



**New Zealand  
Teachers Council**

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## **NEW ZEALAND TEACHERS COUNCIL**

### **Submission on the Education Amendment Bill (No 2)**

(30 April 2014)

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## GENERAL POSITION

1. The New Zealand Teachers Council (the Council) welcomes the opportunity to make a submission to the Education Amendment Bill (No 2).
2. The Council also wishes to appear before the Committee to speak to its submission.
3. The Council supports many elements of the Amendment Bill, much of which is consistent with its submission on the Minister of Education's consultation process on *A 21<sup>st</sup> Century Body for the Education Profession*. The Council also wholeheartedly supports the general focus of the proposed changes on strengthening the profession and raising its status.
4. As with any legislation involving major changes, such as this Bill, there are a number of matters about which the Council has some concerns. The primary focus of this submission is on those areas of concern.
5. The Council attaches the submission that it made in July 2013 to the Minister's discussion document *A 21<sup>st</sup> Century Body for the Education Profession*, for information. The additional material and argument we provided in this document may provide a useful reference for members of the Select Committee.

## RECOMMENDED CHANGES TO THE EDUCATION AMENDMENT BILL (No. 2)

6. The Council recommends that the Select Committee proposes changes to the Bill as currently drafted in its report back to the House, in the following areas:

### Section 1: Governance

- *changes are required to the proposed process [set out in Clause 1 of Schedule 22] for determining the composition of the new governing body – to achieve a governing body that is most likely to be 'owned' by the profession, while retaining the Minister's ability to appoint a majority of its members, in the public interest:*
  - the majority of the members of the new governing body must be registered teachers;
  - at least three members of the new governing body should be elected by the profession;

Further, in making appointments [Schedule 22 Clause 1(5)], the Minister should have regard to:

- the diversity of teaching experiences and perspectives represented by the registered teachers on the new governing body; and
- lay members of the new governing body who have more than a passing knowledge of teaching

[see section 1.2, para 16-21]

- *functions of the new professional body* – “*enhance[ing] the status of the profession*” should be deleted as a ‘function’ [Clause 382(b)], while “*raising the status of the profession*” is retained in the purpose [Clause 377] of the new professional body [see section 1.3, para 22-25]
- *advisory boards* – Māori-medium and early childhood advisory groups (or boards) should be retained as statutory advisory boards, consistent with the current legislation (section 139AH) [see section 1.4, para 26-29]
- *name of the new professional body for teachers* – the new professional body for teachers, to be ‘owned’ by teachers, should be named:

***Teachers’ Council of Aotearoa New Zealand*** [see section 1.5, para 30-34]

## **Section 2: Regulation of the Profession**

### **2.1 Public assurance and confidence in the teaching workforce – the people who are authorised to teach**

#### ***2.1.1 Matters inconsistent with stated purpose***

- *limited authority to teach* – retaining a focus on ‘limiting’ the person, position and period and preventing an open-ended back-door entry to the profession by shifting the party who may apply for a ‘limited authority to teach’ **from** the individual only, **to** the individual **and** the potential employer jointly. [see para 41-47]
- *removal of 20 half-days entitlement to teach without a practising certificate or authorisation* – continuing to allow this anomaly is inconsistent with the objectives of raising the status of the profession; Clause 350(3) and (4) should be deleted. [see para 48-52]
- *partnership schools / kura hourua should only employ teachers who have a current practising certificate or authorisation* – the current anomaly should be removed as it results in no transparency of professional practice for the teaching profession and the public. Such an oversight is a fundamental challenge to the new professional body being able to be effective in achieving its purpose. [see para 53-56]

#### ***2.1.2 Matters likely to impede efficient operations***

- *removal of the specific requirement for “at least 10%” audit and moderation of practising certificates each year* – specifying a minimum percentage in the Bill is unusual, not supported by good audit practice, unhelpful for purposes of ensuring an effective audit function, and has the potential to require considerable new resourcing. The function should be stated as: “*to undertake audit and moderation of the assessment process of the issue of practising certificates*”. [see para 57-64]
- *the new professional body should not be required to act as an employment agency* – this proposed requirement is outside the proper role of a professional body for teachers and

is unworkable; the second part of the clause is unnecessary. Clause 373 should be deleted. [see para 65-67]

- *payment of fees should be up-front (as now) or be permitted over a period of time* – greater flexibility would be available to teachers if they could pay fees by instalment (for instance, annually, for a practising certificate issued for three years). Such a change requires an additional sub-clause at Clause 364(1)(b) to permit payment of fees over specified periods of time. [see para 68-71]

### **2.1.3 Drafting weaknesses**

- *consistency in recognising that the new professional body may develop criteria for practising certificates of different kinds* – the concept of ‘kinds of practising certificates’ is clearly contemplated in the Bill, which the Council supports. For consistency and clarity, Clause 382(1)(h)(ii) ‘Functions of the new governing body’ and Clause 361(2)(c) ‘Practising Certificates’ must be amended to refer to “practising certificates **of different kinds**”. [see para 72-76]
- **Proviso: newly qualified teachers** – registration should only be used where a person has demonstrated that they meet the requirements to be a professional teacher, which would be achieved by allowing a ‘provisional practising certificate’ ahead of registration. The Council does not support ‘provisional registration’.

The Bill does not yet satisfactorily address the implications of separating ‘Registration’ (Clause 353) and ‘Practising Certificates’ (Clause 361), and identifying the preferred arrangements, summarised above, will require further consideration. The Council would be pleased to work with the Ministry to develop a practical and positive way forward on this critical matter in good time in terms of the progress of the legislation. Resolution of this issue may also require consequential modification to other parts of the Bill. [see para 77-82]

## **2.2 Public assurance through the disciplinary processes of the professional body**

### **2.2.1 Matters inconsistent with stated purpose**

- *the new professional body should have the power on ‘its own motion’ to investigate a teacher for competence (as well as conduct) reasons* – an ‘on its own motion’ power of the new professional body to issues of teacher competence would better provide public assurance as to the quality of the teacher workforce and contribute to raising the status of the teaching profession. This improvement requires amendment to Clause 410 to insert an ‘own motion’ power relating to competence. [see para 84-87]
- *the new professional body should have the power to cancel a teacher’s registration for competence reasons* – the new governing body may take a range of actions in relation to competence, as now, including cancelling a teacher’s practising certificate – but it cannot cancel a teacher’s registration, which it can do in relation to matters of serious misconduct. A new sub-clause should be added to Clause 412 to enable the new

professional body to cancel a teacher's registration on grounds relating to competence. [see para 88-90]

- *the maximum level of fines the new professional body can impose for offences is inadequate* – it is critical for reinforcing the importance of the registration and disciplinary processes to providing public assurance and raising the status of the profession, and for practical considerations relating to criminal procedures, that the new governing body and its disciplinary bodies have the authority to impose maximum fines of at least \$7,500 for many, if not all, of the stated offences. [see para 91-94]
- *ensuring the legislative robustness of protections for vulnerable witnesses* - provisions allowing for special protection of certain witnesses should be contained in the principal Act. Protections such as that evidence about sexual abuse will be subject to a presumption of privacy, the names of children will not be published. [see para 95-96]
- *the new professional body should have the power to require teachers to undergo an assessment of their health to ensure they are fit and safe to be in front of a classroom* - particular powers should be incorporated into the Act to ensure the safety of children where there is an impairment issue, for example as applies in section 49 of the Health Practitioners Competence Assurance Act 2003. [see para 97-98]
- *the Complaints Assessment Committee should have the power to refer a matter to the Police* – the Professional Conduct Committee of Health Regulatory Authorities has this power under section 80 of the Health Practitioners Competence Assurance Act 2003. [see para 99-100]

### **2.2.2 Matters likely to impede efficient operations**

- *improving the test that matters 'may possibly constitute serious misconduct' for determining matters to be referred to the Disciplinary Tribunal before investigation* – by implication, referral to the Disciplinary Tribunal must occur before an investigation and the test itself (that a matter 'may possibly' be serious misconduct) casts too wide a net and will more significantly increase the workload of the Disciplinary Tribunal than anticipated. Clause 401(4) should be changed to replace the phrase 'may possibly' with reference to offences committed under Schedule 21, which is already proposed for granting registration (Clause 353(1)(e)) and limited authority to teach (Clause 366(4)(b)). [see para 101-107]
- *Disciplinary Tribunal must be given 'teeth' to respond to any breaches of its orders* – the Disciplinary Tribunal may make a range of 'suppression' orders aimed at achieving the fine balance between being appropriately open and transparent with the public, and protecting both the innocent parties and the principles of natural justice. To support the effectiveness of these orders, the Tribunal has the power to impose a fine for breaching any such orders. The current maximum fine of up to \$1,000 manifestly

understates the significance of such breaches. The maximum fine specified in Clause 407(2) should be increased to at least \$10,000. [see para 108-112]

- *failure to provide information requested in relation to complaints of conduct and competence should be an offence* – it should be an offence to fail to provide information as requested by the Complaints Assessment Committee (under Clause 400) and the new professional body (under Clause 411). A new offence should be added to Clause 407, with a penalty to a maximum of at least \$7,500 to reflect the importance of information to the disciplinary process, and therefore to public assurance and the status of the profession. [see para 113-114]
- *consistency required in the reporting of convictions of teachers to the new professional body by the Courts* – it is critical that the new professional body has timely access to full information about people who hold current practising certificates or limited authority to teach, which means that court Registrars should be required to report to the new professional body within a specified period (7 days) of a conviction. Further, for clarity, the legislation should be explicit that name suppression ordered by a Court does not override the requirement to report convictions. [see para 115-118]
- *ability to carry out interim actions before an investigation is concluded* – there are a number of situations in which it would be beneficial for public assurance and confidence, particularly where there are concerns about the safety of children and young people, for the Complaints Assessment Committee to have the power to reach a formal agreement with a teacher before an investigation is concluded and to annotate the register to that effect. These improvements would be achieved by inserting new sub-clauses at Clause 401 and Clause 359(3) allowing formal agreements with a teacher and annotation of the register following agreement – both before an investigation has concluded. [see para 119-123]

### **2.2.3 Drafting weaknesses**

- *clarifying actions that relate to misconduct that is not ‘serious misconduct’* – greater clarity would be achieved for the Committee in exercising its powers, and for the parties to the processes, by being explicit at Clause 401(2)(d) that the actions listed apply **“following a finding of misconduct that is not serious misconduct, by agreement with the teacher and the person who made the complaint or report”** with the Council recommending insertion of the highlighted words. [see para 124-126]
- *mandatory reporting required for teachers completing a fixed-term contract and from previous employers where there are unresolved competence or conduct issues* – mandatory reporting must apply to people concluding a fixed-term contract in the same way that it does in respect of teachers who are dismissed and who resign. Addressing this anomaly simply requires adding the phrase *“or finishes a fixed-term position”,* if, within the 12 months...” to Clause 392(2). Similarly, the ability to compel a previous employer to provide information on cases relating to conduct should be consistent with

cases relating to competence, by insertion of “*former employees*” at sub-clause 400(4). [see para 127-129]

- *Disciplinary Tribunal needs greater powers to deal with teachers referred to it for criminal convictions, including the power to suspend* - four of the ten powers available to the Disciplinary Tribunal under Clause 404(1), including the ability to suspend the teacher’s practising certificate (d) are currently proposed to be excluded in relation to people reported for convictions. Three of those powers relate to costs, which are unlikely to be a major issue in these cases. It is however, critical to the purpose of the new professional body that the Tribunal has the power to suspend teachers that are referred to it for convictions. This exclusion must be removed. [see para 130-131]
- *the Complaints Assessment Committee should have the ability to exercise more than one of its powers concurrently* - clause 401 should be amended to make it clear that the Complaints Assessment Committee can do “*one or more of the following ...*”, thus allowing for example a referral to competence and referral to the Disciplinary Tribunal. [see para 132-133]

## INTRODUCTION AND APPROACH

7. In the introduction of the Bill to Parliament on 13 March 2014, the Minister of Education stated: *“Teaching needs a strong professional body that provides leadership to, and is owned by the profession. As an independent statutory body, EDUCANZ will use its skills, expertise and authority to provide important leadership and regulation for the teaching profession”*. [New Zealand Government (2014) New legislation to strengthen the education sector [Press release] Retrieved from <http://www.beehive.govt.nz/release/new-legislation-strengthen-education-sector>]
8. In this statement, the Minister identifies two central functions for the professional body: **leadership**; and **regulation** for the teaching profession.
9. The Bill signals a change in organisational form for the current Council, from an autonomous Crown entity to an independent statutory body that “will be owned by the profession.” [New Zealand Parliamentary Debates, 13 March 2014, Vol 697, Pg 16684.]
10. The Minister signalled this change in organisational form in her discussion document, *A 21<sup>st</sup> Century Body for the Education Profession*, in which she stated that the professional body needs to *“reflect the best in teaching quality and leadership and is fully owned by its members”* (Discussion Document, p.10, 2013).
11. In that context, we have presented this submission in two broad sections:

### **Section 1: Governance**

- *Governance* – the form and functions of the professional body, and the effect of the name of the new body;

### **Section 2: Regulation of the Profession**

- 2.1 *Public assurance and confidence in the teaching workforce – the people who are authorised to teach* – composition of the teaching workforce, forms of regulation of the teaching profession and assessment against agreed professional standards;
- 2.2 *Public assurance through the disciplinary processes of the professional body* – allowing the Disciplinary Tribunal hearings to be public, ensuring suitable powers for the conduct and competence processes, ensuring appropriate penalties for offences, enabling suitable reporting of conduct and competence issues.

## SECTION 1: GOVERNANCE

12. The professional body needs to “*reflect the best in teaching quality and leadership and [be] fully owned by its members.*” (Discussion Document, p.10, 2013).
13. A number of factors influence the view that a profession has on its regulatory and professional body, and we have seen changes in that over recent years. The primary factors appear to be:
  - the performance and practices of the professional body, whatever the composition of its governing body or its legal form etc. – what it does and how it does it; and
  - the mechanical factors: legal form, composition of the new governing body – and its name.

### ***1.1 Establishing credibility in strengthening the status of the profession – through performance and practices***

14. Teachers in New Zealand have increasingly recognised the current Council as credible in fulfilling its functions and responsibilities. Actions of the current Council that appear to have had the most effect on the increasingly positive regard in which teachers are holding the Council today include:
  - improved communications and increased engagement of teachers and professional leaders with the Council;
  - ongoing improvements in the reliability, timeliness and transparency of the Council’s performance of its regulatory functions;
  - almost all early childhood services and schools are now using the *Registered Teacher Criteria* for teacher appraisal in the renewal of practising certificates, and there has been an overwhelming demand for the Council’s appraisal workshops, such that the Council has doubled its investment in this project in the last financial year;
  - the strong response from professional leaders to workshops providing professional support for leaders in understanding and being able to process issues of teacher competency to achieve satisfactory outcomes.
15. These changes are indirect and occurred under [1] a governance model under which individuals were elected, nominated or appointed to a governing body of eleven members and [2] an entity type (autonomous Crown entity) within the State sector. Further, these are changes that required lead time to achieve, yet have been critical to building trust and a sense of value within the profession for the Council, based on what it has delivered.

## **1.2 Establishing credibility in strengthening the profession – through structure and composition of the new governing body**

16. The Minister of Education emphasises that the new professional body must have ‘buy-in’ from the profession. Securing ‘buy-in’ takes time and is not simply a function of the will of a Minister or a particular organisational form.
17. The two factors that have had the greatest direct effect on the perception of the teaching profession to the regulation of its members are:
  - the perceived level of independence from the Government – the legal form; and
  - the composition of the new governing body – both the presence of members of the profession on the body and the means by which they are selected.
18. The Council recognises the tensions inherent in the relationship between these factors:
  - the greater the involvement of the profession in selecting the members, the more acute the Government’s need for other means of influencing the direction of the professional body and retaining its focus on protecting the public interest, suggesting an organisational form that is closer to government (for example the Council’s current status as an autonomous Crown entity required to have regard to Government policy); and
  - the further the body is from the Government’s direct influence, as currently outlined in the Bill, the more acute the Government’s need for influence through the one remaining lever available, the power to appoint the members of the new governing body.
19. In addressing these tensions, the Council welcomes the proposal to move from an autonomous Crown entity to an independent statutory body (Clause 379) as greater separation from government contributes to securing and maintaining ‘ownership’ of the body by the profession. That said, the proposed shift to an entirely appointed board (Clause 380), albeit one with a majority of members selected on the basis of open nominations, is unsatisfactory.
20. In the Council’s view if the Minister wishes to ensure that the new body is “fully owned by the profession”, a number of changes are required to the proposed process for determining the composition of the new governing body:
  - the legislation must be explicit that the majority of the members of the new governing body must be registered teachers. The interaction between sub-clauses (2) and (3) of Schedule 22 Clause 1(2) leaves uncertainty on this point. Sub-clause (2) states that a **maximum** of five members (not ‘at least’ five members) must be registered teachers. Further, as drafted, the Minister must appoint at least five members of the new body from nominations received, but there is no stipulation that nominations be limited to registered teachers. The current drafting of the legislation therefore does not guarantee that the majority of the new governing body would be registered teachers and should be amended to make that requirement explicit.

The Council supports the requirement that the majority of members on the Disciplinary Tribunal and every panel of the Tribunal must be registered teachers (Clause 398(4)). Recognition of the importance of involving a majority of registered teachers for disciplinary matters must surely be mirrored in terms of providing leadership to the profession, the core purpose of the new governing body;

- at least three members of the new governing body should be elected by the profession. The Council recognises the appropriateness of the Government having a primary role in appointing the members of the new governing body, it nonetheless remains critical for the profession's 'ownership' of the body that it has a direct role in determining some of its members. Retaining the profession's ability to elect some members of the new governing body is consistent with the situation for the various health professions, such as general practitioners and nurses. It is noteworthy that members of professions with a less direct link to government interests, such as lawyers and accountants, elect all members of the respective governing bodies;
- the maximum of five members of the new governing body who are registered teachers should represent a diverse range of teaching experiences and perspectives, though not on a 'representative' basis – the Minister is able to achieve this balance alongside the election of three members, under sub-clause (5)(a) as currently drafted;
- lay members of the new governing body must have a commitment to advancing excellent and effective teaching practice and sustaining public confidence in the teaching profession, irrespective of their current level of knowledge of education, and be knowledgeable of what the public expects from teachers and the profession as a whole, at a 'big-picture' level. The Council considers that sub-clause (5)(b) should be amended accordingly.

21. As an aside, the Council supports the Minister continuing to appoint the Chair of the new governing body, as now. [Clause 380(2)]

### ***1.3 Functions of the professional body***

22. The Bill introduces an unnecessary and easily avoided confusion in the proposed functions of the new professional body.

23. As noted above, Clause 377 states the purpose of the new body, and sets out that the purpose is to be achieved "*through raising the status of the profession*". The Council supports this as a statement of purpose, as it properly represents enhancing the status of the profession as an overall objective, and as a result of the way in which it engages with members of the profession and demonstrates the expertise necessary to earn the trust of the profession.

24. The second function proposed at Clause 382(1)(b) is "*to enhance the status of teachers and education leaders*". What is the new body to do, what actions is it to take, how should it approach what it does, that is different from the remaining 14 specific functions, all of which are focused on the purpose of the body? The Council struggles to understand enhancing the

status of the profession as a ‘function’ and considers that retaining the ‘function’ will create uncertainty for the new body.

25. In the Council’s view the focus within the purpose of the body on enhancing the status of the profession should be retained, and the second ‘function’, should be deleted.

#### **1.4 Advisory Boards**

26. The Council welcomes the inclusion of Clause 386, which makes a general provision for the new governing body to establish advisory boards.
27. The Council cautions however, against the dis-establishment of the two current advisory boards (currently referred to as groups) established under statute (section 139AH of the Education Act 1989). Although the new governing body would have the general power to establish these two groups, and others, this change would remove statutory protection for the two important parts of the wider teaching profession involved.
28. Removing the statutory requirement for the professional body to establish and support the operation of an advisory group on Māori-medium education unnecessarily creates a risk that Māori-medium education may be swamped by English-medium educational issues, which could result in a failure by the professional body to realise and maintain strong, sound understanding of the unique character and cultural values of Māori-medium education.
29. In a similar way, issues of early childhood education may be at risk of being overwhelmed by issues relating to the larger schooling sector. The unique character and values of early childhood education also need to be appropriately protected.

#### **1.5 Name of the professional body**

30. The purpose of the new professional body is stated in Clause 377 of the Bill as follows:

*“The purpose of the Education Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.”*

31. Although it is proposed that the new professional body is called the ‘Education Council’, the focus of the Bill is clearly on **teachers** and **teaching**: its primary role will be to govern the professional body **for teachers**. This focus is affirmed by the functions required of the new governing body (Clause 382(1)). Twelve of the 15 specific functions proposed refer to ‘**teachers**’ and/or ‘**teaching**’, with a focus on providing leadership to and regulation of the **teaching** profession.
32. Clause 383(1) of the Bill outlines the mechanism by which the new body will be funded. The great bulk of income (as now for the Council) will be from the fees gathered for the registration and authorisation of teachers. In other words, **teachers will be the primary**

**source of funding of their own professional body** – as it should be for a professional body that is ‘owned by the profession’.

33. The right thing to do is then to name the body after the profession that owns it and pays for it.
34. In the Council’s view the name of this new professional body should be:

***Teachers’ Council of Aotearoa New Zealand.***

## SECTION 2: REGULATION OF THE PROFESSION

35. The education system is complex, with the various participants in the system, such as initial teacher education providers, professional leaders in early childhood services and schools, the Education Review Office and so on, who have a major impact on the quality of teaching and learning. Considerable care must therefore be taken in determining the expectations and accountability of the professional leadership body for teachers.
36. The Council presents the following comments on elements of the Bill that address two broad areas relating to public assurance (and consequently raising the status of the profession and the quality of teaching) – public assurance and confidence:
- 2.1 the teaching workforce – the people who are authorised to teach; and
  - 2.2 disciplinary processes to be applied to members of the teaching workforce.
37. The Council also draws distinctions between matters that are:
- inconsistent with the stated purpose of the new professional body and the general focus of the proposed changes;
  - likely to impede the efficient operation of the registration and disciplinary processes matters – by introducing (or by not resolving current) implementation anomalies and difficulties; and
  - drafting weaknesses.
38. The Council also sets out proposals to address the matters that it has raised, with the exception of one matter for which it indicates that further work is required to determine the optimal resolution to the matter.

### ***2.1 Public assurance and confidence in the teaching workforce – the people who are authorised to teach***

#### ***General Comments***

39. Since the 1990s, the Government has accepted that it is appropriate for there to be statutory regulation of teachers and the teaching profession as part of protecting the public interest. The Government (and the public) must be able to have confidence that all members of the profession (and indeed all people who ‘teach’ our children in schools and early childhood services) are fit to be teachers and are competent to teach.

#### ***Registration and the issuing of practising certificates***

40. The Council strongly supports the separation of ‘registration’ from ‘practising certificates’.

### 2.1.1 Matters inconsistent with the stated purpose of the new professional body

#### *Inconsistency with the stated purpose: Limited authority to teach*

41. The Council is disappointed that, despite its stated focus on raising the status of the profession, the Bill does not take the opportunity to strengthen and protect against the risk of a back-door entry to the profession.
42. From the perspective of members of the profession who are trained, qualified and registered as a teacher and who hold a current practising certificate, any situations in which individuals who are not similarly recognised is a challenge to the concept of what constitutes a ‘teacher’ and to the professionalism of teaching – and is inconsistent with the Minister’s espoused objectives that underpin the direction of the changes set out in the Bill. There is a strong argument therefore, that a new professional leadership body for teachers focused on lifting the professionalism and status of the teaching profession should not have any role at all in relation to people who are not formally recognised as ‘teachers’.
43. From a learner perspective however, allowing a form of ‘authorisation’ (based on different criteria or standards) for individuals who are ‘fit for purpose’, recognises:
  - the practical realities that some schools face in securing suitably qualified teachers for all positions at all times;
  - supports greater flexibility especially for covering short-term reliever and teacher release needs; and
  - provides controlled means for allowing a wider range of specialist expertise to be available to enrich learning opportunities where that is required for particular learners.
44. The current legislation and the Bill provide for a ‘limited authority to teach’ [see section 130B and Clause 366 respectively]. Careful management of the tension between registration and such authority is critical.
45. The current legislation provides for an authority to teach that is ‘limited’ to a person, a position and a period – an individual who is to fill a particular position in a particular school (where there is an established need), for a specified period. The Council’s current practice has been to require a process of joint responsibility under which the applicant for a limited authority to teach and the potential employer are both required to provide evidence to support the application. This practice has avoided the risk that limited authority to teach becomes an open-ended ‘back-door entry’ to the teaching profession.
46. In the Council’s view, reflecting this practice in legislation by shifting the party who may apply for a ‘limited authority to teach’ **from** the individual only, **to** the individual **and** the potential employer would strengthen the Bill. The current criteria would continue to apply, and the statutory requirement for the involvement of the employer would provide additional explicit protection of teachers, with the flow-on effect of raising the status of the profession and quality of teaching.

47. Therefore, the Council recommends that Clause 366(1) be amended **from:** “Any person may...” **to:** “Any person and employer or professional leader may jointly apply ... for a limited authority to teach.”

***Inconsistency with the stated purpose: 20 Half days of unauthorised teaching***

48. The Council sees little justification for continuing to enable a person to be employed in a teaching position for 20 half-days in a calendar year (see Clause 350(4)), which perpetuates a current provision (section 120B). Indeed, in the Council’s view, allowing this anomaly to continue is inconsistent with the objectives of raising the status of the profession.
49. At the outset, provision for up to 20 half-days or ‘unregistered teaching’ was instituted to cover situations where people have allowed their registration (and practising certificates) to expire. Under its general powers however, the Council (and new governing body) is able to develop policy to allow for extensions to a practising certificate under exceptional circumstances, where the impending expiry of a practising certificate is the issue.
50. In practice, the 20 half-days’ provision appears to often have been used by employers in relation to individuals with no connection to the profession.
51. There is no evidence of any other equivalent regulated profession having a provision that allows lay people (whatever their apparent expertise) to hold themselves out, for instance, as a lawyer or an accountant, or to hold a position of social worker, at all, far less for a period that amounts to five percent of the school year.
52. In the Council’s view, Clause 350(3) and (4) should be deleted.

***Inconsistency with the stated purpose: Partnership schools / Kura hourua***

53. As noted earlier, the purpose of the new governing body is to:
- “ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.”* (Clause 377)
54. The Bill outlines the responsibilities and accountabilities of employers, teachers and professional leaders against agreed professional standards. This structure goes a long way in providing public assurance as to the quality of “leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings”.
55. The Bill remains silent on the professional requirements and standards required of teachers in partnership schools, and there are no professional accountabilities from those schools to the new governing body for the people employed in these settings.
56. In the Council’s view, individuals employed in teaching positions in partnership schools/kura hourua should have a current practising certificate or be authorised. To allow this anomaly to continue means that the public, potential and current parents and caregivers, and the students themselves, have no assurance about the quality of the ‘teachers’ and there is no

transparency of professional practice for the teaching profession and the public. Such an oversight is a fundamental challenge to the new professional body being able to be effective in achieving its purpose.

### **2.1.2 Matters likely to impede efficient operations**

#### ***Likely to impede efficient operations: 10 percent Audit of practising certificates each year***

57. The sheer size of the teaching profession and the locally led and managed character of our education system means that there must be a high-trust philosophy in assessing the ongoing competence of teachers, with the primary responsibility properly resting with professional leaders in early childhood services and schools. Under the current system, the professional body must rely on the assessment of others, which is largely successful though nonetheless creates some uncertainty.
58. Clause 382(1)(i) proposes that the new governing body undertakes the “*audit and moderation of the assessment process for the issue of at least 10% of practising certificates each year*”.
59. The Council supports the concept behind this proposal: that the new governing body be able to ‘audit’ or otherwise review the practice (performance) of professional leaders in undertaking assessments required to renew practising certificates – to address the uncertainty noted above.
60. As a matter of principle however, the Council considers it unhelpful (and unusual) that a statutory function be drafted in such a prescriptive way.
61. Administratively, the specific nature of the ‘function’ (requirement) creates uncertainty – 10 percent of what: total practising certificates renewed each year (or in a particular area, or school or assessed by a particular professional leader); or of total practising certificates held; or something in between ?
62. More importantly however, such a requirement would demand considerable resourcing, creating a significant new cost for teachers collectively to meet through their fees, and risks creating a large central bureaucratic operation – all with uncertain (even doubtful) benefits for the status of the profession or the quality of teaching.
63. Rather than specifying a minimum percentage (and therefore the timeframe for achieving it) in the Bill, the function should simply be stated as: “*to undertake audit and moderation of the assessment process of the issue of practising certificates*”.
64. The new governing body would still be required to develop and implement an appropriate audit and moderation process that provides assurance that professional leaders make sound judgements against the standards. Importantly though, the proposed change would allow the body the flexibility to develop and maintain an optimal framework and model for implementing this function.

***Likely to impede efficient operations: Introduction of an employment function***

65. In the Council's view, the first part of Clause 373 is unworkable and the second part unnecessary – the clause should be deleted.
66. This provision is asking the professional body to assume an employment function for the management of early childhood centres in relation to prospective employees. This employment function is clearly outside the proper role of the professional body for teachers.
67. In respect of the second part of the clause: if the individual already has teacher registration, the employer is able to check the register for the status of the teacher. If that is not the case, and the person may or may not be applying for a teaching position, the professional body would be no better able to gather any information on the individual than the prospective employer, which would require gaining the consent of the individual.

***Likely to impede efficient operations: Flexibility to pay fees by instalment***

68. In addition to the new governing body having the power to require fees prior to issuing registration and practising certificates, greater flexibility would be available to teachers if it could also have the power to receive payment of fees by instalment (for instance, annually, for a practising certificate issued for three years), without that hindering the currency of a teacher's practising certificate – that is, a fee does not have to be 'up-front'.
69. In the Council's view, receipt of payments consistent with a payment agreement, for instance by the due date each year, would constitute payment of the fee. An additional sub-clause would be required at Clause 364(1)(b) to permit payment of fees over specified periods of time.
70. The new governing body would be able to manage any situation in which an individual failed to comply with the payment agreement through the power under Clause 364(2) to refuse to register a person or issue a practising certificate until the appropriate fee is paid.
71. Consequential changes in the legislation or practice that would provide clarity about this arrangement include:
  - amendment to Clause 364 to be explicit that the Council has the power to withdraw a practising certificate for failure to make payments consistent with the agreement; and
  - as a matter of practice for the new governing body to determine, annotating the register to the effect that a payment arrangement was in place.

**2.1.3 Drafting Weaknesses**

***Drafting weakness: 'Kinds' of practising certificates***

72. The Council also supports the new professional body having flexibility to review and determine 'kinds' (categories) of 'practising certificates', as teachers may be employed in different scopes of practice or be at different stages of their career, including being newly graduated as a teacher.

73. This notion of different kinds of practising certificates is reflected in some clauses of the Bill and not in others. For instance, Clause 364(1)(b) allows for different fees and costs “*for practising certificates of different kinds*”.
74. The concept is sufficiently significant that the Bill should be reviewed systematically and propose changes to make sure that all relevant clauses use a phrase similar to ‘kinds of practising certificates’.
75. Two areas where the Council has identified that a change to the drafting must be made are perhaps the two most critical parts of the Bill in relation to this point:
- Clause 382(1)(h)(ii) Functions of the new governing body – it is critical that the general function relating to practising certificates allows for (indeed establishes) the concept of kinds of practising certificates; and
  - Clause 361(2)(c) Practising Certificates – being explicit about the concept of different kinds of practising certificates in this clause is critical for recognising differences relating, in particular to newly graduated teachers. The required amendment is again straightforward [see para 76].
76. In the Council’s view, both of these clauses must be amended with the following highlighted words so that they each refer to “*practising certificates of different kinds*”.

***Proviso: Accommodating ‘newly qualified teachers’***

77. The Council’s submission relating to the need for consistent use of the concept of ‘kinds of practising certificates’ (above) stands for general purposes. The area where this concept is most sharply in focus is in relation to newly qualified teachers and the relationship between the now separated registration (Clause 353) and issuing of practising certificates (Clause 361), as proposed in the Bill, which the Council supports.
78. Under the clauses noted above, the new professional body **must** grant registration and **must** issue a practising certificate to applicants who, amongst other things, meet the respective criteria, to be set by the new governing body (Clause 382). Enabling the new governing body to set criteria for different kinds of practising certificates means that it can establish criteria appropriate for a newly qualified teacher before they are able to meet the standards required of a fully professional teacher. Thus, the new governing would be able to establish a ‘provisional’ practising certificate.
79. There is however, uncertainty as to whether the new governing body is able to issue a practising certificate to a newly qualified person who is not yet registered – because they are not yet able to demonstrate the requirements for full membership of the profession, which is achieved through registration. That is, in terms of the drafting of the Bill, whether ‘must issue’ has the same meaning as ‘may only issue’.
80. In the Council’s view, registration should only be used where a person has demonstrated that they meet the requirements to be a professional teacher – consistent with raising the status of teachers, and with other professions. Enabling a person to be registered before that

requires the new governing body to lower the standards for registration, which is unacceptable. The Council's preferred approach is therefore to allow a 'provisional practising certificate' ahead of registration, with the newly qualified teacher then having a maximum period in which they are able to demonstrate that they meet the requirements to be a member of the profession and be registered as a teacher. At that time, a new practising certificate would also be issued that was no longer 'provisional'. The Council does not support establishing 'provisional registration'.

81. The Council is concerned that the Bill does not yet satisfactorily address this critical effect of the separation and that identifying the preferred arrangements will require further consideration. The Council would be pleased to work with the Ministry to develop a practical and positive way forward on this critical matter in good time in terms of the progress of the legislation.
82. Resolution of this issue may require consequential modification to other parts of the Bill.

## **2.2 Public assurance through the disciplinary processes of the professional body**

83. It is important that children and young people are taught by teachers who are professional and competent. The number of complaints and reports is small in comparison to the number of registered teachers in New Zealand, however, it is important that these cases are thoroughly investigated and resolved in a timely way. It is also important that the sector and the public can be assured about the rigour, quality and timeliness of decisions reached when complaints against teachers are made.

### **2.2.1 Matters inconsistent with the stated purpose of the new professional body**

#### ***Inconsistency with the stated purpose: Power to investigate competence issues 'on its own motion'***

84. Clause 400(2) grants the new professional body the ability to refer a matter relating to teacher **conduct** to the Complaints Assessment Committee 'on its own motion'. As now, there is no comparable power in relation to teacher **competence**.
85. In the Council's view, granting a similar power to the new professional body to investigate an issue of teacher competence on 'its own motion' would further strengthen its capacity to deal with cases of teachers not attaining the required level of teaching competence – and therefore to better provide public assurance as to the quality of the teacher workforce and contribute to raising the status of the teaching profession. Such a power would also be consistent with other professions and professional bodies.
86. For instance, under the Health Practitioners Competence Assurance Act 2003, the responsible authority has a general power to review the competence of a practitioner holding a current practising certificate on its own motion, in order to consider whether the person meets the required standard of competence.
87. The Council therefore recommends the insertion of an 'own motion' power to Clause 410 relating to competence.

***Inconsistency with the stated purpose: Cancelling registration on competence grounds***

88. The new professional body should be able to cancel a teacher's registration on grounds relating to competence – where a teacher is unable to demonstrate that they have attained (or retained) the required level of competence to be registered as a teacher.
89. Under Clause 412, the new governing body may take a range of actions in relation to competence, as now, including cancelling a teacher's practising certificate – but it cannot cancel a teacher's registration. This action is not included in the list of powers, as it is (at Clause 404(1)(g)) in relation to matters of serious misconduct. The Bill, which perpetuates the current situation, is inadequate and now incongruous given the stated purpose of the new professional body.
90. In the Council's view therefore, a new sub-clause should be added to Clause 412 to enable the new professional body to cancel a teacher's registration on grounds relating to competence.

***Inconsistency with the stated purpose: Inadequate level of penalties for offences***

91. The Bill significantly increases, to \$25,000, the penalty for an employer failing to make a mandatory report on a matter of teacher conduct (see Clause 396), which the Council supports. The Council is disappointed however, that the Bill has not made any changes to the maximum fines for any other offences under the Bill, and that the comparable maximum fine for matters relating to competence remains at \$5,000. Many of the offences under the Bill (and currently) directly relate to the status of the profession, and the purpose of the new professional body for teachers and overall objective stated by the Minister.
92. Of the 14 specified offences under the two offences clauses in the Bill (Clauses 374 and 407), one only has a maximum fine of \$5,000 (the highest), and one has a maximum fine of only \$500. The majority of the offences are subject to a maximum fine of \$2,000. In isolation, these offences may, to some people, seem administrative in nature. Yet, these offences, which include misrepresenting qualifications, teaching when not registered or authorised and so on, have significant potential implications for the status of the profession, the quality of teaching and the safety of students. The current fine levels do not provide meaningful responses to situations where there is intent to misrepresent or mislead.
93. Section 25(3) of the Criminal Procedure Act 2011 provides for a one year time limit for filing charges, if the maximum penalty is a fine exceeding \$7,500. If the fine is less than that, the limit on filing charges is six months. The longer time limit may be critical if there is a justifiable delay in a matter being investigated by the new governing body or one of its disciplinary bodies.
94. In the Council's view, it is critical for both reasons set out above – the importance of the registration and disciplinary processes to providing public assurance and raising the status of the profession, and practical matters relating to criminal procedures – that the new governing body and its disciplinary bodies have the authority to impose maximum fines of at least \$7,500 for many, if not all, of the stated offences.

### ***Protecting vulnerable witnesses***

95. Giving evidence is very traumatic for children. It is submitted that the provisions of section 105 of the Evidence Act 2006 and section 103(3) of that Act, which allow for the giving of evidence in alternative ways, such as behind a screen or by video link, should be incorporated into the new legislation so there are very clear protections in place for child witnesses.
96. It is the Council's view that a presumption in favour of children being able to give evidence in certain ways would avoid opposition from the defence and allow vulnerable witnesses, particularly very young children and their families, the certainty of knowledge of how a hearing will be conducted.

### ***Increasing the power to deal with potential impairment of teachers***

97. Under the proposed legislation, neither the new professional body nor its disciplinary bodies can require a teacher to undergo an assessment of their health to ensure he or she is fit and safe in a teaching role.
98. It is the Council's view that particular powers should be incorporated into the Act to ensure the safety of children where there is an impairment issue, for example as applies in section 49 of the Health Practitioners Competence Assurance Act 2003.

### ***Provide the power for the Complaints Assessment Committee to refer a matter to the Police***

99. The legislation does not provide for particular information-sharing powers, such as for the Complaints Assessment Committee to refer a matter to the Police as exists under section 80 of the Health Practitioners Competence Assurance Act 2003, (which relates to the powers of the Professional Conduct Committee of health regulatory authorities).
100. It is the Council's view that the Complaints Assessment Committee should be given such power.

## **2.2.2 Matters that are likely to impede the efficient operation of disciplinary processes**

### ***Likely to impede efficient operations: Matters that 'may possibly constitute serious misconduct'***

101. Clause 401(4) requires that *"The Complaints Assessment Committee must refer to the Disciplinary Tribunal any matter that the Committee considers **may possibly constitute serious misconduct**"*.
102. Other than frivolous or vexatious matters, most matters that come before the Complaints Assessment Committee 'may possibly' *"adversely affect the well-being or learning of at least one student"*, are likely to *"reflect adversely on the teacher's fitness to be a teacher"*, and are likely to *"bring the teaching profession in disrepute"* These are the tests set out in the definition of 'serious misconduct' (Clause 378(1)) – and 'may possibly' is the test, under the new provision introduced in the Bill (see above), by which the Complaints Assessment Committee must refer matters to the Disciplinary Tribunal.

103. The Council has two concerns with this new provision: that, by implication, referral to the Disciplinary Tribunal ‘must’ occur before an investigation (which the Council nonetheless supports in ‘obvious’ situations); and that the test to be applied (that a matter ‘may possibly’ be serious misconduct) casts too wide a net.
104. This new requirement, as currently drafted, will significantly increase the workload of the Disciplinary Tribunal with a much narrower gain in relation to protecting the safety of students or raising the status of the profession.
105. In the Council’s view, the restriction on granting registration (Clause 353(1)(e)) and limited authority to teach (Clause 366(4)(b)) – that the person “*has not been convicted of a specified offence listed in Schedule 21*” – addresses the intention of this new requirement. Reference to the offences usefully focuses application of the “*may possibly*” test. In the Council’s view the current wording is simply too broad and fails to allow any consideration of context.
106. The Council recommends that Clause 401(4) be changed to replace the phrase ‘may possibly’ with reference to offences committed under Schedule 21.
107. It is important to note that, in the Council’s view, the second sub-clause in the definition of ‘serious misconduct: “*and (b) that is of a character or severity that meets the ... criteria for reporting serious misconduct*” is insufficient for preventing a significant increase in the number of cases that would be referred to the Disciplinary Tribunal before an investigation and finding by the Complaints Assessment Committee. The specific criteria for reporting serious misconduct, developed by the new governing body (as now) would cast a wide net that may be confirmed as serious misconduct in a finding following a full investigation. It is important to recognise and accept however, that following the conduct of a full investigation the disciplinary body may reach a different finding.

***Likely to impede efficient operations: Breaches of Disciplinary Tribunal orders***

108. The Council supports the proposed change to the default position for the conduct of hearings: that Disciplinary Tribunal hearings are open to the public (Clause 405(3)), with the proviso that suitable and meaningful arrangements are in place to protect children, young people and vulnerable witnesses involved in or affected by the disciplinary cases. These arrangements (also set out at Clause 405) require a fine balance between being appropriately open and transparent with the public, protecting the innocent parties and ensuring that the principles of natural justice are protected, as required under Clause 353.
109. In order to maintain processes focused on achieving this careful balance, the Disciplinary Tribunal may make a range of ‘suppression’ orders (Clause 405(6)). To support the effectiveness of these orders, the Tribunal has the power to impose a fine for breaching any such orders – with a maximum penalty however, of only \$1,000 (Clause 407(2)). In contrast, the Health Practitioners Tribunal may impose a fine to a maximum of \$10,000 for any breach of an order that it has made.
110. Fines of up to \$1,000 for breaches of orders made by the Disciplinary Tribunal for registered teachers manifestly understates the significance of the such breaches. This level of fine is a

token gesture only, does not respect the importance of the orders and, at such low levels, is unlikely to inhibit breaches, especially in high-profile cases. The necessary balance described above will not be achieved.

111. In the Council's view, to be able to rigorously investigate allegations of serious misconduct by teachers, the Disciplinary Tribunal must be able to assure parents that the likelihood of re-traumatising their children, who provide crucial evidence in such investigations, is minimised by appropriate protections from the media spotlight. At a minimum, any breach of an order by the Disciplinary Tribunal should provide the same level of protection as that set for the Health Practitioners Tribunal.
112. The maximum fine specified in Clause 407(2) should be increased to at least \$10,000.

***Likely to impede efficient operations: Failure to provide information – an offence***

113. Clauses 400 and 411 include requirements on employers (and previous employers) to provide information to the new professional body in relation to complaints about teacher conduct and competence, respectively. Failure to comply with these legislative requirements, which are critical to the disciplinary bodies having access to the information necessary to properly consider a matter, requires some enforcement support.
114. In other words, in the Council's view, it should be an offence to not provide information as requested by the Complaints Assessment Committee (under Clause 400) and the new professional body (under Clause 411). The amendment would be achieved through an addition to Clause 407 – and the penalty for the offence should, as discussed above, be a maximum of at least \$7,500 to reflect the importance of information to the disciplinary process, and therefore to public assurance and the status of the profession.

***Likely to impede efficient operations: reporting of convictions by the Courts***

115. There is currently no consistency in the practices used by the Courts for reporting convictions. There is little agreement between the Courts on the timing of reporting convictions. Some do not report convictions until after sentencing. Further, some Courts use name suppression orders as a reason for not reporting convictions.
116. The effect of this inconsistency in reporting practice is that the Council and new professional body are impeded from having timely access to full information about people who hold current practising certificates or limited authority to teach.
117. In the Council's view, these issues would be resolved by adding the following highlighted elements to sub-clause 397(3) – that:
  - Court Registrars must report to the new professional body **within 7 days of a conviction**, with the existing proviso remaining in place – this element should result in all courts reporting in the same timeframe; and
  - a name suppression order made by a Court does not of itself override the requirement to report convictions.

118. It could be argued that it is unnecessary for details such as these to be included in the legislation, assuming that there was general understanding about the importance of timely reporting. In the Council's view however, an explicit statutory requirement would assist the smooth operation of this part of the system and better enable the new professional body to maintain an accurate current register of teacher details.

***Likely to impede efficient operations: Ability to carry out interim actions – before an investigation; and to annotate the register***

119. Under sub-clause 401(2)(d), "*following an investigation*" the Complaints Assessment Committee is able to reach an agreement with a teacher to take a range of actions, including censure the teacher, impose conditions on the practising certificate and so on.

120. There are a number of situations however, in which it would be beneficial for public assurance and confidence for the Committee to have the power to reach an agreement with a teacher **before** an investigation is concluded. Such agreements are currently reached in practice. These agreements are however, informal. Having the power to reach formal agreements at the outset, or at any time before an investigation involving misconduct is completed, would strengthen the disciplinary process.

121. The current ability under sub-clause 401(3) to refer a matter to the Disciplinary Tribunal to seek an order for interim suspension requires the time and cost of preparing a case that the Tribunal must then hear and consider. Establishing an explicit power for the Committee and teacher to agree that the teacher will not teach while the misconduct investigation is underway, would contribute to a timely and fair investigation, and provide immediate assurance to the public where there may be concern about safety of children and young people.

122. Clause 359 gives the new governing body the power to annotate the register **following** an interim suspension, or an action by a disciplinary body (the Complaints Assessment Committee or Disciplinary Tribunal). With the new legislative power for such an agreement to occur, as proposed above, the new professional body must also have the power to annotate the register to the effect that an agreement with the teacher has been reached, before the Committee's investigation has concluded (or before an investigation has commenced).,

123. The Council recommends that:

- A new sub-clause be inserted at Clause 401 to enable the Complaints Assessment Committee to enter a formal agreement with a teacher **before** an investigation is concluded; and
- a new (third) provision be inserted at Clause 359(3) – to enable the new professional body to annotate the register *following* agreement between a disciplinary body and the teacher before an investigation has concluded.

### 2.2.3 Drafting weaknesses

#### ***Drafting weakness: Misconduct that is not ‘serious misconduct’***

124. There are a number of circumstances in which the Complaints Assessment Committee investigation process may lead to a finding that is not ‘serious misconduct’. Situations where no case is found, or where the finding relates to competence or impairment are identified, with provision made for no further action or referral to other processes.
125. Greater clarity would be achieved for the Committee in exercising its powers, and for the parties to the processes, by being explicit that the options identified in Clause 401(2)(d) relate to situations in which the finding is one of misconduct that is not serious misconduct.
126. The Council recommends the insertion of the following highlighted phrase at the beginning of Clause 401(2)(d):

*“following a finding of misconduct that is not serious misconduct, by agreement with the teacher and the person who made the complaint or report”*

#### ***Drafting weakness: Inconsistency in mandatory requirements – where fixed-term contracts expire; and there is a change in employer***

127. Mandatory reporting by employers to the new professional body is required in respect of all teachers who are dismissed and for all teachers who resign from their positions if, in the 12 months preceding the dismissal or resignation, the employer had raised issues of conduct or competence (see Clause 392). If the employer raised issues of competence or conduct and the teacher neither resigns nor is dismissed but simply finishes due to the expiry of a fixed-term contract, there is no explicit reporting requirement. This situation is clearly an anomaly in the legislation, perpetuating a weakness in the current legislation.
128. In the Council’s view, this drafting oversight would be addressed simply by adding the phrase “or finishes a fixed-term position, if, within the 12 months...” to Clause 392(2).
129. The Bill, as drafted, attempts to ensure that the Complaints Assessment Committee and the new governing body have the ability to compel an employer to provide information on conduct and competence cases (Clause 400 and 411 respectively). In the Council’s view however, there are two further drafting weaknesses with these sections:
- a. Clause 400(4) should include former employers – consistent with Clause 411(1); and
  - b. Sub-clause 400(4) refers to sub-section (2), when it should refer to sub-section (3).

#### ***Drafting weakness: Disciplinary Tribunal power to suspend for convictions***

130. The Disciplinary Tribunal has limited powers in relation to teachers who are referred to it under the mandatory reporting of convictions (Clause 397). Clause 404(2) specifically removes four of the ten powers available to the Tribunal under Clause 404(1), including the ability to suspend the teacher’s practising certificate (d). The other powers excluded tend to relate to costs which are unlikely to be a major issue in these cases.

131. In the Council’s view however, it is critical to the purpose of the new professional body that the Tribunal has the power to suspend teachers that are referred to it for convictions and presumes that this exclusion is a drafting error.

***Drafting weakness: the Complaints Assessment Committee should have the ability to exercise more than one of its powers concurrently***

132. Clause 401 allows the Complaints Assessment Committee to do “any of the following ...” In contrast, clause 404 allows the Disciplinary Tribunal to do “one or more of the following ...”.

133. In the Council’s view, clause 401 should be amended to make it clear that the Complaints Assessment Committee can do “one or more of the following ...”, thus allowing for example a referral to competence and referral to the Disciplinary Tribunal.