



# Analysis of Submissions

*received in response to the Discussion Document  
Te Oranga me Te Haumaru o Te Ākonga: Tertiary learner  
wellbeing and safety*

25 June 2021



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## KEY MESSAGES

The following highlight the key messages associated with priority themes identified by the Ministry of Education.

### **The safety and wellbeing of learners is paramount, and the intent of the Code is welcomed**

The increased focus on wellbeing was almost unanimously welcomed. Questions were raised about implementation with learners wanting the scope of obligations expanded and strengthened, and providers wanting clarity about the expectations being placed on them.

### **Learner voices are central**

The importance of learner voices was seen as paramount. However, sectors differed in opinion as to how learners' voices should be incorporated. Learners endorsed the Code's purpose and expressed a desire for their voice to be embedded further in the processes designed to achieve the Code's purpose. They felt there needed to be explicit requirements for co-design and engagement throughout the Code. Providers took a more conservative approach and were concerned about the logistics and practicalities of implementing the Code.

### **Te Tiriti o Waitangi is integral to the Code and should be embedded in legislation and the Disputes Resolution Scheme**

Te Tiriti o Waitangi was considered fundamental in the code and there was a desire for kaupapa Māori to be embedded throughout the Code. The holistic approach to wellbeing prevalent in Te Ao Māori was widely supported as a model to guide the Code, as well as the use of Te Reo within the text. Guidance on how to do this in a practical sense was requested.

### **The Code needs to explicitly include the multitude of diverse wellbeing needs of learners**

Whilst the Code seeks to embody inclusiveness, learners felt that it was important to be more explicit and include reference to more specific groups and their diverse wellbeing needs. Learners advocated for strengthening the code to require providers to improve accessibility and provide culturally and spiritually safe spaces. Many learners also supported the inclusion of ecological sustainability as a design requirement. Providers acknowledged the importance of inclusive learning environments but were concerned about the extent of their responsibilities in practice and argued the Code's requirements would not be practical, or enforceable, except in the most general way.

## **Creating a space that is accessible and culturally competent is key to learner outcomes**

Learners from diverse backgrounds as well as disabled learners felt providers need to boost the accessibility of information and support services in their institutions, as well as making them more fit for purpose for the varying needs of learners. Strengthening cultural competency and awareness in institutions was also widely recommended as a way to support equitable outcomes for all learners.

## **Engaging with Pacific Peoples and their families throughout the tenure of study**

Pacific learners noted that providers place a lot of emphasis on recruiting learners, but that effort is not sustained during their tenure, particularly around avoidable withdraws and supporting learners to come back to study if that does occur. They emphasised the importance of making sure providers do not put the burden of carving out a place for Pacific learners solely on them; they felt the Code could prescribe inclusive environments where the cultural, spiritual, and economic wellbeing of learners and their families can be taken into account.

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

Many learners welcomed the level of prescription of the Code and thought that this was required to hold providers accountable for implementation. A principles-based approach with flexibility to respond to individual needs and circumstances was considered by providers to be the best approach to achieve better outcomes for learners. They felt that processes outlined in some parts of the Code were too detailed and seemed overly prescriptive. While acknowledging this, some learners welcomed the increased focus on processes and even asked for more prescriptive requirements to increase accountability.

## **The privacy implications of the Code, the Disputes Resolution Scheme, and the proposed law changes will need careful consideration**

The Code by its nature has the potential to interfere with the autonomy and personal sphere of learners. How this will be managed in practice and balanced against privacy considerations needs to be carefully assessed in implementation of the Code. Submitters raised concerns about the interface of the Privacy Act 2020 to the DRS Rules and the proposed law changes. Specific amendments were recommended by several legal submissions including from the Office of the Privacy Commissioner.

## **The Disputes Resolution Scheme is learner focused and a mana-enhancing processes**

Submitters felt the Dispute Resolution Scheme provided a more comprehensive process that aimed at ensuring that learners have their say, and that fair outcomes are achieved. Most submitters welcomed the proposed Dispute Resolution Scheme's independence. The focus on a learner-centric Dispute Resolution Scheme was also welcomed by Students' Associations: they felt that this would go some way to addressing the power imbalance which exists with many current processes. Providers suggested the Dispute Resolution Scheme favoured complainants and did not assure a fair process.

## GLOSSARY

Act	Education and Training Act 2020
AMINZ	Arbitrators' and Mediators' Institute of New Zealand
APSSA	Asia Pacific Student Accommodation Association
Code	The Education (Pastoral Care of Tertiary and International Students) Code of Practice 2021
DRS	Disputes Resolution Scheme
EIT	Eastern Institute of Technology
GCDR	Government Centre for Disputes Resolution
Learner	A person enrolled in a school or institution. This term is used interchangeably with "student" throughout this document.
LUSA	Lincoln University Students' Association
MUSA	Massey at Wellington Students' Association
NZDSA	New Zealand Disabled Students' Association
NZISA	New Zealand International Students' Association
NZMA	New Zealand Management Academies
NZQA	New Zealand Qualification Authority
NZSE	New Zealand Skills and Education College
NZUSA	New Zealand Union of Students' Associations
OPC	Office of the Privacy Commissioner
OUA	Otago University Students' Association
PTE	Private Training Establishment
QTI	Quality Tertiary Institutions
RA	Residential Advisors
RPH	Regional Public Health (Wellington Region)
SIEBA	Schools International Education Business Association
Student	A person enrolled in a school or institution. This term is used interchangeably with "learner" throughout this report.
TEU	Te Hautū Kahurangi – Tertiary Education Union
UCSA	University of Canterbury Students' Association
UNZ	Universities New Zealand
VUWSA	Victoria University Wellington Students' Association

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## EXECUTIVE SUMMARY

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

This report endeavours to provide a comprehensive snapshot of what was expressed in written submissions, survey responses, and face-to-face meetings conducted by the Ministry. Sixty-four written submissions were received and analysed. Submissions were received from Students' Associations, universities, Private Training Establishments (PTEs), Te Pūkenga (and its subsidiaries), professional bodies, community groups, and 2 individuals. Thirty-seven responses were received to the survey, 25 responses were received from individuals who work in the provision of education (in Te Pūkenga and its subsidiaries, in universities, 1 in a Wananga, 12 in PTEs and 2 in schools). Two learners and 3 members of the public (including 2 who identified as family/whānau of learners) also responded to the survey.

The Ministry held 51 meetings across Aotearoa New Zealand with learners, whānau, students' organisations, providers and their staff, disputes resolution organisations, Māori, Pacific, disabled and ethnic communities and organisations. They received extensive feedback from these groups, some of whom made formal written submissions as well. The notes prepared by the Ministry of these engagements were analysed and summarised.

It is noted that although many of the issues raised are relevant to the LGBTQ+ community, their voices were largely absent from both the face-to-face meetings and written submissions. This could in part be due to the fact that respondents did not self-identify.

There was overwhelming support for the increased focus on the wellbeing and safety of learners. The Education (Pastoral Care of Tertiary and International Students) Code of Practice 2021 (Code) is considered by learners as being a step forward. They welcomed the Code's intention to be learner-centred, and saw this as an opportunity to enact meaningful positive change within the tertiary sector.

Despite general agreement on the Code's intent, a key difference in opinion between learners and providers exists in relation to the processes set out in the Code. Learners argued the Code does not adequately prescribe the level of learner engagement that providers would be required to undertake in decision-making. Learners thought that phrases such as "as much as possible" or "where necessary" be removed from the Code, noting that providers would use them to avoid meeting requirements. The current situation was described as evidence of this.

On the other hand, providers felt strongly that the Code was more prescriptive and process-focused in areas, arguing this is an unwelcome departure from the focus in the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 on achieving outcomes. They described the detailed processes as being impracticable, emphasising that they would impose undue compliance and operational costs on providers. In stark contrast to learners, providers advocated for processes to be couched within language that recognises operational parameters such as "where appropriate" or "as much as possible".

Schools generally welcomed the focus on wellbeing but were unsure why the international education Code for schools needed to be part of the tertiary education Code. Some felt that the requirements and settings were different for schools with international learners and therefore the code for schools should be separate. Schools also raised questions around the need to change



their code again and noted that they have just updated all their processes, documents and systems for the 2019/2020 changes.

Multiple respondents drew attention to Universal design<sup>1</sup> and accessibility. One common issue experienced by disabled learners in particular revolves around being encouraged to undertake certain 'suitable' activities, rather than being given the support to succeed in all types of courses and learning practices. They advocated for all documents and communications to adhere to Universal design principles, and for training to be provided to staff on inclusive practices.

### **Te Tiriti o Waitangi**

Learners considered Te Tiriti o Waitangi (Te Tiriti) fundamental and advocated for Te Tiriti obligations to be extended in scope and breadth across the code. Learners wanted kaupapa Māori embedded throughout the Code, and a number of requests were made to include Te Reo Māori terminology throughout the text. Learners also raised the question about whether the Code would be translated into Te Reo Māori, highlighting that some learners are first language Te Reo speakers and tertiary study is often the first time they are using English in a professional setting, so a comprehensive translation is crucial to these learners' awareness.

Universities generally supported the increased focus on equity and Te Tiriti. Universities NZ acknowledged that the relationship with Māori is different and should be approached through a Te Tiriti and Te Ao Māori lens. Universities were, however, unclear about exactly what is encompassed or envisaged by some of the Te Tiriti obligations in the process requirements of the Code. Other providers largely did not mention Te Tiriti. Where they did, they focused on interpreting what their obligations required.

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

Most respondents agreed about the importance of learner wellbeing and safety practices being central to the strategic goals of organisations, and many welcomed learners' voices being included in the process (Outcome 1 – Organisational strategy goals and plans). However, providers were concerned about how this could be implemented in practice and felt that the processes should allow for greater flexibility. They noted the breadth of the requirements – with whānau and local communities – and felt that this was not practical. Learners, by contrast, welcomed the broad consultation requirements, but felt that engagement would be a better process than consultation. They also sought more stringent and prescriptive processes to ensure the embedding of learner voices in decision-making at all levels.

Learners welcomed the inclusion of their input into decisions relating to course delivery, describing current practices as inaccessible and not fit-for-purpose. They strongly felt Outcome 2 – Learner Voice – should be more explicitly included throughout the rest of the Code, particularly for disabled learners who felt that there's a disproportionate amount of self-advocacy required when studying with a disability. By contrast, universities felt implementing Outcome 2 could impinge on their institutional freedom and were concerned about compromising academic pedagogy. Universities also questioned whether the Education and Training Act 2020 requirement for one learner member of the Council sufficiently fulfilled this Outcome. Private Training Establishments (PTEs) felt Outcome 2 was inappropriate and expressed concern this

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<sup>1</sup> Universal Design is the design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by all people regardless of their age, size, ability or disability.

requirement could expose learners to legal jeopardy and did not respect the commercially sensitive nature of their strategic plans and course delivery.

Outcome 3 – Dealing with Complaints - was broadly welcomed by all groups. Some issues were raised around terminology: it was felt that some terms, such as “culturally responsive” for example, were vague and would be difficult to implement. Learners also felt that there should be a greater focus on accessibility and support. They suggested that Students’ Associations could have an important role to play in reducing the power imbalance felt by some learners when raising complaints, particularly international learners who are fearful of consequences or lack of confidence in getting a fair outcome. Learners felt consideration should be given to assisting Students’ Associations to fulfil such an advocacy role.

The processes associated with Outcome 4 – Supportive organisational structures – were subject to comments from both learners and providers. The key issue with these processes for learners was the need to have greater learner involvement. In terms of staff training, recommendations were made to prioritise areas such as supporting disabled learners, the identification and prevention of racism, discrimination, and bullying. Culturally diverse learners from across the board highlighted the urgent need for staff to receive more cultural competency and awareness training – they are often finding themselves having to ‘educate the educators’ about the level of support they need. It was particularly felt that there could be greater involvement of Māori and Pacific learners in these processes. The practicality of developing and implementing such processes was raised by providers: to make the Outcome more realistic and achievable it was recommended that the definition of “wellbeing” be reconsidered and narrowed.

#### **Part 4: Wellbeing and safety practices for all tertiary providers**

Most respondents supported the intent of Outcome 5 – Safe, inclusive, and supportive physical and digital learning environments - and considered it important to ensure safe and inclusive learning environments. The diversity of learners was highlighted by both learners and providers for different reasons. Learners advocated for strengthening the Code to require providers to improve the accessibility and clarity of information, particularly for learners from interfaith or refugee backgrounds, in order to create a culturally and spiritually safe space for them to feel comfortable retaining their unique identities. Disabled learners wanted requirements to be more specific and advocated for the removal of words like “where appropriate.” They felt that these sorts of words overly softened the obligation and would enable providers to continue to improve physical environments without engaging with disabled learners and disabled Students’ Associations. Learners also supported the inclusion of ecological sustainability as a design requirement.

Providers highlighted the diversity of learners and argued the Code’s requirements would not be practical, or enforceable, except in the most general way. Noting that their relationships with Māori and Pasifika are different, they supported meeting the need for Māori and Pasifika learner spaces. However, they felt the Code was overly focused on certain learner groups (18 to 24-year-olds) and providers with one main campus, and advocated to widen this scope in order to better respond to the needs of the diverse range of learners and institutions.

Most of the people who engaged with the Code supported Outcome 6 – Academic, personal, and social development of learners. However, almost all groups raised concerns about potential unintended consequences of section 23(a)<sup>2</sup> in relation to hateful speech. Universities did not

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<sup>2</sup> Section 23(a) requires providers to provide opportunities and safe spaces for learners to voice diverse and challenging viewpoints.

support section 24(e)<sup>3</sup> noting this may be a valid aspiration, but as a matter for academic pedagogy it is not appropriate for this to be included in this Code.

Outcome 7 – Promoting physical and mental health awareness - was met with a variety of views. Some considered it presented an opportunity to empower learners by involving them in physical and mental health initiatives. Others were more focused on the risk of providers over-stepping into learners’ personal lives, and raised privacy concerns. Universities and PTEs thought that the concept of Outcome 7 was problematic as it required providers to take responsibility for matters that were beyond their control. In their view, being too prescriptive would render the requirements ineffective despite best intentions.

In relation to Outcome 8 – Proactive monitoring of learner wellbeing and safety and responsive wellbeing and safety practices - the Office of the Privacy Commissioner (OPC) succinctly summarised the key concerns of other submitters as finding the balance between privacy and the responsibility to support the wellbeing and safety of learners. Where this balance lies is unclear and guidance would be welcomed by all groups.

### **Part 5: Additional wellbeing and safety practices in tertiary student accommodation**

The scope of ‘without cause’ welfare checks (Outcome 9 – A positive and supportive environment in student accommodation) was of significant concern to all groups engaged. Associated with this were questions around the breadth of the requirements and the roles and responsibilities of providers. The commitment to staff training associated with Outcome 9 was particularly welcomed by learners. They did, however, question whether additional matters should be prioritised such as disabled learners, racism, and bullying. Regional Public Health also recommended a focus on sexual assault.

Overall respondents supported the intent of Outcome 10 – A supportive residential community. Learners felt that they needed to be more involved in decisions and that there needed to be a focus on creating accessible spaces (NDSA). Disabled learners noted that designated services are too often left out of these decisions, handing down a heavy burden on the learners to seek accommodations for themselves. Providers commented that these processes would be unworkable. For example, it was considered that it would not be possible or practical for a provider to meet the cultural needs and aspirations of all groups (s35(e) of the Code). The University of Otago thought that it might be better framed as a broad obligation to provide environments where learners are encouraged and supported to express their identities freely, safely, and positively.

There were a variety of views on whether using contracts as a means to meet wellbeing and safety expectations would be effective (Outcome 11 – Accommodation plans, administration, and operational policies). At one end of the spectrum, it was suggested that they could only provide a framework and could not ensure that wellbeing and safety needs are met. At the other, they were seen as an effective tool, and it was suggested that the contractual obligations be extended. Again, the importance of having some practical guidance and support to implement this Outcome was highlighted.

The importance of accommodation being of a standard that supports social, mental, and physical wellbeing was of utmost importance to submitters (Outcome 12 – Student accommodation contracts). Disabled learners provided real life examples to show the need to extend standards beyond social interaction and communal spaces to accessible for a diverse range of activities and

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<sup>3</sup> Section 24 (e) requires providers to have practices for providing opportunities for work-integrated learning and volunteering.

needs. Providers did not disagree per se with the Outcome as drafted, but were unclear about what their obligations would be in real terms.

## **Part 6 and 7: International learners**

There was support across all respondent types for the integration of the international and domestic Codes. However, it was felt that the specific wellbeing and safety needs of international tertiary learners could be better articulated to reflect the different communities involved. There was a strong feeling from both learners and providers that the unique vulnerabilities experienced by international learners require more consideration, as the majority find themselves alone and lack familiar support networks. Learners and universities agreed that international learners appear to be treated as one homogenous group in the document and the diversity of international learners' needs to be better recognised.<sup>4</sup>

## **Part 8: Code Administrator**

Part 8 of the Code was welcomed by respondents. Learners wanted there to be more explicit requirements for the Code administrator to make processes inclusive and accessible. It was felt that if this was not explicit there was a risk that learners could be disempowered. Providers raised questions around the peer-to-peer review process and how it would work in practice. There was a general feeling from this group of submitters that it would be overly burdensome and add limited value.

## **Disputes Resolution Scheme**

The emphasis on learner empowerment and mana-enhancing processes was positively received. Respondents felt the Disputes Resolution Scheme (DRS) provided a more comprehensive process that aimed at ensuring that learners have their say, and that fair outcomes are achieved. However, some felt that the design and workability of the DRS should be more carefully and thoroughly considered. Organisations such as the Law Society, YouthLaw Aotearoa, and other disputes resolution bodies provided a range of guidance on design and review processes. Many comments on the DRS also relate to the proposed law changes – in relation to the scope, jurisdictional cap, and privacy.

## **Te Tiriti o Waitangi**

There was strong support amongst those who submitted on the DRS for upholding tikanga Māori in the DRS. The inclusion of reporting protocols about the DRS's ability to uphold Te Tiriti was recommended as an important and useful tool.

## **Scope of DRS**

Many thought it should be combined with the international student Scheme. Some thought that the limit on jurisdiction to financial and contractual disputes was not necessary, and that it would be desirable to expand the scope of the DRS over time.

Some people who were engaged raised concerns about the jurisdictional cap. It was considered that aligning the cap with the District Court limits was problematic.

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<sup>4</sup> It should be noted that some of the comments relating to international students appear to misinterpret what has changed. There is a need to provide more information about what has changed and how the different parts of the Code relate to each other.

## Limiting the process

Some respondents recommended that a process be implemented to allow the DRS provider to decline to accept a complaint where a review of the complaint reveals it has previously been considered by some other authorised body; there is no evidence showing this body has made a mistake; and no new evidence in relation to the complaint has emerged that could overturn the decision of that body.

## Access to DRS

The importance of information and support to access the DRS was highlighted. Several submitters noted that there are specific support mechanisms in place outside of the DRS that are best suited to provide advocacy for learners (including Students' Associations) and that there was no need to duplicate these.

## Privacy

OPC raised some concerns about the interface between the Privacy Act 2020 and the draft Rules. They considered that the relationship was unclear and made some suggestions.

## Law Changes

There was broad support for the proposed law changes.

People who engaged with the Code strongly supported Proposal 1 – amending sections 534(1) and (2) to focus on learner wellbeing and safety. Similarly, most respondents who commented on the proposed law changes supported Proposal 2 – that the code administrator and Scheme operator honour Te Tiriti and that Māori, iwi, hapū, and whānau be consulted before a code is issued. One provider noted in its submission that it was important to be mindful that consultation/engagement obligations could become a burden for local iwi and hapū.

Of those who responded to the survey most supported the increase in focus on learner wellbeing and safety in the legislation and were in favour of the Code administrator and Scheme operator having an explicit role in honouring Te Tiriti.

Suggestions for amendments were mostly focused on two proposals:

- Proposal 6 – broadening the DRS to award learners remedies when breaches of the code are confirmed, and imposing a 20 working day requirement for the institution to file an appeal or provide redress (including any payment).
- Proposal 12 – the Minister to signal their expectations about enrolment contracts/forms, processes, and the provision of information to learners.

Nearly all universities were concerned about Proposal 6. University of Otago commented:

*Proposal 6 needs to be particularly sensitive to situations in which a provider takes a pragmatic approach in allowing something in a controlled way on campus, because it is less risky in terms of student wellbeing than banning it, and then having it take place in harmful environments. The same applies to situations where an institution may work with its students' association to ensure an inherently 'risky' event is conducted in as safe a manner as possible.*

Universities were also apprehensive about the powers inherent in the DRS. Learners were concerned Ministerial exemptions could be overused by providers and wanted clear limits established.

# 1. INTRODUCTION

## 1.1. Background

The Ministry of Education (the Ministry) engaged *Allen + Clarke* support the analysis of submissions received on *Te oranga me te haumarū ākonga*<sup>5</sup>: *tertiary learner wellbeing and safety*.

The Education and Training Act 2020 (the Act) requires the Minister of Education to issue a new Code of Practice (Pastoral Care of Domestic Tertiary Students) (the Code) to take effect by 1 January 2022, and a DRS to take effect at the same time. The Minister must consult beforehand on the draft Code, and on the proposed DRS Rules.

The Ministry opened consultation on the draft Code on 7 April 2021. Consultation took place over 6 weeks to 21 May 2021.

The Ministry sought feedback on:

- A proposed new Code that sets out the wellbeing and safety supports which tertiary and international learners can expect from their education providers.
- A new DRS to help resolve contractual or financial disputes between domestic tertiary learners and their providers.
- Law changes to support the focus on wellbeing and safety.

The Ministry received feedback through an online survey, written submissions, face-to-face workshops, interviews and Zoom meetings.

The consultation received 64 substantive submissions from learner representatives (e.g. university Students' Associations), universities, institutes of technology and polytechnics, private training establishments, and other relevant organisations e.g. health, community and legal/disputes resolution). Thirty-seven survey responses were also received.

## 1.2. Structure of this report

The report is structured to reflect the framework set out in the discussion document and consultation questions. There are two parts; Part A summarises key findings across three key areas, namely the proposed changes to the Code, the proposed DRS, and the proposed legislative amendments. Part B summarises responses received in written submissions about the specific components of the proposed code. Part B is grouped by outcome area.

There are four appendices to the report. Appendix 1: Survey Results sets out summary findings from the 37 survey responses. Appendix 2: List of submitters is a list of all written submissions received and reviewed. Appendix 3 is a list of survey respondents. Appendix 4 is a list of face-to-face engagements that the Ministry undertook.

The responses are organised by sector and *Allen + Clarke* have sought to present views without interpretation or assessing their validity regarding the current Code. The terminology used by respondents in their feedback has been used – terms such as “student” and “learner” have been used interchangeably.

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<sup>5</sup> In the submissions it was noted that the Te Reo Māori in the discussion document's title reads incorrectly. It ought to read *Te Oranga me Te Haumarū o Te Ākonga*.

## 2. METHODOLOGY

### 2.1. Overall outputs

*Allen + Clarke* has reviewed, coded and summarised submissions, notes from Ministry-led face-to-face engagements, and survey responses to produce this thematic report. The analysis involved:

- co-designing a coding framework that enables a thematic analysis of responses
- coding within the framework (in Excel)
- distilling common themes within the breadth of perspectives represented in the responses.

### 2.2. Coding framework and thematic analysis

Excel was used to develop a written submissions database. Responses were coded to this framework to enable:

- data extractions by segmentation (code and other criteria); and
- a comparative analysis of topics covered in the submissions and engagements.

*Allen + Clarke* will provide a copy of the Master Coding sheet to the Ministry in Excel format.

Responses were grouped, coded, and read according to the sector perspectives they represent (e.g., learner or provider perspectives). Common themes were then drawn from a comparison of responses to the topics of the Discussion Paper, sections of the draft Code, the DRS and the proposed law changes.

Following review and analysis of written submissions and survey responses, *Allen + Clarke* were asked to review the Ministry's notes from their other engagements. These notes were analysed and incorporate into Part A of this report.



## **PART A: FEEDBACK ON PROPOSALS**

### **3. KEY THEMES**

There was strong for the Code and its increased focus on the wellbeing and safety of learners. Most stakeholders welcomed the Code's intention to be learner-centred and saw this as an opportunity to enact meaningful positive change within the tertiary education sector. However, there were some differences in views between stakeholder groups as to how to achieve the purpose and goals of the Code.

The following sections seek to present and summarise key themes expressed in stakeholders' responses to the Discussion Document and the draft Code. Citations are interspersed in the text to give a direct impression of the range of stakeholder voices represented.

#### **3.1. General Feedback on the Draft Code of Practice**

##### **3.1.1. Te Tiriti o Waitangi**

Respondents were clear Māori involvement in governance must be ongoing and substantive.

Learners expressed strong support for explicit and clear reference to Te Tiriti in the Code. A student organisation described their desire for the Code to be alive with Te Tiriti, while others criticised the Code as not being fundamentally based on Te Tiriti, pointing out Te Tiriti is mentioned just five times in the 58-page document.

AUTSA explained the importance of the Code recognising mana whenua as the appropriate group to set tikanga and kawa. Respondents felt the Code should make it clear that Māori learners should not be expected to carry the burden of educating providers about Te Tiriti or Māori voices and perspectives.

Te Wānanga o Awanuiārangi described how wānanga and government intersect and explained cultural differences make complying with Te Tiriti difficult. They noted that definitions and clear responsibilities for providers are required. They felt government action was reactive and explained the need for government to operate proactively and focus on Te Tiriti with pono, adding that Māori and tauira need to be at the table to move things forward.

Providers acknowledged the relationship with Māori and Pasifika learners was different but largely did not mention Te Tiriti. Some felt that there were too many obligations. Most questioned what Te Tiriti obligations mean in practice and advocated for more guidance on what is required. One University noted "[p]roviding a definition for the terms "iwi", "whanau" and "Te Tiriti o Waitangi" would ensure that providers understand the meaning of these terms and can contextualise where these feature in the Code".

Te Pūkenga and its subsidiaries agreed that they have a role in supporting the Crown to honour Te Tiriti, and specifically to support Māori individually and collectively to meet their learning aspirations. They were, however, mindful that any obligation can burden local iwi and hapū with expectations of participation and co-governance.

##### **3.1.2. Te Ao Māori**

Respondents described the potential for Te Ao Māori to guide the Code, highlighting this in relation to learner wellbeing and safety. Māori tertiary providers have a pastoral care approach

that is based on a holistic world view. One provider discussed linking mātauranga and kaupapa Māori using whakapapa and manaakitanga connections.

### **3.1.3. Wellbeing**

Respondents expressed near universal support for focusing on learner wellbeing. Respondents discussed at length the broader context learners and providers operate within. They wanted the Code to empower learners and be about ensuring learners could access the support they needed but were conscious the Code and education providers could not stand in for a properly functioning national mental health system, wellbeing support structures, and greater equity. Respondents supported a greater emphasis on equity, and both learners and providers highlighted different considerations and requirements; learners highlighted the need to balance protection and empowerment with regards to wellbeing. Providers noted their desire for further clarification of exactly what would be their responsibilities for learners' wellbeing, and what would sit outside their influence and responsibility.

Respondents described the need for funding to achieve the Codes' outcomes and implement the relevant processes. They explained that without funding the Code would be hollow.

Many advocated for a more holistic understanding of wellbeing. Te Whare Tapa Whā was discussed as a model of holistic wellbeing the Code should be based upon.

The importance of physical spaces in supporting learners' wellbeing was highlighted and seen as a crucial part of the Code.

Respondents sought further clarification of what culture means in the Code. Many explained, while not unique to the Code, the current use of 'culture' assumes a vacuum where no culture is present outside of minority ethnic cultural spaces, rather than recognising the role of the hegemonic western culture. Respondents felt cultural safety needs to be fundamental in the Code and its understanding of learners' wellbeing.

Some respondents pointed out the Code appears to be focused on early intervention and avoiding escalation. One group noted their support of this, but added they expected providers would push back against this.

### **3.1.4. Accessibility**

Respondents expressed serious concern the draft Code does not adequately address accessibility or require providers to do so. Respondents highlighted the clear power dynamics between learners and providers with regards to inaccessible spaces and materials. A disabled students' organisation wanted the Code to focus on assisting all learners to identify and manage their basic needs, warning that without this, learners with visible disabilities may be singled out by providers. Disabled students' organisations and individuals described personal experiences of discrimination within tertiary institutions, adding that overwhelmingly, access to materials and accommodation of specific needs is dependent on lecturers and staff.

Some highlighted the importance of disabled learners and learner voices in decision making and described the need for further staff training around disability. Learners described the need to broaden the Code's understanding of accessibility to include educational materials for learners with disabilities. Some respondents added non-visible disabilities need to be explicitly understood and acknowledged as part of disability.

### 3.1.5. Staff Training

Respondents advocated for the Code to require providers to heavily bolster their staff training programmes and requirements. Respondents felt staff training should reflect the roles of staff, with a particular focus on Residential Advisors (RAs).

Learners described pastoral care as being inseparable from providers' other activities, and educators teaching styles must be able to meet all learners' needs. Disabled learners recounted personal experiences of having to teach classes and staff about wheelchair usage and accessibility concerns.

Disabled learners groups discussed commonplace discrimination from tertiary staff, noting some staff are known as being 'safe' for disabled learners, and a lack of consistent competency within staff workforce. Most advocated for disability advisors for learners.

Some respondents described the system as largely mono-cultural and needing to change. They described cultural competency and awareness as missing from the Code and advocated for including cultural competency as a part of teacher qualifications.

Some organisations expressed the importance of relationship building, and the imperative of providers embodying a spirit of whakawhanaungatanga.

A provider explained that pastoral care should be all staff members' responsibility and not fall to just one or two staff members, noting some staff lack confidence in components of pastoral care.

Respondents expressed an explicit desire for tertiary education staff to have race, discrimination, sexuality, and Te Tiriti o Waitangi training.

### 3.1.6. Privacy

Concerns were raised about the potential risk of compromising adult learners' autonomy and right to privacy:

*"The Code must not empower tertiary providers to unnecessarily encroach on the private lives of students, especially off-campus. OUSA also holds concerns regarding the prescriptive nature of the Code."*  
(OUSA)

Respondents explained privacy concerns are not just between learners and providers but involve parents and family as well. Learners have a right to privacy from the institution and family involvement in learners' studies are at the learners' discretion.

Privacy concerns particularly intersect with disability - learners have a right to disclose health status or disability at their own discretion.

### 3.1.7. Compliance with the Code

Respondents thought funding for providers to implement the Code and clear consequences for providers who do not follow it were crucial for the Code to be successful.

Student organisations stressed that any monitoring needs to be completed by third parties. They felt it was essential they were involved in the appointment of the Code Administrator, to ensure appropriate application of the Code. Some added they were highly concerned about, and opposed to, Universities New Zealand having this role.

Providers expressed compliance with the Code would entail significant costs and felt this would be borne by learners. Providers were concerned the Code would become a box-ticking exercise, and thought it was essential the Code differentiated what is aspirational or goal-oriented and what are the requirements.

Learners indicated their unwillingness to cover any additional compliance costs that implementing the Code may entail, either directly through having to pay increased fees, or indirectly through experiencing service cuts in areas not covered by the Code.

### **3.1.8. Accommodation**

Learners described tertiary accommodation as prohibitively expensive and only for well off learners. Student organisations described housing and hall shortages leaving some learners homeless.

Providers spoke of the high level of pressure on RAs, explaining this had increased dramatically because of COVID, as well as the risk of burn out for accommodation staff. One Wānanga felt the Code was not appropriate or reflective of smaller accommodation providers. Senior staff at one university explained they were currently trying to recruit more Māori and Pasifika RAs.

Learners were concerned the burden of learners' wellbeing was being placed on individual RAs rather than with the institutions. One Pasifika Students' organisation explained RA remuneration means only wealthy learners become RAs, meaning RAs are not reflective of the learner population. Learners felt accommodation halls care more about profit than the wellbeing of their learners.

### **3.1.9. Engaging with learners**

Learners wanted to see stronger and more explicit commitment to engagement with learners in the development and implementation of the Code and advocated for Outcomes 1 and 2 to be more fully incorporated throughout the entire Code. NZISA added they were particularly keen to see this for smaller providers.

Student organisations wanted the Code to include learner advocacy groups alongside "their communities" for providers to engage with. Student organisations wanted transparency around providers peer-to-peer assessments. Learners described how power dynamics shape current engagement, noting the Code must be prescriptive about the type of learner engagement required and the nature of the relationship (partnership, decision-making), adding they feel providers treat learners as consumers rather than partners. Learners felt consultation was all one-way, i.e. providers telling learners what they want to do.

Tuākana Network felt University of Auckland's 'vision mātauranga' was a positive example of a framework for engaging Māori and Pasifika learners which emphasised hauora.

Learners discussed the importance of their being involved in decisions about themselves. One disability learner group noted they were not consulted when the provider changed its disability policy.

Submitters also discussed the importance of hearing and learning from learners who do not succeed or who drop out of studies.

Learners were acutely aware of when their voices have been heard and taken seriously or not.

### 3.1.10. Learner advocacy

There was strong support for advocacy support and services. Respondents felt any advocacy service for learners should be independent citing ACC's navigation model as an example. Respondents discussed the roles of learner support staff explaining advocates generally assist with processes, whereas support advisors generally provide pastoral care because learners are more likely to go to someone they know. They highlighted the importance of these types of relationships.

These issues were also raised in relation to the DRS and are recorded in more detail in that section of the report.

### 3.1.11. Diverse perspectives

#### Learners

##### *Māori*

Respondents spoke of the Code not being from a Te Ao Māori perspective and needing a holistic understanding of wellbeing. A Māori provider expressed concern with the compliance costs for certain elements of the Code, signalling the necessity of certain exemptions such as those around accommodation requirements for noho marae.

Respondents explained funding was needed to support and help tauira deal with the impacts of colonisation and racism, adding kaiako do the best they can, and Wānanga seek to build the resilience of tauira.

Respondents felt institutions' responsibility to care for learners was not exclusively academic.

##### *Pasifika*

Respondents felt the energy and resources used to recruit learners, relative to those supporting learners, shows where priorities lie for providers. Respondents highlighted the need to identify what problems learners who drop out faced, what their experience was like, and whether they were aware of the available services or felt supported in their studies. Respondents felt this would help providers better understand where providers are failing learners. They added the Code could be more prescriptive as to exactly what supports are required to do, i.e. support with creating CVs or finding employment.

Respondents thought it was essential that the Code focused on empowering learners rather than just promoting services. Some learners shared positive examples of staff reaching out to to encourage them to continue studying, or to come back to study if they had previously withdrawn early.

Pasifika student organisations described the polytechnic sector as being underserved in mental health services and thought peer-to-peer support could be more visible in the Code. However, they felt that the responsibility should not be placed on learners. They also discussed high costs of living as barriers to their studies, detailing how the lack of financial support is often forcing Pasifika learners to drop out of their studies.

Many wanted Te Tiriti more explicitly included in the Code and advocated for the Code to take a holistic approach and align with Pae Ora. One students' organisation, who supported the Code, identified inadequate levels of Pasifika staff will be a barrier to successfully implementing the Code.

Some Pasifika organisations felt culture was missing from the Code while others felt the Code needed to address cultural, spiritual, and economic wellbeing. Pasifika learners described personal experiences of institutions currently lacking cultural competence. One learner spoke of a university expecting them to provide a family member's death certificate to demonstrate why they needed an extension, and the distress this caused them and their family.

One organisation found the foreword of the Code inspiring, but felt the rest of the Code treated learners as individuals and as learners first rather than recognising learners as members of certain communities and whānau.

Learners suggested co-design with Pasifika learners and their communities to create meaningful and appropriate support services for learners. They expressed a desire and willingness to further help progress policy.

#### *Disabled learners and organisations*

Respondents were clear the Code needs explicit references to disabled learners and expressed the need for co-creative processes with disabled learners to design accessible spaces. They noted that safe, quiet, and relaxed physical spaces often go a long way for disabled learners.

Disabled learners and organisations described how power hierarchies between learners and providers are more pronounced for disabled people. They further explained the intersectional nature of identities and how disabled LGBTQ+ learners have found it very difficult to find support.

Some felt that current disability services are overworked and under resourced, describing disability services as being inaccessible and often difficult to find. They felt this was because it is not in the providers' financial interest to make services readily available.

Many described having to prove disability numerous times as dehumanising and impersonal. Some explained providers and the Code view learners as independent from their communities, which does not recognise disabled learners' experiences as they may have family members and communities who are more involved in their learning, than families and communities of learners without a disability.

Almost all disabled organisations and learners discussed feeling isolated and described self-advocacy as being necessary and currently unavoidable for disabled learners because disability services often do not facilitate with faculty. They highlighted the cultural problem of staff not knowing how to meet disabled learners' needs, and not wanting to know or learn.

#### *International Learners*

Those who spoke about international learners made clear their support for bringing the two Codes together, highlighting the learner engagement requirements as particularly important. It was generally felt that providers need to engage a diverse range of learners, including international learners, in these processes.

International student organisations described the power imbalance between learners and educators as a barrier to international students providing feedback or speaking out. They felt information dissemination needed improvement, explaining international students are often isolated and may be unaware of the services and supports available.

An international student mental health expert highlighted the importance of providers being aware of the specific needs and vulnerabilities of international students.



## Providers

### *Universities*

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

Most written submissions considered that there needed to be more clarity about the obligations in terms of the dimensions of care and support which they would be required to cover under the Code. They were worried about the broadening of the concepts of wellbeing and safety to matters that they felt were outside their control. Many focused on the use of words such as 'timely', 'efficient', 'appropriate', and queried what they might mean, or how they could be measured or monitored. Some universities described how learners' expectations of staff had changed because of COVID-19, noting lecturers were much more available to learners during the emergency response but that this same level of availability is not sustainable long-term.

Some universities believed the Code took a deficit approach and felt this was inappropriate, advocating for a strengths-based approach.

Others described requirements as entailing large systems change and therefore needing additional resourcing to make this happen. They were concerned without this the costs would be passed onto learners.

One university highlighted Pasifika learners as being notably absent from the Code, and wanted the Code to include them more.

### *PTEs*

While PTEs broadly supported the Code's outcomes, they canvassed a range of concerns in their responses about associated processes. Some PTEs noted that, while they take all reasonable steps to ensure and maintain wellbeing, they deal with adult learners in whose private matters they have no interest in interfering with. They felt the Code did not recognise learners' own agency or place responsibility on learners.

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

Many PTEs felt that the draft Code adopted a "one-size-fits-all" approach and that this could not take into account the complexities of certain kinds of learning situations, for example: nursing students whose safety and wellbeing is determined by a range of factors, such as the availability, cost and safety of transport to clinical placements which can necessitate travelling to isolated areas at night and for long distances. Some PTEs noted their support for a separate Code for PTEs in the future, while others questioned the evidence a Code is needed and advocated for going after poorly performing providers.



## Te Pūkenga

In principle, submissions received from Te Pūkenga and its subsidiaries supported the move towards combining the international and domestic Codes. Te Pūkenga stated:

*[it] confirms that it agrees wholeheartedly with the stated purpose of the Code, which aligns with our vision, purpose of values.*

However, they articulated a range of concerns in relation to the Code's perceived ambiguity and proposed scope. Most felt that the Code takes too wide an approach and would require them to do things that they are not resourced to do.

Te Pūkenga highlighted the creation of their new operating model describing the process as "a significant transformational project that is not being created *for* learners, it is being created *with* learners".

Te Pūkenga argued for extending the interim code for 12 months to allow meaningful consultation and collaboration on the development of the new Code. Te Pūkenga noted they would welcome the opportunity to collaborate with the Ministry on policy development in a more meaningful way.

Otago Polytechnic queried the existing timeframe for implementing the Code and asked how compliance costs will be covered:

*While we are confident with our current provision of student wellbeing and safety, this new code will bring with it the need to deeply examine what we are doing to comply with the new code. This will inevitably require additional resourcing in providing enhanced services as well as the obvious compliance costs associated with the new code. As well as additional training for our staff. We ask that resourcing levels be addressed either through student service levy or direct line funding. Deeper engagement (formal and informal) processes with combining of interest and the student voice will require time to establish. The 1 January 2022 implementation will be challenging [...].*

Some Te Pūkenga staff questioned the intention of section 20 of the Code for providers to have warm and inviting spaces for learners to welcome friends, family, and whānau, noting this was not something learners normally did. Staff also discussed the opportunity for providers to partner with established mental health support services. Some staff added they felt their relatively small classes were a strength that provides the space and opportunity to know their learners better.

## 3.2. Disputes Resolution Scheme

Of those who commented, most supported the intent of the proposed DRS, noting the emphasis on learner empowerment and mana-enhancing processes as positive steps. Precise drafting amendments were suggested by the New Zealand Law Society and OPC. Many of the comments made in relation to the DRS relate also to proposed law changes.

Overall respondents felt the DRS provided a more comprehensive process that aimed at ensuring that learners have their say, and that fair outcomes are achieved. There was unanimous support for the DRS' independence. YouthLaw welcomed the power to enquire. However, they emphasised the need to make sure the "facilitator" and the process is independent and unbiased to ensure fairness, ensure chance to respond.

Some did not support the creation of the DRS on the basis that the current system was working adequately. Questions were also raised about who would pay for implementing and administering the new system.

Both learners and providers considered that the process was too complex and that the processes were at odds with the original intent. The cost of implementing such a complex system was equally worrying all stakeholders.

It was felt that the design and workability of the DRS should be more carefully and more thoroughly considered. Many offered to assist in any further review, design or testing of the system. It was stressed that there needs to be specific and extensive engagement with providers, Students' Associations, tauira Māori rōpū, and other learner groups on campus. AMINZ recommended looking at other existing systems for guidance.

Some providers considered that the SDRS favours complainants and provides respondents with limited assurance that the process will be open, fair, and transparent. A more balanced approach was recommended. Others sought further clarity on whether the DRS was just for domestic learners and whether iStudents will remain in place and available for international learners. OUSA raised a related issue about whether a dispute about learner status would be directed to the international or domestic process.

Some PTEs felt that it was unfair to require the publication of complaints. Whilst they understood the desire for increased transparency, they felt that this could unjustly tarnish their reputation where unfounded complaints were published.

There was consensus amongst providers that learners should exhaust internal complaints processes before going to DRS.

Specialist dispute resolution services raised the importance of a hearing to ensure the right to be heard can be fully exercised. They noted that this could be online, or a meeting and did not need to be a formal process. NZDRC thought a "whistle-blower" function (built into the DRS) would be a useful way to get a fuller understanding of the complaints in the sector.

### **3.2.1. Te Tiriti o Waitangi and Te Ao Māori**

The below comments also relate to Proposal 2 of the proposed law changes. There was strong support for upholding tikanga Māori in the DRS. It was, however, considered that more could be done at a practical level. NZUSA considered the process could further integrate tikanga Māori:

*"To create a culturally safe and accessible Dispute Resolution Scheme, tikanga Māori cannot be treated as a token, but rather must be lived through the entire document." (NZUSA)*

Ako Aotearoa proposed being more explicit about commitments and obligations towards Māori in the Rules. It was suggested that Māori ways of working through disputes should be further considered. The importance of tikanga being incorporated in the DRS was highlighted – for example, for tikanga Māori disputes people need to sit face to face. This allows true korero to happen and for mana to be upheld and enhanced throughout complaints process. One group that the Ministry spoke to suggested looking at Farm Debt Mediation Scheme as a model.

Some noted that the inclusion of reporting protocols about the DRS's ability to uphold the principles of Te Tiriti would be an important and useful tool. The inclusion of group complaints was generally welcomed, and submitters felt this would ensure that the process would not be

overburdened by multiple individual complaints and would allow learners to have *whakamanatanga* in submitting combined joint complaints.

Most of those who commented on Te Tiriti considered that there needed to be more engagement with Māori, and it was consistently noted that any changes or developments of the system to better support Māori must be designed alongside tauira Māori.

### 3.2.2. Scope of the DRS

The majority of those who participated in the consultation expressly welcomed the creation of the DRS for domestic learners. Many thought it should be combined with the international student Scheme. Some thought that the limit on jurisdiction to financial and contractual disputes was not necessary, and that it would be desirable to expand the scope of the DRS over time:

*“The Code and the Dispute Resolution Scheme must specifically recognise obligations to safeguard student mental health and well-being. [...] It should be able to hear a wider range of disputes than financial and contractual disputes. [...] The Scheme should be empowered to hear complaints about breaches to the code, misconduct, and disciplinary decisions.”*

(YouthLaw Aotearoa)

Most felt that it was important to have a broad approach to ensure that learners did not fall through the cracks. Many learners and academics felt that the DRS should cover things like sexual harassment and racism.

### 3.2.3. Supporting learners to access the DRS

Most of those who engaged in the consultation process spoke to the importance of knowledge and information in ensuring accessibility to the DRS. OUSA consulted with some international learners who, without exception, noted a lack of information about how to resolve disputes. Even where information was available, they felt it was inaccessible. NZUSA noted the importance of all providers making accessible and visible to learners relevant information about how and where to access the DRS. NZUSA felt that the Scheme operator should play a proactive role in providing adequate information. Learners noted the need for accessibility to be more than token, information needed to be accessible to diverse audiences in a form that they could understand. Some of those who spoke to the Ministry specifically raised the deaf community as an example.

Accessibility was also a primary concern for learners with disabilities:

*“To be effective to disabled learners, the DRS will need to be accessible. This includes all information about the DRS, the process of the disputes themselves, and the language offerings. The DRS operator must partner with student representative organisations to ensure that the processes are accessible. We note that, in section 10, there is a requirement that opportunities be provided for the dispute to be resolved in Te Reo Maori. NDSA suggests an explicit requirement that learners ought to be funded to bring their disputes in NZSL, as it is also one of our official languages.*

*We also wonder how the DRS would operate for learners with learning disabilities who are engaged with supported learning programmes. These students have little relationship with their student advocates or associations, and most of their interactions with their provider is through their support staff. We have heard that disputes between learners and staff*

*are often resolved within the classrooms. We believe that it is imperative to the operation of the DRS, and the Code, that these learners have independent advocacy available and accessible to them where resolving disputes in which the aid of staff is not appropriate.”*

(NZDSA)

It was recommended that Te Reo Māori, New Zealand Sign Language and a range of accessible formats for disabled people be explicitly required. There were some who went further and suggested that the DRS and the Code be in Te Reo Māori and New Zealand Sign Language as official languages of Aotearoa New Zealand.

Disabled organisations asked what the role of supported decision making would be in the DRS and recommended that this be clearly stipulated.

PTE's voiced concerns that providers may not always have a clear understanding of the external complaint processes and recommended workforce training and development. The development of a simple flow diagram was recommended to inform parties as they navigate their way through the process.

Some respondents suggested that the Scheme operator have a greater role in ensuring accessibility to the DRS through providing (and funding) interpretation and translation services.

Advocacy support (and legal advice) was highlighted by many as being important for learners in the DRS given the inherent power imbalance. The New Zealand Disputes Resolution Centre agreed about advocacy support but thought that the power imbalance should have little real impact – they felt that a good practitioner is able to address any power imbalance and ensure everyone is heard in a fair manner.

Several respondents noted that there are specific support mechanisms in place outside of the DRS that are best suited to provide advocacy for learners (including Students' Associations) and that there was no need to duplicate these. However, it was stressed that existing services are already overwhelmed by the number of learners seeking support and are under-resourced. If the DRS is going to refer learners to other advocacy and support services, the DRS should fund them.

Students' Associations unanimously emphasised the importance of their organisations as advocates and asked for an investigation into whether it would be appropriate for the DRS to partner with Students' Associations to support learners through the complaints process. While the inclusion of learners' whānau, advocates and wider iwi in representing learners through the dispute resolution process was welcomed, issues were highlighted around consent.

### **3.2.4. Limiting the process**

Resolving disputes can be resource intensive for providers. While everyone who engaged in the consultation acknowledged the importance of accessible and efficient resolution processes, some concerns were raised about a small number of learners potentially abusing the process. Universities New Zealand recommended that a process be implemented to allow the DRS provider to decline to accept a complaint where a review of the complaint reveals it has previously been considered by some other authorised body, there is no evidence showing this body has made a mistake, and no new evidence in relation to the complaint has emerged that could overturn the decision of that body. Frivolous or vexatious complaints were also raised as a concern by a few respondents.

Students' Associations raised concerns about the reasons for which a Scheme operator may decline a dispute. They felt the wording used in the discussion document was vague and could result in misinterpretation or abuse by universities.

### 3.2.5. Specific Amendments to the Rules

Talk meet resolve referred to the Government Centre for Dispute Resolution (GCDR) advice for the DRS design and recommended this as a framework to review the DRS. The GCDR sets out 10 elements of developing a DRS.<sup>6</sup> AMINZ thought that training qualifications should be expressly referred to in the Rules. However, they noted that the use of the word "certified" in s25 of the Rules was confusing and preferred the term "accredited" or "credentialed". They noted that you do not have to be accredited to practice as a mediator. However, they did recommend that the DRS align and be accountable to a professional code of conduct/ethics.

#### *Privacy*

OPC made a submission on the application of the Privacy Act 1993 to the Rules. OPC considered that the relationship was unclear and made some suggestions:

*Rule 12's interaction with the Privacy Act needs to be clarified.*

*In relation to Rule 14, the Scheme operator should be required to inform parties that they may limit disclosure of information they supply and the grounds on which they may do so.*

#### *Jurisdictional cap*

Many of the written submissions on the DRS raised concerns about the jurisdictional cap. These concerns and associated comments relate also to Proposal 5 of the proposed law changes. It was considered that aligning the cap with the District Court limits was problematic. Unlike the District Court, the DRS is not bound by the usual rules of procedure and legal precedent and does not contain the same procedural safeguards. The New Zealand Law Society suggested:

*"the proposed Scheme has a significantly higher jurisdictional cap of \$350,000. This is on par with the jurisdiction of the District Court (which is required to determine disputes in accordance with the law and formal procedural requirements). We therefore suggest some further thought is given to the Scheme's jurisdictional cap to ensure the operation of the Scheme is consistent with the principles of natural justice. If the proposed jurisdictional cap of \$350,000 is to be retained, it is important for consistency, justice and public confidence that decisions are made according to the general principles of the law, perhaps with some leeway to depart from the law only where it would be unjust to apply it. The Law Society therefore suggests the draft Rules could be amended to require adjudicators to address any legal rights or obligations in their decisions and make it clear where a departure from the law is required by the substantial merits and justice of the case (with the reasons recorded in writing), if that is to be permitted."*

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<sup>6</sup> <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/best-practice-guidance-on-dispute-resolution/developing-a-dispute-resolution-scheme/>

### *Extensions of time*

A few written submissions noted that section 24(1) appears to permit an extension of time only in circumstances where the Scheme operator obtains consent from both parties. They suggested amending this section to grant the Scheme operator the power to extend timeframes at the request of just one party, where it is reasonable to do so.

### *Disclosure of information*

Some written submissions noted that there is no indication that a party is entitled to seek an extension of time for the provision of information requested. If this were the case, submitters expressed concern about the ability of the Scheme operator to draw an adverse inference from a party's failure to provide information in time.

The New Zealand Law Society recommend that the draft Rules be amended to clarify that parties must be supplied with all relevant information, including any information supplied by another party (unless disclosure is expressly limited by the party supplying the information).

VUWSA were particularly concerned about adjudicators' ability to decline consideration of a dispute should information not be provided by either party. They advocated for reasonable limits and processes to ensure that, where a learner does not wish to provide sensitive information due to personal trauma or similar circumstances, their complaint may still be addressed in an appropriate manner.

### *Drafting issues*

Several written submissions identified a series of drafting errors in the draft Rules:

- Clauses 9 and 13(1) include cross-references to sub-clauses 11(2), 9(4)(a), 9(4)(b) and 9(5), which do not exist.
- Clause 18 includes an incorrect cross-reference to clause 16(4) – this should likely refer to clause 17(4).
- Clause 20(2) includes an incorrect cross-reference to clause 19(d) – this should likely cross-refer to clause 20(1)(d).

Some written submissions raised concerns about:

- The absence of a definition for 'complaints' and 'disputes';
- Ambiguity around what is meant by 'is on a without prejudice basis';
- The absence of reference to UNZ or NZVCC in relation to quality assurance; and
- Section 21 and its applicability to domestic learners.

## **3.3. Legislative Changes**

Seventeen written submissions commented on the proposed law changes, comprising seven tertiary education providers, three learner organisations, one peak body, and a selection of other commentators including the TEU and multiple education law or disputes resolution organisations.

Comments were supportive of the legislative changes, providing mixed opinions on specifics, particularly regarding the power of the DRS. Of those who responded to the survey most supported the increase in focus on learner wellbeing and safety in the legislation.



### 3.3.1. Te Tiriti o Waitangi and education providers' responsibilities to Māori learners

Survey respondents and learners who made written submissions made clear their support for amending the Act to give effect to Te Tiriti o Waitangi. One learner organisation advocated for mandating the Code Administrator and Scheme operator to honour Te Tiriti obligations. They felt that a comprehensive understanding of bringing effect to Te Tiriti must be included within the criteria for the roles.

A Quality Assurance Agency supported the development of a tailored Code based on Te Ao Māori for Māori education providers while also stating the Code must be relevant and supportive of ngā ākonga Māori and their providers.

A Community Law Centre expressed support for incorporating Te Tiriti principles, adding more consultation with Māori is needed to find the most appropriate ways of incorporating these principles.

Other submitters felt that Te Tiriti was not adequately contextualised in the Code:

*There are several instances where the Treaty is referenced. We feel that blind references to the Treaty without providing a contextualized interpretation as to how the Treaty relates to student welfare provision is confusing and does not actually support genuine engagement. A contextualized explanation of how the Treaty connects in this way that is intended to be ingrained in the Student Wellbeing Strategy and how all student support provision is executed would be really helpful.*

(EIT)

### 3.3.2. Learners

Learners supported the proposed law changes and made both broad and specific suggestions to improve the proposals. Learner organisations made clear they looked forward to working with the Ministry on the specific changes required of the Act, while further encouraging the Ministry to proactively engage with learners and their communities in ways that are accessible to them.

Learner organisations also supported the Code becoming more learner-centred, and one expressed support of the DRS now having the power to award learners monetary and non-monetary redress.

### 3.3.3. Universities

Universities mostly supported the proposed changes but raised concerns over Proposal 6 - Broadening of the DRS - and Proposal 12 - Ministerial approval and signalling of expectations. Universities were apprehensive about the powers inherent in the DRS. They sought further clarification about what would be enforceable through the DRS, and what might act as suggestions for universities to balance (depending on their, and their learners', circumstances).

Nearly all universities were concerned about Proposal 6. University of Otago commented:

*Proposal 6 needs to be particularly sensitive to situations in which a provider takes a pragmatic approach in allowing something in a controlled way on campus, because it is less risky in terms of student wellbeing than banning it, and then having it take place in harmful environments. The same applies to situations where an institution may work with its Students'*



*Association to ensure an inherently 'risky' event is conducted in as safe a manner as possible.*

Universities supported institutions having a responsibility to provide an environment that supports wellbeing and positive experiences for learners. However, some universities stated the wellbeing of individual learners could never be solely or primarily the responsibility of their tertiary institution. One university commented that the Code needs to accept implicitly or explicitly there are many factors influencing learners' wellbeing and tertiary institutions control only some of these influences.

Some universities were concerned the proposed changes do not reflect the basic functions of universities, as places of learning and research that exemplify and promote freedom of speech and the free and frank exchange of views. One university questioned the purpose of the Code, and the appropriateness and relevance of this purpose in relation to the role of universities.

#### **3.3.4. Other organisations**

Seven other organisations, all connected to tertiary education in some capacity, commented on the proposed law changes. These organisations were broadly supportive and offered small changes. The iStudent complaints' operator recommended the jurisdiction of the Ombudsman does not extend to the DRS as robust protections already exist.

A selection of these organisations made comments regarding Te Tiriti o Waitangi and educators' responsibilities to ākonga Māori, which have been summarised above in section 3.3.1.

#### **3.3.5. Survey responses**

Many survey respondents commented favourably on the proposed law changes. A detailed summary of their responses can be found in Appendix 1.

## **PART B: OUTCOME AREAS**

### **4. CONSULTATIVE AND CO-ORDINATED SUPPORT STRUCTURES (OUTCOMES 1- 4)**

This section analyses the written submissions that were received. It considers feedback against the Outcome areas identified in the Code and groups responses by stakeholder group; learners, universities, PTEs, Te Pūkenga, and others.

#### **4.1. Organisational and Strategic Goals (Outcome 1)**

Thirty submitters commented on Outcome 1. Seven were on behalf of learners, four were universities, three were Te Pūkenga and 12 were PTEs.

All submitters who commented on Outcome 1 agreed that learner wellbeing and safety practices needed to be central to the strategic goals of tertiary organisations. However, overall providers felt that Outcome 1 could not be readily or easily implemented. Some considered that it was too vague and too directive. They encouraged more flexibility. By contrast, learners wanted more specifics and stronger integration of learner voices into decision-making.

##### **4.1.1. Learners**

Learners' submissions were particularly focused on the way the learners' voice was obtained. Many advocated for learners to be integrated into decision-making around strategic planning processes. NDSA was clear that accessibility needed to be at the forefront of any framework. Some associations raised concerns around privacy and autonomy and believed better protections should be incorporated into the outcome.

##### **4.1.2. Universities**

Submitters unanimously supported consultation with stakeholders to inform strategic goals, and especially of learners' perspectives. However, many submitters also noted that the need to consult with communities was perhaps too broad. For example, Universities New Zealand suggested that further consultation beyond learners and staff be mainly limited to whānau, iwi and/or communities where those whānau, iwi and/or communities are actively and deliberately involved in supporting the wellbeing and safety of learners. The University of Otago requested that this requirement be removed or replaced with something less comprehensive, such as "receive appropriate stakeholder input."

##### **4.1.3. Te Pūkenga**

Te Pūkenga and its subsidiaries noted that providers currently have a pastoral care policy in their Quality Management System, which is reviewed by NZQA. Whilst they have no objection in principle to the requirement for an organisational strategy, they advise that this will not be an agile mechanism as it will require input from a governance level.

Weltec and Whitireia suggested that Te Pūkenga should devise the strategic plans and goals, and each ITP subsidiary consult with their staff and learners. Overall submitters were unclear how the peer-to-peer process is intended to work when all ITPs are merged into Te Pūkenga.

#### 4.1.4. PTEs

Most submitters supported amending or removing expectations around community consultation. It was felt that this was unworkable as drafted as it expected too much. Some went as far as to suggest that there was no merit in having learners and communities involved in the development of organisations' strategic plans. A few submitters raised questions about the place of the wellbeing and safety plan within broader strategic plans. Some also noted that strategic plans are often commercially sensitive, and it may not be appropriate to share them.

Many submitters suggested that the peer-to-peer verification of the review process is unreasonable and may be unnecessary. Submitters considered this will be costly and it will be difficult to ensure consistency across staff who are completing the review.

## 4.2. Learner engagement and partnership (Outcome 2)

Twenty-five submitters commented on Outcome 2. Seven were from learners, 4 were universities, 3 were Te Pūkenga (and its subsidiaries) and 8 were PTEs.

All submitters who submitted on Outcome 2 noted the importance of including learner voices and partnership. However, almost all providers felt that the requirements overstepped and would not be able to be implemented in practice. Learners by contrast wanted more explicit requirements and stronger commitment to involving learners in decision-making.

LUSA noted the lack of Te Tiriti in Outcome 2.

### 4.2.1. Learners

Most submissions on behalf of learners suggested more explicit requirements and language to ensure the prioritisation of partnership between learners and providers. NSDA also emphasised the need for partnership (rather than just learner voice), and noted that:

*"Learners were particularly excited by the requirement that learners will have a role in creating "course content and delivery" [11(c)]. Learner participation in course content and delivery has been something disabled learners have wanted for a long time, and this has the potential to radically improve the accessibility of learning. Similarly, learners expressed that the mention of "formal and informal structures" in [11 (a)] was particularly promising. Having multiple avenues of partnership makes consultation far more accessible for disabled learners. The promise of timely and accessible dissemination of information [11 (d)] is also exciting for our taurira."*

### 4.2.2. Universities

Universities were particularly concerned about the code interfering with academic pedagogy. The University of Canterbury suggested that:

*"In accordance with s267(4)(c) and (d) of the Education and Training Act 2020, tertiary institution and academic staff must retain the freedom to regulate the subject matter of courses taught and to access students in the manner they consider best promotes learning. The Code cannot interfere with academic freedom."*

The University of Canterbury also specifically sought clarity on “whether compliance with section 278 of the Act meets the requirements of paragraph 11 of the Code or whether providers are required to amend the composition of the governance structure to enable more learner representation on the university council. If the latter is intended, that would give rise to legal obligations upon learners and their community representatives who participate in management and governance decision-making which may place a burden on tertiary learners which is unintended.”

AUT believed that some learners would prefer to be independent rather than being forced to adhere to wellbeing and safety monitoring systems.

#### **4.2.3. Te Pūkenga**

While agreeing with the purpose of the outcome, submitters noted that it was unclear what, if anything, was required of providers in addition to the current practice of engaging through learner representatives and/or Students’ Associations.

#### **4.2.4. PTEs**

Generally, PTEs suggested that this Outcome was too vague. Many PTEs were concerned that the consultation requirements go too far and strongly urged that the Code not interfere with pedagogy. Some thought that Outcome 2 was redundant.

### **4.3. Dealing with Complaints (Outcome 3)**

Twenty-five submitters commented on Outcome 3. Seven were from learners, 4 were universities, 2 were Te Pūkenga (and its subsidiaries), and 6 were PTEs. YouthLaw Aotearoa also made a submission. Most submitters supported Outcome 3. Both learners and providers, for different reasons, had some questions around implementation. Learners sought more support and providers sought clarity on how the process would operate *vis à vis* existing processes. Te Pūkenga welcomed the staff training clause, believing it provides helpful guidance for providers.

#### **4.3.1. Learners**

Submissions on behalf of learners all supported the inclusion of the complaints process. Some felt that transparency should be embedded in the process and that specific feedback loops should be incorporated. VUWSA suggested that the resourcing and implementing of independent advocacy as a part of the complaints process would be beneficial.

Many Students’ Associations agreed with the universities that more clarity was required around terms like “culturally responsive approaches” and “addressing barriers”.

#### **4.3.2. Universities**

Some universities sought more clarity on how the process fits with existing processes and the scope of complaints that it covers. The University of Auckland made a range of specific suggestions to clarify wording:

*“13 (a) The wording should be modified to ‘effectively addressing complaints of all learners (including appropriate engagement with those supporting them)’.*

*13 (b) (iii) 'include the provision of culturally responsive approaches that consider traditional processes for raising and resolving issues (e.g. restorative justice)'. For completeness, natural justice should be included in the parentheses with restorative justice.*

*(d) (ii) '...diverse learner group (e.g. ...care experienced learners)'The term 'care experienced learners' is unfamiliar and should be defined in section 5."*

#### **4.3.3. PTEs**

Some PTEs questioned the need for the complaints process and thought complaints should be considered in line with the DRS.

The publication of complaints was another area of common concern for PTEs. The consensus was that complaints should not be published online in full. Some suggested that if complaints were to be published, they should be aggregated across providers and contexts to ensure privacy. A couple of PTEs who submitted on Outcome 3 had concerns about implementation. They considered that the culturally responsive and restorative justice requirements were unrealistic.

#### **4.3.4. Other organisations**

YouthLaw recommended that the code contain minimum standards about learners' rights and institutions' obligations in relation to learner complaints. They suggested that the minimum standards should provide obligations that all institutions:

- Have fair, straightforward, and accessible complaint policies and procedures.
- Have set timeframes (i.e. institutions must respond to a learner complaint within a certain number of days).
- Provide clear rules about what learners can base an appeal on.
- Acknowledge that learners can complain about unfair complaint procedures and policies to the code administrator.
- Provide guidance about tertiary providers' obligations in relation to sexual misconduct allegations.

### **4.4. Supportive organisational structures (Outcome 4)**

Twenty-one submitters commented on Outcome 4. Five were from learners, 2 were universities, 2 were Te Pūkenga organisations and 6 were PTEs. Submitters generally supported Outcome 4 but voiced significant concern about the ability to put it into practice.

Te Pūkenga subsidiaries noted that the training clause was a welcome addition and recommended training and guidance across the Code.

One concern raised consistently by submitters across all the board was that public services often operate inefficiently or with low capacity, so this outcome to "connect learners quickly to culturally appropriate social, medical, and mental health services" cannot be guaranteed.

#### **4.4.1. Learners**

Most submissions representing learners thought that learners and learner representatives should be more engaged in the processes. NSDA also suggested that staff be better informed about how

to support disabled learners. Some suggested prioritising the identification and prevention of racism, discrimination and bullying, and other equity issues. Maori and Pacific learners were identified as being invisible in the processes and it was recommended that they be explicitly referred to.

Information and support were highlighted as significant. YouthLaw suggested that a fact sheet be created on disciplinary proceedings. This factsheet should encourage learners to seek support and set minimum standards around these services.

OUSA suggested specific amendments to the definition of wellbeing.

#### **4.4.2. Universities**

Universities were concerned about the overly prescriptive nature of the outcome. The University of Auckland stated that *“having a staff member on call 24/7 for emergencies is not in itself problematic but its inclusion in the Code is; providers should be free to determine the best approach to after-hours emergencies according to the context.”*<sup>4</sup>

#### **4.4.3. PTEs**

PTEs echoed the voice of the universities and questioned the practicality of many of the requirements. Some PTEs thought the definition of wellbeing was too broad.

### **5. WELLBEING AND SAFETY PRACTICES**

#### **5.1. Safe and inclusive learning environments (Outcome 5)**

Twenty-three organisations and an individual commented about Outcome 5. Six submissions were made representing learners, 5 from universities, 1 Te Pūkenga organisation, 9 from PTEs and 1 from a professional body. Learners supported Outcome 5 and advocated for strengthening these requirements. Providers generally felt that it went too far and was impractical and unenforceable. They did, however, welcome Māori and Pacific spaces being specifically referenced.

##### **5.1.1. Learners**

Learner organisations overwhelmingly advocated for further strengthening the Code with regards to outcome 5. They wanted to see the inclusion of accessibility requirements, requirements for institutions to create physical spaces for different learner communities and an increase in funding for providers to supply on-going training for staff with the aim of understanding the intersectionality of learners’ backgrounds. NZUSA commended the expectation for ‘ecological sustainability’ to be incorporated into the design of physical spaces.

Learner organisations noted concern about the paternalistic language of the Code, which does not recognise learners as active participants in these processes. NDSA responding to Section 21(d) wrote:

*“Learners must be involved in the design of environments, especially disabled learners. We think that the caveat “where appropriate” will continue the trend of institutions improving physical environments without engaging with disabled learner associations, thus not improving accessibility. This caveat is too broad, and should be strengthened.”*

### **5.1.2. Universities**

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

### **5.1.3. Te Pūkenga**

One submitter questioned the allocation of roles and responsibilities within the Code. Te Pūkenga noted that the Outcome is very campus-centric and thought that it was not practical for distance learners.

### **5.1.4. PTEs**

Most PTEs supported the thrust of Outcome 5 but raised considerable concern regarding the process requirements which they considered largely if not entirely unachievable. Some PTEs questioned the scope of 'digital learning environments', seeking further clarification of what they would be responsible for.

NZMA argued the discussion document was vague and included overly subjective terms, adding "a good test of a compliance requirement is how well it can be defined, articulated and understood". Some PTEs noted the diversity of learners at their or similar institutions, arguing small providers do not have the space or resources to provide welcoming spaces for friends and whānau of learners.

### **5.1.5. Other Organisations**

TEU acknowledged the inclusion of 'ecological sustainability' into the physical design of environments while advocating for greater specificity to learners being included in the design of such environments. They noted countless examples of rooms and spaces being entirely inaccessible for some disabled learners.

## **5.2. Academic, personal, and social development of learners (Outcome 6)**

Twenty-five organisations and one individual commented regarding Outcome 6. Submitters included 7 learner organisations, 1 Te Pūkenga organisation, 6 universities and 10 PTEs.

Most submitters supported Outcome 6, although most PTEs did not. Learners and providers both advocated for caution, and further consultation, expressing concern the Code as written could protect "hate speech". PTEs questioned the relevance of Outcome 6 with respect to particular programmes they provide, and their role in learners' lives.

Te Pūkenga raised questions about the application of the Code to learners who are employed by a third party as part of industry-based learning. They felt that this was a complicated arrangement which would need to be formulated with input from industry and those stakeholders who support industry-based learning.



### 5.2.1. Learners

Learner organisations supported the thrust of Outcome 6, but criticised certain sections for being mono-cultural and insufficiently learner focused. One described the section as “lacking cultural intelligence”, a sentiment expressed by other learner organisations.

Some learner organisations expressed measured support for section 23 (a), while noting the potential for hateful or harmful speech to be protected under this clause. Most learner organisations highlighted the need to balance providing space for diverse and challenging viewpoints against the Codes’ other requirements for providing safe and respectful environments. The University of Canterbury Students’ Association wrote:

*“Voicing diverse and challenging viewpoints needs to be approached with caution, with provisions in place to protect vulnerable communities and have no tolerance for hate speech.”*

Learner organisations expressed concern about what providers offering access to leadership opportunities may mean in practice - noting many leadership opportunities for learners are through learner representation groups. They were concerned the Code did not recognise this or require providers to partner with learner organisations.

Most learner organisations described the status-quo negatively. These organisations were concerned that without mandated learner partnership in creating leadership opportunities and support systems these same issues would continue. One described the need for a “by learners for learners” ideology.

An individual commented in favour of requiring providers to have disability support practices, be culturally competent, and adhere to Te Tiriti.

### 5.2.2. Universities

Most universities supported Outcome 6 while raising specific concerns with parts of sections 23 and 24. Many argued some processes and practices described in the Code should not be included in a pastoral care framework.

Some universities expressed concern section 23 as currently written could permit learners to voice hateful or unacceptable views. Universities New Zealand suggested amended section 23(a):

*“(A) voice diverse and challenging viewpoints in line with organisational policies on free speech, academic freedom (if relevant), and codes of conduct that help regulate things like hate speech, sexism, and racism.”*

Some universities argued the Code’s inclusion of “safe spaces for learners to voice diverse and challenging viewpoints” should be removed as it does not add to the ongoing discussion of this issue or to current policies. These universities spoke of established code of conducts and policies relating to free-speech and academic freedom.

Some universities did not support section 24(e) noting this may be a valid aspiration but as a matter for academic pedagogy it is not appropriate to be included in this Code.

### 5.2.3. PTEs

PTEs overwhelmingly did not support Outcome 6. PTEs acknowledged the importance of the Outcome but argued the related processes had no place in the Code.

Some PTEs asked for further clarification about what the Code meant by providing access to leadership, volunteering, and work-integrated learning opportunities in relation to the sectors they operate in. Christchurch College of English wrote:

*“We believe that some of the processes overstep the mark of how an English language school (and probably other sectors) might or should impinge on our students.”*

One PTE noted beyond promoting awareness, much of this section is outside their control. This latter point was echoed by a number of other PTEs. NZSE described sections 23 and 24 as overly idealistic, noting challenging viewpoints may threaten the safety of others.

#### **5.2.4. Other organisations**

RPH expressed support for a holistic understanding of learner wellbeing in-line with Te Whare Tapa Whā, and highlighted the importance of strengthening protective factors for learners at tertiary education institutions. RPH recommended a range of systems and changes to support learners’ wellbeing, particularly for learners living in tertiary accommodation.

TEU supported Outcome 6 and recommended explicit mention of how learners will be engaged to understand their needs and be involved in co-design. They recommended that section 23(a) acknowledge academic freedom in line with the Act.

### **5.3. Promote physical and mental health awareness (Outcome 7)**

Twenty-one organisations and one individual commented regarding Outcome 7. Six submissions were made on behalf of learners, 5 from universities, 1 from a Te Pūkenga organisation, 10 from PTEs and 1 from professional bodies.

#### **5.3.1. Learners**

Learner organisations largely supported the basis of Outcome 7 but almost unanimously expressed concern about the inclusion of certain words and the potential for this section of the Code to support providers over-stepping into learners’ personal lives.

Almost all learner organisations were concerned language included in this section may result in institutions overstepping into the private lives of learners. Some of these learner organisations sought clarity to the powers and boundaries of providers under this section.

An individual described the wording of section 27 as being inaccurately framed, writing:

*“The wording around “supporting positive choices” is poorly and inaccurately framed. Sexual health, violence, and consent are not always issues of choice, in particular where someone has been violated. The wording should read “supporting positive choices and a safe environment that upholds the wellbeing of learners and staff.”*

One learner organisation noted the importance of mental and physical health support processes being available at all times not only ‘support when you need it’, other learner organisations mirrored this sentiment.

NDSA highlighted the opportunity for providers to partner with Students’ Associations to achieve these outcomes, writing:

*“Outcome 7 is another fantastic opportunity to empower and include Students’ Associations and representative groups. Physical and mental health initiatives ought to be approached from a “learner” perspective, which associations can assist with.”*

### **5.3.2. Universities**

Universities supported the intent of Outcome 7 but overwhelmingly expressed concern with the current wording of the section, describing the current framing of requirements as impractical.

Most submitters argued universities could not be held responsible for outcomes with regard to these connections for learners from more than 130 countries. Some universities noted their expectation this section referred to Māori and Pasifika learners, and described their support if this was the case.

One university argued the Code went too far and explained it was not clear how a provider would assist a learner to maintain a healthy lifestyle beyond what the university already provides.

### **5.3.3. PTEs**

PTEs largely did not support Outcome 7, arguing the Code implies tertiary providers have a greater level of responsibility for the Outcome than is the case.

Some PTEs sought clarity on the intent of “supporting learners’ connection to their language, identity, and culture” expecting this referred to Māori and Pasifika learners. They noted that if this was not the case it would be impractical to expect that level of support would be made available to such a broad range of learners.

Some PTEs argued if providers are required to develop learners’ capacity to manage mental and physical health then this should be included in learning outcomes and programmes.

### **5.3.4. Other organisations**

RPH described tertiary accommodation as having inconsistent and insufficient sexual abuse prevention measures and procedures. RPH made a range of recommendations for requirements of tertiary providers to address this. TEU noted the Code should not facilitate providers intruding on learners’ private lives and advocated for greater detail outlining the boundaries for providers in “supporting positive choices”.

## **5.4. Proactive monitoring of learners’ wellbeing and safety and responsive wellbeing and safety practices (Outcome 8)**

Twenty-three submitters commented on Outcome 8. Seven represented learners, 5 were from universities, 3 were Te Pūkenga organisations, and 5 were PTEs. OPC also commented on Outcome 8.

Learners and providers generally accepted that there was a careful balance to be achieved between autonomy and providing supports. Providers concerns centred around the cost and resource required to implement the processes. By contrast learners seemed to be mostly concerned about the sharing of personal information.

The commitment to Māori – Crown partnerships in the administration of the DRS was welcomed by most submitters.

#### **5.4.1. Learners**

Many submitters voiced concern that encouraging learners to disclose issues without the necessary systems and supports may cause more harm than good. OUSA noted that there is only minimal reference to empowering learners and creating safe, inclusive spaces for them to raise concerns. OUSA recommended that Outcome 2 be embedded in this Outcome and across the entire Code.

NDSA noted that disabled learners reacted poorly to the idea of being encouraged to disclose health and mental health issues. They recommended that the wording should be amended to be more empowering, and that the onus should be on providers to create a safe environment for speaking about these issues. This approach was supported by other associations.

Many submitters noted the careful balance that is required to provide support while still maintaining the autonomy of learners.

#### **5.4.2. Universities**

Most universities considered that they were not equipped or mandated to monitor each learners' wellbeing. They clearly stated that they did not want this role and considered it would be overly onerous. All submitters felt that the breadth of the requirements made them unrealistic and unworkable.

The University of Otago noted that they must respect an individual's preference and raised the issue of learners who choose not to engage. They also felt that the 24-hour notice period for a without cause welfare check was contradictory and counterproductive. In their experience if there were serious concerns they would respond immediately.

#### **5.4.3. Te Pūkenga**

One submitter suggested that the data collected and used to inform the DRS regarding equitable outcomes for Māori should be aligned to the Māori Data Sovereignty Principles from Te Mana Raraunga "Te Mana Raraunga."

One submitter representing Te Pūkenga organisations noted that the changes to require up-to-date contact details of a nominated person, and the circumstances in which these people should be contacted in relation to their wellbeing and safety would require some changes in the Learner Management Systems.

#### **5.4.4. PTEs**

Many PTEs were comfortable with the Outcome in principle but noted that this could not work in isolation and that it required significant resourcing of wrap around health and wellbeing services for learners. Some PTEs voiced concerns about where the boundaries are and where their responsibilities would stop. They asked what would happen where a learner chooses not to engage.

#### **5.4.5. The Office of the Privacy Commissioner**

OPC highlighted the duty imposed by clause 28 involves a careful balancing of the privacy rights of individual learners and the responsibility of providers to support the wellbeing and safety of learners. They recommended there be guidance to help providers strike this balance appropriately.

In relation to section 29 they recommended:

*“Clause 29(a) could be amended to make clear that any health and mental health issues disclosed to staff will be treated in confidence.*

*Clause 29(b) states that providers may request (but not require) that domestic learners aged 18 and over provide a name and contact details of a nominated person, and the circumstances in which the contact person should be contacted in relation to the learner’s wellbeing and safety. However, clause 29(d) states that providers must have practices for contacting next of kin or the nominated contact person for learners aged 18 and over if there is concern regarding a student’s wellbeing and safety. Clause 29(d) does not restrict such contact to the circumstances specified by the learner in accordance with clause 29(b). OPC recognises that there will be situations in which it may be necessary to contact a family member or nominated contact about a student’s health and wellbeing in circumstances not specified by the student. However, any disclosure of the student’s personal information in such situations must be consistent with principle 11 of the Privacy Act (e.g., where the provider has reasonable grounds for believing that the disclosure is necessary to prevent or lessen a serious threat to the student’s life or health).*

*Clause 29(f) requires that providers have practices for identifying learners ‘who are experiencing difficulties and those at risk of harming others’, and have pathways for assisting them to access appropriate services. We recommend drawing a distinction between learners who are simply ‘experiencing difficulties’ and those at risk of harming others (or themselves). The thresholds for intervention, and the types of intervention required, will be quite different in each case.”*

## **6. ACCOMMODATION (OUTCOMES 9 -12)**

### **6.1. Empowering residents to manage their own wellbeing and safety (Outcome 9)**

Twenty submitters made comments in relation to Outcome 9. Five represented learners, 5 were from universities, 2 were Te Pūkenga organisations, 5 were PTEs, and 2 were professional bodies. Overall submitters supported the intent of Outcome 9.

#### **6.1.1. Learners**

Most submitters raised concerns about the scope of welfare checks and considered the ‘without cause’ checks needed to contain better safeguards including consent as far is reasonable possible in the circumstances. The needs of disabled learners were highlighted by some submitters, and it was recommended that more practical steps needed to be taken to provide support to disabled learners who may feel particularly isolated.

The commitment to staff training was welcomed by most submitters. However, it was felt that this should go further and that there should be an explicit requirement for ongoing support. Training to identify and prevent racism, discrimination and bullying was also considered very important.

### **6.1.2. Universities**

A particular focus for the universities was the management of wellbeing and safety and where responsibility should fall and who should be included. Related to this is the issue of access to public health and wellbeing services. Universities addressed this issue in detail in relation to Outcome 4.

The University of Auckland and Universities NZ considered that the reference to suicide prevention should be widened to include suicide and self-harm awareness.

The University of Canterbury noted concerns and sought further guidance on the interrelationship between the Privacy Act and the Code.

### **6.1.3. PTEs**

Most PTEs felt that the intent was correct, but it was overly detailed and prescriptive. Overall, it was considered that more industry input was required into the processes. Mount Manganui Language Centre noted the failure to understand the commercial realities of the industry in requiring self-review reports to be made public on their websites.

The question of roles and responsibilities was paramount for PTEs. Some raised questions around managing responsibilities in relation to accommodation that they do not manage. Similarly, it was felt that the nuances with homestays had not adequately been addressed.

### **6.1.4. Other organisations**

APSAA questioned whether clause 32(d) required managerial oversight to be present onsite 24/7. If this is the intentioned, they questioned whether this was reasonable.

## **6.2. Environment supporting inclusion, connection, and academic achievement (Outcome 10)**

Fourteen submitters made comments in relation to Outcome 10. Seven represented learners, 4 were from universities, 1 was a Te Pūkenga organisation, 1 was a PTE, and 2 were professional bodies.

Overall submitters supported the intent of Outcome 10. There was a difference in views between providers and learners on the scope of the processes accompanying Outcome 10. Learners considered that they needed to go further and include more specific requirements. By contrast, providers generally thought that the processes were unworkable, and the obligations should be limited.

### **6.2.1. Learners**

Most submissions representing learners noted that learners need to be more involved in decisions. Some submitters also felt that there the Code should provide more requirements on practices to review and improve the sense of community as the current stance is too broad and general.

NDSA raised an important issue from a disability perspective. They noted that the needs of disabled (in particular neurodiverse) learners and recommended more focus on accessible spaces for a wide range of activities and needs.

### 6.2.2. Universities

Overwhelmingly universities felt that the requirements were not feasible. It was suggested that in order to work the obligations should be limited.

*“It is not practical for any provider to meet the cultural needs and aspirations of all groups when the University student population encompasses a multitude of ethnicities, nationalities, abilities, sexualities, faiths, political affiliations etc. Indeed, sometimes there are groups within the student population whose needs and aspirations we should not meet, such as religious cults or other groups holding harmful views.*

*This clause might be better re-framed as something like, “providing a campus environment where students are encouraged and supported to express their identity safely and positively.”*

(University of Otago)

### 6.2.3. PTEs

While acknowledging the important purpose of Outcome 10, some PTEs questioned whether it was necessary given that Outcome 9 would capture the requirements of Outcome 10.

Like universities, PTEs felt that the obligations were too broad and open to interpretation. They considered this a significant risk for providers. One submitter explicitly noted the need for reasonable social behaviour guidelines to be set in partnership with learners.

### 6.2.4. Professional Bodies

*“The transition from high school to tertiary education is a significant life event, and for many students (domestic or international), is their first move away from home. Young people experience huge physical, psychological and behavioural development as they mature into adulthood, such as adopting new behaviours, learning from experience, forming relationships and establishing lifelong health behaviours. Students are expected to have the life skills to live independently and must self manage living arrangements, relationships, and study in a new environment. This is a significant ask and there will be differing levels of ability or capacity to respond to any given situation. This period of transition marks a vulnerable stage in young people’s lives which can impact and alter their health and wellbeing trajectories over the long term. As such, students are in need of significant support to maintain wellbeing. Quality pastoral care is vital to student wellbeing. This includes more than simply looking out for or preventing harm; pastoral care should actively promote and support healthy lifestyles for every student on campus.”*

(Regional Public Health (Wellington Region))



### 6.3. Effective accommodation contracts and accommodation administrative processes (Outcome 11)

Nineteen submitters made comments in relation to Outcome 11. Seven represented learners, 4 were from universities, 2 were PTEs, 2 were Te Pūkenga organisations and 2 were professional bodies. YouthLaw Aotearoa and RPH also made submissions on Outcome 11.

Submitters across all groups supported the intent of Outcome 11. Most submitters were satisfied with the current drafting.

There were differing views, however, between providers and learners as to the extent to which contracts were the most appropriate mechanism for meeting wellbeing and safety needs. Providers generally felt that contracts could only provide a framework and the Code should be redrafted to reflect this. By contrast learners suggested more precise requirements be included.

There was general agreement between submitters that guidelines were required to ensure the processes fulfil their purpose.

#### 6.3.1. Learners

Submissions representing learners strongly supported Outcome 11 but felt there should be a requirement for learners to be involved in decision making. They also sought greater clarity on Residential Assistants. They particularly asked for acknowledgment that Residential Assistants are often learners as well as staff.

NZISA wanted to see the creation of a policy for conflict resolutions specific to tertiary student accommodation and standards of living conditions in tertiary student accommodation. They also advocated for a separate DRS to be created to provide conflict resolution support to international learners. VUWSA suggested:

- a legislated proportional number of Student Support Coordinators and parallel Student Accommodation specific support staff to residents; and
- explicit expansion of safety and security provisions at Student Accommodation,

#### 6.3.2. Universities

Universities were unanimously supportive of this section. They did, however, question the extent to which contracts can meet wellbeing and safety needs and suggested an amendment to the wording.

*“Our practices cannot always ensure that wellbeing and safety needs are met; they can only provide a framework to support these needs being met.”*

*(University of Otago)*

#### 6.3.3. Other organisations

RPH made a submission focusing on alcohol and drug related harm. They recommended:

1. *“A multipronged approach should be implemented in student accommodation and within the wider university to protect the student population from alcohol-related harm. The approach must include actions to facilitate change in student cultural expectations and social norms around alcohol, as well as robust systems and*

*processes to identify and support students at risk of alcohol-related harm;*

2. *Student accommodation policies, and those covering the wider university, need to include practical responsibility and pastoral care of students. This could include the presence of RAs or a “buddy system” where regular check-ins and physical sightings are completed so that students consuming alcohol are doing so in a safe and supported environment. A harm minimisation approach should be taken such that policies are translated into operational programs, services, events and other opportunities that enhance the wellbeing of students and foster no or low consumption of alcohol. It is important that these policies are given sufficient resources to be operational (e.g. funding, dedicated staff);*
3. *Alcohol and drug use should be treated as a health issue; student accommodation policies and providers should put student wellbeing at the forefront by providing support to students who break codes of conduct around alcohol and drug use, rather than using punitive measures which may cause students to use alcohol/drugs in unsafe ways.”*

YouthLaw raised concerns about the applicability of the Code to externally owned and managed student accommodation providers. They also noted the vulnerability of Residential Advisors.

## **6.4. Well maintained accommodation facilities and services (Outcome 12)**

Fourteen submitters made comments in relation to Outcome 12. Four represented learners, 4 were from universities, 2 were PTEs, and 2 were Te Pūkenga organisations.

Submitters across all categories supported Outcome 12. The importance of accommodation facilities being of a standard that supports residents’ social, mental and physical wellbeing, safety, and educational success was unanimously reinforced throughout submissions. The difference in views between groups existed around the scope and clarity of the process associated with Outcome 12 (s. 40). Some learners considered that there was benefit in extending the requirement in s. 40 to include spiritual and accessible spaces. By contrast, many provider submissions voiced concern about the lack of clarity around some of these requirements and were worried that they would be difficult to implement in practice.

### **6.4.1. Learners**

Submissions representing learners strongly supported Outcome 12. One individual noted the importance of spiritual spaces to learners’ wellbeing and recommended that section 40 be expanded to encompass such spaces. Similarly, NDSA advocated for the prioritisation of more than social interaction and communal spaces. They recommended the wording of section 40(1)(a) be amended to include “accessible spaces available for a wide range of interests, activities, and needs”.

*“We have heard from many students that halls of residence are not very disability friendly spaces, especially for neurodiverse learners. Learners often feel that, if they do not fit the “mould” of a typical student, they will become isolated. They report that there are minimal opportunities to*

*socialise because most events and activities are alcohol-oriented, sensory overloading, or otherwise not accessible. Learners have also told us that they struggle with the lack of quiet spaces in halls, and they wish halls would appreciate the importance of down time.*

*We suggest that these sections be amended to prioritise more than just social interaction and communal spaces. For instance, section 40 [1(a)] should provide for 'accessible spaces available for a wide range of interests, activities, and needs.' More general wording like this would ensure that all communal spaces are accessible, and also that there are spaces which can be used by a range of people for a range of activities. NDSA believes that having designated quiet spaces or "down time" spaces would make halls a safer environment for disabled students, and for all students."*

#### **6.4.2. Universities**

Universities were unanimously supportive of this section. All submitters felt that it was unclear what providers were required to do under Te Tiriti to respond to the diverse needs and aspirations of residents (s. 40(1)(b)). The University of Waikato recommend that the term 'responds' is changed to 'engages with residents to explore'. It was felt that this was a more realistic obligation on providers.

A similar concern was raised by some submitters in relation to the wording in section 40(1)(c). It was considered that the word 'difficulties' encompasses a wide range of matters, many of which could be beyond the purview of an accommodation provider to assist with. Given the ambiguity of this statement, it was recommended that it be deleted (University of Waikato, UNZ). The University of Otago advocated for the responsibility on providers to focus on creating a safe environment where learners feel comfortable asking for help. They recommended that the word "difficulties" be amended to "significant difficulties".

#### **6.4.3. Te Pūkenga**

Te Pūkenga submitters were also concerned about the lack of clarity around processes. Their particular concern focused on the level of assurance tertiary providers were required to offer in terms of ensuring accommodation is safe, secure, and culturally responsive. Linked to this concern, one submitter asked whether unaffiliated private accommodation providers who advertise as student accommodation will be required to sign up to, and become compliant with, the Code? It was felt that some more guidance on how to implement the process at section 40 in practice would be useful.

#### **6.4.4. PTEs**

PTEs echoed the views of other providers. They felt that it made sense to bring learner residences into the scope of the Code. However, they raised concern about the scope and detail of the processes.

#### **6.4.5. Other organisations**

RPH provided a comprehensive submission on what is required to ensure the health and wellbeing of learners.

*“It is important for the health of the students that they are provided with quality and well-maintained accommodation that is warm, dry and safe. Poor living conditions, including damp, cold and overcrowding, increase risk of future ill health and poorer performance across a range of social indicators. Infection prevention and control measures should include basic hygiene education for staff and students, allow sufficient cleaning processes and schedules for common areas, and ensure that basic sanitation requirements are available and accessible (e.g. running water, soap, hand drying facilities, etc.). Student accommodation should include adequate numbers of shared facilities (e.g., toilets, kitchens, laundry etc.) for the number of students that will be using them to protect their health and hygiene. It is important that any illness policy allows for disease-specific stand down periods from attending university and communal areas after symptoms resolve (e.g. 48 hours for gastro). Student accommodation and the wider university must also develop an up-to-date illness outbreak plan and policy. Universities should take every opportunity to support student health, including the promotion of extended vaccinations, e.g. meningococcal, influenza etc. All on-site managers and residential assistants (RAs) should have basic health education, such as a first aid certificate, and good understanding of wellness & illness policies in the student accommodation and wider university. RPH recommends:*

- 1. Tertiary accommodation facilities must have appropriate and adequate infection control regulations and mandatory, regular checks to ensure that infection and disease control measures and standards are maintained;*
- 2. In light of the recent Covid-19 pandemic, it would be important for student accommodation to have a pandemic and/or outbreak illness response plan in place that students are aware of. It is also important that student accommodation providers have plans and policies in place to adjust fees or payment arrangements as appropriate when accommodation cannot be fully utilised during an outbreak.”*

(Regional Public Health (Wellington Region))

## **7. WELLBEING AND SAFETY FOR INTERNATIONAL LEARNERS (OUTCOMES 13 – 31)**

Twenty-one submitters made specific comments on outcomes 13 -31. Six represented learners, 4 were from universities, 5 were PTEs, and 1 was a Te Pūkenga organisation. OPC and the Suicide Mortality Review Committee also made submissions on this section.

Submitters across all groups were largely in support of integrating the international and domestic Codes. However, there was consensus that there could be more detail surrounding the specific wellbeing and safety needs of international tertiary learners.

Learners and universities agreed that international learners appear to be treated as one homogenous group in the document, and the diversity of international learners needs to be recognised. Submissions representing learners considered the draft was not sufficient to protect the diverse wellbeing needs of international communities. Both learners and PTEs explicitly raised concern about the perception of international learners as a “cash cow”. They thought the

wording could be amended to have a stronger focus on international learners being learners with diverse and unique wellbeing needs.

OPC noted that clause 94(1)(c) should refer to the Privacy Act 2020, not the Privacy Act 1993.

## 7.1. Learners

Overall submissions representing learners felt that the code could go further. It was suggested that the Code be more aspirational in addressing the systemic behaviour from some providers and expecting more from them. NZUSA felt that the international sections of the Code felt like a separate document, with a lack of learner voice. In addition, they noted that the wellbeing lens that flows through the domestic Code does not permeate the international Code.

Most submissions representing learners raised the impact of COVID-19 as an issue that should be considered further in the code. They believed that there will be more distance learners in the future and noted the large number of learners who remain offshore. It was felt that more specific recognition of this group and their needs should be made in the code.

Specific recommendations were made in relation to Outcomes 15, 16 and 21:

*“While we welcome Outcome 15’s expectations of stronger oversight of education agents, we do believe that there is need for clarification. The Outcome states that agents must not “breach the law”, however it does not define which legal system has mandate or takes precedence. While it may be difficult for the Code to place requirements on breaches of other nations laws, this point should be clarified. In addition, we believe that signatories need to ensure that agents are made aware of power differentials when dealing with prospective learners and receive professional development on how to manage this.*

*We believe that Outcome 16 should have requirements on providers to support learners through their engagement with Immigration New Zealand. The student visa application and maintenance process often presents significant challenges to learners and as partners in their education, providers could be expected to assist. Many providers do already empower students through the process so its addition would merely formalise and standardise the status quo.*

*We feel that the language used in Outcome 21 is unnecessarily paternalistic. Phrases such as “appropriately supervised” disempower learners, particularly those over 18. Students should be treated as equal partners in all facets of their education, including provider-based accommodation.”*

(NZUSA)

Drawing on his individual experience one submitter made recommendations in relation to Outcomes 18 and 20.

*“Outcome 18: Offer, enrolment, contracts, and insurance*

*A contract of enrolment should be required to include information about complaints processes and the disputes resolution Scheme, or this should be provided before a contract is signed. (Clause 57)*

*Outcome 20: Orientation*

*(1)(d) reads “disabling conditions”, which is not appropriate language to describe a disabled person, as it is the learning environment and systems that are disabling. Instead, it should read “disability and/or health conditions”. (Clause 64)*

*Outcome 21: Accommodation, safety and supervision of international tertiary students*

*(1)(a)(ii) should end in “or” rather than “and”. (Clause 66)*

*(1)(d)(i)(B) should include “and at the start of enrolment” when discussing transfers.(Clause 66)*

*(1) discusses instances that are not subject to Part 5 of the Code, but does not explain what criteria allows for exemption or the reasons for the exemption. This should be made clear in the Code. (Clause 69)”*

## 7.2. Universities

An overarching theme in the submissions from universities was the lack of acknowledgement of the diverse nature of tertiary learners. Submitters considered that it was inappropriate to impose strict requirements in relation to all learners as this would potentially make them feel like their liberties are infringed unnecessarily. The University of Canterbury thought that the code could benefit from differentiating those that are most vulnerable.

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

The University of Auckland made a specific recommendation in relation to Outcome 21. The process at section 70 was considered overly cumbersome and it was thought that it could be simplified.

*“70 (1) (a) (ii) We suggest removing the need for a reference check for a designated caregiver. This would add an administrative burden while providing limited or no value; no caregiver is going to provide a negative reference. It would also be very difficult for older caregivers who are not NZ citizens and are not employed or in business, to provide a reference.”*

*(University of Auckland)*

## 7.3. PTEs

Generally, PTEs are comfortable with the requirements. However, they noted the lack of detail around the specific wellbeing and safety needs of international tertiary learners.

One PTE voiced concern about publishing quality assurance results and considered this could potentially harm New Zealand’s reputation.



## 7.4. Professional Bodies

TEU was particularly concerned about the Code as drafted portraying international learners as “cash cows”<sup>7</sup> and suggested reconsidering the focus on the financial implications of Covid-19 to avoid this perception.

## 7.5. The Suicide Mortality Review Committee

The Suicide Mortality Review Committee made a detailed submission about the increasing trend of international learners’ death by suicide. A particular focus was on Asian learners. The Committee noted that in recent years, 25 percent of the Asian peoples who die by suicide in Aotearoa New Zealand were learners at the time of their death. The Committee welcomed the intent of the Code but considered that to be effective more needed to be done. It recommended a series of services and supports be established.

## 8. PART 8 – CODE ADMINISTRATOR

Twenty submitters made specific comments on Part 8 of the draft Code and the role of the Code administrator. Four represented learners, 3 were universities, 7 were PTEs, 2 were Te Pūkenga organisations and 3 were professional bodies.

Submitters across all groups generally supported the provisions in Part 8 and considered that they were a useful addition to the Code. However, it was agreed that there was some confusion around the demarcation between the Code administrator and the Scheme operator.

Providers were focused on the implementation of processes while learners were focused on embedding the learner voice more robustly across all aspects of the Code.

The Academic Quality Agency supported the increased transparency through reporting and suggested that this could be expanded to include the preparation of reports for a public audience to increase confidence. It was also recommended that the Code administrator undertake synthetic analyses of wellbeing and safety and that this be used to inform future practice.

### 8.1. Learners

Students’ Associations felt that there should be more focus on learners in Part 8. NZUSA felt that the Code administrator should be required to partner with learner communities in the development, implementation, and improvement of the Code.

The issue of inclusiveness and accessibility was also a common thread throughout submissions representing learners. It was felt that there should be an explicit requirement for the Code administrator to make their processes accessible to learners. Furthermore, it was suggested that if it was not stipulated that the complaints process be inclusive and learner-centric that there was a real risk of learners being disempowered.

The following specific changes were recommended:

- a. 105(4)(a) be expanded to explicitly include prospective learners.

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<sup>7</sup> This view was supported learners.



- b. 106(2)(a) be amended to include the words 'such that they are accessible and understandable'.
- c. 107(2)(b) should be amended to stipulate that the process must be inclusive and learner centric.
- d. 107(3) be amended to state that the code administrator must assist learners.
- e. 108(4)(b)(ii) be amended to require permission from parties who may have their privacy affected.

## 8.2. Universities

The University of Canterbury raised concerns about the crossover of processes. It was noted that issues arise where there are a number of different investigations taking place at once and in some cases overlapping with each other. It was recommended that the Code be clarified to state which investigation takes precedence. Universities felt this would help providers to understand what the priorities are with respect to the provision of information and assistance.

## 8.3. Te Pūkenga

Weltec and Whitireia raised 3 specific concerns around the implementation of the processes in part 8: the definition of the role is unclear; peer-to-peer verification of self-assessment of wellbeing and safety practices from a different tertiary organisation will be time consuming and costly; and there is no definition of the skills required by a verifier.

## 8.4. PTEs

A recurring theme from PTEs and their peak bodies was the extent to which the Code should specify processes. PTEs generally opposed the idea of peer-to-peer verification from a different tertiary organisation and considered that it would be overly burdensome. It was felt that NZQA were better placed to undertake this role within their current oversight mandate<sup>8</sup>. Some did, however, see the benefit of the peer-to-peer verification in theory noting it encourages mutual sharing and exchanging of practices.

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<sup>8</sup> Similar comments were made in relation to Outcome 9.

APPENDIX 1: SURVEY RESULTS

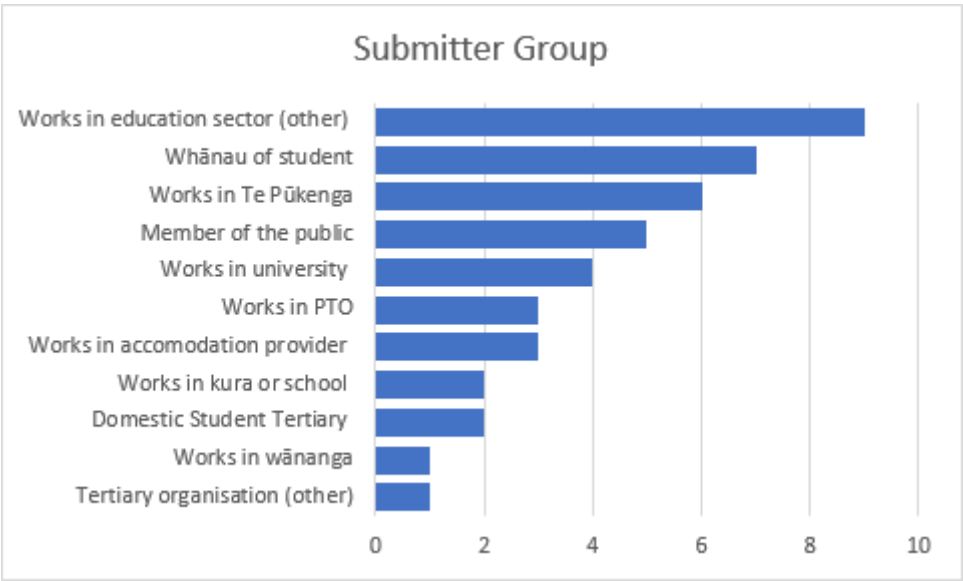
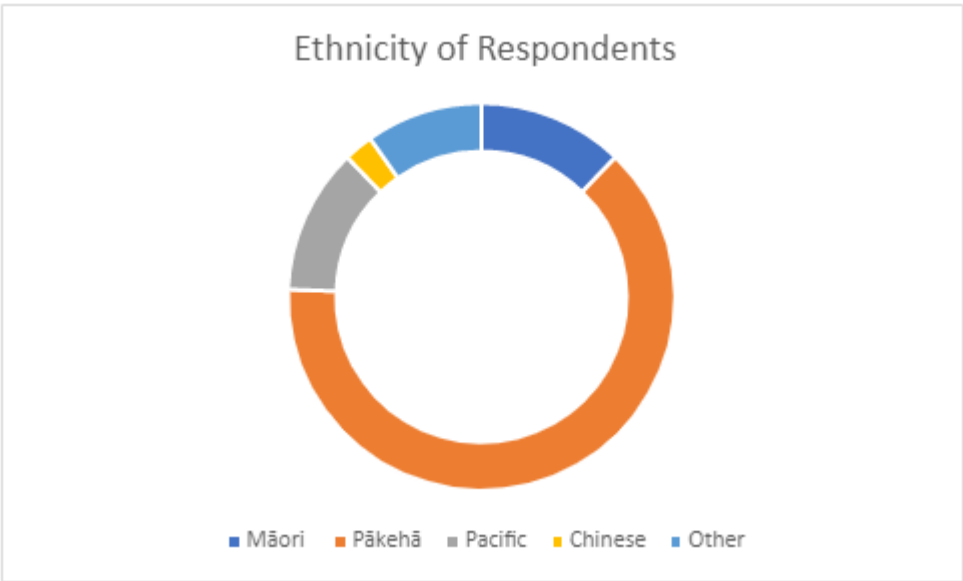
37 Surveys were received and analysed. Many of the survey respondents had either made their own or were part of an organisation who had made a substantive submission.

Of the responses most supported the proposed changes to the Code and its focus on learner wellbeing. Survey respondents also showed general support for the DRS and the proposed law changes.

Below is a snapshot of the survey data:

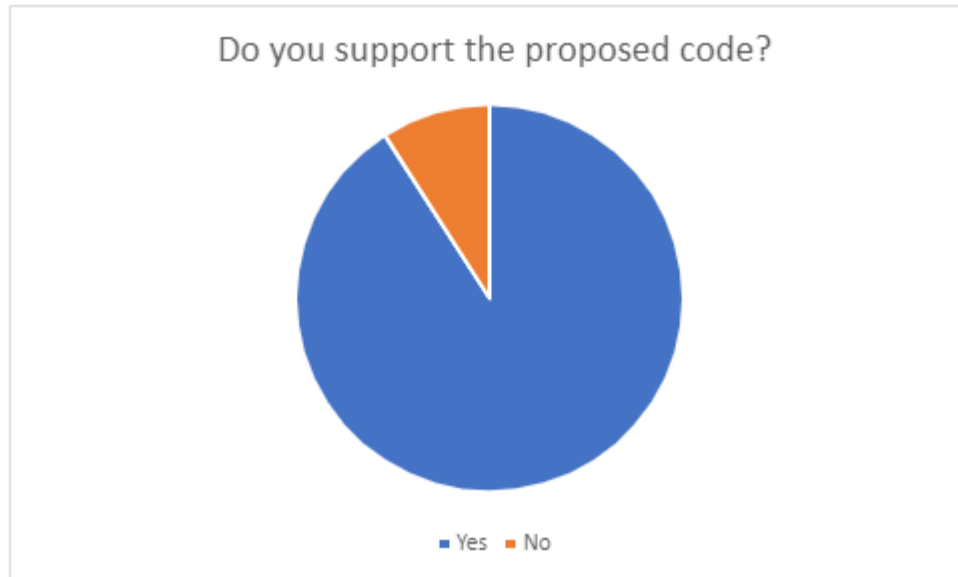
Demographics

Twenty-six Survey respondents were Pākehā, 5 identified as Māori and 5 identified as Pacific.

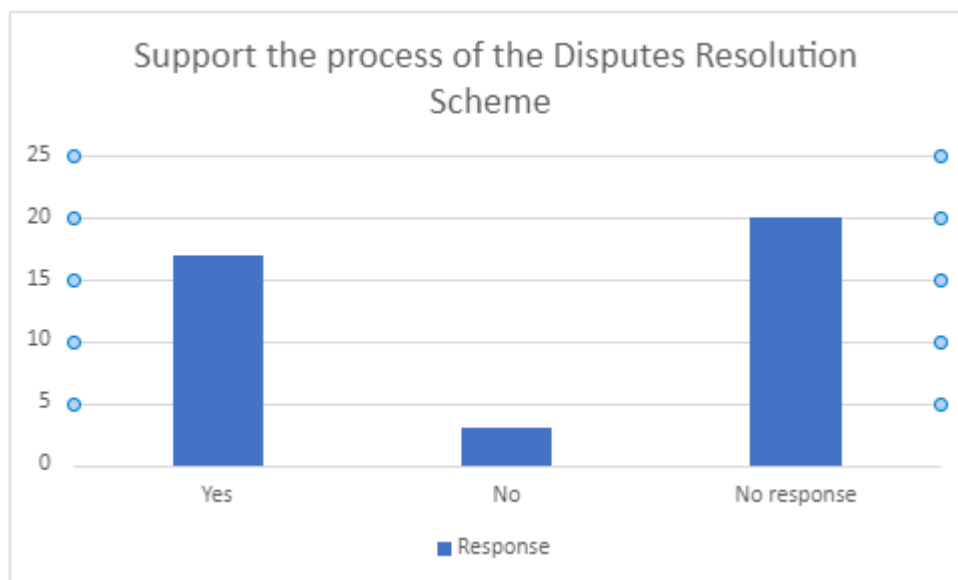


## Overview of Responses

Twenty respondents answered yes to the question as to whether they supported the proposed code. Two answered no, and the rest did not respond.



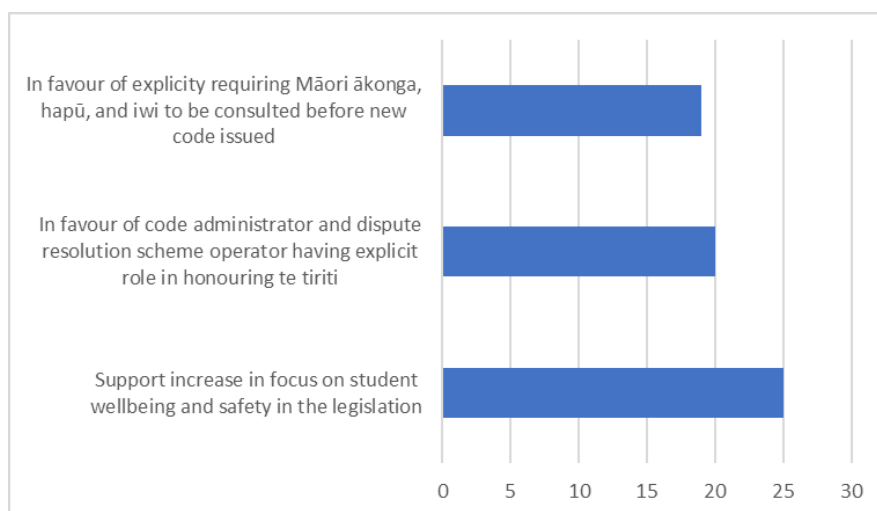
Seventeen survey respondents supported the Disputes Resolution Scheme, 3 did not, and 20 did not reply to this question.



## Law changes

### Proposals 1 and 2

Of those who responded, 25 supported the increase in focus on learner wellbeing and safety in the legislation. Twenty were in favour of the code administrator and Scheme operator having an explicit role in honouring Te Tiriti, and 19 were in favour of requiring Māori ākonga, hapū, and iwi to be consulted before new Code issued.



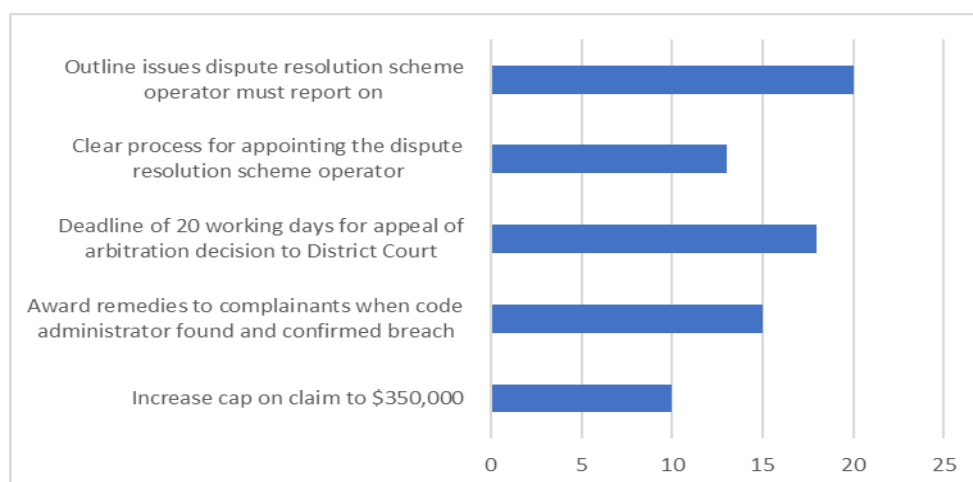
### Code Administrator – Proposals 3 and 4

Of those who responded, 8 supported requiring the Minister to approve a code administrator's plan; 13 supported ensuring the code administrator had the mandate and tools to monitor, gather information and take action; 9 supported the Code administrator reporting regularly; 11 supported the incorporation of legal requirements in the Education and Training Act and Education Act; 10 supported quality improvement and compliance notices; 4 supported the Minister being able to make minor and technical changes to the Code; and 4 supported being able to provide for tailored Codes.



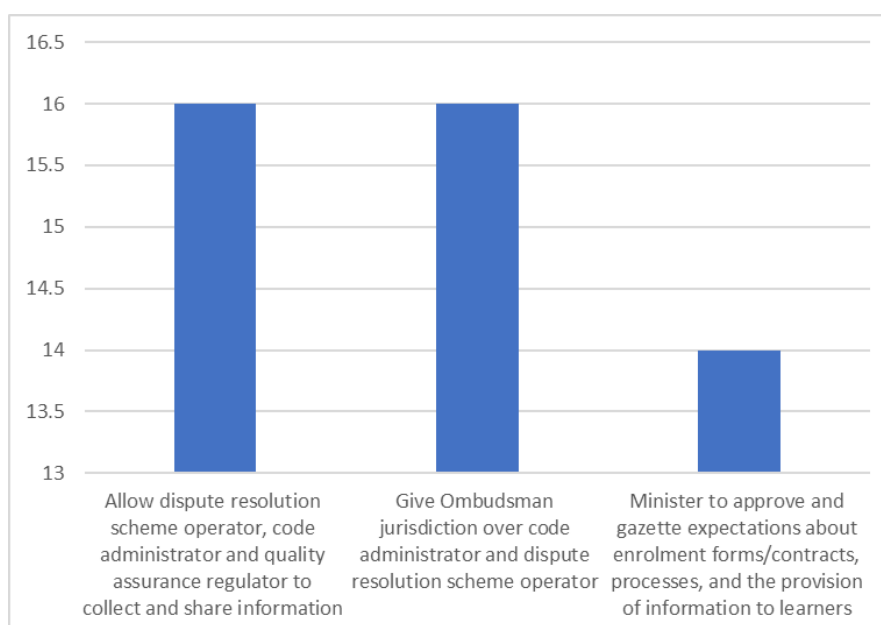
## Disputes Resolution Scheme – Proposals 5 - 8

Of those who responded, 10 supported increasing the cap on a claim to \$350,000; 15 supported awarding remedies to complainants when the code administrator has found and confirmed a breach; 18 supported a deadline of 20 working days for the appeal of an arbitration decision to the District Court; 13 supported clear processes for appointing the Scheme operator; and 20 supported outlining the issues the Scheme operator must report on.



## Administrative efficiency – Proposals 10 -12

Sixteen people supported allowing the Scheme operator, Code administrator and quality assurance regulator to collect and share information; 16 supported giving the Ombudsman jurisdiction over the Code administrator and Scheme operator; and 14 supported the Minister approving and gazetting expectations about enrolment forms/contracts, processes, and the provision of information to learners.



## APPENDIX 2: LIST OF SUBMITTERS

Organisation/group		Individuals
	<b>Learner Perspectives</b>	
1	Lincoln University Students' Association (LUSA)	
2		Mason Parry (Student)
3	Massey at Wellington Students' Association (MUSA)	
4		Matthew Schep (Former tertiary student representative)
5	National Disabled Students' Association (NDSA)	
6	New Zealand International Students' Association (NZISA)	
7	NZNO students	
8	New Zealand Union of Students' Associations (NZUSA)	
9	Otago University's Students' Association (OUSA)	
10	Tauira Pasifika	
11	University of Canterbury Students' Association (UCSA)	
12	Victoria University of Wellington Students' Association (VUWSA)	
	<b>Universities</b>	
13	Academic Quality Agency (Part of Universities NZ)	
14	Lincoln University	
15	Massey University	
16	Te Herenga Waka – Victoria University of Wellington	
17	Te Wānanga Aronui o Tāmaki Makau Rau – Auckland University of Technology	
18	University of Auckland	
19	University of Canterbury	
20	University of Otago	
21	University of Waikato	

	Organisation/group	Individuals
22	Universities New Zealand	
	<b>Private Training Establishments</b>	
23	Aspire 2 International	
24	Auckland English Academy	
25	Bridge International College	
26	Christchurch College of English Language	
27	Community Colleges New Zealand	
28	English New Zealand	
29	ICENZ Limited	
30	ICL Graduate Business School	
31	Independent Tertiary Education NZ	
32	Laidlaw College	
33	Mount Manganui Language Centre	
34	National Trade Academy Ltd	
35	New Horizon College	
36	New Zealand Management Academies (NZMA)	
37	New Zealand Skills & Education Group – New Zealand Skills and Education College and Seafield School of English (NZSE)	
38	PEEETO (The Multicultural Learning CENTRE) & Wilkinson’s English Language School	
39	People Potential x 2	
40	Quality Tertiary Institutions (QTI)	
41	Rotorua English Language Academy	
42	Te Rito Maioha -Early Childhood NZ	
43	UP Education	
44	Whitecliffe College	
	<b>Te Pūkenga and ITP subsidiaries</b>	
45	Ara Institute of Canterbury Ltd	
46	Eastern Institute of Technology (EIT)	
47	Open Polytechnic of New Zealand	
48	Otago Polytechnic	



	Organisation/group	Individuals
49	Te Pūkenga	
50	UCOL	
51	Whitireia & WelTec	
	<b>Schools</b>	
52	Schools International Education Business Association	
	<b>Disputes Resolution Perspective</b>	
53		Carol Anderson (Education Lawyer)
54		Dani Russ (Serves on a school Board)
55	FairWay Resolution Ltd.	
56	New Zealand Law Society	
57	Talk-Meet-Resolve	
58	Youth Law Aotearoa	
	<b>Other</b>	
59	Ako Aotearoa	
60	Asia Pacific Student Accommodation Association (APSAA)	
61	Office of the Privacy Commissioner (OPC)	
62	Regional Public Health (Wellington Region) (RPH)	
63	Suicide Mortality Review Committee	
64	Te Hautū Kahurangi - Tertiary Education Union (TEU)	

### APPENDIX 3: LIST OF SURVEY RESPONDENTS

Name		Organisation/Sector
	<b>Learner Perspectives</b>	
1	ANON-66BU-VBJ-R	Domestic tertiary student (University)
2	ANON-66BU-VBDD-3	Domestic tertiary student (University)
	<b>Works in Education Sector</b>	
3	ANON-66BU-VBQ3-Y	Te Pūkenga subsidiary
4	ANON-66BU-VBX6-9	Te Pūkenga subsidiary
5	ANON-66BU-VBDG-6	Te Pūkenga subsidiary (also family/whānau member of a student)
6	ANON-66BU-VBXB-N	Te Pūkenga subsidiary
7	ANON-66BU-VBD8-Q	University
8	ANON-66BU-VBQV-2	University
9	ANON-66BU-VBTC-J	University (also parent/caregiver of student)
10	ANON-66BU-VBX1-4	University
11	ANON-66BU-VBXP-3	Wananga
12	ANON-66BU-VBTJ-S	NZQA
13	ANON-66BU-VBTV-5	PTE
14	ANON-66BU-VBXE-R	PTE
15	ANON-66BU-VBXF-S	PTE
16	ANON-66BU-VBDA-Z	PTE
17	ANON-66BU-VBDE-4	PTE
18	ANON-66BU-VBDH-7	PTE
19	ANON-66BU-VBDK-A	PTE
20	ANON-66BU-VBDM-C	PTE
21	ANON-66BU-VBDN-D	PTE
22	ANON-66BU-VBDR-H	PTE
23	ANON-66BU-VBDY-R	PTE
24	ANON-66BU-VBXV-9	PTE
25	ANON-66BU-VBX3-6	School
26	ANON-66BU-VBDX-Q	School
27	ANON-66BU-VBD2-H	Consultant
	<b>General Public</b>	

	Name	Organisation/Sector
28	ANON-66BU-VBJR-Q	
29	ANON-66BU-VBTP-Y	
30	ANON-66BU-VBDT-K	Parent/caregiver of a student, family/whānau member of a student
	<b>Other</b>	
31	ANON-66BU-VBJ1-P	Health Services
32	ANON-66BU-VBTR-1	Student Accommodation (University)
33	ANON-66BU-VBX8-B	Student Accommodation
34	ANON-66BU-VBXC-P	Volunteering New Zealand
	<b>Unknown</b>	
35	ANON-66BU-VBJF-B	
36	ANON-66BU-VBQK-Q	
37	ANON-66BU-VBDU-M	

## APPENDIX 4: LIST OF FACE-TO-FACE ENGAGEMENTS

Date	Group name/meeting title
13 April	Student Voice / Code hui with student leaders, MoE, NZQA, AQA
20 April	YouthLaw hui
21 April	Director International Engagement (Ainslie Moore), University of Auckland
21 April	iLead Auckland National Committee
21 April	Yes Disability National Office, Auckland
22 April	University of Auckland International student support coordinators
22 April	New Zealand International Students' Association office, University of Auckland
24 April	Discussion with iLead members – Disabled Learners
27 April	AMINZ/Resolution Institute hui
28 April	Otago University Students' Association
28 April	Meeting with senior Otago University staff in wellbeing/pastoral care roles
29 April	Otago University Residential College/Student Accommodation heads and deputies
29 April	Meeting with Acting Otago University Vice-Chancellor
29 April	Meeting with Otago University specialist student support leaders
30 April	Hui with FairWay
3 May	International students at PTEs
3 May	Education New Zealand, Auckland Agency Group Meeting
3 May	Auckland University of Technology Students' Association
4 May	Hui with Wi Pere Mita - Resolution Institute & Tūhono
5 May	Tauria Pasifika Networks, Massey, Albany
5 May	University of Auckland Pacific Students
5 May	Manukau Institute of Technology Pasifika students
5 May	Rakaia Centre Ara students with disabilities
5 May	CCS Disability Office
5 May	University of Canterbury disabled students
6 May	DPO Coalition Meeting
7 May	NZUSA Council Meeting
10 May	Te Pūkenga – Learner-Centred Staff Network
10 May	Te Pūkenga Kōrero with MoE and NZQA
11 May	NZ Dispute resolution centre (NZDRC)

Date	Group name/meeting title
11 May	University of Auckland Pasifika academics hui
11 May	MIT student support, and appeals & advocacy staff hui
12 May	AUSA – Student Council Meeting
13 May	AUT- Disabled Student Support services
13 May	University of Auckland students NDSA Meeting
13 May	Weltec/Whitireia Students
14 May	Massey Manawatū students
14 May	NZATEAP Student Accommodation Professionals
17 May	Whangarei Tikipunga Highschool Careers notes
17 May	Zoom call with English New Zealand
18 May	Zoom call with Patrick Au – Auckland DHB
18 May	Victoria University of Wellington staff
18 May	Victoria University of Wellington Student Association and VUW Students
18 May	Ethnic and Interfaith meeting, Mt Cook School
19 May	Feedback from online hui with Te Whare Wānanga o Awanuiārangi
19 May	Meeting with Pasifika Community Hawkes Bay
19 May	Meeting with Pasifika Student Group at EIT Hawkes Bay
20 May	Te Wānanga o Aotearoa (TWoA) Hamilton
20 May	Tuākana Network (University of Auckland) At Fale Pasifika
21 May	Hamilton PTEs – Varda, Fairview, Learning Works
21 May	Waikato University staff
-	Warren F DRS hui
-	DRS Rules – ANZELA, MAADRO