

Supplementary Departmental Disclosure Statement

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

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Education and Training (Teaching Council Fees and Costs) Amendment Bill, dated 6 August 2021, can be found at this link <http://disclosure.legislation.govt.nz/bill/government/2021/60/>

This supplementary 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.

15 September 2021

Contents

Contents.....	2
The Main Areas of Change to the Original Disclosures	3
Part One: General Policy Statement.....	4
Part Two: Background Material and Policy Information	6
Part Three: Testing of Legislative Content.....	8
Part Four: Significant Legislative Features	10

The Main Areas of Change to the Original Disclosures

This is a supplementary disclosure statement for the Education and Training (Teaching Council Fees and Costs) Amendment Bill.

The supplementary disclosure statement supplements the original disclosure statement for the Bill by reporting the additions and changes that would need to be made to the original disclosure statement to accurately reflect the Bill with the proposed government amendments incorporated.

Where the Bill now also incorporates changes made by a select committee of the House, the supplementary disclosure statement notes these if relevant but does not explain them further.

The main areas of change to the original disclosure statement include providing for amendments to:

- separate the Teaching Council's (the Council's) functions into mandatory and optional functions
- provide that the Council's professional leadership functions are optional and may only be performed with the approval of the Minister of Education
- provide that the Council may only recover the costs of its mandatory functions
- correct an error by reinstating a provision from the Education and Training Act 2020 authorising the Council to charge for any goods or services it provides in accordance with its functions. Omission of this provision was unintentional
- omit the transitional provisions in the Bill relating to the Legislation Act because the provisions are no longer required.

Part One: General Policy Statement

This Supplementary Order Paper (SOP) proposes amendments to the Education and Training (Teaching Council Fees and Costs) Amendment Bill.

The Bill as introduced amends the Education and Training Act 2020 to enable the Council to fix fees so that it can recover costs for all of its functions and powers.

The Education and Workforce Select Committee changes include enabling the Council to set levies as well as fees. This has resulted in the Bill's name being changed to include levies. It has also resulted in the SOP referring to fees and levies in relation to provisions which are described in the departmental disclosure statement for the Bill as referring only to fees.

The key changes made by the SOP are to:

- separate the Council's functions into mandatory and optional functions
- provide that the Council's professional leadership functions are optional and may only be performed with the approval of the Minister of Education
- provide that the Council may only recover the costs of its mandatory functions.

These changes respond to strong opposition expressed in submissions on the Bill, to teachers being required to pay for the Council's professional leadership functions through their registration and certification fees.

The SOP addresses this concern by preventing the Council from being able to recover the costs of these functions through fees and levies. While the Bill as introduced provided for the Council to be fully self-funded, the SOP gives effect to a subsequent Cabinet decision that these optional professional leadership functions should continue to be funded by the government.

It is important that the Council's mandatory functions, for which it can charge fees and levies, focus on teachers (as distinct from principals and deputy principals etc.) whereas the optional functions are focussed on the profession more broadly.

The SOP gives effect to this policy by amending the Bill to provide that the Council's professional leadership functions are as follows:

- to provide leadership to the education profession
- to enhance the status of education leaders
- to identify and disseminate best practice in educational leadership.

The amendments also provide that the Council's corresponding mandatory functions for which it can set fees and levies to recover related costs, are as follows:

- to provide direction for teachers
- to enhance the status of teachers

- 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.

The SOP corrects a technical error by reinstating section 480(5) from the Education and Training Act 2020, 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.

The SOP also omits the transitional provisions in the Bill relating to the Legislation Act because the provisions are no longer required.

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

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

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	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
<p>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.</p> <p>The Supplementary Analysis Report <i>Teaching Council Functions in the Education and Training (Teaching Council Fees and Costs) Amendment Bill</i> was authored by the Ministry of Education on 15 September 2021. Both documents are available at:</p> <p>Supplementary Analysis Reports: Education and Training (Teaching Council Fees and Costs) Amendment Bill</p>	

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 affected 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?

This SOP 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?

This SOP 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?

NO

No advice has been provided to the Attorney-General on this SOP. Advice provided on the Bill as introduced can be accessed on the Ministry of Justice's website at:
<https://www.justice.govt.nz/assets/Documents/Publications/20210729-NZ-BORA-Advice-Education-and-Training-Teaching-Council-Fees-Amendment-Bill-Updated.pdf>

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

3.4.1. Was the Ministry of Justice consulted about these provisions?

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

3.5.1. Was the Privacy Commissioner consulted about these provisions?

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 was consulted on the policy to be given effect by this SOP, and a consultation draft of this SOP, in September 2021. Treasury and DPMC have also been consulted.	

Other testing of proposals

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?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The SOP limits the Council's ability to impose fees or levies by only allowing it to recover costs in relation to its mandatory functions. The Bill as introduced allowed the Council to set fees to recover the costs in relation to all its statutory functions and the select committee changes provided for the setting of levies, as well as fees, to recover the costs of all the statutory functions. By introducing a distinction between optional and mandatory functions, and only allowing the Council to recover costs in relation to the latter, the SOP constrains this power more than was the case under the Bill as introduced and reported back.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
This SOP does not affect rights, freedoms, or impose obligations, retrospectively. The retrospective elements of the Bill are discussed in the disclosure statement for the Bill available here http://disclosure.legislation.govt.nz/bill/government/2021/60/	

Strict liability or reversal of the burden of proof for offences

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

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?	NO

Powers to make delegated legislation

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The disclosure statement for the Bill as introduced explains how the Bill broadens the Council's existing powers to make delegated legislation by replacing 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. It notes that 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.</p> <p>This SOP limits that power to fees and levies notices related to the costs of mandatory functions. It therefore narrows the scope of the power to make delegated legislation that was provided for in the Bill as introduced and reported back.</p>	

Any other unusual provisions or features

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