



EDUCATION COUNCIL SUBMISSION ON THE EDUCATION (TEACHING COUNCIL OF AOTEAROA) AMENDMENT BILL

Education and Workforce Committee

29 March 2018

EXECUTIVE SUMMARY

1. The statutory purpose of the Education Council of Aotearoa New Zealand (**the Education Council**) set out in section 377 of the Education Act 1989 (**the Act**) is “to ensure safe and high quality leadership, teaching and learning ... through raising the status of the profession”.
2. The Education Council has a duty under the Act and to the members of the profession to whom we charge fees¹, to draw the attention of the Select Committee to any aspects of the Education (Teaching Council of Aotearoa) Amendment Bill (**the Bill**) that may affect the Council’s costs or the Council’s ability to operate “efficiently and effectively”.²
3. We have drawn on our significant experience as the Education Council, particularly in the implementation of the current legislation, to make recommendations to remove ambiguity in the Bill, and to improve its operation.
4. In summary the Education Council’s recommendations on the Bill are:
 - a. On matters likely to impede efficient operations of the Teaching Council:
 - i. Introduce a provision that requires members to receive training in key matters outlined in the Act since, under the Bill, the statutory criteria requiring knowledge in these areas will apply to appointed members only; and
 - ii. Specify a process for the removal of elected members to ensure consistency between members who are appointed and members who are elected; and
 - iii. Specify a process for filling extraordinary vacancies on the Council; and
 - iv. Note the Education Council’s support of the Bill’s clause for staggered turnover of appointed members, and an opportunity to further strengthen continuity arrangements.
 - b. On matters inconsistent with the Bill’s stated purpose:
 - i. Specify criteria for who may nominate and who may second a candidate for election to the Council to provide certainty that only the teaching profession may nominate and second candidates; and
 - ii. Add an express power for the Teaching Council to make rules for the conduct of elections and

Empower the Teaching Council to implement the clauses in the Bill.

1 Education Act 1989, s 383; Funding Agreement between the Ministry of Education and the Education Council of Aotearoa New Zealand (21 Oct 2016, as varied on 26 Jul 2017), at sch 1: cl 1; Education Act 1989, sch 21: cl 7.

2 Education Act 1989, sch 21: cl 7.



the establishment of electoral rolls. This will empower the Teaching Council to implement the clauses in the Bill; and

- c. Amend the Bill to use consistent terms, without acronyms, when referring to early childhood education; and
 - d. Replace the term “representatives” currently used in the Bill to describe elected members, to make clear that all members are there to act in the interest of the profession as a whole; and
5. Finally, we also note the additional costs associated with implementing the clauses in the Bill. These are changing the name of the Education Council, increasing the size of the board, and conducting elections.
 6. We request an opportunity to speak to the Education and Workforce Committee in person about our submission.

RECOMMENDATIONS

On matters likely to impede efficient operations of the Teaching Council

Provision for members to receive training

7. The Bill’s clauses will mean that when appointing members, the Minister must consider a candidate’s skills and ability to carry out the duties of a member of the Teaching Council. These skills include the candidate’s knowledge and experience in the areas of education, governance, leadership, finance, and their understanding of the partnership principles of the Treaty of Waitangi³. There is no provision for similar criteria to be applied to elected members.
8. The Cabinet Paper on the Bill suggests it is sufficient that these skills are represented among those members appointed by the Minister.⁴ The Education Council agrees there cannot be criteria imposed on elected members but we think all members of the Council should have some experience in these important skill areas, especially as elected members will comprise the majority on the Council.
9. We consider it would be helpful if the Bill required members to receive some training once they are elected, to make sure they are able to participate in the Council effectively and constructively. A similar provision for training of elected members is provided for in legislation governing District Health Boards⁵. We also note guidance from the Institute of Directors that directors’ duties are central to good governance, and that a commitment to continuing professional development underpins good governance⁶. The training could be available to all members of the Council.
10. Given the requirement for training is not related to elections, we think it would not be appropriate to include it in the new election rules that the Teaching Council would need to make, after the Bill is enacted.

A commitment to continuing professional development underpins good governance.

³ Education (Teaching Council of Aotearoa) Amendment Bill, cl 6: new sch 21: cl 5.

⁴ Office of the Minister of Education, Cabinet Paper: Education (Teaching Council of Aotearoa) Amendment Bill (30 January 2018), at para 14.

⁵ New Zealand Public Health and Disability Act 2000, sch 3: cl 5.

⁶ The Four Pillars of Governance for New Zealand Directors, pp 83 and 186.



Recommendation: the Education Council recommends an amendment to the Bill that introduces the following clause into schedule 21:⁷

2 Training for elected members

If any Council member or members are not familiar with the obligations and duties of a member of a board, education, governance, leadership, financial skills and Treaty of Waitangi issues, then the Teaching Council must fund and to the extent practicable, ensure the members undertake and complete, training approved by the Chair of the Teaching Council relating to those matters the member or members are not familiar with.

Specify a process for the removal of elected members

11. New section 380(1)(b) of the Act will require elected members to be registered and hold a current practising certificate. This implies that if they cease to be registered or cease to hold a current practising certificate, they will no longer be a member of the Council.
12. However, there is uncertainty because schedule 21: clause 4 of the Act provides that a Council member continues in office until a successor is appointed, unless he or she ceases to hold office under subclause (4) by resigning, being removed or becoming disqualified. After the Bill is enacted, removal will not apply to elected members because the Bill proposes to amend schedule 21: clause 3(1) to say:⁸ (words added by the Bill are emphasised)

The Minister may revoke the appointment of a member of the Education Council **that the Minister has appointed under section 380(1)(a)** at any time for just cause.

13. Disqualification is defined in clause 2 and does not cover the scenario where the member no longer holds registration or a practising certificate.
14. The Council could include a rule in the election rules it enacts, that an elected member is considered to have resigned if they cease to be registered or hold a current practising certificate. However, we consider that sort of rule to be more appropriate for inclusion in the Act, especially as clause 6(3) of the Bill makes an amendment to the Act that relates to this issue.
15. The proposed amendment also means that schedule 21 will contain no mechanism for ensuring that elected Council members comply with obligations in schedule 21 which include the Council's collective duties,⁹ and Council members' individual duties.¹⁰ The result will be that the six appointed members could be removed by the Minister for breaching those obligations, but the seven elected members can breach those obligations without fear of removal from the Council, and in effect with no consequences.
16. There is no valid reason why elected members should not be equally bound by these obligations. All Council members should be equally responsible for an effective and efficient Teaching Council which raises the status of the profession.

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⁷ This clause is based on cl 5 of sch 3 of the New Zealand Public Health and Disability Act 2000, which applies to District Health Boards and cl 1(5)(b) of the proposed new sch 21.

⁸ Education (Teaching Council of Aotearoa) Amendment Bill, cl 6(3).

⁹ Education Act 1989, sch 21: cl 7.

¹⁰ Education Act 1989, sch 21: cl 8.



Recommendation: the Education Council recommends that either:

- a. equivalent provisions to clause 3(4)(a) and (b) are included in clause 2 as a criterion of disqualification. So under clause 4(4)(c), members who meet those criteria would “cease to hold office”; or
- b. the Bill is amended by removing clause 6(3) to ensure there is a mechanism for removing elected members for “just cause” in the same way that appointed members can be removed.

Specify a process for filling extraordinary vacancies

17. The Bill does not indicate how vacancies among elected Council members should be filled if they occur a set number of months before the triennial election. Including provisions in the Bill on how extraordinary vacancies will be filled, will give the teaching profession confidence and certainty that their representation on the Council will not be undermined if a vacancy arises.
18. Other comparable bodies do not fill such vacancies through extraordinary elections. They use other mechanisms such as the relevant Minister appointing a replacement or the remaining Council members appointing a replacement.¹¹
19. The options for the Teaching Council to fill extraordinary elections are:
 - a. The remaining elected Council members appoint a replacement member to fill the extraordinary vacancy; or
 - b. All remaining Council members appoint a replacement member to fill the extraordinary vacancy; or
 - c. The Minister appoints a replacement member to fill the vacancy; or
 - d. Extraordinary elections are held to elect a replacement member to fill the vacancy.
20. Under options (a), (b) and (c) above, the candidates for filling the vacancy could be comprised of:
 - a. Previously unsuccessful candidates in that sector from the last triennial election. If none of the previously successful candidates are willing, then any candidate from that sector, who meets the eligibility requirements for election, would be appointed;¹²
 - b. Any candidate, from that sector, who meets the eligibility requirements for election.
21. The Education Council proposes the provisions for filling extraordinary vacancies apply to vacancies that occur nine months before the triennial elections. This is a reasonable timeframe to select a member, provide any necessary support and training, and allow them to make a constructive contribution to the Council before the next triennial election.
22. The details of this process can be set out in the new election rules.

Including provisions in the Bill on how extraordinary vacancies will be filled, will give the teaching profession confidence and certainty that their representation on the Council will not be undermined if a vacancy arises.

Recommendation: the Education Council recommends the Bill is amended to expressly specify a process for filling extraordinary vacancies, such as one of the processes listed above.

¹¹ See Health Practitioners (Election of Members of Nursing Council of New Zealand) Regulations 2009, reg 4 and 28; and Health Practitioners Competence Assurance Act 2003, s 120(5); Health Practitioners Competence Assurance (Election of Members of Medical Council of New Zealand) Regulations 2009, reg 4 and 27; New Zealand Law Society: Auckland Branch Rules (2009), r 7.5; Engineering New Zealand Rules (October 2017), rules 13.1(c), 13.7; Local Electoral Act 2001, s 117; and New Zealand Public Health and Disability Act 2000, s 29(3) and sch 2: cl 10.

¹² See Health Practitioners (Election of Members of Nursing Council of New Zealand) Regulations 2009, reg 28.



Note support for the proposed staggered turnover of appointed members and the opportunity to further strengthen continuity arrangements for the new Council

23. The Education Council supports clause 5, new section 380(5) which provides for the staggered turnover of members appointed by the Minister. This will provide continuity for the Council particularly in the context of triennial elections proposed in the Bill for elected members.
24. We note the opportunity to further strengthen continuity by appointing an existing Board member(s) of the Education Council to the new Council. The purpose would be to support incoming members by facilitating knowledge transfer including on governance of the Council's statutory functions which remain unchanged by the Bill, and critical work programmes underway.

Recommendation: the Education Council recommends the Select Committee notes the opportunity to support continuity arrangements for new Board members and the Teaching Council.

On matters inconsistent with stated purpose

Criteria for restrictions on who nominates a candidate

25. The Bill does not restrict who can nominate and second a candidate for election to the Council, saying:¹³
- The elected members of the Teaching Council must be elected in accordance with rules made under section 388 by registered teachers who each hold a current practising certificate.
26. The Bill also says that for each sector, the teacher elected must be “elected by teachers from the sector”.¹⁴
27. The New Zealand Teachers Council Election Rules 2002 restricted who could nominate and second a candidate for election to registered teachers who held a current practising certificate and were in the same sector as the person they were nominating.¹⁵
28. The Education Council is concerned that including a similar restriction in the new election rules enacted under the new section 380(3) could be considered ultra vires. An express provision in the Bill would give greater certainty.

Recommendation: the Education Council recommends that clause 5: new section 380 of the Bill is amended to include the following subsection:

- (2) Nominations for candidates to be elected under subsection (1) must be nominated by one person and seconded by another person, both of whom must, at the time of nomination:
- (a) be a registered teacher;
 - (b) hold a current practising certificate; and
 - (c) be a teacher from the sector the candidate is nominated for.

Express rule-making power

29. The former Teachers Council was made up of four elected members and seven members appointed by the Minister (three were appointed through nominations by specified parties). Similar to the Bill's

¹³ Education (Teaching Council of Aotearoa) Amendment Bill, cl 5: new s 380(3).

¹⁴ Education (Teaching Council of Aotearoa) Amendment Bill, cl 5: new s 380(1)(b).

¹⁵ New Zealand Teachers Council Election Rules 2002, rls 13(3)(d), 13(4).



proposed process, the elected members were required to be elected by registered teachers who each held a current practising certificate, in accordance with rules made under section 139AJ(1)(a) of the old Act.¹⁶ Section 139AJ was substantively equivalent to section 388 in the current Act, under which the Education Council is (and the Teaching Council will be) permitted to make rules. Section 139AJ of the old Act said: (emphasis added)

(1) The Teachers Council must, as soon as practicable after the commencement of this section, make rules providing for—

(a) **the conduct of elections for elected members and the establishment of rolls for the election of each elected member;** and

[...]

(2) The Teachers Council may make rules for any other purpose relating to the performance of its functions.

[...]

30. Section 388(1) no longer contains any equivalent to section 139AJ(1)(a). This is understandable as the Education Council has no elected members. However, the Bill does not reintroduce any equivalent of section 139AJ(1)(a) into section 388(1) for the new Teaching Council.

31. Section 388(2) would give the Teaching Council the ability to make rules for any other purpose relating to the performance of its functions. The conduct of elections and the establishment of rolls will not be a function of the Teaching Council, as listed under section 382 of the Act. Given that section 139AJ(1)(a) was considered necessary in the past, this suggests that a similar paragraph would be required to ensure the Teaching Council is empowered to make election rules.

Given that section 139AJ(1)(a) was considered necessary in the past, this suggests that a similar paragraph would be required to ensure the Teaching Council is empowered to make election rules.

Recommendation: the Education Council recommends, that in the interests of clarity and certainty, the Bill is amended to introduce an equivalent to section 139AJ(1)(a) into section 388 of the Act.

Labelling elected members as representatives

32. The use of the word “representing” in clause 5: new section 380(1)(b) of the Bill, risks creating an environment in which the members of the Council are focused on advocating on behalf of their own sector and prioritising its interests, rather than acting to enhance “the status of the profession” in accordance with the Council’s statutory purpose.¹⁷

33. The Education Council considers that with the current wording of the Bill, the Council’s effectiveness may be reduced if it becomes a forum for disputing sectional interests. The diverse range of teaching experiences on the Teaching Council should not impair the performance of its statutory purpose.

34. We note that clause 5: new section 380(1)(b)(iv) uses the phrase “teacher educator” rather than “teacher representing the ... sector” which is used in the other subparagraphs. We think wording such as “teacher educator” or “early childhood education teacher” is more appropriate and will better assist the Council to perform its statutory function and achieve its statutory purpose. In our view this will encourage the elected members to act in the interests of the profession as a whole.

¹⁶ Education Act 1989 (as at 13 February 2015), s 139AD.

¹⁷ Education Act 1989, s 377.



35. In support of this point we note that:

- a. The State Services Commission Guidelines for the appointment of boards state that:¹⁸

Once a board member is appointed, then they should not let advocacy of particular interests override or undermine their governance responsibilities or duties as members. While they may bring an industry or representational lens to their role, informed by their particular knowledge and experience, they must not advocate to the detriment of good governance.

- b. Best practice guidance from the Institute of Directors states that:¹⁹

Directors' duties are central to good governance. They reflect the fiduciary nature of the director role ... People serving on boards of organisations other than companies also have duties and responsibilities.

- c. For the same reason of emphasising common purpose over sectional interests, the School Trustees Association places emphasis on ensuring that the terms "representative" (as in "staff representative" and "parent representative") are not used in their training materials for School Boards of Trustees, and are replaced by the word "trustee".

While [board members] may bring an industry or representational lens to their role, informed by their particular knowledge and experience, they must not advocate to the detriment of good governance.

Recommendation: The Education Council recommends that the phrase "teacher representing the ... sector" currently used in clause 5: new section 380(1)(b)(i) to (vii) be replaced throughout with phrases equivalent to "early childhood education teacher" for each sector.

Inconsistent terms

36. The Bill uses the following different terms: "early childhood sector" and "ECE sector".²⁰ There seems to be no reason to use different terms, and in the interests of clarity and certainty, the same term should be used to refer to the same sector.

Recommendation: the Education Council recommends that both the above phrases are replaced by the phrase "early childhood education sector".

¹⁸ Board Appointment and Induction Guidelines, p 42.

¹⁹ The Four Pillars of Governance for New Zealand Directors pp 166 and 170

²⁰ Education (Teaching Council of Aotearoa) Amendment Bill, cl 5: new s 380(1)(b)(i) and (vii).



Significant financial costs for the Teaching Council

37. The Bill proposes amendments to the Act which will have significant financial implications for the Teaching Council and the profession it serves. The Education Council is funded by teachers' fees to deliver on the functions of the Council to ensure high-quality and safe teaching.
38. We note the following financial implications from the proposed amendments to the Act:

Change	Estimated cost	Basis
Name and branding change to operate under the new name, The Teaching Council of Aotearoa	\$220,000.00 (one off)	Costs of name change to the Education Council
Triennial elections including delivery of voter participation strategies ²¹	\$150,000.00 (every three years)	Elections delivered by the former Teachers Council and election promotion campaign
Increased size of the Board	\$105,000.00 (per year)	Average cost of meeting attendance for current Board members
Skills training for elected members	\$10,000 (every three years)	Tailored governance courses currently available

²¹ 2014 data for Teachers Council elections show a voter turnout of 13.7 percent, or 13,865 of the 100,953 eligible voters.

