



# **The Teachers Council: Government patsy or voice of the profession?**

## **1 Introduction**

Many PPTA members were enraged this year when the Teachers Council announced that fees to renew teachers' practising certificates would nearly double from 1 July. The announcement could not have come at a worse time, with PPTA members already reeling from news of the government's counter-claims in the STCA negotiations.

This has led members to ask a range of questions about the Teachers Council:

- What does it do for me?
- Is it cost-effective?
- Who holds the power at the Council?
- Why doesn't the government pay more of the costs?

The fee rise is by now a fait accompli. Teachers have no option but to pay the increased fee because the Education Act requires teachers to have current practising certificates to be employed as teachers. However, this is an appropriate time for PPTA to review its policy position on the Teachers Council.

## **2 What does the Council do for teachers?**

### **2.1 Core registration functions**

PPTA has always supported the principle that there must be compulsory registration for teaching, in order to protect our membership from the burden of having to teach alongside people who are incompetent or whose behaviour brings discredit to the profession. The work that the Teachers Council currently does all falls roughly within that role:

- The Council approves and monitors all teaching qualifications delivered in New Zealand, to ensure that they have proper entry requirements, prepare students properly to teach in the relevant sector, and make professional decisions about who gets to graduate from courses. This includes the setting of Graduating Teacher Standards. These define what a teacher must be able to do before gaining a teaching qualification that would make them eligible to apply for teacher registration.
- The Council checks applications from beginning teachers for provisional registration, including ensuring that Police vetting shows them to be fit persons to teach, and that they have an adequate standard of English if that is not their first language.
- The Council sets standards, or criteria, that define what a teacher must be able to do to qualify for full registration after their two or more years as a

beginning teacher, and it establishes requirements for the supervision and mentoring of beginning teachers.

- The Council renews teachers' practising certificates, when assured by professional leaders that the teacher is maintaining currency of knowledge and skills.
- The Council handles complaints against teachers for discipline or competence matters, as a full Council or through its Complaints Assessment Committees and the Disciplinary Tribunal or its competence assessment processes. These processes can result in a teacher losing their registration, or having it suspended for a time, or in conditions being imposed on their continued practice.

## **2.2 Council projects**

In recent years the Council has embarked on a number of projects, including research, but these have all been associated in some way with the above functions. Recent examples of these projects are:

- **Induction and mentoring research project**

Research contracts were let, one for each sector, to investigate good models for the induction and mentoring of beginning teachers. This was because of very robust evidence that showed many beginning teachers, especially in secondary schools, were having a raw deal and not getting the support they needed.

- **Registered teacher criteria pilot**

The Council developed a draft set of Registered Teacher Criteria to replace the rather dated Satisfactory Teacher Dimensions. A small research project was conducted to try out the Criteria with beginning and experienced teachers, to ensure that they were appropriate. There was also a consultation process with the profession about the draft Criteria, and this produced a generally positive response.

- **Initial teacher education review**

Research was commissioned to identify the key issues around quality assurance of teacher education courses. This fed into a wide consultation with teacher educators, teachers, and other groups about what requirements the Council should set for the processes of approval and monitoring of teaching qualifications.

It is hard to argue that any of this work was unnecessary in terms of even a narrowly constrained role for the Council. The work has been closely monitored by reference groups which include representatives from PPTA.

## **2.3 Legislative functions**

PPTA members, however, might be concerned about some of the broader objectives of the Council as laid down in the Education Act. According to section 139AE:



*The functions of the Teachers Council are as follows:*

*(a) to provide professional leadership to teachers and others involved in schools and early childhood education:*

*(b) to encourage best teaching practice:*

*(c) to carry out the functions under Part X relating to teacher registration:*

*(d) to determine standards for teacher registration and the issue of practising certificates:*

*(e) to establish and maintain standards for qualifications that lead to teacher registration:*

*(f) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes on the basis of the standards referred to in paragraph (e):*

*(g) to develop a code of ethics for teachers:*

*(h) to exercise the disciplinary functions in this Part relating to teacher misconduct and reports of teacher convictions:*

*(i) to set the criteria for reporting serious misconduct and for reporting on competence issues:*

*(j) to exercise the functions in this Part relating to teacher competence:*

*(k) to co-ordinate a system providing for the vetting by the police of all teachers and other people employed in schools and early childhood services:*

*(l) to identify research priorities and, where appropriate, to promote and sponsor research according to those priorities:*

*(m) to exercise any other functions conferred on it by this Act, any other enactment, or the Minister.*

Objectives (a) and (b) are probably much broader than PPTA members would be comfortable with. 'Professional leadership' is a very all-encompassing term and, as discussed below, the Council's status as a Crown entity actually interferes with its ability to lead the profession in ways that challenge government policies. The Council has been silent, for example, about the narrowing this year of School Support Services contracts in relation to primary teachers for the implementation of National Standards, and the way this has limited all teachers' access to professional development across the curriculum.

The Council's role is in relation to all registered teachers, from early childhood education through to tertiary staff in teacher education and school advisory services,



so it is constrained in terms of its ability to represent the issues for particular groups of teachers. PPTA, on the other hand, has a responsibility to advocate for secondary education on behalf of its members and, members would agree, does so effectively.

PPTA members would probably also question whether the Council has a role in encouraging best teaching practice (objective (b)), except insofar as its quality assurance of teacher education, its development of standards for graduating teachers and for registration, and its expectations about good induction and mentoring of beginning teachers contribute to best teaching practice.

Objectives (c) to (f) and (h) to (k) define the core functions of the Council and are really not challengeable. Objective (g), establishing a Code of Ethics, can probably be linked to the Council's disciplinary functions. While the Code is essentially an aspirational document, it does provide a reference point for the various disciplinary bodies of the Council.

Objectives (l) and (m), however, are challengeable. Objective (l) would be much tighter if it simply empowered the Council to conduct research in relation to its core functions as set out in (c)-(f) and (h)-(k) (see Recommendation 3). The reference in objective (m) to *'the Minister'* is the most dangerous of all, because it empowers the Minister to order the Council to do something s/he wishes it to do, without any reference to the other 12 functions. This power is not, however, to be exercised in relation to objectives (a) and (b) (section 139AG). PPTA has no evidence that this power under objective (m) has ever been used, but that doesn't mean that it might not be in the future.

### **3 Is the Council cost-effective?**

There is no evidence that the Council is an extravagant organisation. In its 2008–09 *Annual Report*, the Council reported that it had only 43.92 FTE staff, not a large number considering its responsibilities.

The Council showed a net deficit of \$1,247,638 in the 2008–09 financial year, and presumably had to call on reserves to cover this.

Appendix 1 provides detail on the distribution of expenditure across its five key functions ('outputs').

It has been suggested that the Council could save money by moving from its current premises on The Terrace in Wellington to somewhere less expensive. The office rental component of their budget is 6 per cent. The School Trustees Association, which is also on The Terrace, spends about 5 per cent of its income on accommodation. PPTA has been advised that around 5 per cent would be reasonable, but that if the percentage climbed to 10 per cent it could be considered excessive.

Teachers Council Director Peter Lind, in a message to all registered teachers dated 21 May, argued that the fee increase from 1 July 2010 was necessary because the Council had not increased the fee since 2002 and could no longer carry out its functions efficiently without further income. Teachers may have been concerned, however, at his comment that the fee rise was necessary *'to fully meet the costs of providing the Council's improved and expanded services to teachers'*. Here he would be referring to the professional leadership projects discussed above, such as the induction and mentoring pilots and the review of initial teacher education, but also to



staffing the registration division so that it can meet reasonable timelines for turning around applications. (PPTA still hears complaints of unacceptable delays, both in terms of the Council's answering of phone calls and in terms of its completion of registration processes.)

#### **4 Who holds the power at the Council?**

The answer to this question is that, ultimately, the government of the day holds the power at the Council, for a number of reasons.

##### **4.1 Autonomous Crown entity**

The Council is established as an *autonomous* Crown entity, which means that it '*must have regard to government policy when directed by the responsible Minister*' (Crown Entities Act 2004). Other examples of autonomous Crown entities are the Arts Council, the Film Commission, and the New Zealand Historic Places Trust.

##### **4.2 Objective (m)**

As noted above, objective (m) of the Education Act requires the Council to obey an instruction of the Minister of Education. On the other hand, the Crown Entities Act requires that a Minister, before directing a Crown entity, must consult with it, and that the direction must be published in the *Gazette* and tabled in Parliament, so it is not something a Minister would do casually.

If the Council were to be re-constituted as an *independent* Crown entity, it would have a little more independence: the Crown Entities Act says that these are '*generally independent of government policy*', although they are still considered part of the state services for the purposes of the State Sector Act (see next paragraph). Examples of independent Crown entities include the Human Rights Commission, the Electoral Commission, and the Office of Film and Literature Classification.

##### **4.3 State Sector Act**

The Council members and staff are bound by the State Sector Act, including its Code of Conduct. This requires them to '*respect the authority of the government of the day*'.<sup>1</sup> The 'Questions and Answers' document explaining the Code states that the board of a Crown entity's '*most important relationship in terms of accountability is with the responsible Minister*'.<sup>2</sup>

##### **4.4 Ministerial power of appointment**

The Education Act gives the Minister the right to appoint the chair and four other members of the Council. These five members, plus the School Trustees Association nominee, mean that just over half of the Council consists of ministerial or employer representatives, and just under half elected or nominated teachers. Furthermore, although PPTA, NZEI, and STA have the right to *nominate* people for our positions, ultimately the Minister *appoints* these people too. (Although up to now, PPTA's nominations have always been accepted by the Minister at the time.)

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<sup>1</sup> [http://www.ssc.govt.nz/upload/downloadable\\_files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/upload/downloadable_files/Code-of-conduct-StateServices.pdf)

<sup>2</sup> <http://www.ssc.govt.nz/display/document.asp?DocID=7411>



It is important for members to note that this union representation on the Teachers Council, hard fought for by PPTA at the establishment of the body, is under threat. In the report of the Minister's Education Workforce Advisory Group, there is a totally unsubstantiated claim that: *'Direct representation of teacher unions on the Council may lead to emphasis on employment conditions and industrial matters rather than professional leadership'*.<sup>3</sup> This is an implied threat to the principle of union representation.

## 5 Opportunity for change

The Teachers Council's legal status as a Crown entity was considered in previous conference papers in 2005 and 2006. In 2006, Annual Conference passed the following resolutions:

- That PPTA continue to work actively to seek improvements to the Teachers Council in the form of both operational and legislative changes.
- That PPTA push for a review of the legislative basis of the Teachers Council, with a view to shifting to an organisation genuinely owned by the profession.

Little traction was achieved during the last government's term on the idea that the profession should own the Council, although Steve Maharey, when he was Minister, expressed some interest in pursuing the idea *'at some later stage'*. It is not clear, either, what kind of entity the 2006 conference paper was envisaging the Council might become.

The current Minister, however, is reputed to be not averse to considering a change, and the Director of the Teachers Council, Peter Lind, in his message announcing the fee increase, said that he himself believed that this was an opportune time for the profession to consider the legal status of the Council as a Crown entity. In commenting on the tenor of the protests the Council had received about the fee increase, he wrote:

*Another common concern was that, as a Crown Entity, the Council was not sufficiently independent of Government. This is despite teachers paying the bulk of the cost of running the Council. The Council does need to reach out to the profession and reflect the aspirations teachers have for such a professional body. Therefore, it is timely to pause and review its current governance structure and functions.*

The Teachers Council appears to be the only professional body that comes under the Crown Entities Act, and is therefore part of the state sector and subject to the State Sector Code of Conduct.

### 5.1 Statutory authorities

Most of the other professional bodies are 'statutory authorities' under the Health Practitioners Competence Assurance Act 2003, which covers everything from doctors

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<sup>3</sup> <http://www.beehive.govt.nz/sites/all/files/10.pdf>, p.25. See also: <http://www.beehive.govt.nz/release/attracting+and+retaining+high+quality+teachers>



and nurses to chiropractors, dieticians, radiation technologists and the like. There are also moves to require counsellors to be registered under this Act.

Under this Act, the Minister may appoint up to 14 members for each authority, and must ensure that each authority has at any time at least five members. The membership of the authority must include a majority of members who are practitioners of that 'scope of practice', and a small number of laypeople. There is also provision for some members to be elected.

The Act is about quality assurance, so it requires these statutory authorities to manage registration, competence, and conduct processes, and complaints and discipline processes including appeal procedures. Authorities set their own fees.

The Medical Council, for example, has 12 members, of whom four are elected by the profession, four are appointed by the Director of Health, and four are laypeople. Initial registration costs \$425, and an annual practising certificate costs \$640. It receives no government contribution.

The Nursing Council has a board of nine members, of whom only two are elected by nurses themselves – and even they have to be 'approved' by the Minister of Health. There are also three lay members and four other members, all appointed by the Minister. An annual practising certificate costs \$96. It receives no government contribution.

## **5.2 New Zealand Law Society**

The New Zealand Law Society is also established under a statute, the Lawyers and Conveyancers Act (Lawyers) Constitution 2008. The total annual fee in the current financial year is \$1,321.87. The government has no legislative right to appoint members of its Council, and the Law Society highly values its relative independence. Yet, even in this case, the government has powers when it comes to malpractice by lawyers, in that complainants who are not satisfied with the Law Society's response can apply for a review of the decision to the Legal Complaints Review Officer in the Department of Justice. Furthermore, serious complaints have to be referred to the Lawyers and Conveyancers Disciplinary Tribunal. This is run by the government, which appoints the chair, deputy chair and lay members, while the Law Society nominates lawyers for the tribunal.

Bodies such as the Medical Council and the Nursing Council, despite being statutory authorities, appear to be freer to advocate for their profession in ways that challenge government policy. The Law Society has even more freedom to do this because it is not a statutory authority.

## **6 Why doesn't the government pay more of the costs?**

In the 2008–09 financial year, the government contribution to the Council was \$178,000 out of a total income of \$4,863,960 (3.7 per cent of total income). One possible approach by PPTA might be to argue that the government should pay much more in return for its position of power over the Council. It would be contradictory, though, to argue for this at the same time as arguing that the profession should have increased control of the Council.

## **7 A way forward**

PPTA is committed to ensuring that quality public education is available to all. That commitment requires that we seek to ensure not only that public education is adequately staffed and resourced, but also that there are controls on who can become, and remain, members of the teaching profession.

### **7.1 Legal status**

The government invests a large amount of taxpayer money every year into the public education system. It is reasonable for the government to demand some assurance about the quality of teachers employed in that system. Some kind of registration body, enshrined in statute, is the minimum we could expect a government to require. However, why teachers need to be overseen by a Crown entity, when other professionals who work in publicly-funded systems such as the health system are overseen by statutory authorities, is far from clear. It may be a product of the low-trust environment in which teachers have had to work in the last 20 years or so, both in New Zealand and in many other countries.

Recommendation 2 would instruct PPTA to seek an amendment to the legislation, to establish the Council as a statutory authority rather than an autonomous Crown entity, and to eliminate the ministerial appointments from the Council. The intention here is that positions on the Council would be elected by teachers or nominated by the unions. The Council would also elect its own chair. The profession could also consider the pleas of teacher educators, whose work is significantly affected by decisions of the Council, that they too should have representation.

A change to a statutory authority would probably mean that the Crown would cease to contribute financially to the Council, but as its current contribution is minor (less than 4 per cent of income) the impact would be limited. On the other hand, it would not help to reduce the fees teachers are required to pay to maintain the Council.

### **7.2 Council functions**

The government, even if it agreed to the Teachers Council becoming a statutory authority, would be likely, as with health practitioners, to specify the kinds of functions such a body must carry out, such as defining qualification requirements, registration and practising certificate requirements, competence and discipline processes, and complaints processes. These functions are pretty much the same functions that the Teachers Council currently performs. On the other hand, a statutory authority would be outside the state service, giving it more freedom to question and challenge government policy.

Recommendation 3 would instruct PPTA to work towards persuading the current or a future government to amend the Education Act to constrain the role of the Teachers Council to its core functions as a registration body, and to eliminate the more general functions currently outlined in the Act. As pointed out above, the Council has so far not moved beyond these core functions, so this would probably not reduce its current expenditure. It would, however, ensure that the Council did not embark on an expansionary adventure, for example into professional leadership on a wider range of issues, or developing further expertise on 'best teaching practice'.



### **7.3 Broad coalition required**

It is important to remember that the Teachers Council is responsible for registering teachers for secondary, area, and primary schools and early childhood centres, and other people 'in the general education system', which can include staff in tertiary institutions such as teacher educators, School Support Services advisors, and others. Any efforts by PPTA to change the legislative status of the Council, or its functions, would be more likely to be successful with the support of other groups such as NZEI and the School Trustees Association. Should conference pass recommendations 2 and 3, efforts would be made to build a broad coalition of support for PPTA's position.

### **Recommendations**

1. That the report be received.
2. That PPTA seek an amendment to the Education Act to change the legal status of the Teachers Council from Crown entity to statutory authority, and to remove the Crown's power to appoint members of the Council.
3. That PPTA seek an amendment to the Education Act to limit the objectives of the Teachers Council to its core functions of approval of teaching qualifications and registration and de-registration of teachers, and research and professional development relevant to these core functions.



## Appendix 1

### Teachers Council expenditure, 2008–09 budget year

Output	2009 Actual	% of outputs total	Surplus/ (deficit) by output
Teacher registration	\$1,759,655	28.8%	\$233,692
Maintenance professional standards (conduct/competence)	\$1,380,304	22.6%	(\$390,197)
Professional leadership	\$2,519,864	41.2%	(\$1,244,439)
Teacher education	\$299,818	4.9%	\$124,267
Non teacher police vetting	\$151,031	2.5%	\$29,039
<b>Total</b>	<b>\$6,110,672</b>		<b>(\$1,247,638)</b>

The most expensive output category is professional leadership, which includes the current work reviewing the Satisfactory Teacher Dimensions and registration policy; revising the guidelines for approval and monitoring of initial teacher education; running the pilot projects researching models of induction and mentoring of beginning teachers; promoting the Code of Ethics; and professional development related to these projects. This is probably the output around which there might be most debate – see section 2.2 above.

The second most expensive output category is registration, and in this area the Council showed an excess of revenue over expenditure of \$233,692 in the 2008–09 year. This is likely to have been related to cash flows (in the 2007–08 year the excess was much smaller, just \$9,309).

The third highest output category is maintenance of professional standards, which covers the costs of the Complaints Assessment Committee, Competence Investigations and the Disciplinary Tribunal. It is an expensive operation but one from which the profession as a whole benefits. No teacher wants to work alongside a colleague who is incompetent or unethical, and nor would the profession's status be enhanced if it gained a reputation for protecting its 'bad eggs'. The disciplinary and competence processes are careful and seek to be fair to all parties, and this means they can be drawn out and expensive.