

## Report: Domestic Tertiary Student Status for children on 2021 Resident Visa pathway

|   |  |                     |                        |
|---|--|---------------------|------------------------|
| <b>To:</b>                                    | Hon Chris Hipkins, Minister of Education<br>Hon Kris Faafoi, Minister of Immigration |                     |                        |
| <b>Date:</b>                                  | 16 November 2021   | <b>Priority:</b>    | Medium                 |
| <b>Security Level:</b>                        | In Confidence  | <b>METIS No:</b>    | 1275042                |
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| <b>Messaging seen by Communications team:</b> | No   | <b>DDI:</b>         | 9(2)(a)<br>04 901 1245 |
|   |  | <b>Round Robin:</b> | No                     |

### Purpose of Report

This report seeks the Minister of Education's agreement to allow children of people holding an eligible work visa to enrol in tertiary study as domestic tertiary students from 1 January 2022, ahead of a parent being granted a 2021 Resident Visa. This change means these children can benefit from tuition funding and pay domestic fees earlier than if they had to wait until their Resident Visa was granted.

To support the implementation of this proposed change, this report also outlines the Immigration New Zealand operational changes needed for student visas for children eligible for domestic student status.

### Recommended Actions

The Ministry of Education and Ministry of Business Innovation and Employment recommend you:

- a. **Note** that the Minister of Education agreed to further work on changes to tertiary education settings to give certainty of access to tertiary study from 1 January 2022 for children of people on eligible visas for the 2021 Resident Visa [METIS 1272849 refers]
- b. **agree** that children of people who hold eligible work visas for the 2021 Resident Visa be classified as domestic tertiary students from 1 January 2022 to 31 December 2023 if they meet all of the following criteria:
  - i they are residing in New Zealand; and
  - ii they are 25 years of age or under on 1 January 2022; and
  - iii their parent held a work visa eligible for the 2021 Resident Visa on 29 September 2021 (or for a critical worker visa, the parent was granted a visa up to 31 July 2022)

**Agree / Disagree**

**Minister of Education**

- c. **note** that if you agree to the change in recommendation b, this will be reflected in an updated domestic tertiary student Gazette Notice outlined in Annex 1 with new additions in category (i)
- d. **agree** to amend the criteria for student visas for dependent children of work visa holders to allow the cohort described in recommendation b to be granted student visas allowing them to undertake tertiary study as domestic tertiary students

**Agree / Disagree**

**Minister of Immigration**

- e. **note** that if the recommendations in b and d above are agreed to, the Minister of Immigration will receive amended student visa immigration instructions to certify shortly
- f. **proactively release** this report after any changes, if progressed, are communicated publicly.

**Release / Not release**

**Minister of Education**



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16/11/2021



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16/11/2021



Chris Hipkins  
**Minister of Education**

25/11/2021

Kris Faafoi  
**Minister of Immigration**

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## Proposed change to domestic tertiary student status from 2022

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- 1 The 2021 Resident Visa creates a clear pathway to residency for eligible work visa holders and their families. However, there is uncertainty about *when* during 2022 their residency application will be processed. Children of people eligible for the 2021 Resident Visa can continue to access school as domestic students while waiting for a Resident Visa, but are unable to access tertiary study as domestic tertiary students during this period. The international tuition fees they would be required to pay create a barrier to their tertiary study.
- 2 In previous advice to the Minister of Education, further work was agreed to on changes to domestic tertiary student status to provide certainty of access to tertiary study from 1 January 2022 for children of people holding an eligible work visas for the 2021 Resident Visa [METIS 1272849 refers]. Since this was agreed to, the Ministry of Education, Ministry of Business, Innovation and Employment (MBIE) and the Tertiary Education Commission (TEC) have worked to finalise further details of the groups covered and operational implementation.
- 3 We would not seek to extend domestic tertiary student status to children of other work visa holders more generally. This proposal could be perceived as a precedent and result in pressure to more broadly allow the children of work visa holders to access domestic tertiary status in the future.
- 4 However, the 2021 Resident Visa is an exceptional circumstance:
  - it is a one-off residency pathway, and the eligibility criteria provides relative certainty to the target group about whether their application will be successful;
  - the number of people involved is significant;
  - some people within this group have already been affected by the impact of COVID-19 on processing their resident visa application.Most other work visa holders and their families, by contrast, may only be temporarily in New Zealand and do not have the same certainty about the ability to transition to residency.
- 5 Under the Education and Training Act 2020, the Minister of Education can gazette groups, in addition to citizens and residents, that can be domestic tertiary students. We propose that from 1 January 2022, a group is added to this Gazette Notice that targets children of eligible visa holders, who are likely to transition to the 2021 Resident Visa before the end of 2022. We propose this category with domestic tertiary student status would be for a fixed period, from 1 January 2022 until 31 December 2023. This is on the basis that those eligible should transition to 2021 Resident Visa during 2022, while providing certainty for full 2022 and 2023 calendar years, including if visas are still pending in late 2022 when enrolment decisions need to be made.
- 6 This change will enable this group of students to have certainty to enrol as domestic tertiary students at the start of 2022. Without this change, many may delay study until later in 2022 or 2023, after their Resident Visa is granted when they can benefit from tuition subsidies and be charged domestic fees from tertiary providers.
- 7 The Ministry of Education proposes that the additional group of domestic tertiary students would include students who meet the following criteria:
  - a. **Children of people on eligible work visas for the 2021 Resident Visa.** The change is focused on children who would likely need to access tertiary study as part of transitioning to a career pathway. The work visa holders themselves

and their partners would not be included, and would not be domestic tertiary students until they gain a Resident Visa.<sup>1</sup>

- b. **A parent would need to be on the specified work visa on 29 September 2021, (or be granted a critical worker visa prior to 31 July 2022).** This links dates that apply for eligibility for the 2021 Resident Visa eligibility.
- c. **Children must be 25 years old, or under, on 1 January 2022.** Children generally must be no older than 24 years to be eligible to be included in a parent's residence visa application, although a special rule for the 2021 Resident Visa allows some children older than this to qualify. We propose 25 years or under, to account for this and allow for some people ageing out of this group prior to the start of 2022, but who are part of the visa group.<sup>2</sup>
- d. **The children would need to be residing in New Zealand.** This is because their relationship to their parent would have been assessed with their current visa. Also, if they are residing overseas, they can access tertiary education in that country, especially if it is their country of citizenship.

- 8 If the work visa holders themselves, or their children, are working, they can continue to access training subsidies through industry training as all employed people can access this support. These settings for workplace training from 2023 are currently under review as part of the Unified Funding System.

**The coverage of children will be slightly broader than for the 2021 Resident Visa, but most will transition through this residency pathway**

- 9 The group of children covered by the proposed additional category is broader than those who will be able to transition to the 2021 Resident Visa. This is because tertiary providers cannot apply very specific immigration criteria related to parents of the student, such as median wage, occupation, or character of parents. Further, we do not recommend linking the category in the Gazette Notice to having a 2021 Resident Visa application submitted, as some people cannot submit applications until March 2022, and it could also encourage ineligible people to submit applications to gain access to domestic tertiary student status.
- 10 The number of children in the proposed additional category of domestic tertiary students whose parent is on eligible visa, but do not meet the other 2021 Resident Visa criteria, is likely to be low. MBIE estimated that around 85% of people on eligible work visas and their dependents could transition to the 2021 Resident Visa. Of the estimated 15% on eligible work visas who do not meet additional criteria for the 2021 Resident Visa, few will have children aged 17-25 years who would access tertiary study during the period of the gazetted category. Nonetheless, a few people will gain domestic tertiary student status for two years and not transition to residency as part of the 2021 Resident Visa. However, it is likely that some of this small group may also transition to residency through other pathways during the period.
- 11 Clear criteria and limited character and health checks should assist families to easily understand if they can transition to the 2021 Resident Visa or if their child would have to pay international fees if studying in New Zealand after 31 December 2023. Having a fixed period of eligibility through to the end of 2023 makes it clear that if people have not transitioned to a Resident Visa by then they will not retain domestic tertiary student status.

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<sup>1</sup> The work visa holders will be working and so are restricted from study as work is their purpose for being granted a temporary visa and supports their pathway to residence through the 2021 Residence Visa. Many partners of work visa holders will also be focused on employment.

<sup>2</sup> Very few onshore dependent children of eligible visa holders are aged 24-25 years, as they are generally not granted temporary visas to enter New Zealand linked to the parent if they are over 20 years of age.

## **Around 3,000 people may benefit from the changes in 2022, depending on their decision to take up tertiary study**

- 12 MBIE records show that as at 13 October 2021 there are around 2,500 children on temporary visas aged 17-25 years linked to parents on eligible work visas for the 2021 Resident Visa.<sup>3</sup> Some of these children will be students that remain in school, and some will not seek to undertake tertiary study. This number is likely be a low estimate due to inconsistencies with linking a child to parents in Immigration New Zealand records.
- 13 Using information on Year 13 school students who are dependents of all work visa holders, not only on work visas eligible for 2021 Resident Visa, contributes a higher-end estimate of additional tertiary enrolments. Based on 2020 and 2021 Year 13 students who are dependent of work visa holders, an additional 3,000 students may undertake tertiary study in 2022. This assumes a 70% transition rate to tertiary education of this group as domestic tertiary students, when for the 2019 cohort in 2020, the transition rate was 6% as domestic tertiary students, by being granted a resident visa.
- 14 Assuming border restrictions to come to New Zealand lift over 2022 or 2023, it may also be possible for children who are currently offshore to travel to New Zealand and qualify for the additional domestic tertiary student category. It is not possible to estimate how many children under 25 years that are currently offshore this could apply to.
- 15 Around 500, or 20%, of children aged 17-25 years linked to parent's work visas are on full fee-paying student visas, and if studying at tertiary providers, will be paying international fees. Providers would lose international fee income from these students prior to them transitioning to the 2021 Resident Visa, but would receive funding from tuition subsidies and domestic fees.

## **No change in access to student support**

- 16 These changes to domestic tertiary student status have no impact on access to student support or 'first-year' Fees Free, as they have other specific eligibility rules. All people who gain the 2021 Resident Visa, including children, will still need to be on a Resident Visa for three years to be eligible for 'first-year' Fees Free and student support. People on the 2021 Resident Visa would become eligible from around the start of 2025, depending on when their Resident Visa is granted.

## **Funding implications**

- 17 This proposal to extend domestic tertiary student status should not have significant funding implications for the tertiary system. As noted in previous advice, the vast majority of this group are already likely to be eligible for tuition subsidies once their residency is approved. This proposal will provide certainty and allow some of these children of specified work visa holders to commence their study at the start of 2022 rather than later in 2022 or 2023. The primary driver of any increase in enrolments from this group over the medium-term would be the decision to establish the residency pathway, rather than enabling this sub-group to access tertiary education somewhat earlier than they otherwise might have.

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<sup>3</sup> MBIE data is likely to be slightly low, because the links between a child and parent are not always entered especially when a child qualifies in their own right (for example, as a full-fee paying student).

## Operational issues

- 18 The Ministry, the Tertiary Education Commission and MBIE are working on advice so that tertiary providers and potential students are informed about the additional category of domestic tertiary students. We will also provide guidance on documentation needed to support their enrolment. Providing additional documentation will not present a significant barrier for many families because they will have already provided the documentation needed to access New Zealand schools.

### Immigration settings to implement the proposed change for access to tertiary education as a domestic tertiary student

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- 19 Under Immigration settings, people who do not hold student visas can only undertake programmes of study that are less than three months long. Therefore, these children will need to be able to obtain student visas in order to undertake study in most tertiary programmes. Changes to immigration instructions will be required to allow the granting of student visas to dependent children of work visa holders for tertiary study.
- 20 Section 22 of the Immigration Act 2009 specifies that immigration instructions are statements of Government policy, therefore the Minister of Immigration must be satisfied that changes to immigration instructions align with Government intent. This is usually achieved through Cabinet agreement. Although this matter has not been formally agreed to by Cabinet, the Minister may still consider that these changes align with the Government intent based on discussion of the matter at Cabinet on 6 October 2021, during consideration of *2021 Resident Visa – fees and detailed policy decisions* [CBC-MIN-21-0114].
- 21 Immigration instructions will be provided to the Minister of Immigration to certify. The proposed immigration instructions would closely reflect the wording in the Gazette Notice and would allow the granting of student visas to the cohort covered. Currently student visas granted to dependent children of work visa holders only allow study at primary and secondary school. Amended instructions will allow the granting of student visas at tertiary level for the children of eligible work visa holders.
- 22 Currently, dependent of worker student visas can only be granted to dependent children up to the age of 20 years, in line with the maximum age of dependence for temporary visas. An exception is proposed to this to allow this cohort to be able to be granted student visas provided they were 25 years or under on 1 January 2022 and they meet the other criteria to be considered dependent.
- 23 These student visas would be granted in line with the parents' visas duration, the same as other dependent students. If their parents' visas extend beyond the end of 2023 (when the children's domestic tertiary student status expires), the visa would be granted up until that date instead.
- 24 There would be no changes to the existing settings about how students qualify for the ability to work. This means that these student visas would be granted work rights based on their programme of study. Additionally, students 18 and over who are included in a 2021 Resident Visa application could be granted 20 hours work rights regardless of their study, as agreed by Cabinet alongside the 2021 Resident Visa detailed policy decisions [CBC-MIN-21-0114].
- 25 Tertiary providers will need to verify that the visa status of the parents makes a child eligible for domestic tertiary student status. But in most cases, this will be made easier as they will be able to rely on information provided with the application for the student visa, or the granted student visa for dependent of worker (including tertiary study in options). These visas will be distinctive because they will be the only student visas

allowing for tertiary study as a dependent child. Students who do not wish to pursue long-term study may apply for a work visa or other temporary visas that allow them to study in a course no longer than three months. They would still be eligible to be considered as domestic tertiary students.

- 26 This change is likely to increase the volume of student visa applications received next year by 2,500-3,500, depending on how many eligible people choose to take up study. There were around 13,000 dependent of worker student visas granted in 2020. This volume increase can be managed within existing Immigration New Zealand resourcing.

## Next steps

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- 27 If you agree to the proposed policy change (recommendation b), agencies will communicate these changes to the tertiary sector and to immigration stakeholders and publish the proposed Gazette Notice that includes the proposed changes. The proposed Gazette Notice with new category, (i), is in the attached Annex.
- 28 The Ministry and the Tertiary Education Commission will update guidance to tertiary education organisations about determining eligibility for domestic tertiary student status for 2022.
- 29 While the change will be communicated promptly to the sector and potential students, once decisions are made to provide certainty for 2022 enrolments, the Gazette Notice may be published after further advice on other changes to domestic tertiary students for 2022.
- 30 The Ministry of Education is also proposing another change to domestic tertiary student status from 2022 related to those on Partnership of a New Zealand Citizen or New Zealand Resident Visa to access specific English for speakers of other languages (ESOL) funds only (intensive literacy and numeracy ESOL and Adult Community Education). This change would support settlement outcomes of those from non-English speaking backgrounds, who are highly likely to transition to New Zealand residency through their partnership. If this change is also progressed, we will publish the Gazette Notice with both changes prior to 1 January 2022.
- 31 If this change is agreed to by the Minister of Education, MBIE will then provide the Minister of Immigration with amended immigration instructions for his consideration to allow the granting of student visas to this group.

## Annex 1: Proposed Gazette Notice

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### The Domestic Tertiary Students Notice 2022

Under section 10(1) of the Education and Training Act 2020, paragraph (a)(iii) of the term “domestic tertiary student”, the Minister of Education acting by and through Andy Jackson, Hautū / Deputy Secretary, Te Puna Kaupapahere / Policy, Ministry of Education under delegated authority, gives the following notice.

#### Notice

1. Title and commencement
  - a. This notice may be cited as the Domestic Tertiary Students Notice 2021.
  - b. This notice shall come into force on the 1 January 2022.
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, and 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.
  - 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.
- i. For the period between 1 January 2022 and 31 December 2023, a person who is:
- (i) residing in New Zealand; and
  - (ii) aged 25 years or under as at 1 January 2022; and
  - (iii) either;
    - A. the child of a person who held a valid visa of one of the following types as at 29 September 2021:
      - Post Study Work Visa
      - Talent (Accredited Employer) Work Visa
      - Essential Skills Work Visa
      - Religious Worker Work Visa
      - Talent (Arts, Culture, Sports) Work Visa
      - Long Term Skill Shortage List Work Visa
      - Silver Fern Practical Experience Work Visa
      - Trafficking Victim Work Visa
      - Migrant Exploitation Protection Work Visa
      - Skilled Migrant Category Job Search Work Visa
      - Victims of Family Violence Work Visa
      - South Island Contribution Work Visa
      - Work Visa granted under Section 61 (provided the applicant held another eligible visa type within 6 months before being granted a Section 61 visa)
      - Longer-term Other Critical Workers visas (granted for longer than 6 months)
      - Longer-term Critical Health Workers visa (granted for at least 6 months); or
    - B. the child of a person who holds a Critical Purpose Visitor Visa granted between 29 September 2021 and 31 July 2022 under one of the following categories:
      - Critical Health Workers (granted for longer than 6 months)
      - Other Critical Workers visas (granted for at least 6 months).

3. Revocation of the Domestic Tertiary Students Notice 2021

his notice revokes the Domestic Tertiary Students Notice 2021 published in the New Zealand Gazette 21 April 2021.

Dated at Wellington this                      day of                      2021

Andy Jackson, Hautū / Deputy Secretary, Te Puna Kaupapahere /Policy, Ministry of Education.