



## Education Report: Ministerial funding determinations and delegations to implement fees-free tertiary education for 2018

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	6 December 2017	<b>Priority:</b>	High
<b>Security Level:</b>	Budget Sensitive	<b>METIS No:</b>	1095634
<b>Drafter:</b>	[REDACTED]		
<b>Key contact and number:</b>	Julie Keenan, Policy Director	[REDACTED]	
<b>Messaging seen by Communications team:</b>	No	<b>Round robin:</b>	Associate Minister of Education, Hon Tracey Martin

### Purpose of report

This paper seeks your agreement to:

- two supplementary determinations to include funding conditions for tertiary education organisations (TEOs) which give effect to the manifesto commitment for fees-free tertiary education in 2018
- a letter of delegation setting out parameters for the Tertiary Education Commission (TEC) to manage funding to pay fees on behalf of eligible students or trainees
- two minor changes to policy settings to align with the fees-free policy intent, under authority Cabinet has delegated to you and the Associate Minister of Education (Hon. Tracey Martin) regarding any outstanding administrative issues:
  - to align with policy agreed by Cabinet for provider-based students, giving the TEC discretion to grant student eligibility for fees-free industry training in cases of exceptional personal circumstances; and
  - a consequential change to reduce the \$35,000 per Equivalent Full-time Student (EFTS) maximum amount that pilot training students can borrow for fees under the Student Loan Scheme, by the amount of any fees paid on their behalf by the TEC.

## Summary

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- 1 To implement fees-free tertiary education from 1 January 2018, ministerial funding determinations need to be changed, and the TEC's role in paying fees on behalf of students or trainees needs to be delegated by the Minister of Education.
- 2 TEC contracts for two section 321 grants will also need to be updated, and this funded provision included in the letter of delegation to reflect, that tertiary education provision funded from these two grants are eligible for fees-free provider-based tertiary education.
- 3 To ensure that fees for eligible students and trainees are charged to the TEC, new conditions of funding for TEOs need to be introduced for the Student Achievement Component (SAC) – provision at Level 3 and above on the New Zealand Qualifications Framework (NZQF) and the Industry Training Fund.
- 4 For the TEC to make fee payments to TEOs on behalf of eligible students and trainees, we propose that you delegate this function to the TEC through a letter of delegation.
- 5 The supplementary funding determinations and letter of delegation will apply for the 2018 calendar year as part of an interim approach to implement fees-free tertiary education. During 2018, further work will be undertaken on the future design of the fees-free policy, and any changes will be reflected in subsequent funding determinations to take effect from 1 January 2019.

## Recommended Actions

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The Ministry of Education recommends you:

*Settings for fees-free tertiary education commitment*

**Minister of Education**

**Associate Minister  
of Education  
Hon Tracey Martin**

- a. **note** that Cabinet has agreed to the eligibility and coverage of fees-free tertiary education commitment in 2018, and authorised the Minister of Education and Associate Minister of Education (Hon Martin) to approve the detail of any outstanding administrative issues [CAB-17-Min 0515 refers]
- b. **agree** that the TEC will have discretion to grant eligibility for fees-free within the Industry Training Fund, in cases of exceptional personal circumstances, if a trainee does not meet all the eligibility criteria (same provision that Cabinet agreed to for provider-based students)

**Agree / Disagree**

**Agree / Disagree**

- c. **agree** that for fees-free students, the student loan borrowing limit for high cost provision (pilot training), currently \$35,000 per EFTS, will be reduced by the value of any fee payment made by the TEC on behalf of the student

**Agree / Disagree**

**Agree / Disagree**

- d. **agree** to forward a copy of this paper to the Minister for Social Development and the Minister of Revenue

**Agree / Disagree**

**Minister of Education**

- e. **note** that the TEC has been consulted on the text of the funding determinations and letter of delegation
- f. **agree** to the attached supplementary funding determination for Student Achievement Component – provision at Level 3 and above on the New Zealand Qualifications Framework to take effect from 1 January 2018

**Agree / Disagree**

- g. **agree** to the attached supplementary funding determination for the Industry Training Fund to take effect from 1 January 2018

**Agree / Disagree**

- h. **sign** the attached letter to the Chair of the TEC, advising him of these supplementary funding determinations

**Agree / Disagree**

- i. **sign** the attached Ministerial letter of delegation for the TEC to administer the funding to pay eligible students or trainees fees to TEOs.

**Agree / Disagree**



Andy Jackson  
**Group Manager**  
**Tertiary Education**

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Hon Chris Hipkins  
**Minister of Education**

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Hon Tracey Martin  
**Associate Minister**  
**of Education**

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## Background

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- 1 On 27 November Cabinet agreed student and course eligibility for fees-free tertiary education in 2018, and funding for the TEC to administer payment of fees on behalf of eligible students and trainees [CAB-17-Min 0515 refers]. Joint Ministers subsequently finalised the settings for fees-free industry training [METIS 1091986 and 1094453 refer].
- 2 To ensure implementation of the fees-free policy, TEOs funded through Student Achievement Component (SAC) Level 3 or above or the Industry Training Fund need to be required to charge the fees payable for eligible students or trainees to the TEC, to pay on their behalf. The mechanism to do this is a new condition of funding in the respective funding determinations.
- 3 Most tertiary education funding is allocated by the TEC through funding determinations the Minister issues under section 159L of the Education Act 1989. The funding determinations for SAC Level 3 and above and the Industry Training Fund that are in effect for 2018 were issued in November 2016 and September 2017 respectively. Supplementary funding determinations amend the conditions that apply in a current funding determination and can take effect from 1 January 2018.
- 4 For the TEC to make the payments for fees on behalf of students or trainees, the TEC needs to be delegated authority to undertake these actions.

## Change to funding determinations

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### *Supplementary funding determinations*

- 5 Implementing fees free tertiary education for 2018 requires new funding conditions being issued in two supplementary funding determinations that apply to SAC Level 3 and above or the Industry Training Fund. The changes reflect the decisions made by Cabinet and Joint Ministers on settings for fees-free tertiary education in 2018.
- 6 The changes to funding conditions for the Industry Training Fund:
  - a) require TEOs to work collaboratively with the TEC to give effect to the fees-free tertiary education initiative within the Industry Training Fund, and in particular each TEO must:
    - i. agree to charge the TEC the actual and reasonable training and assessment fees for trainees eligible for fees-free tertiary education, and must not charge trainees or their employers for these fees
    - ii. provide TEC information regarding fees and the eligibility of trainees
  - b) set eligibility of trainees for fees to be paid of their behalf by the TEC in terms of:
    - i. programme eligibility
    - ii. trainee eligibility
  - c) defines fees to be paid by the TEC on behalf of the trainee
  - d) sets the training programme time period when fees will be paid by the TEC on behalf of trainee.

- 7 The TEC will work further with the sector on implementation of fees-free industry training, especially due to the more complicated fee arrangements in industry training. The letter of delegation sets some principles for TEC to undertake this work, which were agreed by Joint Ministers.
- 8 The changes to funding conditions in the SAC Level 3 and above supplementary funding determination that give effect to the fees-free tertiary education initiative:
- a) require TEOs to work collaboratively with the TEC to give effect to the fees-free tertiary education initiative within SAC Level 3 and above, and in particular:
    - i. fees payable to a TEO for the 2018 academic year must be charged by the TEO to the TEC for payment on behalf of the student, if the TEC has advised the TEO that the student is eligible for fees-free tertiary education provision
    - ii. that a TEO that is required to charge any fees to the TEC for payment on behalf of a student must not charge the student for any portion of the same fee
  - b) set eligibility of students for fee payments being made of their behalf by the TEC
  - c) sets the maximum payment to be made by the TEC for fees on behalf of the student
  - d) defines fees that are covered by fee payments to be made by the TEC
  - e) sets out the consequential change to the student loan borrowing limit for pilot training programmes, if the student is eligible for fee payments being made by the TEC on their behalf under the fees-free tertiary education initiative.
- 9 The condition on funding related to fee payments is not a condition limiting the fees that organisations may charge domestic students. Therefore there is no requirement for you to consult by way of a notice in the New Zealand Gazette, as you would if you were proposing to limit the amount of fees providers can charge. Fees are set by providers under the existing annual maximum fee movement policy. The TEC will make fee payments up to a maximum of \$12,000 (GST inclusive) in 2018.
- 10 Students will be able to borrow for fees over the maximum fees-free amount of \$12,000. However, for pilot training a maximum student loan borrowing limit remains for fees.

*Pilot training borrowing limit for provision at SAC Level 3 and above*

- 11 The attached supplementary funding determination for SAC Level 3 and above includes a change to the maximum student loan borrowing limit for trainee pilots, currently set at \$35,000 per EFTS. The changes seek to ensure that any payment made by the TEC on behalf of an eligible student for fees reduces the borrowing limit by the amount of fees paid by the TEC.
- 12 The fee payments made of behalf of the TEC are not tuition subsidies like other TEC payments. Rather they are to offset the fees the student would otherwise be responsible for paying. As the borrowing limit for fees is capped at \$35,000 per EFTS, any fee payments made by the TEC on behalf of the student should reduce the amount of student loan borrowing that they are able to access from student support, if eligible.

- 13 This change would help to avoid the fee amount at which students would need to self-fund increasing. This incentivises aviation providers to keep their fees as low as possible.
- 14 This change to student loan borrowing limits for pilot training is a consequence of the fee payment arrangements under the fees-free initiative. We propose that the Minister of Education and the Associate Minister of Education agree to this change as part of delegated authority from Cabinet to agree to the detail of any outstanding administrative issues from the fees-free proposals.
- 15 We propose that you forward a copy of this report to Minister for Social Development and the Minister of Revenue, as this relates to student support settings.

### Letter of Delegation

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- 16 We have drafted a letter of delegation from the Minister of Education to the TEC providing the TEC with the authority to make payments of fees to TEOs on behalf of students or trainees. The letter outlines the eligibility of these payments and expectations government has of the TEC in acting on this delegation. The paragraphs in the relevant funding determinations, which set out student eligibility and fee settings for fees-free tertiary education payments being made by the TEC, are referenced, rather than being re-stated in the letter of delegation.
- 17 The funding for TEOs to pay fees on behalf of students or trainees is a direct payment from the Crown rather than an on-or off-plan payment through the tertiary funding system. This is because the Crown does not receive a service for the payment. For this reason, our legal advice is that the Minister should delegate the authority to administer the payments to the TEC through a letter of delegation (attached in Annex 4).

### *Funding under section 321 of the Education Act*

- 18 Section 321 of the Education Act provides the Minister with flexibility to recognise and fund educational organisations that do not fit within the standard funding provisions of the Act. A grant may not be paid to a tertiary education provider or an industry training organisation unless the Minister is satisfied that the payment is in the national interest.
- 19 The New Zealand School of Dance and Toi Whakaari: New Zealand Drama School receive grant funding under section 321 of the Education Act (\$2.220 million in 2017). The grants provide higher per EFTS funding than they would receive under SAC funding, as these providers' delivery models have high staffing ratios.
- 20 Students at these two providers may qualify for fees-free tertiary education in 2018, as programmes they offer meet programme eligibility for fees-free provider-based tertiary education. To give effect to the fees-free policy for section 321 grant-funded providers in 2018, the TEC will amend these two contracts, and section 321 grants to TEOs for tertiary education provision have been included as within scope for fee payments in the letter of delegation.
- 21 Other current section 321 grants that fund tertiary education provision are not eligible for fees-free tertiary education. In any subsequent section 321 grants administered by the TEC, that your agreement is sought for, we will specify if funding from the grant will fund provision that would be eligible for fees-free tertiary education.

## Risks

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- 22 There are minor risks with all changes to funding mechanisms made during an approved funding period because the Education Act does not give the Minister clear powers to make such changes. However, this risk is considered low because the fees-free policy is well-signalled, and providers will view the change as a clarification. Changes to mechanisms are relatively standard and have not been challenged before.
- 23 As 2018 is the first year the fees-free tertiary education policy is in effect, there may be some behavioural responses from TEOs, students, or some unintended impacts that could occur, which if significant enough and appropriate, may need to be addressed through changes to the letter of delegation, or other mechanisms. Another letter of delegation can be issued, if needed during 2018.

## Financial implications

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- 24 These supplementary funding determinations and letter of delegation are process steps to implement the fees-free tertiary education commitment which has been agreed to by Cabinet. Funding implications were outlined as part of agreeing to the policy settings.

## Next Steps

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- 25 Once you agree to, and sign, the two supplementary funding determinations and letter of delegation, and the funding to implement fees-free tertiary education is agreed by Cabinet, the TEC can progress implementation with the sector.
- 26 This will include the TEC reflecting the specified funding conditions in funding letters to TEOs, and making payments to TEOs in relation to fee payments on behalf of students and trainees in the timeframes communicated to TEOs.

## Annexes

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- Annex 1: Letter to the Chair of the TEC to issue the two supplementary funding determinations
- Annex 2: Supplementary funding determination Student Achievement Component – provision at Level 3 and above on the New Zealand Qualifications Framework
- Annex 3: Supplementary funding determination for the Industry Training Fund
- Annex 4: Ministerial Letter of Delegation to the Chair of the TEC for the fees-free tertiary education initiative