

Education (Pastoral Care) Amendment Bill

Government Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Education (Pastoral Care) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would amend the Education Act 1989 to enable the Minister of Education to issue a code of practice applying to the pastoral care of domestic tertiary students. The code would be mandatory for all tertiary education providers.

The bill would also carry over the existing power of the Minister to issue a code of practice applying to the pastoral care of international students. The bill would enable the Minister to issue an interim code for the pastoral care of domestic tertiary students for the 2020 year.

The bill would set out arrangements relating to code administration, monitoring, compliance and enforcement, offences and penalties, and dispute resolution. Notably, the bill would create an offence for breaches of any code resulting in serious harm or the death of a student. The bill would also create a pecuniary penalty for serious breaches of any code.

Currently, providers of education to international students must sign up to the Education (Pastoral Care of International Students) Code of Practice 2016. They are referred to in the bill as “signatory providers”, and only signatory providers can enrol international students.

There is currently no code that applies to the pastoral care of domestic tertiary students. A voluntary code of practice for tertiary student accommodation was created in 2004, but has not been regularly reviewed or updated.

The codes of practice that could be established under this bill would apply to domestic tertiary students and international students. The codes would not apply to domestic school students, who are covered by other existing protections.

The bill would enable the Minister to issue a code covering all domestic tertiary students, regardless of whether the students are in student accommodation. However, the Minister would have the ability to decide on the focus of a code, such as limiting the application of the code to student accommodation.

National Party members are concerned about the lack of detail in regard to the increased cost that the additional regulation could put on students and parents.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced.

We do not discuss minor or technical amendments. We note, however, that we propose making a technical amendment to the definition of “signatory provider” in new section 238D to clarify that this refers to an education provider that is a signatory to a code of practice for the pastoral care of international students. Providers that are not signatory providers cannot enrol international students.

New Part 18A

Clause 4 of the bill would replace the existing Part 18A of the Education Act with new Part 18A. We recommend several changes to the new sections proposed in this clause.

Interpretation of “serious harm”

As introduced, new section 238D would define some of the terms used throughout new Part 18A, including the definition of “serious harm”.

The definition of “serious harm” would be relevant to determining whether an offence has been committed under new section 238S. That new section (which we discuss later) would make it an offence for a provider to commit a breach of an applicable code without reasonable excuse where the breach results in serious harm to (or the death of) a student.

As introduced, the definition of “serious harm” in relation to a domestic tertiary student or an international student means “an event or circumstances that seriously and detrimentally affect 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”.

We think that this definition should be amended to remove reference to the types of treatments or interventions that might be required. Whether or not an injury or illness has required treatment or medical intervention should not be what decides whether serious harm has occurred.

We also think the words “safety or well-being of the student” should be replaced with “ongoing welfare” to make it clear that harms with minor or no ongoing effects for students are not intended to be covered by the definition of “serious harm”.

We recommend that “serious harm” be defined as “an event or circumstances that seriously and detrimentally affect the ongoing welfare of the student, including (but not limited to) physical injury, physical illness, or mental illness”. We recommend amending new section 238D accordingly.

Clarifying that there can be a single code for domestic tertiary and international students

The bill as introduced would enable the Minister of Education to issue codes to cover domestic tertiary students and international students. We recommend amending new section 238G(1) by inserting new paragraph (c) to clarify that the Minister could choose to issue a single code that provides a framework for the pastoral care of both domestic tertiary students and international students.

We also recommend a consequential amendment in new section 238H(1).

We note that a single code would likely distinguish between domestic tertiary students and international students due to the differing challenges of those students’ experiences.

Purpose of the codes

In the bill as introduced, new section 238G(2) states the purposes of any codes that are created. The purposes would be to support the Government’s objectives for education by requiring providers (as defined in the bill) to “take all reasonable steps to protect” both domestic tertiary and international students.

The word “protect” reflects the current purpose for which a pastoral care code for international students may be issued by the Minister under section 238F(1A) of the Act. Currently, such a code can only apply to international students, not to domestic tertiary students.

We recognise that international students are more vulnerable than domestic tertiary students due to linguistic, cultural, and societal differences. Therefore, a higher level of pastoral care would be expected for international students.

To reflect this difference, we recommend amending new section 238G(2)(a) to require providers to take all reasonable steps to “maintain the well-being” of domestic tertiary students, rather than to “protect” them.

We support maintaining the purpose of any pastoral code for international students as being to “protect” international students, reflecting the higher level of pastoral care required.

Requiring consultation before a code is issued

We believe that the bill should include a specific requirement for the Minister, before issuing a code, to consult those stakeholders the Minister considers likely to be

affected by the code. They must include representatives of students, parents, providers, signatory providers, and the staff of providers and signatory providers, as well as the Privacy Commissioner.

Therefore, we recommend inserting new subsection (4A) into new section 238G. This would not apply to an interim code, as set out in new clause 26(4) of new Part 9 of the Schedule.

Student consent for inspections by the code administrator

Subsections (5) to (7) of proposed new section 238H in the bill as introduced specify that a code administrator (or a delegate approved by the Minister) could enter the room or sleeping area of a student at student accommodation in certain circumstances. They must believe on reasonable grounds that it is necessary for monitoring or investigating compliance with the relevant code. They must also give prior notice, explain the purpose of the entry, and the student must be present during the entry or inspection.

We propose that at least 24 hours' prior notice should be required before entry by the code administrator is permitted. We also propose that the student's consent must be obtained, unless it is unreasonable to do so in the circumstances. The student should only need to be present if their consent for entry and inspection is conditional on being present.

We recommend amending new section 238H(7) and inserting new subsection 7A to reflect these changes.

We note that this new section only relates to entry or inspections by the code administrator (or their delegate). It does not replace any entry or inspection provisions in contracts between students and accommodation providers. Importantly, it is not intended to cover or restrict entries relating to emergency or welfare checks.

Privacy rights

We considered concerns about potential breaches of the rights of young people that this bill seeks to protect, those being in tertiary accommodation. In particular, we heard from the Privacy Commissioner on this issue.

This bill would not override the Privacy Act.

Quality improvement notices

Proposed new section 238I would enable a code administrator to issue a quality improvement notice to a provider, setting out concerns about the provider's systems, practices, training, or procedures. If the code administrator thinks that the provider has not complied with the notice after a set period of time, it could impose sanctions. Those sanctions could include imposing restrictions on enrolment.

We consider that quality improvement notices issued by the code administrator should be limited to a provider's obligations under the applicable code. Therefore, we recommend amending new section 238I(1) to clarify that a quality improvement notice may

require a provider to do, or refrain from doing, a particular thing in relation to the provider's obligations under a code.

This would be consistent with the compliance notice provisions under proposed new section 238J, which relates to signatory providers' obligations.

Dispute resolution scheme

Proposed new section 238M would establish a student contract dispute resolution scheme. The scheme could be used to resolve contractual and financial disputes between students and providers. Under subsection 5, a student claimant could lodge a contractual or financial dispute if a provider had not tried to resolve the dispute, or had not resolved it to the student's satisfaction.

We consider that there should be a limitation period for disputes to be raised. We recommend amending new section 238M by inserting new subsection 5A to require a student to lodge a dispute for resolution no later than 7 years after the date of the act or omission causing the dispute. We consider 7 years appropriate, and note that it is consistent with the required retention period for university student records under the Public Records Act 2005.

Offences and penalties

The bill would make it a criminal offence, under new section 238S, if a provider without reasonable excuse breached an applicable code, and that breach resulted in serious harm to, or the death of, a student. We note this would not be a strict liability offence. If convicted, the provider would be liable to a fine up to \$100,000.

Under new section 238T, the bill would also, separate to the offence above, create a civil pecuniary penalty of up to \$100,000. Under new section 238T(1), if the code administrator considered that there had been a serious breach of a code, it could make an application to a court. The court would determine whether there was a serious breach of "the regulatory requirements set out in the applicable code".

We note that the criminal offence and civil pecuniary penalty provisions are mutually exclusive: a provider cannot be convicted or held liable for both in relation to the same matter.

We recommend two changes to proposed new section 238T (which is about the pecuniary penalty).

First, we think that a court should be able to consider a "reasonable excuse" defence when determining whether a party was liable for a serious breach of the code. We recommend amending new section 238T(1) by inserting the words "without reasonable excuse".

Second, we recommend amending new section 238T(1) to remove reference to "regulatory requirements" set out in the code. We think the subsection would be clearer simply referring to a breach of "the applicable code".

We note that what constitutes a serious breach of a code would be determined by the court.

Transitional provisions

We recommend amending clause 5 of the bill, clause 27 in new Part 9 of Schedule 1, so that the offence and penalty provisions for the code covering international students come into effect when an interim code for domestic tertiary students is issued. This would ensure that the offence and penalty provisions for both domestic tertiary students and international students would come into effect at the same time.

We also recommend inserting new subclause (5A) to clause 26 in new Part 9 of Schedule 1, to make clear the provisions of the bill not expressly removed by the Schedule apply to an interim code.

Commencement date

We recommend changing the commencement date of the bill in clause 2 from 1 December 2019 to the day after the date of Royal assent.

Appendix

Committee process

The Education (Pastoral Care) Amendment Bill was referred to the committee on 17 October 2019. The closing date for submissions was 1 November 2019. We received and considered 22 submissions from interested groups and individuals. We heard oral evidence from 11 submitters and the Privacy Commissioner. We also received information from the Tertiary Education Commission. We received correspondence from the Regulations Review Committee.

We received advice from the Ministry of Education and the New Zealand Qualifications Authority (NZQA).

Committee membership

Dr Parmjeet Parmar (Chairperson)

Simeon Brown

Hon Clare Curran

Hon Nikki Kaye

Marja Lubeck

Denise Lee

Jo Luxton

Mark Patterson

Chlöe Swarbrick

Jan Tinetti

Nicola Willis

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted unanimously~~

Hon Chris Hipkins

Education (Pastoral Care) Amendment Bill

Government 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 December 2019~~ on the day after the date of Royal assent. 5

3 Principal Act

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

4 Part 18A replaced

Replace Part 18A with: 10

Part 18A
Pastoral care of students

238D Interpretation

In this Part, unless the context otherwise requires,—

code means a code of practice issued under **section 238G** 15

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

domestic tertiary student means an individual—

(a) who is—

(i) a New Zealand citizen; or 20

- (ii) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under section 2(4); or
- (iii) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not international students; and 5
- (b) who is a tertiary student enrolled at ~~a provider~~ an institution or a registered establishment
- DRS operator** means a person or an agency appointed under **section 238M(4)(a)** 10
- DRS rules** means the rules made under **section 238P**
- international student** means an individual—
- (a) ~~who is enrolled, or is proposed to be enrolled, at a signatory provider;~~
and
- (b) ~~who is not a domestic tertiary student~~ 15
- international student** means an individual who is not a domestic student
- provider** means a person or body that is,—
- (a) in respect of international students, a registered school, an institution, or a registered establishment; or
- (b) in respect of domestic tertiary students ~~and international students,—, an~~ 20
institution or a registered establishment
- (i) ~~an institution within the meaning of section 159; or~~
- (ii) ~~a private training establishment registered under section 233~~
- serious harm**, in relation to a domestic tertiary student or an international student, means an event or circumstances that seriously and detrimentally affect 25
~~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~~ ongoing welfare of the student, including (but not limited to) physical injury, physical illness, or mental illness 30
- signatory provider** means a provider that is a signatory to ~~a code~~ a code issued under **section 238G(1)(b) or (c)**
- student accommodation** means premises that are exempt under section 5B of the Residential Tenancies Act 1986
- student claimant**, in relation to a provider or signatory provider, means a person who— 35
- (a) is a domestic tertiary student or an international student enrolled by the provider or signatory provider; or

- (b) is a former domestic tertiary student 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 tertiary student or an international student

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

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 provider. 10
- (2) A provider may 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 provider; or 15
 - (b) is removed as a signatory provider under **section 238L**; or
 - (c) ceases to be a signatory provider 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. 20

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

A provider must enrol a person as an international student if the person is not a domestic ~~tertiary~~ student and the provider— 25

- (a) provides the person with educational instruction for more than 2 weeks; or
- (b) accepts tuition fees from the person.

Pastoral care of domestic and international students

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238G Pastoral care codes of practice

- (1) The Minister may issue—
 - (a) a code of ~~practice~~ that provides a framework for the pastoral care of domestic tertiary students;
 - (b) a code of ~~practice~~ that provides a framework for the pastoral care of international students; 35

- (c) a code that provides a framework for the pastoral care of domestic tertiary students and international students.
- (2) The purpose of ~~the a~~ code—
- (a) ~~for in respect of~~ domestic tertiary students is to support the Government's objectives for the education of domestic tertiary students by— 5
- (i) requiring providers to take all reasonable steps to ~~protect~~maintain the well-being of domestic tertiary students; and
- (ii) ensuring, so far as is possible, that domestic tertiary students have a positive experience that supports their educational achievement:
- (b) ~~for in respect of~~ international students is to support the Government's objectives for international education by— 10
- (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. 15
- (3) The scope of ~~the a~~ code—
- (a) ~~for in respect of~~ domestic tertiary students is to prescribe, alongside other quality assurance prescribed by this Act,—
- (i) outcomes sought from providers for their domestic tertiary students; and 20
- (ii) key processes required of providers to support the well-being, achievement, and rights of domestic tertiary students:
- (b) ~~for in respect of~~ international students is to prescribe, alongside other quality assurance prescribed by this Act,— 25
- (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)**, a code may include provisions for 1 or more of the following purposes: 30
- (a) despite anything in the Public Finance Act 1989, requiring providers to indemnify the code administrator:
- (b) providing for any other matters contemplated by this **Part**, necessary for its administration, or necessary for giving it full effect. 35
- (4A) Before issuing a code, the Minister must consult—
- (a) those parties that the Minister considers likely to be affected by the code, including representatives of students, parents, providers, signatory providers, and the staff of providers and signatory providers; and

<p>(b) <u>the Privacy Commissioner.</u></p> <p>(5) The A code—</p> <p style="padding-left: 20px;">(a) for in respect of domestic tertiary students is binding on all providers:</p> <p style="padding-left: 20px;">(b) for in respect of international students is binding on all signatory providers.</p> <p>(6) A code—</p> <p style="padding-left: 20px;">(a) may make different provisions in relation to students under the age of 18 years and in relation to students aged 18 years or over:</p> <p style="padding-left: 20px;">(b) must be published on an Internet site maintained by or on behalf of the Ministry:</p> <p style="padding-left: 20px;">(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.</p> <p>Compare: 2015 No 70 s 191(4)</p> <p>238H Code administrators</p> <p>(1) The Minister may, by notice in the <i>Gazette</i>, appoint a person or an agency to be responsible for—</p> <p style="padding-left: 20px;">(a) administering—</p> <p style="padding-left: 40px;">(i) the code for domestic tertiary students:</p> <p style="padding-left: 40px;">(ii) the code for international students; or</p> <p style="padding-left: 40px;">(iii) <u>the code for domestic tertiary students and international students;</u> <u>and</u></p> <p style="padding-left: 20px;">(b) administering both 2 or more of the codes.</p> <p>(2) When appointing a code administrator, the Minister must have regard to the knowledge, skills, or experience of the person or agency.</p> <p>(3) The functions of the code administrator are,—</p> <p style="padding-left: 20px;">(a) in the case of international students,—</p> <p style="padding-left: 40px;">(i) to receive applications from providers seeking to become signatory providers; and</p> <p style="padding-left: 40px;">(ii) to assess those applications against—</p> <p style="padding-left: 60px;">(A) the criteria stated in a code; and</p> <p style="padding-left: 60px;">(B) the purpose stated in section 238G(2) and the scope stated in section 238G(3); and</p> <p style="padding-left: 40px;">(iii) to allow or decline to allow applicants to become signatory providers in accordance with those assessments; and</p> <p style="padding-left: 20px;">(c) in the case of domestic tertiary students and international students,—</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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- (i) to monitor and investigate the extent to which providers comply with a code—
- (A) following a process prescribed by a code; and
- (B) in close collaboration with education quality assurance authorities; and 5
- (ii) to issue to providers notices under **section 238I or 238J**; and
- (iii) to impose on providers sanctions for breaches of a code and failure to comply with notices under **section 238I or 238J**.
- (4) A code administrator may allow an applicant to become a signatory provider 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 provider. 10
- (5) A code administrator may, in accordance with the requirements of the applicable code,—
- (a) enter any student accommodation and inspect the premises and facilities: 15
- (b) inspect, and make and remove copies of, any information relating to the management of the student accommodation:
- (c) ask any person at any 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. 20
- (6) A code administrator may exercise the powers in **subsection (5)** only for the purposes of monitoring or investigating compliance with the relevant code.
- (7) A code administrator may not enter or inspect the room or sleeping area of a student accommodated at any student accommodation unless— 25
- (a) the code administrator believes on reasonable grounds that the entry or inspection is necessary for the purposes specified in **subsection (6)**; and
- (b) ~~prior notice of the entry or inspection is given to the student, and the purpose of the entry or inspection is explained; and~~ 30
- (c) ~~the student is present during the entry or inspection.~~
- (b) the code administrator gives the student at least 24 hours' written notice of the intended entry or inspection that explains the purpose of the entry or inspection; and
- (c) the student consents to the entry or inspection, and the student is present during the entry or inspection if being present is a condition of the consent. 35
- (7A) **Subsection (7)(c)** does not apply if obtaining the student's consent is unreasonable in the circumstances.

- (8) A 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 this section to another person or agency (having regard to their knowledge, skills, or experience).

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Compliance

238I Quality improvement notices

- (1) A code administrator may issue a quality improvement notice to a provider that requires the provider to do, or refrain from doing, a particular thing in relation to the provider's obligations under a code.
- (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.

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Compare: 1992 No 55 s 11C

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238J Compliance notices

- (1) A code administrator may issue a compliance notice to a signatory provider that requires 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 a code; or
 - (b) the signatory provider's conditions of approval as a signatory to a code.
- (2) A notice under **subsection (1)** may specify the manner in which a thing must be done 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

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- (c) state the consequences or possible consequences of non-compliance with the notice.
- (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. 5
- 238K Providers and signatory providers to comply with notices**
- (1) A provider must comply with a quality improvement notice issued under **section 238I**. 10
- (2) A signatory provider must comply with a compliance notice issued under **section 238J**.
- (3) If, in a 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**. 15
- (4) The code administrator may not act under **subsection (3)** until the later of the following:
- (a) 10 working days after the date on which the quality improvement notice or compliance notice was issued: 20
- (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**. 25
- 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**, a 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 signatory provider: 30
- (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 238I or 238J**, a code administrator may remove the signatory provider as a signatory provider. 35

*Dispute resolution***238M Student contract dispute resolution scheme established**

- (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 students) and providers or signatory providers. 5
- (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**. 10
- (4) The Minister—
- (a) may, by notice in the *Gazette*, appoint 1 or more persons or agencies to be responsible for administering the DRS; and
- (b) must take reasonable steps to ensure that there is at all times a person or an agency appointed to be responsible for administering the DRS; and 15
- (c) may impose any conditions on the appointment that the Minister thinks fit.
- (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— 20
- (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, or outcome, or both; or
- (b) the provider or signatory provider— 25
- (i) has not tried to resolve the dispute; or
- (ii) has refused to try to do so.
- (5A) However, a student may not lodge a dispute for resolution under **subsection (5)** later than 7 years after the date of the act or omission on which the dispute is based. 30
- (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. 35
- (7) The DRS operator—

- (a) may charge fees to a student claimant or 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.

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238N Cap on amount to be paid

In resolving any dispute, the DRS operator—

- (a) may 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.

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238O District Court to enforce DRS

(1) The District Court may,—

- (a) on the application of a student claimant or the DRS operator, make an order requiring a provider or signatory 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 student claimant to give effect to any resolution that is binding under **section 238M(6)**.

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(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.

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(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)**.

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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) Before recommending that an order be made, the Minister must consult 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.

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*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 signatory providers who receive tuition fees from international students enrolled with them. 5
- (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 10
 - (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 15
 - (d) require a signatory provider to supply, on request by the agency responsible for the administration of the levy, information about student numbers or any other matter that is necessary to determine or verify the amount of levy payable by the signatory provider.
- (3) Before recommending that an order be made, the Minister must consult signatory providers. 20

238R How export education levy may be applied

- (1) Export education levy funds may be applied for the following purposes:
- (a) the development, promotion, and quality assurance of the export education sector, which may include (without limitation)— 25
 - (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: 30
 - (b) the making of payments as set out in **subsections (2) and (3)**;
 - (c) the administration and audit of the code ~~for~~ in respect of international students: 35
 - (d) the funding of the cost of the operation of the DRS established by **section 238M** that is attributable to international students;
 - (e) the general administration of the levy and associated purposes.

- (2) **Subsection (3)** 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 purposes:
- (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 other payment 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. 5
- (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. 10

Offences and penalties

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

- (1) A provider or signatory provider commits an offence if—
- (a) the provider or signatory provider, without reasonable excuse, breaches the applicable code; and 15
- (b) the breach results in serious harm to or the death of 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. 20

238T Pecuniary penalty relating to breach of code

- (1) On the application of a code administrator, 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 that the provider or signatory provider has, without reasonable excuse, committed a serious breach of ~~the regulatory requirements set out in~~ the applicable code. 25
- (2) The amount of any pecuniary penalty may not exceed \$100,000.

238U Relationship between offences and penalties

- (1) Once criminal proceedings against a ~~person-provider or signatory provider~~ for an offence under **section 238S** are determined, ~~the High Court~~ a court may not order the ~~person-provider or signatory provider~~ to pay a pecuniary penalty under **section 238T** in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings. 30
- (2) Once civil proceedings against a ~~person-provider or signatory provider~~ for a pecuniary penalty under **section 238T** are determined, the ~~person-provider or signatory provider~~ may not be convicted of an offence under **section 238S** in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings. 35

- (3) Any uncompleted proceedings for an order under this Act that a ~~person-provider or signatory provider~~ pay a pecuniary penalty must be stayed if criminal proceedings are started or have already been started against the ~~person-provider or signatory provider~~ for the same act or omission, or substantially the same act or omission, in respect of which the pecuniary penalty order is sought.

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Compare: 1986 No 5 s 79B

5 Schedule 1 amended

In Schedule 1, after Part 8, insert the **Part 9** set out in the **Schedule** of this Act.

Schedule
New Part 9 inserted into Schedule 1

s 5

Part 9		
Provisions relating to Education (Pastoral Care) Amendment Act 2019		5
26	Transitional provision relating to code for domestic tertiary students	
(1)	This clause—	
	(a) applies to providers that enrol domestic tertiary students; and	
	(b) applies despite the provisions of Part 18A (as substituted by the Education (Pastoral Care) Amendment Act 2019).	10
(2)	The Minister may, on or after 1 December 2019 <u>the commencement of this clause</u> and before 1 January 2021 , issue an interim code for domestic tertiary students.	
(3)	An interim code issued under subclause (2) expires on 1 January 2021 .	15
(4)	Despite anything in this 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 of the content or issuing of an interim code.	
(5)	Until an interim code for domestic tertiary students is issued under subclause (2) or a code for in respect of domestic tertiary students is issued under this Act (as amended by the Education (Pastoral Care) Amendment Act 2019), the provisions in Part 18A, as they stood immediately before the commencement of this clause, continue to apply.	20
(5A)	<u>An interim code issued under subclause (2) is to be treated as a code issued under this Act (as amended by the Education (Pastoral Care) Amendment Act 2019).</u>	25
(6)	If an interim code is issued, it <u>Despite subclause (5A), an interim code is not</u> subject to the DRS set out in—	
	(a) this Act as it stood immediately before the commencement of this clause; or	30
	(b) Part 18A (as substituted by the Education (Pastoral Care) Amendment Act 2019).	
(7)	Terms used in this clause and defined in section 238D (as substituted by the Education (Pastoral Care) Amendment Act 2019) have the same meanings as in that section.	35

- 27 Transitional provision 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** (as substituted by the Education (Pastoral Care) Amendment Act **2019**). 5
- (2) ~~Until a code for international students is issued under this Act (as amended by the Education (Pastoral Care) Amendment Act **2019**), Part 18A and the code for international students, as they stood immediately before the commencement of this clause, continue to apply.~~ 10
- (3) ~~However, the Minister may, on or after 1 December 2019 and before **1 January 2021**, amend the code for international students under **Part 18A** (as substituted by the Education (Pastoral Care) Amendment Act **2019**) as if the code had been made under that Part.~~
- (3A) **Part 18A** (as substituted by the Education (Pastoral Care) Amendment Act **2019**) applies to any code in respect of international students issued under Part 18A (as it stood immediately before the commencement of this clause) as if the code were made under **Part 18A** (as substituted by the Education (Pastoral Care) Amendment Act **2019**). 15
- (4) ~~The provisions of Despite subclause (3A), Part 18A, (as they it stood immediately before the commencement of this clause,) continues to apply for the purposes of concluding any proceedings commenced before the commencement of this clause, and the fine and pecuniary penalty set out in **sections 238S and 238T** are unavailable.~~ 20
- (5) Terms used in this clause and defined in **section 238D** (as substituted by the Education (Pastoral Care) Amendment Act **2019**) have the same meanings as in that section. 25

Legislative history

14 October 2019
17 October 2019

Introduction (Bill 184–1)
First reading and referral to Education and Workforce Committee