

Budget sensitive

Office of the Minister of Education

Cabinet

Education (Pastoral Care) Amendment Bill: Policy and Approval for Introduction

Proposal

1. I am proposing amendments through the Education (Pastoral Care) Amendment Bill (The Bill). The Bill will amend the Education Act 1989 (the Education Act) to enable the Minister of Education to issue a Code of Practice for the pastoral care of domestic tertiary education students.

Executive Summary

2. I propose to extend to domestic tertiary education students, over time, an assurance about the Government's expectations of the pastoral care supporting them to achieve in study, similar to the assurance currently given to international students. This will occur in three stages, and this paper seeks agreement to the first enabling stage:
 - 2.1 As a first step, I am proposing to amend the Education Act to enable a Code of Practice for the pastoral care of domestic tertiary education students to be issued for providers to follow.
 - 2.2 I will then issue an interim code for 2020, which will set out a general duty of pastoral care and some interim expectations for tertiary education providers that offer student accommodation.
 - 2.3 During 2020, I propose to develop an ongoing Code of Practice that sets out Government's expectations for providers across the range of pastoral care supports for student wellbeing. This will be accompanied by a dispute resolution scheme that allows students who cannot resolve contractual or financial disputes with their providers to have these resolved. It will also involve co-design of on-going funding through cost recovery.
3. Greater clarity about Government expectations for provider pastoral care is necessary to support confidence in student wellbeing in tertiary education. Recent events have highlighted the limits of the current approach to supporting student wellbeing. I believe it is a priority to put better systems and processes in place for students, particularly for those in student accommodation, before the 2020 academic year.
4. I propose to announce and introduce these amendments urgently, for enactment by the end of November, and to develop an interim code focussed on student accommodation in parallel with the legislative process. There will be engagement on

this change with affected providers and with Universities New Zealand in its regulatory role after the announcement.

Background

5. Recent events, including the tragic death of a student in a hall of residence, have exposed the limitations of the current self-regulating approach in supporting tertiary student wellbeing. In response, the Tertiary Education Commission (TEC) has asked public tertiary education providers that offer student accommodation to review and provide assurances that they have appropriate and sufficient systems and processes in place to ensure student safety and wellbeing.
6. The New Zealand Qualifications Authority (NZQA) also contacted tertiary education organisation Code signatories (including universities, institutes of technology and polytechnics and some private training establishments offering student accommodation) to provide assurances of their pastoral systems for international students. I believe, in light of the appearance of significant systemic failures that tragic current events have highlighted and the variability in pastoral care it has uncovered, we need better systems and processes in place for the pastoral care of tertiary students.
7. In 2004, a Code of Practice for tertiary student accommodation providers was developed by a Tertiary Student Accommodation Working Party which I understand involved representatives from the Vice Chancellors Committee, polytechnic providers, student services and others. This Code of Practice was voluntary and covered the principles of a safe environment, and quality residential services. There was a peer review/accreditation process for signatory providers however, it appears that it has lapsed in use. There were initial attempts by the New Zealand Association of Tertiary Education Accommodation Professionals to review and revive it last year but progress has stalled
8. I consider it urgent to overhaul the current framework, and to do so in time for protections to be in place before the 2020 academic year. Tertiary students, especially young students leaving home for the first time, can be a vulnerable group deserving of support for their wellbeing.

Current framework for pastoral care and welfare of domestic tertiary students

9. Currently there is no consistent approach to the welfare and pastoral care of domestic tertiary students. The Education Act gives tertiary education institutions institutional autonomy over aspects of their governance and day-to-day operations.
10. There are specific requirements for halls of residence. Halls of residence are exempt student accommodation under section 5B of the Residential Tenancies Act 1986, which required them to offer additional services to residents and to set 'house rules' that encourage a sense of belonging by residents. This means that the majority of the Residential Tenancies Act does not apply to halls of residence but the provisions under section 5B apply.
11. Halls of residence must also meet the requirements of the accommodation contracts they enter into with the students who live there.

12. The Code of Practice referred to in paragraph 7 was created to spell out how exempt student accommodation can meet the expectation of section 5B of the Residential Tenancies Act 1986. As a voluntary code it has not been reviewed regularly or updated. The purpose of the Code is to provide a framework within which tertiary education providers and suppliers of student accommodation in halls of residence can work together for the benefit and protection of students. It is not clear to what extent providers use this Code.
13. Halls of residence and providers may also have their own policies and procedures in place relating to student welfare. Immediately following the tragic death, I asked the TEC to contact all tertiary education providers who operate student accommodation to ask they check on all their students in halls of residence and to seek initial information on the processes and systems they have in place to ensure the welfare of students living in accommodation provided by them or on their behalf. Responses highlighted the range and variability of different approaches and policies that providers have in place.

Current protections for international students

14. There is currently a disparity between the protections and supports that exist for international students and those for domestic tertiary students. If a student is an international student, the Education (Pastoral Care of International Students) Code of Practice 2016 means there is an additional duty of care.
15. Providers enrolling international students must be signatories to the Education (Pastoral Care of International Students) Code of Practice. The Code sets requirements for providers in relation to safety and wellbeing, student support, advice and services and grievance processes amongst other matters. It includes consumer protection issues where there are existing arrangements for domestic tertiary students.
16. Some parts of the Code (particularly safety checking and communication with parents/guardians) include specific requirements for under 18 year olds, in line with the Children's Act 2014. The Code has limited requirements for accommodation for students aged 18 years and over [Clause 26 (2)], along with the overarching responsibilities set out in Clause 21 (ensuring a safe study environment, adequate support for wellbeing, and that students live in a safe environment).
17. The New Zealand Qualifications Authority (NZQA) is Code administrator, with responsibilities set out in the Education Act including assessing applications for Code signatory status, monitoring compliance and investigating potential breaches of the Code, and imposing sanctions (including removing signatory status). Service specifications, funding arrangements and reporting requirements for NZQA as Code administrator are covered in a Memorandum of Understanding with the Ministry of Education. Code administration is funded from the Export Education Levy.
18. If a signatory breaches the Code, NZQA may issue a compliance notice. NZQA, as a final sanction, may revoke a provider's status as a Code signatory. This gives providers a strong incentive to comply with the Code, as a provider may not enrol international students if it is not a Code signatory.
19. As well as ensuring minimum standards of pastoral care for international students, the Code has a key role in supporting the success of the international education

sector by providing assurance about the quality of the New Zealand system to prospective international students and their families.

20. While the Code plays an important part in supporting best practice and ensuring minimum standards of pastoral care, experience in the international sector has shown that additional targeted support is required to address the mental health and wellbeing needs of international students.

Options Considered

21. I have identified various options, both regulatory and non-regulatory, to improve our approach to the welfare and pastoral care of domestic tertiary students.
22. The regulatory options I have identified are:
 - 22.1 The creation of a statutory Code for domestic tertiary students similar to the Education (Pastoral Care of International Students) Code of Practice 2016
 - 22.2 The creation of regulations for halls of residence similar to the Education (Hostels) Regulations 2005
 - 22.3 An amendment to the Residential Tenancies Act 1986.
23. The non-regulatory options I have identified are:
 - 23.1 Providers can take action by developing voluntary codes of practice or process and system improvements
 - 23.2 Structural changes to support student voice
 - 23.3 Adding actions under the Tertiary Education Strategy (TES) that are related to expectations of pastoral care by providers.
24. Consultation is currently taking place in relation to drafting of a new TES, and also in relation to student voice. These areas of work are important in contributing to a broader consideration of student wellbeing but I consider that they do not go far enough by themselves. I also note that self-regulation, and the development of a voluntary code in the past has failed to maintain adequate and consistent standards.
25. I recognise the wide ranging nature of pastoral care issues in tertiary education, and their connection to broader issues of health, affordability, educational standards and support, and student voice in tertiary education design and delivery.
26. In light of the breadth of these issues and the range of circumstances of learners in tertiary education, it is important that Government's response understands and addresses the broader needs of learners, rather than just accommodation issues for those students who use hostels or halls of residence. It is also important that the response is timely. For these reasons, I consider creating regulations for hostels similar to the Education (Hostels) Regulations 2005 for school hostels to address accommodation issues would not go far enough.
27. I consider a regulatory solution, through creation of a code, setting consistent Government expectations for providers about pastoral care in tertiary education, and adjusting those after deeper engagement with learners and providers, is the most appropriate response to support wellbeing.
28. Creation of a code will enable us to address a wider breadth of issues and is a more appropriate regulatory framework. It can build on the existing regulatory framework

for exempt student accommodation in the Residential Tenancies Act. Longer term, a code may also enable greater alignment between pastoral care expectations for international and domestic tertiary students.

29. I recognise that regulation will create costs, and engagement with learners and providers will assist in assessing and managing the impact.

Part A: Creation of a mandatory Code of Practice for all tertiary students

Scope of Code

30. I am proposing empowering provisions for a mandatory Code of Practice for tertiary education providers, to be issued by the Minister of Education.
31. The immediate priority will be to develop and issue an interim code for domestic tertiary students by 1 January 2020, after brief sector engagement, so that students and their whānau can have confidence that providers are aware of the Government's expectations of pastoral care. I do not propose to change the existing code for international students at this time, except for the inclusion of new offences and penalties.
32. This Code of Practice will set out the requirements of the duty of pastoral care that tertiary education providers have for tertiary students. It will also set out particular expectations for providers to meet for students in tertiary student accommodation (accommodation that falls within the exemption defined in section 5B of the Residential Tenancies Act e.g. halls of residence). The effect of the Code of Practice will be to provide the content and scope of the duty of pastoral care.
33. The parts of the Code about tertiary student accommodation will apply to tertiary education providers even if they contract out accommodation. We would expect providers to delegate responsibilities out to contracted accommodation services but providers will still hold responsibility under the Code themselves.
34. During 2020, I expect to develop an ongoing Code of Practice in full consultation with sector experts, learners and their family and whānau. This will replace the interim code, and make any consequential changes to the requirements for international students, in time for planning for 2021 provision. This co-designed Code of Practice will provide the agreed content and scope of the duty of pastoral care.
35. The Code will create a mandatory duty of pastoral care as providers will have a duty to comply with the Code, as set out in primary legislation. Sanctions will be available for non compliance with the Code. The Code will extend to matters of health and safety, and wellbeing; and may use evidence of engagement in study as an indicator of wellbeing or risk. However, it will not extend to academic performance, which I recognise as a matter of institutional autonomy.
36. The empowering provisions in the Bill allow for the Minister to issue one or more codes of practice to reflect the circumstances of different groups of students. This builds on the existing ability to set higher expectations for students aged under 18 years in line with the Children's Act, and on the different circumstances and vulnerabilities of international students. The duty of pastoral care will be defined by the Code of Practices that may be created. In this way the duty is limited to the groups of students each Code protects to the extent there is a requirement set out in each Code.

37. The Bill also provides for different consequences for Code breaches for international and domestic tertiary students. In particular, the Code for domestic tertiary students will be mandatory, while the Code for international students will be opt-in for providers that wish to enrol international students. It is important that the ability to enrol international students remains subject to approval and can be removed by the Code administrator.

Existing frameworks provide assurance for pastoral care of domestic school students

38. Any new code for domestic students in the tertiary sector should not apply to domestic students in the schooling sector (both those who attend school during normal school hours, and those who board at hostels), as their welfare is already covered by existing legislation.
39. The Education Act requires each board to ensure that their school is a physically and emotionally safe place for all students and staff. If there are concerns about the welfare of student at a school, the Secretary or Minister may use the statutory interventions framework in Part 7A of the Education Act to address those concerns. There are similar obligations and interventions for private schools under sections 35A to 35M of the Education Act. For students in the schooling sector who board at hostels, the Education (Hostels) Regulations 2005 are in place to ensure their safety.

Code administrator and enforcement of the Code

40. I propose to appoint NZQA as Code Administrator for a Code for domestic tertiary education students. This will be a significant increase in the scope and scale of NZQA's role administering the international Code and will have resourcing and staffing implications for NZQA. More details are in the financial implications section of the paper.
41. For administration of the Education (Pastoral Care of International Students) Code of Practice for universities, Universities New Zealand and NZQA have a Memorandum of Understanding outlining the responsibilities of each party, and Universities New Zealand reports to NZQA. To date, no specific issues have been referred to NZQA by Universities New Zealand.
42. I propose a similar arrangement for administration of the Code for domestic tertiary students. However, I consider that the administration of the Code for universities can be strengthened by enabling NZQA, with the Minister's permission, to formally delegate its Code administration functions to Universities New Zealand. This will allow for more information on how the Code is administered in universities.
43. For a Code of Practice for domestic tertiary students, and for the current Code of Practice for international students, I propose that:
- 43.1 The Code administrator be able to issue quality improvement notices where providers have breached the Code. This would have reputational consequences, as such notices could be made public
- 43.2 A financial penalty is able to be imposed for serious breaches of regulatory requirements set out in the Code, and a fine is able to be imposed on conviction for breaches of the Code that result in serious harm or death.

Disputes resolution

44. The Education Act currently allows for an International Student Contract Dispute Resolution Scheme. This scheme's scope is contractual and financial disputes between international students and providers.
45. I consider that the Code for domestic tertiary students should have a dispute resolution scheme associated with it. However, I do not consider there is enough time to define and contract for a pastoral-care focused dispute resolution service for next year, or to give providers enough time to prepare for the implications of being subject to it.
46. I therefore propose that the Bill include provisions for a Dispute Resolution Scheme. We would then work to develop one for 2021 that would come into operation at the same time as the wider enforcement of the Code. The current processes for student complaints (internal provider processes with subsequent escalation options) would be used for disputes or complaints regarding the interim code for 2020.
47. In creating a dispute resolution mechanism for pastoral care issues for domestic tertiary education students for 2021, I will engage with the sector, consider best practice and make sure that dispute resolution systems are navigable for learners and their family and whānau.

Implementation of Code

48. The Bill will amend the Education Act and implement the policy proposals discussed above by:
 - 48.1 Enabling the Minister to issue a Code of Practice for the pastoral care of domestic tertiary education students
 - 48.2 Outlining the purpose and scope of a Code for domestic tertiary students
 - 48.3 Making a Code for domestic tertiary education students binding on all providers
 - 48.4 Enabling the Minister to appoint a Code administrator (which can delegate some of its functions with Ministerial approval)
 - 48.5 Outlining the functions and powers of the Code administrator, including new provisions specifically relating to student accommodation
 - 48.6 Giving the Code administrator the ability to issue quality improvement notices and to issue sanctions for breach of a Code
 - 48.7 Creating and implementing a dispute resolution scheme for domestic tertiary students' contractual or financial disputes
 - 48.8 Introducing a new offence for code breaches by providers that result in serious harm or death to students, and introducing a pecuniary penalty for serious breaches of regulatory requirements set out in the code.
49. Transitional provisions are included in the Bill to enable the Minister to issue an interim code for domestic tertiary education students without the usual consultation from 1 December 2019 and to expire on 1 January 2021. The transitional provisions also set out that the interim code is not subject to the dispute resolution scheme.

50. Transitional provisions will carry forward the existing Education (Pastoral Care of International Students) Code of Practice 2016. The main change in the Bill relating to international students is for new offence and penalty provisions to apply to signatory providers, which include all schools and tertiary education providers that enrol international students.
51. Aspects of the Bill that may be contentious are:
 - 51.1 The new offences and penalties that are being introduced, including that these will apply to signatory providers
 - 51.2 The power created for the Code administrator to enter and inspect student accommodation
 - 51.3 The ability for the Code administrator to impose limitations on a provider's power to enrol students.

Impact on existing Code of Practice for international students

52. It is important that pastoral care requirements for international students under the existing Code of Practice remain clear during the transition period with the interim code in place.
53. International students are a particularly vulnerable cohort due to distance from family and support networks, linguistic and cultural differences, financial and social pressures based on the funding of studies and the context of pathways to residency.
54. The Education (Pastoral Care of International Students) Code of Practice also plays a key role in the promotion of New Zealand as a safe and welcoming study destination for international students of all ages. Confusion over the status and coverage of the Code could potentially have a negative impact on attracting students motivated by high-quality study combined with an excellent student experience, as set out in the International Education Strategy 2018 – 2030.
55. New Code requirements to be in place by 2021 which apply to all tertiary students would provide an opportunity to address any gaps in the current international Code, particularly relating to support for better mental health outcomes.

Timings for implementing an interim code and a Code of Practice next year

56. I am proposing to create an interim code for domestic tertiary students to be in place by 1 January 2020. I consider it urgent to overhaul the current framework and create an interim code so that there are protections in place for domestic tertiary students before the 2020 academic year.
57. As the start of the next academic year is approaching, there will not be time for extensive consultation on the interim code. I consider that a short consultation period with providers and students is sufficient as this is an interim measure. Cabinet will be able to consider the content of an interim code in November before this targeted consultation takes place.
58. I will co-design a more comprehensive Code of Practice, the dispute resolution scheme and on-going funding through cost recovery with students, providers and the wider tertiary education sector next year, with the aim for this to be in place by the start of the 2021 academic year. This process will involve extensive engagement and

alignment with work taking place on student voice, the Reform of Vocational Education and the TES.

Connections to other legislation

59. The Code will have a connection to the Residential Tenancies Act 1986 as accommodation that is exempt under section 5B of that Act will fall under the ambit of the Code. Proposals to reform the Residential Tenancies Act are being prepared, but do not affect section 5B of that Act.

International student wellbeing

60. In the international education sector, the International Student Wellbeing Strategy (2017) and the International Education Strategy 2018 – 2030 have signalled a clear change in focus and objectives for international education. The Wellbeing Strategy provides an organising framework for government agencies to focus efforts on ensuring that international students feel welcome, safe and well, enjoy a high quality education and are valued for their contribution to New Zealand.
61. The Export Education Levy on international education providers funds a range of pastoral care and wellbeing activities, including Code administration, a dispute resolution scheme, and international student wellbeing initiatives.
62. A key action under the International Education Strategy is for the Code of Practice to continue to evolve to support the goal of an excellent student experience. The development of pastoral care requirements for domestic tertiary students will complement this work, ensuring that the Code remains responsive to the changing pastoral care needs of international students.

Financial Implications

63. The creation of a Code of Practice for domestic tertiary education students will have financial and resourcing implications for the Code Administrator. NZQA has estimated that these costs may be in the range of \$1.5 million for an interim code, which cannot be met within NZQA baselines. These costs are based on experience with the international Code of Practice and allow for uncertainties about the nature of a domestic code and the volume of complaints. There may also be costs for any delegation to Universities NZ from the Code Administrator. Costs will need to be confirmed once the scope and scale of administering the interim Code is known.
64. As funding for administering an interim code is required from 2020, I seek authority for the Ministers of Education and Finance to approve funding for administration of the Code for 2020, up to a maximum of \$1.5 million, following an assessment of the scope and scale of work to give effect to the interim code. This funding would come from unspent funding in Vote Tertiary Education from 2019/20.
65. The proposed domestic dispute resolution scheme, to come into effect from 2021, would also have financial implications. The current dispute resolutions scheme for international students is funded from the Export Education Levy at a cost of around \$150,000 a year.

66. I intend to explore options for cost recovery to fund administration of the ongoing code and the dispute resolution scheme for domestic tertiary students from 2021, s 9(2)(f)(iv)

Impact analysis

67. Cabinet's regulatory impact analysis requirements apply to the policy proposals discussed in this paper. However, in the very short timeframes allowed for the development of this regulatory proposal, the Ministry of Education has been unable to provide a regulatory impact assessment (RIA) to inform Cabinet's consideration of the proposal to enable the introduction of a mandatory code of practice for the pastoral care of domestic students.
68. Consequently, the Regulatory Quality Team at the Treasury confirms that Cabinet's RIA requirements have not been met, which increases the risk of introducing regulation that could be unnecessary, ineffective or unnecessarily costly.
69. If Ministers nonetheless proceed to take substantive decisions on this paper, the absence of RIA will trigger Cabinet's requirements for the provision of supplementary analysis. The Regulatory Quality Team has had some preliminary discussions with the Ministry of Education about the nature and timing of any supplementary analysis. The Ministry has indicated that it could prepare supplementary analysis in the form of a RIA to accompany the proposed Cabinet paper seeking final decisions on the interim code of practice in December 2019.
70. The Regulatory Quality Team is nonetheless concerned, in the current case, that any supplementary analysis will be too limited and come too late to promote an effective and high quality government intervention. In the absence of a RIA, the analysis contained in the current paper is manifestly incomplete and is insufficient to promote informed Ministerial decision-making. It does not adequately address the nature and size of the policy problem, potential alternative policy options, or the potential costs and risks of significant unintended consequences.
71. The Regulatory Quality Team is aware that the Treasury's Skills and Work Team has identified both a range of alternative options and a range of potential unintended impacts of the current proposal that are not considered in the paper (as noted in the consultation section of the paper). These could and should be tested through high quality RIA before settling on a particular policy option.
72. Effective consultation with key stakeholder groups is another key determinant of high quality regulation. The paper proposes an implementation date of 1 January 2020, which would allow only a very short period for consultation. This means that supplementary analysis may be unable to meet this important aspect of Cabinet's RIA requirements.

Consultation

73. Due to the urgent nature of the proposals, formal consultation with agencies has not been possible. However, the proposals have been discussed in general terms with: NZQA, TEC, the Ministry of Justice, the Ministry of Housing and Urban Development, the Treasury and the Department of the Prime Minister and Cabinet.

Treasury Comment

74. The Treasury is concerned that this Cabinet paper does not adequately define the nature or size of the problem it seeks to solve, or adequately assess the options available for solving it.
75. The paper asserts that a duty of pastoral care exists on the part of tertiary education providers for all domestic students, but does not explain the nature of origin of that duty, or why other service providers have no such duty to their clients/members. The discussion seems heavily influenced by the situation of young people living away from home for the first time – a minority of students in the tertiary education system, whose characteristics and needs are not shared by the bulk of domestic students.
76. The range of options outlined in this Cabinet paper is limited and incomplete. In particular, the paper does not canvas other means of ensuring provision of “wellbeing” services to those students who need or want them, for example via the contracts students (or their parents) sign with accommodation providers or with tertiary education organisations.
77. The scale and impact of the costs has not been assessed. If the proposed regulation increases standards, it can be expected to increase the cost of providing accommodation and pastoral care, both through changes to service levels and the cost of demonstrating compliance. Where they can, providers will likely pass these increased costs on to students, through higher accommodation prices and/or higher compulsory student services levies, both of which will in turn put pressure on student support subsidies. Providers can also be expected to lobby the government for direct funding increases to enable them to meet their new government-imposed obligations.
78. The risk of unintended consequences is heightened by the speed with which the proposals have been developed and the lack of time for consultation. Possible unintended consequences include that providers may withdraw from providing student accommodation in 2020 on the grounds that they are unable to confirm if they meet the regulatory requirements (which may, for example, affect the insurability of their premises); or they may seek to avoid enrolling students who they think will have high pastoral care needs. Adequate analysis and consultation would have enabled risks like these to be identified and the regulatory design adjusted to address them.
79. The Treasury believes the paper should be deferred to allow more time for options analysis and consultation with the parties most likely to be affected by the proposed regulation.

Part B – Approval for Introduction: Education (Pastoral Care) Amendment Bill

Need for legislation

80. For the policy discussed above to have legal effect, amendments need to be made to the Education Act.

81. s 9(2)(f)(iv) [redacted] these legislative changes need to go through before the end of the year in order for an interim code to be in place by the start of the 2020 academic year.
82. The Education Act has been amended twice in 2019 through Bills focused predominantly on schooling matters.
83. The Education (Vocational Education and Training Reform) Amendment Bill which is currently being considered by the Education and Workforce Committee does not contain amendments regulating student pastoral care.
84. s 9(2)(f)(iv) [redacted]

Compliance

85. The Bill complies with each of the following:
- 85.1 The proposal is not inconsistent with the principles of the Treaty of Waitangi. The Bill does not have specific implications for Māori as individuals, communities or tribal groupings. Development of a Code of Practice will take the needs of Māori learners and whānau, and communities, into account;
 - 85.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 85.3 The proposal can be expected to improve outcomes for learners of all genders in tertiary education by enabling better pastoral care support for domestic tertiary students, including those experiencing domestic violence or mental and physical health challenges. Good practice pastoral care would support gender identity and difference;
 - 85.4 Learners with disabilities can experience multiple challenges in tertiary education, and better pastoral care is likely to support better learning outcomes for these learners. Good practice pastoral care will respond to the needs of learners with disabilities and specific learning needs;
 - 85.5 A disclosure statement has been prepared and is attached to the paper as Annex One;
 - 85.6 The Bill raises no specific privacy issues, and meets the principles and guidelines set out in the Privacy Act 1993;
 - 85.7 Relevant international standards and obligations;
 - 85.8 The [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

86. The Bill will not be binding on the Crown as the Education Act does not bind the Crown. s 9(2)(f)(iv)

87. s 9(2)(f)(iv)

Allocation of decision making powers

88. Not applicable.

Associated regulations

89. Not applicable.

Other instruments

90. The Bill includes a provision empowering the making of a Code that is deemed to be a disallowable instrument. Making the Code a disallowable instrument ensures transparency as it can be considered through the Regulations Review Disallowance Regime. To address any possible accessibility and transparency concerns, the Bill requires the Code to be published on the Ministry of Education's website, and for them to be presented to the House

91. I do not propose for the instrument to be a legislative instrument as it would mean that the Code has to be drafted as a legal document and the flexibility to provide operational guidance in plain English is lost. It would also mean that for counsel to draft the document, any substantive policy decisions must first be approved by Cabinet, which would slow down the process for issuing the Code.

Definition of Minister/department

92. Not applicable.

Commencement of legislation

93. The Bill will come into force on 1 December 2019.

94. Transitional provisions in the Bill are set out in the Schedule and will expire on 1 January 2021. This is to allow the sector to transition to the new arrangements.

Parliamentary stages

95. The Bill will be introduced on Monday 14 October. It should be passed by the end of November. This will necessitate a shortened select committee period of approximately three weeks.

Publicity

96. I propose to announce the Bill following Cabinet decisions and issue a press release.

Proactive Release

97. I propose that this paper is proactively released on introduction of the Bill.

Recommendations

The Minister of Education recommends that Cabinet:

1. Note that recent events have highlighted the need for improved systems and processes in place for the pastoral care of tertiary students;
2. Note that there are greater protections and supports in place for international students in tertiary education than for domestic students, through the Education (Pastoral Care of International Students) Code of Practice 2016;
3. Agree that it is a priority to put protections for domestic tertiary education students in place before the 2020 academic year;
4. Note that the Minister intends to create a mandatory Code of Practice for pastoral care in tertiary education, with an interim code to be in place from 1 January 2020 and an ongoing Code to be created in 2020:
 - 4.1. The interim code would contain a general duty of pastoral care, and specific requirements for student accommodation services, and would be developed following targeted engagement in late 2019;
 - 4.2. The ongoing Code and domestic disputes resolution scheme would be developed with significant sector engagement, input from students and their family and whānau, and would consider the full range of issues and good practice in ensuring student wellbeing through pastoral care;
5. Agree to amend the Education Act to empower the Minister to create a Code of Practice for pastoral care of domestic students in tertiary education, with associated dispute resolution and sanctions provisions;

6. s 9(2)(f)(iv)

7. Note that the Bill enables:
 - 7.1. The Minister to create a mandatory Code for domestic tertiary education students, and sets out the objectives and scope of the Code;
 - 7.2. The Minister to appoint a Code administrator (which can delegate some of its functions with Ministerial approval);
 - 7.3. The Code administrator to monitor compliance with the Code, including specific provisions for student accommodation;
 - 7.4. Sanctions and consequences for non-compliance with the Code including new offences and penalties for both tertiary and international Codes for serious breaches;
 - 7.5. The creation of a dispute resolution scheme for domestic tertiary education students' contractual or financial disputes, once the ongoing code is in place;
 - 7.6. Transitional provisions to carry forward the existing International Code, and to enable the interim domestic code to be put in place without the usual consultation in time for the start of the 2020 year, and to expire on 1 January 2021;
8. Approve the Education (Pastoral Care) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
9. Authorise the Minister of Education to make any detailed changes necessary to achieve the intent of the Bill;
10. Agree that the Bill be introduced on Monday 14 October;
11. Agree that the Government propose that the Bill be:
 - 11.1. Progressed with a shortened select committee period;
 - 11.2. Enacted by the end of November;
12. Authorise the Ministers of Finance and Education to approve funding for administration of the Code for 2020, up to a maximum of \$1.5 million, to be funded from Vote Tertiary Education baselines;
13. Note that I intend to explore options for cost recovery to fund administration of the ongoing code and the dispute resolution scheme for domestic tertiary students from 2021, ^{s 9(2)(f)(iv)} [REDACTED]
14. Direct the Minister of Education to report to Cabinet Social Wellbeing Committee in December 2019 on the proposed content of the interim code for pastoral care of domestic tertiary education students;

15. Direct the Ministry of Education to provide a Supplementary Analysis Report to provide regulatory impact analysis of the proposals reported in recommendation 14 above.

Authorised for lodgement

Hon Chris Hipkins
Minister of Education

Proactively Released by the Minister of Education