

Regulatory Impact Statement

Setting controls on fees for student services

Agency Disclosure Statement

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

This statement provides an analysis of alternative options for setting controls on fees for student services (i.e. compulsory fees paid by students for non-academic services), to ensure that providers are more transparent and accountable for how they set these fees, and resource specific services.

Limited consultation has been undertaken to support this analysis, but further consultation will be required under the proposed legislation before the Minister for Tertiary Education can exercise the powers, as recommended.

The Ministry of Education considers that the options canvassed in this Regulatory Impact Statement are consistent with the Government's Statement on Regulation.

Ben O'Meara
Senior Policy Manager
Tertiary Education Group

11 February 2011

Status quo and problem definition

Student Services Fees

Student services fees include all compulsory charges by tertiary education providers as a condition of enrolment that are not subject to the Annual Maximum Fee Movement (AMFM), which regulates the amount of tuition-related fees and course costs.¹ These fees have been in place for a number of years, and are used by tertiary education providers to deliver a wide range of additional services for students.² The types of services covered by these fees vary between providers.

Generally, all students contribute to the cost of services, which can then be accessed by students for free, or at a subsidised rate. Services can be either fully or partly funded through these fees, and may be partly subsidised through other revenue sources, such as tuition subsidies or other government grants (e.g. early childhood education subsidies). The following table sets out a summary of the services that universities and institutes of technology and polytechnics (ITPs) report are funded through these fees.

Table One:
Services funded through these fees in 2010, as reported by universities and ITPs

	Universities	ITPs
Institutions that charged a fee in 2010	8	14
Learner support services		
Careers information	7	6
Library services	1	2
Study support	3	3
<i>Disability support</i>	3	5
<i>Māori and Pasifika</i>	3	4
<i>Adult students</i>	1	3
Advocacy services	2	2
Student orientation	3	3
Pastoral care		
Health, counselling and chaplaincy services ³	7	11
Accommodation services	4	3
Financial support and hardship funds	5	7
Crèches/Early Childhood Education services	1	0
Sports and recreation	5	2
Other		
Building maintenance and capital development	6	0
Internet access	5	3
International student support services	2	2
Transport subsidies	1	1
Administration	1	2
Enrolment fee	1	0

¹ In 2011, the AMFM will allow for a 4% increase on the GST exclusive fees and course costs charged in 2010.

² No information has been collected from Private Training Establishments. We understand that such fees are not common in this sub-sector.

³ Note that chaplaincy services were included in this line as part of the original questionnaire sent to TEIs. Information collected as part of the review has indicated that chaplaincy services are not generally funded through student services fees.

Students are entitled to borrow through the compulsory costs component of the Student Loan Scheme to pay for these fees (just as they can borrow for students' association membership fees – where membership is compulsory).

Student Services Fees in 2010

While some universities and ITPs have charged student services fees for a number of years, there were unprecedented increases in 2010. Across all universities, fees for full-time students increased by 102% from an average of \$194 in 2009 to an average of \$392 in 2010.

Auckland University of Technology was the last university to begin charging a fee (\$360 for a full-time student) in 2010; and Canterbury University increased its fee from \$85 in 2009 to \$600 in 2010. Excluding these outliers, the average increase in other universities was 33%.

While fees are highest in universities, fourteen out of the twenty ITPs charged a fee in 2010, ranging from \$16 to \$300 for full-time students in 2010. The average was \$117. The average increase between 2009 and 2010 was 16%.⁴ No wānanga charged a student services fee in 2010.

The legal framework

Tertiary education institutions are able to refuse to enrol students who have not paid tuition fees, and all other fees prescribed by the institution's council. The legislation is not entirely clear, but the Ministry of Education's view (tested with the Crown Law Office) is that the Education Act 1989 does not allow for regulating fees for non-academic services. Section 159L enables the Minister for Tertiary Education to set limits on the fees that a provider can charge domestic students. However, the limits can only be linked to provision of services tied to funding given to providers – funding conditions currently only relate to the provision of educational services on a course basis, and do not require (or fund) providers to offer other, non-academic, services.

Problem definition

The main problems with the status quo are that:

- the regulatory framework is inconsistent, which means that providers can circumvent the regulation of tuition fees intended to reduce the costs of study for students by collecting additional money through student services fees
- there is currently no clear definition of what services should be funded as part of tuition fees, what should be funded through a collective as a public good, and what should be provided on a user-pays basis
- the Education (Freedom of Association) Amendment Bill, which will remove compulsory membership of students' associations, may affect the provision of some core pastoral care services currently delivered by students' associations
- many providers are not transparent or accountable to students about how they set fees, or about what services are delivered for students through these fees.

⁴ This excludes ITPs that introduced new student services fees in 2010 – UCOL and Wellington Institute of Technology.

Objectives

Therefore, the Government's objective is to ameliorate these problems, by providing a clearer framework for tertiary education providers and students to work together to resource and provide additional services to students that are not directly related to the provision of tuition. The purpose of these services should be to achieve the Government's objectives, as set in the Tertiary Education Strategy 2010/15, which includes a focus on improving providers' pastoral and academic support for students, in order to increase course and qualification completion rates – particularly for younger students, and Māori and Pasifika learners.

This framework should:

- enable greater involvement of students in how these fees are administered, including how fees are applied, and what services are purchased
- require more transparency in the administration of these fees, including for example, requiring this money to be kept in a separate, audited trust account
- set clearer limits on what services should be funded through these fees
- ensure that appropriate limits are set on the amount that providers may charge as fees.

Regulatory impact analysis

Options include:

- retaining the status quo
- setting explicit legislative controls on how providers may charge and make use of student services fees
- giving the Minister for Tertiary Education the power to make directions on the use of student services fees.

Status quo

The Government currently has no powers to control the amounts that tertiary education providers may charge as compulsory student services fees. There is a risk that without such controls there is little incentive for providers to prioritise the services they deliver, and to deliver these services in an efficient manner. This is not consistent with the Government's broader objective for regulating fees through the Annual Maximum Fee Movement, which is to ensure that government tuition subsidies are reflected in lower fees for students, rather than being absorbed by tertiary education providers. Regulation also ensures that providers address any inefficiencies in their cost structures, rather than passing these on to students through higher fees, with a corresponding fiscal impact for Government through increased student loan borrowing.

On the other hand, it could be argued that the significant increases in 2010 represented a temporary correction to maintain existing levels of services, in the face of increased pressure on providers' budgets, rather than an indication that such increases will become the norm in the future. There are limits on the amount that providers may charge for student services, because students may resist high increases, or move to other providers where fees are

lower. There are examples under current settings where some providers have sought to ensure that students are involved in decisions on these fees.⁵

However, without additional regulation, there is little Government can do to influence the way that providers and students work more closely together to resource and provide the student services that are needed for successful participation in tertiary education.

Setting explicit controls on student services fees through legislation

Relevant legislation could be amended to set explicit controls on the fees that tertiary education providers can charge for student services. This could include:

- specifying the dollar amount that providers may charge for these fees (including an allowable annual increase)
- specifying the types of services that may be funded through these fees.

This is what is proposed, for example, in Australia, through its Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010, which passed through the House of Representatives late in 2010, and is now awaiting Senate approval.

The risk in setting such conditions explicitly in legislation is that it reduces flexibility in adjusting settings if circumstances may change, or if certain services have been excluded from the definition.

This risk could be mitigated by allowing the Minister to set these conditions through regulations. We do not consider that regulations would be a proportional response to the issue of student services fees. In addition, this would be inconsistent with the way Government currently controls tuition fees through the Annual Maximum Fee Movement.

Giving the Minister the power to set directions on how providers may charge fees for student services

This would enable the Minister to set a clear and transparent framework for tertiary education providers and students to work together to resource and provide additional services to students that are not directly related to the provision of tuition.

In general, the Minister would play a role in supporting effective relationship between students and providers. Under this option, the Minister could make directions on:

- the categories of services that providers can use student services fees to fund
- how fees are held by the provider (for example, in a separate, audited trust account to be used for the purpose of expenditure on student services)
- the arrangements for decisions to be made jointly or in consultation with students.

The Minister would only have the power to apply further controls if it is clear that the relationship between students and providers is not working. In this situation, the Minister would have further powers to set limits on the amount of the fee that providers may charge, and the types of services that can be funded.

⁵ This includes, for example, committees at Victoria University of Wellington and Canterbury University, which are made up of equal representation of student representatives and university staff.

The Minister's powers would be subject to a requirement for the Minister to publicly consult on any proposed conditions for student services fees via a public notice in the *New Zealand Gazette*, in line with the requirements for setting conditions on tuition fees. These powers will also be constrained through a requirement to demonstrate that any direction he or she proposes is necessary to ensure accountability in the use of student services fees.

Consultation

Limited consultation has been undertaken on this proposal at this stage. The Minister for Tertiary Education publicly outlined his concerns about the current approach in July 2010. Information has been sought from both tertiary education institutions and student representatives to inform the Government's review.

Subject to the enactment of Education Amendment Bill (No.4), consultation will be undertaken with tertiary education organisations, students and other interested parties, to inform how the Minister decides to issue directions on student services fees.

Conclusions and recommendations

In order to achieve the Government's objectives for student services, we consider that some form of additional regulation is warranted. This should be sufficiently flexible, and developed in full consultation with tertiary education providers to ensure that any additional compliance costs are minimised. Therefore, we recommend amending the legislation to give the Minister the power to make directions on fees for student services, to achieve a more balanced relationship between students and providers.

Compliance costs

There is little scope to quantify the compliance costs associated with any of the options outlined above. While some options may require greater involvement of students and introduce new compliance requirements for providers, we do not consider that these will generate significant costs, given most providers already have (or should have) existing relationships with students.

If providers are required to have separate audited trust accounts for student services fees, this may generate some additional compliance for providers. However, this will largely be met through existing requirements for institutions to have all financial information in annual reports audited, and NZQA rules for PTEs, which require a statutory declaration and an attestation by a chartered accountant that he or she has reviewed the financial records and there are no issues.

Student representation

The proposed changes will complement the Education (Freedom of Association) Amendment Bill, which is expected to pass into law early in 2011, by ensuring that students will have a stronger influence over how the compulsory fees they must pay for student services are collected and spent.

However, this does mean that new processes may be required to ensure that students' views are represented effectively in decisions on student services. We anticipate a requirement for each provider to develop a protocol – in consultation with students – to ensure that all students are adequately represented.

Implementation

Subject to the enactment of Education Amendment Bill (No.4) in mid-2011, we expect that the Minister for Tertiary Education will first issue directions for the 2012 academic year. This represents a relatively short timeline for implementation, and any arrangements for 2012 may need to be transitional in nature, to allow time for providers and students to adjust arrangements to the proposed new framework. A transitional approach would help to minimise the impact of any additional compliance costs for providers.

The Minister's directions on student services fees may interact with the existing regulation for tuition fees (the Annual Maximum Fee Movement), which also requires public notification through a notice in the *New Zealand Gazette*. We will ensure that these two processes are aligned as much as possible.

Monitoring, evaluation and review

We expect that the new framework will largely be self-monitoring. Both students and providers should have sufficient scope to ensure their interests are sufficiently represented. Where there is disagreement, students would have the opportunity to take their complaints to the Minister, the Office of the Ombudsmen, or, both parties could take a civil action via the courts system.

The Ministry of Education will work to ensure that information on the fees charged for student services is collected via centralised data systems.

While a formal evaluation has not been planned at this stage, we will discuss how the implementation of this framework with both providers and students. We will look to recommend adjustments to the framework if, and when, considered appropriate.