



Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024

Cindy Kiro, Governor-General

Order in Council

At Wellington this 25th day of March 2024

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 79(1)(cb) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs after meeting the requirements of section 79 of that Act.

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Regulations

1 Title

These regulations are the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024.

2 Commencement

These regulations come into force on 18 July 2024.

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

4 Provisions implied into rules about approved dispute resolution schemes

The provisions set out in Schedule 2 are implied into the rules about approved dispute resolution schemes.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

1 Transitional rules

- (1) The provisions set out in Schedule 2 of these regulations are implied into the rules about an approved dispute resolution scheme only in relation to a person who—
 - (a) wants to make a complaint to the scheme about a member on or after the commencement of these regulations; and
 - (b) has not made the complaint (or substantially the same complaint) to the scheme or directly to the member before the commencement of these regulations.
- (2) In all other cases, the rules about an approved dispute resolution scheme apply as if the provisions set out in Schedule 2 of these regulations were not implied into the rules.

Schedule 2

Provisions implied into rules about approved dispute resolution schemes

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1 Timing for making complaints

- (1) A person who wants to make a complaint to the scheme about a member must do so in accordance with this clause.
- (2) The person, or the scheme on behalf of the person, must first make the complaint (or substantially the same complaint) directly to the member.
- (3) The person may then make the complaint to the scheme if—
 - (a) the person does not receive a final decision from the member about the complaint made under subclause (2) within the applicable period after it was made; or
 - (b) the person receives a final decision within the applicable period, but is not satisfied with the decision.
- (4) However, if subclause (3)(b) applies and the person receives the final decision in writing together with a deadline notice, the person may not make the complaint to the scheme more than 3 months after the date of receipt.
- (5) The scheme may extend the 3-month period that applies under subclause (4), but only if—
 - (a) the extension is for a period that is no longer than 9 months; and
 - (b) the scheme is satisfied that the extension is justified by exceptional circumstances.
- (6) Subclauses (3) to (5) are subject to subclause (7).
- (7) A person may not make a complaint to the scheme more than 6 years after the person becomes aware, or should reasonably have become aware, of the facts or events giving rise to the complaint.
- (8) In this clause,—

applicable period means the shorter of the following periods:

- (a) a period of 2 months;
- (b) a period that is specified in the rules for the purposes of this paragraph

deadline notice, in relation to a final decision about a complaint made by or on behalf of a person under subclause (2), means a written notice that states that the person may not make the complaint to the scheme more than 3 months after the date on which they receive the final decision in writing together with the notice.

2 Compensation amounts and limits

- (1) This clause applies if—
 - (a) a person makes a complaint to the scheme about a member; and
 - (b) the scheme wants to require the member to make a payment to the person as part of the remedial action that the scheme imposes to resolve the complaint.
- (2) The scheme may only require the member to pay the person 1 or more of the following:
 - (a) direct compensation equivalent to no more than the applicable weekly amount plus goods and services tax (if any), in so far as the complaint relates to a regular payment under a financial advice product:
 - (b) direct compensation of no more than the applicable lump sum amount plus goods and services tax (if any), in so far as the complaint relates to any other matter:
 - (c) special compensation of no more than \$10,000 plus goods and services tax (if any):
 - (d) interest in relation to any amount payable under paragraph (a) or (b).
- (3) For the purposes of this clause, the scheme may treat complaints made by a person about a member as a single complaint, but only if—
 - (a) those complaints concern the same, or substantially the same, events or facts; and
 - (b) it is fair and reasonable to treat them as a single complaint in the circumstances.
- (4) In this clause,—

applicable lump sum amount means the higher of the following amounts:

 - (a) \$500,000:
 - (b) an amount that the person making the complaint and the member agree in writing is to apply in relation to the complaint for the purposes of this paragraph

applicable weekly amount means the highest of the following amounts:

 - (a) \$2,600 per week:
 - (b) a weekly amount that is specified in the rules for the purposes of this paragraph:
 - (c) a weekly amount that the person making the complaint and the member agree in writing is to apply in relation to the complaint for the purposes of this paragraph

direct compensation means compensation for 1 or both of the following:

- (a) any direct loss suffered by the person making the complaint as a result of the member's conduct:
- (b) any direct expenses reasonably incurred by the person in making the complaint

financial advice product has the meaning given in section 6(1) of the Financial Markets Conduct Act 2013

interest, in relation to an amount payable under subclause (2)(a) or (b), means interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, where—

- (a) the first day of the period for which interest is payable is the day on which any delay in paying the amount under subclause (2)(a) or (b) (as the case may be) becomes unreasonable; and
- (b) the last day of the period for which interest is payable is the day on which the amount is paid

special compensation means compensation for 1 or both of the following:

- (a) any non-financial loss, stress, humiliation, and inconvenience suffered by the person making the complaint as a result of the member's conduct:
- (b) any loss of opportunity suffered by the person as a result of the member's conduct.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations but is intended to indicate their general effect.

These regulations are made under section 79(1)(cb) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **Act**) and come into force on 18 July 2024.

These regulations prescribe certain provisions that are to be implied into rules about approved dispute resolution schemes that are issued under the Act. Section 63(3) and (4) of the Act provides that approved dispute resolution scheme rules are treated as containing any provision that is implied into them by these regulations and have no effect to the extent that they are inconsistent with such an implied provision.

Application

The transitional rules in *clause 1 of Schedule 1* ensure that the provisions implied into the rules apply in relation to a person who wants to make a complaint only if

they have not already made the complaint (or substantially the same complaint) to the scheme or directly to the member before these regulations come into force.

Timing for making complaints

Clause 1 of Schedule 2 prescribes provisions relating to the timing for making complaints under approved dispute resolution scheme rules. In particular, it prescribes that,—

- before a person can make a complaint to a scheme about a member, the person, or the scheme on behalf of the person, must first make the complaint (or substantially the same complaint) directly to the member; and
- if the person does not receive a final decision from the member about the complaint within 2 months of it being made (or any shorter period specified in the rules), then the person may make the complaint to the scheme; and
- if the person does receive a final decision within that time but is not satisfied with the outcome, then the person may make the complaint to the scheme; but, if the member decides to issue the final decision in writing together with a deadline notice (as defined in *clause 1(8) of Schedule 2*), then the person may not make the complaint to the scheme more than 3 months after the date of receipt (and the scheme may extend the 3-month limit by up to a further 9 months if it is satisfied that the extension is justified by exceptional circumstances); and
- a complaint must, in all cases, be made within 6 years after the person becomes aware, or should reasonably have become aware, of the facts or events giving rise to the complaint.

Compensation amounts and limits

Clause 2 of Schedule 2 prescribes provisions relating to compensation amounts and limits in respect of complaints made under approved dispute resolution scheme rules. In particular, it prescribes that—

- a scheme may only require a member to pay a complainant 1 or more of the following as part of any remedial action:
 - direct compensation equivalent to no more than the applicable weekly amount (which is the higher of \$2,600 per week or a weekly amount specified in the rules or agreed in writing between the member and complainant) plus goods and services tax (if any), in so far as the complaint relates to a regular payment under a financial advice product (as defined in section 6(1) of the Financial Markets Conduct Act 2013);
 - direct compensation of no more than the applicable lump sum amount (which is the higher of \$500,000 and an amount agreed in writing between the member and complainant) plus goods and services tax (if any), in so far as the complaint relates to any other matter:

- interest for any unreasonable delay in paying the above amounts, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016;
- special compensation of no more than \$10,000 plus goods and services tax (if any) for any non-financial loss, stress, humiliation, inconvenience, or loss of opportunity; and
- for the purposes of the limits mentioned above, schemes may treat multiple complaints as a single complaint if they concern the same, or substantially the same, events or facts and it is fair and reasonable to do so.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 12 October 2022 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-establishing-consistent-jurisdictional-rules-approved-financial-dispute-resolution-schemes>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 28 March 2024.

These regulations are administered by the Ministry of Business, Innovation, and Employment.