

TR18-9260



Briefing Note: A law change is not required to protect Fees-Free payments to Private Training Establishments

To:	Hon Chris Hipkins		
Date:	16 July 2018	Priority:	Low / Medium / High
Security Level:	In Confidence	METIS No:	1138927
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This briefing note informs you that we no longer propose a fast-track legislative amendment to require private training establishments' fee protection trustees to pay refunds to the TEC if Fees-Free students withdraw from their courses.


We recommend that this briefing note is not proactively released until after Cabinet has considered changes to Fees-Free policy settings for 2019.

Summary

- Our previous reports on Fees-Free policy changes for 2019 proposed a law change to require PTEs' fee protection trustees to pay refunds to the TEC when Fees-Free students withdraw from their courses. This would let the TEC structure Fees-Free payments to PTEs so that funds must be deposited with fee protection trusts, reducing financial risk if PTEs fail.
- To take effect for 2019, this would require a change to the current Education Amendment Bill, via a Supplementary Order Paper, after the Bill is reported back to the House from Select Committee. This would require Cabinet agreement in early August, and a fast-track completion of consultation and drafting.
- The TEC has identified options to change its funding agreements and monitoring to manage risks with Fees-Free payments to PTEs, without the need for a law change.

Noted by Hon Hipkins
25/7/18 KH

- This approach is preferable to a fast-track legislative change with limited opportunity for consultation and parliamentary consideration. It leaves options open to review the law and rules covering fee refunds and fee protection, in the context of future Fees-Free policy design, and tertiary funding and legislation work.



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Proactively Released

Background

1. For 2018, the TEC has paid Fees-Free support to PTEs as bulk payments in consideration for PTEs not charging fees to students eligible for Fees-Free support. Funding is not paid as fee payments "made on behalf of" individual students, which would have to be deposited with independent fee protection trustees.
2. One reason the TEC makes Fees-Free payments to PTEs in this way is that section 235 of the Education Act 1989 (the Act) permits PTEs' independent fee protection trustees to refund fees only to a student's new provider (if the student transfers), or to the Ministry for Social Development (if fees have been paid using student loan money), or to the student. If Fees-Free payments to PTEs were structured as fees paid on behalf of individual students, people receiving Fees-Free support could withdraw from their courses and receive cash refunds of the fees paid by the Crown on their behalf.
3. In two recent reports on potential Fees-Free policy changes for 2019, we proposed seeking Cabinet agreement to prepare a Supplementary Order Paper to the current Education Amendment Bill, amending section 235 of the Act.
[see reports of 21 May 2018 (Metis 1122008) and 6 July 2018 (Metis 1135149)]
4. The proposed change would have required fee protection trustees to pay any refunds for Fees-Free students to the TEC, in the same way refunds are paid to the Ministry for Social Development for fees paid using student loans. This would enable the TEC to structure its Fees-Free payments to PTEs from 2019 as fees paid on behalf of individual students, which must be deposited with trustees. The aim of this proposal was to reduce risks to the Crown in the event of a PTE failing to deliver its programmes.
5. We outlined this potential law change with PTE sector stakeholders in our recent workshops on Fees-Free policy and operational changes. Attendees generally understood the rationale for the proposal, but some had concerns about timing, the need for fast consultation, and potential compliance costs for PTEs and trustees.

We propose to manage risks with changes to TEC's funding agreements

6. We have worked with the TEC to explore alternative ways to manage risks to the Crown, without the need for a fast-track legislative amendment to be introduced after the Select Committee has reported the Education Amendment Bill back to the House.

The TEC operates different Fees-Free funding agreements with different types of tertiary education organisations, and improvements are planned for 2019.

7. The TEC has identified options to manage financial risks by changing the way it pays and monitors bulk Fees-Free payments to PTEs, rather than by structuring Fees-Free funding for PTEs as fees paid behalf of individual students and bringing them into the fee protection trust system. As for 2018, the TEC's Fees-Free funding agreements for PTEs, ITOs, TEIs and organisations funded by grants under section 321 of the Education Act will have different terms and conditions and payment methodologies.
8. For 2019, Fees-Free payments to all providers will be informed by experience of Fees-Free uptake patterns this year, reducing the extent to which payments based on projected enrolments exceed actual levels and need to be recovered.
9. Fees-Free payments to PTEs will be phased to reflect more closely the timing of actual delivery. Payments to ITOs for Fees-Free apprentices and trainees will be based on invoicing for actual numbers of Fees-Free trainees, and paid in arrears.

10. TEI and ITO payment agreements will reflect that the TEC is paying for fees on behalf of individual learners. PTE and section 321 organisations' agreements will continue to reflect that the TEC is paying grants in consideration of them not charging the fees to learners.

Legislative changes about fee refund rules and fee protection trusts can be considered later

11. The TEC's proposed approach is preferable to seeking legislative change through late changes to the current Education Amendment Bill, with limited opportunity for consultation and parliamentary consideration. The TEC's changes would also manage the financial risks with Fees-Free payments PTEs at the time that these are paid on projected enrolments, before they can be linked to individual students in the way that is required before funds can be deposited in fee protection trusts.
12. By not proceeding with an amendment to section 235 of the Act at this time, we will leave open the government's options to review the law and rules covering fee refunds and fee protection over the coming year, in the context of future Fees-Free policy design, and tertiary funding and legislation work. We consider there are other issues that may need to be addressed by a law change. For example, there could be greater clarity and control of refund rules for students enrolling in programmes of sequential courses. These students may currently lose the right to a refund for any course in the sequential programme, shortly after the start of the first course.

Key Risks and Benefits

13. The TEC's proposed approach will mitigate financial risks with Fees-Free payments to PTEs in 2019. The main risks are similar to those with the operation of the TEC's other funding mechanisms. These include the risks of potential legal challenges if funding agreements are not well designed, and potential difficulties in recovering Crown funding in the event of provider failure. These risks are mitigated through careful review of funding agreements, phasing payments to more closely reflect PTEs' delivery and revenue patterns, and ongoing improvements in monitoring.

Next Steps

14. We are preparing a Cabinet paper on Fees-Free policy changes for 2019 for your consideration and ministerial consultation. Our previous proposal for a legislative amendment will not be progressed in this Cabinet paper.
15. In anticipation of minor changes to the Fees-Free policy for 2019, and drawing on implementation experience to date, the Ministry of Education and the TEC to review and update policy and operational documentation, including:
 - the ministerial letter of delegation to the TEC to manage the Fees-Free policy,
 - ministerial Funding Determinations for those TEC-administered funds that cover programmes eligible for Fees-Free support, and
 - the TEC's Fees-Free funding agreements with tertiary education organisations.

Proactive Release

16. We recommend that this Briefing be proactively released after Cabinet has considered changes to Fees-Free policy settings for 2019. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree