



Education report: Draft Cabinet paper – Consultation on tertiary education learner wellbeing and safety: code of practice, dispute resolution and legislative change

To:	Hon Chris Hipkins, Minister of Education		
Date:	10 March 2021	Priority:	High
Security Level:	In Confidence	METIS No:	1249009
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Messaging seen by Communications team:	No	Round Robin:	Yes

Purpose

This paper provides a first draft of materials to seek Cabinet agreement to consult on the new code of practice for pastoral care, the dispute resolution scheme, and legislative changes. Public consultation is required under the Education and Training Act 2020 for the code and dispute resolution scheme; and is an expectation for legislation proposals.

We will make changes after your feedback to allow Ministerial consultation on these drafts to begin. We aim to have final versions ready for either Cabinet Business Committee (CBC) on 29 March or Cabinet Social Wellbeing Committee (SWC) on 7 April, for public consultation in April and May.

Recommended actions

The Ministry of Education recommends you:

- provide feedback** on the attached draft Cabinet paper, including the attached consultation materials, by Tuesday 16 March, to enable Ministerial consultation before lodging for CBC on 29 March;
- note** that this timeline is necessary to allow for public consultation to occur in April and May ahead of Cabinet decisions by early July, which is important to ensure providers know the scope of the code and dispute resolution scheme for 2022 in time to feed into planning and budgeting, and to meet timeframes for the Education and Training Amendment Bill (No2) drafting;
- note** we have completed interagency consultation on these materials, with changes to reflect the needs of diverse learners (especially Māori, disabled learners and Pacific learners), align with wider work programmes (for example Māori-Crown relationships, wellbeing and health, dispute resolution) and reflect the New Zealand Qualification Agency's (NZQA) experience as code administrator;

- d. **note** that we are still developing the attached consultation materials to target them to providers and technical readers, with further work underway to make materials targeted to learners and whānau and specific audiences (e.g. international students, schools), however Cabinet approvals are needed now (as noted in recommendation b);
- e. **agree** to 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

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

Agree / Disagree



Julie Keenan
Policy Director
Te Ara Kaimanawa

10/03/2021



Hon Chris Hipkins
Minister of Education

16/3/2021

Approach to the Cabinet paper and consultation materials

1. The Education and Training Act 2020 requires a new code of practice for pastoral care for domestic tertiary learners to be issued by 1 January 2022, and a dispute resolution scheme to come into effect at the same time. In December 2020, we provided advice on the approach we have been taking to this work [METIS 1245064 refers], integrating expectations for tertiary domestic and international learners, retaining expectations for international school students, learning from best practice dispute resolution and considering opportunities to improve the legislative framework.

Development and testing of the consultation materials

2. We have developed the attached materials using a wide range of sources over 2020 and early 2021. The upcoming consultation is an opportunity to test these explicitly with learners and the wider sector. Inputs include:
 - a. engagement with learner groups and their communities, including Māori, Pacific, Muslim, disabled and rainbow learners;
 - b. feedback on the interim code and from learner experiences and concerns during COVID-19;
 - c. insights from NZQA as code administrator, including into providers' experiences of the interim code;
 - d. insights from dispute resolution experts and leaders;
 - e. the publicly available submissions to the Education and Workforce Committee's inquiry into student accommodation.
3. Education and wider government agencies are supportive of the proposals (see paragraphs 46-47 of the Cabinet paper) and many offered constructive feedback on the code and for implementation and guidance. Several agencies commented that the consultation materials are technical. We are working to prepare versions that are fit for learner and community audiences and navigate to the proposals that relate to them. The final materials will be tailored to an online format, rather than a single document. International education agencies commented that the changes will be made before work is complete under the Recovery Plan.

There are three components to the consultation

4. We have provided a draft Cabinet paper for your feedback in **Annex 1**. It seeks Cabinet agreement to publicly release the consultation materials, setting out:
 - a. the draft code of practice for pastoral care for tertiary learners and international school students (part 3 of the consultation materials, and draft code attached);
 - b. draft rules for the legislated scheme to resolve contractual and financial disputes between domestic tertiary learners and providers (part 4 of the consultation materials, and draft rules attached); and
 - c. an approach to legislative change to support and reinforce the focus on wellbeing and safety and to improve alignment between this policy intent and the regulatory system that gives effect to it (part 5 of the consultation materials).

5. The consultation materials act as an interim Regulatory Impact Statement, removing the need for separate regulatory impact analysis for the Cabinet decisions. The RIA panel at the Ministry has reviewed the materials and confirmed that they meet expectations, will lead to effective consultation and will support the eventual development of a quality Regulatory Impact Statement. We have agreed this approach with the Treasury's Regulatory Strategy Team.

Draft code of practice for pastoral care

6. We have prepared a new code with an increased focus on learner wellbeing and safety, ensured that the framework for the new code supports Ka Hikitia and Te Tiriti o Waitangi obligations, and aligned (and where possible combined) expectations for domestic and international tertiary learners. Key developments include:
 - a. Integration of codes for international and domestic tertiary learners, with separate parts of the code setting out outcomes and expectations for:
 - i. Student accommodation for international and domestic tertiary learners;
 - ii. Tertiary providers enrolling international students; and
 - iii. Schools enrolling international students.
 - b. Expanding code outcomes to include a fuller planning and reporting cycle for providers. The aim is to improve transparency of wellbeing and safety practices and accountability of these practices to Government, learners and other stakeholders (refer to outcome 1 in part 3 of the code). This was a key theme in submissions to the Education and Workforce Committee Inquiry into Student Accommodation (the Inquiry).
 - c. Expanding processes in the general wellbeing and safety section of the code (which was deliberately left high-level for the interim code). This includes enhancing expectations around:
 - i. consultation with stakeholders, learner voice, dealing with complaints, staff training and emergency assistance and response planning (new);
 - ii. proactive monitoring of learners' wellbeing and safety and responsive practices to provide support to learners who need it; and
 - iii. learners' physical and digital learning environments.
 - d. Enhancing processes in the student accommodation section around:
 - i. training for accommodation staff;
 - ii. provider disclosure on its websites in relation to the ownership structure and details of its student accommodation, and the wellbeing and safety practices offered at each accommodation facility (Inquiry submissions suggested a lack of transparency in these areas).
 - e. Clearer focus on provider practices, by focussing the code outcomes on provider practice to achieve results for learners. This emphasises that the outcomes sought apply to all learners rather than to individual learners.

- f. Requirements for schools with international students are unchanged (except for updated references to disabled students and definitions) [METIS 1245064 refers], and are now in a separate part of the code.
7. Part 3 of the consultation material covers the proposals for the new code of practice for pastoral care. The draft code itself is also attached with the consultation materials.

Dispute resolution scheme proposal and draft rules

8. The proposed dispute resolution scheme is for domestic tertiary learners and providers to resolve disputes that are contractual or financial in manner. This scheme does not cover international students as there is already a scheme in operation for international students.
9. The development of this new scheme has been informed by lessons learned from the international student scheme (which is operated by FairWay Resolution Limited as iStudent Complaints under Ministerial appointment until July 2022). It has also been informed by a range of preliminary conversations with, and advice from, the Government Centre for Dispute Resolution (housed in the Ministry of Business, Innovation and Employment), government officials (including from Ministry of Social Development, Ministry of Justice, and Te Arawhiti), practitioners, tertiary learners, and provider staff.
10. Based on this advice, we are proposing that this domestic tertiary learner dispute resolution scheme is learner-centred, must be accessible to all learners and meet their needs (especially underserved learner groups, including learners who are Māori, Pacific, disabled, LGBTQIA+, and from a migrant or refugee background), gives effect to Te Tiriti, prioritises restorative resolution methods first (i.e. facilitation and mediation), and must be able to accommodate tikanga-based practices for learners, should they want them.
11. Following the implementation of this scheme in 2022, and decisions on legislative change, officials will look to progress further work on unifying or aligning schemes for domestic and international learners.
12. Part 4 of the consultation materials covers the proposals for the new dispute resolution scheme for domestic tertiary learners. The draft scheme rules are also attached with the consultation materials.

Package of proposed legislative changes

13. We are proposing to consult on further legislative changes to enhance the current code, code administrator, and disputes resolution scheme settings. NZQA as code administrator, learners, and providers have signalled that further legislative changes could be explored.
14. A consistent focus on learner wellbeing and safety will make the code more inclusive for learners and make it easier for providers to give effect to the code. Learners have told us that 'pastoral care' is paternalistic for adults and has Christian and colonial associations that exclude some learners. We propose legislative amendments to increase the focus on learner wellbeing and safety by:
 - a. replacing the term 'pastoral care' with 'learner wellbeing and safety'; and
 - b. aligning the purpose of the domestic tertiary and international learner codes so they both focus on learner wellbeing and safety.
15. We propose a set of changes to reinforce the Act's expectations that education agencies give effect to Te Tiriti o Waitangi. These changes include more explicit code administrator

and dispute resolution scheme operator responsibilities relating to Māori-Crown partnerships. We also propose that Māori, including Māori learners, hāpu, whanau, and iwi be consulted when a new code is being developed.

16. The proposed changes also aim to improve the resilience and durability of the legislative settings. For example, the changes propose to enable tailored codes for specific provider types, such as a code for schools with international students or a code for te ao Māori or Māori education providers. At present, a Minister can issue a code for either international or domestic tertiary learners or both, but cannot issue different codes for different education providers (for example, a separate schools code that reflects the added vulnerability of international students who are children).
17. Changes to dispute resolution scheme settings consider how to create a more cohesive and learner-centred approach to resolution, including setting a time limit on appeals against an adjudication, and considering whether any code breach can be made within scope of the scheme. We also propose increasing the maximum penalty under the scheme from \$200,000 to \$350,000, restoring the link to the maximum District Court cap.
18. Proposed administrative improvements and efficiencies include:
 - a. allowing the sharing of information between the code administrator, dispute resolution scheme, and the education quality assurance regulators;
 - b. giving the Ombudsman oversight of the code administrator and, when it deals with public agencies, the dispute resolution scheme; and
 - c. allowing for the Minister to notify in the Gazette the content and process for enrolment contracts, making expectations clearer for learners, providers and in case of disputes.
19. These proposals are intended to ensure that the code and code administrator arrangements are appropriately empowered, and to address issues raised by NZQA and the Regulations Review Committee about the code and code administrator responsibilities. Rather than including the code administrator processes in the code, it is considered that these processes are more appropriately enabled by the legislation and the development of a code administrator plan. We propose consulting on a requirement for this plan, and for the Minister's review and approval of it (as part of managing the performance of the code administrator). NZQA agrees with the proposal for a plan, but would prefer greater flexibility, without a need for review of the plan.
20. We have considered other changes, including requirements for providers to specify learner rights and responsibilities. However, given that providers have various tailored ways of articulating student rights and responsibilities, at this stage, we are not proposing further regulation of this.
21. Part 5 of the consultation materials covers the proposals for legislative change.

The Cabinet paper also provides an overview of potential impacts and responses to the consultation materials

22. We expect domestic learners and most tertiary providers to be affected by the new code in broadly the same ways as they were by the interim code. The proposals strengthen the focus on providers having processes that address the outcomes and are tailored to their circumstances and the needs of their learners. Combining the domestic and international codes will improve clarity of obligations and allow for streamlining of processes and services for domestic and international tertiary learners.

23. We expect that international tertiary students will be supportive of the parts of the new code which expand on current requirements in relation to student engagement, complaints, broader support for wellbeing, and tertiary student accommodation. International students are likely to expect a wider range of changes. We will manage this by reinforcing the expectation that further change will follow under the recovery plan, highlighting the benefits of the improvements in wellbeing and safety standards, and indicating the scope for further changes, if appropriate, following legislative changes.
24. Tertiary providers that enrol a high proportion of international students will need to make more changes and are already under pressure given the impact of COVID-19 on international enrolments. We will manage this risk by asking for input on how best to support providers to implement the new requirements.
25. We expect that schools that enrol international students will be supportive of the decision to retain current requirements unchanged. There is a risk that some schools may be confused about the scale and nature of the changes that apply to them, given the changes to the form of the code and the much larger scope of proposed changes for the tertiary sector set out in the consultation materials. We will ensure that communications for schools are targeted and reinforce both the modest changes being made now and opportunities for further change, following legislative changes.

We are planning a range of engagement activities for public consultation

26. We propose that consultation will open in early April after Cabinet decisions and end on 28 May. We will work with your office on the consultation approach and your involvement in it. The objectives of the consultation are to inform decisions on the range of proposals, promote engagement from learners and providers in wellbeing and safety, support ongoing partnership with learners and communities, and promote improvement within providers and of the regulatory system.
27. We intend that people will be able to provide input in various ways including through:
 - a. national meetings with sector peak bodies, government and (national) community organisations;
 - b. face-to-face regional engagements, co-convened with learners and including providers and community groups;
 - c. online 'workshop' engagements with different thematic foci;¹ and
 - d. online feedback through Ministry websites and channels.
28. This will include resources in plain language, in Te Reo Māori and in accessible formats to make sure it is relevant to diverse communities. These will draw from the materials in the attached draft consultation document.
29. We propose to convene a sector advisory group following consultation, which will have a sense-making function, providing guidance and advice to balance objectives of the code and the dispute resolution scheme, potential impacts and likely influences on behaviour in the tertiary education system.

¹ We are currently planning one session for each of the code outcomes, and additional sessions with a focus on complaints and disputes, and pastoral care for international students respectively.

Other related work

Proposed minor and technical changes to interim code

30. You recently received a response from the Regulations Review Committee on proposed minor and technical changes in response to its earlier comments on the interim code. We intend to provide you with a draft further letter of response to the Committee, including proposed final versions of further minor and technical amendments [METIS 1252531 forthcoming].
31. The Committee's comments continue to point to underlying issues in the empowering provisions for the code, which can be addressed through the legislative proposals above. If it is not possible to confirm minor and technical changes before consultation on the proposed new code starts, we recommend you pursue change through the new code rather than issue minor and technical changes.

Education and Workforce Committee Inquiry into student accommodation

32. We will support the Committee's Inquiry, including upcoming verbal submissions expected in late March. The submissions will provide further insights into code provisions, and we will feed these insights, and inquiry findings, into advice on the new code.

Next steps

Finalising Cabinet paper: we aim for CBC on Monday, 29 March

33. We recommend you forward this paper to the Associate Ministers of Education, the Honourable Kelvin Davis and the Honourable Aupito William Sio for their information.
34. We seek your feedback on the draft Cabinet paper, including the attached consultation materials, in **Annex 1** by Tuesday 16 March. We will make any changes needed before Ministerial consultation begins. We recommend wide Ministerial consultation, given the proposals' links beyond education to social and health policy, diversity and inclusion, disputes resolution and tenancy law.
35. We will complete final quality assurance, editing and development of consultation materials in parallel with Ministerial consultation.
36. If Ministerial consultation is complete by 24 March, the final Cabinet paper could be lodged for consideration by CBC on Monday 29 March. The next opportunity would be SWC on 7 April.

Policy decisions after consultation

37. We will keep your office informed of progress and key feedback throughout consultation, and after consultation we will provide advice on key themes, and potential changes to proposals. Cabinet decisions by early July are important to ensure providers know the scope of the code and dispute resolution scheme for 2022 in time to feed into planning and budgeting, and to meet timeframes for the Education and Training Amendment Bill (No2) drafting. After Cabinet decision, Parliamentary Counsel Office can finalise the dispute resolution scheme rules (which are issued by Order in Council) and you can issue a final code. Implementation would follow, including beginning development of code guidance for providers and the appointment of a dispute resolution scheme operator.