

Proposed Rules for the Dispute Resolution Scheme

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 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, does not necessarily have to 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 details in Part 4 of the Rules.

Dispute resolution practitioner

Refers to facilitators, mediators or adjudicators.

Are there any pre-requisites to applying?

Generally, you will need to have attempted to resolve the issue through Fire and Emergency’s internal complaints process first and have a decision from Fire and Emergency on it (and it is that decision you are disputing), but there are circumstances where this isn’t necessary

If the complaints process is not progressing, you may be able to enter the Dispute Resolution Scheme rather than remaining in limbo in the complaints system. You need to allow three months (90 days) for the complaints process to progress before making this application.

Does it cost anything?

No. There are no application or administration fees.



What types of disputes will the Scheme not accept?

Parliament, through the Act, has decided the Scheme will not handle certain disputes¹. The following table lists those disputes, which appear in Rule 6, as well as indicating where they could be handled should they arise.

Dispute	Handled by
Employment dispute that may be dealt with under the Employment Relations Act 2000	Fire and Emergency's People branch; 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 force)	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
Dispute relating to any of sections 14 to 20 of the Act (which deals with local advisory committees) ²	Ombudsman or High Court
Dispute relating to decisions made under the Official Information Act or the Privacy Act	Ombudsman or Privacy Commissioner

What do I stand to gain?

Anything can be mutually agreed in facilitation or mediation.

With respect to adjudication, an adjudicator may direct a party to do one of 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.

¹ Section 178(2) of the Act.

² 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.



The vast majority of these remedies were identified by the Act, the only change made as a result of the April/May 2019 consultation on the Scheme design has been to add a public apology.

What can't I get?

The Scheme cannot direct someone to pay more than \$15,000 to another party to the dispute. This limit is prescribed by the Act. It is a limit on the total dollar amount; if an adjudicator directs a party to pay both compensation and costs to an applicant, the total amount payable by the party cannot exceed \$15,000. That is costs must be included in the \$15,000 and not be additional. [Rule 35 General remedies and Rule 38 Costs refer].

Therefore, if the remedies you are seeking include monetary compensation higher than \$15,000 and/or the dispute is likely to involve substantial [legal] costs, you might like to consider an alternative avenue, such as the District Court. You may still use the Scheme but you will not be able to obtain more than \$15,000.

How independent of Fire and Emergency is the disputes process?

The Fire and Emergency Board appoints the Scheme Administrator [Rule 42]. Individual disputes cannot be taken to the Board, and the Board will not be involved in the administrative or decision-making processes for any dispute. Rather, it will receive regular anonymised reports from the Scheme Administrator on the performance of the Scheme [Rule 48].

The Board must also ensure that sufficient numbers of suitably qualified and independent facilitators, mediators, adjudicators, and investigators are available for timely appointment [Rule 46].

Can you tell me a bit more about the resolution process?

As the applicant you can choose the resolution method (you will not be required to reattempt mediation if that has already been attempted in the internal complaints process and you do not think there is any value in trying mediation again).

If you do attempt mediation and that doesn't work it's over to you whether you wish to progress to adjudication or not (where an adjudicator will decide what the remedies to the dispute are to be (if any)).

You can be represented by lawyers or advocates if you wish. You can also have support people.

Are decisions enforceable?

Yes. You may apply to the District Court for an enforcement order or you can ask the Scheme Administrator to do it for you. This is allowed for in the Act and repeated in the Rules [Rule 40 refers].

Can I appeal an order?

Yes, you can appeal to the District Court. This is provided for by the Act and repeated in the Rules. [Rule 41 refers].