Education Report: Education (Pastoral Care) Amendment Bill – Draft Departmental Report

To: Hon Chris Hipkins, Minister of Education

Date: 8 November 2019  
Priority: High

Security Level: In Confidence  
METIS No: 1210801

Drifter: Helen Baker  
DDI: s 9(2)(a)

Key Contact: Julie Keenan  
DDI: Round Robin: No

Messaging seen by Communications team: N/A

Purpose of report

The purpose of this paper is for you to:

- provide feedback on the draft departmental report for the Education (Pastoral Care) Amendment Bill (the Bill).

Recommended Actions

The Ministry of Education recommends you:

a. provide feedback on the attached draft of the departmental report for the Education (Pastoral Care) Amendment Bill (the Bill) by Monday 11 November

b. note the indicative timetable for progressing the Bill.

Julie Keenan  
Policy Director  
Graduate Achievement, Vocations and Careers  
08/11/2019

Hon Chris Hipkins  
Minister of Education  
18/11/19

Proactively Released
Background

1. The Bill was introduced into the House of Representatives on 14 October 2019. It passed its first reading on 17 October and was referred to the Education and Workforce Committee.
2. Submissions closed on the Bill on 1 November. Twenty two submissions were received. The Education and Workforce Committee heard eleven oral submissions. A full list of submitters is provided as Appendix One to the departmental report.
3. The Education and Workforce Committee is due to report back on the Bill on 3 December 2019.

The Departmental Report

4. A draft of the departmental report for the Bill is attached for your feedback. Officials are still in the process of drafting this report and it has not yet been through quality assurance.
5. The departmental report is due with the Education and Workforce Committee by Tuesday 12 November.
6. The Departmental Report is divided into the following sections:
   - Section One: Introduction
   - Section Two: Specific Matters Raised
   - Section Three: Officials’ Technical Amendments
   - Section Four: Matters raised relating to content of the Code
   - Section Five: Other Matters Raised
   - Appendix One: List of Submitters
   - Appendix Two: Summary of current practice.
7. Officials have previously provided you with advice on penalty and offence provisions in the Bill and cost recovery [Metis No 1210800 refers]. The departmental report sections on the penalty and offence provisions have been drafted in line with that advice.
8. Tertiary Education Commission (TEC) officials have provided you with an Aide-Memoire [AM-19-01351 refers] that provides a high level overview and initial analysis of Tertiary Education Institutions’ (TEI) accommodation facilities. TEC officials are developing a second Aide-Memoire to be provided to you by 13 November.
9. The Education and Workforce Committee has requested information on current TEI practice in student accommodation services and it is intended that TEC’s report will be provided to the Committee, alongside the departmental report, on Wednesday 13 November.

Main amendments recommended

Purpose and scope of the code - new section 238G

10. In response to submitters’ concerns about the requirement to protect domestic tertiary students, including what they need to be protected from, officials propose amending subsection 238G(2)(a)(i). The proposed amendment is to remove the word protect and
instead require providers to take all reasonable steps to maintain the well-being of
domestic tertiary students. This amendment is to recognise, as raised by submitters,
that international students are more vulnerable than domestic tertiary students due to
linguistic, cultural and societal differences and require additional protection under the
Act.

11. In response to the submissions that the Bill should set out a requirement for the
Minister to consult with students and other tertiary education stakeholders before
issuing a code, officials agree that this requirement should be set out in the Bill. This
requirement was not originally included in the Bill as it was assumed that consultation
would take place before a code is issued (except for the interim code) but setting this
out in the Bill provides assurance that this will happen.

12. Further information about submissions and themes relating to new section 238G can
be found in the departmental report at pages 9 – 14.

Entry and inspection (administrator powers) – new section 238H

13. In response to submitters’ concerns about entry and inspection provisions, officials
recommend three changes to the Bill.

14. Officials consider that it is appropriate to amend the Bill to provide for:
   a. a requirement for 24 hours’ notice of an inspection of a student’s room, unless
      this is not reasonable in the circumstances,
   b. a requirement that a student consent before inspection of a student’s room,
      unless this is not reasonable in the circumstances,
   c. the removal of the requirement that a student is present during the entry and
      inspection, only if a student consents to entry and inspection in their absence.

15. Further information about submissions and themes relating to new section 238H can
be found in the departmental report at pages 14 – 18.

Dispute resolution scheme – new section 238M

16. Officials agree with submitters that a limitation period should be included in section
238M and recommend a limitation period of seven years from when the complaint is
raised by the student is added to this section, as in line with the university retention of
student records under the Public Records Act 2005.

17. Further information about submissions and themes relating to new section 238H can
be found in the departmental report at pages 26 – 29.

Offence and penalty provisions and definition of serious harm

18. As noted above, officials’ recommendations have been drafted in line with the advice
provided to you in a separate Education Report [Metis No 1210800 refers]. Further
information on these sections can be found in the departmental report at pages 22 –
26 and on serious harm at pages 29 – 33.

Timetable for progressing Bill

19. The indicative timetable for the next stages of the legislative process is:
   13 November: Presentation of Departmental Report
   20 November: Select Committee discussion of revised text; deliberation.
3 December: Report Back.

Annexes

Annex 1: *Education (Pastoral Care) Amendment Bill – Departmental Report (draft as at 8 November)*

Annex 2: Summary of all recommended amendments to the Bill