

# Scheme Rules

## NHCover Dispute Resolution

### INCLUDES

Dispute Resolution Scheme Rules

Mediation Protocol

Adjudication Protocol

### EFFECTIVE

1 July 2024



**kia tau**

YOUR EXPERTS  
IN DISPUTE  
RESOLUTION



# Introduction

## NHCover Dispute Resolution

Fairway Resolution Limited (Fair Way) is the provider of the approved dispute resolution scheme under the Natural Hazards Insurance Act 2023 (the Act). The service is known as NHCover Dispute Resolution (the Scheme).

The Scheme was approved by the Associate Minister of Finance and established on 1 July 2024 when the Act came into effect.

Fair Way operate the NHCover Dispute Resolution service under the Scheme Rules, which also sets out the protocols for mediation and adjudication.

The purpose of the rules is to help resolve disputes between an applicant and the Natural Hazards Commission Toka Tū Ake arising out of certain types of decisions made by the Commission.

We encourage all parties to familiarise themselves with the Scheme Rules and to contact us if you have any questions. By agreeing to participate in the NHCover Dispute Resolution process, parties agree to adhere to the rules set out in this document and the applicable protocols for the dispute resolution process used.

# Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

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# Dispute Resolution Scheme Rules

## under the Natural Hazards Insurance Act 2023

### 1. Background

- 1.1 Under the Natural Hazards Insurance Act 2023 (the Act) NHC Toka Tū Ake (the Commission) is required to be a member of a dispute resolution scheme (Scheme) approved by the Minister. The purpose of the Scheme is to help resolve disputes between an applicant and the Commission arising out of certain types of decisions made by the Commission. The sections of the Act relevant to the dispute resolution scheme are sections 101 to 107.
- 1.2 The Scheme is based on the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness in accordance with section 102.
- 1.3 The Scheme provides two types of dispute resolution processes: mediation and adjudication. Under these Rules, when an applicant refers a dispute to the Scheme, they will first be offered mediation, and if the applicant or the Commission do not agree to proceed with the mediation, the applicant may request the dispute is referred to the adjudication process.
- 1.4 Under a mediation process, any resolution of the dispute must be by agreement between the applicant and the Commission. In an adjudication process, the dispute is resolved by an adjudicator who determines the dispute for the applicant and the Commission.
- 1.5 The Commission has engaged with a Scheme provider to operate the Scheme, including by appointing a mediator or adjudicator (as applicable) to the dispute. The Scheme must comply with the principles described above and each mediator and adjudicator must conduct themselves appropriately and neutrally and in accordance with these Rules.

### 2. Definitions

- 2.1 In these Rules, unless the context requires a different interpretation:

**Act** means the Natural Hazards Insurance Act 2023.

**adjudicator** means an adjudicator (or a replacement adjudicator) appointed by the Scheme provider for the relevant dispute.

**anonymised information** means information related to the dispute that does not identify (or is not reasonably capable of identifying) the applicant or any individual, and may be combined with information from other disputes, advisors or other information sources.

**applicant** means the 'affected person', as defined in section 104(6) of the Act (or their representative) being:

- (a) the insured person for the residential building or residential land that the claim relates to, or
- (b) any other person who is lawfully entitled to all or part of any building claim entitlement or land claim entitlement payable on the settlement of the claim.

**claim** means a claim made under section 52 of the Act.

**complaint procedure** means the complaint management procedure in accordance with section 91 of the Act. **dispute** means a dispute between the applicant and the Commission in relation to a referable decision, where the applicant has referred the dispute to the Scheme.

**industry practice** means industry practice approved by an industry representative body or regulator.

**mediator** means a mediator appointed by the Scheme provider in respect of the relevant dispute, as that mediator may be replaced from time to time.

**Minister** means the Minister responsible for the Commission.

**party** means each of the Commission and the applicant (or their representatives) and **parties** means both of them.

**public entity** means 'public entity' as defined in section 5(1) of the Public Audit Act 2001.

**referable decision** means a decision made by the Commission:

- (a) under section 59 of the Act as to whether, or to what extent, a claim is valid, or
- (b) under section 60 of the Act as to the extent to which a claim is to be, or has been, settled,

but not a decision of a kind specified in the regulations as not suitable for resolution under the dispute scheme, as defined in section 104(6) of the Act.

**residential building** means 'residential building' as defined in section 9(1) of the Act.

**residential land** means 'residential land' as defined in section 17(1) of the Act.

**Rules** means the Dispute Resolution Scheme Rules contained in this document to be applied by the Scheme approved by the Minister under section 102 of the Act.

**Scheme** means the dispute resolution scheme approved by the Minister under section 102 of the Act.

**Scheme provider** means the service provider appointed under a contract for services with the Commission to administer the Scheme, as may be replaced from time to time.

**technical advice** means advice given to an applicant during the claims management process or dispute resolution proceeding to establish whether their property damage was caused by a natural hazard, and what that damage is. Technical advice may be given by experts, including:

- assessors
- estimators
- surveyors
- valuers
- engineers

- builders
- drainage specialists.

**The Adjudication Protocol** means the adjudication protocol prepared for the purpose of the Scheme under the Act.

**The Commission** means Toka Tū Ake - Natural Hazards Commission as continued under section 125 of the Act and for the purposes of these Rules, unless the context requires otherwise, includes those acting as agents of the Commission.

**The Mediation Protocol** means the mediation protocol prepared for the purpose of the Scheme under the Act.

**working day** means 'working day' as defined in the Legislation Act 2019, section 13.

### 3. Interpretation

3.1 In these Rules, unless the context requires a different interpretation:

- The Act will take priority over any of the Rules to the extent there is a conflict.
- A reference to the singular includes the plural and vice versa.
- A reference to 'includes' means 'includes without limitation' and other grammatical forms of 'includes' will be interpreted accordingly.
- A reference to these Rules, any legislation, regulation, a statutory notice, or any other document, means the Rules, legislation, regulation or statutory notice, as amended, replaced or superseded from time to time.
- A reference in these Rules to a section in the Act (including in any defined term) will be deemed amended or replaced if the corresponding section in the Act is amended or replaced.
- A reference to time is to New Zealand standard time, as adjusted for daylight savings.

### 4. Disputes that may be referred to the Scheme

4.1 An applicant can refer a dispute to the Scheme where they have made a claim for natural hazard damage to a residential property that occurred on or after 1 July 2024 and that dispute relates to a referable decision in accordance with section 104(6) of the Act, unless that decision meets any of the criteria set out in Rule 4.2.

4.2 An applicant cannot refer a dispute to the Scheme where:

- the dispute about a decision made by the Commission has previously been considered and/or referred to mediation and/or adjudication processes through a Scheme approved under the Act,
- the dispute is about a decision made by the Commission under sections 59 or 60 of the Act that is excluded by regulation, and/or
- the dispute has been resolved fully and finally.



## **Other proceedings**

- 4.3 Referring a dispute to the Scheme does not affect the right any person may have to commence proceedings in a court or tribunal.
- 4.4 Commencement of such proceedings in relation to the matters that are the subject of the dispute resolution process under the Scheme will result in a stay of the dispute resolution process until the other proceedings are determined and appeal rights exhausted (unless the court or tribunal orders otherwise).
- 4.5 Where the Commission is a member of more than one Scheme approved under the Act, the matters that are the subject of the dispute may only be heard by one Scheme.

## **5. Who may refer a dispute to the Scheme?**

- 5.1 Only an applicant may refer a dispute to the Scheme. The Scheme provider and the Commission should encourage applicants with disputes to make use of the Commission complaint procedure.
- 5.2 Once a dispute has been referred to the Scheme, the applicant, the Commission and the Scheme provider each agree to comply with these Rules, as amended from time to time, as reflected in section 104(3) of the Act.
- 5.3 Either party may, but is not required to, obtain legal representation for the purpose of referring the dispute to the Scheme and participating in the resolution of the dispute. Any costs associated with obtaining legal representation will be covered by the parties themselves in accordance with rules 6.6 and 7.11.
- 5.4 Either party may apply to a court of competent jurisdiction for an order requiring a party to comply with the Rules pursuant to section 104(4) of the Act.

### **How is a dispute referred to the Scheme?**

- 5.5 To refer a decision to the Scheme, the applicant must provide the Scheme provider with the required information. Such information includes:
  - (a) the applicant's name and contact details,
  - (b) the Commission claim numbers for any referable decisions or any identifying information,
  - (c) the notice from the Commission advising the applicant the decision is a referable decision, and
  - (d) any other information required by the Scheme provider.

### **What happens when a dispute is referred to the Scheme?**

- 5.6 The Scheme provider will refer the applicant and the Commission to the mediation process upon confirmation that the applicant and the Commission agree the dispute should be referred to mediation. If the applicant and the Commission do not agree to proceed with mediation the applicant may refer the dispute to the adjudication process.

## **Can multiple disputes relating to the same property be considered together?**

- 5.7 If the Commission has made more than one referable decision in relation to the same residential land or the same residential building which are the subject of a dispute or multiple disputes by more than one applicant, the parties may agree for the disputes to be considered through the same mediation or adjudication process. However, any such agreement is subject to each of those referable decisions that are the subject of a dispute meeting the requirements in Rule 4 and the parties' agreement as to which parts of the dispute should be considered together.

## **Can an applicant include their private insurer in the dispute resolution process?**

- 5.8 If the applicant, the Commission and the applicant's private insurer agree, the applicant's private insurer can join the dispute resolution process under the Scheme. If agreed, some of these Rules, and/or The Mediation Protocol and/or The Adjudication Protocol may need to be amended for the purposes of that dispute resolution process, including for example sharing of costs, information management and (when adjudication is the dispute resolution process) the scope of orders made by the adjudicator.

## **6. Mediation rules**

### **What happens if the dispute is referred to mediation?**

- 6.1 Once the Scheme provider has confirmed the applicant and the Commission agree to the dispute being referred to mediation, the Scheme provider will start the process for mediation using *The Mediation Protocol* (as amended from time to time).
- 6.2 Rules 6.3 – 6.12 apply to the mediation but will otherwise have no effect. Where there is any conflict between the Mediation Protocol and these Rules, these Rules will take priority.

### **Who appoints the mediator?**

- 6.3 The Scheme provider will appoint a mediator (and, if needed, any replacement mediator) for the dispute. The Scheme provider is responsible for ensuring the mediator is suitable for mediating the dispute. The mediator must be a member of a relevant professional body and have appropriate experience relevant to the dispute.

### **How long will the mediation process last?**

- 6.4 The mediator and the parties will agree on the length of the mediation.
- 6.5 In any case the mediation process will end 4 months after the date the dispute is referred to the mediation process unless the parties agree to extend this timeframe.

### **Who covers the costs of participating in the mediation?**

- 6.6 Each party is responsible for covering its own costs in relation to participating in a mediation.
- 6.7 The Commission is responsible for covering the costs of administering the Scheme, including the Scheme's costs relating to the mediation.

## **Who may attend a mediation?**

6.8 The following persons may attend a mediation:

- (a) the parties,
- (b) the parties' legal representatives,
- (c) a support person for the applicant,
- (d) any expert that a party considers necessary for the resolution of the dispute, and
- (e) any other person that both parties agree to, or who the mediator considers necessary for the resolution of the dispute.

## **Is the outcome of mediation legally binding?**

6.9 A resolution of the dispute agreed in writing by the applicant and the Commission in the mediation process is legally binding on the parties.

## **Can the outcome of mediation be enforced through the courts?**

6.10 A mediated resolution agreed in writing by the applicant and the Commission can be enforced by a court in accordance with section 106 of the Act.

## **Can a mediation end before reaching an agreement?**

6.11 An applicant may end a mediation for a dispute by giving the Scheme provider, mediator (if appointed) and the Commission 2 days' written notice, after the dispute has been referred to mediation and where the dispute has not been resolved by agreement in writing between the applicant and the Commission.

6.12 Where the mediation process does not end in agreement or is ended under Rule 11.2, the same dispute cannot be re-referred to mediation unless the applicant and the Commission agree in writing.

# **7. Adjudication rules**

## **What happens when a dispute is referred to the adjudication process?**

7.1 Once a dispute is referred to the adjudication process by the applicant the Scheme provider will start the adjudication process, unless a Rule applies that prevents the adjudication process being used for that dispute. The referral may be either following a mediation process where no agreement was reached (see Rule 6.11), or in accordance with Rule 5.6. Rules 7.2 – 7.20 will apply to the adjudication process but otherwise will have no effect.

## **Who appoints the adjudicator?**

7.2 The Scheme provider will appoint an adjudicator (and, if needed, any replacement adjudicator) for the dispute. The Scheme provider is responsible for ensuring the adjudicator is suitable for adjudicating the dispute. The adjudicator must be a member of a relevant professional body and have appropriate experience relevant to resolving the dispute.

- 7.3 Where the dispute has been through a mediation process which has ended in accordance with Rules 6.11 or 11.2 or under the Mediation Protocol, the mediator cannot also be the adjudicator for any adjudication of the same dispute under these Rules.

### **Which rules apply to the adjudication process?**

- 7.4 The adjudication will be carried out in accordance with *The Adjudication Protocol*.
- 7.5 The adjudicator will determine the dispute in accordance with the law and considering industry practice.
- 7.6 The adjudicator must give written reasons for their determination.

### **How long will the adjudication process take?**

- 7.7 The adjudication process will start on the date the dispute is referred to the process by the applicant and will be completed within 4 months after the date the dispute is referred to the adjudications process, unless this timeframe is extended in accordance with the Adjudication Protocol.

### **What sort of order can an adjudicator make?**

- 7.8 At any time during the adjudication process, an adjudicator can make procedural orders, which govern how an adjudication process is carried out.
- 7.9 When making a determination, the adjudicator may make the following orders:
- (a) a determination about the referable decision(s) in dispute, and/or
  - (b) an order against the Commission to pay an amount to the applicant for reasonable technical advice costs incurred (for example, the professional service fee costs incurred in relation to obtaining an engineering report about natural hazard damage) by the applicant for the purposes of participating in the dispute resolution process, and/or
  - (c) an order requiring the Commission to settle the applicant's dispute.
- 7.10 The adjudicator may not make an order requiring the Commission to:
- (a) pay damages or interest to the applicant,
  - (b) pay legal costs incurred by the applicant, or
  - (c) settle the claim using one of the methods in section 61 of the Act, or
  - (d) take any action that is not available under the Act.
- 7.11 The adjudicator may not make an order requiring the applicant to pay any costs incurred by the Commission.
- 7.12 Where the dispute relates to a decision made by the Commission under section 59(1)(b) of the Act (to reject a claim because it is invalid), then, if the adjudicator determines that the claim is not invalid on the ground(s) relied upon by the Commission when it made its decision, the claim must be referred back to the Commission to decide whether or not it is a valid claim and, where appropriate, assess, decide and settle the claim. Where the Commission makes a new referable

decision in relation to the claim, the Rules will apply in relation to that new referable decision.

- 7.13 Where the dispute relates to a decision made by the Commission under section 61(1)(e) of the Act (to decline a claim in whole or in part), then, if the adjudicator determines that the claim should not have been declined on the ground(s) relied upon by the Commission when it made its decision, the claim must be referred back to the Commission to assess, decide and settle the claim. Where the Commission makes a new referable decision in relation to the claim, the Rules will apply in relation to that new referable decision.

### **Who covers the costs of participating in the adjudication process?**

- 7.14 Each party is responsible for covering its own costs in relation to participating in an adjudication process.
- 7.15 The Commission is responsible for covering the costs of administering the Scheme, including the Scheme's costs relating to the adjudication process.

### **Who may be part of an adjudication process?**

- 7.16 The following persons may be part of an adjudication:
- (a) the parties,
  - (b) the parties' legal representatives,
  - (c) a support person for the applicant,
  - (d) any expert that a party considers necessary for the resolution of the dispute, and
  - (e) any other person both parties agree to, or who the adjudicator considers necessary for the resolution of the dispute.

### **Is an adjudication determination legally binding?**

- 7.17 The adjudicator's determination is legally binding on the parties in accordance with section 106 of the Act.

### **Can an order be enforced through the courts?**

- 7.18 An order of the adjudicator's determination may be enforced by a court in accordance with section 106 of the Act.

### **Can an adjudicator's order be appealed?**

- 7.19 In accordance with section 107 of the Act, either party may appeal a decision or order made by an adjudicator to a court of competent jurisdiction. In most cases, an appeal must be brought within 20 working days of the date that the decision has been made. The only exception to that timeframe is where the court grants an extension in accordance with the rules of the court.

### **Is the adjudication an arbitration and does the Arbitration Act 1996 apply?**

- 7.20 An adjudication carried out under the Scheme is not an arbitration. The provisions of the Arbitration Act 1996 do not apply to any adjudication under the Scheme.

### **Can an adjudication process end before the order is made?**

- 7.21 An applicant may withdraw from an adjudication process for a dispute at any time by giving the Scheme provider, the adjudicator (if appointed) and the Commission 2 days' written notice, at which time, the adjudication process will end.
- 7.22 Where an applicant ends an adjudication dispute for a dispute, that dispute cannot be subject to a further adjudication process.

### **Can an adjudicator's order be corrected for an accidental clerical mistake or minor error?**

- 7.23 On request of the parties, an adjudicator's order may be corrected by the adjudicator who made it, if the adjudicator considers that it contains a clerical mistake or a minor error.

## **8. Conduct of the dispute resolution process**

### **How should the applicant, the Commission and the Scheme provider conduct themselves?**

- 8.1 The parties must participate in the mediation and/or adjudication process (as applicable), and in doing so must:
- (a) without abandoning their own respective interests, try to ensure that the mediation or adjudication process (as applicable) is conducted fairly and efficiently,
  - (b) not make or encourage any third party to make any false submission or evidence,
  - (c) not use their participation in the mediation or adjudication process (including requesting information) to pursue an improper purpose, and
  - (d) not withhold or conceal (or advise a third party to withhold or conceal) any evidence that the mediator or adjudicator (as applicable) has requested the applicant or the Commission (as applicable) to provide to that mediator or adjudicator.
- 8.2 The Scheme provider, mediator or adjudicator (as applicable) is responsible for ensuring that the dispute resolution process is conducted in a manner that:
- (a) is fair and neutral,
  - (b) provides reasonable accommodations for those with disabilities,
  - (c) promotes resolution of the dispute effectively and efficiently,
  - (d) is culturally appropriate for Māori and other cultural groups, and
  - (e) respects the personal privacy and dignity of those participating in the dispute resolution process.

### **What if the mediator or adjudicator has a conflict of interest?**

- 8.3 The Scheme provider will ask the parties and the mediator/adjudicator (as applicable) whether they have identified any conflict of interest that the mediator/adjudicator may have in their role as mediator/adjudicator for the dispute.
- 8.4 The Scheme provider will seek to manage the conflict of interest appropriately but may replace the mediator/adjudicator if the Scheme provider considers that necessary. The Scheme provider will repeat the process set out in this Rule with the replacement mediator/adjudicator.
- 8.5 Any replacement mediator or adjudicator will be considered the mediator or adjudicator (as applicable) for the purpose of these Rules.
- 8.6 A replaced mediator or adjudicator will have no further role in mediating or adjudicating that dispute under the Scheme.
- 8.7 It will not be a conflict of interest for a Scheme provider to have a contract with the Commission in relation to the Scheme. Similarly, it will not be a conflict of interest for a mediator or adjudicator to have a contract with the Scheme provider.

## **9. Information management**

### **What sort of information can the Scheme provider reasonably seek from an applicant or the Commission?**

- 9.1 The Scheme provider and the mediator and/or adjudicator can seek information from an applicant or the Commission that it considers relevant and necessary for the resolution of the dispute.

### **Disclosure of information relating to a dispute**

- 9.2 Where the applicant, the Commission and/or the Scheme provider provide or make their confidential information available to each other, then those receiving it will use that confidential information only for the purpose of participating in the dispute resolution process under the Scheme.

### **Are there any restrictions on how the Scheme provider, an applicant or the Commission can use information relating to a dispute?**

- 9.3 All information provided to the Scheme must be treated as confidential information and is described as confidential information in these Rules.
- 9.4 The applicant, the Commission and/or the Scheme provider must not disclose any confidential information to each other or a third party, except as set out below.
- 9.5 The applicant, the Commission and/or the Scheme provider can disclose confidential information:
  - (a) where the information was in the public domain without the applicant, the Commission and/or the Scheme provider breaching these Rules.
  - (b) where the applicant, the Commission and/or the Scheme provider obtained the information from a third party and no confidentiality obligation applied to that information.

- (c) where the information was independently developed by the applicant, the Commission and/or the Scheme provider without reference to the confidential information.
  - (d) to those of the applicant, the Commission and/or the Scheme provider's personnel, witnesses, translators and professional advisors who have a genuine need to know and have agreed to comply with confidentiality obligations no less onerous than the confidentiality obligations in these Rules.
  - (e) where the applicant, the Commission and/or the Scheme provider is required to disclose the confidential information under law or the rules of a stock exchange. In this case, to the extent permitted by law, the applicant, the Commission and/or the Scheme provider will notify the applicant, the Commission and/or the Scheme provider of the requirement and the confidential information that they will disclose, the disclosure and the date they will disclose that confidential information. This permitted disclosure is known as the **Mandatory Disclosure Right**.
  - (f) where the Commission receives the confidential information from an applicant, the Commission can disclose the confidential information to the applicant's private insurer for the property that is the subject of the dispute, and any relevant law enforcement agency, including if the Commission considers (acting reasonably) that the applicant may be acting dishonestly or fraudulently in relation to the claim that is the subject of the dispute.
  - (g) where the Scheme provider, a mediator or an adjudicator, receives the confidential information from the Commission or the applicant. In these cases, they can disclose it to either the Commission or the applicant (as applicable), as well as to the mediator (where relevant) in accordance with the Mediation Protocol. This rule does not override clause 8.2 of the Mediation Protocol.
- 9.6 Nothing in these Rules limits the rights of the Commission under the Act or any other law to use or disclose information.
- 9.7 Nothing in these Rules limits the applicant, the Commission, or the Scheme provider from using their own confidential information.
- 9.8 The Commission can use and disclose anonymised information in relation to a dispute for other purposes, including:
- (a) education and training on managing disputes,
  - (b) media releases,
  - (c) exercising the Crown's statutory duties and functions, and
  - (d) published summaries of adjudication decisions.
- 9.9 The Scheme may prepare an anonymised summary of an adjudication decision and make the summary publicly available on the Scheme's and/or the Commission's website. The applicant will be consulted, and their views considered, before the summary of the adjudication decision is published. The anonymised summary will not be published until at least 20 working days have passed following a decision made by an adjudicator and will not be published if either party appeals that decision.



## **Can the applicant, the Commission or the Scheme provider make a public announcement relating to the dispute?**

- 9.10 Neither the applicant, the Commission or the Scheme provider can make a public announcement relating to the dispute unless any of the following exceptions apply:
- (a) if the applicant, the Commission and the Scheme provider each agree in writing to the public announcement,
  - (b) disclosure is permitted under these Rules, and/or
  - (c) if the Mandatory Disclosure Right applies.
- 9.11 Rule 9.10 applies from the point at which a dispute about a referable decision has been referred to the Scheme until the time for bringing an appeal under s 107(2) of the Act has elapsed.

## **What if an applicant has a complaint with how the dispute resolution process is conducted?**

- 9.12 The Scheme provider must have a dispute resolution process in place to resolve any complaints by the applicant about the Scheme. That process must be publicly available.

## **10. Exclusion of liability**

- 10.1 For the purpose of these Rules, The Mediation Protocol and/or The Adjudication Protocol, the applicant and the Commission each release and discharge the Scheme provider's agents and employees, each mediator and each adjudicator, from all liability of any kind (including negligence, misrepresentation, or breach of any equitable, fiduciary, statutory or other duty, or otherwise) which may be alleged to arise in connection with any exercise of their rights or obligations under these Rules, The Mediation Protocol and/or The Adjudication Protocol.
- 10.2 Rule 10.1 does not limit the Scheme provider, each mediator and each adjudicator, its agents and employees' liability to the Commission under the contract between the Scheme provider and the Commission. The applicant will not be entitled to the benefit of or to enforce that contract. This Rule 10.2 takes priority over Rule 10.1.

## **11. Ending participation in a mediation or adjudication process**

- 11.1 An applicant may end their participation in a mediation or adjudication process (as applicable) for a dispute in accordance with Rule 6 (Mediation Rules) or Rule 7 (Adjudication Rules) of these Rules, as applicable.
- 11.2 A mediation or adjudication process will end if the Scheme provider gives the applicant and the Commission written notice that the mediator or adjudicator has told the Scheme provider that:
- (a) the dispute is or has become frivolous, vexatious or is not being pursued in good faith,
  - (b) a party's safety, or their own safety, is at risk,

- (c) the applicant and/or the Commission has not participated (or is unlikely to participate) in the mediation or adjudication process to the extent requested by the Scheme provider,
- (d) either party has materially breached their obligations under Rule 8 (Conduct of the Dispute Resolution Process) and the Scheme provider considers the breach has not been (or is not likely to be) appropriately remedied within a reasonable time, or
- (e) the conduct of the dispute involves (or is likely to involve) matters of fraud or illegal activity. For the purposes of this rule 'illegal activity' means activity of a criminal nature.

## **12. General provisions**

### **Amendments**

- 12.1 These Rules may be amended from time to time.
- 12.2 Any amendment to these Rules is only permitted and valid if agreed by the Commission.

### **Privity**

- 12.3 No third party is entitled to the benefit of, or to enforce, these Rules.

### **Assignment and transfer**

- 12.4 The Commission and the Scheme provider will not assign or transfer their respective rights and obligations to anyone else under these Rules.
- 12.5 The applicant may assign its rights and obligations under these Rules in accordance with section 78 of the Act.

### **Subcontracting**

- 12.6 The applicant or the Scheme provider must not subcontract any of the rights or obligations under the Rules to anyone else.

### **Relationship between the applicant, the Commission and the Scheme provider**

- 12.7 Nothing in these Rules makes the applicant, the Commission or the Scheme provider part of any fiduciary, employer/employee or agent/principal relationship between themselves.

### **Waiver**

- 12.8 If either the applicant or the Commission continues with a mediation or adjudication process without promptly raising any objection about:
  - (a) a failure to comply with these Rules, or
  - (b) any other irregularity relating to the dispute resolution process or conduct of the dispute resolution process,

then the applicant or the Commission (as applicable) will be deemed to have waived its rights to object later unless the applicant or the Commission (as applicable) establishes that, at the relevant time, it did not know or could not reasonably have known of the objection.

### **Governing law**

12.9 These Rules are governed by the laws of New Zealand.

# Dispute Resolution Scheme Mediation Protocol

## applicable to the Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

### 1. Background

- 1.1 The Dispute Resolution Scheme Mediation Protocol (**Mediation Protocol**) applies where a dispute has been referred to mediation under Rule 6.1 in the Dispute Resolution Scheme Rules (as amended from time to time) (**Scheme Rules**).
- 1.2 Mediation under the Scheme Rules is a confidential process where an independent mediator assists the parties to try to resolve their dispute through negotiation.

### 2. Interpretation

- 2.1 The Mediation Protocol is to be read alongside the Scheme Rules including Rule 6 which sets out the “Mediation rules” that will apply to a dispute referred to mediation under the Scheme Rules, including appointment of the mediator, the length of the mediation process, the payment of costs, representation, enforcement, termination and related matters.
- 2.2 Each person participating in a mediation under the Scheme Rules should ensure that they are familiar with both the Scheme Rules and this Mediation Protocol.
- 2.3 Any defined term used in the Mediation Protocol and defined in the Scheme Rules has the same meaning as in the Scheme Rules.
- 2.4 If any aspect of the Mediation Protocol conflicts with the Scheme Rules, the Scheme Rules take priority. In addition to Rule 6 the Scheme Rules cover the following matters which may be relevant to a mediation process and are not separately covered by the Mediation Protocol:
  - (a) Scheme Rule 2 which defines a number of terms in the Scheme Rules,
  - (b) Scheme Rule 3 which outlines principles by which the Scheme Rules are interpreted,
  - (c) Scheme Rule 8 which describes how the dispute resolution procedures under the Scheme will be conducted,
  - (d) Scheme Rule 9 which describes information management processes and confidentiality requirements,
  - (e) Scheme Rule 10 which describes the rules relating to exclusion of liability for (relevantly) the Scheme provider and mediator,
  - (f) Scheme Rule 11 which outlines the process by which participation in a mediation ends, and

- (g) Scheme Rule 12 which describes general provisions applicable to the Scheme.

2.5 A reference to the Mediation Protocol is a reference to this Mediation Protocol, as amended from time to time.

### **3. Purpose of the Mediation Protocol**

3.1 The purpose of the Mediation Protocol is to set out key roles and responsibilities and the process to be followed once the dispute has entered the mediation process under the Scheme Rules and the Scheme provider has appointed a mediator.

### **4. Role and responsibilities of the Mediator**

4.1 A mediator appointed by the Scheme provider to assist the parties to resolve a dispute must:

- (a) carry out the mediation in accordance with the Scheme Rules, the Mediation Protocol and having regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness,
- (b) act as an independent mediator for the parties to the dispute, and
- (c) conduct the mediation in a timely manner and avoid incurring unnecessary expense for any party to the mediation.

4.2 When facilitating a mediation, the role of the mediator is to assist the parties to resolve their dispute, including by assisting the parties to:

- (a) clarify the issues in dispute,
- (b) understand each other's viewpoint,
- (c) share information with each other,
- (d) develop options to resolve the issues,
- (e) explore the usefulness of each option and check whether the option is practical and sustainable,
- (f) identify their own solutions to the dispute,
- (g) reach an agreement that accommodates the interests and needs of all parties.

4.3 When facilitating a mediation, the mediator must make a template settlement agreement available if any of the parties to a mediation request it. This template may form the basis of a Mediated Agreement.

4.4 The mediator must not:

- (a) advocate a position for any party,
- (b) give legal advice to any party,
- (c) impose an outcome of the dispute on any party,

- (d) make a decision for any party about how to resolve the dispute,
- (e) pressure any party to enter into a written agreement reached at mediation (Mediated Agreement).

## **5. Responsibilities of the Parties**

5.1 Each party to a dispute referred to mediation must:

- (a) comply with the Scheme Rules and the Mediation Protocol,
- (b) co-operate in the mediation process in good faith, and
- (c) assist in the proper conduct of the mediation by the mediator and cooperate with the mediator throughout the mediation process.

## **6. The Mediation Process**

6.1 The mediator may adopt any mediation process they consider appropriate provided that:

- (a) it is consistent with the Mediation Protocol and the Scheme Rules, and
- (b) they have regard to the context of the dispute and feedback provided by any party.

6.2 Subject to the Scheme Rules and in consultation with the parties, the mediator shall schedule the mediation, including the locations where the mediation will be held, when it will be held and how long it will last.

6.3 The mediator may require that the parties each provide a written statement of position stating briefly:

- (a) what they consider to be the matters in dispute,
- (b) the factual background to the dispute, and
- (c) the party's position on the matters in dispute.

6.4 The statement of position may attach statements of a factual or technical nature.

6.5 All statements of position and other documents attached to the statement of position that are sent to the mediator must also be sent to all other parties.

6.6 The mediator may receive any information about any matter they consider relevant, and in any way they think is appropriate.

6.7 The mediator may schedule meetings (either by video/telephone conference or in person) with any one or more of the parties and/or their representatives. Such meetings can take place before the mediation or at any time during the process of mediation. Either party, or the mediator can request this at any time. The content of all discussions will be confidential between the mediator and the party concerned, unless otherwise authorised.

- 6.8 At any time in the mediation process the mediator may ask the parties questions to clarify and further explain their positions.
- 6.9 The mediator will not offer an opinion on the accuracy or reliability of information or a party's position, unless:
- (a) requested by the party who provided the information or expressed the position, and
  - (b) the mediator considers it appropriate, and
  - (c) the opinion is provided in a separate meeting with the party who provided that information or position.

## **7. Authorisation and advice**

- 7.1 The parties must attend the mediation with either:
- (a) all necessary authorisations to enter a settlement agreement, or
  - (b) reasonable access to a person who holds such authority.
- 7.2 Where a party requires legal advice regarding their dispute this must be obtained before the start of the mediation and be available as needed during the mediation process, including for the purposes of entering a Mediated Agreement in accordance with clause 10 of this Mediation Protocol.

## **8. Confidentiality**

- 8.1 Mediation is a confidential process. A mediator appointed under the Scheme Rules and the Mediation Protocol is bound by the Information management/confidentiality requirements in Rules 9.1 to 9.11 of the Scheme Rules as if references to the Scheme provider were references to the mediator (with all necessary modifications).
- 8.2 Parties may communicate confidential information to the mediator on the condition that the mediator does not communicate it to the other party without their permission.
- 8.3 The mediator and parties, including their support people and representatives, must treat as confidential all written and oral communications as well as documents disclosed during the process.
- 8.4 The mediator must maintain confidentiality unless they have reason to believe that any person is threatened or in danger of physical harm, or property is in danger. The mediator will report to the Police or other appropriate authority any such threats of harm.
- 8.5 The mediation is carried out on a without prejudice basis. Any information, whether written or spoken, about what occurred at mediation is privileged in accordance with the Evidence Act 2006. Nothing said during the mediation process or documents prepared for or produced during the mediation may be used by any party in any judicial proceeding, administrative tribunal or Court unless required by law or all parties agree to waive that privilege.

- 8.6 However, any Mediated Agreement reached at mediation (Mediated Agreement) and signed by the parties may be admissible as evidence in a judicial proceeding in which a party seeks to enforce the terms of the agreement. Also, such an agreement may be provided to specified third parties with the agreement of all parties.
- 8.7 Unless the parties agree to waive privilege, they are directed by a Court to disclose information, or are required by law a mediator must not divulge any privileged information relating to a mediation in any proceeding. If they agree, or are required, to give evidence in any proceeding, the mediator must immediately inform the other parties.

## **9. Pausing/ending the mediation**

- 9.1 Mediation is voluntary. The parties must participate in good faith and with the intention of completing the mediation process.
- 9.2 Prior to entering a settlement agreement, an applicant may end a mediation for a dispute in accordance with Scheme Rule 6.11.
- 9.3 The mediator may pause the mediation at any time if:
- (a) they believe the length of the session is disadvantaging any party; or
  - (b) to give the parties time to address any matters that may help to resolve the dispute.
- 9.4 The mediator may end the mediation at any time if they consider that the safety of all cannot be assured.
- 9.5 In all other cases, a mediation ends when a Mediated Agreement is signed by the parties to the dispute.

## **10. Settlement**

- 10.1 If a settlement is reached, a Mediated Agreement will be prepared. A template agreement may be provided by the mediator in accordance with clause 4.3. The parties will sign the Mediated Agreement. Parties may seek legal advice before signing any Mediated Agreement. No settlement is binding unless and until it is in writing and has been signed by all the parties.
- 10.2 All parties reserve their respective legal rights if the mediation does not result in a settlement being reached between them, and a binding Mediated Agreement being entered.



# Dispute Resolution Scheme Adjudication Protocol

## applicable to the Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

### 1. Background

- 1.1 The Dispute Resolution Scheme Adjudication Protocol (**Adjudication Protocol**) applies where a dispute has been referred to an adjudication under Rule 7.1 in the Dispute Resolution Scheme Rules (as amended from time to time) (**Scheme Rules**).
- 1.2 An adjudication under the Scheme Rules is a process where an independent adjudicator determines the dispute for the parties.

### 2. Interpretation

- 2.1 The Adjudication Protocol is to be read alongside the Scheme Rules, in particular Rule 7 which sets out the “Adjudication rules” that will apply to a dispute referred to adjudication under the Scheme Rules. This includes appointment of the adjudicator, the types of order that an adjudicator may make, the overall timeframes for the adjudication, the payment of costs, representation, enforcement, rights of appeal and related matters.
- 2.2 Each person participating in an adjudication under the Scheme Rules should ensure that they are familiar with both the Scheme Rules and this Adjudication Protocol.
- 2.3 Any defined term used in the Adjudication Protocol and defined in the Scheme Rules has the same meaning as in the Scheme Rules.
- 2.4 If any aspect of the Adjudication Protocol conflicts with the Scheme Rules, the Scheme Rules take priority. In addition to Rule 7, the Scheme Rules cover the following matters which may be relevant to an adjudication process and are not separately covered by the Adjudication Protocol:
  - (a) Scheme Rule 2 which defines a number of terms in the Scheme Rules,
  - (b) Scheme Rule 3 which outlines principles by which the Scheme Rules are interpreted,
  - (c) Scheme Rule 8 which describes how the dispute resolution procedures under the Scheme will be conducted,
  - (d) Scheme Rule 9 which describes information management processes and confidentiality requirements,
  - (e) Scheme Rule 10 which describes the rules relating to exclusion of liability for (relevantly) the Scheme provider and adjudicator,
  - (f) Scheme Rule 11 which outlines the process by which participation in an adjudication ends, and

- (g) Scheme Rule 12 which describes general provisions applicable to the Scheme.

2.5 A reference to the Adjudication Protocol is a reference to this Adjudication Protocol, as amended from time to time.

### **3. Purpose of the Adjudication Protocol**

3.1 The purpose of the Adjudication Protocol is to set out the process for adjudication to be followed once the dispute has been referred to the adjudication process by the applicant under the Scheme Rules and the Scheme provider has appointed an adjudicator.

### **4. Responsibilities of the Adjudicator**

4.1 An adjudicator appointed by the Scheme provider to resolve a dispute must:

- (a) carry out the adjudication in accordance with the Scheme Rules, the Adjudication Protocol and have regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness,
- (b) act as an independent decision-maker for the dispute. They must not be an advocate for any party to the dispute, and
- (c) conduct the adjudication in a timely manner and avoid incurring unnecessary expense for any party to the adjudication.

### **5. Responsibilities of the Parties**

5.1 Each party to a dispute referred to adjudication must:

- (a) comply with the Scheme Rules and the Adjudication Protocol, and
- (b) assist in the proper conduct of the adjudication by the adjudicator and cooperate with the adjudicator throughout the process.

### **6. The Adjudication Process**

6.1 Within 5 working days of being appointed, the adjudicator must issue a notice to the parties (known as a procedural notice) outlining the following:

- (a) the adjudicator's appointment and contact details,
- (b) the information that the applicant used to refer the dispute to the Scheme under Scheme Rule 5.5, and
- (c) the process and applicable timeframes, including when they commence.

6.2 When referring to the process and applicable timeframes for the adjudication, the procedural notice will include the following process and associated timeframes (unless the adjudicator considers, having regard to clause 7.2, that the dispute in question requires extended timeframes or additional procedural steps):

- (a) that the applicant will provide a statement of position to the Commission (and also the private insurer if they are joined to the dispute under Rule 5.8 of the

Scheme Rules) within 10 working days of the procedural notice being provided to the parties which describes:

- (i) the nature of the dispute (giving sufficient detail about time, place, names of persons and other relevant circumstances),
  - (ii) their position on the dispute, and
  - (iii) the relief or remedy being sought.
- (b) that the applicant will provide the adjudicator and the Commission (and the private insurer, where relevant) with a copy of any documents (including any expert reports and witness statements) that the applicant relies upon, at the same time as providing the applicant's statement of position.
- (c) that the Commission (and also the private insurer if they are joined to the dispute) will provide a statement of position to the adjudicator and the applicant (and the private insurer/ the Commission, as applicable) within 10 working days of an applicant submitting a statement of position to the adjudicator and the Commission which describes:
- (i) what aspects of the dispute are accepted and what aspects of the dispute it disagrees with, and why, and
  - (ii) its position on the relief or remedy sought.
- (d) that the Commission (and the private insurer, where relevant) must (separately or jointly) provide the adjudicator and the applicant with a copy of any document(s) (including any expert reports and witness statements) that it relies upon, at the same time as providing its statement of position.
- (e) that the applicant may file a statement of reply to the statement of position within 10 working days of the Commission (and the private insurer, where relevant) submitting its statements of position. That the applicant must ensure its statement of reply is strictly in reply to the statement of position by the Commission (and/or the private insurer, where relevant) and must not raise any new issues.
- (f) that the adjudicator must issue their written determination of the dispute as soon as reasonably practicable after the statements of position and the applicant's reply have been submitted, subject to the extension of applicable timeframes under clause 7.1(d) of the Adjudication Protocol, and Rule 7.6 of the Scheme Rules.

## **7. The Adjudicator's Powers**

7.1 The adjudicator may:

- (a) deal with all procedural matters (including any matter under this clause 7.1(a) to (d)) either by email, in person or by video/telephone conference with each party, but in either case must issue any procedural directions in writing.
- (b) at any time during the adjudication process, either on their own initiative or on request by a party, order a party to provide to each other (and/or to the adjudicator) specified documents relevant to the dispute not already provided during the process. The scope of any order requiring the provision of

documents must be proportionate to the nature of the dispute and the issues in dispute.

- (c) ask questions and request a party to provide further submissions on any issue or issues raised by the dispute. The requested party must respond to such a request within 5 working days of the request.
  - (d) at any time during the adjudication process, either on their own initiative or on request by a party, extend any timeframe in clause 6 of the Adjudication Protocol, as the adjudicator considers necessary and reasonable, taking into account the principles in clause 4.1 of the Adjudication Protocol.
- 7.2 Except as specified in the Adjudication Protocol and/or Scheme Rules, the adjudicator may conduct the adjudication following any process they consider necessary and reasonable, having regard to the nature and circumstances of the dispute, the wishes of each party, and clause 4.1 of the Adjudication Protocol. For example, the adjudicator may appoint an appropriate technical expert to provide an independent expert opinion (in accordance with an agreed Scheme procedure).
- 7.3 There is a presumption that an adjudication process will not include a hearing, unless circumstances exist to require it (as determined by the adjudicator). In this context, a 'hearing' is not a case management meeting carried out under clause 7.1 (if any).
- 7.4 If either party does not comply with the Scheme Rules and/or the Adjudication Protocol, the adjudicator may decide to proceed to a binding resolution of the dispute unless Rule 11.2 of the Scheme Rules applies.

## **8. Confidentiality**

- 8.1 Adjudication is a confidential process. An adjudicator appointed to resolve a dispute under the Scheme Rules and the Adjudication Protocol is bound by the Information Management/confidentiality requirements in Rules 9.1 to 9.10 of the Scheme Rules as if references to the Scheme provider were references to the adjudicator (with all necessary modifications).