

14 April 2023

Consultation on Conduct and Competency Rules

We are pleased to provide comment to the Teaching Council on proposed changes to Teaching Council Rules related to professional disciplinary processes.

About Te Rito Maioha Early Childhood New Zealand

Te Rito Maioha Early Childhood New Zealand (ECNZ) is an Incorporated Society of members committed to high quality early childhood education for every child. Established in 1963, the organisation is an influential leader in shaping today's early childhood sector through advocacy, policy, tertiary education qualifications and professional development programmes.

We advocate for early childhood education services and the teachers | kaiako who provide education to thousands of infants, toddlers, and children | tamariki. Our members are drawn from a diverse range of community-based, privately-owned, kindergarten and homebased early childhood education services.

Te Rito Maioha is also a registered Private Training Establishment (PTE) with the highest Category One rating for a tertiary provider. We are accredited and approved by New Zealand Qualifications Authority (NZQA) to deliver a range of undergraduate, graduate, and postgraduate qualifications (levels 4-9), including specialist teacher | kaiako education, both nationally and internationally.

We are committed to achieving high-quality teaching and learning by:

- increasing teachers' | kaiako knowledge of Te Tiriti o Waitangi and Aotearoa New Zealand's dual cultural heritage;
- providing access to online blended delivery of undergraduate, graduate, and postgraduate tertiary education programmes leading to recognised and approved qualifications;
- promoting quality teaching and leadership through ongoing professional learning and development programmes;
- providing a range of unique resources and services to our members.

Our submission

We have structured our submission following the structure used in the Executive Summary of the consultation document.

We would like to make comments on the following areas:

Cultural appropriateness

New Rule 4A: Interpretation of rules

We support the proposed rule change requiring any person or body executing a power under the rules to have regard to Te Tiriti o Waitangi and Māori-Crown relationships.

Rule 14(4): Referring reports and complaints – make-up of the Complaints Assessment Committee

We strongly agree that both the initiator's and the kaiako's culture is considered when making a decision about the make-up of the Complaints Assessment Committee. The committee should reflect the culture of both the kaiako and the initiator, i.e., if either are of Māori or Pacific culture, or either is a te reo Māori speaker etc.

Rule 24: Disciplinary Tribunal regulates own procedure

While we agree with the change adding that the Disciplinary Tribunal “may” regulate its procedures in relation to hearings in a way that recognise tikanga Māori, we suggest that this be strengthened to “will” regulate its procedures....to consider tikanga Māori.

Rule 61: Term of appointment to disciplinary body...

We strongly agree that the Council should consider a person’s attributes in terms of their commitment to Te Tiriti o Waitangi, tikanga Māori or Māori medium education when appointing them to one of the bodies. We also believe that the Council should consider Pacific representation on the bodies.

In addition, we believe that everyone involved in a Disciplinary Tribunal, including legal representation, should be competent and confident to open with karakia and mihi.

Timeliness and cost to the profession

Rule 17: Meeting of Complaints Assessment Committee

We agree with the amendment to subclause 6 to remove the requirement for the teacher and the initiator to reach agreement on the course of action to take. We believe this will speed up the process for the teacher.

Confidentiality and privacy

Rule 64: Confidentiality

We strongly agree with the Teaching Council practice of informing a teacher of a complaint or mandatory report in person to talk them through the process. We also agree with the addition to the rule that kaiako must be provided with a decision as soon as practicable.

We would like to add that the confidentiality and privacy of witnesses is protected.

We note that the rule is silent on name suppression. There needs to be a robust, consistent process for eligibility for and applying for name suppression that kaiako understand.

Giving voice to teachers and protecting the mana of teachers and those involved in the processes

New Rule 4A: Interpretation of rules

We strongly support the proposed rule to require the consideration of the particular circumstances of a kaiako, witness or complainant. Conduct can often be a consequence of personal circumstances, stress, bullying, lack of support in an ECE service or school. It is always good for the committee to have a full and comprehensive picture surrounding events through the voice of the teacher, witness or complainant.

Rules 11, 11A and 11B: Investigation and referral of report or complaint by chief executive

We agree with the establishment of a Triage Committee and for that committee to make an initial assessment of a report or complaint to determine if there is sufficient information and the most appropriate next steps, including taking no action if the report is frivolous, vexatious, or not made in good faith.

Rule 14(4): Referring reports and complaints – make-up of the Complaints Assessment Committee

We strongly agree that the teacher's context is considered when deciding the make-up of the Complaints Assessment Committee. The committee should reflect the context of both the kaiako and the initiator, i.e., if either are from an ECE service or school.

Rule 17: Meeting of Complaints Assessment Committee

We agree with the addition of a new subclause 17(5A) to clarify that the person appearing can have one or more support person. To help protect the mana of those appearing in front of the committee, all parties, including the support person, need a clear understanding of the support person's role and responsibilities.

Rule 29: Persons who may be present when hearing held in private

We agree that witnesses presenting evidence can have one or more support person with them when a hearing is held in private.

Rule 41: Report prepared by professional practice evaluator

We strongly agree with the amended subclause 41 (3A) that the kaiako voice should be heard as part of the investigation. Kaiako need to be kept fully informed of the process, timeframes and expectations right from the start – they need to know what their rights are.

Rule 44: Teacher's response if report referred to Competency Authority

It is vital that kaiako attend either via Zoom or in person. This should be part of their professional practice. We agree that if kaiako seek to be heard in person, that they can have a support person present, but it needs to be made clear what the support person's role is. It would be good to have some information available to teachers about the importance of representation or the process if representing themselves.

Rule 45: Meeting of Competence Authority

We strongly support the change to allow a teacher's employer to be involved and the kaiako is notified of the purpose for their attendance.

Enhancing natural justice provisions

Rule 12: Notification to teacher and current employer

We support the proposed rule change requiring the initiator be notified if a decision is made to take no further action (in addition to the teacher and their employer).

Rule 15: Investigator to carry out investigation

We strongly agree that an investigator should be able to consider if further information is required from either the initiator or complainant. There needs to be a thorough investigation of any complaint.

New Rules 20A, 20B and 20C: Review of Complaints Assessment Committee decisions

We strongly agree with the new provision to allow both kaiako and those who make a complaint to request a review of the decision. The ability for a kaiako or a person who made the report or the complainant to seek a review of a decision impacting them is critical in both kaiako and complainants having trust in the process.

The proposed requirements to give notice of review, procedure on review and notice of decision are clear and all support the mana of those involved.

Rule 31: Evidence

We agree with the amendment to allow evidence to be received in alternative ways and to apply the Evidence Act to promote fairness to all parties including witnesses.

Rule 40: Investigation by professional practice evaluator

We agree that when investigating a report or complaint, that applicable standards (currently Ngā Paerewa | the Standards for the Teaching Profession) are used.

Applying a restorative justice approach as appropriate

Rule 34: Special protection for certain witnesses and vulnerable people

We agree that in order to protect their mana, certain witnesses and vulnerable people (including child witnesses) need to be able to have their names or particulars suppressed.

Other rule changes

Rule 3: Interpretation

We support changing the definition of a complainant to include in the case of a child or young person, their parent or legal guardian.

Rule 9: Criteria for reporting serious misconduct

We agree that 'psychological abuse' should be used as a criterion for reporting serious misconduct as it has a definition that is broader than just 'emotional abuse'. It is useful that there is a definition in Section 11 of the Family Violence Act that kaiako, ECE services and schools can refer to.

Make submission to tcccr@teachingcouncil.nz by 14 April 2023.

Key contact for Te Rito Maioha Early Childhood New Zealand:

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