

Briefing Note: Talking points for Cabinet Legislation Committee 11 November 2021: Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021

To:	Hon Chris Hipkins, Minister of Education		
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Purpose


This briefing provides talking points to support the Minister presenting the paper seeking approval of the rules for the functioning and administration of the Domestic Tertiary Student Contract Dispute Resolution Scheme (DRS) to Cabinet Legislation Committee.

Recommendations

The Ministry of Education recommends you:

- note** the talking points provided in **annex 1**;
- forward** this briefing to the Minister who will present the paper in your absence; and
- 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


Julie Keenan
Policy Director
Te Puna Kaupapahere

Hon Chris Hipkins
Minister of Education

05/11/2021

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Background on the DRS rules

1. The Education and Training Act 2020 (the Act) establishes a dispute resolution scheme (DRS) to resolve financial and contractual disputes between tertiary learners and their education providers (section 536).
2. Under the Act, a DRS operator appointed by the Minister of Education will administer the scheme according to the rules made by Order in Council on the Minister's recommendation. The DRS must be operating when the new code for wellbeing and safety of learners (the code) comes into effect on 1 January 2022.
3. This DRS fills a regulatory gap for domestic tertiary learners who do not currently have a bespoke, accessible dispute resolution mechanism. This DRS complements the existing scheme for international learners (iStudent Complaints). Both schemes are established under section 536 of the Act, and share the same scope of contractual and financial disputes between learners and their providers.
4. The rules for the domestic tertiary learner DRS differ from the international rules because they reflect more up-to-date dispute resolution best practice and were designed specifically for New Zealand learners, including that the rules have a more explicit tikanga Māori focus and grounding in Te Tiriti o Waitangi.
5. Parliamentary Counsel Office prepared the rules. PCO's drafting of the rules was directed by Cabinet's decisions, following a 6-week public consultation held in April-May this year [CBC-21-MIN-0065 refers]. This included the Cabinet's direction on the overall framework and policy intent of the rules.
6. PCO's drafting of the rules was further shaped by a second, more targeted 2-week consultation held from 25 August to 8 September [METIS 1271113 refers].
7. The rules were also informed by the Government Centre for Dispute Resolution's Aotearoa best practice dispute resolution framework.

Lodging the DRS rules to Cabinet Legislation Committee

8. A Cabinet paper that seeks approval of the rules to Cabinet Committee was lodged for consideration by Cabinet Legislation Committee on 11 November. PCO provided the certified rules directly to Cabinet for lodging.
9. **Annex 1** provides talking points to support the discussion of the paper and the rules.

Next Steps

10. Subject to Cabinet's agreement, the Order in Council can be made on 15 November. The Minister of Education will signal that the rules have been made as an Order in Council via the Gazette. PCO will prepare and publish the Gazette notice for the Minister. The 28-day rule will apply, and we expect it will expire in mid-December.

Annexes

Annex 1: Talking points to support Cabinet Legislation Committee discussion

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Summary

As part of a package of proposals aimed to improve learner wellbeing and safety in tertiary education, a dispute resolution scheme to help resolve financial and contractual disputes between learners and their providers was provided for in the Education (Pastoral Care) Amendment Act 2019.

These proposed regulations set out rules for the functioning and administration of this scheme, including its design and process.

This scheme fills a gap for domestic tertiary learners who do not currently have a bespoke, accessible dispute resolution mechanism.

This scheme complements the existing scheme for international learners (known as iStudent Complaints). Both schemes are established under the same section of the Act (S536), and share the same scope of financial and contractual disputes between learners and their providers. However, the rules for the domestic tertiary learner scheme differ in that they reflect more up-to-date dispute resolution best practice and were designed specifically for New Zealand learners. This includes that the rules have a more explicit tikanga Māori focus and grounding in Te Tiriti o Waitangi.

Today, on behalf of the Minister of Education, I am seeking your approval to submit the Education (Domestic Tertiary Student Contract Dispute Resolution Scheme) Rules 2021 to the Executive Council, to set rules for the functioning and administration of the dispute resolution scheme for domestic tertiary learners under section 539 of the Education and Training Act 2020.

In July, Cabinet Business Committee made policy decisions for the scheme's design, operation, and monitoring [CAB-21-MIN-0095]. As agreed, the rules:

- draw on the existing International Student Contract Dispute Resolution Scheme Rules 2016, but are tailored to meet the needs of domestic students;
- have been developed in collaboration with the Government Centre for Dispute Resolution to ensure they align with the Aotearoa Best Practice Dispute Resolution Framework, and reflect feedback from Parliamentary Counsel Office;
- prioritise consensual forms of dispute resolution over determinative, adjudicative processes;
- reflect the learner's journey through the scheme to ensure clarity and make the scheme more navigable for learners;
- expect the scheme operator to develop and evaluate its service under the rules with Māori, to ensure consistency with Te Tiriti o Waitangi;
- 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.

Managing costs

There are no financial implications for this paper. The Minister of Education provided details on the contingency for funding the delivery of the dispute resolution scheme in April 2021 [CAB-21-MIN-0095].

Communication and implementation

The rules, if approved, will be submitted to the Executive Council for consideration on 15 November 2021. The rules will be notified in the Gazette on 18 November and published on the New Zealand Legislation website on the same day. The 28-day rule will apply, and we expect it will expire in mid-December. The DRS must be operating when the new code for wellbeing and safety of learners (the code) comes into effect on 1 January 2022.

The Ministry of Education has undertaken an open contestable process to make recommendations to the Minister on who he should appoint as operator of the scheme. The Minister will consider this advice from officials when making the decision on who to appoint as operator.

At the time the rules are made, the Minister of Education will work with officials to ensure that the rules are communicated appropriately, including in alternative formats.

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.