



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

Cindy Kiro, Governor-General

## Order in Council

At Wellington this 15th day of November 2021

Present:

Her Excellency the Governor-General 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.

Rachel Hayward,  
for 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](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*: 18 November 2021.

These rules are administered by the Ministry of Education.