

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Education and Training (Teaching Council Fees and Costs) Amendment Bill: Approval for Introduction
Date considered	9 August 2021
Date of release	17 August 2021

These documents have been proactively released:

Cabinet Paper: Education and Training (Teaching Council Fees and Costs) Amendment Bill: Approval for Introduction

9 August 2021

Minister of Education

Cabinet Minute: CAB-21-MIN-0301

9 August 2021

Cabinet Office

Cabinet Minute: LEG-21-MIN-0112

5 August 2021

Cabinet Office

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In Confidence

Office of the Minister of Education
Chair, Cabinet Legislation Committee

Education and Training (Teaching Council Fees and Costs) Amendment Bill: Approval for Introduction

Proposal

- 1 I propose that the Education and Training (Teaching Council Fees and Costs) Amendment Bill (the Bill) be approved for introduction into the House.

Policy

- 2 On 12 July 2021, the Cabinet Business Committee (CBC) agreed to amend the Education and Training Act 2020 (the Act) to:
 - 2.1 allow the Council to fix fees for all of its legislated functions, and to do so by way of a bundled amount like other professional regulatory bodies
 - 2.2 validate the receipt of fees from 1 February 2021
 - 2.3 validate any earlier decisions the Council, or its predecessor organisations, took in setting fees
 - 2.4 enable the Council to charge a fee, and require payment, in instalments
 - 2.5 allow the Council to recover debts for unpaid fees [CBC-21-MIN-0064].
- 3 The proposal to allow the Council to fix fees for all of its regulated functions may be contentious for those teachers and their representatives who consider that the Council should have some of its functions removed.
- 4 Removal of Council functions is a matter outside the scope of the Bill, which is limited to urgent short-term measures necessary to support the financial solvency of the Council. While the Bill needs to be progressed as soon as possible to put the Council on a secure financial footing, I will be proposing a short Select Committee process to enable teachers and their representative bodies to submit on the Bill.
- 5 Legislation is required because the Act has to be amended in order for the policies in paragraph 2 above to be given effect.
- 6 The Bill clarifies that the Council can retain the fees paid from 1 February 2021 under the May 2020 Gazette notice *Teaching Council of Aotearoa New Zealand Fees for Registration, Practising Certificates, and Limited Authorities to Teach*. As I advised CBC, the High Court quashed the annual fees set under that Gazette notice. This resulted in reversion to the previous (and now current) triennial certification fee. The Bill will enable the Council to credit the annual fees paid by teachers under the May 2020 Gazette notice as part-payment of the previous (and now current) triennial fee payable under the June 2015 Gazette notice *Education Council of Aotearoa New*

Impact analysis

- 7 A regulatory impact assessment was not submitted at the time that CBC approval of the policy relating to the Bill was sought and an undertaking was instead given to submit a Supplementary Analysis Report (SAR) with this paper (CBC-21-MIN-0064).
- 8 The Ministry of Education's Quality Assurance Panel has reviewed the attached SAR *Education and Training (Teaching Council Fees) Amendment Bill* produced by the Ministry of Education and dated 27 July 2021. The panel considers that it partially meets the Quality Assurance criteria. The SAR is clear, concise and makes the case for limited legislative change to secure the financial stability of the Teaching Council while ensuring it continues to be self-funding. Given the need for urgency, there has not been time to seek the views of stakeholders on the specific proposals beyond the Teaching Council itself, including those of the teaching profession. It will be important that the Teaching Council implements and monitors these changes to its fee-setting powers effectively and communicates clearly with the teaching profession.

Compliance

- 9 The Bill complies with each of the following:
 - 9.1 the principles of the Treaty of Waitangi;
 - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
 - 9.4 the principles and guidelines set out in the Privacy Act 2020;
 - 9.5 relevant international standards and obligations;
- 10 The Bill complies with the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee. The Bill departs from the default approach in the Guidelines in relation to the presumption against retrospectivity by authorising the Council to credit fees paid under a (now quashed) May 2020 Gazette notice in part payment of the current fees, and by validating any previous fees paid to the Council or its predecessor organisations other than the quashed fees. However, this retrospective component of the Bill is considered appropriate as it validates matters intended and understood to be lawful but at risk of challenge on technical grounds, and goes only as far as is necessary. The policy is that the Council and its predecessors have always been able to fix the fees that were charged prior to 1 February 2021 and these provisions give effect to that policy.

Consultation

- 11 Consultation has taken place with:
 - 11.1 the Teaching Council;
 - 11.2 the Government caucus and other parties represented in Parliament.

Binding on the Crown

12 The Act will be binding on the Crown.

Creating new agencies or amending law relating to existing agencies.

13 Non-applicable because the Teaching Council is a statutory entity.

Allocation of decision making powers

14 Non-applicable.

Associated regulations

15 Regulations will not be needed to bring the bill into operation.

Other instruments

16 The Bill replaces section 480 of the Act with a new provision that empowers the Council to fix fees by notice., with such notices being deemed to be secondary legislation.

17 As set out in the explanatory note to the Bill, these amendments are necessary to ensure that the Council can fix fees to recover the costs for all of its functions and powers under the Act, including anything the Council is required to do to perform its functions or exercise its powers. These amendments are also necessary to clarify that the Council may require the fees to be paid in the manner that it prescribes (for example, by instalment), and that unpaid fees are a debt due to the Council.

Definition of Minister/department

18 Non-applicable.

Commencement of legislation

19 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

20 As these legislative amendments are urgently required, I seek the inclusion of the Bill in the 2021 Legislation Programme, 9(2)(f)(iv) [REDACTED].

21 If the Committee and Cabinet approve the Bill, I will seek to have the Bill introduced as soon as is practicable after that Cabinet approval, and to have the Bill enacted as soon as practicable after it is reported back to the House from select committee.

22 It is proposed that the Bill be referred to the Education and Workforce Committee.

Proactive Release

23 I intend to proactively release this Cabinet paper, subject to redaction as appropriate under the Official Information Act, once the Bill is introduced to the House.

Recommendations

24 The Minister of Education recommends that the Committee:

- 1 **note** that the Education and Training (Teaching Council Fees) Amendment Bill will amend the Education and Training Act 2020 to:
 - 1.1 allow the Council to fix fees for all of its legislated functions, and to do so by way of a bundled amount like other professional regulatory bodies
 - 1.2 validate the receipt of fees from 1 February 2021
 - 1.3 validate any earlier decisions the Council, or its predecessor organisations, took in setting fees
 - 1.4 enable the Council to charge a fee, and require payment, in instalments
 - 1.5 allow the Council to recover debts for unpaid fees (CBC-21-0064);
- 2 **note** that the Bill will enable the Council to credit annual fees paid from 1 February 2021 under the May 2020 Gazette notice *Teaching Council of Aotearoa New Zealand Fees for Registration, Practising Certificates, and Limited Authorities to Teach*, as part-payment of the previous (and now current) triennial fees;
- 3 **note** that enactment of the Bill is required as soon as is practicable because, until the legislation is amended, the Council cannot be sure that the validity of the previous (and now current) fee cannot be challenged;
- 4 **approve** the inclusion of the Education and Training (Teaching Council Fees and Costs) Amendment Bill in the 2021 Legislation Programme, 9(2)(f)(iv)
[REDACTED]
- 5 **note** that on 2 August 2021 Cabinet will consider the decisions recorded in CBC-21-Min-0064 agreeing to the Bill's policy;
- 6 **note** that the Attorney-General has authorised the Parliamentary Counsel Office to draft the Bill before Cabinet considers the decisions recorded in CBC-21-Min-0064;
- 7 **approve** the Education and Training (Teaching Council Fees and Costs) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 8 **agree** that the Bill be introduced as soon as practicable following Cabinet approval;

9 **agree** that the Government propose that the Bill be:

9.1 referred to the Education and Workforce Committee for consideration;

9.2 enacted as soon as is practicable after it is reported back to the House.

Authorised for lodgement

Chris Hipkins

Minister of Education

Proactively Released



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 6 August 2021

On 9 August 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 6 August 2021:

Out of scope

LEG-21-MIN-0112 **Education and Training (Teaching Council Fees and Costs) Amendment Bill: Approval for Introduction** CONFIRMED
Portfolio: Education

Out of scope

Michael Webster
Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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Education and Training (Teaching Council Fees and Costs) Amendment Bill: Approval for Introduction

Portfolio Education

On 5 August 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 12 July 2021, CBC agreed to amend the Education and Training Act 2020 to:
 - 1.1 allow the Council to fix fees for all of its legislated functions, and to do so by way of a bundled amount like other professional regulatory bodies;
 - 1.2 validate the receipt of fees from 1 February 2021;
 - 1.3 validate any earlier decisions the Council, or its predecessor organisations, took in setting fees;
 - 1.4 enable the Council to charge a fee, and require payment, in instalments
 - 1.5 allow the Council to recover debts for unpaid fees;
- 2 **noted** that the Education and Training (Teaching Council Fees and Costs) Amendment Bill will enable the Council to credit annual fees paid from 1 February 2021 under the May 2020 Gazette notice Teaching Council of Aotearoa New Zealand Fees for Registration, Practising Certificates, and Limited Authorities to Teach, as part-payment of the previous (and now current) triennial fees;
- 3 **noted** that enactment of the Bill is required as soon as is practicable because, until the legislation is amended, the Council cannot be sure that the validity of the previous (and now current) fee cannot be challenged;
- 4 **approved** the inclusion of the Education and Training (Teaching Council Fees and Costs) Amendment Bill in the 2021 Legislation Programme, 9(2)(f)(iv)

- 5 **approved** the Education and Training (Teaching Council Fees and Costs) Amendment Bill [PCO 23974/9.0] for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agreed** that the Bill be introduced as soon as practicable following Cabinet approval
- 7 **agreed** that the Government propose that the Bill be:
- 7.1 referred to the Education and Workforce Committee for consideration;
- 7.2 enacted as soon as is practicable after it is reported back to the House.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Kris Faafoi
Hon Jan Tinetti
Hon Michael Wood
Hon Dr Ayesha Verrall

Officials present from:

Office of the Prime Minister
Officials Committee for LEG