



EASY READ

Fire and Emergency Volunteer Version

# Proposed Rules for the Dispute Resolution Scheme

## Perspective

This quick read has been written from the perspective of a volunteer being the applicant (that is having a dispute with Fire and Emergency, a Fire and Emergency representative or another volunteer).

## Terms to help you understand the Rules

### *Resolution methods explained*

- **Facilitation** – a process in which the parties, with the assistance of the dispute resolution practitioner, identify problems or issues to be resolved, and agree outcomes. Facilitation can be carried out in writing or over the phone with any negotiations made through a neutral person, without the need for face-to-face contact.
- **Mediation** – a process where the parties meet, with the assistance of a mediator, to create a safe environment where they can address issues and resolve them if they wish. The meeting does not necessarily need to be a physical meeting as modern methods can be used if appropriate (e.g. Skype)
- **Adjudication** – a process in which the parties meet to present arguments and evidence to a dispute resolution practitioner who makes a decision that is binding on all parties. Once again, the meeting does not necessarily have to be in person.

### *Scheme Administrator*

Referred to simply as ‘the Administrator’ in the Rules.

Dispute applications are made to the Administrator, not Fire and Emergency. The Administrator is responsible for deciding whether the dispute is accepted into the Scheme and, if it is, assigning a disputes resolution practitioner to it. The functions of the Administrator are outlined in more detail in Part 5 of the Rules.

### *Disputes resolution practitioner*

Refers to facilitators, mediators or adjudicators.

## Part 1: Purpose and jurisdiction

The Rules do not specify in any detail the types of disputes the Scheme can handle; rather they outline the types of disputes the Scheme cannot handle. The list of exclusions (at Rule 6) generally relate to certain disputes the public rather than volunteers may have brought (for example, disputes over levies).

Both current and former volunteers can lodge disputes – that is, you do not have to still be serving (Rule 7).



Generally, but not always, you will have had to have attempted to resolve the issue through Fire and Emergency's internal complaints process before lodging your dispute with the Scheme. But if the complaints process is not progressing, you may be able to enter the Scheme without a further wait (Rule 9). This is sometimes referred to as a 'deadlock provision'.

## Part 2: Application process

An individual volunteer can apply, or a group of volunteers, such as part or all of a brigade. In the case of a group application, each applicant must be named (Rule 11).

There are time limits (Rule 9), but the Administrator has (limited) discretion to accept applications outside of those limits:

- In cases that have gone through Fire and Emergency's complaints process first, an application to the Scheme must be generally made within 90 days of the applicant being notified of the outcome of the complaints process.
- If the application is an appeal against a notice to leave Fire and Emergency due to incapacity (a specific appeal that our Act states must be dealt with by the Scheme), the application must be made within 14 days of that notice (that timing is specified in the Act too).

There is no application fee (Rule 10) and applications can be either in writing or oral – the Administrator will provide reasonable assistance (for example, with translation). There is a process by which oral applications will be confirmed (Rule 11). The administrator may also seek additional information from you prior to making a decision whether the dispute can be handled by the Scheme or not (Rule 13).

There is an option for requesting your dispute be fast-tracked. These applications apply to disputes where a decision is time-critical and must be supported with reasons (Rule 12).

Should the Administrator reject your application, they must give you the reasons and you have a right to a review of that decision (Rules 17 and 18).

Otherwise, the Administrator will accept your dispute into the Scheme, notifying you and the other party/ies of that.

Fire and Emergency's Chief Executive or their delegate will also be notified of the dispute (name of parties only, no details as to nature (Rule 19)). The purpose of this notification is simply so that the Chief Executive is aware of the existence of disputes if travelling or interacting with a specific region (a 'no surprises' approach). There are tight conditions placed on this notification under the Rules:

- The Chief Executive must take reasonable steps to ensure that receipt, or knowledge, of a notice given under this Rule does not result in any person named as a party in that notice being adversely affected (for example, to ensure that an applicant is not adversely affected in their workplace simply because they brought a dispute under these rules), and that confidentiality is maintained.
- Nothing in this Rule affects the independence of the Administrator or any dispute resolution practitioner dealing with a dispute under the Scheme, and the fact that notice has been given under this Rule does not entitle the Chief Executive or any other person to become involved in a dispute, other than in accordance with the Scheme.



### **Part 3: Dispute resolution process**

Your dispute may be resolved by one or more of the following methods: facilitation, mediation or adjudication (Rule 20).

You have the opportunity to indicate your preference on your application (Rule 11). The Administrator may encourage mediation over adjudication, so long as mediation has not already been attempted in the complaints process (Rule 24(2)). But ultimately the choice is yours.

The process and outcome (agreement reached, if any) of facilitation and mediation are both confidential to the parties to the dispute, unless all parties agree otherwise in writing. Process in this context means anything said or provided (such as a document or statement (Rule 23)).

Whereas the outcome of adjudication is not confidential unless the adjudicator makes an order (at their own initiative, or at the request of a party) that all or part of the decision is to remain confidential (Rules 23 and 39).

Every party to the dispute is entitled to attend, and be heard at, the resolution process to the dispute. Note not all disputes will necessarily need a face-to-face meeting/hearing – Rule 20 allows the disputes resolution practitioner to decide the procedure to follow. This, for example, will take into account the geographic location of the parties and their access to communications or support (Rule 24(f)) and could be by audio visual link/video conferencing, or it could be decided on the basis of written evidence and submissions.

Parties to the dispute may be represented, or assisted, at any meeting or hearing that forms part of a dispute resolution process, by a lawyer or advocate (Rule 21).

Parties may have up to two support people (more may be allowed if the dispute resolution practitioner is satisfied this wouldn't be detrimental to the resolution process (Rule 22)).

The administrator must notify Fire and Emergency's Chief Executive or their delegate if a person acting on behalf of Fire and Emergency has failed to participate, or to participate in good faith, in the dispute resolution process (Rule 19).

If mediation is used and it is not successful (i.e. no agreement is reached) the applicant can choose whether to withdraw the dispute or proceed to adjudication (Rule 26).

If the dispute is being resolved by adjudication, either with or without mediation having been attempted first, the adjudicator may ask the Administrator to appoint an investigator (but must consult the parties first) and/or obtain expert assistance or advice of a subject matter expert (Rule 29).

### **Part 4: Remedies, recommendations, declaration and orders: adjudication**

Anything can be mutually agreed between the parties at facilitation or mediation, whereas, the Rules outline the remedies that can be ordered at mediation (Rules 35 and 36).

These are largely guided by the Fire and Emergency New Zealand Act. An adjudicator may direct a party to do any one or more of the following things to remedy a dispute:

- Give reasons for a decision to the other party
- Formally apologise to the other party, including by way of a public apology



- If the dispute relates to a requirement under the Act or Regulations:
  - comply with the requirement
  - remedy, or avoid, the breach, or likely breach, of the requirement
  - take steps to avoid any further breach of the requirement
- Pay compensation, not exceeding \$15,000, to the other party for any harm or loss suffered by that party
- Provide non-monetary redress to the other party for any loss or damage suffered by that party
- Take any other action that the adjudicator considers appropriate in the circumstances. (Rule 35).

The \$15,000 monetary limit also includes any costs awarded. No member of personnel, whether paid or not, will be personally liable to pay compensation in respect of any act or omission that was done, or not done, in the performance, or intended performance, of the person's duties for Fire and Emergency and in good faith. In that situation, if compensation is considered appropriate, it could be ordered against and paid by Fire and Emergency (Rule 35(2)).

If a dispute involves a volunteer, the adjudicator may, in addition to or instead of one or more of the remedies listed above, direct Fire and Emergency to reinstate the volunteer in either the volunteer's former position or a position no less advantageous to the volunteer (Rule 36).

If an adjudicator finds that Fire and Emergency workplace conduct or practices have significantly contributed to a dispute, they may make recommendations to Fire and Emergency as to the action that it should take to prevent similar problems occurring in the future. These recommendations are not binding on Fire and Emergency (Rule 37).

#### **Part 5: Administration of Scheme**

In line with best practice dispute resolution, the Scheme should be as independent as possible. Accordingly, the Scheme is accountable to the Fire and Emergency Board. The Board operates at a governance level and is independent from other functions within the organisation.

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. This includes reporting to the Board any systemic issues identified through an investigation or adjudication and any breach of these rules by Fire and Emergency or Fire and Emergency personnel (Rule 48).

The Administrator must have a process for receiving and resolving complaints about the operation of the Scheme. If you are dissatisfied with the outcome of complaint made under that process, you may complain to the Fire and Emergency Board.