NZQA

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Aide-Memoire: Export Education Levy reimbursements and provider accountability

To:	Hon Chris Hipkins, Minister of Education
From:	Dr Karen Poutasi, Chief Executive
Date:	14 February 2018
Reference:	CR17060

Purpose

1. This aide-memoire is in response to your request for information on options to reduce use of the Export Education Levy ('the Levy') related to cases of provider failure and options to enforce greater provider accountability.

Overview and background

2. Over the last two years, the number of course closures requiring significant reimbursement from the Levy has risen. In the 2016/2017 year, these costs amounted to approximately $900,000, while in 2017/2018 they are expected to exceed $1.5 million.

3. In the past, the Levy was most commonly accessed to reimburse international students in cases where there was a mismanagement of student fees, that is, when there were insufficient funds left in the student fee protection (SFP) accounts to enable the students to continue their studies elsewhere.

4. The number of closures requiring claims on the Levy has remained small. In 2016/2017 these related to only three providers, though the impact, in terms of international student numbers, was significant. However, in the last two years the nature of closures has changed as a result of the exponential growth in risk areas of the international education market and increased NZQA scrutiny of assessment practice.

5. The 2016/2017 spike in Levy costs is due to the complex nature of two of those closures, where NZQA found poor educational delivery and assessment practice, coupled with questionable English language proficiency entry testing. Levy claims for 2017/2018 will be made for similar reasons.

6. In supporting students while also maintaining the credibility of the qualifications system, NZQA has incurred significant costs in arranging English language and academic re-testing of affected students, and their refund or transfer to other institutions. All of this has led to a substantial overall increase in Levy costs to reimburse NZQA and students, though the number of closures requiring Levy funds has remained relatively small.

7. It is important to note that in recent provider and course closures requiring Levy funds, student fee management has not been of concern. This means that had the education on offer been of sufficient quality, in the event of closure, students would likely have had sufficient funds left to continue their studies elsewhere.

8. NZQA expects that as its monitoring of programme delivery and assessment practice gathers momentum and focusses on the highest risk programmes, further drawdowns on the Levy for a relatively small number of cases could be expected in the short to medium term in 2018/2019. In the long term, however, it is expected that monitoring will identify concerns earlier, thus allowing them to be rectified without resulting in closures.

9. The Levy is currently being used as intended in providing a TEO funded insurance pool for cases of market failure. It could be argued however that contributions to the Levy are unevenly distributed so that universities, institutes of technology and polytechnics contribute the lion's share of the Levy, while failed PTEs are the primary users of the funds.

Lack of owner accountability for costs incurred

10. NZQA is concerned about the apparent lack of owner responsibility to meet the costs associated with closure in cases involving Levy claims, especially where those are exacerbated due to quality issues.

11. In the last two years, there has been one case involving a Levy claim for the closure of a programme where the private training establishment (PTE) continued to operate. This is a very rare occurrence, as NZQA is normally able to successfully persuade PTEs in those circumstances to take responsibility for the costs, without needing to access the Levy.

12. Levy claims have mostly resulted from the de-registration of PTEs who have refused or have been unable to pay the costs associated with English language proficiency and academic re-testing of students. It is common in that scenario for the business to be in financial hardship at that point.

13. Where a PTE has been de-registered, there is a consequence for the owners in the sense that they no longer have a business, have suffered reputational damage, and would not be able to establish a new PTE. However, they have not been legally or financially liable for their actions.

14. [redacted]

15. [redacted]

16. [redacted]

s 6(c) OIA

Options for changes to SFP

17. SFP was introduced in 2004 in response to several large-scale provider closures in the early 2000s. Its intent was to ensure that there are sufficient funds available in the event of closure to enable students, both domestic and international, to transfer to other providers or to receive a refund of their fees for the unfinished portion of the course.

18. SFP functions well and minimises the risk of claims on the Levy in cases where there is no mismanagement of student funds and the closure occurs for reasons other than admission criteria (where students should not have been enrolled in the first place) or quality of assessment (where achievement results cannot be relied upon).

19. There are several SFP mechanisms. Some involve a form of guarantee, or a bank bond for the total amount of student funds a provider may be liable for. Another type of SFP arrangement involves a trust account where funds are released to the provider in arrears on a weekly, fortnightly, or monthly basis.

20. An option for increasing provider responsibility for covering student costs in the event of a closure, that would otherwise be absorbed by the Levy, is to consider whether releasing SFP funds on a less regular basis (e.g. quarterly rather than the current monthly payments) would provide greater assurance that the provider will be able to cover the costs.

21. This option is not recommended as reducing the frequency of SFP payments to providers could have a damaging impact on their cashflow, and therefore on their ability to offer quality education. Furthermore, providers are likely to have a claim on any unpaid funds for service delivered up until the date of closure, irrespective of whether those are paid out once a month or four times a year.

22. It is also important to note that legally, it is the students that have an entitlement to receive funds protected under SFP. In other words, those funds cannot be taken by the Crown to cover the cost of closure.

23. As noted previously, while the claims on the Levy have been significant in value, the actual number of providers in question has been small. Therefore, the impact of any changes to SFP policy is likely to be disproportionate in terms of number of providers affected by the changes, for the number of providers that may incur Levy costs.

[redacted]

s 9(2)(f)(iv) OIA

Options for new registration requirements

28. NZQA is exploring options to introduce registration requirements for PTEs with course closures that otherwise remain operational, to cover the cost of the closure. This means that failure to comply with this requirement would result in the de-registration of the PTE.

29. This option would provide a way to reduce costs on the Levy by targeting specific providers where course closures occur, rather than introducing blanket regulations affecting quality providers.

30. There is a risk that in cases where providers fail to comply, the de-registration would increase the cost of the closure and affect a larger number of students, than those affected by the original course closure. NZQA is therefore considering what legal mechanisms it may use to advance this option, while also mitigating the risks associated with it. NZQA will report to you on this in March 2018.

Levy cost recovery and system-level considerations

31. In July 2017, the Ministry of Education provided the then Minister of Tertiary Education, Skills and Employment with advice about the Ministry's ability to recover Levy costs from PTE owners in the event of closure (METIS 1076206 refers-Use of Export Education Levy funds to reimburse students of [redacted] 31 July 2017).

32. The Ministry of Education will also provide you with a paper on system-level considerations regarding the Levy by the end of the month.

s 9(2)(f)(iv) OIA

Summary

33. NZQA always endeavours to compel providers to meet the costs of any closure. Where this is successful, no call is made on the Levy. Where this is not the case, the Levy acts as a TEO-funded insurance pool.

34. There has been significant pressure on the Levy over the last two years in relation to a small number of providers. This pressure is expected to continue over the coming year, but in the longer term, NZQA expects declining use of the Levy due to stricter policy parameters (English language testing and visa settings) and earlier NZQA interventions. s 9(2)(f)(iv) OIA

35. [redacted]

36. NZQA remains committed to holding failed providers responsible for breaches to the Education Act 1989 and will report back by the end of March 2018 on progress in this area.

Karen Poutasi (Dr)

Chief Executive, NZQA

14 February 2018

Chris Hipkins

Minister of Education

__/__/__ Noted/Agreed