considers reports, complaints and other matters related to competence, has eight members of whom five are members of the profession.

Each of these bodies include lay people who are appointed to represent the public.

Who has been consulted about identifying which rules should be changed?

Since October 2022, we have held hui with a range of key stakeholders to discuss the current rules and processes, and to identify areas where change is desirable. Key stakeholder groups representing different parts of the teaching profession have included unions, principal groups, early childhood sector groups, NZ School of Trustees, Ministry of Education, Kaupapa Māori groups, the Council's Pacific Education Steering Group, and lawyers.

What Terms of Reference are guiding this work?

The Council is incorporating the following key strategic objectives into our disciplinary and competence processes:

- integrating ngā uara | values of the profession
- giving voice to teachers and protecting their mana
- protecting the mana of all involved persons
- embedding tikanga Māori
- enhancing natural justice principles
- applying a restorative and rehabilitative approach as appropriate.

In addition, the Council has made a commitment to the Royal Commission of Inquiry into Abuse in Care that as part of our review of the rules, we will:

- review rule 34 to ensure special protection for certain witnesses and vulnerable people
- work to improve the diversity and cultural awareness of our decision-making bodies
- apply a Te Ao Māori lens to our review and professional disciplinary processes.

We appeared at a Royal Commission of Inquiry hearing on State institutional responses on 29 August 2022. Our witness statement can be viewed and/or read on the [Royal Commission website](#).

What further work is involved?

The Council has approved the following phases of work:

- | | |
|--------------------|--|
| Phase One | consulting, drafting, and publishing new and amended rules to take effect from 29 July 2023; designing a transition process and establishing the internal processes and system changes to give effect to the rules. These are the changes described in this document. |
| Phase Two | a review of the impairment processes and further design work on creating a tikanga-based approach in 2023-24 |
| Phase Three | consideration of future law change to give effect to those areas of design, especially related to tikanga Māori that cannot be incorporated within existing legislation. |

The Council is working with Kaupapa Māori stakeholders to create a vision for alternative pathways. This will involve exploring options that meet the different and diverse needs of those involved in the professional disciplinary processes and competence evaluation processes.

What is not covered in the proposed amended rules?

Rules that remain unchanged

Some of the current rules deal with matters other than professional discipline and competence evaluation matters. We do not propose that these be changed, except for a few minor technical changes, detailed below.

- Part 7A - Registration Panel
- Part 9 - Police vetting of applicant for registration as teacher, practising certificate, or limited authority to teach
- Part 9A - Refresh process.

Separate review of impairment processes

We recognise the importance of an effective impairment process. We intend to review how impairment issues can be considered throughout our processes in a way that is focussed on early intervention and rehabilitative options. As we consider this needs a full and robust review that cannot be achieved within the timeframe of this current work we will initiate a separate review of impairment in 2023-24.

Minor technical changes

It is proposed that minor technical changes are made to some rules that should not have any significant impact on our work. Because of their nature we have not gone into detail in this consultation document about them, but they are identified below for your information.

Changes to pronoun

In keeping with other legislative changes pronouns such as “he”, “she”, “him”, “his” or “her” will be changed to “them” or “their” as appropriate. The current rules that are affected are:

| Rule number | Rule title |
|-------------------|--|
| 3 | Interpretation - definition of “impairment” |
| 15 (3) | Investigator to carry out investigation |
| 17 (5) | Meeting of CAC regarding report or complaint |
| 26 (2) | Power to amend charge or notice of referral |
| 34 (2) (a) & (b) | Power to amend charge or notice of referral |
| 40 (1) | Investigation by PPE |
| 60 (1) & (2) | Investigators and PPEs not personally liable and indemnity |
| 61 (2)(b)(i)&(ii) | Term of appointment to disciplinary body, Competence Authority or Registration Panel |
| 62 (1) & (4) | Ceasing to hold position on disciplinary body or Competence Authority |
| 64 (2) (a) | Confidentiality |

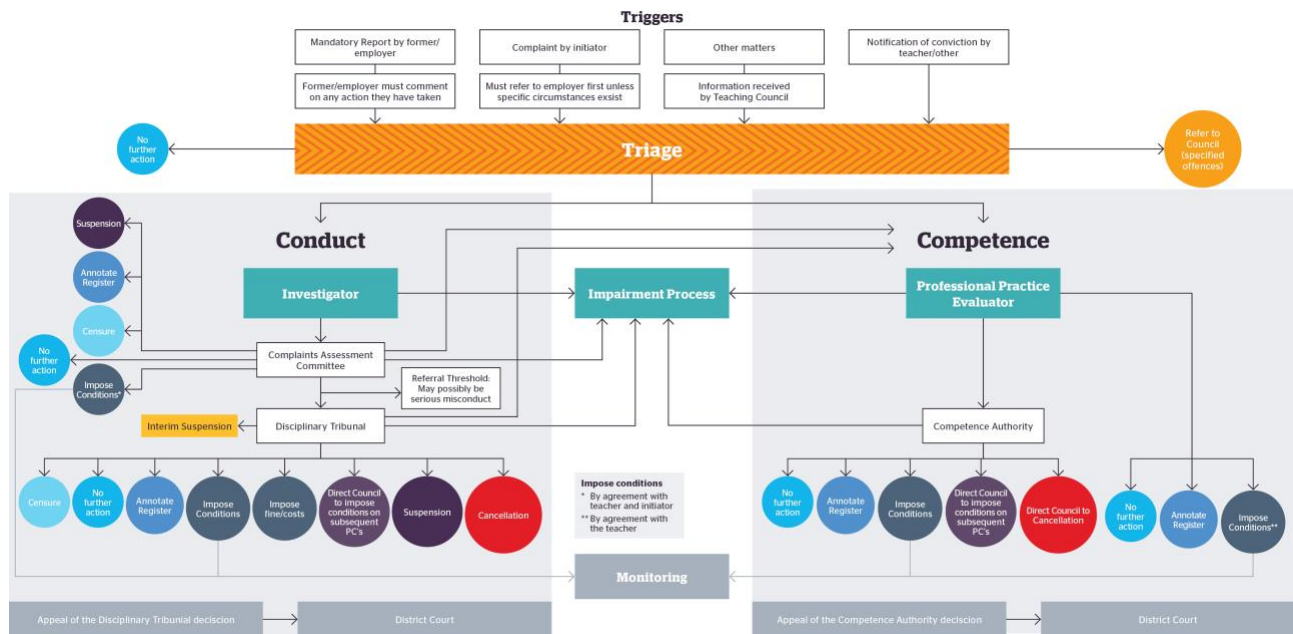
Other technical amendments

| Rule number | Rule title |
|-------------|---|
| 9 (1) | mandatory reporting of possible serious misconduct refers to s.394 of the Education Act 1989 : needs to be updated to refer to s.491 of the Act. |
| 29 (e) | “Parties who may be present when hearing held in private” talks about “the” witness – amend the article to ‘a’ or ‘any’ as this currently implies that there is only one witness. |
| 50 | “Powers of investigator and competence assessor” - change heading from “competence assessor” to “professional practice evaluator”. |

What are the components of the professional disciplinary processes and competence evaluation processes?

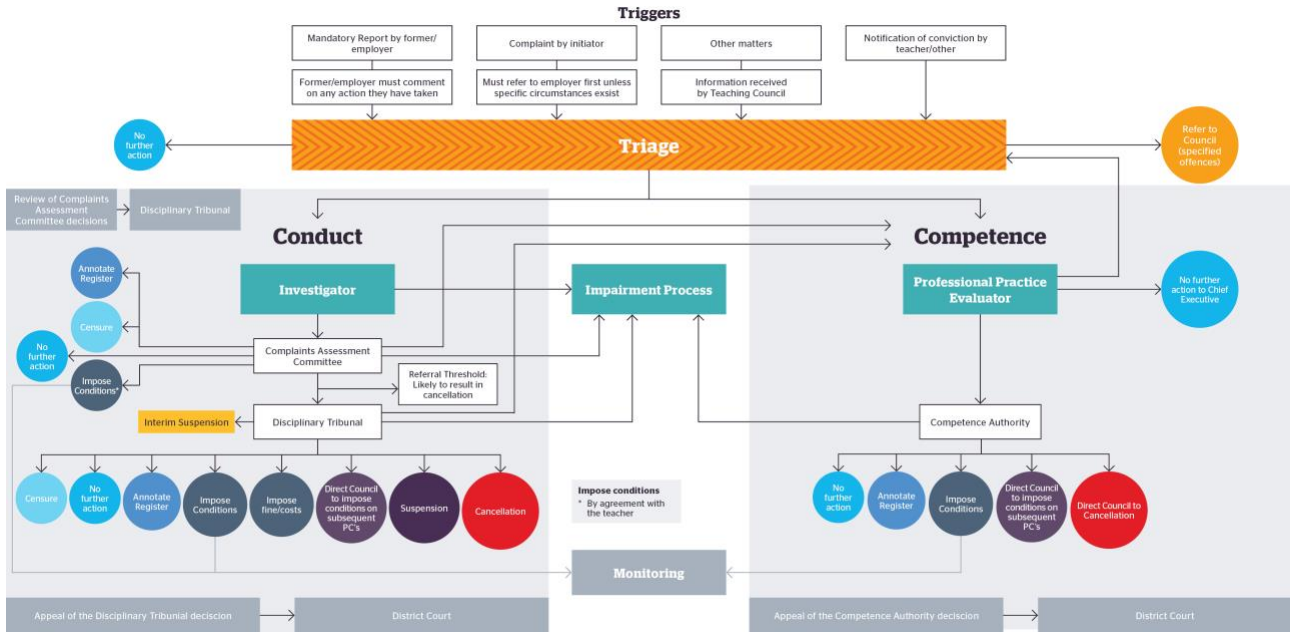
Current processes

The following flow-chart provides a visual guide to the current processes.



Future processes if proposed rule changes adopted

The following flow-chart provides a visual guide to the potential future processes if the proposed rule changes are adopted.



SECTION TWO – PROPOSED RULE CHANGES

This section discusses the rationale for the proposed rule changes and what the proposed rule changes are.

The section is divided into each Part of the current rules.

Where appropriate, an introduction is provided to give some context to each Part or rule.

We have used the following terms to summarise why any changes have been proposed:

We need: reflects our obligation to ensure the rules reflect the changes introduced by the 2022 Amendment Act.

reflects our obligation to incorporate key Council strategic objectives into our professional disciplinary processes and competence evaluation processes.

We found: refers to issues we identified during our review of the current rules. These issues are not part of the legislative changes, nor have they necessarily arisen during stakeholder feedback, but we believe they may help to provide greater clarity.

We heard: refers to issues raised during previous kōrero and hui with key stakeholders, feedback via the fees and levy consultation, and submissions made through the select committee process about the legislative changes in the 2022 Amendment Act. They also reflect issues raised in more recent hui with key stakeholders that have focussed on those rules considered to require greater clarity.

We committed: refers to commitments we made in our witness statement to the Royal Commission into Abuse in Care. We appeared at a hearing on State institutional responses on 29 August 2022. Our witness statement can be viewed and/or read on the [Royal Commission website](#).

We wonder: refers to issues that we have not proposed rule changes for, but we are interested in feedback about whether a rule change should be considered.

We propose: describes the proposed rule changes.

How proposed rule changes are shown

Proposed rule changes are shown in **blue text**.

The following are used to show the nature of the proposed rule changes:

- amended or new wording is underlined
- deleted or repealed wording is ~~struckthrough~~.

Section Four ‘Comparison of current rules and proposed rules’ provides a full list of the current rules and allows a direct comparison with rules that are proposed for removal, amendment or inclusion.

Part 1 - Preliminary provisions

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 1 of the Teaching Council Rules about preliminary provisions:

[s.4 Purpose of the Act](#)

[s.9 Te Tiriti o Waitangi](#)

Rule 3 : Interpretation

We found: the current rule 3 needs to be updated to include some new definitions to reflect proposed additions within the rules.

The term '**complainant**' would help to differentiate from an 'initiator' who is defined in the rules as a 'person who makes a report or complaint to the Council'.

- A 'complainant' may be someone who has an interest in a report, complaint or matter but who is not the 'initiator'.
- We want to recognise our duties towards complainants in the new rule 4A and amended rule 15, and this means we need to include a definition in rule 3.

We also propose to take into consideration the **Protected Disclosures (Protection of Whistleblowers) Act 2022** when considering what actions may occur when a report or complaint or other matter is received by the Council.

The role of the **Triage Committee** is discussed further in this document in the section about Part 4 'Investigation and referral of report, complaint, or other matter by chief executive'. It is proposed a definition is included in rule 3.

We propose: to insert the following definitions under rule 3:

Rule 3 Interpretation

Insert new definitions

Complainant means a person against whom alleged misconduct (including serious misconduct) is committed and includes, in the case of a child or young person, a parent or legal guardian of the child or young person.

Discloser has the meaning given in section 8 of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

Protected disclosure has the meaning given in section 9 of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

Triage Committee means the Triage Committee established under these rules.

Rule 4 : Overview

We need: to update the current rules to reflect the changes introduced by the 2022 Amendment Act, including the new provisions relating to the review of Complaints Assessment Committee decisions by the Disciplinary Tribunal.

We propose: to include a new Part 5A into the rules to provide for the new review provisions. This new Part needs to be referenced in rule 4 which provides an overview of all the rules.

Rule 4 Overview

Amend subclause 4 (e)

- (e) provide for the practices and procedures of the disciplinary bodies when dealing with reports, complaints, and other matters (see Parts 5, 5A and 6); and

New Rule 4A : Interpretation of rules

The purpose of the Act¹ includes ‘establishing and regulating an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships’. As part of the education system, the Council is committed to honouring Te Tiriti o Waitangi. Although not a formal part of the Crown, the Council has committed to being a Tiriti-led organisation and working according to the principles of Te Tiriti o Waitangi and in partnership with the profession.²

We need: to incorporate the key Council strategic objective of embedding tikanga Māori into our professional disciplinary processes and competence evaluation processes.

We heard: the current rules are silent about Te Tiriti o Waitangi obligations and how the Council’s professional disciplinary processes and competence evaluation processes will honour Te Tiriti o Waitangi.

We heard the current rules don’t have appropriate regard for considering the personal circumstances of teachers, complainants or witnesses involved in our professional disciplinary processes and competence evaluation processes. It is important that those who exercise discretion or perform a function under these rules consider whether the personal circumstances of those involved may have impacts, such as cultural or health matters.

We propose: to insert a new rule 4A to have the personal circumstances of teachers, complainants and witnesses taken into account.

We propose to insert a new rule 4A to specifically reflect Te Tiriti o Waitangi expectations.

New rule 4A Interpretation of rules

Any person or body exercising a power or discretion, or performing a function, under these rules must have regard to, as the case requires.-

(a) the personal circumstances of:

- (i) any teacher who is the subject of a complaint, report or matter;
- (ii) any complainant; and
- (iii) any witness, including a complainant, who gives evidence before the Disciplinary Tribunal;

(b) the purposes in section 4 of the Act, including to regulate an education system that honours Te Tiriti o Waitangi and Māori-Crown relationships.

¹ Section 4 of the Education and Training Act 2020

² Our path to the future – Strategic Plan 2022-2027, page 4, 30 June 2022

Part 2 - Making a report or complaint to the Teaching Council

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 2 of the Teaching Council Rules about making a report or complaint to the Council:

| | |
|------------------------|---|
| s.10 | Interpretation – serious misconduct |
| s. 489 | Mandatory reporting of dismissals and resignations |
| s.490 | Mandatory reporting of complaints received about former employees |
| s.491 | Mandatory reporting of possible serious misconduct |
| s.492 | Mandatory reporting of failure to reach required level of performance |
| s.493 | Mandatory reporting of convictions |
| s.495 | Complaints about conduct |
| s.496 | Complaints and reports relating to teacher conduct |
| s.506 | Complaints about competence |

Introduction

Mandatory reports and complaints

The Act sets out when a mandatory report **must** be reported to the Council by an employer or a teacher and when a complaint may be submitted to the Council by an initiator – usually a parent, an employer, a member of the teaching profession, or a member of the Council.

Other matters

These are matters about a teacher’s conduct or competence that come to the attention of the Council outside of a mandatory report or complaint. These include, among other sources of information:

- information received from other agencies/organisations that the Council has information sharing agreements with such as police, Oranga Tamariki, the Ministry of Education and the Education Review Office (ERO)
- notifications from the courts
- when new allegations arise out of an investigation into a mandatory report or complaint
- when convictions or comments are entered in a police vetting report, disclosed to the Council as part of a teacher’s practising certificate renewal process
- information included in media articles.

Own motions

The Council may consider and refer any matters related to teacher conduct or competence of its own motion as it sees fit. Own motions are an action generated in response to other matters that have been brought to the Council’s attention outside of mandatory reports and complaints – see ‘other matters’ above.

Rule 8: Form of report or complaint

We need: to incorporate the key Council strategic objective of applying a restorative and rehabilitative approach, as appropriate, into our professional disciplinary processes and competence evaluation processes.

We found: Rule 8 (1) (e) currently says “...a report or complaint must – if possible, describe the outcome sought by the initiator, if any”. In practice we have found that it is more useful to discuss the ‘action’ the initiator wants the Council to take, as opposed to the

'outcome' sought. In particular, outcomes are sometimes sought that are not within the powers of the Council, disciplinary bodies or Competence Authority to deliver. In addition, for mandatory reports employers are required under the Act to describe what action, if any, they have taken in response to the issues or matters raised. It can be of value for the Council to consider any restorative justice or remedial processes that have been undertaken in response to the issues or matters raised.

We propose: to delete the current subclause rule 8 (1) (e) and replace it with wording to allow for relevant restorative justice processes to be included in information provided about the actions taken in response to the matter.

We propose to add a new subclause 8 (1) (f) to replace the current 8 (1) (e) reference to the 'outcome' sought by the initiator with the 'action' they seek.

Amend rule 8 Form of report or complaint

Amend subclause 8 (1) (e) and insert a new subclause 8 (1) (f)

- (1) In addition to the requirements specified in the Act, a report or complaint must -
- ~~(e) if possible, describe the outcome sought by the initiator, if any.~~
 - (e) if possible, be accompanied by information about any action taken in response to the matter that the report or complaint is about, including any restorative justice process undertaken; and
 - (f) if possible, state what action, if any, the initiator considers should be taken by the Teaching Council.

Part 3 – Criteria for reporting serious misconduct

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 3 of the Teaching Council Rules about the criteria for reporting serious misconduct:

[s.10](#) [Interpretation – serious misconduct](#)
[s.491](#) [Mandatory reporting of possible serious misconduct](#)

Rule 9 : Criteria for reporting serious misconduct

Rule 9 sets out the criteria for reporting serious misconduct.

Some small changes are proposed to improve the clarity of this rule plus we seek feedback on whether the term ‘emotional abuse’ currently used in rule 9 should be changed to ‘psychological abuse’.

We wonder: if the term ‘emotional abuse’ under rule 9 (1) (b) should be changed to ‘psychological abuse’ as defined in [section 11 of the Family Violence Act 2018](#). The Royal Commission of Inquiry into Abuse in Care also used the term ‘psychological abuse’. The definition for ‘psychological abuse’ as shown in the link above is quite lengthy. There is no definition for ‘emotional abuse’ but we understand that it is a term used and understood within the teaching profession.

We propose: to hear feedback on this issue before considering further if a change in terminology should be considered.

We found: the examples provided under subclause 9 (1) (e) can be limiting and may prevent wider consideration of what may constitute the breaching of professional boundaries. Examples are not provided for any of the other subclauses.

We propose: to amend rule 9 (1) (e) to remove the two examples provided about breaching professional boundaries to be consistent with the other subclauses of rule 9 (1).

Rule 9 Criteria for reporting serious misconduct

Amend subclause 9 (1) (e)

- (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 appropriate 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:~~

We found: the term ‘misconduct’ under subclause 9 (2) may exclude consideration of ‘serious misconduct’. To keep this subclause broad the phrase ‘the conduct’ is proposed which would encompass both misconduct and serious misconduct, as subclause (1) of rule 9 already talks about a serious breach of *Ngā Tikanga Matatika | Code of Professional Responsibility*.

We propose: to amend rule 9 (2) to replace the term ‘misconduct’ with ‘the conduct’.

Rule 9 Criteria for reporting serious misconduct

Amend subclause 9 (2)

~~Misconduct~~ The conduct described in any of the paragraphs (a) to (e) and (k) of subclause (1) may-etc

Part 4 – Investigation and referral of report, complaint, or other matter by chief executive

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 4 of the Teaching Council Rules about the investigation and referral of a report, complaint, or other matter by the chief executive:

[s.479](#) [Functions and powers of the Teaching Council](#)
[s.495](#) [Complaints about conduct](#)

Introduction

The Council is responsible under the Act for performing the professional disciplinary functions relating to teacher misconduct and reports of teacher convictions and performing the functions relating to teacher competence.

Triaging of reports, complaints, and other matters

In the calendar year 2022, 653 mandatory reports, complaints, self-reports for convictions, and own motion matters such as police referrals, were received by the Council.

A Triage Committee has been established to help the chief executive manage the administrative processing of reports, complaints, and other matters that are received, and to decide an appropriate pathway. The Triage Committee may decide:

- no further action is necessary
- further information is required to decide an appropriate pathway
- to refer to the Complaints Assessment Committee if it is a conduct matter
- to refer to a professional practice evaluator if it is a competence matter
- to refer to the Council if the matter is related to specified offences under the Children’s Act 2014.

The Triage Committee is not included in the current rules. For transparency we believe it should be included. Feedback during stakeholder hui has also supported the inclusion of the Triage Committee in the rules.

The proposed rule changes refer to the establishment and role of the Triage Committee. We considered the appropriateness of including more detailed information about the Triage Committee within the rules, for example membership information or how its meetings operate. As it is an internal committee, we do not consider it appropriate or necessary for such details to be included in the rules, but we will make information publicly available in due course on our website.

Rule 11 : Investigation and referral of report or complaint by chief executive

We heard: there is some confusion about the nature of any investigations undertaken as part of the triage process. This arises from the use of the term “initial investigation” in rule 11 (1) (b). We propose to amend the rule to clarify that any initial investigation undertaken by an investigator occurs solely for the purpose of confirming there is sufficient information for the chief executive or Triage Committee to decide what further action is appropriate – e.g., referral to the Complaints Assessment Committee for professional disciplinary matters, to a professional practice evaluator for competence evaluation matters, no further action, or referral of specified offences under the Children’s Act 2014 to the Council.

We propose: to rename and reformat rule 11 to provide greater clarity about the purpose of any initial investigation.

We propose to amend rule 11 to include a new subclause 1A to allow the chief executive to refer a report or complaint to the Triage Committee.

Rule 11 Action upon receipt of investigation and referral of report or complaint by chief executive

Amend subclause 11 (1)

- (1) On receipt of a report or complaint, the chief executive may do any or all of the following:
- (a) in order to assess what further action, if any, to take:
 - (i) request further information from any person; ~~in order to assess what further action, if any, to take:~~
 - (ii) ~~(b)~~ appoint an investigator to make an initial investigation of the report or complaint:
 - (b) ~~(c)~~ refer the report or complaint, or part of the report or complaint, to—
 - (i) the teacher's current employer:
 - (ii) ~~the Teaching Council:~~
 - (ii) the Complaints Assessment Committee: ~~a professional practice evaluator, the Teaching Council, or the teacher's current employer, as applicable~~
 - (iii) a professional practice evaluator:
 - (c) take any other action permitted under the Act:
 - (d) take no further action.

Insert a new subclause 11(1A)

- (1A) Instead of taking any action specified in subclause (1), the chief executive may refer a report or complaint to the Triage Committee for a decision on the appropriate outcome in subclause (1).
- (2) This rule does not limit the power of the Teaching Council (acting through the chief executive) to investigate and refer matters of its own motion in accordance with sections 496(2) and 506(3) of the Act.
- (3) When a matter is referred to the Complaints Assessment Committee or ~~another body~~ a professional practice evaluator for investigation in accordance with sections 496(2) and 506(3) of the Act, it is to be treated as if a report or complaint had been made, subject to all necessary modifications in procedure.

Triage Committee

We heard: it is important for the role of the Triage Committee to be included in the rules.

We found: guidance about exercising a decision to take no further action by the Triage Committee would be of value. Such guidance is modelled on the Lawyers and Conveyancers Act 2008.

We propose: to insert a new rule 11A about the establishment of a Triage Committee.

We propose to insert a new rule 11B about the role of the Triage Committee.

New sub-Part heading: *Triage Committee*

New Rule 11A **Establishment of Triage Committee**

- (1) A Triage Committee is established.
- (2) The Teaching Council must appoint the members of the Triage Committee.

New Rule 11B Triage Committee

- (1) If the chief executive refers a report or complaint to the Triage Committee, the Triage Committee must take one or more of the actions specified in rule 11(1).
- (2) Before taking any action specified in rule 11(1), the Triage Committee must determine whether there is—
 - (a) reason to seek further information from any person in order to assess what further action, if any, to take; or
 - (b) reason to refer a report or complaint, or part of a report or complaint, to the teacher’s employer; or
 - (c) sufficient information and substance in a report or complaint, for referral to the Complaints Assessment Committee or a professional practice evaluator; or
 - (d) sufficient reason to justify a decision to take no further action.
- (3) In deciding whether to take no further action in respect of a report or complaint, the Triage Committee may consider any matter it considers relevant, including—
 - (a) the person who is the subject of the report or complaint was not a registered teacher or hold an authority to teach at the time of the events in question; or
 - (b) the matter that the report or complaint is about is trivial; or
 - (c) the report or complaint is frivolous or vexatious or is not made in good faith;
 - (d) the report or complaint relates to a discloser who has made a protected disclosure.
- (4) If a report or complaint is referred to the Triage Committee under rule 40(3), the Triage Committee must take one or more of the actions specified in rule 11(1) as if the complaint or report had been referred by the chief executive under rule 11(1A).
- (5) For the purpose of subclause (4), the Triage Committee may take into account any investigation or assessment already undertaken by any person or body into the report or complaint.

Rule 12 : Notification to teacher and current employer of referral

We found: this rule currently does not refer to notification of a decision to take no further action nor does it mention ‘other matters’. We believe it is useful to clarify these in the rule.

Rule 12 (3) gives the chief executive discretion not to notify a current employer of a referral or of a decision to take no further action, where appropriate. There is no equivalent discretion relating to notifying a teacher. In some cases, it may be appropriate for the chief executive not to notify a teacher if, for example, the teacher has left the profession. We believe the chief executive should have such discretion.

We propose: to amend the heading and content of rule 12 to include reference to deciding to take no further action and to include other matters.

We propose to clarify that the chief executive has the discretion not to notify the referral of a complaint, report or other matter if the chief executive considers notification to be inappropriate.

New sub-Part heading: *Notification*

Rule 12 **Notification to teacher and current employer of referral of report or complaint or decision to take no further action**

Amend subclauses 12 (1), (2), (3) and (4)

- (1) ~~Unless the chief executive considers notification is not appropriate, the chief executive must notify the teacher concerned if—~~
- (a) ~~the report, complaint or other matter is referred to the Complaints Assessment Committee or a professional practice evaluator; or~~
 - (b) ~~a decision is made to take no further action in respect of the report, complaint or other matter, or the Teaching Council, the chief executive must notify the teacher concerned a referral has been made~~
- (2) ~~The~~ For the purpose of subclause (1)(a), the notice of referral to the teacher must—
- (a) include sufficient details so that the teacher understands the nature of the matter that the report, complaint or other matter is about (to the extent possible from the information received by the chief executive); and
 - (b) inform the teacher—
 - (i) of the next steps in the process; and
 - (ii) that the teacher may make submissions to the Complaints Assessment Committee, the professional practice evaluator, or any other person or body exercising any other power under the Act ~~the Teaching Council~~, as applicable; and
 - (iii) that the teacher’s current employer is being notified of receipt of the report or complaint or other matter, if applicable.
- (3) ~~Unless the chief executive considers notification is not appropriate, the chief executive must notify the teacher’s current employer and the initiator of the report or complaint, or the person who referred the matter of:~~
- (a) ~~any referral to the Complaints Assessment Committee or a professional practice evaluator,; or~~
 - (b) ~~any decision to take no further action.~~
- (4) A notice of referral under subclause (3)(a) to the teacher’s employer must describe the nature of the matter that the report or complaint is about.

Part 5 – Procedures of Complaints Assessment Committee for dealing with reports and complaints that relate to teacher conduct

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 5 of the Teaching Council Rules about the procedures of the Complaints Assessment Committee for dealing with reports and complaints that relate to teacher conduct:

| | |
|-----------------------|--|
| s.494 | Disciplinary bodies |
| s.496 | Complaints and reports relating to teacher conduct |
| s.497 | Powers of Complaints Assessment Committee |

Requirements of Education and Training Amendment Act 2022

These sections of the 2022 Amendment Act relate to the powers of the Complaints Assessment Committee:

| | |
|----------------------|---|
| s.44 | Section 497 amended (Powers of Complaints Assessment Committee) |
|----------------------|---|

Introduction

About investigators

Investigators are Council staff members who investigate the evidence related to the alleged misconduct of teachers on behalf of the Complaints Assessment Committee. Some are registered teachers, others have experience in investigations such as ex-members of Police.

About the Complaints Assessment Committee

The Complaints Assessment Committee is an independent body established under the Act to consider reports prepared by investigators in response to reports, complaints or other matters related to teacher conduct.

Under section 486 of the Act, the Council must make rules for a Complaints Assessment Committee to:

- investigate complaints of misconduct about, and reports of convictions of, teachers; and
- carry out any other function, and exercise any power, given under this Act or delegated to it by the Council.

It must also make rules relating to the practices and procedures of the Complaints Assessment Committee.

The Complaints Assessment Committee must comprise at least five people. The Committee may operate in panels and more than one panel of the Committee may operate at any one time. A panel of the Complaints Assessment Committee must comprise at least three people. The majority of members in a panel must be teachers with a current practising certificate. No member of the Complaints Assessment Committee can also be a member of the Disciplinary Tribunal. Twenty-six of the 30 current Complaints Assessment Committee members are members of the teaching profession.

Following an investigation, the Complaints Assessment Committee may do one or more of the following:

- resolve to take no further action
- refer the teacher to a competency review
- refer the teacher to an impairment process
- make a finding of misconduct or possible serious misconduct.

If the Complaints Assessment Committee makes a finding of misconduct that is not serious misconduct, it may, by agreement with the teacher and the person who made the complaint or report or referred the matter, do one or more of the following:

- censure the teacher
- impose conditions on the practising certificate or authority, including (without limitation) requiring the teacher to undergo supervision or professional development
- suspend the teacher's practising certificate or limited authority to teach for a specified period, or until specified conditions are met (though this power is not exercised in practice)
- annotate the register or the list of authorised persons in a specified manner
- direct the Council to impose conditions on any subsequent practising certificate issued to the teacher.

(Note the requirement to seek agreement of the person who made the complaint or report or referred the matter is removed with effect from 23 July 2023 – see further discussion below.)

The Complaints Assessment Committee must refer any matter it considers may possibly constitute serious misconduct to the Disciplinary Tribunal (this is referred to as the 'referral threshold' – see further discussion on this below).

At a Disciplinary Tribunal hearing, the Complaints Assessment Committee is the prosecuting body, represented by a lawyer.

Changes to referral threshold from Complaints Assessment Committee to Disciplinary Tribunal

Section 44 of the 2022 Amendment Act amends section 497 of the Act relating to the powers of the Complaints Assessment Committee with effect from 29 July 2023. Currently section 497 (5) requires the Complaints Assessment Committee to refer to the Disciplinary Tribunal 'any matter that may possibly constitute serious misconduct.' Under the changes to section 497, from 29 July 2023 the Complaints Assessment Committee must refer to the Disciplinary Tribunal:

'any matter if the Committee considers that either of the following powers is likely to be considered in order to address the matter:

- (a) the power to suspend a teacher's practising certificate or authority under section 500(1)(d):
- (b) the power to cancel a teacher's registration or authority or practising certificate under section 500(1)(g).'

This means the 'referral threshold' will change from one based possibly on serious misconduct to one based on the likelihood of suspension or cancellation.

Removal of requirement for Complaints Assessment Committee to reach agreement with the person who made the complaint or report or referred the matter

Section 44 of the 2022 Amendment Act amends section 497 of the Act relating to the powers of the Complaints Assessment Committee with effect from 29 July 2023. Currently section 497 requires the Complaints Assessment Committee, if it makes a finding of misconduct that is not serious misconduct, to seek the agreement of the teacher and the person who made the complaint or report or referred the matter, to do a number of things (described above).

Under the changes to section 497, from 29 July 2023 the Complaints Assessment Committee will no longer be required to seek the agreement of the person who made the complaint or report or referred the matter. It will still be required to seek the agreement of the teacher to impose a penalty, if the Committee makes a finding of misconduct or serious misconduct.

While the agreement of the person who made the complaint or report or referred the matter is no longer required, a new section 499A of the Act provides them with a new ability to seek a review of a Complaints Assessment Committee decision – see the discussion under the new Part 5A.

Removal of power to suspend a practising certificate or a limited authority to teach

The powers of the Complaints Assessment Committee are changed in the Act with effect from 23 July 2023 to remove its ability to suspend a teacher's practising certificate or a limited authority to teach. This change recognises the seriousness of a suspension and shifts authority to sit only with the Disciplinary Tribunal.

Rule 14 : Referring reports and complaints to the Complaints Assessment Committee and allocation to investigator

We need: to incorporate the key Council strategic objectives of embedding tikanga Māori and enhancing natural justice into our disciplinary and competence processes.

We found: This rule currently does not make reference to 'other matters'. As it is not only reports or complaints that may be investigated but also 'other matters' we believe it is important to include this.

We propose: to amend rule 14 to include reference to 'other matters'.

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

Amend subclauses 14 (1) and (3)

- (1) If the chief executive refers a report, complaint or other matter to the Complaints Assessment Committee, the chief executive may-
 - (a) allocate the report, ~~or~~ complaint or other matter to an investigator, who must investigate the report, ~~or~~ complaint or other matter on behalf of the Complaints Assessment Committee and report to the Complaints Assessment Committee for a decision; or
 - (b) refer the report, ~~or~~ complaint or other matter to the Complaints Assessment Committee without first allocating it to an investigator.
- (2) The chief executive may allocate a report or a complaint to an investigator who also conducted an initial investigation of the report or complaint under rule 11.
- (3) The chief executive has the discretion to decide-
 - (a) which panel of the Complaints Assessment Committee to refer the report, ~~or~~ complaint or other matter to; and
 - (b) the composition of any particular panel of the Complaints Assessment Committee to consider a report or complaint, subject to rule 51.

We propose: to insert a new rule 14 (4) to clarify the existing discretion of the chief executive to determine the composition of a Complaints Assessment Committee panel by requiring consideration of the particular contexts of the teacher and initiator, and whether expertise in te reo Māori or tikanga Māori is required.

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

Insert new subclause 14 (4)

- (4) When exercising discretion under subclause (3)(b), the chief executive must consider:
 - (a) the particular context of the teacher concerned, and the initiator;
 - (b) whether the Complaints Assessment Committee requires expertise in te reo Māori or tikanga Māori.

Rule 15 : Investigator to carry out investigation

We need: to consider our obligations for applying natural justice as required under the Act to the teacher who is the subject of a report, complaint or other matter, as well as others involved in our professional disciplinary processes and competence evaluation processes.

We found: this rule currently does not make reference to 'other matters'. As it is not only reports or complaints that may be investigated but also 'other matters', we believe it is important to include this.

We found our rules currently provide for a teacher to have the opportunity to comment on a report prepared by an investigator – this meets our natural justice obligations. However, there is currently no provision for an investigator to consider whether further information is required from an initiator or complainant. We consider it would be useful for the investigator to be able to seek further information in situations such as where different parties have different recollections of events.

We propose: to amend rule 15 so when reference is made to 'a report or complaint' that 'or other matter' is also included. Appendix One shows where the changes are proposed within this rule.

We also propose to include a new requirement for an investigator to consider if a further response or information is required from an initiator or complainant.

Rule 15 Investigator to carry out investigation Amend subclause 15 (1)

- (1) An investigator to whom a report, ~~or~~ complaint, or other matter has been allocated under rule 14 must–
- (a) carry out an investigation of the report, ~~or~~ complaint or other matter; and
 - (b) provide an opportunity for the teacher to comment on the report, ~~or~~ complaint or other matter, or provide evidence; and
 - (c) consider if a further response or information is required from the initiator or complainant; and
 - (~~e~~) (d) prepare an investigation report on the report, ~~or~~ complaint or other matter for the Complaints Assessment Committee, and the report may include recommendations to the Complaints Assessment Committee as to the appropriate outcome.

Rule 17: Meeting of Complaints Assessment Committee regarding report or complaint

We need: to reflect the changes introduced by the 2022 Amendment Act to change the:

- threshold of referrals from the Complaints Assessment Committee to the Disciplinary Tribunal, and
- the current requirement of the Complaints Assessment Committee to seek agreement of the person who made the complaint or report or referred the matter.

We heard: that the role of support people accompanying a teacher, an initiator or another person whom the Complaints Assessment Committee wishes to hear from, needs to be recognised within the rules.

We found: this rule also does not make reference to ‘other matters’. As it is not only reports or complaints that may be investigated but also ‘other matters’ we believe it is important to include this.

We propose: to amend rule 17 so that when reference is made to ‘a report or complaint’ that ‘or other matter’ is also included. Appendix One shows where the changes are proposed within this rule.

We propose to amend rule 17 to introduce a new subclause 17 (5A) to provide clarity around the role of a support person.

We propose to amend subclause (6) of rule 17 to reflect the changes introduced to the referral threshold by the 2022 Amendment Act. This removes the reference to the current threshold referral based on serious misconduct (see above) and removes the current requirement to reach agreement with the person who made the complaint or report or referred the matter (see above).

Rule 17 Meeting of Complaints Assessment Committee regarding report or complaint

Insert new subclause 17 5 (A)

(5A) If the Complaints Assessment Committee decides that it will hear from the teacher concerned, the initiator, or another person, that person is entitled to a support person and may, with the permission of the Complaints Assessment Committee, have more than one person near them to give support.

Amend subclause (6)

(6) In the case of a ~~complaint~~ matter of misconduct to which section 497(3) of the Act applies, that the Complaints Assessment Committee ~~is satisfied is not serious misconduct~~, the Complaints Assessment Committee must use reasonable efforts to reach agreement ~~between~~ with the teacher ~~and the initiator~~ on the course of action to be taken.

Rule 17A : Conditions imposed

We found: the current rules do not provide for the chief executive to monitor compliance with any conditions imposed by the Complaints Assessment Committee, although such a rule applies to the Competence Authority. The ability to monitor compliance with any imposed conditions is important for ensuring safe and high-quality teaching and learning for children and young people and maintaining trust in the teaching profession.

We propose: to include a new rule requiring the chief executive to monitor compliance with any conditions imposed by the Complaints Assessment Committee.

Insert new rule 17A Conditions imposed

- (1) The chief executive must monitor whether the teacher complies with any condition or conditions imposed by the Complaints Assessment Committee.
- (2) The chief executive may refer the non-compliance with any condition or conditions in accordance with section 496(2) of the Act.

Rule 18 : Notice of Complaint Assessment Committee decision

We need: to reflect the changes introduced by the new section 499A of the Act that provides for the review of all or part of a Complaints Assessment Committee decision by the

Disciplinary Tribunal. We need to amend Rule 18 to allow an initiator to seek a copy of that decision to assist them in deciding whether to request a review.

We propose: to amend the heading of this rule to remove the reference to 'notice' of decisions.

We propose to include a new subclause (2) to clarify the requirements of an order issued by the Complaints Assessment Committee.

We propose to include a new subclause (3) and (4) to meet the new section 499A requirements.

Rule 18 Notice of Complaints Assessment Committee decision

Amend subclause 18 (1)

- (1) A notice of the Complaints Assessment Committee's decision must be sent, as soon as practicable, -
- (b) to the teacher; and
 - (c) to the initiator; and
 - (d) to the teacher's current employer, unless the Complaints Assessment Committee considers that sending the notice is inappropriate.

Insert new subclauses 18 (2), (3) and (4)

- (2) An order, other than a procedural or an administrative order, made by the Complaints Assessment Committee, must-
- (a) be signed by the Complaints Assessment Committee; and
 - (b) include the reasons for the decision; and
 - (c) be sent to the teacher concerned, as soon as practicable.
- (3) If the person who made the report or complaint, or referred the matter to the Complaints Assessment Committee, wishes to request a review of the Complaints Assessment Committee's decision under section 499A of the Act, they may seek a copy of the decision from the Complaints Assessment Committee.
- (4) For the purpose of subclause (3), the Complaints Assessment Committee may provide a copy of its decision if it considers it necessary to enable the person to determine whether to request a review of the decision.

Rule 20 : Notice of charge or referral

We need: to reflect the changes introduced by section 44 of the 2022 Amendment Act which changes the threshold for referring matters from the Complaints Assessment Committee to the Disciplinary Tribunal – see the discussion under Part 5.

We propose: to amend Rule 20 (1) to remove the reference to 'serious misconduct'.

Rule 20 Notice of charge or referral

Amend subclause 20 (1)

- (1) A charge of ~~serious misconduct~~ that is referred to the Disciplinary Tribunal must -.....

New Part 5A – Review of Complaints Assessment Committee decision

Requirements of Education and Training Amendment Act 2022

These sections of the 2022 Amendment Act relate to the review of Complaints Assessment Committee decisions by the Disciplinary Tribunal.

[s.45](#) [New section 499A inserted \(Review of Complaints Assessment Committee decisions\).](#)

Introduction

Introduction of new provision to allow the Disciplinary Tribunal to review a Complaints Assessment Committee decision

The 2022 Amendment Act introduces a new provision for a teacher or a person who made the report, or complaint or referred the matter to seek a review of all or part of a Complaints Assessment Committee decision by the Disciplinary Tribunal.

The new section 499A requires that a request for a review is submitted within 28 days after the Complaints Assessment Committee decision has been received. A request needs to be submitted to the Disciplinary Tribunal with a copy of the written decision, the prescribed fee and other information that the teacher or the person who made the complaint or report or referred the matter wishes the Disciplinary Tribunal to consider. The Disciplinary Tribunal has no power to review any part of the Complaints Assessment Committee decision that does not relate to the request. The review is by way of a rehearing.

The prescribed fee will be calculated and separately consulted at a later date. At this time it is not possible to determine an appropriate fee before the rules are finalised and approved. The review process will apply only to Complaint Assessment Committee decisions applying to reports, complaints or other matters received by the Council after 29 July 2023.

It is proposed to introduce a new Part 5A into the rules to describe how this new review provision will operate.

We need: to reflect the changes introduced by section 45 of the 2022 Amendment Act which inserts a new section 499A into the Act that provides for a review of Complaints Assessment Committee decisions by the Disciplinary Tribunal.

We found: other professional regulatory bodies have review provisions. The proposed new rules draw on similar review procedures in the Lawyers and Conveyancers Act 2008 and the Real Estate Agents Act 2008.

We propose: to create a new Part under the rules to reflect the requirements of section 45 of the 2022 Amendment Act.

Part 5A

Review of Complaints Assessment Committee decisions

New Rule 20A : Application of this Part

[Insert new Rule 20A](#)

[Application of this Part](#)

[This Part applies to reviews of any decision of the Complaints Assessment Committee made under section 497\(2\) or \(3\) of the Act.](#)

New Rule 20B : Notice of review

Insert new rule 20B Notice of review

Upon receiving a notice of intention to request a review and all other matters under section 499A(3) of the Act, the Disciplinary Tribunal must send a copy of the notice to—

- (a) the teacher concerned or the person who made the complaint or report, or referred the matter to the Complaints Assessment Committee, if they did not file the notice; and
- (b) the teacher’s current employer, if notice of the Complaints Assessment Committee’s decision was sent to them under rules 18(1)(c) or 20(3)(c); and
- (c) the Complaints Assessment Committee.

New Rule 20C : Procedure on review

Insert new rule 20C Procedure on review

- (1) A review conducted under section 499A(4) by the Disciplinary Tribunal is to be conducted on the papers, unless the Disciplinary Tribunal otherwise directs.
- (2) If the Disciplinary Tribunal decides that it will hear from the teacher concerned or the person who made the complaint or report, or referred the matter to the Complaints Assessment Committee, it may hear from them in person, by telephone conference or video link, or by any other means that are necessary or convenient.
- (3) If the Disciplinary Tribunal decides that it will hear from the teacher concerned or the person who made the complaint or report, or referred the matter to the Complaints Assessment Committee, that person is entitled to a support person and may, with the permission of the Disciplinary Tribunal, have more than one person near them to give support.
- (4) The Disciplinary Tribunal must exercise its powers and perform its duties and functions under this Part in a way that is consistent with the rules of natural justice.
- (5) Subject to section 499A(6) of the Act, if the Disciplinary Tribunal considers it requires further information from any person as a result of information provided to it under section 499A(3) of the Act, it may seek that information.

New Rule 20D : Notice of decision

Insert new rule 20D Notice of decision

A notice of the Disciplinary Tribunal’s review must be sent as soon as practicable,—

- (a) to the teacher concerned; and
- (b) the person who made the complaint or report or referred the matter to the Complaints Assessment Committee; and
- (c) the teacher’s current employer, if notice of the Complaints Assessment Committee’s decision was sent to them under rules 18(1)(c) or 20(3)(c); and
- (d) the Complaints Assessment Committee.

Part 6 – Proceedings in Disciplinary Tribunal

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 6 of the Teaching Council Rules about proceedings in the Disciplinary Tribunal:

| | |
|-----------------------|--|
| s.494 | Disciplinary bodies |
| s.500 | Powers of Disciplinary Tribunal |
| s.501 | Evidence at Disciplinary Tribunal hearings |
| s.502 | Powers of Disciplinary Tribunal in relation to witnesses |

Introduction

The Council is responsible under the Act for performing the disciplinary functions relating to teacher misconduct and reports of teacher convictions and performing the functions relating to teacher competence.

About the Disciplinary Tribunal

The Disciplinary Tribunal is an independent quasi-judicial body established under the Act to consider teacher misconduct. The Tribunal must comprise at least five people. It must include at least one person who is selected from a list, prepared by the Minister in consultation with the Council, of people who are not teachers, employers, or members of an employing body. The majority of members must be registered teachers. The Chairperson is a lawyer who has held a practising certificate issued under the Lawyers and Conveyancers Act for at least seven years and must not be a member of the Council. One or more deputy chairpersons may be appointed. The Tribunal may operate in panels and more than one panel of the Disciplinary Tribunal may operate at any one time. A panel of the Tribunal must comprise at least three people, unless the chairperson directs that there are more than three members. The majority of members in a panel must be teachers with a current practising certificate. Nineteen of the 30 current Disciplinary Tribunal members are members of the profession.

A pre-hearing conference is held. A hearing before the Tribunal is a judicial proceeding for the purposes of the Crimes Act 1961. The Tribunal may serve a witness summons. The Tribunal may require a person to do either or both of the following:

- attend and give evidence at a hearing of the Tribunal
- produce any documents, records, or other information in the person's custody or control that relate to the subject matter of the hearing, whether specified by the Tribunal or not.

Every hearing of the Tribunal must be held in public, unless it is of the opinion that it is proper to hold all or some of the hearing in private, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and to the public interest. The Tribunal may apply its discretion to provide special protection for certain witnesses and vulnerable people.

If a hearing or part of a hearing is held in private, only the following people may be present:

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

The parties to a Disciplinary Tribunal hearing are the teacher concerned and the Complaints Assessment Committee, which acts as prosecutor.

Following a hearing the Disciplinary Tribunal may do one or more of the following:

- any of the things that the Complaints Assessment Committee could have done under section 497(2) – this includes resolve to take no further action, refer a teacher to a competency review, or refer a teacher to an impairment process
- censure the teacher
- impose conditions on the practising certificate or authority of a teacher for a specified period
- suspend the teacher’s practising certificate or authority for a specified period, or until specified conditions are met
- annotate the register or the list of authorised persons in a specified manner
- impose a fine on the teacher not exceeding \$3,000
- order the teacher’s registration or authority or practising certificate be cancelled
- require any party to the hearing to pay costs to any other party
- require any party to pay a sum to the Council in respect of the costs of conducting the hearing
- direct the Council to impose conditions on any subsequent practising certificate issued to the teacher.

An order of the Disciplinary Tribunal will be notified to:

- the parties and their representatives
- the teacher’s current employer
- the initiator.

The decision will be published on the Council Internet site, unless an order is made that prohibits publication.

Rule 24 : Disciplinary Tribunal regulates own procedure

We need: to incorporate the key Council strategic objective of embedding tikanga Māori into our disciplinary and competence processes.

We propose: to insert a new subclause under rule 24 to specify that the Disciplinary Tribunal may consider tikanga Māori when it is regulating its procedures.

Rule 24 Disciplinary Tribunal regulates own procedure

Insert new subclause 24 (2) (ea)

(2) Without limiting subclause (1), the Disciplinary Tribunal may –

...

(ea) regulate its procedures in relation to hearings in a way that recognises tikanga Māori.

Rule 25A : Leave to withdraw proceedings

We found: there is nothing in the current rules allowing charges or proceedings to be withdrawn, for example, when a teacher dies before the process is completed. We believe it is appropriate for the Disciplinary Tribunal to have the discretion to withdraw charges or proceedings.

The proposed new rule is modelled on a similar power in the Lawyers and Conveyancers (Disciplinary Tribunal) Regulations 2008.

We propose: to insert a new rule to allow the Disciplinary Tribunal to withdraw a charge.

Insert new Rule 25A Leave to withdraw proceedings

- (1) No charge may, after it is filed with the Disciplinary Tribunal, be withdrawn except by the leave of the Disciplinary Tribunal.
- (2) On any application for leave to withdraw a charge, the Disciplinary Tribunal may –
 - (a) grant leave on any terms and subject to any conditions it thinks fit; or
 - (b) dismiss the application.

Rule 28 : Conflict of interest

We found: separate conflict of interest rules currently apply to the Disciplinary Tribunal, the Competence Authority and the Registration Panel, while there is no equivalent rule applying to the Complaints Assessment Committee. As the same conflict of interest provisions apply to all these bodies, it is proposed to remove the individual rules and have one rule that applies to them all in rule 63.

We propose: to revoke rule 28 and amend rule 63 – see rule 63.

Rule 29 : Persons who may be present when hearing held in private

We need: to incorporate the key Council strategic objective of protecting the mana of those involved in our professional disciplinary processes and competence evaluation processes.

Rule 29 already notes that if a hearing is held in private that the parties and their representatives may be present. Rule 23 defines the parties as the teacher concerned and the Complaints Assessment Committee which acts as prosecutor. Protecting mana can be achieved by allowing involved parties such as witnesses to have support persons with them at a private hearing.

We propose: to amend rule 29 to clarify that more than one support person may attend a Disciplinary Tribunal hearing with a witness. A minor wording change clarifies that more than one witness may be present at a Disciplinary Tribunal hearing.

Rule 29 Persons who may be present when hearing held in private Amend subclause 20 (e)

If a hearing or part of a hearing is held in private in accordance with section 501(4) of the Act, only the following people may be present:

-
- (e) ~~the~~ any witness presenting evidence, and the witness's support person or support persons; and
- ...

Rule 31 : Evidence

We need: to incorporate the key Council strategic objective of enhancing natural justice into our professional disciplinary processes and competence evaluation processes.

We found: when preparing for our hearing at the Royal Commission into Abuse in Care, we reviewed some of the processes applied in hearings under previous iterations of the Council. We found that, especially prior to the 2004 legislative changes, the needs of witnesses were not appropriately considered in some cases. Legislation and processes have changed since this time, but we feel there is still an opportunity to better protect vulnerable witnesses and particularly child witnesses.

We found the scope of the Disciplinary Tribunal's ability to hear and receive evidence is inconsistent with the powers of tribunals in other professional disciplinary contexts – for example, the Lawyers and Conveyancers Disciplinary Tribunal, the Real Estate Agents Disciplinary Tribunal, and the New Zealand Health Practitioners Disciplinary Tribunal.

The purpose of the Evidence Act 2006 is to help secure the just determination of proceedings by, among other things, providing rules of evidence that recognise the importance of rights affirmed by the New Zealand Bill of Rights Act 1990, promoting fairness to parties and witnesses, and protecting rights of confidentiality and other important public interests. We consider there are important principles within the Evidence Act 2006 – especially with regard to the questioning of witnesses and alternative ways of giving evidence – that should be adopted as appropriate and practicable by the Disciplinary Tribunal. Considering and applying alternative ways of giving evidence by child witnesses or sexual case complainants is of special importance.

We propose: to amend rule 31 of the Rules to reference the natural justice requirement set out in section 494 of the Act.

We propose to insert a new subclause (2) that applies the Evidence Act 2006 to the Disciplinary Tribunal, subject to necessary modifications.

Rule 31 Evidence

Amend subclause 31 (1)

- (1) Subject to section 494(7) of the Act, at a hearing, the Disciplinary Tribunal may receive as evidence any document, record, or other information that may in its opinion assist it to deal with the matter before it, whether or not the document, record, or information would be admissible in a court of law.

Insert new subclause 31 (2)

- (2) Subject to subsection (1), the Evidence Act 2006 applies to the Disciplinary Tribunal, subject to all necessary modifications, in the same manner as if the Disciplinary Tribunal were a court within the meaning of that Act.

Rule 34 : Special protection for certain witnesses and vulnerable people

We committed: in our witness statement to the Royal Commission into Abuse in Care to review rule 34 to ensure special protection for certain witnesses and vulnerable people.

Requiring greater consideration of alternative ways of giving evidence by child witnesses or sexual case complainants is important – see the discussion under rule 31 above. Also important is consideration of the suppression of the identity of child witnesses or sexual case complainants. Rule 34 (4) requires the Disciplinary Tribunal to consider whether to make an order prohibiting publication of the names or particulars of a child or young person or a person allegedly the subject of sexual acts. We believe this consideration can be supported by the Disciplinary Tribunal having regard to the suppression powers available under the Criminal Procedures Act 2021. These powers include automatic suppression of the identity of a complainant in a specified sexual act or the identity of child complainants and witnesses.

We need: to incorporate the key Council strategic objective of protecting the mana of those involved in our professional disciplinary processes and competence evaluation processes.

We propose: to insert in rule 31 a new subclause (2) that applies the Evidence Act 2006 to the Disciplinary Tribunal, subject to necessary modifications – see discussion about rule 31 above.

We propose to amend rule 34 by inserting a new subclause (5) allowing the Disciplinary Tribunal to have regard to the powers of suppression applying under the Criminal Proceedings Act 2022.

Rule 34 Special protection for certain witnesses and vulnerable people
Insert new subclause 34 (5)

(5) When considering making an order under section 501(6) of the Act in respect of a person described in subclause (1), the Disciplinary Tribunal may have regard to whether the person would have been entitled to suppression had the Criminal Procedure Act 2011 applied.

Rule 35A : Conditions imposed

We found: the current rules do not provide for the chief executive to monitor compliance with any conditions imposed by the Disciplinary Tribunal, although such a rule applies to the Competence Authority. The ability to monitor compliance with any imposed conditions is important for ensuring safe and high-quality teaching and learning for children and young persons and maintaining trust in the teaching profession.

We propose: to insert a new rule to requiring the chief executive to monitor compliance with any conditions imposed by the Disciplinary Tribunal.

Insert new Rule 35A Conditions imposed

- (1) The chief executive must monitor whether the teacher complies with any condition or conditions imposed by the Disciplinary Tribunal.
- (2) The chief executive may refer the non-compliance of any condition or conditions in accordance with section 496(2) of the Act.

Part 7 - Competence

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 7 of the Teaching Council Rules about competence:

| | |
|-----------------------|---|
| s.479 | Functions and powers of the Teaching Council |
| s.505 | Competence Authority |
| s.506 | Complaints about competence |
| s.507 | Investigation by Teaching Council of mandatory reports relating to competence and referral to Competence Authority for decision |
| s.508 | Powers of Competence Authority after finding required level of competence not attained |
| s.509 | Appeals against decisions of Competence Authority |

Introduction

The Teaching Council is responsible under the Act for protecting the safety of children and ensuring high quality teacher practice. This is done by ensuring teachers continue their professional learning and maintain and enhance their competence to practice.

About professional practice evaluators

Professional practice evaluators are Council staff members and seconded practitioners who are experienced registered teachers. They are assigned reports and complaints relating to competence and then undertake investigations that lead to an evaluation of teacher competence. A professional practice evaluator can recommend to the chief executive that no further action is taken. Otherwise, they make recommendations to the Competence Authority.

About the Competence Authority

The Competence Authority is an independent body established under the Act to consider reports prepared by professional practice evaluators in response to reports, complaints or other matters related to competence.

Under section 486 of the Act, the Council must make rules for a Competence Authority to:

- consider reports and complaints about teacher competence and to exercise the powers given under the Act
- carry out any other function, and exercise any power, given under this Act or delegated to it by the Council.

It must also make rules relating to the practices and procedures of the Competence Authority.

The Competence Authority panel must comprise at least one layperson who is not a teacher, employer or member of an employing body. The Competence Authority may operate in panels and more than one panel of the Competence Authority may operate at any one time. The majority of members in a panel must be teachers with a current practising certificate. No member of the Committee can be a member of the Complaints Assessment Committee or the Disciplinary Tribunal. Five of the eight current Competence Authority members are members of the profession. The Competence Authority may co-opt up to two members for their specialist knowledge and expertise in relation to a particular complaint.

Following an investigation, the Competence Authority may, if satisfied that a teacher has not attained the required level of competence, do one or more of the following:

- impose conditions on the practising certificate or authority
- refer the teacher to an impairment process
- annotate the register or the list of authorised persons in a specified manner
- direct the Council to impose conditions on any subsequent practising certificate or authority issued to the teacher.

The Competence Authority may order the Council to cancel a teacher's registration, practising certificate or limited authority to teach.

Review of competence processes

We found: during our review of our competence processes, we considered the role of a professional practice evaluator and the Competence Authority.

Clarity about role of professional practice evaluators and Competence Authority

We heard that the current role of a professional practice evaluator appears to be valued by teachers undergoing a competence process. However, currently the rules give the professional practice evaluators powers that were intended by legislation to sit with the Competence Authority. We are proposing professional practice evaluators recommend appropriate outcomes for the Competence Authority to make decisions on.

It is also proposed to remove from professional practice evaluators the ability to refer a teacher to an impairment process – we see this is a function of the Competence Authority. The referral to an impairment process will be considered and discussed with stakeholders when we undertake a review of our impairment processes in 2023-24.

Taking all these matters into consideration we have proposed changes to the competence rules to allow the professional practice evaluators to focus on the options for evaluating the practice of a teacher and making recommendations to the Competence Authority. The proposed rule changes clarify that the decision-making ability lies with the Competence Authority.

Reference to *Ngā Paerewa | Standards for the Teaching Profession*

The current rules do not reference *Ngā Paerewa | Standards for the Teaching Profession*. Given the role *Ngā Paerewa | Standards* play in assessing the competence of a teacher, it is proposed such a reference is included in the rules.

Role of employer in competence discussions

We believe there is value in the Competence Authority being able to operate in a more inclusive manner, including being able to invite an employer and teacher to discuss an evaluation and outcome where appropriate. It is therefore proposed the Competence Authority can seek to have an employer involved in the meeting along with the teacher and other appropriate support persons to make a decision on the best outcome for addressing a competence matter.

Rule 38 : Application of this Part

We propose: to amend rule 38 to simplify the introduction to Part 7.

Rule 38 **Application of this Part**

Amend rule 38

This Part applies to a complaint about or matter concerning a teacher's competence that has been referred by the chief executive to a professional practice evaluator or directly to the Teaching Council

Rule 39 : Process before investigation

We found: Rule 39 has created some technical confusion relating to the sequence of events. Section 506 of the Act requires that, unless specific circumstances apply, all complaints

about a teacher's competence must first be made to the teacher's employer. Rule 39 is therefore superfluous and for that reason we propose to revoke it.

We propose: to revoke rule 39.

Revoke

Rule 39 ~~Process before investigation~~

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

Rule 40 : Investigation by professional practice evaluator

We propose: to amend rule 40 to provide greater clarity about the role of professional practice evaluators. This proposed rule change focusses the role of professional practice evaluators on the investigation of competence matters.

Rule 40 Investigation by professional practice evaluator

Revoke subclause 40 (1)

~~(1) (Revoke) When investigating a report or complaint referred to him or her, a professional practice evaluator must determine whether he or she is satisfied that the teacher concerned has not attained the required level of competence, and, in doing so, the professional practice evaluator may take any of the actions in subclause (2).~~

Amend subclause 40 (2)

- (2) When investigating a report or complaint referred to him or her them by the chief executive or the Triage Committee, a professional practice evaluator may take any steps that the professional practice evaluator considers are necessary, including one or more of the following:
- (a) conducting, or arranging for, an evaluation or assessment of the teacher's competence, having regard to any applicable standards created or modified under section 479 of the Act;
 - (b) arranging and, if necessary, attending meetings between the teacher and other people;
 - (c) seeking further information from the teacher or the initiator;
 - ~~(d) referring the teacher to an impairment process~~
 - (e) requiring the teacher's employer or former employer to provide information in addition to information that has already been provided under section 507 of the Act.

Insert new subclause 40 (3)

(3) A professional practice evaluator may refer a report, complaint or matter back to the Triage Committee for reconsideration if, in the course of an investigation under this rule, they consider that information has arisen which may have materially affected the Triage Committee's decision under rule 11 B (1) had it been available at the time the decision was made.

Rule 41 : Report prepared by professional practice evaluator

We propose: to amend rule 41 to make clear that the professional practice evaluator must provide an opportunity to the teacher to comment on, and provide information for inclusion in, the draft report.

Rule 41 Report prepared by professional practice evaluator

Amend subclause 41 (3)

- (1) The professional practice evaluator must prepare a report after completing the investigation.
- (2) The report must include an assessment from the professional practice evaluator as to whether the teacher has attained the required level of competence.
- (3) If the assessment is that the teacher has not attained the required level of competence, then the report may recommend an appropriate outcome (as set out in section 508 of the Act), having regard to any information provided by the teacher under subclause(3A).

Insert new subclause 41 (3A)

- (3A) Prior to finalising the report, the professional practice evaluation must:
- (a) provide an opportunity for the teacher to comment on the report, or provide evidence that may be relevant to an assessment of the teacher's competence; and
 - (b) include in the report any response, or evidence provided by, the teacher under subclause (3A)(a)(i).
- (4) A copy of the report must be provided to the teacher.

Rule 42 : Actions following report prepared by professional practice evaluator that recommends conditions to be imposed

We propose: to revoke rule 42 and amend rule 43 to provide greater clarity about the role of professional practice evaluators and the powers of the Competence Authority. Rule 42 currently allows the professional practice evaluator to take actions that we propose should be the responsibility of the Competence Authority.

Revoke

~~Rule 42 — Actions following report prepared by professional practice evaluator that recommends conditions be imposed~~

- ~~(1) This rule applies if a report prepared under rule 41 recommends that —~~
- ~~a. conditions be imposed on—~~
 - ~~(i) the teacher's practising certificate or authority to teach; or~~
 - ~~(ii) any subsequent practising certificate or authority to teach issued to the teacher; or~~
 - ~~b. Conditions be imposed under paragraph (a)(i) and the register or list of authorised persons be annotated in a specified manner in relation to the conditions imposed.~~
- ~~(2) The professional practice evaluator must use reasonable efforts to reach agreement with the teacher in order to impose conditions (and annotate the register or list of authorised persons, if applicable).~~
- ~~(3) If the professional practice evaluator is unable to reach agreement with the teacher, the professional practice evaluator may refer the report to the Competence Authority.~~

Rule 43 : Actions following report prepared by professional practice evaluator that makes other recommendations

We propose: to amend rule 43 to remove the ability of the professional practice evaluator to make referrals or take actions that we propose should be the responsibility of the Competence Authority.

Rule 43 **Actions following report prepared by professional practice evaluator that makes other recommendations**

Amend subclauses 43 (1) and (2)

- (1) If a report prepared under rule 41 recommends that—
- ~~e. the teacher be referred to an impairment process, the professional practice evaluator may refer the teacher to an impairment process; or~~
 - ~~d. the teacher’s practising certificate, authority to teach, or registration be cancelled, the professional practice evaluator may refer the report to the Competence Authority; or~~
 - (a) there be no further action, the professional practice evaluator ~~may~~ must refer the report to the chief executive for a decision; ~~or~~
 - (b) in any other case, the professional practice evaluator must refer the report to the Competence Authority.
- (2) ~~In any case, and instead of taking an action specified in Despite subclause (1)(a), following receipt of the professional practice evaluator’s report, the chief executive may refer the teacher directly to the Competence Authority.~~

Rule 44 : Teacher’s response if report referred to Competence Authority

We heard: that the role of support people accompanying a teacher who wishes to be heard in person by the Competence Authority needs to be recognised within the rules.

We propose: to amend rule 44 to clarify the entitlement of a teacher to have a support person or persons attend any meeting of the Competence Authority with them and to clarify that a support person can be near them to give support during any meeting.

Rule 44 **Teacher’s response if report referred to Competence Authority**

Insert new subclauses 44 (4), (5) and (6)

- (4) If a teacher seeks to be heard in person, and that request is not refused by the Competence Authority, the teacher is entitled to a support person and may, with the permission of the Competence Authority, have more than one person near them to give support.
- (5) A request made under subclause (4) must not be unreasonably refused.
- (6) Subclauses (3) to (5) are subject to rule 45(4).

Rule 45 : Meeting of Competence Authority

We need: to incorporate the key Council strategic objective of protecting the mana of those involved in our disciplinary and competence processes.

We heard: it is important for there to be transparency about the operation of disciplinary bodies. The current rules do not describe who may participate in meetings of the Competence Authority.

We propose: to amend rule 45 by inserting new subclauses to provide clarity about the involvement of persons in Competency Authority meetings.

Rule 45 **Meeting of Competence Authority**

Insert new subclauses 45 (5) and (6)

- (5) The following people may be present at a meeting of the Competence Authority:
- (a) members of the Competence Authority; and
 - (b) any administrative officers that the Competence Authority considers are necessary; and

- (c) the teacher and their counsel or another representative, if any; and
- (d) the teacher's support person or persons, if any; and
- (e) the teacher's employer, if the Competence Authority considers that their attendance is desirable; and
- (f) any legal advisor to the Competence Authority; and
- (g) any other person expressly authorised by the Competence Authority to be present.

(6) If the Competence Authority considers that the attendance of the teacher's employer is desirable, it must notify the teacher of its intention to contact the employer for the purpose of requesting the employer's attendance.

Rule 46 : Replacement of member if conflict of interest

We found: separate conflict of interest rules currently apply to the Disciplinary Tribunal, the Competence Authority and the Registration Panel, while there is no equivalent rule applying to the Complaints Assessment Committee. As the same conflict of interest provisions apply to all these bodies, it is proposed to remove the individual rules and have one rule that applies to them all in rule 63.

We propose: to revoke rule 46 and amend rule 63 – see rule 63.

Rule 47 : Conditions imposed

We found: a provision allowing the chief executive to monitor compliance with conditions imposed applied only to the Competence Authority. The rule has been reviewed so it can also be applied to conditions imposed by the Complaints Assessment Committee (see proposed new rule 17A) and Disciplinary Tribunal (see proposed new rule 35A).

Some of the responsibilities assigned to the chief executive under rule 47 are the responsibility of the decision-making body who imposed the conditions.

We propose: to amend rule 47 to confirm the chief executive's role in monitoring compliance with conditions imposed. If a teacher does not comply with conditions imposed, then the matter may be referred under section 496 (2) to the Complaints Assessment Committee as a disciplinary matter.

Rule 47 Conditions imposed

Revoke subclause 47 (1)

~~(1) Any conditions imposed in accordance with the Act and these rules may include conditions designed—~~

- ~~(a) to improve the teacher's competence; and~~
- ~~(b) to restrict the teacher's practice.~~

Renumber and amend subclause 47 (2) to 47 (1)

~~(2) (1) The chief executive must monitor whether the teacher complies with any condition or the conditions imposed by the Competence Authority, and the chief executive may refer the teacher to a professional practice evaluator if it appears that the teacher is not complying with or meeting any conditions.~~

Revoke subclauses 47 (3) and (4)

~~(3) If the chief executive is satisfied that a teacher has satisfactorily complied with the conditions imposed, the chief executive may release the teacher from the conditions.~~

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

Add new subclause 47 (2)

~~(2) The chief executive may refer the non-compliance with any condition or conditions in accordance with section 496 (2) of the Act.~~

Part 8 – Establishment, membership, and operation of disciplinary bodies, Competence Authority, and Registration Panel

Requirements of Education and Training Act 2020

These sections of the Act relate to Part 8 of the Teaching Council Rules about the establishment, membership, and operation of disciplinary bodies, the Competence Authority, and the Registration Panel:

[s.479](#) [Functions and powers of the Teaching Council](#)
[s.494](#) [Disciplinary bodies](#)

Section 494 of the Act requires that the constitution of the disciplinary bodies is set out in the rules.

Rule 52 : Validity of proceedings (Complaints Assessment Committee)

Rule 56 : Validity of proceedings (Disciplinary Tribunal)

Rule 58C: Validity of proceedings (Competence Authority)

We found: there are multiple rules related to the validity of proceedings.

We propose: to revoke rules 52, 56 and 58C and replace them with an amended composite new rule 63A – see rule 63A below.

Rule 61: Term of appointment to disciplinary body, Competence Authority, or Registration Panel

We committed: to the Royal Commission of Inquiry into Abuse in Care to work to improve the diversity and cultural awareness of our decision-making panels.

We need: to incorporate the key Council strategic objective of embedding tikanga Māori into our professional disciplinary processes and competence evaluation processes.

We found: reference to the Registration Panel was included in the heading of this rule but not reflected within the rule.

We heard: the importance of having greater diversity among members of our disciplinary bodies and Competence Authority.

We propose: to include reference to the Registration Panel where appropriate within the rule.

We propose to amend Rule 61 by inserting a new subclause (2) (b) (ii) requiring the Council to consider the knowledge and expertise in Māori matters of a person being considered for appointment to a disciplinary body, the Competence Authority or the Registration Panel.

Rule 61 Term of appointment to disciplinary body, Competence Authority, or Registration Panel

Insert new subclause (2) (b) (ii)

(2) Before appointing a person to a disciplinary body, ~~or~~ the Competence Authority, or the Registration Panel, the Teaching Council must—

...

- (b) consider the person’s personal attributes, including—
 - (ii) their knowledge of, or experience with, Te Tiriti o Waitangi, te reo Māori, tikanga Māori, and Māori medium education; and

Rule 62: Ceasing to hold position on disciplinary body, Competence Authority

We found: this rule does not refer to the Registration Panel. The Registration Panel is included in rule 61 about appointments so should also be included in this rule about ceasing to hold a position on the Panel.

We propose: to amend this rule by including reference to the Registration Panel.

Rule 62 Ceasing to hold position on disciplinary body, ~~or~~ Competence Authority or Registration Panel

Amend subclause 62 (1), (4) and (6)

- (1) The Teaching Council may notify a member of a disciplinary body, ~~or~~ the Competence Authority, or the Registration Panel that, subject to the procedure in subclauses (2) and (3) being followed, they are to cease to hold office as a member on the date specified in the notice.
-
- (4) Subclause (5) applies if a person who is a member of a disciplinary body, ~~or~~ the Competence Authority or the Registration Panel ceases to hold office (whether in accordance with subclauses (1) to (3), or because they have resigned, or because their term or appointment has expired).
-
- (6) A person who ceases to be a member of a disciplinary body, ~~or~~ the Competence Authority or the Registration Panel is not entitled to any compensation or other payment or benefit relating to the person’s removal from office, irrespective of the reason for that removal.

Rule 63: Conflict of interest

We found: there is no conflict-of-interest rule applying to the Complaints Assessment Committee, while there are multiple rules that relate to the Disciplinary Tribunal (see rule 28), the Competence Authority (see rule 46) and the Registration Panel (see rule 48D).

We propose: to revoke rules 28, 46 and 48D and replace them with an amended composite new rule 63 that also applies to the Complaints Assessment Committee.

Rule 63 Conflict of interest

Amend subclauses 63 (1) and (2)

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

Revoke subclause 63 (3)

- ~~(3) The chief executive must provide a replacement member if necessary to ensure that the panel or Authority consists of the required number of members.~~

Insert new subclauses 63 (3) and (4)

- (3) A party may, by notice in writing sent within 5 days after receiving notice of the hearing or meeting, as the case may be, object to the assigning of a member of the disciplinary body, the Competence Authority, or the Registration Panel to participate in a hearing on the grounds that the member has a conflict of interest.
- (4) The chair of the Disciplinary Tribunal, or in any other case, the chief executive, must determine whether the grounds of objection are valid and, if they are, must replace the member with another member if necessary to ensure that the disciplinary body, the Competence Authority, or the Registration Panel consists of the required number of members.

Rule 63A: Validity of proceedings

We found: there is no validity of proceedings rule applying to the Registration Panel, while there are multiple rules that relate to the Complaints Assessment Committee (see rule 52), the Disciplinary Tribunal (see rule 56) and the Competence Authority (see rule 58C).

We propose: to revoke rules 52, 56 and 58C and replace them with an amended new rule 63A that also applies to the Registration Panel.

Insert new rule 63A Validity of proceedings

- (1) The validity of proceedings or a decision of the Complaints Assessment Committee, Disciplinary Tribunal, Competence Authority, or Registration Panel is not affected by-
 - (a) a defect or deficiency in the appointment of a member of the Complaints Assessment Committee, Disciplinary Tribunal, Competence Authority, or Registration Panel; or
 - (b) the temporary absence from a hearing or meeting, as the case may be, of a member who is conducting the hearing.
- (2) Despite subclause (1), all members must be present during any deliberations.

Revoke rules 52, 56 and 58C

- (1) ~~The validity of proceedings or a decision of the xxx is not affected by-~~
 - (e) ~~a defect or deficiency in the appointment of a member of the xxx or a panel; or~~
 - (f) ~~the temporary absence from a hearing of a member who is participating in the hearing.~~
- (2) ~~However, all members must be present during the deliberations.~~

Rule 64: Confidentiality

We need: to reflect the changes introduced by the new section 499A of the Act that provides for the review of all or part of a Complaints Assessment Committee decision by the Disciplinary Tribunal.

We found: that the Council has received over recent years an increasing number of information requests from people who have an interest in our processes but who are not the teacher or the initiator of the report, complaint or other matter. This may include a parent, whānau or guardian on behalf of a child or young person. Some of these requests have been considered by the Office of the Ombudsman. Maintaining the balance between protecting the privacy of teachers and meeting the public interest plus meeting obligations under the Privacy Act and Official Information Act requires care and consideration.

We heard: it is important to protect the privacy and confidentiality of teachers while recognising the public interest involved in ensuring safe and high-quality teaching and learning for children and young people.

We propose: to amend rule 64 to clarify the situations in which the Council may provide notification of Complaints Assessment Committee and Competence Authority decisions.

Rule 64 Confidentiality

Amend subclauses 64 (1) and (2)

- (1) Information disclosed to, or held by, ~~a competence assessor~~ professional practice evaluator, the Competence Authority, or the Complaints Assessment Committee in respect of a report, ~~or~~ complaint or other matter is confidential.
- (2) Despite subclause (1)—
 - (a) the Teaching Council may advise that a person is before the Complaints Assessment Committee or is subject to an investigation into ~~his or her~~ their competence; and
 - (b) the Teaching Council may publish anonymised decisions of the Competence Authority and the Complaints Assessment Committee; and
 - (c) the Teaching Council may provide notification of decisions of the Complaints Assessment Authority and Competence Authority in accordance with these rules; and
 - (d) in the case of decisions by the Complaints Assessment Committee, the Teaching Council -
 - (i) must provide the teacher concerned with the decision of the Complaints Assessment Committee in accordance with rule 18 (2); and,
 - (ii) may provide a person who made a complaint or a report, or referred the matter to the Complaints Assessment Committee, with a copy of the decision of the Complaints Assessment Committee in accordance with rule 18 (3) and 18(4).

Schedule 1 – Part 3 – Provisions relating to Teaching Council Amendment Rules 2023

We need: to provide transitional arrangements for the changes proposed in these rules and to reflect the changes introduced by the 2022 Amendment Act.

It is important that there is clarity about what rules apply to a report, complaint or other matter that is reported to the Council.

We propose: to insert a new Part 3 in Schedule 1.

[Insert new Part 3](#)

[Provisions relating to Teaching Council Rules 2023](#)

[\(5\) Reports, complaints or matters before 29 July 2023](#)

[For the purposes of sections 496 and 506 of the Act, any report or complaint received, or matter referred, before 29 July 2023 must be dealt with in accordance with the principal rules that were in force immediately before that date.](#)

SECTION THREE – COMPARISON OF CURRENT RULES AND PROPOSED RULES

Appendix 1: Proposed New and Amended Teaching Council Rules

See separate document.



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