



## 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 disputes 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 disputes 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 details in Part 5 of the Rules.

#### *Disputes resolution practitioner*

Refers to facilitators, mediators or adjudicators.

### **Which volunteers can lodge a dispute?**

Both current and former volunteers can lodge a dispute.

An individual volunteer can apply or a group of volunteers, such as part or all of a brigade.

### **Are there any prerequisites 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.

Moreover, if the complaints process is not progressing, there could be grounds for entering the Dispute Resolution Scheme rather than remaining in limbo in the complaints system. The main condition here is that 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 can the Scheme deal with?**

The Rules do not specify these in detail; rather it outlines the types of disputes the Scheme cannot handle, as that is a smaller list. But by way of illustration, the Scheme will handle disputes on matters relating to:

- Training
- Operational activities
- Resourcing
- Fleet or property
- Health and safety
- Performance or disciplinary issues
- Discrimination
- Sexual harassment or bullying
- Other matters by mutual agreement between the parties involved
- As specifically prescribed in the Act, an appeal by a volunteer against the requirement to leave Fire and Emergency due to incapacity.

### **What types of disputes the Scheme will not accept?**

These are outlined in Rule 16 and include situations where:

- The dispute would be more appropriately dealt with by a court, tribunal, or other authority; or
- The application is frivolous, trivial, or vexatious; or
- The dispute has been previously dealt with under the Scheme (including, for example, by final resolution).

### **Can you explain frivolous, trivial, or vexatious?**

This proposed exclusion received a lot of comment in our April/May 2019 consultation on Scheme design. As outlined in that proposal, the reference here is to the application, not the applicant. Each application will be assessed on its own merits.

The operating guidelines will emphasise there is a very high bar for excluding disputes on these grounds. The Scheme administrator will determine whether an application meets the relevant threshold based on guidance around what is considered frivolous, vexatious or trivial. The guidance will draw on established case law principles and guidance from the Ombudsman relating to official information requests.



In respect of 'trivial', the assessment will consider the value and importance of the complaint to the applicant. An example of what these words mean in practice can be found on the [Telecommunications Disputes Resolution](#) site.

### **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.

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

#### *Additional remedies available to Fire and Emergency volunteers*

If a dispute involves a volunteer, the adjudicator may, in addition to or instead of one or more of the remedies outlined 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 refers].

### **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, not additional to it (refer to Rule 35 General remedies and Rule 38 Costs).

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. Or you could use the Scheme knowing these upper dollar limits apply.

### **If the dispute is not found in my favour, can I be made to pay the other party anything?**

It is intended that no member of personnel whether paid or not, be individually 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 was considered appropriate, it could be ordered against and paid by Fire and Emergency (Rule 35(2)).

### **How confidential will all this be?**

Fire and Emergency's Chief Executive or delegate will be notified of the dispute (names of parties, not what the dispute is about (refer to 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.

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 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).

This 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. If information is used for those purposes the Rules require it will not be published in a form that could reasonably be expected to identify a particular person.

### **How independent of Fire and Emergency management is all this?**

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).

It is Fire and Emergency's intention to contract an administrator in the first instance (i.e. an external person rather than in-house). However, Rule 42 has intentionally been left flexible in that 42(2) states the person appointed as the administrator may be a Fire and Emergency employee, a person associated with Fire and Emergency or a person wholly independent of Fire and Emergency. This is because while the rules can be amended overtime there is quite a process involved in that so the rules should be a future proofed as possible.

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).



### **How will conflicts of interest be managed?**

The dispute resolution practitioner must disclose any actual or potential conflict of interest and take no further part in the dispute resolution process unless all parties agree in writing the practitioner can continue. The Scheme administrator would then appoint a new dispute resolution practitioner to that particular dispute.

The dispute resolution practitioner must disclose any previous involvement they have had with a party to the dispute even if it is not a conflict of interest. However, if it is not considered a conflict of interest then it is up to the dispute resolution practitioner and the parties to decide if the dispute resolution practitioner should step aside. [Rule 25 refers].

### **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).

If you do attempt mediation and that doesn't work, it's over to you whether you wish to progress to adjudication or not. During adjudication, 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 (refer to Rule 40).

### **Can I appeal a decision?**

Yes, you can appeal to the District Court. This is allowed for in the Act and repeated in the Rules (refer to Rule 41).