

**Cabinet Paper material
Proactive release**

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Tertiary and International Learner Wellbeing and Safety: Code of Practice, Dispute Resolution Scheme Rules and Legislative Changes
Date considered	2 August 2021
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These documents have been proactively released:

Cabinet paper: Tertiary and International Learner Wellbeing and Safety: Code of Practice, Dispute Resolution Scheme Rules and Legislative Changes

Date considered: 2 August 2021

Author: Minister of Education

Cabinet Minute: CAB-21-MIN-0286

Date considered: 2 August 2021

Author: Cabinet office

Cabinet Minute: CBC-21-MIN-0065

Date considered: 12 July 2021

Author: Cabinet office

Appendix A: Summary of consultation feedback

Publicly available here: <https://conversation.education.govt.nz/conversations/wellbeing-and-safety/>

Appendix B: Draft - The proposed Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021

Publicly available here: <https://www.education.govt.nz/further-education/information-for-tertiary-students/code-of-practice-pastoral-care-domestic-tertiary/pastoral-care-for-domestic-tertiary-students-q-and-a/>

Appendix D: Technical detail on the proposed legislative amendments

Appendix E: The Government response to Education and Workforce Committee inquiry into student accommodation

Publicly available here: https://www.parliament.nz/resource/en-NZ/PAP_113467/e6e8b4229e82646c28d904b6e59f2208cb0b0975

Appendix F: Regulatory Impact Statement for the code

Appendix G: Regulatory Impact Statement for the dispute resolution scheme

Associated documents: 1255733 Education Report: Key themes and next steps from public consultation on tertiary education learner wellbeing and safety revised

9 June 2021

Ministry of Education

1262040 Education Report: Talking points for special debate on the inquiry into student accommodation

17 June 2021

Ministry of Education

1264424 Education report: Revised Cabinet paper – Policy approvals for the code of practice, dispute resolution scheme rules and legislative changes

1 July 2021

Ministry of Education

1264495 Briefing Note: Cabinet paper talking points – Policy approvals of a package of provisions for learner wellbeing and safety (CBC 12 July 2021)

9 July 2021

Ministry of Education

1255734 Education Report: Draft Cabinet paper – Policy approvals for the code of practice, dispute resolution scheme and legislative changes

18 June 2021

Ministry of Education

1263313 Education Report: Revised draft Cabinet paper – Policy approvals for the code of practice, dispute resolution scheme rules and legislative changes

25 June 2021

Ministry of Education

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(a) to protect the privacy of natural persons

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

Section 9(2)(h) to maintain legal professional privilege

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

In confidence

Office of the Minister of Education

Cabinet Business Committee

Policy approvals for tertiary and international learner wellbeing and safety: code of practice, dispute resolution scheme rules and legislative changes

Proposal


- 1 I seek your agreement for policy decisions on a package of provisions for learner wellbeing and safety, following public consultation. This includes:
 - 1.1 a new code of practice for the pastoral care of domestic tertiary and international learners, which must take effect by 1 January 2022;
 - 1.2 a new dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers, also to start by 1 January; and
 - 1.3 legislative proposals to support and reinforce the focus on learner wellbeing and safety, to be progressed in the Education and Training Amendment Bill (No 2).
- 2 I seek approval to issue drafting instructions for the scheme rules and the legislative proposals.
- 3 I also seek approval of the attached Government response to the Education and Workforce Committee Inquiry into student accommodation, due to be tabled in Parliament by 6 August 2021.

Relation to government priorities

- 4 This work supports the Government's overall focus on wellbeing and creating a fairer New Zealand. It was not specifically mentioned in the Speech from the Throne or manifesto. It links to strengthening social cohesion, supporting diversity, and creating a New Zealand where all people feel safe, have equal access to opportunities and do not experience discrimination.

Executive Summary

- 5 I seek Cabinet agreement to policy decisions on a package of provisions for learner wellbeing and safety, following public consultation. This is to meet my obligations under the Education and Training Act 2020 (the Act) to have a new code of practice for pastoral care of domestic tertiary learners, and a dispute resolution scheme, in place by 1 January 2022. The package includes:

- 5.1 a new code of practice of pastoral care which sets out shared requirements for domestic and international tertiary learners, and retains specific protections for international students, replacing the existing interim¹ and international codes;²
 - 5.2 proposals for rules for the dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and their providers;
 - 5.3 legislative changes to support and reinforce the focus on wellbeing and safety, and ensure settings for the code, code administrator and dispute resolution scheme are fit-for-purpose; and
 - 5.4 the Government response to the Education and Workforce Committee Inquiry into student accommodation, due to be tabled in Parliament by 6 August 2021.
- 6 The overall purpose of this work is to develop a system of supports for the wellbeing and safety of domestic tertiary and international learners, through one set of clear rules and expectations that providers can tailor to their learners' needs.
 - 7 I expect the proposed code and scheme rules to be in place for the next two to three years. This will allow for law changes to be confirmed and for learners and providers to have worked with these instruments and to refine them to ensure they remain fit for purpose and continue to evolve.
 - 8 I intend to release a summary of feedback from public consultation, table the Government response to the inquiry and issue the new code following Cabinet decisions. This will include a high-level overview of the package of decisions. I intend to appoint the New Zealand Qualifications Authority (NZQA) as code administrator shortly after issuing the new code, to develop guidance on how the code can work and support providers and learners to give effect to it.
 - 9 The scheme rules and legislative changes will be subject to legislative drafting. I intend to report back to Cabinet in October 2021 seeking legislative approval for the rules. I will appoint a scheme operator later this year following a selection process.
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Background

Ensuring learner wellbeing and safety is essential for learners to be able to achieve their aspirations in education and beyond

- 10 Our Government has been developing a system of supports for the wellbeing and safety of domestic tertiary and international learners, through one set of clear rules and expectations that providers can tailor to their learners' needs.
- 11 This is central to a genuinely learner-centred education system, and to high-value international education, as signalled in the new Tertiary Education Strategy and

¹ Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

² Education (Pastoral Care of International Students) Code of Practice 2016

National Education Learning Priorities, the International Education Strategy 2018-2030, and the Strategic Recovery Plan for International Education (the recovery plan).

- 12 The interim code was developed quickly to urgently address growing concerns about the wellbeing of domestic tertiary learners. This was a temporary response, allowing time to develop a new, more robust code that would be subject to a full engagement process with the sector. Due to the impacts of COVID-19, the duration of the interim code was extended to expire on 1 January 2022 [CAB-20-MIN-0253].
- 13 More broadly, the proposals in this paper will raise the prominence of wellbeing and safety as a precondition to success in education, address concerns around mental health, and support more equitable outcomes for diverse learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant and former refugee learners.
- 14 This work also plays a role in Government's commitment to respond to concerns about racism and discrimination and to strengthen social cohesion in New Zealand. Every learner has the right to a safe, healthy, and supportive learning environment, where they are accepted and respected, and an education that values their identity, language, and culture, and those of their whānau and family.
- 15 The new code, dispute resolution scheme, and legislative changes will also integrate the expectations for the Crown's obligations under Te Tiriti o Waitangi. This means ensuring the system of supports honours Te Tiriti o Waitangi and works well for Māori, including through supporting the rights of Māori learners and their whānau as both tangata whenua (under article 2) and citizens (under article 3).
- 16 In May 2021, the Education and Workforce Select Committee reported on its enquiry into student accommodation, begun in June 2020. This was in response to growing concerns about the nature, ownership, regulation, and wellbeing and safety provisions of student accommodation in New Zealand. The report delivered on the inquiry's aim to inform the development of the new code.

Overview of proposals

- 17 We need to keep enhancing existing provisions to ensure we have an effective system in place for supporting learner wellbeing and safety that reflects our strategic direction for a learner-centred education system and provides for continuous improvement.
- 18 The table summarises key decisions for Cabinet, and next steps, for the proposals:

Proposal	Key recommendations	Next steps
New code of practice for pastoral care of domestic tertiary and international learners	<p>Approve the proposed code (appendix B)</p> <p>I propose to retain the structure and framework of the draft code I consulted on, which builds on the existing codes. Note key changes to the code following consultation:</p> <ol style="list-style-type: none"> 1. I have improved the clarity of obligations for providers, including by enabling more flexibility where appropriate 2. I have tightened the focus on who providers need to work with, emphasising learners as key stakeholders 3. I have removed clauses that overreach learner wellbeing and safety <p>Note my intention to re-appoint NZQA as code administrator</p>	<p>Minister of Education issues code in July 2021 and appoints code administrator</p> <p>Code is presented to the House of Representatives</p> <p>Code administrator develops guidelines and works with the sector to implement the new code</p> <p>New code takes effect from 1 January 2022</p>

IN CONFIDENCE

Proposal	Key recommendations	Next steps
Establish rules for the dispute resolution scheme for domestic tertiary learners	<p>Agree to the proposals for the operating and monitoring of the scheme (proposed rules attached in appendix C)</p> <p>I propose to retain the framework of the draft rules I consulted on. Note changes to the scheme following public consultation:</p> <ol style="list-style-type: none"> 1. I recommend the scheme rules reflect the learner's journey through the scheme 2. I have made other detailed changes to: <ol style="list-style-type: none"> a. re-balance the interaction of the scheme and its decisions with the rule of law; b. clarify the scheme operator's functions and duties; and c. ensure the rules' consistency with the Privacy Act 2020 <p>Invite me to issue drafting instructions for the rules</p>	<p>Targeted consultation on Parliamentary Counsel Office (PCO)-drafted rules, with interested groups</p> <p>Report-back to Cabinet for legislative approval after consultation expected in October 2021</p> <p>Governor General makes the rules by Order in Council</p> <p>Selection process to appoint a scheme operator, from August 2021</p> <p>Scheme takes effect from 1 January 2022</p>
Amendments to the Education and Training Act 2020 to further support learner wellbeing and safety	<p>Agree to the proposed amendments to the Act to be included in the Education and Training Amendment Bill (No 2) (technical detail included in appendix D)</p> <p>Agree to the range of proposed amendments relating to:</p> <ol style="list-style-type: none"> 1. <i>Code provisions</i>: I propose to strengthen the focus on wellbeing and safety, provide for a responsive code and modernise code provisions 2. <i>Code administrator provisions</i>: I propose to ensure the administrator has appropriate functions, powers, and duties, and to modernise code administrator provisions 3. <i>Dispute resolution scheme provisions</i>: I propose to broaden the scope of the scheme, improve and clarify provisions for the appointment of the scheme operator, set a timeframe for appeals and retain the current cap on any claim 4. <i>Administrative arrangements</i>: I propose several other changes, including to clarify information sharing and privacy provisions for the code administrator and scheme operator <p>Note the proposed amendments will:</p> <ol style="list-style-type: none"> 1. better support learner wellbeing and safety by clarifying the code focus and the functions, powers and duties of the code administrator; 2. strengthen the focus and operation of the dispute resolution scheme; and 3. improve transparency about decision-making <p>Invite me to issue drafting instructions for the proposed amendments</p>	<p>PCO to draft legislative amendments for inclusion in the Education and Training Amendment Bill (No 2)</p> <p>9(2)(f)(iv)</p>
Government response to the Education and Workforce Committee inquiry into student accommodation	<p>Agree to response (appendix E)</p> <p>Note that I propose we accept the Committee's seven recommendations but that the final code and scheme differ slightly from those endorsed by the Committee based on sector feedback</p>	<p>Response tabled in the House of Representatives by 6 August 2021</p>

Key findings from consultation

- 19 From 7 April to 21 May 2021, New Zealanders were consulted on drafts of the code, scheme rules and legislative change proposals [CAB-21-MIN-0095]. Officials received over 100 written submissions and survey responses from learners, whānau and associations, providers, sector peak bodies, community and health organisations and dispute resolution experts. Officials also conducted around 60 face-to-face and online engagements, with a particular focus on learners and communities representing groups that are underserved by the education system.
- 20 A detailed summary of consultation feedback is attached to this paper in **appendix A**. I propose to release this alongside the announcements of policy decisions.

Participants were broadly supportive of the package of proposals, however, views differed on how to strike the best balance

- 21 There is general support for the goals of learner wellbeing and safety in tertiary education settings to support achievement and broader community wellbeing. Feedback was also generally positive relating to:
 - 21.1 the proposed code, including combining the interim and international codes while retaining existing provisions for schools providing international education, and potential considerations for future iterations of the code;
 - 21.2 developing guidance that provides examples and insights into how the code can work in different provider contexts and for the full range of learners; and
 - 21.3 the proposal to create a new dispute resolution scheme for domestic tertiary learners to provide a similar process currently only available to international learners.
- 22 Views differed overall on how to strike the best balance of expectations across the proposals to support learner wellbeing and safety, with providers and learners respectively saying the balance is too far in the direction of the other.
- 23 Consultation also raised questions about how the package of proposals fits within a broader context, with funding requests to implement the code (from providers) and for services and advocacy support (from learners), and comments on the availability of community and learner mental health and disability supports. Several providers questioned the 1 January 2022 implementation deadline, given the code and scheme will likely be revised again after 2022 based on the legislative change proposals.

I have carefully considered sector feedback in the design of the final proposals

- 24 I have carefully considered sector feedback in the design of the final proposals set out in this paper, aiming to strike a principled and pragmatic balance. I have considered how the code and dispute resolution scheme fit within the wider systems of support for learner wellbeing and safety, as building blocks of a national framework for provider-level relationships with learners and continuous improvement of practice.
- 25 I recognise the concerns raised by providers around timeframes, ambiguity, and cost impacts of the proposals, as well as concerns raised by learners around the level of

support and the potential of increased costs of services. I intend to manage these impacts and concerns through clear communication that the changes are strengthening care provisions to better meet the needs of learners. I am not creating a new system; rather, these proposals are a next iteration building on and refining existing provisions and expectations based on what we have learned to date.

- 26 The system will continue to evolve as providers, learners and their communities engage with it. It is also important to note that the expectations in the code are flexible and enabling: providers can apply them in a way that is appropriate to their learning, communal and residential contexts, and to the specific needs of learners within these contexts. Supporting providers and learners in transitioning to this next iteration will be critical to its success.

A new code of practice covering domestic tertiary and international learners

Key recommendations	Next steps
<p>Approve the proposed code (appendix B)</p> <p>I propose to retain the structure and framework of the draft code I consulted on, which builds on the existing codes. Note key changes to the code following consultation:</p> <ol style="list-style-type: none"> 1. I have improved the clarity of obligations for providers, including by enabling more flexibility where appropriate. 2. I have tightened the focus on who providers need to work with, emphasising learners as key stakeholders. 3. I have removed clauses that overreach learner wellbeing and safety. <p>Note my intention to re-appoint NZQA as code administrator</p>	<p>Minister of Education issues code in July 2021 and appoints code administrator</p> <p>Code is presented to the House of Representatives</p> <p>Code administrator develops sector guidelines and works with the sector to implement the new code</p> <p>New code takes effect from 1 January 2022</p>

- 27 I propose to issue the new code following Cabinet decisions. I have attached the proposed code in **appendix B**. The code supports tertiary and international providers to embed learner wellbeing and safety across their organisation, recognising that people, systems, and processes are interconnected.
- 28 Through consultation, the overall message from providers was that the proposed code went too far to set new requirements and expectations on providers, in particular where these are seen to encroach on teaching and learning practices; whereas tertiary and international learners (and those who support them) argued that the proposals did not go far enough to support learner wellbeing and safety. There is support for the flexibility of an outcomes-based code, but with questions about how much should be set out in processes required to achieve the outcomes and how to strike the right level of certainty, continuous improvement, learner voice and transparency.
- 29 I have tested the proposed changes to the code with national student representatives and provider peak bodies.³ I have adjusted the proposed code to make it more workable in response to feedback received to date, and will table further revisions for the Committee's consideration if needed.

³ This included representatives of the New Zealand Union of Students' Associations, Te Mana Ākonga, Tairā Pasifika, the National Disabled Students' Association, the New Zealand International Students' Association; as well as Te Pūkenga, Universities New Zealand, Te Taihū o Ngā Wānanga, English New Zealand, Independent Tertiary Education New Zealand and Quality Tertiary Institutions.

I propose to retain the structure and framework of the draft code I consulted on

- 30 Issuing combined expectations for domestic tertiary and international learners in a single code will ensure consistent and clear expectations that meet the needs of diverse learners. The new code continues to spell out the expectations that apply now regarding the specific needs of international learners. It also restates existing requirements for schools with international students, given the impacts of COVID-19 and the early stage of work under the recovery plan. The schooling sector supported this.

I have improved the clarity of obligations for providers

- 31 I have improved the clarity of obligations in the code for providers by:
- 31.1 clarifying that the code applies in a way that is appropriate to the provider's particular learning, communal and residential context, and to the specific needs of learners within these contexts;
 - 31.2 reducing the number of outcomes, rewording or grouping processes under broader outcomes that are meaningful for learners, restructuring clauses, and removing lengthy examples that would be better placed in guidelines; and
 - 31.3 changing specific wording to help clarify the purpose and expectations of certain outcomes, including relating to obligations under Te Tiriti o Waitangi.
- 32 This addresses feedback from providers who tended to favour a simpler framework and sought clarification on which processes are specific requirements and which are focused on continuous improvement. These changes also allow suitable flexibility for providers to respond to the specific needs of their learners, addressing concerns about the code being perceived as a one-size-fits-all instrument.

I have tightened the focus on who providers need to work with, emphasising learners as key stakeholders

- 33 Before consultation, I signalled my intention for the code to require providers to increasingly involve diverse learners, whānau, iwi, communities, employers, and staff as they review the adequacy of their policies and processes in meeting the code outcomes.
- 34 Throughout the code, the emphasis has shifted to focus on providers working with diverse learners as key stakeholders, ahead of other stakeholders. I have also tightened the range of stakeholders that providers need to consult by defining other stakeholders as those who have a meaningful interest in the wellbeing and safety of learners at the provider.
- 35 This is in response to providers seeking clarification of the consultation expectations. This shift also addresses feedback from learners who wanted more emphasis ahead of other stakeholders and for this to be embedded and visible throughout the code. The code also uses more empowering language when referring to learners to convey that they play an active role in their education, wellbeing, and safety.

I have removed clauses that were seen to overreach learner wellbeing and safety

- 36 Universities and private training establishments were particularly concerned about certain processes around academic pedagogy, with universities considering that this would interfere with their academic freedom.
- 37 To balance the removal of the overreaching clauses with the views of learners (who were supportive of their increased involvement in decision-making), the code requires providers to work with learners to develop, review and improve their wellbeing and safety practices.

Impact and implementation of the new code

- 38 I expect the main impact for learners and providers will be greater clarity of expectations on providers for their learners' wellbeing and safety from one combined code.
- 39 The expected key cost of the new code for providers is in assessing, over time, its implications (and the extent to which they are different from the existing provisions) and demonstrating compliance. I do not expect that this impact, and associated administrative costs, will be significant because the new code builds on existing provisions, meaning providers can build on the work they are doing now to comply with these. Learners will also need to become familiar with the concepts in the new code and complaints and disputes systems.
- 40 Providers that predominately enrol international students may have additional administrative costs to implement new requirements that were not included in the existing international code. Small private training establishments with a focus on provision to international learners were particularly concerned about these impacts given current challenges with revenue and staffing. While schools with international students may need to update documentation, retaining current settings will minimise the burden on them at a time of significant change in the education sector.
- 41 I intend to appoint NZQA as code administrator once the new code is issued. NZQA has been undertaking this role for the interim and international codes, with a delegated function to Universities New Zealand for specific monitoring of the interim code in the university sector. As code administrator for the interim code, NZQA has focused on capability building and promoting provider responsibility for the development and review of practices to achieve the code outcomes, rather than compliance. Appointing NZQA as administrator for the new code would provide continuity for the sector. I expect to enable NZQA to make decisions on delegating administration functions for the new code.
- 42 Once the new code is issued, the administrator will work with the sector to promote the code through information sessions and workshops, and co-develop high-level guidelines. The administrator will publish the guidelines and its 2022 plan for code administration, so that learners and providers are clear about expectations before the code comes into effect. The administrator will also partner with students' associations to commence work to ensure tertiary providers appropriately include learner voice in determining their approach to meeting the outcomes of the code.

- 43 By 1 January 2022, the administrator expects providers will have prepared to give effect to the code. They will be familiar with the new requirements, have identified areas for improvement, and have planned to begin making those improvements. Learners will be aware of the code and of the clear pathway for raising their concerns. The administrator will continue to work with each distinct sub-sector to monitor information and capability-building needs, and to co-develop increasingly tailored guidance, tools, and quality assurance activities.
- 44 From mid-2022, the administrator will formally monitor providers' performance. If there are issues, the administrator has a range of intervention tools to use and will take an appropriate approach. The overarching aim will be for providers to increasingly own their continuous improvement under the code, tailoring implementation to their unique contexts and learners.

A dispute resolution scheme for domestic tertiary learners

Key recommendations	Next steps
Agree to the proposals for the operating and monitoring of the scheme (proposed rules attached in appendix C)	Targeted consultation on PCO-drafted rules, with interested groups
I propose to retain the framework of the draft rules I consulted on. Note changes to the scheme following public consultation:	Report-back to Cabinet for legislative approval after consultation expected in October 2021
3. I recommend the scheme rules reflect the learner's journey through the scheme.	
4. I have made other detailed changes to:	Governor General makes the rules by Order in Council
a. re-balance the interaction of the scheme and its decisions with the rule of law;	
b. clarify the scheme operator's functions and duties; and	Selection process to appoint a scheme operator, from August 2021
c. ensure the rules' consistency with the Privacy Act 2020.	
Invite me to issue drafting instructions for the rules	Scheme takes effect from 1 January 2022

- 45 I seek approval to issue drafting instructions for PCO to draft the new rules based on the draft rules I consulted on, with some adjustments as set out below. I have attached the proposed rules (**appendix C**), which draw on the existing *International Student Contract Dispute Resolution Scheme Rules 2016*. These proposals reflect the feedback gathered during consultation and have been developed in consultation with other government agencies including the Government Centre for Dispute Resolution (GCDR), to ensure the scheme is in line with best practice standards.
- 46 The scheme complements the code and will be available for domestic tertiary learners to escalate otherwise unresolved financial and contractual issues. The scheme is expected to be in place and operating alongside the new code from 1 January 2022.
- 47 Like the code, submitters commented that the proposed scheme goes either too far or not far enough to enable learners to have disputes resolved through a bespoke, learner-centric scheme. Some submitters questioned the need for the scheme given existing complaints processes. Views also differed regarding the balance between flexibility and rigorous legal procedure involved in resolution processes, and the extent to which the scheme should be learner-centric to address power imbalances between learners and providers, or more balanced with a shared focus on both sides.

I propose to retain the framework of the draft rules I consulted on

- 48 I signalled in April that I intended for the scheme to be accessible and flexible with a tiered process that prioritises consensual forms of dispute resolution (including facilitation and mediation). This means the focus is on helping parties to work together to come to an agreed solution and preserving relationships, making it less intimidating, formal, and costly and more accessible for users than other processes.
- 49 Inclusivity is another key focus of the rules, which are designed to meet the diverse needs of all domestic tertiary learners and help address the power imbalance between learners and providers. This was widely supported during consultation.

I recommend the rules reflect the learner's journey through the scheme

- 50 It is my preference that the structure of the scheme rules reflects the learner's journey through the scheme. This means organising the rules according to how a learner would access the scheme and progress through the different steps to achieve resolution. This would provide greater clarity and make the scheme more navigable for users. I note, however, that it is a matter for PCO to determine the final form and content of the rules, consistent with drafting convention.

I have made several detailed changes to the proposed rules based on sector feedback

- 51 I propose an adjudication process may be undertaken with a practitioner making a binding decision, where a consensual approach does not resolve the dispute or may not be appropriate. The rules will need to be clear that, while adjudicators are not bound to give effect to the rule of law in making decisions, they must have regard to it. This balances the purpose of the scheme in providing accessible and effective dispute resolution (without being punitive) with maintaining fairness for all parties.
- 52 This also addresses provider concerns that the cap on payments awarded to learners is set too high given the less legalistic nature of the resolution process. Section 537 of the Act sets this cap at \$200,000, which I consider is appropriate. Most disputes are unlikely to involve such a significant amount. However, financial and contractual disputes for learners in high fee courses (e.g. aviation, dentistry, medicine) could involve costs of this size. The cap is also in line with similar dispute resolution schemes, including the existing scheme for international learners.
- 53 I also propose that the scheme operator will be expected to develop and evaluate their service under the rules with Māori to ensure it is consistent with Te Tiriti o Waitangi and has proper regard to tikanga. The operator must also generate a range of Māori specific data and insights, that are meaningful and appropriate for use by Māori. This builds on the measures included in the consultation draft to ensure the scheme enables Māori to determine how they want the process to work for them and is consistent with the Crown's obligations to Te Tiriti o Waitangi.⁴
- 54 Some submitters raised issues of privacy and data sovereignty, questioning how the proposals interact with the Privacy Act 2020. I propose the rules are clear that

⁴ This includes enabling users to undertake all parts of the process in te reo Māori and expecting the scheme operator to appoint practitioners that can draw upon appropriate tikanga in resolving the disputes if requested by a claimant.

information must be collected, shared, and publicised in accordance with the Privacy Act 2020. Information gathering and sharing between the scheme operator and education quality assurance agencies is important to resolve disputes and ensure system monitoring and investigation where appropriate. Publishing information as part of case studies and in annual reports ensures system growth and awareness of best practice, and increases transparency, which was supported by learner groups.

- 55 However, this must be balanced against the need to keep personal information secure and confidential to maintain trust in the scheme. I expect that information released publicly is appropriately redacted and safeguarded, and parties must be informed regarding the grounds for withholding information.

Impact and implementation of the scheme

- 56 Some providers were concerned that the scheme may increase costs for them or attract vexatious claimants. While there may be administrative costs associated with a case going to the scheme, I am proposing measures through the new code to strengthen providers' internal complaints processes. This includes expectations for effective processes and the availability of information and support to resolve problems. This also addresses feedback from learners that existing dispute and complaints pathways can be difficult to navigate or do not deliver clear outcomes for individual learners. I expect that most complaints will be resolved locally, at the provider. However, where this is not the case, it is important that learners can escalate their disputes to an external, independent scheme.
- 57 I seek approval to undertake targeted consultation on the rules, once drafted by Parliamentary Counsel Office. I currently expect this to occur in August 2021. This will provide an opportunity for interested groups to check their understanding of the process against the rules before they are approved.
- 58 Under section 536(4) of the Act, the Minister of Education has the power to appoint an operator for the scheme. I intend to run a selection process from August 2021 to appoint a scheme operator. This timing is necessary to allow the operator a brief start-up before the scheme takes effect from 1 January 2022.
- 59 I intend to report back to Cabinet for legislative approval of the rules in October 2021. The Governor General will then make the rules by Order in Council. I currently expect to gazette the scheme rules and notice of the Ministerial appointment of the scheme operator in November 2021.

A package of legislative changes to support the focus on learner wellbeing and safety

Key recommendations	Next steps
<p>Agree to the proposed amendments to the Act to be included in the Education and Training Amendment Bill (No 2) (technical detail included in appendix D)</p> <p>Agree to the range of proposed amendments relating to:</p> <ol style="list-style-type: none"> <i>Code provisions:</i> I propose to strengthen the focus on wellbeing and safety, provide for a responsive code and modernise code provisions. <i>Code administrator provisions:</i> I propose to ensure the administrator has appropriate functions, powers, and duties, and to modernise code administrator provisions. 	<p>PCO to draft legislative amendments for inclusion in the Education and Training Amendment Bill (No 2)</p> <p>9(2)(f)(iv)</p>

Key recommendations	Next steps
<p>3. <i>Dispute resolution scheme provisions</i>: I propose to broaden the scope of the scheme, improve and clarify provisions for the appointment of the scheme operator, set a timeframe for appeals and retain the current cap on any claim.</p> <p>4. <i>Administrative arrangements</i>: I propose several other changes, including clarifying information sharing and privacy provisions for the code administrator and scheme operator.</p> <p>Note the proposed amendments will</p> <ol style="list-style-type: none"> 1. better support learner wellbeing and safety by clarifying the code focus and the functions, powers and duties of the code administrator; 2. strengthen the focus and operation of the dispute resolution scheme; and 3. improve transparency about decision-making. <p>Invite me to issue drafting instructions for the proposed amendments</p>	<p>9(2)(f)(iv)</p>

60 In April, I signalled that I considered legislative changes to be necessary to ensure we can deliver the learner wellbeing and safety outcomes sought, minimise provider compliance and administration costs, and ensure that the provisions are fit-for-purpose [CAB-21-MIN-0095]. I seek approval to include in the Education and Training Bill (No 2) changes relating to:

- 60.1 the provisions for a code of practice;
- 60.2 the provisions for a code administrator;
- 60.3 the provisions for the dispute resolution scheme; and
- 60.4 administrative detail to ensure the provisions for the code and scheme are fit-for-purpose.

61 There was relatively less feedback on the proposed legislative changes, some of which was expressed as comments on other proposals. For example, comments on the code indicate general support for enabling tailored codes for different provider types to be issued. Comments on the dispute resolution scheme indicate some support and some reservations about a wider scope and better navigations for learners between provider complaints processes and the scheme.

62 I have consulted separately on other legislative change proposals for inclusion in the Education and Training Amendment Bill (No 2) [CAB-21-MIN-0131]. 9(2)(f)(iv)

Law changes to support a focused, responsive, and modernised code – appendix D (page 1, paragraphs 2-15 refers)

63 I am proposing amendments to the provisions for a code of practice to:

- 63.1 strengthen the focus on wellbeing and safety;
- 63.2 provide for a responsive code by:
 - 63.2.1 requiring the Minister to consult with Māori before issuing a code;

- 63.2.2 providing for tailored codes or for the Minister to gazette exemptions to the code for particular groupings of providers;
 - 63.2.3 providing for the Minister to regularly set expectations about the code administrator's performance and priorities, and gather information from the code administrator; and
 - 63.3 allow the Minister to make minor and technical changes to the code.
- 64 Due to its emphasis on 'pastoral care', the current legislative framework does not support the increased focus on learner wellbeing and safety. Consultation feedback also raised concerns about 'pastoral care' signalling a paternalistic and reactive approach. Existing provisions for a code of practice also give mixed signals about the focus and purpose of a code by setting out separate purpose statements for codes covering domestic tertiary and international learners respectively. This raises concerns about providers being held to account for two similar but different codes, as many deal with both groups of learners.

Law changes to provide for a code administrator with clear functions, powers, and duties – appendix D (page 4, paragraphs 16-25 refers)

- 65 I am proposing amendments to the provisions for a code administrator to:
- 65.1 ensure the code administrator has appropriate functions, powers and duties to give effect to the code, in a manner that honours Te Tiriti o Waitangi and support Māori-Crown relationships;;
 - 65.2 require annual reporting of the code administrator;
 - 65.3 provide for the code administrator to issue notices to providers to do or refrain from doing something in relation to their obligations under the code; and
 - 65.4 modernise the legislation through moving saved provisions from the Education Act 1989 to the Act.
- 66 The current legislative framework could be strengthened to better empower the code administrator's functions, powers, and duties. The Crown will continue to lead the work on honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships. However, as the code administrator or its delegate uses regulatory powers set by the government, it is important that the Minister of Education can set out expectations for the honouring of Te Tiriti o Waitangi.

Law changes to enable an effective dispute resolution scheme – appendix D (page 7, paragraphs 26-36 refers)

- 67 I am proposing amendments to the provisions for a dispute resolution scheme to:
- 67.1 broaden the scope of the scheme so that it can consider breaches of the code alongside financial and contractual complaints;
 - 67.2 better provide for the appointment, reporting, and operation of a scheme operator;

- 67.3 set a time limit of 20 working days for appeals about scheme adjudications; and
- 67.4 clarify and broaden the type of bodies that can be appointed as scheme operator.
- 68 The current legislative framework could be clearer in enabling the dispute resolution scheme rules and could be strengthened with respect to the appointment, operation and risk intervention arrangements for the scheme operator. The change to broaden the scope will lift provider performance and strengthen the complementary nature of the code and the scheme as part of a wider system to support learner wellbeing and safety. Consultation feedback also raised concern about the timeliness of redress following an appeal, which the proposal set out in paragraph 67.3 above addresses.

Law changes to provide for administrative arrangements that are fit for purpose – appendix D (page 9, paragraphs 37-52 refers)

- 69 I am proposing amendments to the provisions for administrative arrangements to:
- 69.1 allow for the dispute resolution scheme operator, code administrator, and quality assessor to share information about complaints and complaint resolution;
- 69.2 clarify that the code administrator and the scheme operator are subject to the Ombudsman Act 1975 and Official Information Act 1982;
- 69.3 enable the Minister of Education to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners; and
- 69.4 enable providers to undertake fit and proper person checks on staff delivering learner accommodation.
- 70 The Act provides the scope and accountability for the code and the scheme and has a role in enabling the code and scheme rules, through ensuring they are properly provided for, so they are fit for purpose. As the code is administered and the scheme operated by organisations appointed by the Minister, the primary legislation must also ensure that appropriate accountability mechanisms exist for these organisations to the government. The amendments I am proposing in this context have the joint purpose of supporting the effective administration of these two instruments and ensuring they are fit for purpose.

Government response to the inquiry into student accommodation

Key recommendations	Next steps
Agree to response (appendix E)	Response tabled in the House of Representatives by 6 August 2021
Note that I propose we accept the Committee's seven recommendations but that the final code and scheme differ slightly from those endorsed by the Committee based on sector feedback	

I seek approval to table the Government's response to the Education and Workforce Committee's inquiry into student accommodation

- 71 On 13 May 2021, the Education and Workforce Committee reported back to Parliament on its inquiry into student accommodation. Parliament debated the inquiry findings on 24 June; the Government's response must be tabled by 6 August 2021.
- 72 The 148 submissions to the Committee provided significant insights into the operation of tertiary accommodation and learners' experience of it. The evidence the Committee received also contributed to the development of the proposed code.
- 73 The Committee concluded that four areas of the student accommodation system were most in need of improvement: transparency and accountability in governance; disputes resolution and complaints; wellbeing and safety in student accommodation; and emergency planning and response.
- 74 The Committee also looked at how the proposed code and proposed dispute resolution scheme might make improvements in these areas. It concluded that there is a need for systemic change to improve the standard and consistency of learner wellbeing and safety. The Committee supports the code and considers it will set a system-wide standard and improve all providers' practice.
- 75 The Committee made seven recommendations based on its findings, all of which concerned the proposed code and the dispute resolution scheme. In particular, the Committee recommended:
- 75.1 that the proposed outcomes 1-4, 9, and 11 I consulted on with the sector be incorporated into the new code with providers required to meet the standards those outcomes set out;
- 75.2 strengthening the connection between providers' internal complaints processes, the NZQA complaints process, and the proposed dispute resolution scheme; and
- 75.3 combining the dispute resolution scheme for domestic tertiary learners (after it is enacted), with the scheme for international students.
- 76 I propose that we accept the Committee's recommendations and have attached the proposed Government response (**appendix E**). With respect to combining the dispute resolution scheme for domestic tertiary and international learners, consultation feedback indicated support for separate schemes, citing difficulties to navigate the existing complaints system. I propose that the Government give consideration to this recommendation after the new scheme for domestic tertiary learners is in place.
- 77 The draft code and scheme that the Committee endorsed differ slightly from the final versions I am seeking agreement to today. The overall intent and outcomes of the code are largely the same, but details have changed in response to sector feedback during consultation (which finished after the Committee had reported back to Parliament).

- 78 The proposed final code, dispute resolution scheme and legislative changes will therefore give effect to the Committee's recommendations, but with additional consideration of their impact on providers and learners.

Timing and sequencing of proposed changes

The new code and dispute resolution scheme will come into force from 1 January 2022 with legislative changes taking effect later next year

- 79 I will issue the new code and appoint the code administrator following Cabinet decisions. This allows time for the code administrator to work with the sector in the second half of this year to develop guidance and support the sector in understanding the scope of, and becoming familiar with, the code. This is important for providers to feed into their planning and budgeting for the next year.
- 80 I intend to report back to Cabinet following Parliamentary Counsel Office drafting seeking legislation approval for the scheme rules in October 2021. 9(2)(f)(iv)
- 81 In the meantime, I intend to run a selection process to help inform the Ministerial appointment of a scheme operator. This needs to occur in parallel with the finalisation of the rules to ensure the operator can be in place and running the scheme from 1 January 2022.

Key deliverable	Expected timeframes		
	Quarter 3 2021	Quarter 4 2021	Future years
Issue and table the new code	July 2021		
Appoint code administrator			
Table the Government response to the inquiry into student accommodation	By 6 August 2021		
Deliver code workshops; co-develop guidelines; begin partnering with students' associations	July to September 2021		
Publish code guidelines and 2022 plan for code administration, and monitor capability building needs		October to December 2021	
Report-back to Cabinet for legislative approval of the scheme rules		October 2021	
Gazette the scheme rules and notice of the Ministerial appointment of the scheme operator		November 2021	
9(2)(f)(iv)			
New code and dispute resolution scheme rules due to take effect			1 January 2022
Code capability-building through co-development and delivery of tailored workshops and resources			January-June 2022
Code administrator being formal monitoring through a range of quality assurance activities			From July 2022
Further changes to the code and dispute resolution scheme in line with the revised legislative framework			From 2022/23

Financial Implications

- 82 There are no financial implications for this paper. I provided details on the contingency for funding the administration of the new code and associated dispute resolution scheme in April 2021 [CAB-21-MIN-0095].
- 83 The international code administration is currently funded by the Export Education Levy. The Levy has been suspended for enrolments in 2020 and 2021, and services covered by the COVID-19 Response and Recovery Fund [CAB-20-MIN-0253]. I am currently reviewing the Levy to ensure that it is fit-for-purpose and services, including code administration, are appropriately funded.

Legislative Implications

- 84 The proposals for legislative change will be progressed in the Education and Training Amendment Bill (No 2). 9(2)(f)(iv)
- 85 The Bill will bind the Crown.
- 86 The code and dispute resolution scheme rules are secondary legislation and therefore subject to the scrutiny of the Regulations Review Committee under the Legislation Act 2019.
- 87 The code will be binding on all tertiary and international providers.

Regulatory Impact Statement

- 88 The regulatory impact analysis requirements apply to the proposals in this paper relating to the new code, the scheme rules, and legislative changes. Regulatory Impact Statements have been completed for these proposals and are attached.
- 89 The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statements:
- 89.1 "Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021";
- 89.2 "Domestic tertiary learner dispute resolution scheme"; and
- 89.3 "Legislative changes to support learner wellbeing and safety".
- 90 The panel considers that each Statement **meets** the Quality Assurance criteria. Each reflects evidence of effective consultation with stakeholders and reflects their views on the proposed changes well. Convincing cases are made for a code where wellbeing requirements apply to all learners and are supplemented to meet specific needs and for the design of the dispute resolution scheme and its resolution methods. The Statement on proposed legislative changes makes an effective case that these changes will further enhance learner wellbeing and safety.

Climate Implications of Policy Assessment

- 91 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 92 The aim of this work is to support the wellbeing and safety of all learners, including disabled learners, whatever their ethnicity, culture, religion, age or gender identity.

Māori perspective

- 93 Providers and the dispute resolution scheme operator are expected to be able to give effect to Māori learners' Te Tiriti o Waitangi rights, in particular under articles 2 and 3. The proposals aim to address system inequalities to strengthen our system for Māori learners and whānau to support them to achieve their education aspirations. The new code requires providers to work with diverse learners to design strategic goals, plans and practices for learner wellbeing and safety, and safe opportunities for learners to use te reo and tikanga Māori. The scheme operator is expected to develop and evaluate their service under the rules with Māori. This includes being able to have proper regard to tikanga during the resolution process to meet the learner's needs and expectations (including wider family or whānau participation as appropriate). The legislative proposals will further embed and clarify the expectations for the code and scheme to honour Te Tiriti o Waitangi and support Maori-Crown relationships.

Pacific perspectives

- 94 The proposals aim to address system inequalities to also strengthen our system for Pacific learners, families, and communities to support them to achieve their education aspirations. The new code requires providers to work with diverse learners to design strategic goals, plans and practices for learner wellbeing and safety, and to understand and respond to diverse learner voices and wellbeing and safety needs. Although not specifically mentioned, this includes Pacific learners and their families. The scheme operator must appoint culturally competent practitioners, including Pacific practitioners. In assigning a practitioner, the operator must consider a learner's preference and needs regarding, for example, the gender or cultural background of the practitioner, to meet the learner and families' needs and expectations.

Disability perspective

- 95 Providers and the scheme operator are expected to support learners, including disabled learners, by removing access barriers to provider facilities and services and involving learners in the design of physical and digital environments. The new code also requires providers to have policies and processes in place which support learners to manage their physical and mental health, and to access appropriate support where required. This includes making arrangements with disabled learners, including for study off-campus. Providers will also be required to consult with diverse learner groups when developing, reviewing, and improving learner wellbeing and safety practices. The implementation of the new code will be supported by a refreshed Kia Ōrite – Code of Practice for Disabled Students which is available to the sector.

International students

- 96 The new code will require tertiary providers and schools enrolling international students to consider and respond to the particular wellbeing and safety needs of foreign nationals enrolled as onshore international students. International students are a particularly vulnerable cohort, due to distance from family and support networks, linguistic and cultural differences, financial and social pressures, and may be exposed to pressure from home governments. The new code retains current protections relating specifically to international tertiary and school students while setting general wellbeing and safety requirements at the same level as those for domestic learners.

Human Rights

- 97 The proposals discussed in this paper, including the proposed legislative changes, are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The proposals are also consistent with the New Zealand Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities and seek to fulfil a fully inclusive education system as outlined in the New Zealand Disability Strategy.
- 98 The new code upholds human rights by requiring providers to create and maintain inclusive learning environments that support the academic, personal, and social development of learners. Providers will also be required to have practices for recognising, reducing and responding effectively to discrimination, racism, bullying, harassment and abuse (including physical and sexual harassment and abuse).
- 99 The scheme upholds human rights by seeking to deal with disputes in a culturally responsive and accessible manner that meets the diverse needs of domestic tertiary learners, particularly those with vulnerabilities. I expect the scheme operator to be consistent with the principles of restorative and natural justice in resolving disputes.⁵

Consultation

- 100 The Ministry of Education drafted this Cabinet paper and the attached materials, in consultation with NZQA.
- 101 The following organisations were consulted on this Cabinet paper:

Education New Zealand	Ministry of Health
Ministry for Pacific Peoples	Ministry of Justice
Ministry of Housing and Urban Development	Tertiary Education Commission
Office of the Privacy Commissioner	Treasury
The Office for Māori Crown Relations – Te Arawhiti	Te Puni Kōkiri
Ministry of Foreign Affairs and Trade	Oranga Tamariki
Office for Disability Issues	
Department of Internal Affairs (Office of Ethnic Communities)	
Ministry of Business, Innovation & Employment (GCDR)	
Department of Prime Minister and Cabinet (Policy Advisory Group; National Security Group; Child Wellbeing Unit)	

⁵ Restorative justice means focusing on how to put things right and take responsibility. Natural justice means enabling everyone to have an opportunity to present their case, be balanced and fair and use logical evidence.

- 102 The following organisations were informed of this Cabinet paper: Office of the Ombudsman; Ministry of Youth Development; Ministry for Women; Human Rights Commission (Disability Rights Commissioner); Ministry of Business, Innovation & Employment (Immigration New Zealand).

Communications

- 103 Following Cabinet approval, I will release the Government response to the inquiry and issue the new code. Both will also be promulgated through tabling. At the same time, I intend to release a high-level overview of the package of decisions on the Ministry of Education's website, alongside a summary of consultation feedback.
- 104 I seek your agreement for me to confirm the final version of the code and the Government response before their release, subject to any minor changes being consistent with the policy decisions in this paper.
- 105 Information relating to the Bill will be posted on the Ministry of Education's website and included in Ministry publications once the Bill has been introduced. The same applies to the scheme rules once approved by Cabinet later this year. I expect to gazette the scheme rules and notice of the Ministerial appointment of the scheme operator in November 2021.

Proactive Release

- 106 I propose that this paper alongside all attachments are proactively released once the Education and Training Amendment Bill (No 2) has been introduced, with any redactions in line with the provisions of the Official Information Act 1982.

Recommendations

The Minister of Education recommends that the Committee:

- 1 **note** that in April 2021 Cabinet agreed for the Minister of Education to consult on a package of provisions for learner wellbeing and safety because ensuring their wellbeing and safety is essential for learners to be able to achieve their aspirations in education and beyond [CAB-21-MIN-0095];
- 2 **note** that the Minister of Education has completed consultation with the sector which fulfils the statutory consultation requirements under sections 534 and 539 of the Education and Training Act 2020 (the Act);
- 3 **note** the attached summary of consultation feedback, which will be released alongside decisions on the proposals in this paper;
- 4 **note** that submitters were generally positive about the overall goals of the learner wellbeing and safety proposals to support achievement and broader community wellbeing, with learners and providers disagreeing on how to strike the best balance of expectations;

A new code of practice for wellbeing and safety to cover domestic tertiary and international learners

- 5 **note** that the sector supported combining expectations for domestic tertiary and international learners in a single code and the flexibility of an outcomes-based code;
- 6 **note** that, under section 534 of the Act, the Minister of Education may issue a code that provides a framework for the pastoral care of domestic tertiary and international students;
- 7 **authorise** the Minister of Education to issue the new code following Cabinet approval;
- 8 **authorise** the Minister of Education to make decisions on any issues of detail that may arise in preparation for the release of the code without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper;
- 9 **note** that this new code replaces the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019, which expires on 1 January 2022, as well as the Education (Pastoral Care of International Students) Code of Practice 2016;
- 10 **invite** the Minister of Education to present the new code to the House of Representatives following Cabinet approval to fulfil the statutory requirement to do so under section 534(7)(c) of the Education and Training Act 2020;
- 11 **note** the Minister of Education's intention to appoint the New Zealand Qualifications Authority as code administrator to work in consultation with the sector to support implementation of the code from 1 January 2022;

A new scheme to address otherwise unresolved financial and contractual disputes between domestic tertiary learners and providers

- 12 **note** that the sector largely supported the proposal to create a new accessible, inclusive and flexible dispute resolution scheme for domestic tertiary learners to provide a similar process currently only available to international learners;
- 13 **note** that under section 539 of the Act the Governor-General may, by Order in Council made on the recommendation of the Minister of Education, make rules for the functioning and administration of the scheme;
- 14 **note** that the Minister of Education has made changes to the rules based on sector feedback, including:
 - 14.1 prioritising consensual forms of dispute resolution over adjudicative processes that result in binding decisions, with clarity that adjudicators must give effect to the rule of law in making decisions;
 - 14.2 expecting the scheme operator to develop and evaluate their service under the rules with Māori to ensure consistency with Te Tiriti o Waitangi;
 - 14.3 ensuring the proposed rules' consistency with the Privacy Act 2020;

- 15 **note** the Minister of Education's preference for the final structure of the rules to reflect the learner's journey through the scheme to improve clarity and make the scheme more navigable for users;
- 16 **note** that the proposed rules draw on the existing International Student Contract Dispute Resolution Scheme Rules 2016, have been developed in collaboration with the Government Centre for Dispute Resolution to ensure the scheme is in line with the Aotearoa Best Practice Dispute Resolution Framework, and reflect initial feedback from Parliamentary Counsel Office;
- 17 **authorise** the Minister of Education to issue drafting instructions for Parliamentary Counsel Office to draft the new rules based on the proposed rules as attached and above recommendations;
- 18 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper;
- 19 **note** that the final form and content of the new rules is subject to Parliamentary Counsel Office's drafting to ensure that the rules are fit for purpose;
- 20 **agree** the dispute resolution scheme rules, once drafted by Parliamentary Counsel Office, will be released for targeted consultation with people and groups who provided feedback on the proposals ahead of final approval;
- 21 **note** the Minister of Education's intention to report back to Cabinet in October 2021 seeking agreement to the final scheme rules;
- 22 **note** the Minister of Education's intention to appoint a scheme operator later this year, following a selection process, as per section 536 of the Act;

Proposed legislative amendments to the Education and Training Act 2020

- 23 **note** that there was relatively less consultation feedback on the proposed legislative changes, some of which was expressed through comments on the code and scheme;

Amendments relating to the provisions for a code of practice

- 24 **agree** to amend the provisions in the Act relating to a code of practice to:
- 24.1 strengthen the focus on student wellbeing and safety in section 534 and related sections by:
 - 24.1.1 replacing each reference to pastoral care with reference to wellbeing and safety, with any necessary modifications;
 - 24.1.2 clarifying that the code applies to domestic and international students studying in New Zealand or offshore;

- 24.2 provide for a responsive code by:
 - 24.2.1 requiring the Minister of Education to consult with Māori before issuing a code;
 - 24.2.2 enabling the Minister of Education to:
 - 24.2.2.1 issue tailored codes for a particular grouping of providers with either mandatory coverage or the ability to opt in to using a tailored code;
 - 24.2.2.2 appoint a code administrator for one or more codes;
 - 24.2.2.3 regularly set expectations about the code administrator's performance and priorities;
 - 24.2.2.4 gather information from the code administrator;
 - 24.2.3 providing for the Minister of Education to gazette exemptions to all or part of a code for particular groupings of providers and for these exemptions to be added to the code as minor and technical changes;
- 24.3 allow the Minister of Education to make minor and technical changes to the code without meeting the consultation requirement set out in section 534(5) of the Act.

Amendments relating to the provisions for a code administrator

- 25 **agree** to amend the provisions in the Act relating to a code administrator to:
 - 25.1 ensure the code administrator has appropriate functions, powers, and duties to administer the code, monitor performance and manage risk by:
 - 25.1.1 providing for the code administrator to monitor and regularly review how tertiary education providers and signatory providers are giving effect to the code;
 - 25.1.2 allowing the code administrator to authorise any person to do, at any reasonable time, any 1 or more of the following things in relation to the code administrator's functions, powers and duties:
 - 25.1.2.1 enter and inspect any premises (other than a dwelling house) of tertiary education providers (universities, wānanga, Te Pūkenga, private training establishments) and, if they are a signatory provider, schools;
 - 25.1.2.2 require any person to produce documents or information under the control of the person;
 - 25.1.2.3 inspect, photocopy, print, or copy any documents (whether held in electronic or paper form) or that the

- authorised person believes on reasonable grounds to belong to the establishment;
- 25.1.2.4 remove any document, whether in its original form or as an electronic or a paper copy;
- 25.1.2.5 require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies;
- 25.1.2.6 inspect any work and any related materials;
- 25.1.2.7 meet and talk with any person;
- 25.1.3 requiring the authorised person to:
 - 25.1.3.1 produce evidence of the person's authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and
 - 25.1.3.2 give the person in charge a list of all documents that have been removed (if any); and
 - 25.1.3.3 return any documents that have been removed unless to do so would prejudice any investigation.
- 25.1.4 ensuring the authorised person is a fit and proper person and has received appropriate training before using the powers of entry and inspection;
- 25.1.5 requiring the authorisation to be in writing and contain the legislative authority, the full name of the person authorised, and a statement of the powers conferred on that person;
- 25.1.6 providing for the code administrator to:
 - 25.1.6.1 honour Te Tiriti o Waitangi and support Māori-Crown relationships;
 - 25.1.6.2 report annually about its performance of its functions, powers, and duties, as well as the extent to which tertiary education providers and signatory providers are giving effect to the code;
 - 25.1.6.3 issue notices which allow the code administrator to require a provider and/or signatory provider to do, or refrain from doing, a particular thing in relation to their obligations (and, for signatory providers, also their conditions) under a code, replacing quality assurance and compliance notices;

25.1.6.4 have notices set out:

25.1.6.4.1 any concerns the administrator has about the provider's systems, practices, training, or procedures, or about the provider not sufficiently meeting a code outcome, or for non-compliance with a requirement of the code;

25.1.6.4.2 the time within which the provider is expected to address the administrator's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and

25.1.6.4.3 the possible consequences of a failure to comply with a notice.

25.1.6.5 publish those notices, or a summary of it, in a manner designed to give public notice of it and extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with;

25.2 modernise the legislation by moving the provisions of the Education Act 1989 saved by clause 7(3)Schedule 1, of the Education and Training Act 2020, to the main body of the Education and Training Act 2020;

26 **agree**, based on the proposals set out above, to also:

26.1 remove 'following a process prescribed by a code' from section 238H(3)(b)(i)(A) of the Education Act 1989 which is saved by Schedule 1, clause 7(3) of the Act;

26.2 revoke sections 238I and 238J of the Education Act 1989 which are saved by Schedule 1, clause 7(3) of the Act; and

26.3 remove 'in accordance with the relevant code' from section 633(1) of the Act;

Amendments relating to the provisions for a dispute resolution scheme

27 **note** the Minister of Education's proposals for legislative amendments with the joint purpose of modernising, strengthening, and clarifying the legislative provisions relating to the scheme and scheme operator, and ensuring they are fit for purpose;

28 **agree** to amend the provisions in the Act relating to a dispute resolution scheme to:

28.1 broaden the scope of the disputes resolution scheme to include breaches of the code;

28.2 amend provisions to better provide for the appointment and operation of a scheme operator by requiring the scheme operator to:

- 28.2.1 cooperate and supply information;
- 28.2.2 honour Te Tiriti o Waitangi; and
- 28.2.3 report annually;
- 28.3 set a time limit of 20 working days for appeals about scheme adjudications, in line with other schemes;
- 28.4 broaden the bodies able to be appointed as scheme operators to 'organisations' rather than 'agencies';

Amendments relating to administrative provisions for the code administrator and scheme operator

- 29 **agree** to amend the provisions in the Act relating to administrative provisions to support the effective administration of the code and dispute resolution scheme, and ensure they are fit for purpose, so that the Act:
 - 29.1 allows for the scheme operator, code administrator, and quality assessor to share information about complaints and complaint resolution;
 - 29.2 clarifies that the code administrator and the scheme operator are subject to the Ombudsman Act 1975 and Official Information Act 1982;
 - 29.3 enables the Minister to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners; and
 - 29.4 enables fit and proper person checks;

Legislative drafting

- 30 **note** that the legislative change proposals will be given effect through the Education and Training Amendment Bill (No 2), 9(2)(f)(iv) [REDACTED]
- 31 **authorise** the Minister of Education to issue drafting instructions for Parliamentary Counsel Office to give effect to the decisions in the recommendations relating to the legislative change proposals;
- 32 **authorise** the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions in this paper;
- 33 **note** that the recommendations are subject to Parliamentary Counsel Office's drafting to ensure the legislation is fit for purpose;
- 34 9(2)(f)(iv) [REDACTED]

Government response to the inquiry into student accommodation

- 35 **note** that on 13 May 2021, the Education and Workforce Committee reported back to Parliament on its inquiry into student accommodation, with the Government's response due to be tabled by 6 August 2021;
- 36 **note** the Committee's conclusion that four areas of the student accommodation system were most in need of improvement, which are transparency and accountability in governance; dispute resolution and complaints; wellbeing and safety in student accommodation; and emergency planning and response;
- 37 **note** that the Committee supported the draft code that the Minister of Education consulted on and made seven recommendations, all of which concerned the code and dispute resolution scheme;
- 38 **note** the Minister of Education's proposal to accept the Committee's recommendations but that:
- 38.1 the final code and scheme differ slightly from those endorsed by the Committee based on sector feedback; and
- 38.2 the Government give consideration to the recommendation for a combined dispute resolution scheme for domestic tertiary and international learners once the new scheme for domestic tertiary learners is in place;
- 39 **invite** the Minister of Education to table the attached response following Cabinet decisions.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Appendices

Appendix A: Summary of consultation feedback

Appendix B: The proposed *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021*

Appendix C: The proposed *Education (Domestic Student Contract Dispute Resolution Scheme) Rules 2021*

Appendix D: Technical detail on the proposed legislative amendments

Appendix E: The Government response to Education and Workforce Committee inquiry into student accommodation

Appendix F: Regulatory Impact Statement for the code

Appendix G: Regulatory Impact Statement for the dispute resolution scheme rules

Appendix H: Regulatory Impact Statement for the legislative proposals

Appendix D: Technical detail on the proposed legislative amendments

- 1 I seek approval to include in the Education and Training Bill (No 2) changes relating to:
 - 1.1 the provisions for a code of practice;
 - 1.2 the provisions for a code administrator;
 - 1.3 the provisions for the dispute resolution scheme; and
 - 1.4 administrative detail to ensure the provisions for the code and scheme are fit-for-purpose.

Law changes to support a focused, responsive, and modernised code

- 2 I seek agreement to the following legislative changes relating to the provisions for a code of practice:
 - 2.1 strengthening the focus on student wellbeing and safety in section 534 and related sections by:
 - 2.1.1 replacing each reference to pastoral care with reference to wellbeing and safety, with any necessary modifications;
 - 2.1.2 clarifying that the code applies to domestic and international students studying in New Zealand or offshore;
 - 2.2 providing for a responsive code by:
 - 2.2.1 requiring the Minister to consult with Māori before issuing a code;
 - 2.2.2 enabling the Minister to:
 - 2.2.2.1 issue tailored codes for a particular grouping of providers with either mandatory coverage or the ability to opt in to using a tailored code;
 - 2.2.2.2 appoint a code administrator for one or more codes;
 - 2.2.2.3 regularly set expectations about the code administrator's performance and priorities;
 - 2.2.2.4 gather information from the code administrator;
 - 2.2.3 providing for the Minister to gazette exemptions to all or part of a code for particular groupings of providers and for these exemptions to be added to the code as minor and technical changes;
 - 2.3 allow the Minister to make minor and technical changes to the code without meeting the consultation requirement set out in section 534(5) of the Act.

Strengthening the focus on learner wellbeing and safety

- 3 By clarifying the focus on learner wellbeing and safety in the code description and purposes (currently sections 534 (1-2) and other code-related sections), providers, learners, and the code administrator will have greater clarity about the focus and purpose of the code.
- 4 As many providers deal with domestic tertiary and international learners, there are concerns about being held to account for two similar but different codes. As the code is aimed at providers, a focus on 'wellbeing and safety' for domestic and international learners would provide consistency of message and practice. It captures the strengths of 'wellbeing' and 'protect' language while considering the needs of diverse learners.
- 5 Consultation feedback supported this change. This change also addresses concerns about the word 'pastoral' signalling a paternalistic approach that does not recognise the ability of learners to make their own choices, and feedback that 'pastoral care' is not proactive. By moving to a system that prioritises learner wellbeing and safety, this language is no longer appropriate.
- 6 I propose that the code scope clarify that the code applies to all domestic tertiary students and international students, whether they are in New Zealand or offshore. This will ensure that New Zealand's reputation as a quality education provider is upheld irrespective the location of the education.

Providing for a responsive code

- 7 To allow the code to respond appropriately to the current context and new and emerging opportunities, further modifications are needed.
- 8 Changes are needed to ensure that Māori (i.e., Māori learners, iwi, hāpu, and whānau) are consulted before a code is issued. While this would increase the number and range of people required to be consulted before the code is issued, it would also better honour Te Tiriti o Waitangi and support Māori-Crown relationships.
- 9 Amendments are also needed so that a code could be developed for a particular grouping of providers. For example, a tailored code could be issued to cover:
 - 9.1 te ao Māori, kaupapa Māori, or Māori providers (where providers could opt to be covered by this code); or
 - 9.2 categories and sub-categories of providers, including schools, different tertiary education provider types, student accommodation providers, and/or different tertiary education settings.
- 10 Providers should be covered by only one code, unless there was a good reason otherwise. If a code was tailored to a particular type of provider, clear information would be needed about the coverage of the relevant codes. In some cases (e.g. for a te ao Māori code) providers could opt to be covered by that code instead of the already approved code. If there is a separate code, careful consideration will be given to expectations to ensure transparency and minimise compliance costs.

- 11 If codes are developed for a particular grouping of providers, it may be appropriate for the Minister to appoint a code administrator for one or more codes. If several codes are in place, it will be possible for each code to have a different administrator.
- 12 The Minister should be able to signal expectations about the code administrator's performance and priorities and gather information from the code administrator. This may include setting expectations and gathering information about the code administrator's focus on providers and its management of sector performance and risk in the short to medium term. The Minister may require the code administrator to prepare a plan about its work. These changes would improve transparency about the code administrator's work and provide the Minister, learners, tertiary education providers, schools, and stakeholders with clarity about the code administrator's focus. It would also enable trust and confidence that the code administrator ensures that providers are working towards the outcomes and processes set out in the law and the code.
- 13 In the consultation material, I had signalled that there might be legislative changes to allow for the publication of a summary of the investigation and outcome of a breach of the code, subject to appropriate safeguards and redactions for protection of privacy. Feedback suggested that this detailed reporting should not be included in the Act. After further consideration, I have decided to consider any publication obligations when I set out my expectations of the code administrator. I want to ensure that there are appropriate safeguards to protect privacy and consider that this approach is a more appropriate vehicle for detailed reporting.
- 14 In some cases, it may be appropriate for the Minister to gazette exemptions to all or part of the code(s). While I have no immediate plans to use this power, the consultation feedback signalled that different arrangements might be needed for international PhD learners (who are treated as domestic tertiary learners), offshore or distance education learners. In addition, there may be a need for different arrangements when the status of a learner changes from domestic school student to international school student. I have considered whether the exemption should trigger the code consultation process but consider that this power will be used rarely and only when there is an immediate issue that needs to be addressed. As such, it is more appropriate for the Minister to gazette exemptions which could then be added to a schedule in the code through a minor and technical change.

Modernising the code

- 15 I propose that the Minister be allowed to make minor and technical changes to the code without consultation. This a mechanism currently only exists for the interim code. This change would improve the quality and relevance of the code allowing it to stay up to date and be accurate (e.g. if there was a minor change to terminology, a typographical error, or the Minister made an exemption to all or part of the code), without triggering the consultation requirements. As the code is a disallowable instrument, the Regulations Review Committee would examine any versions of the code to ensure that they are consistent with good legislative practice.

Law changes to provide for a code administrator with clear functions, powers, and duties

- 16 I seek agreement to the following legislative changes relating to the provisions for a code administrator:
- 16.1 ensuring the code administrator has appropriate functions, powers, and duties to administer the code, monitor performance and manage risk by:
- 16.1.1 providing for the code administrator to monitor and regularly review how tertiary education providers and signatory providers are giving effect to the code
- 16.1.2 allowing the code administrator to authorise any person to do, at any reasonable time, any 1 or more of the following things in relation to the code administrator's functions, powers and duties:
- 16.1.2.1 enter and inspect any premises (other than a dwelling house) of tertiary education providers (universities, wānanga, Te Pūkenga, private training establishments) and, if they are a signatory provider, schools;
- 16.1.2.2 require any person to produce documents or information under the control of the person;
- 16.1.2.3 inspect, photocopy, print, or copy any documents (whether held in electronic or paper form) or that the authorised person believes on reasonable grounds to belong to the establishment;
- 16.1.2.4 remove any document, whether in its original form or as an electronic or a paper copy;
- 16.1.2.5 require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies;
- 16.1.2.6 inspect any work and any related materials;
- 16.1.2.7 meet and talk with any person.
- 16.1.3 requiring the authorised person to:
- 16.1.3.1 produce evidence of the person's authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and
- 16.1.3.2 give the person in charge a list of all documents that have been removed (if any); and
- 16.1.3.3 return any documents that have been removed unless to do so would prejudice any investigation.

- 16.1.4 ensuring the authorised person is a fit and proper person and has received appropriate training before using the powers of entry and inspection;
- 16.1.5 requiring the authorisation to be in writing and contain the legislative authority, the full name of the person authorised, and a statement of the powers conferred on that person.
- 16.1.6 providing for the code administrator to:
 - 16.1.6.1 honour Te Tiriti o Waitangi and support Māori-Crown relationships;
 - 16.1.6.2 report annually about its performance of its functions, powers, and duties, as well as the extent to which tertiary education providers and signatory providers are giving effect to the code;
 - 16.1.6.3 issue notices which allow the code administrator to require a the provider and/or signatory provider to do, or refrain from doing, a particular thing in relation to their obligations (and, for signatory providers, also their conditions) under a code, replacing quality assurance and compliance notices;
 - 16.1.6.4 have notices set out:
 - 16.1.6.4.1 any concerns the administrator has about the provider's systems, practices, training, or procedures, or about the provider not sufficiently meeting a code outcome, or for non-compliance with a requirement of the code;
 - 16.1.6.4.2 the time within which the provider is expected to address the administrator's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - 16.1.6.4.3 the possible consequences of a failure to comply with a notice.
- 16.1.7 publish those notices, or a summary of it, in a manner designed to give public notice of it and extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with;
- 16.2 modernising the legislation moving the provisions of the Education Act 1989, saved by clause 7(3) Schedule 1 of the Education and Training Act 2020, to the main body of the Education and Training Act 2020.

- 17 Given these new requirements, I also propose to:
- 17.1 remove ‘following a process prescribed by a code’ from section 238H(3)(b)(i)(A) of the Education Act 1989 which is saved by Schedule 1, clause 7(3) of the Act;
 - 17.2 revoke sections 238I and 238J of the Education Act 1989 which have been saved by Schedule 1, clause 7(3) of the Act; and
 - 17.3 remove ‘in accordance with the relevant code’ from section 633(1) of the Act.

Ensuring the code administrator has and uses appropriate functions, powers, and duties

- 18 I propose to provide more detail in the law about the functions, powers, and duties of the code administrator. NZQA, the current code administrator, uses its quality assurance functions, duties, and powers to take action against providers when a breach of the code is detected. Rather than relying on the quality assurer’s powers, the code administrator will be better able to assess and evaluate provider performance against the code. Without adequate information, it is often not possible to work out whether an investigation is needed. Without sufficient mandate, there is a risk of legal challenge to actions taken by the code administrator.
- 19 I have carefully considered the range of powers, functions, and duties that the code administrator needs. To ensure that providers and signatory providers are giving effect to the code, the code administrator needs the ability to gather information and enter and inspect premises. This is in addition to the code administrator’s powers to enter and inspect student accommodation. Without these additional powers, unless there was an issue with student accommodation, the code administrator would only be able to consider the self-review report supplied by the provider or signatory provider.
- 20 I have considered whether the powers should allow the code administrator to enter and inspect a provider’s marae, church, or mosque when monitoring the code or investigating a complaint. On balance, I consider that this power needs to cover all educational delivery sites. I expect the code administrator to use this power judiciously and, if the code administrator is considering the wellbeing and safety of learners on marae, that appropriate consideration is given to kawa and tikanga.
- 21 Given the significance of these powers, I want to ensure that there are appropriate safeguards to ensure that the code administrator does not go beyond its mandate. I have therefore proposed that certain duties must be met when making use of these powers. These safeguards are consistent with those set out in section 634 of the Act. In addition, I propose adding a requirement for the authorised person to be fit and proper and to have undergone training. The powers, functions, duties, and associated safeguards take into account the academic freedom and institutional autonomy of tertiary education institutions.
- 22 I propose that the legislation set out that the code administrator must report annually to the Minister about its performance of its functions, powers, and duties, as well as the extent to which tertiary education providers and signatory providers are giving effect to the code. While this duty is set out in the interim and international codes, it is

more appropriate for this requirement to be in the legislation. This would improve transparency about the code administrator's work and use of funding.

- 23 As the code administrator uses regulatory powers set by the government, it should be required to support Māori-Crown relationships. The Crown will continue to lead the work on honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships.
- 24 Instead of the current quality improvement notices and compliance notices,¹ I propose that the code administrator be able to issue one type of notice when providers are not adequately meeting the code outcomes or there is a breach of the code. Currently, the law allows compliance notices to be used for breaches of the international code and quality improvement notices to be used for breaches of the interim code. This means that, if there was a code issue that affected both domestic and international tertiary learners, providers may find themselves subject to both quality improvement notices and compliance notices at the same time. The proposed change would allow the code administrator to take swift and proportional action when there is a breach of the code, when one or more outcomes of the code have not been adequately provided for, or when the notice has not been complied with.

Modernising the legislation by moving saved sections from the Education Act 1989 to the Act and regulation

- 25 I propose that the law be modernised and updated so that the relevant code and code administrator law is included in the Act, including the saved section 238H(1) to (4) and (9) of the Education Act 1989. Previously, I had considered whether these provisions would be better located in regulations. Upon reflection and given the other changes that I am proposing, I consider that it is more appropriate for the code administrator functions, powers, and duties to be in the Act.

Law changes to enable an effective dispute resolution scheme

- 26 I seek agreement to the following legislative changes relating to the provisions for a dispute resolution scheme:
- 26.1 broadening the scope of the dispute resolution scheme to include breaches of the code;
 - 26.2 amending provisions to better provide for the appointment and operation of a scheme operator;
 - 26.3 setting a time limit of 20 working days for appeals about scheme adjudications;
 - 26.4 clarifying the wording in section 536(4) so that 'agencies' is replaced with 'organisations' to broaden the bodies able to be appointed as scheme operators.

¹ These provisions are set out in sections 238I and 238J of the Education Act 1989 which are saved by Schedule 1, clause 7(3) of the Education and Training Act 2020.

Broadening the scope of the dispute resolution scheme

- 27 I propose to broaden the scope of the dispute resolution scheme so that, in addition to financial and contractual disputes, complaints about breaches of the code can be considered when the code administrator has found and confirmed that a breach of the code has occurred. This change will lift provider performance. If the breach also relates to contractual or financial matters, learners could seek resolution through the dispute resolution scheme. If the breach does not relate to contractual and financial matters, the type and amount of redress will be determined by the scheme operator according to what is appropriate and proportionate in the situation.
- 28 At present, the education quality assurance agency or the code administrator may find a provider or signatory provider has breached the code and can use a range of remedies to address the problem. However, learners are not entitled to redress if there is a breach of the code unless it is also considered to be a contractual or financial dispute.

Amending provisions to better provide for the appointment and operation of a dispute resolution scheme operator

- 29 I propose that the Act be amended to:
- 29.1 provide for the need for the scheme operator to cooperate and supply information;
 - 29.2 require the scheme operator to honour Te Tiriti o Waitangi, in line with section 4(d) of the Education and Training Act 2020, to ensure that the scheme operator uses regulatory powers set by the government that support the Crown's responsibilities to Te Tiriti o Waitangi;
 - 29.3 require the scheme operator reporting annually.
- 30 These changes are intended to strengthen the appointment and risk intervention arrangements. It also sets out clear expectations about the performance of the scheme operator. The annual report will be sent to the Minister and made available on the scheme operator's website.
- 31 I have considered whether the reporting of case information should be included in the Act but have decided that this detail is better specified in the funding agreement and rules. This will allow for greater transparency about the scheme operator's work, while ensuring that important privacy safeguards are used.

Setting a timeframe for appeals

- 32 I propose that an appeal to the courts of the adjudicator's decision must be made within 20 working days.
- 33 Concerns have been raised about the timeliness of the redress following an adjudication. In line with the Disputes Tribunal and the District Court, it is proposed that there be an appeal timeframe of 20 working days. While the scheme is not a court or tribunal, this would mean learners (who may be less knowledgeable about the process) have a longer period of time to appeal. If the adjudication decision is not

appealed, any remedies and/or redress must be made, or further legal action could be taken.

Clarifying the wording in section 536(4) so that 'agencies' is replaced with 'organisations'

- 34 As the scheme operator does not need to be a government agency, for the avoidance of doubt, I propose replacing the term 'agencies' with 'organisations'. Currently section 536 refers to the appointment of 1 or more persons or agencies to be responsible for administering the scheme. Section 6 narrows the definition of 'agency' to government agencies and this change would make the provision consistent with other provisions in the Act.

Retaining the \$200,000 cap on any claim

- 35 I had consulted on whether the cap on any claim that the dispute resolution scheme can award be increased from \$200,000 to \$350,000² but have decided not to make the change.
- 36 While some submitters support the change, other submitters have suggested that the cap not change or that the cap be aligned with Disputes Tribunal caps. For most claimants, the current cap on a claim of \$200,000 would be sufficient. If someone wanted a higher award, they could take action through the District Court.

Law changes to provide for administrative arrangements that are fit for purpose

- 37 I seek agreement to the following legislative changes relating to administrative provisions:
- 37.1 allowing for the dispute resolution scheme operator, code administrator, and quality assurer to share information about complaints and complaint resolution;
 - 37.2 clarifying that the code administrator and the dispute resolution scheme operator are subject to the Ombudsman Act 1975 and Official Information Act 1982;
 - 37.3 enabling the Minister to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners; and
 - 37.4 enabling fit and proper person checks.

Allowing information sharing about complaints and complaint resolution

- 38 I propose that the scheme operator, code administrator and quality assurance regulator can collect and share information about complaints and complaint resolution. The scheme operator, code administrator and quality assurer have responsibilities aimed at student wellbeing and safety. The information could be shared when the complaint is

² The cap of \$200,000 was set to reflect the District Court claim threshold at the time. However, this threshold has since increased to \$350,000 and I consulted on whether the dispute resolution scheme cap should be increased to reflect that change.

received and when the complaint is resolved. To support the privacy of the complainant when the complaint is made, I propose that the transfer of information include provider information but not the name of the complainant unless the sharing of complainant information is necessary and consistent with the Privacy Act 2020.

- 39 Without this change, there will likely be delays to action taken by the code administrator or the quality assurer. If the complainant raises an issue that affects other learners, the delay in sharing of information could have widespread impacts on the reputation and performance of New Zealand's education system.

Providing for the code administrator and the dispute resolution scheme operator to be subject to the Ombudsman Act 1975 and the Official Information Act 1982

- 40 I propose that the Ombudsman have jurisdiction over the code administrator and the scheme operator. Given the Ombudsman's existing responsibilities,³ it is appropriate for the Ombudsman to have the ability to investigate complaints about the code administrator and the scheme operator.
- 41 The Chief Ombudsman considers that any code administrator or dispute resolution scheme operator should be subject to both the Ombudsmen Act 1975 and the Official Information Act 1982 (OIA). It is important that executive government is, and is seen to be, accountable to the public and to Parliament, irrespective of whether an executive government function is ultimately performed by a public or private entity. An important way of achieving this accountability is through the scrutiny of an independent and impartial body such as the Ombudsman.
- 42 The Chief Ombudsman also notes that access to information is a constitutional right reflecting fundamental freedoms which should not be curtailed lightly. The Chief Ombudsman has previously commented that proposals to legislate away the rights of New Zealanders to request information held by a body which is performing a public function should not proceed without a substantive and principled justification, with express consideration of the impact on the public's constitutional right to seek information. It therefore is equally important that the dispute resolution scheme operator is subject to the OIA.
- 43 There are existing mechanisms, including withholding provisions under the OIA, which provide adequate protection of any relevant competing interests where that protection is warranted.

Providing the Minister with the ability to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners

- 44 Rather than outlining the details in the Act, I propose that the Minister regularly approve and gazette their expectations about the nature, form, scope, and content of a enrolment forms/contracts, associated processes, and the provision of information to ensure that the learner has an ongoing understanding about their rights and responsibilities.

³ The Ombudsman has responsibilities for dealing with complaints about public sector agencies, including a government agency, tertiary education institution, or school board of trustees. The Ombudsman has other responsibilities, including dispute resolution panels established under subpart 9 of Part 3 of the Education and Training Act 2020.

- 45 The scheme operator and code administrator will use information from the enrolment form/contract to inform their judgements about the performance of providers and whether there are contractual or financial matters that need to be addressed. Clear enrolment material and processes will help learners to understand their rights and responsibilities and will likely reduce the risk of things going wrong.
- 46 Enrolment contracts set out the expectations about standards and future conduct. As there is a power imbalance between providers and learners, there is value in specifying a minimum standard for content and the need to ensure that learners understand their rights and responsibilities. The Single Data Return includes information about the generic enrolment form. Through funding determinations, extra enrolment expectations can be set out.
- 47 Submitters wanted enrolment form expectations to be located near the code.

Enabling fit and proper person checks for all those employed in student accommodation

- 48 By providing for providers to undertake fit and proper person checks for all those involved in the delivery of student accommodation to adult learners, it is expected that better learner wellbeing and safety will be supported.
- 49 While the Children's Act 2014 provides for fit and proper person checks for those working with students under 18 years of age, there needs to be legislative mandate for other fit and proper person checks. I consider that, in terms of student accommodation, it is important that all learners, irrespective of age, are safe. This requirement is currently set out in the code; however, I consider that this requirement is better included in primary legislation.
- 50 The fit and proper person check will consider whether the applicant:
- 50.1 has been convicted of any offence involving harm to children, violence, or fraud; and
 - 50.2 is, or has been, subject to a property order or personal order under the Protection of Personal and Property Rights Act 1988.
- 51 The provider may take into account any other criteria that the Minister considers relevant.
- 52 While the check will be considered by the provider, if appropriate safeguards are in place, this may mean that the person can still be involved in the delivery of student accommodation.

Regulatory Impact Statement:

Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021

Coversheet

Purpose of Document	
Decision sought:	This analysis and advice have been produced for the purpose of informing key policy decisions to be taken by Cabinet about a new code of practice for pastoral care which sets out shared requirements for domestic and international tertiary learners, and retains specific protections for international students, replacing the existing interim ¹ and international codes.
Advising agencies:	The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.
Proposing Ministers:	Minister of Education
Date finalised:	29 June 2021
Problem Definition	
<p>Improved learner wellbeing and safety contributes to better educational achievement. Learner wellbeing and safety is a responsibility shared by learners, the government, education providers, whānau, the community, and others. While the responsibility is shared, the market, without intervention, does not place sufficient emphasis on learner wellbeing and safety. As the market does not, by itself, focus sufficiently on learner wellbeing and safety, regulation is necessary. A code provides an opportunity for the Minister to set out outcomes and key processes, while also allowing providers the flexibility to choose a response that suits them, their learners, and their communities and stakeholders.</p> <p>Providers, working with their learners, are best placed to make the day to day decisions about how to support learner wellbeing and safety. Providers want to support the wellbeing and safety of their learners and are keen to maintain their reputation as good places to study. However, approaches are uneven with some providers relying on their expert judgment about what will make a difference and others using robust mechanisms to check that their policies and practices make a difference for their diverse learners. Some providers may place more emphasis on meeting employer needs or delivering on research and scholarship expectations than taking account of their current learners' needs and interests.</p> <p>Given the different education settings and the need for continuous improvement, an adaptive and flexible approach is needed. Consideration needs to be given to the nature</p>	

¹ Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

of the provision, educational settings, type of learner, and the age and stage of learner. Any arrangements need to take account of academic freedom and institutional autonomy.

There needs to be clear expectations about learner wellbeing and safety. An outcomes-focused and results-oriented approach has been used. The code provides transparency about the expected outcomes but allows for providers and learners to work out the detail of how best to support learner wellbeing and safety with the shared aim of improving educational achievement.

Learners need to be able to influence provider practices. Diverse learners have different needs. Learners do not always feel that they are being heard by their tertiary education provider. While domestic and international learners have overlapping interests, any arrangements need to consider that international learners are often away from their family and friends.

Executive Summary

A package to support learner wellbeing and safety

This statement sets out the regulatory impact of a new code of practice for pastoral care which sets out shared requirements for domestic and international tertiary learners, and retains specific protections for international students, replacing the existing interim² and international codes.

It is part of a package of provisions aimed at better supporting learner wellbeing and safety. The package comprises:

- a new code of practice for the pastoral care of domestic tertiary and international learners, which must take effect by 1 January 2022;
- a new dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers, also to start by 1 January; and
- legislative proposals to support and reinforce the focus on student wellbeing and safety, to be progressed in the Education and Training Amendment Bill (No 2).

The overall purpose of this work is to develop a system of supports for the wellbeing and safety of domestic tertiary and international learners, through one set of clear rules and expectations that providers can tailor to their learners' needs.

I expect the proposed code and scheme rules to be in place for the next two to three years. This will allow for law changes to be confirmed and for learners and providers to have worked with these instruments and to refine them to ensure they remain fit for purpose and continue to evolve.

² Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

A new code is needed

From 1 January 2022, a new code will take effect. The code aims to support and improve the wellbeing and safety of:

- all domestic and international tertiary learners, including those residing in student accommodation; and
- international school students.

It will replace:

- the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (the interim code), put in place urgently at the end of 2019; and
- the existing Education (Pastoral Care of International Students) Code of Practice (the international code).

This regulatory impact statement sets out:

- the rationale for the code (the problem definition and opportunity);
- possible options:
 - Option A: the interim code and international code are retained;
 - Option B: a single code covering both domestic tertiary and international learners;
 - Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet
- associated benefits, costs, and impacts;
- how the new arrangements will be implemented and monitored.

On balance, option B will affect the most positive change at the lowest cost. This option builds on existing understandings about the regulatory system, including the needs of learners, providers, and other stakeholders. It takes into account feedback from consultation and considers the pressure for more prescriptive requirements with the need for flexibility so that providers can consider the needs of their diverse learners.

Limitations and Constraints on Analysis

The following activities have supported the development of this Regulatory Impact Statement: public engagement in 2019 on the Education (Pastoral Care) Amendment Bill, subsequent implementation of the interim code, and during and after the six-week consultation period. Our understanding of how the proposals should be implemented, their likely impacts, and alternative options has been informed by public consultation. We are confident in the evidence of the current state of learner wellbeing and safety that is set out in this Regulatory Impact Statement.

The formal consultation period allowed for quality public participation. Many agencies have contributed to the development of the next code, providing additional quality assurance. This helps to address any risks due to incomplete evidence.

We have a medium to high level of confidence in the evidence presented in this assessment. The costs outlined in Section 2 are subject to some uncertainty, and there is little information about the monetised value of potential benefits and costs.

Uncertainties regarding costs include:

- Providers have different approaches to learner wellbeing and safety: some have well established approaches that require only incremental changes to give effect to the next code; others need to build new systems and processes.
- Learners are diverse and have different expectations that may fit well with, or challenge, providers who are giving effect to the code. Some want tertiary learners to be treated as adults and have responsibility for their own decisions; others want more detail about how learners will be supported.
- Whānau and communities want to have a greater role but the extent to which they will be involved is uncertain (it will be affected by learner and provider decisions).

Responsible Manager(s)

Julie Keenan

Policy Director

Te Ara Kaimanawa | Graduate Achievement, Vocations and Careers
Ministry of Education

29 June 2021

Quality Assurance

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement: *"Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021"* dated 29 June 2021.

The panel considers that this Statement **meets** the Quality Assurance criteria. It contains evidence of extensive and effective consultation with stakeholders and reflects their views on the proposed new Code well. A convincing case is made for this Code with wellbeing requirements applying to all learners while allowing for supplementary provisions to meet the specific needs of particular groups of students, including international students.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background – The new code builds on the interim code and international code

1. The new code of practice is part of a wider package of proposals that build on the interim code and the International code. Aside from the code, the package includes the following proposals, which have separate Regulatory Impact Statements:
 - a. Rules for the legislated dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers (also to start by 1 January 2022 alongside the new code); and
 - b. Legislative changes to support and reinforce the focus on wellbeing and safety, and to ensure the settings for the code, code administrator and dispute resolution scheme are fit for purpose for the future.
2. The revised code builds on:
 - a. the interim code that resulted from urgent law changes in 2019 to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally.
 - b. the international student code which has been in place since 2002.³

Status quo – There are two codes of practice for pastoral care, one for international learners and one for domestic tertiary learners

3. Providers that wish to enrol international learners opt to become signatory providers and follow the international learner code, which was first introduced in 2002. The current *Education (Pastoral Care of International Students) Code of Practice* (the international code) was published in 2016. It sets out detailed pastoral care requirements for signatories to the code.⁴
4. The *Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019* (the interim code) was put in place urgently at the end of 2019. It sets requirements for all tertiary providers in relation to a general duty of pastoral care for domestic tertiary learners. It also sets specific additional requirements for providers that own and operate or formally arrange for the supply of learner accommodation that is exempt from the Residential Tenancies Act 1986 (RTA). This was the focus of the interim code.
5. Prior to this, providers had limited guidance on how they should support their domestic learners (via a voluntary code of practice for student accommodation only). Consequently, provider wellbeing practices had not been consistent across the sector.

³ Currently the Education (Pastoral Care of International Students) Code of Practice 2016.

⁴ To enrol, and provide educational instruction for, a person as an international student, providers must be signatories to a code that sets out a framework for the pastoral care of international students. Providers can apply to NZQA for approval to become a signatory.

6. The interim code was an urgent response to tragic events, and as such, was expected to be in place for one year until 1 January 2021. This was to allow time to develop, consult on, and issue a new code to replace the interim code. Due to the impacts of COVID-19, it was no longer practicable to have the new code fully developed and implemented by 1 January 2021. This is primarily because the code needs to be developed in a manner that enables full engagement with regulated groups and intended beneficiaries of the regulation. To take account of this, the Education and Training Act 2020 (the Act) extended the duration of the interim code to 1 January 2022.
7. This means there is a statutory requirement to have a new code for the pastoral care of domestic tertiary learners in place by 1 January 2022. Government intended that a revised code would expand on expectations for the safety and wellbeing of learners beyond learner accommodation, recognising that most learners are not in learner accommodation. Before issuing a new code, the Act also requires the Minister of Education to consult those parties that he considers likely to be affected by the code, including representatives of learners, parents, whānau, providers and signatory providers, and their staff, as well as the Privacy Commissioner. Consultation took place in April-May 2021.

What if we retained the status quo?

8. Issuing a new code is mandatory and the Minister has already signalled his intentions to issue a new code that improves and expands the existing interim code. We have considered whether the interim code should be reissued and whether the international code should be retained.
9. Retaining the status quo means that the international code would continue, and the interim code would be re-issued unchanged to fulfil statutory requirements. We have heard positive feedback about existing provisions. For example, learner services staff in providers have appreciated the clearer expectations for learner support services set out in the interim code. Having the interim code in place before COVID-19 also gave direction for providers on their obligations and responsibilities to their domestic learners and allowed a basis for domestic tertiary learners to approach conversations with their providers if they have a concern or complaint.
10. We have also heard, through feedback and provider self-reviews, that the existing provisions fall short in several areas:
 - a. Learners and providers have said that they would prefer to have a combined code because the two current codes impose different expectations that are not consistent and, as a consequence, have higher compliance costs.
 - b. Learners and providers have consistently said that the existing legislative framework is limited. The term 'pastoral care' is outdated, archaic and carries associations with religious and Pākehā cultural institutions that are not appropriate for today's tertiary education learners. This has implications for the new code and the Act's framework.
 - c. Providers have asked for more clarity in several areas, including the overall expectations regarding providers' obligations for learner wellbeing and safety, learner voice and what it means for them to partner with learners, and how they can practically

honour and implement Te Tiriti o Waitangi. There is also uncertainty around learner accommodation for providers and learners.⁵

- d. In terms of the international code, there generally is a good standard of compliance. However, feedback from learners and other stakeholders also indicates that there are gaps in requirements, areas of ambiguity and issues with implementation, transparency, and accountability. It is also important that requirements for them are not set at a lower level than those for domestic learners.
 - e. In this context, the sector has noted specifically that having separate codes for domestic tertiary and international learners is confusing and makes it difficult to navigate their obligations for learner wellbeing and safety.
11. The 148 submissions to the previous Education and Workforce Committee's Inquiry into learner accommodation provided significant new information on learner and provider experience of tertiary accommodation, and views on what they expect to see in the new code. For example, submitters commented on the lack of clarity around what types of wellbeing and safety practices should be available in learner accommodation.
12. The committee found that the system needs to be strengthened and highlighted the role that the proposed code and dispute resolution scheme could have in improving key areas. These include transparency and accountability in governance, dispute resolution and complaints, wellbeing and safety in student accommodation, and emergency planning and response.

What is the policy problem or opportunity?

Improved learner wellbeing and safety contributes to better educational achievement.

13. The approach is underpinned by New Zealand and international research and evidence about wellbeing. It takes into account the Organisation for Economic Co-operation and Development's (OECD's) wellbeing approach. The approach has been shaped by Kōrero Mātauranga, which heard from:
- a. learners, their whānau, and their communities
 - b. education providers
 - c. employers and industries
 - d. other interested parties.
14. Building on work to support international learner wellbeing and safety, the approach uses the latest thinking about the role of Government in signalling expectations, regulating the market, and setting out consequences if there is poor performance. It considers the type of intervention needed to ensure the wellbeing and safety of children, youth, and older learners.

⁵ For example, some providers who thought they had student accommodation realised they do not, and vice versa. Learners can be unsure of the type of accommodation they are in. There are some accommodation providers who market themselves as 'student accommodation' due to location and preferred clientele, but whose accommodation is not covered by the code as it does not come within the definition of student accommodation as defined in the Act.

The ability to influence learner wellbeing and safety is shared by everyone, including learners, their whānau, communities, tertiary education providers, the government, and others.

15. Significant improvements to learner wellbeing and safety can be made if there is an integrated, connected, and cohesive system. The diversity of New Zealanders means that what any individual, family, whānau or community values and places relative importance on will vary. No single framework will capture all that matters for everyone. The role of whānau and community may change depending on the age of the learner, their connectedness to whānau and their communities, and their cultural identity.
16. General consumer protection laws have not had sufficient traction to drive a change in behaviours. If a learner seeks recourse from the courts, the process is expensive and time consuming.
17. Quality assurors have focused on educational quality and have had limited oversight of learner wellbeing and safety.
18. The code provides assurance to whānau about what providers offer, how providers review and improve their practices, and how learner voice is responded to.

Learners need to be able to influence provider practices

19. Learners do not always feel that they are being heard by their tertiary education provider. In the main, providers do a good job and have worked hard to give effect to the interim code and international code. There is pressure to have more culturally relevant and responsive practices and for better accessibility. Learner voice needs to reflect diverse learners. There needs to be more transparency about how learner complaints are handled – and there needs to be the ability to escalate learner complaints to better provide for dispute resolution.

Providers, working with their learners, are best placed to make the day to day decisions about how to support learner wellbeing and safety

20. Providers generally want to support the wellbeing and safety of their learners and are keen to maintain their reputation as good places to study. Given the different education settings and the need for continuous improvement, an adaptive and flexible approach is needed. Consideration needs to be given to the nature of the provision, educational settings, type of learner, and the age and stage of learner. Any arrangements need to take account of academic freedom and institutional autonomy. With input from learners (learner voice), self-review enables the provider to make choices about the actions needed to support the wellbeing and safety of their current learners.

There needs to be clear expectations about learner wellbeing and safety

21. An outcomes-focused and results-oriented approach has been used. The code provides transparency about the expected outcomes but allows for providers and learners to work out the detail of how best to support learner wellbeing and safety with the shared aim of improving educational achievement. A national framework that provides for local decision-making will best allow learners to get better access to the right information and support that takes account of their particular needs. An outcomes approach recognises the diversity of

beliefs, assumptions, values and ideas that shape New Zealanders' views of the world and what they believe matters for wellbeing.

22. There is an inherent tension, between the immediate assurance of standards (compliance/certainty) and the overall wellbeing for better education (a longer mission through self-improvement/flexibility).

There are opportunities to enhance existing provisions based on recent developments

23. Notwithstanding the statutory requirement to issue a new code, there are opportunities to enhance existing provisions in the longer term based on strategic shifts, as well as what we have heard and learned, since the interim code was introduced. This includes:

- a. ensuring the new code supports Government's strategic direction for education, including for a more learner-centred system and high-value international education;
- b. integrating expectations for government's obligations under Te Tiriti o Waitangi: We need to address system inequalities and continue to strengthen our system for Māori learners and whānau to support them to achieve their education aspirations. A key part of ensuring the system honours Te Tiriti o Waitangi will be building the cultural capability of those working within it to work with Māori;
- c. reducing complexity and ensuring the regulatory system is fit for purpose, clear, and accessible for stakeholders and regulatory bodies including the code administrator;
- d. enhancing provisions for supporting the wellbeing and safety of tertiary domestic and international learners: The learnings from the interim code and recovery of the international education sector provide an opportunity to ensure that regulatory settings continue to evolve to support the wellbeing and safety of learners; and
- e. further responding to ongoing concerns around mental health, psychological distress among learners, as well as racism, bias, and discrimination.

A new code provides a coherent framework to support learner wellbeing

24. The new code builds on the interim code and international code. Since 2020, providers have self-reviewed their performance and made improvements to their policies and practices.
25. Our experience has been that the previous 2004 voluntary code of practice has not been successful in providing the Government, learners and their families with confidence that quality wellbeing practices have been in place. The sector has also welcome the increased clarity provided through the interim code around expectations on them for supporting learners.
26. Prior to 2020, the Government had little information about the gaps in wellbeing practices are across the sector, what the most effective practices are, and the contexts within which they will or will not work. At that time, feedback from learners and their families suggested that the quality of provider wellbeing practices was unclear to them also. Furthermore, the

unnoticed death of Mason Pendrous in a Christchurch hall of residence in 2019 shook public confidence in providers' wellbeing practices.

27. An ongoing code would work alongside other statutory requirements and relevant guidelines for the health, safety, and wellbeing of tertiary learners (i.e. not duplicate them). These requirements cover a wide range of activities which will influence provider practices at different levels (e.g. organisational, environmental and at the individual level).

What objectives are sought in relation to the policy problem?

28. The overall purpose of the wider work programme, of which the code is one part, is to develop a system of supports for the wellbeing and safety of domestic and international learners. We are building on the interim code and international code and the work that providers have done to better support learner wellbeing and safety.

29. To achieve this purpose, the work programme has several key objectives, including to:

- a. strengthen and improve regulation relating to the wellbeing and safety of domestic tertiary and international learners and ensure it is fit for purpose so all learners are supported to achieve in their education;
- b. ensure the regulatory system is consistent and clear for all stakeholders, including education providers, accommodation providers, domestic learners, international learners, and communities; and
- c. honour Te Tiriti o Waitangi and support Māori-Crown relationships.

30. Although a code's purpose is to regulate provider behaviours, it could also encourage positive behaviours from different stakeholders, such as learners and communities, through information provision, relationship development, and consultation requirements.

31. The code will therefore contribute to the overall purpose and high-level outcomes of the work programme by raising the prominence of wellbeing and safety as a precondition to success in education. It will do this by fostering conditions for success and support of more equitable outcomes for diverse learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant, and former refugee learners.

32. In this context, there are several code-specific objectives in relation to the opportunities and in addition to the overall objectives set out above, including to:

- a. enable providers to respond effectively to the diverse needs of learners across a variety of contexts; and
- b. ensure wellbeing is a whole-of-provider endeavour with practices that are transparent and continuously improving.

33. Although although there are multiple objectives, they are not mutually exclusive. In fact, the option that is likely to best respond to the opportunities identified above and deliver the highest benefits across all stakeholders groups is one that will meet all of the objectives above. This is reflected in the criteria for options analysis in section 2.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

34. For this analysis, we are looking at the current legislative framework. There are separate but related discussions about changing this framework to better enable a stronger focus on learner wellbeing and safety. This is discussed in a separate RIS, entitled 'Legislative changes to support learner wellbeing and safety'.
35. The options set out below will be assessed against the following criteria:
- Enhancing learner wellbeing and safety:* Does the option provide certainty that the wellbeing and safety of learners will be supported and enhanced?
 - Developing good relationships:* Does the option enable all stakeholders to be involved in supporting the ongoing wellbeing and safety of learners?
 - Transparency, accountability, and continuous improvement:* Does the option ensure wellbeing is a whole-of-provider endeavour with practices that are transparent and continuously improving?
 - Flexibility:* Does the option enable providers and signatories to respond effectively to the diverse needs of learners across a variety of contexts?
 - Reduced complexity:* Does the option reduce complexity and duplication for providers and improve clarity for learners?
 - Te Tiriti o Waitangi:* Does the option honour Te Tiriti o Waitangi and support Māori-Crown relationships?

36. While all criteria are important to determining the best option, we consider that criteria (a) and (b) in particular are the most important to ensure that the code fulfils its purpose of supporting and enhancing the wellbeing and safety of all learners.

What scope will options be considered within?

There are several limitations on the scope of feasible options

37. The code is one mechanism that can be used to strengthen the focus on learner wellbeing and safety. It works alongside existing legislation, including offence and penalty provisions, and the dispute resolution scheme.
38. The Minister is legally obliged to issue a new code for the pastoral care of domestic tertiary learners to replace the interim code by 1 January 2022. The Act enables the Minister to issue separate codes, providing a framework for the pastoral care of domestic tertiary and international learners respectively, or a combined code for both learner groups. The Act also sets out the purpose and scope of the code. This limits options to address the opportunities identified in section 1.
39. The Minister has already signalled his intentions to issue a new code that improves and expands the existing interim code and covers both domestic tertiary and international learners to ensure consistent expectations that meet the needs of diverse learners.
40. Tertiary education includes a wide range of providers, learners, and a variety of contexts. This also constrains the range of options available. It is not feasible to develop a code that

gives detailed and prescriptive guidance on compliance, as it would risk focusing only on selective types of providers or stifling flexibility to allow providers to work with their learners and wider communities to design practices that best meet their learners' needs. Instead, the code needs to be relatively general to be applicable and meaningful to the range of education providers. This means an outcomes focused code that sets out expectations about key processes (such as the interim code) would be an appropriate structure for a wellbeing and safety code.

41. The following table provides an overview of the range of feedback. Further detailed feedback is included in Appendix 1 and is taken into account in the code. The feedback will also inform the development of associated guidance.

Table 1: Key messages

<p>The safety and wellbeing of students is paramount, and the intent of the code is welcomed</p> <p>The increased focus on wellbeing was almost unanimously welcomed. Questions were raised about implementation with learners wanting the scope of obligations expanded and strengthened and providers wanting clarity about what extends beyond their sphere of influence.</p>
<p>Learner voices are central</p> <p>The importance of learner voices was seen as paramount. Differences in opinion between sectors existed in how this was best implemented. Learners expressed a desire to further embed learner voices in the development and implementation of the code. They felt that there needed to be explicit requirements of co-design and engagement throughout the code. Providers took a more conservative approach and were concerned about the logistics of implementation.</p>
<p>Te Tiriti o Waitangi is integral to the code and should be embedded in legislation</p> <p>Te Tiriti o Waitangi was considered fundamental and there was a desire for Kaupapa Māori to be embedded throughout the code. Guidance on how to do this in a practical sense was requested.</p>
<p>The code needs to explicitly include the multitude of diverse wellbeing needs of learners</p> <p>Whilst the code seeks to embody inclusiveness, learners felt that it was important to be more explicit and include reference to more specific groups and their diverse wellbeing needs. Learners advocated for strengthening the code to require providers to improve accessibility and provide culturally and spiritually safe spaces. Learners also supported the inclusion of ecological sustainability as a design requirement.</p> <p>Providers acknowledged the importance of inclusive learning environments but were concerned about the extent of their responsibilities in practice and argued the code's requirements would not be practical, or enforceable, except in the most general way.</p>
<p>A careful balance needs to be achieved in practice between flexibility and prescription</p> <p>Learners welcomed the prescription in many regards and thought that this was required to hold providers accountable for implementation. A principles-based approach with flexibility to respond to individual needs and circumstances was considered by providers to be the best approach to achieve better outcomes for learners. They felt that processes outlined in some parts of the code were too detailed and seemed overly prescriptive. While acknowledging this, learners welcomed</p>

A careful balance needs to be achieved in practice between flexibility and prescription

the increased focus on processes and even asked for more prescriptive requirements in areas to increase accountability.

The privacy implications of the code will need careful consideration as it is implemented

The code, by its nature, has the potential to interfere with the autonomy and personal sphere of learners. How this will be managed in practice and balanced against privacy considerations needs to be carefully assessed when implementing the code.

We considered relevant experience from other countries in setting the scope for options identification and development

42. In developing the options set out below, we considered relevant experience from other countries, including the United Kingdom, Canada, and Australia, as well as information and evidence available within New Zealand. We have included key points here, which are also reiterated in the option descriptions below.
43. Over recent years, there has been a move by providers internationally to embrace more holistic approaches to the wellbeing of tertiary learners. An example of this is the adoption of the Health Promoting Universities approach by some universities in Europe, Asia and Latin America under the World Health Organisation.⁶ This approach aims to incorporate health into university culture, processes, and policies and has become increasingly relevant in the context of COVID-19.⁷
44. Health promotion builds on the Ottawa Charter for Health Promotion,⁸ which emphasises the interconnectedness between individuals and their environments, and recognises that health is created and lived by people within the settings of their everyday life, where they learn, work, play, and love. Health is viewed holistically, reflecting physical, mental, and social well-being and not merely the absence of disease or infirmity.
45. There has been concern that international frameworks, such as the one described above, do not include cultural or indigenous perspectives.⁹ New Zealand's Child and Youth Wellbeing Strategy (NZCYWS) outcomes framework (which is the basis of the interim code) draws from cultural models of wellbeing such as *Te Whare Tapa Whā* and the *Whānau Ora* outcomes framework.
46. The NZCYWS framework has in turn been criticised for missing some of the needs of adults noting that younger people have more of a focus on learning while for older people, it is passing down knowledge and contributing to their communities.¹⁰

⁶ [WHO | Types of Healthy Settings](#)

⁷ [News - Healthy Universities](#)

⁸ [Ottawa charter for health promotion \(who.int\)](#)

⁹ Berghan, G., Came, H., Coupe, N., Doole, C., Fay, J., McCreanor, T., & Simpson, T. (2017). *Te Tiriti o Waitangi-based practice in health promotion*. Auckland, Aotearoa New Zealand: STIR: Stop Institutional Racism. Accessed from: <https://trc.org.nz/treaty-waitangi-based-practice-health-promotion>

¹⁰ For example, research indicates that volunteering, for example, can have a positive effect on wellbeing particularly for those aged over 40. (Tabassum F, Mohan J, Smith P. Association of volunteering with mental well-being: a lifecourse analysis of a national population-based longitudinal study in the UK. *BMJ Open* 2016;6).

What options are being considered?

47. The following options¹¹ have been considered:

- Option A: the interim code and international code are retained;
- Option B: a single code covering both domestic tertiary and international learners;
- Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet.

48. We also considered whether lighter touch arrangements would be appropriate. Given the 2019 event that led to the current settings and the feedback we have had from learners and providers, this option has not been progressed. There is strong support for a code that covers both domestic tertiary and international students. Learners are keen for providers to more effectively address learner wellbeing and safety.

49. We considered whether there should be separate codes for domestic tertiary and international learners. Tertiary education providers are concerned about the workload associated with being covered by two separate but overlapping codes. They are concerned that the focus would be on compliance with each code, which would distract from a focus on learner wellbeing and safety. Separate codes would increase provider and code administrator compliance costs. Domestic tertiary and international students in the same classroom may be treated differently because of each code's requirements.

Option A: the interim code and international code are retained

50. This option would mean that:

- a. the interim code remained in place (but would be renamed and reissued by the Minister);
- b. the international code would remain in place.

51. Providers and signatories have been working since January 2020 to ensure that they have practices in place that comply with the interim code. Signatory providers have been complying with the international code.

52. While this option would be easy to implement, it would not address the issues raised by domestic tertiary and international learners about provider performance and accountability.

53. Prior to, and during consultation, the sector (and providers in particular) have noted that having separate codes for domestic tertiary and international learners is confusing and makes it difficult to navigate their obligations for learner wellbeing and safety.

54. This approach is supported by some international education providers.

Option B: a single code covering both domestic tertiary and international learners that would be outcomes focused and include key processes

55. This option would replace the interim code and international code with a single code covering both domestic tertiary and international learners. This option gives providers the flexibility to determine how to give effect to the outcomes and key processes set out in the code.

¹¹ All options consider international tertiary and school learners as the legislation does not currently provide for separate codes.

56. This option allows providers to build on the work they are doing to comply with existing provisions by retaining strengths of the existing codes, refining requirements, and adding some new practices. This will likely increase the benefit to society, including providers/signatories as well as learners, compared with the status quo.
57. This option takes into account insights from learners and submissions to the inquiry into learner accommodation which suggest the interim code needs to be improved to increase the quality of wellbeing and safety practices, as well as setting out expectations for provider accountability to stakeholders about wellbeing and safety practices.
58. Other improvements that had been suggested prior to consultation focus on:
- a. responsive learner services and teaching and learning approaches to meet the diverse needs of the learner population (including for mature learners and those from different cultures);
 - b. training and psychosocial support for staff (including accommodation staff, security, and cleaning staff) and peer support training;
 - c. better protections for learners for making complaints and resolving disputes; and
 - d. better consistency within and across providers for dealing with an emergency (e.g. COVID-19 lockdown).
59. The international code has a good standard of compliance. However, feedback from learners and other stakeholders also indicates that there are gaps in requirements, areas of ambiguity and issues with implementation, transparency, and accountability. It is also important that requirements for them are not set at a lower level than those for domestic learners.
60. This option aligns expectations for domestic and international learner groups, where their needs are shared, while continuing to spell out the expectations that apply now for signatories regarding the specific needs of international learners. Within this structure there will be core learner wellbeing practices and additional or specific practices to reflect the distinct needs of international learners and those in learner accommodation. This would increase the benefit to society, including providers/signatories as well as learners, compared with the status quo.
61. International learners have distinct and diverse needs. But it is also important that requirements for them are not set at a lower level than those for domestic tertiary learners. This includes areas of general wellbeing, tertiary learner accommodation and appropriate levels for learner voice, feedback, and input.
62. This approach reduces complexity for providers/signatories in terms of requirements for learner wellbeing and safety and improves improve clarity for learners as well as providers/signatories.
63. While most submitters supported a combined code, some international education providers wanted to retain the current international code. Those international education providers valued the international code and were concerned about additional compliance costs when there is limited international education provision given COVID-19 and the closure of borders.

64. The code contains no substantial changes to the requirements for schools enrolling international learners. The school signatory provisions are in a new and separate part of the code for clarity. Restating of the current standards in this way ensures continuity and clarity as schools look ahead to the potential of returning international learners when this is possible.
65. Variations in the way outcomes and key processes are implemented across the sector may reduce clarity for the public, be subject to varying interpretations, and be perceived as unfair by some (if one provider offers more assistance than another).
66. Given the feedback that the draft code was too prescriptive, we have:
- a. pulled back from draft code requirements that would affect teaching and learning practice or overlap with academic quality assurance, while continuing to recognise that teaching staff have input into supporting learner wellbeing and safety.
 - b. reduced examples in the code, including who to consult with or how to develop practices, shifting these examples to guidance material where appropriate.
 - c. reduced and removed overlap with existing requirements, for example for accessible spaces and human resource policies.

Option C: a single code covering both domestic tertiary and international learners that would be outcomes focused and include key processes and prescriptive requirements that providers must meet

67. This option would:
- a. replace the interim code and international code with a single code covering both domestic tertiary and international learners; and
 - b. include detailed and prescriptive requirements that providers must meet.
68. Under this option, the code would set out outcomes, key processes, and detail about how providers will give effect to the code. Prescriptive requirements would increase certainty for learners and stakeholders. However, providers would have to follow the rules, resulting in a limited ability to respond to their diverse learners. This option would be less likely to take into account the full range of educational settings and diverse learners, for example fulltime and onsite learners; parttime, work-based learners, distance learners, etc.
69. The focus would be on compliance with the prescription rather than learner wellbeing and safety. Provider flexibility and creativity would be limited, and innovation would be stifled.
70. In addition, the Government has little information about what the gaps in wellbeing and safety are for each provider, what the most effective practices are for their learners and communities, and the contexts in which they will or will not work. Adopting a prescriptive approach would also see a departure from the outcomes-focused approach taken in the interim code. This option would impact on academic freedom and institutional autonomy as providers would be directed in specific ways to address learner wellbeing and safety.
71. While some learners and providers supported this approach, for many providers, a prescriptive approach provided too much detail and limited the ability for providers to tailor learner wellbeing and safety arrangements to the needs of their diverse learners. This

option might not encourage much movement beyond the minimum (e.g. due to resource constraints).

72. While some learners and providers wanted more detail in the next code, there was strong feedback from many providers that the draft code was too prescriptive and narrow in its focus.

How do the options compare to the status quo/counterfactual?

	Option A: the interim code and international code should be retained	Option B: a single code covering both domestic tertiary and international learners	Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet
Enhancing learner wellbeing and safety	0	++	- (might not encourage much movement beyond the minimum)
Developing good relationships	0	+	- (might not encourage much movement beyond the minimum)
Transparency, accountability, and continuous improvement	0	++	+
Flexibility	0	++	-
Reduced complexity	0	- (different implementation of practices across the sector may reduce clarity for the public)	- (a focus on compliance is likely to limit the flexibility and creativity we are seeking from providers, in terms of how to meet diverse learners' needs)
Te Tiriti o Waitangi	0	+	0
		(requires reflection, justification, and dialogue to bring about a cultural shift to a whole-of-organisation approach to learner wellbeing and safety)	
Overall assessment	This is the baseline option. The analysis of other options considers whether those options have better or worse impacts than option A.	By improving the status quo, this option provides certainty that the wellbeing and safety of learners will be enhanced. This option maintains provider flexibility and creativity to adapt practices to their learners' needs. Any potential risk around clarity can be carefully managed by clear guidelines.	This option is worse compared to the status quo as it would likely cause providers to focus on compliance rather than addressing learner wellbeing and safety. While clear rules provide greater certainty on the quality of wellbeing support, this option may stifle innovation and flexibility. This option also risks not being applicable across the sector given its complexity in terms of providers, learners and learning contexts. It may therefore be unclear for some learners how their wellbeing will be supported if the code does not seem to cater to their specific provider's context.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

The most effective solution is Option B

73. The proposal for a combined code that is outcome focused and has key processes is the preferred option. The new code builds on, and embeds, the existing provisions that currently exist across the interim and international codes.
74. In designing a mandatory code, it is important to achieve a reasonable balance between taking an overly paternalistic role (to ensure consistency of objectives and how they are achieved quickly and sustained over time) and allowing providers freedom to choose what approach they take (to be responsive to its specific context and learner body). This means a largely outcomes-focussed approach (such as taken in the interim code) would be an appropriate structure for the new code as it provides a consistent set of outcomes for all providers (to improve consistency) and flexible practices to enable providers to consider and respond to the diverse needs of their learners and learning contexts.

Proposed structure of the new code

75. We propose that the new code include:

- a. core learner wellbeing requirements that apply to all learners¹² whether they be domestic or international, or participating in provider activities on-campus, off-campus or in learner accommodation.¹³ These would be the fundamental conditions needed for any learner to flourish and succeed in their tertiary studies and beyond; and
 - b. additional or more specific requirements to reflect the distinct needs of learners in these contexts (e.g. those in learner accommodation and for international learners).
76. This structure has the advantage of reducing duplication (i.e. providing more clarity and simplicity for providers and learners) and reducing reporting requirements for those providers enrolling both international and domestic tertiary learners. It is broken down into six substantive parts, as set out below:
- a. Part 3 sets the direction for provider practices at the whole-of-provider level.
 - b. Part 4 is about how providers can proactively support learners to have positive learning and living experiences in their learning environment, and to identify and assess wellbeing and safety risks to learners and respond to them.
 - c. Part 5 sets out additional practices in tertiary learner accommodation.
 - d. Part 6 retains distinct requirements for tertiary international learners, structured in a similar way to the format of the general tertiary learner sections.

¹² This includes industry trainees and apprentices enrolled in vocational education and training with tertiary education providers.

¹³ Tertiary providers involved with student accommodation that is exempt from the RTA under section 5B of the RTA continue to be covered by the code, whether they own or operate the accommodation, or have agreements with third party operators.

- e. Part 7 sets out requirements for schools enrolling international learners. It effectively restates current provisions, as no substantial changes have been made here. The only changes relate to the language used in this part of the code.
 - f. Part 8 relates to code administrator reporting and monitoring requirements.
77. Despite taking a largely outcome-focused approach, the new code retains more detailed requirements for international learners in parts 6 and 7, including for example where there are higher risks (e.g. those under 18) and in relation to key processes to support the Government's objectives for international education.

This combination of options meets all the objectives

78. Overall, we consider this proposal will ensure consistent expectations that meet the needs of diverse learners and support a shift to a wider, developing system of supports for learner wellbeing and safety because it:
- a. continues to focus on outcomes and flexible processes that enable providers to support their learners in ways that best meet their needs (*flexibility & enhanced learner wellbeing and safety*);
 - b. requires providers to increasingly involve learners, as well as whānau, staff, local communities, and iwi, as they review the adequacy of their policies and processes in meeting all the outcomes of the code (*developing good relationships*);
 - c. allows providers to build on the work they are doing to comply with existing provisions by retaining strengths of the existing codes, refining requirements, and adding some new practices (*enhanced learner wellbeing and safety & transparency, accountability, and continuous improvement*);
 - d. aligns expectations for domestic and international learner groups, where their needs are shared, to improve clarity for providers and learners (*reduced complexity*); but
 - e. continues to spell out the expectations that apply now for providers regarding the specific needs of international learners (*enhanced learner wellbeing and safety*);
 - f. sets expectations for providers to have culturally responsive practices for supporting learner wellbeing and learners' identity, language, and culture (*Te Tiriti o Waitangi & enhanced learner wellbeing and safety*).
79. The new code also integrates the expectations for the Crown's obligations under Te Tiriti o Waitangi. It aims to address inequalities to strengthen our system for Māori learners and whānau to support them to achieve their education aspirations. Providers are also expected to be able to give effect to article 2 rights. The new code requires providers to work with learners, whānau, staff, local communities, and iwi to design strategic goals, plans and practices for learner wellbeing and safety, and safe spaces for learners to use te reo and tikanga Māori.

What are the marginal costs and benefits of the option?

Summary of expected costs and benefits

80. Most benefits and costs of the new code are not able to be quantified at this stage. While providers have mentioned the extra costs associated with giving effect to a detailed code, information about the actual monetised costs was not included in their feedback.
81. The key expected benefit of the new combined code covering domestic tertiary and international learners is to provide greater clarity and consistency for both learners and providers of expectations on providers for their learners' wellbeing and safety. Beyond this, the purpose of the new code is to:
- further embed the early focus on wellbeing and safety to support achievement that the interim code has started to encourage;
 - support community confidence in providers' support for their learners' wellbeing and safety; and
 - ensure that providers that are not meeting the expected standards are aware of these gaps and working to address them.
82. To the extent that the new code raises standards of wellbeing support, it could be expected to lead to benefits for both learners and providers, with flow-on public benefits.
83. The expected key cost of the new code is in assessing its implications (and the extent to which they are different from the existing provisions) and demonstrating compliance. Some providers may need to make changes to processes or services to meet the requirements of the code, with associated costs. It is not expected that these changes will be significant in 2022 because the new code builds on existing provisions, meaning providers can build on the work they are doing now to comply with these.

Cost benefit analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	<p>Tertiary education providers and signatory providers (including contracted service providers)</p> <p><i>Contracted providers of services covered by the code may include health and wellbeing services, advisory services, learner accommodation.</i></p> <ol style="list-style-type: none"> One-off costs of adapting from the interim to the new code and from two codes to one Cost of demonstrating compliance with a more complete code For providers that are not currently meeting the expectations of the code or do not have practices in place to deliver on new expectations in the code, there is a cost of making changes to comply with the new code 	Low/medium (depending on incidence)	(a), (b), (d), (f) and (g) near certain; (c) and (e) uncertain and likely to affect relatively few providers (there is a risk that costs could be passed onto learners)

	<p>Signatory tertiary providers that predominately enrol international learners</p> <p><i>Costs are as for tertiary providers, also:</i></p> <ul style="list-style-type: none"> d. One-off cost of reviewing policies relating to termination of enrolment e. May not consider change necessary or desirably, especially in the current context <p>Schools with international learners</p> <ul style="list-style-type: none"> f. One-off cost of updating documentation and references to the new code g. One-off cost of reviewing policies relating to termination of enrolment 		
Regulators	<p>Code administrator</p> <ul style="list-style-type: none"> a. One-off change cost to create guidance and adapt processes as the new code takes effect b. One-off cost of communicating the changes c. Ongoing potential cost of administering a more comprehensive code 	Low: the code administrator function is expected to be less than \$1.251 million in 2021/22. For 2022/23 and outyears \$1.211 million is available.	(a) and (b) near certain; extent of (c) is less certain and will depend on provider response to the new code.
Learners	<p>Domestic and international tertiary learners</p> <ul style="list-style-type: none"> a. increased cost of services in tertiary education or learner services fees, depending on provider responses b. impacts on access to tertiary education if increased costs are a barrier to participation c. time to learn about and work with the new code and complaints systems <p>International learners only</p> <p><i>In addition to the above:</i></p> <ul style="list-style-type: none"> d. there may be a perception of less focus on their pastoral care needs 	Low/no cost	The risk of (a) and (b) occurring is considered to be medium as providers may pass on any extra costs to learners; (c) is near certain; (d) is unlikely as it is offset by continued specific requirements in the code on providers for their international learners
Māori (whānau, hapū and iwi)	<p>Potential costs are:</p> <ul style="list-style-type: none"> a. increased cost of services in tertiary education or student services fees, depending on provider responses b. impacts on access to tertiary education if increased costs are a barrier to whānau, hapū, and/or iwi supporting Māori learner participation c. time to learn about and work with the new code and complaints systems. 	Low/no cost	The risk of (a) and (b) occurring is considered to be low; (c) is near certain
Wider government	<p>The Courts, to the extent that there are prosecutions under the offence or penalty provisions.</p> <p>Government may bear costs if regulated parties pass costs on to learners, and if increased costs to learners lead to higher learner loan costs or uptake of student allowances</p>	Low/no cost	<p>Courts: not certain, not expected to occur frequently.</p> <p>Government: not certain, but expected to be unlikely given that uptake rates are high already and</p>

			there are limits on the amount learners can get through loans and allowances
Total monetised costs	Largely unknown	Up to \$1.251 million in 2021/22, and up to \$1.211 million in 2022/23 and outyears.	Not certain
Non-monetised costs		Low	Not certain
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Tertiary education providers and signatory providers (including contracted service providers) <i>Contracted providers of services covered by the code may include health and wellbeing services, advisory services, learner accommodation.</i> <ul style="list-style-type: none"> a. greater clarity of expectations from one code rather than two overlapping requirements b. the structure and framework of the new code enable flexibility, support continuous improvement and effective feedback loops, and provide better complaint and dispute resolution c. more responsive services can better meet learner needs and improve wellbeing (leading to increased learner engagement and achievement in tertiary education) d. reduced treatment costs, reduced need for remedial action and reduced learner withdrawals due to inadequate pastoral care provisions 	Low/medium	(a) and (b) are near certain
		Low	(c) and (d) is less certain and is dependent on providers' response to the new code
	Signatory tertiary providers that predominately enrol international learners <i>Costs are as for tertiary providers, also:</i> <ul style="list-style-type: none"> e. More consistency with expectations for domestic learners reduces barriers to taking on domestic learners 		
	Schools with international learners <ul style="list-style-type: none"> f. continuity, clarity, and reduced burden at a time of significant change through retaining current settings for schools g. clarification of expectations relating to disciplinary action, particularly termination of enrolment, to ensure that these processes are fair and reasonable 	Low/medium	Extent of (e) is uncertain and dependent on providers' response to the new code
			(f) and (g) near certain
		Low	
Regulators	Code administrator <ul style="list-style-type: none"> a. improved clarity/specificity of requirements b. one code will remove overlapping/ conflicting expectations and a more comprehensive set of processes within the new code should reduce the need for education and compliance actions 	Medium	(a) near certain; (b) and (c) are likely but less certain and depend on providers' responses to the new code and need

	c. changes to the code provide incentives for ongoing self-review and improvement by providers, reducing the need for regulatory action		for support in adapting to the new requirements
Learners	Domestic learners <ul style="list-style-type: none"> a. clearer expectations for what providers must do and how they must work, including ensuring a more appropriate model for adult tertiary learners through a partnership approach (and therefore greater confidence in tertiary education services) b. understanding of learner rights to influence providers, and ability to raise suggestions and concerns about provider practices that affect them c. benefits to wellbeing, where provider practices better meet learner needs and recognise their identity, culture, and community d. benefits to educational achievement and success, where practices enable learners to improve or maintain wellbeing and focus on their studies e. reduced harm from inadequate practices <p><i>In addition to the above, there are further benefits for the following learner groups.</i></p>	Medium	(a) and (b) are near certain
	Māori learners <ul style="list-style-type: none"> f. requirement for providers to recognise the needs and aspirations of whānau Māori and for their processes to be culturally responsive and support the use of te reo Māori g. expectations that providers engage with learners as part of their community would enable whānau perspectives of learners to be heard 	Low	(c), (d) and (e) are less certain and depend on providers' response to the new code
	Disabled learners <ul style="list-style-type: none"> h. explicit expectations that provider services are accessible i. learner voice and engagement expectations will explicitly require engagement with diverse learners, which includes disabled learners 	Low/medium	(g) and (i) are less certain as impacts on learner and whānau engagement may occur if provisions change in response to the new code; expect these would improve over time
	Pacific learners: <i>Same as (g) above</i> Rainbow community learners: <i>Same as (i) above</i> Ethnic, or migrant and former refugee learners: <i>Same as (g) and (i) above</i>		
	International tertiary learners <ul style="list-style-type: none"> j. as for domestic learners, except that the benefits result from aligning wellbeing and safety expectations for domestic and international learners so that they are set at a similar level, where their needs are shared (this also addresses key gaps in the current international code) k. existing specific protections for international learners are maintained 	Medium	(j) and (k) are near certain

Māori (whānau, hapū, iwi)	Potential benefits are: a. the code requirements for provider plans and goals would offer an opportunity for Te Tiriti o Waitangi partner influence on providers b. the new code is an opportunity for iwi and hapū supporting Māori learners to ensure providers are meeting expectations for those learners	Low	Extent of (a) and (b) is uncertain and depends on providers' approach and response to the new code
Wider government	Potential benefits are: a. better outcomes from tertiary education b. improved wellbeing for learners c. reduced treatments costs from harm due to inadequate pastoral care provisions (this might for example include healthcare costs, crime)	Low	(a), (b) and (c) are uncertain but expected to grow/become more visible over time
Total monetised benefits	Unknown	N/A	
Non-monetised benefits		Medium/low	

Key assumptions underlying the costs and benefits analysis

84. The key assumptions underlying the cost benefit analysis above relate to:

- current practice in providers;
- the impact of COVID-19 on signatory tertiary education providers and schools with international learners; and
- the response of regulated parties to the new code.

Current practice in providers

85. Our understanding of current practice in providers is based on:

- provider self-reviews undertaken over the course of 2020 in relation to the interim code;
- submissions and feedback received during the consultation on te oranga me te haumarū ākonga | learner wellbeing and safety; and
- code administrator information.

The impact of COVID-19 on signatory tertiary education providers and schools with international learners

86. The recovery plan sets out a phased response and rebuild from the impacts of COVID-19, including ongoing work to review regulatory settings to ensure recovery supports the goals of the International Education Strategy. International education has been hit hard by COVID-19 disruptions, which have significantly impacted revenue, organisational stability, and future planning for signatories to the current international code. This has implications for the capacity and capability of signatory tertiary education providers and schools with international learners to implement requirements under the new code.

Signatory tertiary education providers

87. Signatory tertiary education providers that predominately enrol international learners have already had to update their pastoral care practices to new and amended international codes as recently as 2016 and 2019. Many of these providers have been heavily impacted by the drop in revenue from enrolling international learners, as well as losing staff and institutional knowledge.

Schools with international learners

88. The primary focus of the new code is embedding the strategic shift towards a learner-centred, wellbeing-focused tertiary education system which empowers learners. In general, the approach taken in the current international code appropriately reflects a traditional pastoral care approach for learners under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians.
89. No substantial changes are being made to wellbeing and safety requirements for international school learners, so the current provisions remain in place for them. This ensures continuity and clarity as schools look ahead to the potential of returning international learners when this is possible. There are two minor terminology changes to the part of the new code relating to schools with international learners.
90. Further review of these requirements may be appropriate following legislative change and as part of the ongoing recovery of the international education sector.
91. The response of regulated parties to the new code
92. Our assumptions about the behaviour of regulated parties are that:
- a. tertiary education providers, including signatory providers, will:
 - i. assess the implications of the new code for their activities accurately, using information from the code administrator,
 - ii. make the necessary changes to become compliant with the code;
 - iii. make appropriate efforts to absorb the cost of necessary changes within the provider to avoid significant costs to learners;
 - iv. consider passing any significant costs of quality or service improvement on to the learner;
 - v. seek clarity about requirements under the new code before making any significant changes or decisions about provision.
 - b. contracted service providers will:
 - i. assess the implications of the new code for their activities accurately, using information from tertiary education providers and the code administrator;
 - ii. make the necessary changes to become compliant with the code;
 - iii. seek to be compensated by providers for any necessary changes;
 - iv. seek clarity about the new code before making any significant changes or decisions about provision.

Section 3: Delivering an option

How will the new arrangements be implemented?

93. The Minister will issue the new code immediately following Cabinet decisions to ensure providers know about the scope of the code for 2022 in time to feed into planning and budgeting. The new code will come into effect from 1 January 2022. Some submitters want more time for the development of the next code while other submitters are keen for the next code to be implemented on 1 January 2022.
94. The Minister may, by notice in the *Gazette*, appoint a person or an agency to be responsible for administering a code. The code administrator can (with the Minister's permission) delegate functions to another party.¹⁴
95. It is expected that the implementation approach of the new code will draw significantly on the approach taken to implementing the interim code and the international code. Signatories have had several years of experience with the international code, and tertiary providers generally have been working with the interim code over the last 18 months. Experience with the existing codes has shown:
- a. the importance of information and education to support good practice, and reduce compliance activity; and
 - b. that complaint volumes can be high in the period following a new code, which indicated the importance of being resourced to respond to high volumes of queries in the start-up period.
96. In line with the approach to implementing the interim code and international code, it is expected that the code administrator, once appointed, will:
- a. begin developing code guidance for providers, in consultation with the sector (this is to occur in the second half of 2021 and may also involve running workshops with the sector, including into next year);
 - b. work with providers to build capability so that providers understand their obligations for learner wellbeing and safety, including in learner accommodation;
 - c. work with providers to help them meet their obligations; and
 - d. support the development of a sound information base on the code and its implementation.
97. The initial focus of implementation will be on information and education, enabling providers to ask questions about the implications of the code and the changes to existing provisions, and avoid misinterpretations or hasty changes that may increase costs unnecessarily. Focusing on information and education for providers will also enable the code administrator to build on existing information and undertake effective risk monitoring and management.

¹⁴ Under the old Education Act 1989, [section 238H](#) enables the Minister to appoint a code administrator. Under the new Act, this function is embedded into regulations under [section 648](#), however, schedule 1, clause 7(3) saves provisions of the old Act related to the code administrator until the date on which regulations are made under the new Act.

98. Joint Ministers have agreed to provide funding for the administration of the new code for domestic providers at \$1.251 million in 2021/22 and \$1.211 million in 2022/23 and outyears. This is in addition to existing funding for administering the code for international providers. The slightly higher funding in 2021/22 will allow the administrator to adjust its activities to respond to provider needs over the 2022 calendar year. If the administrator finds that provider readiness for the new code is greater or that providers quickly build capability and provide quality performance information, the funding may not be exhausted.
99. We expect that the code will evolve over time, both in line with legislative changes and based on any adjustments and clarifications needed as its implementation progresses. This will be a key message of the communication with and information for the sector.

How will the new arrangements be monitored, evaluated, and reviewed?

100. It is the role of the code administrator to develop monitoring and compliance arrangements to manage concerns of non-compliance, investigate alleged breaches, issue improvement notices and take other statutory action appropriate to the seriousness of the breach, and monitor performance as well as manage risk.
101. In terms of existing statutory actions, the Act allows for serious breach penalties to be issued to a provider that has breached the code or failed to comply with a quality improvement or compliance notice (section 535). Providers that commit an offence relating to a breach of code resulting in serious harm to or death of learners can also be found liable on conviction to a fine not exceeding \$100,000 (section 544).
102. Under outcome 1 of the code, providers must develop strategic goals and plans for supporting the wellbeing and safety of learners and use these to review the quality of their practices. Following any self-review, providers are required to take appropriate action within a reasonable timeframe to address any deficiencies in their practices. Providers must also arrange for peer-to-peer review of their self-assessment by suitably skilled and qualified staff from a different provider. The code administrator determines the frequency of both self- and peer-reviews.
103. The code administrator will report regularly about its performance and the performance of the sector.

Appendix 1: Who are the key stakeholders and what are their views?

104. A range of parties will be affected by the new code, and the expected costs and benefits are set out in section 2. The focus of this section is on identifying key stakeholders and outlining how they are affected, as informed by feedback through public consultation.

Users of tertiary education

105. All learners, including diverse domestic tertiary and all international learners, will be directly impacted by the code which places expectations on providers and signatory providers to support learner wellbeing and safety. The code will mean that learners will have more clarity about what providers must do and how learners can influence provider practices. Learners will see benefits to their wellbeing and therefore their educational achievement and success, where provider practices better meet diverse learners' needs.
106. The code is well supported. We have heard from learners generally that learner voice is central to the success of the code and that mechanisms for learners to have a voice need to be more effective. Striking an appropriate balance between providing support while also recognising learners as adults is important. Learners also raised concerns that some of the costs of implementing increased requirements may be passed on to them (e.g. providers may remove money from learner representative bodies to fulfil increased wellbeing requirements).
107. Māori learners highlighted the importance of being seen as part of, and engaged alongside, their whānau and communities. We also heard that Māori learners should not be expected to carry the burden of educating their provider about Te Tiriti o Waitangi or Māori interests.
108. We heard similar themes from Pacific learners, who support the emphasis on the collective (rather than an individualist approach) and noted the importance of working in tandem. They also cautioned that the code should not put the burden of 'fixing things' on the learners.
109. Disabled learners highlighted the importance of recognising that disability includes interplay between individuals and the barriers in their environment. We heard about ongoing issues around accessibility, sense of inclusion and inconsistencies in support.
110. We heard from international learners about the importance of clear and accessible information and that the language used reflects the diversity of different learner communities and voices. While they are aware that domestic learners do not have the same protections as they do, it is important that these provisions are retained for international learners.
111. Ten submissions were received from student associations and two from interested individuals: one a learner, the other a recent graduate and former student representative. All submitters broadly supported the code's intended purpose of providing a basis for ensuring and protecting learners' safety and wellbeing. One of the two individual submitters was pleased to note that the code is a step towards providing learners with appropriate care and support, rather than treating them as "income and expenditures streams."

112. Almost without exception submitters wanted to see stronger and more explicit commitment to engagement with learners in the development and implementation of the code. Most learners welcomed the focus on learners but thought that processes for including learner voices in a real and meaningful way needed to be strengthened.
113. The National Disabled Students' Association noted the absence of learners with disabilities in the code (though mentioned in the Discussion Document). They also considered that the tone of the code was not conducive to inclusion. They were concerned about providers not listening to learners, or that the diversity of needs would not be taken into account by the provider.
114. Many submitters raised the issue of discrimination and harassment in learning environments and wanted this more clearly articulated in the code. Establishing inclusive environments was very important to learners and they recommended that any support and complaints services be required to be accessible and mindful of cultural considerations.
115. Referencing a recent Youth survey, YouthLaw Aotearoa drew attention to refugee background learners, same-sex attracted teenagers and transgender and gender diverse teenagers as groups whose wellbeing needs should be further protected by the code.
116. Concerns were raised about the potential risk of compromising adult learners' autonomy and right to privacy, particularly the private lives of students when they are off campus.
117. Even though the discussion document characterises the code as being "principles-based", learner submissions worried about the potential impact of the code's prescriptiveness. They were particularly concerned about the whole process becoming a "tick box" exercise.
118. Learners indicated their unwillingness to cover any additional compliance costs that implementing the code may entail, either directly through having to pay increased fees, or indirectly through experiencing service cuts in areas not covered by the Code. They also noted how the code's prescriptive nature corresponds to an absence of a learner co-design. They want the code to have lots of detail so that learners can hold providers to account.
119. Some learners and providers acknowledged that tertiary learners are often adults and, therefore, should be able to take responsibility for their wellbeing and safety. Others considered that some learners can be vulnerable because of their circumstances (for example those moving between countries and those leaving home and their normal supports).

Māori interests – whānau, hapū and iwi

120. Ensuring the system of supports for learner wellbeing and safety honours Te Tiriti o Waitangi and works well for Māori is part of the Crown's responsibility under Te Tiriti o Waitangi. The education system has some way to go to ensure Māori receive their general citizenship rights under article 3 of Te Tiriti o Waitangi. It also has an important role in enabling Māori to exercise authority over their taonga, in particular te reo, tikanga and mātauranga Māori, under article 2 of Te Tiriti o Waitangi.

121. In our discussions with Māori and other participants considering the impact of changes for Māori, we have heard about the importance of meaningful whānau engagement which leads to better outcomes for Māori learners. Māori involvement in governance and decision-making should reflect Māori learners and the role of mana whenua.

Families and community interests

122. Ensuring that providers establish relationships with families and communities is important, especially relationships that value, promote and build on language, identity and culture (as noted above). Furthermore, involving communities in identifying and defining their own issues is more likely to lead to more sustainable solutions that work for learners, their supporters, and their communities.

Regulated parties: tertiary education providers and signatory education providers (includes their contracted service providers)

123. All providers are directly impacted by the code as it is binding on them. Providers will be expected to have (or form) an understanding of the new code and enact the requirements it sets. These requirements cover a wide range of activities which will influence provider practices at different levels (e.g. organisational, environmental and at the individual level).
124. Some providers, including contracted service providers (e.g. learner accommodation providers) may need to make changes to their practices to meet the new expectations. This impact on providers is likely to vary depending on a range of factors including the quality and scope of support provided to learners under the existing regulatory requirements. Based on the evidence available, it is not possible to make a detailed provider-by-provider analysis of the likely impacts.
125. Providers agree with the importance of the code and the role it plays, however, they felt more balance is needed in terms of making visible learners' responsibilities and agency regarding their own wellbeing. There was also some concern about the code setting out obligations beyond learner support services and student accommodation. Some participants noted the importance of being clear in the expectations that providers should do 'all reasonable' (whereas 'all possible' may not be realistic).
126. Some providers have a holistic approach to wellbeing that is embedded throughout and within their organisation.

Regulated parties: Universities

127. Seven New Zealand universities and their peak body, Universities New Zealand (UNZ), agreed in principle with the creation of a code that covers both domestic and international learners, and they acknowledged the importance of wellbeing to learner achievement. However, they all had some concerns that the draft code was too prescriptive and would not fulfil its intended purpose of providing a basis for continuous improvement but instead serve as a compliance tool. They were concerned about extending institutions' duty of care beyond the provision of safe learning environments to include students' physical and mental health as well as their social wellbeing.

128. Most universities considered that there needed to be more clarity about their obligations in terms of the dimensions of care and support under the code. They were worried about the broadening of the concepts of wellbeing and safety to matters that they felt were outside their control. Many submitters focused on the use of words such as 'timely', 'efficient', 'appropriate', and queried what they might mean, or how they could be measured or monitored.
129. Universities unanimously supported consultation with stakeholders to inform strategic goals, and especially of learners' perspectives. However, many submitters also noted that the need to consult with communities was perhaps too broad. For example, UNZ suggested that further consultation beyond learners and staff be mainly limited to whānau, iwi and/or communities, where those whānau, iwi and/or communities are actively and deliberately involved in supporting the wellbeing and safety of learners.
130. Universities were particularly concerned about the code interfering with academic pedagogy. Universities highlighted the diversity of learners at their institutions, arguing that the code's requirements would not be practical, or enforceable, except in the most general way. Universities expressed that the relationship with Māori and Pasifika learners is different and supported the need for Māori and Pacific learner spaces. Some universities questioned the relevance of 'ecological sustainability' and human resource management to learner wellbeing and safety.
131. Many universities argued some processes and practices described in the code should not be included in a pastoral care framework. An overarching theme in the submissions from universities was the lack of acknowledgement of the diverse nature of tertiary learners. Submitters considered that it was inappropriate to impose strict requirements in relation to all learners as this would potentially make them feel like their liberties are infringed unnecessarily. The University of Canterbury thought that the code could benefit from differentiating those learners who are most vulnerable.
132. Some universities expressed concern that some draft code wording about learner voice could permit students to voice hateful or unacceptable views.
133. A particular focus for the universities was the management of wellbeing and safety, where responsibility should fall, and who should be included. Related to this was the issue of access to public health and wellbeing services.
134. Another key element of submissions from universities was concern about learners who are studying remotely or overseas (including on exchange). It was felt that the code placed an impossible obligation on providers in these circumstances. For example, while providers will take reasonable steps to provide information and direct learners to access health services in those countries, the provision of those services will be entirely within the realms of the respective country and outside the provider's control.

Regulated parties: Te Pūkenga

135. In principle, submissions received from Te Pūkenga and its subsidiaries supported the move towards combining the international and domestic codes. However, they articulated a range of concerns in relation to the code's perceived ambiguity and proposed scope. Most submitters felt that the code takes too wide an approach and would require them to do things that they are not resourced to do.

Regulated parties: Private Training Establishments (PTEs)

136. While PTEs broadly supported the code's outcomes, they canvassed a range of concerns in their submissions about associated processes. Some PTEs noted that, while they take all reasonable steps to ensure and maintain the wellbeing of learners, they deal with adult learners in whose private matters they have no interest in interfering.
137. Some PTEs noted that the discussion document states that wellbeing and safety are "a shared responsibility between government, providers, learners, whānau, and the wider community", but there is no detail on how the Government would contribute to sharing this responsibility in a tangible way. Responsibility, cost, and liability for developing and maintaining learner wellbeing appears to rest solely with providers. A few PTEs felt the prescriptive nature was counterintuitive to the principles-based approach to the code.
138. Many submissions felt that the draft code adopted a "one-size-fits-all" approach and that this could not take into account the complexities of certain kinds of learning situations, for example, nursing students whose safety and wellbeing is determined by a range of factors such as the availability, cost and safety of transport to clinical placements which can necessitate travelling to isolated areas at night and for long distances.

Regulated parties: schools

139. The Minister has already signalled that the focus of the new code is to embed the strategic shift towards a learner-centred, wellbeing focused tertiary education system that empowers learners. In general, the approach taken in the current international code appropriately reflects a traditional pastoral care approach for learners under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians.
140. The Minister has signalled his intention not to make any substantial changes to wellbeing and safety requirements for international school students. This is partially because legislation and further policy work is needed to be able to do this. Retaining current provisions also ensures continuity and clarity as schools look ahead to the potential of returning international students when this is possible.
141. Feedback has signalled that the focus on tertiary providers is appropriate and that code expectations for school signatory providers do not require changes at this time.

Regulator: code administrator (and any delegated administrator)

142. The code administrator function will require capacity to communicate the changes to the existing provisions, respond to enquiries and complaints, investigate and monitor performance, and prepare a tailored approach to enforcement action for breaches. The administrator is also required to take reasonable steps to publicise the code to providers and learners, including (creating and) publishing guidelines for providers.
143. The code needs to include sufficient detail so that the code administrator can monitor and investigate performance. The code also needs to be flexible so that the code administrator can use the code in diverse education settings and with diverse learners.

Wider government

144. There may be impacts for the Courts, to the extent that there are prosecutions under the code, however, these are expected to be rare.
145. There may be implications for health-related services. If providers are better at identifying wellbeing and safety needs, more learners may be directed to health-related services. If there is not timely access to high quality health related services, learner wellbeing and safety may be compromised.
146. There may be other impacts for wider government, including benefits from better wellbeing and educational outcomes for learners. The guidelines developed by the code administrator will provide an opportunity to highlight healthy practices.

Regulatory Impact Statement: Domestic Tertiary Learner Dispute Resolution Scheme

Coversheet

Purpose of Document

Decision sought:	This analysis and advice have been produced for the purpose of informing key policy decisions on the dispute resolution scheme rules to be taken by Cabinet.
Advising agencies:	The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.
Proposing Ministers:	Minister of Education
Date finalised:	29 June 2021

Problem Definition

A dispute resolution scheme for domestic tertiary learners was provided for in the Education (Pastoral Care) Amendment Act 2019. These proposed rules set out the design and process of the scheme.

The proposals aim to address the problem that unresolved disputes can have a significant impact on learners and their education, particularly due to the power imbalance between learners and providers. Unlike for other learner groups, currently there is no bespoke, learner-centric, independent disputes resolution service for domestic tertiary learners. Existing options for making complaints are confusing to navigate for learners and not bespoke to the tertiary education context.

Executive Summary

Learner wellbeing and safety package

The proposed rules for the financial and contractual dispute resolution scheme (DRS) for domestic learners are part of a suite of proposals, building on earlier urgent changes to strengthen learner wellbeing and safety in tertiary education. They set out the design and process of the scheme that was provided for by the Education (Pastoral Care) Amendment Act 2019.

The other proposals in this package include:

- a new code of practice for the pastoral care of domestic tertiary and international learners; and
- legislative changes to support learner wellbeing and safety.

The legislative changes will come into effect after the dispute resolution scheme and code are in place. These rules are designed to enable an effective and sustainable scheme; however, we note that the legislative proposals include some changes to the provisions establishing the scheme, to further enhance it. This includes broadening the scope of the scheme and strengthening information sharing provisions. If these changes are progressed, these rules will need to be updated.

Regulatory impact statements for the proposed code and the proposed legislative changes are provided separately.

Key considerations in the design of the scheme

Improved learner wellbeing and safety contributes to better educational achievement. Disputes resolution is part of this, as unresolved disputes have a significant impact on learners and their education. Stopping disputes from arising and solving them quickly and effectively when they do happen is critical.

There is a power imbalance between learners (with their whānau) and providers. It is therefore particularly important to have an independent dispute resolution scheme available that helps manage this power imbalance.

Options considered

Two sets of options were considered:

1. Design options
 - a. A scheme that replicates the international student scheme
 - b. A scheme that is tailored to meet the needs of domestic learners
2. Process options
 - a. the scheme should use consensual dispute resolution processes
 - b. the scheme should use determinative dispute resolution processes, or
 - c. the scheme should have a tiered scheme with both consensual and determinative processes

The preferred option is a combination of design option One B and process option Two C

- a. The scheme will be tailored to meet the needs of domestic learners
- b. The scheme will have a tiered process with consensual and determinative dispute resolution methods.

This option is reflected in the proposal presented in the Cabinet paper.

Impact of proposal

This will enable a flexible and accessible scheme that prioritises the needs of all learners and is able to deliver effective and sustainable dispute resolution. It will also allow for the scheme to have proper regard for tikanga Māori to ensure equitable outcomes, while making the complaints system easier for learners to navigate.

We do not expect that there will be high costs for providers related to compliance with the scheme, beyond initial upskilling of staff to understand the process. If providers are required to participate in a DRS process, the scheme will be fair and balanced, with the focus on helping learners and providers solve disputes together in a way that works for both parties and is sustainable, rather than being a punitive scheme.

There will not be significant implications for regulatory bodies. The Ministry of Education will be able to build off similar processes that exist for the international student dispute resolution scheme for monitoring and evaluation. Quality assurers will also be able to build similar information sharing relationships with the new scheme.

Stakeholder views

Key stakeholders were broadly supportive of the scheme and its intent to fill the regulatory gap in the complaints system, and in particular, of its aim of being accessible and independent.

Users of tertiary education were particularly interested in the scheme being accessible and catering for the diverse range of needs that domestic learners have. Clear information and navigable pathways with support available was also important to help learners use the process and address the power balance between learners and providers.

Māori were also particularly interested in ensuring the scheme is accessible for Māori learners, with the capability for the scheme to have regard to tikanga Māori principles, that te reo Māori can be used throughout the process, and that Māori were involved in the development and evaluation of the scheme.

Providers emphasised the importance of the scheme being balanced, fair and reasonable in its process and outcomes. They had some concerns about costs related to the scheme.

Limitations and Constraints on Analysis

The options considered in this RIS are constrained by the primary legislation: the Minister of Education is legally required under section 536 of the Education and Training Act 2020 to establish a student dispute resolution scheme.

The purpose and the scope of the scheme are set out in primary legislation, with the Act providing that the scheme have the purpose of resolving contractual and financial disputes between students and providers or signatory providers. The legislation also sets out that a claimant can only lodge a complaint if they have given the provider an opportunity to resolve the dispute.

The legislation also sets out that the DRS may not require a provider or signatory provider to pay a student claimant more than \$200,000 in relation to a claim.

Transitional provisions of the Education and Training Act 2020 mean that when a new code takes effect, there needs to be a dispute resolution scheme. There is a statutory obligation for the code to take effect on 1 Jan 2022, at which time the DRS must also take effect.

Responsible Manager(s)

Julie Keenan

Policy Director

Te Ara Kaimanawa | Graduate Achievement, Vocations and Careers

Ministry of Education

29 June 2021

Quality Assurance

Reviewing Agency: Ministry of Education

Panel Assessment & Comment: The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement: *"Domestic Tertiary Learner Dispute Resolution Scheme"* dated 29 June 2021.

The panel considers that this Statement **meets** the Quality Assurance criteria. It contains evidence of extensive and effective consultation with stakeholders and reflects their views on the proposed design of the new Scheme and dispute resolution processes. A convincing case is made that a design that is tailored and has a tiered process with consensual and determinative dispute resolution methods will best contribute to improved learner wellbeing and safety.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Background – The new dispute resolution scheme rules are part of a suite of proposals building on earlier urgent changes

1. In 2019, urgent law changes were made to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally. This included amending the Education Act 1989 through the Education (Pastoral Care) Amendment Act 2019 (carried over into the Education and Training Act 2020) to provide for the establishment of a dispute resolution scheme for tertiary learners to resolve financial and contractual disputes, among other matters. These rules propose the design and process of this scheme.
2. These changes were intended as a swift response and first step towards filling regulatory gaps to ensure learner wellbeing was supported while more comprehensive, system-wide changes could be developed. Meanwhile, COVID-19 significantly impacted the tertiary and international education sector, causing disruption for learners and providers. This has contributed further to concerns about learner wellbeing and inconsistency in practices across providers.
3. The dispute resolution scheme rules are part of a wider package of proposals that build on these initial urgent changes. Aside from the scheme, the package includes the following proposals, for which we have developed separate Regulatory Impact Statements:
 - a. A new code of practice for the pastoral care of domestic tertiary and international learners (also to start by 1 January 2022 alongside the new scheme); and
 - b. Legislative changes to support and reinforce the focus on wellbeing and safety, and to ensure the settings for the code, code administrator and dispute resolution scheme are fit for purpose for the future.

Status quo – There is a regulatory gap in the current complaints system, with no bespoke independent complaints service for domestic tertiary learners

4. Currently, when a tertiary learner has a complaint that has not been resolved by their education provider's internal complaints processes, there is no bespoke process for domestic tertiary students to pursue their complaints. Rather, there are a range of external bodies they can take their complaint to depending on its nature, which makes the process difficult for students to navigate, as it is not always clear which pathway should be followed. We have heard anecdotally from students that this often leads them to abandon complaints.
5. The New Zealand Qualifications Authority (NZQA) complaints process can take complaints relating to education quality and pastoral care (including issues around student accommodation). This can be accessed by all learners, but is not a learner-centric process as it aims to change and improve providers' practices in the system as opposed to helping

learners resolve individual complaints. NZQA cannot make decisions about or get involved in compensation or redress.

6. The Disputes Tribunal can hear complaints related to financial or contractual matters where there are claims less than \$30,000, but is not bespoke to the education context and is not widely viewed as an accessible mechanism for tertiary students.
7. iStudent Complaints is a dispute resolution scheme designed to resolve financial and contractual disputes between international learners and their providers. It is not accessible for domestic learners. It was established in 2016 under the same provisions as the proposed scheme.
8. The proposed rules will enable the operation of a scheme that fills this gap for domestic learners, providing a scheme that is designed with learners in mind and reflects an understanding of the education system and relevant regulatory and legal systems. This would be more accessible and able to deliver fairer outcomes for learners than existing pathways.
9. It is not clear how many domestic tertiary learners will seek to use the scheme. The iStudent Complaints scheme has the same scope as the proposed scheme, and received a total of 102 enquiries in 2019/20, and 94 in the previous year.¹ Not all claims require formal assistance through the scheme, with many being resolved through initial assistance and referral.² International learners are a smaller group than domestic learners, so we anticipate this figure will be higher. During the 2019 calendar year, the number of international fee-paying learners in New Zealand was 104,010. In 2019, there were 328,075 domestic tertiary learners (215,675 equivalent fulltime students).

There have been several strategic and statutory changes signalling Government's shift towards creating a learner-centred education system that ensures learner wellbeing and success

10. 'Learners at the centre' and 'barrier free access' are two of the main objectives of the new Tertiary Education Strategy and Statement of National Education and Learning Priorities (TES/NELP). This signals the Government's commitment to ensuring success and wellbeing for all learners through meaningful differences in these areas.
11. On 13 May 2021, the Education and Workforce Select Committee reported back to Parliament on its inquiry into student accommodation. The inquiry was launched after the COVID-19 lockdown because of growing concerns about the nature, ownership, regulation, and wellbeing and safety provisions of student accommodation in New Zealand. One of the inquiry's aims was to investigate and 'recommend some form of conflict resolution or recourse' for students.

¹ iStudent Complaints Annual Report 2019-2020 <https://www.istudent.org.nz/sites/default/files/2020-10/iStudent-Complaints-Annual-Report-2019-2020.pdf>

² 51% of enquiries required more formal assistance (facilitation/mediation/adjudication) in 2019/20

12. The committee found that the disputes and complaints system needs to be strengthened, and highlighted the role that the proposed code and dispute resolution scheme could have in improving this area.
13. In addition, section 4(d) of the Act, passed since the interim code was introduced, requires the education system to honour Te Tiriti o Waitangi and support Māori-Crown relationships. In addition, Ka Hikitia, a cross-agency strategy for the education sector, sets out guiding principles for supporting excellent outcomes for Māori learners and their whānau and ensuring a sense of belonging across the education system.

There have been developments in the dispute resolution sector aimed at improving best practice

14. In 2020, the Government Centre for Dispute Resolution (GCDR) launched a maturity model assessment framework setting out best practice standards for government dispute resolution schemes. The proposed rules have been designed to reflect the GCDR standards and contribute to the work on improving best practice across the dispute resolution sector.

What is the policy problem or opportunity?

Key issues influencing scheme design

15. The proposed approach builds on the wider work being done to support learner wellbeing and safety, and the research and best practice standards developed by the GCDR. It also considers the type of scheme and interventions that are needed to ensure the scheme delivers accessible and effective results for domestic tertiary learners.

Improved learner wellbeing and safety contributes to better educational achievement. Unresolved disputes have a significant impact on learners and their education.

16. Disputes can have a significant emotional and financial impact on individuals and their whānau and communities. Where unresolved, they can have lasting impacts on a learner's experience in education, both academically and in terms of their relationship with their provider.

17. This means that stopping disputes from arising and solving them quickly and effectively when they do happen is critical.

In resolving disputes there is a power imbalance between learners and whanau and providers.

18. Providers have a key role in resolving disputes, as there is a power imbalance. Learners have limited ability to be heard and influence provider decision making. This is exacerbated in a disputes context as there is a disparity in information and resources, and a perception that the provider has power over the learner's educational future.

19. Because frequently learners and their providers will need to continue their relationship during/after the dispute, it is also important that relationships can be maintained where possible.

Accessibility is fundamental in developing an effective dispute resolution scheme

20. At present, pathways for dispute resolution are difficult for learners and providers to navigate or are inaccessible due to formality of process or cost.
21. There is an opportunity in designing this scheme to ensure it is accessible for all users, and reduces confusion in the system.

Who are the key stakeholders and what are their views?

22. A six-week formal consultation period on the package of proposals including the DRS was undertaken, enabling quality public participation. This feedback has informed the approach taken in the proposals.

Users of tertiary education

23. As users of the scheme, domestic tertiary students are primary stakeholders. Ensuring the scheme is accessible and easy to navigate was of significant priority to learners, particularly having clear information on pathways to access the scheme, how to use the process, and what it can deliver for them. The importance of taking into account the diverse needs of learners at every stage of the process was also highlighted in consultation, particularly by disabled learners, and Māori.
24. Learners also emphasised that it was vital to ensure the scheme helped address the power balance between learners and providers, and that learners were supported throughout the process (for example, through disability support services or an advocacy function).
25. All learners have a shared need for wellbeing and safety, but learners are diverse and any arrangements need to take account of:
 - a. diverse educational settings, which include fulltime, part-time, onsite education, distance education, industry training, apprenticeships, offshore education, short-term and multi-year educational programmes
 - b. diverse providers, including universities, wānanga, Te Pūkenga, private training establishments, and schools.
26. No changes are being proposed to the dispute resolution scheme for international students, which includes international school students as well as tertiary. This is partially because legislation and further policy work is needed to be able to do this and also ensures continuity and clarity as schools look ahead to the potential of returning international students when this is possible. As the international scheme fulfils the purpose of resolving financial and contractual disputes for international students, there is not a regulatory gap for these students for the DRS to fill. We are intending to undertake further policy work on combining the two schemes in the future, as recommended by the Education and Workforce Select Committee's inquiry into student accommodation.

Learner representative groups

27. Learner representative groups may be further impacted by the scheme as learners may look to them for support using the scheme, and they may have an interest in ensuring they can educate members in how the scheme works.

28. Ensuring there is transparency in the scheme and its reporting is also important for groups in being able to hold the scheme, and providers, accountable.

Māori interests

29. Ensuring the system of supports for learner wellbeing and safety honours Te Tiriti o Waitangi and works well for Māori is part of the Crown's responsibility under Te Tiriti o Waitangi. The education system has some way to go to ensure Māori receive their general citizenship rights under article 3 of Te Tiriti o Waitangi. It also has an important role in enabling Māori to exercise authority over their taonga, in particular te reo, tikanga and mātauranga Māori, under article 2 of Te Tiriti o Waitangi.
30. In our discussions with Māori and other participants regarding the impact of changes for Māori, the importance of ensuring the scheme is accessible to Māori learners was emphasised. This includes that the process can be conducted in te reo, and information about the scheme is available in te reo.
31. An approach that requires the practitioner have regard to tikanga Māori principles in resolving the dispute, which enables Māori to input into the process and ensure it works for them was highlighted as important and necessary by Māori. Some Māori organisations also emphasised the need for co-design and development with Māori.

Regulated parties – tertiary education providers and signatory education providers

32. Tertiary education providers are directly impacted by the dispute resolution scheme. Providers will be required to comply with the rules of the scheme and its decisions will be binding on them. They will be required to provide learners with information about the scheme, participating in the scheme's processes as required, for example responding to information requests and attending meetings, and complying with any adjudication decisions resulting from the schemes.
33. Providers largely supported the establishment of the dispute resolution scheme, though had some concerns about costs, and ensuring the scheme was balanced and fair. This included costs around administration and compliance with the scheme, and around decisions made by the scheme requiring payments to students. Providers were concerned that the cap on payments that the scheme can require them to pay student claimants is high relative to the level of legal procedure proposed, and wanted the rules to ensure outcomes are reasonable and fair. They were also supportive of an approach consistent with natural justice principles that gives them the right to try and address the complaint first.

Regulator

34. The Ministry of Education will be the agency responsible for regulating the scheme. There is an interest in ensuring there is sufficient information available and accessible for the Ministry to effectively monitor and evaluate the performance of the scheme. It is also important that there be pathways available for the Ministry to take action where the operation of the scheme is not meeting expectations.

Dispute resolution services

35. The scheme will not have a significant impact on the dispute resolution services as while we are aware that there are a number of companies interested in operating the scheme, it

is relatively small. However, the requirements proposed on the operator, for example, high expectations regarding cultural competency and the ability to understand and incorporate tikanga, may help lift best practice standards.

Accredited dispute resolution organisations

36. The DRS may have implications for accredited dispute resolution organisations such as Arbitrators and Mediators Institute of New Zealand, Resolution Institute, and the Māori Allied Dispute Resolution Organisation. If practitioners appointed by the operator of the scheme are required to be members of professional membership organisation, they will be expected to meet certain quality requirements, and be governed by the code of conduct of the relevant organisation. This will mean the organisation is responsible for disciplinary matters, and ensuring their members are trained.

Legal and advocacy services

37. There may be implications for legal and advocacy services, as the scheme may impact the work they are asked to do and will be a new scheme to understand and navigate. It is not clear that the volume of work services have will increase, as we do not expect an increase in issues arising, but more of their work may be related to the DRS and there may be costs associated with upskilling practitioners to understand the new scheme.

Wider government

38. The DRS will have implications for the quality assurance agency as they will need to have mechanisms for sharing and processing information regarding complaints that are progressing through the DRS. This is important so that the quality assurer can investigate compliance issues when they arise, and identify and monitor systemic issues, and ensure continued system learning.
39. NZQA has a complaints process, which investigates claims made against providers from a quality assurance perspective. The NZQA process cannot offer learners compensation, and the establishment of the DRS may have implications for the volume and type of complaints that go to the NZQA process as some claimants will instead use the DRS. This makes it essential that NZQA and the DRS have strong information sharing pathways so that where regulatory action is needed NZQA remains informed even if its process is not used. It is important that learners do not have to go to both the DRS, where they can get compensation, and the NZQA process where they can trigger investigation to ensure their issue is fully resolved.
40. Under section 538 of the Act, a provider or claimant or the operator, could apply to the District Court to enforce a binding resolution of the DRS, including paying any sum of money. The District Court can also make an order requiring the DRS operator to comply with the rules. The District Court can also modify a resolution if it considers the terms are manifestly unreasonable, serving as an appeal mechanism. There is an interest in ensuring that information sharing pathways are robust and efficient. The regulator also has an interest in being informed as to whether decisions require enforcement action through the District Court and whether they are upheld, in order to monitor the performance of the scheme.
41. The Government Centre for Disputes Resolution (GCDR) also has an interest in the scheme and how it tracks against their standards for best practice and what lessons can

be learned from the scheme. They are creating a community of learning for dispute resolution schemes across New Zealand, and it will be important for the scheme to be a part of this.

42. There may be implications for existing complaints bodies that can hear financial and contractual disputes, for example, the Disputes Tribunal. For the Disputes Tribunal this could mean some cases that would ordinarily have gone to the Disputes Tribunal will go to the DRS. This could be beneficial as we have heard they do not have the capacity to have specialist education knowledge for more complex disputes and have a high case load.

What objectives are sought in relation to the policy problem?

43. The overall purpose of the wider work programme, of which the dispute resolution scheme rules are one part, is to develop a system of supports for the wellbeing and safety of domestic and international learners that embeds the early focus on wellbeing and safety to support achievement that the interim code has started to encourage.

44. To achieve this purpose, the work programme has several key objectives, including to:

- a. strengthen and improve regulation relating to the wellbeing and safety of domestic tertiary and international learners and ensure it is fit for purpose so all learners are supported to achieve in their education;
- b. ensure the regulatory system is consistent and clear for all stakeholders, including education providers, accommodation providers, domestic students, international students, and communities; and
- c. honour Te Tiriti o Waitangi and support Māori-Crown relationships.

45. There are also several dispute resolution scheme specific objectives, to embed the best practice principles developed by the GCDR, to be:

- a. User focussed and accessible
- b. Independent and fair
- c. Efficient
- d. Effective
- e. Accountable

46. Ensuring the scheme is accessible and accounts for the diverse needs of all domestic tertiary learners will support the overall purpose and high-level outcomes of the work programme. It will do this by fostering conditions for success and support of more equitable outcomes for diverse learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant and former refugee learners.

47. Although there are multiple objectives, they are complementary, not in competition. The option that is likely to best respond to the opportunities identified above and deliver the

highest benefits across all stakeholder groups is one that will meet all of the objectives above. This is reflected in the criteria for options analysis in Section 2.

Proactively Released

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

48. The options set out below will be assessed against the following criteria:

- a. Is the option learner-focussed and accessible to all user groups?
- b. Does the option ensure that the scheme will be independent and fair?
- c. Does the option ensure that the scheme will be efficient, promoting timely and early resolution of disputes?
- d. Does the option provide effective and sustainable results?
- e. Does the option ensure the scheme will be accountable, with effective monitoring and data stewardship, including supporting effective monitoring of compliance with the code?
- f. Does the option honour Te Tiriti o Waitangi and support Māori-Crown relationships?

49. All criteria are important to determining the best option, with criteria a particularly important in achieving the primary objective of improving wellbeing and safety of tertiary learners.

What scope will options be considered within?

50. The options considered below are constrained by the primary legislation. The student contract dispute resolution scheme has been established by section 536 of the Education and Training Act 2020. These rules are needed to establish the scheme and fulfil the intent of the legislation. Consequently, non-regulatory options to address the opportunities identified in section 1 would be complementary to the DRS and need to be considered alongside and in addition to the scheme. Transitional provisions require the scheme to be established by 1 January 2022. The status quo/counterfactual is not considered as an option, as a scheme must be established.

51. The scope of the scheme is also set in primary legislation (section 536): to resolve financial and contractual disputes between students (and former and prospective students) and providers or signatory providers. Section 536 also sets out that decisions of the scheme are binding (if the result of adjudication or mediation (where agreed by the parties), with section 537 setting a cap of \$200,000 for payments to a student claimant resulting from the scheme.

52. The Minister has already signalled his intention that the scheme be accessible for domestic tertiary learners, without alteration to the options available to international students for resolving disputes. There is an expectation from the Minister that the scheme will be operating by 1 January 2022, alongside the new code of practice for pastoral care.

53. The tertiary education system is complex with a wide range of providers, learners, and a variety of contexts. This also constrains the range of options available, as the scheme must

be able to be accessible and flexible to meet the needs of a diverse range of learners and providers.

54. The scope of feasible options has also been limited by stakeholder engagement. There was a strong preference from providers for the scope to exclude issues related to academic quality, owing to the need for tertiary institutions to retain academic freedom and institutional autonomy.

We considered relevant experience from other NZ government dispute resolution systems in setting the scope for options identification and development

55. In considering the scope for option identification and development we considered relevant experience from across similar schemes in New Zealand. In particular, we considered information and advice from the Government Centre for Dispute Resolution. The Centre has worked with schemes across government to build from experience and expertise and develop best practice standards for dispute resolution schemes in New Zealand. The standards are intended to inform those developing new dispute resolution schemes and reviewing existing schemes to ensure continuous improvement across the sector.

56. The GCDR and practitioner groups have also been consulted to ensure that options identified are feasible for the sector.

Public consultation was undertaken on the package of proposals, including the DRS.

57. The options have also been informed by the feedback received during public consultation which took place in April-May 2021. Feedback included over 100 written submissions and survey responses from learners, whānau and associations, providers, sector peak bodies, community and health organisations and dispute resolution experts. Officials also conducted around 60 face-to-face and online engagements, with a particular focus on learners and communities representing groups that are underserved by the education system.

What options are being considered?

58. Given the statutory requirement to have a scheme to resolve contractual and financial disputes for tertiary learners, the options focus on structure and design of the scheme, as opposed to its scope. The options exist as two pairs that relate to different elements of the scheme. The most effective proposal will be a combination of the options from each pair. The options are:

Option One: Structure and design

- a. A scheme that replicates the existing international student scheme for domestic learners
- b. A scheme that is tailored to the needs of domestic learners

Option Two: Process

- a. A scheme that delivers consensual dispute resolution methods
- b. A scheme that delivers determinative methods of dispute resolution
- c. Option Two A and Two B are not mutually exclusive and could be combined in a tiered process that incorporates both consensual and determinative dispute resolution methods.

Option One A – A scheme that replicates the existing international student dispute resolution scheme

59. Under this option, the international student dispute resolution scheme (international scheme) rules would be replicated for domestic students, with no changes.
60. The international scheme has been running since 2016, and we have heard that it is working well for international learners and providers in terms of accessibility and effectively resolving disputes. The two schemes share the same scope - financial and contractual - and were designed specifically for the education context and to manage power imbalances between learners and providers.
61. This option may also be easier and more efficient to implement, as providers are familiar with the scheme and how it operates. It may also have a lesser impact than other options on one-off compliance and administration costs. The same or similar regulatory and monitoring systems could be used. There is an established system for information sharing and monitoring between the quality assurance agency and the scheme operator that could be expanded for the new scheme.
62. However, this option would not fulfil all the criteria and objectives set for this work, in particular regarding creating a learner-centric and accessible scheme, honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships.
63. The international scheme rules have not been designed to encompass the diversity of the New Zealand population, and ensure the scheme works for Māori, to whom the Crown has particular responsibilities, including in the education context. Replicating the international scheme rules in the domestic context would not account for issues of equity and accessibility, in particular for Māori and Pacific student claimants. It would not allow space for tikanga Māori in the scheme, which we have heard from Māori is fundamental in providing a service that meets Māori needs and delivers equitable outcomes.
64. Replicating the international scheme may also be negatively perceived by users of the new scheme and reduce public trust and uptake, as it would appear that domestic learners have not been listened to or their views taken into account.

Option One B – A scheme that is tailored to the needs of domestic tertiary learners

65. This option would involve designing a dispute resolution scheme that is tailored for domestic tertiary learners. This includes ensuring that the scheme is designed with the diverse needs of domestic learners in mind regarding its accessibility, cultural competence,

process, and accountability measures. This could build off learnings from the international scheme and other existing dispute resolution models across New Zealand. It would also give us the opportunity to design the entire scheme in line with the new GCDR framework for best practice, and reflect the feedback of domestic tertiary learners and Māori.

66. While we have heard that the international scheme works well, the needs of international and domestic learners are different. For example, there may be different cultural needs that need to be accounted for in the design and process of the scheme, the types of disputes may differ, and the education and societal contexts in which learners and providers operate is different. Designing a tailored scheme would ensure we can take these needs into proper consideration throughout the process, so that it is accessible and effective for all stakeholders.
67. It is also particularly vital in the domestic context that the scheme is designed to have regard to Te Tiriti o Waitangi, and takes into account the interests and needs of Māori. This will ensure the scheme is able to deliver more equitable outcomes. This would give us the opportunity to ensure that proper regard is given to tikanga Māori in the dispute resolution process if the learner requests it, ensure that te reo Māori can be used in all processes, and that the scheme generates data that will help Māori to hold the scheme and system to account.
68. Building off the lessons learned from the international scheme but tailoring the scheme to meet the needs of domestic learners may also increase public confidence and trust in the new scheme compared to replicating the international scheme.
69. Designing the scheme from scratch will also present opportunities to improve the rules to align with the GCDR's best practice framework. The framework was developed in 2020, and reflects current understanding of best practice for dispute resolution in New Zealand.
70. There is a risk that using a new approach may create confusion by creating two different systems providers must comply with. In addition, it may create recurring inefficiencies, adding to the complexity of administration, reporting and monitoring for providers, the quality assurer, and the regulator. We consider that these risks can be mitigated. We do not expect that monitoring and evaluation mechanisms will be significantly different in structure from the international scheme. For example, we anticipate annual reporting and case studies will be the key mechanisms as with the international scheme, so it is likely existing systems could be used with minimal alteration. While the schemes may be different in structure and process, we do not envisage significant change for providers in their immediate or long-term compliance or administration obligations with the scheme compared to the international scheme. The dispute resolution scheme and any new compliance obligations, for example training staff, will be reasonable and will fit alongside those for the code.
71. This option was broadly supported during consultation, including by providers, learners, regulators, and other government agencies such as the GCDR. As part of developing this option, feedback from key stakeholders, including domestic learners, was taken into account in identifying components needed to ensure the scheme meets the needs of learners and works for all stakeholders.

Option Two A – A scheme that delivers consensual dispute resolution methods

72. In this option, the scheme would deliver a process that uses consensual dispute resolution methods. This could include facilitation, negotiation, or mediation, with the parties working together to find solutions, with differing levels of involvement from an independent practitioner. Resolutions could be binding and enforceable with the agreement of the parties to the dispute.
73. This option has benefits, but on its own may not maximise the potential of the scheme and ensure it works for all learners. Consensual processes are more accessible and less intimidating than other options for dispute resolution as they are less formal and less costly. They prioritise parties working together to understand each other and the issue and develop a mutually acceptable solution. This is particularly important in the education context as it improves the chances of maintaining or restoring relationships between learners and their education providers. They also are more flexible, for example, meetings could take place at the provider or the claimant's home, or a marae if preferred, and can be tailored to meet the specific needs of the involved parties.
74. However, in some cases, consensual processes may not be sufficient, or appropriate. This is particularly the case where complex legal issues are in dispute, where parties cannot agree a solution, or where relationships have deteriorated such that making parties work together may not be practicable. In these cases, under this option if implemented alone, parties could take disputes to the court system. This is not an accessible pathway for most learners, both in terms of cost and the ease of navigating the process. The likely direct impact of this would be that if consensual processes are not appropriate or do not resolve the dispute, a significant number of claimants may give up on seeking resolution. This is particularly the case for learners from more vulnerable population groups and would likely have inequitable outcomes. This can have long-lasting negative impacts for the claimant regarding their education, finances, and emotional wellbeing. Court cases are also significantly more costly for providers and would be less likely to meet the objective of promoting timely and early resolution.
75. Having the court as the only available next step would further reduce the scheme's ability to be learner-focussed and accessible, with a system that is easier to navigate for all stakeholders. To pursue a claim, learners would have to go to a separate court process after going through the DRS. This would also have implications on the cost for providers as the time spent for parties going through two different schemes is likely to be higher than having a process that can deliver determinative decisions.

Option Two B – A scheme that delivers determinative dispute resolution methods

76. Under this option, the scheme would resolve disputes through determinative methods, with the DRS making an independent, binding decision on the dispute. This could follow hearings or meetings with the parties. Determinative processes can be particularly appropriate where there are complex issues that require a decision based on rights-based determination or legal precedent. These allow for binding decisions to be made outside of the formality of the court system and are more accessible and less costly. They are also an appropriate option where it is not possible or desirable to have the parties work together to find a solution.

77. However, this option is not conducive to restoring or maintaining relationships between parties, and is more formal, intimidating and less accessible than consensual processes. This does not align strongly with the objective of providing learner-centric dispute resolution. It may be less consistent with our obligations to Māori as it does not leave significant space for tikanga based approaches and for learners to input into the design of the process.

Option Two C – A scheme that delivers a tiered dispute resolution process

78. The two options could be combined, and the scheme could offer both consensual and determinative processes. This would look like a tiered scheme, with consensual processes being the first step, with adjudication as a next step if consensual processes do not work. The scheme would also have the flexibility to use adjudication in the first instance if it is more appropriate or if a claimant requests it.

79. This option would combine the benefits of option Two A and B and address the cons of each. A tiered process would ensure that the scheme prioritises the accessibility and flexibility that is crucial to user-groups, being able tailor the process to suit the issue and parties. This will also increase choice for learners, which will help rebalance the power imbalance between learners and providers.

80. Having the consensual processes available will also ensure the scheme is focused on resolving disputes in a way that helps maintains relationships between parties and upholds mana, while promoting early and effective resolution.

81. Having a determinative process built into the scheme will ensure that there is a further step easily accessible for those who are unable to resolve disputes through consensual processes. This may help make the system easier to navigate for learners, providers, and regulators and reduce costs of compliance compared with options that would require courts as the second option.

82. This option received wide support in consultation, including from learners, providers, and dispute resolution specialists.

How do the options compare to the status quo/counterfactual?

	Option One (a) A scheme that replicated the international scheme	Option One (b) A scheme that is tailored to the needs of domestic tertiary learners	Option Two (a) – A consensual process	Option Two (b) – A determinative process	Option Two (c) – A tiered process (combining A and B)
Learner-focussed and accessible	- Will not take into account the specific needs of domestic learners	++ Can tailor for domestic learners to meet their needs, builds off existing understanding of what works for learners, ensures is easier to navigate for learners	+ Less formal and intimidating and costly for learners but next step would be courts	+ Less costly and intimidating than court, but not as accessible as consensual processes	++ More flexible, accessible and easy to navigate
Independent and fair	++ Scheme will be required to be independent and fair	++ Scheme will be required to be independent and fair	++ Parties will work together to make decisions, with an independent third party	++ Independent adjudicator will make decisions that are fair and reasonable	++ Practitioners will be required to be fair and reasonable; the process will be balanced
Efficiency and early resolution	+ 	+ New bespoke scheme may be more efficient than other pathways (e.g. NZQA complaints or Disputes Tribunal)	+ Could require going on to a separate court process if consensual not appropriate	+ Does not align with principle of resolving disputes early in way that preserves relationships	++ Enables early resolution and more timely results as it has a determinative process inbuilt
Effective and sustainable results	- Does not account for needs of domestic tertiary learners and the domestic context, may not be sustainable results	+ May generate higher public confidence and trust in the scheme and process, leading to stronger outcomes	+ Helps parties work together to find a mutually acceptable solution but does not offer an appropriate way to resolve issues if consensual processes are not appropriate	+ Makes binding requirements on parties to resolve disputes but does not focus on rebuilding relationships, so less sustainable	++ Would enable effective, sustainable results in all types/levels of disputes

Accountable with effective monitoring	+	++	+	++	++
	Would be able to use existing systems and processes for monitoring	Would be able to build off existing systems and processes, but ensures important performance indicators for domestic context are included	If cases that are not appropriate for consensual processes have to go to court or other pathway, may be harder to monitor dispute resolution in the system	Would be simpler to monitor and evaluate	Would be simpler to monitor and evaluate and enable monitoring of different types of disputes throughout the system
Honouring Te Tiriti and supporting Māori-Crown relationships	-	+	++	+	++
	Would not take the needs of Māori into account or embed Te Tiriti o Waitangi	Could develop whole system to reflect needs and interests of Māori, ensuring Te Tiriti o Waitangi is embedded	This option is flexible and enables tikanga to be taken into account in the process	The scheme will be required to have practitioners that are culturally competent	This option is flexible and enables tikanga to be taken into account in the process
Overall assessment	This may be an improvement on the status quo, and may be easy to implement but would not meet the objectives set for this work. In particular this option would not be designed with the needs of domestic tertiary learners in mind and would not deliver an accessible scheme.	This option would enable a tailored scheme for domestic tertiary learners. This will be able to build off what works well in the international scheme, what we have heard from stakeholders and be designed to align with current best practice. This would result in higher trust and confidence in the scheme, and stronger outcomes. Similar monitoring systems and compliance requirements will mean is not inefficient to implement.	This option is highly accessible and flexible but it would not allow for all disputes to be effectively resolved at the DRS, with those requiring determinative processes needing to go to less accessible mechanisms	This option enables determinative processes in a less formal mechanism than the courts, but is less learner-centric and does not prioritise relationships so may be less effective and user-friendly	This option enables the flexibility and accessibility of the consensual processes, while enabling a less formal mechanism for determinative dispute resolution where needed. This would also make it easier to monitor the system and resolution of disputes.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

83. The most effective solution is a combination of options One B relating to design of the scheme, and Two C relating to its process.
84. The proposed option is for a scheme that is tailored to meet the needs of domestic learners and meets the GCDR's best practice framework, with a tiered resolution process. This process prioritises consensual dispute resolution, and has a determinative process, adjudication, as an option if consensual processes do not work or are not appropriate.

Design

85. One B is the preferred design option – a scheme tailored to meet the needs of domestic learners.
86. Replicating the international scheme would not deliver the accessible, learner-centric scheme that is required to address the regulatory gap at present, and would be less able to produce effective, equitable, and sustainable resolutions to disputes.
87. Developing a new scheme means we can ensure there is a focus on te reo Māori and that the scheme has proper regard to tikanga, with clear expectations regarding equitable outcomes, and Māori data collection and use.
88. Ensuring the scheme is tailored is more likely to ensure public confidence and trust in the scheme, compared to replicating the international scheme which could lead to a perception that the needs and voices of domestic learners had not been taken into account.
89. While replicating the international scheme may be more efficient to implement as existing systems could be used or replicated, we do not anticipate that there will be significant costs associated with developing monitoring and accountability mechanisms, or information sharing mechanisms for the new scheme. Similar systems could be used for the new scheme.
90. We also do not anticipate significant costs to providers resulting from having to comply with the new scheme. While this option would mean having to comply with two schemes, requirements will be similar and minimal administrative costs beyond training staff to understand the process. This option would also be simpler and more accessible for domestic learners to use.

Process

91. The preferred process option is a tiered process. This will prioritise consensual processes that focus on helping the parties work together to resolve issues and maintaining relationships where possible to ensure a long-lasting and effective resolution. If consensual processes do not work or are not appropriate or not preferred by the claimant, adjudication is available as a next step.

92. Adjudication will further enhance accessibility, as it will be simpler to navigate and more affordable for those intending to pursue their claims than going to another determinative forum like the courts for resolution. Unlike the courts, the scheme is also bespoke to the education context.
93. Combining the two processes is important as they both offer useful methods for resolving disputes in different ways, and this allows for flexibility so the process can be tailored to best suit the needs for parties. This flexibility is also beneficial in enabling the scheme to meet the needs of Māori, as the practitioner must have regard to appropriate tikanga in resolving the dispute and can work with the claimant to determine how the process should run, enabling choice and autonomy. Having either of the processes as the sole dispute resolution method for the DRS would not offer the holistic service the DRS should deliver to be effective and genuinely learner-centric.
94. Combining the processes may also be beneficial from the perspective of monitoring and evaluating the system as more disputes will be able to be resolved at the DRS without going to another body.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Tertiary education providers and signatory providers <ol style="list-style-type: none"> Ongoing administrative costs related to training staff to understand the scheme Potential costs of complying with the scheme if a claim is accepted by the scheme e.g. time preparing information, attending meetings, potential payments to students 	low	(a) is near certain, (b) is not likely to occur frequently
Regulators	Ministry of Education <ol style="list-style-type: none"> Ongoing cost of funding the scheme Ongoing cost of monitoring the scheme 	low/medium The operation and establishment of the scheme is expected to be \$300,000 a year.	(a) and (b) are certain
Learners	Domestic tertiary learners <ol style="list-style-type: none"> Time required to learn about the new scheme and its processes Potential time taken to make a complaint 	low/no cost	(a) is near certain, (b) is not likely to occur frequently
Māori (whānau, hapū and iwi)	Potential costs are: <ol style="list-style-type: none"> Time taken to learn about the new disputes scheme Time taken making and participating in dispute process 	low/no cost	(a) is near certain, (b) is not likely to occur frequently
Wider government	The courts – May be costs related to enforcing decisions where necessary Code administrator/quality assurance agency – May be costs associated with information sharing and administration pathways	low/no cost	Courts: not certain, not expected to occur frequently. Code administrator/quality assurance

			agency: Not certain
Total monetised costs	Largely unknown	The operation and establishment of the scheme is expected to be \$300,000 a year.	Not certain
Non-monetised costs		low	not certain
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Tertiary education providers <ol style="list-style-type: none"> Less costly forum for resolving disputes than court Flexible process, focused on working collaboratively to resolve disputes, not punishing providers Clear and easy to navigate system with clear requirements for providers Builds off experience and learning from international student dispute resolution scheme – familiarity with rules and build confidence and trust in scheme Reduced learner withdrawals as conflicts can be resolved early and effectively 	low/medium	(c) and (d) near certain, (a), (b), and (e) applicable if cases go to scheme
Regulators	Ministry of Education <ol style="list-style-type: none"> Builds off existing international scheme model so more efficient to monitor and operate 	low	near certain
Learners	Domestic learners <ol style="list-style-type: none"> Clear and accessible process for resolving disputes, more affordable and informal and bespoke to education than other options Understanding of needs of learners and flexible process to take these into account Support measures built into the scheme to ensure it is user-friendly and addresses power imbalance 	medium	near certain, when cases go to scheme

	<p>d. Enables early and effective resolution of disputes, and prioritises relationships</p> <p>In addition, there are further benefits for the following learner groups:</p> <p>Māori learners</p> <ul style="list-style-type: none"> e. Requirement for the practitioner to have regard to tikanga in resolving the dispute f. Support for the use of te reo Māori at all stages of the process, including information and annual reports g. Flexibility for process to take place on a marae or other preferred location <p>Disabled learners</p> <ul style="list-style-type: none"> h. Specific reference is made to the need for accessible formats for information i. Students with disabilities must have needs considered and met to enable equal participation in processes 		
Māori (whānau, hapū, iwi)	<p>Potential benefits are:</p> <ul style="list-style-type: none"> a. The operator must develop and evaluate the scheme with Māori and have regard to Te Tiriti, offering opportunity to influence the scheme b. Whānau and hapū supporting Māori learners can support or represent learners in making claims c. The scheme operator must generate a range of data specific to Māori ensuring outcomes are equal and having regard to Māori data sovereignty principles 	low	(a) and (c) are near certain, (b) applies when a relevant claim is made to the DRS
Wider government	<p>Potential benefits are:</p> <ul style="list-style-type: none"> a. A more efficient and clearer pathway for tertiary learner disputes to be resolved b. Stronger information sharing and monitoring across the system c. Improved dispute resolution practice across government by 	low	(a), (b), (c) are near certain

	aligning with the GCDR best practice framework		
Total monetised benefits	Unknown	N/A	
Non-monetised benefits		medium/low	

95. The Ministry of Education is responsible for allocating funding to the scheme. The monetised costs and benefits of the scheme have been estimated, based on assumptions drawing from the international learner dispute resolution scheme, as the costs and modus operandi will be similar to the international learner scheme.
96. The higher funding estimated for the domestic tertiary learner DRS compared to the international learner DRS takes into account the number of learners and vulnerabilities. However, there is a level of risk and uncertainty about the volume, nature, and complexity of disputes. The international learner DRS was allocated \$222,381 in 2020/21 but covers fewer learners. During the 2019 calendar year, the number of international fee-paying learners in New Zealand was 104,010. In 2019, there were 328,075 domestic tertiary learners (215,675 equivalent fulltime learners) and 60,655 international tertiary learners (43,090 equivalent fulltime learners).
97. The impact of non-monetised costs and benefits has been determined using information regarding the international disputes resolution scheme and what we have heard from stakeholder consultation.

Section 3: Delivering an option

How will the new arrangements be implemented?

98. The rules for the functioning and administration of the scheme will be made by Order in Council following Cabinet decisions. The rules will come into effect on 1 January 2022. Once the rules are in place, the Minister may appoint a scheme operator by Gazette Notice and may impose any conditions on the appointment that the Minister thinks fit. We intend that this will take place in November, in time for the scheme to begin operating by 1 January 2022.
99. It is expected that the implementation approach of the scheme will be similar to that of the international student dispute resolution scheme and focus on information and education for providers and learners. We have heard from consultation that promoting and building awareness of the scheme is critical to ensuring the scheme is accessible and works for learners. At present, learners are not aware of the pathways available to them to make and resolve complaints. We have also heard that staff in institutions are often unable to direct learners to appropriate external complaints processes as they also have limited awareness of such processes.
100. Once appointed, it is expected that the operator will:
 - a. Ensure the rules of the scheme are upheld
 - b. Work in partnership with stakeholders (including providers and student representative groups) to promote and publicise the scheme
 - c. Develop the scheme in accordance with the rules, and with Māori (for example, on approaches for giving regard to tikanga Māori principles during dispute resolution processes, on developing scheme resources and outputs in te reo Māori, on building capability of practitioners appointed by the scheme around te ao Māori, tikanga Māori, mātauranga Māori).
 - d. Develop accessible information in a variety of formats to ensure that students and providers are fully aware of the scheme and how to use it
101. There are also measures in the proposed code that require providers to comply with the scheme and ensure they are familiar with the scheme. Providers must also advise learners making complaints through internal processes how to seek further aid resolving the issue through the scheme. The code administrator will be responsible for ensuring providers understand their obligations in this area, for example through developing guidance material.
102. The scheme operator, Code administrator, and education quality assurance agency will be expected to share information to ensure the scheme enhances system performance and works effectively alongside other actors. This is required by the rules in regard to systemic issues identified by the scheme. At present, the international DRS operator and NZQA as the quality assurer and code administrator have a memorandum of understanding, enabling information to be shared so NZQA can investigate whether

regulatory action is required. We expect that a similar arrangement will be undertaken for this scheme.

103. Some smaller providers raised concerns in consultation regarding the cost of complying with the scheme. While we anticipate there will be some small administrative costs associated with educating staff about the scheme, we do not expect there to be high compliance costs. Providers will be required to strengthen their internal complaints processes as part of the proposed Code, which should lead to more complaints being resolved internally. On the occasion a case goes to the scheme, outcomes will be fair and proportionate, therefore providers will only be required to compensate students in the event they have not treated them reasonably.

How will the new arrangements be monitored, evaluated, and reviewed?

104. The Ministry is currently proposing legislative changes to the dispute resolution scheme. If these are progressed, new rules will need to be made in consultation with stakeholders. This will present an opportunity to evaluate and review the performance of the scheme and address any structural issues.
105. Given this, a review cycle has not been set in the rules, however, the operator must co-operate with any person or agency appointed by the Minister to carry out an independent review of the scheme and its operation. This enables a review to be carried out if considered necessary.
106. The scheme operator is required to have a process for receiving and resolving complaints about the operation of the scheme, including a regular client satisfaction survey. This will collect data on a range of performance indicators such as efficiency of the scheme and durability of resolutions and enable identification of issues with its quality.

Data collection

107. Data will be collected by the operator of the scheme and included in the annual report including on:
- a. the number and nature of disputes that were taken to the scheme, including those not accepted, and broken down in each category by the type of provider involved (such as wānanga, universities Te Pūkenga—New Zealand Institute of Skills and Technology and its Crown entity subsidiaries)
 - b. the average length of time taken to resolve disputes
 - c. the outcomes of disputes, for example, whether they were resolved, at what stage
 - d. examples of typical cases (with appropriate safeguards and redaction to preserve privacy)
 - e. financial statements demonstrating how the funding of the operator has been applied

- f. an outline of the steps taken by the scheme operator to ensure it is operating in a way that is consistent with the principles of Te Tiriti o Waitangi
108. The operator must also generate a range of Māori specific data and insights, that are meaningful and appropriate for use by Māori, the operator, and the education quality assurance agencies. They are further required to track the input, output, and outcome indicators of the impact on outcomes for Māori.

System performance

109. The scheme operator must also report on any systemic issues or serious misconduct by providers identified in the course of investigating or resolving a dispute, and how they dealt with the systemic issues or misconduct. In addition, the operator is expected to report systemic issues to the quality assurer, which will enhance monitoring of the system more widely.
110. The court system forms another pillar of monitoring, evaluation and review for the scheme, as parties may appeal decisions to the District Court and may apply to the District Court to enforce decisions.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Business Committee: Period Ended 16 July 2021

On 2 August 2021, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 16 July 2021:

Out of scope

CBC-21-MIN-0065

**Tertiary and International Learner Wellbeing and
Safety: Code of Practice, Dispute Resolution Scheme
Rules and Legislative Changes**
Portfolio: Education

CONFIRMED

Out of scope

Michael Webster
Secretary of the Cabinet



Cabinet Business Committee

Minute of Decision

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Tertiary and International Learner Wellbeing and Safety: Code of Practice, Dispute Resolution Scheme Rules and Legislative Changes

Portfolio Education

On 12 July 2021, the Cabinet Business Committee (CBC), having been authorised by Cabinet to have Power to Act [CAB-21-MIN-0281]:

Background

- 1 **noted** that in April 2021, CBC agreed to the release of consultation documents on a package of provisions for learner wellbeing and safety [CBC-21-MIN-0033];
- 2 **noted** that consultation with the sector has been completed, which fulfils the statutory consultation requirements under sections 534 and 539 of the Education and Training Act 2020 (the Act);
- 3 **noted** the summary of consultation feedback attached under CBC-21-SUB-0065, which the Minister of Education (the Minister) intends to publicly release;
- 4 **noted** that submitters were generally positive about the overall goals of the learner wellbeing and safety proposals to support achievement and broader community wellbeing, with learners and providers disagreeing on how to strike the best balance of expectations;

A new code of practice for learner wellbeing and safety

- 5 **noted** that the sector supported combining expectations for domestic tertiary and international learners in a single code of practice and the flexibility of an outcomes-based code;
- 6 **noted** that, under section 534 of the Act, the Minister may issue a code that provides a framework for the pastoral care of domestic tertiary and international students;
- 7 **approved** the draft Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021 attached as Appendix B under CBC-21-SUB-0065;
- 8 **authorised** the Minister to make any further minor decisions, finalise and issue the *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* (the new code);
- 9 **noted** that the new code replaces the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019, which expires on 1 January 2022, as well as the Education (Pastoral Care of International Students) Code of Practice 2016;

- 10 **invited** the Minister to present the new code to the House of Representatives following Cabinet approval to fulfil the statutory requirement of section 534(7)(c) of the Education and Training Act 2020 (the Act);
- 11 **noted** the Minister's intention to appoint the New Zealand Qualifications Authority as code administrator to work in consultation with the sector to support implementation of the code from 1 January 2022;

A new scheme to address financial and contractual disputes between domestic tertiary learners and providers

- 12 **noted** that the sector largely supported the proposal to create a new accessible, inclusive and flexible dispute resolution scheme for domestic tertiary learners to provide a similar process currently only available to international learners;
- 13 **noted** that under section 539 of the Act, the Governor-General may, by Order in Council, make rules for the functioning and administration of the dispute resolution scheme (the scheme);
- 14 **noted** that the Minister has made changes to the rules of the scheme based on sector feedback, including:
- 14.1 prioritising consensual forms of dispute resolution over adjudicative processes that result in binding decisions, with clarity that adjudicators must give effect to the rule of law in making decisions;
 - 14.2 expecting the scheme operator to develop and evaluate their service under the rules with Māori to ensure consistency with Te Tiriti o Waitangi;
 - 14.3 ensuring the proposed rules' consistency with the Privacy Act 2020;
- 15 **noted** the Minister's preference for the final structure of the rules to reflect the learner's journey through the scheme to improve clarity and make the scheme more navigable for users;
- 16 **agreed** to the proposed *Education (Domestic Student Contract Dispute Resolution Scheme) Rules 2021* (the proposed rules), attached as Appendix C under CBC-21-SUB-0065, which:
- 16.1 draw on the existing International Student Contract Dispute Resolution Scheme Rules 2016;
 - 16.2 have been developed in collaboration with the Government Centre for Dispute Resolution to ensure the scheme is in line with the Aotearoa Best Practice Dispute Resolution Framework;
 - 16.3 reflect initial feedback from Parliamentary Counsel Office;
- 17 **authorised** the Minister to issue drafting instructions to the Parliamentary Counsel Office to formally draft the new dispute resolution scheme rules based on the proposed rules;
- 18 **authorised** the Minister to make any further decisions that may arise during the drafting process;

- 19 **agreed** that, once drafted, the new dispute resolution scheme rules be released for targeted consultation with people and groups who provided feedback on the proposals ahead of final decisions;
- 20 **noted** the Minister's intention to report back to Cabinet in October 2021 seeking agreement to the new dispute resolution scheme rules;
- 21 **noted** the Minister's intention to appoint a scheme operator in late 2021, following a selection process, as per section 536 of the Act;

Legislative amendments

- 22 **noted** that there was relatively less consultation feedback on the proposed legislative changes, some of which was expressed through comments on the code and scheme;

Amendments relating to the provisions of a code of practice

- 23 **agreed** to amend the provisions in the Act relating to a code of practice to:
- 23.1 strengthen the focus on student wellbeing and safety in section 534 and related sections by:
 - 23.1.1 replacing each reference to pastoral care with reference to wellbeing and safety, with any necessary modifications;
 - 23.1.2 clarifying that the code applies to domestic and international students studying in New Zealand or offshore;
 - 23.2 provide for a responsive code by:
 - 23.2.1 requiring the Minister to consult with Māori before issuing a code;
 - 23.2.2 enabling the Minister to:
 - 23.2.2.1 issue tailored codes for a particular grouping of providers with either mandatory coverage or the ability to opt in to using a tailored code;
 - 23.2.2.2 appoint a code administrator for one or more codes;
 - 23.2.2.3 regularly set expectations about the code administrator's performance and priorities;
 - 23.2.2.4 gather information from the code administrator;
 - 23.2.3 providing for the Minister to gazette exemptions to all or part of a code for particular groupings of providers and for these exemptions to be added to the code as minor and technical changes;
 - 23.3 allow the Minister to make minor and technical changes to the code without meeting the consultation requirement set out in section 534(5) of the Act;

Amendments relating to the provisions for a code administrator

24 **agreed** to amend the provisions in the Act relating to a code administrator to:

24.1 ensure the code administrator has appropriate functions, powers, and duties to administer the code, monitor performance and manage risk by:

24.1.1 providing for the code administrator to monitor and regularly review how tertiary education providers and signatory providers are giving effect to the code;

24.1.2 allowing the code administrator to authorise any person to do, at any reasonable time, any one or more of the following things in relation to the code administrator's functions, powers and duties:

24.1.2.1 enter and inspect any premises (other than a dwelling house) of tertiary education providers (universities, wānanga, Te Pūkenga, private training establishments) and, if they are a signatory provider, schools;

24.1.2.2 require any person to produce documents or information under the control of the person;

24.1.2.3 inspect, photocopy, print, or copy any documents (whether held in electronic or paper form) or that the authorised person believes on reasonable grounds to belong to the establishment;

24.1.2.4 remove any document, whether in its original form or as an electronic or a paper copy;

24.1.2.5 require any employee or member of the establishment to make or provide statements, in any form and manner that the authorised person specifies;

24.1.2.6 inspect any work and any related materials;

24.1.2.7 meet and talk with any person;

24.1.3 requiring the authorised person to:

24.1.3.1 produce evidence of the person's authorisation to the person in charge of the premises when the person first enters the premises, and at any later time, at the request of the person in charge; and

24.1.3.2 give the person in charge a list of all documents that have been removed (if any); and

24.1.3.3 return any documents that have been removed unless to do so would prejudice any investigation;

24.1.4 ensuring the authorised person is a fit and proper person and has received appropriate training before using the powers of entry and inspection;

24.1.5 requiring the authorisation to be in writing and contain the legislative authority, the full name of the person authorised, and a statement of the powers conferred on that person;

24.1.6 providing for the code administrator to:

- 24.1.6.1 honour Te Tiriti o Waitangi and support Māori-Crown relationships (or other such wording as agreed with the Parliamentary Counsel Office);
- 24.1.6.2 report annually about its performance of its functions, powers, and duties, as well as the extent to which tertiary education providers and signatory providers are giving effect to the code;
- 24.1.6.3 issue notices which allow the code administrator to require a provider and/or signatory provider to do, or refrain from doing, a particular thing in relation to their obligations (and, for signatory providers, also their conditions) under a code, replacing quality assurance and compliance notices;
- 24.1.6.4 have notices set out:
 - 24.1.6.4.1 any concerns the administrator has about the provider's systems, practices, training, or procedures, or about the provider not sufficiently meeting a code outcome, or for non-compliance with a requirement of the code;
 - 24.1.6.4.2 the time within which the provider is expected to address the administrator's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - 24.1.6.4.3 the possible consequences of a failure to comply with a notice;
- 24.1.6.5 publish those notices, or a summary of it, in a manner designed to give public notice of it and extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with;

24.2 modernise the legislation by moving the provisions of the Education Act 1989 saved by clause 7(3) Schedule 1 of the Education and Training Act 2020, to the main body of the Education and Training Act 2020;

25 **agreed** to also:

- 25.1 remove 'following a process prescribed by a code' from section 238H(3)(b)(i)(A) of the Education Act 1989 which is saved by Schedule 1, clause 7(3) of the Act;
- 25.2 revoke sections 238I and 238J of the Education Act 1989 which are saved by Schedule 1, clause 7(3) of the Act;
- 25.3 remove 'in accordance with the relevant code' from section 633(1) of the Act;

Amendments relating to the provisions for a dispute resolution scheme

- 26 **noted** the Minister's proposals for legislative amendments with the joint purpose of modernising, strengthening, and clarifying the legislative provisions relating to the dispute resolution scheme and scheme operator, and ensuring they are fit for purpose;
- 27 **agreed** to amend the provisions in the Act relating to a dispute resolution scheme to:
- 27.1 broaden the scope of the disputes resolution scheme to include breaches of the code;
 - 27.2 better provide for the appointment and operation of a scheme operator by requiring the scheme operator to:
 - 27.2.1 co-operate and supply information;
 - 27.2.2 honour Te Tiriti o Waitangi (or other such wording as agreed with the Parliamentary Counsel Office);
 - 27.2.3 report annually;
 - 27.3 set a time limit of 20 working days for appeals about scheme adjudications, in line with other schemes;
 - 27.4 broaden the bodies able to be appointed as scheme operators to 'organisations' rather than 'agencies';

Amendments relating to administrative provisions for the code administrator and scheme operator

- 28 **agreed** to amend the provisions in the Act relating to administrative provisions to support the effective administration of the code and dispute resolution scheme, and ensure they are fit for purpose, so that the Act:
- 28.1 allows for the scheme operator, code administrator, and quality assessor to share information about complaints and complaint resolution;
 - 28.2 clarifies that the code administrator and the scheme operator are subject to the Ombudsman Act 1975 and Official Information Act 1982;
 - 28.3 enables the Minister to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners;
 - 28.4 enables fit and proper person checks;

Legislative drafting

- 29 **noted** that the legislative changes in paragraphs 23 to 28 above will be given effect through the Education and Training Amendment Bill (No 2), 9(2)(f)(iv) [REDACTED];
- 30 **invited** the Minister to issue drafting instructions to Parliamentary Counsel Office to give effect to the decisions in paragraphs 23 to 28 above;
- 31 **authorised** the Minister to make any further decisions that may arise during the drafting process, consistent with the overall decisions above;

32

9(2)(f)(iv)

Government response to the inquiry into student accommodation

- 33 **noted** that on 13 May 2021, the Education and Workforce Committee (the Committee) reported back to Parliament on its inquiry into student accommodation;
- 34 **noted** the Committee's conclusion that four areas of the student accommodation system were most in need of improvement: transparency and accountability in governance; dispute resolution and complaints; wellbeing and safety in student accommodation; and emergency planning and response;
- 35 **noted** that the Committee supported the draft code that was consulted on and made seven recommendations, all of which concerned the code and dispute resolution scheme;
- 36 **noted** that the Minister intends to accept the Committee's recommendations, but that:
- 36.1 the final code and scheme differ slightly from those endorsed by the Committee based on sector feedback;
- 36.2 the government give consideration to the recommendation for a combined dispute resolution scheme for domestic tertiary and international learners once the new scheme for domestic tertiary learners is in place;
- 37 **approved** the Government response, attached as Appendix E under CBC-21-SUB-0065;
- 38 **invited** the Minister to present the Government response to the House by 6 August 2021 in accordance with Standing Order 256.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Stuart Nash

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet