

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

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to amend the Education and Training Act 2020 (the **Act**) to enable the Teaching Council of Aotearoa New Zealand (the **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 2 Parts.

Part 1 of 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.

Part 2 of 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 judgment of the High Court dated 30 June 2021 (*Jones & Anor v Teaching Council of Aotearoa New Zealand | Matatū Aotearoa* [2021] NZHC 1581), which found that the Council is not authorised by the Act to fix fees for all of its functions under the Act. The High Court quashed the Council's decision, which took effect from 1 February 2021, to increase the fees paid over a 3-year period, by way of an annual certificate and fee, for teachers' practising certificates. The High Court judgment has resulted in a reversion to the previous 3-yearly fees, which 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 3-yearly fee.

Departmental disclosure statement

The Ministry of Education is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=60>

Regulatory impact statement

The Ministry of Education produced a supplementary analysis report for this Bill on 27 July 2021. A copy of this supplementary analysis report can be found at—

- <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.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Education and Training Act 2020.

Part 1

Teaching Council fees and costs

Clause 4 amends section 479, which sets out the functions of the Teaching Council. The amendments adjust the section heading and carry over existing section 480(6) to (8) as *new section 479(1A) to (1C)* so that section 479 covers both the functions and powers of the Teaching Council.

Clause 5 replaces section 480, which relates to the powers of the Teaching Council, with a new provision that specifically provides the Teaching Council with the power to fix 1 or more fees to cover all of its functions and powers. *New section 480* consolidates the existing powers of the Teaching Council to fix fees (and recover costs) for registering teachers, issuing practising certificates, and granting limited authorities to teach currently set out in clauses 13 and 22 of Schedule 3 into a single provision, and also ensures that the Teaching Council can fix fees for any other matter that

relates to anything it is required to do in order to perform or exercise all of its functions and powers under the Act.

Clause 6 consequentially repeals clauses 13 and 22 of Schedule 3 because the substance of the provisions is now covered by *new section 480* (as replaced by *clause 5*).

Part 2

Validations and other transitional provisions

Clause 7 and the *Schedule* insert *new Parts 3 and 4* (*new clauses 73 to 78*) into Schedule 1, which contains transitional, savings, and related provisions.

Validations

New Part 3 (*new clauses 73 to 76*) validates fees paid under the Education Council of Aotearoa New Zealand Fees for Registration, Practising Certificates and Limited Authorities to Teach notice 2015 and any previous fees fixed for those matters by a former Council (the **specified fees**).

New clause 73 defines terms used in *new Part 3*.

New clause 74 validates the specified fees and provides that all money received by the Teaching Council or a former Council in payment of the specified fees is to be treated as having been lawfully paid to, and received by, those Councils.

New clause 75 ensures that any 2015 fee, or part of a 2015 fee, that applies to a person and that has not been paid before the commencement of the Bill may be recovered by the Teaching Council on and after commencement as if the 2015 fee had always been lawfully payable.

New clause 76 deals with fees paid by a person to the Teaching Council on or after 1 February 2021 under the Teaching Council of Aotearoa New Zealand Fees for Registration, Practising Certificates, and Limited Authorities to Teach notice 2020 (a **2020 fee**). It provides that the payment of a 2020 fee is to be treated as a part-payment of the appropriate 2015 fee payable by the person.

Other transitional provisions

New Part 4 (*new clauses 77 and 78*) clarifies the status of a notice made under *new section 480* during the period after the commencement of the Bill but before the main commencement of the Legislation Act 2019, and sets out transitional publication requirements for the notice.

Hon Chris Hipkins

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Contents

		Page
1	Title	1
2	Commencement	2
3	Principal Act	2
Part 1		
Teaching Council fees and costs		
4	Section 479 amended (Functions of Teaching Council)	2
5	Section 480 replaced (Powers of Teaching Council)	2
	480 Teaching Council fees and costs	2
6	Schedule 3 amended	3
Part 2		
Validations and other transitional provisions		
7	Schedule 1 amended	3
Schedule		
New Parts 3 and 4 inserted into Schedule 1		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education and Training (Teaching Council Fees and Costs) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Education and Training Act 2020. 5

Part 1
Teaching Council fees and costs

4 Section 479 amended (Functions of Teaching Council)

(1) In the heading to section 479, replace “**Functions**” with “**Functions and powers**”. 10

(2) After section 479(1), insert:

(1A) The Teaching Council may, by written notice to a governing body, require the governing body to give the Teaching Council, within a time specified in the notice, any information specified in the notice, and the governing body must within that time give the Teaching Council in writing all information so required that is reasonably necessary or desirable for the Teaching Council to have for the proper administration of this subpart. 15

(1B) The Teaching Council has and may exercise all other powers conferred by this Act or reasonably necessary for the purposes of performing its functions.

(1C) For the purposes of **subsection (1A), governing body** means the board of a State school or a service provider that operates any licensed early childhood service or any certified playgroup or the managers of a private school. 20

(3) In section 479, replace the compare reference with:

Compare: 1989 No 80 ss 382, 383(6)–(8)

5 Section 480 replaced (Powers of Teaching Council) 25

Replace section 480 with:

480 Teaching Council fees and costs

(1) The Teaching Council may, by notice, fix 1 or more fees payable for the following matters for the purpose of funding all of its functions and powers under this Act: 30

(a) registration as a teacher:

(b) the issuing of a practising certificate:

(c) the granting of a limited authority to teach:

(d) any other matter that relates to anything the Teaching Council is required to do in order to perform or exercise its functions and powers under this Act. 35

- (2) Different fees may be fixed under **subsection (1)**—
- (a) in respect of registration effected in different circumstances; and
 - (b) for practising certificates of different kinds.
- (3) Fees fixed under **subsection (1)** are payable in the manner (for example, by instalments) prescribed in the notice and are recoverable as a debt due to the Teaching Council. 5
- (4) Despite anything in this Act, the Teaching Council may refuse to register a person as a teacher, issue a practising certificate, or grant a limited authority to teach until the appropriate fee has been paid in the manner prescribed by the notice. 10
- (5) If the Teaching Council cancels a teacher’s registration or limited authority to teach, it may, by written notice to the teacher or person concerned, require the teacher or person to pay the Teaching Council any reasonable costs specified in the notice that were incurred by the Teaching Council in dealing with the proposal to cancel the registration or authorisation, or with the cancellation itself. 15
- (6) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 1989 No 80 ss 364, 372, 383(1)–(3)

- 6 Schedule 3 amended**
- In Schedule 3, repeal clauses 13 and 22. 20

Part 2

Validations and other transitional provisions

- 7 Schedule 1 amended**
- In Schedule 1,—
- (a) insert the Parts set out in the **Schedule** of this Act as the last Parts; and 25
 - (b) make all necessary consequential amendments.

Schedule
New Parts 3 and 4 inserted into Schedule 1

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Part 3		
Provisions relating to Education and Training (Teaching Council Fees and Costs) Amendment Act 2021		5
73	Interpretation	
	In this Part,—	
	2015 fees means fees fixed or purportedly fixed by the Education Council of Aotearoa New Zealand Fees for Registration, Practising Certificates and Limited Authorities to Teach notice published in the <i>Gazette</i> on 25 June 2015, 2015-gs3644	10
	2020 fee means a fee fixed or purportedly fixed by the Teaching Council of Aotearoa New Zealand Fees for Registration, Practising Certificates, and Limited Authorities to Teach notice published in the <i>Gazette</i> on 22 May 2020, 2020-gs2144	15
	commencement means the commencement of the Education and Training (Teaching Council Fees and Costs) Amendment Act 2021	
	former Council means any predecessor of the Teaching Council.	
74	Validation of specified fees	20
	(1) This clause applies to the 2015 fees and any previous fees fixed by a former Council for registration as a teacher, the issuing of a practising certificate, or the granting of a limited authority to teach (specified fees).	
	(2) The specified fees, and all actions of a former Council in fixing the specified fees, are valid and declared to be and to always have been lawful.	25
	(3) All money received by the Teaching Council or a former Council in payment of the specified fees is to be treated as having been lawfully paid to, and received by, the Teaching Council or the former Council.	
75	Recovery of unpaid 2015 fees	
	Any 2015 fee, or part of a 2015 fee, that applies to a person and that has not been paid before commencement—	30
	(a) is declared to be lawfully payable to the Teaching Council; and	
	(b) may be recovered by the Teaching Council on and after commencement as if the 2015 fee had always been lawfully payable by the person.	

76 Payment of 2020 fees

- (1) This clause applies to a person who has paid a 2020 fee to the Teaching Council on or after 1 February 2021.
- (2) The payment must be treated on and after commencement as a part-payment of the appropriate 2015 fee payable by the person.

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Part 4

Provisions relating to Legislation Act 2019

77 Application of Part

This Part applies until the main commencement date (as defined in clause 2 of Schedule 1 of the Legislation Act 2019).

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78 Teaching Council fees and costs

- (1) This clause applies to a notice made by the Teaching Council under **section 480** (as replaced by the Education and Training (Teaching Council Fees and Costs) Amendment Act **2021**).
- (2) The notice—
 - (a) must be published in the *Gazette* and on an Internet site maintained by or on behalf of the Teaching Council; and
 - (b) must state where printed copies of it are available free; and
 - (c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (3) The Teaching Council must make printed copies of every notice made under **section 480** that is in force available free at the place stated in it.

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