

Summary of Underpinning Analysis: 2027 Funding Determinations

Agency responsible	Ministry of Education
Portfolio	Tertiary Education
Date finalised	27 August 2026

Good law-making: 9(i)

The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The opportunity to consult was provided to all tertiary education providers that receive funding through these mechanisms, and any other interested groups. Consultation was conducted as required by section 423(3) of the Education and Training Act 2020.

Good law-making: 9(j)

The importance of carefully evaluating—

- the issue concerned; and
- the effectiveness of any relevant existing legislation and common law; and
- whether the public interest requires that the issue be addressed; and
- any options (including non-legislative options) that are reasonably available for addressing the issue; and
- who is likely to benefit, and who is likely to suffer a detriment, from the legislation

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The changes to the funding determinations are made in response to operational issues raised by the Tertiary Education Commission and the tertiary education sector. The funding determinations continue to serve the public interest. The amendments reflect a good law-making process.

Good law-making: 9(k)

The importance of the responsible agency identifying and developing effective arrangements for implementing the legislation

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations should be assessed as consistent with this principle. Amendments have been made in full cooperation with the Tertiary Education Commission, and they have been given adequate time to implement the amendments.

Good law-making: 9(l)

Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations allocate grant funding and this is not an activity where an outcome can be measured for a cost benefit analysis.

Good law-making: 9(m)

Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The Amendments update the funding mechanisms made under the Education and Training Act 2020 for the allocation of funding, and as such have already been determined to be the most effective, efficient, and proportional response to the issue of funding tertiary education.

Rule of Law: 9(a)(i)

The law should be clear and accessible

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The funding determinations are designed in consultation with the Tertiary Education Commission. While the funding determinations can be technical and specific, this allows the Tertiary Education Commission to implement them accurately. The funding determinations are readable for sector stakeholders and will be supplemented with guidance for the TEC in implementation.

Rule of Law: 9(a)(ii)

The law should not adversely affect rights and liberties, or impose obligations, retrospectively

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. None of the amendments to the funding determinations operate retrospectively. The amended funding determinations take effect from 1 January 2027.

Rule of Law: 9(a)(iii)

Every person is equal before the law

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The funding determinations bind the Tertiary Education Commission and no other external public or private organisation. Every person is equal, but the determinations impose eligibility criteria for funding to achieve the purpose of each determination.

Rule of Law: 9(a)(iv)

There should be an independent impartial judiciary

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

The funding determinations do not interfere with available forms of redress through the courts.

Rule of Law: 9(a)(v)

Issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. Under section 422 of the Education and Training Act 2020, the funding determinations are implemented by the Tertiary Education Commission allowing them to fund or not fund tertiary education providers based on eligibility criteria rather than administrative discretion.

Liberties: 9(b)

Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not constrain or limit the liberty, freedom, or rights of any person.

Taking of property: 9(c)

Legislation should not take or severely impair, or authorise the taking or severe impairment of, property without the consent of the owner unless-

- there is a good justification for the taking or severe impairment; and
- fair compensation for the taking or severe impairment is provided to the owner; and
- the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or severe impairment

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not affect property rights.

Taxes, fees and levies: 9(d)

The importance of maintaining consistency with section 22(a) of the Constitution Act 1996 (Parliamentary control of taxation)

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not impose or amend taxes.

Taxes, fees and levies: 9(e)

Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates

Inconsistency identified? NO

Summary of agency analysis

Amendments to the funding determinations for 2027 should be assessed as consistent with this principle. The funding determinations provide funding for tertiary education, thereby allowing tertiary education organisations to charge lower fees than would otherwise be possible.

Taxes, fees and levies: 9(f)

Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both—

- the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function; and
- the costs of efficiently achieving the objective or providing the function

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not impose levies.

Role of courts: 9(g)

Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not have any impact on the constitutional role of the courts.

Role of courts: 9(h)

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

Inconsistency identified? NOT APPLICABLE

Summary of agency analysis

Amendments to the funding determinations do not make rights, liberties, or obligations dependent on administrative power.