

# Summary of consultation on the Natural Hazards Insurance Act dispute resolution scheme

In February 2024, we invited New Zealanders to give us feedback on an independent dispute resolution scheme to be implemented under the new Natural Hazards Insurance Act 2023. This summary document shares insights from the submissions we received on the proposed dispute resolution scheme and sets out how these have contributed to the final development of the scheme.

## What is the dispute resolution scheme?

The dispute resolution scheme is a requirement of the Natural Hazards Insurance (NHI) Act 2023, which took effect on 1 July 2024. The scheme supports insured homeowners disputing decisions about their natural hazard insurance claims under the new NHI Act.

The Natural Hazards Commission Toka Tū Ake (NHC Toka Tū Ake – formerly the Earthquake Commission Toka Tū Ake) is a New Zealand Crown Entity that provides insurance cover for homeowners to help them recover from natural hazard events.

New Zealand homeowners who have a private insurance policy in place for their home are covered by NHC Toka Tū Ake for damage caused by natural hazard events to their home and some residential land within the limits of cover.

From 1 July 2024, the dispute resolution scheme is available to help resolve disputes about referable decisions on natural hazards claims, such as:

- whether a claim for natural hazard damage is valid
- the amount of the settlement
- whether the claim is fully or partially declined.

The scheme is available for disputes about claims for damage caused by natural hazard events on or after 1 July 2024.

The purpose of the dispute resolution scheme is to provide a simple and accessible mechanism for the early resolution of disputes. The scheme fits within an existing framework of dispute resolution options that include courts, and is intended to fill a gap for an early resolution mechanism specifically for natural hazards cover.

Fair Way Resolution has been selected to provide this dispute resolution service.

## About the consultation

We released the draft scheme rules, background information and a submission form for public consultation in February 2024, via our website. We asked submitters for feedback on the overarching scheme design and rules, and whether there was anything else that needed to be included to ensure the process is fair and accessible.

Public consultation took place from 7 February 2024 to 6 March 2024. Submitters were invited to provide feedback through a range of channels – an online feedback form, email, by post or verbally via phone. We also delivered presentations over several sessions with interested stakeholders.<sup>1</sup>

## Who we heard from

We received 21 written or verbal submissions from individuals and representatives from various organisations:

- 8 individuals
- 2 government entities
- 7 businesses
- 4 interest groups, not for profits, or community organisations.

## Submissions

The section below summarises the key themes. The statements are paraphrased from the submissions we received – they are not representative of our view except where our view is indicated.

This is a summary document only and not a full account of or a response to submissions received. It is also not an exhaustive list of the changes made to the scheme, but covers the key changes made following the consultation process. We have collated the statements made under key themes. Where themes or statements were common to a number of submissions, we've provided a sense of proportion (e.g. "many submitters suggested..." or "one submitter recommended...").

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<sup>1</sup> We presented the overarching scheme design and rules to stakeholders, answered questions and took verbal feedback.

## Key themes

### *There are some potential barriers for homeowners to use the dispute resolution scheme*

Many submitters indicated that any associated costs or a lack of one-on-one support may be a deterrent for homeowners accessing the scheme. Individual submitters suggested the following:

- The scheme should be free, and all reasonable and necessary services should be covered.
- There should be additional support for homeowners suffering hardship.
- The homeowner may need help throughout the dispute resolution process; they may need help to access advocacy and representation.
- Awarding costs (such as the cost of a technical assessments or a lawyer) needs to be considered.
- Language and accessibility barriers may still prevent a homeowner from making use of the scheme. The scheme needs to be able to cater to individual needs of applicants.
- There should be an option for in-person meetings.
- A lack of access to, and understanding of, the law will likely emerge as a significant barrier to effective and equitable use of the service.

### *More information on the process is needed to make it clear for homeowners*

Several submitters noted that more information is needed to provide clarity on what homeowners should expect from the dispute resolution process and their options. Submitters emphasised that simple and clear information would need to be available for homeowners and that the scheme rules alone will be difficult for a homeowner to use without further simplified guidance.

Several submitters noted that the dispute scheme process is complex and there need to be clear directions for homeowners on the different pathways that are available to them in order to avoid confusion. For example, the new service will be available for disputes about claims for damage that occurs after 1 July 2024, while disputes about earlier claims will follow existing pathways.

### *The scheme rules need more information about expected timeframes*

Many submitters were interested to see clear timeframes in the rules, and some submitters wanted reassurance that homeowners would receive timely access to dispute resolution services.

Some submitters noted that fixed timeframes would inhibit flexibility of the processes, and noted that flexibility is sometimes necessary.

*We received quite a lot of feedback that related to the types of data we should collect and report on, and how the scheme should be monitored overall*

Many submitters identified monitoring as important to understand if the scheme is meeting what is required under the NHI Act.

A number of submitters recommended that data be collected to measure the scheme's performance against best practice principles (user-focused and accessible, independent and fair, efficient, effective, accountable). Several different suggestions were made by a range of submitters:

- Data should be collected at every point in the process to ensure that best practice principles for dispute resolution were being met.
- Data is really important to help understand if the scheme is genuinely accessible.
- Monitoring and review should be independent from the scheme, and some submitters believed it should be independent from NHC Toka Tū Ake.

#### *Recommendation for the separation of mediation and adjudication processes*

Some submitters suggested that in order for the scheme to maintain its independence, there needs to be:

- a separation between mediation and adjudication processes, and
- a rule that the adjudicator cannot be the mediator for the same dispute.

#### *Qualifications for mediators and adjudicators*

Several different submitters made the following comments:

- Having qualified adjudicators is fundamental to being able to make good decisions.
- Ongoing professional development and accreditation for mediators and adjudicators will help maintain a high standard.
- Mediators and adjudicators need to be part of a professional body.
- There should be minimum qualification requirements for mediators and adjudicators and there should be mechanisms for managing conflict of interest.

#### *Recommendation to allow for a more formal process for complex disputes*

We received feedback that the adjudication process should be changed to become a more tribunal-like process with hearings, cross-examination and access to expert information for complex disputes.

#### *The dispute scheme should allow the private insurer to participate so that the homeowner does not need to participate in separate dispute resolution processes*

We received feedback on the additional complexity of having separate dispute resolution processes between the NHC and insurers, with one submission recommending that a change be made to the rules to allow the private insurer to join the dispute resolution

process automatically for disputes that involve private insurance cover over the natural hazards cover cap.

## What we changed as a result of feedback

The contributions of those who made submissions and met with us have been a critical part of the dispute resolution scheme development process. As a result of the submissions we received, we have made a series of changes to the scheme rules. For example:

- **Supporting homeowners to access the scheme** – The scheme rules now clearly state that reasonable accommodations will be made for people with disabilities. This means ensuring the process and environment enable a disabled person to participate. More information on reasonable accommodations can be found at Ombudsman New Zealand.
- **Timeframes** – Changes have been made to the rules to make it clear how the timeframes for each dispute are to be set and how timeframes can be flexible. For example, it is emphasised that the adjudicator can apply their own discretion when more time or an in-person meeting is needed. The rules also clarify that the parties can agree to extend the mediation timeframe, and a mediator can also use their discretion to extend the timeframes.
- **Minimum qualifications for adjudicators and mediators have been added, and there will also be processes to manage conflicts of interest** – A requirement has been added to the rules for mediators and adjudicators to be members of an accredited body and have appropriate experience relevant to the dispute. Fair Way must appoint mediators with the necessary skills, appropriate qualifications and experience that reasonably meet the needs and preferences of the parties. Fair Way will consider factors such as cultural background knowledge and expertise with respect to the context of the dispute. As an established operator, Fair Way has existing procedures in place to manage conflicts of interest. This includes a process for any potential mediator or adjudicator to declare any conflict and an opportunity for any party to raise a concern on this basis. Any conflicts raised will be carefully considered by Fair Way who will determine if a new mediator or adjudicator should be appointed.
- **Separation between mediation and adjudication processes** – A new rule has been added to specify that, where a party started with mediation which fails to reach an agreement and the homeowner proceeds to adjudication, the adjudicator will be a different person than the mediator.
- **Hearings are possible under adjudication** – The rules now make it clear that in-person meetings can occur. The rules allow the adjudicator to determine if a more formal process such as holding a hearing is warranted. The rules presume, however, that adjudications will not generally require a formal hearing and this is to ensure that the process is not overly legalistic, lengthy or costly for homeowners.

## How other feedback will be accommodated by the scheme

The dispute resolution scheme rules and the associated service provided by Fair Way will accommodate some of the points made during public consultation. For example:

**Costs** – NHC Toka Tū Ake is responsible for bearing the costs of administering the dispute resolution service, and homeowners will not be charged for using it. With regard to awarding costs, an adjudicator may order NHC Toka Tū Ake to pay the homeowner for reasonable technical advice costs (for example, the fee associated with the cost of an engineering report). However, NHC Toka Tū Ake cannot be required to pay to the homeowner costs such as damages, interest or legal costs.

**Additional assistance for homeowners to use the scheme, and making the processes clear** – Fair Way will be responsible for assessing the needs of each applicant to the dispute scheme and will arrange services accordingly. Considerations will include wellbeing, language, culture, disability or special needs and other general support needs.

Support will be available at each step:

- Preparation: Fair Way will ensure that parties are prepared to participate in the mediation or adjudication processes. Preparation support ranges from helping parties to be clear about the issue/s relating to the dispute through to any holistic support needed to participate in the mediation.
- Participation: Fair Way will find out from applicants what their needs are and arrange support for them to be able to participate in the process. For example, access to cultural support, translation or interpreter services.
- Professional advice: Fair Way may recommend that applicants seek professional or technical advice independently, for example legal advice.

**Timeliness** – Fair Way will be responsible for handling each application to the dispute resolution scheme in a timely manner, with specific timeframes for processing applications.

**Private insurer participation** – If the homeowner, NHC Toka Tū Ake and the private insurer agree, the scheme rules permit the private insurer to participate in the dispute. This means that the private insurer cannot be involved in the dispute resolution process unless the homeowner agrees.

As part of its communication with applicants lodging a dispute, Fair Way will ask the applicant if they would agree to the private insurer joining the dispute (if appropriate). And as part of the ongoing work on the scheme, we will consider other ways in which private insurer participation – and a more seamless experience for homeowners and insurers – can be supported.

**Face to face meetings** – These will be supported through the mediation process, and the mediator will consider whether they are by video conference or in-person, taking into account the preference of both parties. Face to face meetings may also be possible under adjudication in some circumstances (and at the adjudicator’s discretion).

**Monitoring and review** – Fair Way will have monitoring and evaluation processes in place to ensure the services it provides properly fulfil the objectives of the scheme set out in the NHI Act (including the best practice principles of accessibility, fairness, independence, effectiveness, efficiency and accountability). NHC Toka Tū Ake will also appoint an independent agent to review the dispute resolution scheme from time to time.

## **Next steps**

Thank you to everyone who shared their insights, knowledge and feedback to inform the development of the dispute resolution scheme.

The dispute resolution scheme has now been finalised and approved, and we are working with Fair Way, insurers acting as our agents and our teams to ensure it is implemented effectively.

Further information on the dispute resolution scheme has been published on both [our website](#) and on [Fair Way’s website](#).