



International Student Contract Dispute Resolution Scheme Rules 2016

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 7th day of March 2016

Present:

His Excellency the Governor-General in Council

These rules are made under section 238M of the Education Act 1989—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Tertiary Education, Skills and Employment made after appropriate consultation.

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Rules

1 Title

These rules are the International Student Contract Dispute Resolution Scheme Rules 2016.

2 Commencement

These rules come into force on 1 July 2016.

3 Interpretation

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

Act means the Education Act 1989

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 International Students) Code of Practice 2016

code administrator means the person or agency appointed under section 238FA(1) of the Act to be responsible for administering the code

dispute means a dispute between an international student and a provider that is contractual or financial, or both

DRS operator means the person or agency appointed under section 238J(4)(a) of the Act to be responsible for administering the scheme

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

international student has the same meaning as in section 238D of the Act

legal guardian, in relation to an international student, means a person who, by court or testamentary appointment, is responsible for the student's well-being and financial support and provides for the care of the student in the student's home country

mediator means a mediator appointed by the DRS operator

Minister means the Minister for Tertiary Education, Skills and Employment

provider has the same meaning as in section 238D of the Act

scheme means the International Student Contract Dispute Resolution Scheme established by section 238J 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 who—
 - (i) is an international student enrolled by the provider; or
 - (ii) is a former international student enrolled by the provider; or
 - (iii) intends to be, or is in the process of being, enrolled by the provider as an international student; and
- (b) includes a parent or legal guardian of a person 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, or conduct of the provider who is the subject of a claim.

- (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 claimant may make a claim under the scheme free of charge.
- (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 (such as interpretation support) to enable a student claimant to make a claim.

5 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 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) if appropriate, directs the student claimant to the code administrator or other appropriate authorities; and
- (d) if the provider has not yet been given the opportunity to resolve the issue raised by the dispute, directs the student claimant to the provider.

6 When DRS operator may decline to accept dispute

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 opportunity to resolve the issue raised by the dispute;
- (b) the dispute is being addressed in another forum;
- (c) the dispute would be more appropriately dealt with by a court, tribunal, or other authority;
- (d) the dispute has been previously dealt with under the scheme;
- (e) the claim is frivolous or vexatious;
- (f) given the age of the dispute, it is no longer feasible to gather sufficient evidence or other information for resolution of the dispute under the scheme.

7 General approach to resolving disputes

The DRS operator must consider and deal with a dispute in a timely, cost-effective, and fair manner and, in particular, in a way that—

- (a) encourages the parties to work towards a mutually agreed solution; and
- (b) 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
- (c) takes the views of the parties into account in the decision on measures to resolve the dispute; and
- (d) is consistent with the principles of natural justice; and
- (e) is on a without prejudice basis.

8 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).

9 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) The DRS operator may decide the procedures to be followed under the method selected, consistent with these rules.
- (3) 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 law, the relevant good practice, the code, and other Government policies.
- (4) 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.
- (5) The process and outcome of dispute resolution by negotiation or mediation is confidential to the parties to the dispute.
- (6) The DRS operator may direct the parties to a dispute to other appropriate authorities for assistance or interventions.

10 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.

11 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.

12 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.

13 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.

14 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.

15 Mediator or adjudicator must be independent of parties to dispute

The DRS operator must appoint as a mediator or an adjudicator in a dispute under the scheme only a person who is independent of the parties to the dispute.

16 Decision by adjudicator

- (1) The adjudicator in a dispute, before making a final decision, must give the parties notice of his or her 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—
 - (a) the final decision and the reasons for the decision; and
 - (b) the acceptance period, which must not be less than 10 working days after the date that the notice is sent.

17 When final decision binding

A final decision by an adjudicator in a dispute becomes binding on the parties to the dispute if, within the 10-working-day acceptance period, the student

claimant sends a written notice to the adjudicator stating that the student claimant accepts the decision in full and final settlement of the dispute.

18 Remedies under final decision in dispute resolved by adjudication

An adjudicator in a dispute may direct the following remedies:

- (a) that the provider pay the student claimant an amount not exceeding \$200,000;
- (b) that the provider take any other action directed by the adjudicator to remedy the matter complained about;
- (c) that the provider provide non-monetary redress for any loss or damage suffered;
- (d) that the provider cease the conduct that has given rise to the claim.

19 Termination of dispute resolution process

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 he or she withdraws 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 he or she intends 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; or
- (f) the student claimant fails to accept a final decision within the 10-working-day acceptance period.

20 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 238L 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

21 Functions of DRS operator

- (1) The core functions of the DRS operator are to—
 - (a) provide an independent scheme for resolving disputes between international 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.

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

23 DRS operator may extend time frames

The DRS operator may, if it thinks fit, extend the time within which something must be done under these rules in relation to consideration or resolution of a dispute.

24 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) consider a candidate's objectivity, qualifications, experience, and personal qualities (including the ability to communicate and work effectively 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.

25 DRS operator must ensure accessibility of scheme

- (1) The DRS operator must take all reasonable steps to ensure that international students and providers are fully aware of the scheme and know how to access it.
- (2) Where appropriate and at reasonable cost, the DRS operator may provide additional support (for example, interpretation or translation services or disability services) to ensure accessibility to the scheme.

26 DRS operator may publish case studies

- (1) The DRS operator may, for the limited purposes set out in subclause (2), compile and publish case studies of disputes resolved by adjudication under the scheme, 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) demonstrating the process of decision-making under the scheme and ensuring its transparency.

27 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 government agencies as relevant—

- (a) any systemic issue that it identifies;
- (b) any serious misconduct by a provider that it identifies;
- (c) any breach of these rules by a provider.

28 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 of each of the following (broken down in each category by types of provider, that is, schools, private training establishments, institutes of technology and polytechnics, and universities):
 - (i) disputes accepted:
 - (ii) disputes not covered:

- (iii) disputes resolved by negotiation:
 - (iv) disputes resolved by mediation:
 - (v) 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) any systemic issues or serious misconduct by providers identified in the course of investigating a dispute or resolving a dispute by adjudication, and how the DRS operator dealt with the systemic issues or misconduct:
 - (h) 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.

29 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.
- (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 or an international student 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.

Michael Webster,
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 July 2016, apply to the resolution of disputes using the International Student Contract Dispute Resolution Scheme (the **DRS**) established under section 238J of the Education Act 1989. The rules provide for the functioning and administration of the DRS for resolving disputes between international students and providers of educational instruction.

The rules address the process for resolving disputes, including—

- initiating a dispute; and
- which disputes are not covered by the DRS; and
- the methods by which a dispute may be resolved; and
- the provision of information to the DRS operator; and
- reaching the final decision or settlement; and
- remedies.

The rules also address the administration of the DRS, including the functions and powers of the person or agency appointed as the DRS operator, and reporting and monitoring by the DRS operator.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 15 July 2013 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—

- <http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements/education-amendment-bill-no-2/legislative-amendments-related-to-the-pastoral-care-of-international-students/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 March 2016.

These rules are administered by the Ministry of Education.