

## Discussion Document

# Foreign Students Changing Course and/or Provider: Private Training Establishment Refund Provisions and Immigration Processes

### *Section One: Overview*

#### **Purpose of this document**

This discussion document presents a joint government approach by the New Zealand Qualifications Authority (NZQA), the Ministry of Education and the Department of Labour to take steps to reduce the number of foreign students changing course and/or provider for non-bona fide reasons. The document outlines options to amend the refund provisions in the Education Act 1989 for private training establishments (PTEs) to reduce the financial incentives for foreign students to change course and/or provider. It also outlines a proposed approach to protect the integrity of immigration processes by ensuring that only bona fide foreign students are permitted to change course and/or provider.

#### **Scope of Application**

This discussion document and its possible options for change apply only to foreign students. The refund provision options apply only to the PTE sector.

#### **Current Situation**

Foreign students play an important role in New Zealand, supporting an industry that contributes over \$2 billion a year to our economy. In 2007/08, Immigration New Zealand (INZ - a service of the Department of Labour) approved approximately 70,000 student permits to students from a wide range of countries.

Student permits allow students to undertake a specified course of study at the provider endorsed on their permit. Students are permitted to change their study conditions, subject to approval by INZ. Students who withdraw from their course and/or provider may receive a refund of their tuition fees subject to the refund provisions in the Education Act.

Existing education policy is focused on facilitating foreign students' ability to change course and/or provider, and protect their rights as consumers by guaranteeing most of their money back if a foreign student chooses to withdraw. Students enrolled at PTEs are eligible to receive a refund when they withdraw within seven days of the course starting, less \$500 or ten percent of their course costs, whichever is lower<sup>1</sup>.

INZ is concerned with protecting the integrity of immigration processes by ensuring that student visas/permits are issued to bona fide students only. Under immigration policy, to be eligible to change course and/or provider, students need to prove that they have a valid offer of place from the provider they wish to transfer to, and that they have paid their course fees.

This combined approach has created opportunities for some foreign students to exploit the policies for financial gain. This behaviour impacts on the financial viability of providers, New Zealand's

---

<sup>1</sup> Under Section 236A(1)(d) of the Education Act

reputation as an education destination, and the integrity of immigration processes. This discussion document presents options to address these issues.

## **Action**

We would appreciate your feedback on the options outlined. A form for your feedback is provided, which contains a list of questions to guide your response. Please complete electronically and send to:

[internationalunit@nzqa.govt.nz](mailto:internationalunit@nzqa.govt.nz)

**Feedback is due by 5pm Monday 15 June 2009**

## **Official Information Act 1982**

Note that submission contents and your individual or organisational details may be released beyond government if an Official Information Act request is made for this information. Please let us know if you do not want your submission contents and/or your individual or organisational details to be made available to requesters and we will take this into account when responding to requests.

## ***Section Two: Refund Provisions***

### **Current provisions**

Private Training Establishments are required<sup>2</sup> to refund a student's fees, for courses of more than three months duration, if the student withdraws within seven days of the course beginning, less ten percent of the full fee paid by the student or \$500, whichever is less.

The current refund provisions are designed to protect students' rights as consumers by guaranteeing most of their money back if a withdrawal is necessary.

The key issues with the current refund provisions are:

- The \$500 refund provision has not been updated since 1992 when the export education market was new and there were very few foreign students studying in New Zealand<sup>3</sup>. In 1992, \$500 was approximately ten percent of the fees paid by domestic students. Foreign students pay considerably higher fees than New Zealanders and are not subsidised by the Crown. Foreign students' average annual fees are approximately \$13,500 and so the \$500 fee currently constitutes around a 4% of the total fees paid for one year.
- The marketing, recruitment and administrative costs to an institution for foreign students are considerably higher than those for domestic students and the sector advises that as a consequence the \$500 limit does not meet the sunk costs to the provider should a foreign student withdraw.
- There are also perverse incentives for foreign students already enrolled with a provider to transfer to another provider offering lower priced or lower level courses. As long as the student withdraws within the first seven days of the course, they are guaranteed almost all of their fees back. Onshore agents and providers may encourage this. This way the onshore agent and the associated provider can effectively recruit foreign students without incurring the costs of marketing or recruiting directly from overseas, as this has been done by the original provider the student is transferring from. Furthermore overseas education agents lose commission when students transfer within New Zealand, which in a highly competitive international market reduces agents' incentives to refer students to New Zealand.

In summary, the current situation poses a risk to New Zealand's export education market reputation and finances and impacts on the integrity of immigration processes and procedures.

### **Proposals for amending the provision**

Refund provisions apply to all foreign students, not only those seeking to change course and/or provider, but also include those returning home or who have a change in personal circumstances. The Crown therefore is seeking a policy mix that is fair and equitable and that allows for appropriate refunding of course fees to students in a variety of different situations.

Three options for amending the refund provision are proposed:

#### **1. Eliminate the \$500 value and retain the ten percent limit for course related costs if a student withdraws within seven days after the course starts**

This option proposes to remove the \$500 cap, but allow providers to retain 10 percent of the tuition fees if a student withdraws within seven days of the first day of the course.

---

<sup>2</sup> Section 236A(1)(d) of the Education Act 1989

<sup>3</sup> In 1999 the contribution of export education to gross domestic product (GDP) was estimated at \$545m. By 2001 this had more than doubled to \$1.3 billion. In 2004 the estimated contribution had passed the two billion dollar mark, with the industry's value-added estimated at approximately \$2.2 billion.

**OR**

**2. Eliminate the \$500 value and set the amount that a provider can keep at a maximum of 25 percent, if a student withdraws within seven days after the course starts**

This option would remove the \$500 limit and set the amount the provider can keep at up to 25 percent of course costs (amount within the maximum stated by the PTE at the time of student enrolment) if the student withdraws within seven days of the first day of the course.

**OR**

**3. A phased approach depending on date of withdrawal**

This option proposes a phased approach to refund provisions, depending on when the student withdraws from the course. For example:

<b>Date of Course Amendment Request</b>	<b>Minimum Refund Due to Student</b>
Prior to seven days before course starts	100% minus an administration fee of \$250
Between seven days prior to the course start date and the day the course starts	90%
Between the day the course starts and up to 21 days after the course starting	75%
After 21 days from course starting	At discretion of the provider

**Analysis**

These proposed options for change apply to all foreign students withdrawing from a course, not only those seeking to change providers, but also those returning home, and those who withdraw because of a change in personal circumstances. The Crown is therefore seeking a policy mix that is fair and equitable and that allows for appropriate refunding of course fees to students in a variety of situations.

Eliminating the \$500 cap and applying either a 10 percent or up to 25 percent threshold (options 1 and 2) will allow PTEs to retain a more realistic amount for course related costs. Removing the capped amount also allows the refund provision to reflect changes in student fees over time and is simpler to administer and understand for all parties.

There is little benchmarked information available to determine what is a reasonable level at which to set refunds. Providers do, however, suggest that the cost of recruiting a foreign student is higher than domestic students and that this should contribute to the setting of refund policies. Some have suggested that fees payable to agents are as high as 25 percent of the annual fee a student would pay. Australian universities have for several years collated information on the cost of international marketing and recruitment on an annual basis. Their data indicates that the average cost of recruiting a foreign student is AUD1400, comprised of AUD900 commission and the remainder for direct marketing and administrative related expenses.

On this basis, options 1 and 2 would appear to directly cover the approximate value of the range of non-recoverable (“sunk”) provider costs should a student withdraw. In option 3, recovering the sunk costs would appear to be unlikely until the student withdrew at the beginning of the course. An issue to then consider in option 3 is whether a larger component of the course fees be retained on top of the sunk cost component to discourage students from changing course and/or provider. Option 2, on the other hand, appears to achieve this.

Option 3 gives foreign students the opportunity to withdraw at a later date and still be eligible for a refund but the amount of refund declines as the course progresses. It may still be difficult for the provider to fill the space vacated by the student, however allowing a longer withdrawal period is offset by a higher percentage fee retained by the provider. Furthermore the longer withdrawal period allows more time for the student and provider to work towards a resolution, whether it be changing courses within the same provider or changing providers altogether.

Whichever option is chosen, providers have the obligation under the *Code of Practice for the Pastoral Care of International Students* to provide details of their fee protection and refunds policy. Whichever option is selected, it will be clear to students at the time they are applying to an institution and at the time they enrol how much refund they are entitled to should they chose to withdraw and the reasons the provider retains this amount. All of the options, in part because of the proposed removal of the \$500 cap, improve the clarity of the refund process for students.

In summary, the intent of the change to refund provisions is to set a refund structure that is reasonable and contributes to resolving the issue surrounding changing course and/or provider, but that accounts for students in a variety of circumstances. We need to hear your views to help find the right balance.

## **Other Issues**

### **Courses shorter than three months**

For courses shorter than three months, the minimum refund entitlement for foreign students is specified by NZQA. Courses for foreign students that are shorter than three months are generally English language courses. This has not been raised as an issue by providers or students.

### **Public institutions**

The Education Act does not set the refund provisions for public institutions (universities, institutes of technology and polytechnics and wānanga). The Act states that public institutions must have a refund policy.<sup>4</sup> Public providers generally keep their refund policies similar to PTEs.

These institutions usually allow for full refund if a student withdraws before the course started, or close to full refund minus an administration fee usually between \$500 and \$1000.

In the face of potentially losing newly-recruited foreign students to another provider, some state institutions (especially ITPs) have tightened up their refund policy to reduce the amount refundable should foreign students change providers.

The number of foreign students at public institutions generally represents a lower percent of the total student body than at some PTEs. Most public institutions have a greater number of students in total than PTEs, meaning they are less affected by a small number of foreign students withdrawing.

### **Appeals/complaints**

Foreign students can complain to the International Education Appeal Authority if they are dissatisfied with any aspect of their provider. The larger the amount retained by the provider, the greater the presumed disincentive for a foreign student to change provider. Therefore, options 2 and 3 would be likely to mean less students changing course and/or provider for non bona fide reasons.

### **Timing**

Implementing the preferred option (whatever that may be) will require a change to the Education Act.

---

<sup>4</sup> Section 228(8) states: "The Council of an institution shall take all reasonable steps to ensure that when a student enrolls at the institution (whether for the first time or for a subsequent time) the student is given written notice of the circumstances (if any) in which the student is or may be entitled to a refund of all or any part of fees under this section paid or to be paid to the Council."

### ***Section Three: Immigration Policy***

Immigration New Zealand (INZ) can only focus on the integrity of the student visa/permit issuing process by ensuring students who change provider are bona fide. This can be strengthened by tightening the process by which students apply for a variation of conditions to change course and/or provider. A strengthened approach will enable INZ to more effectively meet student policy objectives, which aim to facilitate the entry of genuine students in support of the industry, while managing immigration risks.

INZ propose to modify existing policy and processes to clarify that:

- a students must apply to INZ to change the conditions of their permits before changing course and/or provider
- b a more rigorous assessment of students' bona fide status (that is, that they remain a genuine student) will be made when students apply to change the conditions of their permits onshore
- c students who stop attending the course and/or provider endorsed on their permits before a variation of conditions has been approved will be considered to have breached the conditions of their student permit (as now, and regardless of the provider's refund provisions)
- d students who are deemed to be non-bona fide (which may include students who breach their permit conditions) are subject to permit revocation.

#### **Implications for students**

Students who withdraw from their course and/or provider before obtaining a variation of conditions will be in breach of their permit conditions. Should a student be issued a notice of revocation, under standard immigration processes, they will have an opportunity to show good cause as to why their permit should not be revoked.

If the student does **not** show good cause (as determined by a compliance officer), and the permit revocation takes effect, the student will then be required to leave New Zealand. If the student **does** show good cause and the revocation is set aside, the student will be eligible to apply for a variation of conditions to change course and/or provider.

These changes are intended to promote best practice and preserve the integrity of immigration processes, rather than to provide a direct intervention to stop students changing their study conditions soon after arrival in New Zealand. However, it is expected that this approach will ensure applicants have genuine reasons for changing course and/or provider, taking into consideration their stated intentions when they applied for a student visa offshore.