

The Education (Hostels) Regulations 2005

GUIDELINES

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Guidelines

TO THE EDUCATION (HOSTELS) REGULATIONS 2005

INTRODUCTION

The Education (Hostels) Regulations 2005 ('the regulations') came into force on 1 March 2006. The regulations, under the Education Act 1989 ('the Education Act'), are intended to help ensure the safety of students boarding in hostels. They were developed as a result of consultation with key stakeholders and representative organisations.

All hostels that fit the definition of 'hostel' in the Education Act and the regulations, and their owners, must comply with the regulations. 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. It does not, however, cover private boarding where a homeowner provides accommodation to less than five students. Nor does it cover boarding when students attending a registered school are not the main group of people being accommodated.

These guidelines provide further explanation and should be read in association with the regulations. The headings correlate to the relevant parts and requirements of the regulations to make it easy to read the two together.

WHY ARE THE REGULATIONS NEEDED?

While most hostels are well run and provide safe physical and emotional environments for students, serious safety concerns have been identified in some hostels. During the development of the regulations consideration was given to issues of student safety in hostels that have been raised over a number of years in reports by the Commissioner for Children, the Education Review Office (ERO) and others. Issues raised include bullying, sexual abuse, harassment, physical assault and the related failings of hostel management.

The regulations particularly help to address gaps in other legislation¹ in terms of:

- Consistent, appropriate, and well-understood pastoral care standards and procedures for domestic students in increasingly diverse hostel environments. The safety of international student boarders is already addressed through the administration of the *Code of Practice for the Pastoral Care of International Students*² established under section 238F of the Education Act.

¹ See Appendix A for a summary of some other relevant legislation.

² For further information about the Code, visit <http://www.nzqa.govt.nz/providers-partners/education-code-of-practice/> or contact NZQA on 0800 697 296 or Code.enquiries@NZQA.govt.nz

- Enforcement mechanisms that enable direct intervention where serious safety concerns are identified. Prior to the regulations the government, which also has an interest as a contributor of funding for hostel services (for example, through boarding bursaries), had no ability to intervene decisively to prevent or resolve safety concerns.

Reporting regimes (including ERO reviews) and other information initiatives can encourage and inform good practice. These options, however, are not adequate where the risks of harm (particularly emotional harm) to boarders are unacceptable and hostel operators are not willing or able to address them. Not preventing or resolving unsafe situations in hostels will interfere with students' abilities to learn and achieve. In extreme circumstances it could lead to serious harm. Consultation informing the development of the regulations emphasised the necessity to ensure compliance with minimum standards and for a relatively broad interpretation of the term 'safe'.

ACKNOWLEDGEMENTS

These guidelines have been developed with substantial input from the Ministry's hostel sector advisory group. The Ministry is very grateful for the time and expertise contributed by the individuals and organisations involved.

Sector representatives included hostel managers, school principals, parents/trustees and others, some of whom were nominated by:

- Association of Proprietors of Integrated Schools
- Association of Integrated Schools
- Independent Schools' Council
- New Zealand Boarding Schools' Association
- New Zealand School Trustees' Association
- Office of the Commissioner for Children
- Paerangi Limited (Maori boarding schools)
- Special Residential Schools

FURTHER INFORMATION AND ADVICE

For more copies of these guidelines, application forms, other forms, and additional advice contact the Hostel Licensing Authority via

Email: Hostel.Licensing@education.govt.nz

Post: Hostel Licensing Authority

Ministry of Education

PO Box 1666

Wellington

Summary Overview

EDUCATION (HOSTELS) REGULATIONS 2005

Part 1 Preliminary provisions

Purpose statement, interpretation of certain terms used in the regulations, confirmation of the hostels to which the regulations apply, and how notices are to be served.

Part 2 Licensing for hostels

- Prohibitions related to unlicensed hostels.
- Licence applications, supporting information required (including information about the suitability of the applicant) and declarations.
- The granting and renewal of licences (including with conditions).
- Formal directions to eliminate non-compliance and the suspension and cancellation of licences.
- Fees and fee refunds.

Part 3 Minimum standards for hostel premises and facilities

- Provision of necessary spaces, facilities and equipment (recognising that the physical environment can also contribute to ensuring a safe emotional environment – one that supports positive developmental and social activities, quiet reflection, privacy, security and a free-flow of communication with people outside the hostel).
- Emergency arrangements.

Part 4 Code of practice relating to management of hostels

- Requirements for written policies and operating procedures, including giving boarders:
 - respect and dignity
 - positive guidance and control
 - protection from discrimination, degradation, ill-treatment, solitary confinement or deprivation
 - protection while on leave from the hostel or on hostel excursions.
- Record keeping.
- Staffing, security and supervision of boarders and visitors to hostels.
- Health protection.
- Food safety and nutrition.
- General safety.
- Parents' contact with or access to boarders.

Part 5 Complaints about hostels

- Procedure for making and handling complaints about non-compliance.

Part 6 Miscellaneous Provisions

- Provisions relating to appeals, a transition period, relationship with other enactments and offences.
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PART 1

Preliminary provisions

This part of the regulations confirms that the purpose of the regulations is “to help ensure the safety of students who board at hostels”. This part also defines terms used in the regulations and confirms the hostels to which the regulations apply.

INTERPRETATION

The meanings of some of the terms used in the regulations are defined to assist with interpreting the regulations. For a number of those terms the meanings are actually the meanings given by the Education Act.

The “chief executive” referred to in the definition of the term “authority” is currently the chief executive of the Ministry of Education (the Secretary of Education). In general, the chief executive will delegate roles such as this to one or more of their subordinates.

The term “owner”, as defined by the regulations, would include the proprietor of an integrated school.

HOSTELS TO WHICH THE REGULATIONS APPLY

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

The definition does not cover:

- private boarding arrangements, where a homeowner provides accommodation to less than five students
- boarding establishments where students attending a registered school are not the main group of people being accommodated (for example, a backpacker hostel or university accommodation premises that only accommodate a few school students in addition to their main client groups).

Hostel operators and the Licensing Authority (Authority) will need to judge whether and when the regulations apply to these hostels. Assessment will include the numbers of boarders accommodated, their relationship to the owner, the terms of the accommodation arrangement, and the periods for which they are accommodated.

In emergency situations the regulations provide for the temporary accommodation of a student in an unlicensed hostel, for a limited period of time.

GIVING OF NOTICES

The regulations specify how notices must be given including:

- notice of new directors etc of a body corporate (regulation 27)
- formal direction (regulation 28)
- revocation of a formal direction (regulation 31)
- suspension of licence (regulation 32)
- cancellation of licence (regulation 37)
- notice of abuse, harassment, or serious neglect of boarders (regulation 58)
- notice to the owner of an existing hostel to apply for a licence within a three month period (regulation 72).

PART 2

Licensing provisions

This part of the regulations covers prohibitions relating to boarding at unlicensed hostels, licensing processes, formal directions to eliminate non-compliance, and suspension and cancellation of licences.

PROHIBITIONS RELATED TO UNLICENSED HOSTELS

The regulations are clear that students may not board at unlicensed hostels (as defined by the regulations) and, if they do, there will be no payment of bursaries or other government subsidies for the cost of boarding for those students or hostels. This is because it would not be appropriate for government to subsidise students or hostels that do not comply with the regulations.

APPLICATIONS FOR LICENCES

Who may apply and how

The regulations require the licence application to be lodged by, or on behalf of, the hostel 'owner' (as defined by the regulations) on a form provided by the Authority. Application forms and checklists may be obtained from the Ministry of Education, Education (Hostels) Licence Administrator.

In developing the regulations it was recognised that hostel owners will include an individual person, a partnership involving a number of people (unincorporated), or a body corporate. Bodies corporate represent groups of people who choose to incorporate under different statutes such as the Companies Act, Incorporated Societies Act or the Charitable Trusts Act to establish a separate legal identity from its individual members.

The Ministry is also aware that some state school boards of trustees have delegated to management sub-committees, or have established and appointed other bodies corporate (such as trust boards), to govern and manage hostels separately from the board governing the school. Anecdotal reports indicate that a majority of school hostels have governance and management arrangements that are separate in this way.

Because supporting documents, a signed statutory declaration, and payment are required with your Licence application it must be either posted or otherwise delivered directly to the Licence Administrator (see page 5 for postal and address details).

Floor plan and site plan required

The floor plan and site plan required by the regulations to accompany your licence application must be clear, up-to-date, and to scale. The plans are very important as



they are a record of the configuration of the licensed hostel premises. Plans might also be used by the Authority to inform decisions about whether to set special licence conditions (see regulation 24 for examples).

Depending on the age of your hostel, copies of plans held by the relevant building consent authority (City or District Council) may be suitable. However plans for licence application purposes do not need to be of the standard required for a building consent as long as they are drawn to scale.

The Authority will not require plans to be resubmitted if you are applying for a licence renewal, provided there have been no changes to the premises since the previous licence or renewal application was made.

Other information required

The regulations require applicants to provide a range of information about the hostel facilities and operations, and about the hostel owner. This helps to determine whether to grant or renew a licence and whether to impose any conditions.

As well as the specific requirements in the regulations, the application form and the associated checklist give a good indication of the type of information needed and the level of detail that you should provide. For example, information about any distinctive operating style, number of boarders of different classes (such as by year level or male/female ratios), months/days/hours of operation (5-day, 7-day, or provision for casual boarding), hostel staff, and any special needs of the boarders the hostel intends to cater for should be provided.

You will need to work through the requirements of the regulations and produce information showing there is good reason to believe the hostel and/or you, as the hostel owner, comply in all respects with all the relevant requirements.

The task may not be as daunting as it sounds. A great deal of general information may already be available (for example, hostel marketing materials, or written policies and procedures) and can be submitted to the Authority as they are.

The Authority may also consider the findings of a recent ERO report. Where this report has raised issues relating to the premises and facilities or hostel management, evidence that these issues have been addressed will be required with the application.

To avoid processing delays, provide as much relevant information as possible. Information that is clearly written and easily read and copied is of greatest value to the

Authority. If you are providing information from hostel publications make sure you index and cross reference them on the application form.

In recognition of the different composition and requirements of bodies corporate, the requirements for assessing 'fit and proper' applies to the directors and persons involved in management of the body corporate. In confirming 'fit and proper' status, it is prudent for applicants to have a documented procedure for checking the suitability of directors or managers of a body corporate. For example, requiring prospective directors and managers to complete declarations stating they meet the regulatory requirements to be a 'fit and proper person'.

The Criminal Records (Clean Slate) Act 2004 allows for people with less serious convictions, who have been conviction-free for seven years, and who meet the eligibility criteria to be deemed to be conviction-free. However, section 19(3)(e) of the Act (see below) also provides an exception for individuals who apply to act in a role predominantly involving the care and protection of children or young people and so all convictions must be declared.

19 Exceptions to general effect of clean slate scheme

- (1) An eligible individual must state that he or she has a criminal record if subsection (3) applies.
- (2) A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records may disclose the criminal record or information about the criminal record of an eligible individual if subsection (3) applies.
- (3) This subsection applies if—
 - (a) the eligible individual's criminal record or information about the eligible individual's criminal record is necessary for any of the following purposes:
 - (i) the exercise of the prevention, detection, investigation, or prosecution functions of a law enforcement agency or an overseas agency or body whose functions correspond to those of a law enforcement agency; or
 - (ii) the administration of sentences or the management of remand inmates by a law enforcement agency; or
 - (iii) the exercise of security-related functions of the New Zealand Security Intelligence Service; or
 - (b) the eligible individual's criminal record or information about the eligible individual's criminal record is relevant to any criminal or civil proceedings before a court or tribunal (including sentencing) proceedings before the New Zealand Parole Board; or
 - (c) the eligible individual has made an application of any kind under the Arms Act 1983 and a member of the police is considering whether the individual is a fit and proper person for the purposes of that application; or
 - (d) the eligible individual has made an application for employment—
 - (i) in a position that involves the national security of New Zealand; or
 - (ii) as a Judge, Justice of the Peace, or Community Magistrate; or
 - (iii) as a member of the police, prison officer, probation officer, or security officer; or
 - (e) the eligible individual has made an application to act in a role predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person (for example, a foster parent or a caregiver of children or young persons); or
 - (f) the eligible individual's criminal record or information about an eligible individual's criminal record is relevant to an investigation under section 17 of the Children, Young Persons, and Their Families Act 1989 of a report of ill-treatment or neglect of a child or young person or in relation to any procedure under Part 2 of that Act arising from an investigation of that kind (including, without limitation, holding a family group conference or a Family Court's consideration of an application for a declaration that a child or young person is in need of care or protection); or
 - (g) the eligible individual's criminal record or information about an eligible individual's criminal record is relevant to the undertaking of research that requires access to criminal history information to be given to any employee or person contracted to a government department or law enforcement agency or to any person undertaking research approved by a government department or law enforcement agency.

Statutory declaration required

The statutory declaration has been incorporated as part of the licence application form. The person completing it may be the owner or someone with delegated authority making the application on behalf of the owner. This declaration is made in accordance with the Oaths and Declarations Act 1957, section 9, which provides:

9 Declarations made in New Zealand

- (1) A declaration made in New Zealand must be in the form in the Schedule 1, and must be made before—
 - (a) a person enrolled as a barrister and solicitor of the High Court; or
 - (b) a Justice of the Peace; or
 - (c) a notary public; or
 - (ca) the Registrar or a Deputy Registrar of the Supreme Court; or
 - (d) the Registrar or a Deputy Registrar of the Court of Appeal; or
 - (e) a Registrar or Deputy Registrar of the High Court or a District Court; or
 - (f) some other person authorised by law to administer an oath; or
 - (g) a member of Parliament; or
 - (h) a person who—
 - (i) is a fellow of the body (incorporated under the Incorporated Societies Act 1908) that, immediately before the commencement of the Oaths and Declarations Amendment Act 2001, was called the New Zealand Institute of Legal Executives; and
 - (ii) is acting in the employment of the holder of a practising certificate as a barrister and solicitor of the High Court; or
 - (i) an employee of Land Transport New Zealand, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette; or
 - (ia) an employee of Public Trust constituted under the Public Trust Act 2001, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette; or
 - (j) an officer in the service of the Crown, or of a local authority within the meaning of the Local Government Act 2002, authorised for that purpose (by name, or as the holder for the time being of a specified office or title) by the Minister of Justice by notice in the Gazette.
- (2) Despite subsection (1), if a te reo Maori equivalent of the declaration prescribed in the Schedule 1 is prescribed by regulations made under section 30A, using that te reo Maori equivalent has the same effect as using the declaration prescribed in the Schedule 1.

A significant penalty, including a term of imprisonment of up to three years, may be imposed under the Crimes Act 1961 for making false declarations. Section 111 of that Act provides that:

111 False statements or declarations

Everyone is liable to imprisonment for a term not exceeding 3 years who, on any occasion on which he is required or permitted by law to make any statement or declaration before any officer or person authorised by law to take or receive it, or before any notary public to be certified by him as such notary, makes a statement or declaration that would amount to perjury if made on oath in a judicial proceeding.

Therefore, it is recommended that you keep records about activities undertaken, inquiries made and information obtained as the basis for the declaration. If the accuracy of the declaration is ever questioned, these records should show reasonable steps were taken to collect all relevant information. A licence may be suspended if the Authority is satisfied that information accompanying an application is false or misleading.

GRANT OR RENEWAL OF LICENCES

Hostels operating immediately before 1 March 2006 are deemed to be a licensed hostel. This transitional licensing will last for 12 months within which time the hostel owner will need to make a full licence application. The regulations also have a provision allowing the Authority to require an owner to make an application within three months of being formally requested (see regulation 72).

Authority may grant or renew licences

The regulations put the onus on the applicant to provide enough information to enable the Authority to issue a licence. The Authority may grant or renew a licence, with or without special conditions, for a period of three years.

Before issuing the licence the Authority must be satisfied by the information it receives from the applicant (and from any other source) that the hostel, its management practices, and the owner, comply with the requirements of the regulations, and that the prescribed fee has been paid.

Applications in respect of different premises

Each licence can only relate to one hostel. The regulations enable the Authority to decide whether hostel premises comprise one or more hostels and if separate licences are required, and provide some criteria on this. For example, the Authority may issue a single hostel licence where hostel buildings on two different sites are used to accommodate junior and senior students separately but the management, staff and funding arrangements are shared.

APPLICATIONS FOR RENEWAL OF LICENCES

Who may apply to renew a licence and how

The regulations require the licence renewal application to be lodged by, or on behalf of, the hostel 'licensee' (as defined by the regulations) on the application form provided by the Authority no later than 20 working days before the licence expires.

Special renewal applications are also required if there is a significant proposed change to the hostel operations, alterations are proposed to hostel buildings, or a new owner proposes to take over the hostel (see below).

As with the initial licence application, the renewal application form and the checklist developed by the Ministry give a good indication of the type of information needed and the level of detail you need to provide.

You should keep copies of your original licence application and all renewal applications to make it easier when you need to renew the licence because most of the information

won't change from one renewal to the next. Because supporting documents, a signed statutory declaration, and payment are required with your renewal application, it must be either posted or otherwise delivered directly to the Licence Administrator (see page 5 for postal and address details).

Authority may permit applications to be lodged late

You will be sent renewal reminders but it's up to you to ensure your renewal application is made in time. You should begin the renewal process early.

The Authority may accept a late renewal application if it is made before the licence expires. The Authority will expect a written explanation for a late application to be submitted alongside the application.

If a licence expires without renewal the hostel becomes 'unlicensed' and the prohibitions referred to in the regulations will apply until a new licence is issued. A new licence application fee also applies instead of the lower renewal application fee.

Renewal required if premises or operations to change

The regulations require a renewal application to amend your licence if you want to make changes that affect the conditions of the licence, or make the hostel's premises or operations significantly different from when the licence was granted or renewed. The renewal application must be made **before** changes take effect.

When this renewal requirement applies will be a matter of judgement by you and the Authority. Some examples of when it is likely to apply are:

- increasing the maximum number or specified class (for example, by age, sex or special needs) of boarders accommodated
- substantial physical alteration to the premises and/or changes to what the hostel premises are used for
- changing from 5-day boarding to 7-day boarding.

The information you provide with your renewal application must be explicit about the changes and if making physical alterations up-to-date scale plans will be required.

Renewal required if owner of hostel to change

The regulations require a renewal application to amend the licence if ownership of a hostel is to change. The renewal application must be made **before** the change takes place.

As indicated on the renewal application form, information will be required to satisfy the Authority that the new owner is a fit and proper person. You must allow sufficient time to gather and submit this information before a change of ownership takes place. Hostel sale and purchase agreements may need to be subject to the new owner being granted a licence.

EXTENT, CONTENT, FORM AND CONDITIONS OF LICENCES

The regulations are very clear about the extent, content and form of licences, licence conditions and notices.

The licence will include a condition specifying the maximum permitted number of boarders that may be accommodated. You should suggest a maximum number for your hostel in your licence application and provide justification for the number. The Authority will consider the information, and other relevant guidelines, such as those relating to the numbers of people permitted to sleep in a bedroom (see the table under 'sleeping' on page 21).

The imposition of other special conditions is at the discretion of the Authority.

NOTICE OF NEW DIRECTORS ETC OF BODY CORPORATE LICENSEE

The hostel owner is required to give the Authority written notice when new directors or managers of a body corporate are appointed. An appropriate form for the notice is available from the Authority. The Authority will need to be satisfied that any new director or manager is a fit and proper person.

FORMAL DIRECTIONS TO LICENSEE TO ELIMINATE NON COMPLIANCE

The content of the regulations on formal directions is largely self-explanatory. It includes matters relating to deadlines for eliminating non-compliance, the licensee being required to display a formal direction, and the conditions under which a direction may be revoked.

Enforcement of the regulations is a logical and necessary extension of administering the regulations. Many decisions made by the Authority about enforcement actions are likely to be substantially informed by the independent review and assurance activities of ERO.

ERO review activities include visits to hostels and reports on the physical and emotional environments in those premises. It is expected that there will be a regular cycle of reviews, (on average at least once every three years), and, as appropriate, in response to information indicating that a hostel is not meeting the requirements of the regulations. ERO review reports should be provided to you as the hostel owner.

As with other ERO reviews, good practice would be identified and any concerns highlighted. Where concerns were relatively minor ERO would generally indicate, informally, a time period and process for follow-up for the concern to be remedied. Where there were serious safety concerns ERO could notify Police or other relevant

authorities (including the Authority) and could, where applicable, undertake a supplementary review.

The Authority will also appoint ‘authorised persons’ under the Education Act with powers to enter and inspect hostels and hostel documentation. Compared to ERO review and assurance activities, licensing body inspections should be relatively infrequent and would largely relate to safety concerns outside the ‘supporting learning’ ambit of ERO, or as follow-up to licensing and other enforcement activities.

Education Act 1989 Section 144D Inspection of hostels

- (1) An authorised person may at any reasonable time do any or all of the following:
 - (a) enter any hostel premises and inspect the premises and facilities;
 - (b) inspect, and make and remove copies of, any information relating to the management of the hostel;
 - (c) require any person at a hostel to make or provide statements, in whatever form or manner is reasonable in the circumstances, about any matter relating to the safety of students who board at the hostel.
- (2) An authorised person may exercise the powers in subsection (1) only for the purpose of monitoring compliance with minimum standards, codes of practice, licences, or licence conditions.
- (3) The person in charge (or apparent charge) of the hostel must, if an authorised person requests it, co-operate in allowing the authorised person access to the premises, facilities, and information relating to the management of the hostel, including assisting the authorised person to copy (in usable form) any information required for the inspection.
- (4) The person in charge (or apparent charge) of a hostel commits an offence and is liable upon summary conviction to a fine not exceeding \$5,000 if he or she fails, without reasonable excuse, to comply with subsection (3).
- (5) An authorised person may not enter or inspect the room or sleeping area of a student accommodated at the hostel unless—
 - (a) the authorised person believes on reasonable grounds that entry or inspection is necessary for a purpose specified in subsection (2); and
 - (b) prior notice of the inspection is given to the student, and the purpose of the inspection is explained; and
 - (c) the student is present during the inspection.

Depending on the circumstances, enforcement action by the Authority could commence with an informal written ‘notice to remedy’ detailing the safety concerns, recommended remedial actions and a timeframe for completion. If the response to this informal approach is not satisfactory, it is likely the Authority would issue a formal direction, and inspections would be done to check safety concerns had been addressed.

Enforcement action would not be taken arbitrarily and, wherever practicable, would always involve prior consultation with you. For example, if the non-compliance relates to the lack of provision of facilities, the Authority would probably allow time for these facilities to be designed and constructed including time to find appropriate contractors. If it related to a more straight forward matter, like the development of an appropriate written policy, a shorter time would probably be allowed.

There is a right of appeal against Authority decisions to the District Court (see page 32).

SUSPENSION AND CANCELLATION OF LICENCES

The content of the regulations for suspension and cancellation of licences is largely self-explanatory. The content includes matters relating to:

- suspension and cancellation of a licence being effected by written notice to the licensee
- suspension notices specifying conditions to be complied with
- the return of suspended and cancelled licences to the Authority
- revocation of suspension
- the duties of the licensee when a licence suspension or cancellation takes effect.

Where a hostel fails to address serious safety concerns, or risk to student safety is such that an immediate remedy is needed, the regulations provide for suspension or cancellation of the hostel licence. The Authority might also initiate a prosecution for any offences committed (see page 32).

Enforcement actions are not undertaken lightly. Only in extreme circumstances would enforcement action occur without warning. For example, if the issues related to infectious disease concerns, the Authority would almost certainly have taken appropriate advice from health authorities before enforcing the closure of a hostel. In emergency situations, such as severe flooding damaging a hostel's water treatment or sewerage plant, it is expected that hostels would close voluntarily.

Temporary or permanent closure of a hostel, owing to suspension or cancellation of a licence, could have a significant impact on the viability of schools as well as the hostel business (for example, where a large proportion of a school's students are boarders and there is limited alternative accommodation near the school). It is likely that, with your prior consent, the Authority would consult with the governing body of any school it considers may be significantly affected by suspension or cancellation of a hostel licence. This would give the schools the opportunity to contribute to the resolution of safety concerns in the hostel.

Before cancelling a licence the Authority must take 'all reasonably practicable steps' to advise you it intends to cancel the licence. While these steps are not specified they may include verbal advice (including by phone) or written advice (including by fax, email or mail). The Authority must also take into account all representations made 'within a reasonable time' after you have been advised of the intention to cancel the licence. 'Reasonable time' is not defined in the regulations but is likely to be a relatively short period (hours or days, rather than weeks or months).

The Authority may also cancel a licence at your request or if satisfied the hostel has ceased operations and appears unlikely to operate again under the licence. For example, where a hostel has burned down and the owner has confirmed that they do not intend to rebuild.

REPLACEMENT LICENCES AND FEES

The regulations require the licence to be displayed at the hostel. There is a fee for replacing a licence, so you should take to ensure it is not lost, stolen or defaced. If a licence contains errors, the hostel owner should notify the Authority in writing and a replacement licence will be provided.

Minimum standards

FOR HOSTEL PREMISES AND FACILITIES

This part of the regulations sets out requirements for hostel premises and facilities, building maintenance, emergency management and general safety.

PROVISION OF NECESSARY SPACES, FACILITIES AND EQUIPMENT

Because it is not possible to account for all hostel circumstances, the regulations establish minimum requirements for facilities and equipment without prescribing exactly how those requirements must be met. The key point to remember is that both you and the Authority must be satisfied that the requirements have been met. You may be able to include cross-referenced sections of hostel publications to support or demonstrate compliance with these requirements.

Also, the regulations do not prevent a hostel from controlling use of these facilities – for example, setting ‘normal’ visiting times or having a booking system for meeting rooms or telecommunications equipment.

The following are examples of facilities which hostels may provide and serve as a prompt for further thinking by hostel owners about what is appropriate for their particular premises.

Boarders’ recreation

Facilities might include social space, television and games room(s), and access to nearby school cultural and sporting facilities and equipment. If the hostel is remotely located from the school, similar facilities might be provided at the hostel premises or arrangements made for the boarders to have access to other local facilities.

Quiet activities

Quiet places for study such as a ‘prep room’ or private spaces within or adjacent to sleeping areas. Provision might also be made for access to a library, and computers for research and recreation.

Food preparation

Facilities might include a place to make hot drinks and heat snack foods adjacent to recreation areas, and/or flat style accommodation with self-catering facilities. Student access to the main hostel kitchen should be restricted because of food hygiene and health and safety concerns.

Eating

A communal dining room, and/or flat-style accommodation with separate dining facilities are two examples of what might be appropriate.

Sleeping

Sleeping arrangements will vary between hostels and there is no intention to prevent the use of dormitory-style sleeping facilities. Consideration should, however, be given to the need to separate boarders for reasons such as differences in age, sex, or any special needs.

New Zealand Standard NZS 9201: Part 3:1999 (Model General Bylaw – Hostels) has the following guidelines on the numbers of people who should be permitted to occupy a 'bedroom'. The Authority will consider space requirements when determining the maximum number of boarders a hostel may accommodate.

Number of persons permitted to sleep in a bedroom

Area of bedroom	Number of persons
Under 4.5 m ²	Nil
4.5 m ² or more but less than 6 m ²	$\frac{1}{2}$ ³ in an existing building but nil in a new building ⁴
6 m ² or more but less than 10 m ²	1
8 m ² or more but less than 10 m ²	1 $\frac{1}{2}$
10 m ² or more but less than 12 m ²	2
12 m ² or more but less than 14 m ²	2 $\frac{1}{2}$
14 m ² or more but less than 17 m ²	3
17 m ² or more but less than 20 m ²	3 $\frac{1}{2}$
20 m ² or more	4 persons and 1 additional person for each additional complete 5 m ²

³ For the purposes of this table $\frac{1}{2}$ a person means a child who is one year or more but under 10 years of age

⁴ For the purposes of this table an existing building means a building existing before 10 October 1947 when the Housing Improvement Regulations 1947 came into force

Personal hygiene and privacy

Where there are open or shared sleeping spaces, separate changing facilities will be needed to meet the privacy requirements of the regulations. Toilet and bathing areas should be partitioned for a reasonable degree of privacy. They also need to be easily accessible so should be reasonably close to sleeping areas.

Laundering of clothing

Facilities for boarders to wash personal clothing need to be provided on site.

Secure storage of personal effects

The requirements of the regulations could be met through the provision of lockable storage facilities in or close to sleeping areas.

Boarders meeting and communication facilities

The requirement to provide space for students to meet with parents or other visitors in privacy could be met by having a dedicated meeting room.

The use of card phones allows boarders to make prepaid phone calls. A range of other solutions are also available to manage the use of phones and other telecommunications.

LIGHTING, HEATING AND VENTILATION

Owing to the range and variation of heating and lighting systems and hostel premises, no specific guidance can be given. It is recommended that you get specialist advice about the adequacy of lighting, heating and ventilation.

General advice is also available in Ministry of Education publications⁵

LAUNDERING OF SHEETS, BATH TOWELS ETC

Apart from facilities for washing students' personal clothing (see above), laundering arrangements can be outsourced or provided on-site.

⁵ *Health and safety management:* <https://education.govt.nz/school/property/health-and-safety-management/>

MAINTENANCE AND SAFE USE OF BUILDINGS AND FACILITIES

The requirements of the regulations mean that any necessary repairs to the hostel and its facilities should be undertaken without undue delay. It is also recommended that you develop and follow a long-term rolling maintenance plan to ensure your hostel is kept in a state of good repair.

FIRES, EARTHQUAKES, OTHER EMERGENCIES AND EVACUATION PLANS

Advice on the preparation of evacuation plans is available from Fire Safety Officers based at the New Zealand Fire Service. Your hostel must already comply with relevant fire safety provisions of the Building Code and may already have an evacuation plan in place. The Ministry's website has a useful guide to emergency planning for schools.⁶

SAFETY AND HYGIENE OF PREMISES GENERALLY

To meet the requirements of the regulations it is recommended that, as far as practicable, you check that items purchased for use in the hostel comply with relevant New Zealand Standards.

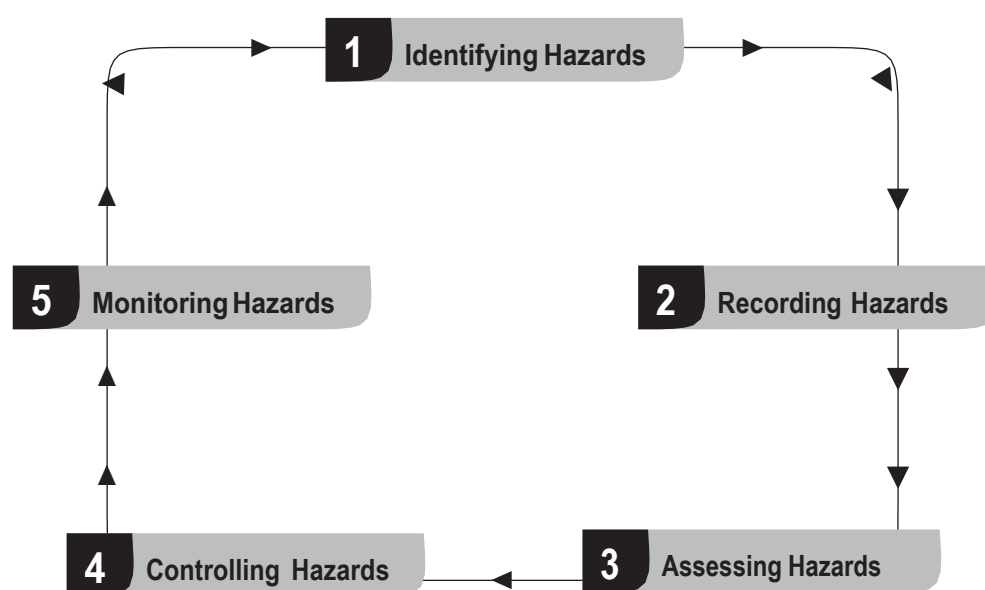
The development of a hostel cleaning plan documenting the frequency and methods of cleaning is desirable. Assistance and advice about cleaning plans are available from reputable cleaning chemical suppliers. Suppliers should also be able to provide material safety data sheets for all products used and advice about storage, safe use, and clean-up of spills, or how to deal with accidental exposure to a product.

⁶ *Health and Safety Practical Guide for Boards of Trustees and School Leaders*: <http://www.education.govt.nz/ministry-of-education/specific-initiatives/health-and-safety/h-and-s-for-boards-of-trustees-and-school-leaders/>

PREMISES TO BE KEPT FREE OF HAZARDS

To meet the requirements of the regulations, it is recommended that an active hazard identification and management system is in place at the hostel.

As illustrated below, an effective health and safety system is a continuous process and requires systematic identification and management of hazards.



Both the Ministry of Education ⁷ and Worksafe ⁸ websites have useful information for developing hazard management plans.

Advice on poisonous plants is available from the biosecurity section of the local Regional Council or Department of Conservation office. In some cases the removal of poisonous plants may be the safest option to achieve compliance.

⁷ *Student well-being in school boarding accommodation:*
<https://www.educationcounts.gov.nz/publications/schooling/5355>

⁸ *Worksafe at Schools: Getting Started; Guidance by Hazard Type:*
<http://www.worksafe.govt.nz/worksafe/information-guidance/guidance-by-hazard-type>
<http://www.worksafe.govt.nz/worksafe/hswa/understanding-hswa/mythbusting/schools>

FIRST AID

You must make provisions for first aid, including supplying equipment and supplies, and trained staff.

A first aid kit containing the following items is suitable for a hostel accommodating 75 people.

Number	Item
4	Triangular bandages
9	Roller bandages [including crepe bandages 50mm and 75 mm sizes]
10	Sterile dressings [75x75mm packets]
2	Adhesive wound dressing strip [100mm packets]
1	Waterproof adhesive plaster [50mm reel]
5	Sterile non-adhesive pads [100 x 100mm packets]
4	Sterile eye pads
1	Container for pouring water over eye [plastic squeeze bottle]
1	Receptacle for soiled dressings [bucket with foot operated lid]
1	250 ml antiseptic liquid
1	Safety pins [card]
1	Scissors – surgical or equivalent stainless steel [pair]
1	Splinter forceps, fine point – stainless steel
1	Injury register and pen
1	First Aid Booklet
1	Card listing local emergency numbers
8	Disposable gloves – large size or multi fitting [pairs]

First aid training should be completed to certificate standard and be based on a New Zealand Qualifications Authority approved course. Refer to the yellow pages or your local phone book for suitable providers.

Code of practice

RELATING TO MANAGEMENT OF HOSTELS

This part of the regulations sets out requirements for hostel policies and operating procedures, record keeping, supervision, staffing, security, food and drink, health protection and parental access rights.

POLICIES AND OPERATING PROCEDURES

In addition to the policies and procedures required by the regulations, a range of other policies and procedures are likely to be needed for effective operation of the hostel.

These may relate to:

- health and safety
- use of alcohol and other substances
- administration of medication and access to health care
- personal hygiene
- disciplinary procedures
- searching of boarders or their belongings
- administration, record keeping and privacy of personal information
- catering
- visitor access
- boarder communications (including email and internet access)
- site security
- organised excursions
- transport
- staffing (including appointment, suitability checking and supervision)
- reporting to parents.

The requirement that policies and procedures be reviewed in consultation with the boarders and their parents every three years might be met by:

- providing boarders and parents with information about the general nature of the hostel policies and procedures, and their ability to participate in the review
- inviting them to indicate which policies and procedures are of particular interest to them and how they would like to be involved in the review (for example, being informed of intended changes, making written comments, or participating in meetings or discussion groups convened by the hostel)
- ensuring that boarders and parents are enabled to participate in the review along the lines they have indicated.

Evidence that a review has been undertaken must be provided with a licence renewal application and so any process undertaken must be documented.

ABUSE HARASSMENT, OR SERIOUS NEGLECT OF BOARDERS

You must have a policy on hostel relationships and protection of boarders from ill-treatment, and this must be provided to the Authority as part of your licence application. The policy must detail how you would meet the provisions of regulation 58, relating to abuse, harassment or serious neglect.

If you suspect harassment or neglect you must make a judgement based on 'a belief on reasonable grounds'. Consider the reliability of the source of the information, and any relevant physical, behavioural or circumstantial evidence available at the time.

You will need to ensure that the provisions of the Employment Relations Act 2000 are met if a staff member is suspended from work, in order to meet the provisions of the regulations. If a boarder is not permitted to stay at the hostel because of their alleged involvement in incidents of abuse or harassment, your policies and procedures will need to protect the rights of the boarder while allegations are investigated.

Any decisions taken, and the reasons for those decisions, need to be documented.

RECORDS

In addition to the requirements of the regulations, hostels must also comply with the Privacy Act 1993. This Act requires personal information to be kept secured, only used for the purposes for which it was gathered, and only disclosed to authorised persons. Staff may need to be privy to a boarder's private information to enable an appropriate level of care to be provided. However, care must be taken not to disclose this information to other boarders, or ancillary staff that may not have a right to it. This issue may be best dealt with under an employment agreement. Records may be kept electronically or in hard copy.

SUPERVISION, STAFFING AND SECURITY

The regulations require suitability checks, including Police vetting. Details of the vetting service are available from the New Zealand Police⁹.

Other ancillary, contract, temporary or voluntary staff or others visiting the hostel are required to be supervised. 'Substantial supervision' is not defined in the regulations so judgement will be needed to meet this requirement. The extent of supervision needed will depend on the purpose and the timing of the visit, the areas of the hostel to be accessed, the presence or absence of boarders, and the proximity to areas used by boarders.

The regulations allow you to set your own staff ratios. A documented risk management approach should be used to determine these.

It is desirable that staff have an appreciation of adolescent development and know how young people's health is fostered if the intentions of the regulations are to be achieved. Adolescence is a critical developmental period and ideally people holding supervisory positions in hostels will have appropriate qualifications. The Ministry of Youth Development¹⁰ and Ara Taiohi¹¹ formally known as the New Zealand Association for Adolescent Health and Development (NZAAHD) may be able to provide guidance and assistance.

SUPERVISION OF BOARDERS ON EXCURSIONS OUTSIDE THE HOSTEL

The Ministry of Education¹² provides information about risk management, planning, staffing, and supervision requirements for excursions and activities outside the hostel.

FOOD AND DRINK

You might consider using reference groups, involving parents and boarders, to consider issues relating to meal variety, quality and quantity. The preparation of a food safety plan is desirable.

Information about nutritional requirements, food safety planning, and requirements for the quality of drinking water is available from the Public Health Services that are normally associated with a District Health Board.

⁹ <http://www.police.govt.nz/advice/businesses-and-organisations/vetting/information-about-vetting>

¹⁰ <http://www.myd.govt.nz/>

¹¹ <http://www.arataiohi.org.nz/>

¹² <http://www.education.govt.nz/school/running-a-school/vulnerable-children-act-2014-requirements-for-schools-and-kura> and <http://eotc.tki.org.nz/EOTC-home/EOTC-Guidelines>

INFECTIOUS AND OTHER DISEASES

The regulations set out certain requirements for persons suffering or suspected to be suffering from diseases listed in Schedule 2 of the Health (Infectious and Notifiable Diseases) Regulations 1966¹³

A Medical Officer of Health may determine exclusion times from the hostel that are less than those provided for in health regulations. The Medical Officer of Health can also provide advice about infection control and on the exclusion of boarders or staff members suffering from other communicable diseases such as the flu. Medical Officers of Health may be contacted through the District Health Board.

PROTECTION OR PROMOTION OF HEALTH

The regulations require you, in a number of health-related situations, to take ‘all reasonably practicable steps’ to protect or promote health. This is not defined, but may include having sufficient staff trained in first aid, having arrangements with medical providers for after hours services, and ensuring that staff know how to contact emergency services.

The range of health and other support services for your hostel will be dictated, to some extent, by its location. In a large metropolitan area, a full range of services should be readily available. In an isolated rural hostel, other special arrangements will need to be considered.

Controlling the use of alcohol and other substances is a matter to address in your hostel policies – for example, setting out the circumstances (if any) when alcohol may be used. Also, a clause might be included in employment contracts prohibiting the use of alcohol or other substances by hostel staff when on duty and prohibiting staff members from being under the influence of alcohol or other substances when on duty.

PARENTS' CONTACT WITH, OR ACCESS TO, BOARDERS

You might suggest that parents limit contact with a boarder to certain times, and avoided during meal times or study time. However, access cannot be prohibited at any time unless the ‘good reasons’ provisions set out in the regulations apply (see regulation 68).

¹³ Health Regulations <http://www.legislation.govt.nz/regulation/public/1966/0087/latest/DLM24271.html>

PART 5

Complaints about hostels

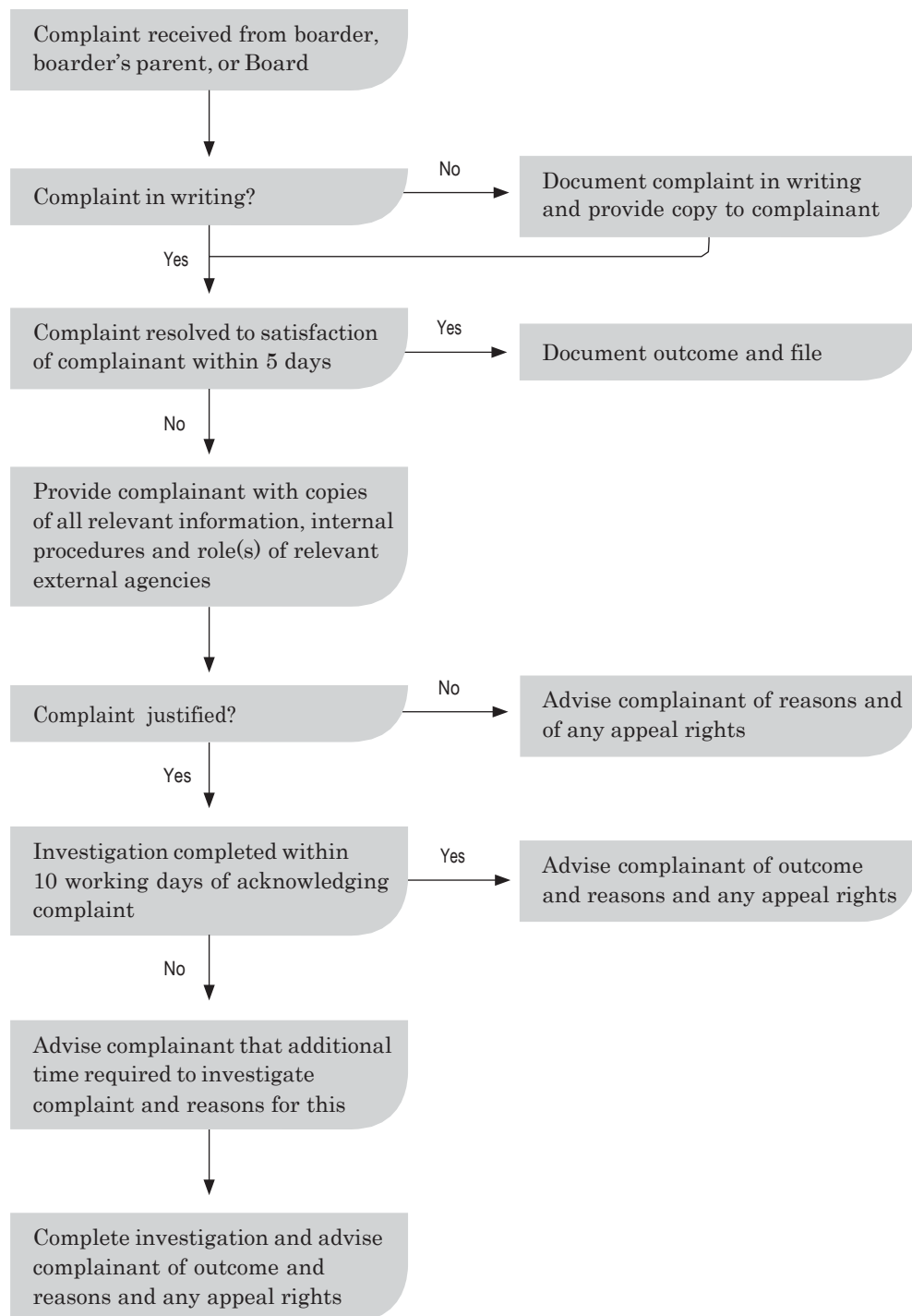
BY PARENTS OR STUDENTS

The regulations require that any complaints be made to the hostel owner. Where the owner is a body corporate, or an absentee individual or partnership, the hostel's complaints procedures may be delegated to a responsible person or hostel manager.

This in no way diminishes the responsibility of the owner, or their delegate, to meet the requirements of the regulations in how they must deal with complaints. In dealing with complaints, consideration should be given to the power imbalance that may exist between affected parties. To help address this, hostel owners may wish to consider arrangements that enable parties to be supported by independent advocates.

The regulations set out the timeframes for dealing with complaints and need to be referred to for details. The diagram opposite summarises the process.

Complaints Procedure



PART 6

Miscellaneous provisions

This part of the regulations sets out appeal provisions, transitional provisions, relationship of the regulations with other enactments, and matters relating to offences and penalties.

APPEALS AGAINST THE AUTHORITY'S DECISIONS OR DIRECTIONS

The appeal provisions are an important protection for hostel owners. They provide an opportunity for independent and authoritative consideration of decisions made or directions given by the Authority. Because appeals involve filing papers with Courts, it is recommended that you seek legal advice.

TRANSITION: EXISTING HOSTELS DEEMED LICENSED FOR ONE YEAR

A hostel operating immediately before the commencement of the regulations is deemed to be licensed for a one-year transition period. The Authority may, however, require you to apply for a licence within a specified three-month period. This requirement will most likely be used after the first few months of the transition period if the Authority thinks the initial licence applications will be slow to arrive.

RELATIONSHIP WITH OTHER ENACTMENTS

The regulations have no effect on your obligations to comply with other relevant legislation.

OFFENCES AND PENALTIES

These provisions are considered to be self-explanatory. Convictions for offences in these regulations may lead to the Authority reconsidering the fit and proper status of a licensee.

SCHEDULE: FEES FOR APPLICATIONS FOR, OR RENEWALS OF LICENCES

This schedule sets out the licence fees payable. The fees are calculated in accordance with *Audit Office Guidelines to Costing and Charging for Public Sector Goods and Services (1989)* to recover actual and reasonable costs incurred for:

- Paper-based assessment activities
- Ongoing database management
- A limited amount of ongoing training and resources for authorised persons (employed by the Authority)
- Hostel visits and reports made by authorised persons
- Enforcement activities.

The fees do not include ERO reviews, which are separately funded by government.

Appendix A

SUMMARY OF SOME OTHER RELEVANT LEGISLATION

The following summary information is provided for indicative purposes only and should not be regarded as comprehensive analysis or used as a definitive source.

General Legislation	Summary Information
Human Rights Act 1993	Makes it unlawful to discriminate in some areas of everyday life (including the provision of accommodation).
New Zealand Bill of Rights Act 1990	Affirms certain rights and freedoms including the right not to be subjected to torture or cruel treatment, freedom from discrimination on the grounds set out in the Human Rights Act, and the right to be secure against unreasonable search and seizure. It covers any person or body performing any statutory function, power or duty imposed on that person or body authorised by law.
Safety Legislation	Summary Information
Building Act 2004	Hostel facilities would be subject to this Act and to the <i>New Zealand Building Code</i> (see below).
<ul style="list-style-type: none"> • s40 Building consent 	<ul style="list-style-type: none"> • All building work (constructed altered or demolished) requires a building consent (except certain minor work and special circumstances) and the owner must give advice to the territorial local authority that the building work has been completed. • The territorial authority will issue a completed building with a code of compliance certificate stating compliance.
<ul style="list-style-type: none"> • s100 Compliance schedule 	<ul style="list-style-type: none"> • Buildings containing specified systems including, lifts, escalators, fire protection systems, mechanical hydraulic or electrical systems must have compliance schedules.
<ul style="list-style-type: none"> • s108 Building warrant of fitness 	<ul style="list-style-type: none"> • The owner of the building must supply an annual warrant of fitness to the territorial authority that the building meets the compliance schedule requirements for the previous 12 months. • A copy of the warrant of fitness has to be displayed publicly.
<ul style="list-style-type: none"> • s114 Change of use of buildings 	<ul style="list-style-type: none"> • The owner must advise the territorial authority if they intend to change the use of the building and the change will require alterations to the building or extend its life.

Safety Legislation continued	Summary Information
<ul style="list-style-type: none"> • s118 	<ul style="list-style-type: none"> • Access to buildings by disabled persons – requirements in accordance with the relevant New Zealand Standard.
<ul style="list-style-type: none"> • s16 Building code 	<ul style="list-style-type: none"> • Regulations are to be called ‘the building code’ and this prescribes the requirements for buildings and performance criteria.
<ul style="list-style-type: none"> • s121 Dangerous buildings 	<ul style="list-style-type: none"> • Defines ‘dangerous buildings’ and includes buildings used for accommodation purposes. The powers of the territorial authority with respect to dangerous buildings are set out in S124.
Building Regulations 1992	
<ul style="list-style-type: none"> • The New Zealand Building Code 	<ul style="list-style-type: none"> • Forms part of the building regulations under section 16 of the Building Act. • The code is mandatory.
<ul style="list-style-type: none"> • Classification of building by use 	<ul style="list-style-type: none"> • Hostels would be covered under ‘communal residential’ and subject to a number of performance measures in relation to: <ul style="list-style-type: none"> – structure – durability – outbreak of fire – means of escape – fire – spread of fire – structural stability during fire – access routes and mechanical installations for access – surface water – to safeguard people from injury and illness caused by surface water – external and internal moisture – hazardous agents on site, hazardous building materials, substances and processes – safety from injury by falling – construction and demolition hazards – lighting for emergency – warning systems – signs – personal hygiene – laundering – ventilation – interior environment – airborne and impact sound – natural light – artificial light – electricity – piped services – gas and energy source – water supplies – foul water – solid waste.

Safety Legislation continued	Summary Information
Health and Safety at Work Act 2015	Sets out the law relating to the health and safety of employees and others in the workplace.
<ul style="list-style-type: none"> Places duties on employers 	<ul style="list-style-type: none"> Duty to provide a safe working environment. Duty to have effective measures in place to identify and minimise hazards. Duty to provide information about monitoring hazards to employees. Duty to provide training and supervision for certain kinds of work. Duty to develop procedures for dealing with emergencies.
<ul style="list-style-type: none"> Codes of Practice and regulations 	<ul style="list-style-type: none"> A code has been issued by the Secretary for Education under s70(2) of the Education Act 1989. The code contains minimum standards in relation to lighting, cleanliness, first aid and storage of dangerous materials. The code places requirements on school Boards of Trustees to ensure that any building under their control meets the standards and requirements in the code. The code does not specifically cover hostels, although there may be some indirect coverage, particularly if the hostel is situated on school premises.
<ul style="list-style-type: none"> Recording and notification of accidents –s10,11 	<ul style="list-style-type: none"> Requirement on employers to maintain a register of accidents affecting any employee or any person. Notify the Labour Dept as soon as possible that serious harm/accident has occurred and provide details in writing within 7 days.
<ul style="list-style-type: none"> Suspension notices and 	<ul style="list-style-type: none"> Employers to comply with suspension notices and improvement notices.
<ul style="list-style-type: none"> Information – s12 	<ul style="list-style-type: none"> Obligation to provide health and safety information to employees.
<ul style="list-style-type: none"> Train and supervise employees 	<ul style="list-style-type: none"> Obligation to train and supervise employees in health and safety procedures.
<ul style="list-style-type: none"> Development of health and safety procedures – s14 	<ul style="list-style-type: none"> Obligation to involve employees in the development of health and safety procedures.
<ul style="list-style-type: none"> Duties of employees – s19 	<ul style="list-style-type: none"> Obligation that no action or inaction of an employee causes harm to any other person.
<ul style="list-style-type: none"> Offences 	<ul style="list-style-type: none"> Offences can lead to fines of up to \$100,000 or 1 year imprisonment.

Safety Legislation continued	Summary Information
Health and Safety in Employment Regulations 1995	<ul style="list-style-type: none"> • Provide greater detail than the Act about the specific duties that apply to employers in general. These regulations are likely to apply less frequently to hostels given that they deal in greater detail with more specialised hazards. However, the person who controls the hostel must take all practicable steps to ensure that any activity at the hostel does not cause harm to the health and safety of persons under 15 years of age (reg59(1)(d) refers).
<u>The Building (Pools) Amendment Act 2016</u>	<ul style="list-style-type: none"> • Requirements are to notify the territorial authority of the existence of a pool (or intention to construct a pool) and to fence the pool as required.
The Fire Safety and Evacuation of Building Regulations 2006	<ul style="list-style-type: none"> • Put in place a number of fire safety measures such as requirements for evacuation procedures, storage of goods and material and maintenance of fire fighting equipment.
The Food Hygiene Regulations 1974	<ul style="list-style-type: none"> • Provide for the control of hygiene in food premises and in the manufacture, preparation, packaging storage, handling and sale of food, including the operation of food vending machines.
<ul style="list-style-type: none"> • Partially exempted premises 	<ul style="list-style-type: none"> • Partially exempted premises are defined as food premises that are part of any boarding house or educational institution.
Health Act 1956	<ul style="list-style-type: none"> • General requirements to protect public health, including in relation to a supply of potable water and sanitary conditions.
Smoke Free Environments Act 1990	Places a number of duties on employers, including the requirement to have a written policy on smoking for the workplace.
Other Relevant Legislation	
Children, Young Persons and Their Families Act 1989	Allegations of abuse could trigger powers of investigation under this Act.
Crimes Act 1961 and the Summary Offences Act 1981	<p>Offences under these Acts are where persons having custody and control over children under the age of 17 tolerate or cause ill-treatment or wilful neglect. (s195, s10A and 10B).</p> <p>There is a duty under the Crimes Act to provide for the necessities of life.</p>

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