

**Reprint
as at 1 July 2016**



New Zealand Teachers Council (Making Reports and Complaints) Rules 2004

(SR 2004/144)

New Zealand Teachers Council (Making Reports and Complaints) Rules 2004: revoked, on 1 July 2016, by rule 67(e) of the Education Council Rules 2016 (LI 2016/122).

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

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These rules are administered by the Education Council of Aotearoa New Zealand.

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Rules

1 Title

These rules are the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.

2 Commencement

These rules come into force on 1 September 2004.

Part 1 **Preliminary provisions**

3 Purpose

The purpose of these rules is to ensure that the Teachers Council receives all the information that it needs in order to investigate and otherwise fulfil its functions with regard to reports and complaints.

4 Requirements in rules are additional to those in Act

- (1) The requirements in these rules about what must be included in reports are in addition to the requirements set out in the Act.
- (2) The relevant sections from the Act that relate to reports are included in these rules (in boxes) to assist users.

5 Interpretation

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

Act means the Education Act 1989

applicable conviction means a conviction for an offence punishable by imprisonment for 3 months or more and which is therefore the subject of a mandatory reporting obligation under section 139AP of the Act

CAC means the Complaints Assessment Committee of the Teachers Council appointed under the New Zealand Teachers Council (Conduct) Rules 2004

child or young person means a person—

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

complaint means any complaint to the Teachers Council under either of the following sections of the Act:

- (a) section 139AR (complaints by any person about teacher misconduct):
- (b) section 139AZC (complaints by any person about teacher competence)

employer means any one of the following who employs a teacher in a teaching position:

- (a) the Board of Trustees of a State 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 complaint or report to the Teachers Council

registration number, in relation to a teacher, means the number that appears in the register or list of authorised persons as the teacher's registration number

report and **mandatory report** means any mandatory report to the Teachers Council under any of the following sections of the Act:

- (a) section 139AK (mandatory reporting by employer of dismissals and resignations):
- (b) section 139AL (mandatory reporting by employer of complaints received about former employee):
- (c) section 139AM (mandatory reporting by employer of possible serious misconduct):
- (d) section 139AN (mandatory reporting by employer of failure to reach required level of competence):
- (e) section 139AP (mandatory reporting by teachers or court Registrar of applicable convictions)

serious misconduct means conduct by a teacher—

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

teacher means either of the following:

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

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

- (2) Terms that are defined in section 139AB of the Act have the meanings given to them in that section, and terms that are defined in section 120 of the Act have the meanings given to them in that section.

Rule 5(1) **child or young person** paragraph (b): amended, on 1 December 2008, by section 60(2) of the Education Amendment Act 2006 (2006 No 19).

6 Meaning of relevant documentation

- (1) In these rules, **relevant documentation** means documentation relating to a report by an employer about a teacher that provides evidence of, or relates to, the matters referred to in the report.
- (2) Without limiting subclause (1), relevant documentation may include any or all of the following:
 - (a) statements by the initiator, witnesses, and any other persons:
 - (b) letters of complaint received by the employer about the teacher:
 - (c) recent performance appraisals of the teacher:
 - (d) reports of independent investigators:
 - (e) letters between the employer or professional leader and the teacher concerning the complaint or matter of concern:
 - (f) statements or responses, or records of statements or responses, by the teacher or his or her advocate:
 - (g) the teacher's letter of resignation:
 - (h) minutes of Board meetings at which the matter was discussed:
 - (i) other information provided by the Police or any other person.

7 Forms

If the Teachers Council provides forms for the purpose of assisting people to make reports or complaints in accordance with these rules, a person may, but is not obliged to, use the relevant form when making a report or a complaint.

8 Address to send reports and complaints to

Every report and every complaint must be sent to the Teachers Council at its current address, and be marked for the attention of the Compliance Officer.

Part 2

Criteria for reporting

9 Criteria for reporting serious misconduct

- (1) The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:
 - (a) the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):
 - (b) the sexual abuse of a child or young person (which includes sexual abuse carried out under the direction, or with the connivance, of the teacher):
 - (c) the psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment:
 - (d) being involved in an inappropriate relationship with any person under the age of 16 years:
 - (e) being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher:
 - (f) the neglect or ill-treatment of any child or young person in the teacher's care:
 - (g) the neglect or ill-treatment of any animal in the teacher's care:
 - (h) theft, or fraud:
 - (i) involvement in the manufacture, cultivation, supply, dealing, or use of controlled drugs:
 - (j) permitting, or acquiescing in, the manufacture, cultivation, supply, dealing, or use of controlled drugs by any child or young person:
 - (k) viewing, accessing, or possessing pornographic material while on school premises or engaged on school business:
 - (l) viewing, accessing, or possessing pornographic material that depicts children or young persons or that depicts animals engaged in sexual acts with humans:
 - (m) breaching the school's standards or rules concerning the use of alcohol at the school or while on school business:
 - (n) any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
 - (o) any act or omission that brings, or is likely to bring, discredit to the profession.

- (2) Physical, sexual, or psychological abuse is reportable whether it occurs as—
- (a) a single act; or
 - (b) a number of acts forming part of a pattern of behaviour, even if some or all of those acts, viewed in isolation, would be minor or trivial.
- (3) In this rule, **school** includes an early childhood education and care centre.
- Rule 9(1)(o): added, on 1 August 2008, by rule 4 of the New Zealand Teachers Council (Making Reports and Complaints) Amendment Rules 2008 (SR 2008/215).
- Rule 9(3): amended, on 1 December 2008, by section 60(2) of the Education Amendment Act 2006 (2006 No 19).

10 Criteria for reporting competence issues

For the purposes of section 139AL(3)(b) of the Act, the criterion for reporting competence issues about a teacher is that the employer would not, if asked, sign the teacher's practising certificate renewal application because of doubts about whether the teacher meets the satisfactory teacher dimensions.

Part 3

Mandatory reports by employers

11 All mandatory reports by employers must include basic information, relevant documentation, and be signed

- (1) Every mandatory report made by an employer about a teacher must include the following information:
- (a) the name and address of the employer making the report;
 - (b) the date of the report;
 - (c) the teacher's full name, registration number, date of birth, and last known address;
 - (d) if the teacher has a former or alternative name, the former or alternative name (if known).
- (2) Every mandatory report made by an employer must include with it copies of all relevant documentation. If some of the relevant documentation is not included in the report, the employer must identify which information is missing and must indicate (so far as possible) where it may be obtained.
- (3) Every mandatory report made by an employer must be signed by the employer, or by a person on behalf of the employer, in which case the person must also provide his or her name in a legible form, and state the capacity in which he or she is signing.

Section 139AK of the Education Act 1989: Mandatory reporting of dismissals and resignations

- (1) When an employer dismisses a teacher for any reason, the employer must immediately report the dismissal to the Teachers Council.
- (2) An employer must immediately report to the Teachers Council when a teacher resigns from a teaching position if, within the 12 months preceding the resignation, the employer had advised the teacher that it was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher's competence.
- (3) Every report under this section must be in writing, and must include,—
 - (a) in the case of a report of dismissal, the reason for the dismissal; and
 - (b) in the case of a report of a resignation,—
 - (i) a description of the conduct or competency issues that the employer had been concerned about; and
 - (ii) a report of what action (if any) the employer had taken with respect to the conduct or competency issues.

12 Mandatory reports of dismissals

A report under section 139AK(1) of the Act of the dismissal of a teacher must—

- (a) comply with rule 11; and
- (b) include a full description of the background to the dismissal, including a description of any complaints or reviews preceding the dismissal, what action the employer took prior to the dismissal, and what action the teacher took; and
- (c) state the date on which the dismissal was given and the date on which it took effect.

13 Mandatory reports of resignations

A report under section 139AK(2) of the Act of the resignation of a teacher within 12 months of the employer advising the teacher that the employer was dissatisfied with, or intended to investigate, any aspect of the conduct of the teacher, or the teacher's competence, must—

- (a) comply with rule 11; and
- (b) describe the advice that the employer gave to the teacher concerning dissatisfaction with any aspect of the teacher's conduct or competence; and
- (c) describe the teacher's response and any further action by the employer; and
- (d) state the date on which the teacher resigned, and the date on which the resignation took effect.

Section 139AL of the Education Act 1989: Mandatory reporting of complaints received about former employees

- (1) The former employer of a teacher must immediately report to the Teachers Council if, within 12 months after a teacher ceases to be employed by the employer, the employer receives a complaint about the teacher's conduct or competence while he or she was an employee.
- (2) Every report under this section—
 - (a) must be in writing; and
 - (b) must set out the nature of the complaint; and
 - (c) may include any additional information that the employer considers relevant.
- (3) A former employer must not report a complaint under this section if—
 - (a) it is satisfied that the complaint is malicious, vexatious, or without any foundation; or
 - (b) the complaint is about competence, and the complaint does not meet the Teachers Council's criteria for reporting about competence issues.

14 Mandatory reports about former employees

A report under section 139AL of the Act by a former employer of a teacher concerning a complaint received about the teacher's conduct or competence while employed by the employer must—

- (a) comply with rule 11; and
- (b) state the date on which the teacher ceased to be employed by the employer; and
- (c) state the date on which the employer received the complaint; and
- (d) set out the complaint; and
- (e) include a statement that the employer is satisfied that the complaint is not malicious, vexatious, or without any foundation; and
- (f) if the complaint is about competence, include a statement that the employer believes that the complaint satisfies the Teachers Council criteria for reporting competence issues as set out in rule 10.

Section 139AM of the Education Act 1989: Mandatory reporting of possible serious misconduct

- (1) The employer of a teacher must immediately report to the Teachers Council if it has reason to believe that the teacher has engaged in serious misconduct.
- (2) Every report under this section must—
 - (a) be in writing; and

- (b) include a description of the conduct of the teacher that the employer believes to be serious misconduct; and
- (c) include a description of what action (if any) the employer has taken in relation to it.

15 Mandatory reports of possible serious misconduct

- (1) A report under section 139AM of the Act by an employer that the employer has reason to believe that a teacher has engaged in serious misconduct must—
 - (a) comply with rule 11; and
 - (b) describe the conduct that the employer believes may be serious misconduct; and
 - (c) describe the action, if any, that the employer has taken in response to that conduct.
- (2) The Teachers Council criteria for reporting serious misconduct are set out in rule 9.

Section 139AN of the Education Act 1989: Mandatory reporting of failure to reach required level of competence

- (1) The employer of a teacher must immediately report to the Teachers Council if it is satisfied that, despite undertaking competency procedures with the teacher, the teacher has not reached the required level of competence.
- (2) Every report under this section must—
 - (a) be in writing; and
 - (b) include a description of the competency issues leading to the report; and
 - (c) include a description of the action that the employer has taken in relation to it.

16 Mandatory reports of failure to reach required level of competence

- (1) A report under section 139AN of the Act by an employer that, despite undertaking competence procedures with a teacher, the teacher has not reached the required level of competence, must—
 - (a) comply with rule 11; and
 - (b) describe the competence issues that originally caused concern; and
 - (c) describe the competence procedures undertaken with the teacher; and
 - (d) describe the competence issues currently causing concern.
- (2) The relevant documentation included in a report under section 139AN of the Act must include—
 - (a) copies of reports on, or assessments of, the teacher's competence in the areas causing concern; and

- (b) any responses or comments by the teacher; and
- (c) the names and contact details of any person with relevant information about the teacher's competence or the competence procedures undertaken.

Section 139AP of the Education Act 1989: Mandatory reporting of convictions

- (1) Every teacher who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction, report the conviction to the Teachers Council.
- (2) Failure to report a conviction to the Teachers Council in accordance with subsection (1) is misconduct that may give rise to disciplinary proceedings.
- (3) The Registrar of every court must, unless the court expressly orders otherwise in a particular case, report to the Teachers Council when a person whom the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for 3 months or more.
- (4) If the Registrar has reported a conviction to the Teachers Council under subsection (3), then, if that conviction is subsequently quashed, the Registrar must notify the Teachers Council of that fact.

17 Mandatory reports of applicable convictions

- (1) A report under section 139AP of the Act by a teacher of an applicable conviction must be made—
 - (a) in writing in accordance with subclause (2), within 7 days of the conviction; or
 - (b) orally, within 7 days of the conviction, in which case it must be confirmed in writing within 14 days of the conviction.
- (2) A report by a teacher under section 139AP of the Act (whether written or oral) must include—
 - (a) the teacher's name, registration number, date of birth, and address; and
 - (b) details of the offence for which the teacher was convicted; and
 - (c) the name of the court in which the conviction was entered.
- (3) In order to assist the CAC in the investigation of an applicable conviction that it must make (under section 139AV of the Act), the report may also include—
 - (a) a statement of the sentence imposed (if known); and
 - (b) a statement of whether the teacher intends to appeal the conviction or sentence (if known); and
 - (c) a description of the circumstances giving rise to the conviction; and
 - (d) any information that the teacher considers will assist the CAC in its investigation.

- (4) A report under section 139AP of the Act by a Registrar—
 - (a) must include a certificate of conviction; and
 - (b) must include as much of the information referred to in subclause (2) as is available to the Registrar; and
 - (c) may include any of the information referred to in subclause (3).

Part 4

Making complaints

18 Complaints about misconduct and complaints about competence

- (1) A complaint to the Teachers Council about the conduct of a teacher (under section 139AR of the Act) or about a teacher's competence (under section 139AZC of the Act) may be made in any written form.
- (2) In order for a complaint to be actioned by the Teachers Council it must include as much as possible of the following information:
 - (a) the teacher's full name and any alternative names by which the teacher is or may be known;
 - (b) the teacher's date of birth (if known);
 - (c) a description of the conduct or the competence issues complained of;
 - (d) a description of the outcome that the initiator wishes to achieve in making the complaint;
 - (e) a description of steps already taken in respect of the matter complained of, and in particular, whether the complaint has been referred to the teacher's current employer; and
 - (i) if not, why not; and
 - (ii) if it has, what steps the employer has taken.
- (3) A complaint by an employer or former employer under either section 139AR of the Act or section 139AZC of the Act must include,—
 - (a) in the case of a complaint about conduct, a report of any action that the employer or former employer has taken in relation to it (as required by section 139AR(3) of the Act); or
 - (b) in the case of a complaint about competence, a description of the competency issues leading to the complaint and the actions (if any) taken by the employer in relation to them (as required by section 139AZC(3) of the Act).

Dated at Wellington this 26th day of May 2004.

Joanna Beresford,
Chairperson of the New Zealand Teachers Council.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

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

2 *Legal status*

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

3 *Editorial and format changes*

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

4 *Amendments incorporated in this reprint*

Education Council Rules 2016 (LI 2016/122): rule 67(e)

New Zealand Teachers Council (Making Reports and Complaints) Amendment Rules 2008 (SR 2008/215)

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