



INSURANCE & FINANCIAL SERVICES  
**OMBUDSMAN**

## **CONSTITUTION**

**INSURANCE & FINANCIAL SERVICES OMBUDSMAN SCHEME  
INCORPORATED**

**1 JULY 2015**

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## 1. Name, Definitions and Interpretation

1.1 The name of the Scheme is the Insurance & Financial Services Ombudsman Scheme Incorporated.

1.2 The Scheme has been established:

- a) to provide a complaints handling service for Participants and users of their Financial Services; and
  - b) to do anything incidental to that purpose.
- Pecuniary gain is not a purpose of the Scheme.

1.3 In this Constitution, unless the context otherwise requires the following expressions have the following meanings:

“Act” means the Financial Service Providers (Registration and Dispute Resolution) Act 2008;

“Approved Scheme” means a dispute resolution scheme which has been approved by the Minister in accordance with Part 3 of the Act and that approval has not been withdrawn;

“Award” means a written decision, with reasons, made by the Ombudsman on behalf of the Scheme in relation to a Complaint that:

- a) is binding on the Participant in the circumstances set out in paragraph 13.1(d) of the Terms of Reference; and
- b) includes a direction that the Participant undertake remedial action permitted by paragraph 14 of the Terms of Reference and set out in the Award;

“Business” has the same meaning as in the Act;

“Chairperson” means the chairperson of the Commission;

“Commission” means the Scheme Commission constituted in accordance with Clause 3;

“Complaint” means an expression of dissatisfaction about a Participant, where a response or resolution is explicitly or implicitly expected from the Participant;

“Complainant” means a person or body that, at the time of making the Complaint to the Scheme, is:

- a) a person or group of persons, whether acting jointly or severally;
- b) the trustees of a family trust including a corporate trustee (if the family trust carries on a business it must be a Small Business);
- c) a club or an incorporated society;
- d) a unit title body corporate or a body corporate of a company title building which is occupied for residential or Small Business purposes; or

e) a Small Business;

*"Financial Markets Authority"* means the regulatory authority established under the Financial Markets Authority Act 2011;

*"Financial Services"* means any financial services provided in New Zealand by a financial services provider registered under the Act;

*"Member"* means a member of the Commission;

*"Minister"* means the Minister of the Crown who is for the time being responsible for Part 3 of the Act;

*"Month"* means calendar month;

*"Ombudsman"* means the Insurance & Financial Services Ombudsman appointed in accordance with Clause 13.1;

*"Other Participants"* are Participants who provide Financial Services of a different type from those insurance services provided by the Participants which are members of, e.g. Insurance Council of New Zealand, Financial Services Council or Health Funds Association of New Zealand (or their successors);

*"Participant"* means each individual, company or organisation which becomes a Participant in the Scheme in accordance with Clause 9;

*"Participation Agreement"* means the standard form agreement as amended by the Scheme from time to time to be entered into by the Scheme and a Participant that binds the Participant to comply with this Constitution and the Terms of Reference;

*"Schedule of Participant Fees and Levies"* means the schedule that is set by the Commission from time to time and specifies the fees, levies and other payments to be paid by Participants to the Scheme for the complaints handling and other services provided by the Scheme;

*"Scheme"* means the Insurance & Savings Ombudsman Scheme Incorporated until 1 November 2015 and the Insurance & Financial Services Ombudsman Scheme Incorporated from that date on;

*"Small Business"* means a Business that has no more than 19 full-time equivalent employees;

- 1.4 “*Subsidiary*” has the meaning given in section 5(1) of the Companies Act 1993 as if “company” in that definition included any body corporate whenever and wherever incorporated including outside of New Zealand; “*Terms of Reference*” means the Terms of Reference of the Scheme as amended from time to time in accordance with this Constitution. Headings in this Constitution do not affect their construction or interpretation.
- 1.5 For the purposes of this Constitution:
- a) Financial Services provided by a Subsidiary of a Participant that is not itself a Participant are deemed to have been provided by the Participant; and
  - b) Reference to the provision of Financial Services includes reference to their non-provision.

## **2. Governance of the Scheme**

- 2.1 The responsibility for governance of the Scheme is vested in the Commission, comprised of Members appointed in accordance with Clause 3, which oversees the operations of the Scheme.

## **3. Membership of the Commission**

- 3.1 The Commission comprises:
- a) a Member who is appointed in accordance with Clause 3.2 to be the Chairperson of the Commission;
  - b) three Members appointed by the Commission who have experience in the financial services industry. The Commission will invite the Boards of the Insurance Council of New Zealand, the Financial Services Council, the Health Funds Association of New Zealand (or their successor organisations) and any other relevant industry groups, to nominate candidates and will take those candidates into consideration in the appointment process. At least one of the Members appointed under this clause must have experience in a sector of the financial services industry serviced by Other Participants;
  - c) three Members appointed by the Commission who have an interest in and are knowledgeable about consumer interests relating to any aspect of the Scheme. The Commission will invite the Minister to nominate candidates and the Commission will take those candidates into consideration in the appointment process; and
  - d) up to 2 additional Members appointed by the Commission in accordance with clause 3.1b) and up to 2 additional Members appointed in accordance with clause 3.1c) in the Commission’s complete discretion, provided that they are appointed in an equal number from clause 3.1b) and 3.1c).

- 3.2 The Chairperson is appointed by the Commission (the retiring Chairperson may participate in this decision unless the vacancy has arisen because the previous Chairperson was removed in accordance with Clause 3.5(a) to (f)). The Member appointed to be the Chairperson must not have a material interest or an association or relationship that may conflict with his/her duties as Chairperson.
- 3.3 Members appointed pursuant to Clause 3.1(b) and (c) are not appointed in a representative capacity. All Members, including the Chairperson, must at all times act in the best interests of the Scheme. Unless the Commission gives its prior consent, they must not disclose to anyone confidential information obtained in the course of their Commission responsibilities.
- 3.4 The following provisions apply to the appointment and re-appointment of Members.
- a) All Members are appointed for an initial period not exceeding three years.
  - b) A Member may be re-appointed at the expiry of any period of office but he/she shall not hold office for a period greater than 2 terms of 3 years and 1 term of 2 years; provided that the Commission may allow a short extension (of a maximum of 1 year) where this would facilitate the smooth functioning of the Commission.
  - c) When a Member is appointed or re-appointed, the Commission must set the period of appointment bearing in mind the desirability of avoiding the situation whereby two or more Members cease office at or about the same time.
- 3.5 Notwithstanding Clause 3.4, a Member automatically ceases to hold office if he/she:
- a) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;
  - b) becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
  - c) has for more than six months been absent without permission of the Chairperson (or in the case of the Chairperson, the majority of the other Members) from the meetings of the Commission held during that period;
  - d) is convicted of an indictable offence;
  - e) commits any act of dishonesty whether relating to the Scheme or otherwise or is guilty of serious misconduct or any conduct tending to bring the Scheme, Commission or himself/herself into serious disrepute;
  - f) is, in the opinion of the other Members of the Commission, disrupting the smooth operations of the Commission and is removed by notice in writing to the Member signed by all other Members of the Commission; or
  - g) resigns by notice in writing to the Commission.

- 3.6 The Scheme remunerates Members, including the Chairperson, on terms decided upon by the Commission from time to time, provided that any Member, including the Chairperson, may elect not to receive payment.
- 3.7 Members, including the Chairperson, are entitled to be reimbursed travelling, hotel and other expenses reasonably and properly incurred by them in connection with the business of the Commission.
- 3.8 A Member, including the Chairperson, may not act in any other professional or remunerated capacity for the Scheme.

## **4. Responsibilities of the Commission**

- 4.1 The Commission:
- a) is responsible for appointments and removals of Members as set out in Clause 3;
  - b) must in accordance with Clause 13 appoint an Ombudsman and must determine the Ombudsman's remuneration and other conditions of engagement;
  - c) must annually review the Ombudsman's performance and conditions of engagement including remuneration;
  - d) has the power to suspend or to remove the Ombudsman at any time in its absolute discretion;
  - e) may appoint a Deputy Ombudsman as required, after consultation with the Ombudsman, on the terms the Commission sees fit: if the Commission decides to appoint a Deputy Ombudsman, the Ombudsman will recommend who will be appointed as Deputy Ombudsman;
  - f) has the power to suspend or remove the Deputy Ombudsman at any time in its absolute discretion;
  - g) has the power to call and conduct a general meeting of Participants in accordance with Clause 17; and
  - h) has the power to change the Constitution and the Terms of Reference (whether the change is initiated by the Commission or in response to recommendations made by the Ombudsman or other person) provided that the procedure in Clause 18 is followed.
- 4.2 The Commission must:
- a) oversee the Ombudsman's performance of his/her duties;
  - b) monitor this Constitution, the Terms of Reference and the operations of the Scheme (generally and by way of the review procedure set out in Clause 7) and consider any recommendations made by the Ombudsman, other relevant industry groups or a reviewer appointed pursuant to Clause 7 to change this Constitution or the Terms of Reference;

- c) consider any recommendations from the Ombudsman pursuant to Clause 14.1(e)(ii) and, if thought fit, assist the Ombudsman to advocate for change to any statutes, regulations or codes of practice which have a bearing on the discharge of the Ombudsman's responsibilities;
- d) approve the Common Seal of the Scheme and authorise any document to which the seal is affixed as attested to by signature of two Members;
- e) prior to the commencement of each financial year:
  - i) set the Schedule of Participant Fees and Levies;
  - ii) consider and, if thought fit, approve the Scheme's budget; and
  - iii) set financial delegations for the Ombudsman;
- f) each financial year appoint an auditor to audit the annual financial statements of the Scheme;
- g) after the end of each financial year, approve the Scheme's financial statements;
- h) consider and, if thought fit, approve the Scheme's annual report to the Minister;
- i) within three months after the end of each financial year, but in any event not later than 1 October, convene a general meeting of Participants at which the Scheme's annual report and audited financial statements are presented;
- j) arrange for an independent review to occur every five years in accordance with Clause 7; and
- k) where the circumstances arise, decide upon one or more successor organisations in accordance with Clause 16.

## **5. Proceedings of the Commission**

- 5.1 The Members may meet together in person or by telephone or video conference for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 5.2 At all meetings of the Commission, there must be a quorum of five Members, including two Members appointed pursuant to Clause 3.1(b) and two Members appointed pursuant to Clause 3.1(c).
- 5.3 A Commission resolution:
  - a) to appoint or remove a Member;
  - b) to appoint, suspend or remove the Ombudsman or a Deputy Ombudsman;
  - c) to change the Constitution or the Terms of Reference; or
  - d) to set or change the Schedule of Participant Fees and Levies,
 must be supported by the Chairperson, two Members appointed pursuant to Clause 3.1(b) and two Members appointed pursuant to Clause 3.1(c).



- 5.4 Except where Clause 5.3 applies, questions arising at a meeting of the Commission are decided by a majority of votes of Members present and voting.
- 5.5 The Chairperson does not have a casting vote if an equality of votes is cast.
- 5.6 A resolution in writing signed or assented to by letter, facsimile or electronic written communication by all the Members (whether on one or more separate documents) has effect as if it had been passed at a meeting of the Commission duly convened and held.
- 5.7 All acts done by any meeting of the Commission or by any person acting as a Member are valid, even if it is afterwards discovered that there was a defect in the appointment of a person as Member or that a person so appointed was disqualified.
- 5.8 The Commission must cause minutes to be made and signed by the Chairperson:
  - a) of the names of Members present at meetings of the Commission; and
  - b) of proceedings at meetings of the Commission.

## **6. Indemnity**

- 6.1 The Scheme indemnifies the Members, the Ombudsman, its agents and employees ("indemnified persons") against any liabilities they incur in their capacity as an indemnified person, notwithstanding any irregularity or informality in their appointment, provided that this indemnity does not extend to protect an indemnified person from any damage or loss arising out of wilful neglect, default or dishonesty on their part.

## **7. Review of the Scheme**

- 7.1 At least every five years, the Scheme must conduct an independent public review of the Scheme's complaints handling service.
- 7.2 The Commission will determine the procedures and timetable to be adopted in the review, but the Reviewer/s must ensure that submissions and comments are invited from:
  - a) Participants;
  - b) Members;
  - c) relevant industry and consumer associations;
  - d) the Minister;
  - e) the general public; and
  - f) any other person or group the Reviewer/s considers appropriate.

- 7.3 The Reviewer/s must prepare and present to the Commission a written report of findings and recommendations and may include recommendations about improvements to any aspect of the Scheme's complaint handling service.
- 7.4 The Reviewer/s report must be made public by being published on the Scheme's website.

## **8. Notices**

- 8.1 A notice may be given by one party to the other party either by serving it personally or by sending it by post, facsimile transmission or email to the other party's current address or, in the case of a Participant, the address notified to the Scheme from time to time.
- 8.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter of notice, and the notice is deemed to have been served two days after the date of its posting.
- 8.3 Where a notice is sent by facsimile transmission or email, service of the notice is deemed to be effected by properly addressing the facsimile transmission or email and the notice is deemed to have been served on the date of its despatch.

## **9. Participation**

- 9.1 The Scheme will admit as a Participant of the Scheme, an applicant which provides Financial Services, unless the applicant:
  - a) is not eligible for registration under the Act; or
  - b) may be refused participation in the Scheme under Clause 9.3
- 9.2 A provider of Financial Services may apply in writing to the Scheme to become a Participant by completing and signing the Scheme's application documentation, and fulfilling any other Scheme application requirements.
- 9.3 The Scheme may refuse to admit an applicant, because of that applicant's
  - a) material or persistent breach of an Approved Scheme's rules; or
  - b) failure to take remedial action imposed on the applicant by an Approved Scheme; or
  - c) failure to pay an Approved Scheme's fees; or
  - d) failure to continue to be a Financial Services provider that may be a Participant of the Scheme.

9.4 A Participant's participation in the Scheme will commence from the date of the Scheme's approval of the application or, if later, the date on which the Participant completes all Scheme application requirements.

9.5 The Scheme must maintain a public register of Participants.

## 10. Obligations of Participants

10.1 Each Participant:

- a) must at all times comply with this Constitution, the Terms of Reference and the Participation Agreement entered into by the Participant and the Scheme;
- b) must operate a bona fide internal complaints handling service in relation to its Financial Services for the benefit of Complainants and publicise to users of their Financial Services the availability of that service;
- c) must, in writing, inform users of their Financial Services that the Scheme is available to provide them with a free complaints resolution service;
- d) must appoint a contact person for the Scheme and provide the Scheme with the name and contact details of that person and any replacement contact person appointed from time to time;
- e) must comply with any Award which, in accordance with the Terms of Reference, is made by the Scheme against the Participant and accepted by the Complainant;
- f) where an Award is made by the Scheme against a Subsidiary of a Participant and accepted by the Complainant – must comply with the Award if the Subsidiary does not do so;
- g) consents to the Scheme making public:
  - i) any failure by the Participant to comply in whole or in part with an Award made by the Scheme against the Participant, or a Subsidiary of the Participant, that has been accepted by the Complainant in accordance with the requirements of the Terms of Reference; or
  - ii) the termination of the Participant's participation in the Scheme; and
- h) consents to the provision by the Scheme to the Minister, the Financial Markets Authority or other regulator of any information concerning the Participant; and
- i) must not take steps to recover any Scheme complaint fee incurred as a Participant of the Scheme from a Complainant.

## **11. Participant Fees and Charges**

- 11.1 A Participant agrees to pay the Scheme any fees or other charges levied by the Scheme on the Participant. The Scheme will calculate these in accordance with the Schedule of Participant Fees and Levies set by the Scheme and revised from time to time.
- 11.2 Where the Scheme needs information from the Participant about its business in order to calculate any levy or other charge, the Scheme may request the Participant to provide that information and the Participant must promptly provide and certify that information as requested by the Scheme. The Scheme's calculation of the amount of any levy or other charge payable by the Participant will, in the absence of manifest error, be final and binding upon the Participant.
- 11.3 The Scheme may invoice a Participant for a fee or charge at the time and in the manner it considers appropriate, for example, in advance, in arrears, by instalments or, where the fee is referable to the Scheme's receipt and consideration of a Complaint, at a time that is proximate to the Complaint. Where a fee is levied in advance, the Scheme may estimate the fee payable by a Participant for the period of time to which the fee is referable and then make any necessary adjustment following the end of that period.
- 11.4 A Participant must make payment to the Scheme within the timeframe specified in the Schedule of Participant Fees and Levies for each fee or charge or, if no timeframe is specified there, not later than 4 weeks after receipt of an invoice from the Scheme requesting payment of the amount.

## **12. Termination of Participation**

- 12.1 A Participant may terminate their participation in the Scheme by giving the Scheme at least 12 months' written notice. The termination will take effect upon expiry of that notice, or as agreed with the Scheme.
- 12.2 The Scheme may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of the Scheme:
  - a) has not paid any fee or charge invoiced by the Scheme pursuant to Clause 11 within 3 months of the date of the invoice;
  - b) materially or persistently breaches, or fails to perform, any obligation of the Participant under the Constitution, the Terms of Reference or its Participation Agreement;
  - c) fails to take remedial action imposed on the Participant by the Scheme;

- d) acts in a way that brings the Participant or the Scheme into disrespect; or
  - e) fails to continue to be a Financial Services provider that may be a Participant of the Scheme.
- 12.3 If, for any other reason, the Scheme wants to terminate a Participant's participation, the Scheme must give the Participant reasonable notice being not less than one month.
- 12.4 Termination of participation, whether by the Participant at the expiry of notice in accordance with Clause 12.1 or 12.3 or by the Scheme giving notice in accordance with Clause 12.2:
- a) does not entitle the Participant to repayment of the whole or any part of any fee or charge previously paid by it to the Scheme;
  - b) is without prejudice to the Participant's liability to pay any fee or charge which has become due and payable to the Scheme; and
  - c) is without prejudice to the Participant's obligations (including to pay fees or charges to the Scheme) in respect of any Complaint made or referred to the Ombudsman before the date of termination of participation.
- 12.5 Clauses 12.4 and 12.5 survive the termination of the Participant's participation in the Scheme.

### **13. Appointment and Removal of the Ombudsman**

- 13.1 The Ombudsman is appointed by the Commission to hold office for an initial period of two years at the remuneration and on the other terms and conditions of engagement determined by the Commission. The Ombudsman may be reappointed at the expiry of any period of office.
- 13.2 The Ombudsman must not have a material interest or a past association or relationship that would conflict with the duties as Ombudsman.
- 13.3 Without limiting Clause 4.1(d), the Commission will remove the Ombudsman from office if the Ombudsman:
- a) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;
  - b) becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
  - c) is convicted of an indictable offence; or
  - d) commits any act of dishonesty whether relating to the Scheme or otherwise or is guilty of serious misconduct or conduct tending to bring the Scheme or himself/herself into serious disrepute.

## 14. Responsibilities of the Ombudsman

- 14.1 The Ombudsman is responsible for managing the affairs of the Scheme including:
- a) the exercise of all of the powers and responsibilities of the Scheme under the Terms of Reference;
  - b) financial management including arranging any borrowing of funds, ensuring that proper financial records are kept, Participant fees are invoiced and collected, Scheme liabilities are met when due, preparing an annual budget for the Commission's approval in accordance with Clause 4.2(e) and causing annual audited financial statements to be prepared for the Commission's approval in accordance with Clause 4.2(g);
  - c) management of the Scheme's staff and resources;
  - d) within the limits of the Ombudsman's financial delegations, entering into contracts on behalf of the Scheme including lease of premises;
  - e) making recommendations to the Commission where the Ombudsman identifies the need for changes to be made to:
    - i) this Constitution, the Terms of Reference or the Participation Agreement; or
    - ii) any statutes, regulations or codes of practice which have a bearing on the discharge of his/her responsibilities; and
  - f) reporting to the Commission.
- 14.2 The Ombudsman must ensure the Scheme complies with its obligations under the Act including:
- a) to take reasonable steps to publicise the Scheme and make its existence known to those who may want to make or refer a Complaint to the Scheme;
  - b) to make the Terms of Reference, this Constitution and the annual report referred to in Clause 14.2(e) available for inspection by the public free of charge at the Scheme's premises during ordinary office hours and by publishing these documents on the Scheme's website;
  - c) to maintain a register of Participants in accordance with Clause 9.4 and publish this on the Scheme's website;
  - d) to notify the Minister if the Scheme proposes to change the Constitution or the Terms of Reference;
  - e) after obtaining the Commission's approval, to provide to the Minister an annual report containing the information prescribed under the Act within three months after the end of the Scheme's financial year and supply to the Minister any further information requested;
  - f) to provide the Minister with a copy of each independent review report obtained in accordance with Clause 7;
  - g) to provide any other information requested by the Minister;

- h) to co-operate with other Approved Schemes if a Complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence);
  - i) to co-operate with the Registrar of Financial Service Providers appointed under section 35 of the Act, including by communicating information in accordance with sections 17 and 34 of the Act; and
  - j) if there is a series of material Complaints about a particular Participant or class of Participants, to communicate that fact to the Financial Markets Authority.
- 14.3 The Ombudsman must receive notice of and is entitled to attend and participate in (but not to vote at) every meeting of the Commission, except where the Commission otherwise decides.
- 14.4 Subject to any restrictions in the Terms of Reference, the Ombudsman has the power to delegate his/her powers and discretions under the Terms of Reference to any employee or contractor engaged by the Scheme. A delegate must exercise their delegated authority in accordance with the Terms of Reference and with any directions or restrictions that may from time to time be imposed by the Ombudsman. The exercise by a delegate of a power is valid as if the power were exercised personally by the Ombudsman.

## **15. Application of Income**

The income and property of the Scheme may only be used for the purposes of the Scheme as set out in this Constitution, and no portion may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Participants. This does not, however, prevent the Scheme from making a payment in good faith of reasonable and proper remuneration and out of pocket expenses to any Participant, in return for any services rendered to the Scheme including any information or advice supplied.

## **16. Distribution of Assets on Winding-Up**

If upon the winding up of the Scheme, there is property remaining after the satisfaction of all the Scheme's debts and liabilities, this property is to be transferred to one or more similar organisations selected for that purpose by the Commission.

## **17. General Meetings**

- 17.1 A general meeting of Participants may be called by the Commission. Notice of the meeting must be given by reasonable prior notification on the Scheme's website. Participants do not have to be notified individually.
- 17.2 The Ombudsman and each Participant is entitled to attend a general meeting of Participants. The Commission may also invite other persons to attend a general meeting.
- 17.3 Subject to Clause 17.4, the Commission will conduct a general meeting as it sees fit.
- 17.4 A general meeting of Participants will be a discussion forum rather than a forum with decision making responsibilities. Accordingly there will be no voting on resolutions at a general meeting.

## **18. Changes to the Constitution and Terms of Reference**

- 18.1 This Constitution and the Terms of Reference may at any time be altered, added to, deleted or replaced by:
  - a) the Commission provided that:
    - i) the Commission has undertaken consultation pursuant to Clause 18.2
    - ii) the Commission approves the alterations, additions, deletions or replacements by resolution of the Commission passed in accordance with Clause 5.3; and
    - iii) the Minister has approved the alterations, additions, deletions or replacements in accordance with the Act; or
  - b) regulation made under the Act and in accordance with section 63(3) of the Act, or by other legislative amendment.
- 18.2 Prior to making any alteration, addition to or deletion from or replacement of this Constitution or Terms of Reference, in accordance with paragraph 18.1(a), the Commission will take reasonable steps to consult with the Ombudsman, Participants, the Minister, relevant industry and consumer associations and other interested organisations and persons.
- 18.3 Any alteration, addition to or deletion from or replacement of this Constitution or the Terms of Reference in accordance with paragraph 18.1(b) will take effect on the date the regulation or other legislative amendment takes effect and will be notified to Participants by the Scheme as soon as reasonably practicable.