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Earthquake Commission – Toka Tū Ake
Emailed to: publicconsultation@eqc.govt.nz

ICNZ SUBMISSION ON THE NATURAL HAZARDS INSURANCE ACT DISPUTE RESOLUTION SCHEME

1. Introduction

1.1 The Insurance Council of New Zealand Te Kāhui Inihua o Aotearoa (**ICNZ**) welcomes the opportunity to make this submission to the Earthquake Commission – Toka Tū Ake (the **Commission**) in relation to its proposed Dispute Resolution Scheme (the **Scheme**) under the Natural Hazards Insurance Act 2023 (the **NHI Act**). The Commission has asked for submissions on:

(a) The draft Rules for the Scheme (the **Rules**); and

(b) The draft Mediation and Adjudication Protocols (the **Protocols**) that will apply under the Rules.

1.2 By way of background, the NHI Act requires the Commission to establish and operate a dispute resolution scheme, and to prepare draft rules for that scheme (sections 101(2) and 103(2)). The scheme and the rules must be approved by the Minister (sections 102(1) and 103(1)), and must:

(a) be based on the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness (sections 102(2)(a) and 103(3)(a));

(b) provide for the resolution of disputes about referable decisions (that is, decisions about whether and to what extent a claim is valid and, if it is valid, the extent to which a claim should be settled) (sections 102(2)(b), 103(3)(a) and 104(6)); and

(c) have been the subject of adequate public consultation (sections 102(2)(c) and 103(3)(b)).

1.3 The Commission has asked us to make our submission on the proposed Rules and Protocols by 11 March 2024. Our submission proposes amendments to the Rules and Protocols in order to ensure that the dispute process is accessible to customers, offers a

fair and independent means to resolve disputes, and does so in an efficient and effective way, in accordance with the principles that are required to be applied under section 102 of the NHI Act.

2. ICNZ

2.1 The Insurance Council of New Zealand represents private general insurers who insure about 95 percent of Aotearoa New Zealand's general insurance market, including well over a trillion dollars' worth of property and liabilities. ICNZ members provide a range of insurance products, including most relevantly here, cover for natural hazard damage in excess of the cover provided by the Commission under the existing Earthquake Commission Act 1993 (the **EQC Act**) and the new NHI Act.

2.2 ICNZ members include AA Insurance Limited, Chubb Insurance New Zealand Limited, FMG Insurance Limited, The Hollard Insurance Company Pty Ltd, IAG New Zealand Limited, Medical Insurance Society Limited, QBE Insurance (Australia) Limited, Tower Limited and Vero Insurance New Zealand Limited, who are all parties to the Natural Disaster Response Agreement with the Commission, which was entered into in October 2020 (the **NDRA**).

2.3 The private insurer members of ICNZ have considerable experience in dealing with disputes concerning claims arising from the Canterbury and Kaikoura earthquakes, as well as the recent severe weather events in 2023. This includes many hundreds of proceedings that were brought in the High Court and in the District Court, in the Canterbury Earthquake Insurance Tribunal (**CEIT**) and through the Greater Christchurch Claims Resolution Service (**GCCRS**) (now the New Zealand Claims Resolution Service (**NZCRS**)).

2.4 In making this submission, ICNZ has drawn on the substantial experience of private insurers in dealing with disputes arising from the Canterbury and Kaikoura earthquakes under each of these different dispute resolution schemes. They have practical experience as to what works and what does not, and, as a result, how to ensure that any dispute resolution scheme under the NHI Act meets the principles that are required to be applied under section 102 of the NHI Act.

2.5 In addition, ICNZ has engaged David Friar of Bell Gully to provide external legal advice in relation to the content of the Rules and the Protocols, given his experience and expertise in relation to disputes concerning claims arising from the Canterbury earthquakes. David has appeared in many dozens of such cases in the High Court, District Court, CEIT and GCCRS, as well as in many dozens of mediations of such

cases, and ICNZ has drawn on that experience in providing external legal support for this submission. Bell Gully is also familiar with NDRA, as it advised ICNZ and its members in relation to the negotiation of that Agreement. It is currently involved in the discussions with the Commission regarding variations required for the NHI Act.

2.6 If you have any questions about this submission, please contact ICNZ's Regulatory Affairs Manager, Susan Ivory (susan@icnz.org.nz).

3. Summary

3.1 ICNZ considers that the draft Rules and Protocols should be amended, as set out in Schedules 1-3 to this submission. These amendments are required to address a number of significant deficiencies and omissions in the proposed draft Rules and Protocols. In the absence of these amendments, we consider that the Rules and Protocols will not meet their objectives. A summary of the reasons for our proposed amendments are as follows.

3.2 First, the Rules and Protocols do not properly balance the relevant principles under the NHI Act. The Act requires the Rules and Protocols to be based on principles of accessibility, independence, fairness, accountability, efficiency and effectiveness. However, the current drafts of the Rules and Protocols do not get the balance right between these principles. Our proposed amendments are designed to ensure a more appropriate balance, which we address in section 4 of this submission.

3.3 Second, the Commission and private insurers have worked closely over the past four years to develop and give effect to the NDRA, which provides for private insurers to manage and settle a customer's claim against the Commission alongside the customer's claim against the insurer. This has resulted in significantly better customer outcomes, by eliminating the potential for inconsistent decisions, avoiding unnecessary duplication and removing what was otherwise a complex, inefficient and costly process for customers. However, the draft Rules and Protocols are inconsistent with the approach adopted in the NDRA. They work against the agreed customer-focus approach, and re-introduce significant complexity and uncertainty for customers if a dispute arises. In section 5, we propose amendments to reduce this unnecessary duplication and inefficiency.

3.4 In particular, a key way to reduce complexity and uncertainty for customers, and to provide greater accessibility, efficiency and effectiveness for customers, is for any dispute with a private insurer to be addressed under the Rules and Protocols at the same time as any dispute with the Commission. This will avoid the need for a customer to have to launch two separate dispute resolution proceedings in relation to what will

typically be the same issues. It will eliminate the potential for inconsistent decisions, avoid unnecessary duplication, and remove what will otherwise be a complex, inefficient and costly process for customers.

3.5 However, because private insurer participation is voluntary, it will be crucial for private insurers to have confidence in the new Scheme. As we explain in section 5, our proposed amendments are designed to give private insurers that confidence so that they are more likely to seek to have any disputes in their private insurer capacity determined concurrently under the Scheme. That in turn will provide customers with a better experience in resolving any disputes.

3.6 Third, the terms on which a private insurer can join the Scheme are important. As we have said, insurer participation is voluntary. Rule 5.8 currently provides that a private insurer can join the Scheme if the Commission and customer agree, with the Rules and Protocols to be amended as needed. This envisages a case-by-case negotiation of the terms on which a private insurer would join the Scheme, which is inefficient and costly. We have proposed amendments to the Rules to better address the basis on which private insurers can join. We discuss this in section 6.

3.7 Fourth, we propose amendments in relation to entry into the Scheme: what types of disputes are covered by the Scheme, a timeframe for a referral to the Scheme, and whether the Commission can commence a dispute process under the Scheme. We discuss our proposed amendments to these aspects of the Rules and Protocols in section 7.

3.8 Fifth, we propose amendments in relation to exiting the Scheme. Given that mediations are voluntary, any party should be entitled to withdraw from a mediation process (in the lead up to a mediation) on reasonable notice, and to withdraw from a mediation at any time. By contrast, an adjudication requires the parties to spend considerable time and money in preparation for the hearing and decision. In our view, there comes a point at which a party should not be entitled to withdraw, which would be inefficient and costly to other parties. We address this in section 8.

3.9 Sixth, the qualifications and experience of the individuals appointed as mediators and adjudicators will be critical to the success of the Scheme, and to the private insurers deciding to use the Scheme to resolve complaints in respect of the private insurance component of a customer's claim. We would note that, in the context of resolving earthquake disputes in Christchurch, the GCCRS appointed retired High Court judges such as Rhys Harrison, Dame Judith Potter and Paul Heath. We would expect

candidates of similar calibre to be appointed in respect of adjudications under the Rules, and highly trained and experienced mediators to be appointed in respect of mediations under the Rules. We address these points in section 9.

3.10 Seventh, we consider that mediation is a vital part of the dispute resolution process, and we welcome its inclusion in the draft Rules and Protocols. We have proposed a small number of changes to the Mediation Rules and Protocol, which we discuss in section 10.

3.11 Finally, adjudication is a key aspect of any disputes resolution process. We consider that the current draft of the Protocol is well suited to dealing with small and simple disputes, but not large or complex disputes, with disputed facts and competing expert opinions. In our view, the proposed process in the Adjudication Protocol does not provide for a fair, efficient and effective process for large or complex disputes.

3.12 The CEIT was established under the Canterbury Earthquakes Insurance Tribunal Act 2019 (the **CEIT Act**) to deal with natural hazard claims against the Commission and private insurers following the Canterbury earthquakes, with a view to allowing insureds, the Commission and private insurers to follow both a mediation and an adjudication pathway. The adjudication pathway is designed to be not as formal as court proceedings, but with the minimum procedural requirements necessary for a fair, efficient and effective adjudication process. Given this similar context in which the CEIT was introduced and given that it specifically applies to a common form of natural hazard claims to which the NHI Act will now apply, we consider that the CEIT provides the most directly applicable tribunal precedent for adjudications involving large or complex claims under the NHI Act.

3.13 Similar provisions to the CEIT are provided for in the adjudication process set out in the Construction Contracts Act 2002 (the **CCA**).

3.14 In our view, there are a number of key procedural provisions for adjudications under the CEIT Act and other legislation such as the CCA that should be adopted for adjudications under the Rules and Protocols. We address this in section 11.

3.15 Our submission also contains four schedules.

(a) Schedules 1-3 contain our clause by clause analysis of the Rules and Protocols and show our proposed changes. These proposed changes pick up all of the points made in the body of this submission, as well as more minor changes that we recommend be made to make the Rules and Protocols work more fairly, efficiently

and effectively, and to improve accessibility. The Schedule also contains an explanation of the reason for each proposed change.

(b) Schedule 4 contains a diagram showing our assessment of the dispute resolution paths that a customer will need to navigate, including under the NHI Act, the Rules and the Protocols. As we explain in section 5, and as can be seen from the diagram, in our view the disputes process is significantly more complex and challenging for a customer to navigate than the simple path shown in the Commission's diagram in relation to the Scheme. We consider it important that the draft Rules and Protocols take into account the broader dispute resolution context and multiple paths that a customer faces following introduction of the NHI Act, the Rules and the Protocols.

3.16 We turn to address each of these key points in more detail.

4. The Rules and Protocols do not properly balance the relevant principles under the NHI Act

4.1 In our submission, the Rules and Protocols do not properly balance the relevant principles under the NHI Act. The Act requires the Rules and Protocols to be based on principles of accessibility, independence, fairness, accountability, efficiency and effectiveness. However, the current draft of the Rules and Protocols does not get the balance right between these principles.

4.2 Our proposed amendments are designed to ensure a more appropriate balance. For example (by reference to the relevant paragraph number in this submission):

(a) ***Accessibility:*** ensure that the two Codes fully align (5.11(a)), allowing an Ombudsman review is unnecessarily complex (5.11(b)), allowing an independent review is unnecessarily complex (5.11(c)), need clear rules as to private insurer's ability to join Scheme and therefore for all of a customer's disputes to be dealt with together (6.3), need consistent definition of affected person (7.6), need early conferences in respect of preliminary issues (7.12) and whether simple or complex dispute (11.4), remove reference to industry practice (11.10), address payment of costs (11.10(c)), and no need for referral back to Commission (11.10(f)).

(b) ***Independence:*** require adjudicator rather than Scheme provider to determine any preliminary dispute (7.12), amend suitability requirement to ensure that mediators must have no conflict of interest and be independent (9.2) and amend suitability

requirement to ensure that mediators must have no conflict of interest and be independent (9.5).

(c) ***Fairness:*** introduce monetary limit for simple disputes process (but not for complex process) (7.7), provide for ability to end mediation process on notice (8.2(b)) and mediation without notice (8.2(a)), limit ability to end adjudication process (8.3), length of mediation process should be a target (10.3), length of adjudication process should be a target (11.8(c)), introduce minimum procedural safeguards for complex disputes, including ensuring that the principle of natural justice applies (11.8).

(d) ***Accountability:*** allow parties to comment on and challenge appointment of mediator (9.3), allow parties to comment on and challenge appointment of arbitrator (9.7).

(e) ***Efficiency:*** ensure clear rules as to private insurer's ability to join Scheme and therefore allow all of customer's disputes to be dealt with together (6.3), allow i Commission to refer a dispute to the Scheme (7.2), introduce 6 month time limit for commencing a dispute (7.7(a)), need process for making an application and response (5.5 and 7.11), address costs awards (11.10(c)-(e)), and no need for referral back to Commission (11.10(f)).

(f) ***Effectiveness:*** introduce early conferences in respect of preliminary issues (7.12), allow parties to agree on a mediation process (10.2), clarify effect of confidentiality and privilege in a mediation (10.4), clarify who prepares a Mediated Agreement (10.5), introduce simple and complex dispute pathways for adjudications (11.4), introduce early adjudication conference as to whether simple or complex dispute (11.6(b)), new procedural powers for adjudication of a complex dispute (11.8(a)), require hearings and evidence for complex disputes (11.8(d)), and need clearer test as to how an adjudicator must determine a dispute (11.10(a)).

4.3 This list is intended to be illustrative only, and is not a comprehensive summary of all of the relevant principles that apply to each of our proposed amendments.

5. The Rules and Protocols fail to take a customer-focused approach

5.1 In our view, the Rules and Protocols should take a customer-focused approach, consistent with the NDRA. However, the draft Rules and Protocols work against this customer-focus approach, and re-introduce significant complexity and uncertainty for customers if a dispute arises.

5.2 By way of background, the Commission provides natural hazard cover to customers under the NHI Act for residential buildings that are already insured with private insurers. The Commission covers natural hazard damage up to a cap of $300,000 plus GST per dwelling, with the private insurer covering any natural hazard damage over that cap. The Commission's cover is the "under cap" part of the customer's claim, while the private insurer's cover is the "over cap" part of the claim. The private insurer may also cover related property that is not covered by the Commission (the "out of scope" part of the claim).

5.3 As a result, if a customer's house suffers damage in a natural disaster, the customer is required to navigate a dual insurance system, with two separate entities managing and settling the customer's insurance claim for the same damage to the same property. The customer has a claim with the Commission (in respect of damage up to $300,000 plus GST per dwelling) and a separate claim with the private insurer (in respect of any damage over that cap, and in respect of any out of scope damage to property not covered by the Commission).

5.4 This division in cover has resulted in the potential for inconsistent decisions, unnecessary duplication and a complex and inefficient process, as evidenced following the Canterbury earthquakes. In short: there have been many instances of poor customer outcomes as a result of the dual insurance system, despite the best efforts of private insurers and the Commission.

5.5 To address this, the Commission and private insurers entered into the NDRA, in which they recognised that having the Commission and the private insurer separately manage and settle the customer's claims in respect of the same property, the same damage and the same event "does not maximise the achievement of Good Customer Outcomes and creates duplication" (NDRA Recital I). The Commission and the private insurers therefore agreed to partner with each other, with private insurers managing and settling both the customer's claim against the Commission and their claim against the insurer (NDRA Recital K).

5.6 The Commission and the private insurers agreed that having the private insurer as the customer's single point of contact in respect of both claims would "facilitate Good Customer Outcomes for customers", "make use of the experience and customer service focussed approach that insurers bring to the management and settlement of insurer claims", and "support an efficient and effective use of insurance sector claims response capability following a Natural Hazard event" (NDRA Recital L).

5.7 The Commission and the private insurers have agreed that the customer-focused model in the NDRA should continue after the NHI Act comes into force on 1 July 2024. They have therefore been negotiating amendments to the NDRA to allow that to happen, to ensure that customers continue to have the private insurers as their single point of contact and a clear and simple pathway for resolving their insurance claims against both the Commission and the private insurer, including within the multi-step framework for review and resolution of customer disputes required by the NHI Act.

5.8 The private insurers are concerned that the current drafts of the Rules and Protocols are inconsistent with this customer-focused model, and that they instead reintroduce significant complexity and uncertainty for customers that the NDRA model was designed to remove. It results in unnecessary duplication, because it does not encourage the customer's claim against the Commission and their claim against the private insurer to be heard together.

5.9 While the Commission's one-page diagram titled "Summary of how the dispute resolution scheme will work" presents a simple path from a decision on the customer's claim with the Commission through to mediation, adjudication and resolution of any dispute, the reality for customers is generally substantially more complex. This is because the diagram does not take into account the broader context that a customer faces if a dispute arises:

(a) First, the Rules and Protocols do not apply to all types of disputes. Only Referable Decisions are covered. Other types of disputes, such as breaches of the Commission's Code of Insured Persons Rights, cannot be addressed under the Rules and Protocols, even if they also arise at the same time as a Referable Decision. That means that there are different pathways for different components of the same dispute.

(b) Second, the Rules and Protocols currently do not apply to the private insurance claim, unless a separate agreement is entered into with the Commission, the customer and the private insurer. It is contemplated that such an agreement will be negotiated and agreed on a case by case basis. This means that there will either be a lengthy and complex negotiation in each case to have a dispute with the private insurer determined together with a dispute with the Commission, or that there will be two separate dispute processes for a customer in relation to the same or overlapping issues. If so, the customer will need to go through the Rules and Protocols to determine the under cap claim, and then the customer will need to go to the insurer's dispute resolution scheme (or court) to determine the over cap

claim – even though both disputes involve the same issues in respect of the same damage to the same property following the same event.

(c) Third, private insurers have a legitimate interest in a dispute between the Commission and the customer, given that any settlement or resolution that the cap has been reached will likely affect the private insurers' potential liability. Further, once the cap has been reached, the Commission ceases to have any role, meaning that the private insurer becomes solely responsible for the remaining dispute.

(d) Fourth, the Rules and Protocols do not take into account further additional and overlapping dispute resolution paths that will be made available to customers, including an Internal Complaint Resolution Process under the NHI Act, an Independent Review under the NHI Act, a review by the Parliamentary Ombudsman, or court proceedings in the District Court or High Court. These differing paths introduce significant complexity for a customer.

(e) Fifth, there are regulations to come which we understand will contain exclusions from the definition of referable decision, which have not yet been published. These regulations will need to be considered before the Rules and Protocols are finalised.

(f) Sixth, the private insurance component of a customer's claim may go to the private insurer's dispute resolution scheme, such as the Insurance and Financial Services Ombudsman (**IFSO**) or Financial Services Complaints Ltd.

5.10 We attach at Schedule 4 a one-page diagram that includes all of the dispute resolution paths that we consider a customer will need to navigate if a dispute arises, including under the NHI Act, the Rules and the Protocols. As will be apparent from this diagram, the process is significantly more complex and challenging for a customer to navigate than the simple path shown in the Commission's diagram. In our submission, the new process is inconsistent with the improved customer-focused approach to managing and settling claims under the NDRA. We would go so far as to say that, based on private insurers' experience in managing and settling customers' claims, most customers would find the new framework for resolving disputes to be bewildering.

5.11 In order to give effect to a customer-focused approach, we propose that the Commission consider the following:

(a) First, having both a Fair Insurance Code (for the insurer component of the claim) and a Code of Insured Persons Rights (for the Commission component of the

claim), which are similar but not identical, is confusing for customers, especially given that the insurer is handling both components of the claim. In our view, the two Codes should fully align. This is a point which ICNZ and its members have made during the consultation process for the Code of Insured Persons Rights.

(b) Second, and more generally, having multiple routes by which the Parliamentary Ombudsman may consider disputes adds an unnecessary layer of complexity and operates outside the Scheme.

(c) Third, it is not clear that there is good reason for an "independent review" for Code breaches as a separate dispute resolution process in circumstances where other disputes do not go to an independent review. This appears to add an unnecessary layer of complexity. In addition, we question the extent to which it is possible to separate out the under cap and over cap components of the claim for the purposes of separate processes in relation to Code breaches.

5.12 We appreciate that these proposals may require legislative amendment. In our view, there is a strong case for such amendments, given the complexity that a customer faces with the current array of dispute resolution paths that they may be required to follow in order to resolve a dispute.

5.13 In the interim, we submit that it will be important to ensure that the Rules and Protocols are as consistent as possible with the broader array of dispute resolution paths and the framework established by the NDRA. Our amendments (as set out in Schedules 1-3) are designed to ensure that this is the case.

5.14 A crucial way in which the current multiplicity of dispute resolution paths can be further simplified is for the Rules and Protocols to be designed in such a way as to encourage private insurers to have disputes about the private insurance component of a customer's claim dealt with at the same time as the Commission's component of the claim, using the dispute resolution scheme provided for in the Rules and Protocols. In order to achieve this, two factors will be critical:

(a) First, the basis on which a private insurer may seek to join a dispute should be effective and efficient. As we explain in section 6, the cost and uncertainty associated with the current proposal for a case by case negotiation of the terms on which a private insurer may join means that it is highly unlikely that private insurers will seek to join a dispute.

(b) Second, the Rules and Protocols need to give private insurers confidence that any dispute will be resolved in accordance with a fair process. Our proposals in the remaining sections of this submission are designed to ensure that this is the case, and that private insurers are therefore more likely to request to join a dispute process. That in turn will provide customers with a much more efficient experience if they do have a dispute, and promote good customer outcomes.

6. The Rules and Protocols should better address the basis on which insurers may join

6.1 The determination of a dispute with a private insurer at the same time as the determination of a dispute with the Commission will avoid the need for a customer to launch two separate dispute resolution proceedings in relation to the same property, the same damage and the same event. That would be a much better outcome for customers.

6.2 Currently, Rule 5.8 provides that a private insurer can join a dispute resolution process if the private insurer, the Commission and the customer all agree. The Rule then says that, if this happens, the Rules and Protocols "may need to be amended for the purposes of that dispute resolution process", for example in relation to costs, information sharing, and the scope of the orders that may be made by an adjudicator. Effectively, the Rules envisage a case-by-case negotiation between the customer, the Commission and the private insurer each time consideration is given to a private insurer joining a particular dispute resolution process.

6.3 ICNZ and its insurer members consider this to be a highly inefficient and ineffective process for joining private insurers, and that it fails to make the process sufficiently accessible to customers. We propose removing Rule 5.8 and instead making the following changes:

(a) The Commission must advise the private insurer of any dispute that is referred to the Scheme (new Rule 5.6(c)), and the private insurer must make any request to join the dispute within 15 working days (new Rule 5.8). The private insurer must set out details of their decision and the dispute between them and the customer (new Rule 5.8).

(b) The Scheme provider must then refer the request to join to the customer and the Commission and see whether there is any objection (new Rule 5.9(c)). If there is, the request and objection must be referred to an adjudicator for a decision (new Rule 5.9(c)).

6.4 We have also proposed changes to the Rules throughout so that they refer to the "parties" rather than just the applicant and the Commission. This will ensure that the Rules apply to a private insurer who is joined to a dispute. In addition, we have proposed using the term "respondent" rather than the Commission in places where a Rule should apply to both the Commission and the private insurer. Again, this will ensure that the Rules apply to a private insurer who is joined to a dispute. These changes are set out in Schedules 1-3.

6.5 Our proposal to use the terms "parties" and "respondent" will ensure that the Rules apply to a private insurer who seeks to join a dispute process, without the need for an inefficient, case by case negotiation of the terms on which a private insurer may be joined to the process.

7. Amendments as to how a dispute enters into the Scheme

7.1 In our view, the Rules should be clearer as to how a dispute enters into the Scheme, and deal with scenarios where the Commission wants to refer a dispute, the timing for referring a dispute, the information to be provided when a dispute is referred, and what happens if there is a dispute as to whether the Scheme has jurisdiction to consider the dispute.

7.2 At new Rule 4.2, we have proposed that, in addition to an affected person referring a dispute to the Scheme, the Commission can also refer a dispute to the Scheme. The same criteria that apply to whether an affected person can refer a dispute will also apply to whether the Commission can refer a dispute to the Scheme.

7.3 We are conscious that section 104 of the NHI Act says that an affected person may (but is not required to) refer a dispute to the Scheme. In our view, this does not preclude the Commission from also referring a dispute to the Scheme. The Act is silent on that point, and giving the Commission the ability to refer a dispute to the Scheme is consistent with the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness set out in the NHI Act.

7.4 Further, if an affected person does not want to participate, then new Rule 5.7 gives the affected person the right to object to the Scheme hearing the dispute – and in any event, Rule 6.11 (in new Rules 6.15 and 6.16) and Rule 7.19 (new Rule 7.24) allow an affected person to withdraw from the dispute process. Accordingly, the insured person's right under the NHI Act to decide not to participate, even if the Commission refers a dispute, is preserved.

7.5 Given that, under our proposal, the Commission can also refer a dispute to the Scheme, we have called an affected person an "affected person" under the Rules, rather than defining an affected person to be an "applicant". Instead, the applicant is the person who refers a dispute to the Scheme, and the respondent is the other person. A private insurer who seeks to join the dispute process would always be a respondent.

7.6 In our view, the term "affected person" rather than "applicant" should be used in the Rules and Protocols, even if the Commission does not accept our submission as to whether the Commission can also refer a dispute to the Scheme. That is because the NHI Act uses the term "affected person" rather than "applicant", there is no difference between the current definition of "applicant" in the Rules and the definition of "affected person" in the NHI Act, and it is likely to be confusing to a customer to be called different names at different stages of the process.

7.7 At new Rule 4.3, we have proposed additional limits on referring a dispute to the Scheme:

(a) We have proposed a 6 month time limit for referring a dispute to the Scheme. In our view, any disputes should be resolved promptly, in accordance with the principles set out in the NHI Act, and this time limit encourages the prompt resolution of disputes.

(b) We have also proposed a monetary limit for disputes under the Scheme. For example, some disputes in relation to multi-owned buildings with multiple dwellings can extend into the millions of dollars. We have proposed a $500,000 limit, unless the parties agree otherwise or unless the affected person agrees that the dispute is a complex dispute. If they do agree that it is a complex dispute, then our proposed Rules ensure that there are sufficient minimum procedural safeguards for the resolution of the dispute, and as a result, there is no need for any monetary limit on the disputes that can be brought.

7.8 We recognise that the Act does not provide for such limits, but there is the power to make regulations to exclude certain claims, and we submit that this power should be used to exclude such claims.

7.9 At new Rule 5.5, we have proposed that, when referring the dispute to the Scheme, the applicant provide slightly more information: the remedy sought (which we consider to be critical to the initial information provided) and whether the applicant wishes to attend a mediation (which assists the Scheme provider in determining whether to allocate the dispute to the mediation process, if all parties agree with the applicant's proposal). A

requirement to identify the remedy sought is consistent with the CEIT Act, section 12(2) and the Accident Compensation Act 2001 (**ACC Act**), section 135. We would expect that the Scheme provider will develop a standard form that can be completed for the purposes of referring a dispute to the Scheme. We refer to the referral in our proposed Rules as the "application" (consistent with describing the current rules describing the person referring the dispute as the "applicant").

7.10 At new Rule 5.6, we have proposed that the Scheme provider provide a copy of the application to the other party, and that the Commission provide a copy to the private insurer (so that the private insurer can decide whether to seek to join the dispute process).

7.11 At new Rule 5.7, we have proposed that the respondent provide its response to the application. This is not currently provided for in the Rules, which we consider to be a significant omission. We would note that section 15 of the CEIT Act requires a response. We have not proposed that a lengthy response is required, but it is critical for there to be an early identification as to whether (1) there is an objection to the dispute being considered under the Scheme, (2) whether any additional referable decision should be considered at the same time, (3) whether any other affected person should be joined, and (4) whether the respondent agrees to first mediate the dispute (if that is sought by the applicant). Likewise, Rule 5.8 gives the private insurer the right to make a request to join, and requires it to set out the decision and dispute that it seeks to have determined (together with whether it agrees to first mediate the dispute).

7.12 It's important that there is a process in which a quick decision can be reached on (1) any objection to the dispute being considered under the Scheme, (2) any other referable decision being considered at the same time under the Scheme, (3) whether any other affected person should be joined, and (4) whether the private insurer should be joined to the dispute process under the Scheme. Our proposed new Rule 5.9 provides for a process in which these matters can be addressed and determined promptly. One option would be for the Scheme provider to make these decisions. However, in our view it is important that the Scheme provider remains neutral and focuses on providing the framework and apparatus for resolving disputes. We consider that it would be more appropriate for an adjudicator to make a decision on any preliminary disputes (indeed, that is an adjudicator's core skill). We have therefore proposed that any such preliminary dispute be determined by an adjudicator under new Rule 5.11 (and we have set out the applicable principles that should apply to such a decision).

7.13 If there is no preliminary dispute (or once any preliminary dispute is determined), the dispute can then be referred to the mediation process (if all parties agree) or the adjudication process (if not). The information required in the application, response and request to join allows this decision to be made quickly by the Scheme provider.

8. Amendments in relation to exiting the Scheme

8.1 The Rules currently make provision for exiting the Scheme in three places: (1) in relation to a mediation process under Rule 6.11, (2) in relation to an adjudication process under Rule 7.19, and (3) more generally under Rule 11.2. We have comments in relation to the first two ways in which the Scheme can be exited.

8.2 The current Rules provide that an affected party can end a mediation on two days' notice. We make the following proposals:

(a) First, current Rule 6.11 (renumbered as new Rule 6.15) fails to distinguish between a mediation (that is, the mediation itself) and a mediation process (that is, the process leading up to a mediation). A mediation is voluntary, and can therefore be ended by any party at any time if they do not want to continue to participate. A mediation normally only lasts a day, and so it does not make sense for a mediation to be terminated on two days' notice. We have therefore proposed a new Rule 6.16 that allows a party to end a mediation at any time, and we have amended new Rule 6.15 to allow for a mediation *process* to be ended on 2 working days' notice (given that "days" is not defined in the Rules but "working days" is, the Rules should use working days for setting time periods).

(b) Second, current Rule 6.11 (renumbered as new Rule 6.15) only allows an affected party to end a mediation process. But because a mediation is voluntary, it makes no sense to require the Commission or a private insurer to continue in the process leading up to a mediation if they do not agree to mediate. As a result, we have proposed that any party can end a mediation process on two days' notice.

8.3 Current Rule 7.19 (renumbered as new Rule 7.24) provides that an affected person can end an adjudication process by giving two days' notice. We agree that an affected person should have the ability to withdraw. However, there comes a point at which all of the parties have incurred significant time and expense in getting an adjudication process ready for the adjudication itself, and it would be wholly inefficient and ineffective to allow an affected person to end the adjudication process and start again elsewhere. For example, what if an affected person has a bad day in a hearing before the adjudicator? Can they give two days' notice to end the adjudication process and avoid a likely adverse

decision, only to start again elsewhere? That is not efficient or effective. We have therefore proposed that an affected person cannot withdraw after 30 working days after the adjudication process has commenced.

9. Qualifications and experience of mediators and adjudicators

9.1 The qualifications and experience of the individuals appointed as mediators and adjudicators will be critical to the success of the Scheme, and to the decisions made by private insurers regarding whether to use the Scheme to resolve complaints in respect of the private insurance component of a customer's claim.

9.2 Current Rule 6.3 provides only that the Scheme provider must be satisfied that the proposed mediator is "suitable". In our view, the Rules should give the Scheme provider a clear direction as to what is meant by suitable. We have therefore proposed an amendment to the Rule which says that a mediator must:

(a) Have no conflict of interest;

(b) Be independent of the parties;

(c) Be qualified to act as a mediator; and

(d) Have sufficient experience in mediating disputes of this nature.

9.3 We have also proposed at Rules 6.4 to 6.7 a mechanism by which the Scheme provider proposes a mediator's name to the parties, and the parties have an opportunity to object. In our view, this is critical. For example, a party may be aware of a conflict of interest that the Scheme provider and the mediator do not know of. This mechanism allows a party to raise that.

9.4 It is also critical that only experienced mediators should be appointed under the Rules.

9.5 Current Rule 7.2 (proposed new Rule 7.3) likewise only provides that the Scheme provider must be satisfied that the proposed adjudicator is "suitable". Again, the Rules should give the Scheme provider a clear direction as to what is meant by suitable. We have therefore proposed an amendment to the Rule which says that an adjudicator must:

(a) Have no conflict of interest;

(b) Be independent of the parties;

(c) Be qualified to act as an adjudicator; and

(d) Have sufficient judicial experience in adjudicating disputes of this nature.

9.6 We would note that, in the context of resolving earthquake disputes in Christchurch, the GCCRS appointed retired High Court judges such as Rhys Harrison, Dame Judith Potter and Paul Heath. We would expect candidates of similar calibre to be appointed in respect of adjudications under the Rules. We would also note that section 57 of the CEIT Act requires the Minister to appoint members of the Tribunal who are suitable, taking into account their knowledge, skills and experience.

9.7 We have also proposed a mechanism by which the Scheme provider proposes an adjudicator's name to the parties, and the parties have an opportunity to object, at new Rules 7.4-7.7. We again consider this to be critical, for the same reasons as for mediators.

9.8 It is implicit in the Rules that the adjudicator and mediator of the same dispute must not be the same person. We have made this explicit in new Rule 7.3.

9.9 Rule 8.2 deals with how mediators and adjudicators should conduct themselves. The Rule applies some (but not all) of applicable principles under the NHI Act, and introduces others that are not in the NHI Act. We propose that the Rule simply requires mediators and adjudicators to act in accordance with the six principles in the NHI Act. That is what the legislation requires. We do not consider that the Commission should only apply some of the NHI Act principles and then add others that are not in the NHI Act.

10. Mediation Rules and Protocol

10.1 We consider that mediation is vital to the dispute resolution process, and we welcome its inclusion in the draft Rules and Protocols. We have proposed a small number of changes, as follows.

10.2 Current Rule 6.4 (new Rule 6.8) requires the parties to agree on the length of the mediation – that is, for how many hours it will last. A prior restraint on the length of a mediation is very unusual – it is very difficult to estimate in advance how long a mediation will reasonably take. In any event, there are other parts of the process that may also be reasonably agreed in advance. We have therefore proposed amending this rule to allow the parties to agree on any part of the process to be adopted for the mediation.

10.3 Current Rule 6.5 (new Rule 6.9) requires the mediation process to end within 90 days from the start of the mediation process. In our view, this is a good target, but there are

many contingencies which may mean that this is not possible. For example, the availability of the mediator, each party, each party's lawyer, and each party's experts will need to be coordinated. We have therefore proposed that the 90 day period is a target rather than a hard rule.

10.4 Clauses 8.5, 8.6 and 8.7 of the Mediation Protocol deal with confidentiality and privilege. It is important that the prohibition on the disclosure of information applies to both confidentiality and privilege. For example, a Mediated Agreement is confidential, but it is not privileged, and so would not be caught by the current wording of clause 8.7. We have therefore proposed amendments to clarify the position.

10.5 Clause 10.1 provides that a mediator will prepare a Mediated Agreement reflecting the settlement reached by the parties. That is not a mediator's role. It is for the parties to prepare a Mediated Agreement. We have amended clause 10.1 accordingly. We have also amended Rules 6.9, 6.10 and 6.12 (new Rules 6.13, 6.14 and 6.17) so that they consistently refer to a Mediated Agreement, which is the defined term used in the current draft of the Mediation Protocol.

11. Adjudication Rules and Protocol

11.1 An adjudication process is a critical aspect of any dispute resolution process. While the current draft is well suited to dealing with small and simple disputes, it is not designed to deal with large or complex disputes, with disputed facts and competing experts. It therefore does not provide for a fair, efficient and effective process for large or complex disputes.

11.2 In our view, the Rules and the Adjudication Protocol should adopt best practice from adjudication processes that have already been adopted in respect of similar types of disputes. The most closely analogous process is that adopted in the CEIT Act. This process is the most directly analogous because:

(a) It was established to provide "fair, speedy, flexible, and cost-effective services for resolving disputes" about insurance claims for physical loss or damage to residential buildings, property, and land arising from the Canterbury earthquakes (CEIT Act, s 3). That is very similar to the principles that the NHI Act requires to be applied to the Commission's dispute resolution scheme: "accessibility, independence, fairness, accountability, efficiency and effectiveness" (NHI Act, s 102).

(b) The CEIT process was adopted to provide insureds with a dispute process pathway that is not as formal as court proceedings but which still contains the minimum procedural requirements necessary for a fair, efficient and effective adjudication process. In our submission, that is what the Rules and Protocols here should aim to do.

(c) The CEIT process follows a very similar framework to that proposed here under the Rules and Protocols, allowing insureds, the Commission and private insurers to follow both a mediation and an adjudication pathway.

(d) The CEIT process applies to insurance disputes in relation to claims for damage to residential buildings, property, and land arising from the Canterbury earthquakes. That is exactly the sort of dispute to which the new Rules and Protocols will apply, and so is directly analogous.

(e) The CEIT process was adopted by Parliament in the CEIT Act, and so is a powerful precedent.

11.3 Accordingly, in our view, there would need to be good reason to depart from the process adopted in the CEIT Act.

11.4 We have proposed that, if a dispute is referred to the adjudication process, the first question to be addressed is whether it is a simple dispute or a complex dispute. If it is a simple dispute, then the current proposed process is suitable. That is, a written exchange of positions and a decision by the adjudicator on the papers, without a hearing. However, that is not appropriate for a complex dispute, where there are (for example) contested issues of fact that need to be decided, or a disagreement between experts that needs to be determined. Such disputes cannot be dealt with on the papers, and can only be determined by an adjudicator following a proper process and a hearing. That is the process adopted under the CEIT Act.

11.5 In our submission, it would be entirely inconsistent with the principles under the NHI Act for complex disputes of this nature to be determined without following a minimum proper process. Indeed, we expect that it would be very unlikely that insurers would agree to join a dispute under the Scheme in relation to such a dispute if there was not a sufficient minimum proper process provided for under the Rules and Adjudication Protocol. We have therefore made proposals for determining whether a dispute is simple or complex, and for the process to be adopted in relation to each type of dispute.

11.6 First, the process for determining whether a dispute is simple or complex is dealt with in clauses 6.1 and new clause 6.2 of the Adjudication Protocol.

(a) We have removed the requirement to provide the information used to refer the dispute to the Scheme (clause 6.1(b)), as we have proposed that this be provided as soon as the dispute is referred to the Scheme (new Rule 5.6), and not only once the dispute is referred to adjudication. However, we have provided for this information to be provided to the adjudicator as soon as that person is appointed (new Rule 7.2). We have also proposed that the adjudication process is started once the adjudicator is appointed and receives the information (new Rule 7.2, replacing clause 6.1(c) of the Protocol).

(b) We have proposed that the adjudicator schedule a first conference to decide whether the dispute is simple or complex (clause 6.2 of the Protocol), and that they give the parties an opportunity to say whether they consider the dispute to be simple or complex (new clause 6.1(c) of the Protocol). Starting with a conference is consistent with the CEIT Act, section 21 and the ACC Fairway contract, clauses 3.6.2 and 3.7.2.

(c) We have included new definitions of a complex dispute and a simple dispute in Rule 2.1. A complex dispute involves material factual disputes, or disagreements between experts. Simple disputes are all other disputes.

11.7 Second, we have kept the existing process for simple disputes, with a statement of position by the applicant (new clauses 6.4 and 6.5), a statement of position by the respondent (new clauses 6.6 and 6.7) and a statement in reply (new clause 6.8). However, we consider that the mandatory 10 day time period under clause 6.4 to be unnecessarily rigid and unrealistically tight, even for a simple dispute. It will not work in practice. We have therefore proposed new clause 6.3, which will allow the adjudicator at the first conference to deal with any procedural matters and make timetable orders for the parties to file their statements of position and reply. That will enable the adjudicator to take into account the nature of the dispute and the issues that will need to be addressed, as well as the availability of the parties and the lawyers.

11.8 Third, we have introduced a new process for dealing with complex disputes, in reliance in part on the process adopted in the CEIT Act. In summary:

(a) Under new clause 6.10 and 6.11, the adjudicator has the power to make orders to progress the adjudication process. This includes key steps such as:

(i) Identifying the core issues in dispute;

(ii) Requiring documents relevant to the dispute (including any adverse documents) to be disclosed;

(iii) Inspecting the residential building or land;

(iv) Determining any preliminary matters and scheduling any further conferences;

(v) Directing that any expert reports be exchanged, and that experts meet and confer at an expert conference;

(vi) Directing that statements of evidence be exchanged; and

(vii) Requesting written submissions from the parties.

(b) These powers are consistent with the CEIT Act, sections 24, 27 and 28, and the CCA, section 42.

(c) We have removed the requirement for an adjudication to be completed within 90 days, under Rule 7.6 (new Rule 7.11). That is entirely unrealistic for a complex dispute (and indeed potentially unrealistic for a simple dispute). There are also many contingencies which may mean that this timeframe is not possible (for example, the availability of the adjudicator, each party, each party's lawyer, and each party's experts). We have therefore proposed that the process be completed as quickly as possible, taking account the principles for dispute processes in the NHI Act.

(d) New clause 6.12 requires the adjudicator to hold a hearing before determining the dispute. The hearing is to be held in private (new clause 6.16).

(e) The hearing which must be held in accordance with the principles of natural justice (new clause 6.13). The requirement to follow the principles of natural justice is a core requirement under the CEIT Act: see sections 20(3) and 37(3). It is also a core requirement under other dispute resolution schemes: see the CCA section 41(c), ACC Act section 140(c), NZCRS Schedule 2 clause 1 and IFSO Terms of Reference clause 12.2(b). We have therefore replicated that requirement under our proposed amendments to the Protocol, at clauses 4.1 and 6.13, as well as in the remainder of the Rules at new Rule 5.11. In addition, we have referenced in new clause 6.13 the key principles under the NHI Act, to which the adjudicator must also have regard.

(f) New clause 6.14 requires evidence to be given and examined if there is a dispute of fact or disagreement between the experts (new clause 6.14) and that inferences may be drawn from a failure to disclose documents or evidence (new clause 6.15). In our view, these are the minimum process requirements that are required for the determination of a complex dispute.

11.9 Because we have already provided for an adjudicator's powers in respect of simple and complex disputes, we have proposed removing clause 7.1 of the Protocol, which in our view is vague and unclear.

11.10 Finally, we have also proposed amendments to the manner in which an adjudicator makes a decision.

(a) Rule 7.4 (new Rule 7.9) requires an adjudicator to determine a dispute in accordance with the law "and with considering industry practice". In our view, the addition of industry practice is likely to cause significant uncertainty, cost and complexity.

(i) First, what is industry practice? Is it best practice? Common practice? Any practice?

(ii) Second, it this intended to be a reference to *insurance* industry practice, or to any relevant industry practice? For example, quantity surveying industry practice?

(iii) Third, how is insurance industry practice established? Is it through expert evidence explaining what they consider to be industry practice? There would appear to be no other way for an adjudicator to find out what that practice is. But requiring the parties to lead expert evidence on this point will impose additional cost on the parties and delay resolution of disputes.

(iv) Fourth, what happens if there is a conflict between what the law says and what insurance industry practice says? The Rules are silent on this point. Does the law take precedence, or does industry practice? In our view, it would be very odd for the Commission or an insurer to have obligations that go beyond the law and that also require them to comply with insurance industry practice.

(v) Fifth, what happens if the Commission or an insurer has gone further than what common insurance industry practice requires? Are they to be penalised for not complying with industry practice?

(vi) Sixth, if the reference is intended to be to *all industry* best practice (for example, geotech, structural engineering, quantity surveying), that is the wrong test for determining which expert evidence should be preferred. Industry practice is a relevant factor, but it is only one factor, and it should not be called out to the exclusion of other relevant factors. Instead, the general law should apply in relation to assessing expert evidence, which means that only a reference to the law in Rule 7.4 (new rule 7.9) is required.

(vii) We have therefore proposed that the reference to industry practice be deleted.

(b) We have proposed amendments to Rule 7.8 (new Rule 7.13) to allow an adjudicator to make a decision in respect of the private insurance dispute. We have also given the adjudicator the power to require an affected person to make a payment or take steps (for example, if the affected person has been overpaid and is required to repay funds to the Commission or an insurer).

(c) We support Rule 7.9 (new Rule 7.14), which provides that the adjudicator may not make any orders for costs or damages. It is important that the prospect of an adverse costs award is not a deterrent to a person referring a dispute to the Scheme, and to avoid arguments about costs. The Rule is clear from the outset as to what the position is, making the Scheme more accessible to customers. The Rules currently provide for one exception to this Rule – namely, that technical advice costs may be payable – and we have proposed an amendment to Rule 7.9 (new Rule 7.14) to make this clear.

(d) We have proposed amendments to Rule 7.8(b) (new Rule 7.13(b)) to address the power of the adjudicator to order that the Commission pay an affected person's technical advice costs. At the moment, the Rule appears to allow an affected person to claim those costs even if the affected person is unsuccessful and even if the content of the technical advice reports was not accepted by the adjudicator. This incentivises customers to refer unmeritorious disputes to the Scheme, even though technical advice costs will need to be incurred. This is because customers will know that there will be no adverse costs award against them, and that the technical advice costs that they incur will be covered by the Commission. We have

therefore proposed that such costs are payable only if (and only to the extent that) the adjudicator accepts some or all of the customer's technical advice in preference to the Commission's technical advice.

(e) We have proposed a new Rule 7.13(c) to allow an adjudicator to make a similar order against a private insurer, but only to the extent that the technical advice relates to the affected person's claim against the private insurer.

(f) We understand that Rules 7.10 and 7.11 (new Rules 7.15 and 7.16) may be needed in circumstances where the adjudicator may not have sufficient information to make a final decision on the claim, and the matter needs to be returned to the Commission. However, if the adjudicator does have sufficient information, they should be able to make a final decision without referring the matter back to the Commission. We have proposed amendments to these Rules to allow for this.

(g) We have proposed a new clause 7.2 to the Adjudication Protocol, to give an adjudicator the power to strike out unmeritorious claims or claims that are not prosecuted. The CEIT is given the same power in section 10 of the CEIT Act.

Schedule 1: Draft Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

Clause	Text	Comments
1.	**Background**	
1.1	Under the Natural Hazards Insurance Act 2023 (the Act) Toka Tū Ake EQC (the Commission) is required to be a member of a dispute resolution scheme approved by the Minister (Scheme). The purpose of the Scheme is to help resolve disputes between an insured person (or other person entitled to an insurance settlement) (an affected person) ~~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.	We propose using the term "affected person" rather than "applicant", given that the NHI Act uses the term "affected person" and an applicant under the Rules is defined identically. In our view, it is confusing for the NHI Act to use one term and the Rules to use a different term when they are both defined to mean exactly the same thing. In addition, we have also proposed that the Commission may be an applicant under the Rules, and so the term applicant should be reserved for the person making the application.
1.2	The Scheme is based on the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness in accordance with section 102.	
1.3	In order to promote these principles, a private insurer may apply to join a dispute process under the Scheme, so that an affected person's dispute with the private insurer can be dealt with at the same time as their dispute with the Commission.	We propose that the Background explain that private insurers can also apply to join a dispute process under the Scheme.
~~1.3~~1.4	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 a mediation process. If that process is unsuccessful, the dispute will be referred to an adjudication process. ~~, and~~ In addition, if the parties ~~applicant or the Commission~~ do not agree to proceed with ~~the~~ a mediation process, the ~~applicant may request the~~ dispute ~~is~~ will be referred to ~~the~~ an adjudication process.	We have used the term "mediation process" for consistency with the remainder of the Rules. This Rule does not explain that if a mediation is not successful, then the dispute will be referred to an adjudication process. We consider that it is helpful to explain that here. We have used the term "parties", as there may be others in addition to an affected person and the Commission, such as a private insurer.

		The Rules should not provide for an applicant to have to make a request for adjudication if the parties do not agree to mediation, after already having made a referral of the dispute to the Scheme. Instead, the Scheme should refer the dispute to adjudication. We have clarified that in this Rule.
~~1.4~~1.5	Under a mediation process, any resolution of the dispute ~~must be~~can only be reached by agreement between the parties~~applicant and the~~. ~~Commission.~~ In an adjudication process, the dispute is resolved by an adjudicator who determines the dispute for the parties~~applicant and the Commission~~.	We have used the phrase "can only be", as "must" suggests that it is mandatory for the parties to reach an agreement at a mediation. We have used the term "parties", as there may be others in addition to an affected person and the Commission.
~~1.5~~1.6	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~~independently.	We have used the word "independent" rather than "neutral", as that is the word used in the principles in section 102 of the NHI Act.
2.	**Definitions**	
2.1	In these Rules, unless the context requires a different interpretation: **Act** means the Natural Hazards Insurance Act 2023. **adjudication process** means the process described in Rule 7 and the Adjudication Protocol. **Adjudication Protocol** means the adjudication protocol accompanying these Rules (as may be amended from time to time). **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~~ a person who refers a dispute to the Scheme under Rule 4.1 or 4.2.	The phrase "adjudication process" is used throughout the Rules. We recommend that it is defined. We have moved the definition of "Adjudication Protocol" (which had been listed under "The"), and amended the definition to more directly explain what the document is. We propose that the term "applicant" is reserved for a person who refers a dispute to the Scheme.

	‘**affected person**’, means 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. as defined in section 104(6) of the Act.	We propose that the term “affected person” is used in the same way as under the NHI Act.
	approved industry practice means industry practice approved by an industry representative body or regulator.	
	claim means a claim made: (a) under section 52 of the Act; and (b) under a private insurance policy (if the private insurer is joined to the dispute process) (as the context requires).	We have amended the definition of “claim” so that it also includes a claim under a private insurance policy (if the private insurer applies to join).
	Commission means Toka Tū Ake - Natural Hazards Commission as continued under section 125 of the Act and for the purposes of these Rules, and unless the context requires otherwise includes those acting as agents of the Commission.	We have moved the definition of “Commission” so that it is listed under “C” rather than “The”, but we have otherwise left the definition the same.
	complaint procedure means the complaint management procedure in accordance with section 91 of the Act.	
	Complex dispute means a dispute where: (a) it is likely that the adjudicator must decide a material factual dispute in order to make their determination; (b) it is likely that the adjudicator must decide a material disagreement between experts in order to make their determination; or (c) any other dispute that the adjudicator considers should follow the adjudication process for a complex dispute.	We have included a definition of a “complex dispute” for the purposes of our proposed new clause 6.2 of the Adjudication Protocol (which requires a dispute to be allocated to a “complex” or “simple” pathway when first referred to adjudication).
	dispute means a dispute between the applicant an affected person and the Commission in relation to a referable decision, where the applicant has referred the dispute to the Scheme. It also includes a dispute between	We have amended the definition of “dispute” so that it also includes a dispute under a private insurance policy (if the private insurer applies to join).

	an affected person and a private insurer (if the private insurer is joined to the dispute process) as the context requires. **dispute process** means a mediation process and/or an adjudication process under these Rules. **Mediated Agreement** means a resolution of the dispute agreed in writing by the parties during the mediation process. **mediation process** means the process described in Part 6 of these Rules and the Mediation Protocol. **Mediation Protocol** means the mediation protocol accompanying these Rules (as may be amended from time to time). **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 and each respondent~~(or their representatives) and parties means both of them~~. **private insurer** means the insurer of the dwelling (and any other related property) at the time the dwelling suffered natural hazard damage that is the subject of the referable decision. **private insurance policy** means the insurance policy between the private insurer and the insured person in respect of the dwelling (and any other related property) at the time the dwelling suffered natural hazard damage that is the subject of the referable decision. **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,	The phrase "dispute process" is used throughout the Rules. We recommend that it is defined. The phrase "Mediated Agreement" is used throughout the Rules. We recommend that it is defined. The phrase "mediation process" is used throughout the Rules. We recommend that it is defined. We have moved the definition of "Mediation Protocol" (which had been listed under "The", and amended the definition to more directly explain what the document is. We have broadened the definition of "party" to take into account that a private insurer may apply to join. We do not consider that the definition of a party should include a representative (for example, if an order is made requiring a party to pay money, that party's representative should not be required to pay that money). We have included definitions of "private insurer" and "private insurance policy" given the references to those terms in the Rules.

	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. **respondent** means: (a) if the applicant is an affected person, the Commission; (b) if the applicant is the Commission, the insured person and any other affected person who is named as a respondent; and (c) any other person who is joined to the dispute in accordance with these Rules and a reference to the respondent in these Rules is a reference to each respondent. **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 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. **simple dispute** means a dispute that is not a complex dispute. **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: • assessors • estimators • surveyors	We have included a definition of "respondent", (1) to include a private insurer, so that references in the Rules to a respondent also apply to private insurers, and (2) because under our proposed amendments to the Rules, the Commission may be the applicant rather than the respondent. We have added a definition of "simple dispute" for the purposes of our proposed new clause 6.2 of the Adjudication Protocol (which requires a dispute to be allocated to a "complex" or "simple" pathway when first referred to adjudication). The existing definition of "technical advice" is too limited. For example, quantity surveying advice is not provided to "establish whether property damage was caused by a natural hazard", or to establish "what that damage is". Instead, they quantify the cost of the work required to address that damage. We have therefore proposed re-wording this definition.

	• valuers • engineers • builders • drainage specialists • other similar technical specialists in relation to the claim. ~~.~~ ~~**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.	We have moved the definition of "The Adjudication Protocol" up so it comes under "A" rather than "The". We have moved the definition of "The Commission" up so it comes under "C" rather than "The". We have moved the definition of "The Mediation Protocol" up so it comes under "M" rather than "The".
3.	**Interpretation**	
3.1	In these Rules, unless the context requires a different interpretation: (a) The Act will take priority over any of the Rules to the extent there is a conflict. (b) A reference to the singular includes the plural and vice versa. (c) A reference to 'includes' means 'includes without limitation' and other grammatical forms of 'includes' will be interpreted accordingly. (d) A reference to these Rules, the Adjudication Protocol, the Mediation Protocol, any legislation, regulation, a statutory notice, or any other document, means the Rules, the Adjudication Protocol, the Mediation Protocol, legislation, regulation or statutory notice, as amended, replaced or superseded from time to time. (e) 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.	The Protocols should also have the benefit of this rule.

	(f) 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~~ affected person ~~can~~ may refer a dispute to the Scheme where: (a) they have made a claim for natural hazard damage to a residential property that occurred on or after 1 July 2024; and (b) ~~that dispute relates to~~the Commission has made a referable decision in respect of that claim in accordance with section 104(6) of the Act;~~,~~ and (c) the dispute relates to that referable decision. However, a dispute cannot be referred to the Scheme if clause 4.3 applies~~unless that decision meets any the criteria set out in rule 4.2~~.	Change from applicant to affected person, as this Rule is only intended to refer to the affected person. Clearer to first explain that the Commission has made a referable decision, and then say that the dispute must relate to that decision. Clearer to put this in a new sentence.
4.2	The Commission may refer a dispute to the Scheme if the requirements of clause 4.1 are satisfied and clause 4.3 does not apply.	The Commission should also be able to refer a dispute to the dispute process.
~~4.2~~4.3	An applicant cannot refer a dispute to the Scheme where: (a) 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, (b) the dispute is about a decision made the Commission under sections 59 or 60 of the Act, which is excluded by regulation, ~~and/or~~ (c) more than six months have passed since the Commission made the referable decision, (d) the claim under the Act and under the private insurance policy (if the private insurer is joined to the dispute process) exceeds $500,000, unless (i) the affected person agrees that the dispute is a complex dispute; or (i) the parties (including the private insurer, if joined to the dispute) agree otherwise.	We propose adding additional timing and monetary threshold requirements (although we acknowledge that these will need to be set by regulation). The change to (e) clarifies what is meant by full and final resolution (using the same language as new Rule 4.5).

	(e) the dispute has been resolved fully and finally (whether by agreement or by determination of a court or tribunal with appeal rights exhausted).	
	Other proceedings	
~~4.3~~4.4	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~~4.5	If a person has ~~C~~commenced~~ment of such~~ or does commence proceedings in a court or tribunal 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 under the Scheme is stayed until the other proceedings are determined and appeal rights exhausted (unless the court or tribunal orders otherwise). If the Court or tribunal determines the dispute, the Scheme provider must end the dispute resolution process for that dispute under the Scheme.	Clarifying that this rule applies to proceedings issued before or after a dispute is referred to the Scheme. Using more direct language to say that the process under the Scheme is stayed in these circumstances. Explaining what happens to the dispute process under the Rules if the Court or tribunal determines the dispute (at the moment, the Rules are silent on this point).
~~4.5~~4.6	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 referred to ~~heard by~~ one Scheme.	Using the word "refer" rather than "hear", to be consistent the remainder of the Rules.
5.	**~~Who may refer a dispute to the Scheme~~What happens when a dispute is referred to the Scheme?**	
5.1	~~Only an applicant may refer a dispute to the Scheme.~~ Before referring a dispute to the Scheme, the Commission encourages ~~applicants~~ an affected person to make use of the Commission's complaint procedure.	The first sentence is unnecessary given Rule 4.1 (and inconsistent with our proposed new Rule 4.2). Change from applicant to affected person, as this Rule is only intended to refer to the affected person.
5.2	Once a dispute has been referred to the Scheme, the applicant, the ~~Commission~~ respondent and the Scheme provider each agree to comply with these Rules, as amended from time to time.	Change from Commission to respondent, so that private insurers are also included.
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~~ dispute to the Scheme, the applicant or Commission must provide the Scheme provider with the ~~required~~ following information in writing:~~. Such information includes:~~ (a) the applicant's name and contact details, (b) the date of the application, (~~b~~c) the Commission claim numbers for any referable decisions or any identifying information, (~~c~~d) the notice from the Commission advising the applicant ~~the decision is~~of ~~a~~ a referable decision, ~~and~~ (e) the remedy sought, (f) whether mediation is sought, and (~~d~~g) any other information required by the Scheme provider. (together, the **application**).	The remaining Rules (and the heading) refer to a "dispute" (rather than a "decision") being referred to the Scheme. That should be carried through here. The information in the application should be provided in writing and dated (see section 12 of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the **CEIT Act**) and s 28 of the Construction Contracts Act 2002 (the **CCA**)). Section 12(2) of the CEIT Act and section 28(2) of the CCA require the applicant to state the remedy sought. The same should apply here. Given the threshold question as to whether all of the parties agree to mediation, this should be addressed in the application.
	What happens when a dispute is referred to the Scheme?	
5.6	Once a dispute is referred to the Scheme: (a) If an affected person refers the dispute, the Scheme provider must provide a copy of the application to the Commission within 5 working days; (b) If the Commission refers the dispute, the Scheme provider must provide a copy of the application to the affected person within 5 working days; (c) The Commission must provide a copy of the application to the private insurer within 5 working days of making or receiving the application.	There is currently insufficient detail in the Rules as to what happens when a dispute is referred to the Scheme. We propose a new Rule 5.6, which requires the application to be provided to other parties (including the private insurer). This is consistent with section 14 of the CEIT Act, which requires the claimant or the Tribunal to serve the application.

5.7	The Commission or an affected person (as the case may be) must provide the applicant and the Scheme with the following information in writing within 15 working days of receiving the application: (a) the date of the response; (b) the respondent's name and contact details; (c) whether the respondent objects to the Scheme considering the dispute, and if so, the reason for the objection; (d) whether the respondent considers that any other referrable decision should be addressed at the same time; (e) whether the respondent considers that any other affected person who is not an applicant should be joined to the dispute process; (f) whether the respondent agrees to mediation (if it is sought); and (g) any other information required by the Scheme; (together, the **response**).	The Rules do not provide for a response. In our view, the respondent should be required to provide a response, so that there is clarity on what is at issue and whether there is any preliminary point or objection to the dispute being referred to the Scheme. The requirement for a response is consistent with section 15 of the CEIT Act and section 37 of the CCA. If there is more than one referrable decision in relation to the claim, the respondent should be given an opportunity to identify it and have it heard together. Likewise, if the respondent considers than another affected person should be joined, this rule allows them to raise that (for example, if a trust owns and insures the property but not all trustees are named as applicants, this Rule allows the respondent to seek to join them).
5.8	If the private insurer wishes to join the dispute, the insurer must advise the Scheme, the applicant and the respondent of the following information within 15 working days of receiving the application: (a) the date of its request to join; (b) its name and contact details; (c) details of the private insurer's decision and the dispute between the private insurer and applicant in relation to that decision; (d) whether the private insurer agrees to mediate (if it is sought); and (f) any other information required by the Scheme (together, the **request to join**).	New Rule 5.8 sets out the process in which a private insurer may apply to join a dispute process. The current Rules do not provide any process for this. In our view, it is important for the Rules to set out a process for joining.
~~5.6~~5.9	Once the Scheme provider has received the application, the response and the request to join (if any), the Scheme provider must: (a) If the respondent objects to the Scheme considering the dispute, refer the dispute to an adjudicator to determine the objection. (b) If the respondent proposes that the disputes process also address any other referrable decision, or that any other affected person	New Rule 5.9 provides for a process to be followed if there is a dispute on preliminary matter, with that preliminary dispute to be determined by an adjudicator.

	should be joined, ask the applicant if there is any objection, and if so, refer the dispute to an adjudicator to determine these matters. If there is no dispute, the other referrable decision is added to the dispute process and/or the other affected person(s) is joined to the dispute process as a respondent. (c) If the private insurer makes a request to join, ask the parties if there is any objection, and if so, refer the dispute to an adjudicator to determine these matters. If there is no dispute, the private insurer is joined to the dispute process as a respondent. (d) ~~The Scheme provider will refer the applicant and the Commission to the mediation process upon confirmation that~~If ~~the applicant~~ all of the parties ~~and the Commission~~ agree the dispute should be referred to mediation, refer the dispute to the mediation process. (e) If at least one of the parties ~~the applicant and the Commission~~ does not agree to proceed with mediation, ~~the applicant may~~ refer the dispute to the adjudication process.	We have reworded the clause concerning referral to mediation to make it clearer. We have clarified that if there is at least one objection to mediation, then the dispute is referred to adjudication. We have removed the reference to the "applicant may refer", as that just adds another unnecessary step into the process. Of course, an affected person can withdraw from an adjudication process if they do not want to pursue that.
	Can multiple disputes relating to the same property be considered together?	
~~5.7~~5.10	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, then any party may seek that ~~the parties may agree for the disputes to be~~all of the referable decisions be considered together as part of one dispute process. ~~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~~If the parties cannot agree on whether more than one such referable decision should be considered together, the Scheme provider will refer the issue to an adjudicator for decision. The adjudicator may not allow a referable decision to be included if that decision does not meet~~ing~~ the requirements in Rule 4.	A decision as to whether to include related disputes about the same property should not depend on the agreement of all parties. Instead, if there is a disagreement, that should go to an adjudicator for decision.
5.11	In considering any dispute under clause 5.9 and clause 5.10, an adjudicator must:	It is important that the adjudicator is given guidance as to how to make a decision on a preliminary dispute. New Rule 5.11 sets that out.

	(a) act in accordance with the principle of natural justice; (b) have regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness; and (c) act consistently with these Rules.	We have included a reference to the principles (and remaining Rules). This is consistent with section 20(1) of the CEIT Act (which requires the Tribunal to have regard to the purposes of that Act). We have included a reference to natural justice, which is consistently required in tribunals: see (by way of example) section 20(1) of the CEIT Act, section 140 of the Accident Compensation Act and section 41 of the CCA.
	~~**Can an applicant include their private insurer in the dispute resolution process?**~~	
~~5.8~~5.12	~~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.~~	We have deleted this clause, as it is now dealt with above.
6.	**Mediation rules**	
	What happens if the dispute is referred to mediation?	
6.1	Once the Scheme provider has confirmed the parties ~~applicant and the Commission~~ agree to the dispute being referred to mediation, the Scheme provider will start the ~~process for~~ mediation process using *The Mediation Protocol* (as amended from time to time).	Refer to parties rather than applicant and Commission. Refer to mediation process as this is the standard term used in the Rules.
6.2	Rules 6.3 – 6.12 apply to the mediation but will otherwise have no effect. The Mediation Protocol applies to the conduct of the mediation process. Where there is any conflict between the Mediation Protocol and these Rules, these Rules will take priority.	The Rules do not say that the Mediation Protocol applies to the conduct of the mediation process. We have added this.

	Who appoints the mediator?	
6.3	The Scheme provider will ~~appoint~~ propose a mediator ~~(and, if needed, any replacement mediator)~~ for the dispute to the parties. The Scheme provider is responsible for ensuring the mediator is suitable for mediating the dispute, including ensuring that the proposed mediator:~~.~~ (a) has no conflict of interest; (b) is independent of the parties; (c) is qualified to act as a mediator; and (d) has sufficient experience in mediating disputes of this nature.	The "suitability" requirements for a mediator should be specified in the Rules. See section 31 of the CEIT Act (independence and conflicts of interest).
6.4	The parties will advise the Scheme provider and each other if they have any objection to the proposed mediator, and if so, on what grounds.	Process for parties to object to a proposed mediator (see section 31 of the CEIT Act in relation to conflicts).
6.5	If any party objects, the Scheme provider must consider whether to propose a different mediator to the parties.	
6.6	If there is no objection, or if the Scheme provider does not agree with the objection, the Scheme provider will appoint the proposed mediator as mediator.	Process for parties to object to a proposed mediator.
6.7	The Scheme provider may propose to replace a mediator at any time (and a party may request that the Scheme provider do so, on notice to the other parties). If the Scheme provider proposes to replace a mediator, or if a party requests, the Scheme provider must follow the process in Rules 6.3 to 6.6 in order to appoint a replacement mediator.	Process for replacement of a mediator.
	How long will the mediation process last?	
~~6.4~~6.8	The mediator and the parties ~~will~~ may agree on the ~~length of~~process to be adopted for the mediation, provided that it is consistent with these Rules and the Adjudication Protocol.	Addresses agreement as to process (broader than just length), but any agreement must be in accordance with Rules and Protocols.
~~6.5~~6.9	~~In any case~~The mediator and the parties will endeavour to conclude the mediation process ~~will end~~within 90 days after the date the dispute is referred to the mediation process.	90 day window should be a target rather than a hard rule.

	Who covers the costs of participating in the mediation?	
~~6.6~~6.10	Each party is responsible for covering its own costs in relation to participating in a mediation.	
~~6.7~~6.11	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~~6.12	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~~6.13	A resolution of the dispute agreed in writing by the ~~applicant and the Commission~~ parties in the mediation process (a Mediated Agreement) is legally binding on the parties.	Refer to parties rather than applicant and Commission. Consistent use of the term Mediated Agreement.
	Can the outcome of mediation be enforced through the courts?	
~~6.10~~6.14	A ~~m~~Mediated ~~resolution~~ Agreement ~~agreed in writing by the applicant and the Commission~~ can be enforced by a court in accordance with section 106 of the Act.	Consistent use of the term Mediated Agreement.
	Can a mediation end before reaching an agreement?	
~~6.11~~6.15	A~~n applicant~~ party may end a mediation process for a dispute by giving the Scheme provider, mediator (if appointed) and the other parties ~~Commission~~ 2 working 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~~.	Refer to party rather than applicant. Refer to working days rather than days.

6.16	A party may end a mediation at any time.	As mediation is voluntary, a party can end a mediation at any time.
~~6.12~~6.17	Where the mediation process does not end in a Mediated ~~a~~Agreement or is ended under these Rules~~by the mediator under 11.2~~, the same dispute cannot be re-referred to mediation unless the parties ~~applicant and the Commission~~ agree in writing.	Consistent use of the term Mediated Agreement. Refer to any ending of the mediation process rather than just Rule 11.2. Refer to parties rather than applicant and Commission.
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 t~~The Scheme provider must refer a dispute to ~~will start~~ the adjudication process if: (a) At least one of the parties does not agree that the dispute should be referred to the mediation process; or (b) the mediation process has ended without the parties entering into a Mediated Agreement.~~, unless a Rule applies that prevents the adjudication process being used for that dispute. This may be following a mediation process where no agreement was reached or in accordance with Rules 5.6 and 6.12.~~ Rules 7.2 – 7.20 will apply to the adjudication process but otherwise will have no effect.	Clearer drafting of when a dispute is referred to adjudication.
7.2	The Scheme provider must provide the adjudicator with the application, response and request to join (if any), together with any determination or other relevant material in respect of those documents. The adjudication process starts once an adjudicator has been appointed under Rules 7.3 to 7.6 and the information in this Rule has been provided to the adjudicator.	Information to be provided to adjudicator, and timing for when the adjudication process starts.
	Who appoints the adjudicator?	
~~7.2~~7.3	The Scheme provider will propose ~~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, including ensuring that the proposed adjudicator:	The "suitability" requirements for a mediator should be specified in the Rules. See section 57 and Schedule 2, Clause 31 of the CEIT Act (suitability assessed based on "knowledge, skills and experience"; independence, conflicts of interest).

	(a) has no conflict of interest; (b) is independent of the parties; (c) is qualified to act as an adjudicator; and (d) has sufficient judicial experience in adjudicating disputes of this nature. The adjudicator cannot be the same person who has acted as a mediator in relation to the dispute.	Further, a person is only qualified to be appointed as a Referee of the Disputes Tribunal if they hold a relevant qualification or has had relevant training, and have the knowledge, skills and experience to be capable of performing the functions of a Referee (s 7 of the Disputes Tribunal Act). It is implicit that the adjudicator cannot be the same person who has acted as a mediator in relation to the dispute, but this should be made explicit.
7.4	The parties will advise the Scheme provider and each other if they have any objection to the proposed adjudicator, and if so, on what grounds.	Process for parties to object to a proposed adjudicator.
7.5	If any party objects, the Scheme provider must consider whether to propose a different adjudicator to the parties.	Process for parties to object to a proposed adjudicator.
7.6	If there is no objection, or if the Scheme provider does not agree with the objection, the Scheme provider will appoint the proposed adjudicator as adjudicator.	Process for parties to object to a proposed adjudicator.
7.7	The Scheme provider may propose to replace an adjudicator at any time (and a party may request that the Scheme provider do so, on notice to the other parties). If the Scheme provider proposes to replace an adjudicator, or if a party requests, the Scheme provider must follow the process in Rules 7.3 to 7.6 in order to appoint a replacement adjudicator.	Process for replacement of an adjudicator.
	Which rules apply to the adjudication process?	
~~7.3~~7.8	The adjudication process will be carried out in accordance with these Rules and *The Adjudication Protocol.*	Ensure that the Rules also apply to the adjudication process.
~~7.4~~7.9	The adjudicator will determine the dispute in accordance with the law ~~and with considering industry practice~~.	Decisions should be made on the basis of the law, and not an unstated and unclear "industry practice" requirement.
~~7.5~~7.10	The adjudicator must give written reasons for their determination. A party may seek to recall a decision if there is: (a) a clerical or mathematical error;	There should be an ability to recall for obvious mistakes, otherwise the only option is a potentially expensive and lengthy appeal (see section 49(2) of the CEIT Act and s 47(3) of the CCA).

	(b) an obvious factual error concerning an uncontested matter; or (c) any matter that a court would be entitled to consider on a recall application.	
	How long will the adjudication process take?	
~~7.6~~7.11	The adjudicator and the parties will endeavour to conclude the adjudication process as quickly as possible, taking into account the principles in Rule 1.2. ~~will start on the date the dispute is referred to the process by the Applicant and will be completed within 90 days after the date the dispute is referred to the adjudications process, unless extended in accordance with the Adjudication protocol.~~	The 90 days period is unrealistic for complex disputes, and even for some simple disputes. We propose saying "as quickly as possible".
	What sort of order can an adjudicator make?	
~~7.7~~7.12	At any time during the adjudication process, an adjudicator can make procedural orders, which govern how an adjudication process is carried out.	
~~7.8~~7.13	When making a determination, the adjudicator may make one or more of the following orders: (a) a determination of the dispute, (b) an order against the Commission requiring it to pay some or all of the reasonable technical advice costs incurred by an affected person (for example, the professional service fee costs incurred in relation to obtaining an engineering report about natural hazard damage) for the purposes of participating in the dispute resolution process, but only if (and only to the extent that) the adjudicator accepted some or all of that technical advice in preference to the Commission's technical advice; (c) (if a private insurer has joined the dispute) an order against the private insurer requiring it to pay some or all of the reasonable technical advice costs incurred by an affected person (for example, the professional service fee costs incurred in relation to obtaining an engineering report about natural hazard damage) for the purposes of participating in the dispute resolution process, but only if (and only to the extent that):	We have broadened (a) so that it includes a private insurance dispute (if any). We have amended (b) so that it only allows for a costs order in respect of technical advice to the extent that the adjudicator preferred that advice to the Commission's advice. Otherwise, there is an incentive for customers to refer unmeritorious disputes to the Scheme and incur technical advice costs, knowing that there is no cost to the customer in doing so (given that the technical advice costs will be met by the Commission). We have added (c) so that technical advice costs may be ordered against an insurer in the same circumstances as the Commission (but also only if the advice relates to that part of the claim against the private insurer).

	(i) the technical advice relates to the affected person's claim against the private insurer: and (ii) the adjudicator accepted some or all of that technical advice in preference to the private insurer's technical advice; (d) an order requiring the Commission to pay an amount to the affected persons or otherwise take steps to which the affected person is entitled to under the Act; (e) (if a private insurer has joined the dispute) an order requiring the private insurer to pay an amount to an affected person or otherwise take steps to which an affected person is entitled under their private insurance policy; and (f) An order that the affected person pay an amount or otherwise take steps that the Commission or private insurer is entitled to require them to take.	We have broadened (d) so that it gives the power, not only to require the Commission to make a payment, but also to require the Commission to take other steps to which the affected person is entitled. We have added (e) to address the dispute with the private insurer. We have added (f) so that orders can be made against an affected person (such as repaying an overpayment).
~~7.9~~7.14	The adjudicator may not make an order requiring ~~the Commission~~ any party to pay: (a) damages to ~~the applicant~~any other party, or (b) legal or any other costs incurred by ~~the applicant~~any other party (except as provided for in Rule 7.13(b)).	We have given every party the protection of this clause, and have ensured that the technical advisor carveout is clear.
~~7.10~~7.15	Where the dispute relates to a decision made by the Commission under section 59(1) 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 adjudicator must consider whether they have sufficient information to determine whether the claim is valid. If so, they must do so. If not, 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.	If the adjudicator has sufficient information to decide if a claim is valid, they should make that determination.

~~7.11~~7.16	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 adjudicator must consider whether they have sufficient information to determine the proper settlement of the claim. If so, they must do so. If they do not, 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.	If the adjudicator has sufficient information to decide the proper settlement of a claim, they should make that determination.
	Who covers the costs of participating in the adjudication process?	
~~7.12~~7.17	Each party is responsible for covering its own costs in relation to participating in an adjudication process (including legal and expert costs, except to the extent provided for in Rule 7.13(b).	Making it clear that legal and expert costs are not covered by other parties.
~~7.13~~7.18	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?	
~~7.14~~7.19	The following persons may be ~~part of~~present at an adjudication hearing or conference: (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.~~	To the extent that (d) and (e) are intended to refer to witnesses, they are dealt with separately in the Adjudication Protocol (clause 6.14). To the extent that (e) is intended to deal with joinder, that is dealt with separately in the Rules (see Rule 5.8).
	Is an adjudication determination legally binding?	
~~7.15~~7.20	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?	
~~7.16~~7.21	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?	
~~7.17~~7.22	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?	
~~7.18~~7.23	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?	
~~7.19~~7.24	An ~~applicant~~ affected person may withdraw from an adjudication process for a dispute at any time by giving the Scheme provider, the adjudicator (if appointed) and the other parties ~~the Commission 2 days'~~ written notice within 30 working days of the adjudication process being commenced, at which time~~,~~ the adjudication process will end.	Affected person rather than applicant. Other parties rather than the Commission. Window to withdraw within first 30 days.
~~7.20~~7.25	Where an ~~applicant~~ affected person ends an adjudication process ~~dispute~~ for a dispute, that dispute cannot be subject to a further adjudication process under this or any other Scheme.	Affected person rather than applicant. Adjudication process rather than adjudication dispute. Preclude ability to use another Scheme.
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 destroy (or advise a third party to withhold, ~~or~~ conceal or destroy) any evidence that the mediator or adjudicator (as applicable) has requested the party ~~applicant or the Commission (as applicable)~~ to provide ~~to that mediator or adjudicator~~.	Rules should also prohibit the destruction of documents. Reference to party rather than applicant or Commission. Should also apply to, for example, an order that documents be provided to another party by way of disclosure (rather than just documents to be provided to a mediator or an adjudicator).
8.2	The Scheme provider is responsible for ensuring the conduct of the mediator or adjudicator (as applicable) appointed for the dispute conducts themselves in a manner that is consistent with the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness.~~:~~ ~~(a) is fair and neutral,~~ ~~(b) promotes resolution of the dispute effectively and efficiently,~~ ~~(c) is culturally appropriate for Māori and other cultural groups, and~~ ~~(d) respects the personal privacy and dignity of those participating in the dispute resolution process.~~	Should be based on existing principles that are already set out in the governing statute.
	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	In addition to the other provisions of these Rules, ~~T~~the Scheme provider and the mediator and/or adjudicator can seek information from a party ~~an applicant or the Commission~~ that it considers relevant ~~and necessary for the resolution of~~ to the dispute resolution process.	This is not the exclusive means for the provision of information (e.g., the Adjudication Protocol also gives the power to require disclosure). Test should be one of relevant not necessity.
	Disclosure of information relating to a dispute	
9.2	Where a party, ~~the applicant, the Commission and/or~~ the Scheme provider, a mediator or an adjudicator provides or makes their ~~confidential~~ information available ~~to each other~~ for the purpose of the dispute resolution process, then those receiving it will use that ~~confidential~~ information only for the purpose of participating in the dispute resolution process under the Scheme.	Should refer to party and should include mediator and adjudicator. Should refer to all information, not just confidential information, and not just provided to each other
	Are there any restrictions on how the Scheme provider, an applicant or the Commission can use information relating to a dispute?	
9.3	~~The~~ A party, ~~applicant, the Commission and/or~~ the Scheme provider, a mediator and an adjudicator must not disclose any ~~confidential~~ information received under the Scheme and/or in relation to any dispute process to a third party, except as set out below:~~.~~	Should refer to party and should include mediator and adjudicator. Should refer to all information, not just confidential information, and not just provided to each other. Amendments for clarity.

	(a) where the information ~~was~~ is in the public domain (and is in the public domain without the party~~applicant~~, ~~the Commission and/or~~ the Scheme provider, the mediator or the adjudicator breaching these Rules);~~,~~	
	(b) where the party, ~~applicant, the Commission and/or~~ the Scheme provider, the mediator or the adjudicator obtained the information from a third party and no confidentiality obligation applied to that information,	Amendments for clarity.
	(c) where the information was ~~independently developed~~ created by the party, ~~applicant, the Commission and/or~~ the Scheme provider, the mediator or the adjudicator (but only to the extent it does not contain information received under the Scheme or in relation to any dispute process and that is covered by the restrictions in this Part) ~~without reference to the confidential information~~,	
	(d) to ~~those of the applicant, the Commission and/or~~ the party's, the Scheme provider's, the mediator's or the adjudicator'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,	Amendments for clarity.
	(e) where the party, ~~applicant, the Commission and/or~~ the Scheme provider, the mediator or the adjudicator is required to disclose the ~~confidential~~ information under law or the rules of a stock exchange (provided that they first notify the other parties of such a requirement)~~. 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, the confidential information that the applicant, the Commission and/or the Scheme provider will disclose and the date they will disclose that confidential information. This permitted disclosure is known as the Mandatory Disclosure Right.~~	Amendments for clarity.
	(f) where the Commission receives the ~~confidential~~ information from an affected party~~applicant~~, the Commission can disclose the ~~confidential~~ information to:	

	(i) the ~~applicant's~~ affected party's private insurer for the ~~property~~ residential building that is the subject of the dispute, ~~including~~ and must do so 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, and (ii) any other public entity for the purpose of that public entity exercising its statutory duties and functions, (g) where the Scheme provider~~, a mediator~~ or an adjudicator~~,~~ receives the ~~confidential~~ information from a party, they must disclose it to the other parties.~~the Commission or the Applicant, they can disclose it to the other of the Commission or the applicant (as applicable).~~	Amendments for clarity.
9.4	Nothing in these Rules limits the rights of the Commission under the Act or any other law to use or disclose information.	
9.5	Nothing in these Rules limits a party, ~~the applicant, the Commission, or~~ the Scheme provider, a mediator or an adjudicator from using their own ~~confidential~~ information.	Should refer to party and should include mediator and adjudicator. Should refer to all information, not just confidential information.
9.6	The Commission and a private insurer 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) (for the Commission) exercising the Crown's statutory duties and functions, and (d) publishing~~ed~~ anonymous ~~summaries of~~ adjudication decisions in accordance with clause 9.8.	Rights to private insurer as well as Commission.
9.7	The Scheme and/or the Commission may prepare an anonymous version of ~~summary of~~ an adjudication decision and make ~~the summary~~that version publicly available on the Scheme's and/or the Commission's website. The ~~applicant~~ parties will be consulted in relation to the proposed anonymous version, and their views considered, before the summary of the adjudication decision is published. The anonymous ~~summary~~ version will not be published until at least 20 working days have passed following	We propose that full determinations are published on an anonymised basis, as is the procedure for the CEIT. Otherwise, a summary may not give the full context necessary to understand the reasons for a decision. Also, the preparation of summaries (as opposed to using an anonymised version of the full determination) is unnecessary additional work.

	a ~~decision~~ determination made by an adjudicator, and will not be published if either party appeals that decision (until a final determination by a court or tribunal with appeal rights exhausted).	
	Can the applicant, the Commission or the Scheme provider make a public announcement relating to the dispute?	
9.8	Neither the parties nor ~~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~~ all the parties agree in writing to the public announcement, (b) disclosure is permitted under these Rules~~, and/or~~ ~~(c) if the Mandatory Disclosure Right applies~~.	Should refer to parties. No need to refer to Mandatory Disclosure Right (which seems a very technical definition – reference to disclosure as permitted by these Rules is sufficient).
	What if an applicant has a complaint with how the dispute resolution process is conducted?	
9.9	The Scheme provider must have a separate dispute resolution process in place to resolve any complaints by ~~the applicant~~ a party about the Scheme. That process must be publicly available. The Scheme's dispute resolution process must not consider the merits of any dispute referred to in the Scheme.	Makes it clear that this is not an appeal route, but for disputes about the disputes provided.
10.	**Exclusion of liability**	
10.1	For the purpose of these Rules, The Mediation Protocol and/or The Adjudication Protocol, the parties ~~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.	Parties rather than applicant and Commission.
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~~ other parties are not be entitled to the benefit of or to enforce that contract. This Rule 10.2 takes priority over Rule 10.1.	Parties rather than applicant.

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 the Rules, as applicable.	
11.2	A mediation or adjudication process will end if the Scheme provider gives the parties ~~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 has not participated (or is unlikely to participate) in the mediation or adjudication process to the extent requested by the mediator, adjudicator or 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 dispute involves (or is likely to involve) matters of fraud or illegal activity by the applicant.	Parties rather than applicant and Commission. Should also refer to mediator or adjudicator.
12.	**General provisions**	
	Amendments	
12.1	These Rules may be amended from time to time.	
12.2	Any amendment to these ~~r~~Rules is only permitted and valid if ~~agreed by the Commission~~ approved by the Minister.	NHI Act requires Ministerial approval.
	Privity	
12.3	No ~~third~~ party other than an affected person, the Commission or a private insurer is entitled to the benefit of, or to enforce, these Rules.	Makes it clear who a third party is.

	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~~ An affected party may assign its rights and obligations under these Rules if it has assigned the benefit of its claim in accordance with section 78 of the Act.	Affected party, not applicant. Makes it clear that an affected party can only assign a right to bring a dispute if they have also assigned their claim under the NHI Act or private insurance policy.
	Subcontracting	
12.6	~~The applicant~~ An affected party and ~~or~~ the Scheme provider must not subcontract any of the rights or obligations under the Rules to anyone else.	Affected party, not applicant.
	Relationship between the applicant, the Commission and the Scheme provider	
12.7	Nothing in these Rules makes any party, ~~the applicant, the Commission or~~ the Scheme provider, a mediator or an adjudicator part of any fiduciary, employer/employee or agent/principal relationship between themselves or any of them.	Party, not applicant of Commission.
	Waiver	
12.8	If ~~either the applicant or the Commission~~ any party 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 party ~~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)~~ party establishes that, at the relevant time, it did not know or could not reasonably have known of the objection.	Party, not applicant of Commission.
	Governing law	
12.9	These Rules ~~will be~~ are governed by the laws of New Zealand.	Use present tense rather than future.

Schedule 2: Draft Mediation Protocol for the Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

Clause	Text	Comments
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**).	The Rules define themselves as the Rules, not the Scheme Rules. Consistent terms should be used.
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	

Clause	Text	Comments
	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.	

Clause	Text	Comments
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, ~~(b)~~(c) disclose any potential conflict of interest to the parties and the Scheme provider as soon as they become aware of it; and ~~(c)~~(d) conduct the mediation in a timely manner and avoid incurring unnecessary expense for any party to the mediation.	Under s 31(2) of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the **CEIT Act)** a mediator must disclose any conflict of interest and refuse to act in relation to the claim unless all of the parties agree otherwise.
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.	

Clause	Text	Comments
4.3	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 principles of accessibility, independence, fairness, accountability, efficiency and effectiveness; ~~(a)~~(b) it is consistent with the Mediation Protocol and the Scheme Rules, and ~~(b)~~(c) in setting the process, they have regard to the context of the dispute and feedback provided by any party.	Section 32(3) of the CEIT Act provides that a mediator may, having regard to the purposes of the Act, follow any procedures that they consider appropriate to resolve the claim promptly and effectively. This new clause allows a mediator to consider the applicable principles under the NHI Act.

Clause	Text	Comments
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~~ Any 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.	

Clause	Text	Comments
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 into a settlement agreement, or (b) reasonable access to a person who holds such authority.	
7.2	Where a party requires legal advice regarding the~~ir~~ 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 9.10 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.	

Clause	Text	Comments
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 ~~not~~ be used by any party in any judicial proceeding, administrative tribunal or Court unless directed by a Court or otherwise required by law or all parties agree to waive that privilege.	
8.6	~~However, A~~a~~a~~ny ~~Mediated A~~agreement reached at mediation ~~(Mediated Agreement)~~ and signed by the parties (Mediated Agreement) is confidential. However, a Mediated Agreement 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 in accordance with the Mediated Agreement or with the agreement of all parties.	Insert definition after requirement that the agreement must be signed. Insert requirement that Mediated Agreement be kept confidential, except as required to enforce.
8.7	Unless the parties agree to waive privilege and/or confidentiality, they are directed by a Court or otherwise required by law to disclose information, ~~or are required by law a mediator~~ the parties and the mediator must not divulge any confidential and/or privileged information relating to a mediation in any proceeding. If they ~~agree, or~~ are directed by a Court or otherwise required by law~~,~~ to disclose information~~give evidence in any proceeding~~, they ~~mediator~~ must immediately inform the other parties.	Protocol should apply to both privilege and confidentiality.

Clause	Text	Comments
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~~ Mediated ~~a~~Agreement, ~~an applicant~~ any party may end a mediation for a dispute at any time in accordance with Scheme Rule 6.11.	Use defined term Mediated Agreement. Allows any party to end a mediation.
9.3	The mediator may pause and subsequently re-start the mediation at any time ~~if~~: (a) if 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.	Makes it clear that if a mediation is paused, it can be re-started.
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 by the mediator and signed by the parties.~~ Parties may seek legal advice before settling any dispute at a mediation. ~~signing any Mediated Agreement.~~ No settlement is binding unless and until it is in writing and has been signed by all the parties.	Mediated Agreement must be prepared by the parties, not by the mediator.
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 into.	Use defined term Mediated Agreement.

Schedule 3: Draft Adjudication Protocol for the Dispute Resolution Scheme Rules under the Natural Hazards Insurance Act 2023

Clause	Text	Comments
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**).	The Rules define themselves as the Rules, not the Scheme Rules. Consistent terms should be used.
1.2	An adjudication process under the ~~Scheme~~ Rules is a process where an independent adjudicator determines the dispute for the parties.	Adjudication process is the term used in the Rules.
2.	**Interpretation**	
2.1	The Adjudication Protocol is to be read alongside the ~~Scheme~~ Rules, and 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 the 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:	

Clause	Text	Comments
	(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 an 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.	Referral to the adjudication process should be by the Scheme provider, not by a second referral by the applicant.
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 and~~,~~ the Adjudication Protocol; ~~and~~ (b) apply the principles of natural justice; and	The requirement to apply the principles of natural justice can be seen in many other schemes, including at s 20(3) of the Canterbury Earthquakes Insurance Tribunal Act 2019 (**CEIT Act**), s 140(c) of the Accident

Clause	Text	Comments
	~~(a)~~(c) have regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness, ~~(b)~~(d) act as an independent decision-maker for the dispute, and~~. They must~~ not be an advocate for any party to the dispute~~,~~; and ~~(c)~~(e) conduct the adjudication in a timely manner and avoid incurring unnecessary expense for any party to the adjudication.	Compensation Act 2001 (**ACC** Act), and s 41(c) of the Construction Contracts Act 2002 (**CCA**).
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 3 working days of being appointed, the adjudicator must: (a) inform each party of the adjudicator's appointment and contact details, ~~(b) provide each party with a copy of the information that the applicant used to refer the dispute to the Scheme under Scheme Rule 5.5, and~~ (b) ~~inform each party that the timeframe in clause 6.2 of the Adjudication Protocol will start from the date that the information in clauses 6.1(a) and (b) is provided.~~ schedule a conference with the parties as soon as practicable after being appointed; (c) give the parties in advance of the conference an opportunity to file a memorandum advising whether they consider the dispute to be a simple dispute or a complex dispute, and the reasons why.	Requirement for a first conference is consistent with s 21 of the CEIT Act
6.2	At the first conference, the adjudicator must hear from the parties and decide whether the dispute is a simple dispute or a complex dispute. The	First conference to decide whether a dispute is complex or simple, and therefore which pathway it will follow. This is consistent with s 42 of the

Clause	Text	Comments
	adjudicator may subsequently re-classify the dispute after hearing from the parties, if they consider that to be required.	CEIT Act, which allows decisions on the papers in appropriate cases, but only after giving the parties an opportunity to comment on doing so.
	Simple disputes	
6.3	If the dispute is a simple dispute, the adjudicator must make orders at the conference: (a) addressing any procedural matters; (b) requiring the applicant to submit to the adjudicator and each party its statement of position and supporting documents by a particular date; (c) requiring the respondent(s) (including any reply of the applicant's statement of position) to submit to the adjudicator and each party its statement of position and supporting documents by a particular date; and (d) requiring the applicant to submit to the adjudicator its statement in reply (if any) that must be strictly in reply by a particular date.	Section 24 of the CEIT Act provides the matters that the Tribunal *may* consider at the first case management, which includes procedural matters and the filing of responses to the claim. The timetable for papers should be set at the conference, rather than the current fixed and unrealistic 10 working day schedule.
~~6.2~~6.4	~~Within 10 working days of an adjudicator notifying each party of the adjudicator's appointment and providing the accompanying information (in accordance with clause 6.1 above), the applicant must submit to the adjudicator and the Commission (and also the private insurer if they are joined to the dispute under Rule 5.8 of the Scheme Rules) a~~ An applicant's statement of position ~~which~~ must describe~~s~~: (a) the nature of the dispute (giving sufficient detail about time, place, names of persons and other relevant circumstances), (b) their position on the dispute, and (c) the relief or remedy being sought.	Timing is dealt with above.

Clause	Text	Comments
~~6.3~~6.5	The applicant must also provide the adjudicator and ~~the Commission (and the private insurer, where relevant)~~ each party with a copy of any document~~(~~s~~)~~ ~~(including any expert reports and witness statements)~~ that the applicant relies upon, at the same time as providing the applicant's statement of position. If they have any adverse documents, these must also be provided at the same time.	If expert reports and witness statements are contemplated, it is likely that it is a complex dispute, not a simple dispute. Adverse documents must be provided, otherwise there is an incentive for parties to fail to disclose relevant material.
~~6.4~~6.6	~~Within 10 working days of an applicant submitting a statement of position to the adjudicator and the Commission (and also the private insurer if they are joined to the dispute), the Commission (and the private insurer, where relevant) must, each submit a~~ A respondent's statement of position ~~to the adjudicator and applicant which~~ must describe~~s~~: (a) what aspects of the dispute are accepted and what aspects of the dispute it disagrees with, and why, and (b) its position on the relief or remedy sought.	Timing is dealt with above.
~~6.5~~6.7	~~The Commission (and the private insurer, where relevant) must (separately or jointly)~~ The respondent(s) must provide the adjudicator and the applicant with a copy of any document(s) ~~(including any expert reports and witness statements)~~ that ~~it~~ they rely~~ies~~ upon, at the same time as providing ~~its~~ their statement of position. If they have any adverse documents, these must also be provided at the same time.	If expert reports and witness statements are contemplated, it is likely that it is a complex dispute, not a simple dispute. Adverse documents must be provided, otherwise there is an incentive for parties to fail to disclose relevant material.
~~6.6~~6.8	~~Within 10 working days of the Commission (and the private insurer, where relevant) submitting its statements of position, the~~ An applicant's ~~may file a~~ statement of reply ~~to that statement of position. The applicant~~ must ~~ensure its statement of reply is~~ be strictly in reply to the statement of position by the ~~Commission (and/or the private insurer, where relevant)~~ respondent(s) and must not raise any new issues.	Timing is dealt with above.
~~6.7~~6.9	As soon as reasonably practicable after the statements of position and the applicant's reply have been submitted, ~~and subject to the extension of applicable timeframes under clause 7.1(d) of the Adjudication Protocol~~	There is no need to refer to extensions here.

Clause	Text	Comments
	~~and Rule 7.6 of the Scheme Rules,~~ the adjudicator must issue their written determination of the dispute.	
	Complex Disputes	
6.10	If the dispute is a complex dispute, the adjudicator must make orders at the first conference or any subsequent conference to progress the adjudication process.	Section 24 of the CEIT Act provides the matters that the Tribunal *may* consider at the first case management, which includes procedural matters and the filing of responses to the claim.
6.11	The adjudicator may make one or more of the following orders at the first conference or any subsequent conference for a complex dispute: (a) Identify the core issues in dispute; (b) Require any party to disclose to the others any documents or other information that is relevant to the dispute (which must include any documents or other information that may be adverse to that party's position); (c) Direct that arrangements be made to inspect the residential building or land (as long as, if the owner or occupier is not an affected person, the owner or occupier's consent is obtained before entry); (d) Determine any preliminary matters (after hearing from the parties in respect of such matters); (e) Schedule any further conferences; (f) Direct that any expert reports be exchanged; (g) Convene an expert conference, to be attended by experts of the same speciality only; (h) Direct that statements of evidence be exchanged; (i) Direct that a bundle of documents be prepared for the hearing;	This clause reflects the orders that are open to the CEIT at the first and subsequent case management conferences under ss 24, 27 and 38 of the CEIT Act. Similar powers exist for adjudicators under s 42 of the CCA. This allows adjudicators to request further written submissions, request disclosure of documents, call conferences of the parties, carry out inspections or make any other reasonable directions relating to the conduct of the adjudication.

Clause	Text	Comments
	(j) Request written submissions from the parties; (k) Make any other reasonable directions for progressing the adjudication process.	
6.12	The adjudicator must hold a hearing before determining a complex dispute.	This is consistent with s 141 of the ACC Act which states that a reviewer must hold a hearing unless the applicant withdraws the review application or all parties agree not to have a hearing. It is also consistent with section 42 of the CEIT Act, which requires a hearing in private unless a decision can be made on the papers.
6.13	The hearing must be held in accordance with the principles of natural justice, and with regard to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness.	Sections 20(1) and (3) of the CEIT Act set out the same requirement for natural justice, and refer back to the purposes of the Act. Under s 140 of the ACC Act, a reviewer must conduct a review a manner that complies with the principles of natural justice.
6.14	If there is any dispute of fact, or disagreement between experts, the adjudicator must give the parties an opportunity to give and call evidence on that issue or issues at the hearing, and must give the other parties an opportunity to cross-examine on that issue or issues.	The ability to call and examine witnesses is a critical part of a fair adjudication process. However, it should be limited to issues in dispute.
6.15	The adjudicator may draw inferences from a party's failure to provide documents or information or their failure to give or call evidence.	Sections 43 and 44 of the Construction Contracts Act provide that where any party fails to provide specified information within the time allowed, or to do any other thing the adjudicator requests or directs, then the adjudicator may draw any inferences from that failure that they think fit. The Australian Financial Complaints Authority Rules state that an adverse inference will be drawn from any such failure (A.9.5), as do the Insurance and Financial Services Ombudsman Terms of Reference (clause 10.6).
6.16	The hearing must be held in private. All documents, information, evidence and any other material exchanged or provided as part of an adjudication	Section 68 of the CCA requires that documents and information created for, or disclosed in the course of, the adjudication must not be disclosed to

Clause	Text	Comments
	process must be kept confidential and must not be disclosed except in accordance with the Rules.	any other person except in certain circumstances (including consent, or for enforcement).
7.	**The Adjudicator's Powers**	
	~~The adjudicator may:~~ ~~deal with all procedural matters either by email, or by video/telephone conference with each party, but in either case must issue any procedural directions in writing.~~ ~~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.~~ ~~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.~~ ~~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.~~	We have deleted this Rule, which is vague. We have included specific relevant powers above.
7.1	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.	

Clause	Text	Comments
7.2	An adjudicator may strike out a dispute, in full or in part, if satisfied that it: (a) discloses no reasonable cause of action; or (b) is likely to cause prejudice or delay; or (c) is frivolous or vexatious; or (d) is otherwise an abuse of process. If a party is not present or represented at the hearing of a claim, the adjudicator may: (a) strike out the dispute; or (b) decide it in the absence of the party; or (c) adjourn the hearing. If a party fails to prosecute their position, an adjudicator may strike it out.	In our view, an adjudicator should have jurisdiction to strike out unmeritorious claims or claims that are not prosecuted. This clause is based on section 10 of the CEIT Act.
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).~~	We have amended Rule 9 to refer to adjudicators, so that this cross-referencing is unnecessary (and is otherwise unnecessarily complex to follow).

Schedule 4: Simplified overview of potential dispute resolution paths for customers

Independent Review

Customer

Insurer

Insurer External Dispute Resolution Provider (IFSO/FSCL)

Toka Tū Ake External Dispute Resolution Provider (Fairway Resolution Services)

Parliamentary Ombudsman

Court proceedings

TTA allocates to reviewer. Insurer continues to manage Code complaint (cl 15,7(b)(ii)(bb) amended NDRA)

Customer may apply for Independent Review.

RESOLVED

END

UNRESOLVED

Independent Reviewer may impose remedies as specified in the Code (ss 88(3)(b), 96(1)(b) NHI Act). Draft Code does not include financial remedies (limited to e.g. apology / explanation / access to info etc). Remedy binding if specified as binding in NHI Regulations.

The NHI Code (and the independent review procedure for Code breaches) will apply to any action by TTA (or an insurer on TTA's behalf) after 1 July 2024 in respect of claims under both the NHI Act and under the EQC Act (Schedule 1, clause 3(2), NHI Act).

Trigger

Customer makes a complaint in relation to an existing EQC/NHI Act claim

If complaint not resolved, deadlock letter or similar sent to customer

Insurer notifies EQC of complaints via monthly reporting (or earlier in process for complaints that are high risk and/or likely to be escalated)

Customer having applied for independent review does not affect right customer may have to refer dispute to dispute resolution scheme or to commence Court or tribunal proceedings (s 88 and 97 NHI Act). NHI Regulations expected to exclude Code breaches from scope of Referable Decisions (i.e. Fairway DRS not available).

Customer may therefore refer unresolved Code breach to Parliamentary Ombudsman or commence court proceedings.

Complaint type

Internal Dispute Resolution Process

Breach of Code of Insured Persons Rights?

YES

RESOLVED

UNRESOLVED

END

Breach of Fair Insurance Code?

YES

RESOLVED

UNRESOLVED

END

Service related issues?

YES

RESOLVED

UNRESOLVED

END

Insurer decision on overcap claim?

RESOLVED

UNRESOLVED

END

Referable Decisions (i.e. complaint about entitlement and cover under NHI Act)?

RESOLVED

UNRESOLVED

END

Complaint could comprise multiple complaint types (e.g., service and settlement, breach of FIC and NHI Code) with different resolution options.

Customer always has option to proceed direct to court proceedings

IFSO/FSCL decision only binding if mutual agreement reached or customer accepts IFSO/FSCL decision.

Customer may refer complaint to Insurer's External Dispute Resolution process (IFSO/FSCL). Insurer participates.

Resolved?

YES

END

NO

Under TTA's proposed framework, insurer participates in Fairway dispute resolution process on behalf of TTA (cl 15.7(c) amended NDRA).

Fairway will only have authority to consider Referable Decisions (e.g., no service related complaints or Code breaches could also be heard).

Customer may refer complaint to Toku Te Ake's Dispute Resolution Scheme (Fairway). If all parties agree, insurer may participate in private capacity for overcap claim.

Mediation (if not straight to adjudication)

RESOLVED

END

UNRESOLVED

Adjudication

RESOLVED

END

UNRESOLVED

Adjudicated Fairway proceedings binding (s 106(1) NHI Act).

TTA and customer may appeal decision through court proceedings (s 107 NHI Act).

Ombudsman may consider (a) questions about statutory interpretation of NHI Act/EQC Act; (b) complaints about service issues (incl. breach of Code / FIC); and (c) settlement of claims. Ombudsman will not consider adjudicated decisions made by Fairway in relation to Referable Decisions (must be appealed through courts). Ombudsman does not have jurisdiction to consider private insurer claims.

Ombudsman issues decision and makes recommendations, but not legally binding.

TTA may refer statutory interpretation questions in relation to Referable Decisions to Ombudsman.

Customer may refer unresolved complaint about service issues (incl. breach of NHI Code / FIC) or settlement of claims to Ombudsman after other dispute resolution options exhausted (e.g., IFSO / independent review).

Insurer not required to act on behalf of TTA in court proceedings unless otherwise agreed (cl 15.8 existing NDRA).

Customer may bring claim against insurer in its private capacity. Court decision binding on parties to proceeding (subject to appeal rights).

Customer or TTA may appeal Fairway decision through court proceedings (at their own cost).

Customer may commence court proceedings (at their own cost).