Regulatory Impact Statement

Maintaining the rate of the Export Education Levy

Agency disclosure statement

This Regulatory Impact Statement has been prepared by the Ministry of Education. It provides an analysis of options to set the rate of the Export Education Levy (the levy) via regulations, in order to replace existing regulations which are due to expire at the end of 2011.

The Export Education Levy funds a range of development activities which are intended to benefit the international education sector, and provides reserve funds to reimburse international students affected by the failure of private training establishments.

This Statement sets out four alternative options for setting the rate of the Export Education Levy by maintaining the current rate, and reducing or increasing the current rate.

Factors which have a bearing on setting the 2012 rate include the prospects for the international education sector, current and estimated future levy revenues, the required spending across the purposes of the levy, and relative sharing of responsibility for development funding between the sector and the Government.

The Ministry recommends that the Export Education Levy for 2012 be set at the same level as the 2011 rate, collected in the same way. This option would generate an adequate amount of revenue to fulfil the purposes of the levy for the 2011/12 and 2012/13 financial years. Consultation was undertaken with education provider groups on the proposal to maintain the current rate of the Export Education Levy.

The Ministry of Education considers that the options canvassed in this Regulatory Impact Statement are consistent with the Government's Statement on Regulation. The necessary regulation will replace an existing regulation currently in force, and will not impose any additional costs on education providers.

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– REGULATORY IMPACT STATEMENT –

MAINTAINING THE RATE OF THE EXPORT EDUCATION LEVY

Status quo and problem definition

1. The compulsory Export Education Levy (EEL) has been in operation since January 2003. The EEL funds a range of development activities to support the international education sector. These activities include international promotion of New Zealand education services, market research, professional development, and the administration of the Code of Practice for the Pastoral Care of International Students (the Code) [1].

2. Collective funding of these activities is effective because it achieves economies of scale in administration, and prevents providers "free-riding" on the contributions of others because competitive providers are unlikely to fund the activities voluntarily. Government also allocates funding directly to international education activities. The 2011 Budget provided an increase of $10 million for international education promotions and marketing, bringing the total government funding for this activity to $13.45 million for 2011/12 and 2012/13.

3. The EEL is made up of a flat fee of $185 (excl GST) payable by each provider, together with a revenue component of 0.45% of tuition income (excl GST) from international students. The $185 fee is intended to help meet the costs of administering the Code of Practice for the Pastoral Care of International Students. The EEL is collected from all education providers which enrol international fee-paying students.

4. Different provider groups earn widely varying fees from international students, depending on the length of their courses[2]. The impact of the EEL is minimal for schools and public tertiary institutions, and larger for private English language schools. State and state integrated schools pay the EEL as a component of their International Student Levy (ISL).

5. The Ministry of Education is responsible for collecting the EEL from education providers. The Ministry also administers the Code. The Education New Zealand Crown agent for international education (ENZ) is responsible for undertaking all other international education activities funded from the EEL.

Problem

6. The current *Education (Export Education Levy) Regulations 2010* expire at the end of 2011. If replacement regulations specifying the rate are not approved by early December 2011[3], then the Ministry of Education will not have regulatory authority to collect the levy from education providers unless and until replacement

[1] The mandatory Code of Practice for the Pastoral Care of International Students (the Code) is established under section 238F of the Education Act 1989. The Act requires that a provider must be a signatory to the Code to enrol international students.

[2] During 2009 the average fee per international student charged by the tertiary education institutions was $11,658; for schools it was $7,894; and for private training establishments it was $4,110.

[3] This due date allows for the 28 working day rule for the application of regulations, following publication in the New Zealand Gazette.

regulations are promulgated. This would result in a measure of uncertainty for providers and the Ministry and, potentially, a small loss in levy revenues for the period during which regulations do not apply.

Objectives

7. The options analysed here will set the rate of the EEL. The rate must ensure sufficient funds are collected to fund the development, promotion and quality assurance of the export education sector. The new rate must be published by 2 December 2011 in order for the levy to be applied and collected from 1 January 2012.

Levy revenues and expenditures

8. Income from the EEL was $3.48 million for the year ended 30 June 2011 and expenditures amounted to $3.29 million. Any annual surpluses are maintained in a Levy trust account by the Ministry of Education. Table 1 sets out the respective revenue and expenditure elements for 2010/11.

Table 1: Export Education Levy for 2010/11 financial year, excluding GST (provisional)	Revenues ($m)	Expenditures ($m)
Public Tertiary Education Institutions	1.70	
Private Training Establishments	1.05	
Schools	0.68	
Interest received	*0.05*	
Total revenues	**3.48**	
Promotions (national brand for export education)		0.99
Research & Professional Development		0.71
Code of Practice for Care of International Students		0.75
Operating grant to Education New Zealand Trust		0.56
Administration by Ministry of Education		0.13
Reimbursement for students affected by PTE failure		0.15
Total expenditures		**3.29**
Balance of the Export Education Levy Trust Account as at 30 June 2011	**$1.69**	

9. A key purpose of the Trust Account is to maintain a sufficient balance ('buffer') to meet any necessary requirements to reimburse international students affected by the failure of private training establishments[4]. The extent of this reimbursement is reported publicly as part of the *Annual Report to Parliament on the Export Education Levy*.

10. The size of a minimum 'buffer' in the Levy trust account has been actuarially calculated at $0.58 million, based on experience of actual reimbursement in 2002/03 and 2003/04. The additional reserves in the trust account allow for any transfers of funding to increase promotion activities (see below), and to fund operational deficits that may result should there be a sustained fall in international student enrolments, as occurred from 2004 to 2008.

11. The government has previously approved the use of reserves in the trust account to expand funding for international promotions activities in the 2006/07 and

[4] For example, a spate of provider collapses in Australia during 2009 meant that the country's main back-up fund to protect overseas students suffered a $2 million reversal to its bottom line in just two years, recording a deficit of $1.3 million in 2009.

2007/08 financial years. At this time there are no firm proposals to apply the reserves in the trust account to specific promotions projects in the 2011/12 or 2012/13 financial years.

Regulatory impact analysis

12. The Ministry considered four alternatives for the rate of the Export Education levy before consulting on a recommended option. The alternatives are set out below. An option to remove the EEL entirely was not considered by the Ministry. This is because the removal of the EEL would eliminate the sector contribution to development activities, resulting in the government (i.e. taxpayers) meeting the sole cost of measures to enhance international education. This would go against existing policy to seek a measure of cost-sharing, via levies or charges, from industries (including international education) which benefit from specific services which are delivered by government agencies.

(a) Maintain the current rates (recommended option)

Pros: The current rate of 0.45% of turnover has yielded sufficient revenue to meet the statutory purposes of the levy, and there is likely to be a small increase in EEL revenues during 2011/12 due to increasing international student enrolments[5]. The balance of the Levy Trust Account is sufficient to cover externally driven costs (e.g. student reimbursement) and to provide reserves for any additional promotions funding which may be sought in 2011/12 or 2012/13. This approach would also be the most administratively straightforward means of operating the EEL.

Cons: Some education providers and/or sector bodies may argue that, given the existing reserve in the Levy trust account and the consequences of the 22 February 2011 Christchurch earthquake[6], then the EEL rate should be lowered or eliminated, with operating expenditures for 2011/12 and 2012/13 to be partially or wholly funded from the Levy trust account.

(b) Reduce the revenue-based component (not recommended)

Pros: A reduction in the revenue component of the EEL for the 2012 calendar year (i.e. from 0.45% to 0.40%) could lead to a reduction in EEL revenues of around $0.19 million for the 2011/12 financial year. This approach would allow providers – particularly private training establishments – to invest the saved funds in their businesses.

Cons: Reducing the current EEL rate for 2012 would lower EEL revenues for the 2011/12 and 2012/13 financial years, and result in the sector providing a smaller share of funding for development activities, relative to the increased contribution from the government approved in Budget 2011. A reduction in the rate of the EEL would also be likely to require a draw-down from the Levy trust account, to meet any operational deficits for the 2011/12 and 2012/13 years.

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[5] Assuming the initial trend of a 5% increase in enrolments for the first four months of 2011 is maintained for the 2011 calendar year, then this could translate into an additional $0.17 million in EEL revenues for the 2011/12 financial year.

[6] The Export Education Levy data for the 1 January – 30 April 2011 period showed an overall 24% fall in international enrolments with education providers based in Canterbury (relative to the same period in 2010), whereas the total for New Zealand showed an overall 5% increase in international enrolments.

Reducing the rate of the EEL will limit the capacity to make greater industry-funded resources available (e.g. in the 2012/13 financial year) to sustain New Zealand's competitiveness in the international education market. In previous financial years the government has approved the use of funds from the Levy trust account to increase the total sector contribution to international promotions. Requiring the Levy trust account to meet operational deficits for sector development activities would therefore reduce the reserves available to expand promotions activities in future years.

(c) Increase the revenue-based component for all providers (not recommended)

Pros: Increasing the levy rate would increase total income (by about $0.6 million for a rate of 0.55% or $1.3 million for a rate of 0.65%) and would be relatively equitable in terms of the level of contribution from different providers. Increasing the surplus in the Levy Trust Account would allow for increased sector-funded allocations for promotions after the 2011/12 financial year.

Cons: There is no immediate need to raise the levy rate in 2012, given the size of the surplus in the Levy Trust Account. There is also likely to be a small increase in total EEL revenues for 2011, due to increasing international student enrolments.

A rise in the levy would have a greater impact on the finances of private training establishments, notably English language schools, as these providers earn lower levels of per-student tuition revenue. A rise in the EEL could affect these providers disproportionately.

(d) Increase the flat fee component (not recommended)

Pros: An increase in the flat fee component would result in an increase in the overall revenues of $0.27 million (for an increase of $500) and $0.55 million (for an increase of $1000). In particular, this would allow for a more even distribution of the costs of administering the Code of Practice across all providers.

Cons: This would take no account (for the purposes of Code costs at least) of the significant differences in student numbers across providers. It could encourage providers with only a small number of students to exit, as they would pay proportionately more than larger providers. It would also require a very sizeable increase in the flat fee in order to raise significant additional revenue.

Consultation

13. The Ministry of Education consulted with the eleven sector bodies that represent international education in New Zealand on the recommended option to make no change to the current EEL rate, and apply the same 2011 rate in 2012. A letter and email inviting submissions was sent to the sector. The consultation letter did not propose specific alternative options to raise or lower the rate of the EEL, because of advice, based on the points stated above, that a recommended option for the EEL was to maintain the current (2011) rate. This advice was approved by the Minister for Tertiary Education.

14. Nine submissions on the proposal for an unchanged levy rate for 2012 were received during the consultation with the international education sector. Agribusiness Training Ltd, ATC New Zealand, Secondary Principals' Association

of New Zealand, NZITP, the New Zealand Association of Private Education Providers, and the Association of Proprietors of Integrated Schools accepted or supported the proposal to maintain the current rate of the Levy. AIS St Helens criticised the continuation of the levy, and requested that the Levy be removed or reduced. English New Zealand submitted that only the flat fee component of the EEL should remain, and the revenue component should be zero-rated. Universities New Zealand reiterated a previous request that the structure of the levy be modified to increase the flat fee component (i.e. from $185 to $738), and to change the revenue component, from a rate of 0.45% to a per-student charge of $36.

15. The Universities NZ proposal to introduce a per-student charge would benefit the universities relative to other providers, because universities receive much more revenue from international students due to their higher fees for multi-year courses. The English language sector could be expected to resist this proposal, as it would be likely lead to them paying a higher proportion of their revenues as their students often study for less than six weeks, and usually pay fees on a week-by-week basis.

Conclusion

16. Maintaining the current rate of the EEL would sustain a level of EEL revenues sufficient to fund sector development activities for the 2011/12 and 2012/13 financial years, and to maintain reserves. The reserves can be applied to meet costs associated with reimbursement of international students, and to increase sector funding for additional international promotion activities.

17. While this approach would not result in an increase in the contribution from the sector to development activities (particularly promotions) which are funded by government, it would also avoid an increase in costs for education providers given the current business climate and the effects of the 22 February 2011 Christchurch earthquake.

Recommendation

18. The Ministry of Education recommends maintaining the current rate of the EEL at the flat fee component of $185 (excluding GST) and 0.45% (excluding GST) of international tuition income.

Implementation

19. The Regulations setting the EEL for education providers will replace the *Education (Export Education Levy) Regulations 2010*. Consequently, there will be no net change to the stock of regulation. There will be no additional compliance costs to education providers or to any government agencies.

Monitoring, evaluation and review

20. An independent review of the operation, administration and effectiveness of the EEL was completed by Deloitte in January 2006, and was reported to the House of Representatives as required by section 238I(5) of the Education Act 1989. The Review is listed on the website of the Ministry of Education (www.minedu.govt.nz//international). The review report concluded with general support for the EEL and the purposes to which it is put, and set out a series of

recommendations for improving the administration of the EEL and communication with the sector. These recommendations were subsequently implemented.

21. There are no further statutory requirements to review the operation of the EEL. The Ministry will continue to review the rate of the EEL annually as part of advice to the responsible Minister, based on the actual and projected EEL revenues and programme expenditures, state of the international education sector, and policy on the preferred level of sector contribution to development activities.

22. The Education Amendment Act 2011 has modified the provisions of section 238H of the Education Act 1989, which relate to the requirement to undertake consultation on the rate of the EEL. From 2012, the preparation of new regulations and consultation will only need to be undertaken if there is a proposal to change the rate of the EEL. This legislative change will be reflected in the *Education (Export Education Levy) Regulations 2011*.