



Education Report: Updates to domestic student and student services fee settings for 2022

To:	Hon Chris Hipkins, Minister of Education		
Date:	25 November 2022	Priority:	High
Security Level:	In Confidence	METIS No:	1297960
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This report seeks your agreement to changes to the definition of a domestic student in the Tertiary Education (Domestic Students) Notice 2022 for the purposes of tertiary education. This will allow holders of the Special Ukraine Visa to access English for Speakers of Other Languages (ESOL) and Adult Community Education (ACE) classes, and implement changes associated with the unified funding system (UFS). It also seeks your agreement to sign the attached notice revoking the 'Ministerial Direction on Compulsory Student Services Fees for 2019', which is the final step necessary to shift the regulation of student services fees into funding mechanisms.

We are seeking your agreement to these changes by 15 December 2022 in order for the notices to be issued prior to the end of the year, enabling these to take effect from 1 January 2023.

Recommended Actions

The Ministry of Education recommends you:

Domestic student definition

- a. **Agree** to classify holders of the Special Ukraine Visas as domestic students for the purposes of ACE and ESOL classes.

☒ **Agree** ☐ **Disagree**

- b. **Note** that the definition of a domestic student will also be updated to implement changes related to the unified funding system.
- c. **Note** that these changes will be implemented by a new Gazette notice, defining a *domestic student* rather than a *domestic tertiary student* in order to address a previous error in our use of this terminology.
- d. **Note** that a legislative amendment required to link regulation-making powers to the term domestic student is being progressed as part of Additional proposals for the Education and Training Legislation Bill (Tranche Three) [METIS 1297667 refers]

Student Services Fees

- e. **Note** the attached revocation notice (Annex 2), which revokes the Ministerial Direction on Compulsory Student Services Fees for 2019
- f. **Sign** the attached revocation notice (Annex 2)
- g. **proactively release** this education report, with paragraphs 14 and 15 redacted as these contain confidential advice about an ongoing legal risk.

Release / Not release



James Campbell
Senior Policy Manager
Tertiary Education

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Hon Chris Hipkins
Minister of Education

7/12/2022

Background

1. New Zealand citizens and residence class visa holders (in most cases) are considered to be domestic students under the Education and Training Act 2020 (the Act). Under section 10(1) of the Act, the Minister of Education can determine further classes of persons to be treated as domestic students via a notice in the New Zealand Gazette. These notices have been recently recategorised as secondary legislation under the Secondary Legislation Act 2021, meaning that they are now required to be tabled in Parliament and are subject to publication requirements and Regulations Review Committee oversight.
2. Typically, minor changes are made to the domestic student gazette notice each year to ensure consistency with wider policy shifts and immigration settings. Authority to issue domestic student gazette notices has been delegated to Ministry Deputy Secretaries.

Domestic student definition

Ukrainian Special Visa Holders

3. On 27 July 2022, you met with Minister Wood and Minister Mahuta to discuss the request from Mahi for Ukraine that holders of the Special Ukraine Visa are granted domestic student status to allow them to continue or commence tertiary study in New Zealand.
4. In an information update to you [METIS 1281857 refers] we noted that categorising Special Ukraine Visa Holders as domestic students would be a significant policy changes with precedent implications and that any such change would need to be consistent with eligibility for other sorts of support the special visa holders are eligible for.
5. We put forward an alternative support option of granting access to Adult Community Education (ACE) and English for Speakers of Other Languages (ESOL) classes. This would support these visa holders to transition to life in New Zealand by improving their language skills, while still being consistent with supports available to other non-resident visa holders.¹
6. We understand that Ministers were supportive of extending ACE and ESOL eligibility to Ukraine Special Visa holders. As we outlined in our information update, we consider that access to ESOL and ACE classes could be approved by you without Cabinet approval, through changes in the New Zealand Gazette. Given the low numbers of Ukraine special visa holders, financial implications are likely to be minimal. MBIE have advised that as of November 2022, 1079 Special Ukraine Visas have been approved, and of these, 431 people have arrived in New Zealand.
7. We incorporated the proposed change into clause 2 of the draft Gazette notice attached as Annex 1.

Implementing changes relating to the UFS

8. In December 2021, Cabinet agreed as part of decisions on the UFS that the current provider-based eligibility rules will apply across the unified funding system [CAB-MIN-21-0525]. Cabinet also agreed that:
 - a. an eligibility exemption scheme would be developed to allow some non-domestic learners to access specific training areas. You agreed to details of the exemption scheme in December 2021 [METIS 1276773 refers].

¹ Subsidising ACE/ESOL tuition for non-residents would not set a new precedent; for example, people on partnership visitor visas are eligible for ACE and ESOL classes.

- b. current work-based eligibility for tuition subsidies be continued for those learners with a training agreement prior to 1 January 2023.
9. To implement these two decisions, we have revised clause 'F' in the domestic student notice to be consistent with the above changes. This replaces the clause that previously deemed all those enrolled in programmes funded by the Industry Training Fund to be domestic students.

Domestic student/domestic tertiary student terminology

10. The Education and Training Act 2020 introduced two separate domestic student definitions. *Domestic student* applies to tertiary domestic student enrolment, fee and refund settings, and funding mechanisms. *Domestic tertiary student* is used in the Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021 (the Code) and the domestic tertiary student disputes resolution scheme (DRS).
11. Since the Act came into force, we have mistakenly been referring to *domestic tertiary student* for funding and fee regulation purposes, including in the funding determinations issued in 2021. We identified this issue earlier in 2022 and corrected the funding determinations you approved in September 2022 so that they refer to *domestic student*.
12. We now propose to issue a new Gazette notice which defines a *domestic student* in relation to the parts of the Act relating to tertiary education (Parts 4 and 5 and related Schedules) of the Act. This draws a clear distinction between the Education (Domestic Students) Notice 2022 for school students and this notice for students in tertiary education. The previous Gazette notice defining a *domestic tertiary student* will be revoked. We will come back to you with further advice on the gazetting of *domestic tertiary students*.

Legislative amendments required

13. As we noted in our recent advice on additional proposals for the Education and Training Legislation Bill [METIS 1297667 refers], a change to the legislation is required to resolve an inconsistency between the definitions of *domestic student* and *domestic tertiary student*. Currently the Act only allows for regulations limiting domestic status for New Zealand resident visa holders to be issued in relation to *domestic tertiary student* status (in relation to the Code and dispute resolution), not *domestic student* status (in relation to funding and fees). This was inadvertently changed from the Education and Training Act 1989, which allowed for regulations to be issued in relation to *domestic students* for funding and fee purposes.

14. 9(2)(h)

[REDACTED]

[REDACTED]

9(2)(g)(i)

[REDACTED]

Revoking the Ministerial Direction on Compulsory Student Services

16. The Education and Training Amendment Act 2022 recently enabled student services fees to be regulated through funding mechanisms, rather than through a Ministerial Direction. In September 2022, you agreed to shift the conditions from the 'Ministerial Direction for Compulsory Student Services Fees for 2019' into relevant funding mechanisms for 2023 [METIS 1294660 refers].
17. We indicated at the time that the last step necessary to finalise the shift of student services fee regulations into funding mechanisms is to revoke the Ministerial Direction from 2019, in accordance with Clause 79 of Schedule 1 of the Education and Training Act 2020 (the Act). This clause stipulates that the Ministerial Direction remains in force until 1 January 2024, unless it is revoked earlier by the Minister.
18. You subsequently agreed that Ministry of Education could revoke this Ministerial Direction via a notice in the New Zealand Gazette [METIS 1294660 refers]. The New Zealand Gazette Office has since informed us that it is unable to publish the notice, as publishing via the New Zealand Gazette is not a specific requirement of the Act.
19. We have sought legal advice from the Ministry's legal team and from Buddle Findlay, who both have advised that the Ministerial Direction can be revoked by posting a signed revocation notice on the Tertiary Education Commission (TEC) website.
20. We have drafted the revocation notice in Annex 2. We recommend that you sign this notice, to be published on the TEC website.

Next Steps

Domestic student notice

21. Attached in Annex 1 is the proposed Tertiary Education (Domestic Students) Notice 2023.
22. If you agree to the policy change to include Special Ukraine Visa holders in the notice, we will publish the proposed notice in the New Zealand Gazette and follow the publication and Parliamentary tabling requirements for secondary legislation.

Compulsory Student Services Fees revocation notice

23. After you have signed the revocation notice, the TEC will post it on its website, finalising the shift of student services fees regulations into funding mechanisms.

Annexes

Annex 1: Proposed Tertiary Education (Domestic Students) Notice 2023

Annex 2: Revocation of the Ministerial Direction on Compulsory Student Services Fees for 2019

Tertiary Education (Domestic Students) Notice 2022

Under section 10(1) of the Education and Training Act 2020, paragraph (c) of the term “domestic 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 Tertiary Education (Domestic Students) Notice 2022.
- b. This notice shall come into force on 1 January 2023.

2. Domestic Students and Domestic Tertiary Students

For the purposes of Parts 4 and 5 and related Schedules of the Education and Training Act 2020, in relation to tertiary education, 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 parent and any sibling 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:
 - (i) was enrolled on 31 December 2022 at a tertiary education provider for the purpose of participating in training or an apprenticeship that was funded by the Tertiary Education

Commission through the Industry Training Fund funding determination in force at the time and issued under section 419 of the Education and Training Act 2020; and

- (ii) continues to be enrolled in the same programme of study that is now funded by the Tertiary Education Commission through *Determination of Design of Funding Mechanism: non-degree delivery at levels 3 – 7 on the New Zealand Qualification and Credentials Framework and all industry training*.

g. A person who:

- (i) is working in New Zealand on an Accredited Employer Work Visa; and
- (ii) is working in an occupation that is specified on the Immigration New Zealand Green List or within the scope of a sector agreement; and
- (iii) is studying a qualification delivered in the work-based mode of delivery; and
- (iv) the qualification has been identified by the appropriate Workforce Development Council as being in the national interest; and
- (v) the qualification has been approved by the Tertiary Education Commission as being in the national interest; and
- (vi) is enrolled in a programme of study or training, or part of a programme of study or training, that is funded by the Tertiary Education Commission.

h. A person who is:

- (i) enrolled in a course of study or training funded 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.

i. A person who is:

- (i) enrolled in a course of study or training funded by the Tertiary Education Commission through the Intensive Literacy and Numeracy English for Speakers of Other Languages Fund or the Adult Community Education Fund; and
- (ii) residing in New Zealand on either a Partner of a New Zealander Work Visa, a Partner of a New Zealander Visitor Visa, or the 2022 Special Ukraine Visa.

j. 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.
- k. 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:
 - Other Critical Workers visas (granted for longer than 6 months)
 - Critical Health Workers (granted for at least 6 months).

3. **Revocation of the Domestic Tertiary Students Notice 2022**

This notice revokes the Domestic Tertiary Students Notice 2022 dated 10 December 2021.

Dated at Wellington this day of 2022

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

Hon Chris Hipkins

MP for Remutaka

Minister of Education

Minister of Police

Minister for the Public Service

Leader of the House



Revocation of the Ministerial Direction on Compulsory Student Services Fees for 2019

Pursuant to clause 79(2) of Schedule 1 of the Education and Training Act 2020, I hereby revoke the “Ministerial Direction on Compulsory Student Services Fees for 2019” dated 31 July 2019, with effect from 1 January 2023. The direction continues in force until 1 January 2023.

From 1 January 2023, student services fees will cease to be regulated through a Ministerial direction and will instead be regulated through determinations of funding mechanisms made under section 419 of the Education and Training Act 2020.

HON CHRIS HIPKINS, Minister of Education

7 / 12 / 2022