

# Supplementary Analysis Report: Teaching Council Functions in the Education and Training (Teaching Council Fees and Costs) Amendment Bill

## Coversheet

Purpose of Document	
Decision sought:	<i>Analysis produced for the purpose of informing Cabinet Legislation Committee decisions to approve the introduction of a Supplementary Order Paper on the Bill</i>
Advising agencies:	<i>Ministry of Education</i>
Proposing Ministers:	<i>Minister of Education</i>
Date finalised:	<i>16 September 2021</i>
Problem Definition	
<p>The Teaching Council (Council) delivers core regulatory functions of registration, teacher certification and disciplinary processes to maintain and enforce teacher conduct and competence standards. It also has functions related to professional leadership that cover both teachers and educational leaders.</p> <p>The Government, through the Ministry of Education, also provides leadership support and other organisations, such as teacher unions and educational leaders' representative organisations, also provide leadership for the profession.</p> <p>Accordingly, it is not considered appropriate that the Council charge teachers for the elements of its functions that are focused on professional leadership when these are also delivered and funded elsewhere.</p> <p>The Council is required under the Education and Training Act 2020 (the Act) to undertake its functions in full and is expected to operate on a fully self-funded basis. As a result, the current legislative wording could result in the Council being obliged to charge teachers through its fees for its functions despite education leadership elements also being funded and provided by other organisations.</p> <p>This proposal relates to the Education and Training (Teaching Council Fees and Costs) Amendment Bill (the Bill) that responds to the High Court's findings in a recent Judicial Review which quashed the Council's decisions to move to an annual fee and practicing certificate renewal and found that the Council did not have the power to charge a fee for all of its functions.</p>	

The Bill enables the Teaching Council to fix fees that cover the costs of all its statutory functions and powers.

This proposal seeks to include limited amendments to the Council's functions in the Bill. Changes to the Bill to address this problem are out of scope of the Bill, so the changes are being progressed through a SOP.

## Executive Summary

This proposal relates to the Education and Training (Teaching Council Fees and Costs) Amendment Bill (the Bill) reported back to the House on 10 September 2021. The Bill responds to the High Court's findings in a recent Judicial Review which quashed the Council's decisions to move to an annual fee and practicing certificate renewal and found that the Council did not have the power to charge a fee for all of its functions.

The Bill enables the Teaching Council to fix fees that cover the costs of all its statutory functions and powers. This proposal seeks to make limited amendments to the Council's functions in the Bill.

The Council is obliged to deliver all of its statutory functions, which currently focus on teachers and the broader education profession that includes educational leaders. To meet its need to be self-funding the Council charges fees and levies that cover the cost of delivering all of its mandatory functions.

This proposal seeks to distinguish the mandatory aspects in the Council's functions that focus on teachers from the professional leadership elements which will become optional and not be included in the fees it charges.

These leadership activities, such as the development of the Leadership Strategy and the establishment of a leadership space (*Rauhuia*), have currently been funded by the Government, through the Ministry of Education. The Ministry is committed to continuing this support, which should be clearly differentiated from the responsibilities of the Council that focus on teachers.

Other professional representative organisations, including the teacher and principal unions, also provide professional leadership to their members.

The majority of submissions made by teachers and their representatives to the Education and Workforce Committee on the Bill strongly opposed the Council being able to charge fees for activities relating to its professional leadership functions.

The proposed Supplementary Order Paper addresses this by amending the Bill to make these functions, which are currently mandatory, optional for the Council. The SOP further provides that the Council can only undertake the new optional functions with the Minister's approval and cannot fix fees or set levies to recover the costs of

these functions. The government will continue to fund the provision of these optional functions.

### Limitations and Constraints on Analysis

Stakeholder views on this matter, including those of teachers, their representatives and the Teaching Council, have been clearly expressed through the Select Committee process on the Bill.

Because this proposal needs to be progressed through an SOP after the Bill has been reported back to the House there is no further opportunity to consult.

There are no other constraints on this analysis.

### Responsible Manager (completed by relevant manager)

Dr Andrea Schöllmann  
Deputy Secretary  
Education System Policy  
Ministry of Education



16 September 2021

### Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	<p>The Ministry of Education's Quality Assurance Panel has reviewed the Supplementary Analysis <i>Teaching Council Functions in the Education and Training (Teaching Council Fees Costs) Amendment Bill</i> produced by the Ministry of Education and dated 15 September 2021. The panel considers that it <b>meets</b> the Quality Assurance criteria. The Supplementary Analysis Report (SAR) provides a clear, concise, case for limited legislative change to clarify the mandatory functions of the Teaching Council and respond to the concerns raised by teachers that the Council should not charge teachers for the costs of fulfilling its professional leadership functions.</p>

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. The Teaching Council of Aotearoa New Zealand (the Council) is an independent statutory body responsible for the professional regulation of early childhood, primary and secondary schooling teachers. The Council's functions, set out in section 479 of the Education and Training Act 2020, are focussed on registration and certification, standard setting and disciplinary processes as well as professional leadership, enhancing the status of teachers and education leaders, and disseminating best practice to teachers and leaders.
2. The Council is obliged to carry out all of its statutory functions. It is also Government policy that the Council will be financially self-sufficient. It raises revenue to cover the cost of its functions through fees it charges teachers.
3. The current fee of \$220.80 for a three-yearly practicing certificate, that was reinstated following the High Court's Judicial Review ruling, has not been increased since 2010. It is insufficient for the Council to cover its operating costs. The Council has sufficient assets, including time-limited transition funding from the Government, to allow it to continue to operate through to around the middle of 2022.
4. Following the passage of the Bill the Council will consult teachers on the level of fees it needs to set in order to cover its operating costs and be financially self-sufficient.
5. As part of its professional leadership activities, the Council has:
  - published a Leadership Strategy and associated Educational Leadership Capabilities Framework
  - established a leadership space, *Rauhuia*, as a networking space to support the strategy and capabilities framework
6. Currently the cost of these activities is recovered through funding of approximately \$0.35 million annually from the Ministry of Education, recognising that these activities potentially extend beyond the teacher focused role of the Teaching Council for which teachers must pay fees.
7. The Ministry of Education delivers Government's investment in growing and lifting the capability of principals and tumuaki. The Government is committed to continuing this support, which creates the potential for overlap with activities the Council might engage in as part of its professional leadership functions.
8. Many teachers and principals belong to representative organisations. These organisations also provide professional leadership to their members in addition to the activities of the Council and the Ministry.
9. Distinct from any leadership focused activities, the Council disseminates information about best practice to all teachers to support them to meet the teaching standards set by the Council. Along with work to enhance the status of all teachers, this is a key part of the role of a professional body.
10. The Teaching Council will need to consider what level of fee it needs to charge in order to be financially self-sustaining, and, under current legislation, that includes covering the cost of the professional leadership elements of its mandatory functions.
11. Submissions on the Bill have made it clear that many teachers oppose the Council being required, through its legislated functions, to provide professional leadership as

they believe this should be funded either by employers directly or via the Ministry of Education or be accessed through their other representative organisations.

### What is the policy problem or opportunity?

12. Government's policy is that the Teaching Council will be self-funded through the receipt of fees, or any other revenue gathering activity, to cover the costs of its mandatory functions as set out in section 479 of the Education and Training Act 2020.
13. Currently the statutory functions of the Teaching Council cover core regulatory functions relating to teachers including setting standards for entry to teaching and for holding a practicing certificate, as well as disciplinary functions to ensure those standards are met.
14. Alongside its core regulatory functions, the Council must also disseminate best practice information to all teachers, because it would otherwise be unable to provide best practice advice on how to meet teaching standards. The Council also works to enhance the status of all teachers, as a key part of the role of a professional body. These functions need to be retained as mandatory for the Council to deliver.
15. Currently these functions for teachers are intertwined in the legislation with an equivalent focus on the broader education profession and educational leaders.
16. There is currently considerable overlap between the activities of the Council that relate to its professional leadership functions and the support the Ministry of Education provides to grow the capability of educational leaders.
17. Following the review of Tomorrow's Schools in 2019, Cabinet agreed that the Ministry of Education's role should include growing and lifting the capability of all education leaders.
18. There is a risk that activities carried out by the Council that relate to its professional leadership functions may overlap or duplicate activities that could be more appropriately funded by the Ministry of Education in line with the Cabinet decision set out above.
19. Currently the legislation does not allow the Council to consider its professional leadership functions as optional.
20. Submissions on the Bill support the Council carrying out its core regulatory functions for teachers and are generally supportive of teachers' fees being used to cover the costs of that work. However, submitters have strongly opposed teachers' fees being used to fund the activities related to professional leadership functions. Submitters believe this cost should be borne either by employers or the Government.
21. This will make it challenging for the Council as it seeks to set fees to fully fund its functions.

### What objectives are sought in relation to the policy problem?

22. To enable the financial sustainability of the Council so that it can continue to regulate teachers to ensure the quality of teaching and safety of children on a self-funded basis.
23. To minimise the costs of the Council's activities that are required to deliver its mandatory functions.
24. To clearly distinguish activities of the Council that should be funded through the collection of teachers' fees from those that should be funded by the Government.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

25. **Financial sustainability.** The legislation enables the Council to operate on the fully self-funded basis required by government.
26. **Proportionality.** As the proposed changes are being progressed through urgent legislation, they are limited to the minimum intervention necessary to clarify the extent of the Council's mandatory functions as they relate to teachers.
27. **Certainty.** The Council and teachers have legal certainty in relation to the status of fees currently and previously collected by the Council and its predecessors.
28. **Fairness.** The policy is that the Council should be able to recover the costs of all its mandatory functions but no more than is needed to do that. It is unfair if teachers are asked to contribute to the cost of activities that should legitimately be funded by the government.

### What scope will options be considered within?

29. Non-regulatory options have not been considered because the problem arises from the scope of the statutory functions of the Council. The Council is obliged to carry out all of these functions.
30. Options must address the need for the Council to be self-funding in order to carry out its mandatory functions. The Minister has confirmed this policy since the High Court decision was handed down.

### What options are being considered?

#### Option One – *Status Quo*

31. The status quo would require the Council to charge fees to cover the costs of the professional leadership related elements of its mandatory functions, particularly if government funding for these functions ceased to be available. This would mean the Council would potentially need to carry out activities, and incur costs, for activities that benefit a subset of all teachers.
32. The Council would continue to charge the \$220.80 fee until such time as it is able to set a higher fee to cover all of the costs of its functions. These new fees would need to

allow a contingency for the cost of the professional leadership related functions, which would, based on the submissions on the Bill, not be supported by teachers.

**Option Two – Amending the Bill** (preferred option)

33. This option would amend the Bill to make it optional for the Council to perform functions relating to:
  - providing leadership to the education profession ;
  - raising the status of education leaders; and
  - identifying and disseminating best practice in educational leadership.
34. The above functions would only be carried out with the Minister's approval and would continue to be funded by the Government.
35. All other functions would remain compulsory and must be funded by the Council through its powers under the Bill to set fees. Annex one shows the Council's full set of functions and the proposed amendments

### How do the options compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – fee setting powers align with current functions
Financial stability	0	++
Proportional	+	+
Fairness	0	++
Certainty	+	++
Overall assessment	0	preferred option

### What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

36. We consider option two is the proportionate response to the changes required in response to the High Court's ruling and achieves the objective of a financially independent and sustainable Council that fulfils its purpose in a way that does not unduly burden the profession in the fees it charges.



## What are the marginal costs and benefits of the option?

<b>Affected groups</b> (identify)	<b>Comment</b> <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups	making some functions optional for the Council may reduce its operating costs that it passes on to teachers through fees	unknown	Low – the Council will need to undertake consultation with teachers before it sets a new fee
Regulators	May reduce operating costs for the Council	unknown	Medium – previous analysis by the Council has shown the leadership related elements are not a major part of its operating costs
Others (e.g. wider govt, consumers, etc.)	Nil – the Ministry will continue to fund the Council for leadership related activities	nil	High
<b>Total monetised costs</b>		Uncertain but likely to be low	
<b>Non-monetised costs</b>		low	
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	Teachers have clearly expressed the view that they do not want their fees to be used to cover the costs of any professional leadership activities the Council undertakes, and this will be made clear.	Medium	High
Regulators	The Council has stated that all of its current functions are mandatory. This	Medium	High

	change will reduce activities for which it needs to use the fees it charges teachers for to recover costs.		
Others (e.g. wider govt, consumers, etc.)	The public is served by quality teaching and a body to ensure the safety of children.	High	Medium
<b>Total monetised benefits</b>			
<b>Non-monetised benefits</b>		<i>medium</i>	<i>High</i>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

37. The new arrangements will be managed through agreements reached with the Minister of Education on advice from the Ministry of Education. The Ministry and the Council will be responsible for the ongoing operation and monitoring of the new arrangements. The Council understands and supports the proposal, and it will communicate with the profession about any developments including its fee setting powers when it consults on a new fee following the changes being proposed in the Bill.

### How will the new arrangements be monitored, evaluated, and reviewed?

38. These changes align the legislation with current policy related to the provision of professional leadership. As such, their impacts will be monitored through existing BAU processes. There will not be any separate reviews for these arrangements.

## Annex 1:

### Potential changes to the statutory Functions of the Teaching Council

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The professional leadership functions a) to c) functions of the Teaching Council, set out in section 479 of the Education and Training Act 2020, could be narrowed as follows:

- a) to provide ~~leadership to teachers and~~ direction for ~~the education~~ teachers ~~ing~~ ~~profession~~;
- b) to enhance the status of teachers ~~and education leaders~~;
- c) to identify and disseminate best practice in teaching ~~and leadership~~ and foster the ~~education teaching~~ profession's continued development in light of research and evidence of changes in society and technology;

All other functions, d) to q) remain unchanged:

- d) to carry out the functions relating to teacher registration;
- e) to establish and maintain any criteria for teacher registration that the Teaching Council considers necessary or desirable;
- f) to review, at any time, the criteria for teacher registration established under paragraph (e) and, after consulting the Minister,—
  - a. vary, delete, or replace 1 or more of the criteria; or
  - b. add 1 or more criteria; or
  - c. delete all of the criteria and substitute new criteria;
- g) to establish and maintain standards for qualifications that lead to teacher registration;
- h) to review, at any time, the standards for qualifications established under paragraph (g) and, after consulting the Minister,—
  - a. vary, delete, or replace 1 or more of the standards; or
  - b. add 1 or more standards; or
  - c. delete all of the standards and substitute new standards;
- i) to conduct, in conjunction with quality assurance agencies, approvals of teacher education programmes;
- j) to establish and maintain,—
  - a. standards for ongoing practice; and

- b. criteria for the issue of practising certificates of different kinds;
- k) to establish and maintain a code of conduct for teachers;
- l) to monitor and enforce the requirements relating to mandatory reporting;
- m) to perform the disciplinary functions in this subpart relating to teacher misconduct and reports of teacher convictions;
- n) to set the criteria for reporting serious misconduct and for reporting on competence issues;
- o) to perform the functions in this subpart relating to teacher competence;
- p) to co-ordinate a system providing for the vetting by the Police of all teachers;
- q) to perform any other functions conferred on it by this Act or any other enactment.

New functions r – t below would be added, using the text deleted from functions a) – b) above. These functions would be optional, with the agreement of the Minister of Education:

- r) provide leadership to the education profession;
- s) to enhance the status of education leaders;
- t) identify and disseminate best practice in educational leadership;