

Education (Export Education Levy) Amendment Bill

Government Bill

Explanatory note

General policy statement

Overview

Introduction

The general purpose of this Bill is to further support New Zealand's export education industry and to ensure that New Zealand continues to be viewed by overseas governments as a desirable education destination for their international students, offering excellent education in quality establishments operating with business integrity.

Export education has become a key industry for New Zealand. It is a sustainable "green" export, which fits well with New Zealand's vision of developing a knowledge-based economy. International students provide a range of both tangible and intangible benefits to New Zealand, promoting cross-cultural awareness and international linkages as well as the immediately evident economic benefits. In order to maintain this industry, students and their home governments need to be assured that they will receive quality education in exchange for their investment.

The export education levy, introduced by the Education (Tertiary Reform) Amendment Act 2002 was conceived with a view to supporting a range of industry-wide development and risk management activities and to ensure the ongoing quality and sustained growth of the industry. The increased demand from international students for a New Zealand education has led many providers to expand their operations and many new ones to open their doors. Some have grown too fast too quickly and the recent closure of some private

establishments has exposed the export education industry and New Zealand to the risk of negative publicity.

While the Code of Practice for the Pastoral Care of International Students (administered by the Ministry of Education) and the New Zealand Qualifications Authority require that student fee protection mechanisms are in place, greater flexibility for use of export education levy funds is needed to ensure the industry, and New Zealand's reputation as a destination for quality tuition for international students, can be fully protected.

Specifically, the Bill will achieve this general purpose through the following measures:

- by increasing, for 2004, the percentage component of the levy on private training establishments from the current rate of 0.45% to 0.7%. This increase will apply despite the promulgation of the Education (Export Education Levy) Regulations 2003 (SR 2003/345) indicating no levy increase for private training establishments;
- by enabling the Government to recover from the levy fund administered by the Ministry of Education, any expenses incurred by the Government in assisting international students enrolled with providers which fail in their delivery of tuition to those students due primarily to business collapse;
- by enabling the government to recover, on the approval of the Minister, from the levy fund the amount it has expended in relation to international students in respect of the Modern Age Institute of Learning Limited (In Liquidation) and Carich Training Centre Limited (In Receivership).

The Bill also incorporates some technical provisions to validate a minor irregularity in the Education (Export Education Levy) Regulations 2002 (SR 2003/1), and removes a superfluous provision.

Background

Increase in levy for 2004

In September 2003 the Ministry of Education, under section 238H(3) of the Education Act 1989, consulted the relevant representative bodies of providers of tuition to international students. Providers were advised of the Government's proposal that the flat-fee component of the levy (\$185) and the percentage component of the tuition fees (0.45%) would remain the same for all providers (except

private training establishments) and that for private training establishments, the flat fee would remain unchanged but that the revenue percentage component of the rate would be increased to 0.7%. Providers were advised that the increase of the levy on private training establishments would ensure the continuing care and support of international students by recovering the costs incurred by the Government in reimbursing students and some creditors of students for monies prepaid to Modern Age which collapsed financially.

Recovery of Government monies for “bail-outs”

Immediate action is required, to protect the educational and financial interests of the students, if a provider of tuition to tertiary international students fails. Protocols are in place between government agencies such as the New Zealand Qualifications Authority and the Tertiary Education Commission to place students. When the failure is of a provider of tuition to international students the wider dimension of implications for overseas governments needs to be addressed quickly to avoid damaging our reputation as a destination for tuition of international students. In the case of the sudden collapse of Modern Age, it was imperative that the Government took immediate and responsible action to reimburse students and home-stay accommodation providers. The cost to Government is approximately \$700,000. Many students had paid for their entire tuition in advance as well as paying for their accommodation and living costs through that provider acting as an agent and a portion of these funds was lost due to that collapse. The Government believes that it is appropriate to have its expenditure repaid from the provider group to which Modern Age belonged, that is, all private training establishments which provide tuition to international students. For Carich, the cost to Government is approximately \$400,000 to reimburse international students who had prepaid their tuition where the provider collapsed before some students were able to start their course and in some cases before the student had even travelled to New Zealand.

Technical matters

There are some minor technical matters which are also addressed in this Bill. They are—

- validation of the Education (Export Education Levy) Regulations 2002, which omitted a clause indicating the use to which the levy would be put. This effectively is already provided in

section 238I of the Education Act 1989. The regulations to apply next year include a clause that refers to that section:

- validation of the purposes for which the levy funds, collected under the Education (Export Education Levy) Regulations 2002, were used. The purposes for which the levy funds may be used are specified in section 238I of the Education Act 1989:
- removal of the requirement in section 238H(2)(e) of the Education Act 1989 to include provision about use of the levy in the regulations because it is already provided for in the Act. There is also adequate accountability in respect of use of the levy through the annual report to Parliament.

Clause by clause analysis

Clause 1 is the Title clause. In the Bill, the Education Act 1989 is referred to as the principal Act.

Clause 2 provides that the Bill comes into force on the day after the date on which the Bill receives the Royal assent.

Part 1

Amendments to principal Act, and provisions relating to export education levy for private training establishments for 2004 academic year

Clause 3 amends section 238H of the principal Act, which relates to the export education levy. The requirement for regulations to prescribe matters relating to the collection and use of the levy in section 238H(2)(e) is omitted. The power to make regulations relating to collection of the levy is covered by other provisions of the regulation-making power in section 238H(2). Also, the purposes for which the funds of the levy may be used are set out in section 238I of the principal Act.

Clause 4 amends section 238I of the principal Act, which relates to the purpose and administration of the export education levy.

The amendments made by *subclauses (1) and (2)* set out new purposes for which the funds of the levy may be used. They apply where a private training establishment has not, cannot, or will not provide a course for which international students are enrolled. In that case the funds of the levy may be used to reimburse students and the agency

responsible for the administration of the levy (at present, the Ministry of Education) or any Crown entity for certain payments made or costs incurred. Examples of these may be tuition fees that are not refunded, accommodation fees where payment was made through the private training establishment but not paid to the accommodation provider, and costs incurred by the Ministry of Education or Crown entities such as the New Zealand Qualifications Authority and the Tertiary Education Commission in finding alternative placements with other course providers.

Subclause (3) provides that if the agency responsible for the administration of the levy has, before the Bill comes into force, made any payment that could have been made from the funds of the levy if *new subsections (1A) to (1C)* of section 238I had been in force at the time they were made, the funds of the levy may, with the approval of the Minister, be used to reimburse that agency.

Clause 5 deals with the amount of the export education levy payable for the 2004 academic year. The effect of this clause is that the levy for 2004 for providers that are private training establishments will (in addition to a flat fee of \$185) be 0.7% of tuition fees received from international students for that year. This amount is higher than the amount prescribed in the Education (Export Education Levy) Regulations 2003 (SR 2003/345).

Part 2

Validation

Clause 6 validates the imposition, collection, and use of the export education levy in respect of the 2003 academic year.

Clause 7 provides that any funds of the levy that are unspent on the day that the Bill comes into force may be used in accordance with the purposes in section 238H of the principal Act, as amended by the Bill.

Hon Trevor Mallard

Education (Export Education Levy) Amendment Bill

Government Bill

Contents

1	Title	5	Levy payable by private training establishments for 2004 academic year
2	Commencement		
	Part 1		Part 2
	Amendments to principal Act, and provisions relating to export education levy for private training establishments for 2004 academic year		Validation
3	Export education levy	6	Validation of imposition, collection, and use of export education levy
4	Purpose and administration of export education levy	7	Use of export education levy

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Education (Export Education Levy) Amendment Act **2003**.
- (2) In this Act, the Education Act 1989¹ is called “the principal Act”.

¹ 1989 No 80

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act, and provisions relating to export education levy for private training establishments for 2004 academic year 10

3 Export education levy

Section 238H(2) of the principal Act is amended by repealing paragraph (e).

4 Purpose and administration of export education levy

(1) Section 238I(1) of the principal Act is amended by inserting, 5
after paragraph (a), the following paragraph:

“(ab) the making of payments as set out in **subsections (1A) and (1B).**”

(2) Section 238I is amended by inserting, after subsection (1), the 10
following subsections:

“(1A) **Subsection (1B)** applies if—

“(a) an international student is or was enrolled with a provider that is a private training establishment for a course of study or training; and

“(b) the private training establishment has not, cannot, or 15
will not provide, in whole or in part, the course of study or training.

“(1B) If this subsection applies, the funds of the levy may be used for any of the following:

“(a) to make payment to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment in respect of the student’s course of study or training if, and to the extent that,— 20

“(i) the private training establishment has not refunded payment; and

“(ii) the agency responsible for the administration of the levy approves the reimbursement as necessary and appropriate in the circumstances: 25

“(b) with the approval of the Minister, to reimburse, in whole or in part, the agency responsible for the administration of the levy, or any Crown entity, for—

“(i) costs incurred by that agency or Crown entity in placing the student with an alternative provider; 35
or

“(ii) other costs incurred by that agency or Crown entity as a direct result of the private training

establishment not providing the course of study
or training.

- “(1C) The Minister may determine priorities for the use of the funds of the levy taking into account all the purposes for which the funds of the levy may be used under this section.” 5
- (3) If, before **subsections (1A) to (1C)** came into force, the agency responsible for the administration of the levy has made any payment that could have been made, or for which it could have been reimbursed, from the funds of the levy had **subsections (1A) to (1C)** been in force at the time the payment was made, the funds of the levy may, with the approval of the Minister, be used to reimburse the agency for that payment. 10

5 Levy payable by private training establishments for 2004 academic year

- (1) The Education (Export Education Levy) Regulations 2003 (SR 2003/345) must be read as if, from the date that those regulations came into force, regulation 6(1)(b) of the regulations provided as follows: 15
- “(b) the following percentage (the **percentage component**) of the tuition fees (exclusive of goods and services tax) received by the provider from international students in respect of the 2004 academic year: 20
- “(i) if the provider is not a private training establishment, 0.45%:
- “(ii) if the provider is a private training establishment, 0.7%.” 25
- (2) The additional percentage component of the levy payable by private training establishments over 0.45% by virtue of **subsection (1)** must be paid— 30
- (a) in accordance with the payment dates for the percentage component of the levy as prescribed in the Education (Export Education Levy) Regulations 2003; or
- (b) if, when this Act comes into force, 1 or more of the payment dates for the percentage component have passed, on 1 or more dates appointed by the Minister by notice in the *Gazette*. 35

Part 2 Validation

- 6 Validation of imposition, collection, and use of export education levy**
- (1) The Education (Export Education Levy) Regulations 2002 (SR 2003/1) are, and always have been, valid. 5
- (2) The collection of the levy under the Education (Export Education Levy) Regulations 2002 and the use of the funds of the levy are, and always have been, lawful.
- 7 Use of export education levy** 10
- Any funds of the levy that are unspent on the day that this Act comes into force may be used in accordance with the purposes specified in section 238I of the Education Act 1989 (as amended by this Act).