



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

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	18 June 2021	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1255734
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	Yes

### Purpose

This paper provides a first draft of materials to seek Cabinet policy approval for the new code of practice for pastoral care, the dispute resolution scheme for domestic tertiary learners, legislative changes and the proposed Government response to the Education and Workforce Select Committee inquiry into student accommodation.

We will make changes after your feedback and to reflect feedback from agency consultation, legal review and regulatory impact assessment, to allow Ministerial consultation to begin promptly on a next version. We aim to have final versions ready for Cabinet Social Wellbeing Committee (SWC) on 7 July.

### Recommended actions

The Ministry of Education recommends you:

- provide feedback** on the attached draft Cabinet paper and its annexes, on Tuesday 22 June, to enable the development of a draft for testing the proposed code with learner and sector peak bodies and Ministerial consultation before lodging for Social Wellbeing Committee's 7 July meeting;
- indicate your agreement** to the following changes to the proposed code, dispute resolution scheme and legislative amendments based on consultation feedback (these are key changes, rather than an exhaustive list of all changes):

Proposal	Key changes	Indicate agreement
New code of practice for pastoral care of domestic tertiary and international learners	We propose to retain the structure and framework of the draft code consulted on.	Yes / No
	We have made changes to improve the clarity of obligations for providers by: <ol style="list-style-type: none"> <li>clarifying that the code must be applied 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 (part 1);</li> </ol>	Yes / No

Proposal	Key changes	Indicate agreement
	<ul style="list-style-type: none"> <li>b. reducing the number of outcomes (from 31 to 22), grouping related processes into meaningful outcomes, restructuring clauses, and removing lengthy examples that would be better placed in guidelines (reducing the code's length by around 10 pages);</li> <li>c. rewording outcome 1 to clarify its purpose, that is: "Providers must take a whole-of-provider approach to maintain a strategic and transparent learner wellbeing and safety system that responds to the needs of their learners";</li> <li>d. distinguishing between specific requirements, and those for which providers must have processes in place but have appropriate flexibility to respond to learners' specific needs.</li> </ul>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
	<p>We have made changes to:</p> <ul style="list-style-type: none"> <li>a. emphasise providers working with diverse learners, as key stakeholders, ahead of other stakeholders;</li> <li>b. delineating consultation requirements on providers by defining 'other stakeholders' (other than learners and staff) as those who have a meaningful interest in the wellbeing and safety of learners; and</li> <li>c. use more empowering language when referring to learners to convey that they play an active role in their education, wellbeing and safety.</li> </ul>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
	We have removed clauses that go beyond learner wellbeing and safety (e.g. learners participating in the decision-making on the strategic management and governance of the provider), and to balance this, the code now requires provider to work with learners to develop, review, and improve their wellbeing and safety practices.	Yes / No
	We have removed proposals that were seen to encroach on teaching and learning or academic matters, as these are covered by educational quality assurance expectations.	Yes / No
	We have made changes to give Te Tiriti o Waitangi greater prominence in the code by including an overarching statement in Part 1 that the code.	Yes / No
	<p>We have made changes to the code so that it reflects the Office of the Privacy Commissioner's feedback to:</p> <ul style="list-style-type: none"> <li>a. draw a distinction between "routine checks" (without cause, on 24 hours' notice) and "welfare checks" (where there are serious concerns, generally with consent);</li> <li>b. lower the "serious threat" threshold for checks with less than 24 hours' notice to cover situations where a provider has serious concerns about wellbeing or safety;</li> <li>c. require that providers first attempt to obtain consent to entry for a welfare check, but allow entry without consent where there are serious concerns about wellbeing or safety.</li> </ul>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
Proposed dispute resolution scheme rules	We propose to retain the scheme framework consulted on, which is under-pinned by principles of flexibility, accessibility, and inclusivity.	Yes / No
	We propose that the structure of the scheme rules reflects the learner's journey through the scheme to provide greater clarity and make the scheme more navigable for users.	Yes / No
	We 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.	Yes / No
	We propose to retain the proposed \$200,000 cap on payments awarded to students, as there is potential for a dispute to involve such an amount and the cap is in line with similar schemes.	Yes / No
	We 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 can have proper regard to tikanga Maori.	Yes / No
	We propose the rules are clear that information must be collected, shared, and publicised in accordance with the Privacy Act 2020.	Yes / No

Proposal	Key changes	Indicate agreement
Proposed legislative amendments	We propose amendments to the provisions for a code of practice to:	
	a. strengthen the focus on wellbeing and safety;	Yes / No
	b. provide for a responsive code by:	
	i. requiring the Minister to consult with Māori before issuing a code;	Yes / No
	ii. providing for tailored codes or for the Minister to gazette exemptions to the code for particular groupings of providers;	Yes / No
	iii. providing for the Minister to regularly set expectations about the code administrator's performance and priorities, and gather information from the code administrator; and	Yes / No
	c. modernise code provisions by allowing the Minister to make minor and technical changes to the code.	Yes / No
	We propose amendments to the provisions for a code administrator to:	
	a. ensure the code administrator has appropriate functions, powers and duties to administer the code;	Yes / No
	b. set out expectations for the code administrator to honour Te Tiriti o Waitangi and support Māori-Crown relationships;	Yes / No
	c. require annual reporting of the code administrator;	Yes / No
	d. 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	Yes / No
	e. modernise the legislation through moving provisions for the code administrator's functions, powers and duties, from saved sections of the Education Act 1989 to the new Act.	Yes / No
	We propose amendments to the provisions for a dispute resolution scheme to:	
	a. broaden the scope of the scheme so that it can consider breaches of the code alongside financial and contractual complaints;	Yes / No
	b. better provide for the appointment, reporting, and operation of a scheme operator;	Yes / No
	c. set a time limit of 10 working days for appeals about scheme adjudications; and	Yes / No
	d. clarify and broaden the type of bodies that can be appointed as scheme operator.	Yes / No
	We propose to retain the \$200,000 cap on payments awarded to students for claims under the dispute resolution scheme, rather than increase it as we consulted on, in line with sector feedback.	Yes / No
	We propose amendments to the provisions for administrative arrangements to:	
	a. allow for the scheme operator, code administrator, and quality assessor to share information about complaints and complaint resolution;	Yes / No
	b. clarify that the code administrator and the scheme operator are subject to the Ombudsman Act 1975 and Official Information Act 1982;	Yes / No
	c. enable the Minister of Education to regularly approve and gazette expectations about enrolment forms, associated processes, and the provision of information to learners; and	Yes / No
	d. enable providers to undertake fit and proper person checks on staff delivering learner accommodation.	Yes / No

c. **indicate your agreement** to proposals that:

- i. the Government accept the Education and Workforce Committee's recommendations from its inquiry into student accommodation, noting that the final code and scheme differ slightly from those endorsed by the Committee based on sector feedback;

**Yes / No**

AND

- ii. the Government give consideration to the Committee's recommendation for a combined dispute resolution scheme for domestic tertiary and international learners once the new scheme for domestic tertiary learners is in place;

**Yes / No**

- d. **note** that the next draft of the Cabinet paper will incorporate feedback from agency consultation, from legal review of the code and proposed dispute resolution scheme rules, and from quality assurance of the three regulatory impact assessments;

- e. **agree** that the next version of the draft Cabinet paper, which we expect to provide to you on 25 June, proceeds directly to ministerial consultation;

**Agree / Disagree**

- f. **agree** that the Ministry will contact learner and sector peak bodies this week to arrange to test the proposed code between 28 June to 1 July, using the next version (after your feedback on the 25 June version);


**Agree / Disagree**

- g. **forward** this report to the Honourable Kelvin Davis, Associate Minister of Education (Māori Education) and the Honourable Aupito William Sio, Associate Minister of Education, for their information;

**Agree / Disagree**

- h. **agree** to proactively release this education report within 30 days of Cabinet policy decisions being made on the final code, dispute resolution scheme rules and legislative proposals with any redactions in line with the provisions of the Official Information Act 1982.

**Agree / Disagree**

  
Julie Keenan  
Policy Director  
Graduate Achievement, Vocations  
and Careers

Hon Chris Hipkins  
Minister of Education

18/06/2021

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## Background

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1. We recently briefed you on the next steps for the development of Te oranga me te haumarua ākonga | Learner wellbeing and safety proposals, and a preliminary summary on overall engagement analysis [METIS 1255733 refers].
2. The attached draft Cabinet paper sets out proposals for Cabinet Social Wellbeing Committee (SWC) on 7 July, for announcements in mid-late July, to ensure:
  - a. certainty for providers regarding the code for 2022, and to enable appointment of a code administrator that will develop guidance material on the code, and work with the sector and learners to inform their planning for 2022;
  - b. timely development of Parliamentary Counsel Office (PCO)-drafted rules for the dispute resolution scheme, to inform the selection of a scheme operator, and Cabinet approval of rules, for announcements in November;
  - c. PCO drafting of law changes for inclusion in the Education and Training Amendment Bill (No 2), as policy approvals are needed before August; and
  - d. presentation to the House of the Government response to the Education and Workforce Committee inquiry into student accommodation, before the 6 August deadline.
3. We are working with Allan and Clarke Consulting to finalise the submissions analysis which will go alongside the Cabinet paper. We intend to provide you with this alongside the next version of the Cabinet paper.

## Approach to the draft Cabinet paper

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### **There are four components to the decisions being sought**

4. The attached draft Cabinet paper in **Annex One** seeks agreement to the four policy decisions set out in paragraph 2 above. It also seeks approval to:
  - a. issue drafting instructions for the rules of the scheme and the legislative proposals; and
  - b. table the Government response to the Education and Workforce Committee's (the Committee's) inquiry into student accommodation by 6 August 2021.
5. Agency consultation and legal review of the proposed code and dispute resolution scheme rules are currently underway.
6. The Ministry of Education Regulatory Impact Assessment Panel is reviewing the Regulatory Impact Statements (RIAs) attached to the Cabinet paper. We have agreed with the Treasury's Regulatory Strategy Team that the RIAs will receive an internal agency review.

### ***Proposed code of practice for pastoral care***

*Feedback from key interest groups largely focussed on part 3 of the code – the organisation systems required by providers*

7. Part 3 of the code sets out the organisational systems providers need to implement the overall approach taken in the code, and, as such, drew the strongest feedback. Issues

raised tended to fall across a continuum depending on submitter interests (i.e., providers versus learners).

8. Providers favoured a simpler, less prescriptive framework that would offer them more flexibility and have lower compliance costs. Related to this, some providers perceived the code as one-size-fits-all, and/or were unclear about:
  - a. processes that are specific requirements and those where providers have some flexibility;
  - b. the extent to which they should consult with stakeholders (which they saw as too broad); and
  - c. the need to be responsible for the wellbeing and safety of tertiary learners who are adults.
9. Universities and private training establishments (PTEs) were also concerned that the code was overreaching into processes around academic pedagogy, with universities considering that this would interfere with their academic freedom.
10. Learners preferred a more detailed approach in the code, to ensure there are no loopholes for providers to avoid their obligations. They would also like to see:
  - a. more emphasis on providers working with learners relative to other stakeholders because they are the key stakeholders as tertiary education users;
  - b. providers working in partnership with learners to be embedded throughout the code, particularly around provider decision-making and strategic planning;
  - c. diverse learner groups more visible in the code (e.g. disabled learners, Māori learners, Pacific learners, international learners); and
  - d. more empowering language to emphasise that learners are not passive.
11. Learners were supportive of being involved in creating course content and delivery.

*Feedback on combining requirements for domestic and international tertiary learners*

12. Learners and providers generally supported combining requirements for domestic and international tertiary learners in parts 3 to 5, retaining the remainder of current protections for international tertiary learners, and setting out requirements for schools separately. All submitters from the schooling sector supported there being no change for schools at this time.
13. Smaller PTEs with a focus on provision to international learners were concerned at the potential impact of implementing new requirements in the code, particularly given current challenges with revenue and staffing.

*We have made some changes to the code to balance competing interests*

14. We have not changed the overall structure of the code. However, we have made changes to balance the concerns of providers and learners by:
  - a. improving the clarity of obligations for providers by:
    - i. clarifying that the code must be applied 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 (Part 1);

- ii. reducing the number of outcomes (from 31 to 22), 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 (reducing the code's length by around 10 pages);
  - iii. rewording outcome 1 to clarify its purpose, that is: "Providers must take a whole-of-provider approach to maintain a strategic and transparent learner wellbeing and safety system that responds to the needs of their learners";
  - iv. distinguishing between specific requirements, and those for which providers must have processes in place, but have appropriate flexibility to respond to learners' specific needs;
- b. emphasising working with learners (as key stakeholders) ahead of working with other stakeholders;
  - c. delineating consultation requirements by defining "other stakeholders" (other than learners and staff) as those who have a meaningful interest in the wellbeing and safety of learners at the provider (Part 2 and Part 3);
  - d. changing words that portray learners as passive, and instead using more empowering language to emphasise the active role learners play in their education, wellbeing and safety; and
  - e. removing clauses that go beyond learner wellbeing and safety (e.g. learners participating in the decision-making in the strategic management and governance of the provider; and academic matters), and to balance this, requiring providers to work with learners to develop, review, and improve their wellbeing and safety practices.

#### *Te Tiriti o Waitangi*

- 15. Some submitters wanted to see Te Tiriti o Waitangi given greater prominence in the code. We have included an overarching statement in Part 1 that the code "contributes to an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships in accordance with section 4(d) of the Education and Training Act 2020".

#### *Feedback from the Office of the Privacy Commissioner*

- 16. In considering the dual objectives of protecting privacy and the protection of potentially vulnerable young people, the Office of the Privacy Commissioner proposed that provisions in the code relating to student accommodation interventions could be amended so providers have enough flexibility to respond where a resident is considered to be at risk.
- 17. The code reflects the Office's feedback to:
  - a. draw a distinction between "routine checks" (without cause, on 24 hours' notice) and "welfare checks" (where there are serious concerns, generally with consent);
  - b. lower the "serious threat" threshold for checks with less than 24 hours' notice to cover situations where a provider has serious concerns about wellbeing or safety; and
  - c. require that providers first attempt to obtain consent to entry for a welfare check but allow entry without consent where there are serious concerns about wellbeing or safety.

## ***Proposed dispute resolution scheme rules***

### ***Learner-centred scheme***

18. Submitters emphasised the importance of an accessible scheme. They supported the proposed focus on accessibility and inclusivity, and the scheme's ability to support the diverse needs of all domestic tertiary learners at every stage of the process.
19. We received feedback from learner groups and the Government Centre for Dispute Resolution (GCDR) that the structure of the rules was not clear. To make the rules more user-friendly, we propose that they are structured to reflect the learner's journey through the scheme's processes, subject to PCO's drafting conventions.
20. There was wide support for measures within the scheme to aid users to navigate the scheme, which are designed to help address the power imbalance between learners and providers. However, there was some concern from providers that these measures would make the scheme unfair and biased towards learners. We have therefore refined the rules to make the process more balanced while retaining accessibility for students. For example, the student's needs and preferences must be taken into account in appointing a mediator, but their agreement is no longer required.
21. There was some interest, especially from student groups, for a support or advocacy function to be developed to advise and assist students going through providers' internal complaints processes and the scheme. This is outside the scope of the current work. However, once the scheme is implemented, we will monitor whether it is as navigable as is intended.

### ***Te Tiriti o Waitangi***

22. Submitters strongly supported the scheme's consistency with the Crown's obligations to Te Tiriti o Waitangi and the proposed measures to ensure the scheme works for Māori. Some submitters agreed that the proposed provisions would help improve outcomes for Māori, although others commented that the provisions did not go far enough to ensure Māori participation and agency in the development of the scheme.
23. We have amended the rules to clarify that the scheme operator must develop and evaluate the operation of the scheme with Māori to ensure its consistency with Te Tiriti o Waitangi and to ensure it has proper regard for tikanga Māori. They must also generate a range of Māori specific data and insights, that are meaningful and appropriate for use by Māori and supports Māori data sovereignty.

### ***Resolution process and penalty***

24. There was widely positive feedback for the proposed dispute resolution process. Submitters emphasised the importance of disputes being resolved in a timely and efficient way.
25. The scheme rules enable the operator to specify reasonable time periods within which providers must supply information requested to ensure processes can run quickly. We consider that specifying timeframes for resolution may hinder the effective resolution of complex disputes. However, the scheme operator is obligated to consider and deal with disputes in a timely manner. The operator must also publish the average time taken to resolve disputes in the annual report, so this can be monitored.

## *Privacy and information*

26. To reflect feedback from the Office of the Privacy Commissioner, we have clarified in the rules that information must be handled in accordance with the Privacy Act 2020. The rules have also been amended to be clearer regarding what information may be collected, shared, and publicised, and why. Information released publicly must be appropriately redacted and safeguarded, and parties must be informed regarding the grounds for withholding information.

## *Costs*

27. Some providers had concerns around costs associated with the scheme. These focused on two issues:
  - a. that the \$200,000 cap for the scheme is too high, relative to the low level of strict legal procedure and could result in unreasonable costs; and
  - b. the potential for high costs of complying with and participating in the scheme.
28. We are not proposing to amend the cap and do not expect that there will be high costs associated with complying with the scheme. There may be some small administrative costs associated with upskilling staff to ensure they are aware of, and understand, how the scheme works. There will be administrative costs if a case goes to the dispute resolution scheme or if the provider is required to pay the student claimant. Providers must have robust internal complaints processes which are being strengthened in the proposed code. The expectation is that most disputes will therefore be resolved locally, but it is important that there is an external, independent mechanism as a next step.
29. The scheme will focus on helping parties work collaboratively to understand and resolve disputes, and restoring relationships. It is not intended to be a punitive scheme. In the case that a determination is made requiring a provider to pay a student claimant, the practitioner is required to be fair and reasonable. While it is unlikely that most disputes will involve costs near the cap, financial and contractual disputes relating to high fee courses (e.g. aviation, dentistry, medicine) may approach it. The cap also aligns with similar schemes and was set in line with the District Court cap.
30. We have amended the rules to clarify that in making decisions through adjudication, while a practitioner is not bound to give effect to strict legal rights or obligations or rules of evidence, they must have regard to the law in making decisions. This balances the purpose of the scheme in providing accessible dispute resolution and maintaining fairness for all parties.
31. Some providers were concerned that there be sufficient measures to prevent vexatious student claimants, to avoid unnecessary costs for providers. We have clarified that the operator can refuse to accept a dispute where it has previously been addressed by another appropriate authority empowered to provide monetary compensation, unless new evidence or information has come to light. This will help ensure the interests of providers are balanced with the need for learners to be able to access a pathway that delivers fair outcomes for them.

## ***Proposed legislative changes***

32. We consulted on proposed legislative amendments that ensure we can deliver the learner wellbeing and safety outcomes sought, minimise provider compliance and administration costs, reinforce the commitment to Te Tiriti o Waitangi and ensure that the provisions are fit-for-purpose.

33. While there was less feedback about the legislative proposals compared to the other proposals, most feedback was positive. We therefore recommend that you seek agreement to most of the legislative proposals we consulted on being included in the Education and Training Amendment Bill (No 2). These proposals relate to:
- the provisions for a code of practice;
  - the provisions for a code administrator;
  - the provisions for the dispute resolution scheme; and
  - administrative detail to ensure the provisions for the code and dispute resolution scheme are fit-for-purpose.

34. Submitters raised the following issues:

	Feedback	Proposed response
Code of practice	There was support for a separate code for signatory provider schools and there should be provision for a separate te ao Māori code that providers could opt to use instead of the next code.	We propose that the legislation provide for a code for a grouping of providers (with mandatory coverage of a particular grouping of providers or, for a te ao Māori code, the ability for providers to opt-in to that particular code). A provider should be covered by only one code.
	Some considered that the code should contain only outcomes (currently the code is required to include both outcomes and key processes).	We do not propose a change: there was significant learner feedback that the processes are important to set standards for what learners can expect from their provider.
Dispute resolution scheme	Many providers, particularly universities, were concerned about the proposal to increase the cap on claim from \$200,000 to \$350,000. Some submitters thought the cap on claim should be the same as the Disputes Tribunal \$30,000 limit. Other submitters supported the proposed increase.	Given the feedback received and that most claims do not currently reach the \$200,000 cap, we propose that that the cap on claim remain unchanged. If the claim cap was increased, there would need to be additional rigour, including the use of the rule of law and better appeal provisions, that would change the disputes resolution scheme into a de facto court or Tribunal.  If a learner wanted to progress a higher value claim, they could use the District Court instead of the dispute resolution scheme.  Learners pay fees and student accommodation costs which can be much higher than the Disputes Tribunal thresholds allow for.
	Some submitters supported broadening the scope of the scheme; others did not.	We propose that that the scope of the scheme be broadened to allow for it to consider disputes relating to breaches of the code. In some cases, these may be treated as contractual or financial matters. In other cases, they may exclusively be considered as a breach of the code.
	One submitter suggested that the scheme should be able to award exemplary damages	The Ministry of Justice advises that exemplary damages are best considered by the District Court. While they are an option in the District Court, they are seldom awarded. If a person wanted exemplary damages, they could take action through the District Court.
Other	Universities wanted the Minister's enrolment form expectations to be located next to the code for ease of access.	We propose that the gazetted enrolment expectations be located near the code.
	The Ombudsman should be able to review the code administrator and some the scheme operator's decisions.	The Ombudsman will be able to review both the code administrator and the scheme operator's decisions. In addition, the code administrator and scheme operator will be subject to the Official Information Act 1982.

### *Powers of entry and inspection*

35. We are proposing changes to the code administrator's legislative functions, powers, and duties, to better allow them to monitor and investigate the extent to which providers comply with a code. It is proposed that the legislation be changed to allow the code administrator to enter and inspect education providers (universities, wānanga, Te Pūkenga, PTEs, and schools that are signatory providers) covered by the code(s).
36. We have based the proposed wording on section 634 of the Education and Training Act 2020 which allows New Zealand Qualifications Authority (NZQA), when undertaking its functions, powers and duties, the power to enter and inspect PTEs.
37. The Ministry of Justice has asked whether the code administrator should be able to enter or inspect marae. Māori have flagged concerns about the powers of entry allowed in other legislation relating to COVID-19 and the Three Waters.
38. Under the proposed powers of entry and inspection, the code administrator could enter and inspect marae, and mosques, churches, or other religious places if and when they are used for education delivery within the scope of the code administrator.
39. The Ministry of Justice also asked whether the code administrator should be subject to Part 4 of the Search and Surveillance Act 2012. The purpose of the Search and Surveillance Act is for monitoring of compliance with the law and the investigation and prosecution of offences, whereas the code administrator would be using the proposed powers of entry and inspection of education premises for monitoring code compliance. As such, we consider it is not appropriate to apply any part of the Search and Surveillance Act to the code administrator.

### *Other legislative changes*

40. We also propose legislative amendments to:
  - a. allow the Minister to set expectations about the performance and priorities of the code administrator. This would provide for the code administrator plan mentioned in the consultation material but would allow for more effective performance monitoring and management;
  - b. allow for an appeal within 10 working days (the consultation material proposed an appeal be made within 20 working days) based on GCDR feedback; and
  - c. move the provisions relating to fit and proper person checks from the code to the primary legislation.

### ***Government response to the Education and Workforce Committee's report on its inquiry into student accommodation***

41. We recently advised you the proposed Government response to the Committee's report on its inquiry into student accommodation [METIS 1255733 refers]. The Committee's seven recommendations endorsed key elements of the consultation proposals.
42. The draft Cabinet paper proposes that the Government accept the Committee's recommendations. It proposes that the Government give consideration to the recommendation to combine the dispute resolution schemes for domestic tertiary and international learners once the new scheme for domestic tertiary learners is in place.
43. The draft Cabinet paper seeks approval to table the Government's response to the inquiry.

## Impact and Implementation

44. The draft Cabinet paper sets out the expected impacts of the code and dispute resolution scheme, both individually and as a package.
45. The paper notes that:
  - a. the proposals therein build on and refine existing provisions and expectations based on what we have learned to date, and the system will continue to evolve as providers, learners and their communities engage with it; and
  - b. the expectations in the code apply to providers in a way that is appropriate to their learning, communal and residential context, and to the specific needs of learners within these contexts.
46. The draft Cabinet paper notes that supporting providers and learners in transitioning to the next iteration of the code, and the dispute resolution scheme, will be critical to their success.

### *Implementation of the code*

47. The draft Cabinet paper notes that once the new code is issued:
  - a. you intend to appoint NZQA as code administrator and enable NZQA to consider delegation of parts of its role;
  - b. the administrator will work with the sector to promote the code, deliver capability-building workshops, co-develop high-level guidance materials, and work with student associations to ensure tertiary providers appropriately include learner voice in determining their approach to meeting the outcomes of the Code; and
  - c. the administrator will publish the guidance materials and its 2022 plan for code administration, so that learners and providers are clear about expectations before the code comes into effect.

### *Implementation of the dispute resolution scheme*

48. The draft Cabinet paper proposes the next steps in the implementation of the dispute resolution scheme, including:
  - a. targeted consultation on the rules, once drafted by PCO, so interested groups can check their understanding of the process against the rules before they are approved;
  - b. a selection process from August 2021 to appoint a scheme operator, to allow the appointed operator a brief lead-in before the scheme takes effect from 1 January 2022; and
  - c. reporting-back to Cabinet for legislative approval of the rules in October 2021, so you can gazette the scheme rules and notice of the Ministerial appointment of the scheme operator in November 2021.

## Te Tiriti o Waitangi analysis

49. We have carried out a Treaty principles analysis of Māori interests in the tertiary learner wellbeing and safety work. **Annex Two** includes consideration of legislative requirements and Crown obligations under Te Tiriti o Waitangi, and a breakdown of Māori stakeholders engaged with before and during consultation. **Annexes Three, Four and Five** provide a Treaty principles analysis of the code, the dispute resolution scheme, and the proposed legislative changes, respectively.
50. The Treaty principles of partnership and active protection are particularly relevant for the current proposals. The proposals will have a strong role in raising the prominence of wellbeing and safety as a precondition to success in education and will support increased equity of access and outcomes for Māori learners and their communities, along with other diverse learner groups. We do not see the code, dispute resolution scheme and legislative changes as mechanisms for resolving contemporary or historical claims.

## Connections with international education workstreams

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51. You have directed officials to review the future of international students under Year 9. The proposed code continues to provide for additional requirements for international students aged under 10 years, and under 18 years. Depending on the final decisions of the review, any changes to the relevant parts of the code will be made separately via legislative and policy changes, which would lead to future code amendments.
52. We are also reviewing the Export Education Levy (the Levy), which among other services, funds the code administrator function and dispute resolution scheme for International students. The review of the Levy will consider the most appropriate mechanism for funding and can also inform any work on the government giving consideration to a combined dispute resolution scheme, should you agree to recommendation c(ii).

## Next steps

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

53. You agreed that we engage confidentially with leaders of the five national students' associations we have partnered with, and six provider peak bodies, on the revised code [METIS 1255733 refers]. At the same time, we will share the overall submission analysis from consultation, so the peak groups can see the range of feedback.
54. This engagement would take place between 28 June and 1 July, once we have integrated feedback on the draft code attached to this paper (from you, agencies, legal review and regulatory impact assessment). If you agree to the recommendation f above, we will contact these groups this week to arrange for their review of the materials, after your feedback on the next draft. Engagement feedback will inform the proposed code for Cabinet consideration at SWC on 7 July.

### Finalising the Cabinet paper for SWC on Wednesday 7 July

55. We are working to finalise the Cabinet paper so SWC can consider it on Wednesday 7 July, as per your guidance at the Education Officials meeting on 14 June. This timeframe is very tight, but possible. It will require some processes to take place in parallel and is likely to require the paper to be lodged late.

56. We seek your feedback on the draft Cabinet paper, including the attached materials, in **Annex One** on Tuesday 22 June.
57. We will provide a revised Cabinet paper, incorporating your feedback, legal and RIA review, a final submissions analysis, and feedback from agency consultation, on Friday 25 June.
58. We recommend this next version proceed directly for Ministerial consultation from 25 June, to allow Ministers to review and discuss it early in the week before lodging, if needed. We recommend wide Ministerial consultation, given the proposals' links beyond education to social and health policy, diversity and inclusion, Māori-Crown relationships, disputes resolution and tenancy law. This timetable means Ministerial consultation will occur in parallel with targeted sector engagement.
59. We propose to complete final quality assurance, editing and development of the materials in parallel with Ministerial consultation and targeted sector engagement, so the final paper can be lodged by Monday 5 July (and, if possible, by 2 July). We will propose a recommendation that allows scope for final feedback from targeted engagement to be incorporated either before SWC consideration or before Cabinet confirmation, if needed.

## Annexes

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**Annex One:** 9(2)(f)(iv)

**Annex Two:** Consideration of legislative requirements and Crown obligations under Te Tiriti o Waitangi, and a breakdown of Māori stakeholders engaged with before and during consultation.

**Annex Three:** Treaty principles analysis of the code

**Annex Four:** Treaty principles analysis of the dispute resolution scheme

**Annex Five:** Treaty principles analysis of the proposed legislative changes

## **Annex Two:** Overview of approach to Treaty of Waitangi analysis of *te oranga me te haumarū ākonga* | tertiary learner wellbeing and safety

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### **Engaging and weighing Māori interests**

1. 9(2)(h) [REDACTED]
2. [REDACTED] the present annex, and accompanying **Annexes Three, Four and Five**, detail our approach to engaging, understanding, and weighing Māori interests in *te oranga me te haumarū ākonga* | tertiary learner wellbeing and safety. **Annex Two** (the present annex) includes consideration of legislative requirements and Crown obligations under Te Tiriti o Waitangi, as well as a breakdown of Māori stakeholders engaged with before and during consultation, and alignment of feedback received with Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy. **Annexes Three, Four and Five** provide a Treaty principles analysis of the code, the dispute resolution scheme, and the proposed legislative changes, respectively.


### **Honouring Te Tiriti o Waitangi**

3. The Government has an enduring focus on improving educational outcomes for Māori learners and giving effect to Te Tiriti o Waitangi and its principles. This is reflected in the Education and Training Act 2020 (the Act), in sections 4(d) and 9. Section 4(d) states that one of the purposes of the Act is to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships, while section 9 of the Act is a signposting or 'elaborated' Treaty clause.<sup>1</sup>
4. The Ministry have taken into account court work and previous guidance that have focussed on the principles of the Treaty of Waitangi. We have also considered the texts of the Treaty of Waitangi in line with Cabinet's expectations. Our analysis considers the Treaty of Waitangi as a whole, including its principles. These principles include:
  - a. *Partnership*: Both the Crown and Māori have a positive duty to act in good faith, fairly, reasonably, and honourably towards the other. (This requires the Crown to make informed decisions on matters affecting Māori interests. Consultation is often required to ensure informed decision-making. A context-specific balance must be struck between kāwanatanga and rangatiratanga.)
  - b. *Active protection*: The Crown has a positive duty to take reasonable steps to protect Māori interests and taonga.
  - c. *Redress*: The Crown must take reasonable steps to address past wrongs.
5. Partnership (and all it entails) and active protection are particularly relevant in the context of the code, dispute resolution scheme and legislative changes. The proposals will have a strong role in raising the prominence of wellbeing and safety as a precondition to success in education. They will also support more equitable outcomes

9(2)(h)

for diverse learners, including Māori learners, and also Pacific, disabled, LGBTQIA+, migrant and former refugee learners. We do not see the code, dispute resolution scheme and legislative changes as having a role to play in providing redress under Te Tiriti o Waitangi.

### Consultation with Māori stakeholders

6. Under subsection 534(5) of the Act, before issuing a code the Minister is required to consult with parties likely to be affected by the code. These include, for example, representatives of learners, parents, whānau, providers and their staff, peak bodies, and the Privacy Commissioner.
7. The design and initial stages of the Ministry's consultation on tertiary learner wellbeing and safety were informed by these legislative requirements, and with consideration of Te Arawhiti's framework and guidelines for Crown engagement with Māori.<sup>2</sup> 9(2)(h)  

8. Formal consultation on the draft code, draft dispute resolution scheme rules and proposed legislative changes opened on 12 April 2021 for a period of 6 weeks until 21 May 2021. During this time stakeholders could provide verbal submissions (through in-person meetings or by phone or video-call) and/or written submissions (via a shared email inbox or online survey).

### Breakdown of engagement with, and submissions from, Māori stakeholders

#### *Stakeholder views before consultation, 2018 to 2021*

9. The draft code of pastoral care circulated for consultation was informed by discussions with the following Māori individuals and groups:
  - a. The Māori education wānanga in 2018, which involved over 2,000 Māori learners, whānau and educators, and was used to refresh Ka Hikitia, Tau Mai Te Reo and the overall Education Work Programme<sup>3</sup>;
  - b. The Kōrero Mātauranga / Education Conversation feedback on Māori education in 2019<sup>4</sup>;
  - c. A workshop with Te Mana Ākonga (the National Māori Tertiary Students' Association) on 22 February 2020;
  - d. A workshop with forty members of the New Zealand Union of Student Associations (NZUSA) executive council on 1 February 2020, including Māori representatives; and
  - e. Two written submissions from Māori learners to the Education and Workforce Select Committee of Inquiry into Student Accommodation<sup>5</sup> in June 2020.

<sup>2</sup> [Te Arawhiti - Engagement](#)

<sup>3</sup> [Ka Hikitia and Tau Mai Te Reo \(Māori Education\)](#)

<sup>4</sup> [EDCONVO-COM-0416-Survey-Research-Breakdown-Maori-8.pdf \(education.govt.nz\)](#)

<sup>5</sup> [Inquiry into student accommodation - New Zealand Parliament \(www.parliament.nz\)](#)

10. The draft dispute resolution scheme rules released for consultation on 12 April were informed by discussions with the following Māori individuals and groups, and government representatives:
  - a. The Māori Allied Alternative Dispute Resolution Organisation (MĀADRO);
  - b. The Government Centre for Disputes Resolution (GCDR)<sup>6</sup>; and
  - c. Te Arawhiti, the Office for Māori Crown Relations.
11. The proposed legislative changes released for consultation on 12 April were tested with Te Arawhiti, the Office for Māori Crown Relations, and informed by analysis of:
  - a. The articles and principles of Te Tiriti o Waitangi;
  - b. Ka Hikitia – Ka Hāpaitia (the Māori Education Strategy); and
  - c. Primary legislation, including the obligations detailed in section 4(d) of the Act, and existing specifications for codes, code administration and dispute resolution schemes across other sectors.

*Stakeholder views during consultation, 12 April to 21 May 2021*

12. Many of the Māori individuals and groups we met with in person or via video call during consultation provided feedback on all three work programmes, and/or the Ministry of Education has considered their feedback in relation to all three work programmes. These Māori individuals and groups included:
  - a. the Auckland University of Technology Student Association (AUTSA) Council, including Māori representatives
  - b. the NZUSA Executive Council, including Te Mana Ākonga tumuaki
  - c. Māori support staff from the University of Otago
  - d. the Tuākana Network of Māori and Pacific staff at the University of Auckland
  - e. Te Wānanga o Aotearoa
  - f. Te Whare Wānanga o Awanuiārangi
  - g. staff of Tikipunga High School, Whangārei.
13. Two Māori individuals supplied verbal and written feedback on only the proposed dispute resolution scheme, and included:
  - a. A representative of the Māori Caucus of the Resolution Institute who is also a member of Tūhono Māori mediation and conflict resolution service
  - b. A member of MĀADRO and the Australia & New Zealand Education Law Association.

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<sup>6</sup> [Government Centre for Dispute Resolution | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/government-centre-for-dispute-resolution)

14. Three Māori individuals submitted written submissions via our online survey<sup>7</sup> during consultation. One self-identified as a domestic tertiary student, one self-identified as working for a wānanga, and one self-identified as working for a Te Pūkenga subsidiary.

#### *Ministry consideration of stakeholder perspectives*

15. The material circulated for consultation and subsequent analysis of stakeholder perspectives gathered before and during consultation was informed by discussions with Ministry of Education teams and groups, including the Māori Policy team, Pacific Policy team, Tertiary Education, Sector Enablement and Support, Parent Information and Community Intelligence, and Legal Services.
16. Consultation material was also informed by Ministry analysis of the Interim Code of Pastoral Care and early drafts of the dispute resolution scheme against the outcomes and principles of Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy. This has helped to inform the direction of analysis in the present work.

#### **Alignment of feedback with Ka Hikitia – Ka Hāpaitia**

17. We can see how the feedback provided by Māori stakeholders before and during consultation aligns with the five outcomes of Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy.<sup>8</sup> This is not unexpected, as the development of Ka Hikitia – Ka Hāpaitia reflects a broad range of conversations with Māori across the education sector.
18. Ka Hikitia – Ka Hāpaitia supports the Act and Tertiary Education Strategy (TES) to shape an education system which honours and gives effect to Te Tiriti o Waitangi and supports Māori-Crown relationships. It is an aspirational framework for government and the education sector to work together to achieve system shifts, and support Māori learners, whānau, hapu and iwi to achieve excellent and equitable outcomes.
19. Given the alignment between the interests of Māori in the present work with the outcomes and aspirations of Ka Hikitia – Ka Hāpaitia (and earlier analysis of the interim code against these outcomes), we have chosen to present feedback from Māori stakeholders against the outcomes of Ka Hikitia – Ka Hāpaitia. It is important to note that questions posed to stakeholders were not presented in relation to Ka Hikitia – Ka Hāpaitia, and this approach has not been tested with the stakeholders in question.
20. Presenting the insights gathered from Māori in the current work against Ka Hikitia – Ka Hāpaitia is not intended to replace or supersede the Crown's obligations to Māori under Te Tiriti o Waitangi. Rather, it is intended to support an analysis of the current work against the articles and principles of Te Tiriti o Waitangi. Ka Hikitia – Ka Hāpaitia is informed entirely by the articles and principles of Te Tiriti o Waitangi. Specific points of connection include:
  - a. *Article 1: The Crown's right to govern:* Relates to the whole of Ka Hikitia – Ka Hāpaitia.
  - b. *Article 2: Māori have the right to make decisions over resources and taonga which they wish to retain:* Relates especially to Ka Hikitia – Ka Hāpaitia outcomes Te Whānau, Te Tuakiritanga and Te Rangatiratanga.

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<sup>7</sup> [Te oranga me te haumarū ākonga | Learner wellbeing and safety \(education.govt.nz\)](https://www.education.govt.nz/te-oranga-me-te-haumaru-akonga/)

<sup>8</sup> [Ka Hikitia – Ka Hāpaitia – Education in New Zealand](#)

- c. *Article 3: The obligations that the Crown has to all New Zealand citizens are also owed equally to Māori:* Relates especially to Ka Hikitia – Ka Hāpaitia outcomes Te Tangata and Te Kanorautanga.

Proactively Released

## Annex Three: Analysis of Māori interests in the Code of Practice for Pastoral Care of Tertiary and International Learners

This is an analysis of Māori interests in the code of practice for pastoral care of tertiary and international learners ('the code'). It considers:

- insights gathered from Māori stakeholders<sup>9</sup> before consultation ('starting principles'), and how these informed the draft code circulated for public consultation
- insights gathered from Māori stakeholders during consultation, and how these informed revisions to the code.<sup>10</sup>

These insights, perspectives and experiences have been used to shape and inform decisions around the development of the code with respect to the Crown's obligations to Māori under Te Tiriti o Waitangi, as specified in Section 4(d) of the Education and Training Act 2020 (the Act).

Much of the feedback provided by Māori stakeholders before and during consultation aligned with the five outcomes of Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy.<sup>11</sup> These outcomes are:

- Te Whānau: Education provision responds to learners within the context of their whānau
- Te Tangata: Māori are free from racism, discrimination, and stigma in education
- Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences
- Te Tuakiritanga: Identity, language, and culture matter for Māori learners
- Te Rangatiratanga: Māori exercise their authority and agency in education.

Ka Hikitia – Ka Hāpaitia supports the Act and Tertiary Education Strategy (TES) to shape an education system which honours and gives effect to Te Tiriti o Waitangi and supports Māori-Crown relationships. It is an aspirational framework for government and the education sector to work together to achieve system shifts, and support Māori learners, whānau, hapu and iwi to achieve excellent and equitable outcomes. Given the alignment between the interests of Māori in the present work with the outcomes and aspirations of Ka Hikitia – Ka Hāpaitia, we have chosen to present feedback from Māori stakeholders against the outcomes of Ka Hikitia – Ka Hāpaitia. Presenting these insights against Ka Hikitia – Ka Hāpaitia is not intended to replace or supersede the Crown's obligations to Māori under Te Tiriti o Waitangi. Rather, it is intended to support an analysis of the current work against the articles and principles of Te Tiriti o Waitangi.

### A. The importance of Te Tiriti o Waitangi

<b>Starting principles</b>	<p>Te Tiriti o Waitangi should be a foundational principle for government, tertiary education providers, and student accommodation providers.</p> <p>Usage of Te Tiriti o Waitangi should not be treated as a tokenistic exercise.</p> <p>Embedding Te Tiriti o Waitangi requires acknowledging Māori have equity needs and Te Tiriti rights, beyond the needs and rights of non-Māori learners.</p>
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<sup>9</sup> Annex Two provides a breakdown of Māori stakeholders engaged with before and during consultation.

<sup>10</sup> Following consultation with a range of stakeholders, revisions were made to the code including reducing the number of outcomes for clarity and ease of use. This means outcome numbers may change between the draft consultation code and the ongoing code, even if the content or intent of the outcomes remains unchanged.

<sup>11</sup> [Ka Hikitia – Ka Hāpaitia – Education in New Zealand](#)

<b>How these principles informed the draft code used for consultation</b>	<p>Draft outcome 1 requires providers to demonstrate how they will honour and give effect to Te Tiriti o Waitangi.</p> <p>Draft outcomes 4 and 9 require providers to ensure their staff are appropriately trained and competent in Te Tiriti o Waitangi.</p> <p>Draft outcomes 5 and 12 require providers to ensure physical and digital environments support engagement with Te Tiriti o Waitangi and respond to the diverse needs and aspirations of learners in accordance with Te Tiriti o Waitangi.</p>
<b>Feedback received on draft code during consultation</b>	The code should have a stronger focus on equity, and empowering Māori and Pacific learners. Honouring Te Tiriti o Waitangi benefits all learners, not just Māori learners.
<b>How this feedback informed the code after consultation and connection to Te Tiriti o Waitangi</b>	<p>There will be no change to the content of draft outcomes 1, 4 and 9, although outcome numbers will change.</p> <p>Draft outcomes 5 and 12 will be changed so providers must have practices for: empowering learners and staff to have authentic relationships with Māori and be responsive to Māori culture, and upholding the cultural needs and aspirations of all learners in their learning environments. Explicitly referencing Māori learners in this context is intended to acknowledge the equity needs of Māori learners and the rights of Māori under Te Tiriti o Waitangi, beyond the needs and rights of other learner groups. This is particularly related to Article 3 of the Treaty and the Crown's obligation to ensure Māori have equity of access and outcomes in education.</p> <p>A new clause (3(7)) will be added to part one of the code, reading: "This code contributes to an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships in accordance with section 4(d) of [the Act]." This additional clause is intended to more strongly link the code with Te Tiriti o Waitangi and the Crown's obligations to Māori (as specified in the Act and encompassed by the Partnership principle). This new clause will also help position Te Tiriti o Waitangi front of mind for all those using, or affected by, the code (including providers and learners).</p>

## **B. Te Whānau: Education provision responds to learners within the context of their whānau**

<b>Starting principles</b>	Māori learners should be understood in the context of their whānau, community, hapū and iwi. The inclusion of whānau is essential for the wellbeing and educational success of Māori learners.	Educational spaces and systems need to be welcoming and inclusive for whānau and community.
<b>How these principles informed the draft code used for consultation</b>	<p>Draft outcome 1 requires providers to consult with students, whānau, community and iwi in the development, review and improvement of strategic goals, plans and practices.</p> <p>Draft outcome 4 requires providers to have co-ordinated information channels for identifying emerging concerns about learners' wellbeing, including channels with parents, guardians, or nominated contact people.</p>	Draft outcome 5 requires providers to create and maintain inclusive and supportive learning environments, including providing learners with warm and inviting spaces where culture and identity is uplifted and valued, and learners can welcome their friends and whānau.

<b>Feedback received on draft code during consultation</b>	<i>As for before consultation.</i>	There is need for communal safe spaces (physical and/or digital) for learners, whānau and staff to meet and hui.
<b>How this feedback informed the code after consultation</b>	The content of the draft outcomes above will be largely unchanged for the ongoing code.	
<b>Connection to Te Tiriti o Waitangi</b>	Including Māori learners, whānau, community, hapu and iwi in consultations, information sharing, and learning environments acknowledges the rangatiratanga of Māori guaranteed in Article 2 of Te Tiriti o Waitangi and supports the principle of Partnership. It acknowledges that Māori should have rangatiratanga over their resources and taonga, including mātauranga and the education of Māori people.	

### **C. Te Tangata: Māori are free from racism, discrimination, and stigma in education**

<b>Starting principles</b>	Māori learners experience racism and discrimination in the tertiary education system, which negatively impacts their confidence, sense of belonging, wellbeing, and educational achievement.	
<b>How these principles informed the draft code used for consultation</b>	Draft outcome 5 requires providers to create and maintain inclusive and supportive learning environments, including processes for recognising, reducing and responding effectively to discrimination, racism, bullying, harassment, and abuse; reducing harm to learners resulting from discrimination; and processes for providing learners with information that supports understanding, acceptance and connection with all learners, including those of different cultures.	
<b>Feedback received on draft code during consultation</b>	The same messages heard before consultation were re-enforced during consultation.	
<b>How this feedback informed the code after consultation</b>	Draft outcome 5 (now outcome 3) will be strengthened as detailed in Table A above.	
<b>Connection to Te Tiriti o Waitangi</b>	Working to eliminate racism and discrimination against Māori learners and whānau in the tertiary education sector is an important aspect of honouring Te Tiriti o Waitangi – particularly the principle of Protection – and is in line with Article 3, which places obligations on the Crown to ensure equity of outcomes for Māori.	

### **D. Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences.**

<b>Starting principles</b>	The education system must acknowledge the diversity of Māori learners and be able to adapt to their needs. Tertiary education should be safe and accessible for diverse Māori learners, including for example those who live rurally or study online.	Māori should have access to appropriate, accessible supports and resources that promote their wellbeing and educational achievement, including on mental health, finances, enrolment and courses, and pathways into tertiary education and the workforce.	Teaching should be culturally safe and responsive. Staff should be appropriately trained, especially in cultural competency and te reo Māori.
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<b>How these principles informed the draft code used for consultation</b>	Draft outcome 2 requires providers to recognise learners as a community with rich and diverse perspectives, experiences, backgrounds and concerns, who are embedded in wider familial, social and cultural networks. This includes acknowledging diverse learners.	Draft outcomes 7 and 9 require providers to have processes for supporting learners' wellbeing needs, including providing culturally appropriate and timely support for physical and mental health and wellbeing. Draft outcome 6 requires providers to have processes for supporting the academic, personal, and social development of all learners, including for transitioning into tertiary study and the workforce.	Draft outcomes 4 and 10 require providers to have processes for providing ongoing and appropriate training and resources to staff, including on Te Tiriti o Waitangi and cultural competency.
<b>Feedback received on draft code during consultation</b>	The code does not fully address the diversity of Māori learners, providers (e.g. wānanga) and accommodation (e.g. noho marae). There should be more consideration of Māori learners who are older, have families, are employed, and/or study primarily online or across multiple sites. Diverse voices should be able to participate in consultation.	<i>As for before consultation, and:</i> Māori learners should be supported to know about and utilise the code.	<i>As for before consultation, and:</i> The burden of educating staff and providers about Te Tiriti o Waitangi and cultural competency should not fall to Māori learners. All staff (including academic staff) should be appropriately trained, and cultural competency should be at the forefront of the code and academic environments (including student accommodation).
<b>How this feedback informed the code after consultation</b>	The content of the draft outcomes above will be largely unchanged for the ongoing code. Additional provisions include: <ul style="list-style-type: none"> <li>The addition of a new clause in part one specifying that providers must implement code processes which are appropriate for their learning environments and contexts, and the needs of their learners. This is intended to better acknowledge the diversity of learners and providers across the sector</li> <li>Increased focus on meeting the needs and aspirations of diverse learners throughout the code, including in requirements for providing supports, resources, and staff training.</li> </ul>		
<b>Connection to Te Tiriti o Waitangi</b>	An enhanced focus on the diversity of learners and providers (including Māori learners and providers), the need for appropriate supports for learners (including Māori learners), and requirements for staff training (including on Te Tiriti o Waitangi and cultural competency) supports the Treaty principles of Partnership and Protection, as well as relating to Article 3 and the Crown's obligation to ensure equity of access and outcomes for Māori in the education system.		

**E. Te Tuakiritanga: Identity, language, and culture matter for Māori learners**

<b>Starting principles</b>	Identity, language, and culture are essential for Māori to feel a sense of belonging and inclusion, be well and succeed. Learning environments and systems should enable Māori to feel safe, included, and supported in their identity, language, and culture, and te reo Māori should be prioritised and supported in tertiary education.
<b>How these principles informed the draft code used for consultation</b>	Draft outcomes 6 and 7 require providers to support learners' connection to their language, identity, and culture, and to provide opportunities and safe spaces for learners to use te reo and tikanga Māori.
<b>Feedback received on draft code during consultation</b>	The same messages heard before consultation were re-enforced during consultation, and: <ul style="list-style-type: none"><li>• Learners should be able to engage with providers in ways they see best – for example, in te reo Māori and according to appropriate tikanga</li><li>• The code and guidance material should be made available in te reo Māori.</li></ul>
<b>How this feedback informed the code after consultation</b>	<p>The content of the draft outcomes above will be largely unchanged for the ongoing code.</p> <p>A definition of tikanga will be added, to acknowledge that tikanga can vary depending on person, place, and context.</p> <p>Once the code is released, the New Zealand Qualifications Authority (NZQA) will develop detailed guidelines for and with the sector, which will clarify application of the code for varying provider types and contexts (e.g. a large university versus a small private training establishment). Further details of how learners and providers should engage (e.g. according to tikanga) could be detailed in these guidelines. This will avoid creating a code which is too prescriptive and potentially has negative impacts on the sector (e.g. for resourcing and staffing ratios).</p> <p>The Ministry acknowledges that releasing a te reo Māori code would be an important way to support Māori learners' connections to language and will continue to work towards development of a te reo Māori code.</p>
<b>Connection to Te Tiriti o Waitangi</b>	Supporting Māori learners' connection to language, identity, tikanga and culture reflects the Treaty principles of Partnership and Protection and acknowledges that Māori have rangatiratanga over taonga they wish to retain (Article 2).

**F. Te Rangatiratanga: Māori exercise their authority and agency in education**

<b>Starting principles</b>	<p>Māori want to exercise rangatiratanga over the education of Māori learners. This means Māori:</p> <ul style="list-style-type: none"><li>• should be able to self-determine their cultural and educational needs and learn in ways that best meet these needs</li><li>• want to work in partnership with leaders in tertiary education who are committed to supporting rangatiratanga and understand te ao Māori.</li></ul> <p>Being able to exercise rangatiratanga is inhibited by the lack of transparency in the tertiary education system – especially on governance structures and how resources and funds are allocated.</p>
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<b>How these principles informed the draft code used for consultation</b>	<p>Draft outcomes 1 and 2 require providers to have wellbeing and safety practices which respond effectively to the needs of learner communities. Providers must have practices for working with learners, whānau, communities and iwi as key partners in developing practices that influence learning environments and learner wellbeing and safety.</p> <p>Providers must also have practices to increase transparency and empower learners and their communities to participate equitably in decision-making processes, including in the strategic management and governance of the provider. This includes enhanced requirements for providers to publicise self- and peer-reviews and disseminate information in timely and accessible ways.</p>
<b>Feedback received on draft code during consultation</b>	<p>The same messages heard before consultation were re-enforced during consultation, and:</p> <p>Māori involvement in engagement and decision-making is essential for honouring Te Tiriti o Waitangi. This involvement must:</p> <ul style="list-style-type: none"> <li>• be meaningful, relationship based, and not tokenistic (e.g. restricted to provider councils and marae kawa (protocols))</li> <li>• involve multiple means and opportunities for Māori learners, whānau and communities to engage, and form relationships, with providers</li> <li>• enable the mana and agency of learners to be acknowledged and remain intact throughout the process. Learners should be empowered and able to represent themselves as they see best.</li> </ul>
<b>How this feedback informed the code after consultation</b>	<p>The draft outcomes above will be further strengthened by amending wording to emphasise that learners have mana and agency, are not passive, and should be empowered to represent themselves as they see best.</p> <p>References to working with learners and their communities will be enhanced throughout the code, to include working with diverse learners and their communities in developing, reviewing and improving strategic goals, plans and practices which support learners' wellbeing and safety, and educational outcomes.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Enhanced requirements for transparency and learner voice provisions, including requirements for providers to work with diverse learners and their communities, support the Treaty principle of Partnership, and acknowledge the rangatiratanga Māori have over their education (Article 2).</p> <p>These outcomes, along with the code as a whole, contribute to an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships in accordance with section 4(d) of the Act.</p> <p>They also work in support of the Government's objective for 'Learners at the Centre,' as outlined in the Tertiary Education Strategy.</p>

#### **G. Wellbeing is holistic**

<b>Starting principles</b>	Wellbeing is holistic. It includes (but is not limited to) whānau and community, meeting basic needs, upholding language and culture, fostering belonging and inclusion, being free from racism and discrimination, and feeling safe and supported in your environment.
<b>How these principles informed the draft code used for consultation</b>	The code has attempted to address the multi-faceted dimensions of wellbeing across all outcomes, encouraging a shift in tertiary education towards a holistic approach that takes into account the wider environment and the system as a whole, to better support the physical, mental, spiritual and cultural needs of learners, and their whānau.

<b>Feedback received on draft code during consultation</b>	The code doesn't fully encompass a Te Ao Māori view of wellbeing. It should acknowledge wellbeing can be perceived differently by different people, and clearly define what it means in the context of the code.	The code should acknowledge spiritual wellbeing, and wider government agencies and education system initiatives which influence wellbeing (e.g. StudyLink Student Loan Scheme, Ministry of Health, Ministry of Justice).
<b>How this feedback informed the code after consultation</b>	<p>As outlined in Table E above, the code will be accompanied by more detailed guidance material. This could include description of the many factors influencing wellbeing (such as wider government and system initiatives or approaches), and the varying impacts depending on person and context.</p> <p>One of the proposed legislative changes supporting learner wellbeing and safety relates to the possibility of creating a separate Te Ao Māori code in future (which might better encompass Te Ao Māori perspectives of wellbeing). There were mixed views on this proposal, and further analysis is included in <b>Annex Five</b>.</p>	
<b>Connection to Te Tiriti o Waitangi</b>	<p>This set of proposals relates more broadly to Te Tiriti o Waitangi, and perhaps most strongly to Article 3. Wellbeing has a strong impact on educational success and could be considered an important means to ensure equity of outcomes for Māori learners and their communities.</p> <p>Allowing Māori to define what wellbeing means for them would support Article 2 of the Treaty, and the principle of Participation.</p>	

#### H. Resourcing

<b>Feedback received on draft code during consultation</b>	Resourcing is a significant barrier for service provision and meeting the aspirations of the code (for learner wellbeing, equity, and educational achievement). This is especially so for wānanga who have a higher proportion of Māori learners with higher equity and Te Tiriti o Waitangi needs.
<b>How this feedback informed the code after consultation and connection to Te Tiriti o Waitangi</b>	<p>Feedback about resourcing the tertiary education sector (and particularly wānanga) was outside the scope of the present consultation, and not rectifiable within the code.</p> <p>It is important to note that requests for additional funding to support the implementation of the code were made almost universally across the sector, including from universities, polytechnics, private training establishments, wānanga and learner associations (including those representing all learners, Māori learners, and disabled learners).</p> <p>We do not envision large increased costs for providers due to implementing the code or meeting its requirements, as these proposals build on and refine existing provisions and expectations for the sector, rather than creating new expectations from scratch. Many providers will already be meeting the requirements in the code, and the system will continue to evolve and improve as providers, learners and their communities engage with, and utilise, the code.</p> <p>Decisions about funding should be made with consideration of Article 3 of Te Tiriti o Waitangi, which places obligations on the Crown to ensure equitable outcomes for Māori and all New Zealanders. Any further funding for the education sector would need to be made with due Ministerial consideration and consultation processes.</p>

## Annex Four: Analysis of Māori interests in the dispute resolution scheme for domestic tertiary learners

This is a Treaty Principles analysis of Māori interests in the dispute resolution scheme ('the scheme'). It considers:

- insights gathered from Māori stakeholders<sup>12</sup> before consultation ('starting principles'), and how these informed the draft scheme rules circulated for public consultation
- insights gathered from Māori stakeholders during consultation, and how these informed revisions to the scheme rules.<sup>13</sup>

These insights, perspectives and experiences have been used to shape and inform decisions around the new dispute resolution scheme, with respect to the Crown's obligations to Māori under Te Tiriti o Waitangi as specified in Section 4(d) of the Education and Training Act 2020 (the Act).

Much of the feedback provided by Māori stakeholders before and during consultation aligned with the five outcomes of Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy.<sup>14</sup> These outcomes are:

- Te Whānau: Education provision responds to learners within the context of their whānau
- Te Tangata: Māori are free from racism, discrimination, and stigma in education
- Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences
- Te Tuakiritanga: Identity, language, and culture matter for Māori learners
- Te Rangatiratanga: Māori exercise their authority and agency in education.

Ka Hikitia – Ka Hāpaitia supports the Act and Tertiary Education Strategy (TES) to shape an education system which honours and gives effect to Te Tiriti o Waitangi and supports Māori-Crown relationships. It is an aspirational framework for government and the education sector to work together to achieve system shifts, and support Māori learners, whānau, hapu and iwi to achieve excellent and equitable outcomes. Given the alignment between the interests of Māori in the present work with the outcomes and aspirations of Ka Hikitia – Ka Hāpaitia, we have chosen to present feedback from Māori stakeholders against the outcomes of Ka Hikitia – Ka Hāpaitia. Presenting these insights against Ka Hikitia – Ka Hāpaitia is not intended to replace or supersede the Crown's obligations to Māori under Te Tiriti o Waitangi. Rather, it is intended to support an analysis of the current work against the articles and principles of Te Tiriti o Waitangi.

### A. Te Whānau: Education provision responds to learners within the context of their whānau

<b>Starting principles</b>	Whānau and community members should be able to support Māori learners throughout the dispute resolution process.
<b>How these principles informed the draft scheme rules used for consultation</b>	Rule 26(2) requires the scheme operator to enable learners to have whānau, community members and/or advocates supporting them through the dispute resolution process.

<sup>12</sup> Annex Two provides a breakdown of Māori stakeholders engaged with before and during consultation.

<sup>13</sup> Following consultation with a range of stakeholders, the scheme rules will be revised. This may result in rule numbers changing, even if the content or intent of the rules remains unchanged.

<sup>14</sup> [Ka Hikitia – Ka Hāpaitia – Education in New Zealand](#)

<b>Feedback received on draft scheme rules during consultation</b>	<p>The same messages heard before consultation were re-enforced during consultation, and:</p> <p>Advocates for learners in the dispute resolution process should be independent of the provider and selected by the learner.</p>
<b>How this feedback informed the scheme rules after consultation</b>	<p>There will be no substantial change to the content of the draft rule above, although rule 4(7) will specify that supports or advocates provided by the scheme operator must be independent of the provider where requested by the learner.</p> <p>The involvement of whānau will be further strengthened by revising the definition of student claimant so a parent, whānau member, legal guardian or advocate can represent and act on behalf of a student claimant, with their consent and request.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Involving whānau and community in the dispute resolution process supports the Treaty principle of Partnership and acknowledges the rangatiratanga of Māori guaranteed in Article 2 of Te Tiriti o Waitangi, including the rights to be involved and have rangatiratanga over the education and wellbeing of Māori, and the dispute resolution process.</p>

#### **B. Te Tangata: Māori are free from racism, discrimination, and stigma in education**

<b>Starting principles</b>	<p>Māori experience racism and discrimination in tertiary education, which results in inequitable education outcomes; for example, Māori learners have higher rates of non-completion of tertiary study than non-Māori learners.</p> <p>The dispute resolution scheme should measure and address systemic or institutional racism to improve outcomes for Māori learners.</p>
<b>How these principles informed the draft scheme rules used for consultation</b>	<p>Rule 22(3) requires the scheme operator to ensure the scheme is consistent with the principles of Te Tiriti o Waitangi. This includes tracking impacts on Māori, making any necessary changes to achieve desired outcomes for Māori, and ensuring no long-term disparity of access of outcomes for Māori in relation to the scheme.</p> <p>Rule 28 requires the scheme operator to report systemic issues to the code administrator and relevant education and government agencies.</p> <p>Rule 29 requires systemic issues to be reported to the Minister of Education and made publicly available in an annual report.</p>
<b>Feedback received on draft scheme rules during consultation</b>	<p>Collective or multiple complaints to the scheme may be indicative of wider issues (e.g. systemic racism) and should be recorded and examined further.</p> <p>However, Māori information should be treated as a taonga, with consideration of data sovereignty and confidentiality. Collection of this data should not be used to reinforce stereotypes or deficit perspectives of Māori performance/outcomes.</p>
<b>How this feedback informed the scheme rules after consultation</b>	<p>Rule 21 (previously draft rule 22), on the functions of the scheme operator, will likely have an additional clause added to specify that the scheme operator must have regard to Māori data sovereignty principles in the collection and use of data relating to Māori.</p> <p>However, there is a need to weight consideration of data sovereignty with consideration of the need for information-sharing between the scheme operator, code administrator, education quality assurance agencies, Minister of Education and parties involved in the dispute, as necessary for the functionality of the scheme as a whole (especially with regard to</p>

	<p>publishing, reporting and monitoring of the scheme, as detailed in Rules 26-29).</p> <p>Considerations of data sovereignty versus information-sharing are currently being tested with the Ministry's legal team and the Government Centre for Dispute Resolution.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Ensuring the scheme measures, assesses and works to address systemic issues and/or disparities for Māori is an important aspect of honouring Te Tiriti o Waitangi, particularly the principle of Protection. It is in support of Article 3, as the Crown has obligations to ensure equity of outcomes for Māori.</p> <p>Article 2 provides for Māori to have rangatiratanga and rights to make decisions about their resources, information and taonga. Consideration of data sovereignty supports this Article, although there will be an ongoing need to balance rights to rangatiratanga with the need for information-sharing to ensure the functionality and workability of the scheme for Māori and all learners.</p>

**C. Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences.**

<b>Starting principles</b>	Māori learners should be provided appropriate, accessible, and culturally safe information and support to understand, access, and utilise the scheme.	Those working to resolve disputes should have appropriate expertise and training, especially in cultural competency and te reo Māori.
<b>How these principles informed the draft scheme rules used for consultation</b>	<p>Rules 9, 15, and 17 require the scheme operator to keep all parties informed of the conditions of the scheme, and the nature and outcome of the dispute.</p> <p>Rule 26 requires the scheme operator to ensure the scheme is accessible and students are aware of, and able to access, the scheme. This includes providing appropriate information, enabling support people to participate, and assisting learners to access further support where needed.</p>	<p>Rule 25 requires the scheme operator to appoint adjudicators and mediators who are capable, qualified, and able to communicate and work effectively with Māori and people from different cultural backgrounds.</p> <p>Rule 26(3) requires the scheme operator to recruit culturally competent practitioners and support their ongoing professional development.</p>
<b>Feedback received on draft scheme rules during consultation</b>	<p>The same messages heard before consultation were re-enforced during consultation, and:</p> <p>Information on accessing and using the scheme could be included in guidance material with the scheme.</p>	The scheme operator and practitioners within the scheme should have sufficient cultural competency and knowledge of tikanga.
<b>How this feedback informed the</b>	There will be no substantial change to the draft rules outlined above.	There will be no substantial change to the draft rules above (although they will now be Rule 24 and 25(3) respectively).

<b>scheme rules after consultation</b>	Further detail on how providers and the scheme operator should support learners to understand and utilise the scheme may be developed by the scheme operator once the scheme is active (this is likely to be published on a website, and also made available to parties involved in a dispute).	Requirements to recruit culturally competent practitioners will be further strengthened by specifying that these should include Māori and Pacific practitioners.  Rule 10(4) will require both the scheme operator and practitioners to act with regard to the principles of Te Tiriti o Waitangi.
<b>Connection to Te Tiriti o Waitangi</b>	Ensuring equity of access in understanding, accessing, and utilising the scheme relates to Article 3 of Te Tiriti o Waitangi, and the principle of Partnership.	Ensuring appropriate cultural competency and training supports the principles of Partnership and Protection, and specifically Article 3 of Te Tiriti o Waitangi which places obligations on the Crown to ensure equity of outcomes for Māori.

#### **D. Te Tuakiritanga: Identity, language, and culture matter for Māori learners**

<b>Starting principles</b>	It is essential that tikanga and recognition of mana are embedded throughout the dispute resolution process.  Tikanga should not be treated as fixed rules, but as variable depending on person and context.	Being able to engage in dispute resolution in te reo Māori is vital for ensuring equitable access and outcomes for Māori learners.
<b>How these principles informed the draft scheme rules used for consultation</b>	Rule 8 requires the scheme operator to act in a way which is mana-enhancing, culturally safe and competent, in accordance with the principles of Te Tiriti o Waitangi, and accommodates any unique cultural or situational needs of the learner.  Rule 10(9) requires the scheme operator to use appropriate tikanga (which is agreed with the learner) to resolve a dispute.	Rule 10(8) requires the scheme operator to ensure a dispute can be resolved in te reo Māori, including during the process of making the claim, negotiation, mediation, and adjudication.
<b>Feedback received on draft scheme rules during consultation</b>	Recognising a learner's mana means treating them fairly, with respect, and not being degrading – even if the outcome is not what the learner wants.  Tikanga should be clearly defined within the scheme, preferably with the learner.	<i>As for before consultation.</i>
<b>How this feedback informed the scheme rules after consultation</b>	Rule 8 will be further strengthened by requiring the scheme operator to act in a way which, in addition to being culturally safe and competent	There will be no substantial change to the draft rule above.  Usage of te reo Māori in the dispute resolution process will be

	<p>and in accordance with Te Tiriti o Waitangi, also has regard to appropriate tikanga where requested by the learner, and upholds the mana of all those involved in the dispute resolution process.</p> <p>Definitions of tikanga and mana in the context of the scheme will be included in the interpretation section of the rules.</p>	<p>strengthened by the addition of rule 15(2) which states that when a practitioner is appointed, the scheme operator must take into account the student claimant's needs and preferences, including how fluent or capable the practitioner is in te reo Māori.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Ensuring tikanga and mana are embedded within the scheme, and that disputes can be raised and resolved using te reo Māori, support the Treaty principles of Protection and Partnership, and help to give effect to Article 2, acknowledging Māori should have rangatiratanga over their tikanga and within the dispute resolution process.</p>	

#### **E. Te Rangatiratanga: Māori exercise their authority and agency in education**

<b>Starting principles</b>	<p>There are vast power imbalances between Māori learners and their providers. Māori learners must be:</p> <ul style="list-style-type: none"> <li>• equipped and empowered to raise complaints against providers</li> <li>• central in the development, implementation, and performance assessment of complaints processes.</li> </ul>
<b>How these principles informed the draft scheme rules used for consultation</b>	<p>Rule 4 allows any student to initiate a dispute against their provider by making a claim under the scheme.</p> <p>Rule 8 requires the scheme operator to act in a way which is student-focused, mana-enhancing, inclusive, and empowers all learners to participate fully in the dispute resolution process.</p> <p>Rule 26 requires the scheme operator to ensure the scheme is accessible to all learners, and that learners are appropriately supported and informed to utilise the scheme.</p>
<b>Feedback received on draft scheme rules during consultation</b>	<p>Māori should be able to:</p> <ul style="list-style-type: none"> <li>• raise and resolve complaints in ways that best suit them (e.g. with Māori resolution and/or restorative justice methods, face to face, on marae, etc)</li> <li>• codesign all aspects of the scheme (including design, procurement, and appointment of scheme operator) and the dispute resolution process (in accordance with the partnership principle of Te Tiriti o Waitangi).</li> </ul>
<b>How this feedback informed the scheme rules after consultation</b>	<p>Rule 8 has been strengthened by requiring the scheme operator to consider and address disputes in ways which integrate the specific cultural or situational needs of the learner claimant into all processes and take the views of all parties into account during decision-making.</p> <p>Rule 21(3) has been amended to specify that the scheme operator must <i>proactively develop and evaluate the scheme and its operation with Māori</i> to ensure the scheme gives regard to tikanga and is consistent with the principles of Te Tiriti o Waitangi.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Empowering Māori learners to raise complaints against their providers (with their whānau and community), and ensuring that the scheme is developed and evaluated with Māori, supports the Treaty principle of Partnership. These provisions are in line with Article 2, which recognises the rangatiratanga Māori have, including the right to make decisions relating to their education.</p>

	<p>Given the time, financial and legislative constraints for developing the scheme – particularly the requirement for the scheme to come into effect by 1 January 2022 – it was not possible to engage in a true co-design process during development of the scheme and its rules. We have worked, and are continuing to work, with Māori stakeholders in designing the scheme, including the Māori caucus of the Resolution Institute and the Māori Allied Alternative Dispute Resolution Organisation (MĀADRO), among others.</p> <p>Co-design would strongly support the Treaty principle of partnership. Questions about the extent to which Māori have been, or should be, involved in designing the scheme therefore raise wider questions about the way in which the Crown does, or should, engage in partnership with Māori –both now and in the future.</p>
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## F. Government Centre for Dispute Resolution (GCDR) Best Practice Framework

The GCDR, alongside Te Arawhiti (the Office for Māori-Crown Relations) and MĀADRO, developed the ‘Dispute Resolution Best Practice Framework,’ which provides a model for considering how to ensure a dispute resolution scheme is consistent with Te Tiriti o Waitangi. The four capability areas identified in this framework, and the considerations they raised in the development of the draft scheme rules circulated for consultation, and in the ongoing development of the scheme, are included below. All four capability areas support the obligations placed on the Crown in section 4(d) of the Act and are strongly related to the Treaty principles of Partnership and Protection.

<p><b>i. Dispute Resolution Process</b></p> <p><i>This capability area relates especially to Articles 2 and 3 of Te Tiriti o Waitangi.</i></p> <p><b>Capability considerations</b></p> <ul style="list-style-type: none"> <li>• Awareness of Māori approaches to dispute resolution, and incorporation of Te Ao Māori and tikanga Māori.</li> <li>• Consideration of Māori access in service design and delivery.</li> <li>• Staff cultural capability and knowledge of Te Ao Māori, and processes to improve and retain cultural capability and knowledge of Te Ao Māori and tikanga Māori.</li> <li>• Ensuring the cultural safety of parties, practitioners, and staff.</li> </ul> <p><b>Considerations for the scheme</b></p> <ul style="list-style-type: none"> <li>• Consider how Māori approaches and tikanga Māori fit within the scope of the scheme for financial and contractual disputes.</li> <li>• Consider how the scheme might be different with Te Ao Māori as the foundation.</li> <li>• Ensure the scheme and its processes are accessible, and staff have appropriate cultural competency and knowledge.</li> </ul>	<p><b>ii. Relationships with Māori</b></p> <p><i>This capability area relates especially to Article 2 and 3 of Te Tiriti o Waitangi.</i></p> <p><b>Capability considerations</b></p> <ul style="list-style-type: none"> <li>• Relationships and engagement with Māori people and organisations to improve services for Māori users.</li> <li>• Responsiveness of points of contact for Māori.</li> <li>• Level of consideration of Māori in Government procurement.</li> </ul> <p><b>Considerations for the scheme</b></p> <ul style="list-style-type: none"> <li>• Consider who, when, and how to consult on the dispute resolution scheme rules and processes.</li> <li>• Consider hiring practices and procurement arrangements within the scheme, to ensure Māori staff and knowledge are valued, supported, and equipped.</li> <li>• Consider whether there should be a separate scheme for Māori, and/or what relationship Māori would like to have with the dispute resolution scheme.</li> </ul>
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<p><b>iii. Equitable outcomes</b></p> <p><i>This capability area relates especially to Article 3 of Te Tiriti o Waitangi.</i></p> <p><i>Capability considerations</i></p> <ul style="list-style-type: none"> <li>• Awareness of systemic racism, and its impacts on Māori.</li> <li>• Actions to mitigate systemic racism, and its impacts on Māori.</li> <li>• Measure and assess activities to understand the effectiveness of services for Māori.</li> <li>• Address disparities of access and outcomes for Māori.</li> </ul> <p><i>Considerations for the scheme</i></p> <ul style="list-style-type: none"> <li>• Ensure systemic racism, especially in the education sector, is considered in decision-making and dispute resolution.</li> <li>• Consider how access and outcomes can be measured and analysed, to mitigate systemic racism and ensure equitable outcomes.</li> <li>• Consider what supports are needed for Māori in dispute resolution processes, to ensure equitable outcomes.</li> <li>• Consider how to review processes to ensure the scheme works for Māori.</li> </ul>	<p><b>iv. Te Tiriti o Waitangi and Māori-Crown Relationships</b></p> <p><i>This capability area relates especially to Article 1 of Te Tiriti o Waitangi and section 4(d) of the Act.</i></p> <p><i>Capability considerations</i></p> <ul style="list-style-type: none"> <li>• Understand the importance of Te Tiriti o Waitangi and Māori-Crown relationships.</li> <li>• Understand the relationship and obligations of the dispute resolution scheme to Te Tiriti o Waitangi and Māori-Crown relationships.</li> <li>• Build and retain organisational knowledge of Te Tiriti o Waitangi and Māori-Crown relationships.</li> </ul> <p><i>Considerations for the scheme</i></p> <ul style="list-style-type: none"> <li>• Consider the requirements arising from Te Tiriti o Waitangi and government legislation (including the Education and Training Act 2020).</li> <li>• Consider how to ensure the scheme serves Māori.</li> <li>• Ensure knowledge of Te Tiriti o Waitangi and Māori-Crown relationships are retained and built throughout the scheme processes.</li> </ul>
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## **Annex Five: Analysis of Māori interests in the proposed legislative changes supporting the wellbeing and safety of tertiary and international learners**

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This is an analysis of Māori interests in the draft proposed legislation changes to the Education and Training Act 2020 (the Act), to support learner wellbeing and safety across tertiary and international education. It considers:

- insights gathered from Māori stakeholders<sup>15</sup> before consultation, and how these informed the proposed legislative changes circulated for public consultation
- insights gathered from Māori stakeholders during consultation, and how these informed revisions to the proposed legislative changes.

These insights, perspectives and experiences have been used to shape and inform decisions around the development of the legislative proposals. The obligations of the Crown to honour Te Tiriti o Waitangi and support Māori-Crown relationships – as outlined in section 4(d) of the Act – underpinned the development of the proposed legislative changes and the present Treaty principles analysis.

The role of the proposed legislative changes is to enable the instruments of the code of practice for the pastoral care of tertiary and international learners ('the code') and dispute resolution scheme ('the scheme'), and empower the code administrator and scheme operator to manage these instruments, ensuring the system is fit for purpose. The legislative changes will ensure the Minister of Education, Ministry of Education, code administrator and scheme operator can fulfil their duties and obligations in a manner that honours Te Tiriti o Waitangi. Therefore, only a select number of the proposed changes have direct, prescriptive reference to Te Tiriti o Waitangi, while the code and scheme rules contain specific Te Tiriti o Waitangi requirements for individuals and organisations.

Much of the feedback provided by Māori stakeholders before and during consultation aligned with the five outcomes of Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy.<sup>16</sup> These outcomes are:

- Te Whānau: Education provision responds to learners within the context of their whānau
- Te Tangata: Māori are free from racism, discrimination, and stigma in education
- Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences
- Te Tuakiritanga: Identity, language, and culture matter for Māori learners
- Te Rangatiratanga: Māori exercise their authority and agency in education.

Ka Hikitia – Ka Hāpaitia supports the Act and Tertiary Education Strategy (TES) to shape an education system which honours and gives effect to Te Tiriti o Waitangi and supports Māori-Crown relationships. It is an aspirational framework for government and the education sector to work together to achieve system shifts, and support Māori learners, whānau, hapu and iwi to achieve excellent and equitable outcomes. Given the alignment between the interests of Māori in the present work with the outcomes and aspirations of Ka Hikitia – Ka Hāpaitia, we have chosen to present feedback from Māori stakeholders against the outcomes of Ka Hikitia – Ka Hāpaitia. Presenting these insights against Ka Hikitia – Ka Hāpaitia is not intended to replace or supersede the Crown's obligations to Māori under Te Tiriti o Waitangi. Rather, it is intended to support an analysis of the current work against the articles and principles of Te Tiriti o Waitangi.

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<sup>15</sup> Annex Two provides a breakdown of Māori stakeholders engaged with before and during consultation.

<sup>16</sup> [Ka Hikitia – Ka Hāpaitia – Education in New Zealand](#)

#### **A. The importance of Te Tiriti o Waitangi as a foundational document**

<b>Insights gathered before consultation</b>	<p>Te Tiriti o Waitangi should be a foundational principle for government, tertiary education providers, and student accommodation providers.</p> <p>Engaging with Te Tiriti o Waitangi should not be treated as a tokenistic exercise.</p> <p>Embedding Te Tiriti o Waitangi requires the acknowledgement that Māori have rights to equitable outcomes under Te Tiriti o Waitangi which require active engagement from the Crown.</p>
<b>How these insights informed the draft legislative changes included in consultation</b>	<p>One of the draft legislation changes proposed that the code administrator and scheme operator would share obligations to honour Te Tiriti o Waitangi and support Māori-Crown relationships as part of the Crown's responsibilities under Section 4(d). This was intended to ensure that these organisations, which have powers delegated by the Crown, will act in accordance with Te Tiriti o Waitangi.</p>
<b>Feedback received on proposed legislative changes during consultation</b>	<p>Honouring Te Tiriti o Waitangi benefits all learners, not just Māori learners.</p>
<b>How this feedback informed the legislative changes after consultation</b>	<p>There will be no further change to the proposed legislative change. Legislation will continue to support the Crown's obligations to honour Te Tiriti o Waitangi, as specified in section 4(d) of the Act.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>Article 3 of Te Tiriti o Waitangi creates obligations on the Crown to actively protect the interests of Māori. The Crown therefore has responsibility to ensure that the actions and activities undertaken by the Crown, and organisations delegated power by the Crown, are consistent with Article 3 obligations.</p>

#### **B. Te Whānau: Education provision responds to learners within the context of their whānau**

<b>Insights gathered before consultation</b>	<p>Māori learners need to be understood in the context of their whānau, community, hapū and iwi. The involvement of whānau is essential for the wellbeing and educational success of Māori learners.</p>
<b>How these insights informed the draft legislative changes included in consultation</b>	<p>A proposed legislative change stated that Māori should be added to the list of groups, organisations, and individuals that the Minister of Education must consult with before issuing a code.</p>
<b>Feedback received on proposed legislative changes during consultation</b>	<p>Māori learners, and their whānau and communities, should be properly informed and not left out of the decision-making process. This means including Māori learners and communities at every stage of the decision-making process, and ensuring engagement is meaningful, ongoing and relationship based.</p> <p>Feedback supported this proposal and emphasised the importance of ongoing consultation with Māori in the development of both the code and scheme.</p>
<b>How this feedback informed the legislative changes after consultation</b>	<p>There will be no further change to the proposed legislative change.</p>

<b>Connection to Te Tiriti o Waitangi</b>	Including Māori learners, whānau, community, hapū and iwi in consultation acknowledges Māori rights to rangatiratanga over the education of Māori learners (as guaranteed in Article 2 of Te Tiriti o Waitangi), acknowledges the unique contexts that Māori operate in, supports Māori-Crown relations (as specified in Section 4(d) of the Act), and supports the Treaty principle of partnership.
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### **C. Te Tangata: Māori are free from racism, discrimination, and stigma in education**

<b>Insights gathered before consultation</b>	Māori learners experience racism and discrimination in the tertiary education system, which negatively impacts their confidence, sense of belonging, wellbeing, and educational achievement.
<b>How these insights informed the draft legislative changes included in consultation</b>	Part of the obligations on the Crown specified in section 4(d) of the Act is establishing an education system which allows Māori learners to be free from racism and discrimination. The role of primary legislation is to ensure that the system is fit for purpose to support Māori learners.  A proposed legislative change stated that the Ombudsman should have jurisdiction and powers to investigate complaints made about the activities of the code administrator and scheme operator.
<b>Feedback received on proposed legislative changes during consultation</b>	The same messages heard before consultation were re-enforced during consultation.
<b>How this feedback informed the legislative changes after consultation</b>	The Ministry considered whether providing for the Ombudsman to have jurisdiction over the scheme operator would be an overreach, given the scheme operator will be a contracted organisation, not part of the government.  However, having greater accountability of the scheme operator (alongside the code administrator) is important to enable Māori learners and whānau to bring complaints to the scheme, and to ensure the scheme and its operator supports Māori-Crown relations and honours Te Tiriti o Waitangi.
<b>Connection to Te Tiriti o Waitangi</b>	Article 3 of Te Tiriti o Waitangi, and the principle of protection, places obligations on the Crown to ensure equity of outcomes for Māori. The Ombudsman is a Crown body, and the Crown has a duty to ensure the operations of organisations empowered by the Crown are acting in a manner that supports equitable outcomes for Māori.

### **D. Te Kanorautanga: Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences.**

<b>Insights gathered before consultation</b>	The tertiary education system must acknowledge the diversity of Māori learners, and be able to adapt to their needs. Tertiary education should be safe and accessible for diverse Māori learners.	
<b>How these insights informed the draft legislative changes included in consultation</b>	A proposed change to the legislation aims to amend the purpose of the code in legislation, from providing for the pastoral care of students to supporting their wellbeing and safety.  Pastoral care is a term which no longer resonates with learners, and a shift towards emphasis on wellbeing and safety will clarify	A further proposed legislative change states the Minister of Education can set out expectations and priorities regarding Te Tiriti o Waitangi for the code administrator and scheme operator.

	expectations and better acknowledge diversity among learner groups, including Māori.	
<b>Feedback received on proposed legislative changes during consultation</b>	The same messages heard before consultation were re-enforced during consultation, and stakeholders supported the move from 'pastoral care' to 'safety and wellbeing.'	
<b>How this feedback informed the legislative changes after consultation</b>	There was strong support for the shift from 'pastoral care' to a focus on wellbeing and safety, so this proposal will be retained in its current form.	This proposal will also be retained. It recognises that the needs of Māori are not singular or static, and the role of the Minister to support wellbeing and safety of Māori learners (according to Te Tiriti o Waitangi and section 4(d) of the Act) can also evolve.
<b>Connection to Te Tiriti o Waitangi</b>	The Crown has active protection and equity obligations under Article 3 to Māori. These obligations exist in relation to the code and scheme on an ongoing manner, and it is the role of the Minister to ensure protection and equity for Māori is a continuing priority.	

#### **E. Te Tuakiritanga: Identity, language, and culture matter for Māori learners**

<b>Insights gathered before consultation</b>	Identity, language, and culture are essential for Māori to feel a sense of belonging and inclusion, be well and succeed. Learning environments and systems should enable Māori to feel safe, included, and supported in their identity, language, and culture, and te reo Māori should be prioritised and supported in tertiary education.	
<b>How these insights informed the draft legislative changes included in consultation</b>	The purpose of the proposed legislative changes is to enable a legislative system which allows the identity, language and culture of Māori learners and communities to flourish.	
<b>Feedback received on proposed legislative changes during consultation</b>	The same messages heard before consultation were re-enforced during consultation.	
<b>How this feedback informed the legislative changes after consultation</b>	There will be no further change to the proposed legislative change	
<b>Connection to Te Tiriti o Waitangi</b>	Supporting Māori learners' connection to language, identity, tikanga and culture reflects the Treaty principles of partnership and active protection. It also acknowledges that Māori have rangatiratanga over taonga (including identity, language and culture), which is guaranteed in Article 2 of Te Tiriti o Waitangi.	

#### **F. Te Rangatiratanga: Māori exercise their authority and agency in education**

<b>Insights gathered before consultation</b>	<p>Māori want to exercise tino rangatiratanga over the education of Māori learners. This means Māori:</p> <ul style="list-style-type: none"> <li>• should be able to self-determine their cultural and educational needs and learn in ways that best meet these needs</li> <li>• want to work in partnership with leaders in tertiary education who are committed to supporting rangatiratanga and understand te ao Māori.</li> </ul>
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<b>How these insights informed the draft legislative changes included in consultation</b>	<p>One of the proposed legislative changes provides the Minister of Education with power to approve tailored codes for groups of learners or providers. This acknowledges the code may not be appropriate for all tertiary education contexts.</p> <p>The proposal states that a tailored code may be a more appropriate instrument for Māori learners or providers than the current proposed code. The proposal is non-prescriptive on how a tailored code would be developed or implemented.</p>
<b>Feedback received on proposed legislative changes during consultation</b>	<p>There was strong engagement from Māori learners and providers on the possibility of a tailored code for Māori providers (e.g. ngā wānanga).</p> <p>Some submitters stated that embedding te ao Māori principles within the current code would be appropriate, while others argued that a tailored code would be vital for te ao Māori wellbeing concepts and tikanga to be appropriately reflected.</p> <p>A tailored code, it was argued, would also provide the opportunity for an authentic co-design process between the Crown and Māori tertiary education providers (e.g. ngā wānanga).</p> <p>All Māori submitters agreed that a tailored code would not exempt the current code or providers from supporting the wellbeing, educational success, and aspirations of Māori learners, and operating in a manner consistent with Te Tiriti o Waitangi.</p>
<b>How this feedback informed the legislative changes after consultation</b>	<p>The legislative proposal to enable tailored codes was retained after consultation.</p> <p>Any tailored code for Māori providers would be developed with ongoing consultation with Māori learners and providers.</p>
<b>Connection to Te Tiriti o Waitangi</b>	<p>The possibility of a tailored code for Māori providers (which better encompasses te ao Māori) would support the guarantee of rangatiratanga to Māori in Article 2 of Te Tiriti o Waitangi, through giving space for Māori learners and providers to work with the Crown on an appropriate mechanism to support the wellbeing and safety of Māori.</p>