

# **Education & Workforce Select Committee Inquiry into Student Accommodation**

## ***Universities New Zealand submission***



### **Introduction**

This submission is from Universities New Zealand, the operating name of the New Zealand Vice-Chancellors' Committee, a statutory body established under Part 19 of the Education Act 1989, which has statutory responsibilities and represents the interests of New Zealand's eight universities on a wide range of matters.

For further information, please contact Chris Whelan, Universities New Zealand—Te Pōkai Tara (chris.whelan@universitiesnz.ac.nz).

We wish to appear before the Select Committee in support of this submission.

### **Profile of the university student body**

Around 180,000 students are currently enrolled at New Zealand's eight universities. About 15% are international students and the remaining 85% are domestic students.

44% of the domestic students (around 67,000) have travelled away from their home town, city or locality to study at university. In addition, a significant proportion of the other 56% of students will choose to leave home and live in flats or halls of residence at some point during their studies.

Just 0.2% of students enrolled at university are under 18 years of age. The other 99.8% are legally adults with expectations of privacy and independence. For a large proportion of these students, university will be the first time they live away from home, and so the first time they experience the many freedoms that go with this.

When students live away from home, they are not homogenous in their choices about where they live. Factors such as budget, lifestyle, and the choices of their peers and families are all important.

### **University accommodation**

Each university is established under the Education Act 1989 as an autonomous institution and each is also a Crown Entity under the Crown Entities Act 2004.

Universities exist primarily for teaching and research. Nothing in their legislation requires them to provide accommodation and where they do it is for a range of reasons that vary from university to university.

The most common reasons are one or more of the following:

1. addressing expectations of students and their parents, where students or their parents are looking for managed accommodation to help provide a supportive living environment while

studying. This may be through providing services such as catering, housekeeping, laundry facilities, utilities and on-site pastoral care and support.

2. simplifying the process of securing accommodation for students coming from overseas, who may not be familiar with rental contracts, set up of utilities or who may otherwise struggle to make these arrangements before arriving from overseas
3. providing a safe environment for students to make friends and build networks before deciding on living arrangements in the private market in future years
4. addressing gaps in the local accommodation market, if the university thinks local private accommodation options are insufficient and some other option needs to be provided or arranged
5. recruiting students. Attractive on-campus accommodation is a factor for some students in where they decide to study. Providing such accommodation can help with recruiting students.
6. improved ability to retain students. Students in university accommodation tend to be more engaged and less likely to discontinue their studies for non-academic reasons. This is particularly the case for Māori and Pasifika students.
7. historic factors. Various trusts (religious and educational) set up halls of residence as early as the 19<sup>th</sup> Century to support students in a range of charitable ways.

Because of factors such as these and the relative priority individual universities place on the need to provide accommodation, there is significant variation in numbers of beds per student and types of accommodation across the eight universities.

This variation extends not only to the type of physical environment (e.g. accommodation blocks versus apartments, modern versus old), but also to the services provided (e.g. fully catered or not), size (of the hall), and ethos. This variety is important, as it gives students choice in the type of accommodation and associated student accommodation communities they become part of.

The core function of universities is teaching and research. Universities know they need to facilitate the provision of accommodation, but they do not actually need to own or operate that accommodation. Where universities do own and operate accommodation, it is usually on a break-even (not-for-profit) basis.

As such, universities rely on private trusts and commercial entities to provide a significant proportion of the beds in student accommodation. More information is on this below.

At present (June 2020) there are 79 'halls of residence' with 18,719 beds across New Zealand's eight universities.

Table 1 (Profile of university accommodation nationally) shows the number of halls and beds within them by university. It can be seen that universities provide an average of 1 bed per 10 students, but this varies significantly by university.

Auckland University of Technology has beds for just 2% of its students, compared to the physically adjacent University of Auckland with 10%. Victoria University of Wellington at 16% and Lincoln University and the University of Otago at 19% are at the upper end of beds per student roll.

**Table 1: Profile of University Accommodation Nationally**

University	Halls	Beds	Student Roll	Beds as % of all Students
Auckland	14	4,457	43,148	10%
AUT	2	709	29,428	2%
Waikato	5	1,090	13,232	8%
Massey	9	1,730	30,491	6%
VUW	14	3,531	22,406	16%
Canterbury	10	2,641	18,364	14%
Lincoln	9	564	3,305	17%
Otago	16	3,997	21,108	19%
<b>Total/Avg</b>	<b>79</b>	<b>18,719</b>	<b>181,482</b>	<b>10%</b>

Of the 78 halls of residence, 45% are for first-year students only and the rest are for mixed (first-year and later) or mature (post-first-year only, and sometimes exclusively postgraduate) students. This is shown in [Table 2](#).

**Table 2: Different halls for different students**

Halls	Beds	Type of Student
29	8,463	First Year Only
34	8,557	Mixed
16	1,699	Mature (post 1 <sup>st</sup> year) only
<b>79</b>	<b>18719</b>	<b>Totals</b>

Halls vary in the range of amenities and services they provide to residents as indicated in Table 3.

**Table 3: Amenities and services across the halls of residence.**

Type of accommodation across the 79 halls	Halls where 'yes'	% of all halls where 'yes'
Academic tutoring support provided?	51	65%
Catering available?	51	65%
Student Rooms share kitchen facilities?	33	42%
Student Rooms share bathrooms/showers?	66	85%
Student Rooms are cleaned for occupants?	36	46%

A proportion of halls also have particular characteristics that affect who can stay in them and/or the expectations of their residents. For example:

- Some halls require their residents to do communal work, or to buddy up with at least one other student for study purposes.
- Some halls are either entirely, or in parts, alcohol free.
- One hall is for couples and small families only.
- Some halls have larger apartment-style rooms for couples.
- Some halls have specified areas for same-gender and/or LGBTQI students.

As outlined earlier, universities typically maintain a breakeven objective around the provision of accommodation. Though costs are higher than a student would pay for a room in a standard student flat, the fees includes a much wider range of services (per Table 3) and things like internet access, electricity, recreation centre memberships, etc.

Demand for rooms generally exceeds supply and all universities budget on close to 100% occupancy when setting breakeven budgets. If a student leaves accommodation during the year, the university is generally not able to bring in a replacement.

Rents are never increased during an academic year.

## Who owns halls of residence and who makes decisions on things like contracts and fee rebates?

Universities do not own or operate all the halls of residence on and around their campuses. This is seen in [Table 4: Who owns 'university' halls and beds?](#)

**Table 4: Who owns 'university' halls & beds?**

Halls	Beds	Who owns the halls/beds?
50	11,025	University
17	5,222	Commercial Provider
8	1,544	Charitable Trust
4	928	Someone else (eg unit owner)
<b>79</b>	<b>18719</b>	<b>Totals</b>

And universities themselves are not the final decision-maker across some accommodation types. For around 41% of beds, it is up to the charitable trust or commercial owner/operator to decide on what is in the contract students sign and to decide on things like rebates and fees refunds. This is seen in [tables 5 & 6](#) below.

**Table 5: Who has final say on what is in student accommodation contracts?**

Halls	University	Commercial	Trust	Other	Totals
University	50	0	0	0	<b>50</b>
Commercial	4	13	0	0	<b>17</b>
Trust	0	0	8	0	<b>8</b>
Other	4	0	0	0	<b>4</b>
<b>Totals</b>	<b>58</b>	<b>13</b>	<b>8</b>	<b>0</b>	<b>79</b>
Beds	University	Commercial	Trust	Other	Totals
University	11,025	0	0	0	<b>11,025</b>
Commercial	1,678	3,544	0	0	<b>5,222</b>
Trust	0	0	1,544	0	<b>1,544</b>
Other	928	0	0	0	<b>928</b>
<b>Totals</b>	<b>13,631</b>	<b>3,544</b>	<b>1,544</b>	<b>0</b>	<b>18,719</b>

**Table 6: Who has final say on rebates/fee refunds?**

Halls	University	Commercial	Trust	Other	Totals
University	50	0	0	0	<b>50</b>
Commercial	4	11	0	2	<b>17</b>
Trust	0	0	8	0	<b>8</b>
Other	4	0	0	0	<b>4</b>
<b>Totals</b>	<b>58</b>	<b>11</b>	<b>8</b>	<b>2</b>	<b>79</b>
Beds	University	Commercial	Trust	Other	Totals
University	11,025	0	0	0	<b>11,025</b>
Commercial	1,678	2,835	0	709	<b>5,222</b>
Trust	0	0	1,544	0	<b>1,544</b>
Other	928	0	0	0	<b>928</b>
<b>Totals</b>	<b>13,631</b>	<b>2,835</b>	<b>1,544</b>	<b>709</b>	<b>18,719</b>

Table 7 shows the proportion of each university's beds that are university-owned and operated.

**Table 7: Profile of university accommodation nationally**

University	Halls	Beds	Uni Owned & Operated	% of beds university owned & operated
Auckland	14	4457	2307	52%
AUT*	2	709	0	0%
Waikato	5	1090	1052	97%
Massey	9	1730	1230	71%
VUW	14	3531	2339	66%
Canterbury	10	2641	484	18%
Lincoln	9	564	564	100%
Otago	15	3497	2549	73%
<b>Total/Avg</b>	<b>78</b>	<b>18219</b>	<b>10525</b>	<b>58%</b>

\*AUT is currently shifting all beds from commercially operated to university operated.

Table 8 looks at the 36 halls run by private trusts and commercial providers and shows the approximate age of the contract between the trust/provider and the university. Most arrangements with private charitable trusts are more than 50 years old.

Most commercial providers' contracts were established in the 2000s and 2010s when large numbers of university accommodation was built to deal with the combined issues of growing student numbers and the increasing expense and difficult access of off-campus accommodation. In most instances, this accommodation was purpose built by the commercial provider.

**Table 8: When were contracts established for halls run by trusts & commercial providers?**

Contract Established	Private Trusts		Commercial Providers	
	Halls	Beds	Halls	Beds
50+ years ago	7	1,284	1	115
1970s	1	260	1	197
1980s	0	0	1	188
1990s	0	0	0	0
2000s	0	0	8	3,134
2010s	0	0	9	2,478
2020s	0	0	0	0
<b>Totals</b>	<b>8</b>	<b>1,544</b>	<b>20</b>	<b>6,112</b>

Most private trusts operate on the basis that they reinvest any surpluses back into improving accommodation and other amenities available to residents.

When commercial providers own and operate accommodation on university land, that provider expects and usually achieves a commercial rate of return on their investment, but universities generally continue to just cover costs.

Regardless of whether a hall of residence is owned and operated by a university, a trust or a commercial operator, all are subject to the requirements of Section 5b of the Residential Tenancies Act. For convenience, the relevant section is reproduced here:

**5B Exempt student accommodation**

- (1) For the purposes of [section 5\(1\)\(h\)\(ii\)](#), this Act does not apply to premises if—
  - (a) the premises are used to provide accommodation exclusively for students of 1 or more tertiary education providers; and
  - (b) the premises are owned or operated by a person (an **accommodation provider**) who is—
    - (i) a tertiary education provider; or
    - (ii) a person who has entered into a written agreement of the kind described in subsection (5) with each tertiary education provider whose students are accommodated at the premises; and
  - (c) the accommodation provider complies with subsections (2) to (4).
- (2) The accommodation provider must provide services to the students accommodated in the premises that are over and above the services that a landlord must provide under [Part 2](#) or [2A](#).
- (3) The accommodation provider must have in place house rules that aim to create an environment that fosters personal development and encourages a sense of community and association with fellow students.
- (4) The accommodation provider must take all reasonable steps to ensure that prospective and current student tenants are made aware of, and have access to copies of, the house rules.
- (5) An agreement referred to in subsection (1)(b) is one that sets out—
  - (a) the rights and obligations of the accommodation provider and the tertiary education provider; and
  - (b) a dispute resolution process by which disputes between the accommodation provider and the tertiary education provider may be resolved.
- (6) In this section, **tertiary education provider** has the same meaning as in [section 159\(1\)](#) of the Education Act 1989, and, accordingly, includes universities, the New Zealand Institute of Skills and Technology and its Crown entity subsidiaries, colleges of education, wananga, specialist colleges, private training establishments registered under [Part 18](#) of that Act, and government training establishments.

All universities have agreements with the private trusts and commercial providers per s5B(5). Typically these agreements are long-term but with review points every five to ten years. This gives accommodation providers sufficient certainty of tenure that they can enter into open-tenure contracts with staff and are able to invest in maintaining and developing facilities certain of a return on investment.

And all universities take seriously the requirement of s5B(2) that “*the accommodation provider must provide services to the students accommodated in the premises that are over and above the services that a landlord must provide under Part 2 or 2A*”. Such services include (depending on the particular hall) catering services, social activities, power, phone and internet services, pastoral care and wellbeing support services, dispute resolution services and academic support services.

The current pastoral care requirements of the Education Act apply only to education providers who operate student accommodation. They do not directly apply to private trusts and commercial providers except where either (a) the agreement between the university and the provider requires the provider to meet all applicable pastoral care requirements, or (b) the university has retained responsibility for pastoral care.

As most agreements between universities and private accommodation providers were established before the 2019 legislation, it may take some time before all universities are able to require all their private accommodation providers to meet all the new pastoral care requirements.

Nevertheless, as all agreements come up for review or renewal, all universities are already bringing them in line with the new requirements.

It is also worth noting that a number of halls of residence near university campuses market themselves as 'student accommodation providers' but have no agreement with a tertiary education provider. These providers are not eligible for the s5B exemptions of the Residential Tenancies Act. Education providers are not responsible for these accommodation providers and the pastoral care requirements of the Education Act do not apply to them.

## **Contracts between students and accommodation providers**

Per the requirements of s5(b) of the Residential Tenancies Act, all accommodation providers are required to have a signed student accommodation agreement with any student that lives with them. This agreement is sometimes guaranteed by a parent or guardian if, particularly in the case of first-year students, the student is under 18 when they sign the agreement.

The student accommodation agreement is not a tenancy agreement under the Residential Tenancies Act but the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 requires it to meet a number of requirements and contain certain specific provisions.

There is no requirement, however, that different providers need to use the same agreement and, in most instances, it would be impractical to do so given previously described factors such as the range of:

- services provided (academic tutoring, full catering, etc)
- accommodation options (shared common areas vs private apartments, etc)
- providers and their particular obligations and objectives (private trust vs commercial provider, etc).

Where a private trust or commercial provider provides accommodation facilities, the university always uses reasonable endeavours to ensure that the contract with students meets legislative requirements and provides some level of monitoring to ensure that contractual requirements are being met.

However, the final decision on the terms of the contract rests, in most cases, with the trust or commercial provider.

## **Pastoral care of students in accommodation**

Pastoral care requirements were put into legislation at the end of 2019 and the release of the Education (Pastoral Care of Domestic Tertiary Students) Interim Code of Practice 2019 (the Interim Code) shortly afterwards, means there are now clearer expectations and obligations around pastoral care of students in accommodation.

The Interim Code is rightly and necessarily principles-based in setting expectations around the pastoral care of students in accommodation. It needs to be principles-based given the wide range of accommodation providers, accommodation types, and the range of expectations and needs of students staying in accommodation.

It is up to tertiary education providers to demonstrate how they are achieving the outcomes and expectations laid out in the Interim Code, given particular local circumstances and needs.

Universities all balance the following factors when thinking about how they meet their pastoral care obligations:

- Universities are primarily places of learning, teaching and research.
- Universities are obliged to provide a safe and healthy environment for their staff and students. Pastoral care, however, incorporates many other dimensions, including health, wellbeing (social, emotional, spiritual and physical), community engagement and academic support for all students based on circumstance and need. Approaches must therefore allow for flexibility to achieve the best possible pastoral care outcomes.
- Most students are adults (only 0.2% of students are under 18 years of age when they commence university study). These students have expectations of privacy and independence. Overly intrusive practices and interventions risk driving students off campus into less safe, less supportive environments.
- Assessing risk levels is a critical part of care planning and management. It is no more feasible to eliminate risk in student accommodation than in life more generally. Indeed, indulging in behaviours that more mature adults might regard as unduly risky is something that younger adults will always do (whether in student accommodation or not), and it is an important part of their human development. Risks within universities are currently well monitored and regularly reported to senior management and governance.
- Currently universities and students have a relationship that establishes responsibilities and obligations for both parties. While universities are being held to account in this proposed legislation, students must also have a responsibility to engage with the services provided and take some responsibility for their own health and wellbeing.
- Intrusive practices and interventions may not be tolerated or accepted by students who have a right to act as independent adults. This could lead to higher risk behaviours, with students not reporting concerns in relation to themselves or others to avoid restrictions or controls on their privacy and right of choice.
- Under the Interim Code, providers are required to take all reasonable steps to protect students and ensure, as far as possible, that students have a positive experience that supports their educational achievement. This is not always possible where individual rights and preferences do not align with the safety, welfare or care of others within that community. For example, some students choose to express political views or to engage in recreational activities that other students find abhorrent.

Universities take their student accommodation and pastoral care responsibilities very seriously. Students pay fees for a level of pastoral support and universities provide a system to develop caring communities. Results indicate that students have better learning outcomes when they have a sense



of belonging. In the main, universities take a holistic approach, focused on the students and helping them become independent learners.

Ensuring physical and mental safety, and building a community, are key components in creating a safe environment for students to grow into their full potential. Pastoral care extends far beyond university accommodation. It spans the whole institution and university community, and universities offer a complex and varied selection of pastoral care to students.

Though the incidence of serious harm is relatively low at university,<sup>1</sup> universities investigate it every time it occurs and use this information to inform policy and practice. All universities systematically identify risks and report them and their mitigations to their councils and the Tertiary Education Commission (TEC).

However, universities cannot provide a perfectly safe environment for students in exactly the same way that Government cannot guarantee a perfectly safe environment for all citizens. Universities (and Government including Health Boards) do the best they reasonably can within finite resources and in keeping with societal – and particularly young adult – expectations around adult rights and freedoms.

Debates around the obligations of education providers to their students need to consider the extent to which tertiary students need additional arrangements or protection over and above other young people of the same age. Universities should not be held to a higher standard than society more generally in the care it is reasonably expected to provide to students.

The education sector is heading into its first self-review cycle against the Interim Code. Particular areas of focus for the 2020 self-review processes will be (a) student voice, and (b) accommodation.

We expect a number of useful lessons will arise from this, which will feed into the Permanent Code for the Pastoral Care of Domestic Students as well as education provider pastoral care policies and practices.

The obligations rightly placed upon student accommodation providers have a significant financial impact. This cost must be considered when comparing the amount charged by those providing student accommodation and private accommodation that operates under the Residential Tenancies Act.

University student accommodation provides significant benefits to students able to access it. Efforts to ensure appropriate pastoral care or affordability need to be made with the awareness that the vast majority of university students are unable to access university accommodation. If such efforts make the provision of on-campus accommodation less viable, fewer students will be able to benefit from it in the future and more will need to rely on private rental accommodation where few of those benefits are available.

## **Fee rebates/discounts during the Covid-19 period**

One area of focus of this Select Committee Inquiry is on the policies and practices of accommodation providers during the Covid-19 close-down period. A significant proportion of students went home over this period; some had their accommodation fees stopped altogether, while others were offered

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<sup>1</sup> On average 10-20 university students die every year from a wide variety of causes – accidental, medical, and self-inflicted. This is almost exactly 1/5<sup>th</sup> the mortality rate of the wider population of the same age.

only partial fee reductions. There was also considerable variation in the level of reductions offered across the universities.

Reasons for this variation stem from several interlinked factors:

1. Universities that owned and operated most of their accommodation were able to make fee reductions unilaterally. With private trusts and commercial providers, reductions required the agreement of the provider. This agreement was not always forthcoming.
2. Some universities explicitly asked those in residential accommodation to return home for the lockdown if they could, whereas others did not. Some students had no other option but to stay in residence and some identified that they and their families and whanau would be safer if the student stayed in residence rather than at home. Some universities concentrated the residents who remained into a smaller number of halls, which enabled them to make greater savings than those who did not.
3. Universities received no wage subsidy or other Government financial support over the close-down period. Despite this, they were instructed to continue the employment of all permanent staff (including those involved in catering and accommodation cleaning). In all cases, there was some reduction in costs through a reduction in consumables (such as food and cleaning products). At a minimum, all universities passed back the marginal cost savings to students.
4. Our approach as the country moved through Covid-19 alert levels and during the Alert Level 4 lockdown was driven by our concern for student welfare and our commitment to ongoing delivery of quality pastoral care. Our Resident Advisors, Residential Managers, kitchen and cleaning staff continued to be employed throughout the lockdown period and many of them left the safety of their own family bubbles each day to come to work and support our resident students. Our aim was to be able to continue to offer accommodation to students who were still living with us and for those who intended to return. The efforts of our residential staff resulted in students remaining safe from Covid-19 and able to continue their studies in supportive learning environments.
5. All universities suffered a significant drop in revenue because of lost international students, delays in research income, etc. Universities had to work out how to reduce losses.
6. Each university is an autonomous Crown entity. Each individual university had to consider its own circumstances and to balance issues around financial viability with issues such as their obligations to their students.

Since Covid-19, the decisions around accommodation fees have been painted as a matter of pastoral care and subject to legislative provisions. It has been claimed that it sits within the remit of the Pastoral Care Code Administrator to investigate.

In fact, the Interim Code does not cover this, and we suggest it would be extremely unwise to legislate policy regarding accommodation fees or rebates. Doing so has the potential to make the provision of accommodation unattractive or unviable for universities, private trusts or commercial providers.

Universities (and other providers of student accommodation) are subject to the Commerce Act 1986 and have legitimate concerns about the potential risks in collaborating on matters such as fee levels, discounts and rebates. If Parliament wants universities to collaborate more around their offerings to students (and, in particular, around pricing and discounting), then the regulatory environment needs to expressly permit and empower that to occur.