

# Departmental Disclosure Statement

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Education (Pastoral Care) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Education.

The Ministry of Education certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 October 2019

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information.....	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features.....	8

## **Part One: General Policy Statement**

The Education (Pastoral Care) Amendment Bill amends the Education Act 1989 (the Act). The public policy objectives of the Bill are to—

- Address regulatory gaps relating to the pastoral care of domestic tertiary students, ensuring that students live in a safe environment and are supported to have a positive experience that supports their educational achievement
- Ensure the consistency and effectiveness of the codes of practice for domestic tertiary and international students
- Ensure that providers are accountable for pastoral care standards

### **Addressing regulatory gaps for domestic tertiary students**

The Bill addresses regulatory gaps relating to the pastoral care of domestic tertiary students by enabling the Minister to create a mandatory code for domestic students alongside the existing Education (Pastoral Care of International Students) Code of Practice 2016, and providing for Code compliance to be monitored and enforced.

The code for domestic tertiary students will require providers to take all reasonable steps to protect students and ensure, so far as is possible, that students have a positive experience that supports their educational achievement.

The Bill is intended to ensure students live in a safe environment by setting out provider requirements for student accommodation and enabling the code administrator to gather information about student accommodation, in order to assess compliance.

Student accommodation will be subject to the requirements of the code where it is exempt from Residential Tenancies Act 1986 requirements.

### **Ensure the consistency and effectiveness of the codes of practice for domestic tertiary and international students**

The Bill provides for the consistency and effectiveness of the codes of practice for domestic tertiary and international students by setting out arrangements relating to code administration, monitoring, compliance and enforcement, offences and penalties and dispute resolution.

### **Ensure that providers are accountable for pastoral care standards**

The Bill is intended to ensure that providers are accountable for pastoral care standards by establishing a system of monitoring and enforcement.

In addition, the Bill introduces a new offence for code breaches by providers that result in serious harm or death to students, and pecuniary penalties for serious breaches of regulatory requirements set out in the code, with liability in each case up to a maximum of \$100,000.

### **Transition arrangements**

Transitional provisions carry forward the existing international code, and enable an interim domestic tertiary code to be in place between 1 December 2019 and 1 January 2021. This will ensure that all domestic tertiary and international students have protections in place for 2020.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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### Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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### Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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Due to the urgent nature of the proposals for legislative reform, a regulatory impact statement has not been prepared. A supplementary analysis report will be prepared following engagement with key stakeholders on the proposed new Code of Pastoral Care for Domestic Students.

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	N/A
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	N/A
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### Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	N/A
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
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(a) the size of the potential costs and benefits?	N/A
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(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	N/A
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2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) the level of effective compliance or non-compliance with applicable obligations or standards?	N/A
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<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>N/A</b>
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## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The policies to be given effect by the Education (Pastoral Care) Amendment Bill do not affect New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Education (Pastoral Care) Amendment Bill does not have specific implications for Māori as individuals, communities or tribal groupings.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**YES/NO**

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

**YES**

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

**NO**

Clause 4, new section 238S, makes it an offence for a provider or signatory provider to breach an applicable code of practice, where the breach results in serious harm or death to one or more of the provider or signatory provider's students. The maximum fine for a provider or signatory provider who commits an offence is \$100,000.

Clause 4, new section 238T, provides for a court, on the application of a code administrator, to order a provider or signatory provider to pay to the Crown a pecuniary penalty of \$100,000.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

**YES**

Ministry of Justice was consulted on what offence and penalty provisions were appropriate, and the drafting thereof.

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>N/A</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
Due to the urgent nature of the proposals for legislative reform, formal consultation with external parties has not been possible. However, the proposals have been discussed in general terms with the Ministry of Housing and Urban Development, the Ministry of Justice, the Treasury, the Tertiary Education Commission, and the New Zealand Qualifications Authority.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
Clause 4, new section 238S, creates a strict liability offence. <b>The offence is justifiable in this instance as the provider or signatory provider will be best placed to establish absence of fault.</b>	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 4, new section 238G, enables the Minister to issue separate codes of practice covering the pastoral care of domestic and international students. This is an expansion of the Minister's existing power to issue a code of practice for the pastoral care of international students (see section 238F of the Education Act 1989).</p> <p>Both codes are to be classified as disallowable instruments, which requires their presentation to the House of Representatives. This enables external scrutiny of the codes by the Regulations Review Committee. The current code of practice for the pastoral care of international students is also a legislative instrument. This classification is to be removed by the Bill. Removing the requirement for Parliamentary counsel to write the code enables the document to be more operationally focused.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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