Amending a funding mechanism during an investment plan period

Q. What is the purpose of this proposal?

A. There are occasions where changes to an existing mechanism are needed within an investment plan period. This may be in response to an event such as the Canterbury earthquakes, or following annual Budgets.

This amendment would clarify the legal mechanisms that allow the Minister to make reasonable changes to funding mechanisms during the period that provider plans are approved. This would mean the funding system could be updated and policy changes could be made without having to issue a whole new funding mechanism.

It also allows the main mechanism for each fund to be definitive, rather than needing to look in multiple mechanisms.

Q. What processes would be involved when a change is made to a funding mechanism?

A. The Minister would be required to consult with affected providers and industry training organisations before making changes within a plan period. This consultation helps to ensure changes are reasonable and proportionate to the issue that has resulted in the proposed change, and that the sector is aware of proposed changes.

Q. How does the proposal affect the certainty of funding tertiary education organisations have?

A. The proposal is not likely to impact the certainty of funding that providers or industry training organisations have. Funding for tertiary education organisations is predominantly based on demand for places, which can either be lower or higher than forecast in any year. However, the Government would like tertiary education organisations to receive additional funding more quickly when demand increases for quality programmes, so long as there is sufficient funding in the system.

The Government currently issues funding mechanisms for 1-2 years, which, in turn, means the Tertiary Education Commission can approve plan terms for this time period.

This proposed change would help to set the conditions for the plan provisions of the Education Act 1989 to operate the way they were originally intended, over a three year cycle but with the flexibility to allow changes if necessary.
Adding new funding conditions to a funding mechanism during a plan period

Q. What would this amendment do?

A. The proposed amendment clarifies when in a funding cycle the Minister is able to add conditions to funding.

It clarifies that the Minister can issue conditions when needed, not just at a transition point between investment plan rounds.

New conditions are generally a response to a particular need or development.

This proposed change would help to set the conditions for the plan provisions of the Education Act 1989 to operate in the way originally intended, over a three-year cycle, with the flexibility to allow changes if necessary.

Clarifying the scope of significant plan amendments and plan replacements

Q. Why is a law change proposed?

A. This clarifies what sort of proposed amendments to plans would be significant, or require a replacement plan. Tertiary education organisations have reported that they would like more clarity.

The purpose of the proposal is to provide tertiary education organisations with guidance about when plan amendments and replacements are required and when they are not. This gives tertiary education organisations clarity about when a change would meet the level of materiality required to need approval by the Tertiary Education Commission.

Expanding the scope of the Tertiary Education Commission’s condition-setting power

Q. What is the purpose of this amendment?

A. This proposal will allow the Tertiary Education Commission to place conditions on a provider’s plan approval to reduce risks of its unfunded activities jeopardising the outcomes of plan funding.

Each year, the Government invests nearly $3 billion of funding in tertiary education organisations.

The TEC would provide reasonable notice prior to setting a condition. This would allow the provider to alert the Tertiary Education Commission if there were going to be any significant issues that would impact on the ability of the provider to adhere to the condition.

Q. How does this preserve academic freedom?

A. The legislation preserves and enhances academic freedom and the autonomy of institutions, subject to the need for accountability for the proper use of the public resources allocated to them. The flexibility tertiary education organisations have to manage their own
affairs needs to be accompanied by adequate monitoring and oversight, given the level of investment the Government makes in tertiary education.

Improving access to information

**Q. What are the information requirements being proposed?**

**A.** Tertiary education institutions that receive funding from the Tertiary Education Commission will be required to keep information in a form that shows:

- the transactions, assets and liabilities, and funds that are or were affected by that funding
- how the tertiary education institution is complying with any funding conditions.

The proposed amendment would require the information to be available to the Tertiary Education Commission for inspection at all reasonable times.

**Q. Why should information and inspection requirements for tertiary education institutions be aligned with those for other tertiary education organisations?**

**A.** Most tertiary education organisations have a high standard of compliance, and it is already normal practice for tertiary education institutions to report regularly to the Tertiary Education Commission. This amendment simply clarifies the format in which the tertiary education institutions provide this information, and the responsibilities involved.

It benefits all parties involved when non-compliance at any tertiary provider is addressed early, so it is appropriate for the same record-keeping requirements to apply across all tertiary education organisations.

Recovery of some of the costs of major Tertiary Education Commission investigations of tertiary education organisations found to have breached funding conditions

**Q. What does this mean for my tertiary education organisation?**

**A.** The majority of tertiary education organisations operate within the law and use government funding as intended. These providers will not experience any change as a result of this proposal. A tertiary education organisation would only be affected if a breach of funding conditions is confirmed.

A tertiary education organisation has a number of conditions placed on its funding. These conditions are set out in a tertiary education organisation’s funding approval letter. By accepting funding, providers agree to these conditions.

The government will still bear the cost of investigations where providers are found to be complying with funding conditions. For those providers that are found to be in breach of their funding conditions, the legislation and regulations will set the parameters around the cost of the investigations that the Tertiary Education Commission can recover.
Ensuring funding rates are applied equitably to public and private providers

**Q. What will this law change mean for a provider?**

**A.** Very little will actually change for providers, as funding rates across the subsectors are already comparable.

A law change would recognise the important role that private training establishments play in the system and ensure that providers continue to be funded at the same rate for comparable outcomes. The proposal aligns legislation with current funding practice.

If a student would get the same level and type of qualification in a private training establishment, as in a tertiary education institution, then those providers will receive the same funding rate for that qualification.

**Q. What does this proposal mean for the competitive tendering process, the performance based research fund and performance linked funding?**

**A.** This proposal allows for the continued allocation of funding based on performance, a competitive allocation process, or as a result of competitive tendering.

**Q. Does this mean that industry training organisations will be funded at the same rate as tertiary education institutions?**

**A.** No. The proposal only applies to ‘tertiary education providers’, which excludes industry training organisations. Industry training organisations arrange training for NZ Apprenticeships, and tertiary education providers both arrange and deliver training for Managed Apprenticeships. To reflect their respective roles, industry training organisations and tertiary education providers are therefore funded at different rates.

**Q. Does this change funds that are currently targeted at particular subsectors?**

**A.** No. The Education Act 1989 still allows for a fund to apply to a specific subsector.

Allowing wānanga to apply for ministerial consent to use protected terms

**Q. What is this amendment designed to do?**

**A.** It would allow wānanga to apply for consent to use protected terms, in the same way that private training establishments already can.

These terms include ‘university’, ‘college of education’, and both ‘polytechnic’ and ‘institute of technology’.

**Q. Does this mean all wānanga can call themselves universities should they want to?**

**A.** No. Any wānanga wishing to use a protected term will have to apply for ministerial consent. The Education Act 1989 sets out a detailed process that the Minister must follow before granting any application for consent.
Q. If a wānanga is granted consent to use the term 'university', would it legally become a university?

A. No. If a wānanga was granted consent to use a protected term, it would still legally be a wānanga, with the special characteristics this requires under the Education Act 1989.

There will be no change to the legal process for a tertiary education organisation to become established as a university (or any other kind of tertiary education institution).

Q. What is the purpose of the ministerial consent process?

A. The ministerial consent process already available to private training establishments under the Education Act 1989 is designed to manage any issues, and to balance these against the potential benefits of allowing a private training establishment to use a protected term.

The proposed amendment will also clarify the types of conditions the Minister may attach to any consent. The Minister may audit for continuous compliance with these conditions, and may withdraw or suspend the consent if not satisfied.

Aligning refund entitlements for domestic students enrolled in a short programme at a private training establishment with those of international students

Q. What is student fee protection?

A. Student fee protection mechanisms are covered by Part 18 of the Education Act 1989. Student fee protection covers all payments made to a private training establishment by, or on behalf of, a student.

Under section 253 of the Education Act 1989, the New Zealand Qualifications Authority has made student fee protection rules. These rules protect the interests of domestic and international students, especially if a private training establishment stops offering a course in which students have enrolled (i.e. course closure).

Q. Why is this change proposed now?

A. A review of the tertiary sections of the Education Act 1989 has given us an opportunity to ensure the refund and withdrawal arrangements for domestic students from courses of less than three months duration are the same as for international students.

Investing trust assets in a common fund

Q. What is this amendment designed to do?

A. A university raised a concern that the legal status of common fund investment is not clear. This proposal simply clarifies the rules around common funds. It will not change the current obligations universities are required to meet as the trustee of a trust.
Those institutions that currently operate a common fund investment vehicle are likely to work under the current provisions, which are largely compatible with the proposed new ones. Any differences will be minor technical matters that should not be difficult to comply with.

Extending the Export Education Levy reimbursement provisions to cover private and partnership schools

**Q. Will private schools and partnership schools be required to have fee protection schemes under the Education Act 1989 as is required of private training establishments?**

**A.** All providers enrolling international students are already required to be a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016. Under the Code, they are required to ensure that fees paid by international students are secure and protected in the event of student withdrawal or provider closure.

**Q. Why are partnership schools being included in the reimbursement provisions if they don’t enrol international students?**

**A.** Although no partnership schools currently enrol international students, including them in the reimbursement provisions allows us to future-proof the legislation and ensures partnership schools will be covered by the reimbursement provisions if any do enrol international students.

**Q. Why aren’t state schools and tertiary education institutions included in the proposed reimbursement provisions?**

**A.** At all public providers – both schools and tertiary – the large majority of enrolments are domestic students who attract public funding. The risk is very low of any public provider having to close, or cease provision to international students, without having access to adequate funds to reimburse them.

Changing the term ‘private training establishment’ to ‘independent tertiary establishment’

**Q. Why is there a proposal to change the term private training establishment?**

**A.** Several private training establishment representatives have asked for a name change to better reflect the diversity of the sector and the range of ownership arrangements. Some private training establishments are run by charities, for example.

**Q. What term is proposed to replace private training establishment?**

**A.** We are seeking feedback from private training establishments on whether the term should be changed to ‘independent tertiary establishment’.

If there is agreement amongst the private training establishments about a different name, we will also consider that, as long as they do not include those used by other types of education providers. This would ensure the new name does not clash with already well established terms, or create market confusion.
Q. Is a separate legislative framework being considered for English language providers, as is the case in Australia?

A. At the moment, English language providers are classed as private training establishments in New Zealand, and are covered by rules and regulations covering the private training establishment sector, including the Education (Pastoral Care of International Students) Code of Practice 2016.

Some English language providers have stated that their part of the sector is different from other private training establishments. They have asked for this to be recognised by government.

Establishing separate legislation for English language providers requires a robust policy process to determine whether this proposal is desirable, practical and feasible. The Ministry of Education intends to review this proposal, before making recommendations that could possibly lead to subsequent legislative change.

Requiring tertiary education organisations to report on their compulsory student services fees

Q. What is a compulsory student services fee?

A. The compulsory student services fee is a compulsory fee that a tertiary education organisation may charge to students, which may be used to fund services for students such as:

- health and welfare services
- child care services
- clubs and societies
- sports recreation and cultural activities.

For more information on the compulsory student services fee refer to:

Q. What compulsory student services fee information would tertiary education organisations need to report on their websites?

A. The information that tertiary education organisations would need to publish on their websites is:

- Basic compulsory student services fee information for the year, including the amount charged per equivalent full-time student and a description of the student services the fee supports.

- A description of the current year’s compulsory student services fee decision-making process – including a description of how the current fee and services offered were determined, how consultation with students occurred, and what the decisions were (refer to the compulsory student services fee Ministerial Direction point 4, on what students must be consulted on).
A description of how students can be involved in compulsory student services fee decisions for the following year: how tertiary education organisations propose to consult with their students and what issues might be considered.

Q. Why does the Government want tertiary education organisations to report compulsory student services fee information on their websites?

A. Publishing compulsory student services fee information on a provider's website ensures a transparent process and keeps students informed about how to be involved, should they want to be.

Q. How involved should students be in their provider’s compulsory student services fee decision-making process?

A. Students should be involved in decisions about all aspects of their compulsory student services fee. The compulsory student services fee Ministerial Direction requires that providers must establish adequate arrangements for decisions to be made jointly, or in consultation with the students enrolled at the provider, or their representatives, on the following matters:

- the maximum amount that students will be charged for student services
- the types of services to be delivered
- the procurement of these services
- the method for authorising expenditure on these services.

Q. Don’t tertiary education organisations have to do this already, as a condition on funding from 2017?

A. All the compulsory student services fee requirements have previously been located in the Education Act 1989. For consistency and simplicity, the Education Act 1989 is being updated to include the new requirements.

Q. Is there an increased compliance burden for tertiary education organisations by requiring them to report compulsory student services fee information on their website?

A. The compulsory student services fee Ministerial Direction already requires providers to consult with students on the compulsory student services fee. Once the information is on providers' websites, it should be easy to keep up-to-date.

Modernising tertiary education institution council operations

Q. How will this affect the way a council operates?

A. The proposed changes will not have any significant implications for the operation of tertiary education institution councils. Rather, they seek to enable tertiary education institution councils to operate more efficiently and effectively.

The Government is proposing these changes in response to feedback from the sector.

The changes are intended to simplify and clarify some parts of the Education Act 1989 and are not unprecedented. The Crown Entities Act 2004 has provisions for more flexible use of
an institution’s common seal and contract execution, and to convene meetings via teleconference or other electronic means. Therefore, the proposed changes seek to align the administration of university councils with current practice.

**Q. How will these changes improve the operation of university councils?**

**A.** They would make it clear that an institution can adopt, if they wish to, a common seal for the use of ‘awards’. The changes will clarify that councils are required to affix an institution’s common seal to contracts. An additional provision could also be added, setting out the alternative means that a university can use to execute a contract.

Extending the period councils are not required to fill a casual vacancy will provide the Minister or council (as the case may be) more time to fill a vacancy, and will also alleviate some of the administrative costs associated with new appointments.

Finally, the proposals to allow councils to convene meetings via teleconference or other electronic means, and to enable university councils to pass resolutions in writing, will provide more flexibility for councils to conduct meetings and, if required, to conduct council business outside scheduled meetings.

**Revoking funding upon request by the tertiary education organisation**

**Q. Why would a tertiary education organisation request to have funding approval revoked?**

**A.** Tertiary education organisations may exit the system from time to time, or be taken over by another tertiary education organisation that already has a plan approved. In these cases, it is of benefit to both the tertiary education organisation and the Tertiary Education Commission to have clarity about the status of previous funding approvals.

**Provisions that apply to tertiary education organisations that are exempted from submitting an investment plan**

**Q. Is there a material problem tertiary education organisations experience that has led to this change?**

**A.** No. The Tertiary Education Commission has funded providers exempt from submitting plans in the past, because the Education Act 1989 clearly anticipates it doing so. However, this change would clarify the exact provision the Tertiary Education Commission should use, and provides for a clear process for approving funding for exempt providers.

**Q. Do the provisions for funding other than by a plan disadvantage tertiary education organisations compared to those that complete plans?**

**A.** No.

**Q. Has the Tertiary Education Commission been acting ultra vires (ie beyond their authority) up to now?**

**A.** No. The Education Act 1989 clearly anticipates that the Tertiary Education Commission fund tertiary education organisations that are exempt from plan requirements. This is a
Clearer performance reporting in tertiary education institutions’ annual reports

Q. What is this proposed amendment designed to do?

A. To clarify how tertiary education institutions must report on their performance, so users are fully able to scrutinise and compare their performance. The change would also extend the scope for auditing.