

HOW THE PREVIOUS CONSULTATION SHAPED THE PROPOSED RULES

Thank you to everyone who participated in the previous round of consultation about the design of the Dispute Resolution Scheme. This is how the suggestions were accounted for in the proposed Dispute Resolution Scheme Rules.

Rule	Issue	Issue(s) for decision raised by submission(s)	Issue(s) for clarification raised by submission(s)	Answer	Action to be taken	Rule number (if applicable)
Scheme jurisdiction: Types of matters the Scheme can handle						
What sort of disputes are covered/who can apply	Employment dispute vs employment relationship problem		Does the reference to the Employment Relations Act mean the exclusion is confined to disputes about the interpretation, application or operation of an employment agreement (section 5 of the ERA) or is it broader, to encompass an employment relationship problem?	The reference to the Employment Relations Act comes from s 178 of the Fire and Emergency Act. However, it is intended that the exclusion be broader and encompass an employment relationship problem as well.	The Rules clarify that any matter relating to a person's employment that can be dealt with under the Employment Relations Act will be excluded. Examples are provided for clarification.	Excluded disputes Rule 6(2)(a)
	Disputes concerning appointments to ranks (volunteer)		There is no mention of whether this Scheme will adjudicate disputes about appointment to rank or other positions within volunteer brigades. There is no specific statement covering a dispute with a rank appointment within Fire and Emergency for volunteers, unlike within the career service, where there is a process	Yes, these types of disputes can be dealt with by the Scheme.	Clarify in operational guidelines.	

			to challenge an appointment.			
	Fire and Emergency employees who are also volunteer fire fighters.		State they are not excluded from the Scheme. (That is, they can lodge an application on volunteer issues only, not employee disputes.)	<p>Yes, these types of disputes can be dealt with by the Scheme.</p> <p>That is, that any volunteer, regardless of whether they are also an employee, is able to lodge an application where their dispute is one that is covered by the Scheme. This is consistent with the aims of the Scheme.</p>	Clarify in operational guidelines.	
	If an employee lays a complaint against a volunteer, will it go under this Scheme?			It will depend on the nature of the dispute. If it is not otherwise covered by the employment system, then it would be fair to have access to this Scheme.	Clarify in operational guidelines.	
	Can a brigade lodge a dispute, or only individuals?			Yes	<p>The Rules allow for an organisation, such as a brigade, to make an application.</p> <p>Further clarify this in operational guidelines.</p>	<p>Rule 3(1) definition of person</p> <p>Rule 7 – who may apply to the Scheme.</p> <p>Rule 11 – form of application and in particular 11(1)(c)</p>

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Entering the Scheme						
Scheme administrator will not accept a dispute it considers to be frivolous, vexatious or trivial.		This proposed exclusion generated a lot of comment, especially the term trivial. "Who deems it trivial, because to the person raising it, it certainly isn't?"		Keep as a Rule, but operating guidelines will emphasise there is a very high bar for excluding disputes on these grounds.	<p>The Scheme administrator will determine whether an application meets the relevant threshold based on guidance around what is considered frivolous, vexatious or trivial.</p> <p>The guidance will draw on established case law principles and guidance from the Ombudsman relating to official information requests.</p> <p>In respect of 'trivial', the assessment will consider the value and importance of the complaint to the applicant.</p> <p>An example of what these words mean in practice can be found on the Telecommunications Disputes Resolution site.</p>	Rule 16 – situations where administrator must refuse to accept application.

Time limits (between complaint outcome and dispute Scheme application)		Submissions were in favour of 90 days but with the Scheme administrator having discretion to accept applications outside that limit.		Make 90 days the Rule, but with Scheme Administrator having the discretion to accept a dispute outside that limit where circumstances justify.	Include as a Rule and provide further direction in operational guidelines on the circumstance where exercising the discretion should be considered.	Rule 9 – Time for application to Scheme.
Review rights if dispute application not accepted		What review rights, if any, does the applicant have of this decision? Can it be challenged? Will someone within Fire and Emergency review the Scheme Administrator's decision? Should the applicant go to the Ombudsman?		Yes, decision can be reviewed.	Provide a process for a low-level review of decision not to accept a dispute within the Scheme.	Rule 18 – Review of administrator's decision to refuse application.

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Possible outcome of a dispute						
Possible outcome of a dispute		The proposed outcomes listed in the consultation document included providing a formal apology. One submitter suggested adding a public apology.		Agree.	Add to apology. The remedy becomes: That a party formally apologises to the other party, including by way of a public apology.	Rule 35 – General remedies. 35(1)(b)
		Would it be useful to provide for an outcome that allows a declaration that the actions of Fire and Emergency were lawful and the complaint is without foundation? There does not seem to be an outcome to address a finding that the complaint was unfounded that would provide Fire and Emergency and the decision-makers with a finding that preserves the legitimacy and credibility of their actions.		This is not necessary.	If a dispute is not founded, this will be clear from the dispute not succeeding. It is not necessary to specifically provide for a declaration to be made as the decision will effectively state this if the application is unsuccessful.	
			Can a volunteer be ordered to pay monetary compensation?	Volunteers cannot be ordered to pay monetary compensation, if they were acting in good faith while performing their duties	Ensure the Rules are clear.	General remedies Rule 35(d) is qualified by 35(2)

				at the time (of the matter of the dispute).		
			One submitter suggested that the document (read Scheme Rules) make clear whether resolutions are precedential or not; if precedential, then precedents or any learnings be diagrammatically shown as going back to Fire and Emergency policy.	<p>Resolutions of mediations will not generally be able to be used by Fire and Emergency to change practices, as they are confidential. However, if both parties to a dispute agree, the resolution, or part of it, could be used for that purpose.</p> <p>Adjudication decisions can be used by Fire and Emergency to change practices as they are generally not confidential. The exception being that an adjudicator can make an order (at their own initiative, or at the request of a party) that all or part of the decision is to remain confidential.</p>	No need to include in Rules as this relates to confidentiality.	
Model brigade rules			Do we need a Rule that clarifies where these fit in (i.e. do they limit the types of disputes the Scheme can handle and/or the resolution outcomes that can be reached or ordered)?	<p>The standard version of the model rules does not limit what the dispute resolution Scheme can deal with.</p> <p>The transition letter jointly issued by the New</p>	Clarification of how the model rules and dispute resolution Scheme interact to be addressed in guidelines and fact sheets.	

				<p>Zealand Fire Service Commission and the United Fire Brigades' Association (UFBA) to volunteer brigades on 30 June 2017 replaced clause 7 of the model rules with new processes and policies to manage discipline, issues and disputes. This included two new dispute resolution processes: the volunteer issues process and the interim dispute resolution process. The proposed statutory dispute resolution Scheme will replace the interim dispute resolution process.</p>		
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Dispute resolution processes						
Timelines for each step of the process		Would be useful to have a time frame for how long dispute resolution process is expected to take?		<p>Not practical to have a one-size-fits-all, end-to-end process time frame due to the multiple variations in steps that are possible.</p> <p>However, the Rules can and should include time frame for any fixed steps.</p>	<p>Time frame for:</p> <ul style="list-style-type: none"> accepting or rejecting application appointing an adjudicator for disputes accepted for fast-track adjudication. 	<p>Rule 13</p> <p>Rule 15</p>
Recovery of a party's own costs from another			<p>There were several comments that these should be additional to the \$15K maximum monetary order specified in the Act.</p> <p>In an adjudication there is no ability to go beyond the cap, as the Act limits what can be ordered. Section 180(4) set the \$15K limit.</p>	<p>In mediations, parties can agree to payment of amount of cost from another that may not be available at adjudication. This is voluntary.</p>	<p>Make it clear in the Rules that costs are limited to the cap provided in the Act.</p>	<p>Rules 38(3)</p>
Costs to participate in the Scheme	Consultation document proposed there be no fees for volunteers but asked whether other applicants should face a fee			<p>Applicants (be they public or Fire and Emergency volunteer) will not be charged an application fee nor an administration fee.</p>	<p>Make this clear in the Rules.</p>	<p>Rule 10(4)</p>

Tikanga practices			One submitter noted there is no stated policy on tikanga practices included in the proposal. In line with a policy of inclusiveness it would be beneficial to include tikanga practices.	This was a drafting error omission in the consultation document.	Include provision that, if requested by a party whether before or during the dispute resolution process), tikanga Māori practices must be adopted as part of the dispute resolution process unless, in the particular circumstances, it is not reasonably practicable to do so.	Rule 20(4) and 24(2)(d) with 24(2)(e) further requiring the dispute resolution process to take account of any other cultural practices relevant to a party.
			<p><i>Social media</i></p> <p>Any type of social media must be considered as a breach to both parties.</p> <p><i>Breaches</i></p> <p>Perhaps consider a place in here that may determine what happens if there is a breach and possible consequences.</p>	Remedies for breaches available through District Court.	No need to state in Rule.	
Conflicts of interest			Submissions suggested that we need to say more. Disclosing the conflicts is not enough—what happens after disclosure? Can the parties object to the practitioner and get a	Agreed	Include a specific Rule on requirement to disclose conflict of interest and the procedure to be followed should a conflict be disclosed.	Rule 25

			<p>new one? Can they waive the conflict in writing? Can the practitioner recuse themselves after identifying a conflict? Can the mediator also be the adjudicator, or does that create a conflict?</p>		<p>The person who has disclosed the conflict is not to hear the dispute unless all parties agree. If no agreement is reached a different dispute resolution practitioner must be appointed to deal with the dispute.</p> <p>No hard Rule provided on whether a mediator can also be an adjudicator, as this may be appropriate or desired by the parties in some situations.</p>	
Fast-track expert determination			<p>Some submissions have called for more details on who the expert will be and on what basis they will be selected (issue of independence drives these queries. Do we need a Rule here?)</p> <p>Another observed 'specialist qualifications' 'experience in subject matter' would suggest that these SMEs will come from within the organisation. Especially if it is a technical or operational matter. It</p>	Agreed that more detail is needed.	<p>To make it clear that a fast-track expert determination is effectively an adjudication on a fast track. Name changed to reflect this.</p> <p>All adjudicators may seek advice or assistance from a subject matter expert and this will apply in a fast-track determination as well.</p>	<p>Rules 15</p> <p>Rule 30</p>

			must be made clear that the people making these 'fast-track determinations' have not conflict of interest or bias.		The adjudicator will be the one making the decision but can seek expert advice where that is required to assist them to reach a decision. For example, if a person appeals the denial of a permit application, it may be necessary to obtain advice from an expert regarding whether the permit was appropriately declined or not in terms of the grounds on which a permit may or may not be issued.	
When no agreement is reached at mediation			<p>What happens if one of the parties does not cooperate in the mediation?</p> <p>Does the mediation end and get referred?</p> <p>Or does it end and the applicant can choose what next?</p> <p>Maybe options are available?</p>	Agreed clarification needed.	<p>To make it clear that the original applicant may seek an adjudication if facilitation or mediation is unsuccessful.</p> <p>Note that participation in the dispute resolution process is only compulsory for Fire and Emergency so other parties cannot be made to take part in mediation. However, if they do participate, this must be in accordance with the Rules.</p>	Rule 26

					<p>Fire and Emergency's Chief Executive to be notified by the Scheme administrator 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.</p>	Rule 19
					<p>An adjudicator may determine a dispute on the basis of the evidence available at the hearing if, without good reason or prior notice to the adjudicator, a party fails to attend, or fails to present evidence at, an adjudication hearing.</p>	Rule 32