

Proposed design of

Fire and Emergency New Zealand's Dispute Resolution Scheme

1.

Public consultation document



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A message from Hon. Paul Swain, Board Chair

On behalf of the Board of Fire and Emergency New Zealand

*Kei aku nui, kei aku rahi,
kei aku whakatamarahi ki te rangi,
aku whakateitei ki te whenua,
tēnā koutou katoa.*

*To the many leaders great and small,
esteemed every one of you,
I greet you all.*

Fire and Emergency New Zealand was established on 1 July 2017 by the Fire and Emergency New Zealand Act, which brought together New Zealand's separate rural and urban fire services for the first time.

The Act also establishes the range of fire and emergency services we are required to deliver to communities across New Zealand and the powers we have to deliver these services.

Every day we make decisions and undertake actions that impact a wide range of people and communities. Our people are highly regarded for the excellent service they provide to communities and they make every endeavour to act both responsibly and within the bounds of their powers.

However, it is important that people within the communities we serve have a right to dispute our actions or decisions, and an independent and transparent process that enables them to do so.

To this end, the Act requires that we develop a Statutory Dispute Resolution Scheme for matters arising under the Act or its regulations. We wholeheartedly support this.

This document and the associated consultation period is your opportunity to help us design that scheme. Please take the opportunity to tell us your views, the comments we receive will help us to finalise the scope of the scheme, which will then be put to the Minister of Internal Affairs for consideration and approval.

Noho ora mai,

Hon. Paul Swain
Board Chair

On behalf of the Board of Fire and Emergency New Zealand

Introduction

Purpose of this document

This document is aimed at helping us design a Dispute Resolution Scheme (“the scheme”). The scheme can be used by both members of the public and Fire and Emergency New Zealand volunteers¹.

This particular document focuses on the public. A second consultation document, which focuses on volunteers, has also been produced and is available online at consultations.fireandemergency.nz. Both documents contain the same scheme design and consultation questions.

All feedback received by the closing date for this consultation will be taken into consideration before the final decision is made on the design of the scheme. The scheme and its associated rules must be approved by the Minister of Internal Affairs, who is responsible for Fire and Emergency.

Nature of our consultation questions

Throughout the document we ask question(s) that seek your views on each step in the dispute resolution process, but generally only if we are proposing anything additional to the strict requirements of the Fire and Emergency New Zealand Act 2017 (“the Act”). We do not seek your views of the requirements of the Act as these have been determined by Parliament and as such are the parameters the scheme must be built around.

The document concludes with some catch all questions, so you are not confined to a strict step by step analysis of the proposal. All consultation questions are listed in one place in Section 13.

What guided our proposed scheme design

The Act provides principles that the development of the scheme, and the scheme itself, must be based on². What these are and how we employed them is outlined in Appendix 1 of this document.

Features of the scheme that will be determined at implementation

Who administers the scheme

A key determinant in this will be the number of disputes received and the number on hand at any one time, which at this stage of design is largely unknown³. Whilst our proposed design has mediation and adjudication being provided by independent practitioners contracted by Fire and Emergency, a decision on whether the scheme administration function should similarly be contracted (potentially meaning the entire scheme is administered by a party other than Fire and Emergency) will be determined as part of implementation design. An in-house, but independent of business operations, function will be put in place initially, but if volumes are sufficient a transition to a fully external administrator may be considered in time.

How resolution practitioners will be contracted

The way in which resolution practitioners will be contracted by the scheme is dependent on the above (who administers the scheme) and will be determined at implementation. Resolution practitioners could, for example, be engaged by contract on an individual basis or through an external service provider.

Detailed 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

¹ Fire and Emergency employees are excluded from using the scheme for matters that may be raised under the Employment Relations Act. This exclusion is prescribed by Section 178 of the Fire and Emergency New Zealand Act 2017.

² As required by Section 179 of the Fire and Emergency New Zealand Act 2017.

³ This is because many of the Fire and Emergency decisions the public may dispute are related to new powers and functions given to Fire and Emergency under the new Act, so there is no historic data upon which to forecast possible future numbers.

Resolving complaints before they escalate to disputes

What this section tells you

This section outlines the Fire and Emergency internal complaints process, which must be used before raising a dispute with the scheme.

Resolving complaints before they escalate to disputes

Fire and Emergency want to ensure that issues are resolved quickly and at the lowest level possible. To achieve that goal, complaints will be initially addressed through a complaints process, which will provide consensual resolution processes.

A consensual process is where the outcome of the dispute is decided and agreed by the parties themselves (e.g. a negotiation, facilitation or mediation)⁴.

However, Fire and Emergency acknowledges there will be cases where consensual measures will not be successful in resolving a complaint and a determinative resolution process is required. The scheme will be in place to provide this service.

A determinative process is one in which a third party decides the outcome (e.g. adjudication)⁵.

Fire and Emergency's complaints process

Public complaints are managed by a separate internal process within Fire and Emergency. It is expected that complaints are raised through this process, and an outcome received before an application is raised with the scheme.

Complaints may be raised at a local level, either in person at a regional office or by phone. Alternatively, complaints can be submitted via the complaints form on the Fire and Emergency website. The complaints team will acknowledge receipt of the complaint and the complaint is then assigned to the appropriate staff member to investigate and respond.

The complaints process utilises consensual resolution processes and complaints are usually resolved over the phone or by email.

Entry to the scheme

Disputes in this context are defined as unresolved complaints. Entry into the scheme will require that a complaint has been raised through this internal process in the first instance, and a decision has been reached (the complaint outcome).

If the complainant is unhappy with the decision, or the process followed to come to that decision, they may choose to lodge an application with the scheme⁶.

⁴ See Section 7 for a description of these terms.

⁵ See Section 7 for a description of these terms.

⁶ Additional entry criteria to ensure accessibility of the scheme are being considered and will be determined at implementation. This includes the ability for the scheme Administrator to apply discretion in certain cases to allow an application direct entry to the scheme without having gone through a complaints process, and a deadlock provision allowing entry to the scheme where a complaint has been raised and remains unresolved for a defined length of time.

Types of disputes that the scheme can handle

What this section tells you

To have an effective scheme, the scope of issues that can be considered by the scheme needs to be both appropriate and clear to allow it to effectively deal with the majority of relevant disputes. This must be balanced with accessibility of the scheme.

This section outlines our proposal for the type of matters in dispute that can be brought to the scheme and which are outside its jurisdiction. Some, but not all, of these are already prescribed for in the Act.

Disputes to be managed within the scheme

The Act directs that the scheme must be available to resolve disputes on any matter under the Act or its regulations, other than some things that are specifically excluded.

Examples of matters that may be subject to dispute by members of the public⁷ that are within the jurisdiction of the scheme are shown in Table One.

TABLE 1: Examples of matters that could be subject to disputes handled by the scheme

Part of Act	Title	Examples
Part 1	Main functions	Complaint that Fire and Emergency has not carried out, or the manner in which Fire and Emergency has carried out, main functions specified in the Act, e.g. the way in which Fire and Emergency: <ul style="list-style-type: none"> • promotes fire safety, including providing guidance on the safe use of fire as a land management tool • provides fire prevention, response, and suppression services • provides for the safety of persons and property endangered by incidents involving hazardous substances • rescues persons who are trapped as a result of transport accidents or other incidents • provide urban search and rescue services
	Additional functions	Complaint that Fire and Emergency has not carried out, or the manner in which Fire and Emergency has carried out, additional functions specified in the Act, e.g. the way in which Fire and Emergency: <ul style="list-style-type: none"> • responds to medical emergencies • responds to maritime incidents • performs rescues • provides assistance at transport accidents (for example, crash scene cordoning and traffic control) • promotes safe handling, labelling, signage, storage, and transportation of hazardous substances • responds to any other situation, if Fire and Emergency has the capability to assist
	Local planning	<ul style="list-style-type: none"> • The basis for how decisions within fire plans are made • The information taken into account in a fire plan
Part 2	Functions, duties, powers in emergencies	<ul style="list-style-type: none"> • Control and direction by operational personnel during a fire emergency (rights of entry)
	Prohibitions and restrictions for fire control	<ul style="list-style-type: none"> • Prohibiting a person to light a fire in an open area • Prohibiting a person to access an area
	Fire seasons	<ul style="list-style-type: none"> • Restrictions on stubble burns • Decisions made regarding prohibited or restricted fire seasons
	Fire permits	<ul style="list-style-type: none"> • Declining a fire permit application • Granting a fire permit application for another person or party
	Further provisions relating to fire control	<ul style="list-style-type: none"> • Complaint against another (e.g. neighbouring property) regarding a firebreak(s) or vegetation • Complaint against Fire and Emergency for inaction about a firebreak(s), or removal of fire hazards • Complaint about another person allowing a fire to spread • Burning or smouldering substance in open air • Appeal against a notice to landholder about firebreaks • Appeal against a notice relating to the removal or destruction of vegetation or other thing increasing fire risk

⁷ In addition to disputes between members of the public and Fire and Emergency, the scheme will also handle disputes between Fire and Emergency volunteers or between and Fire and Emergency volunteers and Fire and Emergency.

Specific appeals that the scheme must consider

There are two types of appeals by the public that the Act dictates must be dealt with using the scheme⁸. Accordingly, people can bring these issues to the scheme without first going through a complaints process; appeals against a Fire and Emergency notice to landholder about fire breaks, and appeals against a Fire and Emergency notice about removal or destruction of vegetation or other thing increasing fire risk⁹.

Matters explicitly excluded from the scheme

Parliament, through the Act, has decided the scheme will not handle certain disputes¹⁰. The following table lists those disputes, as well as indicating where they would be handled should they arise.

TABLE 2: Matters outside the schemes jurisdiction

Dispute	Handled by
Employment dispute that may be dealt with under the Employment Relations Act 2000	Fire and Emergency's People and Capability team; if unresolved Employment Relations Authority or Employment Court
Dispute relating to offences under the Act	Ombudsman or criminal courts
Dispute relating to the performance or exercise of a function, duty, or power by a Minister	High Court (judicial review jurisdiction)
Dispute relating to Part 3 of the Act – that is, the Fire and Emergency New Zealand levy (note this part of the Act has not yet come into effect)	Fire and Emergency (in accordance with levy shortfall and levy penalty processes); if unresolved within a set timeframe then an adjudicator(s) appointed by the Minister
Any other dispute of a kind specified under section 180(1)(c) of the Act - the jurisdiction of the Dispute Resolution Scheme, including specifying the kinds of disputes that may not be resolved using the scheme (these are discussed below)	Varying options depending on subject matter, but likely: Ombudsman or civil courts

⁸ There is also one type of appeal relating to volunteer disputes that must be handled by the scheme. This is set out in Section 35 of the Act.

⁹ Sections 63 and 66 of the Act.

¹⁰ Section 178(2) of the Act.

Other disputes that we propose be excluded from the scheme

The Act also provides that the rules of the scheme may specify certain kinds of disputes that cannot be resolved using the scheme¹¹. We propose that the following be excluded.

Specific circumstances

We propose that the scheme Administrator will not accept a dispute, or will stay or dismiss proceedings in relation to a dispute, where it considers the application either:

- A. is frivolous, vexatious or trivial – note the reference here is to the application, not the applicant¹². Each application will be assessed on its own merits, or
- B. involves a dispute that would be more appropriately dealt with by the courts (for example, because it involves difficult issues of law), or
- C. the dispute has been previously dealt with under the scheme, or
- D. relates to a dispute that occurred more than a specified time before the application was made.

Disputes being pursued in another forum

We propose that any dispute which is being pursued in another forum is ineligible for the scheme, unless and until that process is completed or terminated, or it is referred to the scheme.

This includes disputes currently pending before any court, administrative tribunal, Commission or the Ombudsman.

In the case of a dispute already having entered the scheme, but then concurrently entering another forum, the scheme proceedings will be suspended.

Criminal charges

There may be cases where the scheme becomes aware of a criminal proceeding, coronial proceeding or any other inquiry that relates to an application lodged with the scheme, or a dispute already in progress. In accordance with Section 184(2) of the Act, the matter will not be dealt with until the other process ends.

¹¹ Section 180(1)(c).

¹² Assessment of frivolous vexatious and trivial will be in line with the guidance developed by the Office of the Ombudsman: Frivolous, vexatious and trivial. Skilled scheme staff will carry out this assessment when an application is raised with the scheme, and judgement will be applied throughout the resolution process. The adjudicator will also have the power to stay or dismiss vexatious complaints if required.

Local Advisory Committees (LACs)

Sections 14 to 20 of the Act describe the functions, duties and powers of the Fire and Emergency Board ("the Board") in relation to Local Advisory Committees (LACs). Decisions on matters listed in these sections, for example the establishment of LACs and their boundaries, or the appointment and/or removal of persons as members of LACs, are matters the Board is empowered to decide. Because of the discretionary, high-level policy nature of these decisions, we consider that disputes about Board decisions concerning LACs and their members need to be resolved outside of the scheme, therefore we proposed to exclude them from the scheme's jurisdiction. People affected by these sorts of decisions may seek to challenge them through the Ombudsman or judicial review in the High Court.

Official Information Act requests and Privacy Act complaints

In addition, we believe that the scheme should not cover Fire and Emergency's decisions on requests for information made under the Official Information Act 1982. Requesters have the right to complain to the Ombudsman if they are dissatisfied with our response to their request (including any decision to transfer the request, refuse the request or withhold any information). All our Official Information Act decisions are required to include details of this right, together with contact details for the Ombudsman.

Similarly, we believe any Privacy Act request or alleged breach should be excluded from the scheme's jurisdiction. This is because there is already an existing complaint mechanism—a complaint can be lodged with the Privacy Commissioner over an alleged privacy breach by Fire and Emergency. The Privacy Commissioner encourages people to try to resolve matters themselves before making a complaint to the Office. While the scheme is not available for issues relating to the Privacy Act, Fire and Emergency has a Privacy Officer and we encourage you to contact us first. An early and informal resolution can save time, stress and money.

Types of disputes the scheme will not deal with

Question 2 .



What are your views on the proposed exclusions for what the scheme can deal with?

(outside of those explicitly excluded by the Act)

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

NOTE: Question one is an administration question only and is displayed in Section 13 of this document.

Possible resolution outcomes

What this section tells you

This section outlines our proposal for the potential remedies available in the scheme. Some, but not all, of these are already outlined in the Act.

Possible outcomes of a dispute

For an effective scheme, people must be able to seek a satisfactory and durable outcome to their dispute. We propose that the following outcomes can form the resolution of a dispute (either singly or in combination):

- provide reasons for a decision
- provide a formal apology
- comply with a requirement under the Act or the regulations
- remedy or avoid the breach or likely breach of a requirement under the Act or the regulations
- avoid any further breach of a requirement under the Act or the regulations
- compensate a party to the dispute (up to the limits specified in the Act; namely \$15,000)
- provide non-monetary redress for any loss or damage suffered by a party to the dispute or to take any other action to remedy the matter complained about
- any other action that the parties mutually agree to be taken.

Any, or all, of these could result in the reversal of Fire and Emergency's original decision that was the matter in dispute.

Maximum limit of any monetary remedy

The Act places a \$15,000 limit on orders made under the scheme. Specifically, an order or another decision of an adjudicator or any other decision maker made under the scheme must not:

- require a person to pay an amount exceeding \$15,000
- declare that a person is not liable to any other person for an amount exceeding \$15,000
- vest any property that exceeds \$15,000 in value in any person
- direct the transfer, assignment, or delivery of possession of any property that exceeds \$15,000 in value (Section 180(4)).

This does not limit the "size" of the dispute that can be lodged and accepted by the scheme, however the applicant must enter the scheme in full knowledge that any monetary reparation will be limited to \$15,000.

Applicants seeking more than the monetary limit will need to seek another avenue of recourse (the Courts, for example).

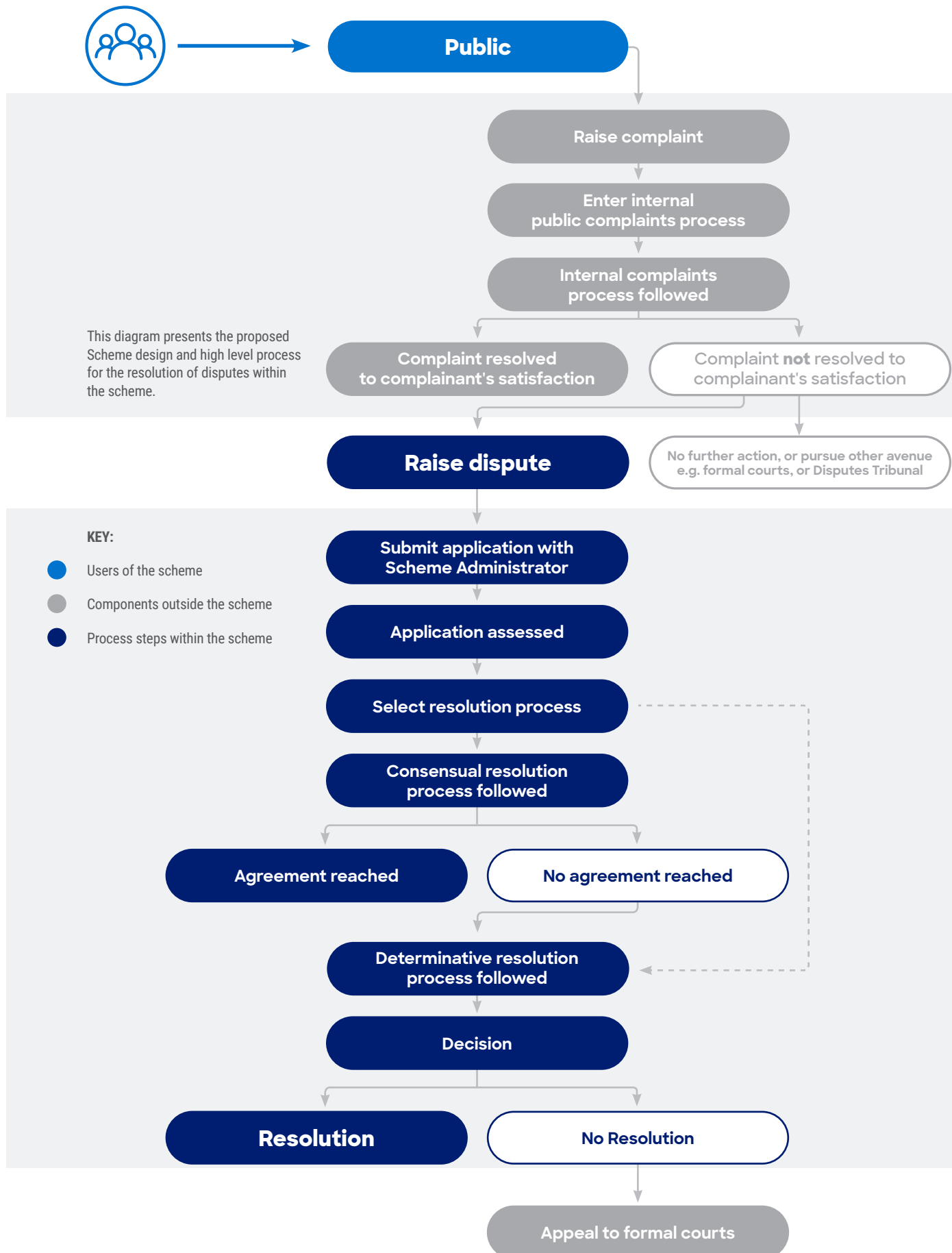
Possible resolution outcomes

Question 3.

What are your views on the proposed outcomes an applicant can achieve?

- ☐ I think they are sufficiently comprehensive
- ☐ I suggest deleting some
(give reasons)
- ☐ I suggest adding some
(give reasons)

Scheme design overview



Entering the scheme

What this section tells you

This section outlines the proposed rules for who can apply and how the application can be made. It also discusses whether the applicant should pay a fee and seeks your views on this, as well as discussing potential time limits and seeking your views on what these should be.

Information about the scheme

For a scheme to be accessible, it needs to be widely promoted and awareness of it raised. Fire and Emergency intends take all reasonable steps to ensure that the public and volunteers are aware of the scheme and how it can be accessed. This includes promoting information about the scheme in a way that is easy to understand.

Participation is voluntary

Nobody is required to participate in the resolution of a dispute using the scheme¹³, however:

- if Fire and Emergency is a party to the dispute brought by a person to the scheme, Fire and Emergency must participate¹⁴.
- three types of appeals (discussed earlier in Section 3 on this consultation document) must use the scheme¹⁵.

Other proceedings as an alternative to using the scheme

The scheme does not affect the right of any person to apply for judicial review or commence any other proceeding in any court or tribunal (as an alternative to using the scheme)¹⁶.

Who can apply

We intend access to the scheme to be as open as possible, rather than limited. Therefore, we propose that any person can apply to have a dispute involving themselves considered by the scheme, with 'any person' being a member of the New Zealand public or a body corporate.

Cost to participate in the scheme

We are considering the option of charging an administration fee for the public to raise an application for dispute with the scheme. A fee would help to recover the costs of administering the scheme, as well as deter potential frivolous and vexatious applications. Whether an application fee is applied will be decided during the implementation of the scheme.

Fire and Emergency will cover its own costs and the costs of an external mediator, adjudicator or anyone appointed to help resolve the dispute (including the cost of hearing rooms, travel and other costs reasonably associated with provision of services by a person facilitating or determining the outcome of a dispute). Note this may also include costs of services needed to enable a user to participate in the dispute resolution process, for example an interpreter.

The Act provides for the ability for a person to recover costs they may have incurred through participating in the scheme, for example costs to contract a lawyer or expert. We propose that Fire and Emergency will only cover such costs incurred by the applicant if the dispute is found in the applicant's favour. In such cases a contribution to costs may form part of the resolution, as determined by an adjudicator. These costs will form part of the \$15,000 order limit, unless a decision is made otherwise by Fire and Emergency. Should resolution be reached through mediation, rather than adjudication, costs can be discussed and agreed in that process. Once again, these types of costs could form part of the \$15,000 order limit unless a decision is made otherwise by Fire and Emergency.

Fee for using the scheme

Question 4.

Which charging option do you prefer?

- ☐ No application or administration fee
- ☐ Small application fee as the only charge
- ☐ Making the facilitation and mediation services for voluntary settlement free, but charging a fee for adjudication services if any party requests such a service
- ☐ Charging a small fee for the facilitation and mediation services for voluntary settlement, and a higher fee for adjudication services if requested

¹³ Section 183 of the Act.

¹⁴ For example, where an applicant has a dispute with an employee or volunteer that relates to actions or failures by that person in their capacity as an employee or volunteer, they are considered a representative of Fire and Emergency and Fire and Emergency would be required to participate.

¹⁵ Sections 35, 63 and 66 of the Act.

¹⁶ Section 184 of the Act.

Time limits

The scheme will accept applications from a specified date. We propose this date is the first day the new scheme is implemented, for example, 1 November 2019. Transitional provisions will be put in place for disputes that are currently in the Interim Dispute Resolution Process¹⁷, or any other internal resolution process.

The Act allows the scheme to not accept disputes involving events that occurred more than a specified period before the application was made. While it would make the scheme more accessible to not have a time limit, it may impact the effectiveness of the scheme in its ability to assist with the resolution of a dispute, for example, relevant information may not be available or personnel involved may no longer be at Fire and Emergency. We seek your views on the timeframe between the date of the complaint outcome from the Fire and Emergency's complaints process (or the date the incident occurred for cases where the applicant has not gone through the complaints process) and when an application can be made.

The Scheme Administrator will have some discretion to accept applications outside of the timeframe.

Appeals with specific time limits

As previously mentioned, the Act requires that two specific types of appeals must be brought to the scheme¹⁸. Please note that in each of these cases, the Act requires that should the person wish to appeal, then the appeal needs to be done within 14 days of receipt of the notice of the original decision. As such these time limits are set and are outside the following question (Question 5).

Initiating a dispute

A person can initiate the scheme process by making an application to the scheme.

In writing (where possible)

We propose the application must be written and, whenever practicable, on the form made available for that purpose. However, should using the standard form pose an obstacle, an application can be made by phone and transcribed by scheme staff. In addition, an application can be submitted by another person on the applicant's behalf, subject to proof of authority to do so.

Where appropriate, the scheme will provide additional support, for example, translation or disability services, to ensure access to the scheme.

Time limits

Question 5.

What do you think the maximum time allowed should be between the date of the complaint outcome from Fire and Emergency's complaints process and when a dispute resolution application can be made?

- ☐ 90 days
- ☐ 6 months
- ☐ 1 year
- ☐ Other – please specify

¹⁷ The Interim Disputes Resolution Process (IDRP) was put in place on an interim basis from 1 July 2017 when Fire and Emergency was established. The scheme that is the subject of this consultation will replace the IDRP.

¹⁸ Sections 63 and 66 of the Act.

With due particularity

The dispute must be specified with due particularity. This means that scheme staff must be reasonably able to identify what the dispute is about. If there is any uncertainty about which event or decision the dispute is over, or more information is required to support the application, then scheme staff will take reasonable steps to obtain clarification from the applicant.

The applicant should state the resolution he/she is seeking, if known.

Assessing applications

The Scheme Administrator, as the manager of the scheme, and any staff appointed by the scheme provide a point of contact, an avenue for informal inquiries, and a triage point for assessing applications made to the scheme. Any decisions made will be supported by guidance to ensure they are fair and consistent, including policies on the acceptance or rejection of applications.

Accepting a dispute application

Once an application has been received by the scheme, 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.

Entering the scheme

Question 6.

What are your views on the proposed rules for entering the scheme?

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

Ways by which resolution will be achieved

What this section tells you

This section outlines the general process for how disputes will be managed within the scheme, including an explanation of the resolution processes available to resolve a dispute.

Resolution methods explained

A **consensual process** is where the outcome of the dispute is decided and agreed by the parties themselves:

- **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. Mediation is based on the principles of confidentiality, impartiality, and self-empowerment.

A **determinative process** is one in which a third party decides the outcome:

- **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.
- **Expert determination**, a process in which the parties present arguments and evidence to a dispute resolution practitioner, who is chosen on the basis of their specialist qualification or experience in the subject matter. The practitioner makes a determination off the papers and without a hearing (see fast track expert determination).

Source: Government Centre for Dispute Resolution

General approach

We want to ensure the scheme provides an effective and efficient resolution process. This means that the scheme will:

- work with applicants to ensure that the resolution option selected is appropriate and proportionate to the dispute
- encourage all parties to work towards a mutually agreed resolution
- ensure it remains transparent by keeping parties informed about the progress of their dispute.

It is anticipated that in most cases consensual processes will have been attempted as part of the internal complaints process, therefore determinative processes will be utilised to resolve most disputes. However, consensual processes will also be available in the scheme for cases where this is the applicant's preferred approach, or where a dispute enters the scheme directly without having gone through a complaints process.

Independent external practitioners to be used

We propose that the mediators and adjudicators will be independent practitioners, contracted by Fire and Emergency, not Fire and Emergency staff/personnel.

However, as mentioned in Section 1 of this consultation document, the exact way in which resolution practitioners will be contracted by the scheme will be determined at implementation. Resolution practitioners could, for example, be engaged by contract on an individual basis or through an external service provider.

Section 9 of this document outlines the requirements Fire and Emergency will place on these practitioners to ensure their independence.

Formal Investigations

There may be instances where it is necessary to find out more information about a dispute, for example, where a dispute involving serious issues has been accepted into the scheme and there has been no prior investigation into the matter. A formal investigation will only be carried out as part of an adjudication. The adjudicator may decide an independent investigation is needed and will consult with the parties as to the terms of the investigation. It will be the scheme Administrator's responsibility to appoint and instruct an external investigator. The investigation will be limited to findings on the facts surrounding a dispute.

While this may add time to the overall process, investigations can support fairness and effectiveness by providing a factual basis for the resolution of disputes. Not every dispute will require a formal investigation, therefore, these will be carried out on a case by case basis.

Fast track expert determination

A fast track expert determination process will be available for time-bound disputes where a quick decision is particularly critical (for example, a fire permit application decision).

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).

A fast track expert determination supports the efficiency and effectiveness of the scheme by providing the option for the quick resolution of disputes where this is needed.

Resolution methods

Question 7.

Do you have any views or insights you would like to give us on this proposed approach?

☐ write comments

Fast track expert determination

Question 8.

What are your views on fast track expert determination being an option for time bound disputes?

- ☐ I support it
- ☐ I support it but suggest the following changes (give reasons)
- ☐ I object to it (give reasons)

Confidentiality

Approach

To promote fairness in the scheme, it is important to be clear on the intentions of Fire and Emergency on confidentiality and the extent to which it will apply. The scheme provides a confidential process for resolving disputes. The scheme will maintain the confidentiality of all information obtained by the scheme, subject to the exceptions listed below. Information about the dispute will be shared with other parties to the dispute and the designated dispute resolution practitioner, as soon as a resolution process has been agreed with the applicant.

Fire and Emergency will be a participant in all disputes. Therefore, where a dispute is against Fire and Emergency or a representative of Fire and Emergency, the Chief Executive (or nominee) will be notified. For disputes between volunteers, the Chief Executive (or nominee) will be notified. At the start of the dispute resolution process, all participants, including the dispute resolution practitioner, will be required to sign confidentiality agreements. Where there is a negotiated outcome, the parties may jointly define the confidentiality of any outcome they have reached. Any case notes produced as a result of the dispute, for example case notes summarising the dispute and the dispute outcome, will be anonymised. This will protect the anonymity of the parties and will abide by their reasonable expectations regarding confidentiality.

The following exceptions to confidentiality apply:

- when any person involved in a dispute poses an immediate danger to him/herself or others
- when any Fire and Emergency representative as a respondent party fails to participate/participate in good faith in a dispute resolution process the scheme will notify Fire and Emergency (Chief Executive or nominee)
- as required by an adjudicator's decision
- as required by law.

Confidentiality as it relates to monitoring and evaluation

The proposed approach to confidentiality outlined above, is not intended to, and will not, prevent the gathering and use of data for monitoring, evaluation, research and reporting purposes.

Data from disputes can give valuable insight into how well a system is working. Looking closely at trends in issues arising in disputes can provide insights into possible wider issues or systemic problems (for example, whether there are problems that keep emerging with a provision in the Act).

The confidentiality of the details of what happens between the parties, including in the mediation room, is an important part of the dispute resolution processes as it encourages parties to engage in free and frank discussions. This principle of confidentiality does not, however, apply to the outcomes of the processes. Any potential privacy issues can be managed by anonymising the data.

Confidentiality

Question 9.

What are your views on the proposed approach to confidentiality?

- ☐ I support it
- ☐ I support it but suggest the following changes (give reasons)
- ☐ I object to it (give reasons)

The functions and duties of people who act on behalf of the scheme

People who act on behalf of the scheme, such as Fire and Emergency staff or externally contracted providers, will have a duty to act independently and disclose any conflicts of interest, including previous involvement in a matter or the people associated with it. Specifically, they must:

- act independently when conducting facilitation, mediation or adjudication
- disclose to Fire and Emergency and the applicant any previous involvement he/she has had in the dispute (other than as a mediator, facilitator or adjudicator), or with parties to the dispute
- disclose any other conflict or appearance of a conflict of interest he/she may have including personal or financial relationships.

In appointing mediators, adjudicators or scheme staff, Fire and Emergency will ensure these individuals are appropriately qualified, trained, accredited, and experienced.

Post resolution

The Act provides for a process where resolution outcomes can be enforced or where a person can appeal decisions reached in adjudication. These features are set by the Act.

Enforcing resolution outcomes reached in the dispute process

The Act provides for the District Court to enforce the scheme as follows:

- 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 effect to any binding resolution¹⁹.
- 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 it²⁰.

How a decision can be appealed

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 Court²¹.

Features that will be determined at implementation

Two other features we are considering as part of the scheme design are:

- the ability for the Scheme Administrator to facilitate the enforcement of, and
- a review process within the scheme.

Scheme Administrator enforcement allows the scheme to facilitate the enforcement of the terms of an agreement reached, or a decision made in a determinative process where an applicant considers that Fire and Emergency has not complied with those terms.

A review process within the scheme would allow a person to ask the scheme for a review of a decision made by the scheme. The scheme would arrange for an external practitioner that has not previously been involved in the dispute to review that decision.

Both features improve the effectiveness of the scheme, and create better access to justice for people raising a dispute. The inclusion of these features is dependent on the final scheme design and will therefore be determined at the implementation stage.

Post resolution

Question 10.

What are your views on the proposed post resolution processes that will be available?

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

¹⁹ Section 185 (1)

²⁰ Section 185 (3)

²¹ Section 186 (1)

Who is accountable for the scheme

Scheme accountable to Fire and Emergency Board

Accountability in this context means there is public confidence in the scheme, there is regular monitoring, assessment and reporting on the performance of the system, and this encourages ongoing improvement and better outcomes.

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

The reporting line represents who is ultimately accountable for the direction and performance outcomes of the scheme. 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. For example, the Board will receive reporting on the number of disputes and types of issues raised, how many have been resolved, and the average time taken to resolve disputes.

The scheme Administrator will only report directly to the Board on matters regarding the operation of the scheme. The functional reporting line of the Scheme Administrator for matters associated with their employment would be to a line manager, most likely at second tier level, for example a Deputy Chief Executive.

Reporting

The Board will receive results of user surveys, including whether people were satisfied with the scheme process and outcomes. If reporting showed that the scheme objectives were not being met satisfactorily, the Board would be able to take various measures in response, for example by adjusting scheme resourcing or seeking to vary aspects of the scheme (in accordance with process requirements set out in the Act). Reporting will also include identification of any systemic and organisation-wide issues identified through the scheme and the Board could action change in response.

Evaluation of the scheme

As the accountable body for the scheme, the Board will periodically appoint an independent reviewer to carry out an evaluation of the scheme. This ensures that it remains an effective and fit for purpose scheme. The first such evaluation shall take place within three years of the scheme coming into operation, and within five yearly intervals thereafter.

Concluding comment and questions

The proposed scheme design outlined in this document has been guided by the principles of accessibility, independence, fairness, accountability, efficiency, and effectiveness. The rules under which the scheme will operate are intended to ensure that the disputes are dealt with and considered in a way which is both consistent with the rules of natural justice and fair and reasonable under the circumstances.

While we have asked you to respond to specific questions on specific issues throughout this document, we do not intend these to limit your thinking, or the breadth of issues you might consider. Accordingly, we finish with two open questions.

Catch all questions

Question 11.

Are there any other Scheme design features covered in this document that you would like to comment on

☐ Yes

If so, please provide your comments

☐ No

Question 12.

Are there any important design features, rules, or considerations you think we have not covered in this document that you would like to comment on?

☐ Yes

If so, please provide your comments

☐ No

Consultation process



How to make a submission

Fire and Emergency welcomes your feedback on this consultation document. The questions asked throughout the document and summarised in this section are a guide only, and all comments are welcome. You do not have to answer all the questions.

To ensure we clearly understand your point of view, you should explain the reasons for your views and provide supporting evidence where appropriate.

You can make a submission in two ways.

- Use our online submission tool, available at: consultations.fireandemergency.nz
This is our preferred way to receive submissions.
- Write to us at:
Fire and Emergency NZ
Level 12, 80 The Terrace
Wellington
6011
Attn: Dispute Resolution Scheme consultation submission

Submissions close at 5pm on 14 May 2019.

How your submission will be used

All submissions received by the closing date will be taken into consideration as we finalise our proposed Scheme design, which we will then put to the Minister of Internal Affairs for consideration and approval.

Submissions may be subject to a request to Fire and Emergency under the Official Information Act 1982. Personal details can be withheld under this Act, including names and addresses. If you or your group do not want any information contained in your submission to be released, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. Fire and Emergency will take your views into account when responding to information requests.

The Privacy Act 1993 governs how Fire and Emergency collects, holds, uses and discloses personal information about submitters and their applications. Submitters have the right to access and correct personal information.

Question 1.

Are you a:

- ☐ Fire and Emergency Volunteer
- ☐ Fire and Emergency Employee
- ☐ Member of the public (either an individual or a representative of a group, association or the like)

Possible resolution outcomes

Question 3.

What are your views on the proposed outcomes an applicant can achieve?

- ☐ I think they are sufficiently comprehensive
- ☐ I suggest deleting some (give reasons)
- ☐ I suggest adding some (give reasons)

Types of disputes the scheme will not deal with

Question 2.

What are your views on the proposed exclusions for what the scheme can deal with?

(outside of those explicitly excluded by the Act)

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

Fee for using the scheme

Question 4.

Which charging option do you prefer?

- ☐ No application or administration fee
- ☐ Small application fee as the only charge
- ☐ Making the facilitation and mediation services for voluntary settlement free, but charging a fee for adjudication services if any party requests such a service
- ☐ Charging a small fee for the facilitation and mediation services for voluntary settlement, and a higher fee for adjudication services if requested

Time limits

Question 5.

What do you think the maximum time allowed should be between the date of the complaint outcome from Fire and Emergency's complaints process and when a dispute resolution application can be made?

- ☐ 90 days
- ☐ 6 months
- ☐ 1 year
- ☐ Other - please specify

Entering the scheme

Question 6.

What are your views on the proposed rules for entering the scheme?

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

Resolution methods

Question 7.

Do you have any views or insights you would like to give us on this proposed approach?

- ☐ write comments

Fast track expert determination

Question 8.

What are your views on fast track expert determination being an option for time bound disputes?

- ☐ I support it
- ☐ I support it but suggest the following changes (give reasons)
- ☐ I object to it (give reasons)

Confidentiality

Question 9.

What are your views on the proposed approach to confidentiality?

- ☐ I support it
- ☐ I support it but suggest the following changes (give reasons)
- ☐ I object to it (give reasons)

Post resolution

Question 10.

What are your views on the proposed post resolution processes that will be available?

- ☐ I support them
- ☐ I support them but suggest the following changes (give reasons)
- ☐ I object to them (give reasons)

Catch all questions

Question 11.

Are there any other Scheme design features covered in this document that you would like to comment on?

☐ **Yes**

If so, please provide your comments

☐ **No**

Catch all questions

Question 12.

Are there any important design features, rules, or considerations you think we have not covered in this document that you would like to comment on?

☐ **Yes**

If so, please provide your comments

☐ **No**

Scheme principles

The principles

The Fire and Emergency Act provides principles that the development of the scheme, and the scheme itself, must be based on²².

In addition, the Act requires that the rules of the scheme must ensure that disputes are dealt with and considered under the scheme in a way that is:

- consistent with the rules of natural justice; and
- fair and reasonable in the circumstances.

How we used the principles

Having regard to the guiding principles, Fire and Emergency proposes a scheme that fundamentally encourages all parties to work towards a mutually agreed resolution.

From the principles we developed a set of assessment criteria. The criteria show our interpretation of the principles and were used throughout the development of the scheme, and ultimately to assess the proposed scheme design.

By way of summary, the principles, their definition (from the Government Centre for Dispute Resolution (GCDR)²³ and our assessment criteria are listed in the following table. The table also shows, in the rightmost column, the features of our proposed scheme design and rules that, in our view, demonstrate the application of the principles.

²² As required by Section 179 of the Act 2017.

²³ GCDR, which is part of the Ministry of Business, Innovation and Employment was established to provide leadership and stewardship to support a systems-based, best practice approach to dispute resolution in New Zealand. We have adopted the Centre's meanings as the Fire and Emergency New Zealand Act does not explicitly define the terms. The best practice guidance provided by GCDR on dispute resolution was utilised in the development of the scheme and is referenced a number of times throughout this document.

TABLE 3: Scheme principles

Principle ²⁴	Definition	Assessment Criteria	Features of our proposed scheme design and rules that support this principle
Accessibility	Users of dispute resolution services are at the centre of all aspects of the dispute resolution system. Dispute resolution is easy for potential users to find, enter and use regardless of their capabilities and resources.	<ul style="list-style-type: none"> Information about the scheme is easy to find There are minimal barriers (real or perceived) to entering and using the scheme Each step of the process is easy to understand 	<ul style="list-style-type: none"> Few exclusions proposed for disputes the scheme can handle Implementation of the scheme will ensure it is easy to find and apply
Independence	Disputes are managed and resolved in accordance with applicable law and natural justice. All dispute resolution functions are, and are seen to be, carried out in an objective and unbiased way.	<ul style="list-style-type: none"> The scheme is, and is seen to be independent of the organisation and the dispute Decision makers are objective and free from bias The scheme allows for the identification and management of conflicts of interest 	<ul style="list-style-type: none"> The Fire and Emergency Board are accountable for the scheme Externally contracted providers carry out mediation and adjudication The functions and duties of persons who act on behalf of the scheme ensures they must act independently and disclose conflicts of interest
Fairness		<ul style="list-style-type: none"> The process has clear privacy and confidentiality rules Users can participate equally in the process The roles and responsibilities of all parties are clear 	<ul style="list-style-type: none"> Implementation of the scheme ensures privacy and confidentiality rules are in place, some of these are foreshadowed in this document Implementation may include a review process within the scheme (this aspect is yet to be determined)
Accountability	There is public confidence in dispute resolution. Those involved in its design and delivery are held to account for the quality of their performance. Regular monitoring and assessment and public reporting encourages ongoing improvement and better outcomes across the system.	<ul style="list-style-type: none"> The scheme is measured against performance objectives There is regular reporting and evaluation of the scheme There is a clear reporting line that supports continuous improvement 	<ul style="list-style-type: none"> The reporting line proposed is direct from the scheme Administrator to the Fire and Emergency Board Regular reporting, monitoring and evaluation are proposed as features of the scheme Implementation of the scheme will ensure identification of systemic issues and continuous improvement
Efficiency	Dispute resolution provides value for money through appropriate, proportionate and timely responses to issues. It evolves and improves over time and makes good use of information to identify systemic issues.	<ul style="list-style-type: none"> Early resolution is encouraged Process and costs are proportionate to the dispute 	<ul style="list-style-type: none"> Early resolution is encouraged at a low level through an internal complaints process The scheme offers consensual resolution methods to resolve a dispute
Effectiveness	Dispute resolution delivers sustainable results and meets intended objectives. It fulfils its role in the wider government system by helping minimise conflict and supporting a more productive and harmonious New Zealand.	<ul style="list-style-type: none"> The process allows for a range of resolution options The scheme is adaptable and flexible to new dispute types 	<ul style="list-style-type: none"> There are a range of resolution outcomes available from the scheme Implementation may include the ability for the scheme Administrator to enforce outcomes of the scheme (this aspect is yet to be determined)

²⁴ Section 179 of the Act



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