

Review of the

**Insurance and
Savings
Ombudsman
Scheme**

March 2003

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Part I—Executive Summary

1 Overview

- 1.1 The Review Committee is confident that the Insurance and Savings Ombudsman scheme (the Scheme) provides consumers and insurers with an effective and affordable external complaints resolution service.
- 1.2 Improvements to the Scheme since its last independent review in 1997 have resulted in more efficient complaints handling and addressed the concerns with cost effectiveness identified during the last review. Participants are pleased with the prudent financial management of the Scheme. We recognise that there may be some additional costs involved in implementing some of our recommendations.
- 1.3 We are satisfied that the Scheme continues to operate in accordance with the benchmark standards for industry ombudsman schemes (accessibility, independence, fairness, accountability, efficiency and effectiveness).¹ Its key strengths are the efficient administration of the overall Scheme and the provision of an affordable and professional complaints resolution service for consumers
- 1.4 There is room for improvement in a number of areas. Key issues of concern for submitters and survey respondents include the process by which the Scheme amends its Rules and Terms of Reference and dissatisfaction with complaint outcomes. We have suggested improvements and enhancements which would make the Scheme even more effective and responsive to the changing needs of consumers and industry.

2 Principles for assessing a complaints service

- 2.1 We used the Australian Securities and Investment Commission's scheme approval criteria as principles for assessing the Scheme and making recommendations. The criteria consist of six benchmarks (accessibility, independence, fairness, accountability, efficiency and effectiveness) which are widely recognised in the self-regulatory arena as essential requirements for external complaints resolution schemes. The principles are defined as follows:
 - **Accessibility:** the scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.
 - **Independence:** the decision-making process and administration of the scheme are independent of scheme members.
 - **Fairness:** the scheme produces decisions that are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.
 - **Accountability:** the scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.
 - **Efficiency:** the scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

¹ Australian Securities and Investment Commission Policy Statement PS 139 Approval of External Complaints Resolution Schemes, pp27-28 at <http://www.cpd.com.au/newcorp/asic/ps/default.asp>.

- **Effectiveness:** the scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

3 Recommendations

- 3.1 To improve effectiveness and accountability, we recommend that the Commission monitor and report on enquiries and complaints to the Scheme, including those that fall outside the Terms of Reference.
- 3.2 To improve effectiveness and accountability, we recommend that the Commission liaise with participant companies to try to obtain information on complaints to those companies that fall outside the Terms of Reference.
- 3.3 To improve effectiveness and accountability, we recommend that the Rules provide for the Board to write to the Commission advising of its reasons for rejecting proposed amendments to the Rules or Terms of Reference.
- 3.4 To improve efficiency and effectiveness, we recommend that the Rules provide for time-frames for the Board to:
 - give the Commission written acknowledgement that the Board has received the request to amend the Rules or Terms of Reference
 - convene a meeting to consider the request
 - notify the Commission in writing of the Board's decision.
- 3.5 To improve efficiency, we recommend that Board members are CEOs or have equivalent authority to bind the organisations they represent.
- 3.6 To improve efficiency, we recommend that the Rules provide for the Board to involve consumer representatives in its Scheme amendment process. The Commission should identify options for a suitable model and discuss these with the Board.
- 3.7 To promote independence and improve effectiveness, we recommend that the Commission investigate the viability of including consumer representatives on the Board or incorporating an industry council into the Scheme, or both.
- 3.8 To improve effectiveness, we recommend that the ISO, the Insurance Council, the Investment Savings and Insurance Association and the Health Funds Association agree on a suitable definition of small business and that the Rules be amended to allow the ISO to consider complaints from small businesses.
- 3.9 To improve effectiveness, we recommend that the Commission obtain external legal advice on the viability of extending coverage to members of group or employer superannuation schemes.
- 3.10 To improve accessibility, we recommend that the Commission collect information on the ethnicity of complainants.
- 3.11 To improve accessibility, we recommend that Participants make data on customer profile, including ethnicity, available annually to the Commission.
- 3.12 To improve accessibility, we recommend that the ISO incorporate Maori and other languages into publications, including the website, where appropriate.
- 3.13 To improve accessibility, effectiveness and accountability, we recommend that the Commission consider a social audit to monitor its performance against its objectives and to ensure that it meets the needs of our diverse society.

- 3.14 For fairness and effectiveness, we recommend that the monetary limit for all claims, except disability claims, be increased to \$150,000 exclusive of GST.
- 3.15 For fairness and effectiveness, we recommend that the Commission develop a formula for reviewing the disability complaints monetary limit so that it meets the needs of customers and keeps pace with inflation, and present a case for change to the Board.
- 3.16 For fairness and effectiveness, we recommend that the ISO be empowered to award an additional amount of up to \$4000 compensation for inconvenience suffered by the complainant.
- 3.17 For fairness and effectiveness, we recommend that Clause 7.4 of the Terms of Reference be amended to remove the requirement for an award to have been made before the ISO can require the Participant to reimburse or compensate the complainant for incidental expenses.
- 3.18 For fairness, we recommend that the ISO consider ways in which the factors identified in Clause 5.7 of the Terms of Reference can be addressed explicitly at each stage of a complaint and reflected in decisions.
- 3.19 For fairness and accessibility, we recommend that the Terms of Reference provide for the ISO to issue a recommendation and, if necessary, an award, if the Participant has not commenced proceedings within two months of notification of the test case procedure.
- 3.20 For fairness and accessibility, we recommend that the Terms of Reference provide for the Participant to pay all costs associated with the test case procedure, including all costs incurred by the complainant on a solicitor and own client basis.
- 3.21 To improve accessibility, we recommend that Rule 7 be amended to require Participants to observe the ISO's statement of best practice guidelines on publicising the Scheme.
- 3.22 To improve accessibility, we recommend that the Terms of Reference require the ISO to promote the Scheme.
- 3.23 To improve accessibility, we recommend that promotional material about the Scheme is reviewed to ensure its content is easily understood by consumers.
- 3.24 For fairness and greater efficiency, we recommend that the ISO investigate and report to the Commission on the viability of using other forms of dispute resolution, including formal mediation.
- 3.25 To improve accessibility, we recommend that standard written communications from the ISO to complainants be reviewed to ensure they comply with current best practice in the use of plain English.
- 3.26 To improve accessibility, we recommend that complainants receive a written summary of the assessment letter that can be easily understood by complainants, including those for whom English may be a second language.
- 3.27 To improve effectiveness, we recommend that the ISO consider the revised format for the complainant feedback questionnaire and the suggested process contained in the Labett report when reviewing complainant survey procedures and forms.
- 3.28 For fairness, we recommend that the Commission write to the Ministry of Justice asking for greater priority to be given to reforming the Insurance Law Reform Act 1977.

- 3.29 To improve efficiency, we recommend that the website and database be managed and updated in-house.
- 3.30 To improve efficiency, we recommend that the ISO replace the casebooks with a database of case summaries that are accessible through the website and searchable online.
- 3.31 To improve accessibility, we recommend that the ISO include more information for consumers on the website.
- 3.32 To improve effectiveness, we recommend that the information technology strategy review consider the impediments to monitoring and reporting on complaint processes and outcomes and develop workable solutions.
- 3.33 To improve efficiency, we recommend that the Commission develop a plan for the use of technology to support participant activity, consumer education, and promotion of the Scheme.
- 3.34 To improve efficiency and effectiveness, we recommend that the Rules be redrafted to remove the requirement for a review committee. They should merely provide for the Commission to arrange an independent review at regular intervals and to consult with industry, consumer and community groups, and the Ministry of Consumer Affairs, before making its recommendations to the Board.
- 3.35 To improve efficiency, we recommend that Rule 11.7 be amended to provide for alternate members to receive notices and minutes of all meetings.
- 3.36 To improve effectiveness, we recommend that Paragraph 5.9 of the Terms of Reference be amended by deleting the words 'review or'.
- 3.37 To improve efficiency, we recommend that the Rules be amended to remove all references to 'nominated' in relation to consumer and community groups and to provide instead for the Commission to consult with the Ministry of Consumer Affairs in drawing up and regularly updating a list of consumer and community groups.

Part II—Background to the Review

4 Introduction

- 4.1 The ISO Scheme 2002 review committee was appointed by the ISO Commission (the Commission) in July 2002, to undertake an independent review of the Scheme and report its findings to the Commission. This is the second review of the Scheme. The first review was completed in April 1997.
- 4.2 The Scheme is a complaints resolution scheme established by the insurance industry for its customers. It is fully funded by participating companies (Participants) and its services are free to consumers. The Scheme is voluntary. There is no statutory requirement for insurance companies to join, although some industry associations require their members to do so.
- 4.3 Its structure is consistent with the traditional three-tier industry ombudsman model, comprising an industry Board, a Commission (two industry and two consumer representatives and an independent chair) and the Insurance and Savings Ombudsman (the ISO).
- 4.4 The Scheme is governed by rules (the Rules) and Terms of Reference. The Rules provide for the operation and administration of the overall scheme, and the Terms of Reference cover the complaints process, including the jurisdiction of the ISO.
- 4.5 The insurance companies generally belong to one of three industry organisations:
- The Insurance Council of New Zealand Inc [<http://www.icnz.org.nz/>]
 - The Investment Savings and Insurance Association [<http://www.isi.org.nz/>]
 - The Health Funds Association of New Zealand Inc [<http://www.healthfunds.org.nz/>]
- 4.6 The ISO provides adjudication on insurance complaints in a private forum. The Scheme has a public good function and therefore needs to operate on the principles set out in Part 1 of this report.

5 Review process

- 5.1 We conducted the review according to the Rules of the Insurance and Savings Ombudsman Commission.
- 5.2 Rule 22 provides:
- 22.1 *The Commission shall in the third year following adoption of these Rules (on 13 May 1994) and at intervals of not more than five years thereafter; conduct a public review of the operation of the Scheme and of the Terms of Reference.*
- 22.2 *For the purposes of the review the Commission shall appoint a Review Committee, which shall consist of:*
- (i) a chairperson appointed by the Board in consultation with the Commission, who shall be chairperson of the Review Committee;*
 - (ii) two representatives of the Participants, nominated by the Board;*

- (iii) *two representatives of the Nominated Consumer and Community Groups, nominated by the Minister;*
- (iv) *a representative of the Minister, nominated by the Minister.*

No person who is a Member, Alternate Member, Insurance and Savings Ombudsman or agent, officer or employee of the Commission shall be appointed to the Review Committee.

22.3 *The Review Committee shall determine the procedures and timetable to be adopted in the review but shall ensure that submissions and comments regarding the operation of the Scheme are invited from:*

- (i) *each participant;*
- (ii) *each member;*
- (iii) *each Nominated Industry Group;*
- (iv) *each Nominated Consumer and Community Group;*
- (v) *the Institute;*
- (vi) *the Minister;*
- (vii) *the Insurance and Savings Ombudsman;*
- (viii) *the general public; and*
- (ix) *any other person or group the Review Committee considers appropriate.*

6 Membership of the review committee

6.1 The 2002 review committee members are:

- Stuart Macaskill—Independent Chair
- Giselle McLachlan—IAG New Zealand Limited (general insurance industry representative)
- Sid Narraway—Royal & Sun Alliance (life insurance and savings industry representative)
- Cindy O'Brien—Ministry of Consumer Affairs (representing the Minister of Consumer Affairs)
- Mary-Jane Rivers—consumer representative
- Helen Walch—consumer representative.

6.2 Acknowledgements

We thank Craig Thorn, Angela Sheehan and Jenny Butler for their valuable administrative support in completing this report.

7 Information gathering

Submissions

7.1 We invited submissions from the parties identified in Rule 22.3 and other parties. Appendix 1 lists parties who were invited to make submissions and shows whether they made a submission and, if so, whether the submission was oral or written.

Surveys and information from telephone enquiries

- 7.1 We conducted two surveys: a survey to measure public awareness of the ISO², and a survey of recent complainants who have used the Scheme.³ We also asked the ISO office to record information on telephone enquiries for three months during the review so we could see the pattern of enquiries and complainants.

² Appendix 2 contains the results of the public awareness survey.

³ Appendix 3 contains the results of the 2002 survey of complainants. It also compares these to the results from the identical survey undertaken in 1997 by the 1997 ISO Scheme review committee.

Part III—Identification of Key Issues

8 Complainant surveys

- 8.1 Appendix 4 interprets the 1997 and 2002 surveys of complainants. In comparing the surveys, we are mindful of the fact that the volume and nature of complaints have changed since the Scheme was reviewed in 1997.
- 8.2 The volume of complaints has decreased. In 1996/97, 487 cases were accepted for consideration⁴ compared with 236 cases in 2001/2002.⁵ However, the complaints have become more complex and time-consuming to deal with. In her 2002 Annual Report, the ISO attributes this to a significant increase in health and disability complaints, which are particularly complex and time-consuming to resolve. For the 2001/2002 financial year, over 60% of the life and savings complaints referred to the ISO were in some way related to health and disability claims.
- 8.3 While the 2002 survey respondents were generally satisfied with the ISO's practices and procedures, they were much less satisfied with the outcomes, and had concerns about independence. The level of satisfaction with service is largely consistent with the 1997 survey results, although there is increased dissatisfaction with the time taken to complete investigations.
- 8.4 There has been a significant reduction in the level of favourable outcomes for complainants. The 2002 survey found that only 23% of respondents had their complaint resolved in their favour, either in whole or in part. This correlates closely with the ISO's reporting. In the 2000-01 financial year, the ISO upheld or partly upheld 22% of complaints.
- 8.5 The 1997 survey of complainants found that 58% of respondents had their complaint resolved in their favour, either in whole or in part. The ISO's annual report for the year 1996-97 noted that approximately 50% of complaints were decided in favour of the complainant.
- 8.6 There was a significant drop in the number of respondents between the 1997 and 2002 surveys who believe that the ISO can influence future decisions made by insurance or savings companies. Around 40% thought that the ISO doesn't have enough power or isn't independent of the insurance and savings industry, and thought that there should be changes to the office.
- 8.7 Fifty-nine percent of respondents rated their overall impression of the ISO office as good or excellent. This is a good result considering that 93% did not get a decision that went entirely in their favour and 72% thought the decision in their case was unfair.
- 8.8 We cannot draw any firm conclusions on why there has been a dramatic decrease in the level of favourable outcomes for complainants but there is a strong possibility that the decrease is due to Participants' improved internal complaints resolution practices. A decrease in the number of complaints to the ISO together with a decrease in the proportion of complaints upheld suggests that more insurers are resolving complaints satisfactorily in-house. This is also the view of the ISO and some industry submitters. Collection of information from Participants about the complaints dealt with internally would enable the Commission to check whether this assumption is correct.

⁴ Office of the Insurance and Savings Ombudsman. Assessment, No. 3, June 1999.

⁵ Office of the Insurance and Savings Ombudsman. Annual Report for the year ended 30 June 2002.

- 8.9 Any improvement in Participants' internal complaints-handling procedures is likely to mean that the ISO has to deal with complainants who are less likely to have their complaint upheld. It is worthwhile considering how complainants' expectations might be managed so that they are less dissatisfied with the outcome. In the next section of the report, we suggest enhancements to office communications and the disputes resolution process which might go some way to addressing this concern.

9 Public awareness survey

- 9.1 Approximately 35% of the respondents are aware of the Scheme. This is a high level of public awareness. Twenty-one percent of respondents mentioned (unprompted) either the Ombudsman or the ISO as means to resolve a dispute. Respondents were most likely to have been made aware of the Scheme through the media, mainly print and television and, in particular, *Consumer Magazine* and *Fair Go*.⁶

10 Information from telephone enquiries

- 10.1 The ISO office receives about 120 calls each month. The most common enquiries are about vehicle insurance, with about 22 calls a month. The next most common enquiries are about cancellation issues, contents insurance, and the internal practices of insurance companies, with between 9 and 12 calls a month each. The least common enquiries are about underwriting and third party insurance, with two enquiries each.

11 Submissions

- 11.1 Overall, submissions expressed satisfaction with the Scheme. While non-industry submitters identified areas for improvement, they value the Scheme and note its many benefits for consumers and industry. Industry submitters did not see a need for changes to the structure of the Scheme (some advocated against any change), and most did not see a need for any major operational changes. There were, however, several non-industry submissions strongly advocating changes to the structure and the process by which the Scheme's rules and terms of reference are amended.

12 Key issues

- 12.1 The concerns identified in the information considered by the Committee fall into two categories: policy issues and operational issues.
- 12.2 The key policy issues are governance (structure and scheme amendment process) and the adequacy of the Terms of Reference for providing reasonable coverage and appropriate remedies. We also looked at promotion of the Scheme and its accessibility to Maori complainants and complainants from other cultures.
- 12.3 The key operational issues are the ways in which the ISO communicates with complainants and resolves disputes, and the adequacy of the technological support available to the ISO.
- 12.4 In the next section of the report we consider the policy and operational issues in detail.

⁶ Refer to Appendix 2.

Part IV—Policy Issues

13 Amending the Scheme

Issue

- 13.1 Many submissions expressed dissatisfaction about how the Rules and Terms of Reference are amended. It is widely perceived that the Board has total control over the Rules and Terms of Reference. The Commission cannot change the Rules or Terms of Reference as it only has recommendatory powers.
- 13.2 Some submitters considered the process unfair to consumers because there is no consumer representation at Board level and no requirement for the Board to take consumers' concerns and interests into account when considering changes to the Scheme.

Problem

- 13.1 The Board rejected some recommendations from the Commission for amendments to the Rules and Terms of Reference. The recommendations arose out of the 1997 Scheme review and the ISO's review of the Terms of Reference in 1998.

Analysis

- 13.1 Rule 3.1(f) requires the Commission to:

...monitor these Rules, the Terms of Reference and the operations of the Scheme (generally and by way of the review procedures as set out in Rule 22) and from time to time recommend to the Board such amendments to these Rules or the Terms of Reference as the Commission thinks fit.

The Commission can recommend changes to the Scheme, but it has no power to make changes.

- 13.2 The ISO does not have explicit power to amend the Rules or Terms of Reference, or even to recommend amendments. The Rules do not appear to envisage that the ISO will make recommendations for amending the Terms of Reference directly to the Board.⁷
- 13.3 Only the Board has the power to amend the Terms of Reference and Rules. It does not have to accept the Commission's recommendations or consider them in a timely manner. The Board does not have to give reasons for accepting or rejecting the Commission's proposals.

Reasons for decisions

- 13.1 Following the 1997 review of the Scheme, the Commission recommended some changes to the Terms of Reference and Rules. The Board did not accept all of the recommendations, and it is not clear to us that the Board communicated its reasons for rejecting recommendations to the Commission.
- 13.2 In 1998, the recently appointed ISO began a review of the Terms of Reference. The practical operation of the Scheme had thrown up a number of issues that needed clarification and, in addition, the ISO believed the Terms of Reference were not easy for participants and consumers to understand. The Commission supported the ISO

⁷ Rule 3.1(d) requires the Commission to 'receive, consider and refer' recommendations from the Ombudsman to the Board.

throughout the review and supported the draft revised Terms of Reference that resulted from the review. The Board rejected several proposed amendments and did not amend the Terms of Reference until July 2002.

- 13.3 It is not clear why the Board rejected some of the recommendations. The Board's failure to give reasons for rejecting some of the Commission's recommendations is not conducive to maintaining good relationships with the Commission and it does not promote transparency of the Scheme to other stakeholders. In future, the Board should be required to write to the Commission giving reasons for rejecting recommendations.

Identifying key issues

- 13.1 Some oral submitters commented that it would have been helpful to the Board if the Commission had alerted it to the key issues (for example, increasing the claims ceiling from \$100,000 to \$200,000) before presenting draft amendments. A doubling of the maximum claim value represents a major increase in liability for participants. As the 1997 Scheme review did not recommend an increase in claim values, apart from disability claims, it is understandable that some Participants were surprised to find this recommendation in the 1998 review.
- 13.2 The 1998 draft amendments to the Terms of Reference contained other significant changes to jurisdiction. They would have changed the provisions regarding employment-related group insurance plans and superannuation Schemes, and the award process. Opinions differ about whether these proposals extended or merely clarified the ISO's existing powers. However, the proposals appeared to have implications for the potential liability of some Participants.
- 13.3 It is reasonable for Participants to want to query such significant changes and to take time to consult interested parties and seek legal advice. It does appear, however, that the participants most concerned with the proposals could have voiced their concerns and sought legal advice earlier.

Board responses

- 13.1 There was frustration at the infrequency of Board meetings and the lack of authority of some Board members to bind their organisations to decisions. This resulted in delays in the Board responding to communications about the recommendations. Some oral submitters commented on the lack of compelling argument and information in support of some of the recommendations arising out of the 1997 review.
- 13.2 The documented debate focused on the detail of draft amendments rather than the underlying principles. It is difficult, therefore, to know whether Participants objected in principle to various recommendations, or whether they agreed in principle but believed the amendments as drafted to be unworkable. We believe there is insufficient basis to conclude that the Board acted unreasonably in failing to accept all the recommendations.

Suggestions for improving the process

- 13.1 We see the problems raised in submissions as communication and process issues, rather than structural flaws. We have several suggestions for improving the process for amending the Rules and Terms of Reference.

Role of the Commission

- 13.1 The Commission should retain its role in recommending changes to the Rules and Terms of Reference. We do not believe that the Commission should have the power to amend the Terms of Reference in isolation from the Board. Industry funds the Scheme, is bound by its decisions, and has to ensure that its Terms of Reference are

workable. We believe the Commission is the appropriate body to develop recommendations for Scheme amendments and to communicate these to the Board.

- 13.2 The ISO should continue to submit findings of ISO reviews to the Commission for its consideration. The Commission can then decide which recommendations to take up with the Board and how best to make a case to the Board. It should also consider the impact an ISO's interim review might have on later Scheme reviews.
- 13.3 To give full effect to Rule 3.1(f), the Commission should monitor and report on queries and complaints that fall outside the Terms of Reference. It should also try to obtain information from Participants about the complaints they receive that fall outside the Terms of Reference. The Commission could then assess whether the Terms of Reference are adequate to deal with most complaints, and it would have data to support recommendations for extending coverage of the Scheme.
- 13.4 When recommending amendments to the Terms of Reference and Rules, the Commission should clearly identify substantive changes. Where it seeks significant substantive changes, the Commission should raise these with the Board early on and seek agreement in principle before drafting an amendment. It is essential for transparency that a first principles discussion is documented.
- 13.5 The decisions of the Board are judicially reviewable. This provides a check on the potential for abuse of power and is an option the Commission could consider if it believes the Board is acting unreasonably in rejecting its recommendations.

Role of the Board

- 13.1 The Board should consider requests from the Commission to amend the Rules or Terms of Reference as soon as possible. The Rules should provide time-frames for the Board to:
 - give written acknowledgement to the Commission that the Board has received the request
 - convene a meeting to consider the request
 - give the Commission written notification of the Board's decision.
- 13.2 If the Board rejects recommendations from the Commission, it should give the Commission an explanation in writing.
- 13.3 It is possible for consumer representatives to be left out of the amendment process if the Board does not actively consult with the Commission. To guard against this in the future, the Board should directly involve consumer representatives when considering amendments to the Scheme. It could set up a working party with equal numbers of industry and consumer representatives, with an independent Chair, to consider recommendations for amending the Terms of Reference and Rules. The Board could agree to be bound by a majority vote of the working party.

Recommendations

- ***To improve effectiveness and accountability, we recommend that the Commission monitor and report on enquiries and complaints to the Scheme, including those that fall outside the Terms of Reference.***
- ***To improve effectiveness and accountability, we recommend that the Commission liaise with participant companies to try to obtain information on complaints to those companies that fall outside the Terms of Reference.***

- ***To improve effectiveness and accountability, we recommend that the Rules provide for the Board to write to the Commission advising of its reasons for rejecting proposed amendments to the Rules or Terms of Reference.***
- ***To improve efficiency and effectiveness, we recommend that the Rules provide for time-frames for the Board to:***
 - ***give the Commission written acknowledgement that the Board has received the request to amend the Rules or Terms of Reference***
 - ***convene a meeting to consider the request***
 - ***notify the Commission in writing of the Board's decision.***
- ***To improve efficiency, we recommend that Board members are CEOs or have equivalent authority to bind the organisations they represent.***
- ***To improve efficiency, we recommend that the Rules provide for the Board to involve consumer representatives in its Scheme amendment process. The Commission should identify options for a suitable model and discuss these with the Board.***

14 Structure of the Scheme

Issue

- 14.1 Some submissions expressed strong concerns about the structure of the Scheme. The submitters noted an imbalance of power between the Board and the Commission (in their view the Commission does not have enough power), and a lack of consumer representation at Board level. Submissions from industry, however, expressed satisfaction with the structure.

Problem

- 14.1 There is a view expressed in some submissions that the industry-dominated structure is ineffective, inefficient and unresponsive to consumer interests.

Analysis

- 14.1 Several submissions recommend structural changes. The preferred option is the removal of a tier from the existing structure. This would mean replacing the Board and the Commission with a single governance body comprising equal numbers of consumer and industry representatives with an independent Chair. One submission noted there is precedent for this with comparable schemes in Australia.
- 14.2 The issues most commonly raised in support of changing the structure are the Board's rejection of recommended amendments to the Terms of Reference and Rules, and the Board's lack of timeliness in dealing with the ISO's review. We do not believe that these issues are evidence of a major structural flaw. They relate more to process and could be resolved within the existing structure. We have addressed them in the previous section of this report on amending the Scheme.

The Board's rejection of recommendations from the Commission does not necessarily indicate an abuse of power. Nor does it indicate a need for a shift in the balance of power between the Board and the Commission.

Independence

- 14.1 Independence is a fundamental principle of industry ombudsman schemes. Submissions from industry, consumer and community groups highlighted its relevance. The ISO office is separate from the Board in that the Board does not have any responsibility for the appointment and employment conditions of the ISO and her staff. Merging the Board and Commission without any regulatory checks would compromise the ISO's independence. It is not clear how independence would be maintained merely by having equal numbers of consumer representatives.

Single-tier governance schemes

- 14.1 Overseas schemes that have merged the two governance tiers operate in vastly different regulatory environments to that which exists in New Zealand. Australia and the United Kingdom have co-regulatory and statutory financial ombudsman schemes underpinned by legislation and monitored by government agencies. For example, to maintain independence the Australian schemes are required by law to set up the single governance body as a company. The schemes also have to be approved and monitored by the Australian Securities and Investment Commission (ASIC).
- 14.2 Setting up a comparable model in New Zealand is more complex than simply merging the two tiers and appointing more consumer representatives. Legislation would be needed setting out minimum requirements for the scheme and charging a government agency with approving and monitoring the scheme. There is no regulatory agency in New Zealand carrying out a similar function to ASIC in this regard. It is likely that the government would require evidence of a major problem with the current structure, resulting in consumer detriment, before considering regulatory intervention. Without regulation, it is hard to see what incentives there are for industry to agree to a model that requires them to give up full control over the scheme.
- 14.3 We do not believe, therefore, that replacing the Board and Commission with a single governance body is necessary or desirable.

Longer-term measures

- 14.1 While the structure is fundamentally sound, the Commission could consider some measures in the longer term to improve transparency and accountability. These are:
- including consumer representatives on the Board
 - adding an industry council to the structure.
- 14.2 Consumer representation on the Board would improve the perception of independence and provide the Board with a consumer perspective. However, recommendations in the preceding section should improve communication between the Board and the Commission and give consumers greater input into amendments to the Scheme. This may address concerns about the lack of consumer representation at Board level.
- 14.3 The Scheme is unusual among industry ombudsman schemes in that it does not have a visible tier comprising membership by all the participants. It has an industry Board operating on delegated authority from participants. By contrast, the Banking Ombudsman scheme and the Electricity Complaints Commissioner scheme both have industry councils.⁸

⁸ The Bankers' Association is the industry component of the Banking Ombudsman scheme and it comprises all industry participants in the scheme. The Electricity Complaints Council comprises all industry participants in the Electricity Complaints Commissioner scheme. Its management functions are undertaken by the Board, which comprises six Council members and an independent Chair.

- 14.4 An industry council would add transparency to the Scheme's operations. This would be particularly useful where the Commission and the Board disagree on amendments to the Rules or Terms of Reference, because the visibility of all participants' views would be promoted. It would also enable the development of an appeal process in such situations. For example, the Commission might seek a ballot of all participants if they wanted to appeal a decision by the Board to reject recommendations for amendments to the Terms of Reference.
- 14.5 We suggest that the Commission consider these options if the changes to process do not promote greater interaction and agreement between the Board and the Commission in relation to amendments to the Terms of Reference and Rules.

Recommendation

- ***To promote independence and improve effectiveness, we recommend that the Commission investigate the viability of including consumer representatives on the Board or incorporating an industry council into the Scheme, or both.***

15 Gaps in coverage

Issue

- 15.1 The coverage of the Scheme was raised in several submissions. Concern was expressed that the Scheme does not cover small businesses and group or employer superannuation schemes.

Problem

- 15.1 Small businesses and individuals in group or employer superannuation schemes have no free forum in which to have a dispute resolved.

Analysis

Small businesses

- 15.1 Many small businesses are comprised of no more than an individual who is the owner or shareholder and operator. These small business people have no more access to sophisticated and costly disputes resolution methods than many individuals do.
- 15.2 The Banking Ombudsman's terms of reference include businesses. A business that insures with a participant in the Banking Ombudsman scheme has access to a free dispute resolution process for insurance disputes. If the same business insures with a participant in the ISO Scheme, the business does not have access to such a process for insurance disputes. Comparable Australian and United Kingdom disputes resolution schemes cover small business claims.
- 15.3 We are not aware of any objection in principle from Participant industry associations for the extension of coverage to small businesses, subject to agreement on a definition.

Group or employer superannuation schemes

- 15.1 There is inequity between insurance consumers in that members of schemes sponsored and controlled by Participants can access the ISO while members of schemes administered by Participants, but sponsored and controlled by employers, cannot access the ISO. We note that the Retirement Commissioner continues to express concern at the lack of coverage for members of such schemes.

- 15.2 Such schemes are expressly excluded from ISO coverage by the Terms of Reference. This is because the contract of insurance is between the trustees or employers and the insurer and not between the individual scheme members and the insurer.
- 15.3 There were a number of submissions seeking an amendment to the Terms of Reference to provide coverage for group or employer superannuation schemes. We did not receive any submissions, or hear any views, opposed in principle to extending coverage to these schemes, although the ISI advised the Committee that it doubted that it is possible in law for a voluntary external complaints resolution scheme to bind these schemes.
- 15.4 The legal position is not clear. There is little value recommending an amendment to the Terms of Reference while doubt exists as to its workability. We agree in principle that members of group or employer superannuation schemes should be covered by the ISO. However, further investigation is needed on whether this is legally viable for all such schemes.

Recommendations

- ***To improve effectiveness, we recommend that the ISO, the Insurance Council, the Investment Savings and Insurance Association and the Health Funds Association agree on a suitable definition of small business and that the Rules be amended to allow the ISO to consider complaints from small businesses.***
- ***To improve effectiveness, we recommend that the Commission obtain external legal advice on the viability of extending coverage to members of group or employer superannuation schemes.***

16 Responsiveness to Maori and other cultures

Issue

- 16.1 The Scheme must be accessible to complainants from all ethnic groups. They should be aware of its existence and feel comfortable with its processes.

Problem

- 16.1 The Scheme does not promote its recognition of and responsiveness to the needs of Maori complainants and complainants from other ethnic groups. Publicity material and written communications from the ISO office are in English, are formal in style and require a high level of literacy. One submission questioned the relevance of the Scheme to Maori.

Analysis

- 16.1 The Committee is not aware of any evidence to suggest that Maori complainants and complainants from other ethnic groups have been deterred from using the Scheme because of its policy and procedures. We are, however, unable to draw any conclusions on whether the Scheme is sufficiently accessible to Maori complainants and complainants from other ethnic groups.
- 16.2 Such a conclusion would require comparison of the demographic profile of ISO complainants and the demographic profile of the customers of Participants. The Scheme does not collect its own information in this regard, nor does it obtain information from Participants. We therefore suggest the Commission undertake some research and analysis of the demographic profiles for complainants and Participants' customers. Participants should make their information available to the Commission annually.

- 16.3 Maori as a group experience poorer educational outcomes, higher unemployment, lower income levels, lower rates of home ownership, and poorer health than non-Maori. They are consequently disadvantaged in the marketplace because they are less able to access information to make informed purchase decisions, less able to enforce their rights to legal redress when transactions fail, and less able to sustain the loss resulting from unsuccessful consumer transactions. It is therefore important that effective redress is accessible to Maori consumers participating in insurance markets.
- 16.4 It is likely that Pacific Island insurance consumers are similarly disadvantaged and they too require access to effective redress.
- 16.5 The nature of New Zealand society is changing and so is the potential insurance customer base. This creates a need and an opportunity for the Scheme to be flexible and adaptable to meet differing cultural practices and expectations.
- 16.6 Census data for 2001 from Statistics NZ⁹ shows the following current demographic issues and potential trends for New Zealand:
- The proportion of people aged 65 and over is increasing. In 2001 they made up 12% of the population and are projected to make up 26% of the population by 2051. Life expectancy is increasing, with men expecting to live, on average, until 76 and women until 81.
 - The proportion of people of European ethnicity is declining, and the decline is expected to continue.
 - The number of people of Asian ethnicity more than doubled between 1991 and 2001. In 1996 there were approximately 200,000 and by 2016 they are expected to number approximately 380,000.
 - The Maori share of New Zealand's population is expected to increase to almost 1 million of an approximately 4.8 million population by 2051.
 - There is an expected increase in the Pacific population from just over 200,000 in 1996 to about 600,000 in 2051.
 - The number of multilingual people in New Zealand has increased by 20% since 1996 and was nearly 1 in 6 in 2001.
 - Excluding children, in 2001, 1 person in 50 in New Zealand does not speak English.
 - The most common languages after English, in 2001, were Maori and Samoan.
- 16.7 We understand that ISO brochures were produced in Maori but that there was very little demand for them, despite the ISO's efforts to promote and distribute them. For future publications, it is advisable to seek advice from public relations advisors specialising in communications with Maori and Pacific Island consumers. The ISO is aware of the value of using cultural advisors and interpreters where appropriate but has had no need to do so to date.

Recommendations

- ***To improve accessibility, we recommend that the Commission collect information on the ethnicity of complainants.***
- ***To improve accessibility, we recommend that Participants make data on customer profile, including ethnicity, available annually to the Commission.***

⁹ Statistics NZ website, www.stats.govt.nz

- ***To improve accessibility, we recommend that the ISO incorporate Maori and other languages into publications, including the website, where appropriate.***
- ***To improve accessibility, effectiveness and accountability, we recommend that the Commission consider a social audit to monitor its performance against its objectives and to ensure that it meets the needs of our diverse society.***

17 Jurisdiction

Monetary limit

Issue

17.1 Several submissions recommended that the monetary limits for claims be raised. The current monetary limits are set out in Clause 7.2 of the Terms of Reference, which provides that awards shall not exceed:

- (a) *in the case of a claim relating to a policy of disability insurance which provides for regular payments to the insured (as distinct from a lump sum), \$750 (plus GST, if GST applies) per week; or*
- (b) *in any other case, \$100,000 (plus GST, if GST applies).*

These limits have not been increased since the last review.

Problem

17.1 The maximum claim values have not kept pace with inflation or increases in property values, wages and sums insured.

Analysis

- 17.1 Average property values have increased since the last review, as have wages and sums insured. This suggests the maximum claim values are inadequate compensation for potential loss.
- 17.2 The \$100,000 maximum is lower than the Banking Ombudsman's limit for insurance claims (\$150,000). The Banking Ombudsman is also able to award an additional sum of up to \$4000, for inconvenience. With the increasing overlap in banking and insurance markets (banks selling insurance products and insurers selling investment products), it seems unfair to insurance customers to retain the different limits.
- 17.3 The ISO's two Australian counterparts have much higher claims limits (\$250,000 and \$290,000). However, their complaints resolution procedures for higher claims include referees, adjudicators and specialist panels.
- 17.4 We do not know how many potential complainants have been unable to access the Scheme because their claim exceeded the monetary limit. Even if the Scheme collected information about unsuccessful applicants, we would still not have a complete picture as people aware of the limits might not bother contacting the ISO. We understand that Participants have on occasion waived the limit and allowed the ISO to hear complaints for higher claims.

Recommendations

- ***For fairness and effectiveness, we recommend that the monetary limit for all claims, except disability claims, be increased to \$150,000 exclusive of GST.***

- ***For fairness and effectiveness, we recommend that the Commission develop a formula for reviewing the disability complaints monetary limit so that it meets the needs of customers and keeps pace with inflation, and present a case for change to the Board.***

Additional compensation/reimbursement

Issue

- 17.1 The ISO can require a Participant to compensate a complainant for incidental expenses, but only if an award has been made.

Problem

- 17.1 The ISO does not generally make awards (the current ISO has made no awards), therefore she cannot invoke the provision regarding incidental expenses. The ISO is unable to award additional compensation for inconvenience suffered by the complainant.

Analysis

- 17.1 If a Participant does not meet its obligations to a customer and the customer's complaint is upheld, the customer ought to be compensated. They should be restored to the position they would have been in had the Participant not breached its obligations. This means they should be compensated for inconvenience and incidental expenses.
- 17.2 There is little point providing for a remedy if it cannot be utilised. Given that the ISO has not made any awards to date, it is likely that few if any complainants will be compensated/ reimbursed for incidental expenses.
- 17.3 The Banking Ombudsman can award compensation of up to \$4000 for inconvenience.

Recommendations

- ***For fairness and effectiveness, we recommend that the ISO be empowered to award an additional amount of up to \$4000 compensation for inconvenience suffered by the complainant.***
- ***For fairness and effectiveness, we recommend that Clause 7.4 of the Terms of Reference be amended to remove the requirement for an award to have been made before the ISO can require the Participant to reimburse or compensate the complainant for incidental expenses.***

Fairness and reasonableness

Issue

- 17.1 The ISO must make decisions by reference to what is fair and reasonable in all the circumstances. This is set out in Clause 5.7 of the Terms of Reference, which states:

In making any decision in the Resolution process, the ISO shall do so by reference to what is, in his/her opinion, fair and reasonable in all the circumstances. In determining what is fair and reasonable, the ISO may consider:

- (a) *the educational, cultural and personal circumstances of the Complainant as are relevant to the complaint;*
- (b) *the manner in which the Complainant has been dealt with by the Participant;*

- (c) *the manner in which the Complainant has dealt with the Participant;*
- (d) *the degree to which the Participant was in control of the systems and procedures which are the subject of the complaint; and*
- (e) *any other matter the ISO considers relevant.*

Problem

- 17.1 Complainants' perceptions of whether the outcome was fair have significantly worsened since the 1997 survey.¹⁰ Several respondents to the complainant survey commented to the effect that the ISO did not take into account what was fair and moral.¹¹

Analysis

- 17.1 In considering complainant's responses, assessments and the ISO case book, the impression gained is that the ISO's decisions are founded in the main on legal principles. We recognise that the ISO is required to 'have regard to ... any applicable rule of law'. The documentation does not make clear what weighting is given to the factors in Clause 5.7 of the Terms of Reference, in the decision-making process. It may therefore not be obvious to complainants how the ISO exercised her power to consider these factors.
- 17.2 We understand that the ISO does take account of the factors listed in Clause 5.7 (or any other factors, as she is entitled to under Clause 5.7(e)) when considering a complaint, even though they may not be noted in the assessment.
- 17.3 Fairness, and the complainants' perceptions of it, is vital to the success of any dispute resolution scheme. Complainants familiar with the Terms of Reference might reasonably expect that factors in addition to the law will be considered and may therefore feel disappointed when reading an assessment that focuses on the legal position and that does not appear to provide for other circumstances relating to their complaint.
- 17.4 Issues such as educational, language and cultural circumstances of a complainant should be tracked with data to illustrate how often they influence the ISO's decision-making and to suggest ways in which participants can better meet their customers' needs.

Recommendation

- ***For fairness, we recommend that the ISO consider ways in which the factors identified in Clause 5.7 of the Terms of Reference can be addressed explicitly at each stage of a complaint and reflected in decisions.***

18 Test cases

Issue

- 18.1 One of the admirable features of the Scheme is that an ISO recommendation is almost always binding on the Participant, but the customer still has the right to go to court.
- 18.2 The exception to this rule is that Participants can invoke the 'test case' procedure if the complaint involves issues with '... important consequences for the business of the

¹⁰ See Appendix 3, question 13(d). While the sample surveyed is small, the fact that the proportion of cases upheld by the ISO has significantly decreased since the 1997 review suggests a similar result would have been obtained from a larger sample because complainants who lose a case are more likely to believe the outcome is unfair.

¹¹ See Appendix 4.

participant or of participants generally; or an important or novel point of law ...¹² The test case procedure removes the complaint from the ISO's jurisdiction.

Problem

- 18.1 In some cases, the complainant will have to sue the Participant in court because the nature of the complaint is such that court proceedings cannot be initiated by the Participant even though the Participant has invoked the test case procedure.
- 18.2 The complainant will have lost time and invested energy in pursuing the complaint through the ISO, only to have their efforts frustrated at the last hurdle, just before a favourable award. The complainant may not have the time, energy or resources to go to court.

Analysis

- 18.1 If the Participant wants to remove the complaint from the ISO's jurisdiction, the onus should be on the Participant to initiate court proceedings. If they are unwilling or unable to do this, the complaint should revert back to the ISO's jurisdiction. It is unfair to require a complainant to initiate proceedings.
- 18.2 It is also unfair to require a complainant to pay any legal costs when the decision to use the procedure is taken by the Participant. The Participant should be required to agree in advance to pay the actual and reasonable costs of litigation. We see no valid reason for requiring the ISO to decide on the allocation of costs before the proceedings commence.

Recommendations

- ***For fairness and accessibility, we recommend that the Terms of Reference provide for the ISO to issue a recommendation and, if necessary, an award, if the Participant has not commenced proceedings within two months of notification of the test case procedure.***
- ***For fairness and accessibility, we recommend that the Terms of Reference provide for the Participant to pay all costs associated with the test case procedure, including all costs incurred by the complainant on a solicitor and own client basis.***

19 Promotion of the Scheme

Issue

- 19.1 Knowledge about the Scheme is a key determinant for people using the Scheme and Participants have a vital role in publicising the Scheme.

Problem

- 19.1 Some Participants do not appear to be discharging their obligation to publicise the Scheme to complainants.

Analysis

- 19.1 It is concerning to note that in the five years since the last review, Participants have not improved their performance in publicising the Scheme to complainants. Only 33%

¹² Clause 8.1 of the Terms of Reference.

of respondents in the survey of complainants said they heard about the ISO from their insurance or savings company. This is slightly down on the 1997 response.

- 19.2 The Public Awareness Survey (Appendix 2) shows that in a sample of 500 people, 35% mentioned, unprompted, either the Parliamentary Ombudsman or the ISO as means to resolving a complaint. While this is a good level of public awareness, it does suggest that customers of Participants are no more likely than the general public to have knowledge of the Scheme.
- 19.3 Rule 7 provides that Participants give an undertaking to the Commission to publicise the ISO. It is not evident to us that Participants are fully utilising the opportunities to publicise the Scheme at point of sale and through promotional channels such as websites, brochures and advertising, or during the internal complaints resolution process. In 2000, following a survey of participants, the ISO prepared a statement of best practice guidelines for participants on publicising the Scheme. Rule 7 should be extended to require Participants to follow those guidelines.
- 19.4 While the Terms of Reference do not require the ISO to promote the Scheme (Clause 10 merely requires publication of an annual report and permits the publication of other material relating to the ISO's activities), the current ISO has made herself available for many speaking engagements and presentations in various fora, national and international. A recent initiative resulting in positive feedback was the ISO's participation in joint presentations to community groups with the Banking Ombudsman and Electricity Complaints Commissioner. It is a role that is increasingly important given the lack of promotion undertaken by Participants, and it should be explicitly provided for in the Terms of Reference to ensure that future ISOs continue to undertake promotional activities.
- 19.5 The promotional pamphlet *How Can the Insurance and Savings Ombudsman Help You?* is formal with small print and language that requires the reader to have a high level of literacy.

Recommendations

- ***To improve accessibility, we recommend that Rule 7 be amended to require Participants to observe the ISO's statement of best practice guidelines on publicising the Scheme.***
- ***To improve accessibility, we recommend that the Terms of Reference require the ISO to promote the Scheme.***
- ***To improve accessibility, we recommend that promotional material about the Scheme is reviewed to ensure its content is easily understood by consumers.***

Part V—Operational Issues

20 Dispute resolution methods

Issue

- 20.1 The ISO relies primarily on adjudication for dispute resolution. There may be value in investigating the viability of alternative forms of dispute resolution to be used where appropriate. The issue of culturally appropriate processes for Maori who insure was raised by one submitter, while another submitter questioned whether there was a need for a hearing-based process.

Problem

- 20.1 Complainant dissatisfaction with complaint outcomes has increased significantly since the 1997 review.

Analysis

- 20.1 The most significant changes to complainants' perceptions of complaint outcomes are in the following areas:
- more people are dissatisfied with the time taken by the ISO to investigate their case
 - more people feel that they didn't get enough opportunity to give feedback
 - fewer people feel that the ISO has the power to influence future decisions made by the insurance and savings companies
 - fewer people feel that the ISO is independent of the industry and dealt with the details of their case in confidence
 - fewer people believe that the ISO will be willing and able to act in their interest on the grounds of what is 'fair' or 'moral'
 - fewer people consider that the ISO is able to influence company decisions.
- 20.2 It is important to address the concerns of those complainants accessing the Scheme. Parties to a dispute resolution should feel satisfied that their views have been heard and they should understand the results, even if they don't agree with the outcome. The response from complainants suggests that more information and greater complainant involvement in the dispute resolution process could be productive.
- 20.3 Complaints are becoming more complex, they are less likely to be upheld, and complainants are becoming less satisfied with complaint outcomes.
- 20.4 While the ISO is essentially an adjudicator, there is a considerable amount of informal mediation that occurs during the dispute resolution process. The ISO often liaises with both parties in order to negotiate a settlement that is mutually acceptable, before making a recommendation. The ISO considers that there may be merit in more formalised mediation in some circumstances and has attempted to engage Participants in this process where appropriate.
- 20.5 It is timely for the ISO and Participants to explore this option more fully. The Ministry of Justice has recently been considering Maori approaches to justice, including culturally relevant dispute resolution processes. The recent independent review of the

Australian Financial Industry Complaints Service also considered alternative methods of dispute resolution.¹³

- 20.6 Complaints vary in their complexity and monetary claim value. It might therefore be useful to the ISO to be able to access a range of dispute resolution processes, including formal mediation.¹⁴
- 20.7 The Committee has considered the use of formal hearings, including the power to call witnesses and cross-examine. We do not believe that the problems identified by complainants would necessarily be resolved through the use of hearings. Nor do we believe that their benefits would outweigh the increased costs of incorporating a hearings procedure into this Scheme. The Committee does not believe that the flaws within the Scheme are sufficient to indicate the need for a specialist statutory tribunal to hear insurance complaints.

Recommendation

- ***For fairness and greater efficiency, we recommend that the ISO investigate and report to the Commission on the viability of using other forms of dispute resolution, including formal mediation.***

21 Communication with complainants

Issue

- 21.1 Twenty-five percent of respondents in the complainant survey did not understand the ISO's decision and 40% thought that the investigation did not cover all the issues. Also of concern is complainants' perception of their ability to give feedback and respond to the insurer's point of view.¹⁵

Problem

- 21.1 Documentation, particularly the assessment sent to the Participant and the complainant, is lengthy and requires a high level of literacy.

Analysis

- 21.1 The main contact with the complainant is the case manager talking with the complainant by phone, without opportunities for face-to-face discussion. Decision-making rests largely on analysis of the written information provided by both parties. For some people, this results in a sense of not being fully heard.
- 21.2 The ISO office needs to make sure that it gives complainants confidence that their case has been 'heard'. This can be achieved by reflecting back to the complainant their case from their perspective, without any judgement or conclusion.

¹³ *Review of the Financial Industry Complaints Service 2002—Final Report*, Community Solutions, La Trobe University, University of Western Sydney at <http://www.fics.asn.au/docs/finalficsreview.pdf>

¹⁴ Mediation is essentially an informal dispute resolution process in which a neutral third person, a mediator, helps parties to a dispute to reach an agreement. Using a non-confrontational, structured conversation or dialogue, the mediator helps both parties to communicate and understand each other's point of view. The parties work out their own solution with the help of the mediator, who has no power to impose a decision on them. It is not necessarily expensive and should not be drawn out. (The NZ Law Society definition and description of Mediation). Mediation can help work out the problem while keeping the business relationship intact. It is often an effective, confidential, flexible, readily accessible process based on the agreement of both parties. The accessibility and joint agreement are the key features of interest to the review committee.

¹⁵ Refer to Appendix 4.

- 21.3 While Participants value the information provided in the assessment, the written comments received through the complainant survey suggest that complainants may not always take in all the information given to them. We noted that the assessment, with its citation of decisions and use of legal language, requires a high level of literacy on the part of its readers, a level that many in the community do not have. During the course of this review, the ISO modified the assessment to include a summary on the front page.
- 21.4 The length and limited options in the existing complainant survey form may deter some people from completing the form. The Labett report we commissioned on the complainant survey includes a revised one-page survey and recommendations about the surveying methods that would be useful to the ISO.

Recommendations

- ***To improve accessibility, we recommend that standard written communications from the ISO to complainants be reviewed to ensure they comply with current best practice in the use of plain English.***
- ***To improve accessibility, we recommend that complainants receive a written summary of the assessment letter that can be easily understood by complainants, including those for whom English may be a second language.***
- ***To improve effectiveness, we recommend that the ISO consider the revised format for the complainant feedback questionnaire and the suggested process contained in the Labett report when reviewing complainant survey procedures and forms.***

22 Avoidance of policies for non-disclosure

Issue

- 22.1 Several submissions expressed concern that the ISO cannot assist consumers who have had policies avoided for innocent non-disclosure of material facts.

Problem

- 22.1 This practice is lawful. The common law is clear and the ISO is required to consider the law when dealing with these complaints. However, the law is often perceived as draconian in that it can leave a consumer with no cover at all, even when the non-disclosure was innocent.

Analysis

- 22.1 The Ministry of Justice received a report from the Law Commission that recommended that the law on non-disclosure should be included in the Insurance Law Reform Act 1977. The Ministry administers the Act. The matter is best dealt with through legislative intervention.

Recommendation

- ***For fairness, we recommend that the Commission write to the Ministry of Justice asking for greater priority to be given to reforming the Insurance Law Reform Act 1977.***

23 Technology support

Issue

23.1 The ISO computer system is inflexible and consequently underutilised.

Problem

23.1 We were advised that an inflexible computer system limits the ISO in her ability to:

- report particular complaint statistics
- adopt a range of benchmarks for timeliness in resolving complaints, that are appropriate to particular types of complaint.

23.2 There have been delays in publishing information on the website, including the recently amended Terms of Reference. The website provides only a minimum of information about the Scheme and its complaints process.

Analysis

23.1 The ISO has been unable to show in annual reports the proportion of 'not upheld' complaints that have resulted in favourable outcomes for complainants, including informal settlements and ex-gratia payments. Many readers would reasonably assume that a 'not upheld' complaint meant that the complainant lost their case and therefore received nothing. The database should be modified to enable the ISO to provide a more detailed breakdown of complaints that were not upheld.

23.2 The database only provides for one time-frame (90 days) to resolve all types of complaints. This does not reflect the fact that some types of complaint are more complex and time-consuming than others. Health and disability complaints in particular are very complex and time-consuming to resolve. The database should provide for a range of benchmarks appropriate to the various complaint categories.

23.3 The website could provide more information for consumers about the Scheme and its structural components, as well as the various industry codes of practice. For example, it could include brief explanations of the composition and roles of the Board, Commission and ISO office. Inclusion of the relevant codes of practice and/or links to their web pages elsewhere would also be useful for consumers.

23.4 While the ISO's Casebook was consistently commended as a useful tool for Participants and others, its accessibility and usefulness would be enhanced if it were developed as an online tool, accessible through the website and searchable by topic. This would also address the concern of an industry submitter regarding the index of the current casebook.

23.5 During the course of the review, the Commission advised that it is undertaking an Information Technology strategy review.

Recommendations

- ***To improve efficiency, we recommend that the website and database be managed and updated in-house.***
- ***To improve efficiency, we recommend that the ISO replace the casebooks with a database of case summaries that are accessible through the website and searchable online.***
- ***To improve accessibility, we recommend that the ISO include more information for consumers on the website.***

- ***To improve effectiveness, we recommend that the information technology strategy review consider the impediments to monitoring and reporting on complaint processes and outcomes and develop workable solutions.***
- ***To improve efficiency, we recommend that the Commission develop a plan for the use of technology to support participant activity, consumer education, and promotion of the Scheme.***

24 Scheme reviews

Issue

24.1 The Rules currently provide for reviews of the Scheme at least every five years. The review must be public and conducted by an independent committee. The Rules specify the composition of the committee, which includes a representative of the Minister of Consumer Affairs. There are no comprehensive terms of reference for the review set down in the Rules, and the Commission does not have to negotiate terms of reference with the review committee.

Problems

24.1 There is a risk that the review process might not meet the expectations of the Commission. Review by committee can be slow and cumbersome. Considerable resources go into meetings and inevitably there are inefficiencies, duplication and double handling of material.

24.2 It is inappropriate to require a Minister of the Crown to be represented on the review committee of an industry scheme. It would be more appropriate to require the Commission to invite the Minister to appoint a representative.

Analysis

24.1 The Commission could study other options for conducting an independent review, including the use of a single reviewer. We note that the Electricity Complaints Commissioner and Banking Ombudsman have both used a single reviewer for independent reviews.

24.2 Interest groups currently represented on the review committee could provide ongoing input to a single reviewer through a reference group, or the Commission could require the reviewer to consult with those groups before preparing final recommendations. This may be more efficient and effective.

24.3 The Commission might decide that the advantages of using a committee outweigh the disadvantages, but there should be flexibility to consider other options and the Commission should not be constrained by prescriptive rules.

24.4 A key requirement of the review process is independence. The Commission might want to reconsider the advisability of locating the reviewer in the ISO office and/or using staff of the Commission or the ISO for secretarial purposes. While these factors may not in fact compromise the independence of the review, they may affect the perception of independence.

24.5 The Commission should set the terms of reference for the review before finalising the appointment of the reviewer. Both parties should be clear from the outset what is expected from them. The Commission should know what information and resources the reviewer will need, and the reviewer should know what the Commission's expectations are. These may include the scope of the review, interim progress reports, timelines and whether submissions and the final report will be made public.

Recommendations

- ***To improve efficiency and effectiveness, we recommend that the Rules be redrafted to remove the requirement for a review committee. They should merely provide for the Commission to arrange an independent review at regular intervals and to consult with industry, consumer and community groups, and the Ministry of Consumer Affairs, before making its recommendations to the Board.***

25 Miscellaneous

Alternate members of the Commission

Issue

25.1 Rule 11.7 provides for alternate members to receive notices of all meetings. It does not provide for alternate members to receive minutes of all meetings.

Problem

25.1 Alternate members do not always receive minutes from Commission meetings.

Analysis

25.1 Alternate members have to be fully briefed on Commission business so that they might make an informed contribution to meetings at short notice. They cannot be fully briefed if they do not receive minutes of all meetings.

Recommendation

- ***To improve efficiency, we recommend that Rule 11.7 be amended to provide for alternate members to receive notices and minutes of all meetings.***

Judicial review

Issue

25.1 Clause 5.9 of the Terms of Reference provides that 'No decision of the ISO shall be capable of review or appeal in any form, by any other person, court, tribunal, statutory complaints authority, or other body'.

Problem

25.1 The provision is misleading because ISO decisions are judicially reviewable.

Analysis

25.1 The intention of the provision is to ensure that the decisions cannot be appealed. If the right to seek a judicial review does exist in a particular case, the Terms of Reference could not override the complainant's right to seek a judicial review.

Recommendation

- ***To improve effectiveness, we recommend that Paragraph 5.9 of the Terms of Reference be amended by deleting the words 'review or'.***

Nominated consumer and community groups

Issue

- 25.1 The Rules require the Minister of Consumer Affairs to nominate community groups for various purposes including consultation about rule changes and invitations to make submissions to reviews of the Scheme. Nominated consumer and community groups are defined as 'consumer and community groups having a direct interest in consumer issues relating to and/or advising consumers in respect of, some or all of the Services, as may from time to time be nominated by the Minister.'¹⁶

Problem

- 25.1 By nominating an exhaustive list of groups, the Minister is potentially excluding some consumer and community groups that he or she may be unaware of. This leaves the Minister open to criticism and complaints from groups that are not nominated and therefore not consulted by the Commission in regard to any of the matters covered by the above rules.

Analysis

- 25.1 This is an industry scheme and consumer and community groups should be able to deal directly with the industry if they want to be included in the consultation process. The Minister should not be required to decide with whom industry will consult.
- 25.2 The Ministry of Consumer Affairs liaises with the Commission and provides it with updated consumer and community group lists from time to time. This appears to work well in practice. It therefore seems unnecessary to have a formal nomination requirement.
- 25.3 The rationale for having nominated industry groups is not applicable to consumer and community groups, because they are not represented on the Board.

Recommendation

- ***To improve efficiency, we recommend that the Rules be amended to remove all references to 'nominated' in relation to consumer and community groups and to provide instead for the Commission to consult with the Ministry of Consumer Affairs in drawing up and regularly updating a list of consumer and community groups.***

26 Other matters

- 26.1 The review committee also considered, but makes no recommendations on, submissions on the following matters:
- disaster planning for the office
 - concerns about the mix of voluntary and compulsory membership of the Scheme
 - changes to Rule 3.1(c) to specifically exclude assistance/advice/information to be given by the Commission to the ISO on specific complaints and if this does occur that the Participant has right to withdraw from the specific complaint
 - a list of agreed medical specialists to be developed by participants and ISO

¹⁶ Insurance and Savings Ombudsman Scheme Rules, July 1998, Rule 1—Definitions and Interpretation.

- Terms of Reference to include a statement about minimum qualifications of case managers
- the assessment to make no reference to whether complaint upheld or not
- the process and format of the annual meeting
- placing a time limit on the length of the Participants' internal complaints process so that the ISO can handle a complaint without a deadlock letter.

Part VII—Conclusion

27 Looking to the future

- 27.1 We note that the ISO and the Banking Ombudsman enjoy a close working relationship and have participated in a number of joint initiatives. Given the increasing overlap in insurance and banking markets, and the participation of some companies in both the ISO and Banking Ombudsman Schemes, there may be opportunities in the future for both schemes to explore synergies and opportunities to work more closely together. This is the trend for financial services ombudsmen overseas.
- 27.2 There are also opportunities for Participants to enhance their industry Codes of Practice to improve the level of protection offered to consumers. Some of the barriers we identified for consumers accessing the Scheme are equally applicable to the Codes of Practice. There is no requirement for any of the Codes to be provided to consumers except where the consumer requests a copy. The Codes are therefore underutilised as informational and educational tools. Some of our recommendations regarding the provision of information by Participants to the Commission could be incorporated into the relevant Codes as well as the Rules of the Scheme.
- 27.3 We recognise that implementation of our recommendations will result in additional costs for the Commission. However, we believe that the benefits for consumers and insurers warrant the additional expense. If complainants are able to bring complaints about small business claims and employer-related schemes to the ISO, the workload and work profile for the ISO office will change. The ISO Commission should consider this issue carefully when considering change in this area.
- 27.4 We are confident that the Scheme is of great value to insurance industry consumers and that it delivers an effective and economical dispute resolution service for the Participants. The Scheme has the potential to become even more responsive to the needs of consumers and insurers and we hope that our recommendations provide some assistance to the Commission in responding to those needs.