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Submission on the Inquiry into Student Accommodation
To: The Education and Workforce Committee

My name is Myra Williamson. I am currently a Senior Lecturer of Law at Te Piringa – Faculty of Law at the University of Waikato. This is an individual personal submission. No one at the University of Waikato has been consulted in the formation of this submission and the views expressed herein are entirely my own.

General statement

I support the need for an inquiry into student accommodation in New Zealand. I also support the need for a permanent Pastoral Code of Conduct. I agree that the area of regulating student accommodation has been under-regulated. My overall impression is that parents entrust their children into the care of tertiary accommodation providers (referred to herein as Providers) with a great deal of hope that things will work out for the best and that the people running the halls of residence will "keep an eye" on their newly independent teenager. However, it is also my impression that there is probably a mismatch in many if not most circumstances between parents' expectations and the lived reality for the student in the accommodation. My own personal experience, as a resident in halls many years ago, and as a parent of a student in halls not very long ago, has been largely positive so nothing I write below should be taken as a negative reflection on any particular halls of residence or any particular university. But I think, upon reflection, that there is a great deal of trust and hope involved on the parents' part when they pack their children off to university. I think some careful regulation in this area is long overdue and necessary. For that reason, I commend the Education and Workforce Committee for the work it is doing on this issue. I hope that this submission will help, in some small way, towards developing a comprehensive pastoral code of conduct for 2021. Most of my comments are in relation to clause 2.3 of the Terms of Reference, namely, I am making suggestions that I hope may "help inform development or refinement of a permanent Pastoral Care Code."

Request to make an oral submission

I request the opportunity to make an oral submission in support of this written submission, but only if time permits and the Education and Workforce Committee would find that useful.

I have set out my detailed comments and suggestions in this submission; they are summarized in the following Executive Summary.

Executive Summary

- Broaden the scope of who can bring complaints under the Dispute Resolution Scheme (DRS), beyond "student claimants" to include their parents, guardians or caregivers.

- Provide a definition of "student accommodation" in the Pastoral Care Code (the Code), rather than refer to other legislation; make that definition broad enough to ensure it covers all providers of accommodation, not just university-owned halls of residence.

- Define "house rules" in the Code, rather than refer to the Residential Tenancies Act 1986 (RTA) since the meaning of "house rules" in the interim Code is more specific than in the RTA, so it makes sense to have a self-contained definition of the term.

- Consider referring to the specific role of "Residential Assistants" in the Definition section of the Code rather than only defining the term "accommodation staff" since most students refer to Residential Assistants (RAs) by that name.

- Set a required ratio for accommodation staff/RAs to students (and amend clause 20(e) rather than leave it to Providers to decide on appropriate levels of staffing.

- Consider what specific training is necessary for accommodation staff before they can carry out the RA function – currently this is probably left to individual Providers.

- Add a new clause 26(7) to the Code requiring Providers, after a reasonable time, to make their self-reviews (and any deficiencies that they identify) available to both the Code Administrator and to the general public. Transparency and accountability will be advanced.

- Require the Code Administrator to include in their annual report a summary of the reports from individual Providers regarding their self-review, and any deficiencies, and publish those findings publicly (i.e., widen the scope of clause 29(1)). Rationale: just as the Education Review Office (ERO) publishes its reports of schools, and those reports are available both on the ERO's website and on the respective schools' websites; the same level of transparency should be provided in relation to tertiary student accommodation: parents and students ought to be able to read the self-reviews.

- Give students the right to terminate their contracts with their Providers early if they a) do so in writing; and b) provide a certain amount of notice. I suggest that 30 days' notice is probably sufficient. It is longer than the 21 days notice' required of tenants under the RTA to reflect the fact that Providers need time to advertise the vacancy and try to fill it and to recognize that contracts between students and Providers are similar to fixed-term tenancies (and there is no right of early termination for fixed-term tenancies under the RTA). If this right is given to students, then I suggest that the Code should require all contracts to include terms that clearly provide for this right.

Submission

1. The Education (Pastoral Care) Amendment Act 2019 ("the Act")

1.1 Section 238M of the Act provides for the establishment of a student contract dispute resolution scheme (DRS). I acknowledge that the proposed DRS does not currently apply to the interim Code. I agree that a DRS is needed and that it will create a useful mechanism for dispute resolution, which is a positive development. I note that under the current arrangements, the residents of halls of residences are like tenants in some respects, but without most of the protections provided by the Residential Tenancies Act 1986 (the RTA) by virtue of the exemption set out in s 5B of the RTA. Therefore, I agree that regulation, and establishing a DRS, is appropriate.

1.2 My concern on this issue is that it appears as though only a **student claimant** can bring a claim to the DRS. The term "student claimant" is defined in s 238D of the Act as referring to current, past or prospective students. Furthermore, s 238M(5) states that "a student claimant may lodge with the DRS operator for resolution under the DRS any contractual or financial dispute with a provider…"

1.3 I would like to suggest that the range of individuals who can lodge a claim should be widened beyond a "student claimant" as currently defined to include the parents and/or guardians/caregivers of a student claimant. I make this suggestion for two reasons. First, I note that financial contracts for the costs of living in the halls of residence are (in my limited personal experience) usually entered into during the prospective student's Year 12 or Year 13 school year, and that the parties to those contracts are usually the provider (the halls of residence) and the parents of the student. It has been my experience, as both a resident many years ago, and as a parent of a resident, just two years ago, that the contract is signed by the parent, who I believe often makes the payments as well. This is most likely because the student is under the age of 18 at the time, and also because it is such a large sum of money (approx. $14,000 a year in my recent experience) that it is the parents who are likely to enter into the contracts, not the students. So, there may not be a contract between the student and the provider. If there are contractual or financial disagreements, these may arise between the parent/guardian (as the payer) and the accommodation provider, and not between the student and the provider. The second reason for the suggested change is that although the student might be experiencing a problem, there should be an option as to who is to lodge the claim and pursue the resolution through the DRS. At the moment, it appears that only a student claimant can lodge a claim. That puts a burden on the student to pursue the matter, when they may not wish to, or may not have the motivation, time or experience to do so.

1.4 Therefore, I would suggest amendment to the wording of s 238M(2) to broaden its scope so that it reads (new suggested text in bold):

> "The purpose of the DRS is to resolve contractual or financial disputes between students (and former or prospective students **and/or those students' parents or legal guardians**) and providers or prospective providers."

1.5 Alternatively, the definition of "student claimant" in s238M could be broadened to include their parents/caregivers.

1.6 I would also suggest amendment to s 238M(5) so that it reads (new suggested text in bold):

> "A student claimant **or their parent or legal guardian** may lodge with the DRS operator…"

2. The Terms of Reference for the Inquiry

2.1 I agree with the overall purposes of the inquiry as stated in the ToR. However, I would like to make the following comments and suggestions.

Meaning of "student accommodation" in the Definition section of the Code

2.2 I believe that "student accommodation" should be defined in the Code itself. At the moment, the Code refers to the meaning of "student accommodation" in s 238D of the Education Act which, in turn, refers to premises that are exempt under s 5B of the Residential Tenancies Act 1986, and that refers to, *inter alia,* the need for "house rules" in s 5B(3) and (4). Two points can be raised here: first, it seems as though the new Code has more specific requirements for what the "house rules" should contain than is stated in s 5B (3) and (4) of the Tenancies Act 1986. For example, see clauses 19(1), 21(e)(4) of the Code as to what the "house rules" must cover.

2.3 If you accept that the "house rules" in the Code are more specific and extensive than the "house rules" mentioned in s 5B(3) of the Residential Tenancies Act 1986 then, references in the Code to that old definition seem to be out of step with the more rigorous requirements set forth in the Code. Secondly, the Code is aimed at protecting students in student accommodation so it seems logical to include a simple and straightforward definition of that term in the Code itself, rather than referring to external legislation, that in turn refers to other legislation, that refers to "exempt student accommodation". It is my submission that it would improve clarity as to what is covered by the Code, and it would make the Code more user-friendly, especially for parents and students, to have the term defined in the Code itself.

2.4 It is suggested that the new definition of "student accommodation" should be broad. It should include all providers who primarily offer accommodation to students. Perhaps if an establishment has over a particular number or percentage of tertiary student residents, and it provides them with meals or any other services above and beyond those of a landlord, then it must be considered as a provider of "student accommodation". A narrow definition should be avoided. I hold this view because I believe there will be individuals or entities who target students specifically and advertise their accommodation to potential students/their parents, who will be able to avoid the obligations imposed by the Code unless the term "student accommodation" is defined broadly. It would not be right to enforce the Code on the traditional university-owned halls of residence alone, which house the majority of tertiary students (and impose any compliance costs on them) but then allow entities which offer student accommodation to avoid compliance.

2.5 Therefore, I think there should be an attempt to define student accommodation in the Code in broad terms relating to either the total occupancy of a building and/or the meals and/or services provided to occupants that are above and beyond those of a landlord so that all student accommodation providers who are excluded from the RTA will have to comply with the Code. This will provide the most comprehensive protection of students.

Meaning of "house rules" in the Definition section of the Code:

2.6 Currently the Code states that "house rules" means the rules and guidelines that meet the requirements in s 5B of the Residential Tenancies Act 1986. However, the references in the Code to "house rules" are more specific about what "house rules" must contain than the wording in s 5B RTA (see above). Therefore, it is suggested that "house rules" be defined in the Code itself, rather than referring to the RTA.

Meaning of "residential assistant" in the Definition section of the Code:

2.7 Currently there is no reference to residential assistants (RAs) in the Code. In my experience, the RAs are usually second-year students (or older) and they are the individuals who spend the most time with students, supervising them, getting to know them and checking on them. It seems strange that they are not mentioned in the Code. Rather, the term "accommodation staff" seems to be used. I think it would be good to acknowledge that RAs exist.

Ration of accommodation staff to students

2.8 I think the Code should stipulate the ratio of RAs/accommodation staff to students. For instance, clause 20(e) refers to the fact that providers must take all reasonable steps to ensure that "the level of live-in accommodation staffing provides appropriate oversight and support…" but it doesn't stipulate what *is* an appropriate level of accommodation staffing. That seems to be left up to the individual Providers to decide.

2.9 I note that in any business, staff salaries are a major expense, and it is likely that to cut costs, staffing levels may be cut from time to time resulting in less oversight of students. This is an even more important consideration if for-profit companies continue to be allowed to be Providers. Therefore, I would recommend that the Code set ratios for accommodation staffing or RAs to students, to indicate what level of live-in accommodation is appropriate. This will help to safeguard students' interests and will help to prevent cost-conscious providers reducing accommodation staff numbers in order to reduce costs.

Terms of Reference clause 2.3: Help refine development of a Pastoral Care Code.

3.1 I believe that the 2021 version of the Code should have a mandatory reporting requirement, and that the Code Administrator should not just have the power to respond to alleged breaches, but should be able to require providers to submit regular—probably annual—reports on how they are complying with the code, with examples of how they are complying. As it stands the interim Code in clause 32, doesn't make it clear that the self-reviews have to be made publicly available.

3.2 I suggest that clause 26(7) should be added to read as follows:

(7) After a reasonable time, a summary of the main points in the review referred to in sub-clause (4) and any deficiencies identified pursuant to sub-clause (6) should be:

(i) reported to the code administrator; and

(ii) made publicly available on the Provider's website.

3.3 I believe it would improve practices across the sector and lead to more transparency if the providers were required to undertake annual self-reviews, to share those self-reviews with the Code Administrator and to post them publicly on their website, together with any deficiencies that they identified and what they did to rectify the problem.

3.4 I suggest that the Code Administrator should be mandated to receive a copy of those self-reviews under sub-clause (4) and to include a summary of them in their annual report which is then made publicly available. This is mentioned in clause 32(2) but I think the transparency aspect is currently missing. Therefore, I suggest that clause 29(1) of the Code be amended as follows (new suggested text in bold):

> "(1) The code administrator must include in its annual report a report on its activities in administering this code, **and it must include a summary of each Provider's self-review undertaken pursuant to clause 32(1) together with a summary of any deficiencies identified by each Provider, as well as how they rectified/intend to rectify any such deficiencies".**

3.5 I believe that transparency and accountability will be improved if: (a) potential students can see what each Provider is doing in relation to self-review; and (b) other Providers will be able to see examples of how others have fulfilled the requirements in the Code.

3.6 I draw two analogies here to rationalize my recommendation. First, an analogy with the ERO: in New Zealand, the ERO regularly reviews schools and provides oversight. Parents of both existing and prospective students can view those reports before enrolling their children in a school. The ERO's reports are made available on its own website, and each school posts a link on its website to the review. Second, an analogy can be drawn with quality assurance and accreditation agencies such as the Quality Assurance Agency (QAA) in the United Kingdom and the Commission on English Language Accreditation in the United States. When those types of agencies are accrediting applicant institutions for academic accreditation/international quality review status, the applicant institutions typically must undertake a comprehensive "self-study" to see how they measure up against the standards set by the relevant agency. Those self-studies are usually required by the accreditor to be shared with both the accreditor and with the general public via the institution's website. In addition, any changes that are identified by the institution as being necessary as a result of the self-study are also notified in an "action-plan" type of document, and again, posted publicly. This level of transparency has many benefits. It creates reassurance for the public who are dealing with the institution, and it provides examples of what compliance looks like for other providers. It is suggested that a similar approach should be introduced in the current context, in relation to student accommodation Providers via the 2021 permanent Code.

4. Terms of Reference clause 2.7:

4.1 One of the purposes of the inquiry is to determine "whether student accommodation should be privatized, contracted out, commercialized; whether it should be for-profit, for-education, or something else".

3.2 In my opinion, student accommodation should not be provided by for-profit operators. I think that student accommodation is more akin to a "social enterprise" in the sense that "it combines a social purpose with entrepreneurial activity".[1] Given that the *raison d'etre* for halls of residence is to provide a "home-away-from-home" for tertiary students, this is probably not possible to achieve if the main motive for an entity's existence is turning a profit. Maybe it is possible to class providers as "social enterprises" because they have to make enough money to continue to operate, but making a profit should not be their objective, otherwise they will be tempted to cut corners such as reducing staff numbers, reducing staff training, reducing quality/quantity of tutorial opportunities, reducing quality or quantity of basic provisions etc. In my view, for-profit companies should not be permitted to own and act as Providers because of the inherent conflict between their duty of care to students and their need to turn a profit. The opportunities to cut costs are ample. Parents are entrusting their children in the care of these providers: if the providers' main priority is to turn a profit, it's difficult to see how the parents could trust those providers to stand in their shoes and be the "home-away-from-home" that they think they are paying for. Education and student welfare should be the priorities for all providers, not making a profit.

5. Terms of Reference clause 1.6

5.1 I note that in clause 1.6 of the Terms of Reference it is acknowledged that students are "stripped of protection they would otherwise have in the rest of the tenancy market". I agree with this. The current arrangements seem to allow Providers to "lock-in" students for the whole academic year. If students want to leave, there is usually (and in my limited experience) no term in the contract that permits them to give notice and leave. There is sometimes a short window of about 2 weeks at the start of the year when they can leave if another halls of residence has a space, but after that, they are "locked in" for the year.

5.2 So, for example, if a student's studies aren't working out, or they are unhappy for any reason, and they wish to leave after one semester or if they don't like the halls for some reason, the only option they seem to have is to tell the Provider they wish to leave, and the latter will try to find someone else to take over their room. If the Provider can't find a replacement, then the student will still be liable for the full term of the contract.

5.3 The Committee may wish to ask to see the agreements that students have to sign before they can take up their offers in student accommodation. The Committee members may wish to read some of the Providers' terms concerning students' options for terminating a contract. As an example, the Committee may wish to consult the University of Otago's "General Conditions of Residence in a University Managed Residential College" available here: https://www.otago.ac.nz/accommodation/apply-for-accommodation/terms-and-

[1] Stephen Moe, "What is a social enterprise?" *LawTalk,* 4 August 2017, https://www.lawsociety.org.nz/practice-resources/practice-areas/not-for-profit/what-is-a-social-enterprise.

conditions/index.html as one example of how Providers frame the relationship between student and Provider.

5.4 According to clause 3, the University of Otago can terminate the student's contract in any one of six situations. But according to clause 4.1, the student cannot terminate early. The student remains liable for "all outstanding fees for the balance of this contract" but "the College may, in its discretion, reduce this liability in light of the circumstances of the Resident's departure…". Thus, there is no right for the student to leave early but the Provider has several options if they wish to terminate early.

5.5 Article 4.1 of the University of Otago's "General Conditions of Residence in a University Managed Residential College" is reproduced here for ease of reference:[2]

> **Liability for fees**
>
> 4.1 This contract is in respect of residence for the period shown in the Contract Payment Schedule. No refund or reduction of those fees is available in respect of any period of the Resident's absence from the College.
>
> 4.2 In the event early termination of this agreement (other than under clause 3.1(e) and (f)) the Resident is liable for a penalty of 1/38th of the annual fee and remains liable for payment of all outstanding fees for the balance of this contract, provided that the College may in its discretion reduce this liability in light of the circumstances of the Resident's departure from the College and/or its ability to arrange for another party to fill the vacancy left by the Resident.

5.6 I think it would be fairer if students had a right to terminate early, with notice, just as there is a right for tenants to terminate a periodic tenancy under the RTA. Knowing that students cannot terminate their contacts is probably very useful for business planning, but it is unlikely to motivate Providers to meet or exceed their students' expectations.

5.7 Providers know that once students are "in the door" they can't really leave. To quote the Eagles: "You can check out any time you like, But you can never leave."[3] The current arrangements seem to be stacked in favour of Providers and create an inherent power imbalance that should be addressed.

5.8 I would recommend writing into the permanent Code a right for students to terminate their contracts on written notice of, say, 30 days, if they no longer wish to live in the halls of residence. The Code should require all contracts to include a term that clearly sets out that right.

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[2] University of Otago Student Accommodation, "General Conditions of Residence in a University Managed Residential College" available at: https://www.otago.ac.nz/accommodation/apply-for-accommodation/terms-and-conditions/index.html

[3] Glen Lewis Frey, Don Felder, Donald Hugh Henley, "The Eagles" *Hotel California*, last stanza of the song: "Last thing I remember, I was running for the door, I had to find the passage back, To the place I was before. 'Relax' said the nightman, 'We are programmed to receive, you can check out any time you like, but you can never leave", available at: LyricFind, "Hotel California" at https://www.google.com/search?client=safari&rls=en&q=hotel+california+lyrics&ie=UTF-8&oe=UTF-8.

Other recommendations

I. Consider having the permanent Code translated in a number of different languages. The Education (Pastoral Care of International Students) Code of Practice 2016 is apparently available in 10 languages.[4] The domestic tertiary students' code should be available in several languages, too (including, for example, Maori, Samoan, Mandarin, Korean, Arabic etc. so that parents of existing and prospective students can easily access the Code). There will be many domestic tertiary students who come from non-English-speaking households and they should be able to access this Code.

II. Consider launching a public awareness campaign, to increase general awareness of the 2021 Code.

III. Consider producing guidelines/summaries of the 2021 Code for distribution to schools.[5]

IV. Consider organising visits to Year 12 and/or 13 students in schools to directly address domestic students who are considering student accommodation in the future, to educate them on the existence of the Code and what it means for them once they leave home and move into their desired accommodation. Students should be made aware of what the Code means in practice, including the existence of the DRS and the "house rules", and how they can ensure that their rights under the Code are realized.

Thank you for your consideration of my submissions.

Myra Williamson
23 June 2020

[4] NZQA "Pastoral Care of International Students" available at: https://www.nzqa.govt.nz/assets/Providers-and-partners/Code-of-Practice/Pastoral-care-of-international-students.pdf.

[5] Ibid. The NZQA has produced guidelines for schools in relation to the pastoral care code for international students, according to the Factsheet cited at note 2 above. Guidelines should also be provided for the domestic students' code.