

# Regulatory Impact Statement: Overview of required information

## Regulatory Impact Statement

### Education Amendment Bill (No. 4) – Student Loan and Allowance Administration

#### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education.

It provides an analysis of proposed amendments to the Education Act 1989 (the Act) intended to:

Strengthen the Ministry of Social Development's (MSD) ability to administer student loans and allowances by clarifying the powers MSD has to request information from providers, and by providing a new offence to deter providers from knowingly providing false or misleading information.

Changes in these areas make tertiary providers accountable for providing accurate information to MSD and will enable them to administer allowances in a consistent fashion with their current loan administration practices.

The proposals will not place a significant compliance burden on tertiary education providers except in instances of poor performance or knowingly misleading practice. Nor will they impair private property rights, market competition, or the incentives on businesses to innovate and invest, or override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

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11 February, 2011

## Status quo and problem definition

Sections 226A and 238B of the Act set out the categories of enrolment information that the MSD can require tertiary institutions and PTEs to disclose. This includes “details reasonably required by the chief executive for the administration of the student loan scheme” (section 226A(6)(h)).

There is no equivalent provision in respect of student allowances. As a result, the MSD has been relying upon a less certain legal alternative to obtain information from providers that is required for the administration of student allowances. MSD has requested that an equivalent provision be introduced in order to address the current uncertainty.

A legal regime enabling MSD to require tertiary education providers to disclose enrolment information for various purposes relating to student loans and allowances is set out in Parts 16 and 18 of the Education Act 1989. The only offence which exists is that of a tertiary education institution or private training establishment (PTE) intentionally failing or refusing to supply required information to the chief executive of the MSD, or any employee or agent of the Ministry (sections 226B and 238C).

## Objectives

To improve the financial and educational performance of tertiary providers and to achieve the broader Government goals for improved system performance articulated in the Tertiary Education Strategy 2010–15, it is important to ensure that the tertiary system is transparent for both tertiary education providers and students, and that providers are accountable for their activities. Two changes are proposed:

- We want to strengthen the Ministry of Social Development’s ability to administer to student loans and allowances by clarifying the Ministry of Social Development’s powers to request information from providers related to student allowances, in line with their current powers regarding student loans.
- We also want to create an offence for providers who knowingly provide false or misleading information in response to requests for loans and allowances related information.

These changes will allow the recent changes in the tertiary sector (the Tertiary Education Strategy 2010–2015, the Targeted Review of Qualifications, and changes in quality assurance in particular) to be taken into account. They emphasise the drive for quality in the sector, the need for a system that can deliver on the changes proposed in government policy and consistency of quality assurance across sub-sectors. As a result, the changes should be progressed as quickly as possible to ensure transparency and accountability.

## Regulatory impact analysis

### Options

Two options are considered:

- a. Option 1: retain the status quo with no legislative changes.
- b. Option 2: make changes to strengthen the tertiary education system so that MSD’s ability to administer student loans and allowances is strengthened by clarifying MSD’s

power to request information from providers regarding student allowances, and the creation of an offence for providers who knowingly provide false or misleading information.

Option 1, no change to the legislation, would limit the Government's ability to provide transparency and accountability around the Ministry of Social Development's ability to administer student loans and allowances.

While the legislation includes the ability for the Ministry of Social Development to obtain "details reasonably required by the chief executive for the administration of the student loan scheme" (section 226A(6)(h)), there is no equivalent provision in respect of student allowances. As a result, the MSD has been relying upon a less certain legal alternative to obtain information from providers that is required for the administration of student allowances. MSD has requested that an equivalent provision be introduced in order to address the current uncertainty.

Option 2 will strengthen the tertiary education sector by increasing transparency and accountability.

The Act will also be amended to include a provision clarifying MSD's power to obtain information from providers, which is required for the administration of student allowances. This will mirror the existing provision around the student loan scheme. An additional offence will be created, that of a tertiary education institution or PTE knowingly providing false or misleading information. At present, there is nothing in the Act which provides an explicit deterrent against such behaviour by a provider. The introduction of a new offence would also address an anomaly in the Act. A similar disclosure regime exists for recipients of student loans and allowances, in which there are several offences relating to the provision of false or misleading information (whether in the form of statements, papers, documents or records)(section 307AA).

### *Benefits*

The proposed clarification will improve MSD's ability to administer the student support system by making enabling it to approach information collection more consistently, and minimising the risk that their ability to collect information to make decisions in relation to Student Allowance entitlement is open to a successful legal challenge. The collection of information is necessary to determine entitlement is a core function of MSD.

The inclusion of a new offence provision in relation to providers knowingly providing false or misleading information will help to ensure the quality and accuracy of information from providers is not compromised, by providing a deterrent to deliberate attempts to falsify information.

### *Risks*

There are no privacy implications arising from these proposals, as they are consistent with existing powers and offences.

### *Costs*

There are no new costs arising from these proposals.

## **Consultation**

The following departments have been consulted in the preparation of this paper: the New Zealand Qualifications Authority, the Department of Labour, the Tertiary Education

Commission, the Ministry of Social Development, the Ministry of Justice, Te Puni Kōkiri, the Ministry of Pasifika Island Affairs, the Ministry of Women Affairs, the Ministry of Youth Affairs, the Ministry of Ethnic Affairs and Treasury.

Feedback was largely technical in nature, with no major concerns raised regarding any of the proposals.

## **Conclusions and recommendations**

On balance, the proposed changes will improve transparency and accountability within the tertiary education system, while minimising costs to the Government, tertiary education organisations and students.

By aligning the administration requirements for student loans and allowances and introducing a new offence provision, the Ministry of Social Development will more consistently and effectively administer and manage the student allowances scheme.

## **Implementation**

### **Legislative timetable**

In order to allow for the passage of the Bill in the first half of 2011, the Bill should be introduced in February 2011 and referred to the Education and Science Committee.

There is a risk that Bill No. 4 may not be passed in 2011, as it will be an election year. To mitigate this risk, the Select Committee time can be contracted from the usual six months.

### **Communications**

Key messages for speaking with the sector will include emphasising the drive for transparency and accountability in the sector.

### **Transitional arrangements**

There is no requirement or need for any transitional arrangements in relation to the two MSD proposals regarding student loans and allowances.

## **Monitoring, evaluation and review**

There are no plans to specifically and separately monitor, evaluate or review the proposed changes. The effectiveness of the changes will be monitored by the Ministry of Education and Ministry of Social Development to ensure that there are improvements to educational outcomes and performance.