



## New Zealand Teachers Council (Conduct) Rules 2004

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

### Contents

1	Title	21	Referral to Disciplinary Tribunal
2	Commencement	22	Notice of charge of serious misconduct and notice of referral
	<b>Part 1</b>		
	<b>Preliminary provisions</b>		<b>Part 3</b>
3	Overview		<b>Disciplinary Tribunal</b>
4	Interpretation	23	Establishment of Disciplinary Tribunal
5	Presumption about how and when notices, etc, sent and received		<i>Hearings</i>
6	Confidentiality	24	Who conducts hearings
	<b>Part 2</b>	25	Disciplinary Tribunal regulates own procedure
	<b>Complaints Assessment Committee</b>	26	Procedural and administrative orders
7	Establishment of CAC	27	Power to amend charge or notice of referral
8	CAC to operate in panels	28	Parties
9	Assistance for CAC and delegation	29	Notice of hearing
10	Meetings of CAC	30	Parties may object to composition of Disciplinary Tribunal
11	Legal assessor	31	Hearings of Disciplinary Tribunal to be in private
	<i>CAC procedures</i>	32	Publication of proceedings
12	Referral to CAC	33	Orders varying rules 31 and 32
13	Notification to teacher of report or complaint about conduct	34	Application for revocation of order made under rule 33
14	Notification to current employer of report or complaint about teacher conduct	35	Special protections available if hearing held in public
15	Teacher may object to members of CAC panel	36	Orders of Disciplinary Tribunal
16	Preliminary investigation and preparation of summary		<i>Procedural matters</i>
17	Meetings of CAC panel	37	Evidence
18	Powers of the CAC following consideration	38	Powers of investigation
19	Further investigation	39	Service of Summons
20	Resolution by agreement		

	<i>Interim suspension</i>		<b>Schedule</b>
40	Application for interim suspension		<b>Additional rules about CAC and Disciplinary Tribunal</b>
41	Determination of application		
42	Notice of suspension		
43	Revocation of interim suspension		

## 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 centre

**competence assessor** means a competence assessor employed by the Teachers Council to act as a competence assessor under the New Zealand Teachers Council (Competence) Rules 2004

**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 one 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 X 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.

## **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) 4 members of the Teachers Council; and
  - (b) 3 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.

### **8 CAC to 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 panel of at least 3 CAC members, at least one of whom must be a member of the Teachers Council.
- (2) More than one CAC panel may operate at any one time.
- (3) Members of the CAC may be on more than one panel at a time.

- (4) A panel may perform and exercise, in relation to any matter referred to it, all the functions and powers of the CAC.
- (5) The convenor 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 subclause (1).
- (6) The convenor may serve on any panel.

### **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 a complaint or report referred to it under section 139AS,—
  - (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) in the case of a complaint of misconduct, resolve the complaint by agreement with the teacher and the person who made the complaint, which may include doing any of the following:
    - (i) censuring the teacher;
    - (ii) imposing conditions on the teacher's practising certificate or authority, such as (without limitation) requiring the teacher to undergo supervision or professional development;
    - (iii) suspending the teacher's practising certificate or authority for a specified period, or until specified conditions are met;
    - (iv) annotating 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) If the Complaints Assessment Committee is satisfied on reasonable grounds that a teacher has engaged in serious misconduct, the Committee must—
  - (a) refer the matter to the Disciplinary Tribunal for a hearing; and
  - (b) send a notice to the teacher concerned setting out the charge of serious misconduct against him or her.

**Section 139AV of the Education Act 1989: Investigation 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 investigation of a report of such a conviction, the Complaints Assessment Committee may, by agreement with the teacher, annotate the register or the list of authorised persons.
- (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.

**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 sub-clauses (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 2004, 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.

**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) 6 members of the Teachers Council; and
  - (b) 5 other people who are not members of the Teachers Council, at least one of whom must be a person who is not a teacher, an employer, or a member 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.
- (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.

#### *Hearings*

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

- (1) Every hearing of the Disciplinary Tribunal must be conducted by 5 members of the Disciplinary Tribunal.
- (2) Every hearing must be presided over by the chairperson of the Disciplinary Tribunal or an alternative chairperson.
- (3) At least 3 of the members conducting a hearing must be members of the Teachers Council.
- (4) 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.

#### **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 that evidence be given by video link or be taken at a time in advance of the hearing:
- (e) an order by consent of the parties.

## **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 Disciplinary Tribunal to be in private**

- (1) Every hearing of the Disciplinary Tribunal must be held in private, unless an order is made under rule 33(1)(a) that the hearing be in public.
- (2) On application by any person, or on its own motion, the Disciplinary Tribunal may allow any person to attend a private hearing if the Disciplinary Tribunal is satisfied that it is desirable that the person attend the hearing, having regard to the interests of any person and to the public interest.
- (3) The Disciplinary Tribunal must deliberate in private as to its decision on a matter and as to any question arising in the course of a hearing.

**32 Publication of proceedings**

- (1) Except as provided in subclause (2) or as ordered under rule 33(1)(b), (c), or (d),—
  - (a) no person may publish any report or account of a hearing; and
  - (b) no person may publish any part of any document, record, or other information produced at a hearing; and
  - (c) no person may publish the name, or any particulars of the affairs, of any party or witness at a hearing.
- (2) Subclause (1) does not apply to the Teachers Council.
- (3) If the Teachers Council publishes any information referred to in subclause (1), it must do so in a manner that preserves the anonymity of the parties and any witnesses, unless the Disciplinary Tribunal expressly orders otherwise.

**33 Orders varying rules 31 and 32**

- (1) Any person may apply to the Disciplinary Tribunal for any one or more of the following orders:
  - (a) an order that the whole or any part of a hearing be held in public;
  - (b) an order allowing the publication of any report or account of any part of a hearing by the Disciplinary Tribunal;
  - (c) an order allowing the publication of the whole or any part of any documents, records, or other information produced at a hearing;
  - (d) an order allowing the publication of the name, or any particulars of the affairs, of any party or witness at the hearing.
- (2) The Disciplinary Tribunal may make any of the orders referred to in subclause (1) if it is satisfied that it is desirable to do so, having regard to the interests of any person and to the public interest.
- (3) Every application to the Disciplinary Tribunal for an order under this rule must be heard in private, but the following persons are entitled to appear and be heard at the hearing on the application:
  - (a) the applicant for the order;
  - (b) the parties to the hearing;
  - (c) the initiator;

- (d) the teacher's current employer.
- (4) An order made under this section continues in force until such time as may be specified in the order or, if no time is specified, until revoked by the Disciplinary Tribunal.

### **34 Application for revocation of order made under rule 33**

- (1) Any person may at any time apply to the Disciplinary Tribunal for the revocation of an order made under rule 33.
- (2) Rule 33(3) and (4) applies to every hearing of an application to revoke an order made under rule 33.
- (3) The Disciplinary Tribunal may grant or refuse an application made under this rule as it thinks fit.

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

- (1) This section applies when a hearing is to be held in public, and a person who is giving oral evidence at the hearing is—
  - (a) a child or young person; or
  - (b) a person whose evidence, from the point of view of the person, is of a distressing or intimate nature.
- (2) Before beginning to give oral evidence, every person to whom this section applies must be advised of the special protections available under this rule.
- (3) If a person to whom this section applies asks for the following protection, the Disciplinary Tribunal must ensure that the only people who may be present while the person is giving evidence are the following:
  - (a) the members of the Disciplinary Tribunal;
  - (b) such administrative officers as the chairperson considers necessary;
  - (c) the parties and their representatives;
  - (d) the person giving evidence, and his or her support person;
  - (e) the teacher's support person, if any;
  - (f) any other person expressly authorised by the Disciplinary Tribunal to be present.
- (4) If a person to whom this section applies wishes to give evidence by way of video link, or to be screened while giving evidence from view of the teacher concerned, the Disciplinary Tribunal may, at its discretion, arrange for the video link or screen as requested.

**Section 139AW of the Education Act 1989: Powers of Disciplinary Tribunal**

- (1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:
  - (a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2);
  - (b) censure the teacher;
  - (c) impose conditions on the teacher's practising certificate or authority for a specified period;
  - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met;
  - (e) annotate the register or the list of authorised persons in a specified manner;
  - (f) impose a fine on the teacher not exceeding \$3,000;
  - (g) require the deregistration (as defined in section 129(6)) of the teacher;
  - (h) require any party to the hearing to pay costs to any other party;
  - (i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing.
- (2) Despite subsection (1), following a hearing that arises out of a report under section 139AP of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in paragraphs (d), (f), (h), or (i) of subsection (1).
- (3) A fine imposed on a teacher, and a sum ordered to be paid to the Teachers Council under subsection (1)(i), are recoverable as debts due to the Teachers Council.

**36 Orders of Disciplinary Tribunal**

- (1) Every order of the Disciplinary Tribunal must be in writing.
- (2) 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, but without details that might identify the parties or any witness (unless the Disciplinary Tribunal has ordered otherwise under rule 33).

- (3) 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.

*Procedural matters*

**Section 139AX of the Education Act 1989: Evidence at hearings**

- (1) The Disciplinary Tribunal may—
- (a) receive evidence on oath (and for that purpose an officer or employee of the Teachers Council may administer an oath); and
  - (b) permit a person appearing as a witness before it to give evidence by written statement, and verify that statement by oath.
- (2) A hearing before the Disciplinary Tribunal is a judicial proceeding for the purposes of section 109 of the Crimes Act 1961 (which relates to punishment for perjury).

**Section 139AY of the Education Act 1989: Powers of Disciplinary Tribunal in relation to witnesses**

- (1) The Disciplinary Tribunal may require a person to do either or both of the following:
- (a) attend and give evidence at a hearing of the Disciplinary Tribunal;
  - (b) produce any documents, records, or other information in his or her custody or control that relate to the subject matter of the hearing, whether specified by the Disciplinary Tribunal or not.
- (2) A requirement under subsection (1) must be in writing signed by the chairperson of the Disciplinary Tribunal.
- (3) A person required to attend a hearing is entitled to be paid, by the party calling the person (or, if called on the volition of the Disciplinary Tribunal itself, by the Teachers Council), witnesses' fees, allowances, and travelling expenses, according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly.

**Section 139AZ of the Education Act 1989: Offences relating to witnesses**

A person commits an offence, and is liable on summary conviction to a fine not exceeding \$500 who, without lawful justification, fails or refuses—

- (a) to attend and give evidence when required by the Disciplinary Tribunal; or
- (b) to answer truly and fully any question put to him or her by a member of the Disciplinary Tribunal; or
- (c) to produce any document, record, or other information as required by the Disciplinary Tribunal.

**Section 139AZA of the Education Act 1989: Privileges and immunities**

- (1) Every person who does any of the following has the same privileges as witnesses have in a court:
- (a) provides documents, things, or information to a disciplinary body;
  - (b) produces documents or things to a disciplinary body;

- (c) gives evidence to, or answers questions by, a disciplinary body.
- (2) Every counsel appearing before a disciplinary body has the same privileges and immunities as counsel in a court.
- (3) If a person is represented at a hearing before the Disciplinary Tribunal by a person other than a barrister or solicitor,—
  - (a) any communications between the person and the representative in relation to the hearing are as privileged as they would have been if the representative had been a barrister or solicitor; and
  - (b) the representative is a counsel for the purposes of subsection (2).

### **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 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.

**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) A person who is dissatisfied with all or any part of a decision by the Disciplinary Tribunal under section 139AU(2) or section 139AW, or by the Council under section 139AZC, may appeal to a District Court.
- (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.

**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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**Explanatory note**

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

These rules, which come into force on 1 September 2004, set out the procedures that the New Zealand Teachers Council must follow in dealing with reports and complaints about teacher conduct, including reports and complaints about possible serious misconduct and about convictions.

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