

Fire and Emergency New Zealand Dispute Resolution Scheme

Better Together

ANNUAL REPORT 2023 | PŪRONGO Ā-TAU

June 2023 | Hune 2023



INDEPENDENT
COMPLAINT AND
REVIEW AUTHORITY
Te Umanga Arotake Amuamu Motuhake





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Foreword | He tīmitanga kōrero



We are pleased to present this annual report to Fire and Emergency New Zealand on the dispute resolution scheme under the Fire and Emergency New Zealand Act 2017.

The Independent Complaint and Review Authority | Te Umanga Arotake Amuamu Motuhake (**ICRA**) is privileged to have the responsibility for delivery of the Fire and Emergency New Zealand Dispute Resolution Scheme under subpart 5 of Part 4 of the Fire and Emergency New Zealand Act 2017 (**Scheme**).

ICRA was established as a specialist delivery service for independent and impartial reviews of, and appeals against, decisions and determinations made by public and private sector organisations and government bodies in the exercise of their statutory powers and duties. ICRA is external to and independent of Fire and Emergency New Zealand and is widely respected as a leading provider of conflict management and alternative dispute resolution services in Aotearoa New Zealand.

Prior to engaging with the Scheme, anyone wishing to initiate a case with ICRA is required to access Fire and Emergency's internal complaints process as a prerequisite. As noted by Belinda Clark in her report 'Independent Review of FENZ's Workplace Culture and Complaint Handling Practices', Fire and Emergency made the decision to adopt a "one stop shop" approach with the establishment of the Behaviour and Conduct Office (**BCO**)

as the key vehicle for complaints handling. Despite the best of intentions, this has resulted in delay in establishing and finalising complaints management processes, leading to very long timeframes for resolving complaints.¹ The corollary of this is that the number of cases then referred to the external Scheme administered by ICRA has been very small.²

Overall, although currently underutilised, the Scheme has provided those who have accessed it with a prompt, comprehensive, effective, and efficient means of resolving their disputes. We are looking forward to continuing to deliver this Scheme to support a greater number of Fire and Emergency volunteers, members of the public and other persons that are entitled to access the Scheme with access to a prompt, independent and impartial forum for the resolution of their disputes.

Ngā mihi,

Catherine Green Director

1 Independent Review of FENZ's Workplace Culture and Complaint Handling Practices, Belinda Clark QSO, November 2022.

2 Due to the low case numbers, Fire and Emergency New Zealand requested that the period covered by this first report be extended to cover the 18-month period from the start of the Scheme on 10 December 2021 until 30 June 2023.

ABOUT US

We provide independent complaint management and review services to individuals, businesses and Government across a wide variety of sectors.

The Independent Complaint and Review Authority (**ICRA**) is a part of [The ADR Centre](#) and was established as a specialist delivery service for:

- independent and impartial reviews of, and appeals against, decisions and determinations made by public and private sector organisations and government bodies in the exercise of their statutory powers and duties; and
- independent and impartial review and auditing of intra-organisational and extra-organisational B2B and B2C complaints processes, procedures and outcomes.

Year in Review

Applications to access the Scheme

As noted previously, only a small number of applications have been received to date. This has been due to the establishment of the Behaviour and Conduct Office (BCO) and its broad remit. Any potential applicant to the Scheme is required first to access that internal complaint management process before any application to the Scheme administered by ICRA may be made (or accepted).

To date, only six applications have been received. All applications were received from Fire and Emergency volunteers, and all those applications were accepted by the Scheme Administrator with no applications refused.

APPLICATIONS TO ACCESS THE SCHEME

10 Dec 21 to 30 Jun 23	Initiated by volunteer	Initiated by member of the public	Total
Applications received	6	0	6
Applications accepted	6	0	6
Applications rejected	0	0	0

Year in Review Applications to access the Scheme

Process selection

Under rule 20 of Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2020 (**Scheme Rules**), the applicant can select their preferred dispute resolution process option. They can choose from facilitation, mediation or adjudication (including fast-track adjudication where the resolution of a matter is time-critical).

Mediation and facilitation are less formal processes. Our mediators and facilitators are skilled, experienced, impartial, and independent professionals. They are not an adviser or advocate for anyone involved in the dispute. They are there to manage the negotiation process and guide and assist the parties without giving advice, expressing opinions or making decisions. They will help the parties to identify and explore issues to be resolved and options for resolution, but ultimately the power to settle the dispute, and on what terms is in the parties' hands.

Adjudication is a more formal determinative process. It allows the parties to put their case to an independent third party (the adjudicator), and the adjudicator will make a decision on the dispute. The adjudicator's decision is binding, which means the parties must comply with it (subject to limited review and appeal rights). A party may also apply for fast-track adjudication if the dispute is time-critical and urgent resolution is required.

Although it is a small sample, to date, four applicants have chosen adjudication, and two have chosen mediation as their preferred process option. No requests for facilitation or fast-track adjudication have been received.

PROCESS SELECTED BY APPLICANT

- Facilitation 0%
- Fast Track Adjudication 0%
- Mediation 33%
- Adjudication 67%



Year in Review Applications to access the Scheme

Case status

Of the cases initiated to date, two have been completed (one mediation and one adjudication), two have been withdrawn by the applicants (both applicants had selected adjudication) and two (one mediation and one adjudication) remain open in terms of rule 34 of the Scheme Rules.

Time taken to resolve cases

ICRA has met all contractual timeliness KPIs for completing cases in the period between 1 November 2021 and 30 June 2023.

Of the cases completed to date:

- The time taken to resolve the mediation case was 44 business days. This was the earliest possible date that both the applicant and the applicant’s advocate were available, and the mediation was delayed to accommodate their availability.
- The time taken to resolve the adjudication case was 86 business days. This case was procedurally complex, requiring five case management conferences. This can be compared with a typical case which would require only one case management conference.

CASES STATUS

- Mediation completed
- Adjudication completed
- Withdrawn
- Case Open

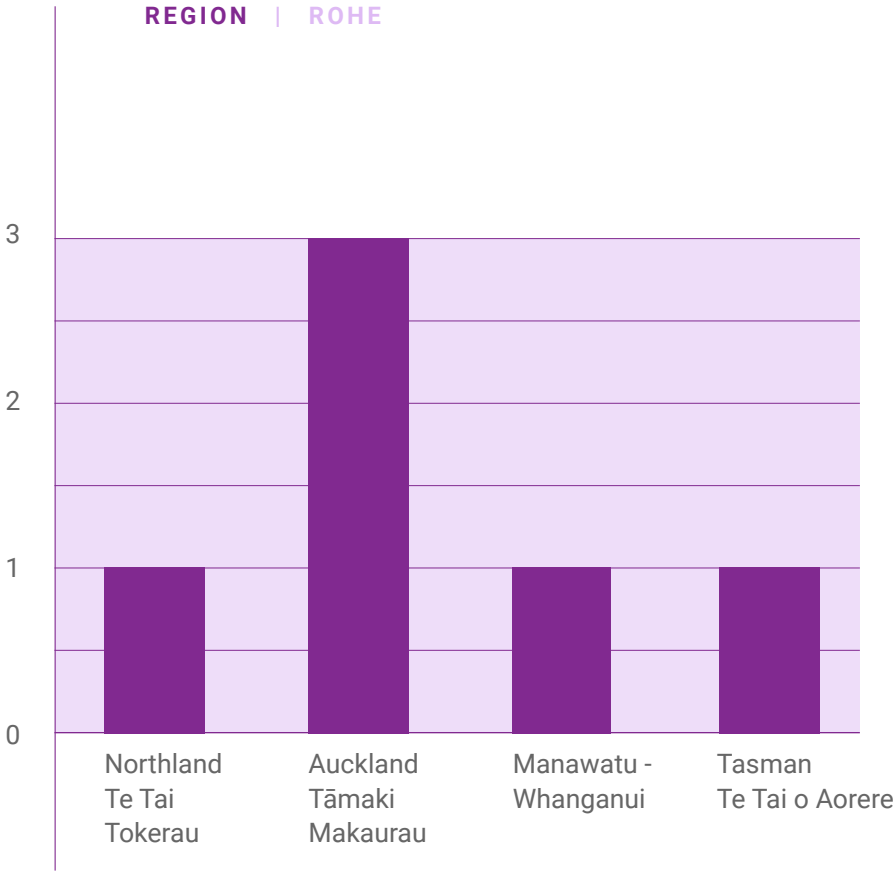


Year in Review Applications to access the Scheme

Who is accessing the Scheme?

The Scheme is available to both volunteer firefighters and members of the public. The parties who accessed the Scheme in the period between 1 November 2021 and 30 June 2023 were all volunteer firefighters.

The applicants came from across Aotearoa New Zealand, with applications from Northland | Te Tai Tokerau (one), Auckland | Tāmaki Makaurau (three), Manawatu-Whanganui (one), and Tasman | Te Tai o Aorere (one).



Year in Review Applications to access the Scheme

The nature of the disputes

Of the six applications to date, five cases involved allegations of bullying, harassment or unfair treatment and one concerned a review of a disciplinary decision.

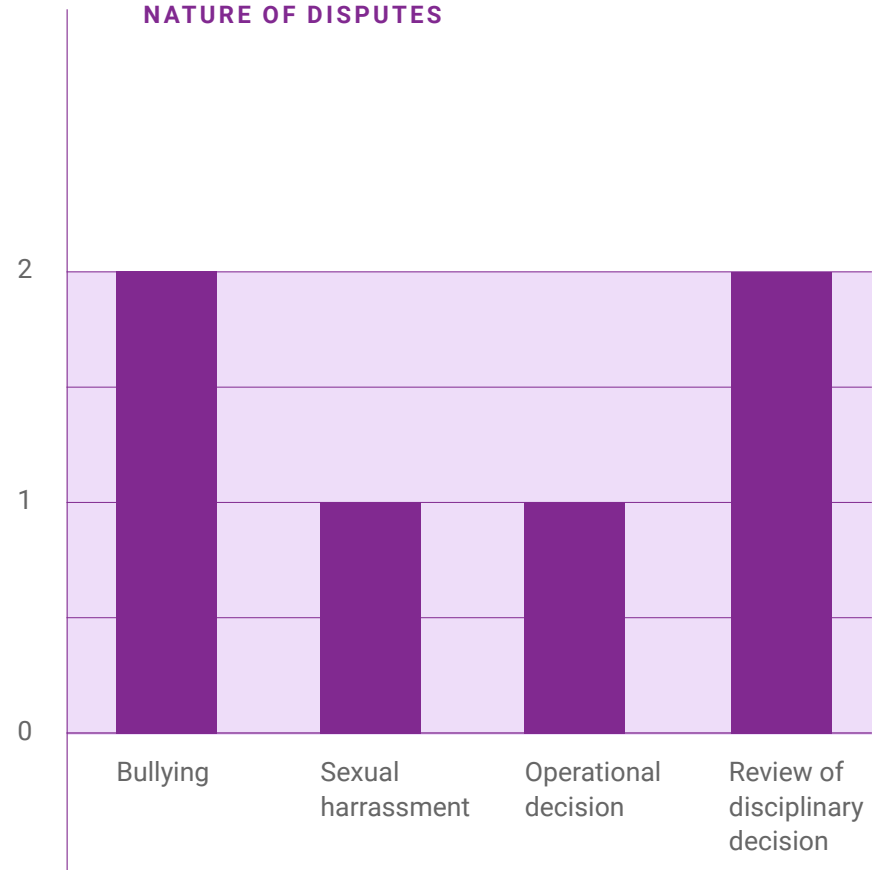
Systemic issues, breach reporting and recommendations

Unsurprisingly given the low number of cases, no systemic issues were identified during the dispute resolution processes.

There were no breaches of the Scheme Rules by Fire and Emergency New Zealand or Fire and Emergency New Zealand personnel.

There were no recommendations made by adjudicators to Fire and Emergency New Zealand under rule 37 of the Scheme Rules as to actions that it should take to prevent similar problems occurring in the future.

NATURE OF DISPUTES



CASE STUDIES

Adjudication ICR22-0707131

The applicant, a former volunteer firefighter, applied to ICRA for the review of a determination that had been issued under the interim dispute resolution scheme in operation before the Scheme came into effect on 10 December 2021. The applicant was not satisfied with the outcome of that determination. The applicant was seeking a full rehearing of the complaints made and an award of costs of \$15,000.

Based on the materials presented, it was not clear whether the previous determination had addressed all the complaints the applicant was raising, or whether there were new complaints. The application was accepted by ICRA and an adjudicator was appointed. The adjudicator indicated to the parties that a preliminary issue had to be resolved before any hearing could take place. That was whether the applicant was raising new complaints, or simply wanted to “appeal” the determination and have the same complaints heard again. The adjudicator asked the parties to file submissions on this issue.

After consideration of the submissions filed, the adjudicator issued a Procedural Ruling as to Jurisdiction, determining that there was no jurisdiction to hear the complaints raised by the applicant

as they had already been decided in the determination. There were no fresh complaints that required determination by the adjudicator. The application was concluded and no award of costs was made.

CASE STUDIES

Mediation ICR23-0108483

The applicant, a former volunteer firefighter, applied to ICRA for a review of their dismissal from a volunteer fire brigade. A number of complaints were made against the applicant by members of the applicant's brigade which were sent to the Behaviour and Conduct Office (BCO). The BCO then referred the complaints back to the applicant's District Manager to investigate.

The investigation by the District Manager resulted in the applicant being dismissed from the brigade. The applicant questioned the impartiality of the investigation carried out by the District Manager and alleged breach of natural justice. The applicant claimed that the complaints ought to have been investigated by the BCO and that an independent decision-maker should have been engaged. The applicant opted to mediate the matter. The application was accepted by ICRA and a mediator was appointed.

The parties proceeded to mediation where it was agreed that the BCO would undertake a review of the District Manager's investigation against and subsequent dismissal of the applicant. It was agreed that if the review of the investigation found that the investigation was carried out properly and the decision

of the District Manager was correct, the applicant would be given the option to resign. In the event that the investigation against the applicant was found to be unjustified, the applicant was to be reinstated and the applicant's service was to be treated as continuous.

Findings of independent review

There was no independent review completed during the reporting period.

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