

In Confidence

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

Student Allowances Amendment Regulations (No 2) 2021

Proposal

- 1 This paper seeks Cabinet approval to submit to the Executive Council the Student Allowances Amendment Regulations (No 2) 2021 to allow people holding a permanent resident visa under the Afghan Emergency Resettlement Visa¹ to be eligible for student allowances.

Policy

- 2 Many Afghan evacuees who arrive in New Zealand as part of the Government's response to the Taliban takeover of Afghanistan, will be granted residence to New Zealand under an Afghan Emergency Resettlement Visa. Some of these Afghan evacuees will already be New Zealand Citizens or hold residence class visas.
- 3 It is expected 1,400 people² could be granted the Afghan Emergency Resettlement Visa. However, it is assumed there will only be 80 additional people³ participating in tertiary education per year over the three years, from 1 January 2022 until the end of June 2025.
- 4 Currently, people with a residence visa are required to have a residence stand-down period of three years and be an ordinarily resident before they become eligible for student loans, allowances and Fees Free payments unless they belong to specific groups such as refugees or those granted a Christchurch Response Visa (2019).
- 5 Cabinet agreed to remove the three-year stand-down period and the requirement to be ordinarily resident in New Zealand for student support for Afghan evacuees granted an Afghan Emergency Resettlement Visa to support their settlement outcomes in New Zealand. On 8 November 2021, Cabinet agreed to:
 - 5.1 remove the requirement to have held a residence class visa and have lived in New Zealand for at least three years and the requirement to be ordinarily resident in New Zealand for student loans and student allowances and Fees Free Tertiary Education and Training for study starting on or after 1 January 2022 for those with an Afghan Emergency Resettlement Residency Visa [CBC-21-MIN-0122 refers].

¹ Afghan Emergency Resettlement Visa means a permanent resident visa of a kind described in the immigration instructions S4.35 (Afghan Emergency Resettlement Category). It is granted to non-Citizens and non-resident Afghan evacuees who have arrived in New Zealand from 24 September 2021 as part of the New Zealand Government response to support Afghanistan following the Taliban's takeover of Kabul.

² This information is based on data from the Ministry of Business, Innovation and Employment. The 1,400 people expected to be granted the Afghan Emergency Resettlement Visa excludes Afghan evacuees who already hold New Zealand Citizenship or Residency.

³ This is based on 60 percent of the 1,400 people being granted the Afghan Emergency Resettlement Visa being adults and using the standard tertiary education participation rate of 10 percent seen in the general population.

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- 6 The changes to eligibility settings for student loans, allowances and Fees Free payments will apply to study starting on or after 1 January 2022. This captures any new students enrolled for study in 2022. However, the Ministry of Social Development (MSD) requires amendments be made to the Student Allowances Regulations 1998 by 5 December 2021. This is to ensure StudyLink⁴ can receive and process potential applications for student allowances ahead of the 1 January 2022 implementation date. If required some people may seek or continue to receive income support through MSD, provided they meet the eligibility criteria.
- 7 The changes to eligibility settings affecting student loans and Fees Free payments do not require legislative amendment as these are located in the Cabinet minute and Fees Free Delegation respectively. An amendment to the Student Allowances Regulations 1998 is required to give effect to the changes to eligibility settings applying to student allowances.

Timing and 28-day rule

- 8 The 28-day rule ensures that the law is publicly available and capable of being ascertained before it comes into force.
- 9 In this case, it will be necessary for the Student Allowances Amendment Regulations (No 2) 2021 to commence on 5 December 2021 so that StudyLink can receive and process applications for student allowances for study starting on or after 1 January 2022.
- 10 Therefore, I seek a waiver to the 28-day rule on the grounds that this change only confers a benefit on the public.

Compliance

- 11 The Student Allowances Amendment Regulations (No 2) 2021 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 1993;
 - relevant international standards and obligations; and
 - *Legislation Guidelines: 2021 Edition*, published by the Legislation Advisory Committee.

Human Rights

- 12 These changes will improve the position of certain groups relative to their status quo under the student support system. Members of this group being advantaged will be Afghan evacuees from Afghanistan who are eligible for the Afghan Emergency Resettlement Visa. MSD considers that the proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

⁴ StudyLink is part of MSD and is responsible for processing and administering Student Allowance payments.

Regulations Review Committee

- 13 There are no grounds for the Regulations Review Committee to draw the Student Allowances Amendment Regulations (No 2) 2021 to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 14 The Student Allowances Amendment Regulations (No 2) 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 15 The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the grounds that they will have no or only minor impacts on businesses, individuals or not-for-profit entities.

Publicity

- 16 As part of the legislative requirements, the Student Allowances Amendment Regulations (No 2) 2021 will be notified in the New Zealand Gazette at the earliest available opportunity.
- 17 MSD officials will work to develop a communications strategy for communicating the changes to those newly eligible for student support.

Proactive release

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

Consultation

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

Recommendations

It is recommended that the Committee:

- 1 **note** that on 8 November 2021 Cabinet agreed to:
 - 1.1 remove the requirement to have held a residence class visa and have lived in New Zealand for at least three years and the requirement to be ordinarily resident in New Zealand for student loans and student allowances and Fees Free Tertiary Education and Training for study starting on or after 1 January 2022 for those with an Afghan Emergency Resettlement Residency Visa [CBC-21-MIN-0122 refers];
- 2 **note** that a waiver of the 28-day rule is sought:
 - 2.1 so that the Student Allowances Amendment Regulations (No 2) 2021 can come into force by 5 December 2021 to allow StudyLink to receive and process applications for student allowances for study starting on or after 1 January 2022, and

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- 2.2 on the grounds that the changes only confer benefits on the public;
- 3 **agree** to waive the 28-day rule so that the Student Allowances Amendment Regulations (No 2) 2021 can come into force on 5 December 2021;
- 4 **note** that the Student Allowances Amendment Regulations (No 2) 2021 will give effect to the decision referred to in recommendation 1.1 above;
- 5 **authorise** the submission to the Executive Council of the Student Allowances Amendment Regulations (No 2) 2021;
- 6 **note** that the Student Allowances Amendment Regulations (No 2) 2021 will come into force on 5 December 2021 and that the changes will apply to study starting on or after 1 January 2022

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development and Employment