



Nigel Gould
Chair
Tertiary Education Commission
PO Box 27-048
Wellington 6141

Dear Nigel,

Determination of Design of Funding Mechanism: Specialised English for Speakers of Other Languages

I am writing to advise you of a determination of the design of a funding mechanism, under section 159L of the Education Act 1989 (the Act), for Specialised English for Speakers of Other Languages.

The new determination is set out in the appendix to this letter. The determination covers the funding of Specialised English for Speakers of Other Languages provision delivered from 1 January 2020. The new determination includes a 1.8 percent increase to all funding rates specified in the determination.

Under section 159O of the Act, it is the Commission's responsibility to develop the details needed to implement my determinations for the design of funding mechanisms.

I expect that the Commission will set appropriate measures as part of its Statement of Service Performance in order to report to me on its performance in giving effect to this determination.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'CHIPKINS'.

Chris Hipkins
Minister of Education

DETERMINATION OF DESIGN OF FUNDING MECHANISM: SPECIALISED ENGLISH FOR SPEAKERS OF OTHER LANGUAGES

PRELIMINARY PROVISIONS

Statutory authority

1. This funding mechanism for Specialised English for Speakers of Other Languages is made under section 159L of the Education Act 1989 (the Act).

Purpose

2. Specialised English for Speakers of Other Languages (ESOL) comprises two funds:
 - a. the Intensive Literacy and Numeracy Fund, ESOL Fund (ILN ESOL Fund); and
 - b. the Intensive Literacy and Numeracy, Refugee English Fund (ILN Refugee English Fund).
3. The purpose of these specialised ESOL funds is to:
 - a. increase opportunities for adults to engage in literacy and numeracy learning, particularly migrants and refugees; and
 - b. raise adults' literacy and numeracy skills to help learners progress onto further study and employment.
4. For the avoidance of doubt, the general parameters and conditions included in this funding mechanism apply to both funds unless stated otherwise.

Definition

5. For funding purposes, the term "refugee" covers refugees, protected persons, and people sponsored by a refugee or protected person.¹

On-Plan funding

6. The Tertiary Education Commission (TEC) must pay funding for specialised ESOL under section 159YA of the Act.

¹ For the removal of doubt this includes the thirty Afghan interpreters who worked for the New Zealand-led Provincial Reconstruction team in Afghanistan and their dependants who were granted residency. In addition, this includes those persons who have been recognised as a refugee or a protected person in accordance with Part 5 of the Immigration Act 2009, and whose application for residence is being processed.

PART ONE: THE FUNDING MECHANISM

GENERAL PARAMETERS

Effective period

7. This funding mechanism is to fund specialised ESOL provision delivered from 1 January 2020.
8. The TEC may exercise any of its administrative functions as required to give effect to this funding mechanism before this date.

Available funding

9. The total amount of Government funding that can be spent under this funding mechanism will be set through the Government's annual budget processes.

TEC administrative responsibility in the case of under-funding

10. If a tertiary education organisation (TEO) receives funding under this funding mechanism that is less than it should have been, or than it was entitled to receive, the TEC must pay the amount of the under-funding as soon as is reasonably practicable.

Geographical areas of provision

11. The TEC must prioritise funding allocated under this funding mechanism to TEOs located in common refugee settlement areas.²

SPECIFIC PARAMETERS

A. THE ILN ESOL FUND

Purpose

12. The purpose of the ILN ESOL Fund is to fund the intensive provision of ESOL learning opportunities within an appropriately structured environment.

Funding rate

13. The TEC must allocate \$19.09 of funding from the ILN ESOL Fund to TEOs per hour of ESOL tuition.
14. The total hours of ESOL tuition delivered per learner by a TEO is expected to be between 20 and 500 hours per year.
15. ESOL tuition must be delivered at the intensity of 5 to 40 hours per week.
16. The TEC must monitor provision funded under the ILN ESOL Fund to ensure that it is delivered in accordance with paragraphs 14 and 15. TEO performance

² Note that West Auckland, South Auckland, Hamilton, Palmerston North, Wellington (City), Lower Hutt, Porirua, Christchurch, Nelson, Dunedin and Invercargill are the most common refugee resettlement areas at this point in time, but other refugee resettlement areas may be established from time to time.

in respect of this must be used by the TEC to inform future allocations through this fund.

TEO eligibility

17. For the purposes of the ILN ESOL Fund, an organisation is a TEO if:
 - a. one of the following:
 - i. a university;
 - ii. an institute of technology and polytechnic (ITP);
 - iii. a wānanga;
 - iv. a private training establishment (PTE);
 - v. a state school or state integrated school;
 - vi. a rural education activities programme (REAP) provider;
 - vii. a community organisation; and
 - b. has demonstrated expertise in delivering ESOL to adult refugees and migrants.
18. The TEC must only fund an organisation from the ILN ESOL Fund if the organisation (other than a community organisation³) is quality assured by:
 - a. the New Zealand Vice-Chancellors' Committee, if the organisation is a university; or
 - b. the New Zealand Qualifications Authority (NZQA), if the organisation is an ITP, wānanga, PTE, or REAP provider; or
 - c. the Education Review Office, if the organisation is a state school or state integrated school.

Programme eligibility

19. The TEC must only fund a programme of study or training from the ILN ESOL Fund that:
 - a. has English language and literacy outcomes; and
 - b. is taught by appropriately qualified and experienced ESOL educators; and
 - c. is flexible and tailored to respond to the particular needs of adult learners (for example, provision may be delivered at off-peak times for those in employment).

³ Some REAPs are community organisations.

Learner eligibility

20. The TEC must only fund a TEO from the ILN ESOL Fund in respect of a learner who:
- a. is one of the following:
 - i. a refugee as defined in paragraph 5 of this funding mechanism; or
 - ii. a migrant; or
 - iii. a person for whom English is their second language;
 - b. is a “domestic student” as defined under section 159 of the Act;
 - c. meets the following criteria:
 - i. is 16 years of age or over; and
 - ii. has low English language and/or literacy skills; and

B. THE ILN REFUGEE ENGLISH FUND

Purpose

21. The purpose of the ILN Refugee English Fund is to support refugees to reach a level of English that will allow them to enter employment, or undertake their choice of vocational or degree-level education, through providing fees-free access to programmes leading to an ESOL qualification.

Funding rates

22. The TEC must allocate funding to TEOs on the basis of:
- a. a specified number of fees-free places in programmes leading to ESOL qualifications at Level 3 and above on the New Zealand Qualifications Framework (NZQF); and
 - b. the tuition fees charged for enrolment in programmes leading to ESOL qualifications at Level 3 and above on the NZQF; and
 - c. pastoral care of \$407 per place, to be used for supporting the educational achievement of learners.⁴

TEO eligibility

23. For the purposes of the ILN Refugee ESOL Fund, an organisation is a TEO if:
- a. one of the following:
 - i. a university;

⁴ This pastoral care may also be shared with other refugee learners at the TEO.

- ii. an ITP;
 - iii. a wānanga;
 - iv. a PTE; and
- b. experienced in educating refugees.
24. The TEC must only fund an organisation from the ILN Refugee English Fund if the organisation is quality assured by:
- a. the New Zealand Vice-Chancellors' Committee, if the organisation is a university; or
 - b. NZQA, if the organisation is an ITP, wānanga, or PTE.

Programme eligibility

25. The TEC must only fund a TEO for a programme of study or training funded from the ILN Refugee English Fund if the programme:
- a. leads to the award of an ESOL certificate or diploma at Level 3 or above on the NZQF; and
 - b. has been quality assured by either NZQA or the New Zealand Vice-Chancellors' Committee (where appropriate).

Learner eligibility

26. The TEC must only fund a TEO from the ILN Refugee English Fund in respect of a learner who:
- a. is a "domestic student" as defined under section 159 of the Act; and
 - b. is a refugee as defined in paragraph 5 of this funding mechanism.

PART TWO: FUNDING CONDITIONS

27. The TEC must attach the following specific conditions to funding paid under this funding mechanism:

Tertiary Education Organisations

28. The TEC must attach to funding a condition that a TEO that receives funding under this funding mechanism must, for the length of the funding period, continue to meet the criteria specified at:
- a. paragraphs 17 and 18 of this funding mechanism, if the funding is from the ILN ESOL Fund; or
 - b. paragraphs 23 and 24 of this funding mechanism, if the funding is from the ILN Refugee English Fund.

Programmes

29. The TEC must attach to funding a condition that a TEO that receives funding under this funding mechanism must ensure that a programme in which an eligible learner is enrolled continues to meet the criteria specified at:
 - a. paragraph 19 of this funding mechanism, if the funding is from the ILN ESOL Fund; or
 - b. paragraph 25 of this funding mechanism, if the funding is from the ILN Refugee English Fund.

Learners

30. The TEC must attach to funding a condition that an organisation that receives funding under this funding mechanism must:
 - a. ensure that each learner who is enrolled in a programme of study or training continues to meet the criteria specified at:
 - i. paragraph 20 of this funding mechanism, if the funding is from the ILN ESOL Fund; or
 - ii. paragraph 26 of this funding mechanism, if the funding is from the ILN Refugee English Fund; and
 - b. verify the identity of each learner enrolled in a programme to confirm the learner's eligibility, in accordance with the requirements developed by the TEC.

TEO responsibilities: ILN ESOL Fund

31. The TEC must attach to funding a condition that a TEO that receives funding from the ILN ESOL Fund must have in place an effective assessment process for identifying each learner's initial literacy and numeracy needs, and measuring their progress, using the most appropriate version of the Literacy and Numeracy for Adults Assessment Tool.⁵
32. The TEC must attach to funding a condition that a TEO that receives funding from the ILN ESOL Fund must only allow a learner to re-enrol in a programme funded through the ILN ESOL Fund, for a period of up to five years in total.

TEO responsibilities: ILN Refugee English Fund

33. The TEC must attach to funding a condition that a TEO that receives funding from the ILN Refugee English Fund must only allow a learner to re-enrol in a programme funded through the ILN Refugee English Fund, for a period of up to three years in total.
34. The TEC must attach to funding a condition that an organisation that receives funding from the ILN Refugee English Fund must provide pastoral care services that supports the educational achievement of each learner.

⁵ Including Adult, Youth, Te Ata Hāpara and Starting Points, as appropriate.

Reporting withdrawals to Ministry of Social Development

35. The TEC must attach to funding a condition that a TEO that receives funding from the ILN Refugee English Fund must report the withdrawal of learners to the Ministry of Social Development within five working days of that withdrawal. This is to enable student loans and student allowances to be cancelled as soon as possible.

Fees

36. The TEC must attach to funding a condition that the TEO must not charge a fee to a learner who is participating in an eligible programme for which a TEO receives funding under this funding mechanism.

Subcontracting

37. The TEC must attach to funding a condition that a TEO that receives funding under this funding mechanism must not subcontract delivery of ESOL provision.

No other funding

38. The TEC must attach to funding a condition that a TEO that receives funding under this funding mechanism must:
- a. not (without the TEC's prior written consent) seek or obtain funding from any Crown source (including a Crown entity or a company wholly owned by the Crown) other than the TEC to fund a programme or training scheme which is funded under this funding mechanism; and
 - b. notify the TEC immediately if it becomes aware of any circumstances that might result in a breach of subparagraph (a) of this condition.

Responsible use of funding

39. The TEC must attach to funding a condition that a TEO that receives funding under this funding mechanism must use the funding:
- a. lawfully, responsibly, and for the purposes for which it is provided; and
 - b. in a manner consistent with the appropriate use of public funds.

Recovery of over-funding

40. The TEC must attach to funding a condition that if a TEO receives funding under this funding mechanism that is greater than it should have been, or that it was not entitled to receive, the TEO must treat the amount of the over-funding as a debt due to the Crown that:
- a. is repayable on demand; and
 - b. may be set-off against all or any funding, or any sum of money payable by the TEC to the TEO.

41. The TEC must provide the TEO with reasonable notice before exercising its right to demand repayment or set-off the debt against all or any funding.

Repayment of funding following revocation of funding approval

42. The TEC must attach to funding a condition that if, in accordance with section 159YG of the Act, the TEC suspends or revokes some or all of a TEO's funding paid under this funding mechanism before that funding has been used or contractually committed towards the purposes for which that funding was provided, the TEO must treat the unexpended or uncommitted portion of the funding as a debt due to the Crown that:
 - a. is repayable on demand; and
 - b. may be set-off against all or any funding, or any sum of money payable by the TEC to the TEO.