



Education report: Improving tertiary education equity and learner outcomes through a focus on learner wellbeing

To:	Hon Chris Hipkins, Minister of Education		
Date:	09 Dec 2020	Priority:	High
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Messaging seen by Communications team:	No	Round Robin:	Yes

Purpose of report

This education report provides an overview of our work programme to improve tertiary education equity and outcomes through a more integrated focus on learner wellbeing. It also provides you with a letter to the Regulations Review Committee for you to sign.

Summary

'Learners at the centre' and 'barrier free access' are two of the main objectives of the new Tertiary Education Strategy and National Education Learning Priorities (TES/NELP). This signals the Government's commitment to ensuring success and wellbeing for all learners through making meaningful differences in these areas.

As a result of these new TES/NELP objectives we have refocussed our work and taken a more learner-centred and integrated approach to our work programme, in order to foster the conditions where all learners can succeed in tertiary education and to ensure more equitable outcomes. This includes the work on the ongoing Code of Practice for Pastoral Care, effective services to support mental and physical wellbeing, working with learners to support student voice **9(2)(f)(v)**

Our recent work has put the foundations in place to better support the wellbeing of tertiary learners, and a learner-centred approach. We have focused on establishing minimum standards that education providers must meet for the safety and wellbeing of tertiary learners through the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019. The Government has also implemented policy changes to improve the affordability of tertiary education, and allocated funding to expand frontline mental health and wellbeing services for learners in tertiary education institutions.

The economic impact of COVID-19 has the potential to worsen the equity of access, retention, achievement and outcomes for population groups who already experience poorer education and employment outcomes. This means it is important that our system sharpens its focus on equity, supports wellbeing and success for a greater range of learners, and creates clear pathways from education into employment for all learners.

Recommended actions

The Ministry of Education recommends you:

- a. **note** that we are progressing work in several areas to improve tertiary education equity and learner outcomes through a focus on learner wellbeing, including:
 - i. supporting the Ministry of Health in the roll-out of mental health and wellbeing services for learners in tertiary education institutions;
 - ii. positioning the work on the ongoing Code of Practice for Pastoral Care, including the requirements it sets for providers, within a system of supports for wellbeing, and assessing how to meet any gaps in that system;
 - iii. creating the legislated scheme to resolve disputes between learners and providers, and ensuring complaint processes and dispute resolution services are accessible, enable timely action and resolution and address common issues;
 - iv. strengthening student voice in tertiary education to ensure that learners' views regarding academic and non-academic matters are heard and responded to; and
 - v. **9(2)(f)(iv)**
- b. **note** the approach we are taking to preparing an ongoing Code of Practice for Pastoral Care, that is, increasing the focus on learner wellbeing and safety, ensuring the framework for the ongoing Code supports Ka Hikitia and Te Tiriti o Waitangi obligations, and aligning (and where possible combining) expectations for domestic and international learners
- c. **note** the three-stage approach we are taking to engagement in the first half of 2021, including high-level engagement on the needs and expectations of learners for the ongoing Code, consultation on a draft ongoing Code and an approach to legislative change and DRS rules, followed by Cabinet decisions and Code release
- d. **note** that we will seek a number of urgent decisions from you by the end of January 2021 to secure funding for Code administration for tertiary domestic students from 1 January 2021, and support the development of the ongoing Code, its empowering legislation and related work on the Disputes Resolution Scheme (DRS)
- e. **note** that we have provided information about previous correspondence with the Regulations Review Committee on the interim Code in **annex 1**, including advice on a proposed approach to address the issues raised by the Committee
- f. **sign and send** the attached letter to the Regulations Review Committee (**annex 2**) by the end of January 2021
- g. **forward** this report to the Honourable Kelvin Davis, Associate Minister of Education (Māori Education), and the Honourable Aupito William Sio, Associate Minister of Education

- h. **proactively release** this education report, once decisions have been made, with any redactions in line with the provisions of the Official Information Act 1982.

Release **Not release**



Katrina Sutich
Group Manager
Tertiary Education
09/12/2020



Hon Chris Hipkins
Minister of Education

29 / 1 / 2021

Proactively Released

Background

Wellbeing is essential for learners to be able to achieve their aspirations in tertiary education and beyond

1. To foster the conditions for success in tertiary education and support more equitable outcomes for learners, we need to address factors which affect the wellbeing of current and future learners. Learners need:
 - a. access to effective services to support mental and physical wellbeing;
 - b. effective mechanisms for student voice and influence, so that all learners can have their views valued, heard and responded to; and
 - c. access to affordable tertiary education and the ability to financially support themselves and any dependents while studying.
2. Over recent years there has been growing awareness and concern about mental health and increasing levels of distress among learners,¹ which COVID-19 has exacerbated. There have been related concerns about student accommodation, following the unnoticed death of Mason Pendrous in a Christchurch hall of residence in 2019 and learners' experiences with their accommodation providers during the COVID-19 lockdown.²
3. Strong student voice is also an important part of a well-functioning tertiary education system that supports positive wellbeing. Student voice means engaging and working with learners to enable them to influence their educational experience, and advocate strongly for their own and others' needs and aspirations. It also needs to reflect the changing demographic within our institutions. We seek to foster strong and sustainable tertiary student voice, where all learners can have their voices valued, heard and heeded.
4. For any given learner, the perceived affordability of tertiary education is affected by upfront fees, living costs during study, family circumstances, income and access to financial support.³
5. The economic impact of COVID-19 has the potential to further reduce equity of access, retention, achievement and outcomes for population groups who already experience poorer education and employment outcomes.
6. To address this, we are focusing on the continued roll-out of mental health and wellbeing services for learners in tertiary education institutions (TEIs); work on the ongoing Code of Practice for Pastoral Care (the ongoing Code) and the Disputes Resolution Scheme (DRS); strengthening student voice; 9(2)(f)(iv)
[REDACTED]
7. This work is linked to wider work on the Reform of Vocational Education (RoVE), including the upcoming unified funding system (UFS), and Tertiary Education Commission's (TEC) Ōritetanga Learner Success programme, which also support learner voice, wellbeing and achievement.

¹ 'Kei Te Pai – Student Mental Health Report' NZUSA - <https://www.students.org.nz/research>

² <https://www.students.org.nz/covid19>; <https://www.temanaakonga.org.nz/post/te-mana-%C4%81konga-releases-report-on-the-impacts-of-covid-19-on-m%C4%81ori-uni-students>; *Impact of COVID-19 on Tertiary Students in Aotearoa New Zealand* <https://www.students.org.nz/research>

³ Student Debt Campaigns <https://www.students.org.nz/campaigns1>; Universal Student Allowance – Te Rourou Matanui-a-Wānanga, *Income and Expenditure Report 2017* <https://www.students.org.nz/research>

We are placing learners at the centre of our current work

To strengthen learner wellbeing and experiences, the Government is expanding and accelerating the roll-out of mental health and wellbeing services for learners

8. As part of Budget 2020, Government announced \$25 million in new funding to expand and accelerate the roll-out of front-line mental health and wellbeing services for learners enrolled at TEIs. This initiative builds on the mental health, wellbeing and addiction initiatives established through Budget 2019 and provides a medium-term response to the psychosocial impacts of COVID-19 on tertiary learners.
9. We are working with the Ministry of Health to facilitate the implementation of this initiative from next year. This has included looking into current service provision and enrolments of specific learners, including Māori and Pacific learners, across TEIs to identify service gaps.
10. The Ministry of Health has recently updated your office on the implementation of the roll-out [Health Report 20202216 refers]. Given the greatest proportion of Māori and Pacific learners are enrolled at Te Pūkenga subsidiaries and wānanga, funding for Year 1 (2020/21) will focus on rolling out services within these institutions. The Ministries of Education and Health are working with Te Pūkenga and the three wānanga to determine the delivery approach.

We are establishing and aligning minimum standards for learner wellbeing and safety

11. We are preparing an ongoing Code to replace the existing Codes of Practice for domestic tertiary and international learners, including the interim Code for domestic tertiary learners which expires on 1 January 2022.
12. This is an opportunity to embed the early focus on safety and wellbeing to support achievement in tertiary education that the interim Code has started to encourage. The interim Code sets strong expectations for learner voice in education, and for provider self-review and continuous improvement. It aims to reinforce and extend existing provider practice and incentives to recruit and retain students.
13. The Code's expectations on providers raise the prominence of safety and wellbeing as a precondition to success in education and support the implementation of the TES/NELP and wider Government wellbeing priorities. It also complements and reinforces our work on student voice, the International Education Recovery Plan and TEC's Ōritetanga – Learner Success work.
14. We expect the ongoing Code to continue the approach of expecting providers to tailor how they support their learners' wellbeing on their own terms. This will mean providers consider how they can best improve and maintain learner wellbeing, in the context of learners' expectations as well as those set by the Code.

The next stage of this work will support and reinforce the focus on learner wellbeing and safety

15. The next stage of this work will continue to focus on wellbeing and safety, and make stronger, more explicit links to the developing system of supports for learner wellbeing and safety. We are also working to ensure that the framework for an ongoing Code will support Ka Hikitia and the Education and Training Act's (the Act) expectations for Te Tiriti o Waitangi.
16. Our early view is that this next stage should be complemented by legislative change to support and reinforce the focus on wellbeing and safety, and to improve alignment

between this policy intent and the regulatory system that gives effect to it. Consideration will also need to be given to how the ongoing Code will be administered and implemented.

17. Legislative proposals could be ready for drafting by mid-2021. This means the revised legislation will not be in place when the ongoing Code takes effect from 1 January 2022. However, where possible, the ongoing Code will be drafted to take account of the revised legislative arrangements. The revised legislation would also enable further changes to the ongoing Code in the longer term.
18. This also means that the focus on wellbeing and safety is made clear early and is given effect, as much as possible, within the constraints of the existing legislation, rather than waiting for the ideal legislative framework. This approach means that we signal now that we understand the limits of the existing legislative framework, and have a plan to address them, rather than waiting for learners and the sector to draw these limitations to our attention.
19. Aligning expectations for domestic and international tertiary learners, where their needs are shared, will improve clarity for providers and learners, and the ongoing Code will continue to specify the expectations that apply now for providers regarding international learners.
20. It is not intended that there will be changes to requirements for schools that host international students through this work; instead we plan to restate the existing requirements for schools within the ongoing Code. However, schools with international students will need to be consulted on the draft ongoing Code.

We are developing the ongoing Code with the benefit of insights from the implementation of the interim Code

21. Although implementation was significantly disrupted by COVID-19, providers and learners have engaged with the interim Code expectations. In particular:
 - a. student services staff in providers have appreciated the clearer expectations for student support services set out in the interim Code;
 - b. insights from learners led us to expand the scope of our work to reframe it as 'wellbeing and safety'. We have had consistent feedback from learner groups that the term 'pastoral care' is not fit-for-purpose as it is 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 Code and for the Act's framework.
 - c. The 142 submissions to the previous Education and Workforce Committee Inquiry into Student Accommodation provide significant new information on learner and provider experience of tertiary accommodation and views on what they expect to see in the ongoing Code. We are ready to continue to support the Committee as advisers to the Inquiry, as needed.
 - d. Providers are completing their first self-reviews against the interim Code, with a strong focus on student voice. We expect that engagement in early 2021 will pick up insights from these self-reviews.

We have developed a three-stage approach to engagement on this work

22. We are planning a three-stage approach to engagement in the first half of 2021 to support the development of the ongoing Code and related work on DRS (see paragraphs 24-28), with:

- a. high-level engagement on the needs and expectations of learners for the ongoing Code from February 2021;
- b. consultation on a draft ongoing Code, including an approach to legislative change and DRS rules in March-April 2021; and
- c. Cabinet decisions in June 2021 and Code release in July 2021, so that a Code can influence 2022 planning and budgeting.

We seek several urgent decisions from you to support the next stage of this work

23. To support the development of the ongoing Code and related work on the DRS we seek a number of urgent decisions from you. The immediate priorities for decision before the end of January are:
- a. We have provided you with a report this week seeking a decision by yourself and the Minister of Finance to draw down funds for the New Zealand Qualifications Authority (NZQA) to continue its Code administrator role for tertiary domestic students from 1 January 2021, using the dedicated contingency set aside at Budget 2020 [METIS 1244594 refers]. We have worked with NZQA to prepare a proposal, which Treasury has reviewed. Both agencies are comfortable with the recommendations.
 - b. A decision on responding to concerns from the Regulations Review Committee about the alignment of the interim Code with the Act's empowering provisions. In the last term of Government, you signalled that a full response would be sent to the Committee. We have provided more detail on the concerns raised by the Committee in **annex 1** and attached a draft response for your consideration (see **annex 2**). In short, this proposes:
 - i. making minor and technical changes to the Interim Code to address the Committee's concerns about restating provisions already addressed in existing legislation;
 - ii. a policy review to respond to the Committee's concerns about the alignment of the ongoing Code with empowering legislative provisions, to ensure that the Code provisions are fit for purpose, and the issues raised in the Inquiry into Student Accommodation that was launched by the Education and Workforce Select Committee last term; and
 - iii. offering the Committee the opportunity to comment on the draft ongoing Code and DRS Rules.

We are creating a new scheme to resolve disputes between learners and providers

- 24. We are developing a DRS for financial and contractual disputes between tertiary learners and their providers that are unable to be resolved using provider or sector complaints processes. The DRS will take effect alongside the implementation of the ongoing Code.
- 25. Currently, domestic tertiary learners must first take their complaints through their tertiary provider's internal complaints process. If it is not resolved internally, learners can then take their complaint to NZQA and/or the Disputes Tribunal. The DRS fills a gap for domestic tertiary learners, who have had access to the Disputes Tribunal, but not to a bespoke tertiary education dispute resolution process, as international learners do.
- 26. This is an opportunity to highlight the importance of effective provider complaints processes, and to provide information and support for learners and providers to navigate

and resolve problems. As part of this work, there is a need to ensure complaint processes and dispute resolution services provided to learners are accessible, enable timely actions and resolution, and address the types of issues learners most commonly have.

27. The legislative framework for the DRS uses the same provisions as the existing international learners DRS. Experience with the international DRS indicates that it has a narrower scope than learners expect (as it is limited to financial and contractual disputes) and the arrangements for appointing a single DRS operator limit tailoring and performance management in the scheme.
28. We will develop the DRS in parallel with the development of the ongoing Code. This means we would engage on the nature of learner need for the DRS in February 2021, consult on draft DRS rules and potentially on future changes to the legislative framework in March-April alongside the Code consultation, and seek Cabinet approval in June (see also paragraph 22).

We are strengthening student voice in tertiary education

29. In late 2019, we engaged with learners, as well as staff and providers, on how student voice was working and could be enhanced [METIS 1218440 refers]. Since then, the Interim Code has come into effect, with a strong student voice lens. It provides a new regulatory instrument for student voice, making initial steps towards enhancing accountability and structures to support student voice.
30. As we develop the ongoing Code, we will ensure it is fit-for-purpose in requiring providers to have appropriate processes in place to feed student voice into decision-making. Providers will also need to increasingly involve learners as they review the adequacy of their policies and processes in meeting all the outcomes of the Code.
31. We are prioritising the work to ensure strong provisions for student voice in the ongoing Code, given the time-limited nature of the work. This will be informed by in-depth consultation with the sector in early 2021, including with learners.
32. In late March 2020, Ministry officials and student leaders⁴ developed a shared approach for working together to effectively communicate information to students during the COVID-19 outbreak and address issues as they arise. This has strengthened our relationship and enabled us to work more closely. We are now considering how to embed these practices to reshape how we engage and manage this relationship for the future.

We have supported tertiary student leaders to develop a student voice resource

33. The resource, called '*Whiri Ngā Rau – From Student Voice to Partnership*' aims to provide guidance to understand and strengthen student voice, and how learners and providers can work in partnership to achieve positive outcomes for learners. *Whiri Ngā Rau* could support learners and providers in the shift to a system with stronger and more sustainable student voice and where robust student-provider partnerships are built and maintained.
34. While we have provided forums and secretariat support to assist the development of *Whiri Ngā Rau*, it is a student-driven and owned project. It is an example of a student-led effort to work towards the realisation of the student voice outcome in the Interim Code. The extent to which *Whiri Ngā Rau* could be applied across the tertiary education system is a conversation between students and their TEOs. We can keep you updated as this work continues.

⁴ This included representatives from NZUSA, Te Mana Ākonga and Tauria Pasifika.

The Government has taken some steps to improve the affordability of tertiary education for learners

35. Over the last few years, the Government has taken some steps to reduce the upfront costs of studying for specific groups of learners through fees-free entitlements and the Targeted Training and Apprenticeship Fund. The Government also increased student loan living cost and student allowances rates by \$50 per week in 2018 to help learners meet rising living costs, and made changes to support particular learner groups who face higher costs of study (such as sole parents or learners undertaking long programmes).⁵
36. However, over the same period, living costs, in particular accommodation costs, have mostly outstripped annual Consumer Price Index (CPI) adjustments to living support payments. For learners, who are reliant on student allowances or borrowing to meet living costs, there is a growing shortfall between actual living costs, learner incomes and the level of available student support.
37. The ongoing economic impacts of COVID-19 have further highlighted this growing shortfall as income for learners from work and family support are more limited. We can expect learners who are Māori, Pacific, disabled or from lower socio-economic backgrounds to be most vulnerable to these financial pressures. In addition, learners who are not eligible for student allowances or student loan living costs will be feeling this impact particularly strongly.⁶

38. 9(2)(f)(iv)

39. In our view, the current balance of contributions from learners (through fees) and government to pay for the delivery of higher tertiary education is about right, and fee relief for learners should focus on the additional support required due to COVID-19 [METIS 1244783 refers].

40. However, for those learners who can access interest-free student loans, fees do not create an immediate financial barrier to enrolment. For many learners, fees make up a relatively small proportion of the total costs of study, particularly for longer-duration and full-time study with an education provider. The opportunity costs of undertaking provider-based study can be high, as learners typically face foregone income from other sources, such as work or benefits.

41. 9(2)(f)(iv)

⁵ <https://www.beehive.govt.nz/release/government-delivers-big-boost-students>; <https://www.studylink.govt.nz/about-studylink/news/2015/budget-2015.html#null>; <https://www.studylink.govt.nz/about-studylink/news/2014/changes-to-accommodation-support-for-sole-parents.html>; <https://www.studylink.govt.nz/about-studylink/news/2015/accommodation-support-for-students.html>

⁶ Learners may be ineligible for student support for a variety of reasons, including their age, their study status (i.e., part-time), because they have used up their entitlements, or because their parents, partner or the learner themselves earns above the income threshold for student allowances.

9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

44. We also need to ensure that incentives across the student support and benefit systems remain neutral, where appropriate, so that people are supported to realise their education and employment aspirations. For example, if people perceive that they are financially better supported in the benefit system, they may choose to withdraw from study or to remain on a benefit. We will continue to work closely with the Ministry of Social Development (MSD) on considerations of how the student support and benefit systems interact, for example in terms of accommodation assistance.

Annexes

Annex 1: Background information and advice on concerns raised by the Regulations Review Committee

Annex 2: Proposed response to the Regulations Review Committee

Annex 1: Background information and advice on concerns raised by the Regulations Review Committee

Purpose

This annex:

- provides you with information about previous correspondence with the Regulations Review Committee about the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (Interim Code)
- proposes an approach that would address the issues raised by the Regulations Review Committee
- includes a draft reply for your consideration in **Annex 2**.

Background

1. Under Standing Order 318(1), all regulations are subject to examination by the Regulations Review Committee. On 4 March 2020, as part of its usual scrutiny, the Committee considered the Interim Code.

The Regulations Review Committee raised concerns about the Code...

2. On 17 March 2020 and 29 June 2020, Alastair Scott, the Chair of the Regulations Review Committee, wrote to you about the Committee's concerns with:

17 March 2020 letter

- some matters in Part 4 of the Interim Code might be better placed in the Education Act 1989
- there needs to be clarity about whether the Interim Code allows the sharing of personal information.

27 July 2020 letter

- secondary legislation must be within the power delegated to the maker by Parliament
- matters of principle and policy should be found in primary legislation while detail and implementation should ordinarily be the domain of delegation
- new legislation should not restate matters already addressed in existing legislation.

3. As the Interim Code, at that stage, expired on 1 January 2021, the Committee decided not to take further action in this case, despite being concerned that it may breach Standing Order 319(2)(a), (c) and (f). The Committee stated that any new code issued under section 238G, will need to address the problems identified with the Interim Code.
4. Mr Scott also had concerns about some early childhood regulations. He proposed that Committee officials meet with Ministry officials about the issues.

...and you replied that the current requirements were fit for purpose (22 June 2020) and that you would look into this further (27 July 2020)

5. You replied on 22 June 2020 stating that you considered the sections in the Interim Code that were of concern to the Committee were appropriate and should be retained. The letter explained that:
 - the empowering legislation requires the code administrator to monitor and investigate the extent to which providers comply with the code following a process prescribed by the code

- without information about the process in the code, the code administrator would not be able to monitor and investigate tertiary education providers and you would not be able to gauge the effectiveness of the code administrator
 - the Interim Code's process is the same as in the Education (Pastoral Care of International Students) Code of Practice 2016 and any change to the Interim Code process would mean that the International Student Code processes, that have been in place since 2016, would also need to be changed
 - many of the process requirements are set out in primary legislation and are included for completeness and clarification, except for the requirement to publicise the code which, in the Code, is broader
 - each of the identified clauses was fit for purpose and, in relation to the concerns about privacy and information sharing, section 34 does not authorise the sharing of personal information between government agencies and that, if there was sharing of personal information, it would be subject to the Privacy Act and privacy principles.
6. In late July you asked the Ministry to provide an incoming Minister with full advice on these issues to inform a thorough response, and to provide responses to the Committee accordingly. Officials also met with Committee legal advisors to get a clear understanding of the concerns they had raised.
 7. On 27 July 2020, you advised the Committee that you would ask officials for full advice on the matters raised by the Committee. You also noted that the term of the Interim Code had been extended due to COVID-19.
 8. On 31 July 2020, Mr Scott wrote to you about the Committee's satisfaction with this approach. The Committee reported its recommendation that the incoming Regulations Review Committee should continue to consider these issues, once convened.

Action is needed to address Regulations Review Committee concerns

9. The Regulations Review Committee raised issues about the content of the Interim Code that need to be considered.
10. In making decisions about the course of action, it is important to note that:

The Interim Code scope and content reflects the International Student Code

- the Interim Code is modelled on the example of the Education (Pastoral Care of International Students) Code of Practice 2016 (International Student Code), which includes amendments made in 2019, and long-standing legislative provisions;
- the International Student Code has not received the same feedback from the Regulations Review Committee and is widely accepted in the sector;
- the International Student Code applies to schools and some tertiary education providers and the Interim Code applies to all tertiary education providers, so it is desirable for there to be consistency between both documents;

- the International Student Code legislation empowering the Code provides for the scope of a Code⁷ and separately expects that the Code Administrator will follow processes prescribed in a Code⁸ and, therefore, the Interim Code has also included both elements.

Legislative change is needed to substantially amend the Interim Code

- if it is appropriate to bring the scope and process provisions together in one place, legislation change is needed.

The Interim Code contributes to student wellbeing...

- Parliament unanimously agreed to make law about the pastoral care of domestic tertiary students urgently to restore confidence in student welfare after a tragic event
- the Interim Code was initially expected to be in place for one year but, because of COVID-19, the legislation was changed and:
 - the Interim Code now expires on 1 January 2022 (a year longer than initially expected)
 - you have the ability to make minor and technical changes to the Interim Code while a replacement Code is being developed.

...and will be replaced by 1 January 2022

- a replacement Code will take effect from 1 January 2022 and engagement and consultation about the replacement Code will occur in 2021.

The Interim Code provides clarity, enables understanding and supports transparency

- it is helpful for Code users to easily access all relevant requirements in one place
- to improve clarity, understanding and transparency about the arrangements, the Code has included the wording of the empowering legislation
- the removal of legislative provisions from the Interim Code would impact on how tertiary education providers would give effect to the Code and learner understandings and expectations
- Officials consider that the Interim Code is fit for purpose but that changes could be made to improve clarity, understanding and transparency about the empowering legislative provisions.

Proposed approach

11. Officials propose that the following approach be used to address the issues raised by the Regulations Review Committee:

- using your power to make minor and technical changes to the Interim Code,⁹ it is proposed that you:
 - clearly identify the legislative provisions in a separate sub-section of the Code
 - clarify that any sharing of personal information will be consistent with the Privacy Act 2020 and its principles (this matter was raised in the Committee's report to the House).

⁷ Section 534 of the Education and Training Act 2020 sets the scope of the code.

⁸ Section 7(3) of Schedule 1 of the Education and Training Act 2020 saves Section 238(H)(3)(b) of the Education Act 1989, which requires the code administrator, in the case of domestic tertiary students and international students:

(i) to monitor and investigate the extent to which providers comply with a code—

(A) following a process prescribed by a code; and

(B) in close collaboration with education quality assurance authorities

⁹ Section 67(3) of the Education and Training Act 2020 allows the Minister to make minor and technical amendments to an interim code and doing so does not affect its status as the applicable code.

- ask officials to review the empowering provisions for the Codes, alongside the development of the replacement Code
- write to the Regulations Review Committee about the proposed approach and seek their input on the draft minor and technical changes to the Interim Code and, when it is available, the draft replacement Code.

Minor and technical amendments to the Interim Code would partially address the concerns...

12. This approach would result in a clearer Interim Code that more clearly sets out the empowering legislation and clarifies the privacy expectations. While this would not address all the Regulations Review Committee's concerns, it would mean that they may be more comfortable with the Interim Code in the short-term. If you agree to this approach, officials will provide you with advice about the minor and technical changes needed in the Interim Code.

...but removal of the sections that cause concern would compromise the Interim Code...

13. Officials have considered whether all the parts of the interim Code that have caused concern to the Committee should be removed. This change would not be minor and technical. Without legislation change (and there would not be time to make legislative change to provide for this), the Code administrator would not be able to perform its role and the change would leave gaps and result in compliance and enforcement problems. There would be increased risks to learner safety and tertiary education providers would likely reduce their focus on learner wellbeing.

...or you could focus on the development of a replacement Code and a review of the empowering provisions

14. If you do not support making minor and technical amendments to the Interim Code, officials propose that any amendments be considered in the development of the replacement Code as it is not practicable for providers to change systems mid-year.

The empowering provisions and replacement Code need to be fit for purpose

15. Officials will undertake work to ensure that:

- the empowering provisions are fit for purpose
- the replacement Code better delivers the outcomes sought
- the processes that the code administrator will use are adequately supported in legislation and regulation.

16. As some sections in the Education Act 1989 remain in force (via a savings clause in the Education and Training Act 2020), further legislative work is required. A review of the empowering provisions may signal that other legislative changes are needed. Officials will report to you in early 2021 about the scope and nature of the work on the empowering provisions, the replacement Code, and the proposed DRS, including the associated consultation.

17. The Inquiry into Student Accommodation that was launched by the Education and Workforce Select Committee last term may also make recommendations that signal the need for further legislation changes.

18. Consultation is proposed in April-May 2021 and we will seek decisions from you in June about the legislation change proposals. 9(2)(f)(iv)

19. The replacement Code will take effect from 1 January 2022. While the revised legislation will not be in place, where possible, the replacement Code will be drafted to take account of the revised arrangements. The proposed DRS may commence when the new law is in place. **Correction: The DRS will come into effect from 1 January 2022, at the same time as the new code.**

You can ask the Committee to provide input into Code drafts

20. It is proposed that you provide the Regulations Review Committee with the opportunity to comment on:
- the minor and technical changes proposed in the Interim Code
 - the proposed replacement Code.
21. This would allow issues to be identified and, where appropriate, responded to.
22. Standing Order 326(2)¹⁰ allows a Minister to refer draft regulations to the Committee for consideration and the Committee may report on the draft regulations to the Minister.
23. Standing Order 326(4) allows the Regulations Review Committee to consider any matter relating to regulations and report to the House.

¹⁰ Standing Orders 2020

Annex 2: Proposed response to the Regulations Review Committee

[Name]
Chairperson
Regulations Review Committee
Parliamentary Buildings
Wellington

Dear [Chair]

Congratulations on your appointment to the role of Chair of the Regulations Review Committee. I am writing to respond to your predecessor's letter of 31 July 2020 regarding the Committee's comments about the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (the Interim Code). In response to your predecessor's letter of 27 July 2020 I said I would provide a fuller response.

An Interim Code was developed to support the pastoral care of domestic tertiary students

In 2019, several law changes were made to improve the welfare of students in university halls of residence and other tertiary hostels. Parliament unanimously agreed to make law about the pastoral care of domestic tertiary students urgently to restore confidence in student welfare after a tragic event. The legislation provides further opportunities for legal action if there was serious harm to or the death of a student and allows legal action to be taken if there is a serious breach of the Code.

The changes were modelled on the example of the Education (Pastoral Care of International Students) Code of Practice 2016 (International Student Code), which includes amendments made in 2019. The International Student Code applies to schools and tertiary education providers with international students.

As the International Student Code and the Interim Code both apply to tertiary education providers, it is helpful for there to be consistency between the two documents.

The Interim Code prescribes the outcomes sought from providers for their domestic tertiary students and key processes required of providers to support the well-being, achievement, and rights of domestic tertiary students.

The Interim Code aims to ensure, so far as is practicable, that domestic tertiary students can succeed academically in a safe, healthy and supportive learning environment, where –

- they are accepted and respected; and
- they receive an education that values their identity, language and culture, and those of their family and whānau.

The Interim Code specifies the role of providers in ensuring the organised and formal provision of pastoral care and assistance for domestic tertiary students and additional outcomes and requirements in relation to domestic tertiary students residing in student accommodation.

The previous Regulations Review Committee had concerns about the Interim Code

As part of its usual scrutiny of regulations, the previous Regulations Review Committee considered the Interim Code and raised issues with the design of the Interim Code. It considered that:

- some matters in Part 4 of the Interim Code might be better placed in the Education Act 1989;
- there needs to be clarity about whether the Interim Code allows the sharing of personal information;
- secondary legislation must be within the power delegated to the maker by Parliament;
- matters of principle and policy should be found in primary legislation while detail and implementation should ordinarily be the domain of delegation; and
- new legislation should not restate matters already addressed in existing legislation.

At that time, it was expected that an ongoing Code would be in place by 1 January 2021 and the Committee decided not to take further action in this case, despite being concerned that it may breach Standing Order 319(2)(a), (c) and (f). The Committee stated that any new code issued under section 238G, will need to address the problems identified with the Interim Code.

The Interim Code now expires on 1 January 2022. The extension of the Interim Code reflects that the demands of COVID-19 have meant that tertiary learners, providers and employees would not have been able to contribute fully to the development of a long-term Code within the original timeframe. In light of the extended timeframe, Section 67(3) of the Education and Training Act 2020 also allows me to make minor and technical changes to the Interim Code.

The Interim Code and replacement Code need to be fit for purpose

The empowering legislation requires the code administrator to monitor and investigate the extent to which providers comply with the code following a process prescribed by the code.

Without information about the process in the code, the code administrator would not be able to monitor and investigate tertiary education providers and you would not be able to gauge the effectiveness of the code administrator.

The Interim Code's process is the same as in the Education (Pastoral Care of International Students) Code of Practice 2016 and any change to the Interim Code process would mean that the International Student Code processes, that have been in place since 2016, would also need to be changed.

Many of the process requirements are set out in primary legislation and are included for completeness and clarification, except for the requirement to publicise the code which, in the code, is broader.

Section 34 does not authorise the sharing of personal information between government agencies and, if there was sharing of personal information, it would be subject to the Privacy Act and privacy principles.

Improving the Interim Code

In response to the Committee's concerns, I propose to make minor and technical changes to the Interim Code to:

- clearly identify the legislative provisions in a separate sub-section of the code; and
- clarify that any sharing of personal information will be consistent with the Privacy Act 2020 and its principles.

I have asked the Ministry of Education for advice about these minor and technical changes. The Government still wants to retain the accessibility of the Interim Code, but we want to make our legislative mandate clear and ensure we do not reinterpret legislation by altering wording.

This approach would result in a clearer Interim Code that more clearly sets out the empowering legislation and clarifies the privacy expectations.

Developing a robust replacement Code

I understand the importance of aligning the replacement Code to the empowering provisions in legislation and ensuring that the replacement Code is well founded in legislation. I have asked officials to review the empowering provisions for the Codes, alongside the development of the replacement Code

Officials will undertake work to ensure that:

- the empowering provisions are fit for purpose;
- the replacement Code better delivers the outcomes sought; and
- the processes that the code administrator will use are adequately supported in legislation and regulation.

The work will take account of any recommendations resulting from the Inquiry into Student Accommodation that was launched by the Education and Workforce Select Committee last term.

Consulting the Regulations Review Committee on drafts

To ensure that the regulatory arrangements are fit for purpose, I would like to offer the Committee the opportunity to comment on a draft of:

- the minor and technical changes to the Interim Code; and
- when it is available, the replacement Code.

I have asked officials to work with the Committee and its staff to ensure that any issues are effectively addressed. Please contact Julie Keenan on 9(2)(a) .

Yours sincerely

Hon Chris Hipkins
Minister of Education