



Background information on amendments to the Education (Pastoral Care of International Students) Code of Practice 2016

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Introduction

Background

The Education (Pastoral Care of International Students) Code of Practice 2016 sets out the responsibilities of education providers to ensure that international students in New Zealand are well informed, safe and properly cared for. All education providers enrolling international students are required to be signatories.

Amendments to the Code of Practice come into effect on 1 July 2019. These are limited changes to strengthen protections for international students and ensure that process requirements support the key outcomes of the Code of Practice.

Scope and purpose of the changes

These changes do not change the fundamental purpose, scope, approach and outcomes-focus of the Code of Practice. The changes are limited to specific issues identified by signatories, sector representatives and government agencies since the 2016 Code of Practice was implemented.

We had to make some changes to the Code of Practice to implement the Education (Tertiary Education and Other Matters) Amendment Act 2018. These changes mean that international students have the same protections as domestic students in terms of enrolment contracts and disciplinary processes.

These necessary changes provided an opportunity to make other improvements. Most of the changes are minor adjustments to make the Code of Practice clearer and more consistent. Significant changes include:

- new contract and disciplinary protections
- clarifying requirements for caregiver safety checks
- more detailed requirements for managing and monitoring education agents
- more practical transfer of care requirements for students under 18

Other changes cover definitions and process requirements for caregivers, accommodation, insurance, orientation and student support.

There are some new provisions, and some existing provisions have been updated. These changes balance the need to ensure the safety and wellbeing of international students across the international education sector with the importance of avoiding unreasonable compliance requirements on signatories.

Consultation and engagement

The Ministry of Education undertook public consultation in August 2017 on specific proposed changes to the Code of Practice, and targeted consultation with sector peak bodies in November and December 2018 on the wording of these amendments. Along with regular engagements with the sector since the implementation of the 2016 Code of Practice, this ensured that the amendments have been closely informed by the views of schools, tertiary education organisations and other representative bodies.

Purpose of this document

This document should be read with the amendments, which can be found on the [New Zealand legislation](#) website. It provides a brief description of what is changing and why. The main changes are outlined first, followed by other minor changes to be noted.

Support for implementation of the amended Code of Practice

As Code of Practice administrator, NZQA will lead implementation, including updated Code of Practice Guidelines covering these amendments. While NZQA's Guidelines are not

regulations, they provide advice on good practice to meet the outcomes in the Code of Practice in different contexts.

Contact details

If you have any questions about the Code of Practice amendments, please contact international.division@education.govt.nz.

If you have any questions about implementation of the Code of Practice, please contact code.enquiries@nzqa.govt.nz.

New contract and disciplinary protections

Clause 7: Definition of contract of enrolment

contract of enrolment

- (a) in relation to a signatory that is a State school, has the same meaning as in section 2 of the Act; or*
- (b) in relation to other signatories, means a written contract that is entered into between an international student (or the student's parent or legal guardian, if the student is under 18 years) and the signatory that entitles the student to receive educational instruction provided by that signatory*

- This definition has been added as a result of the Education (Tertiary Education and Other Matters) Amendment Act 2018.
- The definition of “contract of enrolment” for other types of signatories has been added to the Code of Practice to be consistent with the definition for state schools.
- Please also read the information on contract changes in Clauses 15 and 16.

Clause 16B Process: contract of enrolment

- (1) Each signatory must ensure that a contract of enrolment is entered into between the signatory and each international student (or the student's parent or legal guardian, if the student is under 18 years) that includes the following information and terms:
 - (a) clear information about the beginning and end dates of enrolment:*
 - (b) the conditions for terminating the contract of enrolment:*
 - (c) the circumstances under which the student's conduct may be in breach of the contract of enrolment (including conduct that occurs while the student is not under the immediate supervision or control of the signatory):*
 - (d) the type of disciplinary action that may be taken by the signatory against the student (for example, suspension, exclusion, or the termination of enrolment):*
 - (e) the procedure that the signatory must follow when undertaking disciplinary action against the student.**
- (2) Each signatory must ensure that the contract of enrolment is fair and reasonable.*

- These changes implement the Education (Tertiary Education and Other Matters) Amendment Act 2018 and mean that international students have the same protections as domestic students in terms of enrolment contracts and processes.
- The additional process requirements (c-e) and (2) ensure that:
 - contracts include the circumstances where a student’s conduct may be in breach of the enrolment contract
 - contracts include the type of disciplinary action and the process that would be followed
 - contracts are fair and reasonable.

Clause 16C Process: disciplinary action

Any disciplinary action process that is undertaken by a signatory must be dealt with in accordance with the principles of natural justice (which include those necessary to ensure the prompt, considered, and fair resolution of the matter that is the subject of the action).

- This clause requires that any disciplinary action must be in accordance with the principles of natural justice, and explain what that means. Natural justice would typically include expectations that a person will have adequate notice of a situation that may affect them, they will have an opportunity to be heard and respond, and that a decision will be made by an unbiased decision maker.
- This supports the requirement that contracts must be fair and reasonable, by ensuring that international students have access to a prompt, considered and fair disciplinary process.

Clarifying requirements for caregiver safety checks

Clause 26 Process: accommodation

Clause 26 (1)

(b) ensure that the safety check referred to in clause 26A(1) is completed and is up to date;

- This requirement has been amended for clarity.

Clause 26A Process: safety checks and appropriate checks

(1) The safety check for the residential caregiver referred to in clause 26(1)(b)—

(a) must include—

- (i) a confirmation of identity; and*
- (ii) a reference check that includes contacting at least 1 of the following persons or bodies for the purpose of obtaining information that the signatory considers relevant to a risk assessment:*

- (A) *the residential caregiver’s current or previous employer, professional body, or registration authority;*
- (B) *the licensing authority that is relevant to the residential caregiver’s business or professional activities;*
- (C) *a person who is not related to the residential caregiver; and*
- (iii) *a police vet, to obtain information that is relevant to a risk assessment; and*
- (iv) *an interview with the residential caregiver, to obtain information that the signatory considers relevant to a risk assessment; and*
- (v) *a risk assessment that takes into account all of the information that was obtained under subparagraphs (i) to (iv), to determine whether the residential caregiver poses a risk to the safety of the student; and*
- (b) *is **up to date** if it is completed within 3 years after the date of the latest safety check.*

- This new section lists the elements of a safety check for a residential caregiver and specifies that safety checks must be completed every three years.
- This brings the Code of Practice in alignment with the safety checking requirements under the Children’s Act 2014.

Safety checking requirements do not apply to non-resident temporary supervisors

Clause 26A

- (2) *Subclause (1)(a)(ii) to (v) does not apply to a residential caregiver who—*
- (a) *is a supervisor referred to in paragraph (e) of the definition of residential caregiver in clause 7(1); and*
 - (b) *is not a resident of New Zealand; and*
 - (c) *is travelling with, and accompanying, the international student for the purpose of supervising them during the student’s educational instruction.*

Clause 26(1)

- (ea) *if the student’s residential caregiver is a supervisor described in clause 26A(2), ensure that the parent or legal guardian of the student has provided written agreement that the signatory is not responsible for the student’s day-to-day care when the student is in the custody of that supervisor; and*

- This allows an exemption from onshore safety checks for residential caregivers who are:
 - responsible for supervising international students in temporary accommodation; and
 - not a resident of New Zealand; and
 - travelling with, and accompanying, the international student for the purpose of supervising them during the student’s educational instruction.

- It would not be practicable for signatories to complete the safety checks (including a police vet) in these circumstances.
- To ensure that responsibility for the pastoral care of these students is clear, signatories must obtain a written agreement from the parents or legal guardians which states that the supervisor is responsible for the day-to-day care of the student.

Appropriate checks for other adults sharing accommodation with an international student under 18 years

Clause 26 (1)

(ba) ensure that an appropriate check is completed for each person who is 18 years or over and who resides at the residential caregiver's accommodation, for the purpose of ensuring the safety of the student; and

Clause 26A

3) An appropriate check referred to in clause 26(1)(ba) is up to date if it is completed within 3 years after the date of the latest check.

- This adds a requirement that 'appropriate' checks are completed for other adults sharing the accommodation with an international student under 18 years.
- A full safety check may not always be relevant or practical and could be an unnecessary compliance burden without contributing to improved student safety.
- These appropriate checks must be completed every three years.

Clause 26

(1A) For the purposes of subclause (1)(ba), a person who is 18 years or over and who resides at the residential caregiver's accommodation includes a person of that age who—
(a) temporarily resides at that accommodation; or
(b) is or will be residing at that accommodation for 1 or more periods in any month (whether or not for valuable consideration), each period of which is 5 or more consecutive nights.

- This clause has been added to clarify which adults should be included in the appropriate checks completed under (ba) above.

Written agreement with residential caregivers

Clause 26 (1)

(bb) have a written agreement with the residential caregiver that specifies the role and responsibilities of each party in relation to the care of the student; and

- This clause has been added to specify that signatories must have a written agreement with residential caregivers.

- This is consistent with the requirements for written agreements in other parts of the Code of Practice (for example agents) and helps signatories meet the other accommodation requirements.

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Requirements for managing and monitoring education agents

Clause 13: Outcome 2: managing and monitoring agents

(c) do not breach the law or jeopardise the signatory's compliance with this code.

- This statement has been added to clarify the outcomes prevented by the effective monitoring and management of agents.

Clause 14: Process [Agents]

(ba) during the term of a contract, monitor the activities and performance of its agents in relation to—

- (i) their obligations as specified in the contract; and*
- (ii) whether they provide international students with reliable information and advice about studying, working, and living in New Zealand; and*
- (iii) whether they act with integrity and professionalism in their dealings with prospective students; and*
- (iv) whether they have engaged in any activity or conduct that, in the opinion of the signatory, is or may be in breach of the law or that jeopardises the signatory's compliance with this code; and*

(bb) manage the agents by—

- (i) terminating contracts with an agent if there is evidence suggesting that the agent—*
 - (A) has been involved in any serious, deliberate, or ongoing conduct that is false, misleading, deceptive, or in breach of the law; or*
 - (B) has jeopardised the signatory's compliance with this code; or*
- (ii) taking appropriate action to address conduct or an omission by an agent in relation to the other matters described in subclause (ba); and*

- This requirement specifies that signatories must actively manage and monitor the activities and performance of their agents.
- Signatories were already required to terminate contracts with agents where there is evidence of *any serious, deliberate, or ongoing conduct that is false, misleading, deceptive, or in breach of the law*.
- Signatories now also need to take appropriate action to manage agents where there is evidence of misconduct or poor performance which may not be serious enough to terminate contracts.

More practical transfer of care requirements for students under 18

Clause 23: Process: international students under 18 years

Clause 23 (1)

- (e) if the student is in the care of a residential caregiver,—*
- (i) ensure that a plan is in place for the transfer of care of the student from the residential caregiver to the student's parent or legal guardian, or another person approved by the parent or legal guardian, for—*
- (A) each transfer that occurs during the period of enrolment; and*
- (B) the transfer that occurs at the end of enrolment; and*
- (ii) ensure that the parent or legal guardian is notified of each transfer plan.*

- The clause has been amended so that it only relates to students living with a residential caregiver. This is because it is not necessary to ensure a handover of care for international students living with their parents or legal guardians.
- The amended clause requires a plan for all transfers of care, rather than only at the end of enrolment as per the current requirement. Handover of care may be to the student's parent, legal guardian, or another person approved by the parent or legal guardian. This enables students to move back and forth between residential caregivers and their parents or other approved caregivers during the period of enrolment. Communication of the transfer plan between all parties ensures continuity of care for the duration of the enrolment period. The transfer of care identifies who is responsible for the pastoral care of the student and at what stage each individual is responsible.
- The amended clause also means that parents or legal guardians do not have to provide written confirmation of each transfer plan. This reduces unnecessary compliance requirements for signatories, while still ensuring that parents are informed of transfer plans which may involve handover to another approved person.

Transition arrangements

Schedule: Transitional, savings, and related provisions

Part 1: Provision relating to the Education (Pastoral Care of International Students) Code of Practice Amendments 2019

1 Contracts of enrolment executed before commencement

(1) A contract of enrolment that is executed before the commencement of this clause is treated as complying with the amendments made by the Education (Pastoral Care of International Students) Code of Practice Amendments 2019 in respect of contracts of enrolment until the earlier of—

(a) the end or termination of the contract of enrolment; and

(b) 31 December 2019.

(2) Despite subclause (1), on the commencement of this clause, a contract of enrolment that is executed before the commencement of this clause must include the information and terms that meet the requirements in subclauses 16B(1)(c), (d), and (e) of the Education (Pastoral Care of International Students) Code of Practice Amendments 2019 (which relate to student conduct and disciplinary action).

- The updated Code of Practice commences on 1 July 2019. This gives signatories three months to ensure that they can update processes and policies to meet the new requirements.
- Signatories should ensure that staff responsible for the pastoral care of international students:
 - Familiarise themselves with the amendments and the timeline for implementation
 - Make sure policies and processes are consistent with the amended Code of Practice
 - Ensure that all contracts are updated as follows:
 - New contracts from 1 July must cover all of the amendments
 - Existing contracts must include termination and disciplinary measures by 1 July 2019
 - All contracts must cover all of the amendments by 1 January 2020

Other changes

Clause 7: General Definitions

Residential caregiver (d)

(d) a manager of an accommodation that is—

- (i) operated by a signatory that is a tertiary education provider (as defined in section 159 of the Act); and*
- (ii) mainly used for the accommodation of students enrolled with that provider;*

- This definition has been updated to include a manager of a student hostel operated by a tertiary education provider.
- This is to allow international students aged under 18 to live in an appropriate tertiary student hostel (as domestic students are able to). These types of hostels were excluded by the previous definition of “licensed hostel”.

Residential caregiver (e)

(e) in the case of temporary accommodation, a supervisor who is responsible for the care of international students

- This definition has also been updated, to clarify that it refers to a person who is responsible for the care of the international student(s).
- This definition refers to the supervisor of the student(s), rather than, for example, the supervisor/manager of the temporary accommodation (eg motel or campground manager).
- Note that these amendments also include an exemption from onshore safety checks for non-resident temporary supervisors (see Clause 26A (2)).

Clause 15: Outcome 3: offers, enrolment, contract and insurance

Heading

- The heading of this section has been updated to include reference to insurance, as this is an important part of Outcome 3 and the supporting processes.

Contracts, disciplinary action and insurance

(ba) ensure that each contract of enrolment is fair and reasonable; and

(bb) ensure that any disciplinary action is dealt with in accordance with the principles of natural justice; and

(bc) ensure that international students have the appropriate insurance coverage, including insurance covering travel costs, medical care, and costs associated with repatriation, expatriation, and funeral expenses; and

- These outcome requirements for contracts, disciplinary action and insurance have been added to be consistent with the process requirements.

Clause 16: offer of educational instruction

Clause 16A Process: information to be provided before entering contract

Clause 16A (1)

(a) the most recent results of their evaluations by education quality assurance agencies:

- This adds the word “education” added before “quality assurance agencies”, to make it clear what types of quality assurance agencies are being referred to.

Clause 16D Process: insurance

Clause 16D

(1) Each signatory must ensure that, as far as practicable, each international student who is enrolled with the signatory for educational instruction of 2 weeks’ duration or longer has appropriate insurance covering—

- Subclause (1) has been updated to remove the word “while”.
- This clarifies signatories’ responsibilities for ensuring that international students have appropriate insurance coverage (for example, as travel to New Zealand generally does not happen “while” an international student is enrolled).
- This should be read in conjunction with subclauses 16D (2) and (3) below.

Clause 16D

(2) Subclauses (1)(a)(i) and (ii) include the student’s travel to and from their country of origin or citizenship before their educational instruction begins and after it ends (which may be outside of the enrolment period); and

(3) Subclause (1)(a)(i) does not include the student’s travel to other countries, unless that travel is primarily for the purpose of embarking on connecting flights to and from New Zealand.

- Subclauses (2) and (3) have been added to clarify when insurance cover may begin or end (noting that “as far as practicable” in subclause (1) still applies).

Clause 16D (1) (a)

(iii) if the travel is part of the educational instruction, outside New Zealand; and

- Subclause (1) (a) (iii) has been updated to refer to “educational instruction” rather than “course”, for consistency with the General Definitions and other parts of the Code of Practice.
- All other process requirements under (1) (a-d) are the same.

Clause 20: Process [Orientation]

Clause 20 (1)

(g) provides information about the student's rights and entitlements, including any entitlement to a fee refund, if the student voluntarily withdraws from the educational instruction.

- This adds a new requirement to provide students with information about voluntary withdrawal.

Clause 23: Process: international students under 18 years

Coverage of clause 23

Clause 23

(2) *The requirements in clause 22 apply, in addition to this clause, to international students who are 10 years or older but under 18 years.*

- This has been amended to clarify the ages of the international students it applies to.

Clause 24: Process: international students under 10 years

Coverage of clause 24

Clause 24

(2) *The requirements in clauses 22 and 23 apply, in addition to this clause, to international students who are under 10 years.*

- This has been amended to clarify the ages of the international students it applies to.

Clause 26: Process: accommodation

Clause 26 (1)

(f) *ensure that there is appropriate separation of international students from others of different ages in the accommodation;*

- This amendment replaces the phrase 'from students of different ages' with 'from others of different ages'. This clarifies that international students should be appropriately separated in their accommodation from anyone of a different age, regardless of whether they are students.

Designated caregivers

Clause 26 (1) (e)

(a) before “ensure”, insert “if the student’s residential caregiver is a designated caregiver,”; and

(b) after “the student’s”, insert “day-to-day”.

- These changes update 26(1)(e) to read:

if the student’s residential caregiver is a designated caregiver, ensure that the parent or guardian has provided written agreement that the designated caregiver will be subject to the signatory’s approval and that the signatory is not responsible for the student’s day-to-day care when the student is in the custody of the designated caregiver;

Clause 26

(3A) To avoid doubt, if the residential caregiver is a supervisor described in clause 26A(2) or a designated caregiver, the signatory must meet the requirements of this clause and ensure the safety, health, and well-being of the student.

- Taken together, these clauses clarify that signatories are still responsible for ensuring the safety, health and well-being of students living with designated caregivers, even if the designated caregivers may make decisions about day-to-day care.

Clause 28: Process [student support, advice, and services]

Cultural adjustment

Clause 28 (c)

(iii) how to adjust to a different cultural environment in New Zealand;

- This clause adds a requirement to provide international students with information and advice on adjusting to a different cultural environment in New Zealand.

Technical changes to wording throughout the Code of Practice

Non-gender-specific pronouns

- A number of changes have been made in the Code of Practice to replace masculine or feminine pronouns with non-gender-specific pronouns.
- Examples include replacing “his or her” with “their”, and “himself or herself” with “themselves”.

Use of “signatory” instead of “provider”

- A number of changes have been made to use “signatory” instead of “provider”, for consistency throughout the Code of Practice.