



Briefing Note: Report back on progress of the Teaching Council becoming financially sustainable

To:	Hon Chris Hipkins, Minister of Education		
Date:	18 February 2021	Priority:	Low
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of paper

Note that the Teaching Council of Aotearoa New Zealand (the Council) has informed us that it has successfully transitioned to its new annual practising certificate fee, and that, on the basis of the information available to us, the Ministry considers that the Council is making good progress in becoming financially sustainable.

Summary

- Following funding made available in Budget 2020, Cabinet directed the Ministry of Education to report to the Minister of Finance and the Minister of Education on the Council's progress in moving towards an annual practising certificate and becoming financially sustainable.
- The Council successfully transitioned to issuing an annual practising certificate on 1 February 2021 and there has been no major variance to its monthly financial forecasts.
- The PPTA has filed an application for judicial review seeking to quash the decision to increase the equivalent annual fee. The High Court declined the application for a stay of the fee increase and the substantive hearing will likely take place in May this year. We will update Ministers on developments with the judicial review claim as we hear of them.

Proactive release

Agree that this Briefing will be proactively released.

☒ **Agree** ☐ **Disagree**

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18/02/2021

Hon Chris Hipkins

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Minister of Education

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Background

1. Since 2015, the Government has had a funding agreement with the Teaching Council of Aotearoa New Zealand (the Council) that has provided a significant proportion of the Council's revenue. The previous agreement required the Council to identify and gazette additional sources of income to enable the Council to be financially sustainable by 1 July 2020.
2. On 22 May 2020, the Council confirmed changes to its fees effective 1 February 2021 via Gazette notice. These changes included transitioning from issuing a practising certificate with a fee of \$220 valid for three years, to a practising certificate with a fee of \$157 valid for one year.
3. Shifting to an annual practising certificate fee will reduce the Council's revenue to approximately a third for the first year, and to approximately two thirds in the second.
4. Government provided a total of \$16.5m in Budget 2020 to make up the difference in the Council's income over two years to enable it to transition to an annual practising certificate fee.
5. The funding provides \$11m in financial year 2020/21 and a further \$5.5m in 2021/22.
6. Cabinet directed the Ministry of Education to report to the Minister of Finance and the Minister of Education by 30 September 2020 on the Council's progress in moving towards an annual practising certificate and becoming financially sustainable [CAB-20-MIN-0155.12, ID 12435].
7. With agreement from Treasury, we have delayed our report back to you until after the Council has transitioned to an annual practising certificate fee.

Progress update

8. The funding agreement between the Council and the Ministry includes conditions that the Council will report at set intervals on its progress in implementing the new annual practising certificate fee system and any significant variations to its financial position that may have a material impact on its financial sustainability.
9. The Council provided written confirmation on 30 September and 30 November 2020 that the project plan was on track, and there were no significant variations in its financial performance compared with its forecast. Of particular note, the Council informed us in November that it is \$0.5m better off than the original approved budget with an actual deficit of \$1.7m at 31 October compared with a budgeted deficit of \$2.2m.
10. The Council has also confirmed to the Ministry that the fee increase and annual certificate process were implemented on 31 January 2021.

Other Relevant Information – Judicial Review of the Council's fee decision

11. The PPTA has filed an application for judicial review of the Council's decisions relating to fees and certification periods. The High Court heard the PPTA's application to stay the fee increase pending the outcome of the substantive hearing under urgency in November 2020. The Court declined the application for a stay and the substantive hearing will likely take place in May this year.

12. In addition to declarations that the Council acted unlawfully in reaching the decisions it did, the PPTA is also seeking the following relief:
 - a. quash the decision to move to an annual certificate;
 - b. quash the decision to increase the equivalent annual fee;
 - c. quash the decision to establish a Leadership Centre within the Council.
13. While any remedies in a judicial review are at the Court's discretion, the most disruptive remedy for the Council would be an order quashing their previous decisions, meaning the Council would have to revert to its previous triannual certification and fee. The Council would then need to make a new decision in a legally compliant manner, including consultation with affected parties.
14. Returning to the previous certification fee could threaten the financial sustainability of the Council, as it would create a period where the fees the Council is charging are again not enough to cover its costs. Changing the background processes back to a three yearly cycle would also carry some costs.
15. We will inform you of any developments in this case as we hear of them.

Next Steps

16. We recommend that you forward this briefing to Hon Grant Robertson, Minister of Finance, for his information.