



Education Report: Consulting on fee regulation settings for 2024

To:	Hon Jan Tinetti, Minister of Education		
Date:	8 June 2023	Priority:	High
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Purpose of Report

The purpose of this report is to seek your approval to undertake public consultation on proposed fee regulation settings for 2024. This includes setting the Annual Maximum Fee Movement (AMFM) rate and the micro-credential fee cap for 2024. Minor changes to how the AMFM and student services fee regulation work are also proposed, following recent targeted engagement.

We are asking for your feedback by Wednesday 14 June 2023 to enable public consultation on fee regulation settings in parallel with proposed funding determinations and for these to be finalised well in advance of the forthcoming general election.

Summary

As part of the annual fee regulation process, we are seeking your agreement to publicly consult on fee regulation settings for 2024 via a notice in the New Zealand Gazette. We have proposed several business-as-usual (BAU) settings that must be confirmed annually, alongside a range of policy changes to the way fees are regulated from 2024.

The proposed BAU fee regulation settings for 2024 include:

- setting the Annual Maximum Fee Movement (AMFM) at 2.8 per cent; and
- setting the micro-credential fee cap at \$64 per credit.

Given the difficult financial situation facing parts of the tertiary sector at present, we explored options for setting a higher AMFM. However, this would require additional funding and a Cabinet decision given the resulting costs to the Student Loan Scheme.

In February 2023, you agreed that the Ministry of Education (the Ministry) would undertake a targeted engagement on options to improve fee regulation settings for 2024 [METIS 1303350 refers]. This included exploring changes to how the AMFM works and options for improving the decision-making process for student services fees. After engaging with the sector, the Ministry has undertaken analysis to refine initial high-level options and recommends publicly consulting on a range of minor changes to fee regulation policy settings.

The proposed regulatory changes to how the AMFM works are:

- allowing providers to temporarily reduce fees without then having to remain at the reduced rate; and
- relaxing the exception criteria for the AMFM to allow the TEC to approve fee increases above the AMFM rate where a range of criteria are met, including course viability.

The proposed changes to student services fee regulation include:

- making providers' legal obligations explicit in fee regulations when consulting with learners on student services fees;
- requiring providers to publicly report the fee income and expenditure for each type of student service, and how learner feedback influenced providers' decisions on student services fee amounts and utilisation; and
- introducing a new student service category to allow providers to pay for the cost of consulting with learners on student services fees through student services fee revenue.

Fee regulation settings are implemented through conditions on funding. Once the public consultation on proposed fee regulation settings is complete, we will provide you with further advice that outlines the final proposed fee regulation settings and seeks your approval to include these settings in funding determinations for 2024.

Recommended Actions

The Ministry recommends you:

- a. **note** that changes to fee regulation settings, including setting the AMFM rate, must be publicly consulted on via a notice in the New Zealand Gazette, as required under section 420(1)(b) of the Education and Training Act 2020

Noted

Annual Maximum Fee Movement rate

- b. **note** that changes to the AMFM can be treated as a forecast change (not requiring additional Budget funding to cover increased student loan costs), but that this limits any increase to the rate of forecast inflation for the calendar year (excluding cigarettes and tobacco products)

Noted

- c. **agree** to consult the sector via a notice in the New Zealand Gazette (Annex A) on setting the AMFM rate for 2024 at 2.8 per cent, in line with forecast inflation as at the Budget Economic and Fiscal Update 2023

Agree Disagree

Micro-credential fee cap

- d. **note** that the fee cap for micro-credentials has been set at \$60 per credit since introduction of the policy in 2021

Noted

- e. **agree** to consult the sector via a notice in the New Zealand Gazette (Annex A) on setting the micro-credential fee cap at \$64 per credit for 2024, matching cumulative increases to the AMFM since 2022

Agree Disagree

Fee regulation policy changes

- f. **note** that in February 2023, you agreed that the Ministry would undertake a targeted engagement on high-level options to improve fee regulation policy settings for 2024, including changes to how the AMFM is regulated and how learners are involved in decision-making on student services fees [METIS 1303350 refers]

Noted

- g. **agree** to consult the sector via a notice in the New Zealand Gazette (Annex A) on the following proposals for how the AMFM is regulated:

- i. allowing providers to temporarily reduce fees without having to remain at the reduced rate

Agree Disagree

- ii. relaxing the AMFM exception criteria to allow for an exception where a provider can demonstrate that it is not financially sustainable to deliver a course without an exception (taking into account fee revenue, government subsidies and the total cost of delivering the course)

Agree Disagree

- h. **agree** to consult the sector via a notice in the New Zealand Gazette (Annex A) on the following changes to how student services fees are regulated:

- i. making providers legal obligations when consulting with learners on student services fee settings explicit in fee regulations

Agree / Disagree

- ii. requiring providers to publicly report on their websites the fee income and expenditure for each type of student service, and how learner feedback influenced decisions on student services fee amounts and utilisation

Agree Disagree

- iii. introducing an additional service category to the student services fee framework to allow providers to pay for the cost of consulting with learners on student services

Agree Disagree

Te Pūkenga fee harmonisation

- i. **note** that Te Pūkenga is continuing its multi-year process to align fees across its network in 2024, as part of its work to unify programmes

Noted

- j. **agree** to consult the sector via a notice in the New Zealand Gazette (Annex A) on continuing to allow Te Pūkenga to apply the fee setting limits for new courses when rolling out an existing programme across its network

Agree / Disagree

Next steps

- k. **note** that the attached Gazette notice (Annex A) will be amended to reflect your decisions on this paper and is subject to a final legal review

Noted

- l. **note** that, subject to public consultation and your final approval, fee regulation settings will be implemented through relevant funding determinations

Noted

Proactive release

- m. **agree** that the Ministry of Education release this briefing once final fee regulation settings for 2024 have been confirmed, with appropriate redactions under the Official Information Act 1982

Agree / Disagree



James Campbell
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08/06/2023



Hon Jan Tinetti
Minister of Education

11/06/2023

Background

1. Section 420(1)(b) of the Education and Training Act 2020 (the Act) allows the Minister of Education to place conditions on funding that limit the fees a tertiary education organisation (TEO) can charge domestic learners or employers. Any proposed conditions must be publicly consulted on by way of a notice in the New Zealand Gazette. Fee regulation settings are then implemented as a condition of funding in funding determinations.
2. The two main types of regulated fees in tertiary education are course fees for provider-based courses and student services fees, which are regulated in different ways.
3. For course fees, government sets the amount that providers can increase fees by each calendar year (for courses that lead to the award of a qualification) or by setting a per-credit cap on fees (for micro-credentials). These settings are known as the Annual Maximum Fee Movement (AMFM) and the micro-credential fee cap, respectively. Government regulates course fees for provider-based tertiary education to promote the affordability of study for domestic learners, and to provide a level of certainty about the total cost of multi-year programmes. Regulating fees also controls flow-on costs to the Crown from borrowing through the Student Loan Scheme and the Fees Free policy.
4. In comparison, for student services fees, government takes a less prescriptive approach by determining the process that providers must follow when setting student services fees and deciding on how they are used, which includes the requirement that decisions are made either jointly or in consultation with learners. The government regulates the process for setting student services fees to ensure that learners are involved in decision-making and to ensure accountability to learners over the use of student services fees.
5. In February 2022, you agreed for officials to undertake targeted engagement on improvements to fee regulation settings for 2024 [METIS 1303350 refers]. The targeted engagement included exploring options to improve how the AMFM is regulated and to improve learner involvement in decision-making on student services fees.
6. You have also received a report outlining proposed variations to funding determinations for 2024 [METIS 1309258 refers]. These proposed variations will be publicly consulted on at the same time as the fee regulation settings outlined here, but through a different process, as required in the Act. Once both consultations are complete, the recommended fee regulation settings will be incorporated into funding determinations for your final approval.

Setting the Annual Maximum Fee Movement

7. The AMFM rate is set annually to regulate how much tertiary providers can increase their course fees for domestic learners. It applies to all provider-based courses that lead to the award of a qualification. In setting the AMFM, government endeavours to strike a balance between protecting the affordability of tertiary education for learners, allowing tertiary education providers to cover increasing costs, and managing fiscal cost to the Crown.
8. Since 2020, the AMFM has been set at or below forecast inflation for the following calendar year, as at the Budget and Economic and Fiscal Update (BEFU). This means that it does not require additional funding through Budget to cover increased costs to the Student Loan Scheme, which already accounts for an annual increase in fee borrowing according to forecast inflation for the following calendar year. While fee increases through the AMFM

also impact payments for first year Fees Free, these costs are met within the Fees Free baseline.

9. The previous Minister of Education decided to adopt a 2.75 per cent AMFM rate for 2023, which was below forecast inflation of 4.1 per cent at BEFU 2022, in order to align with the 2.75 percent increase to tuition subsidies and to maintain the balance of government and learner contributions to the cost of tertiary education. Forecast inflation for the 2023 calendar year has now grown to 4.5 per cent, with institutions coming under increasing financial pressure from a combination of increasing costs and decreasing enrolments.

The maximum AMFM rate for 2024 allowed under existing policy settings is likely to be lower than sector expectations

10. The rate of forecast inflation for 2024 as at BEFU 2023 is 2.8 per cent. While setting the AMFM for 2024 at 2.8 per cent would protect the affordability of tertiary education for learners and manage costs to government, it limits the ability of providers to increase fees to cover increasing costs.
11. Between 2011 and 2020, AMFM increases surpassed the rate of inflation in every year. However, recent high inflation and a constrained fiscal environment has required government to strike a careful balance between supporting providers to manage cost pressures while maintaining the affordability of tertiary education. Forecasts have also underestimated inflation in recent years, resulting in actual inflation growing beyond what was factored into AMFM rate increases and reducing fees in real terms. As such, AMFM increases have not kept pace with inflation since 2021.
12. Alongside increases in costs, providers are facing a range of disruptions to revenue streams which, in some cases, has impacted on their financial viability. Notably, funding rate changes through the Unified Funding System resulted in a decrease in tuition subsidies for some provider-based Vocational Education and Training (VET). Furthermore, low international student numbers and decreases in domestic demand across all sub-sectors¹ since 2021 has limited the ability of providers to cover increasing costs.
13. The 5 per cent across-the-board increase to tuition subsidies announced at Budget 2023 will offset some increased costs for providers. However, viability concerns for providers remain. The Tertiary Education Commission (TEC) considers that the financial viability risk within the Private Training Enterprise (PTE) and University sub-sectors has significantly increased, and there are outstanding concerns regarding Te Pūkenga's long-term financial sustainability. Current financial pressures have resulted in widespread restructuring, reduced operating costs and services, the closure of some programmes, and the delay and deferral of some capital projects (including maintenance).
14. The Ministry expects that publicly consulting on an AMFM rate of 2.8 per cent will add to the concerns currently faced by the sector and will disappoint providers. Providers are also likely to have different expectations of where the AMFM will be set for 2024. Notably, BEFU 23 reported a headline forecast inflation of 3.3 per cent for 2024 (for the fiscal year), 0.5 per cent higher than the rate used to calculate the AMFM (based on the 2024 calendar year). Some providers may also expect the AMFM to match the 2024 tuition subsidy increase of 5 per cent, matching the policy approach taken by the Minister last year.

¹ We note that enrolments in part of the sector in 2021 appear to be inflated due to the effect of COVID-19.

There is no scope to set the AMFM higher than 2.8% without additional funding

15. We have explored options for setting the AMFM above forecast inflation, including setting the AMFM at 3.3 per cent (in line with forecast inflation for the 2024 fiscal year) and at 5 per cent (in line with tuition subsidy increases for 2024). The Treasury has confirmed that the additional costs of setting the AMFM above 2.8% for 2024 cannot be met within baselines and would require Cabinet approval for additional funding.
16. The fiscal impacts of each AMFM option, beyond what is accounted for in the forecast Student Loan appropriation, are included in the table below.

Table 1: Fiscal impacts of different AMFM levels

	2.8% AMFM	3.3% AMFM	5% AMFM
Additional borrowing (capex) over 4 years	\$0m	\$17.2m	\$74.6m
Write down on loans (opex) over 4 years	\$0m	\$8.3m	\$36m

17. Given the extent of financial pressures in the tertiary system, we think there would be merit in considering a higher AMFM rate for 2024. An AMFM of 5%, for example, would maintain the balance of contributions to the cost of tertiary education between learners and the government (given the 5% tuition subsidy increase for 2024), while inflation-adjusted fees would still remain lower than they were in 2021.²
18. However, setting the AMFM above 2.8% would require additional funding and Cabinet decisions decision within very tight timeframes. Furthermore, this would delay the process for finalising both fee regulation settings and funding determinations for 2024, which could have flow-on disruptions for the TEC and the wider sector. Therefore, we propose to proceed to consultation with a 2.8% AMFM for 2024.

Increasing the micro-credential fee cap

19. In 2021, the previous Minister of Education introduced a limit on the maximum per-credit fee that providers could charge for micro-credentials [METIS 1229901 refers]. Fee regulation of micro-credentials was introduced to protect learners from facing significant cost barriers, and to manage costs to government through the Fees Free policy and the Targeted Training and Apprenticeship Fund (TTAF).³
20. The micro-credential fee cap was initially set at \$60 per-credit in 2021 and has not increased since then. In comparison, fees for courses regulated under the AMFM received annual increases of 1.7 per cent in 2022, 2.75 per cent in 2023 and, subject to your approval and the outcome of public consultation, a further 2.8 per cent in 2024.
21. To ensure that providers can cover the increasing cost of delivering micro-credentials and continue to deliver quality provision, we propose to increase the micro-credential fee cap in line with cumulative AMFM increases since 2022, to the nearest dollar. This approach also balances the need to protect the affordability of tertiary education for learners and to manage costs to government. Therefore, we recommend publicly consulting on setting the

² Based on actual inflation for 2022 and forecast inflation for 2023 and 2024.

³ The TTAF ended on 31 December 2022.

micro-credential fee cap for 2024 at \$64 per credit through a notice in the New Zealand Gazette (Annex A).

22. The fiscal impacts of increasing the micro-credential fee cap are very minor. As micro-credentials are not covered by student loans, there is no flow-on fiscal impact to the Student Loan Scheme.
23. The Ministry does not consider that the proposed AMFM rate or micro-credential fee cap raises any significant or direct implications from a Te Tiriti perspective. Wānanga generally run a low- or zero-fees model (meaning they are less impacted by changes in the AMFM and micro-credential fee cap than other sub-sectors), although we note that in the past some Wānanga have raised concerns about having their fee-setting controlled by the Crown. These forms of fee regulation also apply equally to all fee-paying learners and will therefore not have a disproportionate impact on Māori learners. Through consultation we will test these assumptions and provide further advice if submissions from Wānanga or Māori raise concerns.

Fee regulation policy changes

24. In February 2023, you agreed that the Ministry undertake a targeted engagement with the sector on potential improvements to the way the AMFM is regulated and improving learner involvement in decision-making on student services fees [METIS 1303350 refers]. Targeted engagement was undertaken throughout March and April, with feedback used to further develop and refine the high-level options. We now recommend publicly consulting on a range of minor changes to fee regulation settings.

Improving how the Annual Maximum Fee Movement is regulated

25. Targeted engagement on changes to the way the AMFM is regulated sought feedback from the sector on three proposed changes to the way the AMFM is regulated:
- a) Proposal 1: Giving providers flexibility to set lower fees without being “trapped” at the reduced rate by the AMFM
 - b) Proposal 2: Relaxing the AMFM exception criteria
 - c) Proposal 3: Relaxing the exception criteria for the fee setting limits for new courses
26. The main objective of these proposals was to improve the flexibility of the AMFM while retaining the existing overarching policy settings, noting that you have agreed to defer broader changes to the fee regulation system [METIS 1306659 refers].
27. Targeted engagement focussed on providers and their peak bodies, including Universities New Zealand (UNZ), Te Pūkenga, Independent Tertiary Education New Zealand (ITENZ) and Quality Tertiary Institutions (QTI). Wānanga and a wide range of learner representative groups were given an opportunity to take part in the engagement but did not provide feedback.
28. We propose to proceed with public consultation on Proposals 1 and 2 – a summary of these changes and the feedback received is outlined below. Engagement on Proposal 3 did not identify any significant issues with the status quo or widespread support for any changes in this area – we are therefore not proposing to consult further on this Proposal.

Proposal 1: Giving providers flexibility to set lower fees without being “trapped” by the AMFM

29. Currently, if providers temporarily lower their fees for a period that extends across calendar years, AMFM rules prevent them from subsequently increasing the fee back to previous rates, disincentivising providers from trialling reduced fees.
30. This proposal would allow providers to reduce their fees for a course and subsequently return to the previous higher fee, in addition to receiving cumulative AMFM rate increases for the period in which the fees were reduced.
31. Overall, providers were supportive of this change as it increases the flexibility of fee regulation. While providers did not indicate widespread interest in trialling reduced- or zero-fees at this point, there have been cases in the past of providers wanting to temporarily reduce fees but not being able to do so.
32. We consider that the proposed change reduces incentives on providers to set fees at the maximum amount allowed under the AMFM and increases the flexibility of the fee regulation system. The Ministry recommends publicly consulting on changing AMFM regulations to allow providers to temporarily reduce fees without having to remain at the reduced rate through a notice in the New Zealand Gazette (Annex A).

Proposal 2: Relaxing the AMFM exception criteria

33. Under current fee regulation settings, providers may be granted an exception to the AMFM for one or more courses if they can demonstrate exceptional financial circumstances that warrant an additional fee increase. If that exception is granted, the provider can increase fees for that course by twice the AMFM rate for that year.
34. In the past, providers have been unable to demonstrate that they meet the existing AMFM exception criteria, with no exception applications being approved since the policy was introduced. This proposal considers changes to loosen the criteria to allow for more exceptions where there are justifiable circumstances.
35. Under current settings, providers are required to demonstrate each of the following criteria:
- a) the TEO could not support the course while remaining financially viable;
 - b) the course is part of a programme that meets or exceeds the median qualification completion rate for similar programmes;
 - c) the course is in some way unique or special; and
 - d) not allowing an exception will prevent the TEO from making a significant contribution to the one of more of the Tertiary Education Strategy priorities.
36. During targeted engagement, providers raised a range of concerns regarding the AMFM exception criteria. They noted that they rarely submit exception applications, even when they feel an exception should be justified, as the existing criteria are set at an unattainable level. They felt that the criteria relating to quality assurance and strategic alignment unfairly disadvantaged certain courses, particularly where there is a high proportion of part-time learners. Providers also felt that the exception criteria should consider where courses have low fees compared to similar offerings, or where there are unique cost pressures.

37. The intent of the AMFM exceptions process is to allow providers to increase fees above the AMFM rate where there is clear evidence of exceptional circumstance. Given the current financial pressures faced by providers, it is reasonable to expect that some courses should meet the threshold for an exception. However, this is balanced against the expectation that some level of cross-subsidisation of courses needs to occur, and that the exceptions scheme should not become a default or even common mechanism for fee setting.
38. Therefore, we propose changes to the exception criteria to lower the threshold for an exception, while retaining strategic alignment and quality assurance checks. We recommend that providers be required to demonstrate that:
- a) it is financially unsustainable to deliver the course without an exception;
 - b) the fees for the course are below the 75th percentile of fees for similar courses; and
 - c) any two of the following three criteria:
 - i. the course is part of a programme that meets or exceeds the median qualification completion rate for similar programmes;
 - ii. the course is in some way unique or special; and
 - iii. not allowing an exception will prevent the TEO from making a significant contribution to the one of more of the Tertiary Education Strategy priorities.
39. We also propose to introduce a limit on the number of exception applications that a provider can make each year, according to the number of learners enrolled at the provider. This cap provides a backstop to ensure that the AMFM exceptions process does not become a default fee regulation mechanism. We are interested in testing this proposed limit via public consultation.
40. We consider that the proposed criteria balance the need to relax the exceptions process while ensuring that there are no unwanted impacts on affordability and accessibility for learners, significant fiscal costs to government (through the Student Loan Scheme) or disruptions to the TEC's ability to manage exception applications. Given current policy settings and forecasts assume that there are some AMFM exemptions being approved, we do not consider that there are any fiscal impacts of making this change and the proposal will rather align policy settings with forecast expenditure.
41. The full proposed new exception criteria are included in the attached Gazette notice (Annex A). We recommended publicly consulting introducing these proposed changes to the AMFM exception criteria into fee regulations for 2024.

Increasing learner involvement in student services fee decision-making

42. Targeted engagement on changes to student services fee regulation sought to address concerns regarding how providers work with learners to set student services fees and decide on how they are spent [METIS 1303350 refers]. Consistent feedback from learners over several years indicated that they don't feel involved in decision-making processes and that providers' decisions on student services often appear pre-determined.

43. In addition to engaging with all provider groups that we spoke to for the AMFM changes, we also talked to a variety of learner representatives, student associations and peak bodies on options for improving student services fees settings. This included learners and representatives from higher education and provider-based VET. Feedback from work-based learners was also sought, but none took part in the consultation.
44. This targeted engagement considered three options to improve learner involvement in decision-making, ranging from a minor change such as clarifying existing regulations to more significant changes such as joint decision-making.
45. Feedback from learners and providers on high-level options was contrasting:
- a) Most learner groups and representatives reported negative experiences with the student services fee decision-making process, particularly where providers consulted with learners. Those who reported a positive experience were all involved in joint decision-making with providers. Learners' preference was to require joint decision-making on student services fees, or for there to be increased transparency and accountability requirements if providers retained the ability to consult.
 - b) Providers felt existing regulations were sufficient and that they had good working relationships with learners. Providers were concerned that additional requirements over the decision-making process would impose an undue regulatory burden, and that providing learners with increased decision-making power could disrupt the long-term provision and workforce planning of student services. In particular, PTEs highlighted that small providers can struggle with even the regulatory burden associated with the existing process.
 - c) However, both learners and providers indicated that additional guidance over the decision-making process for student services fees would be helpful. Some learner groups, particularly those outside of the university sub-sector, had little knowledge of the current requirements over student services fees and felt that additional guidance would help them hold providers to account.

We propose changes to improve the transparency and clarity of the student services fee decision-making process

46. The objectives of the current student services fee regulations are to ensure that there is accountability in the use of the fees for student services, involvement of learners in decisions relating to the charging and use of fees, and that there are fair arrangements for learners in different tertiary education settings. We do not propose any changes that alter the objectives of the regulations, but rather clarify requirements and make small improvements to regulations to better support these objectives.
47. We recommend publicly consulting on the following changes to student services fee regulations for 2024 through a notice in the New Zealand Gazette (Annex A):
- a) making providers' legal obligations when consulting with learners explicit in fee regulations. While providers are already obligated to follow these requirements, there is mixed adherence which may reflect a lack of awareness of the requirements;

- b) to better improve transparency of student services fee setting process, we propose making two additions to the existing reporting requirements on student services fees. This includes requiring that providers publish information online regarding:
- i. how learner feedback influenced decision-making on the setting and use of the student services fees; and
 - ii. student services fee spending, including the expenditure for each type of student service (which providers must already report to the TEC); and
- c) to support providers to undertake fulsome consultation with learners on the rate and utilisation of student services fees, we propose adding a new category to the student services fee framework to allow providers to cover the cost of undertaking consultation or joint decision-making through student services fee revenue.
48. We think this strikes an appropriate balance between improving the transparency of the decision-making process and increasing accountability to learners, without creating substantive new burdens on providers.
49. The TEC has existing guidance on student services fees which includes examples of good practice in respect of both learner engagement and fee setting. However, in light of feedback received during consultation, we also propose that the Ministry and TEC work with both providers and learner representatives to understand how the current guidance on the decision-making process for student services fees can be improved.
50. While we do not consider that the proposed fee regulation policy changes raise any significant or direct Te Tiriti implications, we note that we have had limited engagement from Wānanga, other Māori providers and Māori learner groups. Subject to your approval, we will work with the TEC to improve guidance over the student services fee decision-making process, including developing guidance on how providers can ensure that rights and interest of Māori learners are considered during the student services fee decision-making process.

Te Pūkenga fee harmonisation

51. Te Pūkenga is currently undertaking a process to align fees across its network, as part of its broader work to unify programmes. This is a multi-year project to phase out existing programmes at individual subsidiaries. Different cohorts of programmes will be unified over the next several years and open to new enrolments with a single fee. The Ministry and the TEC have been working with Te Pūkenga to support this process.
52. In 2022, the previous Minister of Education agreed to introduce changes to fee regulation settings to clarify that, where Te Pūkenga unifies a programme by rolling out an existing programme across its network, the fee setting limits for new courses will apply to the courses in this programme [METIS 1286908 refers]. This change ensured there was flexibility to set fees when unifying programmes while preventing Te Pūkenga from rolling out the most expensive course across its network of provision, thereby protecting the affordability of tertiary education for learners and limiting costs to government.
53. As Te Pūkenga will continue to unify fees in 2024, we recommend continuing to apply to the fee setting limits for new courses when Te Pūkenga unifies a programme by rolling out

an existing programme across its network in 2024. We recommend publicly consulting on this proposal through a notice in the New Zealand Gazette (Annex A).

54. Te Pūkenga's programme and fee unification process will result in some very minor fiscal implications for government, given the flow-on impact to student loan borrowing and Fees Free payments. However, such fiscal impacts were already possible under existing policy settings, given that Te Pūkenga was previously able to unify programmes by rolling out the most expensive programme across its network.

Next steps

55. We are seeking your feedback on our advice by Wednesday 14 June 2023, noting that there is a minimum two working-day wait-time between the lodging of a Gazette notice and it being published. This will enable us to begin public consultation on 2024 fee regulation settings by 19 June 2023, at the same time as the consultation on proposed changes to funding determinations for 2024.
56. Subject to your agreement, the attached notice (Annex A) will be published in the New Zealand Gazette on 19 June 2023, with relevant changes made to reflect the decisions made in this paper, if necessary. This will begin the public consultation on fee regulation settings for 2024, which will run for four weeks. We will publish a link to the notice on the Ministry and TEC websites with further information on the proposed changes.
57. As fee regulations are implemented through conditions on funding, the next stage of advice on fee regulation settings will be incorporated into a broader paper seeking your approval to finalise funding determinations for 2024. This advice will summarise feedback on submissions received during the public consultation, along with any recommended changes to fee regulation settings and funding determinations for 2024. We expect to provide you with advice on this in mid-August 2023.

Annex A: The Tertiary Education (2024 Fee Regulation Settings) Notice 2023

Under sections 419(3)(d) and 420(1)(b) of the Education and Training Act 2020 (the Act), the Minister of Education (the Minister) gives notice of the proposed conditions setting limits on and requirements relating to fees, including fees for student services, that tertiary education organisations (TEOs) may charge to domestic students in 2024.

Notice

1. **Title** — this notice may be cited as the Tertiary Education (2024 Fee Regulation Settings) Notice 2023.
2. **Commencement** — the proposed conditions outlined in this notice apply for the 2024 calendar year only.
3. **Interpretation** — in the conditions set out in this notice, unless the context otherwise requires —

Programme means a programme of study or training leading to the award of a qualification listed on the New Zealand Qualifications and Credentials Framework (NZQCF);

Course means part of a programme that leads to the award of a qualification on listed on the NZQCF, including a certificate, diploma, degree, or postgraduate qualification. This includes a course that is part of a programme where the student is not enrolled in the programme (for example, where a student is only enrolled in one or more courses but is not intending to complete the entire programme);

Micro-credential means study or training that leads to an award but does not, of itself, lead to an award of a qualification listed on the NZQCF;

Fees means:

- (a) tuition fees;
- (b) compulsory course costs that are charged to all students enrolled in a course, which includes (but are not limited to) the following: any compulsory costs associated with enrolment, examinations (including reporting of credits to the New Zealand Qualifications Authority), field trips, and any compulsory purchase of equipment or books through the TEO;
- (c) excludes any administrative fees or charges (other than tuition fees or compulsory course costs) for additional services that are payable as a result of the specific circumstances of a student, which includes (but are not limited to) the following: reassessment or remarking of examination results, examination relocation fees, fees associated with recognition of prior learning, or fees associated with an application for selected entry programmes;

Student services fees means fees for the provision of student services that are provided by the organisation or by another person or body on behalf of the organisation;

TEO means tertiary education organisation as defined in section 10(1) of the Act;

Delivery at levels 1 and 2 on the NZQCF (DQ1-2) means the funding mechanism that provides funding for programmes at levels 1 and 2 on the NZQCF;

Non-degree delivery at levels 3-7 on the NZQCF and all industry training (DQ3-7) means the funding mechanism that provides funding for programmes funded at levels 3-7 (non-degree) on the NZQF and all industry training;

Delivery at levels 7 and above on the NZQCF (DQ7+) means the funding mechanism that provides funding for programmes at level 7 (degree level) and above on the NZQCF;

Industry Training means programmes or micro-credentials previously funded through the Industry Training Fund; and

Apprentices and trainees mean apprentices and trainees previously funded through the Industry Training Fund.

4. **Proposal** — I propose to specify the requirements that TEOs must adhere to in relation to charging fees and student services fees for domestic students.

For fees charged to domestic students, I propose to specify the following conditions under section 419(3)(d) of the Act that the Tertiary Education Commission (TEC) must attach to delivery at levels DQ3-7 and DQ7+:

- (a) the annual limits by which TEOs can increase fees charged to domestic students for courses;
- (b) the conditions on fees charged to domestic students by TEOs for new courses;
- (c) the conditions that cap the fees charged to domestic students by TEOs for micro-credentials; and
- (d) other conditions in relation to fees that the TEC must attach to funding mechanisms.

The proposed conditions relating to fees charged to domestic learners will not apply to fees for delivery at levels DQ1-2, which remain subject to the conditions as set out in the Tertiary Education Fees-Free Conditions Notice 2015 (New Zealand Gazette, 28 May 2015, Issue No. 58, Notice No. 2015-go3051) and the Tertiary Education Fees-Free (Levels 1 and 2) Conditions Notice 2016 (New Zealand Gazette, 16 June 2016, Issue No. 54, Notice No. 2016-go3430).

For student services fees charged to domestic students, I propose to specify the following conditions under section 419(3)(d) of the Act that the TEC must attach to delivery at levels DQ1-2, DQ3-7 and DQ7+:

- (a) the conditions on opt-in arrangements for student services fees;
- (b) the conditions on the decision-making process for student services fees;
- (c) the conditions on accounting for the use of student services fees;
- (d) the conditions on reporting and publishing information on student services fees;
- (e) the conditions on the categories or services that student services fees can be charged for; and
- (f) other conditions in relation to student services fees that the TEC must attach to funding mechanisms.

5. **Call for submissions** — Any student, student organisation, TEO or any other person, body or organisation having an interest in the matter, is invited to make a submission on the proposed fee regulation conditions set out in this notice.

All submissions should be sent either by email to:

tertiary.strategy@education.govt.nz

Or by post to:

Fee Regulation Settings Submissions
Tertiary Education Policy
Ministry of Education
PO Box 1666
Wellington 6140

6. **Date for submissions** — All submissions must be received by **16 July 2023**.

Dated at Wellington this 19th day of June 2023

HON Jan Tinetti, Minister of Education.

Proposed Conditions – Fees

General

1. The conditions on fees apply to fees charged by all TEOs for delivery at levels DQ3-7 and DQ7+. However, these funding conditions do not apply to industry training (i.e., programmes previously funded through the Industry Training Fund).
2. The fees charged by a TEO are subject to these conditions if the TEO is the sole source of the item to which the fee relates.

The Annual Maximum Fee Movement

3. The Annual Maximum Fee Movement (AMFM) sets the maximum percentage that TEOs may increase their fees by each year for domestic students for all DQ3-7 and DQ7+ funded courses that are part of a programme.
4. For 2023, the Minister proposes that the AMFM is set at 2.8 percent. This would permit a 2.8 percent increase on the fees (GST exclusive) charged in 2023 to domestic students for DQ3-7 and DQ7+ funded courses.
5. The proposed 2.8 percent AMFM rate is in line with forecast inflation for the 2024 calendar year, as at the Budget Economic and Fiscal Update 2023.
6. The AMFM applies to any new courses established by a TEO in substitution for an existing course dealing with the same or similar subject matter, at a same or similar level on the NZQCF, for which DQ3-7 and DQ7+ funding can be used, except where the provisions in clause 8 below apply.
7. If a TEO reduces fees for a course across one or more calendar years, the TEO can then return to the previous fee (from before the reduction was applied), in addition to applying the AMFM rates for the period in which the fees were reduced. This clause does not apply where fee reductions were in place prior to 2024.
8. For courses delivered by Te Pūkenga that are part of Te Pūkenga's process to unify similar programmes, and where Te Pūkenga delivers this course across its network, the fees for those courses are not subject to the AMFM limits, but are subject to the fee-setting limits for new courses outlined below in clauses 14-19.

Exceptions to the Annual Maximum Fee Movement

9. A TEO may apply to the TEC for an exception from the 2024 AMFM on the basis of exceptional circumstances. Any exception granted will not exceed an additional 2.8 percent increase over and above the permitted 2.8 percent increase.
10. In considering exceptional circumstances, the TEC must only have regard to the following criteria:
 - (a) the TEO can demonstrate that it is financially unsustainable to deliver the course, in terms of the cost of delivering the course and taking into account the total income the course would generate (including government funding and tuition fees), and that there are no satisfactory alternatives to limit costs;
 - (b) the existing fees for the course are no more than the 75th percentile of the range of fees charged for similar courses; and
 - (c) any two of the following three criteria:

- i. where the course is part of a programme at levels 3-8 on the NZQCF that has been delivered previously, the programme has a cohort-based completion rate that meets or exceeds the median performance benchmark for that NZQCF level in the previous year;
 - ii. the TEO can demonstrate that the course is in some way unique or special; for example, that there are no available local alternatives; and
 - iii. not allowing an exception will prevent the TEO from making a significant contribution to the achievement of one or more of the Government's priorities, as set out in the current Tertiary Education Strategy.
11. If a TEO is applying for an exception for multiple courses, each course must individually meet the exception criteria specified in clause 10. For the purpose of clause 10(b), the TEC will specify how similar courses will be determined.
12. There is a limit to the number of courses for which a TEO can request an exception for each year, depending on the number of learners enrolled at the TEO. For a TEO with a combined total of less than 1,000 equivalent full-time students (EFTS) and equivalent full-time learners (EFTL), the limit is 4 courses. For a TEO with between 1,000 and 5,000 EFTS and EFTL, the limit is 8 courses. For a TEO with between 5,000 and 10,000 EFTS and EFTL, the limit is 12 courses. For a TEO with more than 10,000 EFTS and EFTL, the limit increases by 4 courses per increment of 10,000 EFTS and EFTL.

Low or Zero Fee Courses

13. If the fee for a course funded through DQ3-7 and DQ7+ is less than \$511.11 (GST inclusive) (or \$444.44 (GST exclusive)) per EFTS in 2023, then for 2024, the TEO may increase the fee to up to \$511.11 (GST inclusive) (or \$444.44 (GST exclusive)) per EFTS, or can increase the fee by 2.8 percent, whichever is the greater.

Fee-setting Limits for New Courses

14. The fee for a new course established by a TEO and funded through DQ3-7 and DQ7+ must be no more than the 75th percentile from the range of fees charged for similar courses. The TEC must specify how similar courses will be determined.
15. The above fee-setting limits apply to any new courses funded through DQ3-7 and DQ7+, except where the course is in substitution for an existing course dealing with the same or similar subject matter, at a same or similar level on the NZQCF. Substitute courses are subject to the AMFM.

Exceptions to Fee-setting Limits for New Courses

16. A TEO may apply for an exception from the fee-setting limits for new courses on the basis of exceptional circumstances.
17. In considering whether or not there are exceptional circumstances, the TEC must only have regard to the following criteria:
- (a) the course would not be financially viable without a higher fee;
 - (b) where the course is part of a programme at levels 3-8 on the NZQF that has been delivered previously, the programme has a cohort-based completion rate that meets or exceeds the median performance benchmark for that NZQCF level in the previous year;
 - (c) the TEO can demonstrate that the course is in some way unique or special; for example, there are no or very few similar courses to compare fees with; and
 - (d) the course is aligned to the Government's priorities as set out in the Tertiary Education Strategy.

18. The TEC must only grant an exception if it is satisfied that the TEO meets all of the above criteria.
19. The TEC will have discretion to determine the level at which a TEO can set fees for any new courses that have been granted an exception.

Fee-capping Limits for Micro-credentials

20. The fees for a micro-credential must be no more than \$64 (GST inclusive) per credit. This fee cap does not apply to component courses that are also part of a programme and are funded through DQ3-7 or DQ7+, or to any fees charged for industry training
21. Where a micro-credential is wholly or partly comprised of courses that are part of a programme and are funded through DQ3-7 or DQ7+, the fees for those courses must be equal to, or less than, the maximum fee permitted for the course under the AMFM and fee-setting limits for new courses. The fees for the components that are not part of a programme must be no more than \$64 (GST inclusive) per credit.

Exceptions to Fee-capping Limits for Micro-credentials

22. A TEO may apply to the TEC for an exception from the fee-capping limits for micro-credentials (or components of a micro-credential that are not made up of existing courses subject to the AMFM) on the basis of exceptional circumstances.
23. Where a course in a micro-credential is also a course in a programme, it is subject to the AMFM and the relevant exception criteria outlined in clauses 9 to 19.
24. In considering whether or not there are exceptional circumstances, the TEC must only have regard to the following criteria:
 - (a) the TEO can demonstrate that the fee cap makes it financially unsustainable to offer the micro-credential, in terms of the costs of delivering the micro-credential and taking into account the total income that the micro-credential would generate (including Government funding and fees), and that there are no satisfactory alternatives to limit costs; and
 - (b) the TEO can provide evidence that there is strong support from industry and/or employers to deliver the micro-credential and that the micro-credential clearly meets industry and/or employer needs.
25. The TEC must only grant an exception if it is satisfied that the micro-credential meets both of the above criteria.
26. The TEC will have discretion to determine the level at which a TEO can set fees for any micro-credential granted an exception.

Proposed Conditions – Student Services Fees

Objective

27. The objective of the requirements on TEOs that charge fees for the provision of student services is to ensure:
 - (a) accountability to students in the use of fees for student services;
 - (b) involvement of students in decisions about the charging and use of fees for student services; and
 - (c) fair arrangements for students in different tertiary education settings (for example, work-based students or students in fees-free foundation education programmes).

Coverage

28. All TEOs that charge student services fees to domestic students who are funded through DQ1-2, DQ3-7 or DQ7+ must comply with the requirements set out in this notice.
29. TEOs must give effect to the requirements in this notice as soon as reasonably practicable after 1 January 2024.

Requirements

30. **Opt-in arrangements for trainees and apprentices:** TEOs must not charge a compulsory fee for the provision of student services to apprentices, trainees or their employers. TEOs must give apprentices, trainees and their employers the option of paying for and accessing student services. Where apprentices and trainees opt in to receive student services and pay fees, TEOs are still required to comply with the requirements outlined in clauses 31 to 37.
31. **Decision-making:** TEOs must establish and demonstrate adequate arrangements for decisions to be made jointly, or in consultation with the students enrolled at the TEO, or their representatives, on the following matters:
 - (a) the maximum amount that students will be charged for student services;
 - (b) the types of services to be delivered (within the permitted categories set out below);
 - (c) the procurement of those services; and
 - (d) the method for authorising expenditure on those services.
32. **Consultation requirements:** If a TEO chooses to make decisions about student services fees in consultation with students enrolled at the TEO or their representatives, instead of undertaking a joint decision-making process, the TEO is required to ensure that:
 - (a) the outcome of the consultation is not predetermined;
 - (b) proposals are clearly communicated and publicised;
 - (c) there is sufficient time for students to consider proposals and provide feedback; and
 - (d) due consideration is given to student feedback.
33. **Accounting for the use of student services fees:** TEOs must either hold all student services fees in a separate bank account or ensure that all income and expenditure associated with the provision of such services is separately accounted for in the TEO's accounting system.
34. **Reporting on student services fees:** Institutions must provide information on all student services fees through their annual report, and registered private training establishments (PTEs) must provide information on all student services fees through a written report to students. Institutions and registered PTEs must include the following information in their annual report or written report to students:
 - (a) a description of the services funded out of the student services fee;
 - (b) a statement of the fee income and expenditure for each type of student service;
 - (c) the student services fee amount charged per equivalent EFTS or academic year (or however it is calculated); and
 - (d) a statement describing how the provider is complying with the accounting requirements specified above in clause 33.

35. **Private training establishment's written report to students:** Registered PTEs charging student service fees must provide to the TEC a copy of the report that is provided to students. A copy of the report must be sent to:

Requirements for Student Services Fee Submissions
Monitoring and Crown Ownership
The Tertiary Education Commission
PO Box 27048
Wellington, 6141
Email: ssf@tec.govt.nz

36. **Publishing information online:** Providers charging student services fees must, as soon as reasonably practicable each year, publish the following information on their website:
- (a) a description of the services funded out of the student services fee;
 - (b) a statement of the fee income and expenditure for each type of student service;
 - (c) the student services fee amount charged per EFTS or academic year (or however it is calculated);
 - (d) a description of the current year's student services fee decision-making process, including the decisions that were consulted on, how consultation with students occurred, a summary of student feedback, what the decisions were, and the extent to which student feedback was incorporated into those decisions; and
 - (e) a description of how students can be involved in student services fee decisions for the following year, i.e., how TEOs propose to consult with their students and what issues might be considered.
37. **Categories of student services:** Providers may charge student services fees to support the delivery of the following categories of services:
- (a) *Advocacy and legal advice* – Advocating on behalf of individual students and groups of students, and providing independent support to resolve problems, including advocacy and legal advice relating to accommodation.
 - (b) *Careers information, advice and guidance* – Supporting students' transition into post-study employment.
 - (c) *Counselling services* – Providing non-academic counselling and pastoral care, such as chaplains.
 - (d) *Employment information* – Providing information about employment opportunities for students while they are studying.
 - (e) *Financial support and advice* – Providing hardship assistance and advice to students on financial issues.
 - (f) *Health services* – Providing health care and related welfare services.
 - (g) *Media* – Supporting the production and dissemination of information by students to students, including through newspapers, radio, television and internet-based media.
 - (h) *Childcare services* – Providing childcare services while caregivers are studying.
 - (i) *Clubs and societies* – Supporting student clubs and societies, including through the provision of administrative support and facilities for clubs and societies.
 - (j) *Sports, recreation and cultural activities* – Providing sports, recreation and cultural activities for students.
 - (k) *Consultation on student services fees* – Consulting or undertaking joint decision-making with students on student services fees.