

IN CONFIDENCE

Education (Pastoral Care) Amendment Bill

Government Bill

Explanatory note

General policy statement

[MOE to provide]

Departmental disclosure statement

The Ministry of Education is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Or [Counsel to delete the option that does not apply]

A departmental disclosure statement is not required for this Bill.

Regulatory impact assessment

The Ministry of Education produced a regulatory impact assessment on [date] to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

[A copy of this regulatory impact assessment can be found at—

- [Insert URL link(s) to the RIA on the agency's/agencies' Internet site(s)]
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill is to come into force on 1 January 2020.

Clause 3 provides that the Bill amends the Education Act 1989 (the **principal Act**).

Clause 4 replaces Part 18A of the principal Act, which concerns the pastoral care of international students, with a *new Part 18A* that concerns the pastoral care of domestic students and international students.

New clause 238D defines the terms used in *new Part 18A*.

New clause 238E provides that signatory providers may enrol persons as international students.

New clause 238F provides that, despite *new clause 238E*, providers and signatory providers may enrol international students for education instruction for 2 weeks or less.

New clause 238G provides that the Minister may issue a code for domestic students and a code for international students.

New clause 238H provides that the Minister may appoint code administrators, whose responsibilities include assessing code compliance.

New section 238I provides that a code administrator may issue quality improvement notices to providers.

New section 238J provides that a code administrator may issue compliance notices to signatory providers.

New section 238K requires providers to comply with quality improvement notices and signatory providers to comply with compliance notices.

New section 238L sets out sanctions for breaching a code.

New section 238M establishes a student contract dispute resolution scheme (the **DRS**).

New section 238N places a cap on the amount that can be required to be paid in resolving a dispute between a student claimant and a provider or signatory provider.

New section 238O provides that the District Court may enforce compliance with DRS rules or binding resolutions.

New section 238P provides the making of rules for the functioning and administration of the DRS.

New section 238Q provides for the making of an export education levy.

New section 238R sets out the proposes to which export education levy funds may be applied.

Clause 5 amends Schedule 1 of the principal Act, which contains transitional, savings, and related provisions, by inserting *new Part 9 (new clauses 26 and 27)*. *New Part 9*, which is set out in the Schedule of the Bill, sets out the transitional arrangements pertaining to the replacement of Part 18A of the principal Act with *new Part 18A*.

Hon Chris Hipkins

Education (Pastoral Care) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Education (Pastoral Care) Amendment Act **2019**.

2 Commencement

This Act comes into force on 1 January 2020.

3 Principal Act

This Act amends the Education Act 1989 (the **principal Act**).

4 Part 18A replaced (International students)

Replace Part 18A with:

Part 18A
Pastoral care of students

238D Interpretation

In this Part, unless the context otherwise requires,—

code means the code of practice established under **section 238G**

code administrator means the person or agency appointed under section **238H(1)**

domestic student—

(a) has the meaning given by section 2(1); and

(b) in relation to a provider, means a domestic student enrolled by the provider

DRS means the student contract dispute resolution scheme established by **section 238M**

DRS operator means the person or agency appointed under **section 238M(4)(a)**

DRS rules means the rules prescribed under **section 238P**

student accommodation means an accommodation that—

- (a) a provider arranges, either directly or indirectly, for domestic students:
- (b) a signatory provider arranges, either directly or indirectly, for international students

international student—

- (a) has the meaning given by section 2(1); and
- (b) in relation to a signatory provider, means an international student enrolled by the signatory provider

provider means a person or body that is,—

- (a) in respect of international students, a registered school; or
- (b) in respect of domestic students and international students,—
 - (i) an institution within the meaning of section 159; or
 - (ii) a registered private training establishment registered under section 233; or
 - (iii) an organisation that provides adult and community education that receives funding under section 159YA or 159ZC

signatory provider means a provider that is a signatory to the code

serious harm, in relation to a domestic student or an international student, means an event or circumstances that have seriously reduced the safety or well being of the student, including (but not limited to) a physical injury or illness that requires immediate treatment (other than first aid), hospitalisation, or medical, psychological, or psychiatric intervention

student claimant, in relation to a provider, means a person who—

- (a) is a domestic or international student enrolled by the provider or signatory provider; or
- (b) is a former domestic or international student enrolled by the provider or signatory provider; or
- (c) intends to be, or is in the process of being, enrolled by the provider or signatory provider as a domestic or international student.

Compare: 1989 No 80 s 238D

*Enrolment of international students***238E Signatory providers may enrol persons as international students**

- (1) A provider may enrol a person as an international student or continue to have an international student enrolled, as long as the provider is a signatory to a code.
- (2) A provider must not enrol a person as an international student or continue to have an international student enrolled, or provide educational instruction for the person, if the provider—
 - (a) is not a signatory to the code; or
 - (b) is removed as a signatory to the code under **section 238L**; or
 - (c) ceases to be a signatory to the code for any other reason provided in the code.
- (3) A provider or signatory provider that is subject to a sanction under **section 238L(1)** may continue to have international students enrolled and may provide educational instruction to those students but only to the extent permitted by the sanction.

Compare: 1989 No 80 s 238E

238F Providers may enrol persons as international students in certain circumstances

However, a provider may enrol a person as an international student if the person is not a domestic student and the provider provides the person with educational instruction for 2 weeks or less.

Compare: 1989 No 80 s 238EA

*Pastoral care of domestic and international students***238G Pastoral Care Codes**

- (1) The Minister may issue—
 - (a) a code of practice that provides a framework for the pastoral care of domestic students:
 - (b) a code of practice that provides a framework for the pastoral care of international students
- (2) The purpose of the code for—
 - (a) domestic students is to support the Government's objectives for the education of domestic students by—
 - (i) requiring providers to take all reasonable steps to protect domestic students; and
 - (ii) ensuring, so far as is possible, that domestic students have a positive experience that supports their educational achievement:

- (b) 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.
- (3) The scope of the code for—
 - (a) for domestic students is to prescribe, alongside other quality assurance prescribed by this Act,—
 - (i) outcomes sought from providers for their domestic students; and
 - (ii) key processes required of providers to support the well-being, achievement, and rights of domestic students:
 - (b) for international students is to prescribe, alongside other quality assurance prescribed by this Act,—
 - (i) outcomes sought from providers for their international students; and
 - (ii) key processes required of providers to support the well-being, achievement, and rights of international students.
- (4) Without limiting **subsections (1) to (3)**, the code may include provisions for 1 or more of the following purposes:
 - (a) despite everything in the Public Finance Act 1989, requiring providers to indemnify the administrator:
 - (b) providing for any other matters contemplated by this **Part**, necessary for its administration, or necessary for giving it full effect.
- (5) The code—
 - (a) for domestic students is binding on all parties:
 - (b) for international students is binding on all parties who are signatories to the code.
- (6) A code—
 - (a) may make different provisions in relation to students aged under 18 and in relation to students aged 18 or over:
 - (b) must be published on an Internet site maintained by or on behalf of the Ministry:
 - (c) is a disallowable instrument, but is not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1989 No 80 s 238F; 2015 No 70 s 191(4)

238H Code administrators

- (1) The Minister may, by notice in the *Gazette*, appoint a person or an agency to be responsible for—
 - (a) administering—
 - (i) the code for domestic students;
 - (ii) the code for international students; or
 - (b) administering both codes.
- (2) When appointing a code administrator, the Minister must have regard to the knowledge, skills, or experience of the person or agency.
- (3) The functions of the code administrator are,—
 - (a) in the case of international students,—
 - (i) to receive applications from providers seeking to become signatories to a code; and
 - (ii) to assess those applications against—
 - (A) the criteria stated in the code of practice; and
 - (B) the purpose stated in **section 238G(2)** and the scope stated in **section 238G(3)**; and
 - (iii) to allow or decline to allow applicants to become signatories to the code in accordance with its assessments; and
 - (c) in the case of domestic students and international students,—
 - (i) to monitor and investigate the extent to which providers comply with the code—
 - (A) following a process prescribed by the code; and
 - (B) in close collaboration with education quality assurance authorities; and
 - (ii) to issue to providers notices under **section 238I or 238J**; and
 - (iii) to impose on providers sanctions for breaches of the code and failure to comply with notices under **section 238I or 238J**.
- (4) The code administrator may allow an applicant to become a signatory to a code unconditionally, or subject to any written conditions made known to the applicant at the time the code administrator informs the applicant that the applicant is allowed to become a signatory to the code.
- (5) An administrator may, in accordance with the requirements of the applicable code,—
 - (a) enter any student accommodation and inspect the premises and facilities;
 - (b) inspect, and make and remove copies of, any information relating to the management of the student accommodation;

- (c) require any person at a student accommodation to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the student accommodation.

Compare: 1989 No 80 s 238FA

Compliance

238I Quality improvement notices

- (1) A code administrator may issue a quality improvement notice to a provider.
- (2) The notice must—
 - (a) set out any concerns the administrator has about the provider's systems, practices, training, or procedures; and
 - (b) specify the time within which the provider is expected to address the administrator's concerns (which must be a reasonable time, having regard to the nature and complexity of the action required); and
 - (c) specify the possible consequences of a failure to comply with a quality improvement notice.
- (3) The code administrator may publish the notice, or a summary of it, in a manner designed to give public notice of it.
- (4) The code administrator may, before the expiry of the time or period referred to in **subsection (2)(b)**, extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with.

Compare: 1992 No 55 s 11C

238J Compliance notices

- (1) A code administrator may issue a compliance notice to a signatory provider requiring the signatory provider to do, or refrain from doing, a particular thing in relation to—
 - (a) the signatory provider's obligations as a signatory to the code; or
 - (b) the signatory provider's conditions of approval as a signatory to the code.
- (2) A notice under **subsection (1)** may specify the manner in which a thing must be undone or the manner in which the consequences of a thing must be rectified.
- (3) The notice must be in writing and must—
 - (a) state the date on which it is issued; and
 - (b) if it requires the signatory provider to take any action, state a time on or before which, or a period within which, the signatory provider must take the action; and

- (c) state the consequences or possible consequences of non-compliance with it.
- (4) The code administrator may publish the notice, or a summary of it, in a manner designed to give public notice of it.
- (5) The code administrator may, before the expiry of the time or period referred to in **subsection (3)(b)**, extend the time or period, and in that case the time or period as extended becomes the time or period within or during which the notice must be complied with.

Compare: 1989 No 80 s 238FB

238K Providers and signatory providers to comply with notices

- (1) A provider must comply with a quality improvement notice issued under **section 238I**.
- (2) A signatory provider must comply with a compliance notice issued under **section 238J**.
- (3) If, in the code administrator's opinion, a provider or signatory provider does not comply with the relevant notice, the code administrator may (as the code administrator sees fit) impose sanctions against the provider or signatory provider under **section 238L**.
- (4) The code administrator must not act under **subsection (3)** until the later of the following:
 - (a) 10 days after the date on which the quality improvement notice or compliance notice was issued;
 - (b) the expiry of any time or period of a kind referred to in **section 238I(2)(b) or 238J(3)(b)**.
- (5) This section and **sections 238I and 238J** do not limit or affect **section 238L**.

Compare: 1989 No 80 s 238FC

238L Sanctions for breach of code

- (1) If satisfied that a provider or signatory provider has breached the relevant code or failed to comply with a notice under **section 238I or 238J**, the code administrator may,—
 - (a) in the case of signatory providers, impose new, or amend or revoke any existing, conditions on the signatory provider's approval as a code signatory;
 - (b) in the case of providers and signatory providers, impose limitations on the provider's or the signatory provider's power to enrol students.
- (2) If satisfied that a signatory provider has not complied with a sanction imposed under **subsection (1)** or a notice under **section 238FBAA or 238J**, the

code administrator may remove the signatory provider as a signatory to the code of practice.

Compare: 1989 No 80 s 238G

Dispute resolution

238M Student contract dispute resolution scheme

- (1) This section establishes a student contract dispute resolution scheme (the **DRS**).
- (2) The purpose of the DRS is to resolve contractual and financial disputes between students (and former and prospective international students) and providers or signatory providers.
- (3) Every provider or signatory provider that enrolls, intends to enrol, or has enrolled students is subject to and must (in relation to any contractual or financial dispute with a student or a former or prospective student) comply with the rules of the DRS prescribed under **section 238P**.
- (4) The Minister—
 - (a) may, by notice in the *Gazette*, appoint a person or an agency to be responsible for administering the DRS; and
 - (b) must take reasonable steps to ensure that there is at all times a person appointed to be responsible for administering the DRS.
- (5) A student claimant may lodge with the DRS operator for resolution under the DRS any contractual or financial dispute with a provider or signatory provider, but only if—
 - (a) the provider or signatory provider has been given an opportunity to resolve the dispute, but the student claimant is not satisfied with the process, the outcome, or both; or
 - (b) the provider or signatory provider has failed to, or has refused to, try to resolve the dispute.
- (6) The resolution of a dispute is binding on all parties to the dispute if—
 - (a) it is the outcome of an adjudication of the dispute by or on behalf of the DRS operator; or
 - (b) it is produced by a mediation undertaken by or on behalf of the DRS operator whose outcome the parties to the dispute have agreed will be binding.
- (7) The DRS operator—
 - (a) may charge fees to a student claimant, the provider concerned, or both, according to the rules of the DRS prescribed under **section 238P**; but

- (b) (despite those rules) may in its absolute discretion partially or completely exempt any person, or persons of a particular description, from the payment of fees.

Compare: 1989 No 80 s 238J

238N Cap on amount that can be required to be paid

In resolving any dispute, the DRS operator—

- (a) must not require a provider or signatory provider to pay to a student claimant in relation to any particular claim any amount exceeding \$200,000; but
- (b) may charge the provider fees in addition to any amount required to be paid.

Compare: 1989 No 80 s 238K

238O District Court to enforce DRS

- (1) The District Court may,—
 - (a) on the application of the student claimant or the DRS operator, make an order requiring a provider to comply with the rules of the DRS or to give effect to any resolution that is binding under **section 238M(6)**; or
 - (b) on the application of the provider or signatory provider or the DRS operator, make an order requiring a claimant to give effect to any resolution that is binding under **section 238M(6)**.
- (2) If an order (or part of an order) requiring the provider or signatory provider to comply with the resolution requires the provider or signatory provider to pay any sum of money to any person, that order (or part) may be enforced as if it were a judgment by the District Court for the payment of that sum of money to that person.
- (3) If the District Court is satisfied that the terms of the resolution of a dispute by the DRS operator are manifestly unreasonable, the court may modify the resolution before giving effect to it.
- (4) **Subsection (3) overrides subsections (1) and (2) and section 238M(6).**

Compare: 1989 No 80 s 238L

238P Rules of student contract dispute resolution scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make rules for the functioning and administration of the DRS.
- (2) The Minister must not recommend the making of an order without consulting any relevant bodies and sector representatives that the Minister thinks appropriate.
- (3) The rules may prescribe fees, or a means by which fees can be calculated or ascertained.

Compare: 1989 No 80 s 238M

*Export education levy***238Q Export education levy**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing an export education levy on providers who receive tuition fees from international students enrolled with them.
- (2) Without limiting **subsection (1)**, regulations made under this section must—
 - (a) prescribe the amount or the method for calculating the amount (or both) of export education levy payable by individual signatory providers, and may prescribe different amounts, or different methods of calculating the amounts, payable by different classes of signatory provider; and
 - (b) prescribe when the levy, or any part of the levy, is payable; and
 - (c) designate an agency to administer the levy and, if that agency is the Ministry, the regulations may authorise the Ministry to delegate all or specified aspects of the levy's collection and use to another body; and
 - (d) require that a signatory provider supplies, on request by the agency responsible for the administration of the levy, information on student numbers or any other matter that is necessary to determine or verify the amount of levy payable by the signatory provider.
- (3) Before making a recommendation under **subsection (1)**, the Minister must consult signatory providers.

Compare: 1989 No 80 s 238H

238R Purposes to which export education levy may be applied

- (1) The purposes to which levy funds may be applied are as follows:
 - (a) the development, promotion, and quality assurance of the export education sector, which may include (without limitation)—
 - (i) professional and institutional development; and
 - (ii) marketing; and
 - (iii) implementation of scholarship schemes; and
 - (iv) research, and resource development; and
 - (v) support (financial or otherwise) of other bodies engaged in the development, promotion, or quality assurance of the export education sector:
 - (ab) the making of payments as set out in **subsections (2) and (3)**:
 - (b) the administration and audit of the code for international students:
 - (ba) the funding of the cost of the operation of the DRS provided for by **section 238M** that is attributable to international students:
 - (c) the general administration of the levy and associated purposes.

- (2) **Subsection (1B)** applies if—
- (a) an international student is or was enrolled with a private training establishment or a private school for a course of study or training; and
 - (b) at the time of the international student's enrolment the private training establishment held a current registration under Part 18, or the private school held a current registration under section 35A; and
 - (c) the private training establishment or private school has not, cannot, or will not provide, in whole or in part, the course of study or training.
- (3) If this subsection applies, the levy funds may be used for any of the following:
- (a) to make payment to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment or private school in respect of the student's course of study or training if, and to the extent that,—
 - (i) the private training establishment or private school has not refunded the tuition fees or other payment; and
 - (ii) the agency responsible for the administration of the levy approves the reimbursement of the student as necessary and appropriate in the circumstances:
 - (b) with the approval of the Minister, to reimburse the Crown for any sum provided by the Crown and paid to any person to ensure the reimbursement of the student, in whole or in part, for tuition fees or for any payment other than tuition fees made by or on behalf of that student to the private training establishment or private school in respect of the student's course of study or training if, and to the extent that,—
 - (i) the private training establishment or private school had not refunded the tuition fees or other payment; and
 - (ii) the agency responsible for the administration of the levy approved the reimbursement of the student as necessary and appropriate in the circumstances:
 - (c) with the approval of the Minister, to reimburse, in whole or in part, the agency responsible for the administration of the levy, or any Crown entity, for—
 - (i) costs incurred by that agency or Crown entity in placing the student with an alternative provider; or
 - (ii) other costs incurred by that agency or Crown entity as a direct result of the private training establishment or private school not providing the course of study or training.
- (4) Levy funds must be kept in a separate bank account that is used only for the purposes of the levy.

- (5) As soon as practicable after **1 July** in each year, the agency responsible for the administration of the levy must present to the Minister an annual report on the administration of the levy, which must include audited financial statements prepared in accordance with generally accepted accounting practice; and the Minister must present a copy of the report to the House of Representatives.
- (6) The amount of levy payable by a provider under regulations made under this section is a debt due to the Crown and may be recovered in any court of competent jurisdiction.

Compare: 1989 No 80 s 238I

Offences

238S Offence relating to breach of code resulting in serious harm to students

- (1) A provider or signatory provider commits an offence if—
 - (a) the provider or signatory provider breaches the applicable code; and
 - (b) the breach results in serious harm or death to 1 or more of its students.
- (2) A provider who commits an offence against this section is liable on conviction to a fine not exceeding \$100,000.

238T Pecuniary penalty relating to breach of code resulting in serious harm to students

- (1) A court may order a provider or signatory provider to pay to the Crown any pecuniary penalty that the court determines to be appropriate if the court is satisfied, on the application of a code administrator, that—
 - (a) the provider or signatory provider has breached the applicable code; and
 - (b) the breach resulted in serious harm or death to 1 or more of the provider's or signatory provider's students.
- (2) The amount of any pecuniary penalty may not exceed \$100,000.

5 Schedule 1 amended

In **Schedule 1**, after Part 8, insert the Part set out in the **Schedule**

Schedule

New Part 9 inserted into Schedule 1

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Part 9

Provisions relating to Education (Pastoral Care) Amendment Act 2019

26 Transitional provisions relating to code for domestic students

- (1) This clause—
 - (a) applies to providers that enrol domestic students; and
 - (b) applies despite the provisions of **Part 18A** of the Act (as substituted by the Education (Pastoral Care) Amendment Act 2019).
- (2) The Minister may, on or after **1 January 2020** and before **1 December 2020**, issue an interim code for domestic students.
- (3) An interim code issued under **subclause (2)** expires on **1 December 2020**.
- (4) Despite anything in the Act (as amended by the Education (Pastoral Care) Amendment Act 2019) or any other enactment, the Minister is not required to consult any interested or affected persons or bodies in respect to the content or issuing of an interim code.
- (5) Until an interim code for domestic students is issued under **subclause (2)** or a code for domestic students is issued under the Act (as amended by the Education (Pastoral Care) Amendment Act 2019), the provisions in the Act applicable to providers as they stood immediately before the commencement of this clause continue to apply.
- (6) Terms used in this clause and defined in **section 238D** of the Act (as substituted by the Education (Pastoral Care) Amendment Act 2019) have the same meanings as in that section.

27 Transitional provisions relating to code for international students

- (1) This clause—
 - (a) applies to signatory providers that enrol international students; and
 - (b) applies despite the provisions of **Part 18A** of the Act (as substituted by the Education (Pastoral Care) Amendment Act 2019).
- (2) Until a code for international students is issued under the Act (as amended by the Education (Pastoral Care) Amendment Act 2019), the Act as it stood immediately before the commencement of this clause continues to apply.
- (3) The Minister may, on or after **1 January 2020** and before **31 December 2020**, amend the code for international students under Part 18A as it stood immediately before the commencement of this clause.

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- (4) The Minister may, on or after **31 December 2020**, amend the code for international students under the Act (as substituted by the Education (Pastoral Care) Amendment Act 2019) as if the code had been made under that Part.
 - (5) The provisions of Part 18A of the Act, as in force before the commencement of this clause, continue in force for the purposes of concluding any proceedings commenced before the commencement of this clause.
 - (6) Terms used in this clause and defined in **section 238D** of the Act (as substituted by the Education (Pastoral Care) Amendment Act 2019) have the same meanings as in that section.