

YouthLaw Aotearoa

Education and Training Amendment Bill (No 2) Submission

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Who we are

YouthLaw Aotearoa is a Community Law Centre vested under the Legal Services Act 2000. We are a charity and part of the nationwide network of twenty-four community law centres throughout Aotearoa. Our service provides free legal advice and advocacy specifically for children and young people under 25 years of age. We help children and young people facing issues with the police in a couple of ways:

- Our lawyers in the legal advice team support children and their families with information and advice to help them navigate education matters.
- We run legal education workshops about education law for children and young people or those supporting them.
- We publish youth-friendly information resources, undertake research, and make submissions on law and policy affecting children and young people.

This submission is informed by YouthLaw Aotearoa's insights from working with children and young people across New Zealand for over thirty years.

The submission has been prepared by Sarah Butterfield, a solicitor on our legal team, Kimberley Gee, law reform volunteer, and our YouthLaw staff and board.

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YouthLaw Aotearoa Submission

YouthLaw Aotearoa acknowledge and applaud the government's focus on tertiary learners' wellbeing and safety.

We support the broadening of the Dispute Resolution Scheme ("DRS") but have continued concerns about the functioning of the DRS, and who may still be excluded.

We offer the following comments on the Education and Training Amendment Bill (No 2) ("the Bill"):

Our recommendations

Scope

We support the amendment of section 536 of the Principal Act, which expands the scope of the DRS:

(2) The purpose of the DRS is to resolve disputes between students (and former and prospective students) and providers or signatory providers relating to the following matters:

(a) contractual and financial matters:

(b) a claim for redress for any loss or harm suffered by a student as a result of a breach of a relevant code by a provider or signatory provider.¹

We presume that the reference to the "relevant code" refers to the new Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021.

We support clause 51 (2)(b) and submit that it future proofs the DRS for further extensions of scope through new codes. We also submit that the scope of the DRS should be further

widened under future codes. However, we think that the relevant codes should only be government created codes, rather than private provider codes.

Power to consider serious disputes

We recommend that the DRS have the power to consider "serious disputes" between tertiary students and their providers. Subpart 9 of the Education and Training Act 2020 establishes a dispute resolution scheme that deals with serious disputes between students and state primary and secondary schools.² We propose that the DRS should have a similar function to determine serious disputes between students and their tertiary education providers.

A 'serious dispute' could be an issue that was not able to be resolved between the tertiary institution and the student. The "classification" of a serious dispute could also align with section 217 of the principal Act— and include:

- The student's right to enrol at or attend the tertiary provider.
- The learning supports the student receives through their tertiary provider.
- Any discrimination complaints.
- The student's physical or emotional safety while at the school.³

The DRS should also be empowered to hear "serious disputes" about:

- Any disciplinary processes.
- Any misconduct processes.

Potentially, the expansion of scope could be achieved through future codes or an amendment to clause 51(2):

c) any serious disputes between a student and a provider or signatory provider.

¹ Education and Training Amendment Bill (No 2) 2021 (102-1), cl 51(2).

² Education and Training Act 2020, s 216.

³ Section 217.

Having an alternative channel of dispute resolution would ensure a complaint is heard and properly resolved and that the system is not dependent on a single channel, or a single staff member receiving that complaint. This would be particularly significant for smaller tertiary education providers which may lack multiple channels, or 'layers' of complaint mechanisms.

As we have outlined in previous consultations with the Ministry of Education, tertiary disciplinary actions can seriously adversely impact students:

"Discipline committees (or equivalent), can impose serious consequences on students for misconduct, including:

- *failing a paper*
- *failing a course*
- *losing their place at their institution*
- *being fined*
- *being barred from their institution for a period.*

Having an adverse disciplinary record at university may also bar students from following their chosen profession after study, if that profession has "good character" requirements. Significantly, international students who are "expelled" from their institution, may have their student visa revoked.

Disciplinary procedures can also seriously impact student's wellbeing. Students often feel shamed and embarrassed by disciplinary actions and may struggle emotionally and mentally to cope with the disciplinary process and the aftermath. Unfortunately, students may not reach out for legal help or support if they are facing disciplinary procedures. This failure may be because of shame or lack of knowledge about advocacy avenues. International students, students with mental health difficulties, students with disabilities and students who are part of minority groups

*may be hesitant to reach out for advice or support because of the stigma attached to disciplinary procedures, lack of knowledge, or lack of ability to seek support. In some situations, students may attend their disciplinary meetings alone and without the benefit of legal advice. Without legal support, students may not be able to present the best argument or appropriately question factual or process errors by their institutions. As a result, students may have disciplinary outcomes imposed on them that are unjust."*⁴

Once a student has exhausted the appeal/complaint options through their tertiary provider their only options are to complain to the Ombudsman, or the Human Rights Commission (if a rights issue), or to lodge a claim in the High Court for Judicial Review, or the Human Rights Review Tribunal. These options are not realistic or viable options for many students.

Need for an advocacy service

YouthLaw Aotearoa is concerned that there is no provision in the DRS for an advocacy service for tertiary students. Students are often at a disadvantage when they have a dispute with their tertiary provider. The tertiary provider will usually have extensive legal support and advice through in house lawyers or through lawyers who are on retainer. In contrast, students may lack the funds to hire a lawyer or receive legal advice. This results in a significant inequality of power.

We are concerned that students without advocacy support will not be given fair treatment in the DRS. Not having support may also cause emotional distress for students. For these reasons, we submit that an

⁴ YouthLaw Aotearoa "Te oranga me te haumarua akonga: Wellbeing and Safety for Tertiary Domestic and International Learners Submission" May 2021.

advocacy service should be incorporated into the DRS.

We also acknowledge that students from minority groups, with disabilities or mental health difficulties may particularly struggle to access and afford legal advice and may especially benefit from such a service.

Existing student advocacy organisations, such as student union advocacy services, community law centres, and YouthLaw could be empowered through additional funding to provide this service.

Mediation

As stated in our previous submission to the Ministry of Education, we support the inclusion of a mediation service before the DRS.⁵ Having mediation as a first option would also be similar to the primary and secondary schools Disputes Panels, see section 225 of the Education and Training Act 2020.

⁵ YouthLaw Aotearoa “Te oranga me te haumarū akonga: Wellbeing and Safety for Tertiary Domestic and International Learners Submission” May 2021.

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