

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 – Supplementary Order Paper: Approval for Release
Date considered	27 September 2021
Date of release	6 May 2022

These documents have been proactively released:

Cabinet Paper: Education and Training (Teaching Council Fees and Costs) Amendment Bill – Supplementary

Order Paper: Approval for Release

Date considered: 27 September 2021

Author: Minister of Education

Cabinet Minute: CAB-21-MIN-0387

Date considered: 27 September 2021

Author: Cabinet Office

Cabinet Minute: LEG-21-MIN-0144

Date considered: 23 September 2021

Author: 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.

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.

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In Confidence

Office of the Minister of Education

Chair, Cabinet Legislation Committee

Education and Training (Teaching Council Fees and Costs) Amendment Bill – Supplementary Order Paper: Approval for Release

Proposal

- 1 I propose that a Supplementary Order Paper (SOP) to amend the Education and Training (Teaching Council Fees and Costs) Amendment Bill (the Bill) be approved for release.
- 2 The SOP amends the Bill to:
 - 2.1 provide that specific functions of the Teaching Council (the Council) may only be performed with the approval of the Minister of Education; and
 - 2.2 ensure that the Council can only recover costs for carrying out the statutory functions it is required to perform.
- 3 The SOP also corrects an error by reinstating section 480(5) from the Education and Training Act 2020 (the Act) and it omits the transitional provisions in the Bill relating to the Legislation Act because the provisions are no longer required.
- 4 I intend to table the SOP in the House of Representatives for consideration at the Committee of the whole House.

Policy

- 5 The Bill was introduced to the House of Representatives on 9 August 2021 and had its first reading on 12 August 2021. It was reported back to the House on 10 September 2021.
- 6 The Bill responds to a judicial review brought by the New Zealand Post Primary Teachers' Association, which found that the Council is not authorised by the Act to fix fees for all of its functions under the Act.¹ The Bill, as amended during select committee consideration (but not yet adopted by the House), amends the Act to:
 - 6.1 enable the Council to fix fees and levies so that it can recover costs for all of its functions and powers;
 - 6.2 clarify that the Council can only recover the actual and reasonable costs of performing and exercising its functions and powers;

¹(*Jones & Anor v Teaching Council of Aotearoa New Zealand | Matatū Aotearoa* [2021] NZHC 1581)

- 6.3 clarify that the Council can allow fees and levies to be paid in the manner prescribed (eg by instalments) and can recover unpaid fees and levies as debts;
 - 6.4 clarify that, before issuing a fees and levies notice, the Council is required to consult the teaching profession and give due consideration to the views expressed during that consultation.
- 7 The Education and Workforce Committee has also recommended that the name of the Bill is amended to the Education and Training (Teaching Council Fees, Levies, and Costs) Amendment Bill.

Amendments to the leadership functions of the Council

- 8 On 6 September 2021, Cabinet agreed that the scope of the Bill be broadened to include provision for the Council's professional leadership functions set out below to be optional and funded by government, and undertaken only following agreement with the Minister of Education:
- 8.1 provide leadership to teachers;
 - 8.2 raise the status of education leaders; and
 - 8.3 identify and disseminate best practice in educational leadership [CAB-21-MIN-0363 refers].
- 9 Cabinet also agreed that the Council can only charge fees and levies to cover the cost of its mandatory functions.
- 10 Currently the statutory functions of the Council include setting standards for entry to the profession and for holding a practising certificate, disciplinary functions, and responsibility for raising the status of education leaders and disseminating best practice in leadership.
- 11 Submissions on the Bill strongly opposed teachers' fees being used to fund activities relating to professional leadership functions.
- 12 The Council does need the ability to disseminate best practice information to all teachers because it would otherwise be unable to provide best practice advice on how to meet teaching standards. It is also important for the Council to continue to work to enhance the status of all teachers, because that is a key part of the role of a professional body.

Drafting changes to improve clarity

- 13 Upon further consideration, I am proposing that the drafting to respond to the Cabinet decision set out in paragraph 7 is modified. It is important that the Council's mandatory functions, for which it can charge fees and levies, focus on teachers. Teachers are a well understood and well-defined group, as set out in the Act.²
- 14 I therefore consider that the Council's first required function should refer to teachers, rather than to the education profession. The Council could then provide leadership to the broader education profession as an optional function. This will

² Section 10 defines teacher as including a registered teacher, a former registered teacher, a person who holds a limited authority to teach and a person who formerly held a limited authority to teach.

enable greater transparency around how the Council can exercise their mandatory and optional functions.

- 15 I therefore propose that the Council's professional leadership functions set out in para 7 above, which are to be optional and funded by Government, and undertaken only with agreement of the Minister of Education, should be amended as follows:
 - 15.1 to provide leadership to the education profession;
 - 15.2 to enhance the status of education leaders; and
 - 15.3 to identify and disseminate best practice in educational leadership.
- 16 The corresponding mandatory functions in section 479(1) of the Act should be amended as follows:
 - 16.1 to provide direction for teachers;
 - 16.2 to enhance the status of teachers;
 - 16.3 to identify and disseminate best practice in teaching, and foster the teaching profession's continued development in light of research and evidence of changes in society and technology.
- 17 The SOP as currently drafted reflects this proposal.
- 18 In line with the previous Cabinet decisions [CAB-21-MIN-0363 refers], the above functions (15.1, 15.2, 15.3) would be funded by the Government. No additional funding would be required, as the Ministry of Education can continue the current level of funding being provided to the Council for its professional leadership functions from within existing baselines. All other functions will remain compulsory and must be funded by the Council through its powers under the Bill to set fees and levies.
- 19 The SOP corrects an error by reinstating section 480(5) from the Act, which authorises the Council to charge for any goods or services it provides in accordance with its functions. This provision was inadvertently omitted from the Bill.
- 20 The SOP also omits the transitional provisions in the Bill relating to the Legislation Act because the provisions are no longer required.

Impact analysis

Regulatory Impact Statement

- 21 A regulatory impact assessment was not submitted at the time that Cabinet approval of the policy relating to the SOP was sought.
- 22 The Ministry of Education's Quality Assurance Panel has reviewed the Supplementary Analysis Report (SAR) dated 10 September 2021. The panel considers that it meets the Quality Assurance criteria.
- 23 The SAR provides a clear, concise case for limited legislative change to clarify the mandatory functions of the Teaching Council and responds to the concerns raised by teachers that the Council should not charge teachers for the costs of fulfilling its professional leadership functions.

24 The full SAR is attached as Appendix 1.

Climate Implications of Policy Assessment

25 The Climate Implications of Policy Assessment team has been consulted and confirms that the CIPA requirements do not apply to these proposals as there is no direct emissions impact.

Compliance

26 The Bill complies with the following:

- 26.1 the principles of the Treaty of Waitangi;
- 26.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 26.3 the principles and guidelines set out in the Privacy Act 2020;
- 26.4 relevant international standards and obligations; and
- 26.5 the Legislation Guidelines.

27 A revised disclosure statement has been prepared for the Bill.

Consultation

28 The following agencies were consulted: Treasury, the Department of the Prime Minister and Cabinet, and the Teaching Council.

Binding on the Crown

29 The Bill binds the Crown. On 12 July 2021 the Cabinet Business Committee considered the Cabinet paper seeking policy approvals for the Bill, which included a statement confirming that the Bill will be binding on the Crown [CBC-21-MIN-0064]. The provisions in the attached SOP will also bind the Crown.

Creating new agencies or amending law relating to existing agencies.

30 Not applicable

Allocation of decision-making powers

31 Not applicable.

Associated regulations

32 There are no regulations associated with this Bill.

Other instruments

33 Not applicable.

Definition of Minister/department

34 Not applicable.

Commencement of legislation

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

Parliamentary stages

36 The Bill was introduced to the House on 9 August 2021 and had its first reading on 12 August 2021. It was reported back to the House on 10 September 2021. I propose tabling the SOP at the Committee of the whole House.

Proactive Release

37 This paper will be proactively released following Parliamentary consideration of the SOP, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

38 The Minister of Education recommends that the Committee:

1 **note** that on 6 September 2021 Cabinet agreed that the scope of the Education and Training (Teaching Council Fees and Costs) Amendment Bill be broadened to include provision for the Council's professional leadership functions set out below to be optional and funded by Government, and undertaken only following agreement with the Minister of Education:

1.1 to provide leadership to teachers;

1.2 to raise the status of education leaders; and

1.3 to identify and disseminate best practice in educational leadership [CAB-21-MIN-0363 refers];

2 **note** that it is important that the Council's mandatory statutory functions focus explicitly on teachers rather than education leaders, to provide greater transparency and certainty as 'teachers' is a defined term under the Education and Training Act 2020;

3 **agree** that the Council's professional leadership functions, which are to be optional and funded by Government, and undertaken only following agreement with the Minister of Education, are as follows:

3.1 to provide leadership to the education profession;

3.2 to enhance the status of education leaders; and

3.3 to identify and disseminate best practice in educational leadership;

4 **agree** that the corresponding mandatory functions in section 479(1) of the Act should be amended as follows:

- 4.1 to provide direction for teachers;
- 4.2 to enhance the status of teachers;
- 4.3 to identify and disseminate best practice in teaching, and foster the teaching profession's continued development in light of research and evidence of changes in society and technology;
- 5 **agree** that section 480(5) from the Education and Training Act 2020 is reinstated, which authorises the Council to charge for any goods or services it provides in accordance with its functions;
- 6 **note** that the SOP as currently drafted reflects the proposals in recommendations 3 to 5;
- 7 **note** that the SOP also gives effect to Cabinet's decision that the Council cannot set fees or levies to recover the costs of its optional functions;
- 8 **approve** the SOP for release;
- 9 **authorise** Parliamentary Counsel to make minor or technical drafting changes or corrections to the SOP that are considered necessary before the SOP is tabled at the Committee of the Whole House stage;
- 10 **note** that I intend to table the SOP at the Committee of the whole House Stage of the Bill.

Authorised for lodgement
Hon Chris Hipkins
Minister of Education



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 24 September 2021

On 27 September 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 24 September 2021:

LEG-21-MIN-0144 **Education and Training (Teaching Council Fees and Costs) Amendment Bill – Supplementary Order Paper: Approval for Release** CONFIRMED
Portfolio: Education

Out of scope



Out of scope



Productively Released

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 – Supplementary Order Paper: Approval for Release

Portfolio Education

On 23 September 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 6 September 2021 Cabinet agreed that the scope of the Education and Training (Teaching Council Fees and Costs) Amendment Bill be broadened to include provision for the Council’s professional leadership functions set out below to be optional and funded by Government, and undertaken only following agreement with the Minister of Education:
 - 1.1 to provide leadership to teachers;
 - 1.2 to raise the status of education leaders; and
 - 1.3 to identify and disseminate best practice in educational leadership [CAB-21-MIN-0363];
- 2 **noted** that it is important that the Council’s mandatory statutory functions focus explicitly on teachers rather than education leaders, to provide greater transparency and certainty as ‘teachers’ is a defined term under the Education and Training Act 2020 (the Act);
- 3 **agreed** that the Council’s professional leadership functions, which are to be optional and funded by Government, and undertaken only following agreement with the Minister of Education, are as follows:
 - 3.1 to provide leadership to the education profession;
 - 3.2 to enhance the status of education leaders; and
 - 3.3 to identify and disseminate best practice in educational leadership;
- 4 **agreed** that the corresponding mandatory functions in section 479(1) of the Act should be amended as follows:
 - 4.1 to provide direction for teachers;
 - 4.2 to enhance the status of teachers;
 - 4.3 to identify and disseminate best practice in teaching, and foster the teaching profession’s continued development in light of research and evidence of changes in society and technology;

- 5 **agreed** that section 480(5) from the Education and Training Act 2020 be reinstated, which authorises the Council to charge for any goods or services it provides in accordance with its functions;
- 6 **noted** that the Supplementary Order Paper (SOP) to the Education and Training (Teaching Council Fees, Levies, and Costs) Amendment Bill as currently drafted reflects the proposals in paragraphs 3 to 5;
- 7 **noted** that the SOP also gives effect to Cabinet's decision that the Council cannot set fees or levies to recover the costs of its optional functions [CAB-21-MIN-0363];
- 8 **noted** that the Minister of Education intends to table the SOP at the Committee of the whole House Stage of the Bill;
- 9 **authorised** Parliamentary Counsel to make minor or technical drafting changes or corrections to the SOP that are considered necessary before the SOP is tabled at the Committee of the Whole House stage;
- 10 **approved** the Supplementary Order Paper to the Education and Training (Teaching Council Fees, Levies, and Costs) Amendment Bill [PCO 23974-2/4.0] for release.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson
Hon Chris Hipkins (Chair)
Hon David Parker
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Willie Jackson
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Ayesha Verrall
Hon James Shaw
Keiran McNulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG