

Cabinet Paper material

Proactive release

Minister & portfolio	Hon Chris Hipkins, Minister of Education
Name of package	Policy approvals for tertiary and international learner wellbeing and safety: code of practice, dispute resolution scheme rules and legislative changes
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These documents have been proactively released:

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

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Author: Minister of Education

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Author: Cabinet Office

Associated Reports:

Education Report: 1264425 Changes to the code of practice after targeted learner and sector engagement (for CBC 12 July)

9 July 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

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.

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<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. [REDACTED]

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) [REDACTED]</p> <p>[REDACTED]</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

IN C O N F I D E N C E

- 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



Cabinet Business Committee

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.

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