

Fee for review of Complaints Assessment Committee decision by Disciplinary Tribunal

Consultation on
proposed Fee

29 May 2024



**Teaching
Council of
Aotearoa
New Zealand**

Matatū. Tū Mataora.
Stand tall. Shape the future.

Contents

How to have your say	3
What we will do with your feedback	3
Reasons for a new fee being established	3
Principles considered in proposing a fee	4
What are the anticipated costs of a review?	5
Questions	5
Appendix one: Breakdown of actual costs of a CAC review	6
Appendix two: Advice of the Controller and Auditor-General	9
Appendix three: What are the requirements for setting any fee?	11

How to have your say

The Teaching Council of Aotearoa New Zealand (Teaching Council) welcomes feedback from all kaiako | teachers, tumuaki | principals, professional leaders, unions, Initial Teacher Education (ITE) providers, peak bodies, and other stakeholders, including members of the public, Early Childhood Education (ECE), and kura or school communities, who may be interested in or potentially affected by the proposed new policy. The deadline for feedback is 5:00pm Friday 14 June 2024.

You can submit your views on the proposals via a survey on our website. However, you can also make a written and/or oral submission.

If you wish to provide more detailed feedback rather than responding to the survey, please send written comments to cacfeereviews submissions@teachingcouncil.nz.

What we will do with your feedback

The Teaching Council will analyse and consider your feedback before making decisions on amendments to the policy and implementation of the proposed fee.

An analysis of the submissions will be published. The Teaching Council is required to consider any request to release the submissions under the Official Information Act (OIA). Any submissions released under the OIA will be anonymised. You cannot veto the release of your submission under the OIA, but you can let us know if there are specific reasons why you would like your feedback to remain confidential, and we will consider those reasons before deciding on any OIA request that is received.

Reasons for a new fee being established

In 2022 changes were made in the Education and Training Act 2020 related to the teaching profession's disciplinary bodies. In 2023, the Teaching Council issued new rules that set out procedures for how the disciplinary bodies operate in line with the new legislation. The most significant change was giving the Complaints Assessment Committee (CAC) powers to be able to consider more serious matters including those where serious misconduct is alleged, so that only those matters that are very serious and may result in cancellation of registration or a practising certificate need to be sent on to the Disciplinary Tribunal (DT) for decision. This change is intended to make processes faster for all involved.

Prior to the amended rules taking effect on 29 July 2023, CAC decisions required both the agreement of the teacher and the initiator or person making a complaint. If the committee was unable to reach agreement with the teacher and the initiator or person making a complaint, the matter had to be referred to the DT for a decision.

The amended rules now require the CAC to reach agreement only with the teacher. This may result in initiators and complainants being dissatisfied with a CAC decision because they have had no influence on it.

Because of this change, the Education and Training Amendment Act 2022 introduced a new provision that allows a decision made by the CAC to be reviewed by the DT at the request of:

- the teacher who is the subject of the report, complaint or matter that the CAC has made a decision about; (although because they will have already agreed to the outcomes with the CAC, we consider it would be uncommon for a teacher to seek a review of a CAC decision)
- the person who made the report or complaint or referred the matter to the CAC that led to the decision.

Section 499A of the Education and Training Amendment Act 2022, which sets out the new provision, is attached as Appendix one.

Under the old rules, if an initiator or person who made a complaint didn't agree to the CACs proposed decision, the matter would be referred to the DT, and the DT could simply impose a decision. If the initiator or person making the complaint was unhappy with the DT decision, they were not able to appeal the decision to the District Court – only the teacher could. The only further action an initiator or person making the complaint could take was a judicial review. A judicial review looks to consider whether the right process had been followed or not rather than the decision itself. There are considerable legal and court costs involved.

Under the new rules, there is now the ability for an initiator or person making the complaint to seek a review of the decision from the DT. There is a considerable cost associated with reviewing a decision. This paper outlines a proposal for how those costs can be partially met with the introduction of a new fee.

Principles considered in proposing a fee

Section 480 of the Education and Training Act 2020 requires that any fee we charge for this service must “recover only the actual and reasonable costs incurred by the Teaching Council in performing its functions”.

In addition to this requirement, the Teaching Council has considered the following principles in proposing a fee to cover some or all of the costs associated with reviewing a decision:

- In accordance with our values, we want to ensure any fee is set in a fair, honest, ethical, and just way that enables teachers and initiators to have the opportunity to seek a review of a decision without being unduly deterred by cost.
- Where service is provided to an individual, rather than a benefit to the profession as a whole, the individual should meet some of the costs. Parliament considered that a fee might be appropriately charged for a review of decision, rather than the full cost being included in the levy that all teachers pay for. This would align with the situation where an individual decides to request a review of a DT decision – the cost is charged to the individual by the District Court.
- The cost of administering a fee should not be higher than the fee that would be recovered.
- Any fee cannot be higher than the ‘actual’ cost incurred.
- The fee should be reasonable and justifiable for the service provided.

In addition, the four guiding principles in the Office of the Controller and Auditor-Generals 2021 “Setting and administering fees and levies for cost recovery: Good practice guide” are to be applied: Equity, efficiency, justifiability, and transparency. See Appendix two.

What are the anticipated costs of a review?

1. There was no previous provision for the review of a CAC decision, and this limits our ability to rely on precedence in setting a fee.
2. The Act continues to provide an appeal against a DT decision to the District Court.
3. We anticipate that any review will be conducted by way of a rehearing. We also anticipate that most reviews will also be conducted on the papers, rather than by means of a hearing (unless the DT otherwise directs). Our breakdown of the expected costs of this process is outlined in Appendix one.
4. The Teaching Council's Governing Council has agreed to consult on **\$325** as a proposed fee for CAC review.
5. This proposed fee is based on the administration cost to the Teaching Council of processing a review application, and cost of the DT chair conducting a paper review of the case.
6. It is important to note that this does not represent the full cost of conducting a review, and that the difference will need to be funded by teachers out of the levy that they pay to the Teaching Council.
7. Section 499A (3) of the Education and Training Amendment Act 2022 states a fee, if one is set, must accompany a written notice to the DT of the teacher's or person's intention to request a review. It is possible that a person requesting a review may, after initial submission of their written notice and any fee (if set), choose not to pursue the review. The processing of a review request will involve Teaching Council staff time, even if the request is later withdrawn. It is therefore also recommended any fee that is set is non-refundable in recognition of this time commitment.

Questions

1. Do you agree that the Teaching Council should charge a fee for the review of a CAC decision?
2. If the Teaching Council sets a fee for the review of a CAC decision, do you agree with the proposed administrative fee of \$325 and our rationale for that?
3. If you do not agree with the proposed fee, please select **ONE** of the options below:
 - No Fee, and cost to be met by teachers through the levy
 - A lower proportion of the actual cost
 - A higher proportion of the actual cost
 - The full cost of a review and no additional charge to teachers through the levy

Link to the online survey: [Consultation: Fee for review for Complaints Assessment Committee decision by Disciplinary Tribunal](#).

Appendix one: Breakdown of actual costs of a CAC review

Phase one - Receipt of review request and Phase two - Pre-review hui with DT Chair

Role	Responsibilities
DT Coordinator	<p>Phase one - Receipt of review request</p> <ul style="list-style-type: none"> • Receive written notice of an intention to request a review - confirm receipt of fee. • Check accompanying information is sufficient (i.e. grounds for review clearly specified; copy of written notice of CAC decision provided; other information the person wishes DT to consider provided). • Enter necessary details into Hapori Matatū (the Teaching Council's online portal for teachers) to monitor progress. • Provide copy of written notice to other parties, including, as relevant: <ul style="list-style-type: none"> - teacher, or person who made or referred the matter to CAC. - teacher's current employer - CAC. • Discuss with DT Chair setting up of DT pre-review hui. • Coordinate pre-review hui time. • Provide relevant papers to DT Chair. • Enter necessary details into Hapori Matatū to monitor progress.

Phase one total: 50 minutes (DT Coordinator)

Total cost = \$33.48 (DT Coordinator)

DT Coordinator	<p>Phase two - Pre-review hui with DT Chair</p> <ul style="list-style-type: none"> • Take Minutes.
DT Review Chair	<p>Phase two - Pre-review hui with DT Chair</p> <ul style="list-style-type: none"> • Confirm if review can be done on papers. • If further information is required or if information needs clarifying. • Whether it wishes to hear from the teacher concerned or person who made or referred the complaint to the CAC.
DT Coordinator and DT Chair	<ul style="list-style-type: none"> • Enter necessary details into Hapori Matatū to monitor progress. • Review and send pre-review hui minutes to parties. <p>DT Chair to write pre-review hui minutes (based on current Pre-Hearing Conference (PHC) process for conduct matters.)</p>

Phase two total: 165 minutes (DT Coordinator and DT Review Chair)

Total Cost = \$292.63 (DT Coordinator and DT Review Chair)

DT Coordinator = 45 minutes (\$30.13)

DT Chair = 140 minutes (\$262.50)

Total cost for Phase one and Phase two

\$33.48 (Phase one) + \$292.63 (Phase two)

= \$326.11

Agreed fee to consult on is \$325. This reflects the actual and reasonable costs of administering the first two phases of a review.

We have proposed that the fee only cover the costs of Phases one and two of the review process. That would mean that costs for Phase three and four of the review process would need to be met by teachers out of the levy that they pay to the Teaching Council. Those costs are outlined below:

Phase four - Post DT Review Panel

Role	Responsibilities
DT Chair	Decision Writing <ul style="list-style-type: none">(Based on writing decisions for conduct DT cases. As a new process, initial reviews may take more time as precedent-setting.)Checking redactions that are made.
DT Coordinat	Decision review <ul style="list-style-type: none">Proof decision, send to parties and Teaching Council staff.Update Hapori Matatū case and spreadsheets.Update register if applicable. Decision publication <ul style="list-style-type: none">Redactions.Review process sending to parties and internal staff.Publish to website.Updating case on Hapori Matatū.

Phase four Post DT Review Panel total: 780 Minutes

Total Cost = \$1,425.52

DT Chair = (600 minutes) \$1,125.00

DT Coordinator = (180 minutes) \$300.52

The above times and costings are based on the DT processes for processing and considering a conduct matter but have been adjusted to reflect predicted actions required to action a review of a CAC decision.

The cost for the DT Coordinator is based on the hourly rate of \$40.17 derived from the salary at mid-range plus a 20% loading for overhead costs.

The costs for DT members are based on the following fees:

Chair and Deputy Chair	Inclusive of GST
Hearing fee	\$900.00
“On paper” fee (no actual hearing) ^	\$450.00
Preparation fee #	\$450.00
Writing up case decisions, per hour	\$112.50
Members	
Hearing fee	\$415.00
“On paper” fee (no actual hearing) ^	\$207.50
Preparation fee #	\$207.50

^ “On paper” hearing refers to the situation where there is no actual hearing

Preparation fee based on two hours work, that may take up to four hours

Appendix two: Advice of the Controller and Auditor-General

Legal authority

- 2.3 Legislation authorising charging is often permissive, and it sometimes presents a range of options to consider. However, this is not always so. Therefore, your starting point always needs to be making sure that you have the appropriate legal authority to charge and administer fees or levies in the way you intend.
- 2.4 That legal authority will usually be in an Act of Parliament. The Act will usually include an “empowering provision” that authorises the setting of the amount of a fee or levy through regulations. It will not usually specify the amount to be charged.

Guiding principles

First principle: Equity

- 2.10 Equity is about ensuring that you administer and manage fees and levies in a way that is administratively fair.
- 2.11 When implementing and reviewing fees or levies, it is important that you consider equity matters so that the recovery costs from fee and levy payers is fair. This means that you do not seek to recover costs from one group that could benefit a previous or future group.
- 2.12 If you do not review your fees or levies regularly, equity issues between groups of fee payers could develop over time.
- 2.13 Equity might also be an important consideration when determining when and who to charge, but these are policy choices that are outside the scope of this guide. For more information on this, see the Treasury’s guidance.

Second principle: Efficiency

- 2.14 Efficiency means that public organisations produce as many goods, or provide as many services, to the desired level of quality as possible from a given quantity of resources. This achieves value for money.
- 2.15 You need to structure fees and levies in a way that closely reflects the costs needed to produce the goods or provide the services to an individual or organisation. Setting or updating fees is an opportunity to review the costs of delivering goods and services.
- 2.17 You also need to consider how much effort you will put into determining the costs of services. Sometimes, accurately costing individual consumption might take more effort and generate more costs than the cost of the goods and services that you will recover. You will need to decide which approach is most efficient.

Third principle: Justifiability

- 2.21 Reliably establishing the costs of delivery is essential to managing costs and identifying potential inefficiencies. This is important regardless of how you recover the costs. It is important that you recover only those costs that can reasonably be attributed to producing the goods or providing the services that the charges apply to.

- 2.22 This includes a reasonable portion of costs that can be attributed to multiple services (for example, overhead costs). Services will draw on other indirect costs, such as an organisation's management layer.
- 2.23 It is justifiable to recover a portion of the direct and indirect overheads associated with the goods or services through an overhead component in the charge.

Fourth principle: Transparency

- 2.25 Fee and levy payers need to have enough information to understand and assess whether the:
- basis or method for setting the fee or levy is appropriate
 - fees or levies are fairly costed; and
 - revenue generated is correctly accounted for and used appropriately.

Policy and other considerations affecting the amount of the fee or levy.

- 3.21 The fees set for civil court proceedings are an example of a public organisation charging less than full cost recovery because of policy considerations. Historically, these fees have not recovered all costs because to do so would limit people's access to justice.
- 3.23 The circumstances that this is appropriate in are outside the scope of this guide. However, we expect you to document the policy decisions you make about charging less than the amount you need to recover costs in the methodology you use to set the fees or levies.

Appendix three: What are the requirements for setting any fee?

The new section 499A of the Education and Training Act 2020 provides for a request for a review to be subject to a fee if the Teaching Council decides to set one.

499A Review of Complaints Assessment Committee decisions

- (3) The review is by way of a written notice to the Disciplinary Tribunal of the teacher's or person's intention to request a review, accompanied by -
 - (b) the fee prescribed by notice made under section 480, if any.

480 Teaching Council fees, levies, and costs

- (5) The Teaching Council may also charge a fee for any goods or services it provides in accordance with its functions under section 479 (1).

The functions under section 479 include performing the disciplinary functions of the Act relating to teacher misconduct and reports of teacher convictions under section 479 (1).

Section 480 (5) allows the Teaching Council to charge a fee for any goods or services it provides in accordance with its functions under section 479 (1). Section 480 (6) requires that any fees charged under subsection (5) must recover only the actual and reasonable costs incurred by the Teaching Council.

Section 480 (4) requires that the Teaching Council:

- consults registered teachers and holders of a limited authority to teach on any proposed fee; and
- receives the views presented to it with an open mind and give those views due consideration when making a decision on any proposed fee.



**Teaching
Council of
Aotearoa
New Zealand**

Visit: Level 11, 7 Waterloo Quay, Pipitea, Wellington 6011, NZ

Post: PO Box 5326, Wellington 6140, NZ

Phone: +64 4 471 0852

Email: enquiries@teachingcouncil.nz