



New Zealand Teachers Council (Competence) Rules 2007

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

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Rules

1 Title

These rules are the New Zealand Teachers Council (Competence) Rules 2007.

2 Commencement

These rules come into force on 1 November 2007.

3 Application

These rules apply only to a report or complaint about competence made after the close of 31 October 2007.

Preliminary provisions

4 Overview

- (1) These rules deal with reports or complaints received by the Teachers Council that are about the competence of a specific teacher.
- (2) The Teachers Council only investigates matters to do with a teacher's competence if the matter cannot, or appears unlikely to be able to, be dealt with satisfactorily by the teacher's current employer.
- (3) Every report or complaint about competence is referred to a competence assessor for investigation.
- (4) The competence assessor assesses and, as far as possible, addresses any issues to do with the teacher's competence that arise from the report or complaint.
- (5) The competence assessor must use his or her best endeavours to reach agreement with the teacher on a recommendation, for inclusion in a report by the competence assessor to the Teachers Council, for the resolution or disposal of the matter.
- (6) The Teachers Council reviews the outcome of every report or complaint about competence, and may take the steps set out in section 139AZC(8) of the Act as a result.
- (7) This rule is by way of explanation only. If any other provision in the Act or rules conflicts with this rule, the other provision prevails.

- (8) Section 139AZC of the Act is set out in these rules, in a box, so that readers can see how that section and these rules fit together.

5 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 the New Zealand Teachers Council (Conduct) Rules 2004

competence assessor means a person appointed by the Teachers Council to act as a competence assessor under these rules

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 competence to the Teachers Council

report or complaint about competence means any of the following:

- (a) a mandatory report that relates to competence under section 139AK of the Act (report by employer of dismissals and resignations):
- (b) a mandatory report that relates to competence under section 139AL of the Act (report by employer of complaints received about former employee):
- (c) a mandatory report that relates to competence under section 139AN of the Act (report by employer of failure to reach required level of competence):
- (d) a complaint about competence under section 139AZC of the Act

teacher means a person who is either of the following:

- (a) a registered teacher or former registered teacher;
- (b) an authorised person (being a person who holds a limited authority to teach given under Part 10 of the Act) or former authorised person

Teachers Council means the New Zealand Teachers Council established under section 139AC of the Act.

- (2) In these rules, unless the context otherwise requires,—
 - (a) terms that are defined in section 139AB of the Act have the meanings given to them in that section; and
 - (b) terms that are defined in section 120 of the Act have the meanings given to them in that section.

6 Notices, etc, under these rules: how they may be sent, and when they are presumed to have been received

- (1) A notice, advice, or other communication that is sent to a person under these rules may be sent by post, facsimile, or email.
- (2) Every notice, advice, or other communication under these rules must, in the absence of evidence to the contrary, 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 day 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.

7 Confidentiality and disclosure of personal information

Personal information may be disclosed by the Teachers Council if it—

- (a) holds the information in connection with a report or complaint about competence; and

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

8 Competence assessors not personally liable, and indemnified in certain cases

- (1) In an action by the Teachers Council, no competence assessor is personally liable for an act or omission by the assessor acting as an assessor and not in bad faith.
- (2) The Teachers Council must indemnify a competence assessor for costs arising from successfully defended civil proceedings, or successfully defended criminal proceedings, relating to acts or omissions by the assessor acting as an assessor and not in bad faith.

Dealing with competence issues

Section 139AZC of the Education Act 1989: Complaints about competence

- (1) A person who wishes to make a complaint about a teacher's competence must first make the complaint to the teacher's employer, unless 1 of the circumstances in subsection (2)(a) to (d) applies.
- (2) Any person (including a parent, employer, or member of the Teachers Council) may, at any time, make a written complaint to the Teachers Council about the competence of a teacher—
 - (a) if the complaint is about a teacher who is not currently employed by an employer; or
 - (b) if the complainant considers, on reasonable grounds, that the employer will not be able to deal with the complaint effectively because of an actual or perceived conflict of interest; or
 - (c) if the complaint has been made to the employer, but the complainant is not satisfied with the way in which the complaint is being, or was, dealt with; or
 - (d) in any other exceptional circumstance.
- (3) A complaint under this section by an employer or former employer must include a description of the competency issues leading to the complaint and the actions (if any) that the employer or former employer has undertaken in relation to them.

- (4) If the Teachers Council considers that a complaint under this section should have been sent first to the teacher's employer, it must refer the matter to the employer; and in any other case, it must notify the employer (if the teacher is currently employed by an employer) that it has received a complaint about the teacher.
- (5) When the Teachers Council refers a complaint to an employer, the employer must report as required by the Teachers Council.
- (6) If the Teachers Council is satisfied that the employer has not responded, or has not been able to respond, to the complaint in a satisfactory way, the Teachers Council may investigate the complaint.
- (7) When a complaint about competence is made by a member of the Teachers Council, that member may not be involved in any investigation of the complaint.
- (8) If, after investigation, the Teachers Council is satisfied that the teacher has not attained the required level of competence, it may—
 - (a) impose conditions on the teacher's practising certificate or authority;
 - (b) refer the teacher to an impairment process involving the assessment of, and (if necessary) assistance with, an impairment;
 - (c) order that the teacher's registration or authority be cancelled (*see* section 129(1)).

9 Referral to competence assessor

- (1) Every report or complaint about competence received by the Teachers Council must be referred to a competence assessor.
- (2) The competence assessor may conduct an investigation into the report or complaint only if—
 - (a) the matter has been referred to the teacher's employer and the assessor is satisfied that the employer has not dealt with, or is not dealing with, the matter in a satisfactory way; or
 - (b) the assessor believes on reasonable grounds that, although the matter has not been referred to the teacher's current employer, the current employer will not be able to deal with it effectively because of—
 - (i) an actual or perceived conflict of interest; or
 - (ii) any other exceptional circumstance; or
 - (c) the teacher is not currently employed by an employer; or
 - (d) the report or complaint has been referred to the competence assessor by the CAC.

- (3) If the competence assessor does not investigate the report or complaint, the assessor must refer it to the teacher's current employer.
- (4) If the competence assessor is uncertain about whether or not to investigate a particular report or complaint, he or she must seek guidance from the Teachers Council.

10 Notification of receipt of report or complaint about competence

- (1) A copy of every report or complaint about competence that is referred to a competence assessor must immediately be sent to the teacher concerned.
- (2) If a complaint about competence received under section 139AZC of the Act has not been first sent to the teacher's current employer, the competence assessor must advise the current employer (if any) that a complaint has been received and is being investigated by the Teachers Council.
- (3) If advice is sent under subclause (2), the competence assessor may provide the employer with any additional information the assessor thinks fit.

11 Investigation by competence assessor

A competence assessor may, when investigating a report or complaint about competence,—

- (a) seek further information from the teacher, the initiator, and the teacher's current and any former employer; and
- (b) check records held by the Teachers Council concerning the teacher; and
- (c) with the agreement of the teacher,—
 - (i) conduct, or arrange for, the evaluation or assessment of the teacher's competence; and
 - (ii) arrange, and if necessary attend, meetings between the teacher and any other person or persons; and
 - (iii) arrange for the teacher to take part in any procedures designed to improve the teacher's competence; and
 - (iv) arrange advice and guidance for the teacher; and

- (v) arrange for the monitoring of the effect of any procedures undertaken by the teacher or of any advice and guidance offered to the teacher.

12 Competence assessor must use best endeavours to reach agreement with teacher on recommended resolution

- (1) The competence assessor must use his or her best endeavours to reach agreement with the teacher on a recommendation, for inclusion in a report by the competence assessor to the Teachers Council, for the resolution or disposal of the matter.
- (2) This rule does not require the competence assessor to include a recommendation of that kind, or a recommendation of that kind in any particular terms, in any report by the competence assessor to the Teachers Council.
- (3) Nothing in this rule limits or affects the competence assessor's duty to act independently in performing his or her functions as a competence assessor under these rules.

13 Reports by competence assessor to Teachers Council

- (1) The competence assessor must report to the Teachers Council—
 - (a) on the outcome of every investigation; and
 - (b) as required by the Teachers Council.
- (2) If a report by a competence assessor to the Teachers Council includes a recommendation for the resolution or disposal of the matter, the report must include the following:
 - (a) a summary of the original report or complaint about competence:
 - (b) a description of how the competence assessor went about inquiring into the competence issues raised by the report or complaint:
 - (c) a summary of what the teacher did during, or as a result of, the inquiry:
 - (d) a summary of the outcome of any processes undertaken:
 - (e) an assessment of whether the teacher now meets the required level of competence:
 - (f) a recommendation (which may be one agreed on by both the competence assessor and the teacher) concerning the resolution or disposal of the matter.

- (3) Before a report referred to in subclause (2) is given to the Teachers Council, the competence assessor must—
 - (a) send a draft of the report to the teacher concerned; and
 - (b) give the teacher a reasonable opportunity to comment on the draft.
- (4) The competence assessor may amend the draft report in response to any comments made by the teacher.
- (5) A copy of every report to the Teachers Council by a competence assessor (including a report referred to in subclause (2)) must be sent to the teacher who is the subject of the report.

14 Reports to be considered at meeting of Teachers Council

- (1) On receiving a report from a competence assessor, the Teachers Council must—
 - (a) consider the report at a meeting of the Council; and
 - (b) set a date for that meeting.
- (2) If the report is one referred to in rule 13(2), the Teachers Council must—
 - (a) advise the teacher, at least 10 days before that date, of the date of the meeting at which the report is to be considered; and
 - (b) take all reasonable steps to ensure that the teacher is given notice of the reasons for any proposed resolution or disposal of the matter before resolving or disposing of the matter; and
 - (c) give the teacher a reasonable opportunity, at or before the meeting at which the report is considered, to make written submissions on the report and the recommendation included in it; and
 - (d) give the teacher a reasonable opportunity, at that meeting, to appear and be heard, in person or by counsel or other representative, on the report and the recommendation included in it.
- (3) Subclause (2) does not apply, and nothing in this rule affects the Teachers Council's duties under section 129(2) of the Act, if the report recommends that the teacher's registration or limited authority to teach be cancelled under section 129(1)(a) or (b) of the Act.

15 Outcome of Teachers Council consideration of report

- (1) Following consideration of a report from a competence assessor, the Teachers Council may resolve to—
 - (a) take no further action in relation to the matter; or
 - (b) adjourn the matter for further consideration; or
 - (c) refer the matter back to the competence assessor for further work.
- (2) Following consideration of a report referred to in rule 13(2) (but no other report from a competence assessor), the Teachers Council may exercise its powers (under section 139AZC(8) of the Act) to do the following things:
 - (a) impose conditions on the teacher's practising certificate or authority to teach;
 - (b) refer the teacher to an impairment process involving the assessment of, and (if necessary) assistance with, an impairment;
 - (c) order that the teacher's registration or authority be cancelled (*see* section 129(1) of the Act).

16 Notice of outcome of Teachers Council consideration

The Teachers Council must, as soon as practicable, give written notice of the outcome of its consideration of any report of a competence assessor to the following people:

- (a) the teacher concerned; and
- (b) that teacher's current employer; and
- (c) the initiator of the report or complaint about competence concerned.

17 Revocation

The New Zealand Teachers Council (Competence) Rules 2004 (SR 2004/142) are revoked.

Dated at Wellington this 26th day of September 2007.

Kathy Smith,
Chairperson of the New Zealand Teachers Council.

Explanatory note

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

These rules, which are made under the Education Act 1989, come into force on 1 November 2007. They set out the procedures that the New Zealand Teachers Council must follow in dealing with reports and complaints about the competence of individual teachers.

The rules revoke and replace the New Zealand Teachers Council (Competence) Rules 2004. The main changes are as follows:

- provisions relating to the appointment by the Teachers Council of a CRT (competence review team) to address competence issues arising out of a report or complaint about competence are not brought forward in these rules:
- the rules include a new requirement: a competence assessor must use his or her best endeavours to reach agreement with the teacher concerned on a recommendation, for inclusion in a report by the competence assessor to the Teachers Council, for the resolution or disposal of the matter:
- the text of section 139AZC of the Education Act 1989 is updated to reflect the substitution of a new subsection (8)(c) on 17 May 2006 by section 35 of the Education Amendment Act 2006.

These rules apply only to a report or complaint about competence made after the close of 31 October 2007.

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These rules are administered by the New Zealand Teachers Council.
