

Memorandum of Understanding

between

Financial Markets Authority

and

New Zealand Claims Resolution Service

Memorandum of Understanding (MOU) dated 03 June 2024

Between **Financial Markets Authority (FMA)**

And **New Zealand Claims Resolution Service (NZCRS)**

Together, **the parties**

Background

1. The FMA is an Independent Crown Entity established under the Financial Markets Authority Act 2011 (FMA Act), with statutory functions under that Act and the Acts listed in Schedule 1 of that Act.
2. The FMA's main objective is to promote and facilitate the development of fair, efficient and transparent markets. It monitors, investigates and enforces compliance with securities, financial reporting and company law as they apply to financial markets participants and financial markets. The FMA also regulates securities exchanges, financial advisers and brokers, discretionary investment managers, derivatives issuers, trustees and statutory supervisors, and managed investment schemes.
3. The NZCRS is a government service established in 2023 to provide homeowners with free independent support to resolve residential insurance issues resulting from natural disasters. The NZCRS is part of the Ministry of Business, Innovation and Employment.
4. The parties have agreed to enter into this MOU to record the basis upon which they will endeavour to assist each other in the performance of their respective functions.

Purpose

5. The purpose of this MOU is to formalise the relationship of cooperation between the parties, and to:
 - a. Record the parties' commitment to work together;
 - b. Record the basis by which the parties will endeavour to support and assist each other in the performance of each agency's respective functions, duties or powers;
 - c. Agree the way the parties will work together on matters of mutual interest; and
 - d. Allow for efficient and timely sharing of information between the parties for the exercise of the parties' functions.
6. This MOU sets out the framework for cooperation between the parties.

Principles

7. This MOU is a statement of the intent of the FMA and NZCRS to consult, cooperate and exchange information in relation to insurers and insurance advisers. The consultation, cooperation and exchange of information will assist both the FMA and NZCRS to achieve their complementary objectives and facilitate fair, efficient and transparent financial markets and confidence in financial service providers.
8. The FMA and NZCRS anticipate that cooperation will be primarily achieved through ongoing information sharing. The provisions of this MOU are intended to support such cooperation as well as to facilitate the exchange of information where necessary and permitted by law.
9. NZCRS acknowledges that the FMA's ability to share information it holds in relation to the exercise of its powers or the performance of its functions and duties is governed and limited by section 59 of the FMA Act. That section prohibits the FMA from publishing or disclosing information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined in the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3)). Such persons include a person who the FMA is satisfied has a proper interest in receiving the information or document. The FMA will therefore only disclose or supply other information to NZCRS under this MOU where the disclosure is permitted under section 59(3) of the FMA Act. Furthermore, the FMA may, by written notice, impose any conditions on NZCRS in relation to the publication, disclosure, or use of information or documents provided to it by the FMA in accordance with section 60 of the FMA Act.
10. The parties commit to:
 - a. Communicate with each other in an open, honest and timely manner;
 - b. Cooperate in the performance of their respective functions;
 - c. Consult each other on matters of common interest;
 - d. Exchange information, ideas, views or concerns in areas relevant to each other's responsibilities;
 - e. Respond promptly to requests and other contact from each other;
 - f. Ensure matters of overlapping jurisdiction or interest are effectively managed and resolved;
 - g. Coordinate activities and work together, so far as practicable, to avoid unnecessary duplication of expenditure;
 - h. Forewarn each other of actions to be taken, or proposed to be taken, of which the other might be reasonably expected to be advised;
 - i. Work collaboratively to share resources, so far as practicable, including staff training and development opportunities; and
 - j. Provide mutual support on any other operational matters as required.

11. The parties anticipate that these principles will be primarily achieved through regular consultations, supplemented where necessary by more in-depth cooperation through agreed mutual assistance and information-gathering and sharing. The provisions of this MOU are intended to support these exchanges of information.
12. The parties agree to establish such arrangements as are appropriate from time to time to facilitate cooperation in relation to these matters. Personnel for the parties agree to meet as required to give effect to the requirements of this MOU.

Information sharing

13. The FMA and NZCRS agree the following operational procedures for information sharing:
 - a. NZCRS will confer with the FMA and report any trends arising out of its work, including trends and issues relating to specific financial products, insurers or insurance advisers, or complaints;
 - b. NZCRS will provide the FMA with information that comes to its attention which is relevant to the FMA's function as the regulator of financial service providers;
 - c. FMA will use best endeavours to make NZCRS aware of:
 - any general information that it the FMA is intending to send to insurers or financial advisers that may be relevant to NZCRS; and
 - information relating to a specific insurer that may impact NZCRS or the performance of its functions.
 - d. Any other complaints which indicate, at NZCRS's discretion, a high level of actual or potential consumer harm. Should NZCRS not be able to voluntarily supply specific information about an insurer or an insurance adviser or their financial products or services, NZCRS acknowledges that the FMA may issue a notice under section 25 of the FMA Act which will compel NZCRS to provide the information specified in the notice.
14. The parties agree to make relevant information available to each other, subject to any legislative, policy or operational requirements, in a timely and efficient manner.
15. Where a party makes a request for information to the other party, the request will specify:
 - a. The information required;
 - b. The purpose for which the information is sought;
 - c. The timeframe in which the information is needed, and the reasons for any urgency needed;
 - d. Any legal requirement to make information available; and
 - e. Any other relevant matters.

16. The parties agree to use the information provided to each other on request solely for the purpose specified. If one party wishes to use the information for another purpose, that party shall notify or consult with the other party in writing with reasonable notice to enable the other party to comment on the proposed use.

Confidentiality

17. The parties agree to treat any information exchanged under this MOU as confidential.
18. Each party agrees to establish and maintain such safeguards as are necessary and appropriate to:
 - a. Keep confidential information secure and protected;
 - b. Ensure confidential information is only accessed, used, modified and disclosed for legitimate business purposes; and
 - c. Reduce the risk of loss or unauthorised access, use, modification or disclosure of confidential information.
19. Each party acknowledges that confidential information may be disclosed by the other party where disclosure is required, authorised or permitted by law, and that consent of the other party is not a prerequisite to disclosure where it is required by law.
20. If one party is minded to disclose confidential information to a third party, that party shall consult with the other party in writing with reasonable notice to enable the other party to comment on the proposed disclosure.

Misuse or breach

21. If a party has reasonable cause to believe that any breach of security requirements affecting confidential information has occurred or may occur, the party must promptly notify the other party in writing of the actual breach or suspected potential breach.
22. The parties agree to cooperate with each other in preventing, limiting and remedying any actual or suspected breach of this agreement.
23. The parties may undertake investigations as they deem necessary. To the extent permitted by law, the parties agree to provide each other with reasonable assistance in undertaking any investigations.

Issues and dispute resolution

24. The parties will seek to resolve any issue or dispute related to this MOU through negotiation by operational representatives or staff in the first instance.
25. The parties agree to refer any unresolved issue or dispute to senior management representatives of each party for discussion and resolution.

Legal

26. While the parties agree to use their best endeavours to meet the terms of this MOU, they acknowledge this MOU:
- a. Does not impose any legally enforceable rights or obligations on the parties;
 - b. Does not limit or affect the independence of each party, or the requirement that each agency must independently perform its functions;
 - c. Does not affect, modify or supersede any laws applicable to the parties;
 - d. Does not affect the right of either party to assess and ensure compliance with, or to enforce, the applicable laws and regulations of that party; and
 - e. Does not make either party liable or responsible for the actions of the other party.

Costs

27. Unless the parties mutually determine otherwise (in particular in relation to any mutual assistance), each party shall meet its own costs of meeting its commitments under this MOU.

Review of MOU

28. The parties' representatives commit to reviewing the operational effectiveness of the MOU every five years, or otherwise as required.
29. Where there are changes to government or organisational policy which affect the purpose and functions of this MOU, each party agrees to inform the other party of those changes as soon as practicable, and to re-negotiate any aspects of the MOU if necessary.
30. Modification or termination of the MOU may be undertaken at any time by mutual agreement between the parties.

Publication

31. The parties agree to make this MOU publicly available.

Signed on 3/07/2024 for the Financial Markets Authority by:

A handwritten signature in black ink, appearing to be 'SB', with a long horizontal flourish extending to the right.

Samantha Barrass

Chief Executive, FMA

Signed on 03/07/2024 for the NZCRS by:

A handwritten signature in black ink, appearing to be 'DW', enclosed within a large, oval-shaped loop.

Darren Wright

Director, New Zealand Claims Resolution Service