Regulatory Impact Statement:

Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021

Coversheet

Purpose of Document	
Decision sought:	This analysis and advice have been produced for the purpose of informing key policy decisions to be taken by Cabinet about a new code of practice for pastoral care which sets out shared requirements for domestic and international tertiary learners, and retains specific protections for international students, replacing the existing interim[1] and international codes.
Advising agencies:	The Ministry of Education is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.
Proposing Ministers:	Minister of Education
Date finalised:	29 June 2021

Problem Definition
Improved learner wellbeing and safety contributes to better educational achievement. Learner wellbeing and safety is a responsibility shared by learners, the government, education providers, whānau, the community, and others. While the responsibility is shared, the market, without intervention, does not place sufficient emphasis on learner wellbeing and safety. As the market does not, by itself, focus sufficiently on learner wellbeing and safety, regulation is necessary. A code provides an opportunity for the Minister to set out outcomes and key processes, while also allowing providers the flexibility to choose a response that suits them, their learners, and their communities and stakeholders.

Providers, working with their learners, are best placed to make the day to day decisions about how to support learner wellbeing and safety. Providers want to support the wellbeing and safety of their learners and are keen to maintain their reputation as good places to study. However, approaches are uneven with some providers relying on their expert judgment about what will make a difference and others using robust mechanisms to check that their policies and practices make a difference for their diverse learners. Some providers may place more emphasis on meeting employer needs or delivering on research and scholarship expectations than taking account of their current learners' needs and interests.

Given the different education settings and the need for continuous improvement, an adaptive and flexible approach is needed. Consideration needs to be given to the nature |

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[1] Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

of the provision, educational settings, type of learner, and the age and stage of learner. Any arrangements need to take account of academic freedom and institutional autonomy.

There needs to be clear expectations about learner wellbeing and safety. An outcomes-focused and results-oriented approach has been used. The code provides transparency about the expected outcomes but allows for providers and learners to work out the detail of how best to support learner wellbeing and safety with the shared aim of improving educational achievement.

Learners need to be able to influence provider practices. Diverse learners have different needs. Learners do not always feel that they are being heard by their tertiary education provider. While domestic and international learners have overlapping interests, any arrangements need to consider that international learners are often away from their family and friends.

Executive Summary

A package to support learner wellbeing and safety

This statement sets out the regulatory impact of a new code of practice for pastoral care which sets out shared requirements for domestic and international tertiary learners, and retains specific protections for international students, replacing the existing interim[2] and international codes.

It is part of a package of provisions aimed at better supporting learner wellbeing and safety. The package comprises:

- a new code of practice for the pastoral care of domestic tertiary and international learners, which must take effect by 1 January 2022;

- a new dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers, also to start by 1 January; and

- legislative proposals to support and reinforce the focus on student wellbeing and safety, to be progressed in the Education and Training Amendment Bill (No 2).

The overall purpose of this work is to develop a system of supports for the wellbeing and safety of domestic tertiary and international learners, through one set of clear rules and expectations that providers can tailor to their learners' needs.

I expect the proposed code and scheme rules to be in place for the next two to three years. This will allow for law changes to be confirmed and for learners and providers to have worked with these instruments and to refine them to ensure they remain fit for purpose and continue to evolve.

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[2] Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

A new code is needed

From 1 January 2022, a new code will take effect. The code aims to support and improve the wellbeing and safety of:

- all domestic and international tertiary learners, including those residing in student accommodation; and
- international school students.

It will replace:

- the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (the interim code), put in place urgently at the end of 2019; and
- the existing Education (Pastoral Care of International Students) Code of Practice (the international code).

This regulatory impact statement sets out:

- the rationale for the code (the problem definition and opportunity);
- possible options:
    - Option A: the interim code and international code are retained;
    - Option B: a single code covering both domestic tertiary and international learners;
    - Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet
- associated benefits, costs, and impacts;
- how the new arrangements will be implemented and monitored.

On balance, option B will affect the most positive change at the lowest cost. This option builds on existing understandings about the regulatory system, including the needs of learners, providers, and other stakeholders. It takes into account feedback from consultation and considers the pressure for more prescriptive requirements with the need for flexibility so that providers can consider the needs of their diverse learners.

Limitations and Constraints on Analysis

The following activities have supported the development of this Regulatory Impact Statement: public engagement in 2019 on the Education (Pastoral Care) Amendment Bill, subsequent implementation of the interim code, and during and after the six-week consultation period. Our understanding of how the proposals should be implemented, their likely impacts, and alternative options has been informed by public consultation. We are confident in the evidence of the current state of learner wellbeing and safety that is set out in this Regulatory Impact Statement.

The formal consultation period allowed for quality public participation. Many agencies have contributed to the development of the next code, providing additional quality assurance. This helps to address any risks due to incomplete evidence.

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

Uncertainties regarding costs include:

- Providers have different approaches to learner wellbeing and safety: some have well established approaches that require only incremental changes to give effect to the next code; others need to build new systems and processes.
- Learners are diverse and have different expectations that may fit well with, or challenge, providers who are giving effect to the code. Some want tertiary learners to be treated as adults and have responsibility for their own decisions; others want more detail about how learners will be supported.
- Whānau and communities want to have a greater role but the extent to which they will be involved is uncertain (it will be affected by learner and provider decisions).

Responsible Manager(s)

Julie Keenan

Policy Director

Te Ara Kaimanawa | Graduate Achievement, Vocations and Careers

Ministry of Education

29 June 2021

Quality Assurance

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	The Ministry of Education's Quality Assurance Panel has reviewed the Regulatory Impact Statement: *"Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021"* dated 29 June 2021.
	The panel considers that this Statement **meets** the Quality Assurance criteria. It contains evidence of extensive and effective consultation with stakeholders and reflects their views on the proposed new Code well. A convincing case is made for this Code with wellbeing requirements applying to all learners while allowing for supplementary provisions to meet the specific needs of particular groups of students, including international students.

Section 1: Diagnosing the policy problem

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

Background – The new code builds on the interim code and international code

1. The new code of practice is part of a wider package of proposals that build on the interim code and the International code. Aside from the code, the package includes the following proposals, which have separate Regulatory Impact Statements:

    a. Rules for the legislated dispute resolution scheme to resolve financial and contractual disputes between domestic tertiary learners and providers (also to start by 1 January 2022 alongside the new code); and

    b. Legislative changes to support and reinforce the focus on wellbeing and safety, and to ensure the settings for the code, code administrator and dispute resolution scheme are fit for purpose for the future.

2. The revised code builds on:

    a. the interim code that resulted from urgent law changes in 2019 to improve the welfare of domestic tertiary learners in student accommodation and reinforce learner wellbeing more generally.

    b. the international student code which has been in place since 2002.[3]

Status quo – There are two codes of practice for pastoral care, one for international learners and one for domestic tertiary learners

3. Providers that wish to enrol international learners opt to become signatory providers and follow the international learner code, which was first introduced in 2002. The current *Education (Pastoral Care of International Students) Code of Practice* (the international code) was published in 2016. It sets out detailed pastoral care requirements for signatories to the code.[4]

4. The *Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019* (the interim code) was put in place urgently at the end of 2019. It sets requirements for all tertiary providers in relation to a general duty of pastoral care for domestic tertiary learners. It also sets specific additional requirements for providers that own and operate or formally arrange for the supply of learner accommodation that is exempt from the Residential Tenancies Act 1986 (RTA). This was the focus of the interim code.

5. Prior to this, providers had limited guidance on how they should support their domestic learners (via a voluntary code of practice for student accommodation only). Consequently, provider wellbeing practices had not been consistent across the sector.

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[3] Currently the Education (Pastoral Care of International Students) Code of Practice 2016.

[4] To enrol, and provide educational instruction for, a person as an international student, providers must be signatories to a code that sets out a framework for the pastoral care of international students. Providers can apply to NZQA for approval to become a signatory.

6. The interim code was an urgent response to tragic events, and as such, was expected to be in place for one year until 1 January 2021. This was to allow time to develop, consult on, and issue a new code to replace the interim code. Due to the impacts of COVID-19, it was no longer practicable to have the new code fully developed and implemented by 1 January 2021. This is primarily because the code needs to be developed in a manner that enables full engagement with regulated groups and intended beneficiaries of the regulation. To take account of this, the Education and Training Act 2020 (the Act) extended the duration of the interim code to 1 January 2022.

7. This means there is a statutory requirement to have a new code for the pastoral care of domestic tertiary learners in place by 1 January 2022. Government intended that a revised code would expand on expectations for the safety and wellbeing of learners beyond learner accommodation, recognising that most learners are not in learner accommodation. Before issuing a new code, the Act also requires the Minister of Education to consult those parties that he considers likely to be affected by the code, including representatives of learners, parents, whānau, providers and signatory providers, and their staff, as well as the Privacy Commissioner. Consultation took place in April-May 2021.

What if we retained the status quo?

8. Issuing a new code is mandatory and the Minister has already signalled his intentions to issue a new code that improves and expands the existing interim code. We have considered whether the interim code should be reissued and whether the international code should be retained.

9. Retaining the status quo means that the international code would continue, and the interim code would be re-issued unchanged to fulfil statutory requirements. We have heard positive feedback about existing provisions. For example, learner services staff in providers have appreciated the clearer expectations for learner support services set out in the interim code. Having the interim code in place before COVID-19 also gave direction for providers on their obligations and responsibilities to their domestic learners and allowed a basis for domestic tertiary learners to approach conversations with their providers if they have a concern or complaint.

10. We have also heard, through feedback and provider self-reviews, that the existing provisions fall short in several areas:

    a. Learners and providers have said that they would prefer to have a combined code because the two current codes impose different expectations that are not consistent and, as a consequence, have higher compliance costs.

    b. Learners and providers have consistently said that the existing legislative framework is limited. The term 'pastoral care' is outdated, archaic and carries associations with religious and Pākehā cultural institutions that are not appropriate for today's tertiary education learners. This has implications for the new code and the Act's framework.

    c. Providers have asked for more clarity in several areas, including the overall expectations regarding providers' obligations for learner wellbeing and safety, learner voice and what it means for them to partner with learners, and how they can practically

honour and implement Te Tiriti o Waitangi. There is also uncertainty around learner accommodation for providers and learners.[5]

   d.   In terms of the international code, there generally is a good standard of compliance. However, feedback from learners and other stakeholders also indicates that there are gaps in requirements, areas of ambiguity and issues with implementation, transparency, and accountability. It is also important that requirements for them are not set at a lower level than those for domestic learners.

   e.   In this context, the sector has noted specifically that having separate codes for domestic tertiary and international learners is confusing and makes it difficult to navigate their obligations for learner wellbeing and safety.

11. The 148 submissions to the previous Education and Workforce Committee's Inquiry into learner accommodation provided significant new information on learner and provider experience of tertiary accommodation, and views on what they expect to see in the new code. For example, submitters commented on the lack of clarity around what types of wellbeing and safety practices should be available in learner accommodation.

12. The committee found that the system needs to be strengthened and highlighted the role that the proposed code and dispute resolution scheme could have in improving key areas. These include transparency and accountability in governance, dispute resolution and complaints, wellbeing and safety in student accommodation, and emergency planning and response.

What is the policy problem or opportunity?

Improved learner wellbeing and safety contributes to better educational achievement.

13. The approach is underpinned by New Zealand and international research and evidence about wellbeing. It takes into account the Organisation for Economic Co-operation and Development's (OECD's) wellbeing approach. The approach has been shaped by Kōrero Mātauranga, which heard from:
   a.   learners, their whānau, and their communities
   b.   education providers
   c.   employers and industries
   d.   other interested parties.

14. Building on work to support international learner wellbeing and safety, the approach uses the latest thinking about the role of Government in signalling expectations, regulating the market, and setting out consequences if there is poor performance. It considers the type of intervention needed to ensure the wellbeing and safety of children, youth, and older learners.

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[5] For example, some providers who thought they had student accommodation realised they do not, and vice versa. Learners can be unsure of the type of accommodation they are in. There are some accommodation providers who market themselves as 'student accommodation' due to location and preferred clientele, but whose accommodation is not covered by the code as it does not come within the definition of student accommodation as defined in the Act.

The ability to influence learner wellbeing and safety is shared by everyone, including learners, their whānau, communities, tertiary education providers, the government, and others.

15. Significant improvements to learner wellbeing and safety can be made if there is an integrated, connected, and cohesive system. The diversity of New Zealanders means that what any individual, family, whānau or community values and places relative importance on will vary. No single framework will capture all that matters for everyone. The role of whānau and community may change depending on the age of the learner, their connectedness to whānau and their communities, and their cultural identity.

16. General consumer protection laws have not had sufficient traction to drive a change in behaviours. If a learner seeks recourse from the courts, the process is expensive and time consuming.

17. Quality assurors have focused on educational quality and have had limited oversight of learner wellbeing and safety.

18. The code provides assurance to whānau about what providers offer, how providers review and improve their practices, and how learner voice is responded to.

Learners need to be able to influence provider practices

19. Learners do not always feel that they are being heard by their tertiary education provider. In the main, providers do a good job and have worked hard to give effect to the interim code and international code. There is pressure to have more culturally relevant and responsive practices and for better accessibility. Learner voice needs to reflect diverse learners. There needs to be more transparency about how learner complaints are handled – and there needs to be the ability to escalate learner complaints to better provide for dispute resolution.

Providers, working with their learners, are best placed to make the day to day decisions about how to support learner wellbeing and safety

20. Providers generally want to support the wellbeing and safety of their learners and are keen to maintain their reputation as good places to study. Given the different education settings and the need for continuous improvement, an adaptive and flexible approach is needed. Consideration needs to be given to the nature of the provision, educational settings, type of learner, and the age and stage of learner. Any arrangements need to take account of academic freedom and institutional autonomy. With input from learners (learner voice), self-review enables the provider to make choices about the actions needed to support the wellbeing and safety of their current learners.

There needs to be clear expectations about learner wellbeing and safety

21. An outcomes-focused and results-oriented approach has been used. The code provides transparency about the expected outcomes but allows for providers and learners to work out the detail of how best to support learner wellbeing and safety with the shared aim of improving educational achievement. A national framework that provides for local decision-making will best allow learners to get better access to the right information and support that takes account of their particular needs. An outcomes approach recognises the diversity of

beliefs, assumptions, values and ideas that shape New Zealanders' views of the world and what they believe matters for wellbeing.

22. There is an inherent tension, between the immediate assurance of standards (compliance/certainty) and the overall wellbeing for better education (a longer mission through self-improvement/flexibility).

There are opportunities to enhance existing provisions based on recent developments

23. Notwithstanding the statutory requirement to issue a new code, there are opportunities to enhance existing provisions in the longer term based on strategic shifts, as well as what we have heard and learned, since the interim code was introduced. This includes:

   a. ensuring the new code supports Government's strategic direction for education, including for a more learner-centred system and high-value international education;

   b. integrating expectations for government's obligations under Te Tiriti o Waitangi: We need to address system inequalities and continue to strengthen our system for Māori learners and whānau to support them to achieve their education aspirations. A key part of ensuring the system honours Te Tiriti o Waitangi will be building the cultural capability of those working within it to work with Māori;

   c. reducing complexity and ensuring the regulatory system is fit for purpose, clear, and accessible for stakeholders and regulatory bodies including the code administrator;

   d. enhancing provisions for supporting the wellbeing and safety of tertiary domestic and international learners: The learnings from the interim code and recovery of the international education sector provide an opportunity to ensure that regulatory settings continue to evolve to support the wellbeing and safety of learners; and

   e. further responding to ongoing concerns around mental health, psychological distress among learners, as well as racism, bias, and discrimination.

A new code provides a coherent framework to support learner wellbeing

24. The new code builds on the interim code and international code. Since 2020, providers have self-reviewed their performance and made improvements to their policies and practices.

25. Our experience has been that the previous 2004 voluntary code of practice has not been successful in providing the Government, learners and their families with confidence that quality wellbeing practices have been in place. The sector has also welcome the increased clarity provided through the interim code around expectations on them for supporting learners.

26. Prior to 2020, the Government had little information about the gaps in wellbeing practices are across the sector, what the most effective practices are, and the contexts within which they will or will not work. At that time, feedback from learners and their families suggested that the quality of provider wellbeing practices was unclear to them also. Furthermore, the

unnoticed death of Mason Pendrous in a Christchurch hall of residence in 2019 shook public confidence in providers' wellbeing practices.

27. An ongoing code would work alongside other statutory requirements and relevant guidelines for the health, safety, and wellbeing of tertiary learners (i.e. not duplicate them). These requirements cover a wide range of activities which will influence provider practices at different levels (e.g. organisational, environmental and at the individual level).

What objectives are sought in relation to the policy problem?

28. The overall purpose of the wider work programme, of which the code is one part, is to develop a system of supports for the wellbeing and safety of domestic and international learners. We are building on the interim code and international code and the work that providers have done to better support learner wellbeing and safety.

29. To achieve this purpose, the work programme has several key objectives, including to:

    a. strengthen and improve regulation relating to the wellbeing and safety of domestic tertiary and international learners and ensure it is fit for purpose so all learners are supported to achieve in their education;

    b. ensure the regulatory system is consistent and clear for all stakeholders, including education providers, accommodation providers, domestic learners, international learners, and communities; and

    c. honour Te Tiriti o Waitangi and support Māori-Crown relationships.

30. Although a code's purpose is to regulate provider behaviours, it could also encourage positive behaviours from different stakeholders, such as learners and communities, through information provision, relationship development, and consultation requirements.

31. The code will therefore contribute to the overall purpose and high-level outcomes of the work programme by raising the prominence of wellbeing and safety as a precondition to success in education. It will do this by fostering conditions for success and support of more equitable outcomes for diverse learners, including Māori, Pacific, disabled, LGBTQIA+, ethnic or migrant, and former refugee learners.

32. In this context, there are several code-specific objectives in relation to the opportunities and in addition to the overall objectives set out above, including to:

    a. enable providers to respond effectively to the diverse needs of learners across a variety of contexts; and
    b. ensure wellbeing is a whole-of-provider endeavour with practices that are transparent and continuously improving.

33. Although there are multiple objectives, they are not mutually exclusive. In fact,the option that is likely to best respond to the opportunities idenitified above and deliver the highest benefits across all stakeholders groups is one that will meet all of the objectives above. This is reflected in the criteria for options analysis in section 2.

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

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

34. For this analysis, we are looking at the current legislative framework. There are separate but related discussions about changing this framework to better enable a stronger focus on learner wellbeing and safety. This is discussed in a separate RIS, entitled 'Legislative changes to support learner wellbeing and safety'.

35. The options set out below will be assessed against the following criteria:

    a. *Enhancing learner wellbeing and safety*: Does the option provide certainty that the wellbeing and safety of learners will be supported and enhanced?
    b. *Developing good relationships:* Does the option enable all stakeholders to be involved in supporting the ongoing wellbeing and safety of learners?
    c. *Transparency, accountability, and continuous improvement:* Does the option ensure wellbeing is a whole-of-provider endeavour with practices that are transparent and continuously improving?
    d. *Flexibility:* Does the option enable providers and signatories to respond effectively to the diverse needs of learners across a variety of contexts?
    e. *Reduced complexity:* Does the option reduce complexity and duplication for providers and improve clarity for learners?
    f. *Te Tiriti o Waitangi:* Does the option honour Te Tiriti o Waitangi and support Māori-Crown relationships?

36. While all criteria are important to determining the best option, we consider that criteria (a) and (b) in particular are the most important to ensure that the code fulfils its purpose of supporting and enhancing the wellbeing and safety of all learners.

What scope will options be considered within?

There are several limitations on the scope of feasible options

37. The code is one mechanism that can be used to strengthen the focus on learner wellbeing and safety. It works alongside existing legislation, including offence and penalty provisions, and the dispute resolution scheme.

38. The Minister is legally obliged to issue a new code for the pastoral care of domestic tertiary learners to replace the interim code by 1 January 2022. The Act enables the Minister to issue separate codes, providing a framework for the pastoral care of domestic tertiary and international learners respectively, or a combined code for both learner groups. The Act also sets out the purpose and scope of the code. This limits options to address the opportunities identified in section 1.

39. The Minister has already signalled his intentions to issue a new code that improves and expands the existing interim code and covers both domestic tertiary and international learners to ensure consistent expectations that meet the needs of diverse learners.

40. Tertiary education includes a wide range of providers, learners, and a variety of contexts. This also constrains the range of options available. It is not feasible to develop a code that

gives detailed and prescriptive guidance on compliance, as it would risk focusing only on selective types of providers or stifling flexibility to allow providers to work with their learners and wider communities to design practices that best meet their learners' needs. Instead, the code needs to be relatively general to be applicable and meaningful to the range of education providers. This means an outcomes focused code that sets out expectations about key processes (such as the interim code) would be an appropriate structure for a wellbeing and safety code.

41. The following table provides an overview of the range of feedback. Further detailed feedback is included in Appendix 1 and is taken into account in the code. The feedback will also inform the development of associated guidance.

Table 1: Key messages

The safety and wellbeing of students is paramount, and the intent of the code is welcomed

The increased focus on wellbeing was almost unanimously welcomed. Questions were raised about implementation with learners wanting the scope of obligations expanded and strengthened and providers wanting clarity about what extends beyond their sphere of influence.

Learner voices are central

The importance of learner voices was seen as paramount. Differences in opinion between sectors existed in how this was best implemented. Learners expressed a desire to further embed learner voices in the development and implementation of the code. They felt that there needed to be explicit requirements of co-design and engagement throughout the code. Providers took a more conservative approach and were concerned about the logistics of implementation.

Te Tiriti o Waitangi is integral to the code and should be embedded in legislation

Te Tiriti o Waitangi was considered fundamental and there was a desire for Kaupapa Māori to be embedded throughout the code. Guidance on how to do this in a practical sense was requested.

The code needs to explicitly include the multitude of diverse wellbeing needs of learners

Whilst the code seeks to embody inclusiveness, learners felt that it was important to be more explicit and include reference to more specific groups and their diverse wellbeing needs. Learners advocated for strengthening the code to require providers to improve accessibility and provide culturally and spiritually safe spaces. Learners also supported the inclusion of ecological sustainability as a design requirement.

Providers acknowledged the importance of inclusive learning environments but were concerned about the extent of their responsibilities in practice and argued the code's requirements would not be practical, or enforceable, except in the most general way.

A careful balance needs to be achieved in practice between flexibility and prescription

Learners welcomed the prescription in many regards and thought that this was required to hold providers accountable for implementation. A principles-based approach with flexibility to respond to individual needs and circumstances was considered by providers to be the best approach to achieve better outcomes for learners. They felt that processes outlined in some parts of the code were too detailed and seemed overly prescriptive. While acknowledging this, learners welcomed

A careful balance needs to be achieved in practice between flexibility and prescription

the increased focus on processes and even asked for more prescriptive requirements in areas to increase accountability.

The privacy implications of the code will need careful consideration as it is implemented

The code, by its nature, has the potential to interfere with the autonomy and personal sphere of learners. How this will be managed in practice and balanced against privacy considerations needs to be carefully assessed when implementing the code.

We considered relevant experience from other countries in setting the scope for options identification and development

42. In developing the options set out below, we considered relevant experience from other countries, including the United Kingdom, Canada, and Australia, as well as information and evidence available within New Zealand. We have included key points here, which are also reiterated in the option descriptions below.

43. Over recent years, there has been a move by providers internationally to embrace more holistic approaches to the wellbeing of tertiary learners. An example of this is the adoption of the Health Promoting Universities approach by some universities in Europe, Asia and Latin America under the World Health Organisation.[6] This approach aims to incorporate health into university culture, processes, and policies and has become increasingly relevant in the context of COVID-19.[7]

44. Health promotion builds on the Ottawa Charter for Health Promotion,[8] which emphasises the interconnectedness between individuals and their environments, and recognises that health is created and lived by people within the settings of their everyday life, where they learn, work, play, and love. Health is viewed holistically, reflecting physical, mental, and social well-being and not merely the absence of disease or infirmity.

45. There has been concern that international frameworks, such as the one described above, do not include cultural or indigenous perspectives.[9] New Zealand's Child and Youth Wellbeing Strategy (NZCYWS) outcomes framework (which is the basis of the interim code) draws from cultural models of wellbeing such as *Te Whare Tapa Whā* and the *Whānau Ora* outcomes framework.

46. The NZCYWS framework has in turn been criticised for missing some of the needs of adults noting that younger people have more of a focus on learning while for older people, it is passing down knowledge and contributing to their communities.[10]

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[6] WHO | Types of Healthy Settings

[7] News - Healthy Universities

[8] Ottawa charter for health promotion (who.int)

[9] Berghan, G., Came, H., Coupe, N., Doole, C., Fay, J., McCreanor, T., & Simpson, T. (2017). *Te Tiriti o Waitangi-based practice in health promotion*. Auckland, Aotearoa New Zealand: STIR: Stop Institutional Racism. Accessed from: https://trc.org.nz/treaty-waitangi-based-practice-health-promotion

[10] For example, research indicates that volunteering, for example, can have a positive effect on wellbeing particularly for those aged over 40. (Tabassum F, Mohan J, Smith P. Association of volunteering with mental well-being: a lifecourse analysis of a national population-based longitudinal study in the UK. BMJ Open 2016;6).

What options are being considered?

47. The following options[11] have been considered:
    - Option A: the interim code and international code are retained;
    - Option B: a single code covering both domestic tertiary and international learners;
    - Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet.

48. We also considered whether lighter touch arrangements would be appropriate. Given the 2019 event that led to the current settings and the feedback we have had from learners and providers, this option has not been progressed. There is strong support for a code that covers both domestic tertiary and international students. Learners are keen for providers to more effectively address learner wellbeing and safety.

49. We considered whether there should be separate codes for domestic tertiary and international learners. Tertiary education providers are concerned about the workload associated with being covered by two separate but overlapping codes. They are concerned that the focus would be on compliance with each code, which would distract from a focus on learner wellbeing and safety. Separate codes would increase provider and code administrator compliance costs. Domestic tertiary and international students in the same classroom may be treated differently because of each code's requirements.

Option A: the interim code and international code are retained

50. This option would mean that:
    a. the interim code remained in place (but would be renamed and reissued by the Minister);
    b. the international code would remain in place.

51. Providers and signatories have been working since January 2020 to ensure that they have practices in place that comply with the interim code. Signatory providers have been complying with the international code.

52. While this option would be easy to implement, it would not address the issues raised by domestic tertiary and international learners about provider performance and accountability.

53. Prior to, and during consultation, the sector (and providers in particular) have noted that having separate codes for domestic tertiary and international learners is confusing and makes it difficult to navigate their obligations for learner wellbeing and safety.

54. This approach is supported by some international education providers.

Option B: a single code covering both domestic tertiary and international learners that would be outcomes focused and include key processes

55. This option would replace the interim code and international code with a single code covering both domestic tertiary and international learners. This option gives providers the flexibility to determine how to give effect to the outcomes and key processes set out in the code.

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[11] All options consider international tertiary and school learners as the legislation does not currently provide for separate codes.

56. This option allows providers to build on the work they are doing to comply with existing provisions by retaining strengths of the existing codes, refining requirements, and adding some new practices. This will likely increase the benefit to society, including providers/signatories as well as learners, compared with the status quo.

57. This option takes into account insights from learners and submissions to the inquiry into learner accommodation which suggest the interim code needs to be improved to increase the quality of wellbeing and safety practices, as well as setting out expectations for provider accountability to stakeholders about wellbeing and safety practices.

58. Other improvements that had been suggested prior to consultation focus on:

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

59. The international code has a good standard of compliance. However, feedback from learners and other stakeholders also indicates that there are gaps in requirements, areas of ambiguity and issues with implementation, transparency, and accountability. It is also important that requirements for them are not set at a lower level than those for domestic learners.

60. This option aligns expectations for domestic and international learner groups, where their needs are shared, while continuing to spell out the expectations that apply now for signatories regarding the specific needs of international learners. Within this structure there will be core learner wellbeing practices and additional or specific practices to reflect the distinct needs of international learners and those in learner accommodation. This would increase the benefit to society, including providers/signatories as well as learners, compared with the status quo.

61. 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 tertiary learners. This includes areas of general wellbeing, tertiary learner accommodation and appropriate levels for learner voice, feedback, and input.

62. This approach reduces complexity for providers/signatories in terms of requirements for learner wellbeing and safety and improves improve clarity for learners as well as providers/signatories.

63. While most submitters supported a combined code, some international education providers wanted to retain the current international code. Those international education providers valued the international code and were concerned about additional compliance costs when there is limited international education provision given COVID-19 and the closure of borders.

64. The code contains no substantial changes to the requirements for schools enrolling international learners. The school signatory provisions are in a new and separate part of the code for clarity. Restating of the current standards in this way ensures continuity and clarity as schools look ahead to the potential of returning international learners when this is possible.

65. Variations in the way outcomes and key processes are implemented across the sector may reduce clarity for the public, be subject to varying interpretations, and be perceived as unfair by some (if one provider offers more assistance than another).

66. Given the feedback that the draft code was too prescriptive, we have:

   a. pulled back from draft code requirements that would affect teaching and learning practice or overlap with academic quality assurance, while continuing to recognise that teaching staff have input into supporting learner wellbeing and safety.
   b. reduced examples in the code, including who to consult with or how to develop practices, shifting these examples to guidance material where appropriate.
   c. reduced and removed overlap with existing requirements, for example for accessible spaces and human resource policies.

Option C: a single code covering both domestic tertiary and international learners that would be outcomes focused and include key processes and prescriptive requirements that providers must meet

67. This option would:

   a. replace the interim code and international code with a single code covering both domestic tertiary and international learners; and
   b. include detailed and prescriptive requirements that providers must meet.

68. Under this option, the code would set out outcomes, key processes, and detail about how providers will give effect to the code. Prescriptive requirements would increase certainty for learners and stakeholders. However, providers would have to follow the rules, resulting in a limited ability to respond to their diverse learners. This option would be less likely to take into account the full range of educational settings and diverse learners, for example fulltime and onsite learners; parttime, work-based learners, distance learners, etc.

69. The focus would be on compliance with the prescription rather than learner wellbeing and safety. Provider flexibility and creativity would be limited, and innovation would be stifled.

70. In addition, the Government has little information about what the gaps in wellbeing and safety are for each provider, what the most effective practices are for their learners and communities, and the contexts in which they will or will not work. Adopting a prescriptive approach would also see a departure from the outcomes-focused approach taken in the interim code. This option would impact on academic freedom and institutional autonomy as providers would be directed in specific ways to address learner wellbeing and safety.

71. While some learners and providers supported this approach, for many providers, a prescriptive approach provided too much detail and limited the ability for providers to tailor learner wellbeing and safety arrangements to the needs of their diverse learners. This

option might not encourage much movement beyond the minimum (e.g. due to resource constraints).

72. While some learners and providers wanted more detail in the next code, there was strong feedback from many providers that the draft code was too prescriptive and narrow in its focus.

How do the options compare to the status quo/counterfactual?

	Option A: the interim code and international code should be retained	Option B: a single code covering both domestic tertiary and international learners	Option C: a single code covering both domestic tertiary and international learners with prescriptive requirements that providers must meet
Enhancing learner wellbeing and safety	0	++	- *(might not encourage much movement beyond the minimum)*
Developing good relationships	0	+	- *(might not encourage much movement beyond the minimum)*
Transparency, accountability, and continuous improvement	0	++	+
Flexibility	0	++	-
Reduced complexity	0	- *(different implementation of practices across the sector may reduce clarity for the public)*	-- *(a focus on compliance is likely to limit the flexibility and creativity we are seeking from providers, in terms of how to meet diverse learners' needs)*
Te Tiriti o Waitangi	0	+ *(requires reflection, justification, and dialogue to bring about a cultural shift to a whole-of-organisation approach to learner wellbeing and safety)*	0
Overall assessment	This is the baseline option. The analysis of other options considers whether those options have better or worse impacts than option A.	By improving the status quo, this option provides certainty that the wellbeing and safety of learners will be enhanced. This option maintains provider flexibility and creativity to adapt practices to their learners' needs. Any potential risk around clarity can be carefully managed by clear guidelines.	This option is worse compared to the status quo as it would likely cause providers to focus on compliance rather than addressing learner wellbeing and safety. While clear rules provide greater certainty on the quality of wellbeing support, this option may stifle innovation and flexibility. This option also risks not being applicable across the sector given its complexity in terms of providers, learners and learning contexts. It may therefore be unclear for some learners how their wellbeing will be supported if the code does not seem to cater to their specific provider's context.

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

The most effective solution is Option B

73. The proposal for a combined code that is outcome focused and has key processes is the preferred option. The new code builds on, and embeds, the existing provisions that currently exist across the interim and international codes.

74. In designing a mandatory code, it is important to achieve a reasonable balance between taking an overly paternalistic role (to ensure consistency of objectives and how they are achieved quickly and sustained over time) and allowing providers freedom to choose what approach they take (to be responsive to its specific context and learner body). This means a largely outcomes-focussed approach (such as taken in the interim code) would be an appropriate structure for the new code as it provides a consistent set of outcomes for all providers (to improve consistency) and flexible practices to enable providers to consider and respond to the diverse needs of their learners and learning contexts.

Proposed structure of the new code

75. We propose that the new code include:

   a. core learner wellbeing requirements that apply to all learners[12] whether they be domestic or international, or participating in provider activities on-campus, off-campus or in learner accommodation.[13] These would be the fundamental conditions needed for any learner to flourish and succeed in their tertiary studies and beyond; and

   b. additional or more specific requirements to reflect the distinct needs of learners in these contexts (e.g. those in learner accommodation and for international learners).

76. 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. It is broken down into six substantive parts, as set out below:

   a. Part 3 sets the direction for provider practices at the whole-of-provider level.

   b. Part 4 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.

   c. Part 5 sets out additional practices in tertiary learner accommodation.

   d. Part 6 retains distinct requirements for tertiary international learners, structured in a similar way to the format of the general tertiary learner sections.

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[12] This includes industry trainees and apprentices enrolled in vocational education and training with tertiary education providers.

[13] Tertiary providers involved with student accommodation that is exempt from the 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.

e. Part 7 sets out requirements for schools enrolling international learners. It effectively restates current provisions, as no substantial changes have been made here. The only changes relate to the language used in this part of the code.

f. Part 8 relates to code administrator reporting and monitoring requirements.

77. Despite taking a largely outcome-focused approach, the new code retains more detailed requirements for international learners in parts 6 and 7, including for example where there are higher risks (e.g. those under 18) and in relation to key processes to support the Government's objectives for international education.

This combination of options meets all the objectives

78. Overall, we consider this proposal will ensure consistent expectations that meet the needs of diverse learners and support a shift to a wider, developing system of supports for learner wellbeing and safety because it:

a. continues to focus on outcomes and flexible processes that enable providers to support their learners in ways that best meet their needs (*flexibility & enhanced learner wellbeing and safety*);

b. requires providers to increasingly involve learners, as well as whānau, staff, local communities, and iwi, as they review the adequacy of their policies and processes in meeting all the outcomes of the code (*developing good relationships)*;

c. allows providers to build on the work they are doing to comply with existing provisions by retaining strengths of the existing codes, refining requirements, and adding some new practices (*enhanced learner wellbeing and safety & transparency, accountability, and continuous improvement)*;

d. aligns expectations for domestic and international learner groups, where their needs are shared, to improve clarity for providers and learners (*reduced complexity*); but

e. continues to spell out the expectations that apply now for providers regarding the specific needs of international learners (*enhanced learner wellbeing and safety*);

f. sets expectations for providers to have culturally responsive practices for supporting learner wellbeing and learners' identity, language, and culture (*Te Tiriti o Waitangi & enhanced learner wellbeing and safety*).

79. The new code also integrates the expectations for the Crown's obligations under Te Tiriti o Waitangi. It aims to address inequalities to strengthen our system for Māori learners and whānau to support them to achieve their education aspirations. Providers are also expected to be able to give effect to article 2 rights. The new code requires providers to work with learners, whānau, staff, local communities, and iwi to design strategic goals, plans and practices for learner wellbeing and safety, and safe spaces for learners to use te reo and tikanga Māori.

What are the marginal costs and benefits of the option?

Summary of expected costs and benefits

80. Most benefits and costs of the new code are not able to be quantified at this stage. While providers have mentioned the extra costs associated with giving effect to a detailed code, information about the actual monetised costs was not included in their feedback.

81. The key expected benefit of the new combined code covering domestic tertiary and international learners is to provide greater clarity and consistency for both learners and providers of expectations on providers for their learners' wellbeing and safety. Beyond this, the purpose of the new code is to:

   a. further embed the early focus on wellbeing and safety to support achievement that the interim code has started to encourage;

   b. support community confidence in providers' support for their learners' wellbeing and safety; and

   c. ensure that providers that are not meeting the expected standards are aware of these gaps and working to address them.

82. To the extent that the new code raises standards of wellbeing support, it could be expected to lead to benefits for both learners and providers, with flow-on public benefits.

83. The expected key cost of the new code is in assessing its implications (and the extent to which they are different from the existing provisions) and demonstrating compliance. Some providers may need to make changes to processes or services to meet the requirements of the code, with associated costs. It is not expected that these changes will be significant in 2022 because the new code builds on existing provisions, meaning providers can build on the work they are doing now to comply with these.

Cost benefit analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			

Regulated groups	**Tertiary education providers and signatory providers (including contracted service providers)**
	Contracted providers of services covered by the code may include health and wellbeing services, advisory services, learner accommodation.
	  a. One-off costs of adapting from the interim to the new code and from two codes to one
	  b. Cost of demonstrating compliance with a more complete code
	  c. For providers that are not currently meeting the expectations of the code or do not have practices in place to deliver on new expectations in the code, there is a cost of making changes to comply with the new code
		Low/medium (depending on incidence)	(a), (b), (d), (f) and (g) near certain; (c) and (e) uncertain and likely to affect relatively few providers (there is a risk that costs could be passed onto learners)

	Signatory tertiary providers that predominately enrol international learners
	Costs are as for tertiary providers, also:
	   d. One-off cost of reviewing policies relating to termination of enrolment
	   e. May not consider change necessary or desirably, especially in the current context
	
	Schools with international learners
	   f. One-off cost of updating documentation and references to the new code
	   g. One-off cost of reviewing policies relating to termination of enrolment		

Regulators	**Code administrator**
	   a. One-off change cost to create guidance and adapt processes as the new code takes effect
	   b. One-off cost of communicating the changes
	   c. Ongoing potential cost of administering a more comprehensive code
		Low: the code administrator function is expected to be less than $1.251 million in 2021/22. For 2022/23 and outyears $1.211 million is available.	(a) and (b) near certain; extent of (c) is less certain and will depend on provider response to the new code.

Learners	**Domestic and international tertiary learners**
	   a. increased cost of services in tertiary education or learner services fees, depending on provider responses
	   b. impacts on access to tertiary education if increased costs are a barrier to participation
	   c. time to learn about and work with the new code and complaints systems
	
	International learners only
	In addition to the above:
	   d. there may be a perception of less focus on their pastoral care needs
		Low/no cost	The risk of (a) and (b) occurring is considered to be medium as providers may pass on any extra costs to learners; (c) is near certain; (d) is unlikely as it is offset by continued specific requirements in the code on providers for their international learners

Māori (whānau, hapū and iwi)	Potential costs are:
	   a. increased cost of services in tertiary education or student services fees, depending on provider responses
	   b. impacts on access to tertiary education if increased costs are a barrier to whānau, hāpu, and/or iwi supporting Māori learner participation
	   c. time to learn about and work with the new code and complaints systems.
		Low/no cost	The risk of (a) and (b) occurring is considered to be low; (c) is near certain

Wider government	**The Courts**, to the extent that there are prosecutions under the offence or penalty provisions. **Government** may bear costs if regulated parties pass costs on to learners, and if increased costs to learners lead to higher learner loan costs or uptake of student allowances	Low/no cost	**Courts**: not certain, not expected to occur frequently. **Government**: not certain, but expected to be unlikely given that uptake rates are high already and

			there are limits on the amount learners can get through loans and allowances
Total monetised costs	Largely unknown	Up to $1.251 million in 2021/22, and up to $1.211 million in 2022/23 and outyears.	Not certain
Non-monetised costs		Low	Not certain
Additional benefits of the preferred option compared to taking no action			

Regulated groups	**Tertiary education providers and signatory providers (including contracted service providers)**
	Contracted providers of services covered by the code may include health and wellbeing services, advisory services, learner accommodation.
	   a. greater clarity of expectations from one code rather than two overlapping requirements
	   b. the structure and framework of the new code enable flexibility, support continuous improvement and effective feedback loops, and provide better complaint and dispute resolution
	   c. more responsive services can better meet learner needs and improve wellbeing (leading to increased learner engagement and achievement in tertiary education)
	   d. reduced treatment costs, reduced need for remedial action and reduced learner withdrawals due to inadequate pastoral care provisions
	
	Signatory tertiary providers that predominately enrol international learners
	Costs are as for tertiary providers, also:
	   e. More consistency with expectations for domestic learners reduces barriers to taking on domestic learners
	
	Schools with international learners
	   f. continuity, clarity, and reduced burden at a time of significant change through retaining current settings for schools
	   g. clarification of expectations relating to disciplinary action, particularly termination of enrolment, to ensure that these processes are fair and reasonable
		Low/medium
		
		Low
		
		Low/medium
		
		Low
			(a) and (b) are near certain
			
			(c) and (d) is less certain and is dependent on providers' response to the new code
			
			Extent of (e) is uncertain and dependent on providers' response to the new code
			
			(f) and (g) near certain

Regulators	**Code administrator**
	   a. improved clarity/specificity of requirements
	   b. 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
		Medium	(a) near certain; (b) and (c) are likely but less certain and depend on providers' responses to the new code and need

	c. changes to the code provide incentives for ongoing self-review and improvement by providers, reducing the need for regulatory action		for support in adapting to the new requirements
Learners	**Domestic learners** a. clearer expectations for what providers must do and how they must work, including ensuring a more appropriate model for adult tertiary learners through a partnership approach (and therefore greater confidence in tertiary education services) b. understanding of learner rights to influence providers, and ability to raise suggestions and concerns about provider practices that affect them	Medium	(a) and (b) are near certain
	c. benefits to wellbeing, where provider practices better meet learner needs and recognise their identity, culture, and community d. benefits to educational achievement and success, where practices enable learners to improve or maintain wellbeing and focus on their studies e. reduced harm from inadequate practices *In addition to the above, there are further benefits for the following learner groups.*	Low	(c), (d) and (e) are less certain and depend on providers' response to the new code
	Māori learners f. requirement for 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 g. expectations that providers engage with learners as part of their community would enable whānau perspectives of learners to be heard	Low	(g) and (i) are less certain as impacts on learner and whānau engagement may occur if provisions change in response to the new code; expect these would improve over time
	Disabled learners h. explicit expectations that provider services are accessible i. learner voice and engagement expectations will explicitly require engagement with diverse learners, which includes disabled learners **Pacific learners:** *Same as (g) above* **Rainbow community learners:** *Same as (i) above* **Ethnic, or migrant and former refugee learners:** *Same as (g) and (i) above*	Low/medium	(f) and (h) are likely but less certain as these impacts depend on providers' response to the new code
	International tertiary learners j. 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 similar level, where their needs are shared (this also addresses key gaps in the current international code) k. existing specific protections for international learners are maintained	Medium	(j) and (k) are near certain

Māori (whānau, hapū, iwi)	Potential benefits are: a. the code requirements for provider plans and goals would offer an opportunity for Te Tiriti o Waitangi partner influence on providers b. the new code is an opportunity for iwi and hapū supporting Māori learners to ensure providers are meeting expectations for those learners	Low	Extent of (a) and (b) is uncertain and depends on providers' approach and response to the new code
Wider government	Potential benefits are: a. better outcomes from tertiary education b. improved wellbeing for learners c. reduced treatments costs from harm due to inadequate pastoral care provisions (this might for example include healthcare costs, crime)	Low	(a), (b) and (c) are uncertain but expected to grow/become more visible over time
Total monetised benefits	Unknown	N/A	
Non-monetised benefits		Medium/low	

Key assumptions underlying the costs and benefits analysis

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

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

Current practice in providers

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

   a. provider self-reviews undertaken over the course of 2020 in relation to the interim code;
   b. submissions and feedback received during the consultation on te oranga me te haumaru ākonga | learner wellbeing and safety; and
   c. code administrator information.

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

86. The recovery plan sets out a phased response and rebuild from the impacts of COVID-19, including ongoing work to review regulatory settings to ensure recovery supports the goals of the International Education Strategy. International education has been hit hard by COVID-19 disruptions, which have significantly impacted revenue, organisational stability, and future planning for signatories to the current international code. This has implications for the capacity and capability of signatory tertiary education providers and schools with international learners to implement requirements under the new code.

Signatory tertiary education providers

87. Signatory tertiary education providers that predominately enrol international learners 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.

Schools with international learners

88. The primary focus of the new code is embedding the strategic shift towards a learner-centred, wellbeing-focused tertiary education system which empowers learners. In general, the approach taken in the current international code appropriately reflects a traditional pastoral care approach for learners under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians.

89. No substantial changes are being made to wellbeing and safety requirements for international school learners, so the current provisions remain in place for them. This ensures continuity and clarity as schools look ahead to the potential of returning international learners when this is possible. There are two minor terminology changes to the part of the new code relating to schools with international learners.

90. Further review of these requirements may be appropriate following legislative change and as part of the ongoing recovery of the international education sector.

91. The response of regulated parties to the new code

92. Our assumptions about the behaviour of regulated parties are that:
    a. tertiary education providers, including signatory providers, will:
        i. assess the implications of the new code for their activities accurately, using information from the code administrator,
        ii. make the necessary changes to become compliant with the code;
        iii. make appropriate efforts to absorb the cost of necessary changes within the provider to avoid significant costs to learners;
        iv. consider passing any significant costs of quality or service improvement on to the learner;
        v. seek clarity about requirements under the new code before making any significant changes or decisions about provision.
    b. contracted service providers will:
        i. assess the implications of the new code for their activities accurately, using information from tertiary education providers and the code administrator;
        ii. make the necessary changes to become compliant with the code;
        iii. seek to be compensated by providers for any necessary changes;
        iv. seek clarity about the new code before making any significant changes or decisions about provision.

Section 3: Delivering an option

How will the new arrangements be implemented?

93. The Minister will issue the new code immediately following Cabinet decisions to ensure providers know about the scope of the code for 2022 in time to feed into planning and budgeting. The new code will come into effect from 1 January 2022. Some submitters want more time for the development of the next code while other submitters are keen for the next code to be implemented on 1 January 2022.

94. The Minister may, by notice in the *Gazette*, appoint a person or an agency to be responsible for administering a code. The code administrator can (with the Minister's permission) delegate functions to another party.[14]

95. It is expected that the implementation approach of the new code will draw significantly on the approach taken to implementing the interim code and the international code. Signatories have had several years of experience with the international code, and tertiary providers generally have been working with the interim code over the last 18 months. Experience with the existing codes has shown:

    a. the importance of information and education to support good practice, and reduce compliance activity; and

    b. that complaint volumes can be high in the period following a new code, which indicated the importance of being resourced to respond to high volumes of queries in the start-up period.

96. In line with the approach to implementing the interim code and international code, it is expected that the code administrator, once appointed, will:

    a. begin developing code guidance for providers, in consultation with the sector (this is to occur in the second half of 2021 and may also involve running workshops with the sector, including into next year);

    b. work with providers to build capability so that providers understand their obligations for learner wellbeing and safety, including in learner accommodation;

    c. work with providers to help them meet their obligations; and

    d. support the development of a sound information base on the code and its implementation.

97. The initial focus of implementation will be on information and education, enabling providers to ask questions about the implications of the code and the changes to existing provisions, and avoid misinterpretations or hasty changes that may increase costs unnecessarily. Focusing on information and education for providers will also enable the code administrator to build on existing information and undertake effective risk monitoring and management.

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[14] Under the old Education Act 1989, section 238H enables the Minister to appoint a code administrator. Under the new Act, this function is embedded into regulations under section 648, however, schedule 1, clause 7(3) saves provisions of the old Act related to the code administrator until the date3 on which regulations are made under the new Act.

98. Joint Ministers have agreed to provide funding for the administration of the new code for domestic providers at $1.251 million in 2021/22 and $1.211 million in 2022/23 and outyears. This is in addition to existing funding for administering the code for international providers. The slightly higher funding in 2021/22 will allow the administrator to adjust its activities to respond to provider needs over the 2022 calendar year. If the administrator finds that provider readiness for the new code is greater or that providers quickly build capability and provide quality performance information, the funding may not be exhausted.

99. We expect that the code will evolve over time, both in line with legislative changes and based on any adjustments and clarifications needed as its implementation progresses. This will be a key message of the communication with and information for the sector.

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

100. It is the role of the code administrator to develop monitoring and compliance arrangements to manage concerns of non-compliance, investigate alleged breaches, issue improvement notices and take other statutory action appropriate to the seriousness of the breach, and monitor performance as well as manage risk.

101. In terms of existing statutory actions, the Act 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).

102. Under outcome 1 of the code, providers must develop strategic goals and plans for supporting the wellbeing and safety of learners and use these to review the quality of their practices. Following any self-review, providers are required to take appropriate action within a reasonable timeframe to address any deficiencies in their practices. Providers must also arrange for peer-to-peer review of their self-assessment by suitably skilled and qualified staff from a different provider. The code administrator determines the frequency of both self- and peer-reviews.

103. The code administrator will report regularly about its performance and the performance of the sector.

Appendix 1: Who are the key stakeholders and what are their views?

104.   A range of parties will be affected by the new code, and the expected costs and benefits are set out in section 2. The focus of this section is on identifying key stakeholders and outlining how they are affected, as informed by feedback through public consultation.

Users of tertiary education

105.   All learners, including diverse domestic tertiary and all international learners, will be directly impacted by the code which places expectations on providers and signatory providers to support learner wellbeing and safety. The code will mean that learners will have more clarity about what providers must do and how learners can influence provider practices. Learners will see benefits to their wellbeing and therefore their educational achievement and success, where provider practices better meet diverse learners' needs.

106.   The code is well supported. We have heard from learners generally that learner voice is central to the success of the code and that mechanisms for learners to have a voice need to be more effective. Striking an appropriate balance between providing support while also recognising learners as adults is important. Learners also raised concerns that some of the costs of implementing increased requirements may be passed on to them (e.g. providers may remove money from learner representative bodies to fulfil increased wellbeing requirements).

107.   Māori learners highlighted the importance of being seen as part of, and engaged alongside, their whānau and communities. We also heard that Māori learners should not be expected to carry the burden of educating their provider about Te Tiriti o Waitangi or Māori interests.

108.   We heard similar themes from Pacific learners, who support the emphasis on the collective (rather than an individualist approach) and noted the importance of working in tandem. They also cautioned that the code should not put the burden of 'fixing things' on the learners.

109.   Disabled learners highlighted the importance of recognising that disability includes interplay between individuals and the barriers in their environment. We heard about ongoing issues around accessibility, sense of inclusion and inconsistencies in support.

110.   We heard from international learners about the importance of clear and accessible information and that the language used reflects the diversity of different learner communities and voices. While they are aware that domestic learners do not have the same protections as they do, it is important that these provisions are retained for international learners.

111.   Ten submissions were received from student associations and two from interested individuals: one a learner, the other a recent graduate and former student representative. All submitters broadly supported the code's intended purpose of providing a basis for ensuring and protecting learners' safety and wellbeing. One of the two individual submitters was pleased to note that the code is a step towards providing learners with appropriate care and support, rather than treating them as "income and expenditures streams."

112. Almost without exception submitters wanted to see stronger and more explicit commitment to engagement with learners in the development and implementation of the code. Most learners welcomed the focus on learners but thought that processes for including learner voices in a real and meaningful way needed to be strengthened.

113. The National Disabled Students' Association noted the absence of learners with disabilities in the code (though mentioned in the Discussion Document). They also considered that the tone of the code was not conducive to inclusion. They were concerned about providers not listening to learners, or that the diversity of needs would not be taken into account by the provider.

114. Many submitters raised the issue of discrimination and harassment in learning environments and wanted this more clearly articulated in the code. Establishing inclusive environments was very important to learners and they recommended that any support and complaints services be required to be accessible and mindful of cultural considerations.

115. Referencing a recent Youth survey, YouthLaw Aotearoa drew attention to refugee background learners, same-sex attracted teenagers and transgender and gender diverse teenagers as groups whose wellbeing needs should be further protected by the code.

116. Concerns were raised about the potential risk of compromising adult learners' autonomy and right to privacy, particularly the private lives of students when they are off campus.

117. Even though the discussion document characterises the code as being "principles-based", learner submissions worried about the potential impact of the code's prescriptiveness. They were particularly concerned about the whole process becoming a "tick box" exercise.

118. Learners indicated their unwillingness to cover any additional compliance costs that implementing the code may entail, either directly through having to pay increased fees, or indirectly through experiencing service cuts in areas not covered by the Code. They also noted how the code's prescriptive nature corresponds to an absence of a learner co-design. They want the code to have lots of detail so that learners can hold providers to account.

119. Some learners and providers acknowledged that tertiary learners are often adults and, therefore, should be able to take responsibility for their wellbeing and safety. Others considered that some learners can be vulnerable because of their circumstances (for example those moving between countries and those leaving home and their normal supports).

Māori interests – whānau, hapū and iwi

120. Ensuring the system of supports for learner wellbeing and safety honours Te Tiriti o Waitangi and works well for Māori is part of the Crown's responsibility under Te Tiriti o Waitangi. The education system has some way to go to ensure Māori receive their general citizenship rights under article 3 of Te Tiriti o Waitangi. It also has an important role in enabling Māori to exercise authority over their taonga, in particular te reo, tikanga and mātauranga Māori, under article 2 of Te Tiriti o Waitangi.

121.   In our discussions with Māori and other participants considering the impact of changes for Māori, we have heard about the importance of meaningful whānau engagement which leads to better outcomes for Māori learners. Māori involvement in governance and decision-making should reflect Māori learners and the role of mana whenua.

Families and community interests

122.   Ensuring that providers establish relationships with families and communities is important, especially relationships that value, promote and build on language, identity and culture (as noted above). Furthermore, involving communities in identifying and defining their own issues is more likely to lead to more sustainable solutions that work for learners, their supporters, and their communities.

Regulated parties: tertiary education providers and signatory education providers (includes their contracted service providers)

123.   All providers are directly impacted by the code as it is binding on them. Providers will be expected to have (or form) an understanding of the new code and enact the requirements it sets. These requirements cover a wide range of activities which will influence provider practices at different levels (e.g. organisational, environmental and at the individual level).

124.   Some providers, including contracted service providers (e.g. learner accommodation providers) may need to make changes to their practices to meet the new expectations. This impact on providers is likely to vary depending on a range of factors including the quality and scope of support provided to learners under the existing regulatory requirements. Based on the evidence available, it is not possible to make a detailed provider-by-provider analysis of the likely impacts.

125.   Providers agree with the importance of the code and the role it plays, however, they felt more balance is needed in terms of making visible learners' responsibilities and agency regarding their own wellbeing. There was also some concern about the code setting out obligations beyond learner support services and student accommodation. Some participants noted the importance of being clear in the expectations that providers should do 'all reasonable' (whereas 'all possible' may not be realistic).

126.   Some providers have a holistic approach to wellbeing that is embedded throughout and within their organisation.

Regulated parties: Universities

127.   Seven New Zealand universities and their peak body, Universities New Zealand (UNZ), agreed in principle with the creation of a code that covers both domestic and international learners, and they acknowledged the importance of wellbeing to learner achievement. However, they all had some concerns that the draft code was too prescriptive and would not fulfil its intended purpose of providing a basis for continuous improvement but instead serve as a compliance tool. They were concerned about extending institutions' duty of care beyond the provision of safe learning environments to include students' physical and mental health as well as their social wellbeing.

128. Most universities considered that there needed to be more clarity about their obligations in terms of the dimensions of care and support under the code. They were worried about the broadening of the concepts of wellbeing and safety to matters that they felt were outside their control. Many submitters focused on the use of words such as 'timely', 'efficient', 'appropriate', and queried what they might mean, or how they could be measured or monitored.

129. Universities unanimously supported consultation with stakeholders to inform strategic goals, and especially of learners' perspectives. However, many submitters also noted that the need to consult with communities was perhaps too broad. For example, UNZ suggested that further consultation beyond learners and staff be mainly limited to whānau, iwi and/or communities, where those whānau, iwi and/or communities are actively and deliberately involved in supporting the wellbeing and safety of learners.

130. Universities were particularly concerned about the code interfering with academic pedagogy. Universities highlighted the diversity of learners at their institutions, arguing that the code's requirements would not be practical, or enforceable, except in the most general way. Universities expressed that the relationship with Māori and Pasifika learners is different and supported the need for Māori and Pacific learner spaces. Some universities questioned the relevance of 'ecological sustainability' and human resource management to learner wellbeing and safety.

131. Many universities argued some processes and practices described in the code should not be included in a pastoral care framework. An overarching theme in the submissions from universities was the lack of acknowledgement of the diverse nature of tertiary learners. Submitters considered that it was inappropriate to impose strict requirements in relation to all learners as this would potentially make them feel like their liberties are infringed unnecessarily. The University of Canterbury thought that the code could benefit from differentiating those learners who are most vulnerable.

132. Some universities expressed concern that some draft code wording about learner voice could permit students to voice hateful or unacceptable views.

133. A particular focus for the universities was the management of wellbeing and safety, where responsibility should fall, and who should be included. Related to this was the issue of access to public health and wellbeing services.

134. Another key element of submissions from universities was concern about learners who are studying remotely or overseas (including on exchange). It was felt that the code placed an impossible obligation on providers in these circumstances. For example, while providers will take reasonable steps to provide information and direct learners to access health services in those countries, the provision of those services will be entirely within the realms of the respective country and outside the provider's control.

Regulated parties: Te Pūkenga

135. In principle, submissions received from Te Pūkenga and its subsidiaries supported the move towards combining the international and domestic codes. However, they articulated a range of concerns in relation to the code's perceived ambiguity and proposed scope. Most submitters felt that the code takes too wide an approach and would require them to do things that they are not resourced to do.

Regulated parties: Private Training Establishments (PTEs)

136. While PTEs broadly supported the code's outcomes, they canvassed a range of concerns in their submissions about associated processes. Some PTEs noted that, while they take all reasonable steps to ensure and maintain the wellbeing of learners, they deal with adult learners in whose private matters they have no interest in interfering.

137. Some PTEs noted that the discussion document states that wellbeing and safety are "a shared responsibility between government, providers, learners, whānau, and the wider community", but there is no detail on how the Government would contribute to sharing this responsibility in a tangible way. Responsibility, cost, and liability for developing and maintaining learner wellbeing appears to rest solely with providers. A few PTEs felt the prescriptive nature was counterintuitive to the principles-based approach to the code.

138. Many submissions felt that the draft code adopted a "one-size-fits-all" approach and that this could not take into account the complexities of certain kinds of learning situations, for example, nursing students whose safety and wellbeing is determined by a range of factors such as the availability, cost and safety of transport to clinical placements which can necessitate travelling to isolated areas at night and for long distances.

Regulated parties: schools

139. The Minister has already signalled that the focus of the new code is to embed the strategic shift towards a learner-centred, wellbeing focused tertiary education system that empowers learners. In general, the approach taken in the current international code appropriately reflects a traditional pastoral care approach for learners under 18 years, where staff and residential caregivers effectively take on the responsibilities of parents and guardians.

140. The Minister has signalled his intention not to make any substantial changes to wellbeing and safety requirements for international school students. This is partially because legislation and further policy work is needed to be able to do this. Retaining current provisions also ensures continuity and clarity as schools look ahead to the potential of returning international students when this is possible.

141. Feedback has signalled that the focus on tertiary providers is appropriate and that code expectations for school signatory providers do not require changes at this time.

Regulator: code administrator (and any delegated administrator)

142. The code administrator function will require capacity to communicate the changes to the existing provisions, respond to enquiries and complaints, investigate and monitor performance, and prepare a tailored approach to enforcement action for breaches. The administrator is also required to take reasonable steps to publicise the code to providers and learners, including (creating and) publishing guidelines for providers.

143. The code needs to include sufficient detail so that the code administrator can monitor and investigate performance. The code also needs to be flexible so that the code administrator can use the code in diverse education settings and with diverse learners.

Wider government

144.   There may be impacts for the Courts, to the extent that there are prosecutions under the code, however, these are expected to be rare.

145.   There may be implications for health-related services. If providers are better at identifying wellbeing and safety needs, more learners may be directed to health-related services. If there is not timely access to high quality health related services, learner wellbeing and safety may be compromised.

146.   There may be other impacts for wider government, including benefits from better wellbeing and educational outcomes for learners. The guidelines developed by the code administrator will provide an opportunity to highlight healthy practices.