

**Reprint  
as at 1 July 2014**



**New Zealand Teachers Council  
(Conduct) Rules 2004  
(SR 2004/143)**

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

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These rules are administered by the New Zealand Teachers Council.**

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## **Rules**

### **1 Title**

These rules are the New Zealand Teachers Council (Conduct) Rules 2004.

### **2 Commencement**

These rules come into force on 1 September 2004.

## **Part 1**

### **Preliminary provisions**

#### **3 Overview**

- (1) These rules set out how the Teachers Council deals with reports or complaints about the conduct (including convictions) of individual teachers.
- (2) Every report or complaint about conduct is investigated initially by the CAC, whose powers are exercised by a panel of CAC members allocated to the matter.
- (3) Where possible and appropriate, the CAC resolves the matter by agreement with the teacher concerned and the person who initiated the report or complaint.
- (4) In more serious cases, the CAC refers the matter to the Disciplinary Tribunal for a formal hearing.
- (5) This rule is by way of explanation only. If any other provision in the Act or rules conflicts with it, the other provision prevails.
- (6) Sections 139AT to 139AZB of the Act are set out in these rules, in boxes, so that readers can see how the sections and 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 rule 7

**CAC panel** means a panel of at least 3 members of the CAC that is allocated under rule 8 to consider a particular report or complaint about conduct

**child or young person** means a person—

- (a) who is under the age of 16 years; or
- (b) who is, or was at the relevant time, a student at a school or early childhood education and care centre

**competence assessor** means a competence assessor appointed by the Teachers Council to act as a competence assessor under the New Zealand Teachers Council (Competence) Rules 2007

**Disciplinary Tribunal** means the Disciplinary Tribunal of the Teachers Council established under rule 23

**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 report or complaint about conduct to the Teachers Council

**report or complaint about conduct** means any of the following:

- (a) a mandatory report that relates to conduct under section 139AK of the Act (report by employer of dismissals and resignations):
- (b) a mandatory report that relates to conduct under section 139AL of the Act (report by employer of complaints received about former employee):
- (c) a mandatory report under section 139AM of the Act (report by employer of possible serious misconduct):

- (d) a mandatory report under section 139AP of the Act (report by teacher or by court Registrar of convictions):
- (e) a complaint of misconduct under section 139AR of the Act

**serious misconduct** means conduct by a teacher—

- (a) that—
  - (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
  - (ii) reflects adversely on the teacher's fitness to be a teacher; and
- (b) is of a character or severity that meets the Teachers Council criteria for reporting serious misconduct as set out in rule 9 of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004

**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 10 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 defined in section 120 of the Act have the meanings given to them in that section.

Rule 4(1) **child or young person** paragraph (b): amended, on 1 December 2008, by section 60(2) of the Education Amendment Act 2006 (2006 No 19).

Rule 4(1) **competence assessor**: amended, on 1 November 2007, by rule 5(a) of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

Rule 4(1) **competence assessor**: amended, on 1 November 2007, by rule 5(b) of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

## 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 date 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 conduct if it considers on reasonable grounds that the disclosure is necessary to alleviate a threat to public safety.

## **Part 2 Complaints Assessment Committee**

### **7 Establishment of CAC**

- (1) The Teachers Council must appoint a CAC that comprises—
  - (a) at least 1 member, and no more than 5 members, of the Teachers Council; and
  - (b) at least 5, and no more than 20, other people who are not members of the Teachers Council.
- (2) The Teachers Council must appoint one of the members who is a member of the Teachers Council to be the convenor of the CAC and may appoint any other member of the CAC to be the deputy convenor.
- (3) Neither the chairperson of the Teachers Council nor any member of the Disciplinary Tribunal may be a member of the CAC.

- (4) Rules relating to the appointment of members who are not members of the Teachers Council, and about ceasing to be a member of the CAC, are contained in the Schedule.

Rule 7(1): substituted, on 1 November 2007, by rule 6 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

Rule 7(1)(b): amended, on 1 August 2012, by rule 4 of the New Zealand Teachers Council (Conduct) Amendment Rules 2012 (SR 2012/170).

## **8 CAC may operate in panels**

- (1) The convenor of the CAC must allocate the investigation and consideration of each report or complaint about conduct, or class of report or complaint about conduct, to—
- (a) the CAC, operating through all of its members; or
  - (b) a panel of at least 3 CAC members, none of whom are required to be members of the Teachers Council.
- (2) More than 1 CAC panel may operate at any one time.
- (3) Members of the CAC may be on more than 1 panel at a time.
- (4) A panel may perform and exercise, in relation to any matter allocated to it, all the functions and powers of the CAC.
- (5) The convenor may serve on any panel.

Rule 8: substituted, on 1 November 2007, by rule 7 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

## **9 Assistance for CAC and delegation**

- (1) The CAC may be assisted in the performance of its functions by—
- (a) any person appointed by the Teachers Council to assist the CAC; and
  - (b) any person engaged by the CAC (on terms agreed between the person and the CAC) to assist with any particular report or complaint about conduct, or any class of report or complaint about conduct.
- (2) Without limiting rule 8(4), the CAC may delegate its functions, other than its functions under section 139AT(2), (3), or (4) of the Act, to any person referred to in subclause (1).

**10 Meetings of CAC**

- (1) The CAC may regulate its own procedure for the calling and conduct of meetings, subject to the requirements of the Act and these rules.
- (2) Any or all of the members of the CAC who attend a meeting of, or arranged by, the CAC may attend the meeting by means of a telephone or video link, provided that every member attending the meeting can hear, and be heard by, every other member attending.

**11 Legal assessor**

- (1) Without limiting rule 9, the Teachers Council may appoint a legal assessor to advise the CAC on legal matters, and in particular on matters of procedure and evidence.
- (2) The legal assessor must be a barrister or solicitor of the High Court of New Zealand who holds a current practising certificate.
- (3) The legal assessor may attend any meeting of, or arranged by, the CAC, but only for the purpose of giving legal advice to the CAC.

*CAC procedures***Section 139AT of the Education Act 1989: Powers of Complaints Assessment Committee**

- (1) The Complaints Assessment Committee may investigate any complaint or report referred to it under section 139AS.
- (2) Following an investigation, the Complaints Assessment Committee may, in respect of any matter other than a conviction to which section 139AV relates, do any of the following:
  - (a) dismiss the matter, or resolve to take it no further:
  - (b) refer the teacher concerned to a competency review:
  - (c) refer the teacher concerned to an impairment process which may involve assessing, and (if necessary) assisting with, an impairment:
  - (d) by agreement with the teacher and the person who made the complaint or report, do any of the following:
    - (i) censure the teacher:
    - (ii) impose conditions on the teacher's practising certificate or authority, such as (without limitation) requiring the

- teacher to undergo supervision or professional development:
- (iii) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
  - (iv) annotate the register or the list of authorised persons in a specified manner.
- (3) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing.
- (4) The Complaints Assessment Committee must refer a matter concerning a teacher to the Disciplinary Tribunal if it is satisfied on reasonable grounds that—
- (a) the teacher has engaged in serious misconduct; and
  - (b) the matter should be referred to the Disciplinary Tribunal.
- (5) If a matter is referred to the Disciplinary Tribunal under subsection (4), a notice must be sent to the teacher concerned setting out the charge of misconduct against him or her.
- Section 139AV of the Education Act 1989: Investigation by Complaints Assessment Committee of reports of convictions**
- (1) Every report of the conviction of a teacher for an offence punishable by 3 months' or more imprisonment that is received by, or comes to the attention of, the Teachers Council must be investigated by the Complaints Assessment Committee.
- (2) Following the investigation of such a conviction, the Complaints Assessment Committee may do any of the following:
- (a) dismiss the matter, or resolve to take it no further:
  - (b) refer the teacher concerned to a competency review:
  - (c) refer the teacher concerned to an impairment process which may involve assessing, and (if necessary) assisting with, an impairment:
  - (d) by agreement with the teacher, do any of the following:
    - (i) censure the teacher:
    - (ii) impose conditions on the teacher's practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development:
    - (iii) annotate the register or the list of authorised persons in a specified manner.
- (3) If the Complaints Assessment Committee considers that the conviction may warrant action by the Disciplinary Tribunal, it must refer the report to the Disciplinary Tribunal for a hearing.

Box text: amended, on 1 November 2007, by rule 8 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

**12 Referral to CAC**

- (1) As required by section 139AS(1) of the Act, every report or complaint about conduct received by the Teachers Council must be referred to the CAC.
- (2) The CAC must, in accordance with the Act and these rules, deal with every report or complaint about conduct referred to it, unless subclause (3) applies.
- (3) If the CAC considers that a complaint of misconduct received under section 139AR of the Act should be dealt with by the current employer of the teacher concerned, the CAC must decline to deal with the complaint and instead—
  - (a) refer the complaint to the teacher's current employer; and
  - (b) send a copy of the complaint to the teacher concerned, along with advice that it is being referred to the teacher's current employer; and
  - (c) advise the initiator of what the CAC has done.

**13 Notification to teacher of report or complaint about conduct**

- (1) Unless rule 12(3) applies, on receipt of a report or complaint about conduct, the CAC must notify the teacher concerned that it has received a report or complaint.
- (2) The notice given under subclause (1) must include—
  - (a) sufficient detail so that the teacher understands (so far as is possible from the material received by the CAC) the nature of the report or complaint; and
  - (b) advice—
    - (i) about the next steps in the process and the likely timetable;
    - (ii) that the teacher may make submissions to the CAC;
    - (iii) that the teacher's current employer is being notified of receipt of the report or complaint (if applicable);
    - (iv) that no disciplinary action (other than investigation) will occur without the teacher being given an adequate opportunity to respond to the report or complaint.

**14 Notification to current employer of report or complaint about teacher conduct**

- (1) If the CAC receives a complaint of misconduct under section 139AR of the Act and rule 12(3) does not apply, the CAC must notify the teacher's current employer that a complaint of misconduct has been received concerning the teacher.
- (2) The CAC may at any time notify the current employer of a teacher if it receives any other report or complaint about conduct that relates to the teacher.

**15 Teacher may object to members of CAC panel**

- (1) At the same time as, or as soon as practicable after, the notice under rule 14 is sent to a teacher, the CAC must give notice to the teacher of the names of the members of the CAC panel that will consider the matter.
- (2) The notice under subclause (1) must advise the teacher that, if he or she objects to any of those members, he or she must notify the CAC of the objection within 5 working days of receipt of the notification.
- (3) If the CAC receives a notice of objection within 5 working days of giving notice to the teacher, the convenor of the CAC must, unless he or she considers the objection is groundless, replace that member with another member and notify the teacher accordingly.
- (4) Nothing in this rule prevents the convenor replacing a member of a CAC panel at any other time, and for any reason, but if a member is changed the teacher must be notified and subclauses (2) and (3) apply.

**16 Preliminary investigation and preparation of summary**

- (1) Before the CAC considers a report or complaint about a teacher's conduct for the first time, the CAC may—
  - (a) seek further information from the teacher concerned, the initiator, or the teacher's current employer; and
  - (b) review any relevant records of the Teachers Council.
- (2) After completing preliminary investigations under subclause (1), a summary of the report or complaint must be prepared

for consideration by the CAC panel allocated to deal with the matter.

- (3) The summary—
  - (a) must include a copy of the original report or complaint and any information subsequently received including, in particular, a copy of any submissions made by the teacher concerned; and
  - (b) may include preliminary recommendations for the most appropriate response to the report or complaint.
- (4) The summary may not be considered by the CAC panel allocated to deal with the matter until at least 14 days after the date on which the teacher received notification of the report or complaint under rule 13, unless the CAC considers that—
  - (a) the report or complaint requires urgent consideration; or
  - (b) the report or complaint is trivial or vexatious.

#### **17 Meetings of CAC panel**

- (1) Every member of the CAC panel allocated to deal with a matter must be provided with a copy of the summary prepared under rule 16 that relates to the matter, and with a copy of any subsequent reports on the matter that are prepared for consideration by the panel.
- (2) All members of the CAC panel allocated to deal with a matter must be present when a matter is to be considered.
- (3) A member may be present either in person or by way of telephone or video link.
- (4) Subject to the Act and these rules, the CAC panel allocated to deal with a particular matter may regulate its procedure as it thinks fit.

#### **18 Powers of the CAC following consideration**

- (1) After considering a report or complaint about a teacher's conduct, the CAC (acting through the panel allocated to deal with the matter) may do any of the following:
  - (a) dismiss the report or complaint, or resolve to take it no further;
  - (b) resolve to undertake further investigations into the report or complaint, as provided in rule 19:

- (c) resolve to seek resolution of the matter by agreement in accordance with rule 20, or confirm any resolution that has been agreed in accordance with that rule:
  - (d) refer the report or complaint to a competence assessor for consideration under the New Zealand Teachers Council (Competence) Rules 2007, on the basis that the report or complaint appears to relate to competence rather than conduct:
  - (e) refer the teacher concerned to an impairment process, or enter into discussions with the teacher about this possibility:
  - (f) for the purpose of investigating possible serious misconduct, apply to the Disciplinary Tribunal in accordance with rule 40 for interim suspension of the teacher's practising certificate or authority to teach:
  - (g) lay a charge of serious misconduct with the Disciplinary Tribunal on the basis that the CAC is satisfied on reasonable grounds that the teacher has engaged in serious misconduct:
  - (h) refer the matter to the Disciplinary Tribunal for a hearing.
- (2) Before determining that it is satisfied on reasonable grounds that a teacher has engaged in serious misconduct, the CAC must have—
- (a) investigated the matter as fully as is reasonable in the circumstances; and
  - (b) given the teacher an adequate opportunity to respond to the allegations.
- (3) The CAC may refer a report or complaint about conduct (other than conduct that the CAC is satisfied is serious misconduct) to the Disciplinary Tribunal only if the CAC—
- (a) does not consider that it is appropriate to dismiss the matter or resolves to take it no further, or to refer the teacher concerned to a competency review or an impairment process; and
  - (b) has been unable, despite its best endeavours, to resolve the matter by agreement under rule 20.
- (4) A notice of the outcome of the CAC panel's consideration of a matter, identifying which of the things listed in subclause

(1) the CAC has resolved to do, must be sent to the teacher concerned and to the initiator as soon as practicable after the meeting of the CAC panel.

Rule 18(1)(d): amended, on 1 November 2007, by rule 9 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

## **19 Further investigation**

- (1) When undertaking further investigation following consideration by the CAC panel allocated to deal with the matter, the CAC may, without limitation,—
- (a) request information from any person; and
  - (b) engage any suitably qualified person to carry out specific tasks relating to the investigation; and
  - (c) meet with the teacher, the initiator, the employer, and any other person who may assist the investigation; and
  - (d) copy any document, whether in written or electronic form, and hold any document or other thing given to, or otherwise lawfully acquired by, the CAC in the course of its investigations.
- (2) An investigation, or any aspect of an investigation, may be carried out by any member of the CAC personally or by any other person referred to in rule 9.

## **20 Resolution by agreement**

- (1) In the case of a complaint of misconduct that the CAC is satisfied is not serious misconduct, the CAC must use its best endeavours to reach agreement between the teacher and the initiator to one of the following courses of action (as listed in section 139AT(2)(d) of the Act):
- (a) censuring the teacher;
  - (b) imposing conditions on the teacher's practising certificate or authority;
  - (c) suspending the teacher's practising certificate or authority for a specified period, or until specified conditions are met;
  - (d) annotating the register or the list of authorised persons in the manner agreed.
- (2) In the case of a report about convictions, the CAC may, with the agreement of the teacher and as provided in section 139AV

of the Act, annotate the register or the list of authorised persons in the manner agreed.

- (3) In resolving a matter by agreement, the CAC may, without limitation,—
  - (a) engage any appropriate person to assist; and
  - (b) involve any appropriate person in the process; and
  - (c) attend meetings, whether in person or by telephone or video link.
- (4) The process of resolving a complaint of misconduct by agreement may be carried on, or assisted by, any member of the CAC personally, or by any other person referred to in rule 9.
- (5) No resolution by agreement is effective until it has been confirmed by a meeting held in accordance with rule 17.

## **21 Referral to Disciplinary Tribunal**

When a matter is referred to the Disciplinary Tribunal,—

- (a) in the case of a charge of serious misconduct referred under section 139AT(4) of the Act, the CAC must prepare the charge; and
- (b) in the case of a referral of any other matter under section 139AT(3) or section 139AV(3) of the Act, the CAC must prepare a notice of referral.

## **22 Notice of charge of serious misconduct and notice of referral**

- (1) Every charge of serious misconduct that is referred to the Disciplinary Tribunal must—
  - (a) contain such particulars as will clearly inform the teacher of the substance of the grounds on which the CAC is satisfied that the teacher has engaged in serious misconduct; and
  - (b) specify the particulars of the charge.
- (2) Every notice of referral must set out the details of the matter that is being referred to the Disciplinary Tribunal, and the reasons for the referral.
- (3) At the same time as a charge or notice of referral is sent to the Disciplinary Tribunal, a copy must be sent to—
  - (a) the teacher concerned; and

- (b) the initiator; and
- (c) the teacher's current employer (if any).

### **Part 3**

#### **Disciplinary Tribunal**

#### **23 Establishment of Disciplinary Tribunal**

- (1) The Teachers Council must appoint a Disciplinary Tribunal that comprises—
  - (a) at least 1 member, and no more than 5 members, of the Teachers Council; and
  - (b) at least 5, and no more than 20, other people who are not members of the Teachers Council, of whom at least 1 must be a person selected from the list, referred to in section 139AQ(3B) of the Act, of people who are neither—
    - (i) members of the Teachers Council; nor
    - (ii) teachers, employers, or members of an employing body.
- (2) The chairperson of the Teachers Council may not be a member of the Disciplinary Tribunal.
- (3) No member of the CAC may be a member of the Disciplinary Tribunal.
- (3A) As required by section 139AQ(3C) of the Act, the majority of members on the Disciplinary Tribunal must be registered teachers.
- (4) Rules relating to the membership of the Disciplinary Tribunal and the appointment of its chairperson and alternative chairpersons are set out in the Schedule.

Rule 23(1): substituted, on 1 November 2007, by rule 10(1) of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

Rule 23(3A): inserted, on 1 November 2007, by rule 10(2) of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

#### *Hearings*

#### **24 Who conducts hearings**

- (1) A charge laid with, or matter referred for hearing to, the Disciplinary Tribunal must be allocated by the chairperson of the

Disciplinary Tribunal either to the Tribunal, or to a panel of the Tribunal, for hearing.

- (2) Hearings of the Tribunal must be conducted by 5 of its members, of whom the majority must, as required by section 139AQ(3C) of the Act, be registered teachers.
- (3) Hearings of a panel of the Tribunal must be conducted by at least 3 members of the Tribunal, of whom—
  - (a) at least 1 must be a member of the Teachers Council; and
  - (b) at least 1 must be the chairperson, or an alternative chairperson, of the Tribunal; and
  - (c) the majority must, as required by section 139AQ(3C) of the Act, be registered teachers.
- (4) Every hearing (whether allocated to the Tribunal or to a panel of the Tribunal) must be presided over by the chairperson, or an alternative chairperson, of the Tribunal.
- (5) At least 1 of the members conducting a hearing must be a member of the Teachers Council.
- (6) The temporary absence from a hearing of any member who is conducting the hearing does not affect the validity of the hearing, but all members must be present during the deliberations.

Rule 24: substituted, on 1 November 2007, by rule 11 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

**24A Further rule on how Tribunal may operate in panels**

- (1) More than 1 panel of the Tribunal may operate at any one time.
- (2) Members of the Tribunal may be on more than 1 panel at a time.
- (3) A panel may perform and exercise, in relation to any matter allocated to it, all the functions and powers of the Tribunal.
- (4) The chairperson of the Tribunal may, at any time, remove any member of a panel, and may substitute a different member, in order to ensure that the panel continues to comply with rule 24(3).
- (5) The chairperson of the Tribunal may serve on any panel.

Rule 24A: inserted, on 1 November 2007, by rule 11 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

**25 Disciplinary Tribunal regulates own procedure**

- (1) The Disciplinary Tribunal may, subject to the Act and these rules, regulate its own procedure in relation to hearings as it thinks fit.
- (2) Without limiting subclause (1), the Disciplinary Tribunal may—
  - (a) determine the time at which hearings may be held; and
  - (b) adjourn any hearing from time to time; and
  - (c) determine the place at which any hearing may be held; and
  - (d) determine who may attend a particular hearing; and
  - (e) determine that any person attending a hearing may do so by way of video link; and
  - (f) prescribe or approve any forms for the purposes of hearings.

**26 Procedural and administrative orders**

The chairperson of the Disciplinary Tribunal may make any procedural or administrative order that the Disciplinary Tribunal could make that is preliminary or incidental to a hearing, including (without limitation) the following:

- (a) an order for discovery or inspection of documents;
- (b) an order for the filing of briefs of evidence;
- (c) a timetabling order;
- (d) an order relating to the way in which a witness may give evidence, whether under rule 34 or otherwise;
- (e) an order that a hearing or part of a hearing be held in private;
- (f) an order by consent of the parties.

Rule 26(d): replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

Rule 26(e): replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

Rule 26(f): inserted, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

**27 Power to amend charge or notice of referral**

- (1) The Disciplinary Tribunal may, at any time during the hearing of a charge or notice of referral, amend the charge or notice of referral in any way.
- (2) The Disciplinary Tribunal may, at the request of the teacher concerned, if the Disciplinary Tribunal is of the opinion that

the teacher would be disadvantaged in his or her defence by reason of an amendment made or proposed to be made under this rule, adjourn the hearing.

## **28 Parties**

- (1) The parties to a hearing are—
  - (a) the teacher concerned; and
  - (b) the CAC, which acts as prosecutor at any hearing.
- (2) The parties to a hearing are entitled to appear and be heard, in person or by a representative, at the hearing.

## **29 Notice of hearing**

- (1) Notice of a hearing must be sent to—
  - (a) the parties to the hearing; and
  - (b) the teacher's current employer.
- (2) The notice must give the following details:
  - (a) the names of the parties;
  - (b) the date, time, and place of the hearing;
  - (c) the names of the members of the Disciplinary Tribunal who will conduct the hearing.
- (3) The teacher concerned must also be sent information explaining the procedure of the Disciplinary Tribunal and the teacher's rights and obligations in relation to the hearing.

## **30 Parties may object to composition of Disciplinary Tribunal**

- (1) Any party may, by notice in writing sent within 5 days of receipt of notification of the hearing, object to any member of the Disciplinary Tribunal who will be conducting the hearing on the grounds that the member is in a position of conflict of interest.
- (2) The chairperson of the Disciplinary Tribunal must determine whether the grounds of objection are made out and, if they are, must replace the member objected to with another member.
- (3) If a member is replaced, notice of that fact must be sent to the parties, and the parties may object under subclause (1) to any substituted member.

**31 Hearings of Tribunal to be in public**

- (1) Except as provided in this rule, every hearing of the Disciplinary Tribunal must be in public.
- (2) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including the privacy of any initiator) and to the public interest, the Disciplinary Tribunal may (on the application of any person or on its own initiative) hold a hearing or part of a hearing in private.
- (3) If a hearing or part of a hearing is held in private, only the following people may be present:
  - (a) members of the Disciplinary Tribunal;
  - (b) such administrative officers as the chairperson considers necessary;
  - (c) the parties and their representatives;
  - (d) the initiator (if any);
  - (e) the witness presenting his or her evidence, and his or her support person; and
  - (f) any other person expressly authorised by the Disciplinary Tribunal to be present.
- (4) This rule does not prevent the Disciplinary Tribunal from deliberating, as to its decision or to any questions arising in the course of a hearing, in private.

Rule 31: replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

**32 Restrictions on publication**

- (1) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including the privacy of any initiator) and to the public interest, the Disciplinary Tribunal may (on the application of any person or on its own initiative) make one or more of the following orders:
  - (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or private;
  - (b) an order prohibiting the publication of the whole or any part of any books, papers, documents, or other information produced at any hearing;

- (c) an order prohibiting the publication of the name of any person, any particulars of any person, or any particulars that may lead to the identification of any person.
- (2) Unless the Disciplinary Tribunal makes an order under sub-rule (3), no person may in any report or account of a hearing of the Disciplinary Tribunal, publish the name of, or any particulars likely to lead to the identification of, the following:
  - (a) a child or young person (as defined in the Children, Young Persons, and Their Families Act 1989); or
  - (b) a person on whom or in respect of whom, sexual acts are alleged to have been performed; or
  - (c) a person who is alleged to have been compelled or induced to perform sexual acts.
- (3) The Disciplinary Tribunal may make an order for publication of the name of a person referred to in sub-rule (2) if that person is 16 years or older.
- (4) The Disciplinary Tribunal must make an order under sub-rule 3 if:
  - (a) the person referred to in sub-rule (2):
    - (i) is 16 years or older (whether or not the person was 16 years or older when the events which are the subject of the proceedings are alleged to have occurred); and
    - (ii) applies to the Tribunal for the order; and
  - (b) the Disciplinary Tribunal is satisfied that the person understands the nature and effect of the application.
- (5) If satisfied that it is in the interests of a person referred to in sub-rule (2)(b), the Disciplinary Tribunal may make an order under sub-rule (1)(a) prohibiting publication of any report or account of any part of the evidence.
- (6) An order made under sub-rule (1) of this rule continues in force until a time specified in the order or, if no time is specified, until revoked under rule 33.

Rule 32: replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

### **33 Application for revocation of an order under rule 32**

- (1) Any person may apply to the Disciplinary Tribunal for revocation of an order made under rule 32(1).

- (2) The Disciplinary Tribunal may grant the application if the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including the privacy of any initiator) and to the public interest.

Rule 33: replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

### **34 Special protection for certain witnesses**

- (1) This rule applies to a witness giving evidence at a hearing before the Disciplinary Tribunal who is:
- (a) a child or young person (as defined in the Children, Young Persons, and Their Families Act 1989);
  - (b) a person on whom or in respect of whom sexual acts are alleged to have been performed; or
  - (c) a person who is alleged to have been compelled or induced to perform sexual acts; or
  - (d) a person whose evidence, in the Disciplinary Tribunal's opinion, relates to some other matter that may require the witness to give intimate or distressing evidence.
- (2) Before a witness to which this rule applies begins to give evidence, the witness must be:
- (a) advised that they have the right to give evidence in private; and
  - (b) asked whether they would like to give evidence in private.
- (3) If a witness is giving evidence in private, only the people described in rule 31(3) may be present when the witness is giving evidence.
- (4) If a person to whom this rule applies wishes to give evidence by way of video link, closed circuit television, or to be screened while giving evidence, the Disciplinary Tribunal may, in its discretion, arrange for the witness to give evidence accordingly.
- (5) Nothing in this rule prevents the Disciplinary Tribunal from permitting a witness, including those to whom this rule does not apply, to give evidence by way of video link or other alternative means as the Disciplinary Tribunal thinks fit.

Rule 34: replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

**35 Special protections available if hearing held in public**

*[Revoked]*

Rule 35: revoked, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

**36 Orders of the Disciplinary Tribunal**

- (1) Sub-rules (2), (3) and (4) of this rule are subject to sub-rule (5).
- (2) Every order of the Disciplinary Tribunal must be in writing.
- (3) Every order, other than a procedural or administrative order made by the chairperson of the Disciplinary Tribunal under rule 26, must:
  - (a) be signed by the chairperson; and
  - (b) include reasons for the decision; and
  - (c) be notified to the following persons:
    - (i) the parties and their representatives; and
    - (ii) the teacher's current employer; and
    - (iii) the initiator; and
  - (d) be published on the Teachers Council website, subject to any order made under rule 32.
- (4) Every order takes effect on the date on which the order is received by the teacher concerned, unless a later date is specified in the order, in which case it takes effect on that later date.
- (5) Nothing in sub-rules (2), (3) and (4) of this rule shall prevent the Disciplinary Tribunal from making oral interlocutory orders immediately before, during or immediately after a hearing, for the purposes of ensuring compliance with these rules by any person.

Rule 36: replaced, on 1 July 2014, by notification in the *Gazette* 2014, p 977.

**37 Evidence**

At a hearing, the Disciplinary Tribunal may receive as evidence any document, record, or other information that may in its opinion assist it to deal effectively with the matter before it, whether or not the document, record, or information would be admissible in a court of law.

**38 Powers of investigation**

- (1) For the purpose of dealing with any matter before it, the Disciplinary Tribunal, or any person authorised by it in writing to do so, may inspect and examine any documents, records, or other information produced at a hearing.
- (2) The Disciplinary Tribunal may require that any information produced to it must be verified by statutory declaration or as otherwise specified by the Disciplinary Tribunal.
- (3) The Disciplinary Tribunal may of its own motion, or on the application of any party,—
  - (a) order that all or any part of any documents, records, or other information produced to it be supplied to any person appearing before the Disciplinary Tribunal; and
  - (b) impose any terms and conditions on the supply and use of the documents, records, or other information supplied.

**39 Service of summons**

- (1) A witness summons may be served—
  - (a) by delivering it personally to the person summoned; or
  - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence or business.
- (2) If a summons is served under paragraph (1)(a), it must be served at least 24 hours before the attendance of the witness is required.
- (3) If a summons is served under paragraph (1)(b), it must be served so that it is received, in accordance with the presumption in rule 5(2)(a)(ii), at least 10 days before the date on which the attendance of the witness is required.

### *Interim suspension*

**Section 139AU of the Education Act 1989: Interim suspension to enable investigation**

- (1) For the purpose of investigating a complaint of possible serious misconduct about a teacher, the Complaints Assessment Committee may at any time apply to the Disciplinary Tribunal for an interim suspension of the teacher's practising certificate or authority.
- (2) On an application for an interim suspension, the Disciplinary Tribunal may, either with or without a hearing, suspend the teacher's practising certificate or authority for a specified period, or until specified conditions have been met, but in any case for not more than 3 months.

Box text: amended, on 1 November 2007, by rule 14 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

**40 Application for interim suspension**

An application under section 139AU of the Act for interim suspension of a teacher's practising certificate or authority to teach may be made by the convenor of the CAC applying in writing to the chairperson of the Disciplinary Tribunal.

**41 Determination of application**

- (1) On receipt of an application for interim suspension, the chairperson of the Disciplinary Tribunal must consult, by telephone, email, or any other method that is reasonably available, with at least 4 other members of the Disciplinary Tribunal on whether the teacher's practising certificate or authority to teach should be suspended.
- (2) The chairperson of the Disciplinary Tribunal may, without conducting a hearing but after the consultation required by subclause (1), exercise the powers of the Disciplinary Tribunal to suspend a teacher's practising certificate or authority to teach.

**42 Notice of suspension**

- (1) Written notice of an order suspending a teacher's practising certificate or authority to teach must be sent immediately to—
  - (a) the teacher concerned; and
  - (b) the teacher's current employer; and

- (c) the CAC; and
  - (d) the initiator; and
  - (e) the Teachers Council.
- (2) The notice must be in writing and must—
- (a) specify the period of suspension (which must not exceed 3 months); and
  - (b) give reasons for the suspension; and
  - (c) in the case of the notice sent to the teacher, include a description of the teacher's right to apply under rule 43 to have the order revoked.

#### **43 Revocation of interim suspension**

- (1) A teacher whose practising certificate or authority to teach is suspended may apply, in writing, to the chairperson of the Disciplinary Tribunal for the suspension to be lifted.
- (2) The chairperson of the Disciplinary Tribunal may lift an interim suspension on receipt of advice from the CAC that it does not oppose the lifting of the suspension.
- (3) If the CAC does not agree to the lifting of the suspension, the chairperson must arrange for a hearing to be conducted under this Part within 10 working days of the receipt of the application.
- (4) If an interim suspension is lifted, the people who were sent notice of the suspension must be notified immediately.

#### **Section 139AZB of the Education Act 1989: Appeals**

- (1) The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 139AU(2) or section 139AW, or a decision by the Teachers Council made under section 139AZC, may appeal that decision to a District Court.
- (1A) The Complaints Assessment Committee may, with the leave of the Teachers Council, appeal to a District Court against a decision of the Disciplinary Tribunal made under section 139AU(2) or section 139AW.
- (2) An appeal under this section must be made within 28 days of receipt of written notice of the decision, or any longer period that the court allows.
- (3) Subsections (3) to (7) of section 126 apply to every appeal under this section as if it were an appeal under subsection (1) of section 126.

Box text: amended, on 1 November 2007, by rule 15 of the New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305).

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## **Schedule**

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### **Additional rules about CAC and Disciplinary Tribunal**

#### **1 CAC and Disciplinary Tribunal members who are not members of the Teachers Council**

- (1) A person who is not a member of the Teachers Council may be appointed to the CAC or the Disciplinary Tribunal only if he or she would be eligible for appointment as a member of the Teachers Council.
- (2) A person who is not a member of the Teachers Council may not be appointed to the CAC or the Disciplinary Tribunal if—
  - (a) the Teachers Council is concerned that the trust and confidence of the public might be adversely affected if the person were to serve on the CAC or Disciplinary Tribunal; or
  - (b) the person holds another position that is, in the opinion of the Teachers Council, inconsistent with the person's appointment to the CAC or Disciplinary Tribunal.
- (3) Before appointing a person who is not a member of the Teachers Council to the CAC or the Disciplinary Tribunal, the Teachers Council must—
  - (a) consult with interested representative groups and persons; and
  - (b) consider the person's personal attributes, including—
    - (i) his or her knowledge of, and experience in, the matters likely to come before him or her on the CAC or Disciplinary Tribunal; and
    - (ii) his or her knowledge of, and experience in, the type of work that he or she is likely to engage in if appointed to the CAC or Disciplinary Tribunal; and
  - (c) consider the extent to which the person's appointment will ensure a spread of experience and a balance of skills on the CAC or Disciplinary Tribunal.

- (4) While holding office as a member of the CAC or the Disciplinary Tribunal, the rights and obligations (including those relating to remuneration) that apply to members of the Teachers Council apply to every person who is not a member of the Teachers Council as if he or she were a member of the Teachers Council.

**2 Term of appointment of CAC or Disciplinary Tribunal members who are not members of the Teachers Council**

- (1) The term of appointment to the CAC or Disciplinary Tribunal of every person who is not a member of the Teachers Council is 3 years.
- (2) A person who is not a member of the Teachers Council who is appointed as a member of the CAC or Disciplinary Tribunal may be reappointed, but may not hold that office for more than 3 consecutive terms.

**3 Ceasing to be a member of the CAC or Disciplinary Tribunal**

- (1) A person who is not a member of the Teachers Council but is a member of the CAC or Disciplinary Tribunal ceases to hold office as a member of the CAC or Disciplinary Tribunal—
- (a) when the person's term of appointment expires; or
  - (b) when notified in writing by the chairperson of the Teachers Council that the person, from the date specified in the notice, is no longer a member of the CAC or Disciplinary Tribunal; or
  - (c) when the person resigns by notice in writing to the chairperson of the Teachers Council.
- (2) A person who is a member of the CAC or the Disciplinary Tribunal and is also a member of the Teachers Council ceases to hold office as a member of the CAC or Disciplinary Tribunal—
- (a) when the person ceases to be a member of the Teachers Council; or
  - (b) when notified in writing by the chairperson of the Teachers Council that the person, from the date specified in the notice, is no longer a member of the CAC or Disciplinary Tribunal, on the grounds that—

- (i) the person is failing or has failed to perform his or her duties as a member adequately; or
  - (ii) the person is no longer qualified for appointment as a member of the Teachers Council; or
  - (iii) the chairperson considers that the trust and confidence of the public might be adversely affected if the person continues to serve on the CAC; or
- (c) when the person resigns by notice in writing to the chairperson of the Teachers Council.
- (3) Despite subclauses (1) and (2),—
- (a) a person who is a member of the CAC or Disciplinary Tribunal remains in office until a successor is appointed; and
  - (b) even after a successor is appointed, the person may continue to serve as a member, with the agreement of the chairperson of the Teachers Council, for the purpose of completing any matter or thing that the member was involved in before ceasing to hold office.

#### **4 Chairperson and alternative chairperson of Disciplinary Tribunal**

- (1) The Teachers Council must appoint as chairperson of the Disciplinary Tribunal a person who—
- (a) is not a member of the Teachers Council; and
  - (b) is a barrister or solicitor of the High Court of New Zealand who has held a practising certificate for at least 7 years.
- (2) If for any reason the chairperson is temporarily unavailable to serve as chairperson of the Disciplinary Tribunal, the chairperson of the Teachers Council may appoint, for the period during which the chairperson is unavailable, an alternative chairperson.
- (3) If for any reason the chairperson of the Disciplinary Tribunal is unable to preside over a particular hearing, the chairperson of the Teachers Council may appoint an alternative chairperson for the purpose of conducting that particular hearing.
- (4) An alternative chairperson must be qualified under these rules for appointment as the chairperson of the Disciplinary Tribunal.

- (5) An alternative chairperson may perform all the functions, and exercise all the powers, of the chairperson of the Disciplinary Tribunal during the period of his or her appointment.

Dated at Wellington this 26th day of May 2004.

Joanna Beresford,  
Chairperson of the New Zealand Teachers Council.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 3 June 2004.

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## **Reprints notes**

### **1     *General***

This is a reprint of the New Zealand Teachers Council (Conduct) Rules 2004 that incorporates all the amendments to those rules as at the date of the last amendment to them.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

New Zealand Teachers Council (Conduct) Amendment Rules 2014 (*Gazette* 2014, p 977)

New Zealand Teachers Council (Conduct) Amendment Rules 2012 (SR 2012/170)

New Zealand Teachers Council (Conduct) Amendment Rules 2007 (SR 2007/305)

Education Amendment Act 2006 (2006 No 19): section 60(2)

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