

Delegation to Universities New Zealand of code administrator functions for the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019

Date:	7 August 2020	NZQA Priority:	Medium
Security Level:	In confidence	Report No.	CR 21026

	Action Sought	Deadline
Minister of Education	<p>a. Note the Education and Training Act 2020 (ET Act) allows NZQA to delegate certain functions, duties and powers to other persons or agencies.</p> <p>b. Note NZQA is satisfied UNZ will have the requisite knowledge, skills, and experience for the roles NZQA proposes to delegate. NZQA considers this will enhance the pastoral care for university students.</p> <p>c. Approve NZQA to proceed with a formal delegation to UNZ of the following specified responsibilities for the administration of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (Interim Code):</p> <ul style="list-style-type: none"> i. UNZ will be responsible for monitoring the extent to which universities comply with the Interim Code (<i>under section 238H(3)(b)(i) of the Education Act 1989, as saved by clause 7(3) of Schedule 1 of the ET Act</i>) and will escalate concerns about a university's compliance to NZQA. ii. this delegated role will involve responding to complaints or referrals 	

	<p>about the university sector, as set out under clause 31 of the Interim Code, and escalating concerns but leaving investigations to NZQA.</p> <p>iii. UNZ will be responsible for the obligation in clause 30(2) of the Interim Code to publish its processes for receiving and dealing with a complaint or referral and to prescribe forms for a complaint or referral.</p> <p>iv. UNZ will be delegated the power to enter and inspect student accommodation and related processes for documents and talking with people for the purposes of its delegated monitoring role.</p> <p>d. Note that NZQA will impose the condition on the delegation that UNZ will report to NZQA on:</p> <ul style="list-style-type: none"> i. a quarterly basis, so as to contribute to NZQA's reporting requirements set out in clause 29 of the Interim Code, robust and timely information on: <ul style="list-style-type: none"> ▪ the scrutinisation and findings of university self-reviews ▪ complaints and referrals ▪ entry into and inspection of student accommodation ▪ the actioning of findings. ii. progress with the publication of its processes for dealing with a complaint or referral and the forms prescribed for making a complaint or referral. iii. concerns about Code breaches, including any potential breaches that may warrant investigation, within 4 days of identifying the concern. iv. how UNZ will manage conflicts of interest that arise in relation to it exercising its powers, 	
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	<p>duties and functions in relation to the delegation, as soon as is reasonably practicable.</p> <p>e. Note that NZQA expects to provide UNZ with funding to carry out its delegated role, from within the funding approved for Code administration in 2020 and the Budget 2020 contingency for Code administration in future years.</p> <p>f. Note the operating model is being finalised and NZQA will announce the delegation when it is finalised.</p> <p>Proactive Release Recommendation</p> <p>g. agree/disagree that this report is proactively released as part of the next publication of documents</p>	
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Enclosure/Appendix: Yes/No

Round Robin Yes/No

Contact for Telephone Discussion (if required)

Name	Position	Telephone	Cellphone	1 st Contact
Eve McMahon	Deputy Chief Executive Quality Assurance	(04) 463 4374	027 509 7980	√
██████████	Programme Director, Interim Code of Practice	(04) 463 █████	██████████	

The following departments/agencies have seen this report:

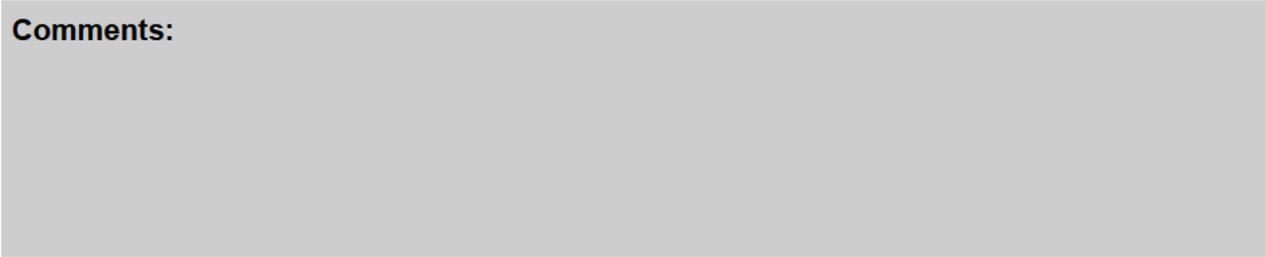
- Ministry of Education Tertiary Education Commission Other (specify)

Minister's Office to Complete:

- Noted Seen Approved
- Needs change Withdrawn Overtaken by Events
- See Minister's comments Declined

Referred to:

Comments:



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Recommended Action

It is recommended you:

- a. **Note that** section 633(5) of the Education and Training Act 2020 (ET Act) provides that the code administrator may, with the Minister's prior written approval and subject to any conditions that the code administrator or the Minister thinks fit, delegate any or all of the functions, duties, and powers specified in section 633 (relating to entry to inspect student accommodation subject to codes) having regard to their knowledge, skills, or experience. Clause 7(3) of Schedule 1 of the ET Act provides that despite any provision of the ET Act, 238H(1) to (4) and (9) of the Education Act 1989 continues to apply until the date on which regulations are made under section 648 that deal with the matter addressed in the provision. The combined effect of these provisions allows the New Zealand Qualifications Authority (NZQA) to delegate to the New Zealand Vice-Chancellors' Committee, trading as Universities New Zealand (UNZ), the functions, duties and powers set out in this report, and subject to any conditions imposed by the Minister or NZQA.

NOTED

- b. **Note that** NZQA considers that delegating some university-focused responsibilities for the administration of the Interim Code in relation to universities to UNZ will enhance the pastoral care for university students. The delegation is dependent on NZQA being satisfied that UNZ has attained the needed knowledge, skills and experiences, and NZQA considers UNZ will attain them through their current recruitment and development plan.

NOTED

- c. **Approve** NZQA to proceed with a formal delegation to UNZ of the following specified responsibilities for the administration of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (Interim Code):
- i. UNZ will be responsible for monitoring compliance, as set out under section 238H(3)(b)(i) of the Education Act 1989, as saved by clause 7(3) of Schedule 1 of the ET Act, and will escalate concerns about a university's compliance to NZQA.
 - ii. The monitoring delegation will mean UNZ is responsible for responding to complaints or referrals about the university sector, as set out under clause 31 of the Interim Code, will escalate concerns about a code breach to NZQA promptly, including any potential breaches that may warrant investigation, and will work with NZQA and the relevant university on the approach to the investigation.
 - iii. UNZ will be responsible for the obligation in clause 30(2) of the Interim Code to publish its processes for receiving and dealing with a complaint or referral and to prescribe forms for using in making a complaint or referral under clause 30(2) of the Interim Code.

- iv. Under section 633(5) of the ET Act UNZ will be delegated the power to enter and inspect student accommodation and related processes for documents and talking with people under section 633(1)-(4) of the ET Act, for the purposes of its delegated monitoring role.

APPROVED/NOT APPROVED

- d. **Note that** NZQA will impose the condition on the delegation that UNZ will report to NZQA on:
- i. a quarterly basis, so as to contribute to NZQA's reporting requirements set out in clause 29 of the Interim Code, robust and timely information on:
 - the scrutinisation and findings of university self-reviews
 - complaints and referrals
 - entry into and inspection of student accommodation
 - the actioning of findings.
 - ii. progress with the publication of its processes for dealing with a complaint or referral and the forms prescribed for making a complaint or referral.
 - iii. concerns about Code breaches, including any potential breaches that may warrant investigation, within 4 days of identifying the concern.
 - iv. how UNZ will manage conflicts of interest that arise in relation to it exercising the powers, duties and functions in relation to the delegation, as soon as reasonably practicable"

NOTED

- e. **Note that** NZQA expects to provide UNZ with funding to carry out its delegated role, from within the funding approved for Code administration in 2020 and the Budget 2020 contingency for Code administration in future years.

NOTED

- f. **Note that** the operating model is being finalised and NZQA will announce the delegation when it is finalised.

NOTED

Proactive Release Recommendation

- g. **Agree/disagree** that this report is proactively released as part of the next publication of documents.

AGREED/NOT AGREED



Dr Grant Klinkum
Chief Executive
7 August 2020



Hon Chris Hipkins
Minister of Education
...14./10./2020

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Purpose of Report

1. This report seeks your approval for the New Zealand Qualifications Authority (NZQA) to proceed with a formal delegation to the New Zealand Vice-Chancellors' Committee, trading as Universities New Zealand (UNZ), of specified responsibilities for the administration of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (Interim Code).
2. It sets out the conditions NZQA will place around the delegation, including the parameters of the delegation and the reporting requirements.

Background

3. On 13 January 2020, you appointed NZQA the code administrator for the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019.
4. Section 633(5) of the Education and Training Act 2020 (ET Act) provides that the code administrator may, with the Minister's prior written approval and subject to any conditions that the code administrator or the Minister thinks fit, delegate any or all of the functions, duties, and powers specified in section 633 (relating to entry to inspect student accommodation subject to codes) having regard to their knowledge, skills, or experience. Clause 7(3) of Schedule 1 of the ET Act provides that despite any provision of the ET Act, 238H(1) to (4) and (9) of the Education Act 1989 continues to apply until the date on which regulations are made under section 648 that deal with the matter addressed in the provision. The combined effect of these provisions allows NZQA to delegate to UNZ the functions, duties and powers set out in this report, and subject to any conditions imposed by the Minister or NZQA.
5. NZQA has previously signalled its intention to delegate responsibilities to UNZ for the administration of the Interim Code as it relates to universities [METIS no. 1210805].

Comment

Purpose of delegating to UNZ

6. NZQA acknowledges that the responsibilities for monitoring universities under the Interim Code has meant UNZ needed an increased and new capability. NZQA is satisfied that it has taken steps to gain this capability and that UNZ will have the requisite knowledge, skills, and experience for the roles NZQA proposes to delegate. NZQA considers this will enhance the pastoral care for university students.
7. Having UNZ monitor the universities' self-review process will promote a higher level of consistency across the universities. Self-reviews will be peer-reviewed which will encourage the implementation of improvements and the sharing of good practice between universities.

Parameters of the delegation

8. UNZ will be responsible for monitoring compliance, as set out in section 238H(3)(b)(i) of the Education Act 1989. The delegation provisions for monitoring in section 238H have

been saved under clause 7(3) of Schedule 1 of the ET Act, and so continue in force. This monitoring of universities' compliance with the Interim Code will involve scrutinising self-review reports and other relevant information. UNZ will escalate concerns about a university's compliance to NZQA, who will have responsibility for investigating the performance of a university under section 238H(3)(b)(i) and issuing any quality improvement notices or taking any offence or pecuniary penalty proceedings.

9. The monitoring delegation will mean UNZ is responsible for responding to complaints or referrals about the university sector, as set out under clause 31(1)-(4) of the Interim Code. The delegation does not extend to investigations which will remain an NZQA responsibility. Where a UNZ enquiry into a complaint or referral identifies a potential code breach, UNZ will escalate the issue to NZQA which will manage all code compliance investigations. NZQA will work with UNZ and the relevant university on the approach to the investigation.
10. UNZ will be responsible for the obligation in clause 30(2) of the Interim Code to publish its processes for receiving and dealing with a complaint or referral and to prescribe forms for using in making a complaint or referral.
11. Under section 633(5) of the ET Act UNZ will be delegated the power to enter and inspect student accommodation and related processes for documents and talking with people as set out in section 633(1)-(4), for the purposes of its monitoring role.
12. UNZ will report to NZQA on a quarterly basis, to contribute to the reporting requirements set out under section 29 of the Interim Code. This will include robust and timely information on self-review findings, complaints and referrals, entry into and inspection of student accommodation, and the actioning of findings. This reporting will mirror NZQA's reporting and will feed into NZQA's annual reporting.
13. It is inevitable that conflicts of interest will arise in exercising the delegation, so a condition has been added for UNZ to advise NZQA how it will manage conflicts.

How the delegation will operate

14. NZQA will be accountable for the overall operation of the delegation. UNZ will be accountable to NZQA for the functions and responsibilities delegated to it.
15. UNZ will exercise its delegation in regard to universities. NZQA will retain the right to exercise the delegated responsibilities for the university sector if and when required, as well as for the non-university sector.
16. NZQA is working with UNZ to develop its operating model and to ensure it mirrors the principles in the NZQA model, including standard criteria for determining when issues must be escalated to NZQA for investigation. This approach is intended to ensure consistency across the whole sector. The delegation is dependent on NZQA agreeing to UNZ's operating model and the satisfactory implementation of UNZ's processes for monitoring universities' compliance with the Interim Code.
17. NZQA will monitor the delegation through the agreed reporting criteria and by having oversight of the processes, including observing UNZ's self-review monitoring process. The delegation will be reviewed in May 2021. NZQA can rescind the delegation if it has serious concerns about its operation.
18. The reporting will provide ongoing assurance to NZQA of the suitability of UNZ's monitoring arrangements and exercising of the delegation, so NZQA can be assured the processes are working in the manner intended.

19. NZQA has consulted with the Ministry of Education and the Ministry of Education is comfortable with the high-level approach to the delegation, subject to ongoing reporting and review.

Communications

20. NZQA will announce the delegation when it is finalised.

21. NZQA and UNZ will agree on a communication plan to ensure consistency of messaging, and to ensure students and key stakeholders are appropriately informed of progress and outcomes regarding any investigation.

Financial Implications

22. The administration of the Interim Code, including any allocation of funding to UNZ for exercising their delegation, will be done from within the funding approved for Code administration in 2020 and the Budget 2020 contingency funding for the administration of the Interim Code.

23. NZQA intends to allocate some of the funding received for the administration of the Interim Code to UNZ to exercise its delegation. The amount to be allocated will be determined once UNZ's operating model is finalised and will be proportional to the level of responsibility delegated to UNZ. NZQA will negotiate a funding agreement with UNZ and associated funding performance measures will be congruent with expectations of the statutory delegation.

24. When the delegation is reviewed in May 2021, the review will assess whether funding levels are appropriate for the delegate role.