

IN CONFIDENCE

Office of the Minister for Children
Chair, Cabinet Legislation Committee

STUDENT ALLOWANCES (STATE-SUPPORTED CARE EXEMPTIONS) AMENDMENT REGULATIONS 2019

Proposal

- 1 This paper seeks approval for the *Student Allowances (State-supported Care Exemptions) Amendment Regulations 2019* to be submitted to the Executive Council for approval.

Policy

- 2 Two minor and technical amendments are needed to ensure consistent definitions of 'income' and 'parent' in the student support, care and welfare systems. This will ensure young people who have been in a state-funded care arrangement or a youth justice placement, and who want to undertake further study, can access Student Allowance entitlements.¹
- 3 On 4 November 2019 Cabinet agreed to amend the Student Allowances Regulations 1998 for the two changes below and authorised me to issue drafting instructions to the Parliamentary Counsel Office [SWC-19-MIN-0149; CAB-19-MIN-0559 refer].
- 4 The changes maintain the overall Government objectives of reducing barriers to participation in tertiary study, supporting child and youth wellbeing, and ensuring consistency across the wider social assistance system.²

Amending the definition of income in the Student Allowances Regulations 1998 so that young people's entitlements are not affected by transition support payments

- 5 One of the key changes to the Oranga Tamariki Act 1989, which came into effect on 1 July 2019, is a better supported transition to adulthood for many young people transitioning out from care and youth justice residential placements. This support includes duties to provide assistance to these young people.³
- 6 The assistance includes a range of financial payments to help young people achieve independence. These payments are non-taxable and are exempt from being considered income for the purpose of calculating welfare assistance. However, there is no similar income exemption for the purpose of eligibility and entitlement to student allowances.

¹ The first amendment affects eligible young people aged 15-24 years who have been in the care, custody or additional guardianship of the Chief Executive of Oranga Tamariki or have been transferred for detention in the adult justice system. The second amendment affects all young people who have lived with a caregiver who was supported through the Foster Care Allowance (administered by Oranga Tamariki—Ministry for Children) or the Orphan's Benefit or Unsupported Child's Benefit (both administered by the Ministry of Social Development).

² That is, across the care and protection, welfare and education systems.

³ Sections 386A and 386B of the Oranga Tamariki Act 1989 refer.

- 7 There is a long-standing convention to align the settings in the student support and welfare systems and ensure consistency across the wider system of social support.
- 8 The regulations create an exemption, so that transition support payments are not considered to be 'income'. This will ensure that young people leaving care and youth justice do not have their entitlements to Student Allowance affected by payments intended to improve their transition to independence.

Amending the definition of parent in the Student Allowances Regulations 1998 so young people's entitlements are not affected by a caregiver's income

- 9 Students under the age of 24 (without children) are subject to a parental income test as part of their Student Allowance application. The definition of 'parent' is broad, and discretionary, encompassing "any person acting in place of a parent". Current operational policy considers a person is acting as a parent if they are responsible for the student's wellbeing and financial support.
- 10 Young people who were in state-funded care can face a parental income test based on the income of a previous or current caregiver, if the caregiver is considered to be acting as a 'parent' by providing emotional and financial support to a young person.⁴
- 11 Consequently, some of these young people have their Student Allowance entitlements income-tested against a caregiver's income. The net effect is that some young people receive a lower or nil rate of Student Allowance and self-fund their education through a Student Loan. The situation increases financial stress for care-experienced young people who want to continue to study.⁵
- 12 In the care and welfare systems, caregivers are not financially responsible for a child or young person in their care. Therefore, it is inconsistent to apply a parental income test to current or former caregivers.
- 13 The regulations create an exemption for state-funded or transition caregivers so they are not considered a 'parent'. This will ensure that young people's entitlements to Student Allowance are not affected if they maintain a relationship with a current or previous caregiver.

Timing and 28-day rule

- 14 Some care-experienced young people are already studying or making decisions about studying in the 2020 academic year. To ensure these young people can benefit from these changes, they need to be in effect as soon as possible. Without the changes, there is a risk young people will face unnecessary financial hardship because:

⁴ This can affect young people who: have lived with a caregiver supported through the Foster Care Allowance administered by Oranga Tamariki; have been in care and are or have been living with a caregiver organised by the new Oranga Tamariki transition support provisions (another of the key changes introduced on 1 July 2019); or who were living with a caregiver supported by the Orphan's Benefit or Unsupported Child's Benefit administered by the Ministry of Social Development.

⁵ Recent decisions of the Student Allowance Appeal Authority found the provision of financial, not emotional, support is the key factor in determining if a caregiver is acting in the place of a parent (refer decision No. [2019] NZSAAA 1). Operational policy guidance are being developed to address the Authority's recent decisions. This will increase entitlements for some of the affected group, but some will still miss out.

- 14.1. transition support payments may impact on their level of entitlement
 - 14.2. relationships with caregivers may impact on their eligibility and entitlements.
- 15 It is proposed that, following Cabinet and Executive Council approval, the regulations be notified in the *New Zealand Gazette* on 12 December 2019 and come into force on 13 December 2019. This will require an exemption to the 28-day rule.
- 16 I consider this exemption is appropriate under the Cabinet manual as the changes only confer benefits to the public, and will ensure that care-experienced young people can make informed decisions studying in the 2020 academic year.

Compliance

- 17 The regulations comply with:
- 17.1. the principles of the Treaty of Waitangi
 - 17.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 17.3. the principles and guidelines set out in the Privacy Act 1993
 - 17.4. relevant international standards and obligations
 - 17.5. *the LAC Guidelines on the Process and Content of Legislation* (2014 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 18 There are no anticipated grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 19 The *Student Allowances (State-supported Care Exemptions) Amendment Regulations 2019* have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 20 The Treasury Regulatory Quality Team determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the basis of no or minor impacts on businesses, individuals or not-for-profit entities.

Publicity

- 21 As part of the legislative requirements, the regulations will be notified in the *New Zealand Gazette*.
- 22 Public announcements about the regulations will be coordinated by my Office.

Proactive release

- 23 To align with our commitment to the proactive release of Cabinet papers, I intend to release this paper after the regulations are notified in the *New Zealand Gazette*.

Consultation

- 24 This paper was prepared by Oranga Tamariki—Ministry for Children. The following agencies have been consulted: Ministry of Education, Ministry of Justice, Ministry for Pacific Peoples, Ministry of Social Development, Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet was also informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 4 November 2019 Cabinet agreed to amend the Student Allowances Regulations 1998 to:
 - 1.1. exempt payments from the transition support system from being considered income for eligibility and entitlement to student allowances
 - 1.2. exempt current and former state-funded caregivers from the definition of ‘parent’ so that their income does not affect a young person’s entitlement to Student Allowance [SWC-19-MIN-0149; CAB-19-MIN-0559];
- 2 **note** that the *Student Allowances (State-supported Care Exemptions) Amendment Regulations 2019* will give effect to the decisions in recommendation 1.1 and 1.2;
- 3 **authorise** the submission to the Executive Council of the *Student Allowances (State-supported Care Exemptions) Amendment Regulations 2019*;
- 4 **agree** to waive the 28-day rule so that:
 - 4.1. the regulations can come into force on 13 December 2019;
 - 4.2. affected young people can fully benefit from the regulations in time for the 2020 study year.

Authorised for lodgement

Hon Tracey Martin

Minister for Children