

# Te oranga me te haumarū ākonga: Tertiary learner wellbeing and safety

## Discussion document



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## Part 1: At a glance – what is this about and why?

### What is this about?

Learner wellbeing and safety<sup>1</sup> in education is a shared responsibility that includes government, education providers, learners, whānau and the wider community. We need practical solutions that work well for learners, providers, and government.

This consultation has three parts, all about developing consistent and evolving supports for learner wellbeing and safety with clear expectations for the roles and responsibilities of tertiary education providers. The proposals do not impact the requirements for schools enrolling international students.

We want your feedback on:

- the development of a new code of practice for pastoral care which sets out shared requirements for domestic and international tertiary learners, as well as retaining specific protections for international students;
- the development of the rules for the legislated dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers; and
- law changes to support and reinforce the focus on wellbeing and safety, and to ensure settings for the code, code administrator and disputes resolution scheme are fit for purpose for the future.

This work is intended to raise the prominence of wellbeing and safety as a precondition to success in education. It will do this by fostering conditions for success and for support of more equitable outcomes for diverse learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant and former refugee learners. In doing so, this work will reinforce the Government's strategic direction for a learner-centred education system and high-value international education. It will also reflect the Government's obligations to honour Te Tiriti o Waitangi and support Māori-Crown relationships.

Your feedback is important. It will help us to identify the arrangements that will best support learner wellbeing and safety for now and into the future.

<https://conversation.education.govt.nz/conversations/wellbeing-and-safety/>

### Why are changes being proposed?

In 2019, several law changes were made to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally. This was an urgent response to tragic events involving the death of a learner in a hall of residence. As part of this, the *Education (Pastoral Care of Domestic Tertiary*

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<sup>1</sup> The wellbeing and safety requirements will complement the broader regulation of health and safety. While the work could focus solely on student wellbeing, it is considered that the word 'safety' should be included. This is because the catalyst for the domestic tertiary student code was a domestic student's lack of safety, and for the international student code, it was the need to protect (keep safe) international students.

*Students) Interim Code of Practice 2019* (the interim code) was established. The interim code is due to expire at the end of 2021.

The interim code is based on the same framework as the existing *Education (Pastoral Care of International Students) Code of Practice 2016* (the international code). But there are key differences in scope and approach. We know that the international code has been largely working well, with many providers doing a good job meeting the core needs of their international learners. However, it is also important that providers consistent requirements regarding the wellbeing and safety needs of domestic and international tertiary learners, where these needs are shared.

We would like your feedback on our proposals for change. Our proposals build on previous feedback on and the strengths of the international code, the international learner dispute resolution scheme, and the interim provisions introduced in 2019. This proposed approach allows us to combine expectations for domestic tertiary and international learners to provide clarity for providers on their roles and responsibilities. We have heard that this clarity is important. We also want to embed the focus on wellbeing and safety to support achievement in tertiary education that the interim code has started to encourage.

### **How can I have a say?**

There will be a range of ways you can have your say on the ideas raised in this consultation, including:

- Completing the [survey](#)
- Emailing feedback to [CodeOfPastoralCare@education.govt.nz](mailto:CodeOfPastoralCare@education.govt.nz)
- Participating in a zoom meeting or face-to-face hui
- Asking the Ministry of Education to meet with your network

Consultation will open 7 April 2021 and end on midnight 21 May 2021.

If you have questions, you can get in touch with the team leading this work at the Ministry of Education at [CodeOfPastoralCare@education.govt.nz](mailto:CodeOfPastoralCare@education.govt.nz).

### **What happens after consultation?**

Your feedback will inform advice on the development of the new code, dispute resolution scheme rules and supporting law changes.

The Minister of Education will then issue the new code later in 2021 and it will take effect from 1 January 2022. The Minister of Education will also propose rules for the domestic learner disputes resolution scheme. An operator for the scheme will be appointed in late 2021. The new dispute resolution scheme is expected to be in place when the new code takes effect from 1 January 2022.

Any proposed law changes will be included in an amendment Bill. During the Select Committee process for the Bill next year, there will be opportunity for further input into the design and content of the law proposals.

The law changes we are proposing would enable further development of the new code and the dispute resolution scheme rules. This could also build in what we've learned from the new code and scheme. If these proceed, there will be further opportunities to comment on the draft documents in the future.

## Part 2: How does this fit with the bigger picture?

### What is wellbeing and why is it important in education?

Wellbeing is a broad and complex concept with different meanings for different people. It is multifaceted and may change over time. In simple terms, wellbeing means that learners, as individuals and in the context of their family, whānau and communities, have safe, inclusive and healthy environments in which to learn, live and socialise, have a positive frame of mind and resilience, and have satisfaction with self, relationship and experiences. This holistic view includes considering wellbeing in community, as well as the relationship between psychological, mental, physical, family, social and spiritual health.

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 and we want to address this. Successfully addressing wellbeing issues in tertiary study also sets a good foundation for individuals to sustain wellbeing throughout their lives.

Supporting learner wellbeing is also important in the context of COVID-19, especially for the recovery of those providers with international learners. The international code has signalled the emphasis on wellbeing and excellent learner experience and plays an important role in attracting prospective learners. The proposals we are consulting on ensure that regulatory settings continue to evolve to support the wellbeing of international learners. This in turn maximises the educational, economic, social and cultural benefits to New Zealand.

There has been a growing focus on learner wellbeing and safety and the importance of learners receiving treatment and support when they need it.<sup>2</sup> This is in the context of a growing awareness of mental health issues and increasing levels of psychological distress, particularly among young people.<sup>3</sup> While distress and anxiety can affect learners of all ages,<sup>4</sup> young learners transitioning into tertiary education can face additional challenges as the chances of experiencing stress, anxiety and depression increase through adolescence and peak in early adulthood. Other groups of learners may also face challenges (e.g. disabled learners),<sup>5</sup> which for some can persist throughout their studies.

There could be adverse short-term outcomes for learners if they are not supported, including poor attendance, performance, engagement and completion of tertiary

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<sup>2</sup> WHO | Types of Healthy Settings: Ottawa charter for health promotion (who.int);

<sup>3</sup> 'Kei Te Pai – Student Mental Health Report' NZUSA - <https://www.students.org.nz/research: Long waits for mental health care in struggling emergency departments, report finds - NZ Herald>; [Students around NZ echo mental health care concerns | RNZ News](https://www.stuff.co.nz/national/health/123044168/no-known-mental-health-concerns-before-one-in-three-student-suicides); <https://www.stuff.co.nz/national/health/123044168/no-known-mental-health-concerns-before-one-in-three-student-suicides>

<sup>4</sup> <https://bmjopen.bmj.com/content/bmjopen/6/8/e011327.full.pdf>

<sup>5</sup> These challenges are associated with moving away from their home (or country) and support networks, adjusting to academic pressures, balancing study, part-time work, and family commitments, and meeting and interacting with a diverse range of new people. English language constraints can also be challenging for learners whose first language is not English.

study, and poor social outcomes such as securing jobs after study.<sup>6</sup> We have heard from learners that COVID-19 has exacerbated concerns about mental health.<sup>7</sup>

Creating an environment that supports learning and wellbeing is a shared responsibility between government, providers, learners, whānau, and the wider community. Tertiary education providers are well placed to work with learners, whānau and communities and promote wellbeing at an individual, group and organisational level.<sup>8</sup> By working together, learners and their families and communities will be able to have confidence that learner wellbeing and safety will be promoted and supported in the learning environment.

The Government is committed to making a learner-centred education system that delivers more equitable outcomes and provides excellent education and learner experience for all learners, including domestic and international learners. A key part of this is ensuring that processes and practices support the wellbeing and safety of diverse learners, in particular Māori, in line with the principles of Te Tiriti o Waitangi, but also Pacific, disabled, LGBTQIA+, ethnic or migrant and former refugee learners.

### **What are we doing now?**

We seek your feedback on several proposals, as outlined below, to establish more accessible, culturally responsive, effective and equitable supports for the wellbeing and safety of all learners, both domestic and international, in tertiary education.

We are developing a new code of practice which aims to improve support for wellbeing and safety for tertiary and international learners, as well as whānau and community, voice. We also propose to combine requirements for tertiary providers into one code, rather than having separate codes and inconsistent requirements for domestic and international learners in the same providers. Our work on this has been guided by feedback from learners and providers on the interim code and how it fits with the existing laws for international learners.

The code is flexible, so that large and small, comprehensive and niche providers can meet its expectations in ways that respond to their learners' needs and their approach to tertiary education. It builds on and embeds the early focus on wellbeing and safety to support the achievement in tertiary education that the interim code has started to encourage. It also builds on the strengths of the existing international code, while retaining specific expectations and appropriately detailed protections responding to the need of international learners.

Alongside this, we are working on a new legislated dispute resolution scheme for domestic tertiary learners. The scheme is intended to help domestic tertiary learners and their providers resolve disputes related to financial or contractual issues. Its development reflects lessons from the existing international learner scheme. This scheme will continue unchanged. The new scheme is separate to the code but

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<sup>6</sup> <https://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/innovation-partnership-and-data-can-help-improve-student-mental-health-in-new-14m-drive/>

<sup>7</sup> <https://www.students.org.nz/covid19>; <https://www.temanaakonga.org.nz/nga-puka>; *Impact of COVID-19 on Tertiary Students in Aotearoa New Zealand* <https://www.students.org.nz/research>

<sup>8</sup> [Okanagan Charter: An international charter for health promoting universities & colleges - UBC Library Open Collections](#)

complements its aims of improving outcomes for learners and strengthening learner voice.

To support the new code and related dispute resolution scheme, we are also proposing improvements to the law. This will help support and reinforce the broader focus on wellbeing and safety.

Public consultation on the new code, the dispute resolution scheme and the proposed law changes are occurring alongside one another, so you can have your say any one a particular or on all proposals.

You can find more information about how you can have your say [here](#). Your feedback and ideas will be used to shape advice towards the finalised new code, dispute resolution scheme and supporting law changes.

### **Why are we proposing changes?**

Overall, the proposed changes aim to raise the prominence of wellbeing and safety as a precondition to learner success in education. It will ensure that all learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant and former refugee learners, live in a safe environment and have positive experiences that support their education achievement. There will be more clarity and consistency around provider responsibilities for the wellbeing and safety of their domestic tertiary and international learners. In doing so, this work will reinforce the strategic direction set by Government for a learner-centred education system and high-value international education. This work will also reflect the expectation for the Government and the education providers to honour Te Tiriti o Waitangi and support Māori-Crown relationships.

#### *Integrating expectations for government's obligations under Te Tiriti o Waitangi*

Ensuring the supports for learner wellbeing and safety honour the principles of Te Tiriti o Waitangi and work well for Māori is part of the Crown's responsibility under Te Tiriti o Waitangi. This means that, alongside other responses, we need to address system inequalities and continue to strengthen the system to better support for Māori learners and whānau to achieve their education aspirations. The education system also has an important role in enabling Māori to exercise authority over their taonga, including te reo, tikanga and mātauranga Māori.

The proposals for change are an opportunity to integrate these expectations into practices and processes across the education system. A key part of this will be building the cultural capability of those working within the system to work with Māori and support their wellbeing and safety in a way that works for Māori and is culturally safe and responsive. This work will also contribute to realising Māori potential and Māori economic resilience.

#### *Responding to need and concerns*

Over recent years there has been growing awareness and concern about mental health and increasing levels of distress among learners,<sup>9</sup> which COVID-19 has

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<sup>9</sup> 'Kei Te Pai – Student Mental Health Report' NZUSA - <https://www.students.org.nz/research>



exacerbated. There have been related concerns about student accommodation, following the tragic death of a learner in hall of residence in 2019, and learners' experiences with their accommodation providers during the COVID-19 lockdown.<sup>10</sup>

There have also long been concerns about racism in education. The engagement through Kōrero Mātauranga and our conversations with the stakeholders since have highlighted the bias, discrimination and racism tertiary learners encounter throughout their educational experience, which can have material consequences.

We are also aware of concerns expressed by disabled learners about how challenging it has been for them to access tertiary education in an inclusive, accessible way.

The proposals for change are an opportunity to respond to concerns of learners, parents and whānau, and other tertiary education stakeholders about systemic racism and the need for enhanced support for wellbeing and mental health, in particular for learners at risk.

#### *Building on interim and urgent provisions for domestic tertiary learners*

In late 2019, several law changes were made to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally. This work was done as an urgent response to tragic events and included the development of the interim code of practice for pastoral care of domestic tertiary learners. The Government intended to revisit the interim code last year and develop a new code to replace it, with fuller engagement with learners, whānau and tertiary education stakeholders. However, this was delayed due to the impacts of COVID-19. We are now working to have the new code in place from 1 January 2022.

#### *Combining and aligning expectations for domestic and international learners to improve clarity for providers*

We know that there is a good standard of compliance from providers with the international code. Many providers have been doing a good job of meeting the core needs of their international learners. However, feedback from learners and other stakeholders also indicates that there is room for improvement where there are areas of ambiguity and to provide proactive support for international learner wellbeing. We have also heard that having separate codes for international and domestic learners can be confusing for providers in navigating their obligations to learner wellbeing and safety.

International learners have distinct and diverse needs. But it is also important that requirements for them are not set at a lower level than those for domestic learners. This includes the areas of general wellbeing outcomes for tertiary learners, tertiary student accommodation and appropriate levels for learner voice, feedback and input.

We now have an opportunity to combine expectations in a single code to improve clarity for providers and learners. This would retain strengths of the existing codes

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<sup>10</sup> <https://www.students.org.nz/covid19>; <https://www.temanaakonga.org.nz/post/te-mana-%C4%81konga-releases-report-on-the-impacts-of-covid-19-on-m%C4%81ori-uni-students>; *Impact of COVID-19 on Tertiary Students in Aotearoa New Zealand* <https://www.students.org.nz/research>

and allow providers to build on the work they are doing to comply with these. Naturally, a combined code would continue to spell out the expectations that apply now for providers regarding the specific needs of international learners, including retaining appropriately detailed protections responding to these needs.

Requirements for schools enrolling international students will be retained and kept distinct. International students in schools are generally younger with some different needs to those in tertiary education, and the current international code is working well for these students. This recognises the need for continuity and clarity of pastoral care expectations, especially as schools prepare to welcome back international students when conditions allow. There are two minor changes to language used in the new code which do not impact on requirements.

#### *Benefit from insights of previous work and importance of learner voice*

Although implementation was significantly disrupted by COVID-19, many providers and learners have engaged with the interim code, in particular through online workshops held by NZQA. We heard, for example, that student services staff in providers have appreciated the clearer expectations for student support services set out in the interim code. We also heard that there is a need for clarity, for example around learner voice and what it means for providers to partner with learners, and around how providers can practically honour and implement Te Tiriti o Waitangi.

We appreciate the feedback you have already shared. Over the last year, our work with student leaders to communicate information to learners during the COVID-19 outbreak and address issues as they arise has further strengthened our relationship with learners and enabled us to work more closely together.

We have the opportunity to embed these practices in our work and develop the new provisions for learner wellbeing and safety based on your insights.

#### **What is already in place?**

It is important that providers support learner wellbeing and safety to support learner success. This is set out in funding plans, council obligations and government strategies. Many providers are doing this already. The Education and Training Act also sets out a general expectation that learner wellbeing is supported. The work we are seeking your feedback on is to provide for more consistency and for consequences if expectations are not fulfilled. It also extends the existing requirements, broadening their scope, so that learners, whānau and communities can have confidence and have their voices heard. The following range of requirements already exist:

- The Education (Pastoral Care of International Students) Code of Practice 2016 (the international code) sets out detailed pastoral care requirements for international learners across the education system.
- International learners also have access to iStudent Complaints, a dispute resolution service set up specifically to help international learners resolve financial and contractual disputes with their providers.

- The Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (the interim code) sets requirements for all tertiary education organisations in relation to a general duty of pastoral care for all domestic tertiary learners. It also sets out specific additional requirements for organisations that offer student accommodation.
- NZQA has been administering the two existing codes. This includes supporting providers to build capability to effectively implement the codes, and monitoring this, as well as assuring provider quality. NZQA may issue quality improvement and compliance notices, if appropriate, and impose limitations on a provider's power to enrol learners.
- The Education and Training Act 2020 also allows for serious breach penalties to be issued to a provider that has breached the code or failed to comply with a quality improvement or compliance notice (section 535). Providers that commit an offence relating to a breach of code resulting in serious harm to or death of learners can also be found liable on conviction to a fine not exceeding \$100,000 (section 544).

#### **Where can I find more information?**

Below is a selection of website links to provide further information on the different parts of this consultation.

- [Education and Training Act 2020](#) – This is the law that establishes and regulates the New Zealand education system, including requirements for the wellbeing and safety of all learners.
- [Tertiary Education Strategy and the Statement of National Education and Learning Priorities](#) – This document sets out the Government's long-term strategic direction for the education system and signals its commitment to ensuring success and wellbeing for all learners.
- [International Education Strategy 2018-2030](#) – This strategy sets out the Government's vision for international education to contribute to a thriving and globally connected New Zealand through world-class education. Ensuring that the code of practice continues to evolve is a key action under this strategy.
- [Strategic Recovery Plan for International Education](#) – This plan focuses on stabilising the international education sector following the impacts of COVID-19. This includes accelerating the transformation set out in the International Education Strategy to deliver educational quality, learner experience and wellbeing, sustainability, and the broader benefits of global citizenship.
- [Ka Hikitia – Ka Hāpaitia | The Māori Education Strategy \(English\) – Education in New Zealand](#) – This cross-agency strategy for the education system sets out specific actions and how we will work with education services to achieve system shifts and support Māori learners and their whānau, hapū and iwi to achieve excellent and equitable outcomes. This work contributes to the Ka Hikitia outcomes *Te Tangata* and *Te Kanorautanga*.

- [Action Plan for Pacific Education 2020–2030 – Education in New Zealand](#) – This action plan sets out the Government’s vision that diverse Pacific learners and their families feel safe, valued and equipped to achieve their education aspirations. It outlines the actions the Government has committed to achieve this vision and signals how education providers can achieve change for Pacific learners and their families.
- [Education \(Pastoral Care of Domestic Tertiary Students\) Interim Code of Practice 2019](#) – This takes you to the interim code. You can access related documents [here](#), including advice provided to the Government in establishing the code. You can access implementation guidance for the interim code [here](#). This is intended to help providers put the interim code into practice and achieve its outcomes.
- [Education \(Pastoral Care of International Students\) Code of Practice 2016](#) – This takes you to the international code. You can access the ‘code of practice toolbox’ [here](#). This provides information to support providers to meet the outcomes of the international code.
- [International Student Contract Dispute Resolution Scheme Rules 2016](#) – This sets out the rules for the international learner dispute resolution scheme. The [iStudent Complaints website](#) provides resources and information about using the scheme.
- [NZQA complaints process](#) – If a learner has a complaint about education quality or pastoral care (including those pastoral care issues involving student accommodation), they can take it to NZQA.
- [Disputes Tribunal](#) – If a learner has a complaint about financial or contractual matters, they can make a claim to the Disputes Tribunal.
- [Ombudsman](#) – If a learner has a complaint about a public provider, they can take it to the Ombudsman.

## Part 3: A new code of wellbeing and safety

This section:

- affects **all tertiary domestic learners** and **international students**
- affects **all tertiary education providers** with domestic learners and international students
- may be of interest to **schools**, however, there are no substantial changes proposed for signatories enrolling school students

### Why have a code?

The wellbeing and safety of learners is essential to educational achievement and the wider outcomes that are enabled through learning. A code is important because it will offer tertiary providers a coherent framework and language for assessing their wellbeing and safety practices and using this as a basis for comparing performance and benchmarking best practices.

### How and when we will do this?

A new code will be issued mid-2021 and will take effect from 1 January 2022.

The new code will be supported by clear implementation guidelines to help tertiary education providers (in consultation with their stakeholders) to put the new code into practice and achieve its outcomes. The guidelines will be produced, in consultation with the sector, after the new code is issued. The guidance will be updated as required to remain current and fit for purpose.

The code administrator will provide access to workshops to help providers understand the code and any new expectations.

### What changes are we proposing?

The new code sets out expectations for tertiary education providers and signatories. This aligns expectations we have regarding their domestic and international learners' wellbeing and safety needs.

No substantial changes are being made to wellbeing and safety requirements for international school students, so the current provisions remain in place for them.

### How will this give effect to the principles of Te Tiriti o Waitangi?

The new code supports the principles of protection, participation and partnership because it requires providers to engage with Māori learners, staff, whānau, iwi and local communities on how they support learner wellbeing and safety in a way that honours and effectively implements Te Tiriti o Waitangi. This includes engagement on developing strategic goals and plans for supporting learner wellbeing and safety, on reviewing wellbeing and safety practices, and on the design of physical and digital environments where appropriate. Providers are also expected to build their capacity to give effect to Māori learners' rights under Te Tiriti o Waitangi. This would include providing opportunities and safe spaces for learners to use te reo and tikanga Māori to support their connection to their identity, language and culture.

### **Why are we proposing changes?**

The interim code for domestic learners was developed very quickly towards the end of 2019 following the unnoticed death of Mason Pendrous in a Christchurch hall of residence in 2019.

Consequently, the main focus on the interim code was on establishing consistent wellbeing and safety standards for learners in tertiary student accommodation. Student accommodation was also given priority as learners will spend more of their time in that accommodation than on campus, so this is where they are more likely to present with difficulties. Government intended that a revised Code would expand on expectations for learners beyond student accommodation, recognising that most learners are not in student accommodation.

We propose to build on the existing interim code to retain its strengths (as identified through consultation) and identify new practices or refinements to existing requirements to improve provider wellbeing and safety standards. This will also allow providers to build on the work they are doing to comply with the interim code. Insights from learners, and submissions to the Education and Workforce Committee Inquiry into Student Accommodation, confirmed our intention to expand the general code so that it improves provider accountability to stakeholders around wellbeing practices and the quality of these practices.

Other enhancements that have been suggested focus on:

- more responsive student services and teaching and learning approaches to meet the diverse needs of the learner population (including for mature learners and those from different cultures)
- training and support for staff (including accommodation staff, security and cleaning staff) and peer support training
- better protections for learners for making complaints and resolving disputes
- better consistency within and across providers for dealing with an emergency (e.g. COVID-19 lockdown).

### **Support for learner wellbeing has many dimensions**

Our new code draws on our understanding of what influences learner wellbeing and where and how providers and other stakeholders can make positive differences. The various dimensions include:

- **Community/stakeholder consultation** – This is about involving key stakeholders (especially learners but also staff, whānau, the local community and iwi) in identifying and defining wellbeing and safety issues within provider learning environments. This is likely to be more sustainable for learners, their supporters, and their communities. This approach involves long-term partnerships, co-learning, co-design, capacity building, shared decision making, mutual ownership of review findings and improvements to wellbeing and safety practices, and the effective dissemination of results.
- **A whole-of-provider approach** – This is about recognising the interconnectedness of different parts of a provider's learning community and emphasises the interactions between people, their behaviours, and the environment. This moves beyond just providing student services and looks at how the provider (across all levels of its organisation) can promote an environment and culture that enhances learner wellbeing, and which is sustainable over time. This approach requires providers to have structures and policies in place to promote learner wellbeing and safety as well as staff

who are appropriately trained and supported. Staff are more likely to be a learner's first point of contact and this interaction could influence a learner's experience.

- **Learning environments (both physical and digital)** – The physical and digital learning environments and the atmosphere within them can also have an impact on identity, sense of belonging, security, and wellbeing. As such they can play a key role in supporting positive, teaching, learning and living experiences. These environments are not just where learners receive formal education, they are also spaces where learners develop personally and socially. What learners take away from their experiences during this time will have an impact throughout their lives.
- **Individuals' wellbeing and safety needs across a range of contexts** – The learner population is more diverse than ever before, and providers will face challenges responding effectively to their social, physical, spiritual, and cultural needs across a variety of contexts and throughout their learning journey. Wellbeing practices need to be accessible and flexible so providers can respond quickly to ensure the best possible outcomes for learners. Public health literature suggests a tiered intervention approach to promoting wellbeing and safety. At the base, are universal proactive initiatives to build learner wellbeing, followed by targeting groups with extra needs, and then providing assistance for those showing signs and symptoms of distress. This addresses situations when it is not easy to recognise learners in distress as well as aspects of the learning environment that can have a negative impact on learner wellbeing and academic performance.

### **Proposed structure of the new code**

We propose that the new code include:

- **core learner wellbeing requirements** that apply to all learners whether they be domestic or international or participating in provider activities on-campus, off-campus or in student accommodation. These would be the fundamental conditions needed for any learner to flourish and succeed in their tertiary studies and beyond.
- **additional or more specific requirements** to reflect the distinct needs of learners in these contexts (e.g. those in student accommodation and for international learners).

This structure has the advantage of reducing duplication (i.e. providing more clarity and simplicity for providers and learners) and reducing reporting requirements for those providers enrolling both international and domestic tertiary learners.

Tertiary providers involved with student accommodation that is exempt from the Residential Tenancies Act 1986 (RTA) under section 5B of the RTA continue to be covered by the code, whether they own or operate the accommodation, or have agreements with third party operators.

No substantial changes are being made to wellbeing and safety requirements for international school students, so the current provisions remain in place for them.

In the new code, tertiary and international learners include industry trainees and apprentices enrolled in vocational education and training with tertiary education providers.

## Summary of proposed changes for all tertiary providers

The parts of the proposed new code that relate to outcomes and processes for all tertiary providers (including tertiary signatories) are summarised below.

### *Part 3: Consultative and co-ordinated support structures*

*This new part to the code sets the direction and foundation for provider practices at the whole-of-provider level. It includes expectations for providers to consult with stakeholders, particularly learners, to set and review strategic goals, plans and practices for the wellbeing and safety of its learner community (outcomes 1 to 3). Providers also need to have the capability to effectively implement its learner wellbeing and safety practices including in an emergency (outcome 4).*

This part covers the following outcomes and practices:

- a) Organisational strategic goals and plans (outcome 1) – Wellbeing and safety practices are designed to respond effectively to the needs of learner communities with the intent and outcomes of these practices being shared with learners, whānau, staff, communities, and iwi.

Process: Stakeholder consultation in developing strategic goals and plans

Process: Stakeholder consultation in reviewing strategic plans and goals

Process: Review of wellbeing and safety practices

- b) Learner engagement and partnerships (outcome 2) – Providers recognise learners as a community with rich and diverse perspectives, experiences, backgrounds, and concerns and equally uphold their mana and autonomy by hearing, heeding, and embedding their voices in relevant education provision, decision-making and governance.

- c) Dealing with complaints (outcome 3) – Providers ensure learners receive a genuine and timely response to their concerns so that they receive a more positive learning experience

Process: Learner complaints

Process: Compliance with the Dispute Resolution Scheme

- d) Supportive organisational structures (outcome 4) – Providers have effective structures in place to implement practices that promote learner wellbeing and safety and identify and assess risk to learners and provide them with effective wellbeing and safety support.

Process: Coordinated information channels (previously in the student accommodation section and expanded)

Process: Staff training (previously just in the student accommodation section and is now expanded in both sections)

Process: Emergency assistance and response planning (new).

### *Part 4: Wellbeing and safety practices*

*This part of the code is about how providers can proactively support learners to have positive learning and living experiences in their learning environment, and to identify and assess wellbeing and safety risks to learners and respond to them. We propose to strengthen the standards required of providers based on initial learner feedback and submissions to the Education and Science Select Committee Inquiry into Student Accommodation as follows:*



- a) Safe and inclusive learning environments (outcome 5) – We have included requirements for providers to promote an inclusive learning environment. This includes providing all learners with accessible information:
- that supports understanding, acceptance, and connection with all learners, including learners of different ages, cultures and religions, disabled learners, and LGBTQIA+ learners
  - that increases their (and their communities) awareness, that they have a reciprocal role in managing their own learning environment
  - about the cultural, spiritual, and community supports available to them.
- b) Physical and digital learning environments (outcome 5) – We propose that practices include accessibility and the physical design of these environments to support learning and social activities, including:
- ensuring learners can navigate provider facilities and services with ease (e.g. disabled learners, international learners)
  - enhancing the physical design of these environments, including –
    - structural (e.g. acoustics, light) and aesthetic features
    - ecological sustainability
    - engagement with biculturalism and the treaty (e.g. through signage, planting plans that promote plants of importance to Māori)
    - involving Māori in the design of environments where appropriate;
  - involving learners in the design of these environments where appropriate.
- c) Academic, personal, and social development of learners (outcome 6) – We propose bringing old outcome 2 (assistance for students to meet their basic needs) into this section. A learner’s basic needs need to be met before they can effectively prioritise their learning. We also propose:
- including practices around supporting the social development of learners including the provision of opportunities and safe spaces for learners to:
    - voice diverse and challenging viewpoints; and
    - connect, build relationships, and develop social, spiritual, and cultural networks; and
    - use Te Reo and Tikanga to support Māori learners’ connection to identity and culture; and
    - access leadership opportunities and engage more actively in their learning, social and residential communities.
  - providing additional practices for supporting academic progress such as:
    - the opportunity for learners to discuss, in confidence and without judgement, any issues that are affecting their ability to study; and
    - providing advice on progression pathways and career development, where appropriate.
- d) Promote physical and mental health awareness (outcome 7) and proactive monitoring of learners’ wellbeing and safety and responsive wellbeing and safety practices (outcome 8). These are two new outcomes that replace outcome 3 in the interim code (physical and mental health of students). These two outcomes reflect the tiered approach to interventions to build capacity and identify and respond to learners who face additional challenges. The content is drawn from the student accommodation section in the interim code.

*Part 5: Additional wellbeing and safety practices in tertiary student accommodation 5 (outcomes 9 to 12)*

*This part focuses on:*

- *empowering residents to manage their own wellbeing and safety and receive appropriate support when they need it (outcome 9)*
- *an environment supporting inclusion, connection and academic achievement (outcome 10)*
- *effective accommodation contracts and accommodation administration practices (outcome 11)*
- *well maintained accommodation facilities and services (outcome 12).*

In Part 5 we have made some changes to strengthen the practices, including provider practices for:

- a) providing more detail on the training accommodation staff should receive and that this should be appropriate to their role
- b) disclosing the relationship between the provider and accommodation owner/operator if not owned and details of wellbeing practices on provider websites
- c) bringing over the wording from the international code in relation to accommodation contracts i.e. that they be:
  - reasonable and in accordance with legal requirements; and
  - provide residents (or the parents or legal guardians of residents under 18 years) with sufficient information to understand their rights and obligations under refund policies
- d) clarifying that providers need to provide information to residents in the house rules advising them that:
  - staff members are mandated to enter a resident's room without permission if there are reasonable grounds to believe that immediate access is needed to save life, or to reduce or eliminate serious risk to life; and
  - providing 24 hours' notice to a resident if staff members will be entering a resident's room to undertake a 'without cause' welfare check.

***Changes for tertiary signatories enrolling international learners***

Parts 6 and 7 set out specific requirements in relation to tertiary signatories and school signatories, respectively.

Learner wellbeing is a key priority for the recovery of New Zealand international education from the impacts of COVID-19. It is important to build on the established pastoral care standards for international learners, and ensure that regulatory settings continue to evolve to support positive wellbeing outcomes for learners, which also maximises the educational, economic, social and cultural benefits to New Zealand.

The Recovery Plan for international education 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 the pandemic, which we know

has significantly impacted revenue, organisational stability and future planning for signatories to the current international code.

The proposed changes in part 3 of the code will support higher and more consistent standards of wellbeing and safety for international tertiary learners through enhanced requirements in relation to provider planning, engagement with learners and communities, complaints processes, and support for learners at risk.

This approach responds to feedback from the tertiary sector, addresses a gap in the current requirements for tertiary international learners, and avoids the ambiguities, inefficiencies and risks that come from retaining two entirely separate regulatory instruments.

*Part 6: Additional requirements for tertiary signatories*

*This part of the new code retains distinct requirements for tertiary international learners, with the outcomes restructured so that these requirements follow the format of the general tertiary learner section as follows:*

- *Tertiary signatory administrative process requirements*
- *Information, advice, and support for international tertiary learners before and throughout the period of enrolment*
- *Appropriate support for the additional wellbeing and safety needs of international learners.*

Key changes we are proposing are as follows:

- a) Rewording and reordering the outcomes to reflect the style of the shared requirements for international and domestic learners
- b) Removing outcomes and requirements that are now covered in the shared requirements for international and domestic tertiary learners in parts 3-5
- c) Adding an outcome requiring tertiary signatories to ensure that they implement parts 3-5 of the code in a manner that responds to the needs of international learners
- d) Aligning the tertiary student accommodation requirements for international and domestic learners
- e) Aligning tertiary provider system processes to support wellbeing outcomes for international as well as domestic tertiary learners
- f) Adding a definition of 'disciplinary action' in relation to international learners to clarify the types of actions that are referred to in processes 53 and 54. This is to ensure that requirements are clear and implementation is in line with outcome 18, which is unchanged. There should be no changes for signatories where current practices are consistent with the intent of this outcome. However, signatories should review their policies to ensure that they are in line with the new definition, particularly in relation to processes for the termination of enrolment.

### *Part 7: No substantial changes to requirements for schools enrolling international students*

There are no substantial changes proposed to requirements for schools enrolling international students, which have been retained in a new and separate part of the code for clarity. However, schools will need to update documentation for new code clause numbers.

Law proposals would allow scope for a separate code for schools enrolling international students in the future. Further review of these requirements may be appropriate as part of the ongoing recovery of the international education sector. For now, restating of the current standards in part 7 of the new code ensures continuity and clarity as schools look ahead to the potential of returning international students when this is possible.

There are two minor changes to the language used in this part of the code.

We propose to change the language used in Outcome 27 to remove reference to international school students with 'special needs' and replace this with 'additional learning needs', distinguishing between disabled learners and other learners with additional needs. There are no changes to the requirements for these students.

We propose to add a definition of 'disciplinary action' in relation to international students to clarify the types of actions that are referred to in processes 76 and 77. This is to ensure that requirements are clear and implementation is in line with outcome 24, which is unchanged. There should be no changes for schools where current practices are consistent with the intent of this outcome, however schools should review their policies to ensure that they are in line with the new definition, particularly in relation to processes for the termination of enrolment.

### **Other options considered**

Our tertiary system includes a wide range of providers, learners, and a variety of contexts. Therefore, a principles-based approach to a code of wellbeing and safety is in place for domestic learners (the current interim code).

A principles-based approach promotes universal goals that are consistent across the wider tertiary sector while enabling flexibility for providers to adapt practices for the wide range of learners' needs, be proactive and innovate, and share learnings across the sector. From our early engagement, we have found that student services staff in providers have appreciated the clearer expectations for student support services set out in the interim code.

The current code for international learners is largely principles-based but it also has more detailed requirements where the risks are highest for international learners, such as care of international students under 18, and to ensure that key processes in relation to education agents, enrolment contracts and immigration support the Government's objectives for international education.

This largely principles-based approach is preferred over a rules-based approach which focuses on enforcing compliance and providing certainty for stakeholders. A focus on compliance is likely to limit the flexibility and creativity we are seeking from providers, in terms of how they meet learners' diverse needs.

## Part 4: Dispute resolution scheme for domestic tertiary learners

This section:

- directly affects **domestic tertiary students**, their **whānau** and **tertiary education providers**
- may be of interest to **international tertiary students and providers**, if they want to provide their thoughts on how the current international student disputes resolution scheme works for them, and their thoughts on combining the international student scheme and the domestic tertiary student scheme into one scheme in the future

### What is the proposal?

The Education and Training Act 2020 (the Act) establishes a dispute resolution scheme (scheme) to resolve financial and contractual disputes between domestic tertiary learners and their education providers.

### How will this give effect to the principles of Te Tiriti o Waitangi?

Ensuring barrier free access and equitable outcomes for Māori is a key objective for the scheme and the principles of Te Tiriti o Waitangi will be embedded in the scheme. This means the scheme will resolve disputes in a way that honours and gives effect to Te Tiriti o Waitangi, supports Māori-Crown relationships, and enables Māori to exercise their authority and agency in education. We are proposing that the scheme allows for appropriate tikanga to be used during the resolution of disputes to meet the needs of Māori learners and their whānau, in accordance with their rights under article 2 of Te Tiriti o Waitangi.

### How and when will we do this?

There are two key stages to the work we are doing on the scheme.

Stage 1: Setting up the scheme to be in place for 1 January 2022. To achieve this, we need to have rules in place. These rules will be made by an Order in Council on the recommendation of the Minister (under section 539 of the Act). We want your feedback on our proposals for these rules that describe the design of the scheme and how it will operate.

***This document relates to the rules as required for stage 1.***

Stage 2: We are also proposing some changes to the law that sets up the scheme, for example, to allow it to deal with a broader range of issues than just contractual and financial issues. Because these changes need to be made by amendments to the law (and therefore need to go through a different process to the rules), these will need to come into effect after the scheme has been set up.

We would also welcome your feedback on stage 2 proposals. For more information on these, go [here](#).

Beyond these two stages, we will also progress work on whether and how to combine the international learner scheme and the domestic tertiary learner scheme to make a single scheme that meets the needs of all tertiary learners. We welcome your feedback on this idea, and you can include it in your submission regarding the scheme.

## **Background of this proposal**

As outlined in the new [Tertiary Education Strategy](#), the Government wants to make the education system work better for learners and make it fairer and more accessible for all. Stronger learner complaints and dispute resolution processes in the tertiary education sector are an important part of this, because we know disputes can have a big financial and emotional impact on learners and their whānau.

This work on the scheme is taking place alongside the development of a new code of practice for pastoral care of domestic tertiary learners (replacing the existing interim code). The code puts in place requirements on providers to improve support for the wellbeing and safety of their learners, and to help ensure learners have a strong and genuine voice in institutional decision-making.

Consultation on the new code proposals are occurring alongside consultation on the scheme, so you can also have your say on those proposals [here](#).

## **How does the current complaints and disputes system work?**

At the moment, when a tertiary learner has a complaint, they must first go to their provider with the complaint to give the provider the opportunity to resolve it through their internal complaints process.

If the learner is not satisfied with the way the provider has handled the complaint (either with the process they have followed or the outcome), there are several external bodies they can take their complaint to depending on what their complaint is about (these various roles are set out below). This makes the process difficult for learners to navigate, as it might not be clear to them which pathway(s) to follow in their circumstances.

### *New Zealand Qualifications Authority*

- If the complaint is about education quality, pastoral care (including those pastoral care issues involving student accommodation), they can take it to the New Zealand Qualifications Authority (NZQA).
- All learners can access the [NZQA complaints process](#).
  - NZQA can investigate the complaint and require that the education provider take certain actions (in accordance with the Education and Training Act 2020, the code, or NZQA Rules) to fix what might have gone wrong (for example, make a change to their practices).
  - NZQA's role is to ensure providers are meeting the requirements they have to their learners under the code, and improve performance across the sector. Their role is about changing providers' practices in the system, as opposed to helping individual learners and they can't make decisions about, or get involved in compensation or redress. This means they can't make the provider give the learner a refund.

### *Disputes Tribunal*

- If a complaint is about financial or contractual matters, the learner could make a claim in the Disputes Tribunal which is cheaper and less formal than a court and can settle claims up to \$30,000.
- All learners can access the Disputes Tribunal.

### *iStudent Complaints*

- iStudent Complaints is a dispute resolution scheme designed specifically to resolve financial and contractual disputes between international learners and their providers.
- Domestic learners cannot access iStudent Complaints and have no equivalent service designed for them – which is why we are establishing a scheme to fill this gap for domestic tertiary learners.

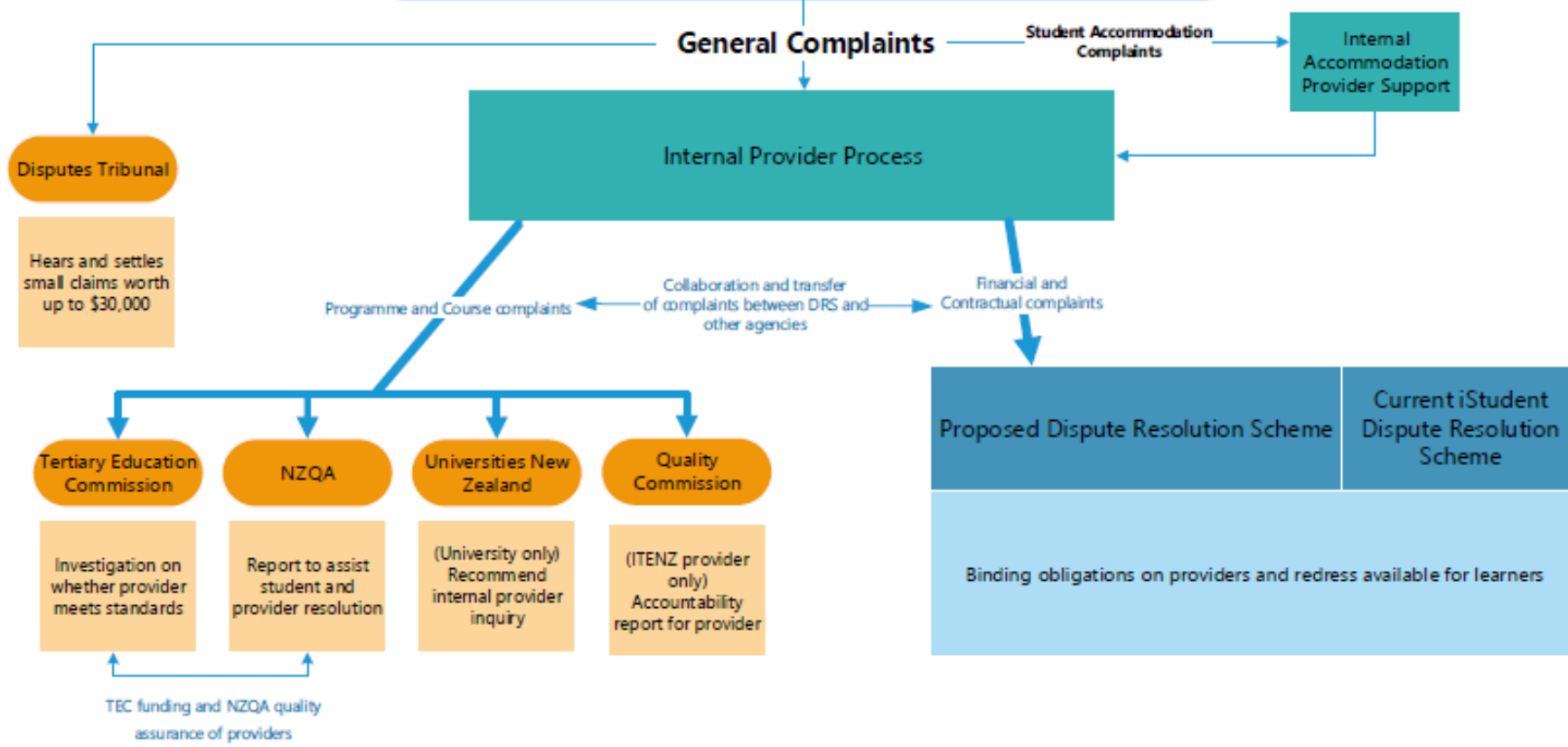
**Note:** The iStudent Complaints scheme deals with international students enrolled in both the *tertiary* and *schooling* sectors. As this new scheme will not cover school students, we have opted not to modify and expand iStudent Complaints at this stage.

### *Human Rights Commission*

- Complaints relating to unlawful discrimination can be taken to the Human Rights Commission (HRC). HRC can help with information and advice, and mediating complaints.

**Note:** Through the code we are proposing requirements to strengthen provider's internal complaints processes to complement the work on the scheme and lift the performance of the whole system. You can find more information on these and give us your feedback [here](#).

# Proposed Tertiary Complaints System



## Further avenues for specific complaints

The Human Rights Commission is available for human rights related complaints

The Privacy Commission hears privacy related complaints

The UN Disability Commission is an avenue for disability-specific complaints



### **Why do we need a dispute resolution scheme for domestic tertiary learners?**

Disputes can have a big emotional and financial impact on individuals and their whānau and communities. This means that stopping disputes from arising and solving them quickly and effectively when they do happen is important. In the education system, this is important because strong relationships between learners and providers help learners to have a better time and get more out of their education.

However, there will be times when disputes cannot be resolved easily between a learner and a provider, and external help is needed.

While international learners have access to a resolution process designed to meet their needs through iStudent Complaints, there is a gap in this area for domestic tertiary learners. Although, domestic tertiary learners can take their complaints to NZQA or the Disputes Tribunal, these processes are not learner-centric and the Disputes Tribunal has costs to using it.

This is why we need a process designed with tertiary learners in mind that reflects an understanding of the education system and the relevant regulatory and legal systems. This would be more accessible and deliver fairer outcomes for learners than the existing pathways.

### **What kind of disputes can the scheme resolve?**

The law that establishes the scheme (i.e. sets it up and legally gives it the power to resolve disputes) sets out that its purpose is to resolve contractual and financial disputes between learners and providers. This means the scheme can help resolve complaints related to anything in a contract between a learner and the provider (e.g. an enrolment contract or accommodation contract) or anything related to finances (e.g. course fees). As law has already set the kind of disputes the scheme can resolve, the scheme will not be able to hear issues that are unrelated to contracts or finances.

We are proposing that the rules outline when the scheme operator (the person/ company/agency who is contracted to run it) can accept and decline a dispute:

The scheme operator may <b>accept</b> a dispute when...	The scheme operator may <b>decline</b> a dispute when...
<ul style="list-style-type: none"><li>○ it is a valid complaint with enough evidence or information available to resolve the dispute</li><li>○ the learner has been declined or refused the opportunity to resolve the dispute by their provider</li><li>○ the learner is dissatisfied with the provider's complaint process and/or the outcome</li><li>○ the learner has not had their complaint acknowledged, processed and/or addressed in a timely manner by their provider</li></ul>	<ul style="list-style-type: none"><li>○ the provider has not been given an opportunity to resolve the issue raised</li><li>○ the dispute is being addressed by another body or would be better dealt with by another body</li><li>○ the dispute has previously been dealt with by the scheme, and there is no new evidence to support the claim</li><li>○ it is not possible to gather enough evidence or other information to resolve the dispute</li></ul>

### ***Why are we proposing these rules?***

The scheme operator will have some ability to decide whether a complaint should be accepted to be resolved or not.

If there is enough evidence or other information to resolve the complaint the dispute can be accepted. If there is not enough evidence or information for a dispute to be

resolved (even after the scheme has made appropriate inquiries), it may be declined as the scheme may not be able to assist in a fair resolution.

If the learner has not taken the complaint to their provider first, the scheme may not accept it. This is an important part of the process because the provider should be given the opportunity to respond and do the right thing if there has been an issue, before it is elevated to an external process like the scheme. If disputes can be resolved just between the provider and the learner, it can often be better in terms of timeliness, the emotional and financial costs for users, and for the relationships involved.

If the dispute has already been through the scheme or the international learner scheme (which follows a similar process), or is currently going through another body (e.g. a court process) the scheme may also decline the dispute, to avoid repeating or duplicating the process.

They may also decline a dispute if it would be better to go through another body, for example, the District Court, the Police, or a commission. In these cases, the scheme operator will be expected to inform the learner about how to make their complaint through those channels as we know that navigating the system can be confusing.

#### **Who will be able to access the scheme and make a complaint?**

The scheme will be accessible to all domestic learners in tertiary education. This includes learners studying at Te Pūkenga, wānanga, universities, and private training establishments.

Under the Act, individual learners (current, former, or prospective) will be able to make a complaint to the scheme. In addition to this, however, we are proposing that other people could represent learners through the scheme process, but only with the informed consent and approval of the learner. These other people could include:

- parent/s, whānau member/s, or legal guardian/s of a learner.
- an advocate who is representing a learner or learners.
- a group of tertiary learners (including prospective and former) and/or their parent/s whānau member/s, or legal guardian/s.

#### ***Why are we proposing this?***

We are proposing that a wide range of people will be able to make complaints with/on behalf of the learner, including parents or whānau members or advocates. This is because we know that in some situations, learners may be unable to make a complaint by themselves or may want additional support.

We are proposing that groups of learners be able to make complaints, as they may have the same complaint and want to raise it together and act collectively.

#### **Who will run the scheme?**

The scheme operator is appointed by the Minister (as enabled by section 536 (4) of the Act). The Minister may impose any conditions on the appointment that they think fit.

## How will the scheme solve disputes?

### ***Learner-focused approach***

We are proposing that the scheme deal with disputes in a way that is mana-enhancing for learners. This will require streamlined, flexible, timely, and accessible dispute resolution run by a culturally-safe and competent scheme operator.

Addressing the inherent power imbalance between the provider and the learner has been integral to the design of the scheme and many elements of the scheme have been included to empower learners. We expect the scheme operator to be able to work with and offer learners tikanga-based approaches if they want them, in line with Māori expectations. This works towards meeting our Article 2 treaty obligations to ensure Māori have tino rangatiratanga, self-determination over matters that relate to them.

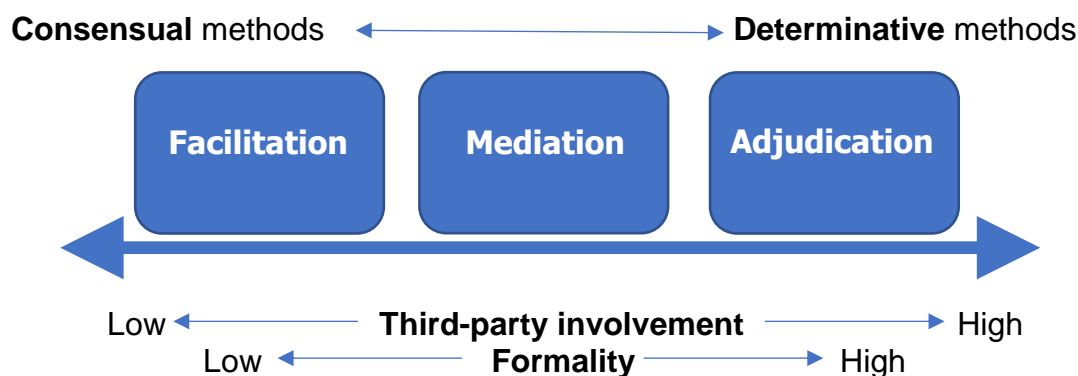
Ensuring the scheme works for Māori, Pacific, disabled learners, LGBTQIA+ learners, and ethnic communities is a core focus.

What this could look like is having rules stating that the operator must:

- Resolve disputes in a way that gives effect to Te Tiriti o Waitangi.
- Accommodate any cultural or situational needs, or vulnerabilities of the learner or their representative.
- Ensure that disabled learners can fully access and participate in the scheme's dispute resolution methods.
- Focus on methods that encourage the people involved in the dispute to first work together to reach a shared understanding and a solution both agree on (e.g. facilitation, mediation) and, if they still cannot agree, to seek a decision from a third party (e.g. adjudication).
- Take the views of all the parties into account.
- Be consistent with principles of restorative justice (focusing on how to put things right and take responsibility) and natural justice (enabling everyone to have an opportunity to present their case, be balanced and fair, using accessible evidence).

### ***Process and methods***

We are not proposing a strict and inflexible process that the scheme operator must follow. Rather, we are proposing that the rules will allow the operator to use a progression of methods of resolution based on increasing third-party involvement (of the scheme appointed practitioner) and increasing formality to work through a dispute with the parties. These methods are demonstrated in the image below.



- **Facilitation:** a facilitator will meet with the parties and listen as they discuss the issues and try to negotiate a settlement.
- **Mediation:** a process that brings the parties together with a neutral mediator to explore and work through the dispute with cooperative discussion and problem solving to try and find an agreement that works for everyone.
- **Adjudication:** an adjudicator will consider the evidence and points of view of both sides and make a decision. These decisions will be binding.

The scheme operator will be able to work with the parties to decide which of these methods is the best place to start. For example, start with mediation and go on to adjudication if that doesn't resolve the issue, or they could start with adjudication where needed.

The methods the scheme operator can use provide for flexibility and we would expect the practitioners to draw on appropriate tikanga in each method, working with the learner and provider. For example, mediation or facilitation could happen in whatever way the parties want, as long as the mediator is involved and working with them to explore the dispute and come to a resolution.

This is not limited to but could involve agreeing to hold the processes in a particular location, for example the learner's marae or community hall, the methods they want to use, having certain people included in the process (for example family, whānau, support people), or agreeing particular timeframes. The intention is that the process should work to affirm the mana of both parties and work in the way that is best for the learner and the provider.

Because decisions resulting from adjudication are binding, we are proposing that there be more rules in place to guide the scheme operator and parties around this stage.

As a general rule, a consensual process (i.e. facilitation or mediation) where the parties agree upon the outcome should be attempted first. The learner should never feel forced to proceed to the adjudication process, but, to help address the power imbalance, we are proposing that the provider must participate when the learner chooses to proceed. Adjudicators must decide a case based on the merits and justice of the case (i.e. the fairest thing to do) rather than strict legal interpretations or the rules of evidence or previous decisions.

### **What remedies will be available following adjudication?**

We are proposing that there will be a range of actions to help make the situation right and restore mana (i.e. remedies) that the adjudicator of a dispute can direct a provider or learner to do. These will be binding, meaning the provider or learner will have to do what they are directed to do. These remedies could include both monetary remedies (e.g. refunds to learners, financial compensation, etc.) and non-monetary remedies (e.g. making a public declaration of the breach, providing particular support to a learner, changing or making new policies to ensure the dispute does not arise again). The provider and learner must follow a direction resulting from an adjudication.

If a party is not complying with their part an adjudication finding, or is not abiding by the scheme rules, the other party or the scheme operator will be able to apply to the District Court to enforce the agreement through an order. If the District Court finds an agreement to be unreasonable, they have the power to modify the agreement.

The Act outlines the scope of the monetary remedies that learners can receive. Specifically, that the provider can pay the learner an amount that doesn't exceed \$200,000.

### **How will information and data related to the dispute be used and collected?**

#### During the resolution process

If a dispute gets to the adjudication stage, we are proposing that the scheme operator will be able to make any inquiries that are fair and reasonable to resolve the dispute. They will be able to specify a reasonable timeframe in which the information must be supplied.

The learner and/or provider must supply this information, unless they do not have it, or releasing it would be a breach of confidence or legal privilege. If they do not do so, the adjudicator may decline to continue considering the dispute (if the learner fails to provide the information), or may resolve the dispute, taking into account that the information was not provided.

The information provided by a learner and/or provider can be provided to the other party, unless the person who supplied the information expressly limits this, and the scheme operator will have to keep the learner and provider informed and ensure they have a reasonable opportunity to respond to each other's arguments and submissions. The scheme operator must ensure that this information is provided in accessible formats for the learner.

#### After the resolution process

We are proposing that the scheme operator will be required to publish information about disputes that are resolved by the scheme. These will be redacted and anonymised so complainants and providers will not be able to be identified.

Unlike for iStudent Complaints, information will be made public about cases at all levels of the resolution process, not only those that have been through adjudication.

Having information regarding the disputes that have been resolved by the scheme publicly available is an important way to:

- keep people informed about the types of issues in the education system;
- keep learners and providers informed of how previous disputes have been resolved and build awareness of best practice expectations for providers; and
- ensure learners are aware of the scheme and the kinds of complaints in can deal with.
- share insights into problems in the education system, so recurring issues can be addressed.

We are proposing that information from disputes that have been resolved at all levels (i.e. facilitation, mediation, and adjudication) be publicly available. This is because only having information available about adjudicated cases is not enough to ensure transparency and full understanding of the range and nature of disputes being resolved through the scheme. Collecting and analysing this information will assist the scheme to improve its processes and will also help to identify systemic issues.

### **Termination of the resolution process**

We are proposing that the dispute resolution process can be terminated if:

- the learner and provider notify the scheme operator in writing that they have entered into an agreed settlement.

- the learner who made the complaint notifies the scheme operator in writing that they withdraw the complaint, and the scheme operator is satisfied they are not withdrawing due to coercion. The scheme operator will need to have a clear and documented process for this.
- the learner failed to comply with an information request without good reason.
- the learner notifies the operator that they intend to apply to another body to resolve the dispute.
- the operator determines that the dispute is not covered by the scheme. If this is the case, we are proposing that the scheme operator must refer the claimant to an appropriate alternative agency or organisation to resolve the claim.

### **How will we ensure the system works for Māori?**

We are proposing a range of measures to ensure the system works for Māori learners and meets the Ministry's obligation to design an education system that honours and gives effect to Te Tiriti o Waitangi and supports Māori-Crown relationships under section 4 of the Act. These measures include:

- the scheme operator must provide the opportunity for a dispute to be resolved in Te Reo Māori, including during the process of making the claim, facilitation, mediation, and adjudication.
- the scheme operator, working with the learner, be able to draw on appropriate tikanga to design the dispute resolution processes to meet the learner's needs.
- there will be specified functions of the scheme operator in relation to Māori. This includes ensuring the scheme:
  - gives effect to Te Tiriti o Waitangi.
  - monitors the outcomes of the scheme for Māori and its accessibility to Māori.
  - generates useful data for Māori and for agencies to use to improve outcomes for Māori.
  - makes available the information Māori need to hold the scheme to account.
  - actively work to address any issues regarding disparity of access or outcomes for Māori users.

It is crucial that Māori can access and use the scheme, and can expect it to deliver fair and equitable outcomes for Māori. A key part of this is ensuring access to information that Māori can use to hold the scheme to account and that the scheme and other agencies can use to proactively improve the performance of systems for Māori.

We are also proposing that the annual report published by the scheme must contain information on any progress the scheme operator has made to ensure it is operating in a way that is consistent with Te Tiriti o Waitangi (including, for example, the scheme operator partnering with or empowering Māori to design and deliver services), so it can be monitored and held accountable. The annual report will also have to be made available in Te Reo Māori and other accessible formats.

### **Accessibility**

#### ***Who will be facilitating, mediating and adjudicating the disputes?***

Having someone you can connect with and trust facilitate, mediate, and/or adjudicate a dispute is an important factor in making the scheme accessible for learners. We are proposing that the learner and provider get some say in deciding who will mediate the dispute.

The scheme operator must make sure the person appointed to mediate or adjudicate a dispute is independent of the learner and provider. They will also have to consider any request made by the learner about the gender and background of the facilitator, mediator, or adjudicator. This is important as in some cases a learner may not feel comfortable disclosing details about a sexual assault complaint to a mediator of an opposite gender, or they may want someone with their cultural background and experience.

Generally, a different practitioner will undertake the different processes. We are also proposing that if the learner requests this, a single person can take the dispute through all stages of the process - from facilitation to adjudication. This means there could be one person that the learner and provider build a relationship and trust with, which can make engaging in the process easier. If, however, the learner and provider want to revisit mediation after an adjudication, a new person must be the mediator to make sure there is no bias.

In choosing a mediator, we are proposing that the scheme operator must use certified practitioners and consider their training, qualifications, experience, and personal qualities (including the ability to communicate and work effectively with Māori, whānau, Pacific communities, with disabled people, and with people from diverse linguistic and cultural backgrounds). To ensure the scheme supports a culture that is inclusive and free of discrimination, we are proposing that the scheme operator must proactively recruit culturally competent and disability inclusive practitioners and support their ongoing professional development.

### ***What supports will be available for learners?***

#### Making the complaint

We are proposing that it will be free for learners to make a complaint to the scheme, and complaints can be made either in writing or orally (the operator must record this in writing and confirm it with the learner).

We are also proposing that the scheme operator will have to ensure that learners and providers are fully aware of the scheme and know how to access it, including providing information about the scheme in Te Reo Māori and a range of accessible formats for disabled people. The Ministry of Education and NZQA should also promote the scheme where possible to maximise awareness of the scheme.

We are also proposing that the scheme operator must provide reasonable support to the learner to enable them to engage in the process and make a complaint. For example, this could look like providing interpretation and language support, ensuring locations where meetings are held are accessible. Where the scheme cannot provide support, it must refer the learner to external support services (including learner advocacy, disability support, wellbeing support services).

#### During the process

We are proposing that the scheme operator will be required to accommodate any unique cultural or situational needs of the learner and accommodate disabled learners to fully access (including physical access) and participate in the scheme.

There will also be a requirement for learners and providers to be able to have a support person/s with them during the resolution processes and learners and providers may seek legal representation.

We are also proposing that the scheme operator provide additional support when appropriate (e.g., interpretation or translation services), or refer the learner to external support services (e.g., learner advocacy, disability support, or wellbeing support services) to ensure accessibility to the scheme.

#### After the process

We are proposing that the scheme operator must make a copy of its annual report available in Te Reo Māori, and in accessible formats for disabled people.

#### **How will the scheme work with the rest of the system?**

We are proposing that the scheme will be linked in closely with the education quality assurance agency (i.e. NZQA) at every stage of the process to ensure the two systems work together to lift provider practice and ensure better outcomes for learners. The scheme will be able to help resolve individual complaints and the quality assurance agency has an important complementary role in identifying, investigating, and resolving systemic issues.

We are also considering rules that require the scheme operator to report on the issues that are raised in complaints it processes to the code administrator, education quality assurance agencies, and relevant government agencies (including, for example, the Ministry of Education, Tertiary Education Commission, etc). These reports should contain information around:

- the receipt and nature of any claim the scheme operator declines or accepts
- any systemic issue that it identifies
- any serious misconduct by a provider that it identifies
- any breach of the scheme rules by a provider.

#### **What other functions will the scheme have?**

We are also proposing that the scheme have a range of other functions to ensure the system runs smoothly. These include:

- promoting and publicising the scheme.
- monitoring compliance with the scheme rules.
- monitoring and reporting on the effectiveness of the scheme.
- carrying out any other function of the scheme under the rules.
- promoting effective dispute resolution in the tertiary education system more broadly, providing a more systematic and preventative approach to dispute resolution.

#### **How will the scheme be monitored?**

We are proposing that there be rules outlining how the scheme should be monitored, to ensure it can be held accountable and performance can be measured and continually improved. This could include that:

- the scheme operator must have a process for receiving and resolving complaints about the operation of the scheme and must publicise that process (for example, on its website).
- the scheme must conduct regular client satisfaction surveys for measuring the quality of processes under the scheme, the durability of the outcomes under the scheme, and any other appropriate performance indicators; and publish the results.
- a provider, learner, or whānau/community member/s who is dissatisfied with the operation of the scheme or the performance of the scheme operator may



complain to the Ministry of Education, but this process must not be used to challenge the outcome in a particular dispute.

- the scheme must publicise that it is subject to the Ombudsmen Act 1975 in relation to Tertiary Education Institutions (i.e. universities, wānanga, and Te Pūkenga).
- the scheme operator must co-operate with any person or agency appointed by the Minister to carry out an independent review of the scheme and its operation.

### **Annual report**

We are also proposing the scheme operator must include specific information in their annual report. This will help ensure transparency and monitor its performance and compliance with specific objectives, for example, consistency with Te Tiriti o Waitangi.

We are proposing that the report include information about the number, nature, and learner complainant demographics (subject to appropriate safeguards and redaction to preserve privacy) of, for example:

- disputes accepted and not accepted.
- disputes resolved by facilitation, mediation, adjudication.
- the length of time taken to resolve disputes.
- progress the scheme operator has made to ensure it is operating in a way that is consistent with Te Tiriti o Waitangi (including, for example, partnering with or empowering Māori to design and deliver services).
- any systemic issues or serious misconduct by providers identified in the course of investigating a dispute or resolving a dispute.

The scheme operator must make copies of its annual report available for inspection by the public without charge, for example, on a website, and must make a copy of its annual report available in Te Reo Māori, and in accessible formats for disabled people.

### **What does this new scheme mean for international learners?**

There will be no change for international learners. This scheme is for domestic tertiary learners, and fulfils the same function as iStudent Complaints does for international learners. International learners will continue to have access to iStudents Complaints.

In the future, we will be considering combining the two schemes so there is one scheme that works for all tertiary learners. This will be particularly important if the [stage 2](#) law proposals to expand the scope of the scheme (i.e. beyond just financial and contractual disputes) go forward so we can ensure all learners can access the same level of service.

### **What are the next steps and timelines for change?**

- Based on what we hear through this consultation, we will refine our policies and work with the Parliamentary Counsel Office (PCO) to reshape the draft scheme rules.
- We will then run a targeted engagement on the PCO drafted rules.
- Following this, we will run an Expression of Interest process (or a similar process) regarding who could operate the scheme.

- Based on what we hear during targeted engagement on the draft rules, we will work with PCO again to make any amendments and finalise the rules.
- The Minister of Education will then appoint an organisation/s to operate the scheme.
- From 1 January 2022, the scheme will start operating and learners can access its services.

### **Where to find more information?**

Below is a selection of website links to provide you with further information about the scheme and wider work, agencies, or services related to it:

- The new code, [the interim code](#), [implementation guidance for the interim code](#), and consultation materials
- [Tertiary Education Strategy](#) and [the Statement of National Education and Learning Priorities](#)
- [International Student Contract Dispute Resolution Scheme Rules 2016](#)
- [iStudents Complaints website](#)
- [New Zealand Qualifications Authority](#)
- [Disputes Tribunal](#)
- [Ombudsman](#)

## Part 5: Proposed Law Changes

This section:

- affects all domestic tertiary and international students
- affects all tertiary education providers and international education providers, including schools

### Why are law changes proposed?

The Education and Training Act 2020 (the Act) needs to be changed to better provide for the domestic tertiary and international student code(s) and the disputes resolution scheme. The changes will simplify and streamline tertiary and international provider responsibilities for student wellbeing and safety. By better supporting learner wellbeing and safety, providers will help learners to have great educational achievement. The proposed law changes:

- increase the focus on learner wellbeing and safety
- honour Te Tiriti o Waitangi and support Māori-Crown partnerships
- make sure the code, code administrator, and dispute resolution scheme settings are fit for purpose
- provide administrative efficiency.

These changes build on the lessons learnt from, and feedback about:

- the international code
- the international learner dispute resolution scheme
- the 2019 law changes, which provided for a code of practice for domestic tertiary learners, a code administrator, the interim domestic tertiary student code, and increased sanctions and penalties.

### ***How will this give effect to the principles of Te Tiriti o Waitangi?***

As well as law changes to better support learner wellbeing and safety, the proposed law changes will give effect to the principles of Te Tiriti o Waitangi. Proposal two helps embed the principles of Te Tiriti o Waitangi into law by clarifying that the code administrator and dispute resolution scheme operator must honour Te Tiriti and support Māori-Crown relationships. Under proposal two the law would also set out expectations for Māori, iwi, hāpu, and whānau to be consulted before a code is issued. Proposal three seeks feedback about tailored codes, including whether there should be a code for te ao Maori and/or Maori education providers.

## Theme: Strengthen the focus on wellbeing and safety

### *Why is a change proposed?*

Learners want the code to focus on learner wellbeing and safety. However, the current law gives mixed signals about the focus of the work:

- the Minister issues a code that provides a framework for the *pastoral care* of domestic tertiary and international learners
- the purpose statements for domestic and international learners differ and do not appear to adequately emphasise learner wellbeing and safety.

Tertiary education providers have concerns about being held to account for two similar but different codes.

The law requires providers to ensure, as far as is possible, that domestic tertiary and international learners in New Zealand have a positive experience that supports their educational achievement. However, section 534 of the Education and Training Act 2020 sets out that:

- tertiary providers are to take all reasonable steps “to maintain the wellbeing of domestic tertiary students”
- signatory providers must take steps “to protect international students”.

It is unusual that the code is expected to provide a framework for pastoral care, but the purpose and scope of the code focuses on learner wellbeing or learner protection. Tertiary learners consider the term ‘pastoral care’ to be paternalistic.

The proposed wellbeing and safety changes will work with the broader regulation of health and safety. While the work could focus on learner wellbeing, by itself, it is considered that the word ‘safety’ should be included because the reason for:

- the domestic tertiary learner code was a domestic learner’s lack of safety
- the international learner code was the need to protect (keep safe) international learners.

Currently, tertiary education providers must navigate two codes when they also have international learners. If two separate purposes are retained, tertiary education providers will find it challenging to support learner wellbeing and safety for domestic tertiary and international learners. As one code is being developed for both domestic tertiary and international learners, different purpose statements affect the ability to have shared requirements in the code.

## Education and Training Act 2020: code purpose

The purpose of a code,-  
(a) in respect of domestic tertiary students, is to support the Government’s objectives for the education of domestic tertiary students by—

- (i) requiring providers to take all reasonable steps to maintain the wellbeing of domestic tertiary students; and
- (ii) ensuring, so far as is possible, that domestic tertiary students have a positive experience that supports their educational achievement:

(b) in respect of international students, is to support the Government’s objectives for international education by—

- (i) requiring providers to take all reasonable steps to protect international students; and
- (ii) ensuring, so far as is possible, that international students have in New Zealand a positive experience that supports their educational achievement.

### ***Proposed law changes***

*Proposal 1: It is proposed that sections 534(1) and (2) be amended to focus on learner wellbeing and safety.*

A focus on learner wellbeing and safety would provide a clear message about provider responsibilities for the wellbeing and safety of both domestic tertiary and international learners.

Many tertiary education providers deal with both domestic tertiary and international learners. As the code is aimed at providers, a focus on 'wellbeing and safety' would provide consistency of message and practice. It captures the strengths of both 'wellbeing' and 'protect' language.

It is important to note that both international school students and tertiary learners are covered by the purpose statement. The wellbeing and safety of tertiary learners and school students may not be the same. This is because children need a higher level of protection than adults.

A focus on wellbeing, without a focus on safety, may not give enough importance to the safety concerns that were the reason for the development of the domestic tertiary learner code.

A change to 'wellbeing and safety' would support the Tertiary Education Strategy and the Statement of National Education and Learning Priorities, as well as wider Government wellbeing priorities. It also aligns with and strengthens work on learner voice, the International Education Strategy and Recovery Plan, the International Student Wellbeing Strategy, and the Tertiary Education Commission's Ōritetanga – Learner Success work.

There could be separate purpose statements for domestic tertiary and international learners that recognise the differences between the needs of domestic and international learners. The international learner purpose statement is tried and tested. However, separate purpose statements can be complicated and set unclear expectations for providers about the treatment of learner groups. Plus, using the term 'protect' may not be right for tertiary international learners.

### ***Impact, including cost implications***

Strengthening the focus on wellbeing and safety would improve:

- provider understandings about their role in supporting learner wellbeing and safety
- learner understandings about their rights and responsibilities.

Using common purpose statements for both domestic tertiary and international learners will reduce provider costs in the long-term as the provider will not have to use different, but similar, code arrangements. If a provider needs to take account of two purpose statements, there may be increased costs for the provider.

This change provides a simpler message about the focus of the code and the responsibilities of providers. There is a concern that this change would make providers totally responsible for learner wellbeing. However, the individual learner can make choices that impact on their wellbeing. Plus, others, including families, communities, and health professionals, have a role in supporting an individual's wellbeing.

***Implementation and operation***

If a law change is made in 2022, the changes would likely take effect from 2023. A new code would be issued, and providers would give effect to the new code. The code administrator will administer the new code.

## **Theme: Honour Te Tiriti and support Māori-Crown relationships**

### ***Why is a change proposed?***

Section 4 of the Education and Training Act 2020 sets out that one of the purposes of the Act is to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

### *Code administrator and dispute resolution scheme operator*

The code administrator and dispute resolution scheme operator do not have legislated expectations about honouring Te Tiriti or supporting Māori-Crown partnerships. Both the code administrator and dispute resolution scheme operator are appointed by the Minister and are seen as an arm of the government. It is important to think about if the code administrator and/or disputes resolution scheme operator should both support Parliament's broader expectations set out in section 4(d) of the Education and Training Act 2020.

The code administrator is currently New Zealand Qualifications Authority and is covered by the Education and Training Act 2020 and the public service expectations about honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships. However, it is possible that the code administrator could be a third party independent of government.

The international learner dispute resolution scheme operator (iStudent Complaints) is not a government agency and the, yet to be established, domestic tertiary learner dispute resolution scheme may not be a government agency.

### *Consultation expectations*

Before issuing a code, the Minister needs to consult with those parties that the Minister considers likely to be affected by the code, including representatives of learners, parents, providers, signatory providers, and the staff of providers and signatory providers, and the Privacy Commissioner. The current law does not explicitly provide for Māori, iwi, hāpu, or their whānau to be consulted. If section 4 of the Education and Training Act was to be given effect, it could be expected that Māori, iwi, hāpu, and whānau should be added to the list of those who should be consulted before the Minister issues a code.

### ***Proposed law changes***

*Proposal 2: It is proposed that the law clarify that:*

- *the code administrator and dispute resolution scheme operator must honour Te Tiriti and support Māori-Crown relationships*
- *Māori, iwi, hāpu, and whānau should be consulted before a code is issued.*

While the current code administrator, NZQA, is part of the Crown, it is possible for the code administrator to be part of an independent organisation. It would be reasonable for Māori to think that the code administrator is an arm of government and should therefore be subject to the same duty to support Māori-Crown partnerships.

It is therefore appropriate to consider clarifying that the code administrator has responsibilities to support the Māori-Crown partnership. If the code administrator delegates its functions, powers, or duties, the delegate should also share the responsibilities for honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships.

The dispute resolution scheme operator is appointed by the Minister to support learners and providers to resolve complaints. As it is an agent of the Minister, it could be argued that it has a role in supporting Māori-Crown relationships as it supports learners and providers to resolve disputes.

It is proposed that Māori learners, whānau, hāpu, and iwi be added to the list of those that the Minister must consult with before the code is issued. This provision better supports the partnership expectation set out in Te Tiriti o Waitangi but would increase the number and range of people required to be consulted before the code is issued.

***Impact, including cost implications***

It is expected that the proposed law changes would honour Te Tiriti and support Māori-Crown partnerships because there would be clear expectations about the roles and responsibilities of the code administrator and the dispute resolution scheme operator.

The proposed consultation changes would increase the ability for Māori voices to be heard in the design and implementation of the code and dispute resolution scheme arrangements.

***Implementation and operation***

The code administrator and dispute resolution scheme operator changes would be included in the accountability documents after the new Act becomes law.

The consultation change would affect the development of future codes.



## **Theme: Make sure the code and code administrator law is fit for purpose**

### ***Why is a change proposed?***

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.

Further possible law changes have been identified to:

- better enable the code administrator to undertake its functions, powers and duties
- modernise and update the law.

### ***Proposed law changes***

*Proposal 3: It is proposed that the law be amended to better enable the code administrator to undertake its functions, powers and duties by:*

- *requiring the Minister to approve the code administrator's plan*
- *ensuring the code administrator has sufficient mandate, that is tools to monitor provider performance, gather further information from the provider, and take actions*
- *providing for the code administrator to report regularly about its work.*

#### *Code administrator plan*

This change would give the Minister the ability to approve the code administrator's plan setting out what the code administrator will achieve and how it will manage its performance, as well as its focus on providers and how it will manage sector performance and risk in the short to medium term. This would improve transparency about 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 law and the code.

There is a risk that this change could increase the Minister and code administrator's workload. An alternative proposal would be for the code administrator to regularly publish its plan. This could allow for the code to be updated and refocused easily.

#### *Code administrator mandate*

This change would provide more detail in the law about the functions, powers, and duties of the code administrator. This proposal would:

- more explicitly provide for the code including information about the promotion and marketing of education, information about homestay expectations, and the need for providers to manage their education agents
- provide for code administrator processes
- provide for exemptions to the code
- provide for the code administrator to:
  - request and gather information
  - visit an education provider's delivery site.

Currently, the code administrator uses its quality assurance functions, duties, and powers to take action against providers when a breach of the code is detected. While this works, it is useful to consider whether there should be law that clearly support these arrangements or broaden the functions, powers and duties of the code administrator so that they are equivalent to those of the quality assessor.

Rather than relying on the quality assurer's powers, the code administrator will be better able to assess and evaluate provider performance against the code. For example, the wording suggests that NZQA must monitor the performance of a provider using the provider's self-review and, in other cases, can only request and gather information when an investigation is being undertaken. Without adequate information, it is often not possible to work out whether an investigation is needed.

Without sufficient mandate, there is a risk of legal challenge to actions taken by the code administrator. The current code administrator arrangements rely on strong linkages with the education quality assurance regulator and are based on the international code settings that have been in place for a while.

The Minister could issue exemptions to all or part of the code. The exemption ability could take into account different educational settings, for example, the different learner wellbeing and safety expectations for onshore and offshore learners when it may not be legally appropriate for a provider to give mental health advice/referrals in another country. The exemption could take into account the changing status of a learner, for example a domestic school student who changes to become an international school student. There is a risk that the exemption could be seen as a way to minimise provider responsibilities for learner wellbeing and safety.

There is a risk that the powers of entry and gathering of information may be seen as excessive. Any powers of entry need to have sufficient checks and balances to ensure that the code administrator uses the powers as Parliament intended.

#### *Code administrator reporting*

This change would make the code administrator report regularly about its work (the code currently requires the code administrator to report annually), including:

- report annually to the Minister about its activities and the performance of the sector (for Crown entities, this could be included in existing annual reporting arrangements)
- publish a summary of the investigation and outcome of a breach of the code, subject to appropriate safeguards and redactions for protection of privacy

This would improve transparency about the code administrator's work and the code administrator's use of funding. Currently, the code administrator's annual reporting is included in the code.

## Code

A code of practice is a document that sets out commonly agreed sets of guidelines that inform all parties about their responsibilities and expectations under the code.

The code sets out the intended outcomes and the expected processes that providers will use to ensure that providers support the wellbeing and safety of students, including those in student accommodation. It provides information about how providers can comply with legal obligations. A code provides providers with the opportunity to develop local solutions about how they will give effect to the outcomes and processes set out in the code. The student wellbeing codes of practice do not replace laws and regulations.

A code administrator refers to the code of practice when issuing a quality improvement or compliance notice, and they may be admissible in court proceedings. A court may use a code of practice to establish what is reasonably practicable action to manage a specific risk.

*Proposal 4: It is proposed that the law be modernised and updated*

This proposal would:

- ensure all relevant code and code administrator law is included in the Education and Training Act 2020, including sections 238H(1) to (4) and (9), 238I, 238J, and 238K of the Education Act 1989
- provide for both quality improvement and compliance notices
- allow the Minister to make minor and technical changes to the code
- provide for tailored codes.

*Provide for both quality improvement and compliance notices*

Alongside the existing sanctions and penalties, it is proposed that the law allow for:

- quality improvement notices when the code administrator thinks the code outcomes are not being adequately met by the provider
- compliance notices when the code administrator thinks there is a breach of the code.

Currently, the law allows compliance notices to be used for breaches of the international code and quality improvement notices to be used for breaches of the domestic tertiary learner code. This means that, if there was a code issue that affected both domestic and international tertiary learners, tertiary providers may find themselves subject to both quality improvement notices and compliance notices at the same time.

The proposed change would allow the code administrator to take swift and proportional action when there is a breach of the code, when one or more outcomes of the code have not been adequately provided for, or when the quality improvement or compliance notice has not been complied with.

It is proposed that the code administrator publish information about any quality improvement or compliance notices issued and any later actions taken by the provider to fix the problem. This change would allow for a wider range of sanctions to apply to providers that do not comply with the code or do not take adequate actions to deliver on the outcomes set out in the code.

*Minor and technical changes to the code*

It is proposed that the law allow the Minister to make minor and technical changes to the code.

While there is a mechanism for the Minister to make minor and technical changes to the interim code, it is not possible to make minor and technical changes to future codes, for example if there was a minor change to terminology or a typographical error. 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.

Without this change, the code might quickly become outdated. As the code is a disallowable instrument, the Regulations Review Committee would examine any versions of the code to ensure that it is consistent with good legislative practice.

*Tailored codes*

To future proof the law, there could be value in providing for tailored arrangements that apply to categories or sub-categories of providers. This would allow for learner wellbeing and safety arrangements to be tailored and/or to address risks, if needed.

The law could provide for tailored codes that would better meet the need of different groups, for example, a tailored code could be issued to cover:

- te ao Māori or Māori education providers
- categories and sub-categories of education providers, including schools, different tertiary education provider types, student accommodation providers, and/or different tertiary education settings.

Providers should be covered by only one code, unless there was a good reason. If a code was tailored to a particular type of provider, there would need to be clear information about the coverage of the relevant codes. There is a risk that too much differentiation will reduce clarity about the expectations or make it too hard for providers to achieve the outcomes and meet the processes. To minimise provider compliance costs, it is important that there is clear information about which code applies to a particular provider.

The law currently provides for a separate code for domestic tertiary learners, international learners, or a combined code covering both groups. Within the codes it is possible to differentiate between the needs of those aged older and younger than 18 years of age, or those in different settings. A combined code is long; a tailored code would likely be shorter.

#### ***Impact, including cost implications***

It is expected that the proposed law changes would improve the effectiveness and the efficiency of the code administrator and code.

#### ***Implementation and operation***

If a law change is made in 2022, the changes would likely take effect from 2023.

## **Theme: Make sure the dispute resolution scheme law is fit for purpose**

### ***Why is a change proposed?***

While there is adequate law to give effect to the dispute resolution scheme, the law needs to be updated and the scope and operation of the dispute resolution scheme could be clarified.

### ***Proposed law changes***

*Proposal 5: It is proposed that the cap on any claim that the dispute resolution scheme can award be increased from \$200,000 to \$350,000*

The cap of \$200,000 was set to reflect the District Court claim threshold at the time. However, the District Court claim threshold has since increased to \$350,000 and the dispute resolution scheme cap should be increased to reflect that change.

*Proposal 6: It is proposed that the scope and impact of the dispute resolution scheme be broadened*

It is proposed that:

- the dispute resolution scheme be broadened to also provide for the scheme to award remedies to learner complainants when the code administrator has found and confirmed that a breach of the code has taken place
- once an adjudicator has made an award to a learner, the institution has 20 working days to either file an appeal of the decision in the District Court or provide redress, including paying the sum awarded.

### ***Scope of the dispute resolution scheme***

The current law allows for the dispute resolution scheme to resolve contractual and financial disputes between learners (and former and prospective learners) and providers or signatory providers. Learners are not currently entitled to redress if there is a breach of the code unless it is also considered to be a contractual or financial dispute.

At present, the education quality assurance agency or the code administrator may find a provider has breached the code and can use a range of remedies to address the provider's behaviour. However, those agencies are not able to award compensation or redress to learners.

Under this proposal, the dispute resolution scheme would be able to award learners both monetary and non-monetary forms of redress if a breach of the code has taken place, or as redress for a financial or contractual dispute. The type and amount of redress will be determined by the dispute resolution scheme operator according to what is appropriate and proportionate in the situation,

Disputes can have significant emotional and financial impacts on individuals, whānau and communities. Given this, preventing disputes from arising and ensuring earlier and more effective resolution when they do arise is important. In education, it is particularly important to enable strong relationships between learners and providers, and to ensure fair outcomes for learners.

This proposal would result in increased costs for:

- the dispute resolution scheme because the broader scope will likely increase the number of complaints
- providers because the broader scope will likely increase the number of complaints.

### *Impact of the dispute resolution scheme*

Concerns have been raised about the timeliness of the redress to learners following an adjudication in their favour. In line with other schemes, it is proposed that there be an appeal timeframe of 20 working days or 28 days. If a provider does not appeal the adjudication decision and they fail to pay the redress within that timeframe, the learner could pursue further legal action and the code administrator could take further actions.

### *Proposal 7: It is proposed that there be a clear process for appointing the dispute resolution scheme operator*

It is proposed that the law provide for the Minister to develop criteria for the appointment of a dispute resolution scheme operator.

To improve transparency and ensure the dispute resolution scheme operator has the capability to deliver the scheme to a high standard, it is proposed that the Minister of Education be able to develop criteria that must be considered when making an appointment of one or more persons or agencies to be responsible for administering the scheme. This could include the necessary experience and skills the operator should have, for example, cultural capability.

If the proposal to develop criteria was progressed, the Minister would consult relevant groups (for example, learners and their whānau, education providers, Māori) before the criteria was finalised.

### *Proposal 8: It is proposed that the law outline the issues that the dispute resolution scheme operator must report on*

It is proposed that the law set out what the dispute resolution scheme operator must regularly report on. The detailed information that must be provided will be specified in the rules and may include the number and nature of complaints received, the length of time take to resolve disputes, financial statements, compliance with Te Tiriti, outcomes for Māori, and any systemic issues identified by the dispute resolution scheme operator.

This will allow for greater transparency about the dispute resolution scheme operator's work. It will better allow for any systemic issues to be identified and addressed.

An alternative option is for the law to enable the rules to specify the issues that the dispute resolution scheme operator must report on. The detail can then be put in the dispute resolution scheme rules, with a broader enabling provision in the law.

### ***Impact, including cost implications***

It is expected that the proposed law changes would improve the effectiveness and the efficiency of the dispute resolution scheme.

### ***Implementation and operation***

Any law changes may be progressed in 2021/2022. As the law changes will not be in place before dispute resolution scheme rules take effect on 1 January 2022. If the law changes impact the dispute resolution scheme rules, new rules would need to be developed.

## **Theme: Provide for effective administration**

### ***Why is a change proposed?***

The Education and Training Act 2020 provides for a code and dispute resolution scheme. However, the following gaps need to be addressed:

- the code administrator, dispute resolution scheme operator, and education quality assurance regulator are not able to share information
- the Ombudsman does not have jurisdiction for the code administrator or the dispute resolution scheme operator
- there is limited ability to prescribe the enrolment form's content and the process for ensuring that learners understand their rights and responsibilities.

### *Inability to share information to support effective administration and quality assurance*

As learners are likely to take their complaints to the dispute resolution scheme rather than NZQA (because the dispute resolution scheme can provide redress to learners), it is important that the code administrator and quality assurance regulator have timely access to any information about learner complaints. Currently NZQA uses information from learner complaints to inform its quality assurance priorities and trigger quality assurance actions. Complaint information can also be used to trigger code administrator actions. The dispute resolution scheme provides a new channel for handling learner complaints. Without a law change, there is a risk that systemic quality issues may not be addressed in a timely manner.

### *The Ombudsman does not have jurisdiction for the code administrator or the dispute resolution scheme operator*

The Ombudsman has responsibilities for dealing with complaints about public sector agencies, including a government agency, tertiary education institution, or school board of trustees. The Ombudsman has other responsibilities, dispute resolution panels established under subpart 9 of Part 3 of the Education and Training Act 2020.

In line with these arrangements, it is appropriate for the Ombudsman to have the ability to investigate complaints about:

- the code administrator
- other disputes resolution schemes when they consider complaints between learners and tertiary education institutions.

### *There is limited ability to prescribe the content and process for ensuring that learners understand their enrolment*

The enrolment form sets out contractual and financial expectations. For domestic learners, expectations about the minimum requirements for an enrolment form are set out in the Single Data Return. For international learners, minimum requirements for the enrolment form, (and the processes for ensuring that a learner understands their rights and responsibilities), are set out in the international code.

The enrolment form and process provide learners with important information about the education to be undertaken and outlines expectations about educational quality and the associated services that will be available. If done well, the enrolment agreement clearly outlines a learner's rights and responsibilities. The enrolment agreement is also important if things go wrong.

It is considered more appropriate for expectations about enrolment forms and processes to be empowered by the primary law.

### ***Proposed law changes***

*Proposal 10: It is proposed that the dispute resolution scheme operator, code administrator and quality assurance regulator are able to collect and share information.*

It is proposed that the dispute resolution scheme be empowered to share any complaint information with the code administrator and the quality assurer as they have overlapping and intersecting responsibilities aimed at learner wellbeing and safety. The information could be shared when the complaint is received and, as the dispute resolution scheme operator currently does, when the complaint is resolved.

The code currently states: 'If the code administrator in the course of investigation finds any systemic issue related to education quality or a serious breach of this code, the code administrator must report that issue or breach to education quality assurance agencies and any relevant government agency.' It is considered more appropriate for information sharing arrangements to be included in primary law than in the code.

To support the privacy of the complainant when the complaint is made, it is proposed that the transfer of information 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.

Without this change, there will likely be 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 have widespread impacts on the reputation and performance of New Zealand's education system.

*Proposal 11: It is proposed that the Ombudsman have jurisdiction over the code administrator and, when a complaint relates to a tertiary education institution, the dispute resolution scheme operator.*

While the Ombudsman will consider all the code administrator's activities, it is proposed that the Ombudsman only consider the dispute resolution scheme operator's activities in relation to state schools and tertiary education providers. For private training establishments and private schools, any dispute resolution scheme decisions can be reviewed using the Courts.

*Proposal 12: It is proposed that the Minister approve and gazette their expectations about enrolment forms/contracts, processes, and the provision of information to learners.*

The dispute resolution scheme and code administrator will use information from the enrolment form/contract to inform their judgements about the performance of education providers and whether there are contractual or financial matters that need to be addressed.

Rather than locking in the details in the Act, it is proposed that the Minister regularly gazette their expectations about the enrolment form and associated processes. Clear enrolment material and processes will help learners to understand their rights and responsibilities and will likely reduce the risk of things going wrong.

Changes could be made to the provisions relating to enrolment (sections 255, 519, and 525 of the Education and Training Act 2020) and by giving the Minister the ability to gazette criteria about the nature, form, scope, and content of a contract, and the



processes to be used to ensure that the learner has an ongoing understanding about their rights and responsibilities.

Currently the international code contains detailed information about the enrolment contract, enrolment processes, and the provision of information to learners. Enrolment contracts set out the expectations about standards and future conduct. As the power between providers and learners is uneven, there is value in specifying a minimum standard for content and the need to ensure that learners understand their rights and responsibilities.

The Single Data Return includes information about the generic enrolment form. Through funding determinations, extra enrolment expectations can be set out.

While there could be law about learner rights and responsibilities, providers have their own ways of providing for learner rights and responsibilities. Bolstering the enrolment agreement will help clarify rights and responsibilities. There is no evidence that a regulatory solution setting out a statement of learner rights and responsibilities is needed. Given the diversity of education provision, it is better for providers to determine the best ways to identify and meet learner needs.

#### ***Impact, including cost implications***

These proposed changes will better allow the dispute resolution scheme operator, education quality assurer, and code administrator to share information and take early action when problems are identified.

The Ombudsman will have oversight of the code administrator and dispute resolution scheme operator and provide an extra layer of scrutiny that will better support effective decision making by the parties.

The specification of enrolment form and process requirements will provide learners with better information about their rights and responsibilities. As the generic enrolment form is used by tertiary education providers, and the international learner enrolment contract applies to signatories, it is not expected that provider compliance costs would increase.

#### ***Implementation and operation***

The changes would take effect after the new Act becomes law.

## Part 6: Impact

### Impact

We are seeking feedback on the impacts of these changes for affected groups, the nature and size of impact, and on who will be affected. We welcome your comments and input on these impacts.

### Domestic learners and prospective learners

For all domestic and prospective learners, we expect the key impacts to be:

- clearer expectations for what providers must do and how they must work
- understanding of learner rights to influence providers, and ability to raise suggestions and concerns about provider practices that affect them
- benefits to wellbeing, where provider practices better meet learner needs and recognise their identity, culture and community
- benefits to educational achievement and success, where practices enable learners to improve or maintain wellbeing and focus on their studies
- reduced harm from practices that harm learners.

### *For the following learners there are additional benefits.*

For Māori learners:

- the new code and dispute resolution scheme will require regulators and providers to recognise the needs and aspirations of whānau Māori and for their processes to be culturally responsive and support the use of te reo Māori
- expectations that providers engage with learners as part of their community would enable whānau perspectives of learners to be heard

For Pacific learners:

- expectations that providers engage with learners as part of their community would enable aiga and fanau perspectives of learner needs to be heard

For disabled learners:

- explicit expectations that provider and dispute resolution scheme services are accessible
- learner voice and engagement expectations will explicitly require engagement with diverse learners, which includes disabled learners

For rainbow community learners:

- learner voice and engagement expectations will explicitly require engagement with diverse learners, which includes rainbow learners

For ethnic, or migrant and former refugee learners

- expectations that providers engage with learners as part of their community would enable ethnic, migrant and refugee perspectives to be heard
- learner voice expectations will explicitly require engagement with diverse learners, which includes ethnic, migrant and former refugee learners

For international tertiary learners:

- as for domestic learners, except that the benefits result from aligning wellbeing and safety expectations for domestic and international learners so that they are set at a higher level, where their needs are shared
- integrating the existing international code with the new code covering tertiary and domestic learners
- maintaining existing specific protections for international learners (such as orientation to life and study in New Zealand)
- greater clarity of wellbeing and learner engagement expectations of providers in particular, including ensuring a more appropriate model for adult tertiary learners through a partnership approach
- addressing key gaps in the current international code, for example:
  - ensuring that international learners in student accommodation are safe, well and supported
  - responding explicitly to racism and discrimination
  - broader support for academic progress and personal development
  - more detailed requirements for providers to give opportunities for learners to maintain their physical and mental health
  - more detailed requirements to monitor and respond to learners at risk.

### ***Potential costs for domestic and international tertiary learners***

For all domestic and international tertiary learners, we expect potential costs to be:

- increased cost of services in tertiary education or student services fees, depending on provider responses (risk is considered to be low)
- impacts on access to tertiary education if increased costs are a barrier to participation (risk is considered to be low)
- time to learn about and work with the new code and complaints and disputes systems.

In addition, for international learners, there may be a perception of less focus on their pastoral care needs (which would be offset by continued specific requirements for providers to international learners).

### **Schools with international students**

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 students under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians. Further review of these requirements may be appropriate following law change and as part of the ongoing recovery of the international education sector.

We expect the key impacts to be:

- continuity, clarity and reduced burden on schools at a time of significant change through retaining current settings for schools (in a separate part of the new code) and the dispute resolution scheme for international students
- clarification of expectations relating to disciplinary action, particularly termination of enrolment, to ensure that these processes are fair and reasonable

- opportunity to consider whether a code specifically for schools is needed and, if so, what it might need to include, through awareness of the proposed law changes and the code changes for tertiary education.

Potential costs are:

- one-off cost of updating documentation and references to the new code.
- one-off cost of reviewing policies relating to termination of enrolment.

**Providers of tertiary education to domestic and international learners (includes staff and management, and their contracted service providers)**

We expect the key impacts to be:

- greater clarity of expectations from one code, rather than two overlapping requirements
- the processes and outcomes of the new code continue to support continuous improvement and effective feedback loops, as well as provide better complaint and dispute resolution
- more responsive services can better meet learner needs, and improve wellbeing
- reduced treatment costs from harm to learners, and cost of complaint and dispute resolution
- awareness of proposed law change enables providers to consider what changes they would want and how those respond to provider and learner needs, including changes for future code or dispute resolution scheme.

Potential costs are:

- one-off costs of adapting from interim to the new code and from two codes to one.
- cost of demonstrating compliance to a more complete code
- cost of new processes to deliver on the new code (for some providers).

**Signatory tertiary education providers predominately enrolling international learners (includes staff and management, and their contracted service providers)**

For the small number of tertiary providers that predominantly enrol international learners, there is likely to be an impact of reviewing and realigning practice to ensure that the additional requirements set out in Part 3 and Part 4 of this code are implemented. These providers have already had to update 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.

We expect the key impacts to be:

- greater clarity of wellbeing and learner engagement expectations
- more consistency with expectations for domestic learners reduces barriers to taking on domestic learners
- awareness of proposed law change enables providers to consider what changes they would want and how those respond to provider and learner needs, including changes for future a code or dispute resolution scheme

- clarification of expectations relating to disciplinary action, particularly termination of enrolment, to ensure that these processes are fair and reasonable.

Potential costs are:

- cost of adapting to the new code approach
- one-off cost of reviewing policies relating to termination of enrolment
- may not consider change necessary or desirable, especially in the current context.

### **Māori, iwi, hāpu and Te Tiriti relationship**

We expect the key impacts to be:

- proposed law changes would mean the code and dispute resolution scheme operation recognise Te Tiriti o Waitangi and its implications for providers and learners
- the proposed code requirements for provider plans and goals would offer an opportunity for Te Tiriti o Waitangi partner influence on providers
- the new code and dispute resolution are an opportunity for iwi and hapū supporting Māori learners to ensure providers are meeting expectations for those learners.

Potential costs are:

- increased cost of services in tertiary education or student services fees, depending on provider responses (risk is considered to be low)
- impacts on access to tertiary education if increased costs are a barrier to whanau, hāpu, and/or iwi supporting Māori learner participation (risk is considered to be low)
- time to learn about and work with the new code and complaints and disputes systems.

### **Code administrator (and any delegate administrator)**

We expect the key impacts to be:

- improves clarity/specificity of requirements
- one code will remove overlapping/conflicting expectations and a more comprehensive set of processes within the new code should reduce the need for education and compliance actions
- proposed law change will improve the fitness-for-purpose of the system and the administrator's role and functions within the system, including relationships with providers and the dispute resolution scheme and other agencies
- the proposed law change and changes to the new code and dispute resolution scheme will provide incentives for ongoing self-review and improvement by providers, reducing the need for regulatory action.

Potential costs are:

- one-off change costs to create guidance and change processes as changes to the code and law take effect
- ongoing potential cost of administering a more comprehensive code.

### **Dispute resolution scheme operator**

We expect the key impacts to be:

- new function (no pre-existing dispute resolution scheme for domestic learners, some issues have been within the Disputes Tribunal scope)
- proposed law change will improve the fitness-for-purpose of the system and the dispute resolution scheme operator's role and functions within the system, including relationships with the code and its administrator and other agencies
- the proposed law change and changes to the code and dispute resolution scheme will provide incentives for ongoing self-review and improvement by providers, reducing the need for regulatory action.

Potential costs are:

- one-off change costs to create guidance and change processes as dispute resolution scheme is implemented and changes to DRS and law take effect
- ongoing cost of DRS operator functions.