



New Zealand Teachers Council (Impairment Process) Rules 2009

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

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Rules

1 Title

These rules are the New Zealand Teachers Council (Impairment Process) Rules 2009.

2 Commencement

These rules come into force on 1 May 2009.

3 Interpretation

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

Act means the Education Act 1989

agreement means an agreement as described in rule 15

health practitioner has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

impairment means any impairment that may adversely affect the teacher's ability to perform the functions required as a teacher; and includes, without limitation, an impairment caused by alcohol or drug abuse

referring body means the Teachers Council or the disciplinary body that refers the teacher to the impairment process.

(2) Unless the context otherwise requires, terms used in these rules that are defined in section 120 of the Act have the meanings given to them by that section.

(3) Unless the context otherwise requires, terms used in these rules that are defined in section 139AB(1) of the Act have the meanings given to them by that section.

4 Assigning matter to impairment co-ordinator

(1) The Teachers Council or a disciplinary body that refers a teacher to an impairment process must do so by assigning the matter to an impairment co-ordinator appointed by the Teachers Council.

(2) The referring body that assigns a matter to an impairment co-ordinator must provide the impairment co-ordinator with the information on which the referring body relied as the reason for referring the teacher to the impairment process.

- 5 Impairment co-ordinator to advise teacher of referral**
The impairment co-ordinator to whom a referral of a teacher to the impairment process is assigned must advise him or her of the referral.
- 6 Impairment co-ordinator to set up impairment committee**
The impairment co-ordinator must set up an impairment committee.
- 7 Constitution of impairment committee**
An impairment committee must comprise at least 3 people, including—
- (a) at least 1 health practitioner, but no more than 3 health practitioners; and
 - (b) at least 1 registered teacher, but no more than 3 registered teachers, none of whom is the teacher who has been referred to the impairment process; and
 - (c) 1 member of the Teachers Council, who is not a member of a disciplinary body.
- 8 Proposing and agreeing membership of impairment committee**
- (1) The impairment co-ordinator must—
 - (a) advise the teacher of the membership of the proposed committee; and
 - (b) ask the teacher whether he or she has any objection to any of the members of the proposed committee.
 - (2) A teacher may object to any 1 or more members of the proposed committee within 5 working days after being informed of the membership of the proposed committee by informing the impairment co-ordinator of the objection and the reasons for it.
 - (3) If the impairment co-ordinator is satisfied that the teacher's objection is reasonable, the impairment co-ordinator must—
 - (a) set up a different proposed committee; and
 - (b) advise the teacher of the membership of the different proposed committee; and

- (c) repeat the objection process, if necessary, until the impairment co-ordinator is satisfied that there is no further reasonable objection by the teacher.

9 Impairment co-ordinator to seek and distribute information

- (1) The impairment co-ordinator must give the teacher a copy of the information provided to the impairment co-ordinator by the referring body under rule 4(2), and ask the teacher for—
 - (a) his or her written comments on the information; and
 - (b) any further written information that the teacher wishes to provide.
- (2) The impairment co-ordinator must give each member of the impairment committee a copy of the information—
 - (a) provided to the impairment co-ordinator by the referring body under rule 4(2); and
 - (b) collected under subclause (1)(a) and (b).

10 Functions of impairment committee

- (1) An impairment committee must seek to ascertain whether the teacher has an impairment, and, if so,—
 - (a) what the impairment is; and
 - (b) what the adverse impacts of the impairment are, or might be, on the teacher's ability to perform his or her functions as a teacher; and
 - (c) what the teacher has already done, and is proposing to do, to deal with the impairment and its effects (for example, what treatment has been undertaken); and
 - (d) what precautions, if any, are necessary so that the teacher can practise competently and safely; and
 - (e) what assistance, if any, with the impairment is necessary so that the teacher can practise competently and safely.
- (2) Without limiting rule 9(1), an impairment committee must, in carrying out its functions under subclause (1), give the teacher a reasonable opportunity to make representations to the committee in person (or by a representative), and in writing.

11 Seeking advice of health practitioner

- (1) An impairment committee may seek the advice of a health practitioner to assist the committee in relation to any matter that the committee must seek to ascertain under rule 10(1), and may do so by way of either or both of the following:
 - (a) seeking the health practitioner's written comment on the available information;
 - (b) an assessment of the teacher by the health practitioner, with the agreement of the teacher.
- (2) The committee must provide a copy to the teacher of any written comments or advice received from the health practitioner.
- (3) If the committee is to receive the advice of the health practitioner orally, it must do so at a hearing at which the teacher is entitled to be present, and at which his or her representative (if any) is also entitled to be present.

12 Advising teacher of possible consequences of non-attendance at assessment by health practitioner

When an impairment committee asks a teacher to consent to attend an assessment by a health practitioner, the committee must advise the teacher of the possible consequences of his or her not consenting to attend the assessment, including—

- (a) that the committee will rely for the impairment process on the other information available to it; and
- (b) that the committee may not be able to ascertain all the matters in rule 10(1); and
- (c) that the committee may not be able to reach an agreement with the teacher.

13 Meetings of impairment committee

- (1) All members of the impairment committee must be present when a matter is to be considered.
- (2) A member may be present either in person or by way of telephone or video link.
- (3) Subject to the requirements of the Act and these rules, an impairment committee may regulate its own procedure for the calling and conduct of meetings.

14 Information impairment committee may consider

The impairment committee may have regard only to the following information:

- (a) any information provided to it under rule 9(2);
- (b) any advice that the committee obtains under rule 11;
- (c) any other representation made by the teacher to the committee, either personally (or by a representative) or in writing.

15 Agreement on action to be taken in regard to impairment

An impairment committee must use its best efforts to reach an agreement with a teacher in regard to any impairment that the teacher is found by the committee to have.

16 Interim report if serious risk to safety

- (1) The impairment committee may instruct the impairment co-ordinator to provide an interim report of the committee to the referring body at any time if the committee has reasonable grounds to believe that a teacher's impairment poses a serious risk to the safety of students at the school or children at the early childhood education and care service where the teacher is employed, or of the teacher's colleagues at the school or service, or of the teacher.
- (2) An interim report under subclause (1)—
 - (a) must indicate the nature of the risk to safety; and
 - (b) may recommend actions that the impairment committee considers are necessary for the safety of the students, children, the teacher's colleagues, or the teacher (as the case may be).

17 Reporting on outcome of process

- (1) An impairment committee must prepare a report on the impairment process and its outcome in relation to each referral, containing—
 - (a) a summary of the process that the impairment committee followed in relation to the referral; and
 - (b) a description of the means used by the committee to ascertain whether the teacher had an impairment, includ-

- ing any advice obtained from a health practitioner, and the result of any assessment by a health practitioner; and
- (c) a statement as to whether the impairment committee was able to ascertain the matters in rule 10(1) and, if so,—
- (i) whether the impairment committee found that the teacher had an impairment; and
 - (ii) a copy of any agreement reached with the teacher in regard to the impairment; and
 - (iii) a summary of the impairment committee's views as to any potential adverse impacts of the impairment on the teacher's ability to perform his or her functions as a teacher; and
 - (iv) a summary of what the teacher had already done, and was proposing to do, to deal with the impairment and its effects; and
 - (v) a description of any precautions that the impairment committee considered necessary so that the teacher could practise competently and safely; and
 - (vi) a description of any assistance with the impairment that the impairment committee considered necessary.
- (2) An impairment committee—
- (a) must provide the teacher with a draft of the committee's report, including a copy of any draft agreement; and
 - (b) must give the teacher a reasonable opportunity to comment on the draft report and any draft agreement; and
 - (c) may amend the draft report and any draft agreement in response to any comments made by the teacher.
- (3) The impairment co-ordinator—
- (a) must provide the impairment committee's report to the teacher and the referring body; and
 - (b) may provide the impairment committee's report to the teacher's current employer.

18 Confidentiality and disclosure of personal information

Personal information may be disclosed by the impairment co-ordinator, the impairment committee, or the health practi-

tioner who provided advice under rule 11, if the co-ordinator, the committee, or the health practitioner (as the case may be)—

- (a) holds the information in connection with a referral to the impairment process; and
- (b) believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to—
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual.

19 Certain persons not personally liable, and indemnified in certain cases

- (1) No impairment co-ordinator, member of an impairment committee, or health practitioner who provided advice under rule 11 is personally liable for an act or omission by that person acting as an impairment co-ordinator, a member of the impairment committee, or a health practitioner providing advice under rule 11 (as the case may be) and in good faith.
- (2) The Teachers Council must indemnify the impairment co-ordinator, member of the impairment committee, or health practitioner who provided advice under rule 11 for costs arising from successfully defended civil proceedings, or successfully defended criminal proceedings, relating to acts or omissions by that person acting as an impairment co-ordinator, a member of the impairment committee, or a health practitioner providing advice under rule 11 (as the case may be) and in good faith.

Dated at Wellington this 18th day of April 2009.

Kathy Smith,
Chairperson of the New Zealand Teachers Council.

Explanatory note

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

These rules, which are made under the Education Act 1989 (the **Act**), come into force on 1 May 2009. They set out the rules relating to the impairment process that must be followed when a teacher is referred to the impairment process.

A referral to the impairment process may be made, in regard to a complaint about a teacher's competence, by the New Zealand Teachers Council under section 139AZC of the Act. A referral to the impairment process may be made, in regard to a disciplinary matter, by the Disciplinary Tribunal under section 139AW of the Act, or by the Complaints Assessment Committee under section 139AT or 139AV of the Act.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 April 2009.
These rules are administered by the New Zealand Teachers Council.
