



Australian and New Zealand Ombudsman Association

Registered Association Number A0044196B

## **Rules and Criteria**

**24 November 2016**  
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## PART 1—PRELIMINARY

### 1 Name

- (1) The name of the incorporated association is Australian and New Zealand Ombudsman Association Incorporated (ANZOA).

### 2 Purposes

The purposes of ANZOA are to:

- (1) Establish an Australian and New Zealand Ombudsman network
- (2) Establish a network for consultation and discussion of areas of interest, concern, or common experiences
- (3) Promote co-operation and communication between recognised industry, parliamentary and professional ombudsmen and their offices
- (4) Promote the appropriate use of the title of Ombudsman in both the public and private sectors
- (5) Accord recognition publicly to those persons who satisfy the defined criteria for Membership of ANZOA
- (6) Enhance the status and visibility of recognised ombudsmen and the importance of the profession
- (7) Formulate and promote standards of best practice to be met by ombudsmen and their offices in the performance of their duties, including the adoption of the *Benchmarks for Industry-Based Customer Dispute Resolution (CDR Benchmarks)*<sup>1</sup> or equivalent
- (8) Provide a forum for the exchange of information and opinions on aspects of Ombudsman practices and procedures, including by holding conferences and seminars
- (9) Encourage and facilitate joint initiatives among recognised ombudsmen and their offices, including but not limited to, research, publication of information, professional development, staff training, case management/ information technology systems and community education
- (10) Promote public awareness of the services offered by recognised Ombudsman offices, including through the publication of papers, articles, and commentaries, and through the promotion of lectures, seminars and conferences about Ombudsman practices and procedures
- (11) Make and disseminate reports, commentaries and submissions on aspects of Ombudsman practices and procedures
- (12) Develop and foster links with overseas ombudsmen, their offices and Ombudsman associations
- (13) Promote excellence in complaint handling through alternative dispute resolution methodologies
- (14) Co-operate with institutions of academic learning, and with other persons having an interest in Ombudsman practices and procedures and procedures in promoting the objects referred to in points above.

### 3 Financial year

- (1) The financial year of ANZOA is each period of 12 months ending on 30 June.

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<sup>1</sup> These Benchmarks were reviewed and republished in February 2015. They are now in two parts and available from the website of The Treasury, Australia: [Principles and Purposes](#) [Key Practices](#)

## 4 Definitions

(1) In these Rules:

**absolute majority**, of the Executive Committee, means a majority of the Executive Committee members currently holding office and entitled to vote at the time (as distinct from a majority of Committee members present at an Executive Committee meeting)

**Executive Committee** means the Committee having management of the business of ANZOA

**Chair** means the person elected to that office on the Executive Committee

**Committee meeting** means an Executive Committee meeting held in accordance with these Rules

**Committee member** means a member of the Executive Committee elected or appointed under Division 3 of Part 5

**general meeting** means a general meeting of ANZOA Members convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal meeting

**Member** means a natural person who is a Member of ANZOA, in accordance with the Membership category set out in rule 8

**Ombudsman** means the natural person holding that office, whether called Ombudsman or not, charged with the responsibility of receiving, investigating and facilitating the resolution of complaints and disputes between consumers and organisations within the jurisdiction of a not-for-profit external dispute resolution office that complies with the Criteria in Schedule 1 of these Rules.

**special resolution** means a resolution that requires not less than three-quarters of the Members voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution

**the Act** means *Associations Incorporation Reform Act 2012* and includes any regulations made under that Act

**the Registrar** means the Registrar of Incorporated Associations

(2) Unless the context otherwise requires—where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; words importing a gender include each other gender; and words in the singular include the plural and words in the plural number include the singular.

## **PART 2—POWERS OF ASSOCIATION**

### **5 Powers of Association**

- (1) Subject to the Act, ANZOA has power to do all things incidental or conducive to achieve its purposes.
- (2) Without limiting subrule (1), ANZOA may:
  - (a) acquire, hold and dispose of real or personal property
  - (b) open and operate accounts with financial institutions
  - (c) invest its money in any security in which trust monies may lawfully be invested
  - (d) raise and borrow money on any terms and in any manner as it thinks fit
  - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability
  - (f) appoint agents to transact business on its behalf
  - (g) enter into any other contract it considers necessary or desirable.
- (3) ANZOA may only exercise its powers and use its income and assets (including any surplus) for its purposes.

### **6 Not for profit organisation**

- (1) ANZOA must not distribute any surplus, income or assets directly or indirectly to its Members.
- (2) Subrule (1) does not prevent ANZOA from paying a Member—
  - (a) reimbursement for expenses properly incurred by the Member or
  - (b) for goods or services provided by the Member,  
—if this is done in good faith on terms no more favourable than if the Member was not a Member.

## **PART 3—MEMBERSHIP**

### **7 Minimum number of Members**

- (1) ANZOA must have at least five Members.

### **8 Membership**

- (1) ANZOA has one Membership category—  
Member: a natural person who is an Ombudsman<sup>2</sup> of a not-for-profit office, recognised by ANZOA as complying with the Criteria in Schedule 1 to these Rules.

### **9 Fellow, Associate and Affiliate**

- (1) The Executive Committee may approve a natural person in one of the following categories:
  - (a) Fellow: A former Member under rule 8(1) who, in the opinion of the Executive Committee, has made a substantial contribution towards furthering the objects of ANZOA.
  - (b) Associate: A senior employee within the office of an Ombudsman recognised in accordance with rule 8(1).
  - (c) Affiliate: Any other person who, in the opinion of the Executive Committee is interested in and supports the objects of ANZOA and has significant relevant expertise.
- (2) Fellows, Associates and Affiliates are not Members of ANZOA and do not have the rights of Membership set out in these Rules.
- (3) The Fellow, Associate or Affiliate status of a person ceases on the person's relinquishing of that status, expulsion or death.

### **10 Application for Membership**

- (1) Applications shall be lodged in writing, in the form prescribed from time to time by the Executive Committee.
- (2) As soon as practicable after receiving it, the application shall be referred to the Executive Committee, who will determine whether to approve or reject it.
- (3) If the Executive Committee approves an application, the Secretary/Treasurer shall, as soon as practicable notify the applicant in writing of the approval and the applicable fees, and request payment within 28 days.
- (4) Once his/her name is entered in ANZOA's Register, an applicant is entitled to exercise the rights that accrue to his/her Membership or other status.
- (5) If the Executive Committee rejects an application, the Secretary/Treasurer shall, as soon as practicable, notify the applicant in writing that the application has been rejected, outlining the reasons for the rejection.

### **11 New Membership**

- (1) If an application for Membership is approved by the Executive Committee—
  - (a) the resolution to accept the Membership must be recorded in the minutes of the Executive Committee meeting
  - (b) the Secretary/Treasurer must, as soon as practicable, enter the name and address of the new Member, and the date of becoming a Member, in the register of Members.

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<sup>2</sup> In accordance with the definitions in 4 (1), Ombudsman means the person holding that office, whether called Ombudsman or not, charged with the responsibility of receiving, investigating and facilitating the resolution of complaints and disputes between consumers and participating organisations within a not for-profit external dispute resolution office that complies with the Criteria in Schedule 1 of these Rules.

- (2) A person becomes a Member of ANZOA and, subject to rule 13(2), is entitled to exercise his or her rights of Membership from the date, whichever is the later, on which—
  - (a) the Executive Committee approves the person's Membership, or
  - (b) the person pays the Membership fee.

## **12 Subscriptions**

- (1) ANZOA's fee structure shall be set by the Executive Committee from time to time.
- (2) Where the subscription due in any year is not paid within three months of the due date, that person ceases to be a Member or hold other status, as applicable.

## **13 General rights of ANZOA Members**

- (1) A Member is entitled to vote if:
  - (a) all monies due and payable by him/her to ANZOA have been paid, and
  - (b) his/her Membership rights are not suspended for any reason.
- (2) A Member who is entitled to vote has the right to:
  - (a) receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules
  - (b) submit items of business for consideration at a general meeting
  - (c) attend and be heard at general meetings
  - (d) vote at a general meeting
  - (e) have access to the minutes of general meetings and other documents of ANZOA as provided under rule 69, and
  - (f) inspect the register of Members.

## **14 Rights not transferable**

- (1) A person's right, privilege or obligation by reason of being an ANZOA Member (or holding other status) is not capable of being transferred or transmitted to another person, and terminates upon the cessation of Membership or other status.

## **15 Ceasing Membership**

- (1) The Membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a Member of ANZOA, the Secretary/Treasurer must, as soon as practicable, enter the date the person ceased to be a Member in the register of Members.

## **16 Resigning as a Member**

- (1) A person may resign as a Member of ANZOA by giving one month's notice in writing to the Secretary/Treasurer of his/her intention to do so.
- (2) After the expiry of the period referred to in subrule (1), the person's ANZOA Membership ceases and the Secretary/Treasurer must record that date in the Register.
- (3) Despite subrule (2), where an Ombudsman ceases Membership of ANZOA but the Ombudsman's office continues in existence, that office will be entitled to the benefits of ANZOA Interest Group activity for up to three months after the commencement of a new Ombudsman.

## **17 Register**

- (1) The Secretary/Treasurer, or his/her delegate, shall keep and maintain a Register, containing the name and address of each current Member, Fellow, Associate and Affiliate and the date on which the name was entered in the Register, and for each former Member the date of ceasing to be a Member.
- (2) Any Member may, at a reasonable time and free of charge, inspect the register of Members.



## **PART 4—GENERAL MEETINGS**

### **18 Annual general meetings**

- (1) The Executive Committee must convene an annual general meeting of ANZOA within 5 months of the end of each financial year.
- (2) The Executive Committee may determine the date, time and place of the annual general meeting.
- (3) The ordinary business of the annual general meeting is as follows—
  - (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then
  - (b) to receive and consider—
    - i. the annual report of the Executive Committee on the activities of ANZOA during the preceding financial year
    - ii. the financial statements of ANZOA for the preceding financial year submitted by the Executive Committee in accordance with Part 7 of the Act
  - (c) to elect the members of the Executive Committee.
- (4) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

### **19 Special general meetings**

- (1) Any general meeting of ANZOA, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- (2) The Executive Committee may convene a special general meeting whenever it thinks fit.
- (3) No business other than that set out in the notice under rule 21 may be conducted at the meeting.

### **20 Special general meeting held at request of Members**

- (1) The Executive Committee must convene a special general meeting if a request to do so is made in accordance with subrule (2) by at least 25% of the total number of Members.
- (2) A request for a special general meeting must—
  - (a) be in writing
  - (b) state the business to be considered at the meeting and any resolutions to be proposed
  - (c) include the names and signatures of the Members requesting the meeting
  - (d) be given to the Secretary/Treasurer.
- (3) If the Executive Committee does not convene a special general meeting within one month after the date on which the request is made, the Members making the request (or any of them) may convene the special general meeting.
- (4) A special general meeting convened by Members under subrule (3)—
  - (a) must be held within three months after the date on which the original request was made
  - (b) may only consider the business stated in that request.
- (5) ANZOA must reimburse all reasonable expenses incurred by the Members convening a special general meeting under subrule (3).

### **21 Notice of general meetings**

- (1) The Secretary/Treasurer—or in the case of a special general meeting convened under rule 20 the Members convening the meeting—must give to each ANZOA Member:
  - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting, or
  - (b) at least 14 days' notice of a general meeting in any other case.

- (2) The notice must—
  - (a) specify the date, time and place of the meeting
  - (b) indicate the general nature of each item of business to be considered at the meeting
  - (c) and if a special resolution is to be proposed—
    - i. state in full the proposed resolution
    - ii. state the intention to propose the resolution as a special resolution; and
  - (d) comply with rule 22(2).
- (3) This rule does not apply to a disciplinary appeal meeting.

## **22 Proxies at general meetings**

- (1) A Member may appoint another Member as his or her proxy to vote and speak on his or her behalf at a general meeting, other than at a disciplinary appeal meeting.
- (2) The notice of meeting given to a Member under rule 21, must—
  - (a) state that the Member may appoint another Member as a proxy for the meeting
  - (b) include a copy of the form in Schedule 2
- (3) Notice of a proxy must be given to the Secretary/Treasurer no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.

## **23 Quorum at general meetings**

- (1) No business may be conducted at a general meeting unless a quorum of Members is present.
- (2) The quorum for a general meeting is the presence (physically, electronically under rule 65 or by proxy) of 25% of the Members entitled to vote.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
  - (a) in the case of a meeting convened by, or at the request of, Members under rule 20—the meeting must be dissolved
  - (b) in any other case—
    - i. the meeting must be adjourned to a date not more than 21 days after the adjournment
    - ii. notice of the date, time and place to which the meeting is adjourned must be given at the meeting and confirmed by written notice given to all Members as soon as practicable after the meeting.
- (4) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule (3)(b), the Members present at the meeting (if not fewer than three) may proceed with the business of the meeting as if a quorum were present.

## **24 Adjournment of general meeting**

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of a majority of Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned—
  - (a) if there is insufficient time to deal with the business at hand, or
  - (b) to give the Members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 21.

## **25 Voting at general meeting**

- (1) On any question arising at a general meeting:
  - (a) subject to subrule (3), each Member who is entitled to vote has one vote
  - (b) Members may vote personally or by proxy
  - (c) except in the case of a special resolution, the question must be decided on a majority of votes.
- (2) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous meeting, only Members who were present at that meeting may vote.
- (4) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 59.

## **26 Special resolutions**

- (1) A special resolution is passed if not less than three quarters of the Members voting at a general meeting (whether in person or by proxy) vote in favour of the resolution.

## **27 Determining whether resolution carried**

- (1) Subject to subsection (2), the chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution has been carried, carried unanimously, carried by a particular majority, or lost, and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.
- (2) If a poll (where votes are cast in writing) is demanded by three or more Members on any question—
  - (a) the poll must be taken at the meeting in the manner determined by the chairperson of the meeting
  - (b) the chairperson must declare the result of the resolution on the basis of the poll.
- (3) A poll demanded on the election of the chairperson, or on a question of an adjournment, must be taken immediately.
- (4) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the chairperson.

## **28 Minutes of general meeting**

- (1) The Executive Committee must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must include—
  - (a) the names of the Members attending the meeting
  - (b) proxy forms given to the chairperson of the meeting under rule 22
  - (c) the financial statements submitted to the Members in accordance with rule 18(3)(b)(ii)
  - (d) the certificate signed by two Executive Committee members certifying that the financial statements give a true and fair view of the financial position and performance of ANZOA
  - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

## **PART 5—EXECUTIVE COMMITTEE**

### **DIVISION 1—POWERS OF THE EXECUTIVE COMMITTEE**

#### **29 Role and powers**

- (1) The business of ANZOA must be managed by, or under the direction of, an Executive Committee.
- (2) The Executive Committee may exercise all the powers of ANZOA except those powers that these Rules or the Act require to be exercised by general meetings of the Members of ANZOA.
- (3) The Executive Committee may—
  - (a) appoint and remove staff
  - (b) establish subcommittees with terms of reference it considers appropriate.

#### **30 Delegation**

- (1) The Executive Committee may delegate to a Committee member, a subcommittee or staff, any of its powers and functions other than—
  - (a) this power of delegation, or
  - (b) a duty imposed on the Committee by the Act or any other law.
- (2) The delegation must be in writing and may be subject to the conditions and limitations the Executive Committee considers appropriate.
- (3) The Executive Committee may, in writing, revoke a delegation wholly or in part.

### **DIVISION 2—EXECUTIVE COMMITTEE COMPOSITION AND DUTIES OF COMMITTEE MEMBERS**

#### **31 Composition of Executive Committee**

- (1) The Executive Committee consists of the following office holders—
  - (a) Chair,
  - (b) Secretary/Treasurer, and
  - (c) up to seven (7) ordinary Committee members elected under rule 37.
- (2) At any time, the minimum representation on the Executive Committee from each of Australia and New Zealand shall be two (2).

#### **32 General duties of Executive Committee members**

- (1) As soon as practicable after being elected or appointed to the Executive Committee, each Committee member must become familiar with these Rules and the Act, as provided to them by the Secretary/Treasurer.
- (2) The Executive Committee is collectively responsible for ensuring that ANZOA complies with the Act and that individual Committee members comply with these Rules.
- (3) Executive Committee members must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) Executive Committee members must exercise their powers and discharge their duties—
  - (a) in good faith in the best interests of ANZOA
  - (b) for a proper purpose.
- (5) Executive Committee members and former Committee members must not make improper use of their position or information acquired by virtue of holding their position, to gain an advantage for themselves or any other person or to cause detriment to ANZOA.
- (6) In addition to any duties imposed by these Rules, an Executive Committee member must perform any other duties imposed from time to time by resolution at a general meeting.

### **33 Chair**

- (1) Subject to subrule (2), the Chair is the chairperson for any general meetings and for any Executive Committee meetings.
- (2) If the Chair is absent, or is unable to preside, the chairperson of the meeting must be—
  - (a) in the case of a general meeting—a Member elected by the other Members present, or
  - (b) in the case of an Executive Committee meeting—a Committee member elected by the other Committee members present.

### **34 Secretary/Treasurer**

- (1) ANZOA's Executive Committee includes the combined office of Secretary/Treasurer.
- (2) Provisions specific to the role of Secretary:
  - (a) The Secretary must be resident in Australia.
  - (b) The Secretary may also hold any other ANZOA office.
  - (c) The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.
  - (d) The Secretary must—
    - i. maintain the register of Members and other categories of association, in accordance with rule 17
    - ii. keep custody of the common seal (if any) of ANZOA and books, documents and securities of ANZOA in accordance with rules 66 and 69
    - iii. subject to the Act and these Rules, provide Members with access to the register of Members, the minutes of general meetings and other books and documents
    - iv. perform any other duty or function imposed on the Secretary by these Rules.
  - (e) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.
- (3) Provisions specific to the role of Treasurer:
  - (a) The Treasurer must—
    - i. receive all moneys paid to or received by ANZOA and as necessary issue receipts for same
    - ii. ensure that all moneys received are paid into the ANZOA bank account
    - iii. make any payments authorised by the Executive Committee, or by a general meeting of Members, from ANZOA funds
    - iv. ensure cheques are signed by at least one Executive Committee member and another Member approved by the Committee.
  - (b) The Treasurer must—
    - i. ensure that the financial records of ANZOA are kept in accordance with the Act
    - ii. co-ordinate the preparation of the financial statements of ANZOA and their certification by the Executive Committee prior to their submission to the annual general meeting of ANZOA.
  - (c) The Treasurer must also ensure that at least one other Executive Committee member has access to the accounts and financial records of ANZOA.

## DIVISION 3—ELECTION OF EXECUTIVE COMMITTEE MEMBERS AND TENURE OF OFFICE

### **35 Who is eligible to be an Executive Committee member?**

- (1) Any financial Member of ANZOA is eligible to be an Executive Committee member.

### **36 Positions to be declared vacant**

- (1) After the annual report and financial statements have been received, the chairperson of the annual general meeting must declare all positions on the Executive Committee vacant and hold elections for those positions in accordance with rule 37.

### **37 Executive Committee nominations**

- (1) All nominations for positions on the Executive Committee shall be
  - (a) made in writing on the form provided by the Secretary/Treasurer
  - (b) signed by two other ANZOA Members
  - (c) accompanied by the written consent of the candidate, and
  - (d) delivered to the Secretary/Treasurer not less than 14 days before the date fixed for the holding of the AGM.
- (2) A candidate may be nominated for more than one Executive Committee position, but (except for the Secretary) cannot hold more than one position.
- (3) Positions on the Executive Committee shall be filled in the order in which they are listed in the AGM agenda.
- (4) If insufficient nominations are received to fill all vacancies on the Executive Committee, the candidates nominated shall be deemed to be elected, and further nominations may be received at the AGM.
- (5) If the number of nominations received is equal to the number of vacancies, the persons nominated shall be deemed to be elected.
- (6) If the number of nominations exceeds the number of vacancies, a ballot must be held at the AGM, in such a manner as the Executive Committee may direct, provided that the decision on the election of all Committee members shall be made by Members.
- (7) On his or her election, the new Chair may take over as chairperson of the meeting.

### **38 Term of office**

- (1) Subject to subrule (3) and rule 39:
  - (a) The Chair is elected for a two-year term.
  - (b) All other Executive Committee members hold office until the positions of the Committee are declared vacant at the next annual general meeting.
- (2)
  - (a) The Chair elected under 38(1)(a) may be elected for two consecutive terms.
  - (b) The members elected under 38(1)(b) may be re-elected with no limit on terms.
- (3) A general meeting of ANZOA may—
  - (a) by special resolution remove an Executive Committee member from office
  - (b) elect an eligible Member of ANZOA to fill the vacant position in accordance with this Division.
- (4) A Member who is the subject of a proposed special resolution under subrule (3)(a) may make representations in writing to the Chair or Secretary/Treasurer of ANZOA (not exceeding a reasonable length) and may request that the representations be provided to the Members of ANZOA.
- (5) The Chair or Secretary/Treasurer may give a copy of the representations to each Member of ANZOA or, if they are not so given, the Member may require that they be read out at the meeting at which the special resolution is to be proposed.

### **39 Vacation of office**

- (1) An Executive Committee member may resign from the Committee by written notice addressed to the Committee.
- (2) A person ceases to be an Executive Committee member if he or she—
  - (a) ceases to be a Member of ANZOA, or
  - (b) fails to attend three consecutive Committee meetings (other than special or urgent Committee meetings) without leave of absence under rule 49, or
  - (c) otherwise ceases to be a Committee member by operation of section 78 of the Act.

### **40 Filling casual vacancies**

- (1) The Executive Committee may appoint an eligible Member of ANZOA to fill a position on the Committee that—
  - (a) has become vacant under rule 39, or
  - (b) was not filled by election at the last annual general meeting.
- (2) If the position of Secretary/Treasurer becomes vacant, the Executive Committee must appoint a Member to the position within 14 days after the vacancy arises.
- (3) Rule 38 applies to any Committee member appointed by the Executive Committee under subrule (1) or (2).
- (4) The Executive Committee may continue to act despite any vacancy in its membership.

## **DIVISION 4—MEETINGS OF EXECUTIVE COMMITTEE**

### **41 Meetings of Executive Committee**

- (1) The Executive Committee must meet at least three times in each year at the dates, times and places determined by the Committee.
- (2) The date, time and place of the first Executive Committee meeting must be determined by the Committee members as soon as practicable after the annual general meeting of ANZOA at which the Committee members were elected.
- (3) Special Executive Committee meetings may be convened by the Chair, or by any four Committee members.

### **42 Notice of meetings**

- (1) Notice of each Executive Committee meeting must be given to each Committee member no later than seven days before the date of the meeting.
- (2) Notice may be given of more than one Executive Committee meeting at the same time.
- (3) The notice must state the date, time and place of the meeting.
- (4) If a special Executive Committee meeting is convened, the notice must include the general nature of the business to be conducted. The only business that may be conducted at the meeting is the business for which the meeting is convened.

### **43 Urgent meetings**

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with rule 42 provided that as much notice as practicable is given to each Executive Committee member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the Executive Committee.
- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

#### **44 Procedure and order of business**

- (1) The procedure to be followed at a meeting of an Executive Committee shall be determined from time to time by the Committee.
- (2) The order of business may be determined by the Committee members present at the meeting.
  - (a) At meetings of the Executive Committee, the Chair presides.
  - (b) If the Chair is absent, or is unable to preside, the Committee members present must choose one of their number to preside.

#### **45 Quorum**

- (1) The quorum for an Executive Committee meeting is the presence (in person or as allowed under rule 65) of a majority of the Committee members holding office.
- (2) If a quorum is not present within 30 minutes after the notified commencement time of an Executive Committee meeting, the meeting may continue and discussion may take place, but no decisions may be made.

#### **46 Voting**

- (1) On any question arising at an Executive Committee meeting, each Committee member present at the meeting has one vote.
- (2) A motion is carried if a majority of Executive Committee members present at the meeting vote in favour of the motion.
- (3) Subrule (2) does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the Executive Committee.
- (4) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted at an Executive Committee meeting.

#### **47 Conflict of interest**

- (1) An Executive Committee member who has a material personal interest in a matter being considered at a Committee meeting must disclose the nature and extent of that interest to the Executive Committee.
- (2) The Committee member—
  - (a) must not be present while the matter is being considered at the meeting
  - (b) must not vote on the matter.
- (3) This rule does not apply to a material personal interest—
  - (a) that exists only because the member belongs to a class of persons for whose benefit ANZOA is established, or
  - (b) that the member has in common with all, or a substantial proportion of, the Members of ANZOA.

#### **48 Minutes of meeting**

- (1) The Executive Committee must ensure that minutes are taken and kept of each Committee meeting.
- (2) The minutes must record the following—
  - (a) the names of the members in attendance at the meeting
  - (b) the business considered at the meeting
  - (c) any resolution on which a vote is taken and the result of the vote
  - (d) any actions arising from the meeting
  - (e) any material personal interest disclosed under rule 47.



#### **49 Leave of absence**

- (1) The Executive Committee may grant a Committee member leave of absence from Committee meetings for a period not exceeding three months.
- (2) The Executive Committee must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Committee member to seek the leave in advance.

## **PART 6—FINANCIAL MATTERS**

### **50 Source of funds**

- (1) The funds of ANZOA may be derived from joining fees, annual subscriptions, donations, fund-raising activities, conferences, seminars, grants, interest and any other sources approved by the Executive Committee.

### **51 Management of funds**

- (1) ANZOA must have an account with a financial institution from which all expenditure of ANZOA is made and into which all of ANZOA's revenue is deposited.
- (2) Subject to any restrictions imposed by a general meeting of ANZOA, the Executive Committee may approve expenditure on behalf of ANZOA.
- (3) The Executive Committee may authorise the Secretary/Treasurer to expend funds on behalf of ANZOA (including by electronic funds transfer) up to a specified limit without requiring approval from the Committee for each item on which the funds are expended.
- (4) Cheques must be signed by at least one Executive Committee member and another Member approved by the Committee.
- (5) Drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by two Executive Committee members.
- (6) ANZOA funds must be deposited into ANZOA's bank account no later than five working days after receipt.
- (7) With the approval of the Executive Committee, the Secretary/Treasurer may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

### **52 Financial records**

- (1) ANZOA must keep financial records that—
  - (a) correctly record and explain its transactions, financial position and performance
  - (b) enable financial statements to be prepared as required by the Act.
- (2) ANZOA must retain the financial records for seven years after the transactions covered by the records are completed.
- (3) The Secretary/Treasurer must keep in his or her custody, or under his or her control—
  - (a) the financial records for the current financial year
  - (b) any other financial records authorised by the Executive Committee.

### **53 Financial statements**

- (1) With total annual revenue of less than \$250,000, ANZOA is a tier one association under the Act.
- (2) For each financial year, the Executive Committee must ensure that the following requirements under the Act relating to the financial statements for tier one associations are met—
  - (a) preparation of the financial statements
  - (b) certification of the financial statements by the Committee
  - (c) submission of the financial statements to the annual general meeting of ANZOA
  - (d) lodgement with the Registrar of the financial statements and accompanying annual statement, submission of financial statements to AGM statement, Committee certification (Schedule 1 Form 1) and fee, within one month of the date of the annual general meeting.

## **PART 7—DISCIPLINARY ACTION AND GRIEVANCE PROCEDURE**

### **DIVISION 1—DISCIPLINARY ACTION**

#### **54 Grounds for taking disciplinary action**

- (1) ANZOA may take disciplinary action against a Member in accordance with this Division if it is determined that the Member—
  - (a) has failed to comply with these Rules, or
  - (b) refuses to support the purposes of ANZOA
  - (c) has engaged in conduct prejudicial to ANZOA, or
  - (d) has refused, or failed, to take action to redress the action/s that led to consideration of disciplinary action.

#### **55 Notices to Member**

- (1) Before any disciplinary action is taken against a Member by ANZOA, the Secretary/Treasurer must give written notice to the Member outlining the grounds for concern and inviting the Member to address the situation within a reasonable timeframe.
- (2) Where the Member does not respond, or responds but does not address the concerns to the satisfaction of the Executive Committee, the Secretary/Treasurer shall give a second notice in writing—
  - (a) stating that ANZOA proposes to take disciplinary action against the Member
  - (b) stating the grounds for the proposed disciplinary action
  - (c) specifying the date, place and time of the meeting at which a disciplinary subcommittee is scheduled to consider the disciplinary action (the disciplinary meeting)
  - (d) advising the Member that he or she may do one or both of the following—
    - i. attend the disciplinary meeting and address the disciplinary subcommittee at that meeting
    - ii. give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting
  - (e) setting out the Member's appeal rights under rule 58.
- (3) The notice of disciplinary action must be given no earlier than 28 days and no later than 14 days before the disciplinary meeting is held.

#### **56 Disciplinary subcommittee**

- (1) If the Executive Committee is satisfied that there are sufficient grounds for taking disciplinary action against a Member, the Committee must appoint a disciplinary subcommittee of three to hear the matter and determine what action, if any, to take against the Member.
- (2) The members of the disciplinary subcommittee—
  - (a) may be Executive Committee members, other Members of ANZOA or anyone else
  - (b) must not be biased against, or in favour of, the Member concerned.

#### **57 Decision of subcommittee**

- (1) At the disciplinary meeting, the disciplinary subcommittee must—
  - (a) give the Member an opportunity to be heard
  - (b) consider any written statement submitted by the Member.
- (2) After complying with subrule (1), the disciplinary subcommittee may—
  - (a) take no further action against the Member, or

- (b) subject to subrule (3)—
  - i. reprimand the Member, or
  - ii. suspend the Membership rights of the Member for a specified period, or
  - iii. expel the Member from ANZOA.
- (3) The disciplinary subcommittee may not fine the Member.
- (4) The suspension of Membership rights or the expulsion of a Member by the disciplinary subcommittee under this rule takes effect immediately after the sub-committee makes its decision.

## **58 Appeal rights**

- (1) A person whose Membership rights have been suspended or who has been expelled from ANZOA under rule 57 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
  - (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken, or
  - (b) to the Secretary/Treasurer not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Executive Committee as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (4) The Executive Committee must appoint a disciplinary appeal subcommittee of three, the members of which—
  - (a) may be Executive Committee members, other Members of ANZOA or other suitably qualified persons
  - (b) cannot have been part of the disciplinary sub-committee which originally heard the matter
  - (c) must not be biased against, or in favour of, the Member concerned.
- (5) Notice of the disciplinary appeal meeting must be given to each Member of ANZOA who is entitled to vote as soon as practicable and must—
  - (a) specify the date, time and place of the meeting
  - (b) state—
    - i. the name of the person against whom the disciplinary action has been taken
    - ii. the grounds for taking that action
    - iii. that at the disciplinary appeal meeting the Members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

## **59 Conduct of a disciplinary appeal meeting**

- (1) At a disciplinary appeal meeting—
  - (a) no business other than the question of the appeal may be conducted
  - (b) the Executive Committee must state the grounds for suspending or expelling the Member and the reasons for taking that action
  - (c) the person whose Membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the Members present and entitled to vote at the meeting must vote on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A Member may not vote by proxy at the meeting.
- (4) The decision is upheld if not less than three-quarters of the Members voting at the meeting vote in favour of the decision.

## DIVISION 2—GRIEVANCE PROCEDURE

### 60 Application

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
  - (a) a Member and another Member in relation to an ANZOA-related matter
  - (b) a Member and the Executive Committee in relation to an ANZOA-related matter
  - (c) a Member and ANZOA.
- (2) A Member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

### 61 Parties must attempt to resolve the dispute

- (1) The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

### 62 Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 61, the parties must within 10 days—
  - (a) notify the Executive Committee of the dispute and its relevance to ANZOA
  - (b) agree to or request the appointment of a mediator
  - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
  - (a) a person chosen by agreement between the parties, or
  - (b) in the absence of agreement—
    - i. if the dispute is between a Member and another Member—a person appointed by the Executive Committee, or
    - ii. if the dispute is between a Member and the Executive Committee or ANZOA—a person appointed or employed by the Dispute Settlement Centre of Victoria, or an equivalent body in another jurisdiction as agreed between the parties.
- (3) A mediator appointed by the Executive Committee may be a Member or former Member of ANZOA but in any case must not be a person who—
  - (a) has a personal interest in the dispute, or
  - (b) is biased in favour of or against any party.

### 63 Mediation process

- (1) The mediator to the dispute, in conducting the mediation, must—
  - (a) give each party every opportunity to be heard
  - (b) allow due consideration by all parties of any written statement submitted by any party
  - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the dispute.

### 64 Failure to resolve dispute by mediation

- (1) If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **PART 8—GENERAL MATTERS**

### **65 Meetings by electronic means**

- (1) If—
  - (a) an Executive Committee meeting or a general meeting of ANZOA Members is convened electronically (i.e. by teleconference, closed circuit television or other electronic means), and all Members who are entitled to receive the notice of the meeting receive that notice and have access to the means by which the meeting is to take place, and
  - (b) each of the participants in the meeting is able to hear each of the other participants, then—
  - (c) all the provisions of these Rules relating to Executive Committee meetings and general meetings shall apply to the meeting as if the participants were physically present together, and any resolution passed by such meeting shall be deemed to have been passed at an Executive Committee meeting or a general meeting (as the case may be) held on the day on which and at the time at which the meeting convened electronically was held.
- (2) All participants in the meeting shall be made known to all the other participants, and no participant may disconnect or cease to have access to their means of communication or otherwise cease to take part in the meeting unless they make known to all other participants that they are ceasing to take part. Until that occurs, they shall be deemed to be present and, if they are Members, to form part of the quorum.

### **66 Common seal**

- (1) ANZOA may have a common seal.
- (2) If ANZOA has a common seal—
  - (a) the name of ANZOA must appear in legible characters on the common seal
  - (b) a document may only be sealed with the common seal by the authority of the Executive Committee and the sealing must be witnessed by the signatures of two Committee members
  - (c) the common seal must be kept in the custody of the Secretary/Treasurer.

### **67 Registered address**

- (1) The registered address of ANZOA is—
  - (a) the address determined from time to time by resolution of the Executive Committee, or
  - (b) if the Executive Committee has not determined an address to be the registered address—the postal address of the Secretary/Treasurer.

### **68 Notice requirements**

- (1) Any notice required to be given to a Member or an Executive Committee member under these Rules may be given—
  - (a) by handing the notice to the Member personally, or
  - (b) by sending it by post to the Member at the address recorded for the Member in the register of Members, or
  - (c) by email or facsimile transmission.
- (2) Subrule (1) does not apply to notice given under rule 58.
- (3) Any notice required to be given to ANZOA or the Executive Committee may be given—
  - (a) by handing the notice to a Committee member, or
  - (b) by sending the notice by post to the registered address, or
  - (c) by leaving the notice at the registered address, or

- (d) if the Executive Committee determines that it is appropriate in the circumstances—
  - i. by email to the email address of ANZOA or the Secretary/Treasurer, or
  - ii. by facsimile transmission to the facsimile number of ANZOA.

## **69 Custody and inspection of books and records**

- (1) Members may on request inspect free of charge—
  - (a) the register of Members
  - (b) the minutes of general meetings
  - (c) subject to subrule (2), the financial records, books, securities and any other relevant document of ANZOA, including minutes of Executive Committee meetings.
- (2) The Executive Committee may refuse to permit a Member to inspect records of ANZOA that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of ANZOA.
- (3) The Executive Committee must on request make copies of these rules available to Members and applicants for Membership free of charge.
- (4) Subject to subrule (2), a Member may make a copy of any of the other records of ANZOA referred to in this rule and ANZOA may charge a reasonable fee for provision of a copy of such a record.
- (5) For purposes of this rule—  
relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of ANZOA and includes its Membership records, its financial statements, its financial record and records and documents relating to transactions, dealings, business or property of ANZOA.

## **70 Winding up and cancellation**

- (1) ANZOA may be wound up voluntarily by special resolution.
- (2) If upon the winding-up or dissolution of ANZOA in accordance with the Act, and after satisfaction of all its debts and liabilities, there remains any property whatsoever, the same shall be paid to or distributed to a charitable institution and/or a society, association or club which is not carried on for the purposes of profit or gain to its individual Members and is established for community services purposes.
- (3) The liability of Members is limited.
- (4) Each Member undertakes that in the event that ANZOA is wound up during the currency of the Member's Membership or within one year of the Member ceasing Membership, he/she will contribute to the property of ANZOA for:
  - (a) payment of the debts and liabilities of ANZOA incurred before he/she ceased to be a Member
  - (b) the costs, charges and expenses of winding up
  - (c) an adjustment of the rights of the contributories among themselves and
  - (d) such other amount as may be required,
  - (e) provided the sum of the amounts payable under paragraphs (a), (b), (c) and (d) shall not exceed one hundred dollars (\$100).
- (5) Associates, Affiliates and Fellows shall have no liability for costs in the event of the winding up of ANZOA.
- (6) The body to which the surplus assets are to be given must be decided by special resolution.

## **71 Alteration of Rules**

- (1) These Rules may only be altered by special resolution of a general meeting of ANZOA.

## SCHEDULE 1: CRITERIA

### (A) INTRODUCTION

The core role of an Ombudsman is to investigate and resolve, determine or make recommendations with regard to complaints against those whom the Ombudsman is empowered to investigate by the exercise of powers and in accordance with procedures described in these criteria.

The term Ombudsman should only be used if six key criteria are met. Those criteria are independence of the Ombudsman from those whom the Ombudsman has the power to investigate, accessibility, fairness, public accountability, effectiveness and efficiency.

For the purposes of determining ANZOA Membership, ANZOA will take into account whether an applicant constitutes a 'competing Ombudsman' to an existing Ombudsman (who is also an existing Member of ANZOA).

The decision as to whether the applicant is a 'competing Ombudsman' or an 'overlapping Ombudsman' will be based on a consideration of all the information provided by the applicant, any information otherwise available to ANZOA and in all of the circumstances. This factor will be considered in determining whether an applicant should be accepted by ANZOA. Any such decision will solely be made by the ANZOA Executive.

Ombudsmen maintain offices staffed by appropriately qualified staff to assist in the discharge of their functions, under delegation.

Detailed criteria which should, in the longer term, be achieved by all recognised ombudsmen and their offices are all set out in part B. While the criteria are based largely on the *Benchmarks for Industry-Based Customer Dispute Resolution (CDR Benchmarks)*, they also incorporate criteria considered important by the Association, such as the office being not-for-profit.

Given the considerable range of Ombudsman offices in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability, the detailed criteria need to be interpreted with sufficient flexibility to encompass those variations.

Independence, for example, may be achieved in several ways. Hence, in the private sector the body which appoints the Ombudsman and to whom the Ombudsman reports, can be regarded as independent, provided that representatives of organisations subject to the Ombudsman's jurisdiction constitute minority representation on it.

Initially recognition of existing offices will be dependent on whether, broadly speaking, they meet the key criteria; it will not be withheld if, in some respects, the detailed criteria are not met. However, over time it is expected that the constitution of all offices would be developed to the extent necessary to meet the detailed criteria. For example, in the longer term the power by those subject to investigation to veto the proposed appointment or reappointment of an Ombudsman should, where it exists, be removed.

In due course, it is expected that in the private sector all, or virtually all, businesses in an industry with an Ombudsman office should participate in that external dispute resolution arrangement even though in the short term, especially when an Ombudsman office is first established, a lesser number of businesses may participate.



The decision as to whether an Ombudsman or their office is recognised as meeting these key criteria will be made by the Executive Committee. The Executive Committee will also consider according to the rules which ombudsmen or their offices meet the detailed criteria in full and which do not. In respect of the latter, the Executive Committee will in due course review its initial recognition, when requested to do so, having regard to the extent to which progress has been achieved towards meeting the detailed criteria in full.

## **(B) DETAILED CRITERIA**

### **1. ACCESSIBILITY**

#### **Principle**

The office makes itself readily available to customers/constituents by promoting knowledge of its services, being easy to use and having no cost barriers.

#### **Purpose**

To promote access to the office on an equitable basis

#### **Key Practices**

##### **Awareness/Promotion**

- 1.1 The office seeks to ensure that those in the community who may require its services are aware of its existence.
  - 1.2 The office promotes its services in the media or by other means.
  - 1.3 The office produces readily available material in simple terms explaining:
    - a) how to access the office
    - b) how the office works
    - c) the major areas with which the office deals, and
    - d) any limits on the office's powers.
  - 1.4 The office requires participating organisations to inform customers/constituents about the office. This may include providing information at the point of service (for example, in displays or brochure stands), in contracts, codes of practice and customer service charters, on websites and in newsletters and correspondence forwarded to customers/constituents.
  - 1.5 The office ensures that information about its services, procedures and scope is made available to customers/constituents by participating organisations when the participating organisation responds to a complaint.
  - 1.6 The office also ensures that this information is made available by participating organisations:
    - a) when customers/constituents are not satisfied in whole or in part with the outcome of the internal complaints mechanism<sup>3</sup> of a participating organisation
    - b) when the participating organisation refuses to deal with a complaint, or
    - c) when a reasonable time has passed for the participating organisation to resolve a complaint, and the complaint remains unresolved, whichever first occurs.
  - 1.7 The office promotes its services in such a way as to be sensitive to and inclusive of customers/constituents with particular requirements, including those experiencing disadvantage. This includes making information available in appropriate languages, and in alternative formats such as large text and audio.
  - 1.8 The office focuses its promotion efforts on areas where a customer is likely to seek information in the event of a dispute; for example, the websites of consumer agencies and advocacy services.
-

## **Access**

- 1.9 The office seeks to ensure access to any person who may require its services.
- 1.10 The office provides appropriate facilities and assistance to enable participation by complainants across the community, including those with particular requirements and those experiencing disadvantage. This includes allowing contact in a range of modes (in person, by telephone, telephone typewriter, fax, email or online), providing interpreter services, providing text in simplified English and/or available in large print format.
- 1.11 Complainants can make initial contact with the office orally or in writing.
- 1.12 There are arrangements for participating organisations to refer a complaint to the office in appropriate circumstances.
- 1.13 The jurisdiction of the office is expressed clearly.
- 1.14 The office seeks to minimise any 'virtual barriers' to complainants, for example, by providing 24-hour contact options such as an online complaint form.

## **Cost**

- 1.15 There is no application or other fee or charge required from a complainant before a complaint is dealt with by the office, or at any stage in the process.

## **Staff Assistance**

- 1.16 The office's staff have the ability to handle complaints and are provided with adequate training in complaints handling.
- 1.17 The office's staff explain to complainants in simple terms:
  - a) how the office works
  - b) the major areas it deals with
  - c) any limits on its powers, and
  - d) the timelines applicable to each of the processes in the office.
- 1.18 The office's staff assist complainants to make a complaint, where complainants need assistance to do so.

## **Use**

- 1.19 The office's processes are simple to understand and easy to use.
- 1.20 The office provides for a complainant's case to be presented verbally or in writing, at the discretion of the decision-maker.
- 1.21 The office provides for complainants to be supported by another person at any stage in the office's processes where necessary.

## **Acceptance by Office**

- 1.22 The office assesses complaints received for timely and appropriate action: for referral to an alternative avenue for justice, or a regulator; for liaison where there may be an overlap in jurisdiction with another dispute resolution office; or for acceptance as a case by the office.
- 1.23 The office follows a defined and transparent process for excluding potentially vexatious or frivolous complaints to ensure appropriate use of the office's resources and minimise the risk of unreasonable cost increases.

## **Non-adversarial Approach**

- 1.24 The office uses appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.
- 1.25 The office provides for informal proceedings which discourage a legalistic, adversarial approach at all stages in the office's processes.

### **Legal or other Representation**

- 1.26 Parties should not be prohibited from having a support person in attendance.
- 1.27 Legal representation will generally only be allowed with the permission of the office. Unless legal representation is required, having regard to the nature of the dispute and issues involved, it will generally be discouraged by the office.
- 1.28 Where an office agrees to one party being legally represented:
- a) the office will provide the opportunity for the other party to be legally represented, and
  - b) the office will require the participating organisation to pay the legal costs of complainants where the participating organisation is the first party to be legally represented.

### **Legal Proceedings**

- 1.29 A participating organisation will not commence legal proceedings before a court, tribunal or other forum in respect of a complaint before an office, except in special circumstances. Special circumstances may include:
- a) where the legal limitations period for bringing legal proceedings is about to expire, and
  - b) where the complaint is to be used as a test case in legal proceedings.

## **2. INDEPENDENCE**

### **Principle**

The decision-making process and administration of the office are independent from participating organisations.

### **Purpose**

To ensure that the processes and decisions of the office are objective and unbiased, and are seen to be objective and unbiased

### **Key Practices**

#### **The Ombudsman**

- 2.1 The Ombudsman is responsible for the determination of complaints.
- 2.2 The Ombudsman is appointed to the office for a fixed term, of sufficient duration so as not to undermine independence.
- 2.3 The method of appointment should be a matter of public knowledge.
- 2.4 The appointment must not be subject to premature termination, other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from office to office. Those under the Ombudsman's jurisdiction should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude their minority representation on the body that is authorised to terminate.
- 2.5 The remuneration of the Ombudsman should not be subject to suspension, or reduction, by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.
- 2.6 The Ombudsman is not selected directly by participating organisations and is not answerable to participating organisations for determinations.
- 2.7 The independence of the Ombudsman is not compromised by any current or previous employment or similar relationship, or other actual or perceived conflict between the role of Ombudsman and any other role or activity. For example:
- a. the Ombudsman must have no current employment or similar relationship with a participating organisation or relevant consumer representative organisation
  - b. the Ombudsman must have no other avoidable relationship, outside the role of Ombudsman,

with a participating organisation or relevant consumer representative organisation.

Where the Ombudsman has a previous employment or other similar relationship with a participating organisation or relevant consumer representative organisation then, as a general rule, the Ombudsman will be precluded from Membership of ANZOA for a period of three years from the time that the employment or similar relationship or other actual or perceived conflict of interest ended ('the exclusion period'). A shorter or longer exclusion period may be warranted in some circumstances, having regard to:

- a. the nature, including seniority, of the previous employment or similar relationship or other actual or perceived conflict of interest
- b. the time that has passed since the employment or similar relationship or other actual or perceived conflict of interest ended
- c. any other relevant matter.

### **Staff**

2.8 The Ombudsman office selects its own staff. Office staff are not answerable to participating organisations for the operation of the office.

### **Overseeing Entity**

2.9 There is a separate entity set up formally to oversee the independence of the office's operation.

2.10 Where the office is established as a company, the overseeing entity must have a balance of consumer, industry and, where relevant, other key stakeholder interests involved in governance.

2.11 Representatives of consumer interests on the overseeing entity must be:

- a) capable of reflecting the viewpoints and concerns of consumers, and
- b) be a person in whom consumers and consumer organisations have confidence.

2.12 As a minimum the functions of the overseeing entity should include:

- a) appointing or dismissing the decision-maker
- b) making recommendations for or approving the office's budget
- c) receiving complaints about the operation of the office
- d) recommending and being consulted about any changes to the office's jurisdiction
- e) receiving regular reports about the operation of the office, and
- f) receiving information about systemic problems.

### **Transparency**

2.13 The office manages any actual or perceived conflicts of interest and bias in a transparent manner.

### **Funding**

2.14 The office operates on a not-for-profit basis and has sufficient funding to enable its caseload and other relevant functions to be handled in accordance with these Benchmarks.

### **Terms of Reference**

2.15 Changes to jurisdiction of the office are made in consultation with relevant stakeholders, including participating organisations, industry and consumer organisations and government.

2.16 Participating organisations do not have a power or right to veto a proposed change to the jurisdiction of the office, or to significant rules and procedures of the office.

### 3: FAIRNESS

#### **Principle**

The procedures and decision-making of the office are fair and seen to be fair.

#### **Purpose**

To ensure that the office performs its functions in a manner that is fair and seen to be fair.

#### **Key Practices**

##### **Final Determinations**

- 3.1 The decision-maker bases final determinations on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

##### **Procedural Fairness**

- 3.2 The office's staff advise complainants of their right to access other redress mechanisms at any stage if they are dissatisfied with any of the office's decisions or with the decision-maker's final determination.
- 3.3 The office provides information to both parties at the same time, including timely ongoing communication on the progress of the investigation and decision.
- 3.4 Both parties can put their case to the decision-maker.
- 3.5 Both parties are told the arguments, and sufficient information to know the case of the other party.
- 3.6 Both parties have the opportunity to rebut the arguments of, and information provided by the other party.
- 3.7 Both parties are told of the reasons for any decision in writing.
- 3.8 Both parties are told of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

##### **Provision of Information to the Decision-Maker**

- 3.9 The decision-maker encourages, but cannot compel, complainants to provide information relevant to a complaint.
- 3.10 The decision-maker can demand that a participating organisation provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed, or unless it contains information which the participating organisation is prohibited by law from disclosing.

##### **Confidentiality**

- 3.11 Where a participating organisation provides information which identifies a third party, the information may be provided to the other party with deletions, where appropriate, at the discretion of the decision-maker.
- 3.12 The office ensures that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in the Benchmarks for Industry-Based Customer Dispute Resolution.

##### **Review of Decisions and Determinations**

- 3.13 The office establishes a process to review decisions and determinations for consistency and compliance, such as selective sampling and auditing of cases.

## 4: ACCOUNTABILITY

### **Principle**

The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

### **Purpose**

To ensure public confidence in the office and allow assessment and improvement of its performance and that of participating organisations

### **Key Practices**

#### **Procedures**

4.1 The office makes available to participating organisations, complainants and other interested bodies its guidelines and policies for dealing with complaints.

#### **Final Determinations**

4.2 The office makes available written reports of final determinations and the reasons for the decision to participating organisations and any interested bodies for purposes including:

- a) educating participating organisations and the community, and
- b) demonstrating consistency and fairness in decision-making.

4.3 Public reports of final determinations do not name parties involved.

#### **Responding to Complainants and Participating Organisations**

4.4 The office uses comments received from complainants and participating organisations to inform the continuous improvement of their internal processes and procedures, and to inform their public reporting.

#### **Annual Report**

4.5 The office publishes a detailed and informative annual report containing specific statistical and other data about the performance of the office, including:

##### General information

- a) a description of the jurisdiction of the office (for example, a list of participating organisations and outline of complaints that can be received)
- b) information about how the office works
- c) information about how the office ensures equitable access
- d) information about new developments or key areas in which policy or education initiatives have been undertaken or are required
- e) a list of participating organisations supporting the office, together with any changes to the list during the year, and
- f) where the office's jurisdiction permits, the names of those participating organisations which do not meet their obligations as organisations under the jurisdiction of the office.

##### Information about complaints

- g) the number and types of complaints it receives and their outcome, including information outlining the complaints received and outcomes for each of the participating organisations
- h) the time taken to resolve complaints
- i) any systemic problems arising from complaints
- j) examples of representative case studies and reports on investigations, and

- k) in appropriate cases, information about any participating organisations which do not meet their obligations.
- 4.6 The annual report is to be made public, including through distribution to participating organisations, relevant stakeholders and otherwise made available upon request.

## 5: EFFICIENCY

### **Principle**

The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

### **Purpose**

To give the community and participating organisations confidence in the office and to ensure the office provides value for its funding

### **Key Practices**

#### **Appropriate Process or Forum**

- 5.1 The office will only deal with complaints which are within its jurisdiction. The office will generally not deal with complaints that have been dealt with, or are being dealt with, by another dispute resolution forum. The office will generally only deal with complaints:
  - a) which have been considered, and not resolved to a person's satisfaction, by a participating organisation's internal dispute resolution mechanism, or
  - b) where a participating organisation has refused, or failed within a reasonable time, to deal with a complaint under its internal dispute resolution mechanism.
- 5.2 Any provision in the internal dispute resolution mechanism of a participating organisation requiring a complaint to reach a deadlock before it can be dealt with by the office must be reasonable, and must allow the office to deal with a complaint where it is clear that it has not been resolved to the satisfaction of the person making the complaint in reasonable time.
- 5.3 The office has mechanisms and procedures for referring complaints that are not within its jurisdiction to other, more appropriate, forums.
- 5.4 The office liaises with other forums where there is a complaint entailing a potential overlap in jurisdiction.
- 5.5 The office has mechanisms and procedures for dealing with systemic problems that become apparent from complaints, including by investigating these issues or referring them to relevant participating organisations, or to regulators or policy makers.
- 5.6 The office excludes vexatious and frivolous complaints, at the discretion of the decision-maker.

#### **Timeliness**

- 5.7 The office considers timeliness in all of its processes and procedures, including the timeliness of acknowledging and responding to an initial complaint, time taken to investigate a complaint, and the time taken to make a decision

#### **Tracking of Complaints**

- 5.8 The office has a reasonable time limit set for each of its processes which facilitate speedy resolution without compromising quality decision-making.
- 5.9 The office has mechanisms to ensure compliance with time limits, as far as possible.
- 5.10 The office has a system for tracking the progress of complaints.
- 5.11 Office staff keep parties informed about the progress of their complaint.

### **Monitoring**

- 5.12 The office sets objective targets against which it can assess its performance.
- 5.13 The office keeps systematic records of all complaints and enquiries, their progress and their outcome.
- 5.14 The office conducts regular reviews of its performance.
- 5.15 Office staff seek periodic feedback from complainants and participating organisations about their perceptions of the performance of the office.
- 5.16 The office reports to the overseeing entity on the results of its monitoring and review.

### **Professionalism**

- 5.17 The office recruits staff with the requisite skills, qualifications and experience to perform the work efficiently.

## **6: EFFECTIVENESS**

### **Principle**

The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

### **Purpose**

To promote community confidence in the office and ensure that the office fulfils its role

### **Key Practices**

#### **Coverage**

- 6.1 The scope of the office and the powers of the decision-maker are clear.
- 6.2 The scope of the office (including the decision-maker's powers) is sufficient to deal with:
  - a) the vast majority of complaints in the relevant industry or service area and the whole of each such complaint, and
  - b) complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.
- 6.3 The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.

#### **Systemic Problems**

- 6.4 The office has mechanisms for referring systemic industry problems, based on cases brought to dispute resolution, to an appropriate regulator for action if required.
- 6.5 The office has mechanisms to determine when to bring systemic problems to the attention of policy agencies or other relevant bodies, such as industry associations.

#### **Office Performance**

- 6.6 The office has appropriately qualified staff to undertake its functions, and provides ongoing professional development and appropriate resources and processes to allow staff to effectively undertake their functions.
- 6.7 The office has procedures in place for:
  - a) receiving complaints about the office, and
  - b) where appropriate, referring complaints about the office to the overseeing entity for action.
- 6.8 The office responds to complaints and any recommendations of the overseeing entity in a timely and appropriate manner.



### **Internal Dispute Resolution Mechanisms**

- 6.9 The office requires participating organisations to set up internal dispute resolution mechanisms, and to inform those affected by the organisation's services about the mechanisms.
- 6.10 The office has the capacity to advise participating organisations about their internal dispute resolution mechanisms.

### **Compliance**

- 6.11 The office has mechanisms to encourage participating organisations to cooperate with the office, and to abide by the rules of the office.
- 6.12 Final determinations of the decision-maker that are not recommendations are binding on the participating organisation if complainants accept the determination.
- 6.13 The office has methods to mandate or improve compliance with decisions, and ensure redress for customers/constituents when a participating organisation is non-compliant with an office's final determination, decision or recommendation.

### **Periodic Independent Review**

- 6.14 The operation of the office is reviewed regularly by an independent party at set periods.
- 6.15 The review, undertaken in consultation with relevant stakeholders, includes:
  - a) the office's progress towards meeting the *Benchmarks for Industry-based Customer Dispute Resolution*
  - b) whether the scope of the office is appropriate
  - c) participating organisation and complainant satisfaction with the office
  - d) assessing whether the dispute resolution process used by the office are just and reasonable;
  - e) the degree of equitable access to the office, and
  - f) the effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.
- 6.16 The results of the review are made available to relevant stakeholders.

**SCHEDULE 2: FORM FOR APPOINTMENT OF PROXY**

I,  
(name)

of  
(address)

being a Member of the Australian and New Zealand Ombudsman Association (ANZOA)

appoint  
(name of proxy holder)

of  
(address of proxy holder)

being a Member of ANZOA, as my proxy to vote for me on my behalf at the annual/special\* general meeting of ANZOA

to be held on  
(date of meeting)

and at any adjournment of that meeting.

My proxy is authorised to vote in favour of / against\* following resolution (insert details of resolution).

Signed  
Date

\*Delete if not applicable