



## Briefing Note: Options for legislative amendments to the Export Education Levy

<b>To:</b>	Hon Chris Hipkins		
<b>Date:</b>	13/05/2020	<b>Priority:</b>	Medium
<b>Security Level:</b>	Medium	<b>METIS No:</b>	1228219
<b>Drafter:</b>	Greg Martin		
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### Purpose of Report

This paper provides you with advice on options for legislative amendments to the Export Education Levy to enable effective management of payment obligations in response to COVID-19 and other extraordinary circumstances which severely impact education providers.

### Summary

- Legislative amendments are required to support the Ministry to “hibernate” Export Education Levy payments for Trimester 3 2019 and to enable the Ministry to suspend payments for 2020, which will reduce financial pressure on education providers as a result of COVID-19, and help to reduce the risk of further closures.
- The two options for amendments are:
  - Option 1:** Targeted legislation to defer, cancel or refund EEL payments until the end of 2020
  - Option 2:** Broader legislative change to defer, cancel or refund EEL payments, which could be used in response to any extraordinary circumstances
- We recommend Option 1, as it provides more certainty in responding promptly to the short-term pressure on providers due to the impact of COVID-19, and changes can be included in the Education and Training Bill without additional regulatory requirements. While this option does not provide flexibility to address future issues facing the sector, broader changes to the legislative framework for EEL would benefit from further analysis of the impacts of COVID-19 and alignment with any changes resulting from the international education recovery work programme.

### Recommended Actions

The Ministry of Education recommends that you:

- a) note** that response to recent advice on managing the EEL [METIS 1224675 refers],

- the Ministry should advise providers that they can “hibernate” any remaining EEL due for 2019 until they are able to pay it
  - EEL payment obligations for 2020 should be suspended
- b) **note** that there is a small window of opportunity to make the necessary legislative amendments to coincide with the passage of the Education and Training Bill

c) **agree** to:

Option 1: Targeted legislation to defer, cancel or refund EEL payments until the end of 2020 (*recommended*)

Or [Extend this until the end of 2021, CH](#)  Agree  Disagree

Option 2: Broader legislative change to defer, cancel or refund EEL payments, which could be used in response to any emergency

Agree  Disagree

d) **agree** that this briefing note is proactively released once proposed legislation has been added to the Education and Training Bill.

Agree  Disagree



Belinda Himiona  
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Graduate Achievement, Vocations and Careers  
13/05/2020



Hon Chris Hipkins  
**Minister of Education**

[14/5/2020](#)

## Background

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2. The reduction in international student numbers caused by the global and national response to COVID-19 means that many education providers are now facing considerable financial hardship. This represents a significant risk to the financial viability of some providers and the stability of the Export Education Levy (EEL).
3. In response to recent advice on managing the EEL [METIS 1224675 refers], you agreed that:
  - the Ministry should advise providers that they can “hibernate” any remaining EEL due for 2019 until they are able to pay it
  - EEL payment obligations for 2020 should be suspended
4. Any suspension of EEL obligations and revenue will increase the funding gap between planned expenditure and what can now be covered. A cash injection into the EEL has been agreed to as part of the 2020 Budget to cover the lost income.
5. The pressures created by COVID-19 have exposed the limitations of the current regulatory framework for the EEL, particularly the lack of flexibility to promptly respond to significant events by adjusting payment obligations.
6. The Export Education Levy Regulations 2011 set out the amount of Levy payable, when the Levy is payable and methods for calculating the Levy. Providers enrolling international students have current payment obligations covering Trimester 3 2019 (which was due in February), Trimester 1 2020 (due end of May) and Trimester 2 2020 (which started on 1 May). Appendix 1 sets out the trimester and payment dates for all provider types.
7. The EEL Regulations cannot be retrospectively changed to remove the obligation to pay into the EEL for previous periods of enrolment, as there is no enabling provision in the primary legislation.
8. “Hibernation” or deferral of EEL payments due for 2020 would also require removal of the obligation to collect debts owing, and would not remove pressure on struggling providers in the short to medium term, as debt would continue accruing.
9. Treasury’s advice is that the Epidemic Preparedness Act does not provide an option for addressing this problem because financial hardship (even culminating in potential insolvency or business failure) does not meet the threshold for an Immediate Modification Order.
10. Providers are urgently seeking clarity on their obligations for 2020. Reassurance that payments for 2020 will be cancelled depends on confirmation of decisions included in this paper and the progression of the mechanism for enacting them.
11. There is a small window of opportunity to add proposed changes in a Supplementary Order Paper to the Education and Training Bill, which should be through the House in June 2020.
12. If this opportunity is missed, there will be an additional delay in the Ministry’s ability to reassure the sector, which could lead to further closures, which impact on students, staff and the financial stability of the EEL.

## **Options for deferring and cancelling EEL payment obligations**

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13. There are two options for amendments to the primary legislation to enable us to wipe the obligation to pay into the Export Education Levy for 2020 and defer payment for Trimester 3 2019:
  - a. Option 1: Targeted legislation to defer, cancel or refund EEL payments until the end of 2020
  - b. Option 2: Broader legislative change to defer, cancel or refund EEL payments, which could be used in response to any emergency.
14. Both options would require legislative change, and would be included in the Education and Training Bill. It is possible that there would be an issue of using a statutory power to override an Executive Order in Council (the EEL Regulations), however it is likely that this issue can be resolved, as the primary legislation takes precedence.

### **Option 1: Targeted legislation to defer, cancel or refund payments until the end of 2020**

15. Under this option, the Act would be amended so that:
  - a. payments for Trimester 3 2019 are deferred until a specific date (eg February 2022)
  - b. no levies are payable for the periods of enrolment from 1 January 2020 to 31 December 2020
  - c. any levy payments relating to enrolments during Trimester 3 2019 and 2020 can be refunded
16. This option is unlikely to cause delays in the passage of the Education and Training Bill, as it is limited to the immediate response to COVID-19. It would allow further legislative changes to manage the impact of COVID-19 to be taken later, if needed to address the longer term impact of COVID-19.
17. This option is not “future-proofed”: it does not allow for further deferral or cancellation at a later date, in response to longer-term impacts of COVID-19 or other extraordinary circumstances.

### **Option 2: Broader legislative change to defer, cancel, amend or refund EEL payments in any exceptional circumstances**

18. This would add the ongoing ability for the Minister to defer, cancel and refund payments in respect of any period of enrolment, in response to extraordinary circumstances. This could include, for example, a major earthquake or severe financial crisis. Use of this power would be at the Minister’s discretion, and would be implemented through a direction to the EEL fund administrator via Gazette notice.
19. This option would provide flexibility to respond to the impact of COVID-19, without time constraints, and would enable a prompt and effective response to any future circumstances significantly impacting revenue via international student tuition fees.
20. In order to prevent the possibility of providers requesting deferral or cancellation for circumstances that are more limited in scope, this provision should be kept to extraordinary circumstances that severely impact revenue from international student tuition fees across a significant section of the sector.
21. This option would also allow for the EEL rate to be temporarily reduced (rather than removed), as appropriate to the situation.

22. Under normal circumstances, powers such as this would require a Regulatory Impact Assessment (RIA), which, due to the urgent nature of the COVID-19 response and the timelines for the SOP for the Bill, cannot be done in this case.
23. This option would require careful drafting, particularly in defining the applicable extraordinary circumstances, to ensure that there is minimal risk of challenge in the House which would delay the passage of the Education and Training Bill.

## **Ongoing financial management of the EEL**

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24. It is currently unclear what the ongoing impact of COVID-19 will be on the EEL going forward, however it is likely that revenue will be significantly reduced. We will provide further advice on the financial management of the EEL, including how it relates these changes.

## **Next steps**

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Once you have confirmed the legislative options set out in this paper, a proposal will be added to the draft Cabinet paper presenting proposals for Supplementary Order Papers to be added to the Education and Training Bill. The draft Cabinet paper is due to go out for departmental consultation on 15 May 2020.

Communications to providers will be updated to reflect the proposed approach to ‘hibernating’ and suspending payments as soon as this is appropriate.

Appendix: Summary of EEL enrolment periods and payment dates

<b>Date</b>	<b>Schools</b>	<b>Tertiary providers</b>
30 April	End of Trimester 1	End of Trimester 1
30 May		Trimester 1 payment due
31 July	Trimester 1 payment due for schools End of Trimester 2	
31 August		End of Trimester 2
30 September		Trimester 2 payment due
31 October	Trimester 2 payment due	
31 December	End of Trimester 3	End of Trimester 3
31 January	Trimester 3 payment due	
16 February		Trimester 3 payment due