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Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington

ew@parliament.govt.nz



Matatū. Tū Mataora.
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Education and Training Amendment Bill (No. 2) Supplementary Notes

Introduction

1. About the Teaching Council of Aotearoa New Zealand | Te Matatū Aotearoa

The Teaching Council of Aotearoa New Zealand | Matatū (the Council | Matatū) is the independent professional body for registered teachers | kaiako from early childhood education through to primary and secondary schooling in English and Māori medium settings. There are currently about 136,000 registered teachers | kaiako in New Zealand | Aotearoa. The statutory purpose of the Council | Matatū, set out in section 478 of the Education and Training Act 2020 (ETA 2020), is “to ensure safe and high-quality leadership, teaching and learning ... through raising the status of the profession”.

2. Oral submission

This supplementary submission provides further information to support comments made at the Council’s | Matatū oral hearing before the Education and Workforce Select Committee on 2 March 2022, and further to our written submission of 18 February 2022.

3. Executive summary

In our written submission we noted our support for removing the requirement for the teacher and the initiator of the complaint to reach agreement with the Complaints Assessment Committee in order for the Committee to have jurisdiction over the matter.

We wish to clarify the importance of providing a teacher | kaiako with the opportunity to make submissions on the outcomes that the Complaints Assessment Committee proposes to apply.

We believe our processes - as described within secondary legislation in the form of the Teaching Council Rules 2016 - can be adapted to allow the voice of the teacher | kaiako to be heard at this point of the process.

During the Select Committee oral hearing, a question was posed about the expected cost savings arising from the proposed changes. The documents released for the current consultation about the Council’s | Matatū fees and levy indicate that future savings are anticipated as a result of the proposed changes to the threshold for referral to the Disciplinary Tribunal. An independent assessment by Deloitte discusses the expected reduction in legal costs reflecting potentially lower workload from the proposed law change and considers this assumption is not unreasonable. The assessment notes

however the difficulty of predicting what these costs might be. Further details of cost assumptions and what we are consulting are below.

Discussion – Teaching Council Rules

4. Removing the requirement for agreement

Clause 39 of the Bill amends section 497(3) of the primary Act relating to the powers of Complaints Assessment Committee by replacing “misconduct that is not serious misconduct, by agreement with the teacher and the person who made the complaint or report or referred the matter” with “misconduct or serious misconduct”.

This removes the current requirement for the Complaints Assessment Committee to seek agreement to the outcome with the teacher and the person who made the complaint or report or referred the matter.

It is our desire to ensure the voice of teachers | kaiako are heard throughout the disciplinary process and that the mana of all parties within the process is protected. We consider it is important to provide a teacher | kaiako with the opportunity to make submissions on outcomes that the Complaints Assessment Committee proposes to apply.

We believe the voice of the teacher | kaiako can be protected in secondary legislation in the form of amendments to the [Teaching Council Rules 2016 \(the Rules\)](#).

5. Teaching Council Rules 2016

Section 486 of the primary Act requires the Council | Matatū to make Rules, which are secondary legislation.

Section 486(1)(b) of the Act requires the Council | Matatū to make Rules providing for a Complaints Assessment Committee to—

- (i) investigate complaints of misconduct about, and reports of convictions of, teachers; and
- (ii) carry out any other function, and exercise any power, given under this Act or delegated to it by the Teaching Council

Additionally, section 486(1)(e) requires the Council | Matatū to make Rules providing for the practices and procedures of the disciplinary bodies, which includes the Complaints Assessment Committee.

Rule 17 (6) of the Rules currently states:

“In the case of a complaint of misconduct that the Complaints Assessment Committee is satisfied is not serious misconduct, the Complaints Assessment Committee must use reasonable efforts to reach agreement between the teacher and the initiator on the course of action to be taken.”

The Rules are silent about what happens if agreement is unable to be reached. The Complaints Assessment Committee has had to refer such cases to the Disciplinary Tribunal for the outcome to be imposed.

The Amendment Bill proposes this requirement to reach agreement is removed. We believe however that the Rules should provide the opportunity for the voice of a teacher | kaiako to be heard, by requiring that the teacher | kaiako under investigation is given the opportunity to make submissions about any outcome that the Complaints Assessment Committee proposes to apply to them.

6. Consultation about Teaching Council Rules

Under section 486 (3) when preparing Rules (and any amendments to them), the Council | Matatū must take all reasonable steps to consult those affected by the Rules.

The Rules will need to be amended when the Amendment Bill is enacted as proposed. The transitional provisions provide for a 12-month delay in the commencement of the clause relating to the powers of the Complaints Assessment Committee. This provides time for the required consultation about the Rules changes to be conducted.

We believe the Rules is the appropriate place to provide for the voice of a teacher | kaiako to be heard with regard to the Complaints Assessment Committee's proposed outcome.

Discussion – expected cost savings arising from proposed threshold changes

7. Consultation Document – Proposed Fees and Levy

The Council | Matatū is currently consulting about proposed fees and levy. The [Consultation Document – Proposed Fees and Levy](#) was published on 18 February 2022 and is currently out for consultation until 1 April 2022. The following extracts are from this consultation document.

Outputs and costs

This section sets out Council's estimate of the volume of each service (within the mandatory functions) that will be produced, and the cost of resources and inputs required to produce these.

Estimated volume of services produced

The main activities that give rise to the Council's annual operating costs include:

- receiving about **600** complaints or Mandatory Reports
- undertaking about **300** conduct investigations
- undertaking about **30** competence investigations

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Impacts of a decreased threshold for referral to the Disciplinary Tribunal

In 2015 legislative changes were made for mandatory reporting that lowered the threshold for cases requiring Disciplinary Tribunal hearings to all those that 'may possibly constitute serious misconduct'¹³

These changes have driven increases in both the volume of mandatory reports (up by 50 percent), and the complexity and cost of investigating and resolving these cases. All cases the Complaints Assessment Committee hears that 'may possibly constitute serious misconduct'¹⁴ must now be referred to the Disciplinary Tribunal.

The Council is seeking legislative reform to address this issue, with changes forming part of the Education and Training Amendment Bill (No.2). If the proposed changes to legislation come into effect, savings will be recognised in future years.

¹³ Education Amendment Act 2015 s401(4)

¹⁴ Education and Training Act 2020 s497(5)

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8. Deloitte's Actual and Reasonable Assessment

Deloitte were commissioned to produce an independent assessment to provide confidence that the Council's | Matatū proposed costs for delivering its functions are 'actual and reasonable'. The report [Actual and Reasonable Assessment Teaching Council of Aotearoa New Zealand 02 February 2022](#) is included in the documents available for consultation.

The following extracts are from this assessment document. These extracts reference the cost savings expected from the proposed legislative changes to the threshold of referral between the Complaints Assessment Committee and Disciplinary Tribunal. Deloitte’s assessment document considers this assumption of savings is not unreasonable. The assessment document notes however the difficulty of predicting what these costs might be.

Operational areas

We believe these management behaviours and disciplines are an indicator the Council has sound management practices in place.

Some of the specific examples we would like to highlight in this report are summarised in the table below:

Function / Area	Example
Professional Responsibility	<p>This area of the Council’s responsibilities has been subject to significant pressures and change since 2016. In terms of workload, the average number of mandatory reports the Council receives per annum has increased around 50% (from 400 to 600 per year), and the proportion of cases that must be referred to the Disciplinary Tribunal (rather than being fully resolved by the Complaints Assessment Committee) has increased significantly.</p> <p>The Council recognised a backlog of cases needed to be addressed, so resolution times could be reduced to more acceptable levels. The Council increased its resourcing in response. While this backlog is not yet fully addressed, the Council has made significant progress reducing this.</p> <p>The Council has also sought to understand what was driving the increased workload, what can be done to make the process more efficient and what can be done to make the process more effective. This has included:</p> <ul style="list-style-type: none"> • Planning and progressing a proposal for law changes, to reduce the need for such a high proportion of cases to be referred to the Disciplinary Tribunal • Seeking specialist external advice on how it can improve its process (in terms of robustness and fairness of outcomes) • Making tactical enhancements to streamline its process – e.g. in relation to how cases are triaged • Planning further roll-out and adoption of its new online platform for the end-to-end case management process <p>This has clearly been challenging for the Council, as it has sought to run Professional Responsibility processes efficiently and effectively. We believe it demonstrates the Council’s ability to respond and seek to fix issues, as well as its process improvement mindset – balancing efficient use of resources with appropriate levels of service and responsiveness to members.</p>

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Findings – FY22 Budget comparison

Comparison by function of actual costs in FY21 and budget costs in FY22 (all \$000s)

Function	FY21 Actual Cost	FY22 Budget Cost	Comments
Professional Responsibility	3,932	4,337	Around 10% increase reflects activity is expected to be higher in FY22 (to continue to work through the backlog) and more Complaints Assessment Committee and Disciplinary Tribunal hearings will involve travel.

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Findings – FY23-FY25 forecasted cost comparisons

Comparison by function of budget costs in FY22 and forecast costs for three outyears – averaged across FY23 to FY25 (all \$000s)

Function	FY22 Budget Cost	FY23-FY25 Average	Comments
Professional Responsibility	4,337	4,272	The Council expects to achieve savings in legal costs over the forecast period, as a result of reduced workload. This is somewhat offset by expected salary inflation.

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Our parallel development of these forecasts has not highlighted any material arithmetical errors. These forecasts (and changes from FY22) are based on three key assumptions:

- The Council expects to reduce legal costs, reflecting potentially lower workload from the proposed law change in relation to Professional Responsibility and significant progress having been made on the backlog of cases. We believe this assumption is not unreasonable. It is difficult to predict what these costs might be, given the uncertainty and level of change in this part of the Council’s business (*also refer page 19 above*).

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Appendix B – Costings

Attached below is a detailed snapshot of all FY21 actual costs, FY22 budgeted costs and forecasted FY23, FY24 and FY25 costs for the Council under each function (all \$ thousands).

Function	FY21 Actual Cost	FY22 Budgeted Cost	Change from FY21 to FY22		3-year average (FY23-FY25)	Change from FY22 to 3-year average (FY23-FY25)
			(\$)	(%)		
Professional Responsibility	3,932	4,337	405	10.3	4,272	-55

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