

# Summary of key changes and what stays the same

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August 2024

## Overview

As the structure of the proposed Scheme Rules is significantly different to the Policy, a summary of the key changes and what stays the same is set out below as opposed to a line-by-line comparison which was not practical.

## What is different in the scheme rules?

### Re-organisation

The Scheme Rules are re-organised into 6 Parts:

1. Preliminary provisions, including purpose and scope (rule 1) and definitions (rule 2). Rule 1.5 is the key eligibility criteria rule in this part and mirrors the Policy.
2. Dispute resolution processes including the new tikanga-based dispute resolution provisions (rule 3), relationship with other proceedings (rule 4), and general provisions (rule 5).
3. Mediation (rules 6-9), including how to start the mediation process and the response process for mediation and end of mediation process (the ability for the Claimant to submit a reply to any response is removed).
4. Expert Determination (rules 10-13), including how to start the expert process and the response and reply process for expert determination. Effect and enforcement provisions are in rule 13.
5. Appeals (rule 14).

6. Other provisions (rules 15 to 16) – permitted disclosures, exclusion of liability and indemnity provisions.

Schedule 1 sets out the definition of Unfair Registration, what may be evidence of Unfair Registration or how a respondent may demonstrate that there is not an Unfair Registration.

## Key changes

### **Cultural and accessibility support services are now facilitated:**

A party to a dispute may request that a tikanga Māori cultural support framework be applied, that derives from mātauranga Māori (traditional knowledge). This is a key component of the Scheme Rules framework that was developed in collaboration with Tūhono Collective. Tūhono is recognised for its expertise in this field, ensuring the framework's robustness and cultural integrity. NZDRC and DNC will be guided by Tūhono and those requesting support to ensure services are delivered that resonate with them and make them feel comfortable engaging in the process.

As this is a new initiative, and the tikanga-based support required may be different for different parties NZDRC and DNC will regularly assess feedback to ensure user needs are met.

In addition, accessibility support such as sign language and Pasifika cultural support is also available. The DNC will pay the contractor's fee for these services.

### **Options to elect either mediation or expert process:**

The claimant now has the option to elect either mediation (under Part 3) or expert determination (under Part 4) using either a mediation claim form or expert determination claim form on the NZDRC website as opposed to having to commence with informal mediation before expert determination under the Policy. This choice will affect the evidence and documents (submissions) required, and the requirements for the respondent's response (less for mediation and more for expert determination).

Further details on the role and powers of experts is also set out in Part 4.

**Appeal process no longer facilitates a notice of intention to appeal and NZDRC appoints the appeal panel:**

The concept of a notice of intention to appeal to be lodged along with a non-refundable deposit, and then lodging the appeal has been removed. The appellant will simply submit an appeal notice form online, and then the respondent may submit a response online. The full fee is payable when submitting an appeal notice. The appeal notice must include the grounds for the appeal.

NZDRC will appoint three experts to an appeal panel. The position in the Policy of the chair of experts has been removed. Any three experts (other than the expert who gave the original determination) may be appointed to the appeal panel by rotation, subject to availability and no conflict of interest.

**Documents may be submitted electronically:**

Hard copies of documents are no longer required — they are to be provided electronically.

**Word limits for claims, responses and replies:**

These have been retained but will be set out in the forms rather than in the Scheme Rules. The forms will also contain guidance on the type of information parties should consider including to minimise the risk of insufficient information being provided and an application being rejected.

**Clarification that the Arbitration Act does not apply:**

New rule 12.14 provides that the Arbitration Act does not apply for clarity.

**DNC's right to amend the Scheme Rules:**

DNC's right to amend the Scheme Rules has been amended to provide more clarity on the consultation process but otherwise remains largely consistent with the Policy.

**Timeframes:**

Timeframes have been changed to working days, from days in the Policy, and some have been slightly shortened or lengthened. The aim is to keep the process moving efficiently while allowing the parties sufficient time.

## Terminology and definitions:

Key changes in terminology and definitions include:

<b><u>Policy term:</u></b>	<b><u>New term in Scheme Rules</u></b>
-	<b>Appeal Notice, Appeal Response Form</b>
-	<b>Claim Form</b>
Commencement of Dispute Resolution Service proceedings	<b>no longer used</b>
Complainant	<b>Claimant</b>
Complaint	<b>Claim</b>
Conclusion of Dispute Resolution Service proceedings	<b>Conclusion of the Dispute Resolution Services</b> (and definition expanded)
-	<b>Contractor</b>
-	<b>Costs</b>
-	<b>Dispute Resolution Practitioner</b>
-	<b>Dispute Resolution Services</b>
Days	<b>Working Days</b>
-	<b>Descriptive Term</b>
Decision	<b>Determination</b>
DNCL	<b>DNC</b>
-	<b>Expert Determination Claim Form</b>
-	<b>Expert Determination Response Form</b>
-	<b>Expert Determination Reply Form</b>
-	<b>Fee or Scheme Fee</b>
Informal Mediation	<b>Mediation</b>
-	<b>Mediation Claim Form</b>
-	<b>Mediation Response Form</b>
-	<b>Scheme</b>
Policy / Procedure	<b>Scheme Rules</b>

Register	<b>.nz Register</b>
Registrant	<b>Domain Name Holder</b> (or Registrant)
Registrar	<b>.nz Registrar</b> (or Registrar)
-	<b>NZDRC Registrar</b>
-	<b>NZDRC</b>
-	<b>Settlement Agreement</b>
-	<b>Submission</b>

The term **Unfair Registration** has been refined to refer to a new **Fair Use** term which includes additional factors to those included in the Policy that may be taken into account for more clarity. The definitions of both terms are set out in Schedule 1. A new defined term **Descriptive Term** has been added to the definitions section using the wording of that concept in the Policy, with minor amendments. Similar minor amendments have been made to the existing definition of **Generic Term**.

## What elements of the current policy remain?

While there are changes to terminology, structure and options set out above the Scheme maintains the following key elements:

- Mediation and expert processes are retained but now as two distinct processes.
- The right to appeal a determination to an appeal panel of three experts is retained.
- The eligibility criteria to commence a dispute remains the same as under the Policy.
- DNC continues to fund mediation as it did under the Policy for informal mediation.
- The claimant pays the expert's fee for the expert determination as it did under the Policy.
- The appellant pays the appeal panel fee for the appeal — largely the same appeal process as under the Policy except the notice of intention to appeal is removed.
- The respondent can file a response to a claim, and the claimant can file a reply in the expert determination process.

- The respondent can file a response to an appeal notice, and the appellant can file a reply.
- Specific timeframes apply to encourage efficient resolution of the dispute.
- The processes remain confidential, subject to exceptions at law and publication of determinations and related case summaries and statistical data and reporting anonymized where it relates to mediations.
- Once a valid claim is received, a compliance lock will be put on the domain name until the dispute is resolved.
- Claims and appeals may be settled or withdrawn.
- Mediators and experts are independent and neutral professionals selected by NZDRC from the lists on the NZDRC website.
- The role of the registrar (called .nz Registrar to distinguish them from the NZDRC registrar/case manager) remains the same.
- DNC's role and responsibilities remain the same, except that the day-to-day administration of the scheme will be subcontracted to NZDRC to perform for DNC.
- NZDRC will appoint mediators and experts by rotation and based on availability and no conflict of interest.
- Experts cannot award costs against a party.
- The Scheme does not prevent parties from pursuing court, tribunal or other proceedings and generally, the Scheme processes will be suspended while other processes run their course which is consistent with the Policy.