

# Regulatory Impact Statement: Legislative changes to support learner wellbeing and safety

## Coversheet

Purpose of Document	
Decision sought:	This analysis and advice have been produced for the purpose of informing decisions on proposed legislative amendments to be taken by Cabinet.
Advising agencies:	The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.
Proposing Ministers:	Minister of Education
Date finalised:	29 June 2021
Problem Definition	
<p>For learner wellbeing and safety to be sufficiently supported in tertiary education through the code of practice for pastoral care and dispute resolution scheme (DRS), the legislative settings need to be fit-for-purpose to reflect the needs of these arrangements. A fit-for-purpose legislative framework would provide the clarity and certainty that providers and learners need to understand the rights and expectations that are placed upon them.</p> <p>The legislative settings need to enable a flexible and adaptive framework for learner wellbeing and safety, that can allow the code and DRS to be reviewed, monitored and updated. This enables these instruments to be responsive to the changing needs of learners.</p> <p>A fit-for-purpose legislative system is important for empowering and enabling the wellbeing and safety for all learners in tertiary education. The legislation has a role in ensuring that Te Tiriti o Waitangi is appropriately honoured. It also must enable diverse learners to be empowered and have access to the necessary support they need. This would enable better decision-making from providers that relate to the specific contexts and circumstances of their learners.</p> <p>Learner wellbeing and safety is a responsibility held by learners, providers, the community, and the government. The legislation must provide for clear relationships between these groups, through administrative processes that are effective and efficient. Clear communication and accountability relationships between learners, providers, the code administrator, DRS operator and the government are important for the ongoing prioritisation of learner wellbeing and safety.</p>	

## Executive Summary

This Regulatory Impact Statement provides an analysis of the proposed legislative changes to support the introduction of the Education (Pastoral Care of Tertiary and International Students) Code of Practice (the code) and Dispute Resolution Scheme (DRS) at the beginning of 2022.

The proposed legislative changes are a collection of 18 amendments to the Education and Training Act 2020, to support the wellbeing and safety of tertiary and international learners. These proposed amendments can be categorised into four themes, with each theme intended to ensure that the legislative framework is fit-for-purpose to support the new instruments of the code and DRS. They are:

- a. changes that support a focused, responsive and modernised code;
- b. changes that provide for one or more code administrator with clear functions, powers and duties;
- c. changes that enable an effective dispute resolution scheme; and
- d. changes that provide for administrative arrangements that are fit-for-purpose.

These proposed changes seek to make the legislation fit-for-purpose through several different ways. They seek to create a clearer intent for the code, modernise and update the legislative settings, clarify the scope and powers of the regulated bodies, and improve the accountability between providers, the code administrator, DRS operator and government.

The proposed legislative changes share key objectives with the broader learner wellbeing and safety work programme. These are to:

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

The options for legislative change will be assessed against the status quo with the following criteria are:

- a. support learner wellbeing and safety;
- b. honour Te Tiriti o Waitangi and support Māori-Crown relationships;
- c. enable effective administration; and

- d. minimise compliance costs.

These criteria will assess the proposed legislative changes, arranged by theme, against the status quo. The status quo in this Regulatory Impact Statement represents how the legislative framework for learner wellbeing and safety is expected to operate and function after the code and DRS are introduced at the beginning of 2022, with no amendments to the legislation.

The analysis of the options for legislative change, informed by stakeholder feedback, has shown that the proposed legislative changes in respect to the code, code administrator, dispute resolution scheme and administrative arrangements are preferred to the status quo. Introducing these legislative changes will have the overall impact of supporting learner wellbeing and safety by improving the regulatory system and ensuring it is fit-for-purpose.

### **Limitations and Constraints on Analysis**

We are confident in the evidence of the current state of learner wellbeing and safety. Our understanding of how the proposals should be implemented and their likely impacts, and alternative options has been shaped by the public engagement in 2019 on the Education (Pastoral Care) Amendment Bill, subsequent implementation of the interim code, ongoing international dispute resolution scheme operation and performance, and engagement during and after the six-week consultation period.

The formal consultation period allowed for quality public participation. Many agencies have contributed to the development of the next code, dispute resolution scheme and supporting legislative changes, providing additional quality assurance. This has helped to ensure we have sufficient evidence.

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

Uncertainties regarding costs relate to:

- the different approaches providers have to learner wellbeing and safety: some have well established approaches that require only incremental changes to give effect to the next code; others need to build new systems and processes
- the diverse range of learners with different expectations that may fit well with or challenge providers who are giving effect to the code. Some want tertiary learners to be treated as adults and have responsibility for their own decisions; others want more detail about how learners will be supported.

Whānau and communities want to have a greater role but the extent to which they will be involved is uncertain (it will be affected by learner and provider decisions).

### Responsible Manager(s)

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Policy Director

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Ministry of Education

29 June 2021

### Quality Assurance

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	<p>The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement "<i>Legislative changes to support learner wellbeing and safety</i>" dated 29 June 2021.</p> <p>The panel considers that this Statement <b>meets</b> the Quality Assurance criteria. It reflects evidence of effective consultation with stakeholders and makes an effective case for the proposed legislative changes and the likelihood that, if agreed, these changes will further enhance learner wellbeing and safety.</p>

## Section 1: Diagnosing the policy problem

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

*Background – The legislative changes are part of a suite of proposals building on earlier urgent changes*

1. In 2019, urgent law changes were made to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally. In addition to enabling the Minister of Education to issue a code of practice for the pastoral care of domestic tertiary learners, the then Education Act 1989 set out arrangements relating to code administration, monitoring, compliance and enforcement, offences and penalties, and dispute resolution.
2. These changes were intended as a swift response and first step towards filling regulatory gaps to ensure learner wellbeing was supported while more comprehensive, system-wide changes could be developed. Meanwhile, COVID-19 significantly impacted the tertiary and international education sector, causing disruption for learners and providers. This has contributed further to concerns about learner wellbeing and inconsistency in practices across providers.
3. The proposed legislative changes are part of a wider package of proposals that build on these initial urgent changes. The legislative proposals support, and enable further development of, a collection of changes that support learner wellbeing and safety, for which we have developed separate Regulatory Impact Statements:
  - a. A legislated code of practice for pastoral care (the code) to support the wellbeing and safety of domestic tertiary learners (to start by 1 January 2022); and
  - b. Rules for a legislated dispute resolution scheme (DRS) to resolve financial and contractual disputes between domestic tertiary learners and providers (to start alongside the new code by 1 January 2022).
4. The proposed legislative changes are a collection of 18 changes to the Education and Training Act 2020. The purpose of these changes is to ensure that the new framework for wellbeing and safety provided by the new code and DRS are well enabled by the legislation. This will have the effect of enhancing and supporting the focus on wellbeing and safety, honouring Te Tiriti o Waitangi, and ensuring the legislative settings that provide for the code, code administrator and DRS (including the DRS operator) are fit-for-purpose.

*Status quo – No legislative change*

5. The *Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019* (the interim code) was a temporary response to tragic events in 2019. It was introduced alongside legislative requirements to develop and enact a permanent code for domestic students and a dispute resolution scheme by 1 January 2021. However, this was extended until 1 January 2022 due to the disruption caused by COVID-19, and the impacts it had on a thorough development and consultation process.

6. The code and the dispute resolution scheme are provided for by the Education and Training Act 2020 (the Act). The Act also sets out the responsibilities and scope of the code administrator, DRS operator and the role the Minister of Education has in defining the scope and operation of these organisations.
7. As the code and the dispute resolution scheme have been developed and consulted on, there has been further insights and perspectives regarding this work. This includes the impacts of COVID-19 on tertiary learners, lessons from both the international code and international learner DRS, and the interim code. The result of these insights is that the current legislative settings that provide for learner wellbeing and safety through the code and DRS are not as fit-for-purpose as they could be to support these new instruments on an ongoing basis.
8. The legislative settings related to the code and the DRS can be categorised into four themes. These themes are the code, code administrator, DRS, and administrative settings. We consider that under the current legislation, each of these components are not as supportive as they could be of learner wellbeing and safety, when applied to the new instruments that are intended to take effect in 2022.
  - a. The legislative provisions for setting a code of 'pastoral care' do not sufficiently set out a clear purpose for supporting learner wellbeing and safety, with different purposes for domestic and international students. The provisions also do not do enough to uphold the importance of honouring Te Tiriti and ensuring there is an adequate Māori voice in the development of the code. There are also no allowances for the code to be responsive to diverse types of provision, which may require exemptions from parts of the code, or a separate, tailored code.
  - b. The current legislative provisions do not provide an ideal mandate for the code administrator to be effective in performing its functions, powers, duties and responsibilities. This includes taking appropriate action against providers when a breach in the code is detected. Further, the current provisions do not explicitly outline accountability and transparency mechanisms for the Minister from the code administrator.
  - c. Similarly, the current provisions do not detail accountability mechanisms for the DRS operator. In addition, the legislation states the current scope of the DRS only covers financial and contractual disputes, which may be considered too narrow to properly support learner wellbeing and safety.
  - d. There are administrative gaps in the current legislation for the efficient operation of the code administrator and DRS operator. The legislative framework does not allow for necessary operative aspects that would allow these bodies to effectively operate together, such as being able to collect and share information.

Therefore, a collection of separate legislative changes to the Act is proposed, organised according to these themes.

**Summary of the proposed legislative changes in this Regulatory Impact Statement, categorised by theme:**

<b>Code of practice</b>	<b>Code administrator</b>	<b>DRS and DRS operator</b>	<b>General administration</b>
Strengthening the focus on wellbeing and safety	Ensuring the code administrator has appropriate functions, powers and duties to administer the code	Broaden the scope of the DRS so that it can also consider breaches of the code alongside financial and contractual complains	The DRS operator, code administrator and quality assurance regulator can collect and share information about complaints and complaints resolution
Requiring the Minister to consult with Māori before issuing a code	Set out expectations to honour Te Tiriti and support Māori-Crown relationships	Set a maximum timeframe for appeals of decisions made by the DRS at 10 working days	The Ombudsman has jurisdiction over the activities of the code administrator and DRS operator and the Official Information Act 1982 will also apply to them
Enabling tailored codes and to allow the Minister to gazette exemptions to the code for particular groupings of providers	Require annual reporting from the code administrator	Amend provisions in section 536 of the Act to better provide for the appointment, reporting and operation of a DRS operator	The Minister of Education can regularly approve and gazette expectations around enrolment forms, associated processes, and the provision of information to learners
Enabling the Minister to regularly set expectations about the code administrator's performance and priorities, and gather information from the code administrator	Issue notices to providers to do or refrain from doing something in relation to their obligations under the code	Modernize the wording in section 536(4) of the Education and Training Act 2020 to broaden the type of bodies that can be appointed as DRS operator	Providers must undertake fit and proper person checks on staff delivering learner accommodation
Allowing the Minister to make minor and technical changes to the code	Modernising the legislation through moving saved provisions from the Education Act 1989 to the Education and Training Act 2020		

9. These legislative proposals have been developed based on recent years spent reviewing the interim code and international DRS, and in the development of an ongoing code and DRS for domestic learners. The intention of these changes is to ensure that these new instruments are fit-for-purpose. While these legislative proposals will be implemented after the ongoing code and DRS are introduced, they will improve the operation and monitoring of these instruments over the long term.

## What is the policy problem or opportunity?

*Creating an environment that supports learner wellbeing is a shared responsibility*

10. Wellbeing is essential for learners to be able to achieve their aspirations in education and beyond. There is a direct relationship between wellbeing and academic enjoyment and achievement, in terms of engagement, reasons for studying, relationships, organisational support and wider environmental factors. Because of this, learner wellbeing should be a priority for tertiary education providers. Retention and completion are an ongoing challenge, that we want to address. Successfully addressing wellbeing issues in tertiary study also sets a good foundation for individuals to sustain wellbeing throughout their lives.
11. For the code and the DRS to create an environment that supports learning and wellbeing for tertiary learners, the primary legislation needs to sufficiently enable the code administrator and DRS operator to perform their functions and duties.

*Who are the key stakeholders and what are their views?*

12. A range of parties will be affected by the new code, and the expected costs and benefits are set out in section 2. The focus of this section is on identifying key stakeholders and outlining how they are affected, as informed by feedback through public consultation.
13. Generally feedback was in support of the proposed legislative changes. There was almost universal support for the proposals seeking to modernise and update the legislation to ensure it is fit-for-purpose as part of the new arrangements for the code and the DRS. Legislative changes that drew the most comment and range of opinions were regarding how Te Tiriti o Waitangi and Māori voice were addressed, and the potential widening of the scope of the DRS.

*Users of tertiary education*

14. Tertiary education users were widely in favour of the proposed change in language from the term 'pastoral care' to 'wellbeing and safety'. We found that tertiary learners saw the term 'pastoral care' as inappropriate for adult learners, and had underlying religious connotations.
15. Learners were also very supportive of the proposal to increase the scope of the DRS, so that learners could seek redress for breaches of the code. They made the argument that this proposal would help them to reach a resolution for code breaches which could have a very large impact on the wellbeing of learners.



### *Māori interests – whānau, hapū and iwi*

16. Māori groups emphasised the importance of Māori engagement in the development of the proposed changes. This is to help ensure the system supports learner wellbeing and safety for Māori, and honours Te Tiriti o Waitangi as part of the Crown's responsibility under Te Tiriti. In our discussions with Māori and other participants considering the impact of changes for Māori, we have heard that meaningful whānau engagement is critical to better outcomes for Māori learners.
17. Māori providers stressed the importance of having a Māori voice ongoing in this work. Māori providers supported proposals such as the possibility for a tailored code for Māori providers and were critical of the impact general references to Te Tiriti would have in practice.

### *Regulated parties: tertiary education providers, signatory education providers and schools*

18. Concerns were raised about the proposal to increase the scope of the DRS and the implications this may have on education providers. Providers expressed concerns about the financial and resource implications this may have through an increased volume of complaints, and whether this proposal would interfere with the institutional autonomy of tertiary organisations.

### *Wider government*

19. Courts: There may be impacts for the Courts, to the extent that there are prosecutions under the Code, however, these are expected to be rare.
20. Ombudsman: The Ombudsman was supportive of having jurisdiction over the code administrator and DRS operator, as these organisations are performing a government function and should be accountable to the public and Parliament. Similarly, it is important for there to be public access to information about the performance of these organisations.

## **What objectives are sought in relation to the policy problem?**

### *Creating an environment that supports learner wellbeing is a shared responsibility*

21. The purpose of the overall work programme, which includes the code, the DRS and the proposed legislative changes, is to develop a system that supports the wellbeing and safety of domestic and international learners. It seeks to embed the early focus on wellbeing and safety to support achievement that the interim code has started to encourage.
22. To achieve this purpose, the work programme has several key objectives, including to:
  - a. strengthen and improve regulation relating to the wellbeing and safety of domestic tertiary and international learners and ensure it is fit-for-purpose so all learners are supported to achieve in their education;

- b. ensure the regulatory system is consistent and clear for all stakeholders, including education providers, accommodation providers, domestic students, international students, and communities; and
  - c. honour Te Tiriti o Waitangi and support Māori-Crown relationships.
23. In addition to the key objectives of the wellbeing and safety work set out above, there are further key objectives for the legislative changes, including to:
- a. support the code administrator to perform its duties and functions and enable any further development of the code or tailored codes;
  - b. ensure the scope and operation of the dispute resolution scheme is appropriately provided for and is fit-for-purpose; and
  - c. enable the administrative efficiency of the code administrator and dispute resolution scheme operator.

*Why legislative change is appropriate to meet these objectives*

24. The primary legislation, the Education and Training Act, provides the scope and accountability mechanisms for the code and the DRS. As the scheme and the code are operated and administered by organisations appointed by the Minister, the primary legislation must ensure that the appropriate accountability mechanisms to government exist for these organisations. The legislative provisions also have a role in enabling the code and dispute resolution scheme rules, ensuring they are fit-for-purpose.
25. This has particular relevance to the obligations on the government to honour Te Tiriti o Waitangi. The legislative framework must ensure all parties delegated powers by the Minister are in alignment with this obligation, as organisations performing work on behalf of the Crown.

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

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

26. The proposed options for legislative change will be assessed against the following criteria:
- Support learner wellbeing and safety:* Does the option support the enhancing of learner wellbeing and safety in the legislation?
  - Honour Te Tiriti o Waitangi and support Māori-Crown relationships:* Does the option empower the legislation to reflect the Government's obligations to honour Te Tiriti o Waitangi and support relationships with Māori?
  - Enable effective administration:* Does the option provide for the legislation to enable tertiary education providers, the dispute resolution scheme operator, code administrator and the Minister of Education to effectively administer the new arrangements?
  - Minimise compliance costs:* Does this option minimise compliance costs for tertiary education providers, schools with international students, the dispute resolution scheme operator and code administrator?
27. The selected criteria have been drawn from and influenced existing regulatory guidelines from the Education and Training Act 2020. The purposive section of the Act, section 4, sets out to establish and regulate an education system that supports the health, safety, and wellbeing of those studying in New Zealand, outlined in section 4(b), and Te Tiriti o Waitangi and supports Māori-Crown relationships, outlined in section 4(d).
28. The Ministry of Education has eight principles which guide regulatory stewardship, which have also been drawn upon in the development of these criteria. The four principles that have relevance to the learner wellbeing and safety work have been adapted into the criteria set out for the proposed legislative changes. These regulatory stewardship principles are honouring Te Tiriti o Waitangi, learner/ākonga focus, effectiveness and efficiency.
29. Criteria (a), support learner wellbeing and safety, is the most important and therefore is weighted the most heavily in analysis. This is because it most closely aligns to the overarching purpose of the code and DRS work.
30. The chosen criteria are linked closely to the objectives of the proposed legislative changes in section 1. Criteria (a) is aligned to the focus of the work which is to develop a system that supports learner wellbeing and safety. Criteria (b) guarantees that the Ministry's obligations to Te Tiriti o Waitangi and supporting Māori-Crown relationships are honoured. Criteria (c) and (d) support the objective of ensure the regulatory system providing for the code and DRS are fit-for-purpose.

### What scope will options be considered within?

31. There are limitations on the scope of the proposed legislative changes, due to the current legislative requirements that provide for the code and DRS. In the commissioning of the code and the DRS, there has been Ministerial direction in policy setting (discussed in the two accompanying Regulatory Impact Statements for those instruments) which the proposed legislative changes are intended to support. This restricts departures from the purpose and intention of these proposals.
32. These proposed legislation changes are constrained by what is feasible and appropriate when considering what is in the primary legislation, and what is appropriate in the secondary instruments of the code and DRS rules.
33. On the basis of this, the focus of the legislative changes is ensuring these instruments, the code administrators and DRS operator are properly empowered, and the legislative provisions are fit-for-purpose.

### What options are being considered?

34. The current legislative settings provide for the code and the DRS to be introduced on 1 January 2022. It is important that the settings for these instruments are fit-for-purpose to enable and support learner wellbeing and safety. The legislative settings supporting learner wellbeing and safety can be categorised into four distinct but related themes, which are:
  - a. Code of practice (5 proposed changes),
  - b. Code of practice administrator (5 proposed changes),
  - c. Dispute Resolution Scheme and DRS operator (4 proposed changes),
  - d. General administration relating to both the code and the DRS (4 proposed changes).
35. Each of these themes includes a number of individual proposed changes to the current legislative settings. The individual proposals are bundled together as they are related to the same theme. The proposed changes within each theme collectively seek to achieve the same purpose, which is ensuring that legislative provisions for the new instruments of the code and DRS are properly empowered and fit-for-purpose. Each proposed change contained within the themes is an independent change, with the proposed changes able to be progressed independently if Parliament decides to remove specific individual proposals from the group of 18 proposed changes.
36. Therefore, each bundle of independent but related changes for each theme is treated as a single option for a proposed legislative change, which is assessed against the status quo. These proposed changes are:
  - a. Changes that support a focused, responsive and modernised code;
  - b. Changes that provide for one or more code administrator with clear functions, powers and duties;

- c. Changes that enable an effective dispute resolution scheme; and
- d. Changes that provide for administrative arrangements that are fit-for-purpose.

*Consideration of options that have been ruled out*

37. There has been consideration on whether a fundamental redesign of the system is required. Based on the feedback received before and during consultation, there has been no argument made for a redesigned regulatory approach being more appropriate across tertiary education. The current and proposed arrangements have the right balance between an outcomes focused system, with consequences for poor performance, and the ability for providers to tailor their learner wellbeing and safety policies and practices to their diverse learners and educational settings.

*Why these four themes of individual proposals are being dealt with separately*

38. Each of these themes is dealt with separately in this Regulatory Impact Statement, as they address specific problems or gaps with the current legislative settings from the introduction of the code and the DRS in 2022. Therefore, there is limited overlap in the expected development of the status quo in relation to each theme. There are 18 separate legislative proposals across the four themes. Detailed analysis has been undertaken for each proposed legislative change, with this Regulatory Impact Statement summarising and categorising each proposal within the four themes, which was found to be the most appropriate format for analysis.

39. For the purposes of the analysis in this section, the status quo is maintaining existing legislative settings with the introduction of the code and the DRS on 1 January 2022. The code and the DRS will be implemented before the proposed legislative changes can be introduced.

40. Many of the proposed changes are minor or technical, with clear and straightforward options to address them. However, where there are opportunities for more than one approach to dealing with a problem presented by the status quo, the discussion of the preferred option includes discussion of the different approaches that could be taken towards solving the problem, and the rationale for selecting the proposed change that has been selected as part of the preferred option. For this reason, there are only two options presented, the status quo and legislative changes.

*Theme One: Code of practice legislative provisions*

41. The current legislative provisions that set out a permanent code, contained in section 534 and surrounding sections of the Act, were designed to provide for a permanent code, while the interim code was enacted. It is important that the legislative provisions are fit-for-purpose to ensure future codes are effective.

### **Option One – Status Quo**

42. The first option is the status quo, which involves retaining the current wording in the legislation related to the code of practice, in section 534 and surrounding sections.
43. The current framing of section 534 of the Act states the purpose of a code is to provide for the pastoral care of students. It states that this involves separate purposes for different kinds of students, stating that the wellbeing of domestic students' needs to be promoted, and that international students must be protected.
44. The status quo would see these purpose statements retained. This option recognises that different needs exist for international and domestic students, with international students generally seen as needing greater support, as they are further away from support networks and studying in an unfamiliar environment.
45. However, we expect that separate purposes for domestic and international students would have negative impacts on providers, who may have to abide by different purposes for different learner groups. The language of pastoral care is also considered to be inappropriate for adult learners. It also carries religious connotations which we found through consultation that learners responded negatively to.
46. Section 4(d) of the Act states that one of the purposes of the Act is to create an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships. The current code-related legislative settings could better support section 4(d) to ensure that the code is honouring of Te Tiriti or the Māori-Crown relationship.
47. The current legislative provision states that the Minister may issue a code. This provides for a singular code. Whilst the current code has a range of objectives targeted at different provider and diverse learner groups, it is likely that the status quo would develop in a way where, for certain provider and learner groups, coverage under the code, or under the code administrator, is not optimal.
48. In the current legislative settings, there are no mechanisms explicitly stating how the Minister of Education interacts with the code administrator beyond the initial appointment. As the code administrator is an agency appointed by the Minister of Education, it is important and necessary for there to be clarity on the directing and monitoring powers the Minister has over the code administrator, which is not allowed for by the status quo.
49. The status quo is expected to provide for an unnecessarily rigid code. Under the current legislative settings, the Minister is able to make minor and technical changes to the Interim Code but is unable to make any minor or technical changes to the code without meeting the consultation requirements in section 534(5) of the Act.

### **Option Two – Update the legislative provisions to support a focused, responsive and modernised code**

50. This option includes five separate proposals to support the code of practice, to ensure that the legislative provisions have been updated to be fit-for-purpose.

- a. Strengthening the focus on wellbeing and safety,
  - b. Requiring the Minister to consult with Māori before issuing a code,
  - c. Enabling tailored codes or for the Minister to gazette exemptions to the code for particular groupings of providers,
  - d. Enabling the Minister to regularly set expectations about the code administrator's performance and priorities, and gather information from the code administrator,
  - e. Allowing the Minister to make minor and technical changes to the code.
51. This option involves a proposal for amending section 534(1) and (2) of the Act to focus on wellbeing and safety and replace the term 'pastoral care' with 'wellbeing and safety'. The term 'wellbeing and safety' is more aligned with the broad work and is heavily referenced within the code itself. In consultation, there was strong support for this shift in terminology. The term 'pastoral care' was considered as overly paternalistic and carrying religious connotations that are inappropriate in the context of tertiary education.
52. This option also involves a proposal for merging the purposes for domestic and international students in the Act, with unified purpose for domestic students and international students. This would create clearer expectations for providers about the expectations placed upon them by the code.
53. This option includes a proposal for mandatory Māori consultation before a code is issued by adding Māori to an existing list of groups that the Minister must consult with. This requirement supports the Crown in keeping its obligations of honouring Te Tiriti in section 4(d) of the Act. It is aligned with the Treaty of Waitangi principle of partnership, through involving Māori learners, iwi, hāpu and whānau in the development of a code.
54. This option contains a proposal that allows for exemptions for all or parts of the code as gazetted by the Minister, and allows for the Minister to issue tailored codes with either mandatory coverage or the ability to opt in. Part of this option is also to allow the Minister to appoint code administrator for one or more codes. Allowing for tailored codes could result in the future development of codes for certain types of providers, such as schools, or Te Ao Māori providers. Therefore, if the Minister provides for separate codes, it may also be appropriate to have separate code administrators. In some cases, it may be appropriate for the Minister to gazette exemptions to all or part of the code. Consultation feedback signalled that different arrangements might be needed for specific groups. This option provides flexibility to support the development of future codes and exemptions and allows for the Minister to be responsive to different needs of providers and learner groups.
55. This option includes a proposal which states that Minister may approve the code administrator's plan setting out what the code administrator will achieve and how it will manage its performance. This would improve transparency on the code administrator's work and provide the Minister, learners, tertiary education providers, schools, and stakeholders with clarity about the code administrator's focus. It would also enable trust and confidence that the code administrator is ensuring that providers are working towards the outcomes and processes set out in the legislation and the code. This includes



expectations about the code administrator supporting the Crown's obligations under Te Tiriti o Waitangi.

56. This option involves a proposal that allows the Minister to make minor and technical changes to the code without undertaking consultation requirements in section 534(5) of the Act. The ability to make minor and technical changes to the code would improve the quality and relevance of the code allowing it to stay up-to-date and be accurate.

	Option One – Status Quo	Option Two – Update the legislative provisions so they support a focused, responsive and modernised code
<b>Support learner wellbeing and safety</b>	<p>0</p> <p><i>Retaining separate purposes of the code acknowledges the different needs of international students as compared to domestic tertiary learners.</i></p> <p><i>The current pastoral care language describing the purpose of the code is inappropriate for tertiary learners.</i></p> <p><i>If there were to be separate or tailored codes, it may be inappropriate for a single code administrator to be administering different codes for different groups.</i></p>	<p>+</p> <p><i>Purpose section to be aligned with the content of the code, which is focussed on wellbeing and safety.</i></p> <p><i>Māori learners' wellbeing and safety would be enhanced through having a greater Māori voice through consultation on the code.</i></p> <p><i>Exemptions and tailored codes allow the specific needs of learner groups to be supported and enabled.</i></p> <p><i>Minister's ability to signal expectations about code administrator priorities allows for the Minister to prioritise learner wellbeing and safety.</i></p>
<b>Honour Te Tiriti and support Māori-Crown relationships</b>	<p>0</p> <p><i>The Crown may be breaching obligations under section 4(d) if Māori are not appropriately consulted</i></p>	<p>++</p> <p><i>The opportunity for tailored codes for Te Ao Māori providers could result in greater partnership and equity</i></p> <p><i>Te Tiriti partnership is honoured by the consultation requirement for the Minister</i></p>
<b>Enable efficient administration</b>	<p>0</p> <p><i>Potential to create confusion about provider expectations with different purposes to follow for different student groups.</i></p>	<p>+</p> <p><i>Clearer and more efficient for the code administrator and providers to have one purpose to follow, with consistent messaging about wellbeing and safety.</i></p> <p><i>Enabling the Minister to make minor and technical changes to the code allows for effective administration and updating of the code without time and resource burdens.</i></p>
<b>Minimise compliance costs</b>	<p>0</p>	<p>0</p>
<b>Overall assessment</b>	<p>The status quo is likely to be worse than option two. It does not provide a clear message to providers about the purpose of the code, through out-of-date language and separate purposes for learner groups. The status quo does not support a code that is responsive to the evolving needs to develop and update the code.</p>	<p>This is, on balance, a better option than the status quo because it simplifies the purpose of the code, sending a clear message to providers about student wellbeing and safety. It allows for the Minister to recognise and respond to diverse learner needs through gazetting exemptions to the code and providing for tailored codes. It also allows the code to stay responsive and fit-for-purpose.</p>



## *Theme Two: Code administrator legislative provisions*

57. The legislative provisions for the code administrator are primarily dealt with alongside the general code in section 534 of the Act. It is important to ensure that the code administrator is sufficiently accountable to the Minister of Education, and to ensure that the code administrator is empowered to perform its functions and duties.

### **Option One – Status Quo**

58. The first option is the status quo, which involves retaining the current wording in the legislation related to the code administrator legislative provisions.
59. With the current legislative settings, the mandate for the code administrator to perform its functions effectively in evaluating providers against the code is not explicitly provided for. The current code administrator has to use quality assurance functions to gain access and information about providers, as the legislative settings do not enable the code administrator to access, monitor and investigate the premises of providers. The ability for the code administrator to get proximity to providers' activities is important for the effective operation of the code and monitoring the compliance of providers.
60. The code administrator is not part of the Crown, meaning the obligations under section 4(d) of the Act regarding honouring Te Tiriti o Waitangi are not shared by the code administrator. However, as an organisation that has been delegated power by the Crown, it is unfavourable for the code administrator to have no clear obligations in respect to Te Tiriti.
61. The current legislative settings do not provide for reporting by the code administrator to the Minister of Education. There are provisions within the code itself which discuss reporting, however the appropriate place for reporting expectations is the primary legislation.
62. Under the current legislation, the code administrator can only use its quality assurance functions, duties, and powers to take action against providers when a breach of the code is detected. The current legislation allows compliance notices to be used for breaches of the international code and quality improvement notices to be used for breaches of the interim code. Therefore, a code issue that affected both domestic and international tertiary learners, could result in both quality improvement notices and compliance notices issued at the same time.

### **Option Two – Update the code administrator provisions so they are fit-for-purpose**

63. This option involves five proposals to support the code administrator so that the legislative provisions are fit-for-purpose.
- a. Ensuring the code administrator has appropriate functions, powers and duties to administer the code,
  - b. Setting out expectations to honour Te Tiriti and support Māori-Crown relationships,

- c. Requiring annual reporting from the code administrator,
  - d. Issuing notices to providers to do or refrain from doing something in relation to their obligations under the code,
  - e. Modernising the legislation through moving saved provisions from the Education Act 1989 to the Education and Training Act 2020.
64. Under a proposal as part of this option, the code administrator's functions, powers, and duties are amended to enable the code administrator to give effect to the code. The code administrator will be better able to assess and evaluate provider performance against the code through powers to enter and inspect the premises of providers and access information held by providers, to ensure that the code is being given effect to. This is in addition to the code administrator's powers to enter and inspect student accommodation. To ensure that these powers are not overreaching, there are certain duties that must be met when making use of these powers, which are consistent with the safeguards set out in section 634 of the Act. This balance is important to respect the institutional autonomy of the providers.
65. As the code administrator or its delegate uses regulatory powers set by the government, a proposal as part of this option requires the code administrator to support the Crown's responsibilities to Te Tiriti o Waitangi and Māori-Crown relationships. The code administrator does not have the same expectations as the Crown to lead the work on honouring Te Tiriti. However, as an organisation with delegated authority by the Crown, it is important for the Minister of Education to be able to set out expectations for the honouring of Te Tiriti.
66. A proposal contained within this option requires the code administrator to report annually to the Minister of Education about its work and the performance of the sector. While this duty is currently set out in the Interim Code and International Student Code, it is more appropriate for this requirement to be in the legislation. This would improve transparency about the code administrator's work and use of funding.
67. A proposal included in this option states that the code administrator is able to issue one type of notice when providers are not adequately meeting the code outcomes or there is a breach of the code. This reduces complexity for providers through different notice types and allows the code administrator to take swift and proportional action when providers have not met their obligations under the code.
68. As a proposal as part of this option, the legislative settings are modernised and updated so that the relevant code and code administrator law is included in the Education and Training Act 2020, including sections 238H(1) to (4) and (9), 238I, and 238J of the Education Act 1989. The code-related law needs to be revised so that the saved Education Act 1989 provisions in the Education and Training Act 2020, Schedule 1, clause 7(3) are moved to the Act or regulations.
69. As part of this option, we considered whether to include a proposal to limit code administrator powers of entry to certain locations within providers. The current legislative settings do not expressly limit the code administrator's powers to enter and inspect marae

and religious locations which are used for education by providers. The current wording was retained, with the code administrator expected to use their powers in a manner consistent with their obligations to honour Te Tiriti o Waitangi and important religious sites for learners.

	Option One – Status Quo	Option Two – Update the code and code administrator provisions so they are fit-for-purpose
<b>Support learner wellbeing and safety</b>	0 <i>Lack of clear powers and access mechanisms for the code administrator, which may affect the code administrator's performance in ensuring providers are supporting the wellbeing and safety of learners.</i>	+ <i>Greater transparency about the priorities and performance of the code administrator means greater accountability for learners. Clarifying the functions, powers and duties of the code administrator helps the code administrator regulate providers effectively, which will support learner wellbeing and safety.</i>
<b>Honour Te Tiriti and support Māori-Crown relationships</b>	0 <i>As the code administrator is not part of Crown, there are no expectations to perform their duties honouring Te Tiriti or supporting Māori-Crown relationships.</i>	0 <i>Minister can set out expectations and obligations in relation to Te Tiriti.</i>
<b>Enable efficient administration</b>	0 <i>There are gaps in the powers of the code administrator that prevent the most effective and efficient operation of the code.</i>	++ <i>Code administrator enabled to properly perform functions and duties. One kind of compliance notice instead of multiple simplifies provider responsibilities. Clarifying mechanisms for the Minister to direct the code administrator and the code administrator to report helps the administrator to be efficient.</i>
<b>Minimise compliance costs</b>	0 <i>Different kinds of notices for different learners are confusing for providers and carries unnecessary compliance costs.</i>	- <i>Increased costs for the code administrator having to report to the Minister and follow Minister expectations.</i>
<b>Overall assessment</b>	The status quo is not the preferred option. The current legislative frameworks are insufficient in providing the code administrator with the necessary powers to perform its duties. The current code administrator is reliant on its quality assurance functions to get information and access about the performance of providers, which is ineffective in the long term for the operation of the code administrator.	Option two is the preferred option. The proposed legislative changes provide the appropriate mechanisms for the code administrator to perform its functions and duties. It also allows the Minister to ensure Te Tiriti is being honoured in the duties of the code administrator. Simplifying the types of notices that the code administrator can issue benefits both the code administrator and providers, through establishing a clearer system.

### *Theme Three: Dispute resolution scheme legislative provisions*

70. Section 536 of the Act and the surrounding sections provide for the establishment for a dispute resolution scheme and DRS operator. It is important for these provisions are fit-for-purpose in supporting the operation of a DRS for domestic learners.

#### **Option One – Status Quo**

71. The first option is the status quo, which involves retaining the current wording in the legislation related to the DRS, in section 536 and surrounding sections.

72. The status quo involves keeping the scope of the DRS narrow, with only financial and contractual complaints able to be heard. The consequence of this is that learners can only bring a limited type of complaint to the DRS and are not able to access redress for types of complaints that they are not able to resolve with their provider.

73. During consultation, concerns were raised about the importance for having disputes resolved in a timely manner. The current legislative settings do not provide any timeframe requirements to ensure that complaints are not left unresolved over an extended period of time through appeals.

74. The current legislative settings do not provide clear mechanisms for the DRS operator to be accountable to the Minister of Education. As the DRS operator is an organisation that has been delegated authority by the Minister, it is important there is clarity about how the Minister can direct and hold public accountability of the operator.

75. The current legislation under section 536(4) of the Act could be read as unnecessarily requiring the DRS operator to be a government agency as defined by section 6 of the Act. This limits the ability for organisations that are not agencies as defined by section 6 to be appointed as the DRS operator.

#### **Option Two – Update the dispute resolution scheme provisions so they are fit-for-purpose**

76. This option involves four separate proposals which have the joint purpose of modernising the legislative provisions related to the DRS and DRS operator, and ensuring they are fit-for-purpose. This would:

- a. Broaden the scope of the DRS so that it can also consider breaches of the code alongside financial and contractual complains,
- b. Set a maximum timeframe for appeals from the DRS at 10 working days,
- c. Amend provisions in section 536 of the Act to better provide for the appointment, reporting and operation of a DRS operator,
- d. Modernize the wording in section 536(4) of the Act so that 'agencies' is replaced with 'organisation' to clarify the type of bodies that can be appointed as DRS operator.

77. The proposal as part of this option to broaden the scope of the DRS so that complaints about breaches of the code can be considered when the code administrator has found and confirmed that a breach of the code has taken place. The type and amount of redress will be determined by the scheme operator according to what is appropriate and proportionate in the situation. The possibility of greater increases in the scope of the scheme were considered, but it was found that this may create too great a stretch on resources, expose providers to too great liability, or threaten to breach the institutional autonomy and academic freedom of tertiary education institutions.
78. Concerns have been raised about the timeliness of the redress following an adjudication. This is particularly important in the context of student complaints, where a short resolution of complaints is very important. In line with other schemes, it is proposed as part of this option that there be an appeal timeframe of 10 working days. If the adjudication decision is not appealed, any remedies and/or redress must be made.
79. The changes in respect to the appointment and removal of a DRS operator are intended to strengthen the appointment and risk intervention arrangements. A proposal within this option sets out clear expectations about the performance of the scheme operator. This gives the Minister the ability to effectively monitor the DRS operator and can approve, decline and withdraw applications to be the operator.
80. As there is no rationale to require the DRS operator to be a government agency, replacing the term 'agencies' with 'organisations' in the legislation is more appropriate so a proposal within this option states this, to allow a greater range of organisations to apply to be the DRS operator.
81. Consideration was also given to have a proposal as part of this option to increase the cap that can be awarded in a claim to the DRS from the existing \$200,000 to \$350,000. This would keep that cap consistent with the District Court cap, which the DRS cap was initially set against when the District Court cap was \$200,000. However, retaining the \$200,000 cap was found to be appropriate, with claimants able to access the District Court if they sought a higher award.

	Option One – Status Quo	Option Two – Update the dispute resolution scheme provisions so they are fit-for-purpose
<b>Support learner wellbeing and safety</b>	0 <i>By limiting the scope to financial and contractual disputes, there is a risk that the scheme would not be able to hear, resolve or provide necessary redress to a large number of learner complaints.</i>	++ <i>Increased scope of the DRS will greatly improve ability of learners to access effective resolution of disputes. Ensuring timeliness of appeals supports the quick resolution of complaints, which is important to supporting learner wellbeing.</i>
<b>Honour Te Tiriti and support Māori-Crown relationships</b>	0	0

<b>Enable efficient administration</b>	0	0 <i>This option provides clear accountability for the DRS operator the Minister, which supports the efficient monitoring of the scheme.</i>
<b>Minimise compliance costs</b>	0	- <i>Costs could increase for providers and the DRS operator if the volume of disputes goes up with the broadened scope.</i>
<b>Overall assessment</b>	The status quo is not the preferred option. Keeping the scope of the DRS narrow is likely to be detrimental to the purpose of the scheme in the long run, which is to support learner's accessibility to redress when they have not been able to resolve disputes with their providers. The status quo also presents technical and administrative problems, such as the term 'agency' potentially limiting the scope of organisations that can be considered as the DRS operator.	The most impactful aspect of the assessment of this option is the impact the broadening of the scope would have on tertiary learners. Allowing breaches of the code to be heard by the DRS could increase costs for the DRS operator and providers due to volume, but it allows redress for learners when there has been a breach of the code. The other proposed changes as part of this theme modernise the legislative provisions relating to the scheme and ensures they are fit-for-purpose.

#### *Theme Four: Administration of code and dispute resolution scheme*

82. The code and dispute resolution scheme are provided in the legislation. The introduction of the code and the DRS presents commonly shared administrative gaps that prevent the legislative settings from being fit-for-purpose.

#### **Option One – Status Quo**

83. The status quo involves retaining the current legislative settings that cover the administration of the code and DRS.

84. The current arrangements have no allowances for the sharing of information between the DRS operator and code administrator. This will likely cause delays to action taken by the code administrator or the quality assurer. If the complainant raises an issue that affects other learners, the delay in sharing of information would impact the effectiveness of the instruments to support learner wellbeing and safety.

85. The legislative settings do not provide for the Ombudsman to have jurisdiction over the code administrator and DRS operator or for the Official Information Act 1982 to explicitly apply to them.

86. Currently, details about enrolment agreements and associated processes are provided from within the international code itself. However, information of this kind is less appropriate to be contained in code itself, and better enabled by primary legislation.

87. It is especially important that the wellbeing and safety of learners in student accommodation is protected. The code currently sets out expectations about those

working in student accommodation in proximity to learners being fit and proper people. This provision is better located in primary legislation.

#### **Option Two – Provisions to support effective administration**

88. This option involves four proposals to support the effective administration of the code and dispute resolution scheme, ensuring they are fit-for-purpose.

- a. The DRS operator, code administrator and quality assurance regulator can collect and share information about complaints and complaints resolution,
- b. The Ombudsman has jurisdiction over the activities of the code administrator and DRS operator and the Official Information Act 1982 will also apply to them,
- c. The Minister of Education can regularly approve and gazette expectations around enrolment forms, associated processes, and the provision of information to learners,
- d. Providers must undertake fit and proper person checks on staff delivering learner accommodation.

89. There are overlapping responsibilities between the DRS operator, code administrator and quality assurer, so the sharing of information about complaints would support their functions. Therefore, as part of this option, there is a proposal to support the privacy of the complainant when the complaint is made, the transfer of information will include provider information but not the name of the complainant unless the sharing of complainant information is necessary and consistent with the Privacy Act 2020.

90. It is appropriate for the Ombudsman to have jurisdiction over the activities of the code administrator and DRS operator. Therefore, as part of this option, there is a proposal for the Ombudsman to have authority to investigate complaints regarding the code administrator. This supports fair administration of the code for providers and learners, and fair operation of the DRS. It was argued that Ombudsman jurisdiction over the DRS operator would not be appropriate as the operator is not a government agency however, it is performing a government function and warrants Ombudsman scrutiny. It is also equally important that the code administrator and DRS operator are subject to the Official Information Act 1982, to ensure transparency of activities.

91. This option contains a proposal that the Minister of Education has the ability to regularly approve and gazette their expectations about the nature, form, scope, and content of enrolment forms/contracts, associated processes, and the provision of information to ensure that the learner has an ongoing understanding about their rights and responsibilities. The gazetting of this information supports learner access to information and ensure transparency from providers. There were multiple options considered about how to communicate this information, with gazetting found to be the most appropriate and visible.

92. To support learner wellbeing and safety, it is appropriate for fit and proper person checks for those working in the delivery of student accommodation. In cases not dealing with children (which are covered by the Children's Act 2014), a legislative mandate is required



for fit and proper person checks. Therefore, this is a matter for the Act, not for within the code, and there is a proposal providing for checks as part of this option.

	Option One – Status Quo	Option Two – Provisions to support effective administration
Support learner wellbeing and safety	0	<p>+</p> <p><i>Learners gaining greater access to information about enrolment contracts and their rights and responsibilities supports provider transparency and their wellbeing and safety.</i></p> <p><i>Fit and proper person tests helps assure the safety of those in student accommodation.</i></p> <p><i>Ombudsman jurisdiction over the activities of the code administrator and DRS operator provides accountability for those organisations to support learner wellbeing and safety.</i></p>
Honour Te Tiriti and support Māori-Crown relationships	0	0
Enable efficient administration	<p>0</p> <p><i>Current provisions would make it difficult for the code administrator and dispute resolution scheme operator to be as effective and efficient in their operation, especially if they are not able to share information.</i></p>	<p>+</p> <p><i>Clearer expectations for enrolment forms will enable easier assessments for the code administrator and DRS operator.</i></p>
Minimise compliance costs	0	<p>0</p> <p><i>Ombudsman jurisdiction to hear complaints on the code administrator could increase costs from the administrator in dealing with complaints.</i></p>
Overall assessment	The status quo is expected to develop in a manner that leaves administrative gaps in the legislative provisions for the administration and operation of the code and DRS.	This option supports the more substantive changes in the other themes relating the code and DRS, by ensuring the administrative provisions are fit-for-purpose. Allowing for greater information sharing will have a significant impact on the efficiency of the code administrator and DRS operator, while learner's wellbeing and safety is enhanced through greater access to information.



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

93. The combination of option B, a proposed legislative change, across the four themes of code, code administrator, DRS and effective administration is the option that is most effective in meeting the policy objectives set out in section 1, and will deliver the highest net benefits for learners, providers, the code administrator and the DRS operator.
94. The combination of these options will have the overall effect of making a legislation system that is modernised, clear, updated and fit-for-purpose. Alongside the DRS rules and the code of practice, this option of adopting the proposed legislative changes will contribute to creating a tertiary education system that best supports learner wellbeing and safety.

**What are the marginal costs and benefits of the option?**

95. The marginal costs and benefits for each of the four themes of proposed legislative changes are analysed separately.

## Proposal 1: Code of practice provisions

### Costs and benefits costs of proposed approach compared to taking no action

Category of affected stakeholders	Specific stakeholders impacted	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	Tertiary education signatory providers (including schools with international students)	<p>A consistency of message through a unified purpose statement focussing on wellbeing and safety would give greater clarity and understanding to providers on their role regarding learner wellbeing and safety. Streamlined expectations placed on providers by the code would lead to reduced costs in the long run (low) (+).</p> <p>Tailored codes may have positive impacts on types of providers that may have access to a code that is more appropriate for their learner groups, such as Te Ao Māori providers or schools with international students (medium) (+).</p>	High
Regulators	<p>Minister of Education/Ministry of Education</p> <p>Code administrator</p>	<p>Ensuring appropriate consultation with Māori gives effect to the obligations of the Ministry of Education to te Tiriti o Waitangi under section 4 of the Act (low) (+).</p> <p>Allowing the Minister to make minor and technical changes to the code supports the efficient regulation of the code by the Minister (low) (+).</p> <p>Increased in time and cost of consultation by adding Māori to the list of groups the Minister must consult with before issuing a code (low) (-).</p> <p>Using consistent wellbeing and safety language in the purpose section of the Act supports the Ministry's TES and NELP strategies and allows for simpler monitoring of providers by the code administrator (low) (+).</p>	Medium
Wider government	Government	Ensuring Māori are appropriately consulted enables the honouring of Te Tiriti and supports Māori-Crown relationships, which has interconnected implications for the government as a whole (low) (+).	Medium

Other parties	Learners	Stronger focus on wellbeing and safety in the legislation has a positive effect for the experience of education on prospective learners, learners and their whānau (low) (+).	High
	Diverse learner groups	Learner safety is further supported by ensuring fit and proper person checks have been undertaken by those working in student accommodation (low) (+) (-).	
	Māori	Tailored codes may have a positive impact for certain learner groups that may have different wellbeing and safety needs than what is provided in the code. A tailored code could appropriately cater to the particular needs of learner groups (medium) (+).	
Total Monetised Cost		No monetised value.	
Non-monetised costs		Low costs.	

## Proposal 2: Code administrator provisions

### Costs and benefits costs of proposed approach compared to taking no action

Category of affected stakeholders	Specific stakeholders impacted	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	Code administrator	Code administrator would face an increase in workload with regular reporting and publishing plans (low) (-).  Updating the mandate of the code administrator would allow the administrator to perform their functions under the code more effectively (low) (+).	High

		Updated functions, powers and duties of the code administrator would allow more effective performing their role and responsibilities under the code (medium) (+).	
Regulators	Minister of Education/Ministry of Education	<p>The Minister's ability to approve the code administrator's plan and set out expectations would enable trust and confidence in the code administrator is working towards focus areas and outcomes (medium) (+).</p> <p>Low increase in costs for the Minister/Ministry in developing and approving code (low) (-).</p>	High
Wider government	N/A	N/A	
Other parties	<p>Providers</p> <p>Learners</p>	<p>Providers may see powers of entry used and gathering of information about their provider by the code administrator (medium) (+) (-).</p> <p>The Minister's ability to set out expectations for the code administrator allows flexibility and quick responses to changing learner supports and needs (medium) (+).</p>	High
<b>Total Monetised Cost</b>		No monetised cost.	
<b>Non-monetised costs</b>		Low costs.	

### Proposal 3: DRS provisions

#### Costs and benefits costs of proposed approach compared to taking no action

Category of affected stakeholders	Specific stakeholders impacted	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	DRS operator	<p>The broadening of the scope of the DRS to include breaches of the code could increase the volume of complaints the DRS would receive and increasing operating costs (medium) (+).</p> <p>The reporting proposal would incur a</p>	Medium

		financial cost for the DRS operator (low) (-).	
Regulators	Minister of Education & Ministry of Education	The proposal detailing the process for appointing a DRS operator and reporting of the operator would allow the Minister and the Ministry to monitor the operator and ensure it is performing effectively and efficiency (low) (+).	High
Wider government	Courts	There is the possibility for prosecutions under the code from the proposal to expand the scope of the DRS, however these are expected to be rare (low) (-).	Medium
Other parties	Learners and whānau  Providers	<p>The broadening of the scope of the DRS would increase access for learners and whānau to seek redress of breaches of the code (medium) (+).</p> <p>A limit on the timeframe for an appeal allows for resolution of disputes to happen in an efficient manner for learners (low) (+).</p> <p>Providers would be exposed to greater number of complaints by the broadened DRS scope. They would be liable to pay redress to learners for code breaches, alongside financial and contractual disputes (medium) (-).</p>	Medium
<b>Total Monetised Cost</b>		Potential increase in operational costs for DRS operator (low) (-).	
<b>Non-monetised costs</b>		Medium costs.	

#### Proposal 4: Effective administration provisions

##### Costs and benefits costs of proposed approach compared to taking no action

Category of affected stakeholders	Specific stakeholders impacted	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty <i>(High, medium or low)</i>
Regulated parties	Code administrator & DRS operator	The information sharing between the code administrator and DRS operator would allow both organisations to perform their obligations effectively (medium) (+).	High

Regulators	Minister of Education & Ministry of Education	Increased workload in gazetting expectations about enrolment forms and contracts (low) (-).	High
Wider government	Ombudsman	The Ombudsman may have an increase in workload from the inclusion of the code administrator and DRS operator in its scope (low) (-).	High
Other parties	Learners and whānau	Learners would have a greater understanding of their rights and responsibilities through greater prescription of enrolment form content (low) (+).  The ability of learners to bring complaints to the Ombudsman allows for greater public accountability for the code administrator and DRS operator (low) (+).	High
<b>Total Monetised Cost</b>		No monetised cost.	
<b>Non-monetised costs</b>		Low costs.	

### *Key underlying assumptions to the analysis*

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

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

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

- a. provider self-reviews undertaken over the course of 2020 in relation to the interim code; and
- b. submissions and feedback received during the consultation on learner wellbeing and safety.

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

98. The recovery plan sets out a phased response and rebuild from the impacts of COVID-19, including ongoing work to review regulatory settings to ensure recovery supports the goals of the International Education Strategy. International education has been hit hard by

COVID-19, which has significantly impacted revenue, organisational stability, and future planning for signatories to the current international code. This has implications for the capacity and capability of signatory tertiary education providers and school with international learners to implement requirements under the new code.

*Signatory tertiary education providers*

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

*Schools with international learners*

100. The primary focus of the new code is embedding the strategic shift towards a learner-centred, wellbeing-focused tertiary education system which empowers learners. In general, the approach taken in the current international code appropriately reflects a traditional pastoral care approach for learners under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians.
101. No substantial changes are being made to wellbeing and safety requirements for international school learners, so the current provisions remain in place for them. This ensures continuity and clarity as schools look ahead to the potential of returning international learners when this is possible. There are two minor terminology changes to the part of the new code relating to schools with international learners.
102. Further review of these requirements may be appropriate following legislative change and as part of the ongoing recovery of the international education sector.

*Assumptions for the dispute resolution scheme legislative changes analysis*

103. The costs and benefits of the DRS have been determined based on assumptions drawing from the international student's dispute scheme, as the costs and operation will be similar to the international student DRS.
104. While there is uncertainty about the volume, nature, and complexity of disputes that will result from a broadened scope, it is not expected that a substantial change to the operation and funding of the DRS will be required. This assumption has been informed by consultation feedback and the international DRS.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

105. The new arrangements of the code and the DRS will be implemented on 1 January 2022. Due to the timing of the legislative process that will occur for the changes proposed in this Regulatory Impact Statement, the proposed changes will not be able to be implemented alongside the code and the DRS at the beginning of 2022.
106. These proposed legislative changes are expected to be incorporated into the Education and Training Bill (No. 2), an amendment bill that is proposing a collection of separate legislative proposals to amend the Act. Based on current timelines, if the Bill is passed and a law change is made, it is unlikely the proposals would likely take effect before 2023. There will also be the opportunity to revise the code and DRS rules, which may not take effect until 2024.
107. With the legislative changes coming after the introduction of the code and the DRS, the code administrator, DRS operator and providers will have time to work with the new arrangements in 2022, and gain familiarity with the new arrangements before having to respond to and incorporate the relevant provisions of the new legislative changes.
108. As the proposed legislative changes primarily seek to ensure that the legislative arrangements regarding the code and the DRS are fit-for-purpose, there are no significant financial considerations in the implementation of the changes. There are existing financial arrangements for the administration of the code and the operation of the DRS, and the proposed legislative changes are not expected to place any significant further financial burdens or requirements on the code administrator, DRS operator or tertiary education providers.
109. Consultation feedback was sought about any specific monetised costs and no specific costs were identified. However, providers commented that compliance with the new arrangements would bear additional costs, and learner groups signalled that further resourcing could be required for advocacy services.

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

110. Many of the proposed legislative changes are related to monitoring, evaluation and review of the code and the DRS. Mechanisms of monitoring, evaluation and review are therefore built-in to the proposed changes. These include a mechanism to allow the Minister of Education to direct and monitor the code administrator and the DRS operator.
111. Due to the nature of these changes therefore, there is no scheduled timeframe for a formal review of the proposed legislative changes. Rather, an ongoing, monitoring based approach is to be preferred, as part of ongoing monitoring of the learner wellbeing and safety instruments of the code and DRS. The legislative changes in these proposals include powers for the Minister to make ongoing changes, to ensure that the code and DRS remain fit-for-purpose.



112. The Minister of Education and the Ministry of Education will be regularly monitoring the performance of the code administrator, DRS operator, and providers. Feedback from learners will also inform judgements about performance of the learner wellbeing and safety regulatory system. Information will continue to influence and shape any future development of the code, code administrator, and DRS arrangements, including any future potential legislative changes that may be required.
113. As many of the proposed legislative changes enable and provide for future specific future development regarding aspects of learner wellbeing and safety, such as the provision enabling the Minister to develop tailored codes, there will continue to be opportunities to better support learner wellbeing and safety.