

Supplementary Analysis Report:

Interim Code of Practice for Pastoral Care of Domestic Tertiary Education Students

Section 1: General information / Decisions already made

About this report

The Ministry of Education has prepared this Supplementary Analysis Report (SAR) and is responsible for the analysis and advice set out in it, except as otherwise explicitly indicated.

Cabinet agreed that a SAR should be provided to the Social Wellbeing Committee and Cabinet in December 2019 along with the Cabinet paper seeking approval of the content of the interim Code of Practice [CAB-19-MIN-0530 refers]. The scope of the SAR as agreed by the Associate Minister of Finance and the Minister of Education on advice from The Treasury and the Ministry of Education [Treasury Report T2019/3467 refers] covers:

- the expected impacts of the interim Code of Practice on affected parties
- how implementation of the interim Code of Practice will be supported
- the risks and planned mitigations
- how the Ministry of Education will use information on the operation of the interim Code to help develop the ongoing Code, and how gaps in analysis will be addressed.

The agreed content of the supplementary analysis is presented in the following structure:

1. General information / decisions already made
2. Problem definition and objectives
3. The proposal: interim Code of Practice
4. Costs and benefits
5. Implementation and operation
6. How information on the operation of the interim Code will be used to inform the ongoing Code
7. How gaps in the analysis will be addressed when the ongoing Code is being developed

Decisions already made

Cabinet has agreed to amendments to the Education Act 1989 to enable the Minister of Education to issue a Code of Practice for pastoral care of domestic tertiary education students. The amendments are currently before select committee and have the following public policy objectives:

- to address regulatory gaps relating to the pastoral care of domestic tertiary students, to

ensure that students live in a safe environment and have a positive experience that supports their educational achievement:

- ensure the consistency and effectiveness of the codes of practice for domestic tertiary and international students:
- ensure that providers are accountable for pastoral care standards.

The Minister of Education has stated his intention to issue an interim Code of Practice (interim Code) in December 2019, subject to the legislation passing. The intended scope of this interim Code is to set out a general duty of pastoral care and some interim expectations for tertiary education providers that offer student accommodation during 2020. An ongoing Code of Practice (ongoing Code) would be developed during 2020, with fuller engagement with learners, whānau and tertiary education stakeholders.

Key limitations and constraints on analysis

Development of the interim Code and this SAR is constrained by the tight timeframes for the legislative amendments and for issuing the interim Code in time for it to take effect in 2020. Many elements of the work that would usually be sequenced so that results can contribute to the next step of work are instead being done concurrently. Timing has also limited the opportunity for consultation and engagement on impacts of the change.

It is expected the final details of an interim Code will continue to be developed until early December, meaning that the assumptions about the content of an interim Code in this Report may not be borne out.

In these circumstances, it is challenging to identify the full set of impacts, risks and opportunities from the proposed interim Code. The sections of this Report identify relevant key assumptions, with specific assumptions and information limitations laid out in Section 4: Costs and benefits.

Quality Assurance Reviewing Agency

Treasury and the Ministry of Education

Quality Assurance Assessment

A joint panel with representatives from the Regulatory Quality Team at the Treasury and the Ministry of Education has reviewed the Supplementary Analysis “Interim Code of Practice for Pastoral Care of Domestic Tertiary Education Students” produced by the Ministry of Education and dated 15 November 2019. The panel considers that it partially meets the Quality Assurance criteria.

Due to the tight time frame, the interim Code has been developed concurrently with the Supplementary Analysis Report (SAR), and there has been limited opportunity for stakeholder consultation on current practice and the potential impacts of the interim Code. Consequently, the analysis in the SAR is based on the most advanced draft of the Interim Code available, but not the final version.

It has not been possible to quantify all the costs and benefits. The main expected benefit of the interim Code is greater clarity of Government’s expectations and the main expected cost

is in assessing the implications and demonstrating compliance. There may be an increase in costs to some tertiary providers if they need to make changes to processes or services, however their ability to pass on these costs to users through fees will be limited in 2020.

The approach to implementing the interim Code with the initial focus on education and information could help manage some of the implementation risks and uncertainties about its impacts. The SAR indicates that development of the ongoing Code will be informed through monitoring and implementation of the interim Code, stakeholder consultation and planned independent audits of tertiary education institution practice.

Responsible Manager (signature and date)

Julie Keenan

Policy Director

Graduate Achievement, Vocations and Careers

Ministry of Education

Section 2: Problem definition and objectives

2.0 Scope of this section

This section provides a brief outline of the nature and scale of the problem and the objectives of the interim Code.

2.1 Problem definition

Overview

There are regulatory gaps in the general duty of pastoral care expected of tertiary education providers towards their domestic students and in the existing requirements for Residential Tenancies Act (RTA) exempt student accommodation. Requirements (outlined in the next section) for tertiary education institutions and private training establishments to support student wellbeing, and for providers of exempt student accommodation are not detailed. This results in a lack of clarity for providers, and variable standards of pastoral care, which can mean that existing requirements are not met as intended, some students are not adequately supported to be safe and well, and the benefits of enhanced wellbeing for tertiary students are not gained, with associated economic and social impacts as well as educational impacts. The absence of detailed requirements also means that there is a lack of trust from some students and whānau that students will receive adequate support for wellbeing from tertiary education providers and the type of pastoral care expected in student accommodation.

There is also a disparity between the pastoral care protections in place for international students and the requirements in place for domestic tertiary students. While international students experience different circumstances and can be particularly vulnerable while in New Zealand, other tertiary students can be vulnerable as a result of moving away from families and support networks, adjusting to tertiary study, experiencing physical or mental health issues, and difficulties maintaining a reasonable standard of material wellbeing.

The impact of the existing RTA exemption requirements has been that there is little consistency of standards required for student accommodation, and the existing voluntary code of practice has not led to effective self-regulation or clear standards. As the voluntary code has not been reviewed since its creation in 2004, it cannot be expected to reflect current needs and priorities for student accommodation.

In terms of the wider responsibility of pastoral care for their learners, evidence from consultation on Student Voice¹, the National Education and Learning Priorities, and the Education Conversation: Kōrero Mātauranga shows that domestic tertiary students, parents and whānau, and others in the sector are concerned at the need for enhanced support for wellbeing and mental health in particular, students at risk, safe and inclusive learning environments.

Through the consultation on tertiary student voice we heard about the importance of wellbeing and mental health to students and the need for consistent, quality services to support these. The importance of accessibility and availability of mental health and wellbeing services also came through strongly at the recent Reform of Vocational Education learner

¹ Student voice is defined as ‘opportunities at all providers (including universities, polytechnics, wānanga and private training establishments) for all students’ views and values regarding academic, non-academic, and wellbeing matters to be heard and responded to’

workshops on the Unified Funding System. We heard that these issues are prevalent amongst all learner groups we engaged with, including Māori, Pacific and disabled learners, and learners feel that sufficient support is lacking. Evidence from recent engagement in the Korero Mātauranga also reinforced the bias, discrimination and racism many tertiary students encounter throughout the education system. Learners highlighted the need for more and higher quality services and want available supports to be visible and clear right from the start in tertiary education.

While there are reputational motivations for providers to address shortcomings in the general standard of support for student wellbeing and in the standards of pastoral care in student accommodation, the absence of a more comprehensive regulatory framework means that there are no consistent expectations on providers, despite the high family and community trust placed in providers for accommodation services in particular. Setting requirements which will apply across the tertiary education sector will support consistent outcomes in these areas.

Background

Current requirements that relate to pastoral care

There are no detailed pastoral care requirements set out for domestic tertiary students comparable to those required by the Education (Pastoral Care of International Students) Code of Practice 2016 (the Code for international students). Requirements exist for both TEIs and PTEs, but these are stated broadly and do not require consistent actions:

- Section 181 of the Education Act requires the council of a tertiary education institution, 'in the performance of its functions and the exercise of its powers to ensure that proper standards of integrity, conduct, and concern for the public interest and the well-being of students attending the institution are maintained'.
- NZQA's PTE Registration Rules include requirements relating to student safety, meeting students' specific needs, and implementing an approach to student well-being that encompasses, where relevant, taha whānau (social/cultural), taha wairua (spiritual), taha hinengaro (emotional/mental) and taha tinana (physical) dimensions to encourage and enable student progress.

There is variation across the tertiary sector in how TEOs provide services to students, and no general requirement for reporting. Some information on student services is available through the Compulsory Student Services Fee (CSSF) reporting requirements, and all universities and institutes of technology and polytechnics (ITPs) currently charge a CSSF to help fund student services. All universities and most ITPs offer health services, counselling services, and sports, recreational and cultural activities. The wānanga do not currently charge a CSSF, but indicate that they offer a range of pastoral care related services. Some PTEs also charge a CSSF to fund activities in support of student wellbeing, particularly for counselling services and sports, recreational and cultural activities.

Many domestic tertiary education providers are signatories to the Code for international students, and are therefore aware of and confident in meeting its requirements for their international students. Although the same standards do not currently apply to domestic students, providers have some experience in meeting expectations for student safety and wellbeing.

Student accommodation

Student accommodation is regulated by the entirety of the RTA, in terms of non-exempt providers (such as private accommodation arrangements) and by section 5B of the RTA for exempt providers. Halls of residence are likely to be exempt student accommodation under section 5B of the RTA. This requires them to offer additional services to residents and to set 'house rules' that encourage personal development and a sense of community. However it also means that the majority of the RTA does not apply to halls of residence. Halls of residence must also meet the requirements of the accommodation contracts they enter into with the students who live there.

In 2004 a working group of accommodation providers developed a voluntary code of practice to cover the principles of a safe environment, and quality residential services in RTA-exempt halls of residence. This voluntary code has not been reviewed since, and it is not clear how widely it is used in practice.

TEC has estimated that current TEI accommodation facilities provide accommodation for up to 19,133 students, which represents 6.0% of total 2019 TEI enrolments. This accommodation was reported across 123 facilities; the smallest providing three beds and the largest providing 847 beds. The majority of accommodation is supplied by the 79 Halls of Residence/Colleges which have a total maximum capacity for 14,256 students.

TEC analysis demonstrates that TEIs have many different approaches to providing accommodation to their students from residential colleges (providing academic and wider pastoral support) through to self-contained flatting, family or apartment-style arrangements. Around half of halls of residence accommodation is provided directly by TEIs, the remainder has some or all responsibilities met by contracted third party providers.

A wide range of roles and responsibilities sits within the term "Residential Assistant" (RA), a senior student employed to support accommodation staff. TEC has estimated that across the TEI sector there is on average one RA per 35.4 students in halls of residence. This ratio is slightly smaller for the ITP sub-sector at one RA per 27.0 students, compared to the University sub-sector at 36.4.

Objectives of the proposed interim Code

The proposed interim Code will support the overall objectives of the Education (Pastoral Care) Amendment Bill:

- address regulatory gaps relating to the pastoral care of domestic tertiary students, to ensure that students live in a safe environment and have a positive experience that supports their educational achievement:
- ensure the consistency and effectiveness of the codes of practice for domestic tertiary and international students:
- ensure that providers are accountable for pastoral care standards

The interim Code will have two main components, with associated objectives:

- a general duty of pastoral care: to clarify and enhance the existing requirements for TEOs in relation to student wellbeing so that tertiary learning environments

consistently, appropriately and effectively support students to be safe and well

- specific requirements for tertiary education providers that offer student accommodation: to support the safety and wellbeing of students and improve the consistency of standards in student accommodation

Section 3: The proposal: interim Code of Practice

3.0 Scope of this section

- This section provides a brief description of:
 - the interim Code and how it is going to work
 - who it will impact and how

3.1 Description of the interim Code

The interim Code will set out requirements for all tertiary education providers in relation to a general duty of pastoral care for all domestic tertiary students, and specific additional requirements for providers that own and operate or formally arrange for the supply of student accommodation that is exempt from the RTA.

The code will set out clearer expectations for tertiary education providers that own and operate student accommodation, or have written agreements with accommodation providers to supply accommodation to their students. The shift from self-regulation to a mandatory code will also ensure that these clearer expectations apply to all tertiary education providers, and through them, to all RTA-exempt providers of student accommodation.

The clearer expectations set out in the proposed interim code will cover expected outcomes and pastoral care standards for learners including:

- risk assessment and management
- the nature of oversight and contact with students,
- the type of support offered to students,
- roles and responsibilities for student accommodation staff

Setting out requirements for a general duty of pastoral care will provide further guidance to providers so that they can meet these existing requirements, as well as presenting an opportunity to support student wellbeing as part of our broader move towards a student-centred approach.

The requirements proposed for the interim Code would not mean that providers are expected to be solely responsible for student safety and wellbeing, and entirely accountable for any instance of harm; or remove student or whānau responsibility for their wellbeing. The purpose of the Code is to ensure that providers endeavour to enable all domestic tertiary students to experience a learning environment that proactively supports wellbeing and effectively connects them to communities and the wider network of support, including specialist health or wellbeing services, when needed.

Giving effect to the interim Code

A Code Administrator will be appointed to monitor and investigate the extent to which providers comply with the code. In practice, the Code Administrator will also have an important role in informing and educating providers on the Code and ways to meet its requirements, and in receiving and responding to complaints of breaches. The Code Administrator may delegate any or all of its functions, duties, and powers to another person or agency, with the Minister’s permission.

In response to concerns about compliance or a breach of the interim Code, the Code Administrator may issue quality improvement notices and if appropriate impose limitations on a provider's power to enrol students. The Bill includes a new criminal offence for code breaches by providers that result in serious harm or death to students, and a new civil pecuniary penalty for serious breaches of regulatory requirements set out in the code. The offence and penalty are new provisions that will apply to both international and domestic Codes. The Ministry of Education worked with the Ministry of Justice to set out the proposed offences and penalties, which are informed by similar provisions in other legislation including the Health and Safety at Work Act.

The Bill gives new powers of entry and inspection of student accommodation to the Code Administrator, reflecting the scope of the Code for student accommodation. These powers include the ability to inspect and copy information relating to the management of that accommodation, ask any person at any student accommodation to make or provide statements about matters relating to student safety at the accommodation.

Application to the court for penalties under the codes of practice will be sought only for the most serious breaches, and where other sanctions available to the Code Administrator do not match the severity of the breach involved.

Timing and transition to ongoing Code

The interim Code will expire on 31 December 2020. An ongoing Code will be in place for 2021, and all changes introduced in the Bill will apply to providers and signatory providers in relation to domestic tertiary students and international students. This will include a dispute resolution service for domestic tertiary students (international students already have access a dispute resolution service).

3.2 Who will be impacted by the interim Code

A range of parties will be affected by the interim Code, and the expected costs and benefits are set out in the next section. The focus of this section is on the impacts of an interim Code in 2020, rather than the impact of the ongoing Code.

Regulated parties: tertiary education providers

All providers can be expected to need to understand the interim Code and make an assessment of its implications for them.

Some providers may need to make changes to their practice. This impact on providers is likely to vary depending on factors including the quality and scope of pastoral care provision in student accommodation and support for student wellbeing based on 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.

The interim Code has not yet been drafted, but unintended impacts on providers will be managed throughout this process by ensuring that the interim code builds on existing good practice, is informed by sector insights, is in line with expectations set in the Code for international students and the 2004 voluntary code, and sets minimum standards which reinforce the core needs and rights of students while recognising the scope and reasonable limits of provider responsibilities in relation to student wellbeing.

Regulated parties: contracted providers of pastoral care services

All contracted providers would be expected to need to understand the interim Code and make an assessment of its implications for them.

As with tertiary education providers, some contracted providers may need to make changes to their practice. This impact, and the risk of unintended impacts, will also be managed in the same way as for tertiary education providers.

The cost of any changes to practice may be met by being absorbed by providers (reallocated from other priorities or purposes), or passed on to users (through fees, although there are limits on doing this in 2020 due to existing budgets and fee setting).

Regulators

The new Code Administrator function needs to be established, with capacity to communicate the change, respond to enquiries and complaints, investigate and monitor compliance, and prepare a tailored approach to enforcement action for breaches.

Users of tertiary education

Domestic tertiary students will be expected to experience:

- Increased trust and confidence in pastoral care services, including accommodation services.
- Increased engagement and achievement in tertiary education, to the extent that either greater confidence in pastoral care or better provision of pastoral care services enables better educational results (although this is not likely to be seen immediately in 2020)
- Potential for increased costs, passed on from regulated parties, if fees are raised (although this is not likely in 2020 as a result of the Interim Code, as budgets are largely set for 2020 already)

Wider government

There may be impacts for the Courts, to the extent that there are prosecutions under the Code. These are expected to be rare, so may not occur in 2020.

There may be impacts for wider government, including benefits from better wellbeing and educational outcomes for students (as above, and any reduction in government-funded treatment costs, noting that these are not likely to be seen immediately in 2020) and any marginal increases in spending if increased costs are passed to students and if students increase uptake of government support as a result (this is not likely in 2020 for the reasons stated above, and given that uptake rates are high already and current amounts available to students through loans and allowances in relation to accommodation costs).

Section 4: Costs and benefits

4.0 Purpose of this section

This section of the analysis provides:

- Summary of the expected costs and benefits for affected parties (i.e. TEIs, PTEs, tertiary accommodation providers, students and their families /whānau, government agencies).
- Key assumptions underlying those costs and benefits.

4.1 Summary of expected costs and benefits

Most benefits and costs of the changes are not able to be quantified at this time due to gaps in information about current practice and response to the interim Code.

The key expected benefit of the interim Code is to provide greater clarity of Government's expectations of providers before the start of the 2020 academic year. The purpose of issuing a Code is to:

- Support community confidence in providers' support for student wellbeing
- Encourage a focus on student wellbeing to support participation and achievement in education
- Set expectations for the standards expected from tertiary education providers
- Ensure that providers that are not meeting the expected standards are aware of these gaps and working to address them

The key expected cost of the Interim Code is in assessing its implications and demonstrating compliance. Some tertiary education providers may need to make changes to processes or services in order to meet the Code, with associated costs. It is not expected that these changes will be significant in 2020.

To the extent that the interim Code raises standards of pastoral care provision, it could be expected to lead to benefits for students and providers, with flow-on public benefits.

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Likelihood	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	Tertiary education providers: <ol style="list-style-type: none"> Costs of assessing the implications of the Code for their provider Costs of demonstrating compliance to internal provider management and governance, and to the Code Administrator as required 	(a) and (b) near certain; (c) uncertain and likely to affect relatively few providers	Low/medium (depends on incidence)
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	<p>c. for those providers (or through providers, contracted service providers) that are not currently meeting the expectations of the Code, the costs of making changes to meet the interim Code (could include staffing or service changes).</p> <p>Contracted providers of services covered by the code (may include: health and wellbeing services, advisory services, student accommodation). Costs are as for tertiary education providers.</p>		
Regulators	<p>Code Administrator:</p> <p>a. Costs of communicating the change</p> <p>b. Costs of establishing a Code Administrator function for domestic tertiary students, including:</p> <ol style="list-style-type: none"> i. Monitoring compliance ii. Responding to inquiries and complaints iii. Preparing a tailored approach to enforcing the Code, including the proposed quality improvement notices, civil pecuniary penalty and criminal offence 	<p>(a) and (b)(i) both certain.</p> <p>Extent of (b)(ii) and (iii) uncertain, will depend on provider response to Code.</p>	<p>Low: Code Administrator function expected to be less than \$1.5 million in 2020; ongoing costs tbc based on ongoing Code to be developed in 2020.</p>
Wider government	<p>The Courts, to the extent that there are prosecutions under the new offence or penalty provisions.</p> <p>Government may bear costs passed on from regulated parties, if they pass costs on to students, and if increased costs to students lead to higher student loan costs or takeup of student allowances</p>	<p>Courts: not certain, not expected during the time the interim Code is in force.</p> <p>Government: not certain, not expected during the time the interim Code is in force.</p>	<p>Low/no cost</p>
Students and whānau	<p>Students and whānau may bear costs passed on from regulated parties, if they raise student services fees, tuition fees or student accommodation fees in response to the interim Code. Increased costs for students and whānau may have impacts on access to tertiary education</p>	<p>Students and whānau: not certain, not expected during the time the interim Code is in force.</p>	<p>Low/no cost</p>
Total Monetised Cost	<p><i>Largely unknown</i></p>	<p>Not certain</p>	<p>Less than \$1.5 million in 2020</p>
Non-monetised costs		<p>Not certain</p>	<p>Low</p>

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	<p>Greater clarity of expectations for service providers (leading to public confidence in service provision, increased willingness to use services, reduced queries/concerns)</p> <p>Increased student engagement in and achievement in tertiary education.</p> <p>Reduced student withdrawals and need for remedial action by providers resulting from inadequate pastoral care provision</p>	<p>Confidence in service provision relatively certain; difficult to quantify.</p> <p>Impacts on engagement and withdrawal may occur if pastoral care provision changes in response to the Code: uncertain.</p>	<p>Low/medium</p> <p>Low</p>
Regulators	<p>Greater assurance of the quality of pastoral care to support educational engagement and achievement</p>	<p>Certain.</p>	<p>Medium</p>
Wider government	<p>Better outcomes from tertiary education.</p> <p>Improved wellbeing for students</p> <p>Reduced treatment costs from harm resulting from inadequate pastoral care provision (domains might include healthcare costs, crime).</p>	<p>Impacts may occur if pastoral care provision changes in response to the Code: uncertain.</p>	<p>Low</p>
Students and whānau	<p>Students and whānau: greater confidence in tertiary education services.</p> <p>Students:</p> <ul style="list-style-type: none"> • Increased achievement in tertiary education • Improved wellbeing • Reduced harm resulting from inadequate pastoral care provision (domains of reduced harm might include social isolation, healthcare costs, crime). 	<p>Certain.</p> <p>Impacts on engagement and withdrawal may occur if pastoral care provision changes in response to the Code: uncertain.</p>	<p>Medium</p> <p>Low</p>
Total Monetised Benefit	<p>Unknown</p>		
Non-monetised benefits			<p>Medium/low</p>

4.2 Key assumptions underlying those costs and benefits

The key assumptions being made relate to:

- The scope of the interim Code
- Current practice in tertiary education providers
- The response of regulated parties to the Interim Code.

The scope of the Interim Code, its empowering legislation, and its implications

The interim Code is not yet in final draft, and is to be considered by Cabinet in December 2019. The empowering legislation is scheduled to be reported by Select Committee on 3 December 2019. It is assumed that legislation will enable an interim code to be issued in December, and that an interim Code will:

- avoid, as much as possible, setting requirements that affect contracts and facilities that are already in place for 2020 delivery. This will include: current staff contracts, contracted service provision, and physical buildings.
- incorporate the elements of the 2004 voluntary code for student accommodation, updated to reflect current regulatory practice
- reflect relevant expectations from the Code for international students not set expectations beyond the 2020 year, as it expires at the end of 2020
- an initial focus on support for sector capability in the first half of 2020, allowing providers an opportunity to identify any gaps between existing practices and the requirements of the interim Code and make plans to address these..

Current practice in tertiary education providers

Our understanding of current practice in tertiary education providers is based on:

- Tertiary Education Institution responses to Tertiary Education Commission requests for information on accommodation practices, and to review and report on current systems and processes in place to ensure student safety and wellbeing. These requests were made because there is limited quantitative and qualitative data available regarding RTA-exempt student accommodation as a result of the current self-regulatory approach.
- Submissions on the Education (Pastoral Care) Amendment Bill, including those by universities, polytechnics, students and current and former staff of tertiary providers.
- relevant expectations from the Code for international students insights from a sector advisory group that has provided officials with sector and learner insights on the interim Code
- an assumption that practice in PTEs is not significantly divergent from that of TEIs, and is largely consistent with relevant expectations from the Code for international students. There is no means to test this assumption in the time available

The response of regulated parties to the interim Code

Our assumptions about the behaviour of regulated parties are:

- tertiary education providers will:
 - assess the implications of the interim Code for their activities accurately, using information from the Code Administrator
 - make the necessary changes to become compliant with the Code
 - make appropriate efforts to absorb the cost of necessary changes within the provider, to avoid significant costs to students
 - consider passing any significant costs or costs of quality or service improvement on to students

- seek clarity about the ongoing Code before making any significant changes or decisions about provision
- contracted service providers will:
 - assess the implications of the interim Code for their activities accurately, using information from tertiary education providers and the Code Administrator
 - make the necessary changes to become compliant with the Code
 - seek to be compensated by providers for any necessary changes
 - consider changing their offering or exiting the market if an interim Code sets significantly different or more costly expectations for their provision.
 - seek clarity about the ongoing Code before making any significant changes or decisions about provision

Section 5: Implementation and operation

5.0 Purpose of this section

This section of the analysis provides:

- How the new arrangements will be given effect.
- How the implementation risks will be managed or mitigated
- How the implementation of the interim Code relates to other work related to the Code.

5.1 How the new arrangements will be given effect

The Education (Pastoral Care) Amendment Bill proposes that the Minister will appoint a Code Administrator, and that the Code Administrator can (with the Minister’s permission) delegate functions to another party.

It is expected that from 1 January 2020, NZQA will be the Code Administrator for the Interim Code, and will delegate elements of the Code Administrator functions to Universities New Zealand which would take on relevant university-related code administration responsibilities.

NZQA has shared its intentions for implementing the domestic interim Code Administrator role. These will continue to develop alongside work to develop the Code. These are that NZQA, or UNZ under delegation, will:

- work with tertiary education providers to build provider capability so that tertiary education providers understand their obligations, particularly relating to student accommodation.
- produce guidance for the whole of the sector and run workshops for tertiary education providers.
- work with tertiary education providers to help them meet their obligations.
- develop monitoring and compliance arrangements to:
 - a. manage concerns of non-compliance
 - b. investigate alleged breaches
 - c. issue improvement notices and take other statutory action appropriate to the seriousness of the breach
 - d. monitor performance and manage risk
- support the development of a sound information base on the Code and its implementation. This will include understanding which elements of the Interim Code require adjustment or clarification for the ongoing Code.

5.2 How the implementation risks will be managed or mitigated

The proposed approach to implementing the Initial Code will manage some of the key implementation risks, which relate to speed of the development and implementation of the Code and uncertainties about its impacts.

The proposed initial focus on information and education will enable providers to ask questions about the implications of the Code, and avoid misinterpretation or hasty changes that may increase cost unnecessarily.

Information and education for providers will also enable NZQA to build on existing information and enable effective risk monitoring and management.

The contingency funding that Cabinet has set aside for 2020 administration of the interim Code will allow NZQA to adjust its activities to respond to provider needs over 2020. If NZQA finds that provider readiness is greater or that providers quickly build capability and provide quality performance information, less funding may be needed.

The Code Administrator will have appropriate monitoring and accountability arrangements, including performance measurement. These will be developed over 2020.

5.3 How the implementation of the interim Code relates to other work related to the Code

The implementation of the interim Code in 2020 will draw significantly from the approach to implementation of the Code for international students. The proposed Code Administrator and many tertiary providers have experience with the Code for international students, and will work with both codes during 2020. Experience with the Code for international students has shown:

- the importance of information and education to support good practice, and reduce compliance activity: an evaluation of its implementation noted that the sector highly valued the extra support and responsiveness to particular sectoral needs.
- that complaint volumes can be high in the period following a new code (trebling in the first year after implementation of the Code for international students), and this indicates the importance of being resourced to respond to high volumes of queries in the start-up period.

Implementation will be taking place alongside the development of the ongoing Code. This is likely to provide opportunities to use early responses to the interim Code in the development of the ongoing Code, and to consider alignment with the Code for international students.

It is expected that the results of independent audits of TEI accommodation (commissioned in response to a request from TEC) will become available after the interim Code is announced. This is because the audits are due before the end of December 2019, and analysis of the audits will likely be completed in early 2020. These audits, and the changes to TEI policy and practice that may follow from their recommendations, are likely to change provider practice in student accommodation.

Other related work that will be able to inform the implementation of the interim Code (and development of the ongoing Code) includes:

- the ongoing roles of NZQA and UNZ in quality assurance, including mātauranga Māori quality assurance

- government response to consultation on tertiary education student voice, following an analysis of submissions to the late-2019 consultation
- the finalisation of the strategy for education that follows from the Shaping an Education System for New Zealanders consultation, and development of Ka Hikitia and a Pacific Education Plan
- ongoing work to implement the International Students' Wellbeing Strategy, showing what contextual supports can work to support wellbeing.

Section 6: How information on the operation of the interim Code will be used to inform the ongoing Code

6.0 Purpose of this section

This section of the analysis covers:

- Information on how and when the impact of the new arrangements will be monitored, including for unintended consequences.
- How this information could be used in developing the ongoing Code.

6.1 Information on how and when the impact of the new arrangements will be monitored

NZQA intends to carefully monitor the impacts of the interim Code, in particular on queries and complaints, during the first year of implementation. This monitoring will be important to ensure that Code Administrator resources are focussed on meeting needs and on the highest priority work; as well as identifying any unintended consequences from the interim Code and any adjustments needed to address these. Any functions NZQA delegates to UNZ would be monitored in terms of the delegation approved by the Minister.

Monitoring might be expected to include:

- Volumes and analysis of queries and complaints
- Provider and learner feedback received on the Code Administrator, and on the Code and provider performance
- Stakeholder informal feedback, for example, through relationships with provider and learner peak bodies

Several of the potential costs and benefits identified in section 4 above will take some time to eventuate, so would not be expected to be seen during the period of the interim code.

NZQA's performance of this new regulatory function will be included in agency planning and performance documents and monitored in line with the usual Crown entity monitoring approach.

6.1 How this information could be used in developing the ongoing Code of Practice

It is expected that the following types of information may be available to inform the development of the ongoing Code:

- Volumes and analysis of queries and complaints; which may identify to what extent and which parts of the interim Code are causing concern (this may also assist in developing the disputes resolution scheme)
- Provider and learner feedback on the interim Code, provider performance, and the Code Administrator; which may identify which parts of the interim Code require changes in behaviour
- Stakeholder informal feedback; which may provide early informal insights into the experience of the interim Code

This information may inform the development of the Code and the processes to support it, or may assist in developing questions and consultation documents for an ongoing Code.

Section 7: How gaps in the analysis will be addressed when the ongoing Code is being developed

7.0 Purpose of this section

This section of the analysis focusses on how the development of the ongoing Code can ensure that that Code is well informed by evidence of current practice and its results, using sources including in-depth stakeholder consultation and evidence and data on current practice and its results.

7.1 How will the ongoing Code be informed by evidence of current practice and results?

It is expected that the development of the ongoing code will be better informed by evidence of current practice and results. Examples of the information expected to be available before the ongoing code is finalised includes:

- evidence from thorough stakeholder engagement and consultation, which is an opportunity to understand:
 - current practices across the range of providers, including the range of types of provision, its costs, and how providers respond to the different needs of diverse student groups
 - learner and whānau expectations and feedback on their needs from pastoral care in tertiary education
 - the expected impact of a proposed ongoing Code
- early results from the implementation of the interim code, including feedback from the Administrator’s monitoring of results (see section 6 above)
- any unintended consequences resulting from the interim code
- fuller information on TEI practice and upcoming changes from the independent audits due to report in late November and December 2019

7.2 When and how will the new arrangements be reviewed?

The interim Code expires at the end of 2020, so a scheduled review of its arrangements is not necessary.

The development of an ongoing code will, in effect, include a review of which elements of the interim code and its implementation should be continued.

Ongoing monitoring of the implementation of the initial Code will provide an early warning of any developing problems, such as higher than planned volumes of queries, significant stakeholder concerns, or unintended consequences. These would be considered by agencies and discussed with Ministers as appropriate.