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**Teaching  
Council of  
Aotearoa  
New Zealand**

Matatū. Tū Mataora.  
**Stand tall. Shape the future.**

## Education and Training Amendment Bill (No. 2)

### Introduction

#### 1. About the Teaching Council | Te Matatū Aotearoa

The Teaching Council (the Council) is the independent professional body for registered teachers | kaiako from early childhood education through to primary and secondary schooling in English and Māori medium. There are currently about 136,000 registered teachers | kaiako in New Zealand/Aotearoa. The statutory purpose of the Council, set out in section 478 of the Education and Training Act 2020, is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

The Council acts in the interests of registered teachers | kaiako to:

- provide direction to teachers | kaiako
- enhance the status of teachers | kaiako
- establish and maintain criteria for teacher | kaiako registration, standards for ongoing practice and criteria for the issue of practising certificates and limited authorities to teach
- monitor and maintain the requirements relating to teacher | kaiako conduct and competence
- establish and maintain the *Code of Professional Responsibility and Standards for the Teaching Profession* | *Ngā Tikanga Matatika mō te Haepapa Ngaiotanga me ngā Paerewa mō te Umanga Whakaakoranga* (the *Code* | *Ngā Tikanga Matatika and the Standards* | *Ngā Paerewa*)
- establish and maintain standards for qualifications that lead to teacher | kaiako registration and approve teacher | kaiako education programmes.

One purpose of the Education and Training Act 2020 is to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships. We are one of several agencies contributing to Ka Hikitia, the Māori Education Strategy, which is the cross-agency strategy for the education sector. It sets out how we will work with education services to achieve system shifts in education and support Māori ākonga | learners and their whānau, hapū and iwi to achieve excellent and equitable outcomes.

Delivering to this purpose and strategy, and how we act in the interests of the teaching profession, is by:

- being Te Tiriti-led and applying tikanga Māori to values-based relationships and decision-making
- giving mana to the voice of teachers | kaiako and protecting the mana of all
- enhancing natural justice principles
- taking a restorative and rehabilitative approach as appropriate.

The weaving of Te Tiriti, tikanga Māori and teacher | kaiako voice into Teaching Council | Matatū Aotearoa processes aligns to our commitment and contribution to build an education system that supports Māori to enjoy and achieve education success as Māori, and to allow teachers | kaiako develop their teaching skills in Aotearoa for the communities they serve.

The Council's values | ngā uara, which we have adopted from the teaching profession, are those that underpin the *Code | Ngā Tikanga Matatika and the Standards | Ngā Paerewa*. They articulate the expectations and aspirations of the teaching profession:

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

We embed these concepts through **Mana Tangata** (everyone has mana), **Mana Kaiako** (teachers | kaiako have mana with expectations and standards that go with it), **Mana Hautūtanga** (there is mana in leading and leadership as a teacher | kaiako), and **Mana Rangatira** (acknowledges the leadership potential in all - therefore the mana associated with a teacher | kaiako being a leader in their own space).

The work undertaken on behalf of the teaching profession needs to take place within a whare that is supported by the contributions every teacher | kaiako makes to their profession and to learners | ākongā. The Council is developing the concept of Ngā Pou o Te Whare o te Matatū to explain how each element of the whare is necessary to ensure its strength and stability, and to provide a place for everyone within the profession. Ngā Pou o Te Whare o te Matatū describes the key functions of the Council as:

- **Pou Aro Whakamua** - future direction of teaching
- **Pou Whai Rēhitanga** - becoming registered and certified as a teacher | kaiako
- **Pou Tikanga Matatika, Ngā Paerewa** - the Code and Standards
- **Pou Here Tōmua** - establishing and maintaining standards for Initial Teacher Education (ITE) and undertaking ITE programme approvals
- **Pou Matatika** - high standards of ethical behaviour
- **Pou Mataara** - high quality teacher | kaiako practice.

We have a Te Rautaki Tiriti o Waitangi strategy to develop the understanding of our kaimahi about our Te Tiriti obligations and tikanga expectations. Building this knowledge and understanding among our kaimahi will allow us to better guide the people we serve through our processes and develop our part of the education system as kaitiaki of the *Code | Ngā Tikanga Matatika and the Standards | Ngā Paerewa*.

Our values | ngā uara, our Te Tiriti obligations and tikanga expectations, and supporting concepts will be considered and embedded as we adapt our policies and practices to reflect these proposed legislative changes. Our submission is based on ensuring the proposed changes are in alignment with and the basis for delivering the best outcomes for the teaching profession and the communities it serves.

## 2. Process

The Council acknowledges this submission will become public information.

## 3. Oral submission

The Council wishes to speak to this submission.

## 4. Executive summary

The Council has actively sought and supported the proposed changes to our purpose, our functions, and our disciplinary processes. We are engaging with stakeholders to review our processes with the aim of embedding the concepts of Te Tiriti-led and tikanga Māori, values-based, giving mana to the voice of teachers | kaiako and protecting the mana of all, enhancing natural justice principles, and taking a restorative and rehabilitative approach as appropriate.

Changes to the legislation relating to the Council's disciplinary processes in 2015 were intended to ensure that the most serious cases were always heard by the Disciplinary Tribunal. However, the lower threshold for cases requiring referral to the Disciplinary Tribunal has also resulted in a significant number of less serious cases being referred to the Disciplinary Tribunal. Consequently these cases then take a lot longer to resolve, are more expensive to administer, and result in unnecessary stress and anxiety for all concerned. In our view the Complaints Assessment Committee, which is a committee of teachers | kaiako and lay people, is set up to more appropriately deal with lower-level matters such as conduct that brings the profession into disrepute. The changes have driven increases in both the volume of mandatory reports (by up to 50%), and the complexity and cost of investigating and resolving these. All cases heard by the Complaints Assessment Committee that "may possibly constitute serious misconduct" are now required to be referred to the Disciplinary Tribunal. We have discussed the proposed changes with stakeholders who endorse the intent to ensure that only serious cases are being referred to and considered by the Disciplinary Tribunal.

We support the proposed changes to the powers of our Complaints Assessment Committee. We believe these changes will contribute to efficiencies that help enhance natural justice and protect the mana of those involved in our processes.

We support in principle the proposed amendment to introduce a new power of review of a decision of the Complaints Assessment Committee by the Disciplinary Tribunal. We disagree with extending this review right to Complainants/initiators as this would be inappropriate for a process which is about holding to account a teacher | kaiako by their peers for their professional conduct, rather than a process for resolving complaints to the satisfaction of the parties. Doing so would also put the teaching profession out of step with other professional disciplinary bodies, increase costs, and undermine the purpose of these changes.

Complainants/initiators currently have no ability to seek a review of any disciplinary body decision, whether the Complaints Assessment Committee or the Disciplinary Tribunal. Currently both the Complaints Assessment Committee and the teacher | kaiako under investigation have the ability in our legislation to appeal decisions of the Disciplinary Tribunal to the District Court. No such right of appeal is available to the complainant/initiator, and we consider it is proper that only the parties can appeal decisions. A complainant/initiator may be a witness to the allegations and may be asked to provide the Complaints Assessment Committee with information but is not entitled to receive all the information obtained during the investigation as they are not a party to the matter. Natural justice does not require that the complainant/initiator has a right to appeal a decision of the Complaints Assessment Committee or Disciplinary Tribunal, as the decision does not adversely affect them.

If a decision is made to allow such a right of review, then we propose the wording is amended to limit the review to those decisions that result in censuring a teacher | kaiako, and/or imposing conditions on the teacher's | kaiako practising certificate or authority to teach, and/or annotating the register or list of authorised persons in a specified manner, and/or directing the Teaching Council to impose conditions on any subsequent practising certificates. However, we reiterate our concern that establishing a right of review for complainants/initiators will undermine the ability of the Council to achieve the intent of this suite of changes.

We support changing the purpose of the Council to broaden our role to regulate teachers | kaiako in languages other than English and Māori. This change will enable the Council, as a matter of priority, to engage with stakeholders to establish the most appropriate policy settings to support the growth of a Pacific bilingual and immersion workforce, as signalled in the Pacific Education Action Plan.

We support adding a new function to clarify that the Council can prosecute offences where a person is in a teaching position without a current practising certificate or Limited Authority to Teach as it helps us ensure teachers are competent, fit to practice and accountable for the way in which they teach. This supports our purpose to ensure safe and high-quality leadership, teaching and learning for ākonga | learners across the education system and the range of education settings. However, we seek wording changes to ensure the Council has discretion about when to prosecute rather than being required to prosecute in every case.

We support transitional provisions for the changes in the disciplinary processes but seek greater flexibility that will allow the benefits of the changes to take effect more quickly.

## **Discussion**

### **5. Limited authority to teach**

We **recommend** the reference to ‘authority to act’ in clause 38 is amended to ‘authority to teach’.

Clause 38, amending section 479(1) about the Council’s functions by introducing a new sub-clause (pa), refers to ‘limited authorities to act’ – the term currently used in the legislation is “limited authority to teach”. This is an authority which is provided for under clauses 14 to 22 of Schedule 3 of the primary Act.

We propose clause 38 is amended – see section 9 of this submission for further information.

### **6. Clause 2 - Commencement**

We **recommend** clause 41 is deleted from clause 2 (1).

Clause 2 (1) proposes that clause 41 comes into force 12 months after the date on which this Act receives the Royal assent. As clause 41 is a technical one that allows the heading of the section to more accurately reflect the wording used within the section, it should come into force immediately.

Clause 2 (1) proposes clauses 39 (amendments to section 479 ‘Powers of Complaints Assessment Committee’) and 40 (new section 499A ‘Review of Complaints Assessment Committee decisions’) come into force 12 months after the date on which the Act receives Royal assent. It is important there are transitional provisions in place to provide certainty as to how matters that were commenced prior to the entry of the new disciplinary regime are to be dealt with. See section 13 below for further discussion.

### **7. Clause 5 - Interpretation - Definition of ‘teaching position’**

We **support** the amendment to the definition of ‘teaching position’ by removing the reference to ‘other educational institutions’.

The change clarifies that we can exercise our discretion under Schedule 3 clause 10 (9) (b) when considering the recent teaching experience of professional leaders in tertiary education organisations. It will mean that instructors and professional leaders in tertiary settings are treated the same as teachers | kaiako in early childhood services and schools | kura when we consider their recent teaching experience for the purposes of renewing practising certificates.

## 8. Clause 37: Section 478 amended - Purpose of Teaching Council

We **support** the amendment of the purpose of the Teaching Council to remove the term ‘senior secondary’, which is redundant, and to include a reference to early childhood services and schooling in settings that use languages other than English and Māori.

Removing the reference to English and Māori will broaden the Council’s role to regulate teachers in languages other than English and Māori. This change will enable the Council, as a matter of priority, to engage with stakeholders to establish the most appropriate policy settings to support the growth of a Pacific bilingual and immersion workforce, as signalled in the Pacific Education Action Plan.

## 9. Clause 38: Section 479 amended - Functions of Teaching Council

We **support in principle** the proposed amendment to add a new function of the Council so that the Council is required to prosecute breaches of provisions of the Act that relate to teacher registration, practising certificates, and limited authorities to teach, but recommend revised wording.

We **recommend**, for the following reasons, that the new sub-clause (pa) under section 479(1) is reworded as follows:

“(pa) to take such action as may be appropriate in the public interest to enforce the provisions of this sub-part and section 662”.

The Council has concerns that the overall effect of this amendment as currently worded would require the Council to prosecute breaches of teacher registration, authority to teach, and certification requirements. The Council wishes to have discretion about whether to prosecute or not.

We recommend the provision should make clear that the Council should exercise its power of prosecution only when it is in the public interest to do so. This would ensure the Council retains a discretion not to prosecute in certain cases, for example, where the proposed defendant’s culpability is low or alternatives to prosecution are available. We suggest [s 72\(3\)\(b\) of the Civil Aviation Act 1990 \(CAA\)](#) may provide a useful starting point for appropriate wording. That section requires the Director of Civil Aviation to “take such action as may be appropriate in the public interest to enforce the provisions of this Act and of regulations and rules made under this Act, including the carrying out or requiring of inspections and monitoring”. This permits the Director to take steps short of prosecution (for example, a warning) to enforce the Act if that is in the public interest.

The Council currently does not monitor compliance in the ECE sector, which is not part of the data-matching agreement with the Secretary of Education. To avoid the creation of an express statutory duty to undertake compliance checks, we suggest the final phrase of the CAA power (“including the carrying out or requiring of inspections and monitoring”) be omitted. In the absence of an express requirement, we do not think the Council would have a specific statutory obligation to comprehensively monitor the certification of all ECE employees in New Zealand. Prosecuting agencies are not under an obligation to detect every offence and the Council is unusual in being able to comprehensively monitor certification of certain sectors via the data-matching programme. As it is impractical to monitor all ECE employees, we consider it would likely be sufficient that the Council is able to investigate possible breaches as it learns of them, for example, from public complaints, media reports or during professional conduct investigations.

We note the provision as drafted empowers the Council to prosecute “breaches of the requirements under the Act relating to teacher registration, practising certificates, and limited authorities to act”. (As noted under section 5 above, the reference to ‘limited authorities to act’ should be changed to “limited authority to teach”.) We consider this drafting may be overly broad in that it suggests breaches of any requirement may be prosecuted, then not every breach of a requirement will be a criminal offence amenable to prosecution. Accordingly, if the reference to “prosecution” is retained, we recommend that the provision empowers prosecutions for offences.

If Parliament intends that the Council conduct prosecutions for any offence under [s 662](#) – “Offences Relating to False Representations” - it may be worth broadening the drafting to ensure all offences against s 662 are captured. We consider that the current requirement that prosecutions be for “breaches of the requirements ... relating to teacher registration, practising certificates, and limited authorities to **act / teach**” (see section 5 of this submission above) could be interpreted to exclude prosecutions under, for example, s 662(1)(a) for making a false statement to the Council regarding a person’s qualification or experience. To avoid any potential narrowing of the prosecution power, we suggest an enforcement power drafted broadly enough to capture the entirety of s 662 would be desirable.

We suggest an appropriate drafting could be to insert after s 479(1)(p):

“(pa) to take such action as may be appropriate in the public interest to enforce the provisions of this sub-part and s 662”.

We consider this wording would:

- provide the desired express statutory authorisation
- provide a discretion to prosecute only when in the public interest
- avoid implying a duty to comprehensively monitor the sector
- ensure all offences against s 662 are captured.

## 10. Clause 39: Section 479 – Powers of Complaints Assessment Committee

The Council **supports** the proposed amendment of the powers of the Complaints Assessment Committee.

The amendment includes:

- raising the threshold for the mandatory referral of cases from the Complaints Assessment Committee to the Disciplinary Tribunal so that the mandatory referral occurs when the Disciplinary Tribunal is likely to need to consider suspending or cancelling a teacher’s registration, practising certificate, or authority to teach
- enabling the Committee to resolve cases that meet the definition of serious misconduct, which currently must be considered by the Disciplinary Tribunal
- removing the Committee’s ability to suspend a teacher’s practising certificate or authority to teach for a specified period, or until specified conditions are met
- removing the requirement for the teacher and the initiator of the complaint to reach agreement with the Committee in order for the Committee to have jurisdiction over the matter
- clarifying that a Committee hearing is to be a hearing on the papers, unless the Committee otherwise directs.

The Council has sought these legislative changes to help improve efficiencies within our disciplinary processes and improve natural justice for teachers | kaiako. Due to the low threshold requiring referral, there is an increase in the number of low-level cases being referred from the Complaints Assessment Committee to the Disciplinary Tribunal, leading to an increase in the time taken for matters to be resolved. Our analysis has shown that up to 50% of cases currently referred to the Disciplinary Tribunal result in low-level outcomes because, while the case met the threshold for serious misconduct in the Act, it was not considered to be “serious” misconduct warranting a higher-level outcome (such as suspension or cancellation). These sorts of cases would be better resolved by the Complaints Assessment Committee, which is well equipped to do so. This impacts on teachers | kaiako, their whānau, their employers, and the complainants/initiators. The role of the Council to ensure the safety of tamariki by raising the status of the profession is paramount. Also important is respecting and preserving the mana of all persons involved in the processes. Allowing the Complaints Assessment Committee to resolve many cases that currently must be referred to the Disciplinary Tribunal will help reduce timeframes and the uncertainty created for the parties involved. The changes proposed would require the most serious cases that could result in cancellation or suspension being referred to the Disciplinary Tribunal.

## 11. Clause 40: new Section 499A – Review of Complaints Assessment Committee decisions

The Council **supports in principle** the proposed amendment to introduce a new power of review of a decision of the Complaints Assessment Committee by the Disciplinary Tribunal. The new section sets out the process by which a party may request a review and the powers of the Disciplinary Tribunal in carrying out this function and clarifies that the review is by way of a rehearing.

We agree that the teacher | kaiako under investigation should have the ability to review a decision of the Complaints Assessment Committee to the Disciplinary Tribunal where a finding of misconduct or serious misconduct has been made against them.

We **do not agree** that complainants/initiators should have the right to review a Complaints Assessment Committee decision. We understand that allowing complainants/initiators to review or appeal decisions would be out of step with other professional disciplinary bodies, and with other jurisdictions, including the criminal jurisdiction where initiators of criminal charges (complainants/victims or witnesses) have no right of appeal following decisions of the District Court or High Court. In criminal matters, the parties are the alleged offender and the prosecutor. Only the alleged offender and the prosecutor have the right of appeal (with leave). This is consistent with the teacher | kaiako under investigation and the investigating body, the Complaints Assessment Committee, having the right of appeal in our context.

Complainants/initiators currently have no option to appeal any Complaints Assessment Committee decisions. We are concerned the proposed wording allows a complainant/initiator to seek a review of any Complaints Assessment Committee decision, including to take no further action or to refer a teacher | kaiako to one of our other processes (impairment or competence). We consider the intent of the Bill to reduce the Disciplinary Tribunal's workload is likely to be undermined.

If the proposal to provide complainants/initiators with a right to review proceeds, then we propose the wording under section 499A (1) is amended as follows:

- (1) A teacher who is the subject of a decision by the Complaints Assessment Committee under section 497~~(2)~~ or (3) or the person who made the complaint or report or referred the matter to the Committee under section 496 that led to the decision **under section 497(3)**, may request a review of all or part of that **section 497(3)** decision to the Disciplinary Tribunal.

These changes clarify that the complainant/initiator has a right to a review where the Complaints Assessment Committee has made a decision under section 497 (3) but not section 497 (2). This excludes a complainant/initiator seeking a review under subsection (2) where the Complaints Assessment Committee decision is to take the matter no further, and/or to refer the teacher | kaiako to a competency review, and/or to refer the teacher | kaiako to an impairment process. This change does allow a complainant/initiator to seek a review under subsection (3) where the Complaints Assessment Committee decision is to censure the teacher | kaiako, and/or impose conditions on the teacher's | kaiako practising certificate or authority to teach, and/or annotate the register or list of authorised persons in a specified manner, and/or direct the Teaching Council to impose conditions on any subsequent practising certificates.

To some degree, the public interest is already served by having lay members on a Complaints Assessment Committee. The Council is exploring options for increasing the proportion of lay members or ensuring that lay membership of the Complaints Assessment Committee includes specific representation (e.g., from the disability community) in cases where a community may have an interest, to help provide some increased assurance that the public interest is being protected.

We also acknowledge that providing complainants/initiators with more information about the Complaints Assessment Committee decision-making process would assist them and we are looking at mechanisms to better involve and update them across our conduct functions. The caveat to this is that we are restricted by the requirements of the Privacy Act and the right of a teacher | kaiako to have their personal information protected. This does often mean we are unable to disclose critical information obtained by a Complaints Assessment Committee or investigator to the complainant/initiator.

## 12. Clause 41: Section 504 amended - Appeals against decisions of disciplinary bodies

The Council **supports** this proposed amendment, which is a technical one to allow the heading of the section to more accurately reflect the wording used within the section.

As noted under section 6 of this submission above, the Council **recommends** this clause is removed from the clause 2 'Commencement' provisions.

## 13. Schedule 1 - new Part 4 inserted - Clause 81: Transitional provisions

We **support in principle** the inclusion of transitional provisions for clauses 39 and 40 to provide certainty as to how matters that were commenced prior to the entry of the new disciplinary regime are to be dealt with. As noted in section 6 of this submission, clause 41 should be removed from the transitional provisions.

We **recommend** that additional wording is added to maximise the benefits of the disciplinary process changes by allowing more flexible transitional provisions. Rather than the transitional provisions being triggered as proposed by the date an investigation is commenced on or after the date on which these sections come into force, we recommend it is determined by the date upon which a complaint or mandatory report is received.

In addition, we **recommend** that for a complaint or mandatory report that has been received prior to the transitional provisions coming into force, that if the investigation process is underway and no outcome has been finally determined, the teacher | kaiako may have the option of electing to have their complaint or mandatory report considered under the new provisions.

We believe these amendments will allow the benefits of the changes to be implemented more quickly.