Briefing Note: Meeting with the Vice-Chancellors of New Zealand Universities

To: Hon Chris Hipkins, Minister of Education

Date: 28 November 2019

Priority: Low

Security Level: In Confidence

METIS No: 1212294

Drafter: Te Owaimotu Crawford

DDI: S 9(2)(a) OIA

Key Contact: Ewan Delany

DDI: Round Robin: No

Messaging seen by Communications team:

No

Purpose of Report

The purpose of this paper is for you to:

Note that you are meeting with the Vice-Chancellors of New Zealand’s universities on Thursday 5 December, between 11.30am – 12.15pm.

This briefing provides you with an agenda, talking points for the meeting, the latest correspondence from Universities New Zealand (UNZ) as well as the draft response, and an analysis of UNZ recommendations on the Education (Pastoral Care) Amendment Bill.

Summary

- UNZ has indicated they would like to discuss the following items:
  o Student pastoral care – legislation, code of practice and quality assurance,
  o Proposals in their 8 November letter (Annex 4),
  o Tertiary Education Strategy – funding review update and work-integrated learning,
  o Additional matters likely to impact the university sector in 2020.
- We have attached a suggested agenda as Annex 1, and talking points as Annex 2. Officials will also be present to support you.
Proactive Release

It is intended that this briefing is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree

Andy Jackson
Group Manager – Tertiary Policy
Graduate Achievement, Vocations and Careers

29/11/2019

Hon Chris Hipkins
Minister of Education

7/12/19
Background

1. You are meeting with the university Vice-Chancellors (VCs) on Thursday 5 December between 11.30am – 12.15pm.Officials will be available to support you at this meeting. You meet regularly with the VCs as Universities New Zealand (UNZ), the last meeting was in June 2019 [METIS 1193166 refers].

2. You have progressed a number of items in your Education Work Programme since you last met with UNZ in June 2019. This meeting will provide you an opportunity to discuss those items, particularly those that affect the university sector, such as the Code of Practice for Pastoral Care and the new Tertiary Education Strategy.

3. The VCs expected to attend are:
   a. Derek McCormack, Auckland University of Technology – Chair, UNZ
   b. Professor Stuart McCutcheon, University of Auckland (who is due to continue in his role until March 2020)
   c. Professor Neil Quigley, University of Waikato
   d. Deputy Vice-Chancellor People and Culture, Alan Davis, Massey University (in place of VC Professor Jan Thomas, Massey University)
   e. Professor Grant Guilford, Victoria University of Wellington
   f. Professor Cheryl de la Rey, University of Canterbury
   g. Professor Bruce McKenzie (acting), Lincoln University
   h. Professor Harlene Hayne ONZM, University of Otago

4. UNZ, through its Chief Executive – Chris Whelan, has indicated that they would like to discuss the following items:
   a. Student pastoral care – legislation, Code of Practice and quality assurance,
   b. Proposals in their 8 November letter,
   c. Tertiary Education Strategy – funding review update and work-integrated learning,
   d. Additional matters likely to impact the university sector in 2020.

5. This briefing notes provides you with an agenda outlining these matters (Annex 1), as well as talking points to support you at this meeting (Annex 2).

Student pastoral care – legislation, code of practice and quality assurance

6. Work on developing a code of practice for the pastoral care of domestic tertiary students is continuing. Ministry officials are working closely with UNZ staff and student services directors, and appreciate their input.

7. The work includes:
   a. Education (Pastoral Care) Amendment Bill (the Bill),
   b. development of an interim code,
   c. implementation of the interim code, including delegation to UNZ,
   d. Tertiary Education Institution (TEI) independent audits and ongoing independent investigation,
   e. development of an ongoing code of practice.
Education (Pastoral Care) Amendment Bill

8. The Bill was reported back to the House by the Education and Workforce Committee (the Committee) on Tuesday 26 November and is awaiting its second reading. Twenty two submissions, and an additional one from the Regulations Review Committee, were received on the Bill. The Committee heard oral evidence from 11 submitters and the Privacy Commissioner. UNZ made a written and oral submission.

9. In its written submission, UNZ expressed qualified support for the Bill, saying: “New Zealand universities accept the inevitability of mandatory standards for the pastoral care of students and want to work with Government to develop a workable, realistic Code of Pastoral Care for domestic and international students.”

10. UNZ made a number of recommendations about the Bill. These are set out in a table in Annex 3, along with Ministry officials’ responses to those recommendations. Officials made changes to the Bill in response to recommendations from UNZ relating to the following areas:

   a. the ability for the Minister to issue one code of practice for both domestic tertiary and international students,
   b. limits on entry and inspection provisions for the code administrator,
   c. the scope of quality improvement notices being limited to the code,
   d. a limitation period for the dispute resolution scheme, and
   e. the definition of serious harm.

11. UNZ has indicated that they still have concerns around the dispute resolution scheme and its application to prospective students. We consider that this is managed by the eligibility provisions of the Act and can be further managed through the dispute resolution scheme rules (to be developed in 2020).

Development of the interim code

12. On 14 October 2019, Cabinet agreed to amend the Education Act 1989 to empower the Minister of Education to create a code of practice for the pastoral care of domestic tertiary students, with an interim code to be in place from 1 January 2020 and an ongoing code to be created in 2020.

13. The two main components of the interim code with associated objectives are:

   a. a general duty of pastoral care: to clarify and enhance the existing requirements for TEOs in relation to student wellbeing so that tertiary learning environments consistently, appropriately and effectively support students to be well.
   b. specific requirements for tertiary education providers that offer student accommodation to support the safety and wellbeing of students and improve the consistency of standards in student accommodation.

14. There has not been an opportunity for wide consultation and engagement on the interim code, given the timeframes for its development. The interim code has, however, been shaped by engagement and feedback with a sector and learner advisory group of experts, who were nominated by tertiary education peak bodies.

15. We suggest you thank UNZ for assisting with this interim group through two delegates;
16. The interim code reflects relevant expectations from the Education (Pastoral Care of International Students) Code of Practice in relation to student wellbeing. It also draws on the voluntary Code of Practice for tertiary student accommodation providers exempt from the Residential Tenancies Act 1986 (under section 5B). The interim code embeds the outcomes of the Child and Youth Wellbeing Strategy as the basis of a general duty of pastoral care, with flexibility to recognise that students may be adults.

17. We currently expect that you will report back to Cabinet on Monday 9 December to seek approval on the interim code content.

18. You sent a copy of the draft interim code to peak bodies in the tertiary sector, including UNZ. Officials considered feedback from UNZ and made two adjustments from the three issues raised.

Implementation of the interim code, including delegation to UNZ

19. You have signalled your intention to appoint NZQA as the code administrator for the code of practice for the pastoral care of domestic tertiary students. NZQA is already the code administrator for the current code of practice for international students. NZQA is likely to delegate some code administration functions to UNZ, with your approval. As this will be a formal delegation under the Bill, reporting to NZQA will be required. We will provide you with additional advice on the likely scope of this delegation, before you are asked to approve it.

20. UNZ will likely wish to discuss the delegation with you. We suggest you encourage UNZ to talk about how they consider they can best give effect to the interim code and the scope of the delegation. You could suggest the possibility of the delegation being developed in stages if UNZ needs time to consider how it can best give effect to the expectations. The funding would be adjusted accordingly.

21. As part of its role as code administrator, NZQA (and UNZ to the extent of its delegation for the university sector) would have the following functions and responsibilities:

- **Building capability and establishing quality assurance** arrangements to support the interim code. This will include developing guidelines for the interim code and running workshops to build the capability of tertiary education providers.

- **Operation of a complaints processes**: if there is a potential breach of the code, NZQA and UNZ need to be able to investigate the complaint and ensure that any code breach is adequately addressed.

- **Regular updates on performance of the system** and the performance of NZQA in giving effect to the changes. For the university sector, NZQA will likely ask UNZ for information about university performance, including how complaints are handled.

- **Feedback on any problems with implementation** of the interim code to inform development of the ongoing code.

22. Ministry and NZQA officials propose that a capability-building approach be adopted in 2020, with a focus on ensuring that tertiary education providers understand and give effect to their student wellbeing responsibilities, particularly their student accommodation obligations.

TEI independent audits and ongoing independent investigation

23. The Tertiary Education Commission (TEC) has recently provided you with two Aide-Memoires about TEIs student accommodation services (AM-19-01351 and AM-19-01357). The first Aide-Memoire provided a high level overview and initial analysis of
TEI accommodation facilities. The second Aide-Memoire provided an overview of standard operating procedures and/or codes of practice for TEIs’ accommodation facilities and services.

24. The TEC has requested that each TEI complete an independent audit of their accommodation services. The TEC is due to receive information on these independent audits from TEIs by the end of December.

25. There has been some questioning from universities around the need for independent audits before a code of practice is issued. The independent audits are occurring now as it is important to have a stocktake of current arrangements, and this will inform development of the ongoing code.

26. The TEC will provide you with a third Aide-Memoire, informed by each TEI’s independent review of their processes, systems and procedures utilised within their wider accommodation services, once this information has been received and analysed by the TEC.

27. The University of Canterbury is conducting an independent investigation into the death of a student at Sonoda Villages hall of residence. The indicated timeframe for results of this investigation, which is being led by former Judge Toogood, is the end of November.

28. Both the University of Canterbury and UNZ have indicated they will respond and make changes following the results of the investigation.

**Development of an ongoing code of practice**

29. This code will be developed with sector engagement. It is expected that development of this ongoing code will take place mainly in the first half of 2020 so providers are able to prepare for its implementation at the beginning of 2021.

30. The content of the ongoing code will have more detailed processes for general pastoral care, is likely to expand on the accommodation processes and will be more informed by the perspectives of providers, staff, and learners and their families.

**Proposals in 8 November letter**

31. You received a letter from UNZ, dated 8 November 2019, which was also copied to the Prime Minister, and Ministers Robertson, Salesa, Woods, Martin and Davis (Annex 4).

32. The letter proposes a redirection of second year fees-free investment to two major areas: student support and technology infrastructure. A draft response, which your Office has provided feedback to officials on, is attached at Annex 5.

33. This meeting provides you with the opportunity to expand upon your response and reinforce key messages, including:

   a. S 9(2)(f)(iv) OIA

   b. Government shares the sector’s commitment to achieving equitable education outcomes for Māori, Pacific peoples, and students from low socio-economic backgrounds. It supports initiatives to share good practice in engaging with learning and services or supports to achieve this.

   c. S 9(2)(f)(iv) OIA
i. TEIs are autonomous institutions which should manage their assets to ensure the efficient use of national resources. TEIs’ capital asset management is expected to provide active stewardship of resources for present and future customers.

Tertiary Education Strategy

34. You have decided to delay the release of the new Tertiary Education Strategy (TES) to fully respond to all consultation feedback and ensure its alignment with the Statement of National Education and Learning Priorities (NELP). The current TES will be extended in the interim. A new TES will be published alongside a NELP in early 2020.

35. Consultation on the TES ran for six weeks (17 September – 25 October). VCs engaged in this consultation both on behalf of their individual institutions as well as a collective (UNZ), through written submission. NELP consultation finished on 25 November.

36. The VCs have indicated that they would like to see a further consultation on a separate draft TES early next year. We have advised them that this is unlikely.

37. UNZ supports the 30-year Vision for the education system, however, has reservations about the efficacy of the whole-of-system integrated approach due to the breadth of its application to the entire education system, and high-level nature. According to UNZ, these qualities do not make clear how some of the current trade-offs and tensions in the tertiary system will be managed or balanced.

38. In its submission, UNZ supported the aspirational nature of the TES, however, its view is that achieving some of its goals will require:
   a. additional resourcing; and/or
   b. new and innovative ways of doing more within existing resourcing; and/or
   c. reprioritising existing resourcing with consequential trade-offs.

39. Officials consider that some of the proposed actions and shifts in the TES for tertiary education organisations should not be seen as dependent on changes to funding, for example addressing racism, bias and low expectations and delivering culturally and personally responsive teaching, and should be considered base-line best practice.

Additional issues likely to impact the university sector in 2020

40. UNZ may also be interested in:
   a. Funding Reviews and Unified Funding System
   b. Opportunities for Universities through the Reform of Vocational Education
c. The Performance-Based Research Fund Review

d. Enhancing Student Voice in Tertiary Education

e. Tomorrow’s Schools Review.

Funding Reviews and Unified Funding System

41. Officials are working on ten active funding policy workstreams. In regards to the reviews of funding for equitable outcomes and for work-integrated learning, any changes to funding design will build off work on the unified funding system.

42. You have signalled to the sector that you intend to consider the design of the funding system for degree level and postgraduate provision, once work on unifying the funding system for learning at levels 3 to 7 is complete. Some of this is likely to involve re-balancing existing funding.

43. The new unified funding system for vocational education will apply to a small proportion of delivery in the university sector’s provision (i.e. the system will only apply to all Level 3 to 7 delivery (excluding degrees)).

Opportunities for Universities through the Reform of Vocational Education

44. Universities will be able to benefit from the vocational education system’s strengthened industry leadership. While universities will not be covered by Workforce Development Councils’ (WDCs) standards setting powers, they are likely to offer some certificates and diplomas that will draw on industry skills needs information. While not mandatory, universities would also likely benefit from engaging with WDCs to gain industry input to their higher-level qualifications in professions such as education, social work, engineering, health professions, etc. This would be particularly beneficial where diploma-level qualifications within the scope of the WDC (e.g. provided by the NZIST) could contribute towards entry into a university degree-level qualification.

45. There may also be opportunities for universities to get involved in CoVEs. Two pilot CoVEs will be established in the Construction and Primary sectors and are expected to be up and running in early 2020, following an open application process. While CoVEs must be led by and hosted at either a regional subsidiary of the NZIST or a wānanga, universities could be part of a consortium that applied for funding to establish one of these pilot CoVEs.

Performance-Based Research Fund (PBRF) Review

46. Minister Salesa is lead Minister on the PBRF, which is currently being reviewed by an independent panel (the panel) led by Professor Linda Tuhiiwai Smith.

47. UNZ has been interested in the progress of the Review and provided the panel with a written submission when they carried out sector consultation (along with Komiti Pasifika). UNZ also met with the panel, as did the UNZ Research Committee. They are generally of the view that the PBRF has had a positive influence on the research and education system within their institutions and would caution against major changes to the fund.

48. The PBRF is a performance-based funding system to encourage and reward excellent research in New Zealand’s degree-granting organisations. It does not fund research directly but supports research, including post-graduate level teaching support.

49. The PBRF is a capped pool (currently $315 million per year) and is a mixed performance-assessment regime that employs both peer review processes and performance measures. New Zealand’s eight universities will receive the vast majority of the funding under the PBRF in 2019 (96.7%).
50. The panel is due to provide Minister Salesa with their independent report by 31 January 2020 and she is due to report back to the Social Wellbeing Committee by April 2020. Public consultation on any proposals for change would likely take place around May 2020. UNZ will be provided with an early opportunity to see the report.

Enhancing Student Voice in Tertiary Education

51. You recently consulted on options to enhance student voice, including:
   a. enhancing student voice status quo through increasing accountability, greater support, and sustainable resourcing,
   b. making structural changes to enhance student voice, and
   c. establishing a National Centre for Student Voice.

52. In its submission, UNZ noted that universities see meaningful student voice as both important and valuable, but must operate in ways that reflect the practical challenges and realities, and sometimes competing goals and objectives of universities. In this regard, UNZ proposed four recommendations to enhance meaningful student voice:
   a. **Good practice and upskilling** including, one organisation nationally responsible for developing good-practice guidance and providing training and support where students cannot get this to an adequate level at their own institutions.
   b. **One national student body** that can act on behalf of all other national student bodies and the main university students’ associations when contributing to processes requiring meaningful student voice (similar to the function NZUSA performs currently); is resourced to support student representatives to develop responses to national or regional issues, as well as logistical support when required; and, can appoint student representatives to key national committees for periods of at least two years.
   c. **Consult international exemplars** to determine how issues around ‘sustainability’ (i.e. the churn of student representatives) might be best addressed, supported and resourced.
   d. **Encourage students to see the value in taking on representative roles**.

53. We are in the process of analysing submissions from the consultation on enhancing tertiary student voice. Following, this we will provide you with a summary of what was heard during consultation and advice on how to further develop the focus areas detailed in the discussion paper.

Tomorrow’s Schools Review

54. Though not directly related to tertiary education, UNZ may also welcome an update on progress on the Tomorrow’s Schools Review, as a major review included in your Education Work Programme.

55. From April 2018 to June 2019, the Tomorrow’s Schools Independent Taskforce conducted a review of the compulsory schooling system, with its final report *Our Schooling Futures: Stronger Together / Whiria Ngā Tūāhititini* being released on 12 November 2019.

56. In response to the Taskforce’s Report, the Government has made decisions on a range of proposals that seek to make the education sector a more networked, responsive and supported system. These proposals include:
   a. more responsive, accessible and integrated local support to schools through the establishment of a separately branded business unit within the Ministry of Education (the Education Service Agency);
b. stronger arrangements to underpin principal leadership of the schooling system; and

c. a better balance between local and national responsibilities for school property and network provision.

57. The Government has prioritised areas that will make the greatest difference to improving equity and excellence for learners/ākonga and their whānau, and that will establish the conditions, attitudes and behaviours necessary to ensure that system transformation unfolds over time in a way that is self-sustaining and self-reinforcing.

Annexes

Annex 1: Agenda

Annex 2: [Redacted]

Annex 3: Analysis of UNZ recommendations on the Education (Pastoral Care) Amendment Bill.

Annex 4: s 9(2)(ba)(i) OIA

Annex 5: [Redacted]
Annex 1: Agenda

Universities New Zealand, through its Chief-Executive – Chris Whelan, has indicated that the Vice-Chancellors would like to discuss:

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<thead>
<tr>
<th>Item</th>
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<tr>
<td>1. <strong>Student Pastoral Care</strong></td>
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<tr>
<td>- Legislation</td>
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<td>- Code of Practice</td>
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<td>- Quality Assurance</td>
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<td>2. <strong>Proposals in letter – 8 November</strong></td>
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<td>3. <strong>Tertiary Education Strategy</strong></td>
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<td>- Funding review and Work-Integrated Learning</td>
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<td>4. <strong>Any additional matters likely to impact the university sector in 2020</strong></td>
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<td>- Reform of Vocational Education</td>
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Annex 3: Analysis of UNZ recommendations on the Education (Pastoral Care) Amendment Bill
### Universities New Zealand Submission on the Education (Pastoral Care) Amendment Bill

<table>
<thead>
<tr>
<th>Submission</th>
<th>Officials agree - and led to a change to the Bill</th>
<th>Officials agree - but proposal does not require a change to the Bill, or can be done another way</th>
<th>Officials do not agree</th>
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<td><strong>General</strong></td>
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<tr>
<td>Support the purpose of the Bill but note that in its current form the Bill creates issues and inconsistencies that would not deliver on its intended outcomes.</td>
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<td><strong>Codes of practice (new section 238G)</strong></td>
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<td>The terms used in in new section 238G(2) are too broad and should be clarified. Definitions lacking for what is ‘reasonable’, ‘as far as possible’, ‘ensuring […] domestic students have a positive experience that supports their educational achievement’.</td>
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<td>-</td>
<td>These phrases are commonly used legal wording.</td>
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<td>Consistency with existing legislation in terms of definitions is important.</td>
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<td>Some changes to definitions in the Bill are proposed.</td>
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<td>The Bill needs to allow flexibility so different levels of pastoral care can be provided appropriate to students’ circumstances.</td>
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<td>These matters can be addressed in the code itself.</td>
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<td>There should be only one code for both international and domestic students as it would be onerous to have two parallel reporting and QA processes for the same range of services.</td>
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<td>The Bill will be changed to make it explicit that the Minister has flexibility to issue either one or two codes.</td>
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<td>The Bill should include principles the Minister must consider before issuing any code.</td>
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<td>New section 238G(3) already sets out the scope of the code and any code that is issued will need to be consistent with relevant legislation.</td>
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<td><strong>Administration of codes, including entry and inspection (new section 238H)</strong></td>
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<td>Should appoint the same administrator(s) to both domestic and international codes and support an ability for the code administrator to</td>
<td>-</td>
<td>The Minister is able to appoint a code administrator after considering</td>
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delegate their responsibilities. NZQA should be the code administrator with a delegation to UNZ.

The entry and inspection provisions are incompatible with the student’s privacy. The rights to enter and inspect should be limited to purposes of monitoring compliance with the code and require a reasonably grounded suspicion of breach.

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<tr>
<th>Three main changes:</th>
<th>The code administrator can only enter or inspect within its compliance and monitoring role.</th>
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<tr>
<td>• 24 hours' notice for inspection of a student’s room,</td>
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<td>• Powers of entry should be subject to the student’s consent, and</td>
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<td>• A student does not need to be present if they consent to entry and inspection in their absence.</td>
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**Compliance (new sections 238I to 238L)**

Would like to see the code focus on improvement and fostering of best practice, with compliance measures as a final option.

The Bill has a focus on the legal powers needed to implement the code administrator role, rather than the wider range of education and information interventions available to the code administrator in order to promote good practice.

The provider should first be given the opportunity to respond or remedy the situation prior to a code administrator publishing a quality improvement notice.

The scope of quality improvement notices should be limited to matters in the code.

Section 238(1) should be amended so quality improvement notices are limited to matters contained in the code.

In practice, the code administrator would likely give a provider an opportunity to reply to allegations before a notice is issued. A further right of appeal beyond judicial review is not required.

**Offence and penalty provisions (new sections 238S to 238U)**

The proposed offence in new section 238S does not, on its face, involve one of strict liability, as ‘reasonable excuse’ is not the same as a ‘lack of fault’. If it is intended to be a strict liability offence, clearer wording be used within new section 238S.

This is not intended as a strict liability offence. The reference to ‘without reasonable excuse’ includes a mental element that means that strict liability is not present.

The definition of serious harm for criminal offence is prescriptive and immediately

The current definition does not escalate every issue to
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<tr>
<th>Escalates every issue to a serious harm issue, which may not always be appropriate or proportional, and may prevent precautionary steps being taken early on.</th>
<th>'serious harm', because any serious harm under this provision needs to come from a breach of the code.</th>
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<tr>
<td>The level of maximum fine for criminal offence or maximum civil pecuniary penalty is significant. It is difficult to assess their impact without having regard to the final code. The penalty provisions should be reviewed and/or implemented once the permanent code of practice has been finalised in 2021.</td>
<td>The maximums will apply to a wide range of variously sized providers. There is no clear basis for setting sub-categories of provider with different maximums.</td>
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<td><strong>Dispute Resolution Scheme (new sections 238M to 238P)</strong></td>
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<td>New section 238M(2) has a wider application than disputes relating to the code. This could have the potential for it to be heavily used.</td>
<td>The amount of complaints brought before the DRS will be limited by subsection 238M(5), which requires the student to first try to resolve the dispute with their provider or signatory provider.</td>
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<td>The definition of student claimant should be limited to students currently enrolled at the university and the reference to 'prospective students' removed, as this is a limitless group. A statute of limitations should be applied to former students, with a limit of seven years (in line with the university retention of student records under the Public Records Act 2005).</td>
<td>A limitation period of seven years from when the complaint is raised by the student should be added to section 238M. The reference to 'prospective' students is limited by the definition of 'student claimant' in section 238D to a student who &quot;[intends] to be, or is in the process of being, enrolled by the provider or signatory provider&quot;.</td>
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<tr>
<td><strong>Interpretation (new section 238D)</strong></td>
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<td>It is concerning that the term 'serious harm' is open-ended, as it is an integral aspect of the proposed offence in new section 238S. 'Serious harm' could extend to cover accidents, such as breaking a limb, which are not uncommon at inter-college sports events. The term is not defined in code of practice for international the Education Act 1989, or the</td>
<td>The Bill’s definition of serious harm in s 238D should be amended to: a. remove the reference to treatment, b. refer to serious and detrimental ongoing effects for the welfare of the student.</td>
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<td>Health and Safety at Work Act 2015. The definition of the term should be aligned with other relevant legislation.</td>
<td>The application of section 238S is limited by the need for a breach of the code as well as serious harm that occurs as a result of that breach.</td>
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The proposed definition of 'student accommodation' is ambiguous. The term implies an unrealistic requirement for pastoral care responsibilities for all domestic and international students, irrespective of where they are living.