

Hon Chris Hipkins

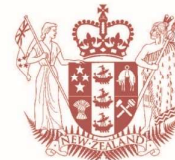
MP for Remutaka

Minister for COVID-19 Response

Minister of Education

Minister for the Public Service

Leader of the House



Presented to the House of Representatives in accordance with Standing Order 272 J.17

Legislative Statement – Education and Training (Teaching Council Fees, Levies, and Costs) Amendment Bill – Third Reading

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 and impose levies 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 responds to a judicial review brought by the Post Primary Teachers' Association (*Jones & Anor v Teaching Council of Aotearoa New Zealand | Matatū Aotea* [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 Bill amends the Act to enable the Council to fix fees and levies so that it can recover the costs for all of its mandatory functions and powers, and therefore be fully self-funded. It also clarifies that the Council can allow fees and levies to be paid in the manner that it prescribes (e.g. by instalments) and can recover unpaid fees and levies as a debt.

The Bill retrospectively validates the receipt of payments under an annual fees notice made in May 2020 that has now been quashed by the High Court. It does not, however, validate the quashed fees notice. It also validates any previous fees fixed (except those paid under the May 2020 notice) and received by the Council and its predecessor organisations. The retrospective validations ensure the validity of previous fees, and allows the Council to credit fees received in relation to the now-quashed annual fee as part-payment of the current 3-yearly fee.

Amendments made by the Education and Workforce Committee and the Committee of the whole House

The Education and Workforce Committee recommended a number of amendments to the Bill, all of which have been adopted by the House. These include:

- Enabling the Council to use levies as well as fees (the Act and the Bill as introduced only provide for fees) to recover costs from teachers. Costs related to some of the Council's functions are more appropriately recovered through levies, because they relate to activities undertaken for the benefit of the profession rather than as specific services for individual teachers.
- Clarifying that the Council can only fix fees and impose levies in relation to its actual and reasonable costs incurred in performing its mandatory functions.
- Requiring the Council to consult teachers and holders of a limited authority to teach on any proposed fee or levy, and to receive the views presented to it with an open

mind and to give those views due consideration when making decisions about fees and levies.

A number of related minor amendments, including changes to the Bill's name and various provisions to reflect the addition of a levy-making power, were also made.

During the committee of the whole House, further amendments were made in relation to the Council's functions:

- The functions are separated into mandatory and optional functions. The professional leadership functions are optional and all other functions are mandatory.
- The optional professional leadership functions can only be performed with the approval of the Minister of Education.
- The Council can only use fees and levies to recover the costs of the mandatory functions. It is important that the Council's mandatory functions, for which it can charge fees and levies, focus on teachers. The policy is that any optional functions approved by the Minister should be funded by the Government, as they are focussed on the profession more broadly.

Two technical amendments were also made during the committee of the whole House. The first of these corrected an error in the Bill by reinstating a provision from the Act, that was inadvertently omitted from the Bill, which authorises the Council to charge for any goods or services it provides in accordance with its functions. The second of these omits the transitional provisions in the Bill relating to the Legislation Act 2019 because the provisions are no longer required.