

The Tertiary Education (Conditions Setting Limits on Fees for New Courses) Notice 2018

Under sections 159L(3), 159M(b) and 159OA of the Education Act 1989 (“Act”), the Minister of Education gives notice of the proposed variation of conditions to set limits on fees that tertiary education organisations (TEOs) may charge to domestic students for new courses.

Notice

1. Title—This notice may be cited as the Tertiary Education (Conditions Setting Limits on Fees for New Courses) Notice 2018.

2. Commencement—The proposed conditions outlined in this notice would apply to all new courses established after the conditions come into effect through a variation to the determinations of the design of the funding mechanisms under section 159OA of the Act for Student Achievement Component (SAC) level 3 and above and Information and Communications Technology (ICT) Graduate Schools (“funding mechanisms”). If the Minister decides to vary the determinations of the design of the funding mechanisms, then the proposed variation will come into effect on a date that is not earlier than three months after the date of the Minister’s decision.

3. Proposal—I propose to vary the determinations of the design of the funding mechanisms under section 159OA of the Act by specifying the new conditions that the Tertiary Education Commission must attach to funding that is provided under the funding mechanisms, in particular, conditions specifying:

- a. the limits by which TEOs can set fees charged to domestic students enrolled in new courses that lead to training schemes, certificate, diploma, degree, and postgraduate qualifications that receive SAC funding for provision at level 3 or above on the New Zealand Qualifications Framework (NZQF) (including provision at ICT Graduate Schools); and
- b. the other conditions in relation to fees that the TEC must attach to SAC funding for provision at level 3 or above (including provision at ICT Graduate Schools).

The proposed conditions do not apply to fees for SAC-funded courses that are at level 1 and 2 on the NZQF, 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](#)).

4. Rationale—I consider that the proposed variation to enable the Tertiary Education Commission to attach new conditions on funding is reasonably necessary to protect the affordability of tertiary education for students by regulating the fees charged by TEOs to domestic students for new courses. Given the significant public investment in tertiary education through the Student Loan Scheme and the Fees-Free policy, it is also reasonably necessary to regulate the cost of tertiary education to taxpayers.

5. Application—The conditions set out in this notice apply to:

- a. Fees which include the following items: tuition fees, compulsory course costs, examination fees, other charges associated with a programme of study, material charges, cost of field trips and any compulsory purchase of equipment or books through the organisation.
- b. TEOs which are organisations as defined in section 159B, including tertiary education institutions (TEIs), private training establishments (PTEs) and rural education activities programme providers (REAPs).
- c. “New courses”, which does not include any new courses at level 3 and above on the NZQF established by a TEO in substitution for an existing course dealing with the same or similar subject matter and at a same or similar level on the NZQF, for which SAC funding can be used. Any courses established by a TEO in substitution for an existing course are subject to the requirements under an Annual Maximum Fee Movement (AMFM) notice.

6. Call for Submissions—Any TEO and any other person, body or organisation having an interest in the matter is invited to make a submission on the proposed fee setting regulations for new courses and other proposed conditions set out in this notice.

All submissions should be sent to: Funding and Fees Policy, Graduate Achievement, Vocations and Careers, Ministry of Education, PO Box 1666, Wellington 6140. Email: tertiary.strategy@education.govt.nz.

7. Date for Submissions—All submissions must be received by **10 December 2018**.

NEW ZEALAND GAZETTE

Dated at Wellington this 19th day of November 2018.

CHRIS HIPKINS, Minister of Education.

Proposed Conditions to be Attached to Student Achievement Component Funding Allocated and Paid for by the Tertiary Education Commission to Tertiary Education Organisations

General

1. These conditions apply to fees charged for student achievement (SAC) funding for provision at levels 3 and above in all tertiary education organisations (TEOs), including Information and Communications Technology (ICT) Graduate Schools.
2. The fees associated with a particular course are subject to these conditions if:
 - a. the TEO is the sole source of the item to which the fee relates; and
 - b. all domestic students validly enrolled in the course are required to pay the fees.

Fee Setting Limits for New Courses

3. The fees for a new course at level 3 and above on the New Zealand Qualifications Framework (NZQF) established by a TEO must be no more than the highest 75th percentile from the range of fees charged for similar courses. The Tertiary Education Commission (TEC) will specify how similar courses will be determined.
4. The fee setting limits apply to any new courses at level 3 and above on the NZQF established by a TEO, 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 NZQF, for which SAC funding can be used.

Exceptions

5. A TEO may apply for an exception from the fee setting limits for new courses for a SAC-funded course that is part of a programme that leads to a qualification at level 3 or above on the NZQF on the basis of exceptional circumstances. The TEC will have discretion to determine how much a TEO can set fees for any new courses granted an exception.
6. In considering exceptions, the TEC must only have regard to the following criteria:
 - a. 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;
 - b. the course is aligned to Government priorities as set out in the Tertiary Education Strategy;
 - c. the course is part of a programme of study that would be financially unviable without a higher fee; and
 - d. where the course is part of a qualification at levels 3–8 on the NZQF that has been delivered previously, the qualification has a completion rate that meets or exceeds the median performance benchmark for that NZQF level in the previous year.
7. An application must satisfy all criteria to gain an exception.

Note: Effect of this Notice

These notes do not form part of this notice, but are intended to indicate its general effect.

- A. Section 159OA of the Education Act 1989 (“Act”) provides that the Minister may vary the determination of the design of funding mechanisms after the Tertiary Education Commission (TEC) has implemented, or started to implement, the funding mechanisms under section 159O of the Act.
- B. The Minister may only vary a determination if it is reasonably necessary to do so; and by making changes in relation to the matters mentioned in section 159L(2) and (3) of the Act.
- C. Section 159L(3)(d) of the Act provides that the Minister, when determining the design of a funding mechanism, may specify the conditions that the TEC must attach to funding provided under the mechanism, including conditions that limit the fees that an organisation may charge domestic students.
- D. Under section 159M(b) of the Act, the Minister may not specify conditions that set limits on the fees that

NEW ZEALAND GAZETTE

organisations may charge domestic students until:

- i. the Minister has published a notice in the **New Zealand Gazette** that:
 - A. states that the Minister proposes to specify such conditions;
 - B. sets out the proposed conditions;
 - C. invites submissions on the proposed conditions;
 - D. specifies the date by which submissions must be received, which must be a date no later than 21 days after the date of the **New Zealand Gazette** notice; and
 - ii. the date by which submissions must be received has passed.
- E. Under section 159OA of the Act, if the Minister varies a determination, the variation takes effect on a date specified by the Minister that must be no earlier than whichever is the later of the following:
- i. the day that is three months after the date on which the Minister varies the determination; or
 - ii. the beginning of the calendar year after the calendar year during which the Minister varies the determination.
- F. The conditions setting limits on fees subsequently specified by the Minister in accordance with section 159L(3)(d) of the Act must be imposed as conditions on funding payable by the TEC to an organisation under sections 159YA and 159ZC of the Act.
- G. Under sections 227(1A) and 234A of the Act, TEIs and PTEs respectively must not charge domestic students a fee that exceeds the maximum specified as a condition on funding approved by the TEC under sections 159YA and 159ZC of the Act.