



New Zealand Teachers Council (Competence) Rules 2004

Pursuant to section 139AJ of the Education Act 1989, the New Zealand Teachers Council makes the following rules.

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Rules

- 1 Title**
These rules are the New Zealand Teachers Council (Competence) Rules 2004.
- 2 Commencement**
These rules come into force 1 September 2004.

Part 1

Preliminary provisions

3 Overview

- (1) This Part deals with reports and complaints received by the Teachers Council that are about the competence of a specific teacher.
- (2) The Teachers Council only investigates matters to do with a teacher's competence if the matter cannot, or appears unlikely to be able to, be dealt with satisfactorily by the teacher's current employer.
- (3) All reports and complaints about competence are first referred to a competence assessor for investigation.
- (4) The competence assessor assesses and, as far as possible, addresses any issues to do with the teacher's competence that arise from the report or complaint.
- (5) The Teachers Council may appoint a CRT (competence review team) to address competency issues arising out of a report or complaint.
- (6) The Teachers Council reviews the outcome of every report or complaint about competence, and may take the steps set out in section 139AZC(8) of the Act as a result.
- (7) This provision is by way of explanation only. If any other provision in the Act or rules conflicts with it, the other provision prevails.
- (8) Section 139AZC of the Act is set out in these rules, in a box, so that readers can see how that section and these rules fit together.

4 Interpretation

- (1) In these rules, unless the context otherwise requires,—

Act means the Education Act 1989

CAC means the Complaints Assessment Committee of the Teachers Council appointed under the New Zealand Teachers Council (Conduct) Rules 2004

competence assessor means a person employed by the Teachers Council to act as a competence assessor under these rules

CRT means a competence review team appointed under rule 13 to address issues of competence arising from reports or complaints about competence

employer means any one of the following who employs a teacher in a teaching position:

- (a) the Board of Trustees of a state school (which includes any integrated school):
- (b) the managers of a school registered under section 35A of the Act:
- (c) the management of an early childhood education and care service:
- (d) the Secretary, in his or her capacity as an employer under section 91N of the Act

initiator means the person who makes a complaint or report about competence to the Teachers Council

report or complaint about competence means any of the following:

- (a) a mandatory report that relates to competence under section 139AK of the Act (report by employer of dismissals and resignations):
- (b) a mandatory report that relates to competence under section 139AL of the Act (report by employer of complaints received about former employee):
- (c) a mandatory report that relates to competence under section 139AN of the Act (report by employer of failure to reach required level of competence):
- (d) a complaint about competence under section 139AZC of the Act

teacher means either of the following:

- (a) a registered teacher or former registered teacher:
- (b) an authorised person (being a person who holds a limited authority to teach given under Part X of the Act) or former authorised person

Teachers Council means the New Zealand Teachers Council established under section 139AC of the Act.

- (2) Terms that are defined in section 139AB of the Act have the meanings given to them in that section, and terms that are defined in section 120 of the Act have the meanings given to them in that section.

5 Presumption about how and when notices, etc, sent and received

- (1) A notice, advice, or other communication that is sent to a person under these rules may be sent by post, fax, or email.
- (2) Subject to evidence to the contrary, every notice, advice, or other communication under these rules is to be treated,—
 - (a) if posted,—
 - (i) as having been sent on the day on which it was dated; and
 - (ii) as having been received by the person to whom it was sent 2 working days after the day on which it was sent or, if sent to or from a place outside New Zealand, 10 working days after the date on which it was sent; and
 - (b) if faxed or emailed,—
 - (i) as having been sent on the day on which it was in fact sent; and
 - (ii) as having been received by the person to whom it was sent on the next working day after the date on which it was sent.

6 Confidentiality

The Teachers Council may disclose personal information held by it in connection with a report or complaint about a teacher's competence if it considers on reasonable grounds that the disclosure is necessary to alleviate a threat to public safety.

7 Members of CRT not personally liable, and indemnified in certain cases

- (1) In any action by the Teachers Council, no member of a CRT is personally liable for any act or omission of the member of the CRT provided the member acted in good faith.
- (2) Every member of a CRT is indemnified by the Teachers Council for costs arising from successfully defended civil proceedings, or successfully defended criminal proceedings, relating to actions taken by the member as a member of a CRT, provided the member acted in good faith.

Part 2

Dealing with competence issues

Section 139AZC of the Education Act 1989: Complaints about competence

- (1) A person who wishes to make a complaint about a teacher's competence must first make the complaint to the teacher's employer, unless 1 of the circumstances in subsection (2)(a) to (d) applies.
- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the competence of a teacher—
 - (a) if the complaint is about a teacher who is not currently employed by an employer; or
 - (b) if the complainant 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; or
 - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
 - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a description of the competency issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.
- (4) If the Teachers Council considers that a complaint under this section should have been sent first to the teacher's employer, it must refer the matter to the employer; and in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (5) When the Teachers Council refers a complaint to an employer, the employer must report as required by the Teachers Council.
- (6) If the Teachers Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Teachers Council may investigate the complaint.
- (7) When a complaint about competence is made by a member of the Teachers Council, that member may not be involved in any investigation of the complaint.
- (8) If, after investigation, the Teachers Council is satisfied that the teacher has not attained the required level of competence, it may—
 - (a) impose conditions on the teacher's practising certificate or authority;
 - (b) refer the teacher to an impairment process involving the assessment of, and (if necessary) assistance with, an impairment;
 - (c) deregister the teacher under section 129.

8 Referral to competence assessor

- (1) Every report or complaint about competence received by the Teachers Council must be referred to a competence assessor.

- (2) The competence assessor may conduct an initial investigation into the report or complaint only if—
 - (a) the matter has been referred to the teacher's employer and the assessor is satisfied that the employer has not dealt with, or is not dealing with, the matter in a satisfactory way; or
 - (b) the assessor believes on reasonable grounds that, although the matter has not been referred to the teacher's current employer, the current employer will not be able to deal with it effectively because of—
 - (i) an actual or perceived conflict of interest; or
 - (ii) any other exceptional circumstance; or
 - (c) the teacher is not currently employed by an employer; or
 - (d) the complaint or report has been referred to the competence assessor by the CAC.
- (3) If the competence assessor does not investigate the report or complaint, the assessor must refer it to the teacher's current employer.
- (4) If the competence assessor is uncertain about whether or not to investigate a particular report or complaint, he or she must seek guidance from the Teachers Council.

9 Notification of receipt of report or complaint about competence

- (1) A copy of every report or complaint about competence that is referred to a competence assessor must immediately be sent to the teacher concerned.
- (2) If a complaint about competence received under section 139AZC of the Act has not been first sent to the teacher's current employer, the competence assessor must advise the current employer (if any) that a complaint has been received and is being investigated by the Teachers Council.
- (3) If advice is sent under subclause (2), the competence assessor may provide the employer with such additional information as the assessor thinks fit.

10 Investigation by competence assessor

A competence assessor may, when investigating a report or complaint about competence,—

- (a) seek further information from the teacher, the initiator, and the teacher's current and any former employer; and
- (b) check records held by the Teachers Council concerning the teacher; and
- (c) with the agreement of the teacher—
 - (i) conduct, or arrange for, the evaluation or assessment of the teacher's competence; and
 - (ii) arrange, and if necessary attend, meetings between the teacher and any other person or persons; and
 - (iii) arrange for the teacher to take part in any procedures designed to improve the teacher's competence; and
 - (iv) arrange advice and guidance for the teacher; and
 - (v) arrange for the monitoring of the effect of any procedures undertaken by the teacher or of any advice and guidance offered to the teacher.

11 Reports by competence assessor to Teachers Council

- (1) The competence assessor must report to the Teachers Council—
 - (a) on the outcome of every investigation; and
 - (b) as required by the Teachers Council.
- (2) If a report by a competence assessor to the Teachers Council includes recommendations for the resolution or disposal of the matter, the report must include the following:
 - (a) a summary of the original report or complaint about competence;
 - (b) a description of how the competence assessor went about inquiring into the competence issues raised by the report or complaint;
 - (c) a summary of what the teacher did during or as a result of the inquiry;
 - (d) a summary of the outcome of any processes undertaken;
 - (e) an assessment of whether the teacher now meets the required level of competence;
 - (f) a recommendation concerning the resolution or disposal of the matter.
- (3) Before a report referred to in subclause (2) is given to the Teachers Council, the competence assessor must—
 - (a) send a draft of the report to the teacher concerned; and

- (b) give the teacher a reasonable opportunity to comment on the draft.
- (4) The competence assessor may amend the draft report in response to any comments made by the teacher.
- (5) A copy of every report to the Teachers Council by a competence assessor (including a report referred to in subclause (2)) must be sent to the teacher who is the subject of the report.

12 Teachers Council consideration of report by competence assessor

Following consideration of any report by a competence assessor, the Teachers Council may resolve to—

- (a) take no further action; or
- (b) adjourn the matter for further consideration; or
- (c) refer the matter back to the competence assessor for further work; or
- (d) appoint a CRT to inquire into the matter.

13 Appointment of CRT and setting terms of reference

- (1) The Teachers Council must set the terms of reference for every inquiry carried out by a CRT.
- (2) Every member of a CRT is appointed on such terms and conditions as are agreed between the member and the Teachers Council.
- (3) The Teachers Council may not appoint a competence assessor, or any member of the Teachers Council, the CAC, or the Disciplinary Tribunal, to a CRT.

14 Objection to members of CRT

- (1) The Teachers Council must, as soon as practicable, advise the teacher who is the subject of a report or complaint about competence of the names of the members of any CRT appointed to inquire into the matter.
- (2) The teacher may object to any member of the CRT on the grounds that the member has a conflict of interest.
- (3) A notice of objection must be in writing, be addressed to the Teachers Council, and be received by the Teachers Council within 5 working days of receipt by the teacher of the advice given under subclause (1).

- (4) After considering the objection, the Teachers Council may remove any member of the CRT and, if necessary, replace the member.
- (5) The teacher must be advised of any replacement member, and has a right to object to that member under this rule.

15 Investigations by CRT

- (1) When inquiring into a matter arising out of a report or complaint about a teacher's competence, a CRT may do whatever it considers is necessary to—
 - (a) assess any competency issues arising from the report or complaint; and
 - (b) address those issues in a way that improves the teacher's competency.
- (2) Without limiting subclause (1), a CRT may do any of the following:
 - (a) request production for inspection of any documents or records held by the teacher or any current or former employer of the teacher concerning the teacher's employment, performance, or conduct, or that relate to the report or complaint;
 - (b) obtain any other information, including expert opinion on any matter;
 - (c) invite the teacher to meet with any member of the CRT and, as appropriate, invite the teacher to make written or oral comments on any aspect of the investigation;
 - (d) request copies of material held by any court or tribunal that may be relevant;
 - (e) carry out classroom observations;
 - (f) by agreement with the teacher, monitor the teacher's performance over time, which may include reviewing lesson plans and students' work, and engaging in any other activities the CRT considers would assist in assessing the teacher's competence or addressing areas of unsatisfactory competence.

16 Decisions and meetings

- (1) A CRT may regulate its procedures as it thinks fit, subject to the Act, these rules, and the direction of the Teachers Council.

- (2) A CRT may conduct meetings in person, by telephone, or by video link.
- (3) A CRT may appoint a legal assessor to advise it on matters of law, procedure, and evidence, and the legal assessor may be present at meetings of the CRT, except when the CRT is deliberating.

17 Report of CRT to Teachers Council

- (1) A CRT must report to the Teachers Council—
 - (a) on completion of its work with a particular teacher; and
 - (b) as required by the Teachers Council.
- (2) If a report by a CRT to the Teachers Council includes recommendations for the resolution or disposal of the matter, the report must include the following:
 - (a) a summary of the original report or complaint about competence;
 - (b) a description of how the CRT went about inquiring into and addressing the competency issues raised by the report or complaint;
 - (c) a summary of what the teacher did during, or as a result of, the inquiry;
 - (d) a summary of the outcome of any processes undertaken;
 - (e) an assessment of whether the teacher now meets the required level of competence;
 - (f) a recommendation concerning the resolution or disposal of the matter.
- (3) Before a report referred to in subclause (2) is given to the Teachers Council, the CRT must—
 - (a) send a draft of the report to the teacher concerned; and
 - (b) give the teacher a reasonable opportunity to comment on the draft.
- (4) The CRT may also send a draft of a report referred to in subclause (2) to the teacher's current employer for comment.
- (5) The CRT may amend the draft report in response to any comments made by the teacher or the teacher's current employer.
- (6) A copy of every report to the Teachers Council by a CRT (including a report referred to in subclause (2)) must be sent to the teacher who is the subject of the report and to the teacher's current employer.

18 Teachers Council consideration of CRT report

- (1) On receipt of a report from a CRT, the Teachers Council must set a date for the meeting at which the report will be considered.
- (2) If the report is one prepared in accordance with rule 17(2), the teacher—
 - (a) must be advised of the date of the meeting at least 10 days in advance; and
 - (b) is entitled to make written submissions on the report, and to appear and be heard, in person or by a representative, in the course of the meeting at which the report is considered.
- (3) Following consideration of any report by the CRT, the Teachers Council may resolve to—
 - (a) take no further action; or
 - (b) adjourn the matter for further consideration; or
 - (c) refer the matter back to the CRT or a competence assessor for further specific work.
- (4) The Teachers Council may exercise the following powers (given under section 139AZC(8) of the Act) only following receipt of a report from the CRT prepared in accordance with rule 17(2):
 - (a) imposing conditions on the teacher's practising certificate or authority to teach (as provided under section 139AZC(8) of the Act):
 - (b) referring the teacher to an impairment process involving the assessment of, and (if necessary) assistance with, an impairment (as provided under section 139AZC(8) of the Act).
- (5) If the final report of a CRT recommends that the teacher be deregistered, the Teachers Council must follow the procedures associated with deregistration under section 129(2) of the Act rather than this rule.
- (6) The outcome of the Teachers Council's consideration of any report must be notified as soon as practicable, in writing, to the teacher concerned and, in the case of a report prepared in accordance with rule 17(2), also to the teacher's current employer and the initiator.

Dated at Wellington this 26th day of May 2004.

Joanna Beresford,
Chairperson of the New Zealand Teachers Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 September 2004, set out the procedures that the New Zealand Teachers Council must follow in dealing with reports and complaints about the competence of individual teachers.

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