

Under the Inquiries Act 2013
In the matter of the Royal Commission into Historical Abuse in State Care and in
the Care of Faith-based Institutions

**Teaching Council of Aotearoa New Zealand |
Matatū Aotearoa: Brief of Evidence of Lesley
Anne Hoskin for Institutional Response Hearing**

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Brief of evidence of Lesley Anne Hoskin

I, **Lesley Anne Hoskin**, chief executive of Wellington state:

- 1 I have been the Chief Executive of the Teaching Council of Aotearoa New Zealand | Matatū Aotearoa (**Teaching Council**) since 16 December 2019, following a year as Interim Chief Executive. Before I was Chief Executive I served as Deputy Chief Executive, initially on secondment from the Ministry of Education where I held senior roles. I hold a Diploma in Te Reo Māori, a Master's Degree in Public Sector Management, and a Postgraduate Diploma in Management and Leadership from Oxford University. I am also Trustee on the Skylight Trust.
- 2 Giving evidence with me at the hearing will be **Robyn Baker**. Robyn was appointed Chair of the Teaching Council at the last Council meeting on 28 July 2022. Robyn was a secondary teacher and then a tertiary lecturer and manager between 1984 and 2000; Chief Executive of the New Zealand Council for Educational Research until 2014; and has been the Chair of the New Zealand National Commission for UNESCO (United Nations Educational, Scientific and Cultural Organisation) since 2016.
- 3 This brief represents evidence that I give on behalf of the Teaching Council organisation as a whole. I also provide evidence for predecessor organisations for which I have relied on documents that have been available. My knowledge of historical policies and practices may be limited but I shall endeavour to provide as much information as possible – if that is not possible today then I will make all endeavours to obtain information the Commission seeks where that is possible.
- 4 We will both be available to answer any questions that the Commission may have for the Teaching Council.

Acknowledgement of harm and survivors' accounts

- 5 I begin, on behalf of the Teaching Council and its predecessor bodies, by acknowledging those survivors, their whānau, of abuse by teachers who have been involved in our processes and where we have not taken appropriate care to ensure their safety, resulting in instances of harm being done which is unacceptable. We recognise our processes have had a significant and ongoing negative impact on some individuals. We wish to engage with survivors in a genuine and well-considered way. Therefore we do not feel it is appropriate to make a general apology today. We await the Commission's full findings to help us ensure that any apologies to survivors are meaningful and personalised.
- 6 Today there are over 140,000 teachers in Aotearoa. Quite rightly, society has high expectations of teachers in terms of their values and behaviours. As members of our society, teachers reflect the strengths and weaknesses of that society. Although parts of this brief look back to when systems or processes were different, or look forward to how they might change, abuse of learners has always been unacceptable and always will be. The Teaching Council has always had the responsibility to ensure our processes are administered in effective, empathetic ways for all survivors, and we always will have that responsibility. It is right that we are held to a high standard in that task.

The history of the Teaching Council's predecessors

- 7 Predecessor organisations to the Teaching Council have existed since 1989. Prior to 1989 the Teachers Register was kept by the Director-General of Education. The Teaching Council's functions, governing legislation, and powers (particularly the powers that may be relevant to the work of the Royal Commission) have changed significantly over the last 30 years.
- 8 In this brief, I refer to those changes as I set out our evidence on certain issues. I provide a summary account of our predecessor organisations and a diagram showing how the Teaching Council has changed in an appendix to this brief.

The Teaching Council today

- 9 On 29 September 2018, the then-Education Council was renamed the Teaching Council, which is the body that exists today. The Teaching Council has a mandate to ensure safe and high-quality leadership, teaching and learning for children and young people in early childhood, primary and secondary schooling in English- and Māori-medium settings, as well as the settings of other languages, through raising the status of the profession.
- 10 The Teaching Council is an independent statutory agency and is not part of the core Crown. It is funded by the fees and levy paid by members of the profession. The Governing Council comprises 13 members – seven are elected by the profession and the remainder are Ministerial appointments. 100 employees provide the services necessary to achieve the Teaching Council's legislated functions, supported by communications, human resources, finance, IT and policy and implementation teams, alongside a call centre.
- 11 The functions of the Teaching Council can be described in the form of six pou (pillars) that uphold Te Whare o Te Matatū | The House of the Teaching Profession:
- Pou Aro Whakamua – steering the future direction of teaching;
 - Pou Whai Rēhitanga – becoming registered and certificated as a teacher;
 - Pou Tikanga Matatika, Ngā Paerewa – establishing and maintaining the Code of Professional Responsibility (**Code**) and Standards for the Teaching Profession (**Standards**);
 - Pou Here Tōmua – establishing and maintaining standards for Initial Teacher Education and undertaking Initial Teacher Education programme approvals;
 - Pou Matatika – ensuring high standards of ethical behaviour; and
 - Pou Mataara – ensuring high quality teacher practice.
- 12 The pou that are particularly relevant to preventing or addressing abuse are:
- Pou Whai Rēhitanga (registration and certification);
 - Pou Tikanga Matatika, Ngā Paerewa (Code and Standards); and
 - Pou Matatika (disciplinary processes to support high standards of behaviour).
- 13 The Teaching Council is responsible only for registered and certificated teachers who work in early childhood services, primary and secondary schools. Currently there are 140,000 registered teachers. Our responsibilities for upholding the
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standards of the teaching profession apply also to former teachers. Teachers include those who hold a Limited Authority to Teach who are required to comply with the Code. Teachers are defined as those who are currently or formerly registered teachers, or those who currently or formerly held a Limited Authority to Teach.

- 14 The Teaching Council issues and monitors the registration, certification and authorisation of individual teachers, and manages conduct and competence complaints and mandatory reports related to individual teachers. While we provide advice to professional leaders and principals about the endorsement of teachers for practising certificates and authorisations, as well as guidance about mandatory reporting requirements and our disciplinary processes, we do not have information systems or processes centred on institutions within the education sector. The exception is in the Initial Teacher Education sector where we have relationships with those institutions who design and deliver training programmes to student teachers.
- 15 While we are not a Crown organisation, we work closely with other agencies. We have a Memorandum of Understanding (**MoU**) with the Ministry of Education to share information about potential abuse in the early childhood education sector. We also have a MoU with the New Zealand Police, Oranga Tamariki and the Ministry of Education to share information about potential abuse in the primary and secondary sectors. Court registrars are required under the current Education and Training Act 2020 (**the Act**) (and the previous 1989 Act) to inform the Teaching Council where teachers (or former teachers) are convicted of criminal offending. Discussions are currently underway to explore how ERO may be included in information sharing arrangements.
- 16 In 2010 legislation changes allowed information matching of register information and information of teacher salaries at payrolled schools to be shared to identify teachers who may be working without registration, a current practising certificate or authorisation. From 1 August 2022 the Education and Training Amendment Act 2022 clarifies the Teaching Council's ability to prosecute offences by including a new function.

Pou Whai Rēhitanga - our role in registration and certification

- 17 Registration or the issue of a limited authority to teach are the point at which people enter the teaching profession, after successfully attaining an approved Teacher Education qualification. Proof of identity requirements meet the recommended practices of the New Zealand Police vetting requirements, as well as the Department of Internal Affairs' Identification Management Standards. Police vetting has been a requirement since 2002. An application to become a registered teacher or holder of a Limited Authority to Teach cannot proceed without a satisfactory Police vet being completed. Overseas-trained teachers are required to obtain a police vet from the national police service of the issuing country. For some countries, such as the United Kingdom and Australia, the Teaching Council requires a specific type of Police vet certificate which provides more detail related to working with children.
 - 18 Applicants for registration or to hold a limited authority to teach are required to declare that they are:
 - physically and mentally fit to teach and do not have a condition that would affect their ability to teach safely and satisfactorily; and
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- committed to the values and expectations in the Code and not under investigation for any matters that may impact on their teaching or ability to meet the Code.
- 19 It is an offence to make false representations related to applications for registration, practising certificates or limited authorities to teach.
- 20 Under the Children’s Act 2014, the Teaching Council cannot register an applicant if they have a conviction for specified offences without an exemption from the Ministry of Social Development. The applicant is responsible for acquiring the exemption. Since October 2016 there have been convictions for a specified offence entered by the court which have subsequently led to 44 cancellations by the Board, including ten cancellations in 2020 and eight cancellations in 2021.
- 21 Under the Teaching Council Rules 2016, a Registration Panel considers applications for registration or re-registration under certain conditions. They include concerns about whether the applicant:
- is of good character;
 - is fit to be a teacher;
 - has previously applied for registration and been declined; or
 - has previously had their registration or a practising certificate cancelled.
- 22 Newly registered teachers are issued with a Tōmua | Provisional Practising Certificate and are required to complete a period of mentoring and induction. This period is two years for teachers trained in Aotearoa. Overseas-trained teachers with experience may receive Teaching Council approval for a reduced period of 12 months subject to satisfactory evidence.
- 23 A professional leader or principal is required to endorse that a teacher has demonstrated they can independently and fully meet all the Standards following successful completion of an induction and mentoring programme supervised by a mentor who holds a Tūturu | Full (Category One) Practising Certificate. This endorsement, along with requirements such as a satisfactory Police vet, must be satisfied before a teacher can shift from a Tōmua | Provisional Practising Certificate to a Tūturu | Full (Category One) Practising Certificate.
- 24 The renewal of practising certificates every three years requires:
- a satisfactory Police vet;
 - evidence of satisfactory recent teaching experience as endorsed by a professional leader – including at least two years’ uninterrupted teaching in the last five years;
 - completion of satisfactory professional development as endorsed by a professional leader;
 - the applicant’s declaration that they are committed to the values and expectations of the Code and confirmation as to whether or not they are under investigation for any matter;
 - the applicant’s declaration they are physically and mentally able to carry out the teaching role safely and satisfactorily; and
 - the applicant’s declaration that they have continued to develop and practise te reo me ngā tikanga Māori while practising as a teacher.
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- 25 The renewal application must be endorsed by a professional leader based on the leader's knowledge of a teacher's practice in relation to using and meeting the Standards.

Pou Tikanga Matatika, Ngā Paerewa - our role in monitoring ethical behaviour

- 26 At any point in a teacher's career, whether while they hold a Tōmua | Provisional Practising Certificate or a Tūturu | Full (Category One) Practising Certificate, an employer is expected to comply with the mandatory reporting requirements if the employer has concerns or receives a complaint about the conduct or competence of a teacher.

Pou Matatika- our disciplinary processes

- 27 The focus of the professional disciplinary process is to determine whether a teacher should be able to continue teaching and if so, under what conditions. Professional discipline is principally concerned with safety for learners and the maintenance of the quality, and public perception, of the profession. By providing a process for setting standards of behaviour for the profession, discipline also aims to enhance the status and good-standing of the profession as part of the Teaching Council's role.
- 28 Though behaviours may be both criminal and disciplinary, discipline is distinct from the criminal law. While the criminal law is aimed at behaviours or omissions falling short of what is expected of people in society generally, discipline focuses on safety and what is expected of teachers as a profession, rather than punishment.
- 29 When criminal behaviours are involved, Police and criminal processes need to conclude before the Teaching Council disciplinary processes begin.
- 30 The Teaching Council receives complaints from the general public and mandatory reports from employers. The Teaching Council also has the ability to refer to the Complaints Assessment Committee any matters that relate to teacher conduct of its own motion. Those complaints and reports, when first received, proceed through a Triage Committee. The Triage Committee assesses complaints and reports at a preliminary stage to help identify things such as matters of concern that need to be dealt with promptly, matters that require further investigation, whether an issue raised is better addressed by a different organisation, or whether the matter raised is trivial and does not involve a conduct issue. Matters raising potential disciplinary issues are referred to the Complaints Assessment Committee for investigation.
- 31 The Act (and its predecessor) both Complaints Assessment Committees and the Teacher's Disciplinary Tribunal are granted disciplinary functions and powers. . At a high level, complaints and mandatory reports referred from the Triage Committee are first considered by a Complaints Assessment Committee. The Committee has the power to make lower-level disciplinary determinations following an investigation (namely, findings of "no further action" and misconduct). Hearings of the Complaints Assessment Committee are private. If the matter may possibly constitute "serious misconduct", the Committee must refer the matter to the Disciplinary Tribunal. The Committee has a broad ability to refer a matter to the Disciplinary Tribunal for a hearing at any time. The Committee then acts as prosecutor in the Disciplinary Tribunal. The teacher can represent themselves, or they may have a lawyer or representative to present
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their case. Hearings of the Disciplinary Tribunal are public unless the Chair or Deputy Chair determine otherwise, and the Tribunal also has the ability to make non-publication orders, where proper to do so.

- 32 Decisions issued by the Disciplinary Tribunal may be appealed by either the teacher or the Committee (with leave of the Teaching Council). There is presently no right of appeal from decisions of a Complaint Assessment Committee, but these can be subject to applications for judicial review. I will speak later to pending legislative changes relating to appeals. There are further rights of appeal to the District Court and above from Disciplinary Tribunal decisions, and the Complaints Assessment Committee can be subject to applications for judicial review.
- 33 The Complaints Assessment Committee and the Disciplinary Tribunal are independent from the Teaching Council in their decision-making, although in this hearing, we take responsibility for these bodies at an organisational level.

Te Whare o Te Matatū

- 34 The Teaching Council has an internal strategy and is on a journey to enhance the knowledge and understanding of all our staff and panel members about Te Tiriti o Waitangi, te reo and tikanga Māori. As the strategy progresses and our understanding continues to strengthen and deepen, this understanding will underscore our relationships and interactions with teachers which will in turn, impact on all learners.
- 35 We acknowledge the injustices created by a biased education system and the impact this has on teachers and learners. Our service promise in our newly released Strategic Plan reflects our principles and values:
- to be Tiriti-led by working according to the principles of Te Tiriti o Waitangi and in partnership with the profession;
 - to enhance inclusiveness by working across diverse teaching and learning communities, including disability groups and other learners facing challenges of being marginalised; and
 - to demonstrate cultural competence in our work and being agents of change for equitable outcomes for Māori, Pasifika, disabled and other learners facing challenges of being marginalised.
- 36 Our response to the Notice to Produce 448 described how over time, changes have been made to give effect to Te Tiriti through codes and standards, registration and certification, and Initial Teacher Education programme requirements (pages 11 to 36).
- 37 In May 2021 we launched the Unteach Racism campaign, designed to acknowledge the position of teachers to lead change and make a difference for learners facing prejudice and bias based on ethnicity. Unteach Racism is built on the Human Rights Commission's Give Nothing to Racism campaign, and is research-based with advice from teachers, leaders and academics. An app and a website with online resources is available to support teachers and education leaders to grow their own knowledge and understanding of racism. It includes advice for teachers on self-reflection and having frank, open conversations about racism with colleagues.
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Areas of challenge and shortcoming identified in survivors' experiences and the Royal Commission's documents

- 38 We have reviewed the documents the Royal Commission has identified as potentially relevant for the hearing. Many of those documents relate to individual cases, some of which are active disciplinary matters and therefore sub judice. All are likely to engage privacy concerns. Some involve suppression orders. At the same time, the Teaching Council recognises that some individual survivors have sought specific answers about their specific cases. As this brief is likely to be made public, I have tried to address the substance of the issues raised but without reference to identifiable details of individual cases for now. This cautious approach is not intended to disrespect either the Commission or survivors.
- 39 In terms of specific cases, the Teaching Council is committed to providing as many answers in as much detail as the Commission or survivors require – whether that is through carefully anonymised individual questioning; supplementary written evidence to follow up questions from the Commission; or individual engagement with survivors should that be considered appropriate.

A responsive system

- 40 As set out above, the Teaching Council has several ways in which it can prevent or respond to abuse by teachers. This is primarily a gatekeeper role: the Teaching Council controls entry to the profession in the first place (through registration and issuing limited authorities to teach); it controls the ability of teachers to remain in the profession (through renewal of practising certificates); and it investigates, and addresses conduct allegations, which in some cases may result in teachers being removed from the profession (following the disciplinary process).
- 41 One of the things the Teaching Council needs in order to perform its gatekeeper role well is to receive relevant information. Like any organisation, the Teaching Council can only act on what it knows about. Of course, that is not the only thing it needs: the Teaching Council also needs to do a good job with the information it receives, and I address this later. But focusing on the information flowing into the Teaching Council, some of the documents the Commission identifies show where the system has not worked well.
- 42 Over the last thirty years, the legislative and policy framework has improved information flow. Some of those things include:
- (a) From 1996, employers of teachers have been required to notify dismissals and when resignations when a teacher resigns and within the previous 12 months the teacher's employer had advised the teacher they were dissatisfied with or intended to investigate an aspect of the teacher's conduct, or if the employer thought any aspect of the behaviour or performance of a former employee may be relevant to the then-Registration Board's performance of its duties.
 - (b) From 1996, registrars in criminal courts are required to notify the Teaching Council of convictions entered against teachers.
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- (c) In 2004 mandatory reporting requirements were introduced, including situations where the employer believes the teacher has engaged in serious misconduct.
 - (d) From 2004, teachers who hold a current practising certificate or limited authority to teach have been required to report if they have been convicted of an offence punishable by more than three months' imprisonment.
 - (e) From 2004, it has been unlawful for an employer or former employee to fail to report a mandatory reporting matter. It is therefore unlawful for an employer to agree not to report a teacher in exchange for their agreeing to leave employment.
 - (f) From 2014, the Children Act introduced more comprehensive safety checks for teachers.
 - (g) From 2015, the Teaching Council has Memoranda of Understanding with other organisations about potential abuse in the early childhood, primary and secondary sectors (including Oranga Tamariki, the Police and the Ministry of Education)
- 43 While these are all positive developments, they also indicate shortcomings in the system prior to their enactment. The system has generally moved to put in place measures where both the teaching profession and the government are incentivised and expected to inform the Teaching Council of relevant matters.
- 44 Despite these changes, there is still potential for the system not to work as well as it should. Reasons for that include:
- (a) Where abuse is perpetrated by a teacher in secret such that the only persons who know about it are the perpetrator and survivor(s).
 - (b) Where abuse is committed by a teacher, but the teacher's peers or colleagues tolerate the abuse (mistakenly or intentionally) or are similarly culpable, so that mandatory reporting does not take place.
 - (c) Where there is not an embedded culture of raising concerns or speaking out when inappropriate conduct or abuse is observed.
- 45 Addressing these issues is the responsibility of many organisations, but the work that falls to the Teaching Council to try to address includes:
- (a) Ensuring its complaints procedures are fit for purpose and accessible to survivors who wish to engage with these.
 - (b) Ensuring teachers know their professional responsibilities to report. The Teaching Council can do this both through its work in standard setting and through its disciplinary function (which serves an educative role to the wider profession). The Teaching Council can pursue own-motion investigations where it suspects teachers have not reported.
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A disciplinary framework that is fit for survivors

- 46 The disciplinary framework provided by our legislation and how we have administered it have not always been fit for purpose for survivors. At least one survivor has given compelling evidence about their experience to the Commission. The Teaching Council accepts without reservation the account given and apologises for it.
- 47 What follows is intended as an explanation but not an excuse of some of the issues raised by that evidence. As I have explained, the intention of responding at a general level here, due to the public nature of the brief, is accompanied by a commitment to engage in detail in whatever is considered the best forum for that.
- 48 Earlier incarnations of our legislation required a teacher's employer to apply for the cancellation of a teacher's registration in order for the disciplinary process to become engaged. There was no way for survivors to initiate the process themselves nor the Teachers Registration Board. That disempowered survivors and made the disciplinary process dependent on initiation by employers who may have been incentivised to resolve matters directly with the teacher. This was changed in 2004. Anyone may now make a complaint and employers are required by law to refer serious misconduct. We talk more about ensuring our complaints process is accessible at paragraphs 69 - 72 below.
- 49 Ensuring that the disciplinary process proceeds in a timely manner is important. Individual timeframes are case dependent and may depend on things like the amount of investigation involved. The Teaching Council has KPIs for monitoring and reporting to the Board on the timeliness of our disciplinary processes. Like any legal process, either party can bring legal challenges, including applications for judicial review. In rare cases this can lead to lengthy delays. The tension between timeliness and procedural fairness for all parties is felt in many jurisdictions. We know, however, that where it is compounded by another unfairness it will be felt acutely.
- 50 In terms of financial support for survivors, the payment of witnesses' travel costs is now regularly done, and AVL arrangements are increasingly used to reduce the need to travel as well as to mitigate the potential stress involved if providing evidence about sensitive and personal matters.
- 51 The hearing process has changed significantly over the years. Disciplinary matters are no longer heard by the full Council of 20 members. Instead, there is a dedicated Disciplinary Tribunal that sits in three-person panels. The Chair or Deputy Chair of each panel is a qualified lawyer, with experience in litigation. The Tribunal regularly uses measures such as screens for witnesses, remote appearances, and the presence of support persons. It is well-placed to control questioning of witnesses, to ensure questions are appropriately framed and are relevant to the issues in dispute. Specific provisions are in place for child witnesses, learners and other vulnerable individuals involved in the process (including the right to give evidence in private). The Tribunal also has a broad ability to regulate its own procedure, subject to the requirements of natural justice. The changes that have been made reflect a developing understanding of how to ensure the disciplinary process is as fit for purpose as possible.
- 52 There is also the issue of ensuring sufficient non-financial support for survivors. While the Teaching Council has encouraged the use of support people, that
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should not be a substitute for ensuring the Teaching Council itself is communicating well and keeping survivors informed as disciplinary matters proceed. Today, we have dedicated investigators that can provide an element of continuity from early on in the process and as the matter progresses through the disciplinary framework. It may also be the case that a one-size-fits-all approach will not be adequate. We accept there is more to do in this area and are committed to exploring how improvements to communication and support can make the disciplinary system more fit for purpose.

- 53 Many of these issues come back to difficult questions about what the disciplinary process is set up to achieve. Having looked at it critically, our view is that it is presently focused on the question of registration, rather than validation of survivors' experiences. We have overseen changes in the system which we hope are positive steps. But there is more work to do. Part of that work will be about how survivors' interests can be better met within the current system; whether there needs to be more fundamental changes to the system (for example, whether there are limits to what can be achieved in an adversarial system); or whether the answer lies better in another system (for example, using the criminal courts with the disciplinary and regulatory consequences for teachers following from those).

Appropriate use of the disciplinary system to detect, prevent and respond to abuse

- 54 Abuse that is of a criminal nature will usually follow a criminal pathway. A specified offence conviction will prohibit a person becoming or continuing as a teacher unless they acquire an exemption. A Police or criminal process needs to be completed before the Teaching Council process begins.
- 55 As set out above, the disciplinary system – which is one of the primary ways the Teaching Council responds to allegations of abuse – contains a number of tools, processes and potential outcomes. Like any statutory body, the Teaching Council has to work within its particular legislative environment. I have set out how that legislative environment has changed across the years to become more responsive, while recognising there will always be room for improvement.
- 56 However, while legislation over the last 30 years (and today) provides boundaries, the way in which the Teaching Council has chosen to fulfil its functions within those boundaries has always been our responsibility. While part of the answer to shortcomings in the past stems from structures and legislation, another part of the answer will be what the Teaching Council chose (and chooses) to do.
- 57 Some of the themes arising from the documents the Royal Commission has identified, and other issues by which the Royal Commission may be assisted, include the following:

Interim and preventive measures

- 58 *The use of voluntary undertakings not to teach:* Where serious allegations have been made against a teacher, the Teaching Council can seek from them a voluntary undertaking not to teach. If the undertaking is given, the teacher is recorded on the public register as not teaching, so schools know they cannot be employed. Undertakings are an interim measure only. They are an effective way to ensure that immediate safety concerns are addressed by removing a teacher's ability to teach until the conclusion of the disciplinary process.
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Employers are informed of signed undertakings not to teach. Currently there are 28 teachers at various stages of the disciplinary process who are covered by a voluntary undertaking not to teach.

- 59 *Applications for interim suspension:* If a teacher does not give an undertaking, the Complaints Assessment Committee can (and not infrequently does) apply to the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority. This requires an application by the Committee, supported by evidence. The teacher may oppose the application. The Disciplinary Tribunal issues a reasoned decision. If granted, an order of the Tribunal suspends the teacher's ability to teach pending the conclusion of the disciplinary process.

Resolutions of disciplinary matters

- 60 *Agreements to resolve disciplinary matters at a "lower" level:* The terminology has changed across the years but by "lower" level I mean short of a full defended hearing in front of the disciplinary body with the most significant disciplinary powers available to it, namely suspension and cancellation (currently the Disciplinary Tribunal, formerly the Teachers Council or the Teachers Registration Board). In cases where the conduct does not meet the threshold to warrant referral to the Disciplinary Tribunal, the Complaints Assessment Committees nevertheless have the power to make an adverse finding in respect of a teacher's conduct (namely, a finding of misconduct).
- 61 *Resolution through agreement with the teacher and initiator:* The Complaints Assessment Committee may impose penalty orders (not including suspension or cancellation) through agreement with both the teacher and the initiator. An agreement can be a principled means of concluding a disciplinary process and one that can serve the interests of all persons, including survivors. But agreements must be made on a principled basis and the orders agreed to must meet the principles and purposes of disciplinary proceedings. Pragmatism has a place in the equation, but it should not eclipse principle. I will speak shortly about pending changes to the powers of the Complaints Assessment Committee related to agreements.
- 62 The legislative framework is also set up to require a Complaints Assessment Committee to refer conduct to the Disciplinary Tribunal if they consider it "may possibly constitute serious misconduct". I will also be speaking to pending changes to the threshold for referrals from the Complaints Assessment Committee to the Disciplinary Tribunal.

Decisions not to pursue disciplinary matters

- 63 The fact of retirement or voluntary deregistration is not by itself a reason not to pursue conduct investigations against teachers. It is frequently the case that former teachers will be investigated. The Teaching Council argued in High Court proceedings that it did have the power to continue disciplinary proceedings against teachers who had voluntarily deregistered following the alleged conduct giving rise to the disciplinary proceedings, before 2004 legislative amendments confirmed this was the case.
- 64 There are circumstances where the Teaching Council (or a Complaints Assessment Committee, as the case may be) will decide not to pursue disciplinary matters even when there is evidence tending to support serious
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misconduct. That is never a step taken lightly and occurs in situations such as those where the teacher faces serious, permanent health impairments such that they could not fairly take part in the disciplinary process, as required to ensure natural justice requirements imposed under the applicable legislation are met.

Other areas of potential relevance for the Royal Commission

- 65 The Teaching Council has also reflected on other aspects of its work and systems that may be relevant to the Royal Commission's work.

Who is a teacher?

- 66 It is important to note that while many people work within early childhood services, primary and secondary schools, such as teacher aides or support and administrative staff, they are not covered by the Code and Standards that apply to the teaching profession as they are not defined as a registered teacher. The Teaching Council is therefore not a body that exercises oversight across all persons working in schools or other education settings.

Raising awareness of profession

- 67 We have work to do to raise the awareness of teachers about the Code and give them the confidence to call each other out about unacceptable practices, to prevent inappropriate behaviours being repeated. It is an expectation of the Code that all teachers will maintain public trust and confidence in the teaching profession by contributing to a professional culture that supports and upholds the Code. This includes leading and engaging in professional conversations about ethical conduct, learning and applying tools for dealing with ethical dilemmas, and taking action to stop a colleague's harmful, unethical or unlawful actions where their behaviour may be in breach of the Code.
- 68 When speaking at conferences or visiting centres or schools, the Teaching Council shares presentations and case studies – including expectations under the Code and common themes of misconduct or serious misconduct. Investigators from the Teaching Council have made presentations to students of Initial Teacher Education programmes to make them aware of their responsibilities as they enter the teaching profession.

Accessibility of our complaints processes

- 69 We are committed to making our complaint processes more accessible and understandable, so we can better incorporate the voices of victims. We acknowledge we have work to do to make the complaints system more accessible for young persons and persons with disabilities in particular.
- 70 The Education and Training Act 2020 introduced a dispute resolution scheme to facilitate and promote the resolution of serious disputes between students and State schools (Part 3, Sub-part 9, sections 216 to 236). Serious disputes are defined as a dispute between a student and the board of the student's school including about, among other things:
- any racism or other form of discrimination that is a prohibited ground of discrimination experienced by the student while at school; and
 - the student's physical or emotional safety while at the school.
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- 71 In our Select Committee submission of 14 February 2020, the Teaching Council stated “The Teaching Council believes clarification is required about how the serious dispute resolution process described in the Bill will interact with the Teaching Council’s role, especially about the following matters:
- confusion about the appropriate body and process to consider an alleged claim or dispute
 - the potential for delays in the processes undertaken by the Teaching Council if matters are referred through the dispute resolution process
 - the possibility a teacher may be subjected to a range of investigative or review processes which may compromise natural justice
 - how information arising from a referral to a dispute panel and any aspect of a dispute panel’s review, investigation or recommendations or agreements/decisions/settlements will be shared with the Teaching Council if the dispute raises issues, at any stage of the process, relating to a teacher’s conduct or competence
 - how to communicate to students, parents, whānau, Boards, principals, teachers and the school community the differences between and options for pursuing different types of disputes, and the mandatory reporting requirements.”

- 72 We understand work on establishing this dispute resolution process is ongoing. We support options for students to be able to get resolution of disputes but continue to urge caution about ensuring that natural justice is observed for all parties involved in a dispute resolution process by ensuring there is clarity about the responsibilities and information-sharing between different agencies.

Data collection

- 73 The Teaching Council’s key interaction with teachers occurs when they become registered and when they apply for a new type of practising certificate or renew an existing type of practising certificate or a Limited Authority to Teach, which is generally every three years. For the 140,000 plus teachers in the profession, we have an accurate picture of their employment only at the time they apply to be issued with or renew a practising certificate or authorisation. For this reason, the Teaching Council has been unable to assist the Royal Commission with requests for information relating to educational institutions as our data collection is based on individual teachers. We acknowledge there is a potential gap in the education system being able to provide the institutional data sought.
- 74 We are open to discussions across the sector to improve reporting. Education and awareness training is also of great importance, as reporting systems are dependent on the willingness of people to use those reporting systems to bring alleged breaches to the attention of the appropriate agencies.
- 75 In terms of information the Teaching Council holds that may be relevant to the extent of abuse by teachers:
- 76 In 2021, there were around 150,000 registered teachers, of which 107,400 had current practising certificates. We received 537 complaints and mandatory reports, representing 0.5% of certificated teachers. 120 teachers or 0.11% had conditions placed on their practising certificates. 25 teachers or 0.02% had their registration or practising certificate cancelled.
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- 77 In 2020 544 mandatory reports and complaints were received and 537 in 2021. This excludes self-reported convictions. In 2020 55 matters were referred from the Complaints Assessment Committee to the Disciplinary Tribunal. In 2021 there were 68 referrals.
- 78 The reasons why conditions have been applied or registration is cancelled are wide ranging, including situations that do not involve abuse of learners.

Significant changes over the last 30 years that have improved the Teaching Council's ability to identify, prevent or respond to abuse

- 79 The 2004 introduction of a code of ethics, legislated functions and Rules to set up disciplinary processes, and mandatory reporting requirements signalled a significant shift for the teaching profession. Special protections for certain witnesses and vulnerable people are now available. These include the Disciplinary Tribunal now being required to consider holding some or all of a hearing in private, using video link or alternative means for the giving of evidence, and prohibiting the publication of names or particulars of a person's affairs.
- 80 From 1 July 2015, the Children's Act 2014 prohibited people with specific serious convictions (defined as "specified offences") from being employed as teacher, and from 1 July 2016 prohibited any existing teacher with specific serious convictions continuing to be employed. In the case of a specified offence, the Council must immediately cancel the registration of a teacher (which occurs without needing to go through an investigation and hearing, though the teacher must be given the chance to be heard on the proposed cancellation).
- 81 Over the last five years we have made process and procedural changes to better safeguard current or former learners who are survivors of abuse by teachers who engage with us. Recent examples include the Teaching Council:
- training investigators in a recognised child interviewing qualification, including the use of trauma-informed interview techniques;
 - supporting the Complaints Assessment Committee to make own-motion referrals to the Disciplinary Tribunal. This can take place where the Teaching Council or Complaints Assessment Committee becomes aware of other conduct issues in the course of an investigation into an original complaint. As an example of a recent own-motion referral, the Teaching Council obtained information during an investigation that a teacher had become aware that a teacher colleague had been having inappropriate sexual relationships with boys and failed to bring this to the attention of a professional leader. This matter was referred to and resolved at the Complaints Assessment Committee stage. Another example of an own-motion referral is when the Teaching Council became aware of a professional leader endorsing the practising certificate of a teacher when the professional leader had knowledge the teacher had sexually offended against children;
 - reviewing our criteria and process for the selection of members of disciplinary bodies;
 - requiring a legal advisor to be present to ensure the Complaints Assessment Committee uses the correct legal framework/process to determine whether a matter may possibly constitute serious misconduct, is misconduct or if there should be no further action taken;
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- training Disciplinary Tribunal members about vulnerable witnesses;
- considering the needs of vulnerable witnesses at the pre-hearing stage by communicating with witnesses who may be vulnerable prior to a hearing about the processes and the options available to them, e.g. screens;
- providing written material to witnesses and people attending Disciplinary Tribunal hearings about what to expect;
- setting up an 0800 abuse hotline so survivors of abuse by teachers can make direct contact with a Lead Investigator;
- investigators referring people involved in our processes to the Learner and Whānau support programme if they are likely to benefit from an understanding of our processes and how to engage with these processes;
- appealing decisions of the Disciplinary Tribunal (10 appeals have been lodged between May 2021 and August 2022); and
- increasing use of voluntary undertakings not to teach.

82 Recognising the impact of disciplinary processes on those involved, we have put significantly more resources into the professional responsibility area over the last two years to speed up the time to resolution. Sometimes the time taken is outside the Teaching Council's control, as we wait for Police and criminal processes to conclude, availability of witnesses or responses from teachers.

Changes for the future

83 On 1 August 2022, the Education and Training Amendment Act 2022 took effect. This Act provides us with an opportunity to review our disciplinary processes. Changes in the Act related to our disciplinary processes do not take effect immediately, but in 12 months.

84 Key changes include:

- removing the power of the Complaints Assessment Committee to suspend a practising certificate or authority
 - enabling the Complaints Assessment Committee to resolve cases that meet the definition of serious misconduct
 - allowing the Complaints Assessment Committee, if it makes a finding of misconduct or serious misconduct, to, with the agreement of the teacher concerned:
 - censure the teacher
 - impose conditions of the practising certificate or authority
 - annotate the register or list of authorised persons
 - direct the Teaching Council to impose conditions on any subsequent practising certificate
 - changing the threshold of referral from the Complaint Assessment Committee to the Disciplinary Tribunal so that any matter must be referred if the Committee considers that the following powers are likely to be considered in order to address the matter:
 - the power to suspend a teacher's practising certificate or authority
 - the power to cancel a teacher's registration or authority or practising certificate
 - introducing a new provision allowing a teacher who is the subject of a decision of the Complaints Assessment Committee or the initiator to
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request the Disciplinary Tribunal to review part or all of the Committee's decision.

82. A law change in 2015 resulted in a significant number of less serious cases being referred to the Disciplinary Tribunal. Cases have been taking longer to resolve, resulting in stress and anxiety for those involved in the process and adding to the cost of the processes. The Teaching Council has engaged with key stakeholders about how best to improve natural justice within the process. These changes were open for public submission in April 2021 by the Ministry of Education, as well as the Select Committee process in early 2022. The aim of these changes is to improve natural justice by referring only the most serious cases to the Disciplinary Tribunal. The Complaint Assessment Committee would have the ability to consider serious misconduct of a nature such as conduct that may bring the teaching profession into disrepute through actions such as acting dishonestly or committing theft or fraud. The Committee will no longer be required to reach agreement with an initiator who is given a new right of appeal if dissatisfied with a Committee decision.
83. The 12-month delay in implementation of these disciplinary process changes allows us to review the current Teaching Council Rules 2016 and to consult - as required by law - with the profession and key stakeholders about changes to the Rules to improve efficiencies within our disciplinary processes, improve natural justice for teachers, and better respect the mana of all persons involved in the processes. The review period will require us to consider and consult how the safety of learners is prioritised when determining what matters of serious misconduct are referred to the Disciplinary Tribunal.
85. As Chair of the Governing Council, Robyn Baker has directed that the terms of reference for the Rules review includes the following:
- reviewing Rule 34 which relates to ensuring special protection for certain witnesses and vulnerable people;
 - reviewing all the cases involving teachers brought before the Royal Commission to identify issues that could inform change, and to help identify where apologies to survivors are warranted and how to engage with survivors so any apologies are well-considered, genuine and personalised; and
 - improving the diversity and cultural awareness of our decision-making panels.
86. We acknowledge our Te Tiriti journey is more developed in other parts of our functions and processes than in our disciplinary processes. The Teaching Council Rules 2016, as they relate to the disciplinary processes, have not been significantly changed for six years and pre-date the introduction of the Code and Standards. The one-year review of our Rules provides a significant opportunity to apply a te ao Māori lenses to our review and ultimately to our disciplinary processes. The Chair of the Teaching Council has directed that this also form part of the terms of reference.
87. We have already started working with other regulatory bodies to explore the options for incorporating a te ao Māori approach into our collective processes and sharing learnings from different parts of our regulatory frameworks. This mahi may identify and lead to law change in the future.
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Concluding comments

- 88 The Teaching Council is a regulatory and professional body designed to consider whether a person is fit to become a registered member of the profession, and whether that person continues to maintain the expected skills, knowledge, behaviours and character to continue teaching. When the Teaching Council or its disciplinary bodies – which are quasi-judicial bodies – perform their functions and exercise their powers, we and they are required to act in accordance with the rules of natural justice. This includes allowing a teacher to hear and respond to allegations about their conduct and/or competence. The ultimate penalty that we can apply to a teacher is to remove them from the profession by cancelling their registration. We recognise that as our processes are not designed as a complaint resolution process, we are limited in being able to satisfy the needs and desire of some complainants, especially those who are survivors of abuse by teachers.
- 89 This does not mean we are not aware of the needs of complainants who include survivors of abuse. We hope our response to Notice to Produce 448 and this brief demonstrate that over time, there have been changes in societal and professional expectations, legal requirements, policies and practices, and induction and training that have influenced how we perform our role and how we interact with those involved in our processes. Part of our commitment to doing better is trying to be as open as possible about where we have not done as well as we should. We acknowledge that for ourselves as a regulatory body and for the whole of the teaching profession, this is an ongoing journey, with much yet to be learned and applied, and with a view to overcoming the impact of colonisation, building an authentic and meaningful Te Tiriti partnership, reflecting the diversity of Aotearoa, respecting the mana of all and – most importantly – keeping all learners safe.
- 90 We look forward to the Commission’s full findings to help inform our journey of continuous improvement and to allow us to engage with survivors and whānau in a meaningful way.

Signed: .....
Lesley Hoskin

Date: 12 August 2022

Appendix One

91 In this Appendix, we provide a summary account of our predecessor organisations and a diagram showing how the disciplinary functions of the Teaching Council and its predecessors, as prescribed by legislation, have changed.

Registration Board

92 The Registration Board was established on 1 October 1989 by the Education Act 1989. For this reason, the Teaching Council has been unable to assist the Royal Commission with requests for information relating to the period prior to 1989.

93 The mandate of the Registration Board was to register and certify teachers. The Registration Board could only consider cancellation of registration on the grounds of character, fitness to teach or not being a satisfactory teacher if a principal or chief executive applied to the Registration Board.

Teachers Council – 2002 to 2015

94 Speaking at the launch of the Teachers Council in 2002 the then-Minister of Education stated: “the new Council will take on an expanded role for the flagship for ethics and standards in education.” The Minister also noted: “It has the power to investigate where misconduct and incompetence are reasonably thought to have occurred and it has access to a bigger range of tools to deal with misconduct or incompetence, including penalties like suspension, fines and deregistration.”

95 The Education Standards Act 2001 established the Teachers Council, with effect from 1 February 2002. Thirteen functions were assigned to the Teachers Council including:

- (a) determining standards for teacher registration and the issuing of practising certificates;
- (b) developing a code of ethics;
- (c) exercising disciplinary functions relating to misconduct and reports of teacher convictions;
- (d) setting the criteria for reporting serious misconduct and reporting on competence issues; and
- (e) co-ordinating a system providing for Police vetting of all teachers and others employed in schools and early childhood services. In 2010, Police vetting by the Teachers Council was restricted just to teachers.

96 The Teachers Council was required to consult and publish Rules covering the practices and procedures of two new disciplinary bodies – the Complaints Assessment Committee and the Disciplinary Tribunal. The Rules also covered the procedures for the Teachers Council dealing with mandatory reports which were now required from employers. New offences were introduced.

97 From 1 September 2004, the new Complaints Assessment Committee and Disciplinary Tribunal processes took effect under the Education Standards Act Commencement Order 2004.

- 98 The powers of the Complaints Assessment Committee included being able to resolve a complaint by agreement with the teacher and complainant if, following an investigation, they determined misconduct. If the Committee believed on reasonable grounds that a teacher had engaged in serious misconduct, then the Committee was to refer the matter to the Disciplinary Tribunal. The purpose of seeking agreement was to achieve an appropriate outcome and minimise time and costs.
- 99 A person who wished to make a complaint about the conduct of a teacher was required first to make a complaint to the employer of the teacher unless there were specific circumstances. Such a person included a parent, employer or a member of the Teachers Council.
- 100 In 2012, a Memorandum of Understanding was signed by Child, Youth and Family and the Ministry of Education. Schedule 1 was amended in November 2015 and details the agreement between Child, Youth and Family (now Oranga Tamariki), the Ministry of Education, New Zealand Police and the Education Council (now the Teaching Council) relating to the management of allegations of abuse involving an adult working in an education setting.
- 101 In 2014, the Children Act introduced more comprehensive safety checks for children's workers. It also introduced the concept of a core worker – a person could not be employed in a core worker role if they had specified offences unless they gained an exemption. Teachers are core workers.

Education Council – 2015 to 2018

- 102 In 2012, a review of the Teachers Council was undertaken and a report provided to the Minister of Education - "*Review of the New Zealand Teachers Council: A Teaching Profession for the 21st Century*". The review was commissioned by the Cabinet Social Policy Committee to support a culture of change through strengthening leadership in the teaching profession. The review would examine the role, functions, capacity, capability and effectiveness of the Teachers Council to ensure the Council sets and enforces clear standards for entry, progression and professional accountability.
- 103 The Review Committee was also directed to take account of recommendations of the June 2012 "*Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector*" presented to the Minister of Education.
- 104 The report recommended, among other things, that the Teaching Council be disestablished and that legislation with a wider reach be introduced to establish a new professional teaching body.
- 105 From 1 July 2015, the Teachers Council was dissolved and the Education Council established. Many of the functions remained unchanged but the new body was required to establish and maintain a code of conduct (instead of a code of ethics) that would be binding on all registered teachers and holders of Limited Authorities to Teach. A new function was introduced to establish and maintain standards for ongoing practice and criteria for the issue of different kinds of practising certificates. This allowed the Education Council to start researching and consulting on a code and standards that would set the behavioural expectations for all teachers.
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- 106 In 2015, registration was separated from certification and registration became for life unless a teacher voluntarily de-registers. This allows a teacher who is still registered but no longer teaching to be the subject of disciplinary processes, with any outcomes noted on the public register as appropriate.
- 107 During 2015 and 2016, internal structures and processes were changed to streamline and improve the disciplinary processes. Compliance and Monitoring Advisors were established within the Education Council to ensure teachers complied with any conditions placed on their practising certificates. An in-house investigations team and legal team were established which freed the Complaints Assessment Committee from carrying out investigations and allowed them to consider reports of investigations and decide appropriate outcomes.
- 108 In 2016, the Education Council published updated Rules which were renamed the Teaching Council Rules 2016 when the Teaching Council was established.
- 109 In 2017, the Education Council published the Code and Standards for the Teaching Profession following an extensive period of consultation with the profession and stakeholders. The teaching profession's values, the Code of Professional Responsibility and the Standards for the Teaching Profession, in addition to the definition of serious misconduct in the Act and our Rules, together set out the high standards for ethical behaviour and the expectations of effective teaching practice. These are the benchmarks used by the Teaching Council to determine if a teacher acted in breach of their professional obligations.
- 110 In 2017, a Triage Committee was established. The Committee meets three times a week to consider all mandatory reports and complaints about teachers on behalf of the Chief Executive and determine appropriate pathway. The Triage Committee considers whether a teacher poses a risk to learners and if so, take immediate action to apply a voluntary undertaking not to teach or issue a referral for an interim suspension to take effect.
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