



Submission
of the
**New Zealand Union of Students’
Associations**
on
**Te Oranga me te Haumaru Ākonga:
Tertiary Learner Wellbeing and Safety**

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To	Ministry of Education
From	New Zealand Union of Students' Associations (NZUSA)
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Subject	Te Oranga me te Haumarū Ākonga: Tertiary Learner Wellbeing and Safety

1. Introduction

- 1.1. The New Zealand Union of Students' Associations ("NZUSA") would like to thank you for the opportunity to make a written submission on the Te Oranga me te Haumarū Ākonga: Tertiary Learner Wellbeing and Safety consultation.
- 1.2. The New Zealand Union of Students' Associations (NZUSA) is the national voice of students in tertiary education. We are proudly owned by students' associations and councils from universities, institutes of technology and polytechnics around the country. We work alongside our partner organisation Te Mana Ākonga (National Māori Tertiary Students' Association), Taura Pasifika (National Pasifika Tertiary Students' Association) and the National Disabled Students' Association to fight for a barrier-free education for all.
- 1.3. NZUSA's members are:
 - Albany Students' Association (ASA)
 - Students' Association at UCOL (SAU)
 - Auckland University Students' Association (AUSA)
 - Lincoln University Students' Association (LUSA)
 - Massey at Distance (M@D)
 - Massey Wellington Students' Association (MAWSA)
 - Massey University Students' Association (MUSA)
 - Otago University Students' Association (OUSA)
 - Students' Association at NMIT (SANITI)
 - Students' Association at Wintec (SAWIT)
 - Student Connection at Weltec & Whitireia
 - Unitec Student Council (USC)
 - Victoria University of Wellington Students' Association (VUWSA)
 - Younited Students' Association at Eastern Institute of Technology

2. Preamble

- 2.1. NZUSA strongly welcomes the outcomes and processes outlined in the *Te Oranga me te Haumarū Ākonga: Tertiary Learner Wellbeing and Safety* discussion document and the proposed *Education (Pastoral Care of Tertiary and International Students) Code of Practice 2021*. We feel that a code such as this is long overdue and commend both the Minister of Education and the Ministry for rectifying this gap.
- 2.2. We would also like to applaud the work the Ministry of Education has done engaging with student communities on the Code. The co-design of consultation with student leaders is an exciting step towards making learners truly equal partners in tertiary education. We encourage the Ministry to continue to engage with learners as it has done through this consultation period.
- 2.3. However, we do have some areas of concern that we believe need to be addressed if the Code is to truly reflect the needs of learners, whānau, staff, communities, and iwi.
- 2.4. We have attached an annotated version of the draft *Code of Practice* as an appendix to this submission that should be read in conjunction with the relevant section of this document.

Language Used in the Code

- 2.5. Much of the language applied in the Code feels paternalistic and can imply that learners are a passive group without meaningful autonomy and voice. A prevalent example of this that occurs throughout the Code is the phrase "*identifying learner needs*". This can disempower learners' lived experience and makes them in effect a junior partner within the Code.
- 2.6. In our view, the paternalistic phrasing of such clauses could make it easier for providers to "reach" into the lives of learners outside of study and from a student perspective, over-reach. A pertinent example is the University of Otago's recent Code of Conduct review. This Code has generated significant controversy with learners due to its encroachment on many facets of their lives. As the Wellbeing Code currently stands, it would enable such behaviour from providers, not discourage it.

Connection Between Outcomes

- 2.7. We have concerns that the Outcomes within the Code do not adequately connect as it is currently drafted.
- 2.8. In particular, we are alarmed that Outcome 2, which should play a role in all other Outcomes, is not reinforced throughout the rest of the Code. In NZUSA's view, this Outcome is vital to ensure that the Code is truly learner-centric and empowers the voice and lived experience of those in the sector.
- 2.9. We recommend that rather than being simply a single Outcome that learner voice flow throughout every Outcome and be referenced as a guiding and binding principle in the Code.

Prescriptive Nature of the Code

- 2.10. NZUSA has concerns that the Code is too prescriptive on providers and dictates some processes that providers should have the autonomy to design with their stakeholders to suit their specific content. The somewhat prescriptive nature of the current Code also reduces the autonomy of staff and students in the sector to define what works best for them.
- 2.11. This prescription could have significant ramifications on the implementation of the Code. We are cognisant that the sector often reacts to prescriptive requirements by adopting a bureaucratic compliance culture. This negatively impacts students by making the Code a "tick-box exercise" rather than a holistic tool to aid them in improving and empowering their wellbeing. In addition, the burden of compliance often falls upon front-line staff who care for students and are already under-resourced and over-worked.
- 2.12. We do recognise that the discussion document alludes to the Code being "principles-based" however we feel this message should be reinforced throughout the Code to negate overly prescriptive interpretations.

Te Tiriti o Waitangi

- 2.13. NZUSA strongly believes that the Code should explicitly commit to upholding and giving effect to Te Tiriti in the Purpose of the Code.
- 2.14. As the tertiary sector struggles with the reality of institutional racism, the Code must be explicit and clear around expectations to uphold Te Tiriti. Many parts of the sector do not have sufficient knowledge of Te Tiriti and Te Ao Māori so the Code must offer sufficient clarity and precision so that students are empowered to act on breaches by providers.

- 2.15. We also feel that much of the language around Te Tiriti could be more aspirational, and that providers should be required to strive for Te Tiriti excellence rather than simply incorporate it as an afterthought as is current practice for much of the sector.

Learners, Whānau and Communities

- 2.16. We welcome the Code's recognition that learners have support provided by their whānau and communities. However, we feel that as a learner-centric document the Code must be explicit that learners are the lead voice in this partnership, then their whānau and communities. Without this demarcation between groups, we perceive a risk that providers could group learners, whānau and communities together as one giant tick box exercise.
- 2.17. We also have concerns that the Code does not currently give learners the autonomy or agency to decide who can speak to their issues. In some instances, learners may not want their whānau engaged in conversations about their wellbeing and the Code should allow for them to make this decision.

Student Representative Organisations

- 2.18. While NZUSA is sure that student representative organisations such as Students' Associations and Student Councils are included as a community in the Code, we feel that they should have explicit mention in the Code as a core body that providers must engage with.
- 2.19. Student representative organisations play a significant role in gathering and representing the voices of learners. The Code should have requirements embedded that providers must engage with the student organisations that exist on their campuses rather than the inconsistent engagement we currently see.
- 2.20. Without explicit mention, we have significant concerns that some providers may seize the opportunity to not meaningfully engage with student representatives and instead engage with learners that may not have the lived experience or ability to speak effectively on issues. This challenge is already seen on many tertiary campuses and we do not want the Code to enable or reinforce this.

Other Comments

- 2.21. We feel that the current definition of "wellbeing and safety" does not fully reflect the diverse and wide-ranging needs of learners. NZUSA believes that the definition should be broadened to include factors pertaining to both physical and meta-physical wellbeing such as wairua (spirituality), hinengaro (emotional wellbeing), whānau (relationships), and tinana (physical wellbeing).

- 2.22. In addition, we recognise that compliance with the Code will likely place additional financial pressures on providers. NZUSA believes that resourcing for this will be vital and that more funding from the Government will be necessary to ensure that the Code is truly effective.
- 2.23. The learner-centric Outcomes of the Code have the potential to radically change tertiary delivery in Aotearoa. While we strongly agree with their intent, NZUSA believes that there must be greater recognition in the Code of the impact that this will have on staff workloads. Many staff in the tertiary sector are already burning out due to unrealistic expectations of workloads and the Code will likely add to this. It must be remembered that staff conditions of work are students' conditions of learning and the Code will not be effective if those responsible for supporting learners are not adequately resourced to do so.
- 2.24. We also believe that the Code must be truly embedded in the actions and behaviours of providers. It must become an integral part of institutional cultures to ensure it is not simply a compliance exercise.

3. Part 3: Consultative and co-ordinated tertiary provider support structures (in relation to domestic and international tertiary students)

Outcome 1 – Organisational strategic goals and plans

- 3.1. While we welcome the intent of Outcome 1 to engage learners, whānau, communities and iwi in provider decision-making we do have concerns about the limited expectations it places on providers.
- 3.2. The Outcome has requirements that providers must **consult** with “learners, whānau, staff, local communities, and iwi”. While this is welcomed, NZUSA feels that this does not go far enough. If the Code is to truly live the *Tertiary Education Strategy's* commitment to *Learners at the Centre* and honour *Te Tiriti o Waitangi*, a process of co-design and meaningful partnership must be adopted. Mere consultation on pre-determined plans and strategies risks reinforcing the power imbalance often felt between learners and their providers and will not result in the changes that will be required to meet the expectations of the Code and learners. As the sector transitions from student voice to student partnership, the Code must do this as well.
- 3.3. NZUSA believes that meaningfully embedding learner partnership through co-design of organisational strategic goals and plans is the only way to ensure that these documents and processes truly meet the needs of our 400,000 diverse taura.

- 3.4. NZUSA feels holding the voice of learners at the same level as whānau and community may present challenges. Students should be able to include these voices if they wish to, but learners must have agency to decide what voices should be included and how. It should not be decided by others what voices can speak for students.

Outcome 2 – Learner voice

- 3.5. NZUSA believes that Outcome 2 for the most part, is a promising start. The recognition of the importance of learner voice is a significant development that will radically reshape student wellbeing practices. However, there is no mention of partnership. As many students have experienced, voice can simply be ignored. Without embedding partnership at every stage of the learner journey, the Code cannot work for our taura.
- 3.6. We also have concerns about the cushioning language used in this Outcome. Phrases such as “where appropriate” and “where relevant” can be used to disempower learner voice and don’t suit a partnership model. Institutions should not be able to define when partnership is appropriate, that simply isn’t meaningful.
- 3.7. NZUSA recommends that “student voice” be altered to “student partnership” to better reflect the journey that the tertiary sector is taking from voice to partnership. We also suggest the removal of the cushioning language highlighted above, as we believe this will be used by some providers to minimise and ignore the voices of students.

Outcome 3 – Dealing with complaints

- 3.8. NZUSA welcomes Outcome 3 and feels that it addresses many of the negative experiences that learners have had with complaint processes. However, we are alarmed that many of the promising phrases used in the Outcome (“timely responses”, “addressing barriers” and “providing opportunities”) are not defined. This could lead to real conflict between differing interpretations of these phrases by learners and providers.
- 3.9. NZUSA recommends that these phrases are defined in greater detail, either in the Code or best practice guidelines. In addition, we recommend that learners are empowered to define “timely responses” in the Code.
- 3.10. While we welcome the Code’s expectation of “culturally responsive approaches” to complaints we do have concerns that there is no requirement in the Code for staff to have education and professional development on how to provide this.

Outcome 4 – Supportive organisational structures

- 3.11. NZUSA commends the Ministry's recognition that organisational structures have a significant impact on learner wellbeing. The processes around information channels and staff training are promising with expectations for data gathering, timely and accessible resources and identifying emerging concerns. However, we are concerned that there is no mention of how learners can partner in this work and the Outcome does appear to treat students as passive participants.
- 3.12. We find the absence of staff empowerment in this Outcome concerning. For staff in the tertiary sector to be able to speak up on issues that impact learners and develop their ability to meet learner needs, providers must create organisational structures that recognise and value their expertise.
- 3.13. We believe that *17: Staff Training* should be reframed to professional development and ongoing education for staff. We have concerns that the framing of this process as "training" may lead to one-off "tick-box" education that does not adequately prepare staff to apply this knowledge across the diverse situations and issues they will face.
- 3.14. We also feel that the areas listed for staff training need expansion to include identification and prevention of racism, discrimination and bullying. Explicit mention of these areas will align the Code to the *Tertiary Education Strategy* which has a priority that providers "ensure places of learning are safe, inclusive, and free from discrimination, racism and bullying".

4. Part 4: Wellbeing and safety practices for all tertiary providers (in relation to domestic and international students)

Outcome 5 – Safe, inclusive, and supportive physical and digital learning environments

- 4.1. NZUSA feels that Outcome 5 treats students as a passive group that stuff happens to. Much of the language used feels paternalistic with many mentions of "assisting" students and "identifying" their needs. There is no mention of students as active partners in these processes.
- 4.2. We commend the ambitious expectation to have "ecological sustainability" incorporated into the physical design of spaces that providers use. This is vital to ensuring that tertiary education can support the wellbeing of students as climate change has a greater impact on Aotearoa.
- 4.3. NZUSA believes that expectations around safe, inclusive environments should be more proactive. We feel that to align with the *Tertiary Education Strategy's*

aim of education being “free from racism, discrimination and bullying” that the language in (20(a)) should be strengthened.

- 4.4. We recommend that the language used in this Outcome be made more empowering to encourage active partnership with learners.

Outcome 6 – Academic, personal, and social development of learners

- 4.5. NZUSA welcomes Outcome 6 and the focus on assisting students to meet their basic needs. However, we are concerned that there is no mention of student representative organisations and the role that these groups play in this mahi. The Outcome should reference how the voices of these bodies can be heard by providers and should enable closer interaction between the two.
- 4.6. We welcome the expectation for providers to create opportunities and inclusive spaces for students to “voice diverse and challenging viewpoints”. This complements the [Education and Training Act 2020](#)’s provision of academic freedom for students ([s 267](#), [s 318](#)), and we feel that this should be explicitly referenced in the Code.
- 4.7. We have some concern that providers are expected to offer students access to “learnership opportunities”. Many leadership opportunities in tertiary institutions are provided through student representative organisations, however there is no mention of this. There is also no requirement for providers to partner with student organisations to ensure this. The nebulous nature of the phrase “learnership opportunities” could cause challenges as some providers may use it as a way to control appointments to student voice roles that would traditionally be filled by student representative organisations.

Outcome 7 – Promoting physical and mental health awareness

- 4.8. We welcome Outcome 7’s expectations on providers to assist learners to be physically and mentally healthy.
- 4.9. However, we are cognisant that phrasing such as “support positive choices” may lead to institutions overstepping into the off-campus lives of students, as we have seen from some Universities already. There needs to be greater clarity as to the powers and boundaries of providers under 27(b)(ii) to ensure that intrusion into the lives of learners is minimised.
- 4.10. We also feel that the overall language used in this Outcome is somewhat strange and it repeats points made in other Outcomes without adding any significant new requirements or context.

Outcome 8 – Proactive monitoring of learner wellbeing and safety and responsive wellbeing and safety practices

- 4.11. NZUSA strongly supports the intent of this Outcome.
- 4.12. However, we are concerned about the language used in this Outcome. “Encouraging learners to disclose health and mental health issues to staff, including accommodation staff, so that the provider can proactively offer them support and resources” (29(a)) may poorly implemented by providers and could cause undue harm to learners. We feel that the Outcome should place expectations on providers to empower students to disclose information, and processes to ensure there are safe, inclusive spaces for this to occur.

5. Part 5: Additional wellbeing and safety practices in tertiary student accommodation (in relation to domestic and international tertiary students)

Outcome 9 – A positive and supportive environment in student accommodation

- 5.1. NZUSA supports the facilitation of a positive and supportive environment in student accommodation as well as the empowerment of residents to manage their own wellbeing. In addition, we believe that many of the processes in Outcome 9 go a significant way towards addressing the flaws in student accommodation exposed during the COVID-19 lockdown.
- 5.2. In order to ensure a positive and supportive learning community, accommodation staff must receive adequate training to effectively carry out the processes. As the draft Code currently stands, accommodation staff receive a wide range of training. However, it is crucial that accommodation staff not only receive appropriate training, but that this training is consistent. More particularly for Residential Assistants (RAs), training is often held at the start of employment and opportunities to re-train are infrequent. Adhering to 32(b) of the code, in that “accommodation staff are fit and proper persons,” ongoing training should be provided throughout the tenure of all accommodation staff to ensure they are enabled to carry out their roles effectively.
- 5.3. NZUSA was disappointed that the code failed to address the need for ongoing accommodation staff support. NZUSA firmly believes that support for staff is a critical component to ensure a supportive and positive accommodation environment. However, we strongly agree that referral pathways - including those through tertiary providers, community or public services - and escalation procedures will provide accommodation staff with support when dealing with adverse circumstances.

- 5.4. We do have concerns that some processes, particularly those related to welfare checks (33(1)), could lead to overreach from some institutions. It is important that students retain their independence in student accommodation, whilst knowing there is a safety net provided when needed.
- 5.5. In addition, we believe that there needs to be explicit mention of training to identify and prevent racism, discrimination and bullying. Explicit mention of these areas will align the Code to the Tertiary Education Strategy which has a priority that providers “ensure places of learning are safe, inclusive, and free from discrimination, racism and bullying”.

Outcome 10 – A supportive residential community

- 5.6. While NZUSA agrees that learners in student accommodation must live in a communal environment that supports inclusion, connection, and academic achievement, we feel this could be more aspirational. A particular process that is missing is how students partner with accommodation providers in making decisions. Having students involved in decision making would not only see their needs addressed from the bottom-up but would also encourage them to be proactively engaged in their living environment. Without engagement in decision making, student accommodation feels like a controlled and temporary home environment until students start renting. Engaging in decisions may reduce this feeling and provide students with more independence and autonomy.
- 5.7. In addition, language such as “reasonable” does not offer a clear direction to providers when developing and maintaining house rules or providing a healthy and supportive accommodation community. Using such language without embedding the voice of learners gives accommodation providers the opportunity to decide what they consider to be appropriate, rather than partnering with residents to define this.
- 5.8. We feel that the phrase “responsible social behaviour” could create implementation issues, as providers and students can have quite disparate interpretations of this. Students must play a role in defining what this looks like in individual circumstances and the Outcome should include this requirement.

Outcome 11 – Accommodation plans, administration, and operational policies

- 5.9. NZUSA strongly supports both the intent and drafting of Outcome 11. The requirements for contracts and refund policies to be clear and concise are extremely important and address many of the problems experienced by learners in 2020. The Outcome’s requirements for providers to fully inform

students on ownership, operations, and wellbeing practices of student accommodation are welcomed in particular.

- 5.10. However, we feel that there should be a requirement for providers to inform students about opportunities to share their voices and be involved in accommodation decision making. Providers must not rely on students to approach them with feedback about wellbeing practices, ownership and operations, contracts, or policies, but rather, work together in the development of administrative and internal operations. Engaging students in accommodation decision making at all levels is the only way to know what processes are appropriate to serve that student community.

Outcome 12 – Student accommodation facilities and services

- 5.11. NZUSA supports both the intent and drafting of Outcome 12.

6. Part 6: Additional wellbeing and safety practices for tertiary providers (signatories) enrolling international students

- 6.1. NZUSA feels that the International sections of the Code do feel like separate documents, with a lack of learner voice. In addition, the wellbeing lens that flows through the domestic Code does not permeate the international Code.
- 6.2. We are disappointed that the international Code appears to reinforce the current approach to export education where international students are often treated as cash cows to be exploited for financial gain, rather than learners with diverse and unique wellbeing needs. NZUSA believes that the Code should be more aspirational in addressing this systemic behaviour from some providers and expecting more from them.

Outcome 13 – Responding to the specific wellbeing and safety needs of international tertiary students

- 6.3. We feel that Outcome 13 is not sufficient to address the diverse wellbeing needs of international student communities. The Outcome appears to treat international students as a single homogenous group rather than as distinct learner communities. In addition, there is no mention of partnering with these communities to ascertain their specific wellbeing needs, nor mention of partnering with communities to help meet them.

Outcome 15 – Managing and monitoring education agents

- 6.4. 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.

- 6.5. 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.

Outcome 16 – Immigration matters

- 6.6. 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.

Outcome 21 – Accommodation, safety, and supervision of international tertiary students

- 6.7. 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.

7. Part 7: Wellbeing and safety practices for schools enrolling international students

- 7.1. We have not commented on Part 7: Wellbeing and safety practices for schools enrolling international students as it falls outside of the scope of the tertiary sector. However, we encourage the Ministry to engage with learners in this sector as their voice is critical to the success of this section of the Code

8. Part 8: Code Administrator

- 8.1. We feel that Part 8 lacks the same focus on learners that flows through the rest of the Code. There is limited ability for learners and their communities to feed into the activities and processes of the Code Administrator. To empower learners the Code Administrator must meaningfully engage them in their work and decision-making.

105. Reporting and publishing obligations

- 8.2. NZUSA supports the obligations placed on the Code Administrator to communicate its work and findings, however we believe that the Code Administrator should also be required to partner with student communities to socialise the Code and its functions.

106. Reporting a breach of code

- 8.3. We feel that organisations should be able to make complaints to the Code Administrator rather than only individuals. An example would be student organisations making complaints on behalf of learners that have experienced breaches. While this may be possible under the Code's current wording, we recommend that it be explicitly added as an option to ensure that learners can be supported by organisations in ways that work for students.
- 8.4. We believe that there should be requirements on the Code Administrator to make their processes inclusive and accessible to learners. Many processes developed by providers are challenging for students to engage with and we believe the Code should make explicit attempts to prevent this.

107. Responding to a complaint

- 8.5. While we support the ability for complaints to be informally addressed (107(2)(b)) we feel it should be stipulated that this process should be inclusive and learner-centric. We have concerns that if this is not defined, students could be disempowered by the process involved in making and advancing a complaint. Learners have experiences of providers forcefully using informal resolutions to "silence" student complaints and avoid publication of certain failings.
- 8.6. While we welcome the expectation that the Code Administrator assist learners making a complaint (107(3)), we feel that it should be strengthened to explicitly state that the Code Administrator **must** assist learners. We also feel that there should be expectations on the Code Administrator to partner with and empower other organisations that advocate for and support students.

108. Monitoring compliance with code

- 8.7. We support the processes outlined for monitoring compliance with the Code, however we believe that they should be expanded upon. There should be explicit requirements for the Code Administrator to hear and gather feedback from student representative organisations and other communities that are engaged with learners.
- 8.8. We also have concerns that the language used in (108(5)) could be disempowering towards staff and students. Unlike documents, they are not objects to be accessed, but active partners to be engaged with.
- 8.9. In addition, we feel that learners, whānau and communities should be included under (108(6(a))) and (108(6(b))). The Code Administrator currently has no obligations to engage with these communities on improvements to the Code

or to receive advice from them on matters that could be improved. We believe this is an oversight that should be addressed in the Code.

9. Dispute Resolution Scheme

- 9.1. The proposal for a Complaints and Disputes Resolution Scheme (DRS) for domestic tertiary learners is new. Overall, NZUSA is supportive of the DRS and its intention to ensure a more effective complaints process with better outcomes for students.
- 9.2. Current complaints processes within tertiary institutions are often inaccessible, confusing and tend to favour the institution rather than the student. NZUSA believes that the new DRS provides a more comprehensive and effective process that ensures learners are empowered to have their say and can be assured that outcomes will be fair and just. However, support for students and upholding Tikanga Māori cannot be understated. NZUSA strongly recommends that the DRS embed more support for learners within the process and further integrate the role of Tikanga Māori.
- 9.3. NZUSA believes that the Dispute Resolution Scheme could be made more accessible for learners as it is currently presented in an unwieldy format. We recommend that the order of the DRS be aligned to a learners journey through a dispute with their provider to ensure that students are as informed as possible.

Student Support in the Dispute Resolution Scheme

- 9.4. We feel that the scheme currently fails to provide reasonable avenues of support for students as they engage with the disputes resolution process. *Section 26.4* states that the DRS operator “*where appropriate and at a reasonable cost, [...] must provide additional support [...], or must refer the student claimant to support services outside of the DRS operator*”. While NZUSA agrees that there are specific support mechanisms in place outside of the DRS that would be more suited to provide advocacy, these services are usually provided by student representative organisations that are significantly underfunded and under-resourced. Pre-existing services are already often overwhelmed by the number of students seeking support and we believe that the DRS will add to this challenge.
- 9.5. We strongly believe that if the DRS operator is to refer students to external entities for support, they have a responsibility to ensure adequate funding and resourcing for those services. They cannot simply pass on students to other services and expect them to cope with the increased workload. NZUSA recommends that the DRS be altered to recognise this, and that expectations

are placed on the DRS operator to fund external advocacy services that are extant.

- 9.6. We also feel that there needs to be more explicit mention of support persons and greater clarity provided around the role that they can play in the dispute resolution process.

Information on the Dispute Resolution Scheme

- 9.7. NZUSA believes that it is crucial that information about how and where to access the scheme is made accessible and visible by all providers to all students. Pre-existing internal complaints processes are often inaccessible and confusing - this cannot be the case for the new DRS. The DRS operator must partner with providers and student representative organisations to ensure that students are proactively informed about both the DRS and how to engage with it.

Upholding Tikanga Māori

- 9.8. NZUSA commends the Ministry for placing expectations on the DRS operator to use appropriate tikanga to resolve disputes, however we feel that there should be more emphasis on the importance of tikanga throughout the Scheme. 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.

10. Proposed Legislative Changes

- 10.1. NZUSA supports the broad intent of legislative changes to enable and empower the Code that are proposed in Part 5 of the discussion document. We look forward to working with the Ministry on the specific changes that will be required to the Education and Training Act.
- 10.2. We strongly encourage the Ministry to proactively engage with learners and their communities on these changes in a manner that is accessible to all students. Information on proposed amendments must be succinct and presented in ways that enable learners to share their lived experiences.

Delegated Authority for Code Administration

- 10.3. NZUSA strongly believes that change is required to the Education and Training Act to ensure that learners are consulted on the appointment and scope of the Code Administrator. We feel that if the Code is to be truly learner-centric, learners must have a voice in who administers the Code.
- 10.4. We also believe that learners must have a voice in the appointment of the Dispute Resolution Scheme operator. We feel that an addition to the Education

and Training Act requiring the Minister to consult with learners before appointing a DRS operator is the best means to achieve this. Specifically, we propose that s 536(4)(a) of the Act be amended to read "*may, by notice in the Gazette and after consultation with learners, appoint 1 or more persons or agencies to be responsible for administering the DRS;*"

11. Conclusion

11.1. NZUSA firmly commends the intent and aims of the new Code of Practice and Disputes Resolution Scheme. We are heartened by the role that learners have played in both framing and designing the Code and look forward to further engagement with the Ministry as the work on *Te Oranga me te Haumaru Ākonga: Tertiary Learner Wellbeing and Safety* continues.

Part 1 – Introduction

1. Title

This code is the Education (Pastoral Care of Tertiary and International Students) Code of Practice 2021.

2. Commencement

This code comes into force on 1 January 2022 and is issued under section 534 of the Education and Training Act 2020.

3. Purpose of the code

(1) The purpose of a code –

(a) in respect of domestic tertiary students, is to support the Government’s objectives for the education of domestic tertiary students by –

- (i) requiring providers to take all reasonable steps to maintain the wellbeing of domestic tertiary students; and
- (ii) ensuring, so far as is possible, that domestic tertiary students have a positive experience that supports their educational achievement.

(b) in respect of international students, is to support the Government’s objectives for international education by –

- (i) requiring providers to take all reasonable steps to protect international students; and
- (ii) ensuring, so far as is possible, that international students have in New Zealand a positive experience that supports their educational achievement.

(2) This code specifies the role of providers in ensuring the organised and formal provision of wellbeing and safety practices to care and assist –

- (a) all tertiary learners generally; and
- (b) tertiary learners residing in student accommodation; and
- (c) international tertiary students; and
- (d) international school students.

4. The scope of the code

(1) The scope of the code –

(a) in respect of domestic tertiary students, is to prescribe –

- (i) outcomes sought from providers for their domestic tertiary students; and
- (ii) key processes required of providers to support the wellbeing, achievement, and rights of domestic tertiary student.

(b) in respect of international students, is to prescribe –

- (i) outcomes sought from providers for their international students; and

Commented [AL1]: We have concerns that this language could lead to providers absolving themselves of responsibility for learner wellbeing if this cushioning language is not further defined.

Commented [AL2]: We have concerns that this language could lead to providers absolving themselves of responsibility for learner wellbeing if this cushioning language is not further defined.

- (ii) key processes required of providers to support the wellbeing, achievement, and rights of international students.
- (2) This code, as it relates to tertiary providers, applies to –
- (a) the activities provided or arranged by a provider for domestic tertiary students who are studying towards a New Zealand qualification, whether in New Zealand or offshore; and
 - (b) student accommodation which is exempt under section 5B of the Residential Tenancies Act 1986 (RTA), including where there is a written agreement between the tertiary provider and the accommodation provider under section 5B(1)(b)(ii) of the RTA.
- (3) The code administrator may exempt the following students or learners from the application of part of the code –
- (a) a school student who changes status from domestic student to international student; or
 - (b) domestic tertiary learners or school or tertiary international students where appropriate, with due consideration for wellbeing and safety, on approval of the Minister of Education with the consent of the learners effected.
- (4) This code applies in addition to current statutory requirements and relevant guidelines for the health, safety and wellbeing and safety of tertiary learners and international school students.
- (5) This code does not override the responsibilities of education and accommodation providers under the Privacy Act or the Health Information Privacy Code.

Commented [AL3]: We believe that learners should have voice in whether they are exempted from the Code and we believe that this should be explicitly covered under (b).

Part 2 – How to read this code

5. Definitions

(1) In this code, unless the context otherwise requires, –

Act means the Education and Training Act 2020

accommodation staff includes all full-time and part-time staff who are employed within student accommodation described in Part 5

basic needs mean the essential material requirements to support wellbeing and safety including housing, food and clothing

code administrator process relates to Part 8 of this code and has the same meaning as 238H of the Education Act 1989 which is saved by Schedule 1, clause 7(3) of the Education and Training Act 2020

contract of enrolment between international students and signatories –

- (a) in relation to a signatory that is a State school, has the same meaning as in section 2(1) of the Act; or
- (b) in relation to other signatories, means a written contract that is entered into between an international student (or the student’s parent or legal guardian, if the student is under 18 years) and the signatory that entitles the student to receive educational instruction provided by that signatory

designated caregiver means a relative or close family friend designated in writing by a parent or legal guardian of an international student under 18 years as the caregiver and accommodation provider for that student

disabled student means a learner who experiences a physical, sensory, cognitive, psychosocial, or behavioural difficulty, or a combination of these

disciplinary action in relation to an international student includes suspension, exclusion, or the termination of enrolment for any reason, and any other disciplinary action set out in the contract of enrolment

domestic tertiary student has the same meaning as in section 10 of the Act

due diligence means the process of obtaining disclosure and verification in respect of another party before entering into a binding commitment

education agent means a person, body, or organisation acting on behalf of a signatory in relation to their international students’ enrolment and study, and includes a subcontracted agent

educational instruction includes classes, courses, programmes, or training schemes –

- (a) that are approved or exempted in accordance with section 524, 525, 527 or 528 of the Act; and
- (b) that the signatory has been granted accreditation to provide (where required under section 525 or 527 of the Act); and

Commented [AL4]: We believe that this definition should be expanded to be more explicit about what constitutes a basic need. We do not want to end up in a situation where learners and providers can debate the definition of this phrase to the detriment of wellbeing.

Part 3 – Consultative and co-ordinated tertiary provider support structures (in relation to domestic and international tertiary students)

Commented [AL5]: We believe that this Outcome is not strong enough and should talk about partnership, not merely consultation.

6. Outcome 1: Organisational strategic goals and plans

Provider wellbeing and safety practices are designed to respond effectively to the needs of learner communities with the intent and outcomes of these practices being shared with learners, whānau, staff, local communities, and iwi.

7. Process: Stakeholder ~~consultation~~ partnership in developing strategic goals, plans and practices

Providers must ~~consult~~ **meaningfully partner** with learners; whānau, staff, local communities, and iwi, to develop strategic goals and plans across their organisation, including student accommodation, for supporting the wellbeing and safety of learners which –

- (a) demonstrate how the provider will give effect to the outcomes sought and processes required by this code; and
- (b) includes how the provider will honour and give effect to the Te Tiriti o Waitangi; and
- (c) are readily available to learners and staff (along with this Code).

8. Process: Stakeholder ~~consultation~~ partnership in reviewing strategic plans and goals

Providers must regularly review their organisation's strategic goals and plans for supporting the wellbeing and safety of learners in ~~consultation~~ **partnership** with learners, whānau, staff, local communities, and iwi, including –

- (a) making amendments within a reasonable timeframe following the review; and
- (b) making the revised strategic goals and plans readily available to learners, staff and the general public, including on its websites.

9. Process: Review of wellbeing and safety practices

(1) Providers must use their organisation's learner wellbeing and safety strategic plan to review the quality of its learner wellbeing and safety practices at a frequency determined by the code administrator, including –

- (a) using ~~feedback~~ from learners, whānau, staff, local communities, and iwi; and
- (b) using relevant quantitative and qualitative data that is, as far as practicable, disaggregated by diverse learner group (e.g. learners of different ages, cultures, religions, international learners, refugees, disabled learners, distance learners, care experienced learners, and LGBTQIA+ learners); and
- (c) ensuring that wellbeing and safety practices are fit for purpose.

Commented [AL6]: We feel that feedback isn't a strong enough means to ensure that learner voices are heard, as it places the burden on engagement on learners. Instead, we would propose that learners are embedded in this review process.

(2) Providers must, within a reasonable timeframe, following a review under sub-clause (1) take appropriate action to address any deficiencies in learner wellbeing and safety practices.

(3) Providers must arrange for a peer-to-peer verification of self-assessments by ~~suitably skilled and qualified staff~~ from a different tertiary provider at a frequency determined by the code administrator.

(4) Providers must make self-review reports and peer-to-peer review reports of their learner wellbeing and safety practices readily available to learners, staff, and the general public, including on its websites.

Commented [AL7]: We feel that examples of these skills and qualifications should be provided either in this Code or the best practice guidelines. A vital skill that must be incorporated is learner engagement and an understanding of the learner journey.

10. Outcome 2: Learner ~~voice~~ partnership

Providers recognise that learners are a community with rich and diverse perspectives, experiences, backgrounds, and concerns, who are embedded in wider familial, social and cultural networks. Providers work to equitably uphold learners' mana and autonomy by hearing, heeding, and embedding their voices in relevant education provision, decision-making and governance.

Commented [AL8]: Cushioning language like this will disempower learners and result in providers deciding when learner voice is and isn't relevant.

11. Process

Providers must have practices for –

- (a) having appropriate formal and informal structures in place to provide a platform to actively hear, engage with, and develop the diverse voices of learners and their communities; and
- (b) working with learners, and their communities, as key partners in developing practices, including learner instigated or led initiatives, that influence their learning environments, and wellbeing and safety; and
- (c) empowering learners and their communities to participate equitably in decision-making processes, including, where appropriate, in decisions on how resources and spaces are used, the content of learner rules or codes of conduct, course content and delivery, and the strategic management and governance of the provider; and
- (d) promoting the timely and accessible dissemination of appropriate information and resources to increase transparency of governance and to assist learners and their communities to participate fully in decision-making processes.

Commented [AL9]: Cushioning language like this will disempower learners and result in providers deciding when learner voice is and isn't relevant.

12. Outcome 3: Dealing with complaints

Providers contribute to a positive learning environment by ensuring learners receive a genuine and timely response to their concerns.

13. Process: Learner complaints

Providers must have practices for –

- (a) effectively addressing complaints of all learners (and those supporting them) and providing constructive feedback; and
- (b) ensuring the timely and efficient handling of complaints in ways that –
 - (i) are appropriate to the level of complexity or sensitivity of the complaint; and
 - (ii) consider the issues from a cultural perspective; and
 - (iii) include the provision of culturally responsive approaches that consider traditional processes for raising and resolving issues (e.g. restorative justice); and
- (c) ensuring that the complaints process is easily accessible to learners (and those supporting them), including –
 - (i) providing learners with clear information on how to use the internal complaints processes (including the relevant person/s to contact), and the scope and possible outcomes of the processes; and
 - (ii) addressing barriers to accessing this information (e.g. due to language, lack of internet access (e.g. providing other ways of raising a complaint), fear of reprisal, desire for anonymity); and
 - (iii) providing an opportunity for a support person/s to guide and support the learner through the complaints process; and
- (d) recording complaints for –
 - (i) effectively managing complaints; and
 - (ii) identifying where there are deficiencies in wellbeing and safety practices, in particular where this is in relation to a specific diverse learner group (e.g. learners of different ages, cultures, religions, international learners, refugees, disabled learners, distance learners, care experienced learners, and LGBTQIA+ learners); and
- (e) reporting back annually on the number and nature of complaints made (at an aggregate level) to provider management, learners, and other key stakeholders (including the quality assurer) including on provider websites; and
- (f) advising learners on the next steps available to them, including –
 - (i) how to seek resolution of a contractual or financial dispute under dispute resolution schemes; and
 - (ii) how to make a complaint to the code administrator if a learner believes that the provider is failing to meet the outcomes or requirements of this Code.

Commented [AL10]: We feel this clause should be strengthened to embed the learners support person in the complaints process.

14. Process: Compliance with the Dispute Resolution Scheme

- (1) Providers must ensure they are familiar with the relevant dispute resolution scheme rules for domestic and international learners and ensure compliance with those rules in a dispute to which it is party.
- (2) Failure to comply with the dispute resolution scheme rules is a breach of this code and may trigger sanctions by the code administrator.

15. Outcome 4: Supportive organisational structures

Providers have effective structures in place to implement practices that promote learner wellbeing and safety, and to identify and address risk to learners.

Commented [AL11]: We feel that this outcome treats leaders as passive participants in organisational structures rather than as active partners who can play a significant role in designing and maintaining supportive organisational structures.

16. Process: Co-ordinated information channels

Providers must have co-ordinated information channels across their organisation (including student accommodation) and externally for –

- (a) gathering qualitative and quantitative information to evaluate the quality of learner wellbeing and safety practices; and
- (b) providing clear, consistent, accessible, and timely information, advice, and guidance to learners' and those who support them; and
- (c) effectively identifying emerging concerns about learners' wellbeing and safety or behaviour to be able to connect learners quickly to culturally appropriate social, medical, and mental health services, including providers having information channels with –
 - (i) relevant external support services to deliver integrated support for learners, particularly those who may need it over the longer term; and
 - (ii) other providers, schools, and workplaces where the provider has a study or training arrangement in place; and
 - (iii) parents or guardians (for those under 18 years) or the nominated contact person/s where appropriate.

17. Process: Staff training

Providers must have practices for providing ongoing training and resources to staff that are tailored to their roles in the organisation, on –

Commented [AL12]: We are concerned that this process could lead to a compliance-heavy training regime that does not properly prepare staff for engaging with students.

- (a) Te Tiriti o Waitangi; and
- (b) understanding the welfare issues of diverse learner groups and ways of assisting them to access available supports (e.g. learners of different ages, cultures (i.e. cultural competency), religions, international learners, refugees, disabled learners, distance learners, care experienced learners, and LGBTQIA+ learners); and
- (c) encouraging healthy lifestyles for learners; and
- (d) physical and sexual violence prevention, including how to support a culture of disclosure and reporting; and
- (e) recognising and effectively responding to learners to ensure wellbeing support, culturally safe health and mental health literacy and support, suicide prevention, drug and alcohol awareness; and
- (f) referral pathways (including to local service providers) and escalation procedures; and
- (g) identifying and timely reporting of incidents and concerning behaviours; and
- (h) privacy and safe handling of personal information.

Commented [AL13]: We have concerns that this clause could lead to providers over-reaching into the private lives of students and attempting to control their behaviour off-campus.

18. Process: Emergency assistance and response planning

Providers must have practices for assisting learners, and responding effectively, in emergency situations, including any emergencies affecting student accommodation. The emergency could be localised in nature (e.g. a suicide attempt, completed suicide or other medical emergency) or it could involve the whole learning or residential community (e.g. a contagion, a security crisis such as a firearms incident, natural disasters, or geopolitical conflicts). The practices must include –

- (a) ensuring that there is at least one **are sufficient** suitably prepared staff members available to be contacted by a learner, or learners, in the event of an emergency 24 hours a day, 7 days a week; and
- (b) co-ordinating decision-making across the provider when responding to emergencies (including observing all the relevant national guidelines and services where appropriate); and
- (c) disseminating timely, accurate, consistent, and accessible information to learners and staff during emergencies (including information on national guidelines and services where appropriate); and
- (d) ensuring all staff are aware of the indicators of imminent danger to a learner or others and what action they can reasonably provide to help make them safe; and
- (e) keeping a regularly updated critical incident and emergencies procedures manual which guides staff involved in emergency situations which contains the immediate and ongoing actions required including –
 - (i) engaging with relevant Government agencies (e.g. the New Zealand Police, Ministry of Health, Education agencies); and
 - (ii) the follow-up de-briefing process to support all learners and staff.

Commented [AL14]: We feel that this minimum expectation of staffing does not go far enough. Many providers would need more than one staff member to fill this role and this should be explicitly highlighted.

Part 4 – Wellbeing and safety practices for all tertiary providers (in relation to domestic and international students)

(All obligations as they relate to international tertiary students are signatory obligations)

Physical and digital learning environments

19. Outcome 5: Safe, inclusive, and supportive physical and digital learning environments

Providers create and maintain learning environments that are inclusive and support and empower the academic, personal, and social development of learners.

20. Process: A safe and inclusive atmosphere

Providers must have practices for –

- (a) recognising, reducing, and responding effectively to discrimination, racism, bullying, harassment, and abuse (including physical and sexual harassment and abuse), including –
 - (i) assisting partner with learners and staff to recognise and respond to discrimination, racism (including institutional racism), bullying, harassment, and abuse (including physical and sexual harassment and abuse); and
 - (ii) promoting an inclusive institutional culture; and
 - (iii) reducing eliminate harm to learners resulting from discrimination; and
- (b) promoting an inclusive learning environment by providing all learners with information –
 - (i) that supports understanding, acceptance, and connection with all learners, including learners of different ages, cultures and religions, disabled learners, and LGBTQIA+ learners; and
 - (ii) that increases their (and their communities) awareness, that they have a reciprocal role in managing their own learning environment; and
 - (iii) about the cultural, spiritual, and community supports available to them; and
- (c) providing learners with warm and inviting spaces where culture and identity is uplifted and valued, to connect, build relationships, support each other, and to welcome their friends, families, and whānau.

Commented [AL15]: This clause is far too paternalistic and treats learners as a passive group.

Commented [AL16]: We feel that the expectation to “reduce harm” is not aspirational enough and won’t result in sufficient change for learners.

21. Process: Physical and digital spaces and facilities

Providers must have practices for enhancing the spaces and facilities in its physical and digital environments, to support learning and social activities, including –

- (a) the health and safety of communal environments; and
- (b) ensuring learners can navigate provider facilities and services with ease (e.g. disabled learners, international students, refugees, first-year students); and
- (c) the physical design of these environments, including –
 - (i) structural (e.g. acoustics, light) and aesthetic features; and
 - (ii) ecological sustainability; and

Commented [AL17]: We feel that this language could be tweaked to better state expectations on providers. “Warm and inviting” is quite a vague phrase that we consider may be open to vastly differing interpretations.

- (iii) engagement with biculturalism and Te Tiriti o Waitangi (e.g. through signage, planting plans that promote plants of importance to Māori) and involving Maori in the design of environments where appropriate; and
- (d) involving learners in the design of these environments ~~where appropriate~~; and
- (e) human resources management; and
- (f) the security of learners.

Commented [AL18]: This cushioning language will result in disempowered learners.

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22. Outcome 6: Academic, personal, and social development of learners

Learners are supported by providers to transition into tertiary study, progress and achieve in their studies, and to develop knowledge, skills, and experience to prepare them for further work or study.

23. Process: Supporting personal and social development

Providers must have practices that provide opportunities and safe spaces for learners to –

- (a) voice diverse and challenging viewpoints; and
- (b) connect, build relationships, and develop social, spiritual and cultural networks; and
- (c) use te reo and tikanga to support Māori learners' connection to identity and culture; and
- (d) access leadership opportunities and engage more actively in their learning, social and residential communities **in partnership with student representative organisations.**

24. Process: Supporting academic progress

Providers must have practices for –

- (a) **helping empowering** learners (including mature learners) prepare for, and adjust to tertiary study (i.e. from pre-application, orientation and through to the first year), and to identify additional learning support needs early; and
- (b) providing access to academic support services and maintaining appropriate oversight of learner achievement and engagement; and
- (c) providing the opportunity for learners to discuss, in confidence and without judgement, any issues that are affecting their ability to study; and
- (d) regularly reviewing teaching, learning and assessment approaches and resources to fit with learners' diverse needs (e.g. for learners of different cultures and ages, disabled learners, and learners experiencing mental illness or health difficulties); and
- (e) providing opportunities for work-integrated learning and volunteering; and
- (f) providing advice on progression pathways and career development, where appropriate .

25. Process: Assistance for learners to meet their basic needs

- (1) Providers must have practices that **assist empower** all learners (including those who have work, family or caring commitments) to identify and manage their basic needs, including providing accurate information, **as soon as reasonably practicable**, on how they can access –
 - (a) services through the provider or through community and public services that will help them maintain reasonable standards of material wellbeing and safety, within the institution and externally; and
 - (b) suitable accommodation and maintain a healthy lifestyle (e.g. including maintaining good work life balance).
- (2) If food is made available by the provider on campus or in student accommodation, the provider must ensure that the food available includes a range of healthy food options that is obtainable at a reasonable cost **as defined by learners in conjunction with providers.**

Commented [AL19]: We are concerned that this clause does not explicitly mention the role that student representative organisations play in learner leadership and participation.

Commented [AL20]: This language can be more empowering.

Commented [AL21]: This phrase seems unnecessary.

Commented [AL22]: We have concerns that as the clause is currently drafted, reasonable cost would be defined by providers rather than by learners. This could lead to significant access issues as learners have a far different definition of reasonable.

26. Outcome 7: Promoting physical and mental health awareness

Providers support learners to develop the capacity to manage their physical and mental health and access support through information, advice, and support when they need it.

27. Process

Providers must have practices which assist learners to be physically and mentally healthy ensure learner wellbeing, including –

- (a) providing opportunities for learners to have experiences that improve their physical and mental health and wellbeing and safety; and
- (b) assisting learners to manage their physical and mental health, by –
 - (i) promoting awareness of practices that support good physical and mental health that are credible and relevant to learners; and
 - (ii) supporting positive choices impacting on health, wellbeing and safety and education throughout their learning journey (e.g. in relation to drug and alcohol use, sexual health, physical and sexual violence prevention, information about disabling conditions, relationship and conflict management and consent education); and
 - (iii) supporting learners' connection to their language, identity, and culture; and
 - (iv) providing accurate and timely information and advice to learners about –
 - a. how they can access medical and mental health services through the provider or through community and public services, including culturally responsive services; and
 - b. how they can report health and safety concerns they have for their peers; and
 - c. how to respond to an emergency and engage with relevant Government agencies (e.g. how international tertiary students can contact the New Zealand Police).

Commented [AL23]: We have concerns that this phrase could lead to overreach from institutions into the lives of students.

28. Outcome 8: Proactive monitoring of learner wellbeing and safety and responsive wellbeing and safety practices

Providers proactively identify learners who experience difficulties with their wellbeing and/or safety and promptly connect them with the appropriate resources and services.

29. Process

Providers must have practices for –

- (a) encouraging creating an empowering environment that enables learners to disclose health and mental health issues to staff, including accommodation staff, so that the provider can proactively offer them support and resources; and
- (b) requesting that domestic learners 18 years and over provide a name and 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; and
- (c) having up-to-date contact details for international tertiary learners and domestic tertiary learners under 18 years and their next of kin; and
- (d) contacting next of kin or the person nominated by domestic learners 18 years and over if there is serious concern regarding the wellbeing or safety of a student; and
- (e) providing opportunities and spaces for learners to anonymously raise concerns about themselves or others; and
- (f) identifying learners who are experiencing difficulties and those at risk of harming others and having clear pathways for assisting them to access appropriate services on campus or in the community when they need it; and
- (g) tailored arrangements for disabled learners or those affected by health and wellbeing difficulties, including when they are required to study off-campus (e.g. those undertaking work or overseas placements); and
- (h) responding to disruptive and threatening behaviour in a way that is sensitive to a learner's physical or mental health situation or disabling condition; and
- (i) supporting learners who interrupt their studies on physical or mental health grounds and providing inclusive, accessible re-entry processes for their transition back into tertiary study; and
- (j) maintaining a record of reported risks, including any concerns raised in relation to the effective administration of the Code.

Commented [AL24]: We have concerns that as currently drafted this clause could lead to providers overzealously "encouraging" learners to disclose some quite distressing issues. There should be more expectations on providers to create an inclusive, safe environment where learners feel empowered to disclose issues.

Commented [AL25]: While the intent of this clause is well meant, it could limit the agency and autonomy of learners. This in turn limits their ability to control their own wellbeing.

Commented [AL26]: Re-entry into tertiary education is a challenging and daunting process that must be inclusive and empower learners.

50. Outcome 16: Immigration matters

Signatories ensure that international tertiary students are entitled to study in New Zealand under the Immigration Act 2009.

51. Process

Each signatory must have practices for –

- (a) ensuring that each international tertiary student who enrolls with the signatory has the necessary immigration status for study in New Zealand; and
- (b) reporting to Immigration New Zealand known or suspected breaches of visa conditions by international tertiary students; and
- (c) notifying Immigration New Zealand of terminations of enrolment.
- (d) **Assisting and empowering learners who engage with Immigration New Zealand.**

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*Information, advice, and support for international tertiary students
before and throughout the period of enrolment*

54. Outcome 18: Offer, enrolment, contracts, and insurance

Signatories ensure that prospective international tertiary students (or parents or legal guardians of those under 18 years) make well informed enrolment decisions, clearly understand their legal obligations and disciplinary procedures, have fair and reasonable enrolment contracts, are appropriately insured, and have access to documentation held by signatories where this is appropriate.

55. Process: Offer of educational instruction

Each signatory must ensure that the educational instruction offered to international tertiary students is in accordance with the Act and is appropriate for international tertiary students' expectations, English language proficiency, and academic capability.

56. Process: Information to be provided before entering contract

- (1) Each signatory must have practices that ensure prospective international tertiary students receive, as a minimum, information about the following before entering into a contract with the student –
 - (a) the most recent results of their evaluations by education quality assurance agencies; and
 - (b) quality improvement or compliance notices and conditions imposed under the Act that the code administrator directs must be disclosed to prospective international tertiary students; and
 - (c) the education provided and its outcome, for example, whether a qualification is granted; and
 - (d) refund conditions that comply with the outcome and process in clauses 52 and 53; and
 - (e) staffing, facilities, and equipment; and
 - (f) available services and supports; and
 - (g) insurance and visa requirements for receiving educational instruction from the signatory; and
 - (h) this code and the dispute resolution scheme rules; and
 - (i) full costs related to an offer of educational instruction.
- (2) Each signatory must ensure that, before entering into a contract of enrolment or enrolling with the signatory, each international tertiary student is informed of the student's rights and obligations in relation to receiving educational instruction from the signatory, including the rights under this code.

57. Process: Contract of enrolment

- (1) Each signatory must ensure that a contract of enrolment is entered into between the signatory and each international tertiary student that includes the following information and terms –
 - (a) clear information about the beginning and end dates of enrolment; and
 - (b) the conditions for terminating the contract of enrolment; and
 - (c) the circumstances under which the student's conduct may be in breach of the contract of enrolment (including conduct that occurs while the student is not under the immediate supervision or control of the signatory); and

- (d) the type of disciplinary action that may be taken by the signatory against the student; and
 - (e) the procedure that the signatory must follow when taking disciplinary action against the student.
- (2) Each signatory must ensure that the contract of enrolment is fair and reasonable.

58. Process: Disciplinary action

Any disciplinary action process that is taken by a tertiary signatory must be in accordance with the principles of natural justice (which include those necessary to ensure the prompt, considered, and fair resolution of the matter that is the subject of the action).

- (1) Each signatory must have processes to ensure international students have access to third-party support and advocacy.

Commented [AL27]: The Code must ensure that international students have access to advocacy and support during disciplinary processes.

59. Process: Decisions requiring written agreement of parent or guardian

Each signatory must ensure that, where appropriate, it obtains the written agreement of the parent or legal guardian of an international tertiary student under 18 years with respect to decisions affecting the student.

60. Process: Insurance

- (1) Each signatory must have practices that ensure, as far as practicable, each international tertiary student who is enrolled with the signatory for educational instruction of 2 weeks' duration or longer has appropriate insurance covering –
- (a) the international tertiary student's travel –
 - (i) to and from New Zealand; and
 - (ii) within New Zealand; and
 - (iii) if the travel is part of the educational instruction, outside New Zealand; and
 - (b) medical care in New Zealand, including diagnosis, prescription, surgery, and hospitalisation; and
 - (c) repatriation or expatriation of the international tertiary student as a result of serious illness or injury, including cover of travel costs incurred by family members assisting repatriation or expatriation; and
 - (d) death of the international tertiary student, including cover of –
 - (i) travel costs of family members to and from New Zealand; and
 - (ii) costs of repatriation or expatriation of the body; and
 - (iii) funeral expenses.
- (2) Subclause (1)(a)(i) and (ii) includes the international tertiary student's travel to and from their country of origin or citizenship before their educational instruction begins and after it ends (which may be outside of the enrolment period).
- (3) Subclause (1)(a)(i) does not include the international tertiary student's travel to other countries unless that travel is primarily for the purpose of embarking on connecting flights to and from New Zealand.

Part 8 – Code Administrator

105. Reporting and publishing obligations

- (1) The code administrator must include in its annual report a report on its activities in administering this code.
- (2) If the code administrator, in the course of investigation, finds any systemic issue related to education quality or a serious breach of this code, the code administrator must report that issue or breach to education quality assurance agencies and any relevant government agency.
- (3) The code administrator may, for the limited purposes set out in subclause (4), disseminate or otherwise publish a summary of the investigation and outcome of a breach of this code, subject to appropriate safeguards and redactions for protection of privacy.
- (4) The purposes referred to in subclause (3) are –
 - (a) keeping providers, students, and other educational interest groups informed; and
 - (b) demonstrating the process of investigation and decision-making under this code.
- (5) The code administrator must take reasonable steps to publicise this code to providers and to students, including publishing guidelines for providers.

Commented [AL28]: This phrase should be further defined.

106. Reporting breach of code

- (1) The code administrator –
 - (a) can receive complaints that the code has been breached from any person or organisation; and
 - (b) must decide whether the complaint or referral appears to involve a code outcome or process not being met, warranting further action.
- (2) The code administrator –
 - (a) must publish its processes for receiving and dealing with a complaint or referral
 - (b) these processes must be inclusive and accessible to all learners; and
 - (c) may prescribe forms for use in making a complaint or referral.

107. Responding to a complaint

- (1) If the code administrator decides that further investigation is warranted, it must –
 - (a) make a record of, and investigate the alleged outcome(s) and/or process(es) not being met; and
 - (b) notify the person who made the complaint or referral of the decision to investigate.
- (2) If the code administrator decides that further investigation is not warranted, it must consider the following options and act accordingly within a reasonable timeframe –
 - (a) refer the complaint or referral to another agency; and
 - (b) deal with the complaint or referral informally in an inclusive, learner-centric manner; and
 - (c) terminate the complaint or referral.
- (3) In investigating a complaint or referral, the code administrator may must assist the person making the complaint or referral (or refer that person to assistance) if assistance is

necessary for facilitating the investigation (for example, assistance to overcome a barrier, or support for their wellbeing and safety during the complaints process).

108. Monitoring compliance with code

- (1) In relation to tertiary education providers, the code administrator must monitor –
 - (a) each tertiary education provider’s documented self-review of its performance against the required outcomes and processes set out in this code through the standard quality assurance processes, including peer-to-peer reviews; and
 - (b) each tertiary education provider’s performance against the required outcomes and processes of the code through standard quality assurance processes. Tertiary education providers must provide any other information that the code administrator considers appropriate for monitoring purposes; and
 - (c) feedback from student representative organisations and other community groups.
- (2) In relation to school signatories, the code administrator must monitor –
 - (a) each school signatory’s documented self-review of its performance against the required outcomes and processes set out in this code through the standard quality assurance processes; and
 - (b) each school signatory’s performance against the required outcomes and processes of the code through standard quality assurance processes. School signatories must provide any other information that the code administrator considers appropriate for monitoring purposes.
- (3) The code administrator may investigate the performance of a tertiary education provider or school signatory if it is concerned that the tertiary education provider or school signatory does not comply, or is at risk of not complying, with this code.
- (4) An investigation –
 - (a) may be undertaken either on the code administrator’s own initiative or as a result of information provided to it, including a complaint or report of a code outcome or process not being met; and
 - (b) may include (but is not limited to) the following steps by the code administrator, subject to the consent of the tertiary education provider or school signatory to each of these steps –
 - (i) making a site visit; and
 - (ii) inspecting and obtaining relevant documents held by the tertiary education provider or school signatory; and
 - (iii) interviewing staff and students as appropriate.
- (5) A tertiary education provider or school signatory must comply with reasonable requests by the code administrator in the course of an investigation for access to documents, staff, and students in a timely manner.
- (6) The code administrator must, –
 - (a) consult and share appropriate information with education quality assurance agencies, learners, whānau and communities and relevant government agencies for the purpose of agreeing interventions for the improvement of the code or compliance with it; and
 - (b) receive and consider information provided by education quality assurance agencies, learners, whānau and communities and relevant government agencies for the same purpose.

Commented [AL29]: Staff and students are not objects to be accessed.