

Comparison of April/May 2019 consultation document proposals to consultation version of the Rules

What the discussion document said with respect to Rules

“This document covers the main elements of the Scheme design as well as the key Rules that the Scheme will operate under. More detailed Rules that will sit under these will be developed during implementation. These will not run contrary to the Rules proposed here and will be published on our website”.

Entering the Scheme

Proposal related to	Draft Rule	Proposal and Rule largely aligned
Prerequisite to entering the Scheme	<p>Proposal was:</p> <ul style="list-style-type: none"> Matter must have been raised with Fire and Emergency first and the outcome known. A deadlock provision was also floated as a possibility. Appeals that under the Act¹ must be handled by the Scheme have direct entry (without having to go through the complaints process first). <p>Draft Rules are:</p> <ul style="list-style-type: none"> Has complaints process as a prerequisite, but with some discretion. Also has deadlock provision. Appeals have direct entry. 	✓
Matters outside the Scheme’s jurisdiction	<p>As per proposal with the following exception:</p> <p><i>Time limits</i></p> <p>We proposed to exclude a dispute that occurred more than a specified time before the application was made.</p> <p>Draft Rules propose no time limit, but the Scheme Administrator must not accept the application if they consider that it is no longer reasonably feasible for sufficient evidence or other information to be gathered to enable the dispute to be resolved under the Scheme.</p>	✓
Who can apply	Reflects proposal	✓

¹ Sections 35, 63 and 66 – an appeal by a volunteer to leave Fire and Emergency compulsory due to incapacity, appeal against a firebreak notice, appeal against a removal of vegetation notice.

Cost to participate in the Scheme	<p>Proposal was:</p> <ul style="list-style-type: none"> No application or administration fee for Fire and Emergency volunteers Included a consultation question on whether the public should have to pay either fee. <p>Draft Rules state no fees.</p>	✓
Time limits (between complaint outcome and lodging a dispute)	<p>We asked submitters' their opinions. Ninety days was the most common response, but there was a call for discretion within that. This has been reflected in the draft Rules.</p>	✓
Application	<p>Rule are as per the proposal:</p> <ul style="list-style-type: none"> Preferably in writing from the outset but oral applications are allowed. Where appropriate, the Scheme will provide additional support, for example translation, to ensure access to the Scheme. 	✓
Assessing application for entry into Scheme	<p>Proposal was:</p> <ul style="list-style-type: none"> Once the Scheme has received an application, the Scheme Administrator may make any enquiries that are fair and reasonable to determine whether the dispute can be accepted, or to assist in the resolution of a dispute. <p>The draft Rule is slightly narrower:</p> <ul style="list-style-type: none"> If the Scheme Administrator requires further information to determine whether or not to accept an application, the Scheme Administrator may request that further information from the applicant. 	✓

Possible resolution outcomes (✓)

The Rules are as per the proposal with the following changes as a result of submissions:

- Public apology has been added as a possible outcome, under apology.

Resolution methods

Proposal related to	Rule	Proposal and Rule largely aligned
General approach	Disputes resolution methods and procedures draft Rules are in line with proposal. Reference to tikanga Māori practices has been added as a result of submissions.	✓
Independent mediators and adjudicators to be used (as distinct from Fire and Emergency staff/personnel)	Draft rule is in line with proposal.	✓
Formal investigation can be carried out as part of an adjudication	Draft Rule is in line with proposal: <ul style="list-style-type: none"> If an adjudicator considers that the appointment of an investigator would assist in the resolution of a dispute, the adjudicator may request that the Scheme Administrator appoints such an investigator and may specify the proposed terms and scope of the investigation. However, before making a request to the Scheme Administrator, the adjudicator must consult with the parties, and must take their views into account in formulating the proposed terms and scope of the investigation. 	✓
Fast track expert determination	<p>Renamed 'fast-track adjudication' in the draft Rules</p> <ul style="list-style-type: none"> As per the proposal, this is available for time-bound disputes where a quick decision is particularly critical (for example, a fire permit application decision). <p>However, the process/framework is quite different from the proposal.</p> <p>Proposal was:</p> <ul style="list-style-type: none"> That the fast-track process will be carried out by an expert determination of the original decision made. If the outcome of this review finds that Fire and Emergency made an incorrect decision, then Fire and Emergency will be bound by the fast-track decision. If the outcome of this review is not satisfactory to the complainant, they may choose to request an adjudication of the original decision by Fire and Emergency (not the outcome of the fast-track determination). 	<p>✓</p> <p>X</p>

	<p>The proposed approach and draft Rule are now:</p> <ul style="list-style-type: none"> That fast-track is essentially adjudication on a fast track with identical Rules (except timings), including right to appeal the adjudication decision to the District Court. 	
Confidentiality	<p><i>Notifying Fire and Emergency Chief Executive</i></p> <p>Draft Rule is essentially the same as the proposal which was:</p> <ul style="list-style-type: none"> Where dispute is against Fire and Emergency or a representative of Fire and Emergency, the Chief Executive will be notified. For disputes between volunteers, the Chief Executive will also be notified. <p>However, the Rule places more specific requirements on the level of detail provided in that notification, i.e. names of parties only (that is, no details as to the matter under dispute). The notification is also to the Chief Executive or their delegate, rather than just the Chief Executive.</p> <p><i>Confidentiality of process and outcome</i></p> <p>Proposal was:</p> <ul style="list-style-type: none"> That at the beginning of the disputes resolution process, all participants would be required to sign a confidentiality agreement. Where there is a negotiated outcome, the parties may jointly define the confidentiality of any outcome they have reached. <p>Draft Rule is:</p> <ul style="list-style-type: none"> Following submissions which called for outcomes to be known (to stop rumours and to assist Fire and Emergency to be a learning organisation) draft Rules are: Mediation process and outcomes are confidential unless parties agree otherwise in writing. Adjudication outcomes are not confidential, but the adjudicator at their own initiative or at the request of a party may make an order that a decision, or part of a decision, be kept confidential. As per the proposal, and as now allowed for in the Rules, these approaches to confidentiality are not intended to, and will not, prevent the gathering and use of data for monitoring, evaluation, research and reporting purposes. 	<p>✓</p> <p>✓</p> <p>✓</p>
Enforcement	<p>Proposal was, and draft Rule is, both as per the Act, which provides for the District Court to enforce the Scheme as follows:</p> <ul style="list-style-type: none"> the District Court may, on the application of a party to a dispute or the Administrator, make an order requiring a party to comply with the Rules of the Scheme; or to give 	<p>✓</p>

	<p>effect to any binding resolution².</p> <ul style="list-style-type: none"> if the District Court is satisfied that the terms of the resolution of a dispute under the Scheme are manifestly unreasonable, the court may modify the resolution before giving effect to it³. 	
Appeals	<p>Proposal was, and draft Rule is, that as provisioned in the Act:</p> <ul style="list-style-type: none"> In cases where a person is unhappy with a decision reached in an adjudication or any other decision made under the Scheme, they can take action by making an appeal to the District Court. 	✓
Accountability	<p>Proposal was:</p> <ul style="list-style-type: none"> That the Scheme would be accountable to the Fire and Emergency Board. Individual disputes cannot be taken to the Board, and the Board would not be involved in the administrative or decision-making processes for any dispute. Rather, it would receive regular anonymised reports from the Scheme Administrator on the performance of the Scheme. <p>Draft Rules reflect this, with:</p> <ul style="list-style-type: none"> The Board appointing the Scheme Administrator The Scheme Administrator submitting an annual report to the Board The Board receiving complaints about the operation of the Scheme (only if the complainant is dissatisfied with the Scheme Administrator's internal handling of the complaint) The Board arranging regular independent evaluation of the Scheme. 	✓

² Section 185 (1)

³ Section 185 (3)