



Education Report: Domestic Tertiary Student Dispute Resolution Scheme Operator

To:	Hon Chris Hipkins, Minister of Education		
Date:	10 November 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1272227
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose

This paper seeks your agreement to appoint an operator for the Domestic Tertiary Student Dispute Resolution Scheme (DRS), which is established under section 536 of the Education and Training Act 2020 (the Act).

Summary

1. You are authorised under the Act to appoint one or more persons or agencies to be responsible for administering the DRS. The Act requires you to take reasonable steps to ensure that there is an appointee to do this at all times.
2. To aid you in selecting and appointing a supplier, the Ministry of Education (the Ministry) ran an open market process, with an evaluation panel consisting of officials and external evaluators.
3. The panel's final recommendation is that Talk Meet Resolve (TMR) is the preferred operator of the scheme. The Ministry supports the panel's recommendation, and we recommend that you appoint TMR as the scheme operator. TMR had a strong proposal, with proven experience operating a large-scale, client-focused, and efficient dispute resolution scheme (including for the Accident Compensation Corporation), and was the best fit for the objectives and intent of the scheme.
4. We note that TMR will be new to operating in the tertiary education sector, and recommend a condition on the appointment of a performance review after 12 months.
5. A funding agreement must be settled between the operator and the Ministry to enable the scheme to operate. We recommend the Ministry conclude this process with the preferred operator before the appointment is made through the Gazette notice. There is a second operator that we could appoint instead, if we cannot reach agreement with TMR.
6. The scheme needs to be operating on 1 January 2022, so it is important to progress this work swiftly to give the operator sufficient time to set up the scheme.

Recommended Actions

The Ministry of Education (the Ministry) recommends you:

- a. **note** that the Education and Training Act (the Act) establishes a Domestic Tertiary Student Dispute Resolution Scheme (DRS) and that you are authorised by the Act to appoint a person or agency to administer the scheme (the operator). You must take reasonable steps to ensure that there is a person or agency appointed as operator at all times. You are also authorised to impose any conditions on the appointment that you see fit
- b. **note** that the Ministry has run a competitive open market process to make a recommendation to you on who to appoint as DRS operator
- c. **agree** to appoint Talk Meet Resolve, the panel's recommended supplier, as the operator, subject to the Ministry and Talk Meet Resolve settling a funding agreement
- Agree / Disagree**
- d. **agree** to set a condition on the appointment that requires the operator to satisfy a review after 12 months that it is performing well
- Agree / Disagree**
- e. **agree** to the Gazette notice (in **Annex One**), to be published once the funding agreement is settled
- Agree / Disagree**
- f. **9(2)(j)** [REDACTED]
- Agree / Disagree**
- g. **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

10/11/2021


Hon Chris Hipkins
Minister of Education

21/11/21

Background

- 1 Section 536 of the Education and Training Act 2020 (the Act) establishes the Domestic Tertiary Student Dispute Resolution Scheme (DRS). The DRS is scheduled to be operating on 1 January 2022, alongside the Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021.
- 2 The purpose of the DRS is to help domestic tertiary students and their education providers resolve disputes related to contractual and financial matters in a way that is accessible, timely, user-focused, and culturally appropriate.
- 3 The Act sets the following parameters for your appointment of a DRS operator:
 - It authorises you to appoint one or more persons or agencies to be responsible for administering the DRS (the operator) by notice in the Gazette (a draft Gazette notice is provided as **annex one** for your approval).
 - It requires that you must take reasonable steps to ensure that there is a person or agency appointed to administer the scheme at all times.
 - You are also authorised to impose any conditions on the appointment of an operator that you see fit under section 536(4)(c). This can include conditions that allow for assessment of operator performance beyond the monitoring and reporting enabled by the rules and funding agreement.
- 4 The operator will be responsible for administering the scheme in accordance with any rules for its functioning and administration made by Order in Council on your recommendation under section 539 of the Act. These rules have been drafted by the Parliamentary Counsel Office and we expect these to be able to be made by Executive Council on 15 November 2021, following Cabinet approval. These rules will take effect on 1 January 2022 [METIS 1271113 refers].
- 5 The rules set out that the primary functions of the operator are:
 - providing an independent scheme for resolving disputes between students and providers that fall within the scheme's jurisdiction;
 - operating the scheme in accordance with the scheme's purpose and the rules; and
 - resolving, or assisting in resolving, disputes under the scheme by agreement between the parties or, if applicable, by adjudication.

Panel evaluation process

- 6 The Ministry ran an open market contract opportunity process in order to recommend a preferred supplier for you to appoint. Given this is a Ministerial appointment and not a standard procurement process, the Government Procurement Rules did not apply to this process. However, for consistency and best practice, the process was facilitated in accordance with the procurement rules where appropriate by a specialist from the Ministry's procurement team.
- 7 Interested suppliers were asked to respond to the contract opportunity and their responses were evaluated along three main 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 criteria were all important, however, the proposed solution and capability had the greatest weight, as they were deemed most critical to achieving a high-quality DRS.

- 8 Five responses were received; 9(2)(j)
- 9 The responses were evaluated by a five-person panel that included:
- two officials from the Ministry;
 - the President of the National Disabled Students' Association;
 - a tumuaki takirua (Co-President) from Te Mana Ākonga (the National Māori Tertiary Students' Association); and
 - a representative from Te Taumata Aronui advisory group.
- 10 The Government Centre for Dispute Resolution (GCDR) played an advisory role throughout the contract opportunity process to ensure it reflected best practice, including reviewing documentation and criteria.
- 11 Three of the five suppliers scored well against the evaluation criteria and were asked to make a presentation to the panel: 9(2)(j)
- 12 The panel's final recommendation with wide agreement was that TMR is the preferred supplier. Their proposed solution was the most aligned with the rules, prioritising accessibility and client care with a highly user-focused scheme, and strong cultural competence. They also had significant knowledge and demonstrated compliance with the GCDR best practice standards in providing dispute resolution.
- 13 9(2)(j)
- 14 A recommendation report was produced from the process, which can be provided to your office at your request.

Proposed scheme operator and conditions on appointment

We recommend Talk Meet Resolve (TMR) as scheme operator

- 15 The evaluation panel recommends TMR as the preferred supplier to operate the DRS. The Ministry supports this recommendation.
- 16 TMR's response was considered the strongest across the criteria by both the independent members of the panel and the Ministry. Its proposal best embodied the Ministry's intent and expectations for the scheme, and the wider wellbeing and safety work programme. We are satisfied that TMR will be able to deliver an efficient, equitable, and user-focused scheme.
- 17 TMR's solution was the strongest in meeting the cultural competence expectations we have for the scheme. We were impressed by TMR's commitment to meeting user needs and accessibility, and focus on continually improving both its service and system learning.

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9(2)(i)

Conditions on appointment and performance assessment

- 19 The operator's performance will be regulated and monitored by the rules, the funding agreement, and any conditions you make on the appointment.
- 20 We propose you include a condition on the appointment that TMR satisfies a review of the scheme after 12 months that it is performing well and in accordance with the rules. This will provide an additional lever to assess and manage performance.
- 21 The funding agreement will set out detail that expands on the rules, including reporting and monitoring, and administrative conditions. The proposed term of the agreement is 2 years, with the possibility to extend for a 1-year period for a maximum term length of 3 years.
- 22 We recommend that the funding agreement be finalised before the Gazette notice (**annex one**) is published for the appointment, to ensure the conditions are finalised before the appointment is made.

Next steps

- 23 If you agree, we will approach TMR to enter into a funding agreement to have the scheme established and operating on 1 January 2022. We can provide your office with the drafted agreement if requested.
- 24 9(2)(i) [REDACTED]
- 25 Once the funding agreement has been finalised, officials will work with the appointed DRS operator to develop the scheme in accordance with the rules and GCDR best practice framework to be operational on 1 January 2022 when the rules come into effect.
- 26 The term of the funding agreement for this scheme and current work to consider the expiry of the current International Student Dispute Resolution Scheme contract will keep open the option to combine the two schemes after the Education and Training Amendment Bill No.2 has passed.
- 27 We will keep your office updated on progress leading up to 1 January 2022.

Annexes

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

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

**Appointment of Domestic Tertiary Student Dispute Resolution Scheme
Operator**

Pursuant to section 536(4) of the Education and Training Act 2020, I hereby
appoint [Clayton and Associates, trading as *Talk Meet Resolve*] to be
responsible for administering the Education (Domestic Tertiary Student
Contract Dispute Resolution Scheme) Rules 2021.

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

21st

Dated at Wellington this Xth day of November 2021.

Hon CHRIS HIPKINS, Minister of Education.

