



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

To:	Hon Chris Hipkins, Minister of Education		
Date:	9 June 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1255733
Drafter:	Lauren Bell	DDI:	9(2)(a)
Key Contact:	Julie Keenan	DDI:	
Messaging seen by Communications team:	N/A	Round Robin:	N/A

Purpose

This report:

- Advises key themes from
 - early high-level review of the 100 submissions and 60 engagements on learner wellbeing and safety proposals, including a Code of Practice te oranga me te haumarū ākonga, a new dispute resolution scheme (DRS) and supporting law changes. The submissions are generally supportive of the objectives of the proposals and recommend more or less change from the current state.
 - the Education and Workforce Committee's (the Committee) report on its inquiry into student accommodation, which supported specific proposals we consulted on within Te oranga me te haumarū ākonga | Learner wellbeing and safety.
- Sets out our proposed next steps for a revised set of proposals on Te oranga me te haumarū ākonga | Learner wellbeing and safety, and for the Government response to the Committee's inquiry report (as a special debate is scheduled for 24 June and the formal response is due 6 August). We seek your agreement to these next steps.
- Indicates potential timing of Cabinet decisions in July 2021, to enable providers and the future code administrator to plan for code implementation from 1 January 2022, and to enable final rules to be developed for the DRS and procurement of an operator.

Proactive Release

We recommend you release this report once final policy decisions have been made, with redactions made in line with the provisions of the Official Information Act 1982.

Release / Not release

Recommendations

We recommend you:

1. **Agree** the focus of talking points to support you for a 5-minute call in the 24 June special debate on the Education and Workforce Committee's (the Committee) report on its inquiry into student accommodation:

- a) Support for the Committee's work and its recommendations, which endorse your learner wellbeing and safety proposals, including a Code of Practice te oranga me te haumarū ākonga, a new dispute resolution scheme (DRS) and supporting law changes.

Agree / Disagree

- b) Alignment with the Tertiary Education Strategy priority "learners at the centre".

Agree / Disagree

- c) The importance of student voice and clear expectations in student accommodation, and the high level of professionalism amongst accommodation staff.

Agree / Disagree

- d) Links to wider issues, including student wellbeing and mental health, Budget 2021 increases to financial support for living costs, and housing costs.

Agree / Disagree

2. **Agree** in principle to the next steps for the development of Te oranga me te haumarū ākonga | Learner wellbeing and safety proposals:

- a) Mid-June: Preliminary advice on overall engagement analysis and changes to the proposals.

Agree / Disagree

- b) Late-June: Testing the proposed code with learner and sector peak bodies, and providing them with overall engagement analysis to give context for the changes, after your feedback. This would include:

- i) The five national student associations we have partnered with: the New Zealand Union of Students' Associations, Te Mana Ākonga, Tauria Pasifika, the National Disabled Students' Association, the New Zealand International Students' Association.

- ii) Provider peak bodies: Te Pūkenga, Universities New Zealand, English New Zealand, Te Taihū o Nga Wānanga, Independent Tertiary Education New Zealand and Quality Tertiary Institutions.

Agree / Disagree

- c) Mid-July: Proposals to Cabinet Social Wellbeing Committee on 7 July, or Cabinet Business Committee on 12 July, for announcements in mid-late July, to ensure:
- i) Approval of and certainty for providers on the code for 2022, to enable appointment of a code administrator, and their work with the sector and learners inform their planning for 2022 which will start from mid-2021, including guidance on the code.
 - ii) Timely development of Parliamentary Counsel Office (PCO) drafted rules for the DRS, to inform procurement of a DRS operator and Cabinet approval of rules for an Order in Council and announcements in November.
 - iii) PCO drafting of law changes for inclusion in the Education and Training Amendment Bill (No 2), as policy approvals are needed before August.
 - iv) Approval of a Government response to the Committee's inquiry into student accommodation, which is due to the House by 6 August.

Agree / Disagree



Julie Keenan
Policy Director
Te Ara Kaimanawa

09/06/2021

Hon Chris Hipkins
Minister of Education

___/___/___

Background on Te oranga me te haumarū ākonga | Learner wellbeing and safety consultation

1. From 7 April to 21 May, we consulted on the package of provisions for Te oranga me te haumarū ākonga | Learner wellbeing and safety. This included a draft code, draft dispute resolution scheme (DRS) rules, and law change proposals.
2. We heard a wide range of high-level and complex feedback from many stakeholders. This included tertiary learners, whānau, tertiary providers, and student accommodation providers, peak bodies, staff, community and health organisations, dispute resolution experts, and government officials.¹ In total, officials received 104 written submissions (including 40 survey responses) and conducted 60 hui (including face-to-face, online, and phone call).
3. We tested the approach to consultation, early results, and immediate findings with our Stakeholder Advisory Group of experts nominated by learner and provider groups. The Group's function is to assist officials to interpret and contextualise feedback.

Key themes from consultation

A range of high-level themes need to be balanced for the proposed new code, dispute resolution scheme, and law changes

4. There is general support for the goals of learner wellbeing and safety in tertiary education settings, to support achievement and broader community wellbeing. There is also support for:
 - Combining the tertiary and international codes, so that tertiary education providers with international students have one set of requirements.
 - The flexibility of an outcomes-based code, but with questions about how much should be set out in processes required to achieve the outcomes. The proposed code builds on the interim code for domestic students, with more explicit processes. The overall message from tertiary education providers is that the proposals go too far to set new requirements and expectations on providers; whereas tertiary and international learners (and those who support them) argue that the proposals do not go far enough.
 - An unchanged code proposed for schools providing international education. The Schools International Education Business Association and other school submitters support this proposal, but question the need to include it in the larger code: we propose changes to the Education and Training Act 2020 (the Act) to enable separate codes for different types of providers in the future.
 - Guidance that provides examples and insights into how the code can work in different provider contexts and for the full range of learners. This will be prepared by the code administrator with providers and learners.
5. Underneath this overall theme, submitters raise many significant points about the detail of proposals and how they would work in different tertiary education settings, and seek different mixes of prescription, flexibility, certainty, judgement, continuous improvement, learner voice, and transparency. Some provider submissions query the proposed 'whole of provider' focus on learner wellbeing and safety, saying it infringes on academic freedom.² Several large providers questioned the 1 January 2022 implementation of the

¹ However, there was limited engagement from industry-based learners and apprentices and industry training organisations on the proposals.

² Victoria University of Wellington's (VUW) submission included an appendix from, and an offer to meet with, Sir Kenneth Keith and Sir Geoffrey Palmer. The appendix recommended that no further work is done on the code until issues of academic freedom and the mandate for the code are addressed. This recommendation was not

proposals for the code, including their alignment with the Reform of Vocational Education implementation (the development of Te Pūkenga and the transition for work-based training)³ and the proposed law changes leading to further code and DRS changes after 2022.

6. We also received submissions about how the proposals fit in a broader context: requests for funding to implement the code or for services and advocacy support for learners, comments on the availability of community and student mental health and disability supports. Submitters raised issues of privacy and data sovereignty in both the code and DRS, and questioned the relationship of this work to pre-existing expectations on tertiary education institute governance and private training establishment management.
7. We are considering feedback, aiming to strike a principled and pragmatic balance. This will involve considering how the code and DRS rules fit within the wider system and provide a national framework for provider-level relationships with learners and continuous improvement of practice. It will also involve deciding the relative roles of guidance from the code administrator and the code itself: our preliminary view is that the code could be streamlined, with references to tailoring processes to student or provider circumstances put into guidance material. We are working closely with the New Zealand Qualifications Authority (NZQA), as the likely code administrator, on an appropriate balance that allows for flexibility and sufficient powers for the administrator when needed. Our early thoughts on changes are to:
 - Pull 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 to supporting learner wellbeing and safety.
 - Reduce examples in the code, including who to consult with or how to develop practices, shifting these examples to guidance material where appropriate.
 - Reduce and remove overlap with existing requirements, for example for accessible spaces and human resource policies.
8. We are progressing a more detailed analysis of the consultation feedback, including the mostly technical feedback we received regarding the DRS and the law changes, and incorporating comment received from the Parliamentary Counsel Office (PCO), NZQA, Government Centre for Dispute Resolution and the Office of the Privacy Commissioner over the consultation period. We will provide you with an overall report on the submissions received and engagements held over the consultation period. This will include specific analysis of Te Tiriti o Waitangi and Māori interests, to support our obligations under section 4 of the Act.

Code themes

9. Table 1 overleaf provides a high level and impressionistic view of the range of feedback as we understand them to date. The themes presented in Table 1 are useful in illustrating the balances to be set as we work towards the next code.

specifically endorsed in either the main VUW submission or the Universities New Zealand submission. We intend to take up the offer to meet.

³ Te Pūkenga's submission questioned the pace of change and its alignment with the insights and operating model being formed in Te Pūkenga. We consider the new code will provide more opportunities for insight, and the following code will be able to reflect these insights more thoroughly. Te Pūkenga also questioned the impacts for work-based learning, including for tripartite agreements with employers and trainees. We are conscious that providers involved in work-based provision have different responsibilities for work-based learners, and that these vary depending on the model of provision. Under the code, it is expected that providers are responsible for activities they provide or organise for learners. We intend to work through this with Te Pūkenga, other work-based providers, and the New Zealand Qualifications Authority and Tertiary Education Commission.

10. This does not capture all feedback on the code, and there is significant detailed feedback that we will analyse and reflect in specific suggestions on the text of the code, or keep in mind for guidance material for providers. The text in italics is stylised summaries of the voices expressing these views: these are not necessarily submitter quotes.

Table 1. High-level view of code themes

Retain separate requirements for international students		Single code	
Some participants wanted to retain a separate code or self-contained requirements for international students.		Many participants supported the concept of having one single code for both domestic and international students.	
<i>'We are concerned that international student needs will not be prioritised within a single code'</i>		<i>Support unified domestic and international code - apply same protections to all students'</i>	
Standards are overly prescriptive		Standards are too flexible	
While there was broad support for an outcomes based approach for the Code some participants thoughts there was too much detail in the process sections and this acts to reduce or limit some the flexibility for providers.		Some participants consider there is not enough precision in the processes (e.g. using words like 'appropriate' and 'reasonable'); with concern this could lead to ambiguity and create loopholes resulting in no meaningful change.	
<i>There is too much prescription - beginning to feel 'restrictive and disabling'</i>		<i>Code needs to be explicit on expected standards so real change happens'</i>	
As adults, learners take responsibility for own wellbeing		Learner wellbeing and safety is a shared responsibility	
Some participants consider learners are adults and their wellbeing and safety is their own responsibility.		Some participants consider that some learners can be vulnerable because of their circumstances (e.g. coming to a new country, school leavers moving away from home and their supports).	
<i>Code must hold tension between pastoral care support and respecting students as adults who own responsibility for their wellbeing</i>		<i>There's a lot of self-advocacy required to study with a disability, which is really tough as an 18 year old'</i>	
Provider focus is teaching and learning		Provider focus is wellbeing and safety for learning	
Some participants consider that the code steps over the line when it sets out obligations in relation to wellbeing and safety.		Some participants called for greater accountability for providers to support wellbeing and safety so learners can be successful on their own terms.	
<i>Staff are responsible for academic input, not mental health - academic staff are there to teach, not provide pastoral care/support.</i>		<i>Providers work to equitably uphold learners' mana and autonomy by hearing, heeding and embedding their voices in relevant education provision, decision-making and governance'.</i>	
Limit expectations of student voice		Student partnership, more than voice	
Some participants consider that compliance costs for providers will be heavy if they must consult with learners, whānau and communities, and that learners will have too much influence in provider's wellbeing and safety practices.		Some participants consider the code does not go far enough in requiring providers to work in partnership with learners and their communities and that this means that providers will not really know how to meet learners' needs.	
		<i>'Term 'consultation' implies one-way relationship - should be about partnership'</i>	
Retain status quo		Introduce new code	
Some participants expressed a preference to retain the interim code for the time being and continue to develop with the sector before a new code is introduced.		Some participants expressed a preference for introducing a new code in 2022 and continue to improve how it is implemented.	
<i>'We suggest pushing out timelines and taking longer to get this right'</i>		<i>A code such as this is long overdue</i>	

DRS themes

11. Feedback on the proposed DRS also shows a range of views, and a sense that the scheme goes either too far or not far enough to enable learners to have disputes resolved through a bespoke scheme that is learner-centric. Several submitters make connections between proposed improvements to provider complaint process requirements in the code. If more complaints are resolved at providers, fewer people will need to use the DRS.

12. Table 2 overleaf provides a high-level view of themes in this feedback.

Table 2. High-level view of DRS themes

Broadly support		Don't support	
Some submitters supported the need for a bespoke resolution scheme for domestic tertiary learners, noting there is a similar scheme already operating for international learners		Some participants noted the scheme may not be necessary given existing pathways that learners could access (e.g. Disputes Tribunal and Ombudsman), even if they are not bespoke processes	
<i>Strongly support the intent and aspirations of DRS</i>		<i>Don't see the need of the DRS when there are avenues to take learner complaints already</i>	
Learner-centred		Learner/provider shared focus	
Some submitters consider the rules must be learner-centred to help address the power imbalance between learners and providers		Some submitters felt the scheme should be more balanced between learners and providers, with minimal specific provisions for learners	
<i>Advocacy support is important for learners in disputes processes given the power imbalance</i>		<i>Disagree that the power imbalance between tertiary students and providers has an impact - a good practitioner is able to address the power imbalance and ensure everyone is heard in a fair manner</i>	
Focus on penalty		Focus on resolution	
Some submitters considered the scheme is inconsistent with current legal practice		Some submitters considered that the scheme should be flexible and focused on resolution	
<i>Usual rules of legal procedure don't apply with DRS (as with Disputes Tribunal) - may be problematic given DRS' proposed high jurisdiction (\$350,000) and overlap with District Court</i>		<i>Complaints process sterile and formal - doesn't recognise that often issues get dealt with informally</i>	
Prioritise privacy		Navigate between Code & DRS complaints	
Many participants expressed concern about the level of information-sharing required by the code, considering it is too intrusive on students		Many participants highlighted the importance of getting provider's internal complaints processes right, by ensuring the processes are accessible and can address student's complaints in a genuine and timely manner	
<i>Data and Māori information is taonga - must be clear what is collected and what it will be used for</i>		<i>Support the DRS requiring learners to go via internal complaints process first</i>	
Transparency: system learns from disputes		Focus on individual disputes	
Some participants supported the DRS operator's requirement to publish information about disputes, as this supports transparency and system-wide improvement		Some participants questioned how the DRS interacts with the Privacy Act, including restrictions on the collection and disclosure of personal information	
<i>Publication of disputes processed by the DRS enables learners, providers, and whānau to better understand issues in the system that have been resolved through the DRS</i>		<i>It is inappropriate to require the operator to disclose confidential information about the nature of disputes or how they were resolved. Only high-level information should be included, and it shouldn't be publicly available</i>	

Law changes themes

13. We received relatively less feedback about the proposed law changes. Some feedback on law changes were expressed as comments on the code or DRS proposals:

- Comments on the code indicate general support for some law changes including allowing for separate tailored codes for different provider types, in particular schools.
- Some tertiary providers question whether the code should include processes as well as outcomes (this is a current Act requirement); while learner representatives consider the processes an important protection in the code.
- Comments on the DRS indicate some support and some reservations about a wider scope (beyond financial and contractual matters), and about better navigation for learners between provider complaints processes and the DRS, and between complaints to NZQA about providers' implementation of the code and the DRS.

14. There is mixed comment about the proposal to link the maximum award by the DRS (now \$200,000) with the District Court limit, which is now \$350,000. Some submitters support this, while others say the newly proposed limit is too high and the Act should set the same limit for the DRS as the Disputes Tribunal. We consider the limit needs to take into account

the level of international student fees and costs of study, which could exceed the current limit for high cost courses.

Education and Workforce Committee report and government response

The Committee's recommendations support Te oranga me te haumaru ākonga | Learner wellbeing and safety proposals we consulted on

15. On 13 May, the Education and Workforce Committee (the Committee) presented its report⁴ on the inquiry into student accommodation.⁵ The committee found that improvements were required in four areas:⁶

- a. Transparency and accountability in governance
- b. Disputes resolution and complaints
- c. Wellbeing and safety in student accommodation
- d. Emergency planning and response

16. The committee made seven recommendations based on these findings, all of which concerned the proposed code and the disputes resolution scheme. In particular, the committee recommended:

- that the proposed outcomes 1-4, 9, and 11 be incorporated into the new code with providers required to meet the standards they set out;
- strengthening the connection between providers' internal complaints processes, the NZQA complaints process, and the proposed DRS. We are progressing this through the law change proposals to ensure the pathways for making complaints are clear and seamless for learners, providers, and regulators; and
- combining the DRS for domestic tertiary students (after it is enacted), with the DRS for international students. We advised the Committee that this should be considered after the domestic student DRS has been established, and likely after law changes to the empowering provisions of the DRS.

17. We propose as a starting point that the Government response, due by 6 August, agree with the Committee's recommendations, noting any changes to the proposed code and DRS after consultation. We propose to include the Government response with Cabinet decisions on Te oranga me te haumaru ākonga | Learner safety and wellbeing proposals.

18. The Business Committee has set aside an hour for special debate on the inquiry findings on 24 June, after Question Time.⁷ We propose to prepare talking points for you to take a 5 minute call in that debate, focussed on the alignment between the Committee's findings and your priorities for tertiary education as well as other linked issues that were raised through the inquiry (including student wellbeing and financing, and the upcoming decisions on the code and DRS recommendations from the Committee).

⁴ The Committee's report can be view here https://www.parliament.nz/resource/en-NZ/SCR_111297/19a7a68cb99a7e85902e78a30ea471096943b29e

⁵ The inquiry was initiated in 2020 following increasing concerns about the wellbeing and safety of learners in student accommodation, which were exacerbated by COVID-19. One of the key purposes of the inquiry was to inform the development of the new code of practice.

⁶ The Committee's views were unanimous, except for a minority view that student accommodation should be not-for-profit

⁷ The Business Committee's determination regarding the special debate is at [Determinations of the Business Committee for Wednesday, 19 May 2021 - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz/resource/en-NZ/SCR_111297/19a7a68cb99a7e85902e78a30ea471096943b29e)

Next steps and timing considerations

There are real time pressures to have the code and DRS come into effect on 1 January 2022, but there will be future opportunities for change

19. We have been working towards early July decisions and announcements on the code and DRS, so that providers have time to plan and prepare for the Code in 2022, and a DRS operator can be appointed to be operating from January 2022.
20. The sector has queried the tight timeframe around developing the new code and DRS and having it come into effect by 1 January 2022, asking not to go ahead with the new code (instead, sticking with the interim code for the time being), or to implement the new code later, after further consultation and development with the sector and law changes. Student groups have not supported this proposal; their view is that any delay would harm students as the interim code lacks specificity about consistent expectations of providers for learner wellbeing and safety. To change or defer the new code and DRS would require either law change (we do not currently have a vehicle) or renewed consultation on a proposal to reissue the current interim code as a new code (and accept that a DRS will commence in 2022).
21. This next code and DRS are expected to have a 2-3 year life, before further revisions once learners and providers have worked with these tools, and the Act has been updated and made more fit for purpose. New iterations of the code and DRS will be expected from 2023 or 2024, providing further opportunities to refine the code and DRS to ensure they are fit for purpose. The continuous improvement approach we are taking with the code requires for change over time, building on and reflecting existing good practices, rather than having to create entirely new practices.

Proposed targeted engagement on a revised code, to test the response to feedback

22. The range of feedback received now, and the need to balance a code between flexibility and certainty, continuous improvement and minimum standards means that we now recommend another phase of targeted engagement with learner and provider peak bodies before Cabinet decisions in mid-July. Taking a few more weeks in June-July than planned will be useful for testing the next code iteration with key stakeholders and providing transparency and feedback about the range of consultation submissions. However, slipping announcements beyond early August will make it very difficult to implement the code well in 2022 because it will miss providers' planning cycles and delay the DRS operator selection.
23. After we have reflected your feedback on proposed changes to the code, we propose you allow us to consult confidentially with leaders of:
 - The five national student associations we have partnered with: the New Zealand Union of Students' Associations, Te Mana Ākonga, Tauira Pasifika, the National Disabled Students' Association, and the New Zealand International Students' Association.
 - Provider peak bodies: Te Pūkenga, Universities New Zealand, English New Zealand, Te Taihū o Nga Wānanga, Independent Tertiary Education New Zealand, and Quality Tertiary Institutions.
24. Alongside testing a revised code with key stakeholders, we recommend releasing a summary of submissions analysis to sector and learner stakeholders, and if possible to the public, as soon as possible. This is important for the sector to get a sense of the scale and diversity of feedback and why and how decision-makers have adjusted proposals to reflect feedback that the proposals do both too much and not enough.

Implementing the code, after decisions on its content

25. The new code will require a code administrator, appointed by you. We are working closely with NZQA in its current code administrator role, and towards a proposal that you appoint NZQA as administrator of the new code. Ministers have agreed funding for the domestic code administrator role from a Budget 2020 contingency, and decisions about funding the international code administrator are linked to decisions about the future of the Export Education Levy (EEL). 9(2)(f)(iv)
26. NZQA is preparing to work with the sector (providers and learners) to develop guidance material to support providers as they implement the code: experience shows that guidance and opportunities to share practice will be important to some providers' confidence and success in implementing the code.

DRS specific next steps leading up to 1 January 2022 implementation

27. The upcoming July Cabinet paper to the Social Wellbeing Committee (SWC) will include drafting instructions for PCO to produce draft scheme rules, and seek approval for you to undertake targeted consultation on the formal rules during August before lodging to Cabinet Legislation Committee and seeking its review of the rules in late October and asking the Governor General to make the rules as an Order in Council.
28. Under section 536(4) of the Act, you appoint the DRS operator. We are preparing for a contestable procurement process to be able to advise you on an appointment. The key elements of this proposed process are:
- Procurement (likely be through a Request for Proposals) will be open for four weeks following targeted consultation on the rules, potentially from early-mid August to early-mid September.
 - A supplier briefing session several weeks before the procurement begins, once rules are out for targeted consultation: this may mean we need to disclose elements of the draft rules and proposed contract with the operator to potential operators so that they are well informed.
 - Applications to be evaluated by a selection panel of 3-5 people (mostly government officials).
 - Advice to you on a preferred operator, finalisation of a funding agreement with the operator.
29. We expect the DRS rules and notice of the Ministerial appointment of the DRS operator can be issued in the Gazette in mid-late November. This will allow the operator a brief start-up before the DRS begins from 1 January.

9(2)(f)(iv)