

In Confidence

Office of the Minister of Education

Chair, Cabinet Social Wellbeing Committee

## **Policy Approvals for Interim Code of Practice for the pastoral care of domestic tertiary students including those in student accommodation**

### **Proposal**

1. This paper seeks approval for content for an Interim Code for the pastoral care of domestic tertiary students, and attaches a supplementary regulatory impact analysis for the proposal.

### **Executive Summary**

2. On 14 October 2019, Cabinet agreed to amend the Education Act 1989 to empower the Minister of Education to create a Code of Practice for the pastoral care of domestic students in tertiary education, with an Interim Code to be in place from 1 January 2020 and an ongoing Code to be created in 2020.
3. This paper provides an update on the progress of this legislation, and seeks approval for the proposed content of the Interim Code. It provides detail of the implementation and administration of this Interim Code, and reports back on the regulatory impact assessment and joint Ministers' decisions on funding for the administration of the interim Code.

### **Background**

4. On 14 October 2019, Cabinet agreed that it is a priority to put better systems and processes in place for students, particularly for those in student accommodation, before the 2020 academic year [CAB-19-MIN-0530 refers].
5. To extend to domestic tertiary students, over time, an assurance about the Government's expectation of the pastoral care supporting students to maintain their wellbeing and achieve in study, Cabinet agreed:
  - 5.1. to amend the Education Act to empower the Minister to create a Code of Practice for pastoral care of domestic students in tertiary education, with associated dispute resolution and sanctions provisions;
  - 5.2. to create a mandatory Code of Practice for pastoral care in tertiary education, with an Interim Code to be in place from 1 January 2020 and an ongoing Code to be created in 2020;
  - 5.3. that the Interim Code would contain a general duty of pastoral care, and specific requirements for student accommodation services, and would be developed following targeted engagement in late 2019.

6. I committed to report back to the Cabinet Social Wellbeing Committee and Cabinet in December 2019 on the proposed content of the Interim Code for pastoral care of domestic tertiary education students (attached as Annex A).

### **Education (Pastoral Care) Amendment Bill**

7. Recent events, including the tragic death of a student in a hall of residence, exposed the limitations of the current self-regulating approach in supporting tertiary student wellbeing. Currently, there is no consistent approach to the welfare and pastoral care of domestic tertiary students.
8. Requirements for tertiary education institutions and private training establishments to support student wellbeing, and for tertiary student accommodation providers exempt from the Residential Tenancies Act 1986 (under section 5B), are not detailed. This results in a lack of clarity for providers, and variable standards of pastoral care. 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.
9. The Education (Pastoral Care) Amendment Bill (the Bill) aims 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.
10. The Bill enables the Minister of Education to issue a pastoral care code for domestic tertiary education students, based on key outcomes and processes to achieve these. The enabling provisions reflect appropriate existing provisions for the Code of Practice for the pastoral care of international students. In light of the priority of providing assurance for families and students in tertiary education in 2020, the Bill provides for the Minister to issue an Interim Code that would be in place from 1 January 2020 until an ongoing Code of Practice is put in place.
11. The Select Committee reported the Bill back to the House on 27 November. It awaits second reading

### **Interim Code of Practice for the pastoral care of domestic tertiary students**

12. Positive wellbeing is essential for students to be able to succeed and achieve their aspirations in education. 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.
13. The Interim Code for 2020 sets out a general duty of pastoral care that all tertiary education providers must provide for domestic tertiary students, and interim expectations for tertiary providers that offer student accommodation.
14. The Interim Code reflects relevant expectations from the Education (Pastoral Care of International Students) Code of Practice in relation to student wellbeing. It also draws on the voluntary Code of Practice for tertiary student accommodation providers exempt from the Residential Tenancies Act 1986 (under section 5B), which was

developed in 2004 by a Tertiary Student Accommodation Working Group, and the regulations for school hostels. The Interim Code embeds the outcomes of the Child and Youth Wellbeing Strategy as the basis of a general duty of pastoral care.

15. There has not been an opportunity for wide consultation and engagement on the Interim Code, given the timeframes for its development. The Interim Code has, however, been shaped by engagement and feedback with a sector and learner advisory group of experts in the area, nominated by tertiary education peak bodies. This advisory group provided insight into the way that the welfare and pastoral care of tertiary students is approached at different tertiary education providers and for diverse student groups. A copy of the Interim Code was shared with peak bodies for feedback.
16. The Interim Code is deliberately high level to avoid the unintended consequences that might arise without full consideration of the implications for the sector; more detailed requirements will be set out in the ongoing Code of Practice following co-design with the sector in 2020. The Interim Code will be replaced by an ongoing Code in 2020, before the Interim Code expires on 1 January 2021.

### **Proposed content of the Interim Code of Practice**

17. A proposed Interim Code of Practice is attached at Annex A. All tertiary providers will have a duty to comply with this Code until an ongoing Code of Practice is put in place. The Interim Code sets out a general duty of pastoral care required of all tertiary education providers in relation to domestic students. It covers all the activities sponsored by the tertiary provider on or off-campus. With Cabinet's permission, I may make minor drafting or technical changes to the draft code before it is issued.
18. The Interim Code incorporates elements of the 2004 voluntary code for student accommodation, updated to reflect current regulatory and sector practice informed by the Tertiary Education Commission's work with tertiary education institutions (TEIs) and a sector advisory group. It also reflects relevant expectations from the code of practice for the pastoral care of international students, particularly for student safety and wellbeing.
19. The Interim Code has two main components, with associated objectives:
  - 19.1. 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 ensure that students live in a safe environment and have a positive experience that supports their educational achievement.
  - 19.2. 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.

### *General Pastoral Care*

20. To contribute to a physically safe and positive learning environment which is supportive of students' voice and physical and mental health, the general pastoral

care section of the Interim Code sets out six high-level outcomes which cover key aspects of wellbeing and embed the outcomes of the Child and Youth Wellbeing Strategy. The Interim Code requires that all providers must have policies and procedures in place which support students to:

- 20.1. experience a physically safe and mutually supportive learning environment that responds to the needs of all students
  - 20.2. have adequate access to advice, information and services which help them to meet their basic need
  - 20.3. manage their physical and mental health, and to access support when needed
  - 20.4. transition to tertiary study, progress and achieve in their studies, and develop knowledge, skills and experience to prepare them for further work or study
  - 20.5. experience an inclusive learning environment where they are accepted and valued, respected and free from racism and discrimination, and connected with social and cultural networks, and;
  - 20.6. have their mana upheld in their learning environment, and their voices heard and integrated in decisions around the planning and provision of student support services.
21. For the approximately six percent of students who live in student accommodation, including first year students who are away from home for the first time, it is vital to their successful study that they are safe and supported in their residential community.
  22. The advisory group of sector experts advised that cohorts of students in tertiary accommodation are diverse including adults changing careers and some families. The Interim Code needs to be flexible enough to meet diverse needs, without unintended consequences. All tertiary providers should take a learner-centred approach to student accommodation.

#### *Pastoral Care in Student Accommodation*

23. The Interim Code has four high-level outcomes for supporting the wellbeing and education success of students in residential accommodation. These include:
  - 23.1 a positive and supporting residential environment that assists with their learning and wellbeing; with practices covering information and promotional activities, accommodation staff, and risk monitoring and responsive pastoral care
  - 23.2. a communal environment that promotes healthy living and social wellbeing; with practices including reasonable House Rules, health promotion activities, promoting responsible social behaviour and academic success, meeting the cultural needs and aspirations of residents, and developing appropriate initiatives guided by students to build a sense of community.

23.3. clear, reasonable and effective practices, including a clear statement of intent or mission statement and human resource strategy, processes around student accommodation contracts and self-evaluation eg. regularly reviewing their accommodation practices, and;

23.4. building facilities and services maintained to a standard sufficient to support residents' social, mental and physical wellbeing and educational success.

24. Some may be concerned that the Code requirements may impact on academic freedom and institutional autonomy, as set out in the Education Act 1989. However the Education Act 1989 also states that academic freedom and institutional autonomy needs to be carefully balanced against the need for the maintenance of the highest ethical standards, transparency about these arrangements, and the need for accountability by institutions. Officials consider that the new Code requirements ensure high standards, increase transparency and accountability.

### **Implementation and administration of the Interim Code of Practice**

25. I am proposing that the Interim Code of Practice for domestic tertiary students be in place by 1 January 2020.
26. I propose to appoint the New Zealand Qualifications Authority (NZQA) as Code Administrator for the Interim Code of Practice, with some functions likely to be delegated to Universities New Zealand (UNZ) for university-related Code administration responsibilities. NZQA is already the Code Administrator for the code of practice for the pastoral care of international students and can build on existing capability.
27. NZQA and, where appropriate, UNZ will establish procedures to manage concerns of non-compliance, and investigate alleged breaches. This may include issuing improvement notices and taking other statutory action appropriate to the seriousness of the breach.
28. NZQA proposes an initial focus on information and education for the first half of 2020 which will enable providers to ask questions about the implications of the Interim Code, and avoid misinterpretation or hasty changes that may increase cost unnecessarily.

28.1. Between January and March 2020, NZQA and UNZ would develop guidelines about how to give effect to the Interim Code, and commence work on quality assurance arrangements. As is usual practice, these would be shared with Institutes of Technology and Polytechnics, the wānanga, and other relevant sector representatives prior to being published.

28.2. In the second quarter of 2020, they would publish Interim Code guidelines and run workshops to build the capability of tertiary education providers, with a focus on ensuring sound student accommodation arrangements. Tertiary education providers would develop the necessary policies and practices to deliver better outcomes.

28.3. During the first half of 2020, the Code Administrator would take a reactive approach to quality assurance. NZQA (or UNZ as appropriate) would

investigate any complaints received. When shortfalls are noted, NZQA and, where appropriate, UNZ will work with tertiary education providers to support them to meet their obligations.

29. In the third quarter of 2020, through its external evaluation and review process, NZQA (or UNZ as appropriate) would commence quality assuring tertiary education providers to see if they are giving effect to the Interim Code. This would include targeted monitoring, and integrating the Code in External Evaluation and Review processes. Where required, NZQA will issue improvement notices and take other statutory action appropriate to the seriousness of the breach.
30. An ongoing Code which will consider the full range of issues and good practice in ensuring student wellbeing through pastoral care will be developed during 2020 with significant sector engagement and input from students and their communities, families and whānau. This will be in place to replace the Interim Code when it expires at the end of 2020. A dispute resolution scheme, and options for cost recovery will also be developed during 2020, for implementation from 2021.

### Consultation

31. The Department of the Prime Minister and Cabinet (Policy Advisory Group, and Child and Youth Wellbeing Unit), Treasury, New Zealand Qualifications Authority, Tertiary Education Commission, Ministry of Justice, Ministry of Social Development, Ministry of Health, Te Puni Kōkiri and Office of Ethnic Communities have been consulted and provided comments on this paper.

### Financial Implications

32. The Minister of Finance and I have approved funding for administration of the Interim Code by NZQA for 2020, up to a maximum of \$1.5 million, to be funded from Vote Tertiary Education baselines. I expect that costs will not exceed this level in 2020. Some of this may pass under delegation to UNZ from the Code Administrator.
33. As noted by Cabinet on 14 October 2019, I intend to explore options for cost recovery to fund administration of the ongoing Code and the dispute resolution scheme for domestic tertiary students from 2021 [CAB-19-MIN-0530 refers] s 9(2)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

s 9(2)(f)(iv)

### Legislative Implications

34. The Minister needs to issue a Code in order to implement the proposals. Legislative authority for the Minister to do so is contingent on the Education (Pastoral Care) Amendment Bill (the Bill) being passed and coming into force.
35. The Bill was introduced on Monday 14 October. The First Reading took place on Thursday 17 October. The Bill has had a six week Select Committee review – twenty two written submissions and eleven oral submissions were received. The Select Committee reported the Bill back to the House on 27 November.

36. I anticipate that the Bill will be passed before the end of 2019. The Interim Code will be able to be issued by me from the day after the date on which the Act receives Royal Assent, to enable it to be in place by 1 January 2020.
37. The Interim Code will be a disallowable instrument. This will ensure transparency as it can be considered through the Regulations Review Disallowance Regime and is required to be published on the Ministry of Education's website, and presented to the House.

### **Impact Analysis**

38. Cabinet's regulatory impact analysis requirements apply to the proposals discussed in this paper. A Supplementary Analysis Report is attached as Annex B, which sets out:
  - 38.1. The expected impacts of the Interim Code on affected parties
  - 38.2. How implementation of the Interim Code will be supported
  - 38.3. The risks and planned mitigations and;
  - 38.4. 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.
39. 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.
40. Due to the tight timeframe, 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.
41. 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.
42. 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.

## Human Rights

43. The proposals discussed in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
44. The Interim Code upholds human rights by seeking the outcome that students feel accepted as part of an inclusive community, respected and free from racism and discrimination, and connected with social and cultural networks.
45. Providers will be required to have practices for recognising, reducing and responding to discrimination, racism, bullying and harassment (including sexual harassment), including assisting students and staff to recognise and respond to these behaviours, proactively reducing harm to students resulting from discrimination, and supporting an inclusive environment.
46. The Interim Code embeds the outcomes of the Child and Youth Wellbeing strategy. Every learner has the right to a safe, healthy and supportive learning environment, where they are accepted and respected, and an education that values their identity, language and culture, and those of their whānau and family

## Gender Implications

47. Providers will be required to support the welfare and pastoral care of all students, whatever their identity.

## Disability Perspective

48. The Interim Code will require providers to have policies and processes in place which support students to manage their physical and mental health, and to access appropriate support where required.

## Publicity

49. I intend to release the Interim Code following the enactment of the Bill and Cabinet decisions, and issue a press release.

## Proactive Release

50. I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act 1982, following the release of the Interim Code.

## Recommendations

The Minister of Education recommends that the Committee:

51. **Note** that on 14 October 2019, Cabinet agreed to amend the Education Act to empower the Minister of Education to create a Code of Practice for pastoral care of domestic students in tertiary education, with associated dispute resolution and sanctions provisions. [CAB-19-MIN-0530 refers]
52. **Note** that on 14 October 2019, Cabinet invited the Minister to report to Cabinet Social Wellbeing Committee in December 2019 on the proposed content of the

Interim Code for pastoral care of domestic tertiary education students [CAB-19-MIN-0530 refers]

53. **Note** that a Supplementary Analysis Report is attached as Annex B of this paper, responding to Cabinet's direction to the Ministry of Education to provide regulatory impact analysis of the Interim Code [CAB-19-MIN-0530 refers]
54. **Note** that the Minister of Finance and I have approved funding for administration of the code for 2020, up to a maximum of \$1.5 million, from Vote Tertiary Education baselines as authorised by Cabinet on 14 October 2019 [CAB-19-MIN-0530 refers]
55. **Approve** the content of the Interim Code of Practice for the pastoral care of domestic tertiary education students including those in student accommodation, which is attached to this paper as Annex A.
56. **Authorise** the Minister of Education to make minor drafting or technical changes to the draft code before it is issued
57. **Note** that the Minister of Education intends to issue the Interim Code after the Act receives Royal Assent, to enable it to be in place by 1 January 2020.
58. **Note** that the Minister of Education intends to explore options for cost recovery to fund administration of the ongoing code and the dispute resolution scheme for domestic tertiary students from 2021.
59. s 9(2)(f)(iv)  

60. **Invite** a report back to the Cabinet Social Wellbeing Committee on a proposed draft ongoing Code, dispute resolution scheme, and cost-recovery options by June 2020.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education