



## **Submission on the Ministry of Education's**

# ***Consultation on the draft Rules and Guidelines on the use of physical restraint at registered schools and kura in New Zealand***

**3 April 2022**

### **1. Introduction**

The Teaching Council of Aotearoa New Zealand | Matatū Aotearoa (the Council) is the independent professional body for registered teachers and kaiako from early childhood education through to primary and secondary schooling, in English and Māori medium settings. There are currently about 136,000 registered teachers and kaiako in Aotearoa New Zealand.

The statutory purpose of the Council set out in section 478 of the Education and Training Act 2020 (ETA 2020) is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

We welcome this opportunity to submit on the Ministry of Education's *Consultation on the draft Rules and Guidelines on the use of physical restraint at registered schools and kura in New Zealand*.

The Council has sought legislative change on this issue since 2018, when the profession advised us the new physical restraint framework did not provide the clarity and confidence needed by teachers and kaiako to apply the framework with confidence. There was confusion about the ability of teachers and kaiako to have any physical contact with learners | ākonga in any situation and concerns that they would be referred to the Disciplinary Tribunal for having contact with a child for any reason. We also received feedback that training and resources for the initial roll-out was inconsistent in terms of its content and delivery.

There has been consistent messaging from teachers and kaiako and other professionals that there is a rise in the number of learners | ākonga in our communities who are suffering from a mix of complex social and health issues, that frequently remain undiagnosed or not supported sufficiently or sustainably. These issues are for the whole community to solve. We acknowledge that schools and early learning services have an important role to ensure that every learner | ākonga is supported to be successful. However, specialist services and resources needed by schools and kura are often not available, or not available quickly enough. It is within this context that schools and kura have a legal obligation to create a physically and emotionally safe place for all learners | ākonga and staff, whether or not the resourcing has kept pace with the need.

Registered teachers and kaiako also have professional obligations. The Standards for the *Teaching Profession* | *Ngā Paerewa mō te Umanga Whakaakoranga* require teachers and kaiako to establish and maintain professional relationships and behaviours focused on the learning and wellbeing of each learner | ākonga, and to develop a culture that is focused on learning, and is characterised by respect, inclusion, empathy, collaboration, and safety. Similarly, the *Code of Professional Responsibility* | *Ngā Tikanga Matatika mō te Haepapa Ngaiotanga* expects teachers and kaiako to work in the best interest of learners | ākonga.

The Council is concerned about the impact of lack of specialist resources on teachers and kaiako, and their ability to fulfil their role. We agree that physical restraint should always be a last resort; however, the practical reality of not having adequate specialised support that meets all needs is that there are more incidents and issues for a teacher or kaiako to manage that may lead to physical restraint being considered.

The legislative change on use of physical restraint in schools and kura is intended to limit harm that might be caused by physical restraint. For the teaching profession, this is very high stakes, as failure to make the right judgement that follows the legislative requirements potentially exposes them to both civil legal risk and professional censure.

We have had a representative on the Physical Restraint Advisory Group (PRAG) and acknowledge the rich kōrero that has led to these documents being released for public consultation. We acknowledge the mahi of the PRAG, and although we think there are many good proposals in these documents, we do not support the rules and guidelines as currently drafted. Therefore we are recommending some changes to these rules and guidelines.

On their own, the physical restraint guidelines and rules are not enough to achieve a step change and systemic shift to achieve greater equity and wellbeing for all learners | ākonga. We believe the draft rules and guidelines provide a useful framework to support schools and kura with learners | ākonga in distress. However, the reality on the ground is that much more upfront wrap around support is needed for many learners | ākonga and their families | whānau. In the Council's view, these guidelines will not land well with the teaching profession unless there is a joined up community and multi-agency response to resourcing, training, and support that is visible, accessible and sufficient. The package of resources must be addressed alongside the release of these guidelines.

## 2. Sharing the burden of responsibility

The draft rules and guidelines do not change the current reality – that teachers, kaiako, and the teaching profession are largely left on their own to bear the burden of responsibility for dealing with increasingly complex societal issues, e.g., learners | ākonga traumatised through family violence or poverty, or health conditions such as depression and Fetal Alcohol Syndrome. In addition, teachers and kaiako may be seen as guilty of breaching the law and the *Code* | *Ngā Tikanga Matatika* and *Standards* | *Ngā Paerewa* when they make a judgement in response to often fast-moving and complex situations. The practical reality of teaching means the judgement of teachers and kaiako needs to consider not just the impact on individual learners but the responsibilities they have to all those present at the time.

The draft rules and guidelines expect teachers and kaiako to have the time available to engage in one-on-one de-escalation strategies while still being responsible for a large number of learners | ākonga, and to apply sound judgements based on assessments of learner | ākonga consent, the risk of imminent harm, including significant emotional distress, and awareness of the details of support plans that may apply to learners | ākonga. All of which is expected to be assessed, processed and acted upon, often within mere seconds.

So the stakes are very high for teachers and kaiako, with this burden of responsibility impacting on their wellbeing | hauora. We fear that without a step change in the capacity and timely availability of specialist support and resourcing, we will see more schools and kura excluding learners | ākonga, which none of us want.

### 3. Avoiding a compliance focus

We believe the draft rules and guidelines continue to encourage a compliance approach – focussing on the generation of plans, reporting of incidences, completion of webinars, etc., rather than building an integrated and sustained wellbeing | hauora approach that gives broader communities the skills and knowledge to support all learners | ākonga as they develop and grow as young people.

Our view is that the expectations around learning support plans and reporting are too compliance heavy and may not be the best way to achieve what is needed.

#### **Learning support plans**

Currently these are usually developed for learners | ākonga with specific learning support needs and by specialists with the skill to do this (by a Special Education Needs Co-ordinator (SENCO) or Learning Support Co-ordinator (LSC)).

We do not agree that incidents of physical restraint or parent request, on their own, should trigger a requirement for a learning support plan. Teachers and kaiako seek to know and understand the learners | ākonga they have responsibility for, and in most cases that will be sufficient. We acknowledge that there is a national rollout for more LSC's and appreciate this. However, not all schools and kura have access to this resource, and where they do, we do not believe this additional requirement will add value.

**We recommend changes are made to enable the school or kura to have more flexibility in choosing whether to develop a learning support plan.**

#### **Monitoring and Reporting**

We agree that it is important for schools and kura to have a reporting mechanism that enables them to review incidents of physical restraint and trends over time, as part of a quality improvement approach. We are mindful that this process can also be very resource intensive, particularly for teachers and kaiako who already work very long hours.

At a system level, our view is that only statistical information should be collected, and not the level of detail that is proposed in the template provided. We are concerned that some of the information that may be collected could be used inappropriately, or that there is a perception that it may be used inappropriately at a system level. For example, information about individual teacher or kaiako actions being visible to an agency that does not have jurisdiction over teacher disciplinary processes.

We are concerned that in practice, many schools and kura will struggle to meet these reporting requirements, and that a more effective approach would be to combine simple statistical information with a national evaluation on use of de-escalation strategies, physical restraint, and learning support for learners | ākonga that is periodically undertaken by ERO. This is more likely, in our view, to give a realistic picture and recommendations for improvement.

**We recommend that only relevant system statistic information is collected and that consideration is given to reducing the incident by incident reporting in favour of a periodic national evaluation.**

### 4. Significant investment in resourcing and training

Significant investment is needed in designing, developing, and continually growing a trauma-informed, mana-enhancing approach that can be applied to all learner | ākonga relationships, to remove the inequities associated with focussing on and negatively labelling individual learners | ākonga. Current investment is not sufficient.

Because of the confusion prior to the legislative change and the high stakes nature of the subject, **we recommend that the approach to introducing these guidelines is comprehensive and that principals and tumuaki can have kanohi ki te kanohi sessions that enable them to ask questions.**

Training design must have input from the teaching profession and be trialled to ensure the training reflects the practical realities of teaching practice and provides the teaching profession with the clarity and confidence to interact safely with all learners | ākonga. We strongly support the training to be kanohi ki te kanohi and ongoing, as we believe an online approach on its own will be ineffective for this mahi. We think that all leaders, teachers, and kaiako (including relievers) will need to be trained, in an ongoing way. This is a huge undertaking but we believe it is necessary.

**We recommend that all teachers and kaiako are trained**, starting with a whole school or kura approach to training, where schools, kura, and regions select teams who are fully trained (in trauma-informed practice and the content of the physical restraint guidelines and physical restraint holds) to lead change across their schools, kura and regions.

**We also recommend a kete of culturally appropriate relevant resources is developed** to support school communities, teachers, and kaiako, and a review of existing resources and programmes that may no longer line up with the principles that underpin this mahi.

## 5. Investment in early learning sector

The framework of rules and guidelines to minimise physical restraint is designed only for registered schools and kura. We believe community-wide support, guidance, training and interventions for identifying and managing complex, trauma-related behaviours must occur as early as possible to support the ability of children to develop their social and emotional skills and to ensure the best outcomes for them.

For this reason, substantial investment in training and resources that reflect the unique features of early childhood learning and development is also urgently required. **We recommend that this work commences once the guidelines for schools and kura have been endorsed.**

## 6. Hearing the profession's voice

If at the conclusion of this consultation, there is a small number of submissions received, the Council believes this would reflect the competing priorities and very challenging environment currently confronting the teaching profession. The teaching profession views this mahi as essential – it is important for their voice to be fully considered.

## 7. Conclusion

The teaching profession seeks the resourcing, support, and engagement of all communities in building a society that has joint responsibility for the learning and growth of every learner | ākonga, and that respects the mana, potential, and rights of all. The Governing Council acknowledges that the *Draft Rules and Guidelines on the use of physical restraint at registered schools and kura in New Zealand* contribute to this journey, but we are seeking a package of resources and a number of changes to make them workable on the ground and successful. We think there is a significant risk that without sufficient resourcing, schools and kura may find themselves reluctantly choosing to exclude some learners | ākonga from their schools and kura.

We understand that even if our schools and kura follow the rules and guidance in these documents, change will not be guaranteed or immediate. Trusting relationships take time to develop, and the learning we acquire through development, such as trauma-informed practice and de-escalation strategies, do not contain solutions, but rather insights to support judgements and development of solutions.

**We recommend that the rules and guidelines are implemented with a review period of two years.** We do not believe they will be “right first time” and we need to commit now to iterate and improve.

## 8. Recommendations

1. That there is a joined up community and multi-agency response to resourcing, training and support that is visible, accessible and sufficient. The package of resources must be addressed alongside the release of these guidelines.
2. That changes are made to enable the school or kura to have more flexibility in choosing whether to develop a learning support plan.
3. That only relevant system statistic information is collected and consideration is given to reducing the incident by incident reporting in favour of a periodic national evaluation.
4. That the approach to introducing these guidelines is comprehensive and that principals and tumuaki can have ongoing kanohi ki te kanohi sessions that enable them to ask questions and lead this change.
5. That all teachers and kaiako (including relievers) are trained, starting with a whole school or kura approach to training, where schools, kura, and regions select teams who are fully trained (in trauma-informed practice and the content of the physical restraint guidelines and physical restraint holds) to lead change across their schools, kura and regions.
6. That a kete of culturally appropriate relevant resources is developed to support school communities, teachers, and kaiako, and a review of existing resources and programmes that may no longer line up with the principles that underpin this mahi.
7. That ECE-appropriate guidelines are developed once the guidelines for schools and kura have been endorsed.
8. That the rules and guidelines are implemented with a review period of two years so there is ongoing clarification, scenarios, and other resources updated, in order to ensure it stays useful and current for teachers and kaiako.