



Education Report: Ministerial Appointment of “Operator” for the Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme

To:	Hon Jan Tinetti, Minister of Education		
Date:	1 August 2023	Priority:	High
Security Level:	In Confidence	METIS No:	1314593
Drafter:	Nancy Ma	DDI:	04 463 8821
Key Contact:	Freddy Ernst	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

1. This report seeks your agreement to appoint an “operator” for the Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme (combined DRS).

Summary

2. Two student contract dispute resolution schemes (DRSs) have been established under section 536 of the Education and Training Act 2020 (the Act) – one for domestic tertiary students and one for international students. Both schemes exist to resolve disputes between learners and providers, and each has their own “operator”.
3. On 29 March 2023, Cabinet Social Wellbeing Committee agreed to proposals for a combined DRS [SWC-23-MIN-0018 refers]. This paper recommends an operator of the combined DRS. We have provided you with separate advice on the rules for the combined DRS (METIS 1312636 refers).
4. Section 536(4) of the Act requires you to take reasonable steps to ensure that there is an appointee responsible for administering the DRS at all times. That provision authorises you to appoint one or more persons or organisations for this role, and to impose any conditions on the appointment that you see fit.
5. To aid you in selecting and appointing a combined DRS operator, the Ministry ran a competitive open market procurement process and received three bids. Applications were assessed by a panel of officials, supported by a learner advisory panel comprising both domestic tertiary and international student body representatives.
6. Both learners and officials considered that Fair Way Resolution Limited (Fair Way) was the best fit for the objectives and intent of the combined DRS. Fair Way had a strong proposal, with proven experience operating large-scale, client-focused, and efficient dispute resolution services. Fair Way is the current operator for the international DRS.
7. A funding agreement must be agreed between the Ministry and the combined DRS operator. We recommend that the Ministry undertakes this process with the preferred combined DRS operator before the appointment is formalised. The appointment of an operator is formalised by notice in the Gazette.

8. If you agree to proceed with the recommended operator, but the Ministry is unable to reach an agreement with Fair Way, we recommend that we enter discussions with 9(2)(b) . 9(2)(b)(ii) also submitted a strong proposal 9(2)(b)(ii) . 9(2)(b)(ii) would be well placed to establish the combined DRS and support learners through dispute resolution.
9. You have previously indicated to Cabinet that the scheme will be in operation by 1 January 2024. Ministry officials have also signalled this date to the sector when consulting on the policy. In order to provide sufficient time for an operator to establish the combined DRS by 1 January 2024, we recommend appointing an operator as a priority during the current parliamentary term. We will need to work through a transition plan with both DRS operators as there is no funding available for overlapping provision of services with the existing schemes.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that in March 2023, Cabinet approved proposals to combine the International Student Contract Dispute Resolution Scheme and the Domestic Tertiary Student Contract Dispute Resolution Scheme Noted
- b. **note** that you are required to appoint an operator to administer the combined Domestic Tertiary and International Student Dispute Contract Dispute Resolution Scheme Noted
- c. **note** that the Ministry has run a competitive open market process to determine a preferred operator of the combined DRS scheme, including support from a learner advisory panel in the evaluation process Noted
- d. **note** that the learner advisory panel and the Ministry identified Fair Way Resolution Limited (Fair Way) as their preferred operator for the combined DRS scheme Noted
- e. **agree** to:
- a. appoint Fair Way as the operator of the combined DRS scheme, subject to the Ministry and Fair Way first settling a funding agreement Agree / Disagree
- b. set a condition on the appointment that requires the operator submit a self-review after 12 months and attest that it is performing well Agree / Disagree
- c. publication of a Gazette notice to formalise the appointment once the funding agreement is settled Agree Disagree

- f. **note** that 9(2)(b)(ii) also submitted a strong proposal 9(2)(b)(ii)

Noted

- g. **agree** that, subject to your agreement to recommendation e., should a funding agreement not be settled with Fair Way, the Ministry enter discussions with 9(2)(b)(ii) about becoming an operator for the DRS scheme

Agree / Disagree

- h. **agree** that this briefing note is proactively released, once decisions have been made, and with any redactions in line with provisions of the Official Information Act 1982.

Agree / Disagree



Katrina Sutich
Group Manager – Tertiary Policy
Te Pou Kaupapahere
01/08/2023



Hon Jan Tinetti
Minister of Education

03/08/2023

Background

10. As previously advised [METIS 1297306 refers], s 536 of the Act establishes a DRS to resolve particular categories of disputes between: domestic tertiary and international learners (including former and prospective students); and their education providers. Currently, there are separate DRSs for domestic tertiary learners and international learners. 9(2)(b)(ii) is the 'operator' of the domestic DRS ('Tertiary Education Dispute Resolution'). Fair Way Limited is the 'operator' of the international DRS ('iStudent Complaints').

Cabinet agreed to a combined DRS

11. The Cabinet Social Wellbeing Committee agreed to combine the domestic DRS and the international DRS on 29 March 2023 [SWC-23-MIN-0018 refers]. The intention for combining the schemes is to simplify and streamline the disputes system making it more accessible and easier to navigate for all learners and their education providers, and to reduce compliance duplication. It will also help to ensure that all learners and providers have access to a scheme that is up to date with dispute resolution best practise, puts people at the centre, and considers Te Tiriti o Waitangi.

There are a number of steps required to establish a combined DRS

12. In order to establish the combined DRS:
- a. a provider needs to be appointed, and
 - b. rules to govern the operation of the combined DRS need to be legislated through an Order in Council (covered in separate advice (METIS 1312636 refers).
13. You have previously indicated to Cabinet Social Wellbeing Committee that the scheme will be in operation by 1 January 2024. Ministry officials have also signalled this date to the sector when consulting on the policy. To support meeting this timeframe, the Ministry has progressed the above two processes (see paragraph 12) in parallel (METIS 1305216 refers).
14. In order to provide sufficient time for an operator to establish the combined DRS, we recommend appointing an operator as priority during the current parliamentary term.
15. The Act sets parameters for appointing a DRS operator. Section 536(4):
- a. requires that you must take reasonable steps to ensure that there is a person or organisation appointed to administer the DRS at all times.
 - b. authorises you to appoint one or more persons or organisations to be responsible for administering the DRS (the 'operator') by notice in the Gazette.
 - c. authorises you to impose any conditions on the appointment of an operator that you see fit. This can include conditions that allow for assessment of operator performance beyond the monitoring and reporting enabled by the rules and funding agreement.

The Ministry ran a competitive open-market procurement process

16. The Ministry ran a competitive open-market procurement process to select a preferred operator. This is similar to the process previously taken to appoint the current operator of the domestic DRS (METIS 1272227 refers). Interested suppliers were asked to respond to the contract opportunity and their responses were evaluated along three main weighted criteria: their proposed solution (40%), supplier capability (30%), and supplier capacity (20%). In their response, suppliers were also asked to provide pricing information (10%), with the understanding that funding is fixed. The proposed solution and capability were deemed most critical to selecting a high-quality DRS operator.

17. The Ministry received 9(2) applications. These were submitted by Fair Way (the current international DRS operator), 9(2)(b)(ii)

. Given the specific and specialised nature of the combined DRS, the level of response we received met our expectations based on our knowledge of providers with capability and capacity to deliver the service.

18. The Ministry set up a panel to evaluate the tenders that included a learner advisory panel and Ministry officials. The learner advisory panel included learner representatives from the New Zealand International Students' Association, New Zealand Union of Students' Associations and Te Mana Ākonga. The learner advisory panel participated in a non-voting capacity. Two Ministry officials evaluated the responses in a voting capacity.

19. s9(2)(b)(ii)

Proposed preferred scheme operator and conditions on appointment

The Ministry recommends Fair Way as the combined DRS operator

20. Both the learner advisory panel and Ministry officials considered Fair Way's proposed combined DRS solution to be the strongest of the applicants. It best embodied the expectations for delivery of the scheme, and the wider expectations for learner wellbeing as their proposal:

- offered a user-focused and accessible scheme that demonstrated strong cultural competence
- considered the diversity of applicants, including the experience of international learners and domestic tertiary learners, catering to different cultural, social, physical and wellbeing requirements
- demonstrated their capability and experience, including application of key learnings from their experience in dispute resolution over the past 25 years and since operating the international DRS since 2016
- exhibited their extensive understanding and knowledge of learners' experiences in dispute resolutions
- met the Government Centre for Dispute Resolution (GCDR) best practice standards.

21. The evaluation panel and Ministry officials were impressed by Fair Way's commitment to meeting user needs, ensuring accessibility and their focus on continually improving their service by system learning. The learner advisory panel felt that Fair Way's approach to dispute resolution was most aligned with how they wanted to experience the service and that Fair Way would be best placed to respond to the diverse needs of domestic tertiary and international learners.

22. For these reasons, the learner advisory panel and Ministry officials recommend progressing to contract negotiation with Fair Way as the preferred supplier to operate the combined DRS.

We recommend adding a review and attestation condition as part of the appointment

23. The Ministry will monitor the combined DRS operator's performance against the combined DRS rules, the funding agreement, and any conditions you make on the appointment.
24. We note that Fair Way has had experience operating in the international education sector since 2016. As this is a new scheme with an expanded cohort, we recommend you include a condition on the appointment in the Gazette that Fair Way review the scheme after 12 months and attest that they are performing in accordance with the combined DRS rules and the GCDR best practice framework. This will provide an additional lever to assess and manage the combined DRS operator's performance.
25. The funding agreement will set out details that expand on the rules, including reporting and monitoring requirements, and administrative conditions. The proposed term of the agreement is three years, with the possibility to extend for two two-year periods, for a maximum term of seven years. 9(2)(j)
26. We recommend that the funding agreement be finalised before the Gazette notice (Annex 1) is published for the appointment, to ensure the conditions are agreed before the appointment is made.

We seek your agreement to approach 9(2)(b)(ii) if contract negotiations with Fair Way are unsuccessful

27. While we consider it is unlikely, if contract negotiations with Fair Way are unsuccessful, and given the tight timeframes for establishment, we seek your agreement to approach 9(2)(b)(ii) as an alternative operator for the combined DRS.
28. 9(2)(b)(ii) proposal also ranked highly, 9(2)(b)(ii)
- In this case, we recommend the same review and attestation condition be added for the same reasons as outlined above.
29. As previously advised (METIS 1305216 refers) we will need work through the transition process following the appointment of an operator.

Risks

30. The Ministry has considered the risks of appointing either Fair Way (the preferred operator) or 9(2)(b)(ii) as the combined DRS operator. We believe the risks are not significant and can be mitigated by placing conditions in the funding agreement or applying appointment conditions that you are authorised to make under Section 536(4)(c) of the Act. As noted above, the key risk is failing to settle a funding agreement in a reasonable timeframe, and we have sought to mitigate this by seeking your agreement to approach 9(2)(b)(ii) as an alternative operator.
31. There is potential that changes in circumstances will require the combined DRS operator to be flexible in delivery and volume of service. Fair Way has a flexible operation model and has successfully delivered for large schemes under COVID-19 conditions. The Ministry is confident that Fair Way will be able to manage this risk within the fixed price of \$520,000 per annum allocated to operate the combined DRS.
32. 9(2)(b)(ii)

33. There is a risk that establishing the scheme may take some time to be fully realised. We are confident that Fair Way will have an effective scheme operating on 1 January 2024 as it already has the necessary infrastructure and processes (e.g., case management processes, data management, experienced practitioners, and methods) in place. The Ministry will be able to work with Fair Way during the establishment phase. We have a similar view of 9(2)(b)(ii)

34. As previously advised (METIS 1305216 refers), we will need to work through a transition plan with both DRS operators as there is no funding available for overlapping provision of services with the existing schemes.

Financial Implications

35. The funding for the combined DRS contract opportunity is fixed at \$520,000 per annum. The combined DRS will use the funding currently allocated to the domestic DRS and international DRS and no further funding is required at this stage. The domestic DRS is funded through a budget contingency [CAB-21-MIN-0095 refers] allocated in April 2021, and the international scheme is funded through the Export Education Levy.

36. There may be a slight increase in the number of complaints being lodged with the combined DRS, due to removing some barriers to access. We do not expect this to be significant and consider that this can be met within the existing funding.

Next steps

37. Subject to your agreement, we will:

- approach Fair Way to enter into a funding agreement to have the scheme established and operating on 1 January 2024, and
- debrief unsuccessful applicants.

38. The Ministry can provide your office with the complete funding agreement if requested.

39. If discussions with Fair Way are not successful, subject to your agreement, the Ministry will approach 9(2)(b)(ii) as an alternative operator to negotiate a funding agreement for operating the scheme.

40. We have provided draft Gazette notice for your consideration (Annex 1). The draft Gazette notice is consistent with the notice appointing the operator for the Domestic Tertiary Student DRS. Subject to your agreement, once we have a funding agreement with Fair Way, we will publish the final Gazette notice to formalise the appointment.

41. Once the appointment has been finalised, officials will work with the appointed combined DRS operator to develop the scheme in accordance with the rules and GCDR best practice framework to be operational on 1 January 2024 when the rules come into effect. We will keep your office updated on progress on the establishment of the combined DRS.

Annexes

Annex 1: Draft Gazette notice for appointment of Domestic Tertiary Student and International Student Dispute Resolution Scheme Operator

**Appointment of Domestic Tertiary Student and International Student
Contract Dispute Resolution Scheme Operator**

Pursuant to section 536(4) of the Education and Training Act 2020, I hereby appoint Fair Way [trading as Fair Way Resolution Limited] to be responsible for administering the Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme established under the Act.

This appointment is subject to the following condition: the operator must satisfy a review after 12 months that it is performing well.

Dated at Wellington this XXth day of XXXXXXXX 2023.

Hon Jan Tinetti, Minister of Education.