



Education Report: Gaps in refugees' access to tertiary education

To:	Hon Chris Hipkins, Minister of Education		
Date:	03 March 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1251157
Drafter:	Julia Cronin	DDI:	s 9(2)(a)
Key Contact:	Heather McDonald	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This report outlines gaps in access to tertiary education for a small group of refugees and their immediate families, and proposes changes to the domestic tertiary student notice to support eligibility for these refugee-groups not currently included.

Recommended Actions

The Ministry of Education recommends you:

- note** that people who were determined to be refugees or protected persons while in New Zealand, and their immediate families, are not granted New Zealand residency at the same time as refugee status, but have to subsequently apply for it, which creates gaps in access to both tertiary education and student support, compared to those determined to be a refugee through the refugee quota re-settlement programme
- agree** that partners and children of those determined to be refugees or protected persons (or parents and siblings, if the refugee is a child), who are living in New Zealand, but all are yet to gain New Zealand residency, will be a domestic tertiary student
- note** that if you agree to the change in recommendation (b), it will be reflected in an updated domestic tertiary student Gazette Notice, to which the Ministry is also making technical changes, such as updating legislation references
- proactively release** this education report.

Agree / Disagree

Release / Not release



Katrina Sutich
Group Manager Tertiary Education
Te Ara Kaimanawa



Hon Chris Hipkins
Minister of Education

03/03/2021

8/4/2021

Support for refugees

1. New Zealand provides refugees with access to tertiary education and financial support for study on a similar basis to New Zealand citizens to support their re-settlement in New Zealand. Those with refugee status and residency can also access financial support to study through Fees Free and student support, without the three-year residency requirement that applies to other groups that are not New Zealand citizens.
2. However, refugees that gain their refugee status while in New Zealand, and their immediate families, do not have the same access to tertiary education or student support as refugees who arrive in New Zealand through the refugee quota. This manifests from two issues for those gaining refugee status while in New Zealand. They
 - i. have to subsequently apply for New Zealand residency (rather than being granted residency at the same time as their refugee status decision, as with refugee quota category)¹, resulting in some gaps for access, until they gain New Zealand residence;
 - ii. have refugee status conferred to the individual that made the claim only, and not extended to their immediate family, such as children, even though they are likely to also transition to New Zealand residency as a family group, resulting in these immediate family members not gaining the same access to tertiary education as their family member with refugee status (whole families through refugee quota are considered to be refugees).
3. We propose that all groups of refugees, irrespective of the immigration process to obtain refugee status, can receive the same access and support within tertiary education.

People gaining refugee status while in New Zealand

4. Over the last five financial years, on average around 450 people per year claim refugee status while in New Zealand and 130 people per year gain refugee or protected persons status. Since June 2020, numbers are down with COVID-19 border limitations, but there were still 250 refugee claims for six months to January 2021 from people already in New Zealand (and 24 people have been determined to have refugee status over this period).
5. Most people with refugee status will obtain New Zealand residency within two years. On average, their residency application is lodged four months after gaining refugee status, and then one year after lodging their application around 70% of people have gained residency. However, timeframes vary considerably for individual circumstances, and a few people may not transition to residency within five years.

Gaps in access to tertiary education

6. The Ministry met with the Asylum Seeker Support Trust in September 2020 to discuss gaps in access for those gaining refugee status while in New Zealand, and their immediate families. The Ministry, working with MBIE and MSD, have identified changes to tertiary education that would be needed to support the same access for those gaining refugee status while in New Zealand, as those arriving into New Zealand through the refugee quota.

¹ Claims for refugee or protected persons status while in New Zealand are firstly considered by MBIE, but are also considered and granted on review by the Immigration and Protection Tribunal, administered by the Ministry of Justice and led by a District Court Judge. Given this process can involve other entities approving refugee status, MBIE subsequently determine residency applications from those that are granted refugee status.

Access to tertiary education tuition subsidies

Family members of those with refugee status

7. We propose that you agree that the immediate family in New Zealand of the person granted refugee or protected person status can also be included as domestic tertiary students. We are seeking your agreement as this is a policy change that extends access to tuition subsidy funding for an additional group of people.
8. MBIE advise that of the 428 people that gained refugee status from 2015/16 to 2019/20 and transitioned to residency, an additional 144 family members also gained New Zealand residency with them (an average of 30 per year). The family members could be either already in New Zealand with the individual who has refugee status, or still be overseas. If family members, including children, are with the person with refugee status in New Zealand, they will be treated as international students by tertiary education providers, as they are not residents, and do not have refugee status themselves.
9. For example, one case raised by the Asylum Seeker Support Trust outlined a family where both parents gained refugee status, but not the three children. One of those children had completed schooling in New Zealand and was accepted into a degree-level programme. The university outlined that they are currently considered to be an international student. Under the current settings they will not be considered a domestic tertiary student who benefits from tuition subsidy funding or from domestic fee limits, until they have New Zealand residency, which could take around two years.
10. The proposed change to the domestic tertiary student Gazette Notice in recommendation (b), will enable access to tertiary education for immediate family members of people who have refugee or protected person status in New Zealand.²
11. As these involve very small numbers of additional people being eligible for tuition subsidy funding, these can be met within baselines for tuition subsidy funding, which funds well over 300,000 students.

Technical update for those who gained refugee status while in New Zealand

12. The Ministry have updated the proposed Gazette Notice to provide consistent domestic tertiary student eligibility for people claiming and then gaining refugee status in New Zealand. Under the current settings both those claiming and those granted refugee or protected person status are domestic tertiary students. However, if they have been granted refugee status, the criteria states that they should also have an application for New Zealand residency being processed. This means that technically this group of refugees revert to being international students until they have submitted an application for residency.
13. The Ministry have updated the proposed Gazette Notice to remove this condition. This is a technical change as it will mainly help provide clarity for learners and providers.

Further work on gaps to access financial support to study

14. The policy intent is for refugees to be able to access student support and Fees Free when they start living in New Zealand, as the three-year residency requirement does not apply to refugees. However, eligibility for student support and Fees Free includes eligibility criteria related to citizenship or residency. Those with refugee status and their families that have not yet transitioned to residency yet, are not eligible. Within Fees Free,

² Note that within the schooling system, settings are more permissive to support all children under 19 years access education. This includes children of people on temporary work visas and children of people claiming refugee status.

there are exceptional circumstances provisions, that the Tertiary Education Commission has discretion to apply, which could support access for some learners on a case-by-case basis.

15. s 9(2)(f)(iv)

Updating the Domestic Tertiary Student Gazette Notice

16. If you agree to the proposed policy change to expand access to tuition subsidy funding to immediate family members of those with refugee status that are living with them in New Zealand, prior to gaining residency, this will be reflected within category (c) of the Domestic Tertiary Student Gazette Notice.
17. Attached in Annex 1 is the proposed Domestic Tertiary Student Gazette Notice, 2021, with the two options for category (c) related to the proposed policy change.
18. The attached Domestic Tertiary Student Gazette Notice has also been updated to reflect technical changes as outlined in paragraph 19 below, that update references to legislation and reflect existing settings.
19. These three updates relate to:
- i. updating legislation references to the Education and Training Act 2020, including removing the reference to trainees in the now repealed Industry Training and Apprenticeships Act 1992, and instead referencing the Industry Training Fund.
 - ii. removing the condition that those recognised with refugee or a protected person status are domestic tertiary students, only if they have an application for New Zealand residency in process (category c of the Gazette Notice)
 - iii. amending the current description of search and rescue provision so that this is line with the current funding arrangements for search and rescue provision (category g of the Gazette Notice)
20. If you agree to the proposed policy change (recommendation b), we will publish the proposed Gazette Notice shortly afterwards that includes the change.

Annex 1: Proposed Gazette Notice

The Domestic Tertiary Students Notice 2021

Under section 10(1) of the Education and Training Act 2020, in the definition of the term “domestic tertiary student”, the Minister of Education acting by and through Andy Jackson, Deputy Secretary, Graduate Achievement, Vocations and Careers, Ministry of Education under delegated authority, gives the following notice.

Notice

1. Title and commencement

- (1) This notice may be cited as the Domestic Tertiary Students Notice 2021.
- (2) This notice comes into force on the day of its publication in the New Zealand Gazette.

2. Persons of the following class or description are required to be treated as if they are not international students:

- a. A person who has a letter from the Protocol Division of the New Zealand Ministry of Foreign Affairs and Trade confirming that they are for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 for the current academic year, until the end of the year in which that status expires.
- b. A person who has made a claim to be recognised as a refugee or a protected person under Part 5 of the Immigration Act 2009, and who is the holder of a valid temporary visa.

Proposed version without policy change in recommendation (b)

- c. A person who is recognised as a refugee or a protected person under Part 5 of the Immigration Act 2009 who, for the time being, has not been granted a New Zealand residence class visa

OR

Proposed version with policy change in recommendation (b)

- c. A person who is:
 - (i) recognised as a refugee or a protected person under Part 5 of the Immigration Act 2009 who, for the time being, has not been granted a New Zealand residence class visa;
 - (ii) the partner and any child in New Zealand of a person under paragraph 2(c)(i)
 - (iii) the parents and any siblings in New Zealand of a person under paragraph (2)(c)(i) who is a dependent child.
- d. A person who is in New Zealand to study under a New Zealand Government approved exchange programme at a tertiary education provider.
- e. A person who is enrolled in a Doctor of Philosophy programme at a New Zealand university.
- f. A person who is enrolled at a tertiary education provider for the purpose of participating in training or an apprenticeship that is funded by the Tertiary Education

Commission through the Industry Training Fund in force at the time and issued under section 419 of the Education and Training Act (2020).

g. A person who is:

- (i) enrolled in a course of study or training purchased by the Tertiary Education Commission for search and rescue training; and
- (ii) entitled to remain in New Zealand on a visa for at least six months from the date of their enrolment in that course of study or training.

h. A person who is enrolled at a tertiary education provider in a short-term work-related training course that:

- (i) receives no funding from the Tertiary Education Commission under section 419 of the Education and Training Act 2020; and
- (ii) is for a period of 10 days or less; and
- (iii) is required by their employer for the particular work being undertaken.

3. Revocations - This notice revokes the Domestic Students (Tertiary Education) Notice 2019 published in the New Zealand Gazette 15 November 2019.

Dated at Wellington this day of 2021

Andy Jackson, Deputy Secretary Graduate Achievement, Vocations and Careers, Ministry of Education.