

Education Report: Next steps for the Code of Pastoral Care for domestic tertiary education students

To:	Hon Chris Hipkins, Minister of Education		
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose

This report seeks your feedback on the Ministry's proposed next steps for the Education (Pastoral Care of Domestic Tertiary Students) Code of Practice, in response to the disruption from COVID-19. It recommends legislative change to enable the interim Code to remain in place for 2021, allowing time to develop an ongoing Code with learner and sector input. This advice is short-form: we can provide fuller argument if you prefer.

We seek your feedback on our proposed approach and the expectations it will set for learners and providers. We have provided options for a different approach: either continuing current plans to develop an ongoing Code, or converting the current interim Code into a first ongoing Code, if you prefer.

Summary

We have been working to develop an ongoing Education (Pastoral Care of Domestic Tertiary Students) Code of Practice (the Code), and the dispute resolution scheme and cost-recovery options due to Cabinet by June 2020, for implementation from 2021. We have been engaging in particular with learners and people who work in the sector, drawing from relevant findings from Kōrero Mātauranga engagements; and presenting the development of an ongoing Code as a step in continuous learning improvement for providers and agencies as they begin to implement the interim Code. This work has been progressing alongside the New Zealand Qualifications Authority's implementation of the interim Code: NZQA has been consulted on this advice and is comfortable with the recommendations.

Progressing work on the Code and dispute resolution scheme for 2020

As the year has progressed, and peak bodies' work on responding to COVID 19 has become more significant, it has become harder and harder for them to put energy either to the development of the ongoing Code or the implementation of the interim Code. Providers and learners are rightly focussed on the immediate response to COVID-19 and are telling us they cannot engage in this work.

We have therefore suspended planned engagement activity in order to provide information to students and providers about meeting basic needs, supporting well-being, and how they can manage learning transitions during this period of uncertainty. Already, the response to COVID-

19 is opening up questions relevant to the development of the Code and ways for student voice to be heard in decisions on learning and other services covered in the Interim Code. We are putting processes in place to capture this information and new ways of working to address both immediate needs and inform an on-going Code.

As the Code should develop over time and in engagement with regulated groups and intended beneficiaries of the regulation, we have reconsidered our approach. In doing this we seek to enable tertiary providers and learners to focus on responding and adapting to the many challenges of COVID-19, rather than putting effort to longer-term projects. We also seek to ensure early certainty and clarity for providers, as much as possible: providers will begin setting budgets and plans for 2021 from mid-year so need clarity well before the election. And consistency with the intent and collaborative approach to the Code of Practice is important.

Our preferred approach is to amend the Education Act to enable the current interim Code to continue for another year, until 1 January 2022. This would allow time for an ongoing Code to be developed with learner and provider engagement, and for it to reflect experience with the interim Code, including through the COVID-19 response and early stages of recovery. It would keep faith with the open and constructive engagements we have had with learners and providers to date: assuring them that we will allow space to engage and listen before setting an ongoing Code. The proposed dispute resolution scheme would be introduced alongside the ongoing Code, at the later date. The key drawback of this option is that the interim Code, which has not had the scrutiny of consultation, would continue for longer; however the interim Code is still a disallowable instrument so is open to Parliamentary scrutiny.

We recommend making these changes as a Supplementary Order paper to the Education and Training Bill, and we are working to make that possible, including by confirming with Treasury whether the COVID-19 exemption to regulatory impact analysis applies. At this stage we expect the amendments to cover:

- a. Extending the date of expiry for the interim Code
- b. Carrying over the provisions of the Education (Pastoral Care) Amendment Bill that spell out that a dispute resolution scheme is not required for an interim Code
- c. (optional) allowing the Minister to make minor or technical changes to the interim Code without issuing an ongoing Code.

Alternatives to this approach are:

- The status quo: we develop an ongoing Code in 2020, with the risk that it does not thoroughly reflect provider and learner perspectives, and also that effort on the Code diverts providers and learners (and agencies) from the COVID-19 response and early recovery.
- We roll over the interim Code within the existing legislative framework: we consult briefly on the interim Code becoming an ongoing Code, we develop and consult on rules for a first dispute resolution scheme. This option would be less diversionary than the status quo, but would still create the costs to all parties of a consultation process on a Code and dispute resolution scheme and would break with the approach to engagement we have been using, without having significant benefits over amending the law.

We have not yet tested these options with peak learner or provider bodies: we can do so following your feedback on a preferred option.

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Risks

This project has relatively short deadlines and is operating in a complex and uncertain environment. We are actively managing risks relating to the dependencies between different parts of the project and our wider work programme, stakeholder expectations, resourcing priorities and quality. This report presents our best advice on how to deliver the work, we will update you on progress and any changes needed.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that in December 2019 you committed to report to Cabinet by June 2020 on a proposed ongoing Education (Pastoral Care of Domestic Tertiary Students) Code of Practice (the Code), dispute resolution scheme and options for cost recovery of Code administration [SWC-19-MIN-0194 refers]
- b. **note** that the pressures of the response to COVID-19 mean that if officials were to seek input by peak learner and provider bodies to the development of an ongoing Code, we would expect weak engagement and to divert learner and provider effort from work on COVID-19 response
- c. **agree** that as a next step in work on the Code, to:
EITHER (recommended)
 - i. amend the Education Act to extend the interim Code to 1 January 2022, removing the need to develop an ongoing Code or dispute resolution scheme in 2020;

Agree / Disagree

OR

- ii. the status quo: continue developing a draft ongoing Code and dispute resolution scheme, with a view to consulting on both during 2020 for implementation in 2021.

Agree / Disagree

OR

- i. consult later in 2020 on rolling over the interim Code to be a first ongoing Code and rules for a dispute resolution scheme, for implementation in 2021.

Agree / Disagree

- d. **direct** officials to incorporate your decisions in the upcoming Cabinet paper on Supplementary Order Paper amendments to the Education and Training Bill, and to prepare communications for sector and learner groups to follow immediately on Cabinet decisions;
- e. **agree** that this Education Report is proactively released as part of the next publication, with redactions where decisions are still to be made

Release/Not release



Julie Keenan
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Graduate Achievement, Vocations and Careers

Hon Chris Hipkins
Minister of Education

31/03/2020

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