

# **Regulatory Impact Statement**

## **Creation of a new specialist body to consider complaints regarding teachers' professional competence**

### **Agency Disclosure Statement**

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. This is one of a suite of RISs on amendments to update the Education Act 1989 (the Act). The analysis and resulting policy proposals focus on meeting the needs of schooling and early childhood education now and into the future.

The Ministry undertook a public consultation on the policy proposals for updating the Act between 2 November and 14 December 2015 and received over 1800 submissions. A report on the submissions is available on the Ministry's website.

This RIS provides an analysis of three options that aim to:

- have competence complaints dealt with by people who have expertise in relation to teachers' competence
- have competence complaints dealt with in an appropriate timeframe
- enable the governing board of the Education Council to spend more time on the full range of their statutory responsibilities
- clearly differentiate between conduct and competence complaints processes - the focus of the competence process is on rehabilitation, whereas the conduct process is focused on discipline
- ensure appropriate processes are established for considering competence complaints, including appropriate checks and balances.

The Education Council has been consulted on this proposal. Targeted consultation with the teacher unions and stakeholder organisations has been undertaken.

The Ministry considers this document to be a fair representation of the available options.



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## Status quo

1. The Education Council was established in July 2015 as the professional organisation for teachers. The Education Council is charged with ensuring safe and high quality leadership and teaching in schools and early childhood services. It has a broader role than the former Teachers Council, which it replaced, and is required to provide leadership and direction for the teaching profession.
2. The governing board of the Education Council comprises nine individuals. At least five come from nominations and at least five must be registered teachers with current practising certificates. The governing board is responsible for leading the direction of the Education Council. The governing board is supported by an organisation of about 50 employees led by a Chief Executive, working to implement functions and strategic direction across four main areas: teacher education, registration, teacher practice (conduct and competence), and council services and operations.
3. Teacher competence complaints<sup>1</sup> have increased over the last three years. The number of complaints is expected to continue to increase as employers' awareness of the importance of competence and of new mandatory reporting requirements increases.

### Current arrangements for considering complaints about teachers

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4. The Education Council is responsible for ensuring teachers are competent in the teaching environment and that their conduct is becoming to the profession, both inside and outside of the teaching environment.
5. The changes to the Act that established the Education Council also changed the way serious misconduct cases are handled. It became mandatory for the Complaints Assessment Committee (CAC), the body that investigates conduct complaints, to refer matters of serious misconduct directly to the Disciplinary Tribunal. This has made the process more robust and timely.
6. Currently, all complaints about teachers are triaged by senior Council staff into three different types: competence, conduct and impairment<sup>2</sup>. Each type of complaint follows a different process to resolution. The diagram in Appendix A sets out in more detail the processes followed for conduct and competence complaints.

- *Conduct*: Serious conduct complaints are referred to the Education Council's Disciplinary Tribunal, and less serious complaints are dealt with by a panel of the Complaints Assessment Committee (Refer to appendix A).

The Disciplinary Tribunal is established in legislation and has the power to impose conditions on a teacher as well as ordering the cancellation of a teacher's registration, practising certificate or Limited Authority to Teach (LAT). The Disciplinary Tribunal is a disciplinary body of the Education Council and operates separately to the governing board. A Disciplinary Tribunal panel is predominantly composed of current practitioners chaired by a lawyer, and includes provision for a

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<sup>1</sup> Complaints refer to mandatory reports made by principals, as well as all other complaints.

<sup>2</sup> Impairment issues and complaints are dealt with by the Impairment Committee, which is an advisory-only body that investigates teacher impairment and provides specialist and rehabilitative advice.

lay member who can bring the perspective of the general public, parents and students to the consideration of cases. This ensures that the Council's standards for teachers are being fairly, consistently, and robustly applied.

- *Competence*: Once referred, competence complaints are investigated by a Competence Assessor, who is an Education Council staff member. A report is then presented to a Competence Advisory Group, who advises the Competence Assessor. The Assessor then informs the teacher of their recommendations. Recommendations can include, but are not limited to, supervision, extra professional development or that the Council take no further action. If the recommendation is for the Teachers' Register to be annotated, for cancellation to be considered, or if agreement cannot be reached with the teacher concerned about the appropriate course of action, then the complaint is referred to the governing board of the Education Council for a final decision (Refer to appendix A).

7. The focus of the competence process is on rehabilitation and assisting teachers to gain the level of competence required to teach, while the conduct process is focused on discipline.

## Problem definition

8. The governing board of the Education Council has the power to cancel a teacher's practising certificate or LAT, in response to complaints about teacher competence. As only the governing board has this power, it considers only more serious teacher competence complaints, where cancellation is being considered or where agreement on a course of action cannot be reached with the teacher concerned.
9. This situation presents concerns. First, the consideration of individual teacher competence cases does not sit well with the Council's other responsibilities. It is operational work rather than a strategic governance function.
10. Second, while the governing board includes several experienced practitioners, it also has members chosen for other skills, such as governance. It is important that individuals making decisions regarding any form of complaint have the right expertise so that they can accurately make well reasoned and sound judgements. It is desirable to have a more specialised body considering competence complaints, as they will have more detailed and up to date knowledge on the issues being presented. Having a more specialised body would mirror the approach taken for conduct complaints, which are handled by the Disciplinary Tribunal. Disciplinary Tribunal members have expertise in discipline related issues.
11. There are also concerns with the amount of governing board time taken up by considering competence complaints. The governing board currently meets two days a month. Of this time, it spends a full day each month considering competence complaints. Competence cases require the governing board to review individual teacher competence investigation information, and may also include hearing from the teacher concerned. The governing board's involvement in competence cases imposes a significant workload on the board, limiting the amount of time it can devote to its other legislated responsibilities.
12. Finally, the involvement of the governing board contributes to delays in resolving competence complaints. It currently takes, on average, nine months for a competence complaint to be resolved. This is a result of the length of time needed to evaluate

competence complaints and the fact that the Education Council only meets monthly. This is unfair to the teacher who is going through this process. A new system would need to ensure that a more timely process takes place.

## Objectives

13. The objective is to ensure that the processes for considering complaints about teacher competence are fair, timely, and draw on the appropriate expertise for assessing teacher competence, while also ensuring that the governing board of the Education Council has the ability to focus on the full scope of its statutory responsibilities. This will enable the Council to fulfil its responsibility of providing strategic leadership of the teaching profession, which in turn will help to raise the quality of teachers in New Zealand schools. Quality teaching is identified as a key influence on high quality outcomes for a range of students.
14. Options to address the objective were assessed against the following criteria:
  - competence complaints are dealt with by people who have expertise in relation to teachers' competence
  - competence complaints are dealt with in an appropriate timeframe
  - enables the governing board to spend more time on the full range of their statutory responsibilities
  - clearly differentiates between conduct and competence complaint processes. The focus of the competence process is on rehabilitation, whereas the conduct process is focused on discipline. The option selected must clearly differentiate between conduct and competence issues so that competence is not seen as a disciplinary process
  - appropriate processes are established for considering competence complaints, including appropriate checks and balances.

## Options

15. Three options were considered:
  - **Option A:** Give the Chief Executive of the Education Council the power to order cancellation of teachers' practising certificates and LATs.
  - **Option B:** Allow competence issues to be dealt with by the Education Council's Disciplinary Tribunal.
  - **Option C:** Establish a new specialist body under the Act, as part of the Education Council, to deal specifically with competence complaints and give it the power to order cancellation of teachers' practising certificates and LATs.

## Impact analysis

### **Option A: Give the Chief Executive of the Education Council the power to order cancellation of teachers' practising certificates and LATs.**

16. Enabling the Chief Executive of the Education Council to consider teacher competence issues, including cancellation, would shift the overall responsibility for these cases away from the governing board. As a result, the time pressures that the governing board is currently facing would be lessened.

17. The Chief Executive has other responsibilities within the Education Council, and this proposal would add to these. Although the Chief Executive would be able to look at the complaints on a more frequent basis than the governing board, the work would need to be balanced with the Chief Executive's other responsibilities. This option may mean that the timeframe for competence complaints to reach resolution would be reduced.
18. This option clearly separates competence complaints to conduct, as final decisions are made by the Chief Executive as opposed to a Disciplinary Tribunal. This would keep the rehabilitative focus of the current competence process.
19. This option would not provide sufficient checks and balances. It would give the Chief Executive sole decision making power regarding the cancellation of teachers' practising certificates and LATs. This means that if the Chief Executive does not reach a fair and balanced decision, there is no safeguard of a team of individuals reviewing the decision to check it is appropriate.
20. The Chief Executive is answerable to the Council. This means that the Council may remain involved in the competence process in a reviewing role.
21. The Chief Executive may not have any experience of assessing teachers' competence. He or she may therefore not be the best candidate to evaluate competence complaints at the final stage of the process, where cancellation is being considered, or where an agreement cannot be reached with the teacher regarding conditions.

Criteria	Meets Criteria
Ensures that competence complaints are dealt with by people with the right expertise.	No
Ensures competence complaints are dealt with in a timely manner.	Yes
Enables the governing board of the Education Council to spend more time on its statutory responsibilities.	Yes
Clearly differentiates between the rehabilitative nature of competence complaints process compared to the disciplinary conduct process.	Yes
Ensures that appropriate processes are established.	No

#### **Option B: Disciplinary Tribunal to consider issues relating to teacher competence**

22. The Disciplinary Tribunal could be given the responsibility for considering and making recommendations relating to issues of teacher competence, including the cancellation of practising certificates and LATs. Allowing the Disciplinary Tribunal to make decisions where cancellation is being considered, or where agreement cannot be reached with the teacher concerned about the appropriate course of action, would remove the responsibility from the governing board. This would give the governing board more time to focus on their full range of responsibilities.
23. The benefit of this option is that the Disciplinary Tribunal is already a well established body both in practice and in primary legislation. This means that its processes are already robust and regulated by rules.
24. However, the current approach to competence complaints, where the Education Council works with the teacher to help them reach the required level of competence, would be

inconsistent with the approach needed for the quasi-judicial process in place for conduct complaints. The Ministry of Education therefore considers that one body would not be able to undertake both functions adequately. The Disciplinary Tribunal is chaired by a lawyer, although the majority of the other members are practitioners (there is also provision for a member who is neither a teacher nor a principal). This reflects a more legalistic approach to the consideration of conduct complaints, and is not considered appropriate for competence complaints, where the preference is to work with the teacher to address any competence concerns.

25. Transferring responsibility for competence complaints to the Disciplinary Tribunal would mean that members would have less time to focus on conduct issues which is their primary focus, as outlined in the Act. This issue could be resolved, however, by more staff being allocated to the Disciplinary Tribunal.
26. The Education Council's preference is to keep competence cases separate to the disciplinary process, because the rehabilitative approach taken in competence cases does not sit well with the more legalistic approach taken to conduct cases.

Criteria	Meets Criteria
Ensures that competence complaints are dealt with by people with the right expertise.	No
Ensures competence complaints are dealt with in a timely manner.	Yes
Enables the governing board of the Education Council to spend more time on its statutory responsibilities.	Yes
Clearly differentiates between the rehabilitative nature of competence complaints process compared to the disciplinary conduct process.	No
Ensures that appropriate processes are established.	Yes

**Option C: Establish a specialist body under the Act, as part of the Education Council, to deal specifically with competence complaints**

27. Under this option, a new body (a Competence Authority) would consider matters relating to teacher competence where cancellation is being considered, or where agreement cannot be reached with the teacher concerned about the appropriate course of action. The establishment of a Competence Authority to consider competence complaints would protect the individual rights and interests of teachers whose cases are being considered. It would also ensure the governing board of the Education Council has no residual responsibility for the competence complaints process. This would allow the governing board to spend more time on its other responsibilities.
28. The establishment of a Competence Authority could ensure that members of the Authority had the relevant expertise to deal with competence complaints in a rehabilitative way. Having a new body, specifically for competence, would enable the competence process to remain a rehabilitative one, separate from the disciplinary conduct process.
29. The newly established Authority, or panels of the Authority, could be convened when necessary to deal with competence complaints. This would ensure that complaints were dealt with in a timely way which would be in the best interests of employers, teachers and students.

30. The procedures and functions of Competence Authority would be set up in rules and could easily be aligned with the processes that the Complaints Assessment Committee and Disciplinary Tribunal follow. Doing this would allow for checks and balances in accordance with the rules of natural justice, similarly to those tried and tested with the Disciplinary Tribunal, to be put in place for the new body.

Criteria	Meets Criteria
Ensures that competence complaints are dealt with by people with the right expertise.	Yes
Ensures competence complaints are dealt with in a timely manner.	Yes
Enables the governing board of the Education Council to spend more time on its statutory responsibilities.	Yes
Clearly differentiates between the rehabilitative nature of competence complaints process compared to the disciplinary conduct process.	Yes
Ensures that appropriate processes are established.	Yes

## Consultation

31. The Education Council was consulted on this proposal, and consultation has been undertaken with the following organisations: Post Primary Teachers' Association, New Zealand School Trustees Association, Te Akatea New Zealand Māori Principals' Association, New Zealand Educational Institute Te Riu Roa (NZEI Te Riu Roa), New Zealand Principal's Federation, Secondary Principals' Association of New Zealand, Pasifika Principals Association, Christian Early Childhood Education Association of Aotearoa, Pasifika Advisory Group, Montessori Association of New Zealand, Hospital Play Specialists, The Federation of Rudolf Steiner Waldorf Schools in New Zealand, Playcentre Federation of New Zealand, Early Childhood Council, Early Childhood Leadership, Te Kōhanga Reo National Trust, Barnardos New Zealand, Home Early Learning Organisation, New Zealand Kindergartens Inc, Early Intervention Association of Aotearoa New Zealand, Te Rito Maioha Early Childhood New Zealand and New Zealand Home-based Early Childhood Education Association.
32. Feedback was received from 10 organisations, five from the ECE sector and five from the schooling sector.
33. Eight submissions were broadly supportive of establishing a Competence Authority under the Act, although several asked for clarification on some points, or raised issues that they considered important to the success of the Competence Authority. The Early Childhood Council opposed the proposal, and NZEI Te Riu Roa, supported the proposal for a Competence Authority, but opposed some elements.
34. The Education Council has recently consulted on a similar proposal to amend their Rules 2016 to include establishing a Competence Authority. The responses to this proposal state that while submitters were in favour of establishing the Competence Authority, to help speed up the competency process, that it should only deal with lower level competence matters and not make decisions of cancellation. The proposed Rules did not include giving the Competence Authority the ability to order the cancellation of a teacher's practising certificate and LAT.

## Conclusions and recommendations

35. On balance, we consider that the best option is to establish a Competence Authority in the Act, setting out its roles, responsibilities and functions in primary legislation. This option would enable competence issues to be dealt with in a more efficient and timely way for the Education Council. A Competence Authority would retain the rehabilitative focus of the teacher competence complaints process. This option would also remove the responsibility for considering serious competence complaints from the Council and place it with a group of qualified experts specifically chosen for the task. As a result the governing board of the Education Council would have a larger portion of time to devote to its strategic governance role. (See Appendix A for how the competence process would work if option C is chosen.)

## Implementation,

36. The implementation of a Competence Authority would be led by the Education Council, and aligned with the implementation of the Council's new Rules.
37. The new body will be established under Education Council Rules. The legislation will allow for the existing Rules, relating to a new body, to continue. However, they will expire 12 months after commencement of the update Act unless replaced earlier.
38. The Council has indicated that the new body can be established and operated within existing Council funding.
39. There may be some concerns from stakeholders about the powers of the new body. The Ministry and Education Council will be able to disseminate guidance around the changes and powers of the new body.
40. Any guidance around the changes will be issued through the Education Council.

## Monitoring, evaluation and review

41. The Education Council will monitor:
- the workload for the new competence authority
  - timelines for resolution of complaints; and
  - the number of appeals, successful and otherwise, against Competence Authority decisions.
42. Feedback from schools and boards will be used in assessing the effectiveness of the changes.



## Appendix A: Current Education Council processes for conduct and competence complaints

