

# Departmental Disclosure Statement

---

Education and Training (Teaching Council Fees and Costs) Amendment Bill
---

The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 August 2021

**Contents**

Contents..... 2  
Part One: General Policy Statement..... 3  
Part Two: Background Material and Policy Information ..... 4  
Part Three: Testing of Legislative Content..... 5  
Part Four: Significant Legislative Features ..... 7

## Part One: General Policy Statement

The purpose of this Bill is to amend the Education and Training Act 2020 (the principal Act) to enable the Teaching Council of Aotearoa New Zealand (Council) to fix fees so that it can recover costs for all of its functions and powers. The Council is an independent statutory body responsible for the professional regulation of teachers.

The Bill is in two parts.

First, the Bill broadens the Council's existing fee-setting powers by making express provision for the Council to fix 1 or more fees for the purpose of funding all of its statutory functions and powers.

This part of the Bill also clarifies that fees are payable in the manner prescribed (for example, by instalments), and that the Council can recover unpaid fees as debts.

Second, the Bill validates the receipt of payments for fees that took effect from 1 February 2021 and have now been quashed, and validates any previous fees set or payments received by the Council or its predecessor organisations.

These measures respond to a High Court judgment of 30 June 2021<sup>1</sup> in which the Court found that the Council is not authorised by the principal Act to fix fees for all of its functions under the Act. The Court quashed the Council's decision, which took effect from 1 February 2021, to increase the fees paid over a three-year period, by way of an annual certificate and fee, for teachers' practising certificates. The High Court decision has resulted in a reversion to the previous three-yearly fees that were set in 2015.

As the Council operates on a fully self-funded basis, amendments are necessary to enable it to fix fees to recover the cost of all of its functions and powers under the Act.

The retrospective validations in the Bill are necessary to ensure the validity of previous fees, and to allow the Council to credit fees received in relation to the now-quashed annual fee as part-payment of the current three-yearly fee.

---

<sup>1</sup> [2021] NZHC 1581

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
---	----

### Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
---	----

### Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
---	----

### Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
The Supplementary Analysis Report <i>Education and Training (Teaching Council Fees and Costs) Amendment Bill</i> was authored by the Ministry of Education on 27 July 2021. This is available at <a href="https://www.education.govt.nz/our-work/legislation/education-and-training-teaching-council-fees-and-costs-amendment-bill/supplementary-analysis-report-education-and-training-teaching-council-fees-and-costs-amendment-bill">https://www.education.govt.nz/our-work/legislation/education-and-training-teaching-council-fees-and-costs-amendment-bill/supplementary-analysis-report-education-and-training-teaching-council-fees-and-costs-amendment-bill</a>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
See reference in section 2.4	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The Bill is not inconsistent with New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Bill is not inconsistent with the principles of the Treaty of Waitangi.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by the Ministry of Justice is expected to be made available on the Ministry of Justice's website at <http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

### Privacy issues

**3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?**

NO

### External consultation

**3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?**

YES

The Teaching Council of Aotearoa New Zealand (the Council) was consulted on the policy to be given effect by this Bill, and a consultation draft of this Bill, in July 2021. The Council supports the policy and the Bill.

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
The proposals in the Bill have not been tested because they are consistent with existing Government policy. They do not introduce a new approach.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
--	-----------

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Clause 5 of the Bill replaces section 480 of the principal Act with a new provision that specifically authorises the Council to fix one or more fees for the purpose of funding all of its functions and powers under the Act. This enlarged fee-setting power is necessary because the Council is required to operate on a fully self-funded basis, but the Act only allows it to fix fees in relation to some of its functions. The fees are fixed by a notice, which is deemed to be secondary legislation and subject to the publication requirements in the Legislation Act 2019. Secondary legislation can be disallowed and is subject to Regulations Review Committee scrutiny.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Clause 7 and the Schedule of the Bill amend Schedule 1 of the principal Act to enable the Council to credit fees paid under a (now quashed) May 2020 Gazette notice in part-payment of the fees now back in force (set by a 2015 notice), and to validate any previous fees paid to the Council or its predecessor organisations before the quashed fees. This retrospective component of the Bill goes only as far as is necessary to validate the Council's fixing of fees and receipt of payments up to (but not including) the 2020 notice. 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.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
---	-----------

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
--	-----------

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
---	-----------

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
--	------------

The Bill amends the Council's existing powers to make delegated legislation. Clause 5 of the Bill replaces section 480 of the Education and Training Act with a new provision that specifically authorises the Council to fix one or more fees for the purpose of funding all of its functions and powers under the Act. These fees are fixed by a notice, which is deemed to be secondary legislation and subject to the publication requirements in the Legislation Act 2019. Secondary legislation can be disallowed and is subject to Regulations Review Committee scrutiny.

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
--	-----------

