



Proposed Rules for the Dispute Resolution Scheme

Perspective

This quick read has been written from the perspective of a member of the public being the applicant (that is having a dispute with Fire and Emergency, or a member of Fire and Emergency's personnel).

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, this does not necessarily have to be an in-person meeting.

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 dispute resolution practitioner to it. The functions of the Administrator are outlined in more detail in Part 5 of the Rules.

Dispute resolution practitioner

Refers to facilitators, mediators or adjudicators.

Scheme open to the public as well as our volunteers

Generally, the same rules apply to any applicant. However, there are some rules specific to Fire and Emergency volunteers. We apologise if this makes the rules slightly hard to navigate, but it is one implication of having one Scheme for both purposes.

Much of this is prescribed by legislation and/or influenced by earlier consultation

The Scheme must operate in accordance with Subpart 5 of the Fire and Emergency Act 2017, which, for example, outlines the principles upon which the Scheme must be based and prescribes: certain types of disputes the Scheme cannot handle; dollar limits on any monetary compensation that can be awarded; and enforcement and appeals arrangements.



In April 2019 we consulted on some of the main elements of the Scheme design as well as some of the key rules that the Scheme will operate under. The rules presented here now for your comments take into account those proposals and submissions received on them. Many of the rules present the next level of detail to those earlier proposals and reflect a call for greater clarity down to that level by submitters.

Part 1: Purpose and jurisdiction

The Scheme is being established to resolve disputes on any matter under the Act or regulations made under this Act, with certain exclusions.

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 two exceptions to this are appeals against notices issued by Fire and Emergency where:

- Fire and Emergency reasonably considers it necessary for the purpose of fire control to require a landholder to make and clear any firebreak on the landholder's land or to remove from any firebreak any vegetation or other thing (Section 62 of the Fire and Emergency New Zealand Act), or
- Fire and Emergency requires the occupier or (if there is no occupier) the owner of land to remove or destroy any vegetation or other thing on the land if Fire and Emergency reasonably considers that the vegetation or other thing is likely to endanger persons or property by increasing the risk of the outbreak or spread of fire (Section 65).

The Act requires that these appeals be dealt with by the Scheme and as such the Rules allow for these to directly enter the Scheme without needing to go through Fire and Emergency's complaints process first.

The types of disputes the Scheme cannot handle are outlined in Rule 6 and include disputes related to levies and disputes related to offences. These exclusions are, once again, specified by the Act.

For illustrative purposes, we attach a list of the types of disputes the Scheme can handle and that might be received from members of the public (as opposed to volunteers).

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

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 the complaints process first, an application to the Scheme must generally be 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 a landholder about firebreaks, or appeals against a Fire and Emergency notice about removal or destruction of vegetation or other



thing increasing fire risk (specific appeals 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 on 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 (Rule 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 delegate will also be notified of the dispute (name of parties only, no details as to nature).

Part 3: Disputes 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 that not all disputes will necessarily need a face-to-face meeting/hearing – Rule 20 allows the dispute resolution practitioner to decide the procedure to follow. This will take into account, for example, 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 adjudication (Rule 35).

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 is set by the Act and also includes any costs awarded (Rule 38).

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 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.

Table 1: Examples of matters that could be subject to disputes handled by the Scheme

| Part of Act | Title | Examples |
|-------------|--|---|
| Part 1 | Main functions | <p>Complaint that Fire and Emergency has not carried out, or about 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:</p> <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 | <p>Complaint that Fire and Emergency has not carried out, or about 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:</p> <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 the lighting of fires in an area • Prohibiting access to 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 |