

10. TEI and ITO payment agreements will reflect that the TEC is paying for fees on behalf of individual learners. PTE and section 321 organisations' agreements will continue to reflect that the TEC is paying grants in consideration of them not charging the fees to learners.

Legislative changes about fee refund rules and fee protection trusts can be considered later

11. The TEC's proposed approach is preferable to seeking legislative change through late changes to the current Education Amendment Bill, with limited opportunity for consultation and parliamentary consideration. The TEC's changes would also manage the financial risks with Fees-Free payments PTEs at the time that these are paid on projected enrolments, before they can be linked to individual students in the way that is required before funds can be deposited in fee protection trusts.
12. By not proceeding with an amendment to section 235 of the Act at this time, we will leave open the government's options to review the law and rules covering fee refunds and fee protection over the coming year, in the context of future Fees-Free policy design, and tertiary funding and legislation work. We consider there are other issues that may need to be addressed by a law change. For example, there could be greater clarity and control of refund rules for students enrolling in programmes of sequential courses. These students may currently lose the right to a refund for a course in the sequential programme, shortly after the start of the first course.

Key Risks and Benefits

13. The TEC's proposed approach will mitigate financial risk with Fees-Free payments to PTEs in 2019. The main risks are similar to those with the operation of the TEC's other funding mechanisms. These include the risks of potential legal challenges if funding agreements are not well designed, and potential difficulties in recovering Crown funding in the event of provider failure. These risks are mitigated through careful review of funding agreements, phasing payments to more closely reflect PTEs' delivery and revenue patterns, and ongoing improvements in monitoring.

Next Steps

14. We are preparing a Cabinet paper on Fees-Free policy changes for 2019 for your consideration and ministerial consultation. Our previous proposal for a legislative amendment will not be progressed in this Cabinet paper.
15. In anticipation of minor changes to the Fees-Free policy for 2019, and drawing on implementation experience to date, the Ministry of Education and the TEC to review and update policy and operational documentation, including:
 - the ministerial letter of delegation to the TEC to manage the Fees-Free policy,
 - ministerial Funding Determinations for those TEC-administered funds that cover programmes eligible for Fees-Free support, and
 - the TEC's Fees-Free funding agreements with tertiary education organisations.

Proactive Release

16. We recommend that this Briefing be proactively released after Cabinet has considered changes to Fees-Free policy settings for 2019. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree