

# Hon Chris Hipkins

MP for Remutaka

Minister of Education

Minister of Police

Minister for the Public Service

Leader of the House



Jenn Bestwick  
Chair  
Tertiary Education Commission  
PO Box 27-048  
Wellington 6141

Dear Jenn,

## **Updated delegation to fund Fees Free tertiary education and training in 2023**

I am writing to advise you of an updated delegation to administer funding for Fees Free tertiary education and training from 1 January 2023, in accordance with section 409(1)(j) of the Education and Training Act 2020 (the Act). This replaces the delegation to fund Fees Free tertiary education and training in 2022, dated 8 December 2021, in respect of the Fees Free tertiary education and training policy.

Funding for the Targeted Training and Apprenticeship Fund (TTAF) will end on 31 December 2022, and there will be no new TTAF funding after this date. For the avoidance of doubt, the provisions of the delegation dated 8 December 2021 that relate to TTAF continue to apply to enable the Tertiary Education Commission (TEC) to exercise any of its administrative functions to cease further funding under TTAF.

I have agreed that the following changes to the Fees Free policy will be implemented from 1 January 2023 [METIS 1290083 refers]:

- a. provider-based courses or credentials with zero tuition fees and zero compulsory course costs will no longer impact learners' Fees Free eligibility or consume an eligible learner's Fees Free entitlement; and
- b. learners who would previously have been eligible for Fees Free industry training on the basis that they were legally entitled to reside and work in New Zealand will no longer be eligible for Fees Free support. Work-based learners will now need to meet the citizenship and residency criteria as set out in paragraphs 7 (a) or 7 (b) to be eligible for Fees Free industry training unless the circumstances in paragraphs 7 (c) or 7 (d) apply.

## **Fees Free Tertiary Education and Training Policy (the Fees Free policy)**

### ***Purpose***

1. The purpose of the Fees Free policy is to make the first year of provider-based tertiary education, or the first two years of industry training, fees-free for provision that is funded through either of the following funding determinations:
  - a. *Non-degree delivery at levels 3-7 on the New Zealand Qualifications and Credentials Framework (NZQCF) and all industry training (DQ3-7 fund);*

- b. *Delivery on the NZQCF at levels 7 (degree) and above (DQ7+ fund).*
2. The Fees Free policy supports the Government's commitment to make tertiary education and training affordable for all by:
    - a. improving affordability and reducing debt levels;
    - b. expanding access and participation, especially for those who have not previously studied or those for whom finance has been a real barrier to participation;
    - c. supporting lifelong learning; and
    - d. ensuring the benefits of tertiary education for New Zealanders, including residents with an ongoing commitment to New Zealand, are shared through a highly skilled population contributing to a strong society and thriving economy.
  3. In June 2020, Cabinet agreed to the new TTAF, which was an additional entitlement, and would not count as consumption of a learner's Fees Free entitlement [CAB-20-MIN-0247 refers]. In December 2020, additional target areas were agreed to for the TTAF and added to the target list, to apply from 1 January 2021. The TTAF will end from 31 December 2022.

***Definition of provider-based and work-based learner***

4. For the purposes of this funding delegation:
  - a. *Provider-based learner* means a learner who is enrolled in a course or credential that is funded through:
    - i. the DQ3-7 fund, but excludes provision that would previously have been funded through the Industry Training Fund (ITF); or
    - ii. the DQ7+ fund; or
    - iii. grants under section 556 of the Act for tertiary provision towards a qualification on the NZQCF at Level 3 or above, or a micro-credential at Level 3 or above approved by the New Zealand Qualifications Authority (NZQA).
  - b. *Work-based learner* means a learner who is enrolled in a programme that is funded through the DQ3-7 fund that would previously have been funded through the ITF;
  - c. *Learner* means both a provider-based learner and a work-based learner as defined above.

***Delegation to determine eligibility***

5. I delegate to the TEC, in accordance with section 409(1)(j) of the Act, the authority to determine whether a learner is eligible for Fees Free tertiary education provision by applying the criteria set out below.

***Citizenship or residency criteria – provider-based learner***

6. For a provider-based learner to be eligible for Fees Free tertiary education, they must be one of the following:
- a. a New Zealand citizen; or
  - b. a holder of the Christchurch Response (2019) Permanent Resident Visa; or
  - c. a holder of a residence class visa who would have been eligible for the Christchurch Response (2019) Permanent Resident Visa; or
  - d. a holder of a residence class visa who is a family member<sup>1</sup> of a Christchurch Response (2019) Permanent Resident Visa holder, or a family member of a residence class visa holder who would have been eligible for the Christchurch Response (2019) Permanent Resident Visa; or
  - e. a holder of the Afghan Emergency Resettlement Resident Visa; or
  - f. a holder of a residence class visa and:
    - i. have been living in New Zealand for at least three years while holding a residence class visa and ordinarily resident in New Zealand; or
    - ii. a person granted refugee or protected person status, or a family member granted a residence visa with the person granted refugee or protected person status<sup>2</sup>; or
    - iii. sponsored into New Zealand by someone in their family who, at the time of sponsorship, was a refugee or protected person; or
  - g. a person granted refugee or protected person status, prior to gaining a residence visa; or
  - h. an immediate family member, without a residence visa and residing in New Zealand, of a person granted refugee or protected person status, as defined as:
    - i. the partner and any child in New Zealand, of a person under paragraph 6(g)

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<sup>1</sup> This includes family members who hold residence visas through their relationship to holders of a Christchurch Response (2019) Permanent Resident Visa (or those who would have been eligible for a Christchurch Response (2019) Permanent Resident Visa but were already holding another residence visa). These residence visa types include Partner of New Zealander resident visa; Dependent child resident visa; Parent resident visa; and Resident Visa granted by discretion under Section 61 of the Immigration Act, with the residence granted due to links to a family member affected by the Christchurch mosques terror attack. For family members to be eligible, their residence visa must be granted between 15 March 2019 and 31 December 2024.

<sup>2</sup> This includes family members of a person with refugee or protected person status who are granted residency together, with the person who holds refugee or protected person status. This would be a residence visa through the refugee and protection category for people who are granted refugee or protected person status while residing in New Zealand.

- ii. the parent and any sibling in New Zealand, of a person under paragraph 6(g) who is a dependent child.

*Eligibility criteria – work-based learner*

7. For a work-based learner to be eligible for Fees Free tertiary education, they must be one of the following:
- a. one of the persons specified in paragraphs 6(a)-(e), or 6(g)-(h) above; or
  - b. a holder of a residence class visa and:
    - i. ordinarily resident in New Zealand; or
    - ii. a person granted refugee or protected person status, or a family member granted a residence visa with the person granted refugee or protected person status<sup>3</sup>; or
    - iii. sponsored into New Zealand by someone in their family who, at the time of sponsorship, was a refugee or protected person; or
  - c. employed in a role specified on the Green List or within a Sector Agreement<sup>4</sup> and:
    - i. enrolled in a programme or credential approved for a tuition subsidy by TEC; and
    - ii. the TEO in which the learner is enrolled would be eligible to receive tuition subsidies in respect of the learner; and
    - iii. the learner has a signed training agreement and commences training on or after 1 January 2023; or
  - d. a learner who:
    - i. would have been eligible under previous Fees Free delegations for Fees Free industry training; and
    - ii. will no longer be eligible as they do not meet the eligibility criteria set out in paragraphs 7(a)-(c); and

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<sup>3</sup> This includes family members of a person with refugee or protected person status who are granted residency together, with the person who holds refugee or protected person status. This would be a residence visa through the refugee and protection category for people who are granted refugee or protected person status while residing in New Zealand.

<sup>4</sup> The green list provides a straight to residence and residence pathway to attract migrants into highly skilled, hard to fill positions in global demand. Sector agreements for the care, construction and infrastructure, meat processing, seafood, and the seasonal snow and adventure tourism sectors allow for limited exceptions to the median wage requirement when employing migrant workers, in exchange for ongoing improvements within these sectors.

- iii. who has a training agreement in place and commenced training before 1 January 2023.

*Prior study or training criteria*

8. To be eligible for Fees Free tertiary education or training, a learner must have either:
  - a. been enrolled in a school in the current calendar year this delegation applies to, or in the preceding two calendar years<sup>5</sup> other than as an adult student; or
  - b. not undertaken more than half a year of equivalent full-time tertiary education (0.5 equivalent full-time student (EFTS) units or 60 credits) at Level 3 or above on the NZQCF, including tertiary education or training at an equivalent level undertaken in any country.
9. The following must not be included in measures of prior tertiary education or training when determining eligibility for Fees Free:
  - a. any tertiary education undertaken while enrolled in school prior to 1 January 2019 (except for tertiary education undertaken as an adult student);
  - b. any tertiary courses undertaken as part of a school learning programme, or secondary-tertiary programme on or after 1 January 2019;
  - c. any credits achieved as part of any industry training programme of fewer than 120 credits that were reported after 1 January 2018;
  - d. any courses or credentials funded by the TEC undertaken after 1 January 2023 that had zero tuition fees and zero compulsory course costs;
  - e. any tertiary study or training in respect of which fees support is or was provided through the TTAF;
  - f. any tertiary study or training that is or was funded through the Youth Guarantee (YG) fund after 1 July 2020;
  - g. any tertiary study or training that is or was funded through the Māori and Pasifika Trades Training (MPTT) fund after 1 July 2020; and
  - h. any tertiary study or training that is or was funded through the Refugee English Fund.
10. For the purposes of paragraphs 8(a) and 9(a), an adult student, under the Act, is any student whose 19th birthday occurred before 1 January of the current year. This definition does not apply to students deemed to require special education under section 37 of the Act.

*Eligible courses and credentials or programmes*

11. For a provider-based learner to be eligible for Fees Free tertiary education, they must be enrolled in an eligible course or credential.

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<sup>5</sup> This includes those enrolled in a school who have a certificate of exemption under section 21 of the Act.

12. An eligible course or credential for a provider-based learner is a course that is:
  - a. funded by the TEC from:
    - i. the DQ3-7 fund, but excludes provision that would previously have been funded through the ITF; or
    - ii. the DQ7+ fund; or
    - iii. grants under section 556 of the Act for tertiary provision towards a qualification on the NZQCF at Level 3 or above, or a micro-credential at Level 3 or above approved by the NZQA; and
  - b. not part of a school learning programme or secondary-tertiary programme.
13. The TEC must not pay any amount in respect of fees where the fees are met under another funding arrangement (including YG fund or MPTT funding).
14. For a work-based learner to be eligible for Fees Free they must be enrolled in a programme that is:
  - a. at NZQCF Level 3 or above;
  - b. approved by the NZQA;
  - c. funded by the TEC through the DQ3-7 fund and would previously have been funded through the ITF;
  - d. comprised of at least 120 credits (which includes all New Zealand Apprenticeships); and
  - e. not part of a school learning programme or secondary-tertiary programme.

### ***Delegation to make payments***

15. I delegate to the TEC, in accordance with section 409(1)(j) of the Act, the authority to make payments in respect of eligible Fees Free learners as set out below.

### ***Fees Free entitlement limits***

16. The TEC will pay no more than \$12,000 (GST inclusive) total to all tertiary education organisations (TEOs) in respect of any individual learner eligible for Fees Free tertiary education.
17. Individual provider-based learners who received any Fees Free support in prior calendar years are to receive no more than 1 EFTS unit of Fees Free support in total.
18. Individual work-based learners are to receive no more than 24 months of fees-free work-based training.
19. The TEC must calculate a work-based learner's 24-month entitlement:
  - a. from the start date of the first eligible programme in which the eligible learner was enrolled; and

- b. by only including the months in which the learner received work-based training in an eligible programme or programmes.
20. The TEC must develop operational rules to assess entitlement limits and consumption by individuals who combine both work-based training and provider-based study, taking into account the intent of the Fees Free policy.

*Payments for provider-based learners*

21. I delegate to the TEC the authority to:
- a. if the TEO is not a private training establishment (PTE), pay the TEO in respect of fees on behalf of an eligible learner in accordance with paragraphs 15-20; or
  - b. if the TEO is a PTE, compensate the PTE in respect of an eligible learner in accordance with paragraphs 15-20 for fees forgone as the result of a condition imposed on the PTE's funding.
22. Fees for provider-based tertiary education are defined as:
- a. compulsory tuition fees;
  - b. compulsory course costs that are charged to all learners enrolled in a course, which includes (but are not limited to) the following:
    - i. any compulsory costs associated with enrolment;
    - ii. examinations (including reporting of credits to the NZQA);
    - iii. field trips; and
    - iv. any compulsory purchase of equipment or books through the TEO; and
  - c. student services fees; but
  - d. excluding 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 learner, which includes (but are not limited to) the following:
    - i. reassessment or remarking of examination results;
    - ii. examination relocation fees;
    - iii. fees associated with recognition of prior learning; or
    - iv. fees associated with an application for selected entry programmes.
23. The TEC must only make a payment to a TEO in respect of an eligible learner's compulsory tuition fees and compulsory course costs if:
- a. the fee charged by the TEO is equal to, or less than, the fee that is recorded in Services for Tertiary Education Organisations (STEO);



- b. the TEO charges that fee to every learner in the same circumstances (whether or not they are eligible for Fees Free tertiary education) who is enrolled in the same course; and
  - c. the fees comply with all fee regulation requirements imposed as conditions on the TEO's funding.
24. The TEC must only make a payment to a TEO in respect of an eligible learner's student services fees if that fee is consistent with any requirements on student services fees in effect as a condition of funding issued under section 419 of the Act.

*Payments for work-based learners*

25. I delegate to the TEC the authority to make fee payments to TEOs on behalf of an eligible work-based learner (or their employer) in accordance with paragraphs 15-20.
26. Fees for work-based training are defined as fees:
- a. for training and assessment;
  - b. paid to TEOs that receive funding from the DQ3-7 fund, or directly to training and assessment providers;
  - c. paid by learners (including trainees or apprentices) or employers; and
  - d. are directly related to individual learners that are Fees Free eligible.

*Payments relating to eligible learners from previous calendar years*

27. The TEC has discretion to make retrospective payments relating to the fees paid by learners or their employers, who, despite meeting the Fees Free tertiary education and training eligibility criteria since 1 January 2018, were not determined by the TEC to be eligible for Fees Free tertiary education and training. This discretion should be exercised in a manner that is consistent with the policy intent of Fees Free.
28. For the avoidance of doubt, if a learner did not benefit from Fees Free payments they were entitled to from an enrolment in the preceding year, they could still be eligible to receive a retrospective Fees Free payment if they sought to access Fees Free payments the following year. It is the expectation that the TEC will work with TEOs to identify Fees Free eligible learners, and these learners will seek access to Fees Free within the year that their study commences.

**Consumption**

29. For the avoidance of doubt, if an eligible learner was enrolled in an eligible course or eligible programme in or after 2018, then the eligible learner has received (consumed) all or part of their Fees Free entitlement (whether or not the TEC made payments to a TEO in respect of that learner).
30. The following credits must not count towards an eligible learner's Fees Free consumption:
- a. any tertiary study or training for which fees support is or was provided through the TTAF;



- b. any tertiary study or training funded through the YG or MPTT funds from 1 July 2020;
  - c. any tertiary study funded through the Refugee English Fund; and
  - d. any courses or credentials undertaken after 1 January 2023 by a provider-based learner that are funded by the TEC through the DQ3-7 fund, the DQ7+ fund or a grant under section 556 of the Act that have zero tuition fees and zero compulsory course costs.
31. The TEC must develop processes to determine the amount of each eligible learner's Fees Free entitlement that each eligible learner has consumed.
32. The TEC has discretion to exempt study or training from counting towards a learner's consumption where the study or training was funded through either the YG fund or MPTT fund and relates to courses that started before 1 July 2020 and continued beyond 1 July 2020. The TEC must exercise this discretion in line with the intent of the Fees Free policy.

### ***Carry-over***

33. If an eligible learner was enrolled in an eligible course or credential or an eligible programme in or after 2018 but did not consume their maximum Fees Free entitlement within the first calendar year of commencing an eligible course or programme, the TEC must develop a mechanism to enable that learner to carry-over the remaining portion of their Fees Free entitlement.
34. An eligible learner's maximum Fees Free entitlement that may be carried-over is any amount payable until one of the following occurs:
- a. the TEC has paid \$12,000 (GST inclusive) to TEOs in respect of the learner's fees; or
  - b. the provider-based learner has consumed 1 EFTS unit; or
  - c. the work-based learner has been enrolled in 24 months of an eligible work-based training programme or apprenticeship (as determined in accordance with paragraph 20); or
  - d. the learner (if combining both work-based training and provider-based tertiary education) has consumed their Fees Free entitlement in accordance with the operational rules developed under paragraph 20.

### ***Exceptional circumstances***

35. The TEC may use discretion to determine that a learner who does not meet all of the criteria is eligible for Fees Free tertiary education and training after considering the learner's exceptional personal circumstances.
36. The TEC may use discretion to write-off all, or a portion of, an eligible learner's consumption of their Fees Free entitlement after considering the learner's exceptional personal circumstances.
37. In determining cases of exceptional personal circumstances, the TEC must take into account the intent of the Fees Free policy.

38. I expect the TEC to publish guidance on the Fees Free website so that both the option and process for exceptional personal circumstances are clear to learners.

### ***Learners impacted by COVID-19***

39. The TEC may use its discretion to write-off all, or a portion of, an eligible learner's consumption of their Fees Free entitlement when the following circumstances exist:
- a. since 1 January 2020:
    - i. a learner has withdrawn from study or training; or
    - ii. a learner's study or training is adversely affected; and
  - b. the learner withdrew from study or training, or their study has been adversely affected, due to the impact of COVID-19 (for example, health or changes in access to tertiary education study).
40. While COVID-19-related impacts on study or training may also relate to exceptional personal circumstances, having specific discretion on the consumption of Fees Free entitlements due to the impact of COVID-19 supports the TEC to provide more clarity for learners.
41. I expect the TEC to consider exercising this discretion in the following circumstances:
- a. where a learner's health, or their family's health, is affected by COVID-19; or
  - b. where there is a heightened risk to a learner's health, or their family, or household's health, due to underlying health conditions; or
  - c. where a learner faces additional barriers to access, for example, due to a lack of online access or electronic devices; government travel restrictions; or lack of childcare arrangements during periods of school and early childhood education closure; or
  - d. where the TEC considers it is necessary and reasonable to apply this discretion, for any other reason to ensure learners are not unfairly disadvantaged due to the impact of COVID-19.
42. Where learners are enrolled in an eligible programme or in courses that are discontinued by the TEO due to the impact of COVID-19, the credits and fee payments associated with incomplete components of courses or eligible programmes will not count against the learner's Fees Free consumption. For example, this could be because of TEO closure or because a TEO cannot continue to deliver courses or programmes within the restrictions of the COVID-19 Protection Framework response to COVID-19.
43. I expect the TEC to publish guidance on the Fees Free website so that both the criteria and the process for Fees Free entitlements being re-instated due to the impact of COVID-19 are clear to learners.

### ***Learners affected by TEO closing***

44. The TEC may use its discretion to make a payment, or write-off all, or a portion of, an eligible learner's consumption of their Fees Free entitlement in the following circumstances:
  - a. the learner is or was enrolled at a TEO, and was eligible for Fees Free;
  - b. the learner was not reported as being eligible for Fees Free because the TEO did not include the learner in the Fees Free enrolment reports that it was or is required to provide to the TEC under the Fees Free funding agreement it has with the TEC;
  - c. the learner or a third party has paid the learner's fees for an eligible course, credential or programme; and
  - d. the TEO in which the learner was enrolled closes down or goes into liquidation.
45. The TEC may make a payment to the learner, or to another party that has paid the learner's fees, up to the value of the fees paid by the learner or that third party, provided that the payment does not exceed \$12,000 (GST inclusive).

### **Operationalising this delegation**

46. The TEC will work with the sector and other government agencies to support the implementation of the Fees Free policy and to advise me of any significant issues that arise.
47. The TEC must determine arrangements with TEOs for the operation of the Fees Free policy for provider-based learners.
48. The TEC must determine arrangements with TEOs for the operation of the Fees Free policy for work-based learners based on the following principles:
  - a. eligible work-based learners and their employers will not be charged by TEOs or any provider contracted by the TEOs for training and assessment costs; and
  - b. the TEC will pay TEOs the identified actual and reasonable cost, as determined by the TEC, of the fees (or fees foregone for PTEs). The TEC will establish processes to ensure that the fees and charges for work-based learners are reasonable and are assessed based on fees and charges that have been paid by or on behalf of learners, or in compensation for fees foregone, in the 2021 and 2022 calendar years. The TEC will also consider alignment with fee rates for comparable courses or programmes across the tertiary education system; and
  - c. TEOs will be required to ensure that work-based learners fully benefit from the Fees Free policy – ensuring that employers and training/assessment providers do not charge learners for costs already covered by the Fees Free payment to TEOs (whether as explicit training and assessment fees, or as part of a broader fee, or by deductions from wages).

***Time period for this delegation***

49. This delegation applies from 1 January 2023 until 31 December 2023, unless otherwise indicated. The TEC may exercise any of its administrative functions as required to give effect to this delegation outside of these dates.

***Operationalisation of end of TTAF***

50. For the avoidance of doubt, the provisions of the delegation dated 8 December 2021 that relate to TTAF apply until 30 June 2023, as set out in paragraph 100 of that delegation, to enable the TEC to exercise any of its administrative functions to cease further funding under TTAF.

51. The provisions of the previous Fees Free delegation will remain in effect until final payments for fees for eligible students, apprentices, or trainees under TTAF have been made to TEOs. The TEC must determine the final payment date.

52. The TEC must ensure that:

- a. it only makes a payment to a TEO under the TTAF if the TEO has reported a fee for a TTAF eligible student, apprentice, or trainee on or before a date specified by the TEC; and
- b. a TEO that does not report a fee for a TTAF eligible student, apprentice, or trainee on or before the date specified by the TEC does not charge a student, apprentice, trainee, or any other third party for that fee.

Yours sincerely,



**Hon Chris Hipkins**

Minister of Education