

Reprint
as at 14 July 2017



Education (Pastoral Care of International Students) Code of Practice 2016

(LI 2016/57)

Pursuant to section 238F of the Education Act 1989, the Minister for Tertiary Education, Skills and Employment makes the following code of practice.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This code is administered by the Ministry of Education.

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Part 1
Introduction

1 Title

This code is the Education (Pastoral Care of International Students) Code of Practice 2016.

2 Commencement

This code comes into force on 1 July 2016.

3 Previous version revoked and replaced

- (1) The Code of Practice for the Pastoral Care of International Students in force immediately before this code comes into force (the **previous version**) is revoked and replaced by this code.
- (2) Despite subclause (1), the previous version remains in force (as if it had not been revoked and replaced) in relation to an international student who has enrolled with a provider before 1 July 2016 and applies, to the exclusion of this code, until 31 December 2016.

4 Code is legislative instrument

This code is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act.

5 Purpose of code

The purpose of this code is to support the Government's objectives for international education by—

- (a) requiring signatories to take all reasonable steps to protect international students; and

- (b) ensuring, so far as is possible, that international students have in New Zealand a positive experience that supports their educational achievement.

6 Scope of code

- (1) The scope of this code is to prescribe, alongside other quality assurance prescribed by the Education Act 1989,—
 - (a) outcomes sought from signatories for their international students; and
 - (b) key processes required of signatories to support the well-being, achievement, and rights of international students.
- (2) The code does not apply to the activities of a signatory relating to students whose study is carried out outside New Zealand.
- (3) The code administrator may exempt the following students from the application of all or part of the code:
 - (a) a student who changes status from domestic student to international student;
 - (b) a student who is enrolled in a distance learning programme.

Part 2

How to read this code

7 General definitions

- (1) In this code, unless the context otherwise requires,—

Act means the Education Act 1989

agent means a person, body, or organisation acting on behalf of a provider or signatory, and includes a subcontracted agent

code administrator means the person or agency appointed under section 238FA(1) of the Act

designated caregiver means a relative or close family friend designated in writing by a parent or legal guardian of an international student under 18 years as the caregiver and accommodation provider for that student

domestic student has the same meaning as in section 2 of the Act

DRS means the International Student Contract Dispute Resolution Scheme established by section 238J of the Act

DRS rules means the rules prescribed under section 238M of the Act

due diligence means the process of obtaining disclosure and verification in respect of another party before entering into a binding commitment

education quality assurance agency means an agency authorised by the Act to exercise quality assurance functions in respect of signatories

educational instruction includes classes, courses, programmes, or training schemes—

- (a) that are approved or exempted in accordance with section 4E, Part 18, or Part 20 of the Act; and
- (b) that the provider has been granted accreditation to provide (where required under Part 18 or 20 of the Act); and
- (c) that the provider has been granted consent to assess against the relevant assessment standards (where required under Part 18 or 20 of the Act)

enrol means register or admit a person as a student for educational instruction provided by a signatory after the student has accepted an offer of educational instruction from the signatory, and **enrolment** has a corresponding meaning

expatriation means the process of moving a person from 1 country or locality to another

fee protection mechanism means a mechanism approved in rules made under section 253(1)(e) of the Act

homestay means accommodation provided to an international student in the residence of a family or household in which no more than 4 international students are accommodated

international student has the same meaning as in section 238D of the Act

legal guardian, in relation to an international student, means a person who, by court or testamentary appointment, is responsible for the student's well-being and financial support, and provides for the care of the student in the student's home country

licensed hostel means a hostel that is licensed under the Education (Hostels) Regulations 2005

parent, in relation to an international student, means the father or mother of the student who is responsible for the student's well-being and financial support

provider has the same meaning as in section 238D of the Act

repatriation means the process of returning a person to his or her country of origin or citizenship

residential caregiver means—

- (a) a homestay carer; or
- (b) a licensed hostel manager or other person responsible for the care of international students in a licensed hostel; or
- (c) a designated caregiver; or
- (d) in the case of temporary accommodation, a supervisor

school hostel means a licensed hostel owned or administered by a school and approved by the code administrator for international students who are enrolled

in year 1 to year 6 of a school, or aged 10 and under and enrolled in any other provider

signatory means a provider that is a signatory to this code

subcontracted agent means a person, body, or organisation contracted by an agent to act on the agent's behalf.

- (2) In this code, a reference to the age of a person is a reference to the age of the person on his or her last birthday.
- (3) A term that is used in this code and defined in the Act but not in this code has the same meaning as in the Act.

Part 3

Becoming signatory

8 Function of code administrator to receive and assess applications to become signatories

The code administrator must—

- (a) receive applications from providers seeking to become signatories to this code; and
- (b) assess those applications against—
 - (i) the criteria for becoming a signatory set out in clause 9; and
 - (ii) the purpose and scope of this code set out in clauses 5 and 6.

9 Criteria for becoming signatory

The criteria for an applicant to become a signatory to this code are the following:

- (a) the applicant is a provider;
- (b) the applicant provides, or is intending to provide, educational instruction;
- (c) the applicant has acceptable financial management practices and performance;
- (d) the applicant has policies and procedures in place that will enable it to achieve the outcomes sought and processes required by this code;
- (e) the code administrator does not otherwise consider the applicant to be unsuitable for approval as a signatory to this code.

10 Code administrator may remove signatory on request of signatory

At the request of a signatory, the code administrator may remove the signatory as a signatory to this code.

Part 4

What signatories must do

Marketing and promotion

11 Outcome 1: marketing and promotion

Signatories must ensure that the marketing and promotion to prospective international students of services provided by signatories includes clear, sufficient, and accurate information enabling those students to make informed choices about the services provided.

12 Process

Each signatory must—

- (a) proactively seek to understand the information needs of international students; and
- (b) develop and provide information to international students and review the information to ensure it is kept up to date; and
- (c) ensure that international students receive, as a minimum, information about the following:
 - (i) the signatory's quality assurance results; and
 - (ii) the educational instruction, staffing, facilities, and equipment available to international students; and
 - (iii) the DRS; and
 - (iv) potential learning outcomes for international students, including pathways for further study and employment, where applicable; and
 - (v) estimated study and living costs for international students; and
 - (vi) accommodation and transport, or ways to obtain such information.

Agents

13 Outcome 2: managing and monitoring agents

Signatories must effectively manage and monitor their agents (that is, those agents that signatories have contracted to represent them) to ensure that those agents—

- (a) provide international students with reliable information and advice about studying, working, and living in New Zealand; and
- (b) act with integrity and professionalism towards prospective international students.

14 Process

Each signatory must—

- (a) carry out and record reference checks on potential agents to ensure as far as possible that they have not been involved in any conduct that is false, misleading, deceptive, or in breach of the law; and
- (b) enter into written contracts with each of its agents; and
- (c) terminate contracts with agents if there is evidence suggesting that those agents or their subcontracted agents—
 - (i) have been involved in any serious, deliberate, and ongoing conduct that is false, misleading, deceptive, or in breach of the law; or
 - (ii) have jeopardised the signatory's compliance with this code; and
- (d) ensure that its agents have access to, and maintain, up-to-date information relevant to their duties as specified in the contracts with the signatory.

Offers, enrolment, and contracts

15 Outcome 3: offers, enrolment, and contract

Signatories must—

- (a) support international students (or the parents or legal guardians of international students under 18 years) to make well-informed enrolment decisions that are appropriate to the educational outcomes sought; and
- (b) ensure that international students (or the parents or legal guardians of international students under 18 years) have the information required to understand their interests and obligations before entering into a legally binding contract with a signatory; and
- (c) ensure that proper documentation is kept and, where appropriate, provided to international students (or the parents or legal guardians of international students under 18 years).

16 Process

- (1) Each signatory must ensure that international students receive, as a minimum, information about the following:
 - (a) the most recent results of evaluations by 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 the educational instruction on offer is in accordance with the Act and is appropriate for students' expectations, English language proficiency, and academic capability.
- (3) Each signatory must ensure that, before entering into a contract with the signatory 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.
- (4) Each signatory must ensure that there is a written contract entered into between the signatory and each international student (or the student's parent or legal guardian, if the student is under 18 years) which includes clear information about the beginning and end dates of enrolment, the conditions for terminating enrolment, and the conditions for terminating the contract.
- (5) Each signatory must ensure that, as far as practicable, while an international student is enrolled with the signatory for educational instruction of 2 weeks' duration or longer, the student 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 course, 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.
- (6) Each signatory must ensure that, where appropriate, the signatory obtains the written agreement of the parent or legal guardian of an international student under 18 years to decisions affecting the student.

*Immigration matters***17 Outcome 4: immigration matters**

Signatories must—

- (a) ensure that they do not allow or continue to allow a person to undertake educational instruction if that person is not entitled under the Immigration Act 2009 to undertake the educational instruction; and
- (b) take reasonable precautions and exercise due diligence in ascertaining whether international students are entitled under the Immigration Act 2009 to undertake the educational instruction for which they enrol.

18 Process

Each signatory must—

- (a) ensure that each international student who enrolls with the signatory has the necessary immigration status for study in New Zealand; and
- (b) report to Immigration New Zealand known or suspected breaches of visa conditions by international students; and
- (c) notify Immigration New Zealand of terminations of enrolment.

*Orientation***19 Outcome 5: orientation**

Signatories must ensure that international students have the opportunity to participate in a well-designed and age-appropriate programme that provides the information and advice necessary for a student at the outset of his or her educational instruction.

20 Process

- (1) Each signatory must ensure that its orientation programme—
 - (a) provides each international student with full information and advice on all relevant institutional policies; and
 - (b) provides each international student with full information and advice on the services, support, and facilities that the signatory offers; and
 - (c) provides the names and contact details of designated staff members responsible for international student support; and
 - (d) provides appropriate information relating to health and safety of international students; and
 - (e) provides information about grievance procedures for international students, both internal and external; and
 - (f) provides information about the termination of enrolment.

- (2) For an international student under 18 years, a signatory must ensure, where applicable, that any parent, legal guardian, or residential caregiver of the student who is in New Zealand and accompanying the student has access to the orientation information or programme that has been provided to the student.

Safety and well-being

21 Outcome 6: safety and well-being

Signatories must—

- (a) provide a safe study environment for international students; and
- (b) provide adequate support for the well-being of their international students; and
- (c) as far as practicable, ensure that international students live in a safe environment.

22 Process: general

Each signatory must—

- (a) respond fairly and effectively to instances of inappropriate behaviour by, or impacting on, an international student; and
- (b) develop and maintain policies for managing inappropriate behaviour that are communicated to staff and students and effectively implemented; and
- (c) advise international students on how to—
 - (i) report and address health and safety issues (for both on campus and off campus activities); and
 - (ii) respond to an emergency (for both on campus and off campus activities); and
 - (iii) access health and counselling services; and
 - (iv) engage with relevant government agencies such as the New Zealand Police and the department responsible for administering the Oranga Tamariki Act 1989; and
- (d) have up-to-date contact details for each international student and his or her next of kin; and
- (e) ensure that at all times (24 hours a day, 7 days a week) there is at least 1 staff member available to be contacted by an international student in an emergency.

Clause 22(c)(iv): amended, on 14 July 2017, by section 150(2) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

23 Process: international students under 18 years

- (1) In relation to international students under 18 years, each signatory must—

- (a) not enrol an international student 10 years or older but under 18 years who does not live with a parent or legal guardian unless—
 - (i) the student is in a properly supervised group of students whose educational instruction is not for more than 3 months; or
 - (ii) the student is in the care of a residential caregiver; and
 - (b) have up-to-date contact details for the students' parents, legal guardians, and residential caregivers; and
 - (c) maintain effective communications with the parents, legal guardians, or residential caregivers of students concerning their well-being and progress in study; and
 - (d) ensure that at least 1 staff member is designated to proactively monitor and address any concerns about international students under 18 years; and
 - (e) ensure that it receives written confirmation from a parent or legal guardian regarding the plan for handing over the care of an international student after the student's enrolment with the signatory ends.
- (2) This clause applies in addition to the requirements in clause 22.

24 Process: international students under 10 years

- (1) Each signatory must ensure that its international students under 10 years live with a parent or legal guardian, unless they are accommodated in a school hostel.
- (2) This clause applies in addition to the requirements set out in clauses 22 and 23.

25 Process: international students at risk or with special needs

- (1) Each signatory must ensure that—
 - (a) appropriate measures are put in place to address the needs and issues of international students at risk or with special needs; and
 - (b) the parent or legal guardian of a student under 18 years or the next of kin of a student 18 years or over is aware of any situation where the student is at risk or has special needs; and
 - (c) where appropriate and in compliance with the principles of the Privacy Act 1993, issues relating to the students are reported to relevant agencies such as the New Zealand Police and the department responsible for administering the Oranga Tamariki Act 1989, and to the code administrator.
- (2) A student is at risk if the signatory has reasonable grounds to believe that there is a serious issue relating to the student's health, safety, or well-being, including, for example, —
 - (a) the student is unable to adequately protect himself or herself against significant harm or exploitation:

- (b) the student is unable to adequately safeguard his or her personal welfare.
- (3) A student with special needs includes a student who—
 - (a) experiences a physical, sensory, cognitive, psychosocial, or behavioural difficulty, or a combination of these, and that difficulty or those difficulties affect his or her ability to participate, learn, and achieve; or
 - (b) requires the provision of adapted programmes or learning environments, or specialised equipment or materials to support him or her to access the curriculum, participate, learn, and achieve.
- (4) This clause applies in addition to the requirements set out in clauses 22, 23 and 24.

Clause 25(1)(c): amended, on 14 July 2017, by section 150(2) of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

26 Process: accommodation

- (1) In relation to an international student under 18 years who is in the care of a residential caregiver, the signatory must—
 - (a) ensure that the student’s accommodation is safe, is in acceptable condition, and meets all regulatory and legislative requirements; and
 - (b) ensure that an appropriate safety check has been completed for a residential caregiver; and
 - (c) maintain effective communication with the student and his or her parent or legal guardian when accommodation issues arise, and must take responsibility for addressing those issues, including reporting them to relevant authorities and moving students to appropriate accommodation; and
 - (d) conduct sufficient student interviews and home visits to monitor and review the quality of residential care, taking into consideration the age of the student, the length of the stay, and other relevant factors; and
 - (e) ensure that the parent or legal guardian of the student 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 care when the student is in the custody of the designated caregiver; and
 - (f) ensure that there is appropriate separation of international students from students of different ages in the accommodation; and
 - (g) ensure that the student is appropriately supervised in the accommodation.
- (2) In relation to an international student 18 years or over who lives in accommodation provided or arranged by a signatory, the signatory must—
 - (a) ensure that the student’s accommodation is safe, is in acceptable condition, and meets all regulatory and legislative requirements; and

- (b) maintain effective communication with the student when accommodation issues arise, and must take responsibility for addressing those issues, including reporting them to relevant authorities.
- (3) In relation to an international student 18 years or over who arranges accommodation for himself or herself, the signatory must ensure that the student is directed to relevant advice and information that will enable the student to understand his or her rights and obligations as a tenant in New Zealand.
- (4) In this clause, **accommodation issues** includes issues of health and well-being arising from a student's accommodation or connected with it.

Student support, advice, and services

27 Outcome 7: student support, advice, and services

Signatories must ensure that international students are fully informed about relevant advice and services to support their educational outcomes.

28 Process

Each signatory must—

- (a) ensure that information and advice provided by the signatory to international students is accurate, age-appropriate, and up to date; and
- (b) provide its international students with information about their legal rights and obligations and, where possible, the possible risks when students receive or accept advice or services; and
- (c) provide its international students with information and advice on—
 - (i) how to effectively interact with persons from different cultural backgrounds; and
 - (ii) the cultural and community support available to them; and
- (d) ensure that its international students are provided with information and advice on pathways for further study or career development, where appropriate; and
- (e) ensure that, where applicable, its international students have access to information and advice on—
 - (i) minimum wages and labour conditions in New Zealand; and
 - (ii) maximum hours of work permitted under visa conditions.

Managing withdrawal and closure

29 Outcome 8: managing withdrawal and closure

Signatories must ensure that the fees paid by international students for educational instruction in New Zealand are secure and protected in the event of student withdrawal or the ending of educational instruction or the closure of a signatory.

30 Process

- (1) Each signatory must ensure that—
 - (a) its refund policies are reasonable and in accordance with legal requirements; and
 - (b) it provides its international students (or the parents or legal guardians of international students under 18 years) with sufficient information to understand their rights and obligations under those refund policies.
- (2) A refund policy must include refund conditions for the following situations:
 - (a) failure by a student to obtain a study visa;
 - (b) voluntary withdrawal by a student;
 - (c) the signatory ceasing to provide a course of educational instruction as contracted with a student, whether it stops of its own accord or as required by an education quality assurance agency;
 - (d) the signatory ceasing to be a signatory;
 - (e) the signatory ceasing to be a provider.
- (3) In the situation in subclause (2)(c) or (d), the signatory must deal with fees paid for services not delivered or the unused portion of fees paid as follows:
 - (a) refund the amount in question to the student (or the student's parent or legal guardian); or
 - (b) if directed by the student or the code administrator or the agency responsible for fee protection mechanisms, transfer the amount to another signatory as agreed with the student (or the student's parent or legal guardian).

Grievance procedures

31 Outcome 9: dealing with grievances

Signatories must ensure that all international students have access to proper and fair procedures for dealing with grievances.

32 Process

- (1) Each signatory must ensure that—
 - (a) it has an effective internal process for addressing grievances by its international students; and
 - (b) its international students are informed about that process.
- (2) Each signatory must advise its international students—
 - (a) of the availability of recourse to the code administrator or DRS or any other relevant authority if a student cannot access the internal grievance process or is dissatisfied with the outcome or experience of using that process; and

- (b) how to make a complaint to the code administrator or to seek resolution of a financial dispute under the DRS.

Compliance with International Student Contract Dispute Resolution Scheme

33 Outcome 10: compliance with International Student Contract Dispute Resolution Scheme

Signatories must comply with the DRS rules.

34 Process

- (1) Each signatory must ensure that it is familiar with the DRS rules and ensure compliance with those rules in a dispute to which it is a party.
- (2) Failure to comply with the DRS rules is a breach of this code and may trigger sanctions by the code administrator.

Part 5
Breaches of code

35 Reporting breach of code

- (1) Any person may—
 - (a) complain to the code administrator that the code has been breached; or
 - (b) refer any issue relating to an alleged breach of the code to the administrator.
- (2) The code administrator—
 - (a) must publish its processes for receiving and dealing with a complaint or referral; and
 - (b) may prescribe forms for use in making a complaint or referral.

36 Code administrator's response to complaint or referral

- (1) On receiving a complaint or referral under clause 35, the code administrator must decide whether the complaint or referral appears to involve a breach of the code warranting further investigation.
- (2) If the code administrator decides that further investigation is warranted, it must—
 - (a) make a record of, and investigate the alleged breach; and
 - (b) notify the person who made the complaint or referral of the decision to investigate.
- (3) If the code administrator decides that further investigation is not warranted, it must consider the following options and act accordingly:
 - (a) refer the complaint or referral to another agency;
 - (b) deal with the complaint or referral informally;

- (c) terminate the complaint or referral.
- (4) In investigating a complaint or referral, the code administrator may assist the person making the complaint or referral (or refer that person to assistance) if assistance is necessary for facilitating the investigation (for example, assistance to overcome a language barrier).

37 Monitoring compliance with code

- (1) Each signatory must undertake and document self-reviews (at the frequency specified by the code administrator) of its performance against the required outcomes and processes set out in this code.
- (2) The code administrator must monitor each signatory's performance against the required outcomes and processes by scrutinising the signatory's self-review reports and any other information that the code administrator considers appropriate.
- (3) The code administrator may investigate the performance of a signatory if it is concerned that the signatory does not comply, or is at risk of not complying, with this code.
- (4) An investigation—
 - (a) may be undertaken either on the code administrator's own initiative or as a result of information provided to it, including a complaint or report of a breach of this code; and
 - (b) may include (but is not limited to) the following steps by the code administrator, subject to the consent of the signatory to each of these steps:
 - (i) making a site visit;
 - (ii) inspecting and obtaining relevant documents held by the signatory;
 - (iii) interviewing staff and students as appropriate.
- (5) A signatory must comply with reasonable requests by the code administrator in the course of an investigation for access to documents, staff, and students.
- (6) The code administrator may,—
 - (a) if practicable and appropriate, consult and share information with education quality assurance agencies and relevant government agencies for the purpose of agreeing interventions for the improvement of the code or compliance with it; and
 - (b) receive and consider information provided by education quality assurance agencies and relevant government agencies for the same purpose.

38 Sanctions for breach of code

The code administrator may impose a sanction for breach of this code in accordance with section 238G of the Act.

Part 6

Code administrator

39 Reporting and publishing obligations

- (1) The code administrator must include in its annual report a report on its activities in administering this code.
- (2) If the code administrator in the course of investigation finds any systemic issue related to education quality or a serious breach of this code, the code administrator must report that issue or breach to education quality assurance agencies and any relevant government agency.
- (3) The code administrator may, for the limited purposes set out in subclause (4), disseminate or otherwise publish a summary of the investigation and outcome of a breach of this code, subject to appropriate safeguards and redactions for protection of privacy.
- (4) The purposes referred to in subclause (3) are—
 - (a) keeping education providers, students, and other educational interest groups informed; and
 - (b) demonstrating the process of investigation and decision making under this code.
- (5) The code administrator must take reasonable steps to publicise this code to education providers and to international students.

40 Disclosure of conditions and compliance notices

The code administrator may decide that certain conditions imposed and compliance notices issued under Part 18A of the Act must be disclosed to prospective international students.

Dated at Wellington this 2nd day of March 2016.

Hon Steven Joyce,
Minister for Tertiary Education, Skills and Employment.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 10 March 2016.

Reprints notes

1 *General*

This is a reprint of the Education (Pastoral Care of International Students) Code of Practice 2016 that incorporates all the amendments to that code as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 150(2)