

In Confidence

Office of the Minister for Social Development and Employment
Chair, Cabinet Legislation Committee

Student Allowances Amendment Regulations (No 2) 2022

Proposal

- 1 This paper seeks Cabinet approval to submit to the Executive Council the Student Allowances Amendment Regulations (No 2) 2022 which will extend eligibility for student allowances to those who gain refugee or protected person status while living in New Zealand, prior to applying for or gaining a New Zealand resident visa, and their immediate family who can transition to residency with those holding refugee or protected person status [CAB-21-MIN-0548 refers].

Policy

- 2 General eligibility for student support, including student loans and allowances, is set in line with Government's expectations that those able to access these supports have demonstrated commitment to working and living in New Zealand. This involves:
 - 2.1 residency status; and
 - 2.2 a residence requirement period, requiring residency to be held for three years while living in New Zealand.
- 3 Persons with refugee status, and their families, who come into New Zealand under the refugee quota process are granted a resident visa prior to their arrival into New Zealand. This group and those that hold a Refugee Family Support Resident Visa, are exempt from the three-year residence requirement to access student support.
- 4 However, persons granted refugee or protected person status while in New Zealand have delayed access to student support due to the following factors:
 - 4.1 these persons must subsequently apply for New Zealand residency (rather than have residency granted at the same time as their refugee status decision), and they must have a resident visa (which can take around two years to obtain) before they can access student support; and
 - 4.2 that refugee status is only conferred to the individual who made the claim and not extended to their immediate family, such as children, even though they can transition to a resident visa through the refugee and protection category as a family group.
- 5 These settings result in delays for these refugee groups in accessing student financial support, of around two years for those with refugee status, and up to five years for their immediate family members that can transition to residency with them. Therefore, they do not benefit from the same access to student support as persons from the annual refugee quota.
- 6 On 17 December 2021, Cabinet agreed to extend eligibility for student loans and allowances to:
 - 6.1 those who gain refugee or protected person status while living in New Zealand, prior to applying for or gaining a New Zealand resident visa; and

- 6.2 the immediate family members of those with refugee or protected person status specified in 6.1 who can transition to residency with those holding refugee or protected person status [CAB-21-MIN-0548 refers].
- 7 The Ministry of Education and the Ministry of Social Development (MSD) have worked together to define the specific refugee cohorts that this policy applies to, and, consistent with the Cabinet Minute, the agencies have agreed this applies to:
- 7.1 people who have gained refugee or protected person status while living in New Zealand, but do not hold a residence class visa,
- 7.2 the immediate family members¹ of refugees and protected persons specified at 7.1, who reside in New Zealand, hold a temporary entry class visa, and who are eligible to transition to a residence class visa with the refugee or protected person, and
- 7.3 the immediate family members of refugees and protected persons specified at 7.1, who have transitioned to a residence class visa with the refugee or protected person².
- 8 At the time of the Cabinet decision an implementation date had not been decided. I propose the changes to eligibility settings for student loans and allowances will apply to study starting on or after 1 May 2022. This is the earliest possible implementation date.
- 9 An amendment to the Student Allowances Regulations 1998 is required to give effect to the changes to student allowance eligibility settings. This amendment needs to come in to effect by 27 March 2022 to ensure StudyLink can receive and process potential applications for student allowances ahead of the 1 May 2022 implementation date.
- 10 Note that Fees Free payments for this cohort have been in effect since 1 Jan 2022. The changes to eligibility settings applying to student loans do not require legislative amendments as these are located in the Cabinet minute.

Timing and 28-day rule

- 11 The 28-day rule ensures that the law is publicly available and capable of being ascertained before it comes into force.
- 12 In this case, it will be necessary for the Student Allowances Amendment Regulations (No 2) 2022, if approved, to come into force on 27 March 2022 so that StudyLink can receive and process applications for study starting on or after 1 May 2022.
- 13 Therefore, I seek a waiver to the 28-day rule on the grounds that this change only confers a benefit to the public.

¹ Immediate family members have previously been defined as the partner and child of a refugee or protected person specified at 7.1; as well as the parent or sibling of a refugee or protected person specified at 7.1 who is a dependent child.

² The refugee or protected person must be a person that gained refugee or protected person status while living in New Zealand and who was later granted a residence visa. This group of family members is to include family members who transitioned to a residence visa with the refugee or protected person together in the same resident visa decision but will not include subsequent family of the refugee or protected person who are granted a residence visa at a later date.

Compliance

- 14 The Student Allowances Amendment Regulations (No 2) 2022 comply, where applicable, with the following:
- the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 2020;
 - relevant international standards and obligations; and
 - *Legislation Guidelines: 2021 Edition*, published by the Legislation Advisory Committee.

Human Rights

- 15 The proposal to provide access to student support for those granted refugee or protected persons status while living in New Zealand including their immediate family, will ensure consistent treatment of refugee groups, which is consistent with the New Zealand Refugee Strategy. MSD considers that this the proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Regulations Review Committee

- 16 There are no grounds for the Regulations Review Committee to draw the Student Allowances Amendment Regulations (No 2) 2022 to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 17 The Student Allowances Amendment Regulations (No 2) 2022 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 18 Treasury's Regulatory Impact Analysis team has determined that the proposal to extend eligibility for student loans and student allowances to those who gain refugee or protected person status while living in New Zealand, and the immediate family transitioning with them, prior to applying for or gaining a residence visa, is exempt from the requirement to provide a Regulatory Impact Statement. The exemption has been granted on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 19 As part of the legislative requirements, the Student Allowances Amendment Regulations (No 2) 2022 will be notified in the New Zealand Gazette at the earliest available opportunity.
- 20 MSD officials will develop a communications strategy for communicating the changes to those newly eligible for student support and stakeholder groups working with refugee or protected persons.

Proactive release

- 21 I intend to proactively release this Cabinet paper within standard timeframes.

Consultation

- 22 The Ministry of Education, who have the policy lead for student support, have been consulted on this paper.

Recommendations

It is recommended that the Committee:

1. **note** that on 17 December 2021 Cabinet agreed to extend eligibility for student loans and student allowances to those who gain refugee or protected person status while living in New Zealand, prior to applying for or gaining a New Zealand resident visa, and their immediate family who can transition to residency with those holding refugee or protected person status [CAB-21-MIN-0548 refers];
2. **note** that a waiver to the 28-day rule is sought:
 - 2.1. so that the Student Allowances Amendment Regulations (No 2) 2022 can come into force on 27 March 2022 to allow StudyLink to receive and process potential applications for student allowances for periods of study starting on or after 1 May 2022, and
 - 2.2. on the grounds that the changes only confer benefits on the public;
3. **agree** to waive the 28-day rule so the Student Allowances Amendment Regulations (No 2) 2022 can come into force on 27 March 2022;
4. **note** the Student Allowances Amendment Regulations (No 2) 2022 will give effect to the decision referred to in recommendation 1 above;
5. **authorise** the submission to the Executive Council of the Student Allowances Amendment Regulations (No 2) 2022.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development and Employment