This document outlines the Education Council’s processes for conduct and competence. All relevant legislation and rules take precedence over this document. Relevant legislation includes the Education Act 1989 and the New Zealand Teachers Council (Conduct) Rules 2004; New Zealand Teachers Council (Competence) Rules 2007; New Zealand Teachers Council (Impairment) Rules 2009; New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.
Before the CAC or Council investigate a teacher for conduct, convictions or competence, the Council must be notified. There are three ways of providing formal notification: with a complaint, a mandatory report, or notification of convictions.

**MAKING COMPLAINTS AND REPORTS**

The Council sends the teacher a copy of the complaint or mandatory report concerning him or her, in accordance with the Privacy Act 1993 and the rules of natural justice. The teacher is given sufficient detail to be able to understand the nature of the complaint or report.

The teacher will be given an early opportunity to answer the allegations and correct any information held on file.

The complaint, mandatory reporting and conviction notification processes are outlined below. The forms for mandatory reports, complaints and reporting convictions are set out on our website at educationcouncil.org.nz

**MANDATORY REPORTS**

The Education Act 1989 stipulates that an employer must provide a mandatory report to the Council in various circumstances. A mandatory report must be made by an employer when:

- a teacher is dismissed for any reason;
- a teacher resigns from a teaching position, or the expiry of a teacher’s fixed-term position, and, within the 12 months preceding the resignation, the employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the teacher’s conduct or competence;
- a teacher ceases to be employed by the employer, and within the following 12 months, the employer receives a complaint about the teacher’s conduct or competence while they were an employee;
- they have reason to believe that the teacher has engaged in serious misconduct; or
- the employer is satisfied that, despite undertaking competence procedures, the teacher has not reached the required competence level.

However, a former employer must not report a complaint about a former employee if satisfied the complaint is malicious, vexatious or without any foundation.

Employers are required to report if they have reason to believe the teacher has engaged in serious misconduct. Serious misconduct means behaviour by a teacher that adversely affects, or is likely to adversely affect, the well-being or learning of one or more students, or reflects adversely on the teacher’s fitness to teach, and is of a character or severity that meets the Council’s criteria for reporting serious misconduct. The criteria for reporting serious misconduct is set out at Appendix B.

Mandatory reports must be in writing and include:

- in the case of a dismissal, the reason for dismissal;
- in the case of a resignation, a description of the conduct or competence issues of concern and any action the employer had taken;
- in the case of a complaint received about a former employee, the nature of the complaint and additional information the employer considers relevant;
- in the case of failing to reach the required level of competence, a description of the competence issues and actions the employer has taken.

The process for investigating conduct and convictions, and the process for investigating competence are two distinct processes and differ significantly.

Conduct matters, including convictions, are considered by the Complaints Assessment Committee (CAC) and may be referred to the Disciplinary Tribunal. Competence matters are considered initially by the Council’s Competence Assessors with a final determination made by the Council. This document details when employers are required to report conduct and competence issues to the Council. It outlines the Council’s conduct and competence processes, and the various steps along the investigation and decision-making process.

A teacher under investigation for competence, conduct or convictions may be referred to the impairment process. This document also outlines what happens during the impairment process.

This document should be used by teachers, professional leaders, boards of trustees, governing bodies of early childhood education (ECE) services and employers.

educationcouncil.org.nz
Relevant documentation to be included in mandatory reports may include:

- statements of complainants, witnesses and anyone else;
- letters of complaint received by the employer about the teacher (including from staff, parents and students);
- letters between the employer or professional leader and the teacher concerning the complaint or matter of concern;
- any statement or responses, or records of statements or responses received from the teacher or his or her advocate;
- the teacher’s letter of resignation;
- minutes of board of trustees meetings at which the matter was discussed;
- the teacher’s recent performance appraisals;
- relevant classroom observations;
- examples of the teacher’s planning, assessment and evaluation (if applicable);
- independent investigators’ reports; and
- any other relevant information provided by other people or by the Police.

The form for submitting a mandatory report can be found on our website at educationcouncil.org.nz

It is an offence, unless there is reasonable justification, to fail to make a mandatory report. Such an offence may result in a fine of up to $25,000.

COMPLAINTS

Concerns about a teacher’s competence or conduct should be discussed in the first instance with the teacher’s employer to give them the opportunity to take appropriate action to resolve the issue.

However, there are provisions to make a complaint to the Council about a teacher’s conduct or competence if:

- the complaint is about a teacher who is not currently employed;
- the complaint considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest;
- the complaint has been made to the employer, but the complainant is not satisfied with the way the complaint is being, or was, dealt with; or
- there are any other exceptional circumstances.

If the Council or the CAC receives a complaint about a teacher that it considers should have gone to the teacher’s employer, it will refer the matter to the employer.

Complaints must include:

- the complainant’s full name and contact details;
- the name of the teacher involved;
- the details and action that has been taken; and
- the outcome the complainant would like to see from the investigation.

Complaints cannot be anonymous. If the CAC investigates a complaint, the teacher concerned will be given an opportunity to answer any allegations.

The form for making a complaint can be found on our website at educationcouncil.org.nz

In exceptional circumstances, the Council can act on concerns about a teacher without receiving a complaint.

CONVICTIONS

The CAC is required to investigate a teacher’s conviction for any offence that may be punishable by imprisonment for three or more months. This means, regardless of the actual sentence imposed, the teacher must report the conviction to the Council.

Since drink driving convictions incur a possible three months’ or more imprisonment, these convictions must be investigated by the CAC.

There are two reporting requirements for convictions.

First, teachers are required to self-report any conviction punishable by a possible imprisonment of three months’ or more within seven days of the conviction notice. Secondly, court registrars are also required to report these convictions to the Council.

The Council will also be made aware of teachers’ convictions when a police vet is undertaken.

Teachers are police vetted when they:

- first apply for registration or a practising certificate;
- reapply for a practising certificate;
- renew their practising certificate; and
- apply for a Limited Authority to Teach.

The Council can also be made aware of convictions through any other means and is required to refer these matters to the CAC for investigation.

The form for reporting a conviction can be found on our website at educationcouncil.org.nz

REFERRALS

When the Council receives a complaint, mandatory report or notification of a conviction, a decision is made as to whether the matter should be dealt with by the CAC or whether it should go through the Council’s competence process. All convictions and conduct issues are referred to the CAC. If a report contains a combination of conduct and competence, this will also be referred to the CAC if the CAC considers the case may possibly be serious misconduct it must refer the case to the Disciplinary Tribunal.

Only if a report purely relates to competence will it be referred to the Council’s Competence Assessors. A flowchart of the overall process is set out in Appendix A.
Competence issues should generally be dealt with first within the school or ECE service. The processes and methods to deal with competence in the school or ECE service are governed by employment law and the relevant provisions in the teacher’s employment agreement.

If the Council receives a mandatory report or complaint about a teacher’s competence, it may be referred back to the employer if the employer has not investigated and attempted to resolve the issue.

The issue won’t be referred back to the employer if:
- there is an actual or perceived conflict of interest;
- the teacher is no longer employed by the employer who filed the report; or
- there are exceptional circumstances.

In other words, it is generally only after an employer hasn’t already been notified.
The Council is made aware of competence issues through mandatory reports and complaints as outlined in the Making Complaints and Reports section on page 3. The CAC or Disciplinary Tribunal may also refer a teacher to the Council’s competence process.

A flowchart for the competence process is set out in Appendix A.

TEACHER ADVISED
The Council will send a copy of any mandatory report or complaint about competence to the teacher. The teacher is given an opportunity to provide a response and to correct any information held on their file. The Council must advise the teacher’s current employer of any complaint about competence if the employer hasn’t already been notified.
The Council will also send the teacher a copy of any report drafted by the Competence Assessor.

COMPETENCE INVESTIGATION
Competition investigations are undertaken by the Council’s Competence Assessors. The Competence Assessor receives and investigates the complaint or mandatory report. An initial assessment into the teacher’s competence will be made as measured against the Practising Teacher Criteria.

During the investigation, the Competence Assessor may consider and request documentation as outlined in the Making Complaints and Reports section on page 3.

They may request this information from the teacher or initiator (the person who made the complaint or mandatory report), current and former employers. Further information may also be required from the initiator or complainant; the teacher’s employers or the teacher involved, to ensure the Competence Assessor has all the information needed.

The Competence Assessor may also, with the agreement of the teacher, arrange for the evaluation of the teacher’s competence. This may include an external assessor, meetings or requirement for the teacher to take part in certain procedures or programmes.

If the employer or former employer is asked for further information it must be provided, in accordance with the Education Act 1989. After the Competence Assessor has carried out an initial evaluation on a teacher’s competence, a report will be drafted detailing findings and recommendations on the resolution.

COMPETENCE ADVISORY GROUP
The Competence Advisory Group (CAG) is an advisory body for the Council, comprising professional leaders with significant appraisal experience. The CAG generally meets each month to provide advice to the Competence Assessors.

The Council will send a copy of any mandatory report, current and former employers.

Further information may also be required from the teacher involved, to ensure the Competence Assessor has all the information needed.

The Competence Assessor may also, with the agreement of the teacher, arrange for the evaluation of the teacher’s competence. This may include an external assessor, meetings or requirement for the teacher to take part in certain procedures or programmes.

If the employer or former employer is asked for further information it must be provided, in accordance with the Education Act 1989. After the Competence Assessor has carried out an initial evaluation on a teacher’s competence, a report will be drafted detailing findings and recommendations on the resolution.

The Competence Assessor will seek advice on the teacher’s competence. This may include an external assessor, meetings or requirement for the teacher to take part in certain procedures or programmes.

The Competence Assessor will seek advice on the recommended resolution. The CAG will also advise on any specific ECE, primary, secondary, professional leadership issues or other perspectives that should be taken into account.

Furthermore, the CAG will advise the Competence Assessors on whether a teacher has satisfactorily met the conditions under an agreement or those placed on their practising certificate.

The CAG has delegated authority from the Council to refer a teacher to the Impairment Committee. The impairment process is outlined in the Impairment section on page 15.

RECOMMENDATION AND AGREEMENT
Once the Competence Assessor has met with and received advice from the CAG, he or she will decide on the next step.

Possible outcomes include:
- the Council takes no further action;
- conditions are imposed on the teacher’s practising certificate;
- the teacher’s practising certificate is annotated, which will appear on the Teachers Register;
- the teacher’s practising certificate or registration is cancelled.

Before a recommendation is taken to the Council to impose conditions or annote the register, the Competence Assessor is required to strive to reach an agreement with the teacher on the recommended resolution.

A typical agreement between the Competence Assessor and the teacher may include various conditions, such as:
- arranging for the evaluation or assessment of the teacher’s competence;
- arranging meetings between the teacher and any other person;
- arranging for the teacher to take part in any procedures designed to improve competence; or
- arranging advice and guidance for the teacher.

Advice and guidance is designed to meet the needs of the teacher to support them to become competent.

The content and structure of the advice and guidance program depends on the teacher’s needs and the competence concerns identified.

Advice and guidance differ in style and intent from the induction and mentoring programme required for provisionally certificated teachers to become fully certificated. It refers to the range of support initiatives designed to help improve a teacher’s competence.
The Competence Assessor will write to the teacher with a proposed agreement. The teacher has the right to respond, and to recommend changes to the agreement. The teacher also has the right to decline the agreement.

If the teacher recommends changes, the Competence Assessor will consider them, and respond to the teacher either with an amended agreement or the original. While the Competence Assessor is required to consider the teacher’s recommendations, they do not have to include any recommended changes.

If the Competence Assessor and teacher agree, the agreement is signed and comes into force.

To comply with many of the conditions on a typical agreement, the teacher is usually required to be employed in a teaching position. In these situations, if a teacher is not employed, the agreement is regarded as inactive and is activated when the teacher is employed in a teaching position. It is the teacher’s responsibility to advise the Competence Assessor if and when he or she is in a teaching position.

Most agreements include a monitoring period, which is overseen by the Competence Assessor. If an agreement cannot be reached between the Competence Assessor and the teacher, the Competence Assessor will take the matter to the Council for a resolution. If an agreement includes annotation of the register, this too will be taken to the Council because only it has the authority to annotate the register for competence matters.

COUNCIL CONSIDERATION AND DECISION

If the Competence Assessor recommends the following solutions, the matter must be presented to the Council for its deliberation and decision:

• that the teacher’s practising certificate or agreement be cancelled;
• that the teacher’s practising certificate be annotated on the Teachers Register;
• that the teacher’s practising certificate or registration be cancelled;
• that no further action be taken.

A Competence Assessor’s report provides the basis for the Council’s decisions. The report contains:

• a summary of the original report or complaint about competence;
• a description of how the Competence Assessor went about investigating the issues raised;
• a summary of what the teacher did during, or as a result of, the inquiry;
• a summary of the outcome of any processes undertaken;
• an assessment of whether the teacher now meets the required level of competence;
• a recommendation concerning the resolution or disposal of the matter.

The teacher is then given a draft of the report, the reasons for the recommendation, and an opportunity to make written submissions to be included in the final report before it is submitted to the Council. The teacher is also provided with a copy of the final report to the Council, and is given the opportunity to be heard by the Council. The teacher may have an advocate prepare submissions and appear with them before the Council.

After the Council has considered the Competence Assessor’s report and recommendations, and the teacher’s submissions, it may make the following decisions:

• impose conditions on the teacher’s practising certificate;
• annotate the Teachers Register;
• cancel the teacher’s practising certificate or registration;
• take no further action;
• adjourn the matter for further consideration; or
• refer the teacher back to the Competence Assessor for further action.

The Council is required to notify the teacher, the teacher’s current employer and the initiator of the mandatory report or complaint of the outcome. The teacher has the right to appeal the Council’s decision at a District Court. An appeal must be made within 28 days of written notice of the decision, or any longer period that the Court allows.

If conditions are imposed on a teacher’s practising certificate, the Competence Assessor will monitor those conditions. Once this is complete, the Competence Assessor will evaluate the evidence and make an assessment as to whether the conditions have been met, and whether the teacher has attained the required level of competence. A further report may be compiled and presented to the CAG seeking its advice.

The Competence Assessor will then prepare a report to the Council for its decision. The process is outlined in Council Consideration and Decision on page 8. As outlined above, the teacher has the right to make submissions and appear before the Council. The possible outcomes are also the same.
When the Council receives a complaint or mandatory report about a conduct issue, or a notification of a conviction, it is referred to the Complaints Assessment Committee (CAC).

The CAC investigates the matter and decides what action should be taken. It comprises panels based in Christchurch, Wellington and Auckland. Each panel has four members, with a quorum of three. A flowchart of the conduct process is set out in Appendix A.

INITIAL ACTION
The matter is referred to one of the CAC panels, which is usually one in proximity to the teacher. However, for various reasons, this is not always possible. A Council staff member is also assigned as a Case Coordinator.

A check is performed to ensure there is no conflict of interest between the teacher and a member of the panel. If there is, the panel member will be removed, or occasionally the matter may be reassigned to another panel.

The Case Coordinator will contact the teacher to advise that the Council has laid a complaint, received a mandatory report, complaint or notification of a conviction. The teacher will be advised about the nature of the report or complaint, the next steps and how to make submissions. The matter will then be referred to the CAC. The teacher will be advised of this and of the panel members.

If a teacher wishes to object to a panel member, he or she has five working days to object and must provide reasons for their objection in writing. The Convenor of the CAC will consider the objection and decide whether to replace the panel member.

For convictions, the Court Registrar will be asked to provide the summary of facts, the certificate of conviction and in certain cases sentencing notes from the court.

If the matter is as a result of a complaint, the teacher’s current employer is also advised of the matter under investigation. For mandatory reports or convictions, the CAC may advise the current employer.

It is important to be aware that the Council usually sends the teacher a copy of the complaint or mandatory report in accordance with the New Zealand Teachers Council (Conduct) Rules 2004. The teacher is given sufficient detail to understand the nature of the report or complaint so far as is possible from the material received by the CAC. The teacher will be given an early opportunity to answer the allegations that have been made.

PRELIMINARY INVESTIGATION AND SUMMARY
Before the CAC considers the report or complaint, further information may be gathered from the teacher, initiator (the person who made the complaint or mandatory report) or the current employer. Relevant records held by the Council may also be reviewed.

A summary of the report, complaint or conviction will then be prepared for the CAC containing the original report, complaint or notification of conviction, and any other information received including the teacher’s submissions.

The CAC will only consider the summary once 14 days has lapsed since the teacher received notification of the report or complaint. This is to give the teacher ample time to submit a response. The CAC may consider it earlier than 14 days if the matter requires urgent consideration or if the report or complaint is trivial or vexatious.

CAC MEETING AND INVESTIGATION
When the CAC meets, it will determine whether further enquiries are needed to complete its investigation or whether it can make an appropriate decision based on the information before it.

Further enquiries may include requesting information, engaging a suitably qualified person to carry out specific tasks, or meeting with the teacher, initiator, employer or other person who may be able to assist the investigation. In accordance with the Education Act 1989, an employer is required to provide any information requested by the CAC.

INTERIM ACTIONS
If the CAC is investigating a matter it believes to be serious misconduct, it may apply to the Disciplinary Tribunal at any stage for an interim suspension of the teacher’s practising certificate or authorisation.

Occasionally, the CAC may decide for various reasons that a teacher should not teach while the CAC investigation is underway but an application for interim suspension is not warranted. In this type of situation, the CAC may seek a written undertaking from the teacher that he or she will not teach until the CAC has completed its investigation and an outcome is reached.

CAC DECISION AND OUTCOME
Once the CAC has completed its investigation it will make a decision. The options available to it are outlined below.

No further action
The CAC may dismiss the case or take no further action.

Referral to competence
The CAC may refer particular aspects of the case to the Council for investigation by a Competence Assessor if there are concerns about a teacher’s competence.

Agreement with the teacher
For cases of misconduct, the CAC may try to reach a resolution by agreement. In the case of a notification of a conviction, an agreement is with the teacher. For other reports or complaints, the agreement is with the teacher and initiator. Reaching agreement may result in one of the following actions:

• censuring the teacher;
• imposing conditions on the teacher’s practising certificate;
• suspending the teacher’s practising certificate for a specified period or until conditions are met; or
• annotating the Teachers Register.

Referral to CAC
Referral to the CAC may be made in the following circumstances:

• the CAC wishes to consider the report or complaint in accordance with the Teachers Council (Conduct) Rules 2004;
• the CAC wishes to make a decision on the report or complaint;
• the CAC wishes to consider the report or complaint in accordance with the Teachers Council (Conduct) Rules 2004.

Referral to the CAC may be made in the following circumstances:

• the CAC wishes to consider the report or complaint in accordance with the Teachers Council (Conduct) Rules 2004;
• the CAC wishes to make a decision on the report or complaint;
• the CAC wishes to consider the report or complaint in accordance with the Teachers Council (Conduct) Rules 2004.
Conditions imposed under an agreement may include:
• completing specified professional development;
• practising under specified supervision;
• having regular meetings with a specified mentor;
• undertaking restorative action to address upset caused;
• an apology to the complainant; or
• attendance at a specified course such as anger management, defensive driving or specialist behaviour management.

The register may be annotated to indicate that the teacher’s practising certificate has been suspended or is subject to conditions.

Referral to the Impairment Committee
The CAC may refer particular aspects of the matter to the Impairment Committee for its recommendation. See the Impairment section on page 15. The Impairment Committee’s report will then be taken into consideration when the CAC makes its decision.

Referral to the Disciplinary Tribunal
If the CAC considers the case may possibly be serious misconduct, it must refer the case to the Disciplinary Tribunal. In this case, the CAC acts as the prosecutor when the matter is before the Tribunal. See the Disciplinary Tribunal section on page 13.

ADVISED OF OUTCOME
The teacher and initiator of the report or complaint are advised of the outcome of the investigation. The current employer will be advised of the outcome of a complaint, and may be advised of the outcome of a mandatory report. Any other person the CAC deems appropriate may also be advised.

Monitoring of CAC Agreed Conditions
Any agreements put in place between the CAC and the teacher will be monitored to ensure compliance. Once the conditions have been met, the CAC will remove the conditions from the teacher’s practising certificate and any annotation from the Teachers Register.

If a teacher is in breach of any conditions, the CAC will investigate and decide on appropriate actions to take.

The New Zealand Teachers Disciplinary Tribunal (Tribunal) is a quasi-judicial body that considers matters referred to it by the CAC. Tribunal hearings are formal procedures and conducted in a manner very similar to a court.

Full Tribunal hearings are conducted by five members of the Tribunal, one of whom is the Chairperson. Hearings of a Tribunal panel may also be conducted, in which case only three members are required. The CAC is the prosecuting body and is usually represented by a lawyer.

The teacher can represent him or herself, or may have a lawyer or representative present his or her case. Hearings are held in public, unless an order for a private hearing is granted.

Any evidence that the Tribunal considers would be of assistance in considering the matter can be received. Evidence may be received from witnesses, either verbally or in writing, or may be provided in the form of any relevant documents, records, objects or other ways.

PROCESSES
Initial actions and pre-hearing conference
The Tribunal process commences when the CAC sends a notice of charge, for serious misconduct and misconduct, or notice of referral, for convictions, to the Tribunal. The notice of charge or notice of referral is also sent by the CAC to the teacher concerned, the initiator of the complaint or mandatory report and the teacher’s current employer.
When the Tribunal receives a notice of charge or referral, the Tribunal coordinator will liaise with both parties and the Chair to arrange a pre-hearing conference (PHC). The PHC is often conducted by phone conference and is attended by both parties or their representatives, the Chair, and the Tribunal coordinator.

The Chair sets the hearing date and a timeline for filing submissions and evidence with the Tribunal. The Chair will then make a written order detailing the hearing date and timeline.

The Tribunal coordinator formally notifies the teacher or teacher’s representative about the timeline for filing submissions and evidence with the Tribunal. The teacher or teacher’s representative is notified of the names of the panel members. Any objections to panel members can be made within five days of receiving the letter.

Hearings

If agreed by both parties, the Tribunal may make a decision on the papers. This means that the parties do not appear before the Tribunal and a decision is made after reading the submissions and evidence.

In the event of a hearing, the representative for the CAC begins the hearing by making an opening statement and asking their witnesses to give evidence.

The witness can be cross-examined by the teacher’s representative the teacher themselves and the Tribunal members. The CAC’s representative is also able to ask questions arising from the cross-examination of the teacher.

After the CAC has presented its case, the teacher or the teacher’s representative makes an opening statement. The teacher may be sworn in and present their evidence and may be asked questions by the CAC’s representative and the Tribunal members. Any objections to panel members can be made within five days of receiving the letter.

The Tribunal coordinator formally notifies the teacher or teacher’s representative about the timeline for filing submissions and evidence with the Tribunal. The teacher or teacher’s representative is notified of the names of the panel members. Any objections to panel members can be made within five days of receiving the letter.

Decision and publication

The Tribunal makes a decision, which is sent to the parties and their representatives, the teacher’s current employer and the initiator.

Tribunal decisions are published on the Council’s website. Unless the Tribunal orders otherwise, these decisions will include the name of the teacher.

Tribunal hearing decisions can be appealed to the District Court within 28 days of receiving the decision letter, or a longer period if the Court allows.

OUTCOMES

The Tribunal may do any of the things that the CAC can do, and may also:

- suspend the teacher’s practising certificate or authorisation for a specified period or until specified conditions are met;
- annotate the Teachers Register; or
- order that the teacher’s registration or authorisation to teach be cancelled.

As long as the teacher has not been referred to the Tribunal on the basis of a conviction, the Tribunal may also:

- impose a fine on the teacher of up to $3000;
- require any party to the hearing to pay costs to any other party; or
- require any party to pay a sum to the Council in respect of the costs of conducting the hearing.

OUTCOMES

A teacher may be referred to the Impairment Committee by the Complaints Assessment Committee, the Disciplinary Tribunal or the Competence Advisory Group.

An impairment is something that may adversely affect the teacher’s ability to perform the functions required as a teacher, and includes, without limitation, an impairment caused by alcohol or drug abuse. An impairment could be caused by a physical or mental health condition, addiction or other factors.

If there are concerns about a teacher’s health during a conduct or competence investigation, the CAC, the Tribunal or the CAC can refer the case to the impairment process. This investigates a teacher’s impairment and may provide recommendations to the referring body.

THE IMPAIRMENT PROCESS

The impairment process provides specialist and rehabilitative input, where appropriate, to the conduct and competence process to ensure that a teacher is able to carry out their functions competently and safely.

When a teacher is referred to the Impairment Committee, the Impairment coordinator will set up a committee consisting of at least three people, including at least one health practitioner, one registered teacher and one member of the Council.
The Impairment Committee receives the information and seeks to ascertain whether the teacher has an impairment and if so:

- what the impairment is;
- what the adverse impacts of the impairment are, or might be, on the teacher’s ability to perform his or her functions as a teacher;
- what the teacher has already done, and is proposing to do, to deal with the impairment and its effects (for example, what treatment has been undertaken);
- what precautions, if any, are necessary so that the teacher can practise competently and safely;
- what assistance, if any, with the impairment is necessary so that the teacher can practise competently and safely.

In the course of considering a possible impairment, the Impairment Committee may:

- receive written advice from a health practitioner; or
- ask the teacher to attend an assessment by a health practitioner.

The teacher is entitled to be present for any oral representations made and to receive a copy of any advice received from a health practitioner.

If the teacher does not consent to undertaking an assessment by a health practitioner, the Impairment Committee must rely on the information available to it and may not be able to complete its determination or reach agreement with the teacher.

An interim risk report may be provided to the referring body should the Impairment Committee have reasonable grounds to believe that the teacher’s impairment poses a serious risk to the safety of students, colleagues or themselves.

Once the Impairment Committee makes its determinations, a draft report outlining its findings and reporting on the outcome of the process is provided to the teacher. The teacher is given a reasonable opportunity to provide comment and agreement to the findings of this report.

A flowchart of the impairment process is set out in Appendix A.

If a teacher’s practising certificate expires during an investigation by the Council, the Complaints Assessment Committee or the Disciplinary Tribunal for competence, conduct or convictions, the Council will not renew the teacher’s practising certificate until the investigation is complete and the outcome known.

The Council must be satisfied the teacher is of good character and fit to be a teacher before a practising certificate is renewed. The Council cannot be assured of this when a teacher is under a competence or conduct investigation.

It is illegal for a person to teach in the schooling sector without a practising certificate or authorisation for more than 10 full days.

If they teach in a sector where having a practise certificate is compulsory.

The Chief Executive of the Council makes the decision on whether to grant an extension to teach. An application for an extension to teach can be made on our website at educationcouncil.org.nz

An extension to teach may be granted to an applicant if they have a current application for a practising certificate, have paid the required fees, and if they teach in a sector where having a practising certificate is compulsory.

An extension enables a professional leader to be able to employ a person in a teaching position while their registration or authorisation is being processed.

The Chief Executive may grant an extension for a person undergoing an investigation if assured that any outstanding matter is not of a nature that may result in an order prohibiting the teacher from practising.

It is illegal for a person to teach in the schooling sector without a practising certificate or authorisation for more than 10 full days.
**Case Coordinator**
Case coordinators are Council staff members. They provide administrative support to the Complaints Assessment Committee, the Disciplinary Tribunal and the Impairment Committee. They are the first point of contact for the teacher, employer and initiator involved in a matter under investigation, and collate and pass on relevant information to the body undertaking the investigation.

**Competence Advisory Group (CAG)**
The CAG is made up of about five to 10 senior teachers. Membership is determined by the Chief Executive of the Council with reference to the nature of the competence case to be considered.

The CAG provides feedback and advice to the Competence Assessor on the investigation of a mandatory report or complaint about a teacher's competence, and on the proposed recommendations to the Council following the investigation.

The CAG acts in an advisory capacity only. The Competence Assessor is required to perform duties independently and to report to the Council.

**Competence Assessor**
Competence Assessors are appointed by the Council. They work with teachers who have had a report or complaint to Council made about them. Competence Assessors report to the Council and receive advice from the CAG.

**Complaints Assessment Committee (CAC)**
The CAC is made up of between one to five members of the Council and up to 20 people who are not Council members. The term of appointment is for three years. The CAC can operate in panels of at least three members. There are several CAC panels operating concurrently.

The CAC considers reports and complaints about teachers’ conduct, and convictions of teachers that are punishable by three months’ or more imprisonment. It also acts as the prosecutor when it refers a report, complaint or conviction to the Disciplinary Tribunal for consideration.

**Conduct Concerns**
Conduct concerns refer to aspects of a teacher’s behaviour that call into question his or her ability to practise safely as a teacher.

**Disciplinary Tribunal**
The Tribunal is made up of between one to five members of the Council and up to 20 people who are not members of the Council. It is also required to include at least one person who is not a teacher, employer or member of an employing body. The majority of the Tribunal’s members must be registered teachers. The Tribunal can operate in panels of three members. A full Tribunal consists of five members.

**Impairment**
Impairment means any impairment that may adversely affect a teacher's ability to perform the functions required as a teacher, such as impairment caused by alcohol or drug abuse.

**Impairment Committee**
An Impairment Committee is made up of at least three people (including health practitioners and registered teachers) and a member of the Council who is not a member of the CAC or the Tribunal.

**Manager Teacher Practice**
The Manager Teacher Practice oversees and manages the section of the Council that deals with competence and conduct. The Manager Teacher Practice provides administrative support for the CAC and the Tribunal. Complaints, mandatory reports and information about convictions are received by the Manager Teacher Practice and assigned to the Competence Assessors or Case Coordinators for referral to the CAC.

**Serious Misconduct**
Serious misconduct is defined in the Education Act 1989 as conduct by a teacher that:

- adversely affects, or is likely to adversely affect, the well-being or learning of one or more students; or
- reflects adversely on the teacher’s fitness to be a teacher; and
- is of a character or severity that meets the Education Council criteria for reporting serious misconduct.

Rule 9 of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 sets out the criteria for reporting serious misconduct. This is outlined in Appendix B.

**Teacher**
The definition of a teacher is at section 139AB of the Education Act 1989 and includes the following:

- a registered teacher;
- a former registered teacher;
- an authorised person; and
- a former authorised person.

Accordingly, as well as currently registered teachers, the Council, CAC and Tribunal have jurisdiction to investigate formerly registered teachers as well as people who have had an authority to teach, such as a Limited Authority to Teach.

**Glossary**

**Case Coordinator**
Case coordinators are Council staff members. They provide administrative support to the Complaints Assessment Committee, the Disciplinary Tribunal and the Impairment Committee. They are the first point of contact for the teacher, employer and initiator involved in a matter under investigation, and collate and pass on relevant information to the body undertaking the investigation.

**Competence Advisory Group (CAG)**
The CAG is made up of about five to 10 senior teachers. Membership is determined by the Chief Executive of the Council with reference to the nature of the competence case to be considered.

The CAG provides feedback and advice to the Competence Assessor on the investigation of a mandatory report or complaint about a teacher’s competence, and on the proposed recommendations to the Council following the investigation.

The CAG acts in an advisory capacity only. The Competence Assessor is required to perform duties independently and to report to the Council.

**Competence Assessor**
Competence Assessors are appointed by the Council. They work with teachers who have had a report or complaint to Council made about them. Competence Assessors report to the Council and receive advice from the CAG.

**Complaints Assessment Committee (CAC)**
The CAC is made up of between one to five members of the Council and up to 20 people who are not Council members. The term of appointment is for three years. The CAC can operate in panels of at least three members. There are several CAC panels operating concurrently.

The CAC considers reports and complaints about teachers’ conduct, and convictions of teachers that are punishable by three months’ or more imprisonment. It also acts as the prosecutor when it refers a report, complaint or conviction to the Disciplinary Tribunal for consideration.

**Conduct Concerns**
Conduct concerns refer to aspects of a teacher’s behaviour that call into question his or her ability to practise safely as a teacher.

**Disciplinary Tribunal**
The Tribunal is made up of between one to five members of the Council and up to 20 people who are not members of the Council. It is also required to include at least one person who is not a teacher, employer or member of an employing body. The majority of the Tribunal’s members must be registered teachers. The Tribunal can operate in panels of three members. A full Tribunal consists of five members.

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**CONDUCT AND COMPETENCE**

*Your brief guide to the Conduct and Competence process*

Conduct and competence issues should normally be dealt with initially between the school or ECE and the teacher, in the context of the employment relationship.

If a matter cannot be resolved in the employment context, for example, if the teacher resigns during the process, then the matter must be reported to the Council. Further, if a teacher is dismissed, or if the conduct is regarded as serious misconduct, then the matter needs to be reported to the Council.

This also means that any complaints by members of the public should generally go to the employer first. It is only if the teacher no longer works at the school or centre, or for exceptional circumstances, that the Council will consider complaints that have not gone to the employer.

This diagram briefly outlines the Conduct and Competence process. You can find detailed outlines of the Conduct, Competence and Impairment processes on our website.

**PROCESS FLOWCHARTS**

i. Conduct and Competence Overview
   *Your brief guide to the Conduct and Competence process.*

ii. Conduct Process
   *A diagram briefly outlining the Conduct process.*

iii. Competence Process
   *A diagram briefly outlining the Competence process.*

iv. Impairment Process
   *A diagram briefly outlining the Impairment process.*

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1. **Council Notified or Acts on Concerns**
   Notification of conduct, competence or conviction arrives at the Council, or the Council acts on concerns itself.

2. **Assessment and Referral**
   An assessment is made as to whether this is a valid notification. A decision is made as to the appropriate body to refer the notification to.

3. **Investigation**
   An investigation will be carried out and the teacher will be advised about the investigation. The teacher is entitled to make a response. The appropriate body will use due process and comply with natural justice and law, including the Education Council rules.

4. **Decision**
   A decision is made based on the investigation.

5. **Outcome**
   Referral to the Council or Disciplinary Tribunal, which will make a decision. Any conditions placed on the teacher’s practising certificate will be monitored to ensure the teacher complies.

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**Referral outcomes include:**
- Referred back to the initiator for further information
- Referred to the employer to deal with this matter before the Council investigates
- Referred to the Complaints Assessment Committee
- Referred to the Competence Team.

**Initial decision may result in:**
- No further action
- Attempt to come to an agreement with the teacher that may impose conditions on his or her practising certificate
- Referral to the Council (for competence cases) or the Disciplinary Tribunal (for conduct cases and convictions).

**Final decision may result in:**
- No further action
- Impose conditions on the teacher’s practising certificate
- Cancel the teacher’s registration
- The Disciplinary Tribunal may impose a fine or costs.
CONDUCT PROCESS

Conduct and Competence

This diagram briefly outlines the Conduct process. You can find a brief overview of the Conduct and Competence process and detailed outlines of the Conduct and Impairment processes on our website.

1. Council Notified or Acts on Concerns
   Complaint, mandatory report or notification of conviction received, or the Council acts on concerns about a teacher itself.
   Notification may be from employer or public, court registrar, police vet or self report from teacher. The Council can also act on concerns about teacher conduct itself.

2. Assessment and Referral
   A decision is made as to whether it is a valid report or complaint and if so, whether the issues relate to conduct, competence or both.
   Determined to be a conduct issue or both a conduct and competence issue.

3. Investigation
   Allocated to a Complaints Assessment Committee (CAC) Panel. Case co-ordinator notifies teacher and initiator. Case co-ordinator explains timeframes and next steps to teacher and some information gathering begins. CAC will use due process and comply with natural justice and law including the Education Council rules when undertaking the process. The teacher is notified and given an opportunity to respond and make a submission.

4. Decision
   CAC Panel decides whether to investigate and if so, determines initial outcome.

   Initial outcomes – continue to final outcomes:
   • Seek interim suspension from the Disciplinary Tribunal
   • Seek a voluntary undertaking that teacher will not teach
   • Refer teacher to Competence team
   • Refer teacher to Disciplinary Tribunal.

5. Outcome
   Disciplinary Tribunal deliberates and determines final outcome.

   Final outcomes:
   • Dismiss case or take no further action
   • Annotate the Teachers Register
   • Censure the teacher
   • Put conditions on practising certificate
   • Suspend practising certificate for specific period or until conditions met
   • Cancel the teacher’s registration
   • Order teacher to pay costs to Education Council and/or other party
   • Impose fine not exceeding $3,000.*

   * Disciplinary Tribunal cannot make these determinations if the case has arisen as a result of a conviction.

COMPETENCE PROCESS

Conduct and Competence

This diagram briefly outlines the Competence process. You can find a brief overview of the Conduct and Competence process and detailed outlines of the Conduct and Impairment processes on our website.

1. Council Notified or Acts on Concerns
   Mandatory Report or complaint received from employer or public, or acts on concerns about a teacher itself.
   Competence matters should normally be dealt with first by the employer. If this has not occurred, the matter may be referred to the employer.

2. Assessment and Referral
   Decision as to whether the issue relates to conduct, competence or both.
   Determined to be a competence issue.

3. Investigation
   Competence team receives mandatory report, complaint or referral from the Complaints Assessment Committee. Investigation carried out by Competence Assessor.

4. Decision
   Competence Advisory Group (CAG) meets. CAG advises competence assessor. Competence Assessor takes CAG’s advice into account and determines initial outcome.

   Initial outcomes – end of process:
   • Competence Assessor determines the teacher has attained the required level of competence and recommends to Council to take no further action.**
   • Competence Assessor determines that teacher has not attained the required level of competence and recommends to Council that the teacher’s registration be cancelled.**
   • Competence Assessor sends a proposed agreement to the teacher that imposes conditions and the register will not be annotated. The teacher signs the agreement and initiator and current employer informed.* The case is referred to the Council.**
   • Competence Assessor sends a proposed agreement to the teacher that imposes conditions and the register will be annotated. Teacher signs agreement and initiator and current employer informed.* The case is referred to the Council.**
   • Competence Assessor uses best endeavours to gain an agreement. If no agreement reached, the proposed agreement is withdrawn. The case is referred to the Council.**
   • Competence Assessor determines that teacher has not attained the required level of competence despite having received appropriate advice and guidance and recommends to Council that the teacher’s registration be cancelled.**

5. Outcome
   Council deliberates and determines final outcome. Initiator and current employer are informed of the outcome.

   Final outcomes:
   • Annotate the Teachers Register
   • Refer teacher back to Competence Assessor for further action
   • Impose conditions (referred back for monitoring)
   • Take no further action
   • Adjourn matter for further consideration
   • Cancel the teacher’s registration.
CRITERIA FOR REPORTING SERIOUS MISCONDUCT

Rule 9 of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 sets out the criteria for reporting serious misconduct. Rule 9 is set out in full below.

Rule 9 Criteria for reporting serious misconduct

1. The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:
   a. the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher)
   b. the sexual abuse of a child or young person (which includes sexual abuse carried out under the direction, or with the connivance, of the teacher)
   c. the psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment
   d. being involved in an inappropriate relationship with any person under the age of 16 years
   e. the psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment
   f. being involved in an inappropriate relationship with any person under the age of 16 years
   g. the neglect or ill-treatment of any child or young person in the teacher's care
   h. the neglect or ill-treatment of any animal in the teacher's care
   i. involvement in the manufacture, cultivation, supply, dealing, or use of controlled drugs
   j. permitting, or acquiescing in, the manufacture, cultivation, supply, dealing, or use of controlled drugs by any child or young person
   k. viewing, accessing, or possessing pornographic material while on school premises or engaged on school business
   l. viewing, accessing, or possessing pornographic material that depicts children or young persons or that depicts animals engaged in sexual acts with humans
   m. breaching the school's standards or rules concerning the use of alcohol at the school or while on school business
   n. any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more
   o. any act or omission that brings, or is likely to bring, discreditable to the profession.

2. Physical, sexual, or psychological abuse is reportable whether it occurs as:
   a. a single act; or
   b. a number of acts forming part of a pattern of behaviour, even if some or all of those acts, viewed in isolation, would be minor or trivial.

3. In this rule, school includes an early childhood education and care service.