

Hon Chris Hipkins

MP for Remutaka

Minister for COVID-19 Response

Minister of Education

Minister for the Public Service

Leader of the House



Hon David Parker
Attorney General

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Dear David

Approval for drafting by Parliamentary Counsel Office before policy approved by Cabinet

On Monday 12th July the Cabinet Business Committee (CBC) supported my proposal for a Bill to urgently amend provisions in the Education and Training Act 2020 related to the Teaching Council's fee-setting power (I have attached the Cabinet paper). As the CBC decisions cannot be confirmed by Cabinet until 2 August, I seek your approval for the Parliamentary Counsel Office (PCO) to begin drafting the legislation now. I am aiming to take the Bill to the Cabinet Legislation Committee on 5 August for approval for introduction.

The Bill will enable the Council to set fees that cover all of its functions, and will validate previous fee-setting decisions. These measures are necessary to address the implications of the recent judicial review case in which the High Court quashed the Council's decisions to change the certification period for practising certificates and to increase the fees, from 1 February 2021 (the fees had not been increased since 2010).

The Court's finding, that the Education and Training Act did not enable the Council to fix fees for all of its functions, has also raised doubt as to the validity of the fee previously charged by the Council. This is problematic because the order that quashed the Council's decision to charge an annual fee from February 2021 has effectively resulted in a reversion to the previous fee.

I am seeking to have legislation enacted as soon as is practicable this year because, until the legislation is amended, the Council cannot be sure that the validity of the previous (and now current) fee will not be challenged. It can set an alternative fee informed by the Court's findings that is limited to the functions for which it is authorised to charge, but that means it will be operating at a loss because it cannot recover costs for all of its functions. This would be inconsistent with the policy that the Council be fully self-funded.

Provided you agree, Ministry of Education officials will begin instructing PCO.

I look forward to your response.

Yours sincerely

Chris Hipkins
Minister of Education