



Education Report: Designing a new tertiary fee regulation system for vocational education and training

To:	Hon Chris Hipkins, Minister of Education		
Date:	18 February 2021	Priority:	High
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper seeks your agreement to:

- the broad scope of a review of fee regulation settings for vocational education and training, including initial decisions to support future advice
- progress work on legislative changes to the compulsory student services fee framework, and
- your preferred approach for officials to undertake targeted engagement on learner eligibility for tuition subsidies in the UFS.

Summary

The introduction of the Unified Funding System (UFS) from 2023 will significantly change the basis of government funding for all level 3-7 non-degree provision and industry training. As fees on average make up 40 percent of the financial contribution towards provider-based provision in scope of the UFS, we need to consider how fee regulation settings respond to funding changes and support the overall system shifts of the Reform of Vocational Education.

9(2)(f)(iv)

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Alongside the proposed review of fee regulation settings, we recommend progressing changes to how the compulsory student services fee (CSSF) framework operates. Currently the provisions in the Education and Training Act 2020 (the Act) on CSSFs provide limited discretion for you to specify different conditions on CSSFs, or to limit what providers can charge in certain circumstances. For example, we will need to consider how the CSSF framework applies to trainees, but the Act does not give you discretion to specify different rules for different groups of students. We propose that the Ministry progress work through an Education and Training Amendment Bill in 2021 to remove the provisions on CSSFs from primary legislation and enable you to establish these requirements as conditions on funding under section 419 of the Act.

This paper also seeks your initial view on the approach to create consistency for learners' eligibility for tuition subsidies under the UFS, and which options you would like us to explore further through targeted engagement with relevant sector bodies.

Recommended Actions

The Ministry of Education (the Ministry) recommends you:

9(2)(f)(iv)



9(2)(f)(iv)



Legislative changes to the compulsory student services fee framework

- g. **note** that the current legislative framework for compulsory student services fees through sections 257 and 360 of the Education and Training Act 2020 gives you limited discretion to cap or specify conditions for distinct groups of learners, such as trainees
- h. **agree** that the Ministry progress work through the second Education and Training Amendment Bill in 2021 to consider removing the provisions on compulsory student services fees from primary legislation, enabling you to establish these requirements as conditions on funding under section 419 of the Education and Training Act 2020

Agree / **Disagree**

Eligibility for government tuition subsidies in the Unified Funding System

i. **note** that the learner eligibility for tuition subsidies in the Student Achievement Component level 3 and above fund is based on being a domestic student as defined in the Education and Training Act 2020, while eligibility for tuition subsidies in the Industry Training Fund is based on being legally employed.

j. **agree** that further work on the approach for eligibility for tuition subsidies for non-domestic learners under the Unified Funding System should:

EITHER

i. include the possibility of removing eligibility to training subsidies for non-domestic students altogether, shifting the obligations to pay for training to employers

I'd like to consider a narrow exemption framework to allow for 'national interest' training for non-domestic workers

Agree / Disagree

OR

ii. focus more narrowly on approaches to maintain eligibility for training subsidies for non-domestic students, which could consider applying eligibility to the work-integrated and employer-led modes of delivery only

Agree / Disagree

k. **agree** for officials to undertake further work on the approach to extend eligibility for tuition subsidies for work-integrated training to people in the workplace who are not employees

Agree / Disagree

l. **agree** that the 10 percent cap for level 5 and 6 provision for industry training will not apply within the Unified Funding System

Agree / Disagree

m. **agree** that officials seek initial views from Business New Zealand and Workforce Development Council Interim Establishment Boards on your preferred approach in recommendation (j), and following this engage with a small targeted group of affected stakeholders, including transitional industry training organisations and industry representatives

Agree / Disagree

n. **proactively release** this Education Report after decisions have been made and following any public announcement to consult with the sector on proposals.

Release / Not release



Katrina Sutich
Group Manager
Tertiary Education



Hon Chris Hipkins
Minister of Education

18/02/2021

23/3/2021

Background


1. 9(2)(f)(iv)

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Scoping a review of fee regulation

2. The introduction of the UFS from 2023 will significantly change the basis of government funding for provider-based level 3-7 non-degree provision and all industry training.¹ The UFS will aim to incentivise more work-integrated training, encouraging providers to broker learners into employment and support them to continue their training while working. It will also aim to enhance support for employers, ensure a strong and sustainable network of provision and look to address national and regional skills priorities. As fees currently make up on average 40 percent of the financial contribution towards provider-based level 3-7 non-degree provision, we will need to consider how fee settings support these system shifts and the principles of fee regulation.

9(2)(f)(iv)

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Progressing legislative changes to the compulsory student services fee framework

27. Currently, provisions in sections 257 and 360 of the Act on compulsory student services fees (CSSFs) provide you with limited discretion to specify conditions on CSSFs, including:
- a. the categories of student services that CSSFs can support
 - b. that providers must make decisions on CSSFs in consultation or jointly with students
 - c. how providers must account for CSSF revenue, and
 - d. reporting requirements on the use of CSSFs.

28. If a tertiary provider breaches the requirements, which are set out in a ministerial direction, you can issue a separate direction to limit how much the provider can charge for its CSSF, or specify that the provider cannot use CSSFs to fund a specific student service. To date, no such direction has been issued.
29. You cannot currently specify different conditions for different groups of learners (such as trainees or extramural students). You also cannot specify limits on how much providers can charge or increase their CSSFs by. Our legal advice indicates that any attempt to place conditions on CSSFs through a funding mechanism under section 419 of the Act would likely be *ultra vires*, because a legislative instrument cannot supersede provisions in primary legislation.

We need to determine ongoing CSSF arrangements for trainees

30. In early 2020, transitional legislative provisions were introduced to prevent tertiary providers from charging trainees a CSSF when the responsibility of transitional ITOs shifts to providers. We wanted to prevent trainees from facing an additional, unexpected cost when they shift from transitional ITOs to providers. We are currently progressing work to extend this transitional provision by a year, ending 31 December 2022 so that officials have time to consider future arrangements on CSSFs for trainees. This change is reflected in the draft Cabinet paper scheduled for SWC on 24 February [METIS 1248937 refers]
31. Our initial view is that trainees should be subject to separate requirements on CSSFs because of the distinct characteristics of these learners. Trainees are often in full-time work and are less likely to access student services offered by providers (such as health-related services, or sports and recreational activities). A similar case could be made for part-time or extramural students. As you cannot currently specify distinct conditions on CSSFs for different categories of learners, we will need to consider legislative change to establish ongoing arrangements for CSSFs.

We recommend progressing legislative changes so that you have more discretion to specify conditions on CSSFs

32. We recommend progressing work on legislative changes to remove the provisions on CSSFs from the Act and instead enable Government to regulate CSSFs through conditions on funding under section 419 of the Act, the same way that all other provider-based fees are regulated. This would:
 - a. *Increase flexibility for you to specify requirements on CSSFs* – this would enable Government to set and change requirements on CSSFs, including specifying distinct rules for groups of learners. The Government could also consider capping how much can be charged for CSSFs or prevent certain learners from being charged a CSSF.
 - b. *Enable the CSSF framework to align with broader system shifts* – additional to the ongoing work on RoVE, the UFS, and broader work on fee regulation, we are currently working on a new a Code of Safety and Wellbeing for domestic students. This work is likely to have significant system-wide implications. Regulating CSSFs through conditions on funding will enable the Government to routinely assess whether changes to the CSSF requirements are needed.
33. Subject to your agreement, we will progress work through the second Education and Training Amendment Bill in 2021 (the Bill) on this proposed change. We will provide further advice on the proposal alongside content in the Cabinet paper on the Bill seeking agreement to consult of proposals (which is scheduled for SWC in April).

34. Tertiary providers may raise concerns with the proposal to remove the CSSF framework from primary legislation. This is because the proposed change would give Government more power to specify conditions on CSSFs and so this may cause uncertainty for providers on potential future changes to the CSSF framework. We will have an opportunity to address concerns from the sector on proposals through targeted consultation with the sector on proposals in the Bill.

Eligibility for government tuition subsidies in the Unified Funding System

35. For SAC level 3 and above, learner eligibility for tuition subsidies is based on being a domestic student as defined in the *Education and Training Act 2020* (a citizen, residence class visa holder, or other categories gazetted by the Minister), and those not meeting this definition are treated as international students. In comparison, industry training eligibility is based on being legally employed.
36. This creates difficulties when developing a new system which merges funding for industry training with that for provider-based provision through the UFS. We need to resolve how eligibility rules for tuition subsidies would function in the UFS in the future. We seek your views on which eligibility changes you would like us to explore further as part of the strategy session on 24 February.

Eligibility of international learners

37. There are currently about 10 percent of trainees and apprentices without residency status (i.e. non-domestic learners), and approximately a further 8 percent whose residency status is unknown, some of whom may also be non-residents. Together this could be up to about 23,000 learners.⁶ The proportion of non-resident trainees and apprenticeships has increased in recent years (from approximately 5.5 percent non-residents and 8 percent unknown in 2014).
38. Approximately 75 percent of this cohort of learners are within the five industry groups of: construction (approximately 4,700); agriculture, forestry and fishery (approximately 4,000); healthcare (approximately 4,000); manufacturing (approximately 2,700); and accommodation and food services (approximately 2000). On average the training for this group is of a shorter duration, but this will not be the case in all circumstances.

Policy rationale and practicality are two key principles to consider

39. In terms of the rationale for receiving government funded tuition support, an approach that balances the needs of the labour market and the wellbeing of New Zealanders would align with the Government's approach to immigration. Such an approach would see employers, rather than government bearing the full costs of hiring (including training) people from overseas. This would align with objectives to ensure there are incentives to develop local workforces before seeking to source labour from overseas. Generally, people paid under the median wage are limited to three years in New Zealand while those paid over this can stay indefinitely and may potentially gain residency.

⁶ It should be noted that the National Student Index (NSI) categories used for this are relatively static. The values are usually provided just once, when the National Student Number (NSN) is created. Providers do not let NSI know when these categories change i.e. from a visa to permanent resident visa or to citizenship. Because of this, they may tend to overstate the proportions of learners on visas.

40. In terms of practicality, once the UFS brings industry training together with provider-based programmes, the flexibility to access learning in a variety of settings (funded as modes of delivery) will place a strain on the different eligibility rules.

A potential approach is to remove tuition subsidy eligibility for the training of non-domestic students ...

41. Our work so far suggests that the best way forward may be to remove tuition subsidy eligibility for the training of non-domestic students altogether, shifting the obligations to pay for this training onto their employers. This approach aligns with the rationale and practical issues outlined above.
42. However, this approach would have implications for existing and new non-domestic learners engaged in work-place based training and for those industries with whom they are working. We will provide further advice to you exploring these implications and on transition arrangements for managing this.
43. We would need to invite the sector's views on any changes to eligibility and therefore seek your views on this approach ahead of any engagement.

... an alternative approach could be to link tuition subsidy eligibility to industry training status, but this is more complex and less aligned with UFS goals

44. If you do not want us to explore the above approach, the alternative is to continue to link tuition subsidy eligibility to industry training status. This could mean having separate eligibility criteria for the provider-based mode versus work-integrated and employer-led modes. This approach does not fully align with the rationale of shifting obligation for training payment for non-domestic students to employers and it is likely to significantly increase operational complexity for providers and agencies.
45. Taking the approach of eligibility applying only for work-integrated and employer-led modes of delivery would have an inconsistent impact on learners. Learners would face different obligations and costs depending on which mode of delivery they undertake. It would maintain the funding for all parts of a qualification for most trainees. However, most apprentices and some trainees have a provider-led component, and this would create additional costs for them compared with the apprentices and trainees who are only studying in a work-integrated or employer-led mode, in terms of international fees.⁷
46. In terms of practical application, this approach would be administratively very complex, and would undermine incentives to support some types of training, in particular apprenticeship training.

Employment status of learners

47. Another difference exists in relation to industry training in that people in the workplace who are not employees e.g. employers, contractors, and volunteers, do not currently have access to industry training subsidies.
48. We consider that all New Zealand domestic students should be eligible for all parts of the UFS. This means aligning with the SAC approach to eligibility for industry training. The Productivity Commission's 2019 report, *Technological Change & the Future of Work*, recommended that such a change would promote flexible and ongoing lifelong

⁷ In 2019, providers earned \$286 million in international student revenue in delivery within the scope of the UFS (level 3 to 7 (diploma)). Whilst Covid-19 has significantly disrupted this, it is still an important source of financing, and there is no plan to shift it onto the public purse.

learning, noting that people with many different work arrangements can share similar training needs, and may work alongside each other in the same workplace.

49. This would increase demand for work-based learning – but it is difficult to predict by how much. There are over 450,000 employers and contractors who would become eligible, and over 830,000 volunteers.⁸ However, only a small portion of these groups would be interested in work-integrated learning within the UFS. The changes in demand could be managed through approval of Investment Plans, with priorities signalled through Investment Guidance.


Restrictions on level 5 and 6 training

50. Transitional ITOs are only permitted to spend up to 10 percent of their ITF funding on level 5 and 6 programmes. This restriction was introduced following the 2001 industry training review to test demand above level 4. However, this did not result in a meaningful test of demand because in their effort to manage within this restriction, the threshold was not reached.
51. While it is not a learner eligibility rule, we suggest aligning it with other funding rules and removing this restriction. We suggest this is better managed through the negotiation of Investment Plans to ensure an appropriate mix of provision.

We seek your views on which eligibility changes you would like us to explore further

52. With your agreement we would anticipate seeking initial views from Business New Zealand and Workforce Development Council Interim Establishment Boards. Following this, we would look to engage with a small targeted group of affected stakeholders, including transitional ITOs and industry representatives.
53. Pending your decision, further work will be needed to understand the feasibility and likely impacts of removing tuition subsidy eligibility for non-domestic trainees, and to consider the mitigation of risks associated with this, such as a potential sharp drop-off in funded trainee volumes for some providers who take on arranging training functions. Further work would also be needed on the arrangements for employers to pay for training for these groups.
54. We would aim to advise you mid-year on the implications of the proposed changes, including detailed eligibility criteria, sector feedback, and a timeline for this work to be completed.

Next steps

55. ^{9(2)(f)(iv)}
56. Subject to your agreement to progress work on how CSSFs are regulated, we will prepare advice in the upcoming Cabinet paper for the second Education and Training Amendment Bill for 2020 (scheduled for April).

⁸ And the pool of eligible volunteers would be considerably smaller as TEC would only look to extend UFS eligibility to volunteers *in the nature of employment*.

Annexes

- Annex 1 – Summary of current fee regulation settings
- Annex 2 – Examples of fee differences for VET qualifications

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Annex 1 – Summary of current fee regulation settings

Fee type	Settings	Direct Government support
Tuition fees and compulsory course costs	<p>The AMFM (2011-present) requirements are a condition of SAC3+ funding. Requirements are regulated at the course level and monitored using fee data reported to TEC by tertiary providers, not actual fees paid (i.e. through Fees Free or student loans).</p> <p>There are three key components to the AMFM policy:</p> <ol style="list-style-type: none"> 1. <i>The AMFM</i> – sets the annual limit on fee increases for existing courses (this locked different fee settings in place when the AMFM was introduced in 2011); 2. <i>Fee setting limits for new courses</i> – this caps fees for new courses at the upper quartile of similar courses as determined by the TEC; 3. <i>Exceptions criteria</i> – there are exceptions criteria for unique courses with higher costs (providers very rarely meet the criteria for an exception). <p>In 2021, we introduced a fee cap of \$60 per credit for SAC3+ funded micro-credentials. TEC can also approve exceptions subject to micro-credentials meeting specified criteria.</p>	<p>Student loans – on average \$6,900 borrowed for fees in 2018, with a total of \$866 million borrowed.</p> <p>Fees Free tertiary education and training – on average \$6,300 paid to tertiary providers for new Fees Free students in 2019, with a total of \$280 million for new and continuing Fees Free students.</p>
CSSFs	<p>The CSSF framework (2013-present) is administered through a Ministerial direction and establishes a framework in which providers can charge fees for student services.</p> <p>The framework gives providers flexibility to set CSSFs, but ensures the fees only contribute to certain categories of student services and that providers are accountable for their use.</p> <p>Providers can charge students in foundation education (levels 1 and 2) a CSSF.</p>	<p>Students can borrow through Student loans (although no exact fee breakdown is available, we estimate that \$80-\$100 million was borrowed for CSSFs in 2019).</p> <p>Fees Free includes CSSFs – in 2019 \$20 million, 8 percent of provider-based Fees Free payments were for CSSFs.</p>
Industry training fees charged by transitional ITOs or third parties to employers and / or trainees	<p>No direct Government regulation – this is largely regulated by the market as transitional ITOs negotiate with providers or employers to determine costs of training, which is often passed onto the trainee or employer through fees.</p> <p>Employers are expected to make a financial contribution to the cost of training and assessment, but this is often in kind.</p>	<p>Most trainees cannot access student support, as their programme is either not eligible or it does not meet the 0.25 EFTS minimum study load requirement.</p> <p>Fees Free in 2018 and 2019 – on average \$2,070 for 12 months of industry training and \$3,300 per STM across 2018 and 2019 (a total of \$13 million in 2019).</p>
Other fees	<p>No Government regulation – these fees vary by TEO and may include voluntary fees (e.g. field trips), compulsory administrative fees (e.g. enrolment fees), fines or fees for halls of residence. Some providers have started to charge 'programme fees' which should probably fall under 'compulsory course costs' and be subject to fee regulation. We are currently undertaking further work to collect data on these fees from providers.</p>	<p>Eligible students can borrow up to \$1,000 per year in course-related costs (\$94 million borrowed in 2019).</p> <p>Some TEOs include other fees that are related to courses as part of student loan borrowing for fees.</p>
Fees-free provisions	<p>This includes foundation education (at levels 1 and 2 on the NZQF), Youth Guarantee (YG) provision, Māori and Pasifika Trades Training (MPTT), provision funded by the Refugee English Fund and Literacy and Numeracy Fund and Gateway. The fees-free requirements are gazetted as a condition of funding for this provision.</p>	<p>Fully funding these areas of provision as fees-free cost government around \$200 million in 2019.</p>