



Education (Pastoral Care of International Students) Code of Practice Amendments 2019

Pursuant to section 238F of the Education Act 1989, the Minister of Education makes the following instrument.

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Amendments

1 Title

This instrument is the Education (Pastoral Care of International Students) Code of Practice Amendments 2019.

2 Commencement

The instrument comes into force on 1 July 2019.

3 Principal code

This instrument amends the Education (Pastoral Care of International Students) Code of Practice 2016 (the **principal code**).

4 Clause 3 replaced (Previous version revoked and replaced)

Replace clause 3 with:

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 Clause 7 amended (General definitions)

(1) In clause 7(1), definition of **agent**, delete “provider or”.

(2) In clause 7(1), insert in its appropriate alphabetical order:

contract of enrolment,—

(a) in relation to a signatory that is a State school, has the same meaning as in section 2(1) 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

(3) In clause 7(1), definition of **educational instruction**, paragraphs (b) and (c), replace “provider” with “signatory”.

- (4) In clause 7(1), definition of **repatriation**, replace “his or her” with “their”.
- (5) In clause 7(1), definition of **residential caregiver**, replace paragraph (d) with:
- (d) a manager of 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; or
- (e) in the case of temporary accommodation, a supervisor who is responsible for the care of international students
- (6) In clause 7(1), definition of **school hostel**, replace “in any other provider” with “with any other signatory”.
- (7) In clause 7(2), replace “his or her” with “their”.

6 **Clause 13 amended (Outcome 2: managing and monitoring agents)**

After clause 13(b), insert:

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

7 **Clause 14 amended (Process)**

- (1) After clause 14(b), insert:
- (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

- (2) Revoke clause 14(c).

8 Cross-heading above clause 15 replaced

Replace the cross-heading above clause 15 with:

Offers, enrolment, contracts, and insurance

9 Section 15 amended (Outcome 3: offers, enrolment, and contract)

- (1) In the heading to clause 15, replace “**offers, enrolment, and contract**” with “**offer, enrolment, contract, and insurance**”.

- (2) After clause 15(b), insert:

- (ba) ensure that each contract of enrolment is fair and reasonable; and
- (bb) ensure that any disciplinary action is taken 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

10 Section 16 replaced (Process)

Replace clause 16 with:

16 Process: offer of educational instruction

Each signatory must ensure that the educational instruction on offer is in accordance with the Act and is appropriate for international students’ expectations, English language proficiency, and academic capability.

16A Process: information to be provided before entering contract

- (1) Each signatory must ensure that international students receive, as a minimum, information about the following before entering into a contract with the student:
 - (a) the most recent results of their evaluations by education quality assurance agencies;
 - (b) compliance notices and conditions imposed under the Act that the code administrator directs must be disclosed to prospective international students;
 - (c) the education provided and its outcome, for example, whether a qualification is granted;
 - (d) refund conditions that comply with the outcome and process in clauses 29 and 30;

- (e) staffing, facilities, and equipment:
 - (f) available services and supports:
 - (g) insurance and visa requirements for receiving educational instruction from the signatory:
 - (h) this code and the DRS rules:
 - (i) full costs related to an offer of educational instruction.
- (2) Each signatory must ensure that, before entering into a contract of enrolment or enrolling with the signatory, each international student (or the student's parent or legal guardian, if the student is under 18 years) is informed of the student's rights and obligations in relation to receiving educational instruction from the signatory, including the rights under this code.

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 taking disciplinary action against the student.
- (2) Each signatory must ensure that the contract of enrolment is fair and reasonable.

16C Process: disciplinary action

Any disciplinary action process that is taken by a signatory must be 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).

16D Process: insurance

- (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—
- (a) the student's travel—

- (i) to and from New Zealand; and
- (ii) within New Zealand; and
- (iii) if the travel is part of the educational instruction, outside New Zealand; and
- (b) medical care in New Zealand, including diagnosis, prescription, surgery, and hospitalisation; and
- (c) repatriation or expatriation of the student as a result of serious illness or injury, including cover of travel costs incurred by family members assisting repatriation or expatriation; and
- (d) death of the student, including cover of—
 - (i) travel costs of family members to and from New Zealand; and
 - (ii) costs of repatriation or expatriation of the body; and
 - (iii) funeral expenses.
- (2) Subclause (1)(a)(i) and (ii) includes 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).
- (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.

16E Process: decisions requiring written agreement of parent or guardian

Each signatory must ensure that, where appropriate, it obtains the written agreement of the parent or legal guardian of an international student under 18 years with respect to decisions affecting the student.

11 Clause 19 amended (Outcome 5: orientation)

In clause 19, replace “his or her” with “their”.

12 Clause 20 amended (Process)

After paragraph (f), insert:

- (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.

13 Clause 22 amended (Process: general)

In clause 22(d), replace “his or her” with “their”.

14 Clause 23 amended (Process: international students under 18 years)

- (1) Replace clause 23(1)(e) with:

- (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.

(2) Replace clause 23(2) with:

- (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.

15 Clause 24 amended (Process: international students under 10 years)

Replace clause 24(2) with:

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

16 Clause 25 amended (Process: international students at risk or with special needs)

- (1) In clause 25(2)(a), replace "himself or herself" with "themselves".
- (2) In clause 25(2)(b), replace "his or her" with "their".
- (3) In clause 25(3)(a), replace "his or her" with "the student's".
- (4) In clause 25(3)(b), replace "him or her" with "the student".

17 Clause 26 amended (Process: accommodation)

(1) Replace clause 26(1)(b) with:

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

(2) In clause 26(1)(c), replace "his or her" with "the student's".

(3) In 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”.
- (4) After clause 26(1)(e), insert:
- (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
- (5) In clause 26(1)(f), replace “from students” with “from others”.
- (6) After clause 26(1), insert:
- (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.
- (7) In clause 26(3), replace—
- (a) “himself or herself” with “themselves”; and
- (b) “his or her” with “their”.
- (8) After clause 26(3), insert:
- (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.

18 New clause 26A inserted (Process: safety checks and appropriate checks)

After clause 26, insert:

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.
- (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.
- (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.

19 Clause 28 amended (Process)

After clause 28(c)(ii), insert:

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

20 New Schedule 1 inserted

Insert the Schedule 1 set out in the Schedule of this instrument as the first schedule to appear after the last clause of the principal code.

Schedule
New Schedule 1 inserted

cl 4

Schedule 1
Transitional, savings, and related provisions

cl 3

Part 1
Provision relating to 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 paragraphs (c), (d), and (e) of clause 16B(1), as inserted by the Education (Pastoral Care of International Students) Code of Practice Amendments 2019 (which relate to student conduct and disciplinary action).

Dated at Wellington this 12th day of March 2019.

Hon Chris Hipkins,
Minister of Education.

Explanatory note

This note is not part of this instrument, but is intended to indicate its general effect.

This instrument, which comes into force on 1 July 2019, amends the Education (Pastoral Care of International Students) Code of Practice 2016 (the **Code**) to—

- add a definition of contract of enrolment and replace certain references to contracts with that term:
- amend the definition of residential caregiver to add that a manager of an establishment that is operated by a tertiary education provider and mainly used for accommodating international students may be a residential caregiver:
- provide that a signatory must ensure that—
 - it monitors the activities and performance of its agents for specified purposes and manages those agents by taking certain action in specified circumstances:
 - each contract of enrolment between the signatory and an international student—
 - includes additional specified information and terms about student conduct and disciplinary action; and
 - is fair and reasonable:
 - any disciplinary action that is taken by the signatory in relation to an international student is taken in accordance with the principles of natural justice:
 - its orientation programme provides each international student with information about the student's rights and entitlements if the student voluntarily withdraws from the educational instruction:
 - in relation to an international student who is under 18 years,—
 - an appropriate safety check is completed for each person who is 18 years or over and who resides at a residential caregiver's accommodation, and that a new prescribed safety check is completed for residential caregivers; and
 - it has a written agreement with each residential caregiver that specifies the role and responsibilities of each party in relation to the care of the student; and
 - there is an appropriate separation of the student from residents of different ages, including non-students, in their accommodation:
 - it provides information and advice to international students on how to adjust to a different cultural environment in New Zealand:
- with respect to insurance coverage for international students,—
 - clarify that an international student's travel to, from, and within New Zealand includes the student's travel to and from their country of origin or citizenship before their educational instruction has begun and after it has ended (which may be outside of the enrolment period); and
 - clarify that travel to and from New Zealand 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:

- in respect of plans for the transfer of care of an international student who is under 18 years from one caregiver to another,—
 - remove the requirement that the confirmation that the signatory must obtain from a parent or legal guardian regarding the plan must be in writing; and
 - require the signatory to ensure that—
 - a plan is in place for each transfer of care of the student that occurs during the enrolment period (in addition to at the end of enrolment); and
 - the parent or legal guardian is notified of each transfer plan:
- provide for transitional provisions in respect of contracts of enrolment that are executed before the commencement of these Regulations:
- make other minor changes to improve clarity and to give effect to the amendments:
- replace gendered references with gender-neutral references.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 March 2019.
This instrument is administered by the Minister of Education.