



EDUCATION REVIEW OFFICE
Te Tari Arotake Mātauranga

Guidelines for Hostel Assurance Statement and Self-Audit Checklists

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Introduction

Hostels with student boarders aim to provide a safe physical and emotional environment for the students using that facility.

The Education (Hostels) Regulations 2005¹ provide for:

- Licensing of hostel owners, and checks on people who operate the hostel;
- Minimum standards for hostel premises and a code for management practices;
- Direct intervention options where serious safety concerns in a hostel are identified.

Review reports prepared by the Education Review Office (ERO) inform the hostel owners, hostel staff, parents, students, the Ministry of Education, and the Minister of Education of the provision of a safe physical and emotional environment for students in hostels.

The legal framework described above provides a baseline for all hostel owners. ERO wants to know that hostel owners are taking all reasonable steps to meet the legal requirements with which they must comply in order to promote care for students living at the hostel.

The Education Review Office carries out reviews of school hostels as part of regular education reviews of schools under sections 470 to 473 of the Education and Training Act 2020. This may include instances where private boarding hostels provide accommodation and the main group of boarders are enrolled at a registered school.²

¹ Note: this Regulations continue to apply under clause 4, Schedule 1 [Saving provisions - [Legislative instruments continued](#)] of the Education and Training Act 2020. [Education \(Hostels\) Regulations 2005](#) – www.legislation.govt.nz

² Enrolled in a school that is a State school, a State integrated school, or a school registered under [Schedule 7 Private schools](#) of the Education and Training Act 2020.

Compliance Issues

Compliance with legal requirements is an integral part of the provision of high quality care. The main focus of the ERO review is the provision of a safe physical and emotional environment that supports learning for student boarders.

ERO places significant reliance on the information given by hostel owners as to whether they are taking all reasonable steps to meet their legal obligations. Hostel owners are asked to provide assurance to ERO about legal compliance. Where there are areas of non-compliance, hostel owners are asked to advise what action they are taking to achieve compliance.

In order to help with this process, ERO has developed the *Guidelines for Hostel Assurance Statement and Self-Audit Checklists* that include:

- a brief outline of the legal requirements with which hostel owners must comply;
- checklists to be completed by hostel owners to assist hostel owners, and ERO in reviewing legal compliance; and
- an assurance statement to be signed by hostel owners providing evidence of compliance with legal requirements.

The completed checklists and assurance statement are used by ERO to help the scoping and planning stages of the review.

Note: The *Guidelines for Hostel Assurance Statement and Self-Audit Checklists* do not cover every legal requirement with which hostel owners must comply. Information in the *Guidelines* may not represent the official version of Acts, Regulations and other legal requirements. In any situation hostel owners should refer to the legislation.

The Self-Audit Checklists are part of the hostel owner's self-review process. You should seek professional advice especially in the application of the health and safety at work legislation if you are uncertain about specific matters. If any significant issues or risks are identified under any sections of the Self-Audit Checklists, these will be discussed during the review and referred to other agencies as appropriate.

SECTION ONE

Administration Compliance Guide

Key Legislation

- The Education and Training Act 2020
- Education (Hostels) Regulations 2005.
- Privacy Act 2020.
- Public Records Act 2005.

The Nature of Hostels

The Education and Training Act 2020 defines 'hostel' as "a boarding establishment used mainly or solely for the accommodation of students enrolled at a registered school".

Education (Hostels) Regulations 2005

The Education (Hostels) Regulations 2005 ["Hostel Regulations"] clarify the above definition and apply to hostels if they are:

- i. used for the accommodation of five or more students of whom none is in any way a family member of, or related to, the owner; and
- ii. each student's accommodation is provided for valuable consideration and for one or more periods each of which is longer than three consecutive nights.

The definition covers a wide range of boarding establishments, for example, residential special schools, health camps, hostels operated by state and state-integrated schools, and private hostels serving groups of international students attending registered schools.

These Regulations do not cover:

- private boarding arrangements, where the homeowner provides accommodation to less than five students.
- boarding establishments where students attending a registered school are not the main group of boarders (for example, a backpacker hostel or university hostel).
- hostels that are used in an emergency for a period of up to 3 months or a longer period approved by the Ministry of Education.

The Hostel Regulations prescribe a system of licensing for hostels, set out minimum standards that apply to hostel premises and facilities and a code of practice relating to the management of hostels.

Note: Under the Hostel Regulations “licensee” means the holder of the licence and “owner” means the person who is lawfully entitled to occupy, and is operating a hostel at the hostel premises. The Hostel Regulations place separate duties on the licensees and owners, who may be the same person in many circumstances.

Licensing

An application for a licence must be made by or on behalf of the hostel’s owner, and the licence renewal application must be made by, or on behalf of the hostel licensee on a form provided by the Ministry of Education [MOE].

In determining whether to grant or renew a licence, the Ministry of Education may be informed by ERO’s most recent report on the review of the hostel and may consider that report in helping it to be satisfied that the hostel has suitable premises and facilities, is complying with the minimum standards, and the code of practice relating to the management of the hostel under the Hostel Regulations.

Students are prohibited from boarding at unlicensed hostels. No boarding bursary or government subsidy will be paid in relation to an unlicensed hostel.

Regulation 53 of the Hostel Regulations states that the owner of a hostel must ensure that boarders are not accommodated in the hostel at any time when the hostel is an unlicensed hostel.

The extent, content and form of the licence are set out in Regulation 21. This requires every licence to include the licensee’s full name, address of the licensed premises, the date on which it was granted or renewed, the standard conditions and any special conditions.

Under Regulation 22, a hostel may not accommodate more than a specified maximum number of boarders, determined when the licence is granted or renewed.

Regulation 25 requires the licensee to display the hostel licence in a place easily inspected by visitors. In addition, the hostel licensee must display next to the licence:

1. the full name of each responsible person in the hostel; and
2. a notice which explains the hostel licensee’s duties under Regulation 26; and
3. a notice which explains a procedure for handling complaints made by boarders or boarders’ parents or a Board, about non-compliance with the regulations or conditions of the licence, and in relation to or involving the hostel.

Regulation 26 requires that the licensee must make available to a boarder, a boarder’s parent, or a Board, for copying and/or inspection, a copy of the Education (Hostels) Regulations 2005 and a copy of the hostel’s licence, when requested, and at a time reasonable and convenient to the licensee.

If the licensee is not complying with an area of the Regulations, the MOE has the power to give a formal direction relating to the area of non-compliance. Any formal direction given must be displayed at the hostel next to the licence, where it can be easily inspected by visitors (see Regulation 30).

Code of Practice Relating to Management of Hostels

Policies and Operating Procedures

The owner of a hostel must ensure that the hostel is managed in accordance with written policies and operating procedures maintained by the owner. The owner must make a copy of the policies and procedures available for inspection and copying by a boarder, parent of a boarder or staff member.

The general purpose of the policies and procedures is to ensure that boarders:

- are supported in a positive learning environment;
- are given the opportunity to develop positively within reasonable boundaries;
- feel secure and valued;
- have ready access to people they can trust and confide in, and are supported in raising problems and issues that are of concern to them;
- have ready access to, and a degree of choice about, health and other personal services. (see Regulation 54).

Policy on Relationships and Protection from Ill-Treatment

The policies required by Regulation 54 include a policy on hostel relationships (for example relationships between boarders, or between boarders and staff) and the protection of boarders from ill-treatment.

The purpose of the policy on relationship and protection from ill-treatment must be to help ensure that every boarder:

- is treated with respect and dignity;
- is given positive guidance promoting appropriate behaviour, and by use of praise and encouragement and avoidance of blame, harsh language, belittling or degrading responses;
- is not subject to any form of discrimination, physical ill-treatment, solitary confinement or deprivation of food, drink, warmth, shelter, privacy or protection; and
- is physically restrained only in circumstances in accordance with restrictions and conditions specified in the policy. (see Regulation 55)

The procedures required by Regulation 54 include a procedure for granting the boarders leave of absence from the hostel. Regulation 56(2) sets out the procedures that must be specified for this purpose.

The owner of a hostel must review the policies and procedures required by Regulation 54 at least once every three years. As part of the review the owner must take all reasonably practicable steps to consult the boarders and their parents on the terms of the policies and procedures (see Regulation 57).

Records

The hostel owner must ensure that for each boarder there are created and maintained, among other things, records of:

- the boarder's name, date of birth, and home address or addresses;
- the name and home address of all guardians if it differs from the boarder's address;

- the place at which at least one guardian of the boarder may be reached while boarding at the hostel.

Regulation 59 set out other details, which must be included when creating, and maintaining records.

Under Regulation 60 the hostel owner must ensure that the records required by Regulation 59 are created and maintained with an appropriate degree of confidentiality and retained at least one year after the boarder has left the hostel or if the owner is a public office under the Public Records Act 2005, as required by that Act.

Regulation 60 also provides that the records are available for inspection and copying at any reasonable time by persons authorised under the Education ND Training Act 2020.

Complaints and Procedures

A complaint made by a boarder's parent, a boarder or Board may be made in writing or orally to the hostel owner, concerning hostel non-compliance. The owner must put an oral complaint in writing as soon as practicable.

Regulation 68 sets out the procedure for resolving complaints as follows:

- the hostel owner puts oral complaints into writing as soon as practicable; and
- the complaint is (unless earlier resolved to the complainant's satisfaction) acknowledged in writing within five working days or receipt; and
- the complainant is informed of any relevant internal complaints procedures; and
- the owner's response to the complaint is documented; and
- the complainant receives a copy of all information held by the owner that is or may be relevant to the complaint; and
- the owner decides whether the complaint is justified in accordance with Regulation 69.

Under Regulation 69 the hostel owner must decide whether the complaint is or is not justified within ten working days of receiving the complaint, or additional time is needed to investigate.

If additional time is needed, the owner must decide how much additional time is needed to investigate and decide whether the complaint is justified.

If the additional time required for investigating is more than twenty working days the owner must inform the complainant of this, the reasons for the determination and that the owner is required to decide as soon as practicable whether the complaint is justified.

Note: "*Working day*" is defined in the Interpretation Act 1999 as a day of the week excluding:

- a. A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- b. A day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- c. If 1 January falls on a Friday, the following Monday; and
- d. If 1 January falls on a Saturday or a Sunday, the following Monday or Tuesday.

Regulation 70 requires that after making a decision, the hostel owner must inform the complainant of the reasons for that decision, any proposed actions to be taken, any appeal process that the complainant may use to review the decision, and any relevant external agency that may assist the complainant to investigate the complaint if it is not resolved to the complainant's satisfaction.

Relevant external agencies may include the Chief Review Officer (if the complaint relates to the provision of a safe physical and emotional environment that supports learning for students accommodated in the hostel), the Children's Commissioner³, the department responsible for administering the [Oranga Tamariki Act 1989](#), and the New Zealand Police.

Useful Resources

[The Education \(Hostels\) Regulations 2005: Guidelines](#)

New Zealand Education Gazette (6 March 2006 @ page 18) Official Notices-Education (Hostels) Regulations 2005.

³ Note the Children's Commissioner will be replaced by the Children and Young People's Commission once that agency is established under the [Children and Young People's Commission Act 2022](#)

SECTION TWO

Health, Safety & Welfare Compliance Guide

Key Legislation

- Education and Training Act 2020
- Education (Hostels) Regulations 2005.
- Building Act 2004.
- Health and Safety at Work Act 2015 and Regulations.
- Children’s Act 2014
- Children’s (Requirements for Safety Checks of Children’s Workers) Regulations 2015
- Fire and Emergency New Zealand Act 2017
- Fire Safety, Evacuation Procedures, and Evacuation Schemes Regulations 2018
- Health Act 1956.
- Food Act 2014 and Regulations
- New Zealand Bill of Rights Act 1990.
- Human Rights Act 1993.
- Smoke-Free Environments and Regulated Products Act 1990.
- COVID-19 Public Health Response Act 2020

Introduction

The parents or guardians of student boarders entrust the welfare of their children into the care of the owners of hostels. These families do so with the expectation that their children will be provided with a safe physical and emotional environment that supports their learning.

Hostel owners must be satisfied that the hostel provides a safe and healthy environment for boarders. The educational and social development of children is closely linked to their physical and emotional safety. Children will not learn effectively if they are physically or verbally threatened, or if their living arrangements are unsafe.

Education (Hostels) Regulations 2005

Part 3 of the Education (Hostels) Regulations 2005 sets out the minimum standards for hostel premises and facilities.

Note: Regulation 73 states that the Hostel Regulations do not limit or affect requirements imposed by any other legislation which apply to a hostel, the management of a hostel or hostel facilities, owner or premises.

Procedure for granting boarders leave of absence

Under Regulation 56 the hostel owner is required to have a procedure for granting boarders leave of absence from the hostel.

The procedure for granting leave of absence, must among other things, specify:

- how the boarders may apply for leave of absence;
- conditions that may apply to leave;
- how checks are to be made of the suitability of the places where and people with whom each period is to be spent;
- how recreational and other associated activities are to be assessed to identify any risks involved;
- how records of the boarders' absences on leave from the hostel are to be created and maintained.

Abuse, harassment, or serious neglect of boarders

Under Regulation 58 if the hostel owner believes on reasonable grounds that a person (whether staff member or boarder or not) has, among other things:

- harmed (whether physically, emotionally or sexually) or ill-treated a boarder; or
- subjected the boarder to discrimination, solitary confinement, physical restraint; or
- otherwise abused, harassed, or seriously neglected a boarder; or
- the hostel owner must ensure that the person does not come into contact with the boarder concerned so far as practicable, and require the person to stay off the hostel premises if the owner regards that it is necessary to ensure that no boarder is ill-treated.

The owner must give written notice of the matter to the Ministry of Education within 24 hours of forming the belief, and to at least one of the following, that is, the parents of the boarder concerned or the Department responsible for administering the [Oranga Tamariki Act 1989](#) or the New Zealand Police as well as any other of them as the owner considers appropriate.

The Ministry of Education may cancel the licence if satisfied that the hostel's owner has abused, harassed, or seriously neglected a boarder.

Records

As noted under **Section One** of these guidelines the owner must create and maintain records for each boarder under Regulation 59. Other details to be included in each boarder's record are:

- particulars of every accident and every illness occurring to or experienced by the boarder and any actions taken in response;
- details of any chronic illness and any medication to be taken;
- details of all medicines administered by hostel staff and by whose authority they were administered;
- the names and addresses of people who should be consulted if the boarder is ill or injured; and
- the names and addresses of the people authorised by a guardian of the boarder to collect the boarder from the hostel, and people who are lawfully entitled to or forbidden to have contact with, or access to the boarder.

Supervision and security

Under Regulation 61(3) the owner must ensure that the hostel is at all times staffed with a ratio of staff to boarders present that ensures the safety of the boarders having regard to the number of boarders, their ages and needs, the nature of their activities, the training and qualifications of the staff or other adults concerned.

Regulation 61(4) states that people who have no duties beyond administration, cleaning, food preparation and serving, or maintenance must not be counted as staff.

Supervision on excursions

Regulation 62 states that when boarders are taken on excursions the owner must ensure that there are enough hostel staff or adults to ensure the safety of boarders having regard to the number of boarders, their ages and needs, the nature of the excursion activity, the training and qualifications of the staff or other adults concerned.

Food and drink

Under Regulation 63 the hostel owner must ensure that food is served in the hostel at such times and in such variety, quantity and quality to meet the boarders' nutritional needs. The food must be adequately protected from contamination when stored, prepared and served, and an ample supply of potable water must be available at all times.

Infectious and other diseases

The owner is required to take all reasonably practicable steps to ensure that a boarder or member of the hostel staff suffering from or suspected of suffering from or exposed to infectious disease under the Health (Infectious and Notifiable Diseases) Regulations 1966 is excluded from the hostel for the period of isolation in terms of those Regulations.

Regulation 64 sets out other details of the owner's obligations.

Protection or promotion of health

The owner must ensure that the hostel has an area and facilities for the temporary isolation and care of at least one sick boarder.

A responsible person must take all practicable steps to get medical aid and to notify a parent in the case of an accident or serious illness to a boarder.

The owner must take all reasonably practicable steps:

- to facilitate access by a boarder to a full range of general health and other support services at the boarder's expense.
- to ensure that no member of the hostel staff while at the hostel, and no boarder uses or is affected by alcohol, or any other substance to the extent that it is an actual or potential cause or source of harm to the person or another person or both.

Regulation 65 sets out other details under this heading.

Parents' contact with, or access to, boarders

The owner must ensure that a boarder's parent can have contact with, or access to the boarder whenever the boarder is present at the hostel or no good reason exists to deny that contact or access.

Regulation 66(2) sets out the circumstances in which good reason exists to deny access. Briefly good reason exists if the parent:

- is subject to an order of a court that prohibits contact with or access to the boarder;
- is subject to a warning under section 4 of the Trespass Act 1980 to stay off the premises;
- is suffering from an infectious, or some other contagious disease that is likely to harm the boarders if passed on to them;
- is under the influence of alcohol or any other substance that is an actual or potential cause of harm;
- is exhibiting behaviour that is or is likely to be disruptive to the hostel's operation.

Health and Safety at Work Act 2015 (HSWA)

Under the HSWA, the Person Conducting a Business or Undertaking (PCBU) is a legal entity such as a body corporate. In the context of hostels the PCBU can be the school board or trust board (proprietor) if they are the hostel owner who holds the primary duty of care for, and manages risks to, the health and safety of workers and others arising from the work of the hostel. The PCBU will exercise its primary duty of care by ensuring the health and safety of:

- its workers (e.g. boarding staff, administrators, property managers, volunteer workers etc.) while at the hostel, and on excursions and outside the hostel.
- other workers who are influenced or directed by the PCBU
- others (e.g. boarders, parents, members of the public, and visitors to the premises), by ensuring they are not put at risk from work carried out by the hostel.

Officers of the PCBU, are individual members such as trustees, directors and managers of the hostel occupying a position that allows them to *exercise significant influence* over the management of the hostel. Their role is to exercise *due diligence*, which means that they must take reasonable steps to ensure that the legal entity (as the PCBU) meets its health and safety obligations.⁴

COVID-19 Public Health Response Act 2020

The COVID-19 Public Health Response Act 2020 was passed as standalone legislation to provide a different legal framework for responding to COVID-19. The Act allows the Minister of Health (or the Director-General of Health in specified circumstances) to make orders under section 11 to give effect to the public health response to COVID-19 in New Zealand.

⁴ Seek assistance of a professional advisor if you need advice on any aspect of your health and safety system. For further information refer: [health and safety practical guide for boards of trustees and school leaders](#), and [webspace](#)

- [COVID-19 Public Health Response Act 2020](#)

Building Act 2004

The Building Act establishes a series of minimum safety standards (building regulations), which must be complied with. The purpose of these regulations is to ensure all new buildings and alterations are constructed to a standard that ensures the safety of the occupants.

The purpose of the Building Act 2004 (Section 3) is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that:

- a. people who use buildings can do so safely and without endangering their health; and
- b. buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- c. people who use a building can escape from the building if it is on fire; and
- d. buildings are designed, constructed, and able to be used in ways that promote sustainable development.

Smoke-Free Environments and Regulated Products Act 1990

The purpose of this Act is to prevent, so far as is reasonably practicable, the detrimental effects of smoking and vaping on the health of any person who does not smoke or vape, or who does not wish to smoke, inside any workplace or in certain public enclosed areas. Schools are required to have smoke-free and vaping buildings and grounds at all times.

Hostel premises may in several cases fall within the definition of “*school premises*” under this Act.

“*School premises*” means premises that are:

- a. a registered school; or
- b. facilities, grounds, structures, or other premises, controlled and managed by the managers of a registered school, and used principally for:
 - i. the enjoyment, recreation, or relaxation of the young people attending the school; or
 - ii. cultural or sporting activities (or both) involving, or undertaken for the benefit of, the young people attending the school.

The managers of registered schools or proprietors of integrated schools who are also the employers of the hostel staff have obligations under the Act. The smoke-free requirement may apply to hostel grounds during weekend sports games, fund-raising activities, or community days, as well as when grounds or buildings are rented out by other groups.

New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act provides for the safeguarding of rights in respect of such matters as:

- The right to the observance of the principles of natural justice.
- The right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise.

- The right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.
- The right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
- The right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
- The right to be free from discrimination.

Human Rights Act 1993

Under section 53 of the Human Rights Act it is unlawful for the hostel owner to refuse any person the right to accommodation by reason of any of the prohibited grounds of discrimination such as race, religion, ethnic or national origin. It is also unlawful to impose or seek to impose on any boarder any term or condition by reference to the prohibited grounds of discrimination. Certain exceptions to this rule exist under sections 55 and 56 of the Act.

Pastoral Care for International Students

The Education (Pastoral Care of International Students) Code of Practice 2016 came into force on 1 January 2022.⁵

The new Code of Practice means:

- Education providers will be required to achieve outcomes outlined in this new Code of Practice, following prescribed key processes.
- The Code Administrator, the New Zealand Qualifications Authority (NZQA), has new powers to sanction education providers who do not follow the code.

Clause 26 of the Code of Practice 2016 sets out the obligations of the Code signatory in relation to the accommodation of international students. The Code signatory can be the school board (State schools) or management for private registered schools. In relation to an international student under 18 years who is in the care of a residential caregiver⁶, 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

⁵ You can read the Code [Education \(Pastoral Care of Tertiary and International Learners\) Code of Practice 2021](#).

[*Note for more information go to [New Zealand Qualifications Authority - Mana Tohu Mātauranga o Aotearoa \(external link\)](#)].

⁶ A residential caregiver can include a licensed hostel manager or person responsible for the care of international students in a licensed hostel.

- 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.

Useful Resources

- [The Education \(Code of Pastoral Care of International Students\) Code of Practice 2016 \(external link\)](#) - NZQA website
- WorkSafe's website: <http://www.business.govt.nz/worksafe/about/reform/>
- Human Rights Commission Facts Sheets (www.hrc.co.nz and go to 'resources').
- New Zealand Qualifications Authority - Code of Practice for the Pastoral Care of International Students (www.nzqa.govt.nz)
- Fire and Emergency New Zealand: including information on [Evacuation Schemes](#)

SECTION THREE

Personnel Compliance Guide

Key Legislation

- Education and Training Act 2020
- Education (Hostels) Regulations 2005.
- Employment Relations Act 2000.
- Children’s (Requirements for Safety Checks of Children’s Workers) Regulations 2015
- Human Rights Act 1993.
- New Zealand Bill of Rights Act 1990.
- Health and Safety at Work Act 2015 and regulations.
- Privacy Act 2020
- Protected Disclosures (Protection of Whistleblowers) Act 2022

Introduction

The employment of suitably qualified staff is one of the most important tasks of management. Sound personnel management policies should provide guidance and support for both staff and management in a variety of situations. If the hostel owner is a public body such as a school board then these policies should reflect the principles of being a good employer and promote an environment of trust and open communication.

Hostel owners should also take all reasonable steps to provide a safe and positive working environment for staff.

Education (Hostels) Regulations 2005

Staffing

Regulation 61(2) of the Education (Hostels) Regulations 2005 requires the owner of a hostel to ensure that:

- all permanent staff members are adults; and
- no staff member has been convicted of a crime involving dishonesty and sentenced for that crime within the preceding 7 years, or has been convicted of any offence involving harm to children or violence, or has been convicted of any sexual offence, or is unfit to be a staff member because of mental illness or serious behavioural problems; and

- every person employed or engaged by the owner as a children’s worker (as defined in the Children’s Act 2014) is safety checked in accordance with the CA; and who is not covered a children’s worker, but has regular access or unsupervised contact with boarders is subject to suitability check (including Police vetting) or who visits occasionally is supervised by a staff member; and
- staff and boarders are encouraged to maintain positive relationships with each other; and
- security measures are used to prevent unauthorised access to the hostel’s premises.

The hostel owner must ensure that at all times when boarders are present in the hostel, they are supervised by either a responsible person, or staff who are supervised by a responsible person.

A “*responsible person*” means a person directly involved in, and primarily responsible for, the boarders’ day-to-day care, comfort, health, and safety.

Also note earlier comments under **Section Two** of these guidelines in deciding the ratio of staff members to boarders.

Employment Relations Act 2000

The object of the Employment Relations Act 2000 is to build employment relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship. The Act requires that employers and employees deal with each other in good faith.

Human Rights Act 1993

The Human Rights Act is designed to help ensure that people are treated fairly. It prohibits certain discriminatory practices in relation to the employment and treatment of employees. The grounds of discrimination in section 21 of the Act include religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, sex, employment status, family status, sexual orientation and marital status.

Under the Human Rights Act, employers can be liable for sexual harassment committed by their employees. Hostel owners can work towards providing a safe physical and emotional learning environment for all by developing prevention of sexual harassment policies and procedures for boarders and staff members.

The Act uses an expanded definition of 'employment'. It applies to employees, voluntary workers, people seeking work, and contract workers. This means the Act applies to a number of people who are not covered by other employment legislation, such as the Employment Relations Act 2000, which only applies to employees. The Act covers advertisements, job applicants, employment opportunities and conditions for employees and how employees leave their employment.

Under the Human Rights Act (section 69) and the Employment Relations Act 2000 the management of a hostel may be liable for the occurrence of racial or sexual harassment, or discrimination of any hostel staff by a boarder (see further *Preventing Sexual Harassment in Schools: Human Rights Commission 1996*, and *Racial Harassment in Schools: Human Rights Commission 2001*).

Privacy Act 2020⁷

The Privacy Act is designed to ensure that there are adequate safeguards in the way organisations (including hostel management) collect, use, store and disclose information about boarders, employees and job applicants.

In relation to the manner of collection of personal information, IPP 4 states:

An agency may collect personal information only—

(a) by a lawful means; and

(b) by a means that, in the circumstances of the case (particularly in circumstances where personal information is being collected from children or young persons),—

(i) is fair; and

(ii) does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Section 22 of the Privacy Act sets out 13 information privacy principles that must be followed in relation to matters including:

- the information management collect, hold and use about employees and job applicants; and
- the information management collect, hold and use about boarder's personal matters, such as family circumstances and medical conditions.

Hostel owners must ensure that they are familiar with the principles of the Privacy Act, and that there are policies and procedures in place to ensure personal information is collected, stored, used and disclosed in accordance with those principles.

Section 201 of the Act requires every agency to appoint 1 or more individuals as privacy officers who, amongst other things, is responsible for ensuring the agency complies with the provisions of this Act.

Protected Disclosures (Protection of Whistleblowers) Act 2022

The purpose of the Act is to promote the public interest -

(a) by facilitating the disclosure and timely investigation of serious wrongdoing in or by an organisation; and

(b) by protecting the people who disclose in accordance with this Act.

Under the Act **organisation** means a body of persons (including a body comprising 1 employer and 1 or more employees), whether—

(a) corporate or unincorporate:

(b) in the public sector or in the private sector

Under section 29 of the Act every public sector organisation must have appropriate internal procedures.

⁷ New Privacy Act applies from 1 December 2020.

If the hostel owner is a “*public sector organisation*”⁸ under the Act it is required to have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in or by that organisation.

It will be good practice for hostel owners who are not a “*public sector organisation*” to have similar procedures.

Useful Resources

- www.education.govt.nz
- Human Rights Commission Facts Sheets (www.hrc.co.nz and go to 'resources').

⁸ Refer to section 4 of the Act.

SECTION FOUR

Premises and Facilities Compliance Guide

Key Legislation

- Education and Training Act 2020
- Education (Hostels) Regulations 2005
- Building Act 2004 and Regulations.
- Fire Safety, Evacuation Procedures and Evacuation Schemes Regulations 2018
- Fire and Emergency New Zealand Act 2017

Introduction

The purpose of this section is to focus on the hostel owner's attention on the provision of minimum standards for the hostel premises and facilities under Part 3 of the Education (Hostel) Regulations 2005. This section overlaps in part with **Section Two** (Health, Safety and Welfare).

Education (Hostels) Regulations 2005

Provision of necessary spaces, facilities, and equipment

Regulation 44 requires that the hostel owner, having regard to the number, age range and sex of the boarders, provide all spaces, facilities, and equipment reasonably necessary for:

- boarders' indoor and outdoor recreation;
- quiet activities (for example, study);
- food preparation;
- eating and sleeping;
- toileting, bathing, or attending to personal hygiene and changing of clothing in reasonable privacy;
- laundering of clothing;
- secure storage of boarder's personal effects;
- boarders to meet or to communicate privately (in writing or by telephone, email, or other means), with parents and other people.

Maintenance and safe use of buildings and facilities

Under Regulation 47 the hostel owner must take all reasonably practicable steps to ensure that the hostel's buildings and facilities are kept in good repair and not used in ways that endanger boarders' safety.

Fires, earthquakes, and other emergencies

Regulation 48 states that a hostel owner must ensure that:

- a. a telephone is available for emergency calls to and from the hostel; and
- b. a plan for the boarders' evacuation, care, and temporary accommodation (if required) in emergencies (whether they result in hostel buildings being unsafe or uninhabitable or not) is provided and maintained, and the evacuation procedures are prominently displayed on the hostel's premises; and
- c. all hostel staff are trained in fire and earthquake drills, and in other emergency procedures; and
- d. regular evacuation drills are carried out.

Evacuation plan to include fire evacuation scheme

Regulation 49 states that the plan required under paragraph (b) above must include an evacuation scheme that:

- e. is designed to enable evacuation from the scene of a fire safely and within a reasonable time; and
- f. satisfies all requirements (if any) imposed by or under the Fire and Emergency New Zealand Act 2017 for a fire evacuation scheme for the building or buildings concerned.

Safety and hygiene of premises, equipment, etc

The owner must ensure that the hostel's premises, and (so far as they are used by or accessible to boarders) its furniture, furnishings, fittings, flooring or other surfaces, equipment, and materials comply with all applicable New Zealand Standards; and are kept safe and hygienic (see Regulation 50).

Premises to be kept free of hazards

Every responsible person, staff member, and the owner of a hostel must ensure that, so far as is reasonably practicable, hazards to boarders' safety on the premises are corrected, repaired, otherwise removed, or made inaccessible to the boarders (see Regulation 51).

First aid

Under Regulation 52 the hostel owner must ensure that first-aid equipment and supplies to meet the needs of boarders are provided at the hostel and if the boarders are present in the hostel premises at least one staff member who holds a current first-aid certificate is available at or on or reasonably near the hostel premises.

The above requirement does not limit or affect any duty imposed on an employer (in this case the hostel owner or licensee as employer of hostel staff) by regulations under the Health and Safety in Employment Act 1992 to take all practicable steps to provide first-aid facilities at the place of work (that is, the hostel premises).

Building Act 2004

Refer to comments under **Section Two**

Useful Resources

- *New Zealand Standard (NZS) 4121: 2001: Design for Access and Mobility: Buildings and Associated Facilities* (www.standards.co.nz).
- *Fire and Emergency New Zealand*: including information on [Evacuation Schemes](#)