



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 12 November 2021

On 15 November 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 12 November 2021:

Out of scope

LEG-21-MIN-0181

**Education (Domestic Tertiary Student Contract
Dispute Resolution Scheme) Rules 2021**
Portfolio: Education

CONFIRMED

Out of scope

Out of scope

Michael Webster
Secretary of the Cabinet

Proactively Released



Cabinet Legislation Committee

Minute of Decision

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Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

Portfolio **Education**

On 11 November 2021, the Cabinet Legislation Committee:

- 1 **noted** that on 12 July 2021, the Cabinet Business Committee agreed:
 - 1.1 to the rules that establish a dispute resolution scheme to resolve financial and contractual disputes between learners and their providers;
 - 1.2 that the scheme would be accessible and flexible, prioritise consensual methods, and be consistent with Te Tiriti o Waitangi;

[CBC-21-MIN-0065]
- 2 **noted** that the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 give effect to the decision referred to above;
- 3 **noted** that section 539(2) of the Education and Training Act 2020 requires that the responsible Minister must consult with any relevant bodies and sector representatives that the Minister thinks fit before recommending the making of an Order in Council under section 539(1);
- 4 **noted** the advice of the Minister of Education that this requirement has been met;
- 5 **authorised** the submission to the Executive Council of the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 [PCO 23986/13.0];
- 6 **noted** that the Rules come into force on 1 January 2022.

Rebecca Davies
Committee Secretary

Present:

Hon Michael Wood (Chair)
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Kris Faafoi
Hon Michael Wood (Deputy Chair)
Hon Kiri Allan
Hon Dr David Clark
Keiran McAnulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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Office of the Minister of Education

Cabinet Legislation Committee

Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 (the rules).
- 2 These rules are for the functioning and administration of the dispute resolution scheme, made under section 539 of the Education and Training Act 2020 (the Act) [CAB-21-MIN-0286].

Policy

- 3 As part of a package of provisions for learner wellbeing and safety, a new dispute resolution scheme has been developed to address financial and contractual disputes between domestic tertiary learners and providers. This complements the Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021 and is required to be in place and operating on 1 January 2022. These regulations set out rules for the functioning and administration of the scheme.
- 4 Cabinet has previously made decisions on the proposals for operating and monitoring the scheme. On 2 August 2021, Cabinet approved the proposed Education (Domestic Student Contract Dispute Resolution Scheme) Rules, agreed to their formal drafting by the Parliamentary Counsel Office. They agreed that, once drafted, the new rules be released for targeted consultation with people and groups who provided feedback on the proposals ahead of final decisions. Cabinet also agreed to authorise the Minister of Education to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy decisions [CAB-21-MIN-0286].
- 5 Prior to this, Cabinet agreed on 6 April 2021 to publicly consult on options for the development of the rules [CAB-21-MIN-0095].
- 6 As Cabinet has previously agreed, the proposed rules:
 - 6.1 draw on the existing International Student Contract Dispute Resolution Scheme Rules 2016. They have also been developed in collaboration with the Government Centre for Dispute Resolution (GCDR) to ensure

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the scheme is in line with the Aotearoa Best Practice Dispute Resolution Framework;

- 6.2 prioritise consensual forms of dispute resolution over determinative adjudication processes, and are clear that while adjudicators are not bound to give effect to the rule of law in making decisions, they must have regard to it;
 - 6.3 expect the scheme operator to develop and evaluate its service, as set out in the rules, with Māori, to ensure consistency with Te Tiriti o Waitangi;
 - 6.4 reflect the learner's journey through the scheme to ensure clarity and make the scheme more navigable for learners;
 - 6.5 have been designed so that the scheme works well for all learners and is consistent with the Crown's obligations under Te Tiriti o Waitangi and with the Privacy Act 2020; and
 - 6.6 reflect feedback from the Parliamentary Counsel Office.
- 7 Following targeted consultation, I have approved further minor and technical changes to clarify elements of the scheme and its application, consistent with the delegation to me from Cabinet [CAB-21-MIN-0286 refers].
- 8 Some matters raised during targeted consultation will be reflected in the Education and Training Amendment Bill (No 2). Concerns were raised during targeted consultation about the scope of the scheme in relation to adjudication, including whether its approach and its focus on more accessible and equitable forms of dispute resolution is empowered by the Act.
- 9 I consider that this scope of the scheme is enabled by the Act as it stands. However, for the avoidance of doubt, I am seeking to clarify in the Act that the dispute resolution scheme operator will be required to apply principles of fairness and reasonableness in resolving disputes, to have regard to the law, and, in the case of an adjudication, to determine a dispute on its merits but is not bound by strict legal requirements or precedents. This clarification is consistent with the intention that the dispute resolution scheme should be administered in a pragmatic and cost-effective manner aligned with the principles of alternative dispute resolution. It will be included in the upcoming Cabinet Legislation Committee paper on the Education and Training Amendment Bill (No 2).

Timing and 28-day rule

- 10 The rules, if approved, will be submitted to the Executive Council for consideration on 15 November 2021. The rules will be notified in the New Zealand Gazette on 18 November and published on the New Zealand Legislation website on the same day. They will come into effect on 1 January 2022.

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Compliance

- 11 The rules comply, where applicable, with:
- 11.1 the principles of the Treaty of Waitangi;
 - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and/or the Human Rights Act 1993;
 - 11.3 the Privacy Act 2020, which applies to the collection, use, disclosure, retention, and disposal of personal information under the rules, unless otherwise provided in the rules. The Office of the Privacy Commissioner was consulted about the rules, and has identified no privacy concerns with them.
 - 11.4 relevant international standards and obligations; and
 - 11.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 12 Section 539(2) of the Act specifies that the Minister must consult any relevant bodies and sector representatives that the Minister thinks fit. This requirement has been met, as I have undertaken public consultation on the development of the rules [CAB-21-MIN-0095]. In addition to the public consultation, there was further targeted consultation undertaken on the rules drafted by Parliamentary Counsel Office [CAB-21-MIN-0286].

Regulations Review Committee

- 13 I do not consider that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel Office

- 14 The draft rules have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet. Parliamentary Counsel Office has not noted any reservations about these rules.

Financial Implications

- 15 There are no financial implications for this paper. I provided details on funding for the dispute resolution scheme in April 2021 [CAB-21-MIN-0095].

Impact Analysis

- 16 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval was sought of the policy relating to the regulations [CAB-21-MIN-0286].

Publicity

- 17 At the time the rules are made, I will work with officials to ensure that the rules are communicated appropriately, including in alternate formats.
- 18 Once the scheme is in operation, the scheme operator has a responsibility under the rules to publicise the scheme, including how the scheme can be accessed and will work, as well as case studies.

Proactive release

- 19 I intend to proactively release this Cabinet paper within standard timeframes, with any redactions in line with the provisions of the Official Information Act 1982.

Consultation

- 20 I have consulted widely in the course of developing the policy relating to the rules [CAB-21-MIN-0095 and CAB-21-MIN-0286]. Public consultation was undertaken on the development of the policy. Targeted consultation with public and sector groups was undertaken on the draft rules.
- 21 The following agencies have been consulted on this paper and the attached draft rules:

Tertiary Education Commission	Ministry of Health
New Zealand Qualifications Authority	Ministry of Justice
Education New Zealand	Ministry for Women
Office of the Privacy Commissioner	Ministry for Pacific Peoples
Office of the Ombudsman	Treasury
Office for Disability Issues	Oranga Tamariki
Ministry of Housing and Urban Development	Ministry of Social Development
Ministry of Foreign Affairs and Trade	Ministry of Youth Development
The Office for Māori Crown Relations – Te Arawhiti	
Human Rights Commission (Disability Rights Commissioner)	
Ministry of Business, Innovation & Employment (GCDR; Immigration New Zealand)	
Department of Prime Minister and Cabinet (Policy Advisory Group; Child Wellbeing Unit)	

Te Puni Kōkiri was informed of this paper and the attached draft rules.

Recommendations

The Minister of Education recommends that the Cabinet Legislation Committee:

- 1 note that on 2 August 2021, Cabinet agreed to the proposed rules that establish a dispute resolution scheme to resolve financial and contractual disputes between learners and their providers. It was agreed that the scheme would be accessible and flexible, prioritise consensual methods, and be consistent with Te Tiriti o Waitangi [CAB-21-MIN-0286];
- 2 note that the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 will give effect to the decision referred to in recommendation 1 above;
- 3 note that section 539(2) of the Education and Training Act 2020 requires that the responsible Minister must consult with any relevant bodies and sector representatives that the Minister thinks fit before recommending the making of an Order in Council under section 539(1);
- 4 note the advice of the Minister of Education that this requirement has been met;
- 5 authorise the submission to the Executive Council of the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021;
- 6 note that the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 come into force on 1 January 2022.

Authorised for lodgement

Hon Chris Hipkins

Minister of Education

Appendices

Appendix A: Education (Domestic Tertiary Student Contract Dispute Resolution Scheme)
Rules 2021

Proactively Released

**Education (Domestic Tertiary Student Contract Dispute
Resolution Scheme) Rules 2021**

Order in Council

At Wellington this day of 2021

Present:
in Council

These rules are made under section 539 of the Education and Training Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Education made after complying with section 539(2) of that Act.

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Rules

1 Title

These rules are the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021.

2 Commencement

These rules come into force on 1 January 2022.

3 Application

These rules apply to the resolution of disputes between domestic tertiary students (and former and prospective domestic tertiary students) and providers under the scheme.

4 Interpretation

In these rules, unless the context otherwise requires,—

Act means the Education and Training Act 2020

adjudicator means a person appointed by the DRS operator to resolve disputes by adjudication

appoint includes engage or employ

caregiver has the same meaning as in section 386AAA of the Oranga Tamariki Act 1989

code means a code of practice issued under section 534(1)(a) or (c) of the Act, but only to the extent that it relates to domestic tertiary students

code administrator means a person or an agency appointed under regulations made under section 648 of the Act

consensual methods means dispute resolution processes in which the parties reach mutual agreement on the outcome of the dispute (for example, facilitation or mediation)

dispute—

(a) means a dispute between a domestic tertiary student (or a former or prospective domestic tertiary student) and a provider that is contractual or financial, or both; and

(b) includes a contractual dispute in relation to the quality of education received by a domestic tertiary student (or a former domestic tertiary student) if an education quality assurance agency has taken action against the provider under section 348(4), 350(1)(a), (b), or (c) or (2), or 459(6) of the Act

DRS operator means a person or an agency appointed under section 536(4) of the Act to administer the scheme

education quality assurance agency, for the purposes of these rules, means—

- (a) NZQA (*see* section 253(b) of the Act);
- (b) the Vice-Chancellors Committee (*see* section 253(c) of the Act)

family group, in relation to a domestic tertiary student, means a family group, including an extended family,—

- (a) in which there is at least 1 adult—
 - (i) with whom the domestic tertiary student has a biological or legal relationship; or
 - (ii) to whom the domestic tertiary student has a significant psychological attachment; or
- (b) that is the domestic tertiary student's whānau or other culturally recognised family group

legal guardian, in relation to a domestic tertiary student, means a person who, by court or testamentary appointment, is responsible for the student's well-being and financial support

mana includes a person's intrinsic value and inherent dignity derived from the person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group in accordance with tikanga Māori or its equivalent in the person's culture

practitioner means a person appointed by the DRS operator to resolve disputes by consensual methods or by adjudication

scheme means the student contract dispute resolution scheme established by section 536 of the Act, but only to the extent that it relates to domestic tertiary students (and former and prospective domestic tertiary students)

serious misconduct, in relation to a provider, means misconduct that the DRS operator considers, on reasonable grounds, to be fraudulent or grossly negligent or a breach of any applicable legislation or the code

student claimant, in relation to a provider,—

- (a) means a person who—
 - (i) is a domestic tertiary student enrolled by the provider; or
 - (ii) is a former domestic tertiary student enrolled by the provider; or
 - (iii) intends to be, or is in the process of being, enrolled by the provider as a domestic tertiary student; and
- (b) includes a parent, caregiver, or family group member of a person referred to in paragraph (a), acting with the consent of that person; and
- (c) includes a legal guardian of a person referred to in paragraph (a)

systemic issue means an issue that has material implications that not only affect the parties to a particular dispute but also relate to the systems, processes, conduct, or operation of the—

- (a) provider who is the subject of a claim; or
- (b) wider tertiary education system

tikanga Māori includes Māori customary law and practices.

Part 1

Dispute resolution process

Lodging disputes

5 How to lodge dispute with DRS operator

- (1) A student claimant may lodge a dispute against a provider by making a claim under the scheme to the DRS operator.
- (2) A claim must set out the following information:
 - (a) the student claimant's name;
 - (b) confirmation that the student claimant is a domestic tertiary student (or a former or prospective domestic tertiary student);
 - (c) the name of the provider;
 - (d) sufficient information about the dispute to enable the DRS operator to assess whether to accept the dispute.
- (3) A claim may be made in writing or orally.
- (4) The DRS operator must record in writing a claim made orally and confirm the record of the claim with the student claimant.
- (5) A student claimant must not be charged a fee for making a claim under the scheme.

6 Support to enable student claimant to make claim

- (1) To enable a student claimant to make a claim, the DRS operator must, where appropriate and at a reasonable cost,—
 - (a) provide additional support (for example, interpretation, translation, or language services);
 - (b) refer the student claimant to support services outside the DRS operator (for example, student advocacy, disability support, or well-being support services).
- (2) If requested by the student claimant, the support and services must be independent of the provider against whom they have lodged a dispute.

DRS operator determines eligibility and provides initial response

7 When DRS operator may decline to accept dispute

- (1) The DRS operator may decline to accept a dispute for resolution under the scheme if it considers that the scheme does not cover the dispute for 1 or more of the following reasons:
 - (a) the provider has not been given an adequate opportunity to resolve the dispute;
 - (b) the dispute has been dealt with in another forum, unless new evidence or other information has come to light that the DRS operator believes on reasonable grounds should be considered;
 - (c) the dispute is being dealt with in another forum, unless the student claimant withdraws the dispute from the other forum;
 - (d) the dispute would be more appropriately dealt with by a court, a tribunal, or another appropriate authority;
 - (e) the dispute has been previously dealt with under the scheme, unless new evidence or other information has come to light;
 - (f) the claim is trivial, frivolous, or vexatious;
 - (g) as a result of a delay in lodging the dispute, it is no longer possible to obtain sufficient evidence or other information for resolution of the dispute under the scheme.
- (2) This clause does not apply if the District Court has, under section 538 of the Act, enforced a resolution that is binding under section 536(7) of the Act.

8 DRS operator to inform student claimant of information sharing

Before accepting or declining a dispute, the DRS operator must inform the student claimant that information about their dispute will be shared in accordance with these rules.

9 Initial response of DRS operator to claim

- (1) The DRS operator must give written notice to the student claimant and to the provider within 10 working days after the claim is made that—
 - (a) acknowledges the lodging of the dispute and the nature of the dispute; and
 - (b) states—
 - (i) that the dispute is accepted; or
 - (ii) that the dispute is not covered by the scheme and explains why; and
 - (c) if appropriate, refers the student claimant to the code administrator or another appropriate authority; and

- (d) if the provider has not yet had the opportunity to resolve the dispute, refers the student claimant to the provider; and
 - (e) if the dispute is accepted, outlines the next steps in the process for dealing with the claim (for example, requests for further information or suggested dates for a meeting).
- (2) The DRS operator must inform the relevant education quality assurance agency of the nature of the dispute and whether it has been accepted by the DRS operator or referred to the code administrator or another appropriate authority.
- (3) If the DRS operator declines the dispute, the DRS operator must refer the student claimant to support services outside the DRS operator (for example, student advocacy, disability support, or well-being support services).

General approach to resolving disputes

10 General approach to resolving disputes

- (1) The DRS operator and practitioners must consider and deal with a dispute in a timely, accessible, culturally safe, and competent manner and, in particular, in a way that—
 - (a) is consistent with the principles of Te Tiriti o Waitangi; and
 - (b) has regard to appropriate tikanga Māori; and
 - (c) upholds the mana of the parties to a dispute; and
 - (d) where appropriate, has regard to the specific cultural needs or circumstances of the parties in the dispute resolution process; and
 - (e) takes into account the age of the student claimant (for example, the need to communicate in ways that are appropriate for a person of a particular age); and
 - (f) ensures that all learners, including disabled learners, can fully access and participate in the dispute resolution process; and
 - (g) encourages the parties to work towards a shared understanding of the dispute and a mutually agreed solution; and
 - (h) prioritises and maximises the use of consensual methods to resolve the dispute, unless those methods are not appropriate for resolving the dispute; and
 - (i) promotes restorative justice between the parties and is consistent with the principles of natural justice; and
 - (j) for consensual methods, is on a without prejudice basis; and
 - (k) for adjudication, takes the views of the parties into account in deciding measures to resolve the dispute.
- (2) The DRS operator and practitioners—
 - (a) must act in a way that is fair and reasonable in all the circumstances; and

- (b) must have regard to the general law, the relevant best practice, and the code.

11 Support for parties in resolution of dispute

- (1) The DRS operator must allow parties to the dispute to have the following people in attendance during the dispute resolution process:
 - (a) an advocate:
 - (b) a support person or persons.
- (2) The DRS operator must provide the opportunity for te reo Māori or New Zealand sign language to be used in the dispute resolution process.
- (3) Where appropriate and at reasonable cost, the DRS operator must—
 - (a) provide additional support to student claimants and providers (for example, interpretation, translation, or language services):
 - (b) refer the student claimant to support services outside the DRS operator (for example, student advocacy, disability support, or well-being support services).

12 Disputes may be combined

The DRS operator may, after taking into account the views of the parties, combine disputes for single resolution when the DRS operator considers that it is sensible to do so.

13 Consensual methods or adjudication to resolve dispute

- (1) The DRS operator must, after taking into account the views of the parties, decide whether to use consensual methods or adjudication to resolve a dispute.
- (2) The DRS operator must offer to use consensual methods unless, in the circumstances of the case, there are good reasons not to offer to use them.
- (3) The DRS operator may, after taking into account the views of the parties, decide at any time to refer the parties to adjudication if the DRS operator is satisfied that consensual methods are not working.
- (4) The practitioner may, after taking into account the views of the parties, decide the procedures to be followed under the dispute resolution process, consistent with these rules.

14 DRS operator must appoint practitioner for resolution of dispute

- (1) The DRS operator must appoint as a practitioner in a dispute under the scheme only a person who is independent of the parties to the dispute.
- (2) When appointing a practitioner, the DRS operator must take into account the student claimant's preference and needs regarding a person to be appointed (including, without limitation, the gender, cultural background, knowledge of tikanga Māori, and te reo Māori fluency of the person to be appointed).

- (3) If a dispute proceeds from consensual methods to adjudication, the practitioner for the consensual methods must not act as the adjudicator, unless the parties agree.
- (4) An adjudicator may refer a dispute that is in adjudication back to consensual methods at any time before the adjudicator gives notice of their proposed decision under rule 23(1) if—
 - (a) the parties agree; and
 - (b) the adjudicator considers that is in the interests of the parties to do so.
- (5) If the parties return to consensual methods under subclause (4), the DRS operator must appoint a new practitioner to resolve the dispute.

15 DRS operator must ensure parties are aware of conditions of scheme

The DRS operator must ensure that the parties to the dispute are aware of—

- (a) the conditions of entering the scheme, including the conditions set out in the following rules:
 - (i) rule 16 (confidentiality of consensual methods):
 - (ii) rule 17(a) (adjudicator not bound by rules of evidence or previous decisions):
 - (iii) rule 17(b) (adjudicator must determine dispute according to substantial merits and justice of case):
 - (iv) rule 19 (DRS operator must confirm that party to dispute consents to full disclosure of information to other parties):
 - (v) rule 34 (DRS operator must report systemic issues, serious misconduct, and breach of rules); and
- (b) the nature of the dispute resolution process, including the prioritisation of consensual methods over adjudication.

Resolution of disputes by consensual methods

16 Confidentiality of consensual methods

- (1) The persons specified in subclause (2) must, unless authorised to do otherwise by the parties or the relevant party, keep confidential—
 - (a) any agreement for the resolution of a dispute by consensual methods; and
 - (b) any statement, admission, or document made or created for the purposes of consensual methods; and
 - (c) any information that, for the purposes of consensual methods, is disclosed in the course of the consensual methods.
- (2) The persons are—
 - (a) the practitioner:

- (b) a party to the consensual methods:
- (c) a person who assists a party or who assists a practitioner:
- (d) the DRS operator or a person employed or engaged by the DRS operator.
- (3) No evidence is admissible in any court or tribunal, or before any person acting judicially, of any agreement, statement, admission, document, or information that is required by subclause (1) to be kept confidential.
- (4) However, this rule does not—
 - (a) prevent the discovery or affect the admissibility of any evidence that would otherwise be discoverable or admissible and that existed independently of the consensual methods merely because the evidence was presented in the course of the consensual methods; or
 - (b) prevent disclosure where disclosure is otherwise authorised or required by law; or
 - (c) prevent the use of anonymised data for reporting, monitoring, evaluation, or research purposes.

Adjudication of disputes

17 Basis for adjudication

Despite rule 10(2), an adjudicator—

- (a) is not bound by the rules of evidence or previous decisions; and
- (b) must determine the dispute according to the substantial merits and justice of the case, but is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

18 Adjudicator may request information necessary for resolution of dispute in adjudication

- (1) The adjudicator may request information from the parties if necessary for and relevant to the resolution of a dispute by adjudication.
- (2) When requesting information, the adjudicator may specify a reasonable period within which a party must supply the information.
- (3) The adjudicator must advise the parties that—
 - (a) they are not required to supply the information requested if—
 - (i) the supply of the information would breach an obligation of confidence owed to a third person who has refused consent to the supply of the information; or
 - (ii) the information is subject to legal professional privilege or was provided to the party on a without prejudice basis; or
 - (iii) the party does not have the information or it is not within their control; and

- (b) a failure or refusal to supply information requested (if none of the exceptions in paragraph (a) apply) may weaken their claim or result in termination of the dispute resolution process.

19 Disclosure of information to other parties to adjudication

The adjudicator must confirm that a party to an adjudication (A) consents to the full disclosure to the other parties of information supplied by A that is relevant to the claim.

20 Student claimant may request certain information not be disclosed to provider

- (1) A student claimant may request that their sensitive personal information not be disclosed to the provider without the student claimant's consent.
- (2) If a student claimant has made a request under subclause (1), the adjudicator must not disclose the information to the provider, unless the adjudicator believes that the provider would be unreasonably disadvantaged in their ability to respond fully and fairly to the claim.
- (3) If the adjudicator decides that the information should be disclosed to the provider, the adjudicator must first notify the student claimant before disclosing the information to the provider.

21 Adjudicator must ensure parties to adjudication are kept informed

- (1) The adjudicator must keep the parties to an adjudication informed about progress in resolving the dispute and the procedure, or any changes in the procedure, including—
 - (a) how information and evidence is to be presented in the adjudication; and
 - (b) the rights and obligations of the parties in the adjudication (if any); and
 - (c) the period of time required to hear evidence; and
 - (d) when a decision is likely to be made.
- (2) The adjudicator must ensure that each party has a reasonable opportunity to be informed of, and to respond to, the arguments or submissions of the other parties.
- (3) The adjudicator must supply the parties with all relevant information, including any information supplied by a party, unless,—
 - (a) in relation to sensitive personal information of a student claimant, disclosure is prohibited under rule 20(2);
 - (b) in relation to other information, the party does not consent to the disclosure of information.

22 Use of information in adjudication

- (1) For the purpose of resolving a dispute, the adjudicator may consider any information obtained by them or supplied to them.

- (2) The adjudicator may draw an adverse inference from a failure of or a refusal by a party to—
- (a) comply with a request for information under rule 18 if none of the exceptions in rule 18(3)(a) apply;
 - (b) consent to the release of relevant information under rule 19, unless it is sensitive personal information that a student claimant has requested not be disclosed under rule 20.

23 Decision by adjudication

- (1) Before making a final decision, the adjudicator must give the parties notice of the adjudicator's proposed decision and the reasons for the decision.
- (2) The adjudicator's notice of the proposed decision must be in writing and must allow a period of 10 working days after sending the notice for the parties to make further submissions and for further consideration of the dispute.
- (3) If the dispute is not resolved within the 10-working-day period, and after considering any further submissions received from the parties, the adjudicator may make a final decision in the dispute.
- (4) The final decision may differ from the proposed decision notified to the parties.
- (5) The adjudicator must give notice in writing to the parties of the final decision and the reasons for the decision.

24 When final decision binding

A final decision becomes binding on the parties to a dispute on the date on which notice is given under rule 23(5).

25 Remedies under final decision in dispute resolved by adjudication

- (1) The adjudicator may direct the following remedies:
 - (a) that the provider make a public acknowledgment and apology that it has committed a breach of the student claimant's rights or that some other harm has been suffered;
 - (b) that the provider pay the student claimant an amount not exceeding \$200,000 for the damage, loss, or inconvenience suffered (for example, the impact on the student claimant's health, the duration of the dispute, or attempts to resolve the dispute using the provider's internal processes) resulting from the dispute as judged by the adjudicator;
 - (c) that the provider take any other action directed by the adjudicator to remedy the dispute;
 - (d) that the provider provide any reasonable non-monetary redress for any damage, loss, or inconvenience resulting from the dispute;
 - (e) that the provider—

- (i) review any of its rules, bylaws, or policies relating to the conduct that gave rise to the dispute; or
 - (ii) refrain from continuing or repeating the conduct that has given rise to the dispute; or
 - (iii) take any other appropriate action (other than an action described in subclause (2)) to resolve the dispute.
- (2) The adjudicator may recommend that the provider establish rules, bylaws, or policies that are aimed at preventing the conduct that gave rise to the dispute.

Termination of dispute resolution process

26 Termination of dispute resolution process

- (1) A dispute resolution process under the scheme is terminated if—
 - (a) the parties notify the DRS operator in writing that they have entered into an agreed settlement; or
 - (b) the student claimant notifies the DRS operator in writing that they have withdrawn the claim, stating the reason for withdrawing the claim, and the DRS operator is satisfied that the student claimant has not been coerced into withdrawing the claim; or
 - (c) the student claimant notifies the DRS operator in writing that they intend to apply to a court, a tribunal, or another appropriate authority for resolution of the dispute; or
 - (d) the DRS operator determines that the dispute is not covered by the scheme; or
 - (e) the student claimant has failed or refused to supply any information requested under rule 18 and—
 - (i) none of the exceptions in rule 18(3)(a) apply; and
 - (ii) the DRS operator notifies the student claimant in writing that it declines to continue consideration of the dispute.
- (2) If a dispute resolution process is terminated under subclause (1)(d), the DRS operator must refer the student claimant to the code administrator or an appropriate authority to have their dispute addressed.

Part 2

Administration of scheme

Functions and powers of DRS operator

27 Functions of DRS operator

- (1) The DRS operator has the following core functions:

- (a) providing an independent scheme for resolving disputes between students and providers that fall within the scheme's jurisdiction:
 - (b) operating the scheme in accordance with the scheme's purpose and these rules:
 - (c) resolving, or assisting in resolving, disputes under the scheme by agreement between the parties or, if applicable, by adjudication.
- (2) Other functions of the DRS operator include the following:
- (a) assisting with the promotion and publication of the scheme, including by working with providers and student representative groups:
 - (b) monitoring compliance with these rules:
 - (c) monitoring and reporting on the effectiveness of the scheme:
 - (d) carrying out any other function of the scheme under these rules:
 - (e) assisting with the promotion of effective dispute resolution in the tertiary education system more broadly, providing a more systematic and preventative approach to dispute resolution:
 - (f) identifying systemic issues that are emerging through the scheme and reporting them to the education quality assurance agencies, the code administrator, and relevant government agencies.
- (3) The DRS operator has the following specific functions in relation to Māori:
- (a) proactively developing and evaluating the operation of the scheme with Māori to ensure that the scheme has regard to tikanga Māori and is consistent with the principles of Te Tiriti o Waitangi:
 - (b) taking any action that is necessary or desirable to address any concerns regarding—
 - (i) the application of tikanga Māori in resolving disputes; or
 - (ii) any inconsistency with the principles of Te Tiriti o Waitangi in resolving disputes or in the operation of the scheme as a whole:
 - (c) ensuring that its annual reports are accessible to, and appropriate for use by, Māori:
 - (d) generating a range of Māori-specific data and insights that are meaningful and appropriate for use by Māori, the DRS operator, and education quality assurance agencies:
 - (e) tracking the input, output, and outcome indicators of the scheme's impact on outcomes for Māori, and making any changes necessary to expedite the achievement of desired outcomes:
 - (f) ensuring that there is no significant or long-term disparity of access or outcomes for Māori in relation to the operation of the scheme.

28 Powers of DRS operator

- (1) The DRS operator has the powers specifically conferred by these rules and other powers necessary for performing its functions under these rules.
- (2) The DRS operator may delegate the performance and exercise of its functions and powers under these rules to any person who is appointed to perform or exercise them.
- (3) However, the DRS operator may not delegate a function or power that under these rules must be performed or exercised by an adjudicator.

29 DRS operator may extend time frames

The DRS operator may, at the request of a party to a dispute, and where it is reasonable to do so, extend the time frame within which something must be done, including providing information, under these rules in relation to the consideration or resolution of a dispute.

30 DRS operator must appoint sufficient number of practitioners for scheme

- (1) The DRS operator must appoint a sufficient number of practitioners to ensure the effective functioning of the scheme.
- (2) In appointing practitioners, the DRS operator must—
 - (a) consider a person's training, qualifications, experience, and personal qualities (including their ability to communicate and work effectively with Māori, young people, Pacific people, disabled people, and people from diverse cultural and linguistic backgrounds); and
 - (b) appoint only persons who are capable of performing the functions of a practitioner; and
 - (c) ensure that a person appointed is able to act independently.
- (3) The DRS operator must proactively recruit culturally competent practitioners (including Māori and Pacific practitioners) and disability-inclusive practitioners and support their ongoing professional development.
- (4) The DRS operator is responsible for the actions of a person it appoints to perform its functions under these rules.

31 DRS operator must ensure accessibility of scheme

- (1) The DRS operator must take all reasonable steps to ensure that students and providers are fully aware of the scheme and know how to access it.
- (2) In subclause (1), **reasonable steps** include providing information about the scheme in te reo Māori, New Zealand Sign Language, and in a range of formats that are accessible for disabled people and people for whom English is not their preferred language.
- (3) If 1 or more persons or agencies are responsible for administering the scheme, those persons or agencies must ensure that there is a single contact point for

domestic tertiary students (and former and prospective domestic tertiary students) to access the scheme (for example, a single Internet site, telephone number, and email address).

32 DRS operator must maintain record of disputes

- (1) The DRS operator must maintain a record of all disputes lodged with the operator and the outcome of the disputes, including a copy of any agreement for the resolution of a dispute by consensual methods and a summary of any decision made by an adjudicator.
- (2) A person or an agency who is no longer the DRS operator must make the record available to a person or an agency appointed to be responsible for administering the scheme.

Reporting and accountability of scheme

33 DRS operator must publish case studies and thematic reviews

- (1) Subject to appropriate safeguards and redactions for the purposes of protecting privacy of personal information, the DRS operator must, for the purposes set out in subclause (4),—
 - (a) compile and publish—
 - (i) case studies; and
 - (ii) when relevant, thematic reviews of disputes resolved under the scheme; and
 - (b) promote discussion and awareness of those case studies and thematic reviews.
- (2) The case studies and thematic reviews may include the following information:
 - (a) the basic facts of a case;
 - (b) the approach taken to resolve the case;
 - (c) the outcome reached.
- (3) In compiling and publishing a case study, the DRS operator must obtain the consent of the parties involved in the dispute or disputes on which the case study is based.
- (4) The purposes referred to in subclause (1) are—
 - (a) keeping providers, students, and other educational interest groups informed; and
 - (b) raising awareness of best practice among providers to help build sector capability, for example, regarding internal complaints processes; and
 - (c) raising awareness of systemic issues affecting learners and providers; and

- (d) demonstrating the process of decision making under the scheme and ensuring that the process is transparent.

34 DRS operator must report systemic issues, etc

In the course of investigating or resolving disputes by adjudication, the DRS operator must report the following matters to the code administrator, education quality assurance agencies, and relevant government agencies (including, without limitation, the Ministry and TEC):

- (a) any serious misconduct by a provider that the DRS operator identifies:
- (b) any breach of these rules by a provider:
- (c) any systemic issue that the DRS operator identifies.

35 Annual report

- (1) The DRS operator must submit to the Minister, by 30 September in each year, an annual report for the year ended on 30 June of that year.
- (2) The annual report must include, without limitation, the following information relating to the year in question:
 - (a) the number and nature of each of the following (broken down in each category by types of provider, that is, private training establishments, wānanga, Te Pūkenga—New Zealand Institute of Skills and Technology and its Crown entity subsidiaries, and universities):
 - (i) disputes accepted:
 - (ii) disputes not accepted:
 - (iii) disputes not accepted that are referred to other agencies (for example, to an education quality assurance agency, TEC, or back to the student claimant's provider):
 - (iv) disputes under subparagraphs (i), (ii), and (iii) that relate to Māori student claimants, including the outcomes of the dispute resolution processes:
 - (v) disputes resolved by the scheme, noting which method was successful in resolving the dispute:
 - (vi) for disputes resolved by adjudication, the number that were resolved in favour of the student claimant and the number that were resolved in favour of the provider:
 - (b) the average length of time taken to resolve a dispute by consensual methods and adjudication:
 - (c) examples of typical cases, subject to—
 - (i) appropriate safeguards and redaction to protect privacy of personal information:

- (ii) the consent of the parties involved in the dispute or disputes on which the examples are based:
 - (d) financial statements prepared in accordance with generally accepted accounting practice that demonstrate how the funding of the DRS operator has been applied:
 - (e) an outline of the steps taken by the DRS operator to ensure that it is—
 - (i) operating in a way that is consistent with the principles of Te Tiriti o Waitangi, for example, partnering with or empowering Māori to design and deliver dispute resolution services; and
 - (ii) having regard to tikanga Māori, including during the dispute resolution process:
 - (f) any systemic issues or serious misconduct by providers identified in the course of investigating or resolving a dispute by adjudication, and how the DRS operator dealt with the systemic issues or serious misconduct:
 - (g) the result of any independent review completed during the reporting year.
- (3) The DRS operator must make copies of its annual report available for inspection by the public without charge, for example, on an Internet site maintained by or on behalf of the DRS operator.
- (4) The DRS operator must make a copy of its annual report available in te reo Māori and in a range of formats that are accessible for disabled people and people for whom English is not their preferred language.

36 Monitoring operation of scheme

- (1) The DRS operator must have a process—
- (a) for receiving and resolving complaints about the operation of the scheme and must publicise that process (for example, on an Internet site maintained by or on behalf of the DRS operator); and
 - (b) for collecting feedback on the operation of the scheme, which must include the following:
 - (i) conducting regular client satisfaction surveys for measuring the quality of processes under the scheme, the durability of the outcomes under the scheme, and any other appropriate performance indicators:
 - (ii) enabling feedback to be submitted anonymously:
 - (iii) publishing the results of the survey and anonymous feedback.
- (2) A provider or student claimant who is not satisfied with the operation of the scheme or the performance of the DRS operator may complain to the Ministry, but the complaint must not be used to challenge the outcome of a particular dispute.

- (3) The DRS operator must co-operate with any person or body appointed by the Minister to carry out an independent review of the scheme and its operation.

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 January 2022, apply to the resolution of disputes using the scheme established under section 536 of the Education and Training Act 2020. The rules provide for the functioning and administration of the scheme for resolving disputes between domestic tertiary students (and former and prospective domestic tertiary students) and providers.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 29 June 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- https://assets.education.govt.nz/public/Documents/our-work/information-releases/Advice-Seen-by-our-Ministers/August-2021/Tertiary-and-International-Learner-Wellbeing-Cabinet-paper_Redacted-v2.pdf
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Education.