

# Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2020

*These rules are made by Fire and Emergency New Zealand, pursuant to subpart 5 of Part 4 of the New Zealand Fire and Emergency Act 2017.*

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## Rules

### 1 Title

These rules are the Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2020.

### 2 Commencement

These rules come into force on **[date]**.

### 3 Interpretation

(1) In these rules, unless the context otherwise requires,—

**Act** means the Fire and Emergency New Zealand Act 2017

**administrator** means the person appointed to that position under rule 43

**applicant** means a person who has, or a group of persons who have, applied to the administrator to have a dispute resolved under the Scheme

**chief executive** means the chief executive of FENZ

**dispute** includes an appeal under any of sections 35, 63, and 66 of the Act

**dispute resolution practitioner** means a facilitator, mediator, or adjudicator appointed under these rules

**FENZ complaint process**—

(a) means a process developed by FENZ to deal with a complaint that has been made to FENZ; and

(b) includes a process that deals with disciplinary matters relating to a FENZ volunteer

**party** means a party to a dispute under the Scheme

**person** includes a natural person, a corporation sole, a body corporate, and an unincorporated body

**regulations** means regulations made under the Act

**Scheme** means the Dispute Resolution Scheme approved by the Minister under section 182 of the Act.

(2) Any word or term that is used in these rules and defined in the Act but not in these rules has the same meaning as in the Act.

#### **4 Status of examples**

- (1) The examples given in these rules are illustrative of the particular rule, and do not limit that rule.
- (2) However, if there is any inconsistency between the example and the rule, then the rule prevails.

### **Part 1**

#### **Purpose and jurisdiction of Scheme**

#### **5 Purpose of Scheme**

The purpose of the Scheme is to make provision for the matters set out in sections 178 to 180 of the Act, including to—

- (a) establish a framework to enable the fair and reasonable resolution of disputes; and
- (b) make provision for the determination of disputes that are appeals under sections 35, 63, or 66 of the Act; and
- (c) specify the persons who may participate in the Scheme; and
- (d) ensure that all disputes are dealt with on the basis of accessibility, independence, fairness, accountability, efficiency, and effectiveness; and
- (e) provide for the enforcement and review of decisions made in accordance with these rules; and
- (f) provide for matters relating to the administration of the Scheme.

#### **6 Disputes that may be dealt with under Scheme**

- (1) A dispute arising in relation to any matter under the Act or regulations may be dealt with under the Scheme, including, for example, any matter relating to the relationship between a FENZ volunteer and FENZ or a brigade.
- (2) However, a dispute of any of the following kinds (an **excluded dispute**) must not be dealt with under the Scheme:
  - (a) a dispute that may be dealt with under the Employment Relations Act 2000, including an employment relationship problem, a personal grievance, and any other employment matter:
  - (b) a dispute relating to an offence under the Act:
  - (c) a dispute relating to the performance or exercise of a function, duty, or power by a Minister:
  - (d) a dispute relating to Part 3 of the Act (which deals with levies and provides for a separate dispute resolution regime):

- (e) a dispute relating to any of sections 14 to 20 of the Act (which deal with local advisory committees):
- (f) a dispute relating to a decision made by the chief executive under the Official Information Act 1982 or the Privacy Act 1993 (which, in each case, can be dealt with under the relevant provisions of those Acts).

## **7 Who may apply to Scheme**

- (1) Any person may apply to the Scheme for the resolution of a dispute.
- (2) To avoid doubt, access to the Scheme is available to any of the following persons:
  - (a) current FENZ volunteers:
  - (b) former FENZ volunteers (who, for the purposes of the Scheme, are treated in the same way as current FENZ volunteers):
  - (c) members of the public:
  - (d) any other persons having a dispute.

## **8 Obligation to attempt to resolve dispute before applying to Scheme**

- (1) A person may not access the Scheme without first attempting to resolve their dispute through the FENZ complaint process, unless–
  - (a) the dispute is an appeal under any of sections 35, 63, or 66 of the Act (in which case the person may access the Scheme directly); or
  - (b) the administrator allows the person to access the Scheme under subrule (2).
- (2) The administrator may accept an application where the applicant has not first attempted to resolve the dispute through the FENZ complaint process, but only if the administrator is satisfied that–
  - (a) it would not be appropriate to require the applicant to go through the FENZ complaint process; and
  - (b) it is still reasonably feasible for sufficient evidence or other information to be gathered to enable the dispute to be resolved under the Scheme.

## **Part 2**

### **Dispute Resolution Application**

## **9 Time for application to Scheme**

- (1) For applications that relate to an appeal, the application must be made within 14 days after receipt of the relevant notice of appeal to either–
  - (a) the Board (if the appeal is under section 35 of the Act); or

- (b) the administrator (if the appeal is under either section 63 or 66 of the Act).
- (2) In all other cases, unless the administrator accepts the application under either of subrules (3) or (4), the application must be made to the administrator within 90 days of the date on which the applicant was notified of the outcome of the FENZ complaint process.
- (3) The administrator may accept an application that has been made after the 90 days referred to in subrule (2) if the administrator is satisfied that the circumstances merit such action.
- (4) The administrator may also accept an application that has been made before the FENZ complaint process has been completed if–
  - (a) it has been at least 90 days since the complaint was made to FENZ; and
  - (b) the administrator is satisfied that the FENZ complaint process is not being progressed at a reasonable rate.

#### **10 Method of application**

- (1) An application may be made orally or in writing (including electronically, for example, by email).
- (2) An application may be made on an applicant's behalf if the person making the application is authorised by the applicant to do so.
- (3) Where an application is made to the Board (see rule 9(1)(a)), the Board must refer that application to the administrator as soon as is reasonably practicable after the Board receives it.
- (4) No fee or other charge is payable in respect of an application.

#### **11 Form of application**

- (1) The application must include the following information:
  - (a) the full name and contact details of each applicant; and
  - (b) the status of each applicant (for example, whether the applicant is a member of the public, or a FENZ volunteer); and
  - (c) if an application is being made on behalf of an applicant (including, for example, where the applicant is a company, brigade, or other non-natural person), evidence that the person making the application has the authority to do so; and
  - (d) the full name and contact details, if known, of each of the other parties; and
  - (e) a brief description of the dispute; and

- (f) whether the dispute has been dealt with by way of the FENZ complaint process and,—
    - (i) if so, the date on which the applicant was notified of the outcome; and
    - (ii) if not, the reasons why; and
  - (g) the method of dispute resolution selected by the applicant; and
  - (h) any outcomes sought by the applicant; and
  - (i) any other information that the administrator considers relevant.
- (2) If an application is made orally, the administrator must record that application in writing and confirm that record with the applicant.
- (3) The administrator must provide reasonable assistance (for example, with translation or interpretation) to the applicant, to enable the application to be made.

## **12 Application for resolution by fast-track adjudication**

If a dispute involves a time-critical matter, the applicant may apply for the dispute to be dealt with by way of fast-track adjudication and, in that case, the applicant must provide—

- (a) the reasons why the dispute should be dealt with in that way; and
- (b) the date by which the determination is required.

## **13 Action by administrator on receipt of application**

- (1) If the administrator requires further information to determine whether or not to accept an application, the administrator may request that further information from the applicant, and must specify a date by which that information must be provided.
- (2) The administrator must make a decision on whether or not to accept an application, and provide written notice of that decision to the applicant as soon as reasonably practicable, but not later than 7 working days after, either—
- (a) the receipt of the application; or
  - (b) if additional information has been requested under subrule (1), the receipt of that information or the date specified for the provision of that information, whichever is earlier.
- (3) The administrator must accept an application if—
- (a) the dispute is covered by the Scheme (see rule 6); and
  - (b) the application has been made within the required time; and
  - (c) the administrator is not required to refuse the application under rule 16.

#### **14 Notice by administrator if application accepted**

- (1) If the administrator accepts an application, the administrator must give written notice to the applicant, and to the other party or parties, that includes the applicant's description of the dispute and states—
  - (a) that the application has been accepted; and
  - (b) the method of dispute resolution to be used; and
  - (c) if the dispute is to be determined by fast-track adjudication, the date for determination approved by the administrator.
- (2) The administrator must also give written notice to the applicant of their reasons if—
  - (a) the applicant sought determination by way of fast-track adjudication; and
  - (b) the administrator accepts that application, but has either—
    - (i) approved a different date for determination to that sought by the applicant; or
    - (ii) accepted the application for resolution by ordinary adjudication instead of fast-track adjudication.
- (3) The administrator must also provide the parties with information about the conditions of entering the Scheme.

#### **15 Appointment of dispute resolution practitioner**

- (1) As soon as reasonably practicable after acceptance of an application, the administrator must appoint a suitably qualified and independent dispute resolution practitioner to deal with the dispute.
- (2) However, if fast-track adjudication has been approved, the administrator must appoint the adjudicator within 2 working days of the application being accepted.

#### **16 Situations where administrator must refuse to accept application**

- (1) The administrator must refuse to accept an application if the administrator is satisfied that—
  - (a) the dispute does not relate to a matter under the Act or regulations; or
  - (b) the dispute is an excluded dispute (see rule 6(2)); or
  - (c) the application is frivolous, trivial, or vexatious; or
  - (d) the applicant has failed to provide any further information requested by the administrator (see rule 13); or
  - (e) the dispute would be more appropriately dealt with, or is already being dealt with, by a court, tribunal, or other authority; or

- (f) the dispute has been previously dealt with under the Scheme (including, for example, by final resolution).
- (2) However, subrule (1)(f) does not apply (and the administrator may accept the application) if the dispute has previously been refused by the administrator under rule 31(2) (because it was the subject of an ongoing FENZ complaint process) and the FENZ complaint process has subsequently been completed.

#### **17 Action by administrator if application refused**

If the administrator refuses to accept an application under rule 16, the administrator must give the applicant written notice of that refusal, which must–

- (a) include the description of the dispute provided by the applicant; and
- (b) state that the application has been refused, and the reasons why.

#### **18 Review of administrator's decision to refuse application**

- (1) If the administrator gives notice of a decision to refuse an application (see rule 17), the applicant may, no later than 20 working days after receipt of that notice, apply to the administrator for a review of that decision.
- (2) As soon as reasonably practicable after receipt of such an application, the administrator must refer it to an adjudicator, engaged for that purpose by the Board under rule 47(2), to review the decision.
- (3) The adjudicator must review the dispute application and must, no later than 10 working days after they received the referral under subrule (2), determine the review, and give reasons for the determination, by either–
  - (a) confirming the administrator's decision; or
  - (b) revoking the administrator's decision (in which case the application must be treated by the administrator as having been accepted).

#### **19 Administrator to notify chief executive of certain matters**

- (1) The administrator must provide the chief executive or their delegate with written notice of each dispute that has been accepted, together with the names of the parties to the dispute.
- (2) The administrator must also provide written notice to the chief executive, or their delegate, if–
  - (a) FENZ is a party; and
  - (b) the administrator becomes aware that a person acting on behalf of FENZ has failed to participate, or to participate in good faith, in the dispute resolution process, despite the dispute resolution practitioner's attempts to gain such participation by that person.

- (3) The chief executive or their delegate 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 (see rule 24(2)(e)).
- (4) To avoid doubt, 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.

### **Part 3**

#### **Dispute Resolution Process**

##### **20 Dispute resolution methods and procedures**

- (1) A dispute may be resolved by one or more of the following methods:
  - (a) facilitation:
  - (b) mediation:
  - (c) adjudication, including fast-track adjudication.
- (2) Every party is entitled to attend, and to be heard at, the resolution process of that dispute.
- (3) The dispute resolution practitioner decides the procedures to be followed in resolving a dispute, but must ensure that they are consistent with section 179 of the Act and these rules.
- (4) 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.
- (5) The administrator, and all dispute resolution practitioners, must—
  - (a) act in accordance with what is fair and reasonable in all the circumstances; and
  - (b) consider and deal with a dispute in a timely and cost-effective manner; and
  - (c) have regard to the law and relevant good practice.
- (6) In reaching a decision, an adjudicator is not bound by the rules of evidence or previous decisions, but must determine the dispute according to the substantial merits and justice of the case.

## **21 Minimum requirements for conduct of dispute resolution process**

As a minimum, the dispute resolution process must–

- (a) be consistent with the principles of natural justice; and
- (b) encourage the parties to work towards a mutually agreed solution; and
- (c) promote the use of consensual methods of dispute resolution where appropriate and where those methods have not already been attempted (for example, by attempting facilitation or mediation before adjudication); and
- (d) adopt tikanga Māori practices, to the extent provided for in rule 20(4); and
- (e) take account of any other cultural practices that are relevant to a party or parties; and
- (f) take account of the geographic location of the parties and their access to communications or support; and
- (g) ensure that all parties are kept informed of the progress of their dispute.

## **22 Party may be represented, or assisted, by lawyer or advocate**

A party may be represented, or assisted, at any meeting or hearing that forms part of a dispute resolution process, by a lawyer or advocate.

## **23 Party entitled to have support people present**

- (1) A party may be supported at any meeting or hearing that forms part of a dispute resolution process, by up to two support people.
- (2) However, despite subrule (1), additional support people may be present if–
  - (a) the meeting or hearing involves a tikanga Māori, or any other cultural, process (in which case any number of support people may be present); or
  - (b) in any other case, the dispute resolution practitioner is satisfied that it would not be detrimental to the dispute resolution process (in which case the number of additional support people may be specified by the dispute resolution practitioner).

## **24 Confidentiality**

- (1) The dispute resolution processes under the Scheme are confidential to the parties and, except as provided for in subrule (2), no person (including the administrator, the dispute resolution practitioner, any investigator, and the parties and their support people and representatives) may disclose any of the following information:

- (a) any statement, admission, or document created or made for the purposes of the process; and
  - (b) any other information (whether written or oral) that, for the purposes of the process, is disclosed in the course of the process; and
  - (c) the outcome of facilitation and mediation; and
  - (d) all or any part of an adjudication order, or of the outcome of an adjudication, that is subject to a confidentiality order under rule 39.
- (2) The information specified in subrule (1) may be disclosed only if, and only to the extent that,–
- (a) all of the parties to the dispute have given their written consent to the disclosure; or
  - (b) the information is already in the public domain (unless the information is subject to a confidentiality order under rule 39, in which case the information must not be disclosed); or
  - (c) disclosure is necessary for the purposes of, or in connection with, the enforcement of an outcome reached under the Scheme; or
  - (d) the disclosure is limited to the dispute resolution practitioner providing the administrator with a copy of the facilitation or mediation agreement; or
  - (e) the disclosure is to give notice to the chief executive or their delegate (see rule 19); or
  - (f) the information is–
    - (i) disclosed in a form that does not identify any particular person; or
    - (ii) to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify any particular person; or
  - (g) the dispute resolution practitioner discovers a likely risk of serious harm during the dispute resolution process (in which case the dispute resolution practitioner may, at their discretion, report that discovery, and the nature of the harm, to an appropriate person).

**25 Disclosure of conflict of interest, previous involvement with party, etc**

- (1) A dispute resolution practitioner and any investigator must disclose to the administrator and the parties–
- (a) any previous involvement they have had with a party or a party's lawyer, advocate, or support people, in relation to the dispute; and
  - (b) any other conflict of interest they may have in relation to the dispute (which may include, for example, a personal or financial interest in the outcome).

- (2) If a disclosure has been made under subrule (1), the dispute resolution practitioner or the investigator (as the case may be), must withdraw from the dispute, unless that person and all parties agree, in writing, to that person continuing to deal with the dispute, despite the conflict.
- (3) Disclosure must also be made in the following situations:
  - (a) where the dispute resolution practitioner or the investigator has had previous involvement with a party other than in relation to the dispute (in which case the disclosure must be made to the parties and, if the disclosure is being made by the investigator, to the dispute resolution practitioner); and
  - (b) where a party considers that the dispute resolution practitioner or the investigator may have a conflict of interest in relation to the dispute (in which case the disclosure must be made to the other party or parties and to the dispute resolution practitioner).
- (4) If a disclosure has been made under subrule (3), the dispute resolution practitioner and the parties may agree on what, if any, action is required as a result (which may include, for example, the dispute resolution practitioner withdrawing from the dispute).
- (5) Unless agreement is reached under subrule (2) or (4), the administrator must appoint a different dispute resolution practitioner or investigator (as the case may be), and the previous appointee then takes no further part in the dispute resolution process.
- (6) To avoid doubt, the fact that a dispute resolution practitioner or investigator was engaged, or otherwise procured, to be appointed to that position under these rules by, or on behalf of, the Board or FENZ, is not a conflict of interest and does not need to be disclosed.

## **26 Request for adjudication following unsuccessful facilitation or mediation**

If the parties fail to resolve their dispute through facilitation or mediation, the applicant may ask the administrator to have the dispute resolved by adjudication and, in that case, the administrator must appoint an adjudicator to deal with the dispute.

## **27 Adjudicator may request further information**

- (1) If an adjudicator requires further information to enable them to resolve the dispute, the adjudicator may make any request that is fair and reasonable in the circumstances.
- (2) If the request is to a party, that party must either supply the information to the adjudicator, or give the adjudicator written notice (with reasons) of the party's objection to supplying the information, by the following dates:
  - (a) the date specified by the adjudicator:

- (b) if no date has been specified, as soon as reasonably practicable after receiving the request.
- (3) Nothing in this rule requires a party to provide information if–
  - (a) providing the information would breach an obligation of confidence owed by the party to a third person who has refused consent to the supply of the information; or
  - (b) the information is subject to legal professional privilege or was provided to the party on a without prejudice basis; or
  - (c) the party does not have the information or it is not within the party's control.
- (4) If the request is made to a person who is not a party–
  - (a) the adjudicator must obtain the consent of the parties before making the request; and
  - (b) the person to whom the request is made may, without giving reasons, decline to provide that information.

## **28 Failure by party to supply information**

If a party fails, without good reason, to provide any information requested under rule 27, that adjudicator may,–

- (a) if the party is the applicant, decline to consider the dispute further; or
- (b) in all cases, continue to resolve the dispute, drawing any adverse inference that the adjudicator considers appropriate from the party's failure to provide the information.

## **29 Administrator may appoint investigator**

- (1) If an adjudicator considers that an investigator would assist in the resolution of a dispute, they may–
  - (a) ask the administrator to appoint an investigator; and
  - (b) specify the proposed terms and scope of the investigation.
- (2) However, before making such a request, the adjudicator must consult with the parties, and must take their views into account in formulating the proposed terms and scope of the investigation.
- (3) The administrator may appoint any suitably qualified and independent person as an investigator.

### **30 Adjudicator may obtain expert assistance or advice**

If an adjudicator considers that the assistance or advice of a subject matter expert would assist in the resolution of a dispute, they may obtain any such assistance or advice that they consider necessary.

### **31 Dispute resolution practitioner may decline to continue consideration of dispute**

- (1) A dispute resolution practitioner may, at any time during a dispute resolution process, decline to continue to consider the dispute if they become aware—
  - (a) of information that would have required the administrator to refuse the application (see rule 16); or
  - (b) that the applicant has commenced proceedings with a court, tribunal, or other authority in relation to the same matter that is the subject of the dispute; or
  - (c) that the dispute relates to an ongoing FENZ complaint process that the administrator was unaware of when the application was accepted.
- (2) In such cases, the dispute resolution practitioner must refer the dispute back to the administrator, and the administrator must then reconsider, and decide, whether the application should be accepted or refused.

### **32 Failure of party to attend adjudication**

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.

### **33 Final decision: adjudication and fast-track adjudication**

- (1) The adjudicator must give the parties written notice of their final decision, including the reasons for reaching that decision.
- (2) An adjudicator in a fast-track adjudication must give the parties written notice of their final decision, including the reasons for reaching that decision, by the date approved by the administrator (see rule 14(1)(c)).
- (3) A final decision is binding on the parties from the date of the written decision.

### **34 End of dispute resolution process**

- (1) A dispute resolution process ends in the following circumstances:
  - (a) the dispute resolution practitioner gives the administrator written notice that the parties have entered into an agreed settlement:

- (b) the adjudicator makes a final decision on the dispute, and any application for a review of that decision has been considered and dealt with:
  - (c) the applicant gives the administrator written notice that the dispute has been withdrawn:
  - (d) the administrator, or the dispute resolution practitioner, determines that the dispute is not, in fact, covered by the Scheme:
  - (e) the adjudicator gives the applicant written notice that they decline to consider the dispute further, because of the applicant's failure to comply with the adjudicator's request for information (see rule 28).
- (2) When a dispute resolution process has ended, it may not be re-commenced or continued unless the administrator is satisfied that, in the particular circumstances, it would be fair and reasonable to allow the process to re-commence or continue.
- (3) To avoid doubt, nothing in this rule affects the right of appeal under rule 42.

#### **Part 4**

#### **Remedies, recommendations, declarations, and orders: adjudication**

#### **35 General remedies**

- (1) An adjudicator may direct a party to do any one or more of the following things to remedy a dispute:
- (a) give reasons for a decision to the other party:
  - (b) formally apologise to the other party, including by way of a public apology:
  - (c) if the dispute relates to a requirement under the Act or regulations,—
    - (i) comply with the requirement:
    - (ii) remedy, or avoid, the breach, or likely breach, of the requirement:
    - (iii) take steps to avoid any further breach of the requirement:
  - (d) subject to subrule (2), pay compensation, not exceeding \$15,000, to the other party for any harm or loss suffered by that party:
  - (e) provide non-monetary redress to the other party for any loss or damage suffered by that party:
  - (f) take any other action that the adjudicator considers appropriate in the circumstances.
- (2) Despite subrule (1)(d), an adjudicator must not direct a member of FENZ personnel to pay compensation if, at the relevant time, the person was acting in good faith while performing or exercising their functions, powers, and duties under the Act or regulations and, in that case, the adjudicator may direct FENZ to pay that compensation.

### **36 Additional remedies available to FENZ volunteers**

If a dispute involves a FENZ volunteer, the adjudicator may, in addition to, or instead of, one or more of the remedies available under rule 35, direct FENZ to reinstate the volunteer in either the volunteer's former position or a position no less advantageous to the volunteer.

### **37 Adjudicator may make recommendations to FENZ**

- (1) If an adjudicator finds that FENZ workplace conduct or practices have significantly contributed to a dispute, the adjudicator may make recommendations to FENZ as to the action that it should take to prevent similar problems occurring in the future.
- (2) If an adjudicator considers that a restorative process in relation to the dispute is appropriate, the adjudicator may—
  - (a) make a recommendation to FENZ that FENZ facilitates such a process; and
  - (b) identify the persons to be involved in that process (which may include, for example, the parties to the dispute, non-parties who were negatively affected by the dispute or the resolution of the dispute, and any other person or group of persons that the adjudicator considers should properly be included in the process).
- (3) An adjudicator may make the recommendations under subrule (4) if they find that a FENZ volunteer has been either—
  - (a) harassed in the course of carrying out their FENZ duties; or
  - (b) treated adversely in the course of carrying out their FENZ duties on the ground that the FENZ volunteer is, or is suspected or assumed or believed to be, a person affected by family violence.
- (4) The recommendations that the adjudicator may make to FENZ are about—
  - (a) the action that FENZ should take in respect of the person who engaged in the harassing behaviour, or who treated the volunteer adversely, as the case may be; and
  - (b) any other action that FENZ should take to prevent further harassment, or adverse treatment, as the case may be, of the volunteer concerned or of FENZ volunteers generally.
- (5) The actions referred to in subrule (4) include, for example, recommendations that, in relation to the person found to have engaged in the harassing behaviour or adverse treatment, FENZ—
  - (a) takes disciplinary action against that person; or
  - (b) instigates rehabilitative action in respect of that person; or
  - (c) commences a misconduct investigation in relation to that person.

- (6) However, a recommendation made under this rule is not binding on FENZ, and an adjudicator must not make an order requiring FENZ to give effect to any such recommendation.
- (7) In this rule, **harassing behaviour** includes, for example, harassment of the kind described in sections 108 and 109 of the Employment Relations Act 2000, and **adverse treatment** is to be interpreted in light of section 108A of that Act.

### **38 Costs**

- (1) Where a party has been successful (whether in part or in whole) in the dispute, the adjudicator may direct the other party to pay the reasonable costs of the successful party.
- (2) However, an adjudicator must not make a direction that requires—
  - (a) a party to pay FENZ's costs; or
  - (b) a member of FENZ personnel to pay costs to another party if the circumstances described in rule 35(2) exist and, in that case, the adjudicator may direct FENZ to pay those costs; or
  - (c) a party to pay more than \$15,000.
- (3) To avoid doubt, if an adjudicator directs a party to pay both compensation and costs to another party, the total amount payable by the party must not exceed \$15,000.

### **39 Adjudicator may make confidentiality order**

- (1) An adjudicator may, whether by their own initiative or at the request of a party, make an order that a decision, or part of a decision, be kept confidential (a **confidentiality order**).
- (2) However, an adjudicator must not make a confidentiality order unless they are satisfied that, in all the circumstances, the order is necessary to avoid harm to the safety or welfare of any person (whether or not that person is a party).
- (3) The effect of a confidentiality order is that the decision, or the part of the decision, must not be made public or provided to a non-party, unless specifically authorised by the adjudicator.

### **40 Enforcement orders**

- (1) A party or the administrator (whether by their own initiative or at the request of a party) may apply to the District Court for enforcement orders.
- (2) Any such application must be made in accordance with section 185 of the Act.

## **41 Reviews**

- (1) A party may apply for a review of an adjudicator's decision if it is likely that the outcome for that party was adversely affected because—
  - (a) the adjudication process was conducted in a manner that was unfair to that party; or
  - (b) the adjudicator made a material error of fact or of law; or
  - (c) facts directly relevant to the dispute became available after the adjudication was completed, and those facts could not reasonably have been discovered by the party before the adjudication was completed.
- (2) An application for review under subrule (1) must be made to the administrator no later than 25 working days after the date of the adjudicator's decision.
- (3) On receipt of an application for review, the administrator must refer the application to an adjudicator (the **reviewer**) who was not involved in the adjudication process that is the subject of the review, and the reviewer may either accept the application (in which case subrule (4) applies) or reject the application (in which case the original adjudicator's decision stands).
- (4) If the application is accepted, the reviewer—
  - (a) must review both the information presented during the adjudication process and any other information requested by the reviewer in accordance with subrule (5); and
  - (b) having done so, may make a decision on the merits of the application and either confirm the original adjudicator's decision or replace that decision with the reviewer's own decision (in which case rule 33 and rules 35 to 39 apply).
- (5) For the purposes of this rule, the reviewer may make a request for further information to any party under rule 27, and the consequences of failing to comply with that request are as specified in rule 28.
- (6) To avoid doubt,—
  - (a) the review process does not entitle a party to be heard in person; and
  - (b) nothing in this rule affects the right of appeal under rule 42; and
  - (c) disagreement with the outcome of an adjudication does not amount to grounds for review.

## **42 Appeals**

- (1) A party aggrieved by a decision made under the Scheme may appeal to the District Court.
- (2) Any such appeal must be brought in accordance with section 186 of the Act.

## Part 5

### Administration of Scheme

#### 43 Appointment of administrator

- (1) The Board must appoint a suitably qualified person to be responsible for the administration of the Scheme (the **administrator**), and must ensure that, at all times, the Scheme is administered by an administrator.
- (2) The person appointed may be a FENZ employee, a person associated with FENZ (including, for example, a FENZ volunteer or a FENZ contractor), or a person wholly independent of FENZ.

#### 44 Functions of administrator

- (1) The core functions of the administrator are—
  - (a) to provide an independent Scheme for resolving disputes that fall within the Scheme's jurisdiction; and
  - (b) to operate the Scheme in accordance with subpart 5 of Part 4 of the Act and these rules.
- (2) The other functions of the administrator include—
  - (a) to promote and publicise the Scheme; and
  - (b) to monitor compliance with these rules; and
  - (c) to monitor and report to the Board on the effectiveness of the Scheme; and
  - (d) to carry out any other function of the Scheme under these rules.

#### 45 Powers of administrator

The administrator has the powers specifically conferred by these rules and all other powers necessary for performing its functions under these rules.

#### 46 Administrator to facilitate accessibility of Scheme

- (1) The administrator must make sufficient information available to enable both FENZ volunteers and members of the public to be aware of the Scheme, how the Scheme operates, and how to access it.
- (2) The administrator (whether by their own initiative or at the request of a party) may provide additional assistance (for example, interpretation, translation, or disability services) to a party or parties, to the extent that the administrator considers reasonable and appropriate.
- (3) The costs of any such assistance are to be paid by the Scheme.

#### **47 Appointment of dispute resolution practitioners**

- (1) The Board must ensure that sufficient numbers of suitably qualified and independent facilitators, mediators, adjudicators, and investigators are available for timely appointment, under rules 15, 29, or 41, so as to ensure the effective functioning of the Scheme.
- (2) The Board must also engage sufficient numbers of suitably qualified and independent adjudicators (who may also be available for appointment under subrule (1), as appropriate) to be available to review the administrator's decision to refuse an application (see rule 18).

#### **48 Administrator may publish case studies**

- (1) The administrator may compile and publish case studies of disputes resolved by adjudication under the Scheme for the purposes of—
  - (a) keeping the public, FENZ volunteers, FENZ, and other interest groups informed; and
  - (b) demonstrating the process of decision-making under the Scheme and ensuring its transparency.
- (2) The administrator must ensure that, before publishing case studies, appropriate safeguards (such as anonymisation or redaction) are in place, to protect the privacy of individuals (whether or not those individuals were parties to the dispute).

#### **49 Annual report**

- (1) The administrator must submit to the Board, by 30 September in each year, an annual report for the year ending on 30 June of that year.
- (2) The annual report must include, as a minimum, the following information relating to the year in question:
  - (a) the number of each of the following:
    - (i) dispute applications accepted:
    - (ii) dispute applications refused under rule 16:
    - (iii) disputes resolved by facilitation:
    - (iv) disputes resolved by mediation:
    - (v) disputes resolved by adjudication (other than those resolved by fast-track adjudication):
    - (vi) disputes resolved by fast-track adjudication:
    - (vii) disputes that have not ended under rule 34:
  - (b) the average length of time taken to resolve a dispute by—
    - (i) facilitation:

- (ii) mediation:
  - (iii) adjudication (other than those resolved by fast-track adjudication):
  - (iv) fast-track adjudication:
- (c) the nature of the parties who accessed the Scheme:
  - (d) the nature of the disputes dealt with by the Scheme:
  - (e) any systemic issues identified during an investigation or adjudication:
  - (f) any breach of these rules by FENZ or FENZ personnel:
  - (g) subject to appropriate safeguards to protect the privacy of individuals,—
    - (i) any recommendations made by adjudicators to FENZ under rule 37:
    - (ii) examples of typical cases:
  - (h) the findings of any independent review completed during the reporting year.
- (3) FENZ must publish on its website a copy of the annual report provided to the Board under this rule.
  - (4) This rule is in addition to any other reporting requirements that the Board may impose on the administrator under any contract, or any other agreement, in relation to the Scheme.

## **50 Complaints about, and monitoring operation of, Scheme**

- (1) The administrator must have, and must publicise, a process for receiving and resolving complaints about the operation of the Scheme, but that process must not be used to challenge the outcome of a particular dispute.
- (2) A person who is dissatisfied with the outcome of a complaint made under the process described in subrule (1) may complain to the Board.
- (3) The administrator must—
  - (a) conduct regular user satisfaction surveys for measuring the quality of processes under the Scheme, the durability of the outcomes under the Scheme, and any other appropriate performance indicators; and
  - (b) as soon as reasonably practicable after the survey has been completed, make the results publicly available, free of charge, on a website that the administrator considers suitable for that purpose.

## **51 Independent review of Scheme**

- (1) The Board must ensure that an independent reviewer is appointed to carry out an evaluation of the Scheme, and produce a report,—

- (a) within 18 months of these rules coming into force; and
  - (b) at periods of no more than 3 years following the preceding evaluation.
- (2) An evaluation carried out under this rule, must assess the effectiveness of the Scheme and whether it is fit for purpose, including, as a minimum,—
- (a) whether the Scheme meets the principles specified in section 179 of the Act; and
  - (b) whether the administrator, dispute resolution practitioners, investigators, and FENZ are complying with the obligations imposed on them under these rules; and
  - (c) the time typically taken to resolve a dispute.
- (3) The administrator must co-operate with the independent reviewer, and make information on matters to be covered by the evaluation available to the reviewer.
- (4) FENZ must publish a copy of the independent reviewer's report, together with the Board's response to that report, on its website.

NOT GAZETTED