

DRAFT Domestic Student Contract Dispute Resolution Scheme Rules

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Rules

1. Title

These rules are the Student Contract Dispute Resolution Scheme Rules 202X.

2. Commencement

These rules come into force on [*insert date*] 2022.

3. Interpretation

(1) In these rules, unless the context otherwise requires,—

Act means the Education and Training Act 2020

adjudicator means an adjudicator appointed by the DRS operator

appoint includes engage or employ, and appointee has a corresponding meaning

code means the Education (Pastoral Care of Tertiary and International Students) Code of Practice 2021

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

dispute means

(i) dispute between a student and a provider that is contractual or financial, or both; and

(ii) includes a contractual dispute in relation to the quality of education received by a student where the education quality assurance agency has taken any action against the provider

domestic tertiary student has the same meaning as in section 10(1) of the Act

DRS operator means the person or agency appointed under section 536(4)(a) of the Act to be responsible for administering the scheme.

education quality assurance agency means an agency authorised by the Education Act to exercise quality assurance functions in respect of providers

enrol means register or admit a person as a student to receive educational instruction through a provider after the student has accepted an offer of educational instruction from the provider, and **enrolment** has a corresponding meaning

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

Mana-enhancing means a way of engaging with others that cares for the spiritual, emotional, physical, and intellectual dimensions of a person [from Royal, 2006]

mediator means a mediator appointed by the DRS operator

Minister means the Minister of Education

provider has the same meaning as in section 10(1) of the Act

scheme means the student contract dispute resolution scheme established by section 536 of the Act

serious dispute has the same meaning as in Part 3 s 217 of the Act

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 law or regulations or the code

student claimant, in relation to a provider,—

(a) means a person or persons 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 tertiary provider as a domestic student;

(b) includes a parent/s, whānau member/s, or legal guardian/s of a person or persons in paragraph (a) making a complaint at their request

(c) includes an advocate representing a person, or persons in the case of a class or collective action, in paragraph (a) at their request

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,

or conduct of the provider who is the subject of a claim.

Tikanga means Māori customary system of values and practices

- (2) A term that is used in these rules and defined in the Act but not in these rules has the same meaning as in the Act.

Part 1

Dispute resolution process

4. How to initiate dispute

- (1) A student claimant may initiate a dispute against a provider by making a claim under the scheme to the DRS operator.
- (2) A student must not be charged a fee for making a claim under the scheme.
- (3) The 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) The DRS operator must provide reasonable support (including interpretation and language support), or must refer the student claimant to support services outside of the DRS operator (including, student advocacy, disability support, wellbeing support services, etc.), or both, to enable a student claimant to make a claim.

5. When DRS operator may accept a dispute

The DRS operator can accept claims:

- (a) where there is sufficient evidence or other information in support of the claim available for resolution of the dispute under the scheme; or
- (b) where the student claimant has been declined or refused the opportunity for resolution by their provider; or
- (c) where the student claimant is dissatisfied with the providers internal process or the outcome (or both the process and outcome); or

- (d) where the student claimant has not had their complaint acknowledged, processed, and/or addressed within a reasonable time.

6. When DRS operator may decline a dispute

- (1) The DRS operator may decline to accept a dispute for resolution under the scheme if the DRS operator 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 issue raised by the dispute;
 - (b) the dispute is being addressed by another appropriate authority;
 - (c) the dispute would be more appropriately dealt with by a court, tribunal, or other appropriate authority;
 - (d) the dispute has been previously dealt with under this scheme, unless new evidence has come to light;
 - (e) the claim is trivial, frivolous or vexatious;
 - (f) delay in initiating the dispute if as a result it is no longer possible to obtain sufficient evidence or other information for resolution of the dispute under the scheme.
- (2) 1(b) does not prevent the DRS operator accepting claims that are being dealt with by another body where appropriate, for example, if they are not being progressed in a timely or reasonable manner.

7. Initial response of DRS operator to dispute

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 receipt of the claim and its nature; and
- (b) states either that the dispute is accepted, or that the dispute is not covered by the DRS and explains why; and
- (c) refers the student claimant to the code administrator or other appropriate authorities, or back to the provider if it has not yet been given the opportunity to resolve the issue raised by the dispute; and
- (d) informs the education quality assurance agency of the nature of the complaint, and whether it has been accepted by the DRS operator or referred elsewhere.

8. General approach to resolving disputes

The DRS operator must consider and deal with a dispute in a student-focused, streamlined, timely, mana-enhancing, effective, flexible, culturally-safe and -competent, inclusive, accessible, and fair manner and, in particular, in a way that—

- (a) is consistent with the principles of Te Tiriti o Waitangi / The Treaty of Waitangi.; and
- (b) accommodates any unique cultural or situational needs of the student claimant/s; and
- (c) accommodates disabled learners to fully access and participate in dispute resolution methods; and
- (d) encourages the parties to work towards a shared understanding and mutually agreed solution; and

- (e) prioritises and maximises the use of consensual measures to resolve the dispute, that is, favouring negotiation and mediation before adjudication, unless negotiation and mediation are not appropriate for resolving the dispute; and
- (f) takes the views of the parties into account in the decision on measures to resolve the dispute; and
- (g) is consistent with the principles of restorative and natural justice; and
- (h) is on a without prejudice basis.

9. 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 the conditions of entering the scheme, including the following conditions:

- (a) rule 9(4)(a) (adjudicator not bound by rules of evidence or previous decision):
- (b) rule 9(4)(b) (adjudicator determines dispute according to substantial merits and justice of the case):
- (c) rule 9(5) (confidentiality of negotiation and mediation):
- (d) rule 27 (DRS operator must report systemic issues, serious misconduct, and breach of rules).

10. How disputes may be resolved

- (1) The DRS operator may decide to use any 1 or more of the following methods to resolve a dispute:
 - (a) negotiation:
 - (b) mediation:
 - (c) adjudication.
- (2) Where practicable, consensual methods (for example, negotiation and mediation) should be attempted first, however, if the student claimant requests, claims relating to the quality of education received by a student where the education quality assurance agency has taken any action against the provider must proceed directly to adjudication
- (3) The DRS operator may decide the procedures to be followed under the method selected, consistent with these rules.
- (4) The DRS operator, including a mediator or an adjudicator,—
 - (a) must act in accordance with what is fair and reasonable in all the circumstances; and
 - (b) must have regard to the principles of Te Tiriti o Waitangi / The Treaty of Waitangi, the law, the relevant good practice, the code, and other Government policies.
- (5) However, in an adjudication, the DRS operator, including 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, and in doing so is not bound to give effect to strict legal obligations or to legal forms or technicalities.
- (6) The process and outcome of dispute resolution by negotiation or mediation is confidential to the parties to the dispute.
- (7) The DRS operator may refer the parties to a dispute to other appropriate

- authorities for assistance or interventions.
- (8) The DRS operator must provide the opportunity for a dispute to be resolved in Te Reo Māori, including during the process of making the claim, negotiation, mediation, and adjudication.
 - (9) The DRS operator must draw upon appropriate tikanga on request by a student claimant to resolve the dispute.

11. Disputes may be combined

The DRS operator may combine disputes for single resolution when the DRS operator considers that it is sensible to do so.

12. DRS operator may obtain information necessary for resolution of dispute in adjudication

- (1) For the purpose of obtaining information necessary for the resolution of a dispute by adjudication, the DRS operator may make any inquiries that are fair and reasonable in the circumstances.
- (2) A party to a dispute being resolved by adjudication must supply any information requested by the DRS operator unless—
 - (a) the supply of the requested information would breach an obligation of confidence owed to a third person who has refused consent to the supply of the information; or
 - (b) the information is subject to legal professional privilege, or was provided to the party on a without prejudice basis; or
 - (c) the party does not have the information or it is not within its control.
- (3) In requesting information, the DRS operator may specify a reasonable time period within which the party concerned must supply the information.
- (4) As soon as practicable after receiving a request by the DRS operator for information and in any event within any time period specified in the request, a party must—
 - (a) comply with the request; or
 - (b) object to supplying the information and give reasons why the party cannot or should not supply it.

13. Failure to supply information in adjudication

- (1) This rule applies where a party to a dispute being resolved by adjudication fails to comply with a request for information by the DRS operator and none of the exceptions in rule 11(2) apply.
- (2) If the party is the student claimant, the DRS operator may decline to continue consideration of the dispute.
- (3) Whoever the party is, the DRS operator may proceed to resolve the dispute on the basis that an adverse inference may be drawn from the party's failure to comply.

14. Use of information in adjudication

- (1) For the purpose of resolving a dispute by adjudication, the DRS operator may

- consider any information obtained by it or supplied to it.
- (2) The DRS operator may assume that a party to a dispute consents to the full disclosure to other parties of information supplied by it, unless the party supplying the information expressly limits disclosure.

15. DRS operator must keep parties informed

The DRS operator must—

- (a) keep the parties to a dispute informed; and
- (b) ensure that each party has a reasonable opportunity to be informed of, and to respond to, the arguments or submissions of the other parties.

16. Conditions on DRS operator for appointing the mediator and/or an adjudicator

- (1) The DRS operator must appoint as a mediator and/or an adjudicator in a dispute under the scheme only a person who is independent of the parties to the dispute, and that the student agrees to.
- (2) The DRS operator must take into account a student claimant's preference regarding the gender of the person to be appointed as a mediator and/or an adjudicator in a dispute under the scheme.
- (3) If a dispute proceeds from mediation to adjudication then the person who acted as mediator in the dispute cannot act as the adjudicator, unless both parties agree.
- (4) If the parties elect to return to mediation after a dispute has been referred to adjudication, then a new person must be appointed as mediator.

17. Decision by adjudicator

- (1) The adjudicator in a dispute, before making a final decision, must give the parties notice of their proposed decision reached on the basis of information held by the DRS operator.
- (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, which decision may differ from the proposed decision notified to the parties.
- (4) The adjudicator must give notice in writing to the parties of the final decision and the reasons for the decision.

18. When final decision binding

A final decision becomes binding on the parties to a dispute on the date that notice is given in accordance with rule 16(4).

19. Remedies under final decision in dispute resolved by adjudication

An adjudicator in a dispute may direct the following remedies:

- (a) that the provider make a public acknowledgment that it has committed a breach of the student's rights;
- (b) that the provider pay the student claimant an amount not exceeding \$350,000;
- (c) that the provider take any other action directed by the adjudicator to remedy the matter complained about;
- (d) that the provider provide monetary and/or non-monetary (which can include, for example, removal of grades from an academic transcript) redress for any loss or damage suffered;
- (e) that the provider:
 - (i) review any of its rules, bylaws, or policies relating to the conduct that gave rise to the dispute;
 - (ii) cease the conduct that has given rise to the claim
 - (iii) establish any rule, bylaw, or policy relating to the conduct that gave rise to the dispute;
 - (iv) take any other relevant action to resolve the dispute

20. 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 and the DRS operator is satisfied that the student claimant has not been coerced into withdrawing; or
 - (c) the student claimant notifies the DRS operator in writing that they intend to apply to another authority (such as a court or tribunal) 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 to comply with an information request and 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 rule 19(d), the DRS operator must refer the student claimant to an appropriate agency or organisation to have their claim addressed.

21. Application to District Court

A student claimant, a provider, or the DRS operator may apply to the District Court for, and the District Court may make, an order in accordance with section 538 of the Act—

- (a) requiring a provider to comply with the rules of the DRS; or
- (b) requiring a claimant or provider to give effect to any binding resolution; or
- (c) modifying a resolution where its terms are manifestly unreasonable, before giving effect to it.

Part 2
Administration of Scheme

22. Function of DRS operator

- (1) The core functions of the DRS operator are to—
 - (a) provide an independent scheme for resolving disputes between students and education providers that fall within the scheme’s jurisdiction; and
 - (b) operate the scheme in accordance with the scheme’s purpose and these rules; and
 - (c) resolve, or assist in resolving, disputes under the scheme by agreement between the parties or, if applicable, by adjudication.
- (2) Other functions of the DRS operator include—
 - (a) to promote and publicise the scheme; and
 - (b) to monitor compliance with these rules, and
 - (c) to monitor and report on the effectiveness of the scheme; and
 - (d) to carry out any other function of the scheme under these rules; and
 - (e) to promote effective dispute resolution in the tertiary education system more broadly, providing a more systematic and preventative approach to dispute resolution.
- (3) Specific functions of the DRS operator regarding Māori include—
 - (a) to proactively evaluate the operation of the scheme for consistency with the principles of the Te Tiriti o Waitangi / The Treaty of Waitangi; and
 - (b) to take any action that is necessary or desirable to address any inconsistency with the principles of the Te Tiriti o Waitangi / The Treaty of Waitangi; and
 - (c) to ensure accountability and performance documents are accessible to, and used by, Māori; and
 - (d) to generate a range of Māori specific data and insights, that are meaningful and appropriate for use by Māori, the scheme operator, and the education quality assurance agency; and
 - (e) to track the input, output and outcome indicators of the impact on outcomes for Māori, and to make any changes necessary to expedite the achievement of desired outcomes; and
 - (f) to ensure no significant or long-term disparity of access or outcomes for Māori in relation to the operation of the scheme.

23. Power 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, except a function or power that under these rules must be performed or exercised by an adjudicator.

24. DRS operator may extend time frames

- (1) The DRS operator may, if it thinks fit, and with the agreement of both parties to a dispute extend the time within which something must be done under these rules in relation to consideration or resolution of a dispute.

25. Appointees of DRS operator

- (1) The DRS operator must appoint sufficient numbers of adjudicators and mediators to ensure the effective functioning of the scheme.
- (2) In appointing an adjudicator or a mediator, the DRS operator must—
 - (a) use certified practitioners and consider their training, qualifications, experience, and personal qualities (including the ability to communicate and work effectively with Māori, with disabled people, and with people from diverse linguistic and cultural backgrounds); and
 - (b) appoint or engage only persons who are capable of performing the functions of an adjudicator or a mediator, as the case may be; and
 - (c) ensure that a person appointed or engaged is able to act independently.
- (3) The DRS operator is responsible for the actions of a person appointed by it to perform its functions under these rules.

26. 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, including providing information about the DRS in Te Reo Māori and a range of accessible formats for disabled people.
- (2) The DRS operator must enable parties to the dispute to have a support person or persons in attendance during the resolution processes.
- (3) The DRS operator must proactively recruit culturally competent and disability inclusive practitioners, and support their ongoing professional development.
- (4) Where appropriate and at reasonable cost, the DRS operator must provide additional support (for example, interpretation or translation services), or must refer the student claimant to support services outside of the DRS operator (for example, student advocacy, disability support, or wellbeing support services) to ensure accessibility to the scheme.

27. DRS operator may publish case studies

- (1) The DRS operator must, for the limited purposes set out in subclause (2), compile, publish, and disseminate case studies of disputes resolved under the scheme and effective practice in providers regarding internal complaints processes, subject to appropriate safeguards and redactions for the purposes of privacy.
- (2) 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 across providers to help build sector capability regarding internal complaints processes; and
 - (c) demonstrating the process of decision-making under the scheme and

ensuring its transparency.

28. DRS operator must report systemic issues, etc

In the course of investigating a dispute or resolving a dispute by adjudication, the DRS operator must report to the code administrator, education quality assurance agencies, and relevant government agencies (including the Ministry of Education and the Tertiary Education Commission)—

- (a) the receipt and nature of any claim it declines or accepts:
- (b) any systemic issue that it identifies:
- (c) any serious misconduct by a provider that it identifies:
- (d) any breach of these rules by a provider.

29. Annual report

- (1) The DRS operator must submit to the Minister, by September 30 in each year, an annual report for the year ending on 30 June of that year.
- (2) The annual report must include (but is not limited to) the following information relating to the year in question:
 - (a) the number and nature (subject to any requirement to maintain the privacy of persons under the Privacy Act 2020) of each of the following (broken down in each category by types of provider, that is, schools, 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 covered:
 - iii. disputes not covered that are referred to other agencies (for example, to the education quality assurance agency, the Tertiary Education Commission, back to the student's provider)
 - iv. disputes under (2)(i) (ii) and (iii) that belong to Māori learners, including the outcomes of the dispute resolution processes.
 - v. disputes resolved by negotiation:
 - vi. disputes resolved by mediation:
 - vii. disputes resolved by adjudication:
 - (b) the average length of time taken to resolve a dispute by negotiation:
 - (c) the average length of time taken to resolve a dispute by mediation:
 - (d) the average length of time taken to resolve a dispute by adjudication:
 - (e) examples of typical cases, subject to appropriate safeguards and redaction to preserve privacy:
 - (f) financial statements prepared in accordance with generally accepted accounting practice that demonstrate how the funding of the DRS operator has been applied:
 - (g) an outline of the steps taken by the DRS operator to ensure it is operating in a way that is consistent with the principles of Te Tiriti o Waitangi / The Treaty of Waitangi (including, for example, partnering with or empowering Māori to design and deliver services):
 - (h) any systemic issues or serious misconduct by providers identified in the course of investigating a dispute or resolving a dispute, and how the DRS operator dealt with the systemic issues or misconduct:
 - (i) 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 a website.
- (4) The DRS operator must make a copy of its annual report available in Te Reo Māori, and in accessible formats for disabled people.

30. Monitoring operation of scheme

- (1) The DRS operator must have a process for receiving and resolving complaints about the operation of the scheme and must publicise that process (for example, on its website).
- (2) The DRS must—
 - (a) conduct 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; and
 - (b) publish the results.
- (3) A provider, student, or whānau/community member/s who is dissatisfied with the operation of the scheme or the performance of the DRS operator may complain to the Ministry of Education, but this process must not be used to challenge the outcome in a particular dispute.
- (4) The DRS operator must co-operate with any person or agency appointed by the Minister to carry out an independent review of the scheme and its operation.