INDEPENDENT EVALUATION

FIRE AND EMERGENCY NEW ZEALAND'S DISPUTE RESOLUTION SCHEME

(Service Provider ICRA)

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1. FORWARD

1.1 Background & scope of the review

The creation of Fire and Emergency New Zealand (FENZ) under the Fire & Emergency Act 2017 (the Act) brought together more than 600 urban and rural fire forces and brigades, operating under 38 fire districts and territorial authorities, into a single unified organisation covering all New Zealand.

At the time of the amalgamation (July 2017) the New Zealand Fire Service (NZFS) comprised of 14,777 personnel including 1,807 career fire fighters and 11,800 volunteers (includes volunteer firefighters and volunteer brigade and operational support). Volunteers made up 81% of the total personnel.

Broadly, the intent of the Act and amalgamation was to provide new levy funding mechanisms, to provide better support for volunteers, to address the relative inequity between some rural and urban fire services and to provide for a community voice through the implementation of local committees.

A natural consequence of the pre-amalgamation structure of the NZSF and the disparate fire districts and authorities was that there existed (or not at all) many different approaches and schemes for the raising and resolution of complaints and disputes.

Accordingly, the Act prescribed that a single dispute resolution scheme (under S178) must be provided for everyone covered by it (with certain exclusions).

Initially under S178 FENZ developed and implemented an Interim Dispute Resolution Scheme while a more permanent and independent scheme was developed . The interim scheme was an in-house service and not independent of FENZ, albeit that it was operated at an arms-length, and received some critique for this lack of independence in an independent review (Cottrill, October 2023). The interim scheme operated from 01 July 2017 until December 2021.

On 10 December 2021 the rules for operation of the current (permanent) scheme came into effect. There was a cross - over of the interim and permanent schemes while the last of the interim scheme's files were closed and the new permanent scheme became operational.

FENZ appointed the Independent Complaint and Review Authority (ICRA) to administer The Fire and Emergency New Zealand's Dispute Resolution Scheme and to provide dispute resolution partitioner services. ICRA is an independent company operating out of Auckland.

Under the Rules of the Scheme, the Board of FENZ is required to ensure that an independent evaluation of the Scheme takes place within 18 months of the Rules of the Scheme coming into force[1].

It is from this context that this independent evaluation has arisen.

The evaluation has been conducted under the terms of reference (TOR) dated July 2023 (Appendix 1). In particular the Scope of the Review sets out:

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[1] Cl 51(1)(a) of the Scheme Rules

1.2 Scope of the Review

The evaluation of the Scheme is required to 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 the Rules of the Scheme; and

(c) the time typically taken to resolve a dispute.

ICRA and FENZ have the right to review the findings of the reviewer (as set out in the draft report) for accuracy and fairness, but the reviewer will have the final say on the content of the report that is presented to the Board.

AND

1.3 Process and methodology

The reviewer may determine their own process and methodology for carrying out the evaluation, but the evaluation should:

(a) Assess the Scheme by reference to the statutory context within which it has been established (Fire and Emergency New Zealand Act 2017 and the Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2021);

(b) Take account of how the Scheme fits within Fire and Emergency's Resolution Framework.

(c) Consider the perspectives of all stakeholders, including those raising disputes, ICRA (as the administrator), individual dispute resolution practitioners, investigators, and Fire and Emergency (as the 'owner' of the Scheme);

(d) Take account of both legal obligations and best practice principles;

(e) Consider the extent to which the Scheme contributes to Fire and Emergency's role in supporting the Crown to meet its obligations under The Treaty/Te Tiriti, as set out in Fire and Emergency's statement of its Commitment to working with Māori as tangata whenua; and

(f) Identify what is working well, what is not working well, and make recommendations for improvement.

1.4 The Legal Framework

The Fire & Emergency Act 2017 states as its Purpose "to reform the law relating to fire services, including by strengthening the role of communities and improving the support for volunteers in the provision of fire-services…(S3)".

S36.2 of the Act places an obligation that "FENZ must take reasonable steps to recognise, respect and promote the contribution of FENZ volunteers", and at S36.2 FENZ is bound by the good employer provisions of S118 in the Crown Entities Act 2004 as these apply to employees. Further, at S37 FENZ are to make "advocacy and support services to FENZ volunteers".

It is under this legislative framework that S178 of the Act placed a duty upon FENZ to develop and provide dispute resolution scheme.

The coverage of the scheme is anticipated by the Act to be broad; "FENZ must develop a dispute resolution scheme for resolving disputes on any matter under the Act or any regulation made under this Act other than the disputes set out in sub-section (2)".

The Act also anticipates the use of flexible and varied dispute resolution approaches in a tiered process that are appropriate for the level and seriousness of the dispute.

It was under this legislative framework that the Dispute Resolution Scheme was developed and implemented, and the Scheme Rules notified and approved by the then Minister Hon Tracey Martin. The Scheme became operative 01 November 2021.

1.5 Methodology

Seventeen individuals were confidentially interviewed for the purposes of this report. 4 were internal to FENZ (2xHR and 2xBCO) and 2 were external of FENZ (1xUFBA and 1x former FENZ employee). 4 of the interviewees were claimants and 7 were employees or contractors of the service provider ICRA. The interviewees were asked set questions from a template and free narrative questions (follow up and supplementary questions) that were consistent with the TOR. The interviewees also made voluntary free narrative statements. The interviews were not recorded, but notes were taken. To maintain the confidentiality promised to the interviewees' no unique identifiers are used in this report.

In writing this report I have relied on documentation and policy provided to me by ICRA and FENZ and searched what is available on the public domain and on their respective public web sites

I have been guided in preparing and writing this report by the Government Centre for Dispute Resolution (MBIE) publication Assessing Your Current Scheme. Other resources used are referenced in the body of this report.

Also, this review and report has been informed by and conducted under the Best Practice Dispute Resolution Principles and Framework as per S.179 of the Act FENZ Act (2017):

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

2. EXECUTIVE SUMMARY

The purpose of the Dispute Resolution Scheme is to *"make provision for the matters set out in sections 178 to 180 of the Act (Fire and Emergency Act 2017)"* and in particular to *"establish a framework to enable the fair and reasonable resolution of disputes..."* (Scheme Rules). The Scheme is available to FENZ Volunteers and members of the public.

The jurisdiction of the Scheme is set out in the Act and the supporting Scheme Rules. The Scheme Rules are supported by Scheme Guidelines.

Since the Scheme's official launch in November 2021 uptake and entry into the Scheme has been slow. There have been 11 direct contacts by complainants. One has been rejected, 9 have been accepted into the Scheme and one is currently pending acceptance. Three have progressed to mediation and 5 to adjudication and 1 to conciliation. There have been no direct contacts made to the Scheme by members of the public.

This Independent Evaluation has found that the FENZ Dispute Resolution Scheme satisfies in the main the assessment principles of Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness.

The deficiencies identified in this report are not serious breaches of the principles and can be remedied through giving regard to and implementing the recommendations made in this review.

Particular note should be taken of the discussion and recommendations made in regards to the Scheme supporting the good faith obligations of the Crown under Ti Tiriti o Waitangi. It is recommended that the Scheme Rules be amended to ensure that the Scheme Administrator annually reports on meeting the Scheme's obligations under Ti Tiriti.

Importantly, an overarching dilemma exists about where exactly the Dispute Resolution Scheme sits in the continuum of FENZ complaint and dispute resolution processes.

The continuum begins at the Brigade level which is appropriate in all but the most serious cases or where conflicts of interest or matters of personal safety arise. Escalation of unresolved matters, or more serious matters, is currently to the (soon to be implemented) hybrid Complaints Management Process (formerly? the BCO), where the administration and triage is contracted out of FENZ for the purposes of independence and the complaint resolution functions are internal for the purposes of building and maintaining complaint resolution capability, to be connected and influential as part of culture change, and to monitor trends and developing themes.

The somewhat omnibus role of the new Complaints Management Process and ambiguity in the Dispute Resolution Scheme's rules leave the Scheme somewhat marooned in a place where it is seldom an alternative first or second responder to complaints or disputes and almost as seldom used for the purpose that the Rules likely intend it as being; a Scheme to be used in extraordinary circumstances, or where the FENZ internal processes have failed through the lack of timeliness or for some other reason, or for the appeal of a FENZ decision that an applicant is unhappy about.

Through the internal to FENZ and external to FENZ interviews and the assessment of the Scheme's operation it is apparent there are differences about how the Rules ought to be applied in regards to entry into the Scheme. This unsettled view exists within FENZ and various levels and functions

It needs to be made certain for both the users and the Administrator of the Scheme where the Scheme currently sits and where it ought to sit going forward. Alternatives include:

- An opt in Scheme for Volunteers and the public as an independent alternative to the FENZ Complaints Management Scheme with limited constraining pre-requisite to entry requirements; or

- An opt in Scheme for Volunteers and the public with the existing entry pre-requisites made clear and un-ambiguous; or
- A strictly appellate Scheme sitting above the Complaints Management Process for when Volunteers or members of the public are unhappy about a FENZ decision

The BCO is currently in transition to a new structure, presenting FENZ and ICRA (The Scheme Administrator) a timely and important opportunity to collaboratively address the ambiguity and their different interpretations and application of the Scheme Rules and most importantly how the 2 schemes' might complement each other in the future.

3. SUMMARY OF RECOMMENDATIONS

Recommendation One:

That the Clauses 6, 7 and 8 of the Scheme Rules or Guidelines (which-ever is appropriate) be reviewed and modified to ensure the following:

- That any ambiguity in regard to the role of the Dispute Resolution Scheme be amended to give it a clear meaning and in particular to make clear the meaning of "must have attempted to resolve (Clause xx)" and the exceptions to Clause xx).
- In making any changes to the Rules or Guidelines particular consideration should be given to more clearly defining the purpose and role of the Dispute Resolution Scheme and its future functional nexus with FENZ's new Complaints Management Process.

AND

- That going forward it should be ensured that a working nexus be formed between the FENZ Complaints Management Process and the Dispute Resolution Scheme
- Enquiry and Case hand over criteria and protocols should be agreed to between the Complaints Management Process and the Dispute Resolution Scheme.

Recommendation Two

- That an independent advocacy service be established as an alternative to that provided by the UFBA.
- That ICRA include a prominent explanation of advocacy services available to applicants on the Scheme web site and include links to the advocacy services

Recommendation Three

- That ICRA give effect to Cl 50(3) (a) (b) of Rules (conduct and publish regular user satisfaction reports) and at a minimum publish the results in the Scheme annual report

Recommendation Four:

- That the Scheme Rules be amended to ensure that the Scheme Administrator has an obligation to annually report on supporting the Crown's obligations under Ti Tiriti including provision of appropriate tikanga based practices
- That the Scheme Administrator and FENZ notes the foregoing discussion and associated expert comments in regard to supporting the Crown's obligations under Ti Tiriti and considers changes with guidance from the Government Centre for Dispute Resolution.

4. THE REVIEW OF THE DISPUTE RESOLUTION SCHEME

4.1 Overview and preliminary discussion

At the time of the completion of this report the Scheme had been in operation for circa 18 months. During this period (only) 9 applications to ICRA had been formally approved into the Scheme. At the time of this report 5 had been closed and 4 files were still open.

This low number of applications and approvals is not of a concern in itself so long as it is not a result of the key principle of Accessibility being compromised in some way. Through the interviews ICRA expressed their concerns that barriers to entry into the Scheme exist, and that these reside mainly internally within FENZ[2].

It is common ground through the interviews that awareness of the Scheme is low. Both within FENZ and externally of FENZ.

The Scheme rules (Append 3) and Operational Guidelines (Append 4) are silent in regards to definitions of the key Principles of Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness. Accordingly for the purposes of this report I have relied on the definitions drawn from the Government Dispute Resolution Centre guidelines (ibid

There exists a nexus, albeit a tenuous one (see 4.2 below), between the Dispute Resolution Scheme & FENZ's Behaviour & Conduct Office (BCO) which has during the term covered by this review been the front-line complaints procedure for FENZ salaried firefighters' and volunteers[3].

4.2 Principle One: Accessibility

The Scheme Rules and Operational Guidelines are silent in regard to a definition of Accessibility

MBIE's Assessing your current scheme (ibid) defines 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 or resources."*

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[2] Discussed further at 4.2

[3] The BCO received some criticism in the Clark report (2022) and in particular noted that the "Behaviour and Conduct Office, set up to respond to complaints and improve workplace behaviour, fell short of its goals". Its lack of independence was also criticised. Accordingly at the time of this report the BCO is in transition to a new hybrid Complaints Management Process structure with the front end contact and triage roles being provided by an independent provider and most dispute resolution functions being undertaken within the FENZ People Branch (under the Workplace Relations Directorate).

Another useful definition of accessibility is[4]

> *"The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and no cost barriers (p. 95, Sourdin, 2008)"*

Entry into the Scheme is set out in the terms of the Scheme Rules and Policy (Cl 6) (1).

In particular, the Scheme Rules (Cl 6) (2) also set out matters that may not be dealt with under the Scheme:

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).

AND at Cl 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.

AND Significantly at Cl 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

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[4] Sourdin's (2008) definitions are made in the context of customer complaint processes, but in any event apply usefully to the context of this review.

(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.

In particular it is Cl8 (1) of the rules that is of importance in the context of this Review; it was a dominant theme for both ICRA and FENZ interviewees.

A majority of internal to FENZ interviewees interpret S8 (1) strictly; meaning that the Scheme is one of last resort or appellate and only to be reverted to once all internal complaint processes have been exhausted, while some (but less) Internals took a more liberal interpretation to entry into the Scheme.

ICRA interviewees' and some internal FENZ interviewees (ibid)' took a liberal interpretation of *"without first attempting to resolve their dispute through the FENZ complaint process"*, saying that broad discretion was anticipated under S8 (2 a,b) or least ought to be contemplated.

The Operational Rules (ibid) give some direction in regard to S8 (2 a, b) and in particular state:

The Scheme Administrator will need to consider the circumstances of each case and make a decision based on the information provided by the applicant in each situation.

Circumstances where it would not be appropriate to go through the FENZ complaint process might include:

- *following the usual FENZ complaint process would require the applicant to complain to people who are implicated in the subject matter of the complaint.*
- *requiring the applicant to go through the FENZ complaint process would cause harm to the health or wellbeing of the applicant beyond the usual level of stress that may reasonably result from commencing a complaint within that process. For example, if the applicant would be retraumatised by going through multiple processes.*

In cases where the Scheme Administrator chooses not to exercise their discretion under rule 8(2), the applicant should be directed to the FENZ complaint process.

ICRA say that S7 & S8 constrain the reach and effectiveness of the Scheme, and in particular a narrow and constraining interpretation by the BCO, (and confirmed by BCO interveiwees) (now in transition) is seriously affecting the number of Scheme applications and BCO referrals[5].

The counter point to this from FENZ is that what can be resolved internally ought to be in order for FENZ to build and maintain dispute resolution capability and to monitor trends[6].

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[5] Here, it ought to be noted the actual number of complaints raised with the BCO that might have met the Scheme's eligibility is relatively low. During 2022 20 volunteers, 4 members of the public and 1 contractor made complaints to the BCO. Note that the numbers into the (former) Interim Scheme informed the estimate used for procurement for the new Scheme of 15 to 30 cases per year.

[6] A counter point to this is that Rule 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". Note that to date this rule has not been used by ICRA.

It has been suggested too that the BCO wilfully or through unawareness at the triage level with-holds complaints and disputes[7] from the Scheme when they ought to have been referred to it. This is supported by those interviewed as part of this review. As stated there are mixed views about what "must first attempt to resolve the matter directly with Fire and Emergency" means. A counter point to this is that ICRA ought to be less concerned with Scheme numbers and more concerned with applying S8 as it was intended. The dilemma being that S8 (a,b) offers to ICRA the interpretation of it being a broad church., and to FENZ of it being a narrow one.

A valid argument can be made that Volunteer applicants ought to be able to decide themselves on which scheme they use (FENZ new hybrid model or ICRA) rather than someone making the choice for them. When a high level of process independence is import to an applicant, anything less than that will corrode their confidence in the process. People have very strong process interests; they believe that dispute resolution processes should be fair. When people don't believe a process has been fair, they will find it very difficult to accept an outcome that goes against them, when they think the process has been fair, they will have less difficulty in accepting the outcome or in being conciliatory.[8]

A counter point to this is that when and if FENZ adopt the full recommendations of the Clark report (ibid) (a fully independent complaints resolution model) the significance of the Scheme's independence will be somewhat blunted, and it could possibly be reduced to an exclusively appellate role. That in any event is a not uncommon interpretation of the role of the current Scheme *"if a volunteer complainant is dissatisfied with the response received from the BCO process they can go to the Fire and Emergency Dispute Resolution Scheme"* (Clark Report,2022).

In any event both the FENZ and ICRA websites highlight S8 and do offer guidance for applicants:

From the BCO site:

> *What if I am not satisfied with the outcome?*
>
> *If you are unhappy with the outcome of the complaints process, you may be able to take further action with the following external organisations (depending on your circumstances):*
>
> - *the Human Rights Commission – for complaints about discrimination on one of the 13 grounds prohibited in the Human Rights Act and for sexual or racial harassment;*
> - *WorkSafe – for complaints about a breach of the duty of care to take reasonable care to provide a safe workplace, e.g. workplace bullying;*
> - *the Ministry of Business, Innovation and Employment's Mediation Services – to help resolve employment relations problems:*
>   - *between the employee and the organisation, or*
>   - *between two employees – if both parties agree, the employees can attend mediation to work out a way forward in which they can work together while upholding both parties' rights.*
> - *Volunteers can access the Dispute Resolution Scheme (DRS).*
> - *Employment Relations Authority – for employees to lodge a personal grievance (PG) for claims such as unjustified disadvantage or constructive*

[7] See discussion in regard to the difference between a complaint and dispute at 4.2.1

[8] This might be particularly so in the light of the new FENZ hybrid Complaints Management Process which does not embrace the level of independence as recommended in the Clark report (ibid).

dismissal. Note: This is for action against the employer, i.e. the organisation, not a person.

From ICRA site:

WHO CAN USE THE FIRE AND EMERGENCY SCHEME?

If a Fire and Emergency volunteer, member of the public or an organisation disagrees with something Fire and Emergency has or has not done, or a decision Fire and Emergency has made, they may apply to resolve their dispute through the Fire and Emergency Scheme. In most cases, they must first attempt to resolve the matter directly with Fire and Emergency.

4.3 Complaint or Dispute or Deadlocked?

Adding to the ambiguity in the interpretation of S8 is an unsettled view between FENZ internal systems and ICRA in regard to "dead lock" and the difference between a complaint and dispute. In particular, the prevailing FENZ Workplace Relations view (HR interviews) is that only in exceptional circumstances would a complaint or dispute end up as unresolved[9] and it is only in that exceptional circumstance or when someone is unhappy about an outcome that a matter would be referred to the Scheme. Note that the ICRA Scheme clearly allows for referral to the ICRA scheme if a complainant believes the FENZ process is taking too long.

From ICRA site:

If you are not happy with the BCO outcome, or believe it is taking too long for the BCO to respond to your complaint, you can apply to use the Fire and Emergency Scheme.

ICRA's view is that when a complaint becomes a dispute, or the matter becomes deadlocked in the FENZ internal process it should be referred on to the Scheme.

A useful and succinct definition of deadlock is:

"This is where the parties cannot reach agreement upon a particular matter which requires their approval"[10]

Further, ICRA questions if the terms complaint and dispute are adequately defined for the purpose of making clear what ought to be resolved by FENZ and what ought to be referred to the Scheme.

The Government Centre for Dispute Resolution (ibid) define the difference between a complaint and a dispute as being:

They will start when an issue or concern arises. These matters may become a complaint, which then escalates into a dispute. A dispute will generally arise where there is disagreement over a fundamental aspect of the complaint, or when the redress that is offered does not satisfy the complainant.

The BCO on the face of it is a complaint scheme. It can be argued that when a complaint becomes intractable or deadlocked it becomes a dispute and accordingly ought to pass to the

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[9] There is an implication here that all matters bought to the BCO are resolved in some way – through facilitation /mediation or recommendations arising from an investigation and accordingly the Scheme's role is limited to dealing with unhappiness about the outcome. This reflects a somewhat paternalistic/unitarist approach to people management and dispute resolution.

[10] Legal Glossary. Lexus Nexis

Dispute Scheme[11]. It might also be argued that that is the intention of S178 of the Act in so much as it makes clear that FENZ "must" develop a dispute resolution scheme and at S178(2) it legislates few exclusions to any such scheme. The Act does not define "dispute".

The ambiguity that arises through interpretation of Clauses 6,7, and 8 of the rules and the lack of clarity in the particular roles, and the extent of them, between ICRA and the BCO is causing confusion for the both the user and the providers. This needs to be redressed. Consideration ought to be given to a more complimentary but still discreet role for the Dispute Resolution Scheme.

As noted (footnote 3) the BCO is currently in transition to a new structure, presenting FENZ and ICRA a timely and important opportunity to address the ambiguity and their different interpretations and application of the Rules collaboratively. In particular S8 (1) & (2).

4.4 Scheme Awareness

Four Scheme applicants were interviewed. All were FENZ volunteers. 1 of the 4 had prior knowledge of the Scheme (through an executive officers' course). One was referred to the Scheme by FENZ People branch and 2 found their own way to the Scheme through an internet search using FENZ dispute as a key word[12].

A dominant theme across all interviews was that awareness of the Scheme and its role and functions is low – both to the general public and to volunteers. ICRA say that getting traction with FENZ and the UFBA to promote the Scheme to volunteers has been difficult, in spite of offering to attend meetings and conferences. ICRA say that many changes to FENZ communications personnel has added to the difficulty.

Not withstanding this ICRA report having undertaken or circulated:[13]

- Explanatory flyer for stations insert into IGNITE magazine in April 2023
- Promotional material distributed for all Volunteer Firefighter Conferences across NZ in 2023
- Attendance and exhibitor stall at the Te Hiku Volunteer Leadership Conference 2023
- In-person meetings with UFBA key stakeholders on a regular basis
- ICRA explainer video (ibid)
- Social media posts

ICRA note that in the first 20 months of operation of the FENZ Scheme (beginning December 2021 the website has received 2,289 page views. A traffic spike in December 2021 (circa 150 views) is attributed to the publication of the joint media release announcing the Scheme and spike in April 2023. corresponds with the release of the ICRA Dispute Resolution Scheme Flyer

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11 That is not to say that the BCO ought not commission independent investigations into complaints; if the complainant does not accept the outcome of the investigation it might lead to a facilitative or restorative process (or suchlike). If not resolved then it becomes intractable or deadlocked and ought to pass to the Dispute Scheme.

12 A google search using the key words "FENZ dispute" links to the ICRA site where a video and adequate information to make an application can be accessed. Conversely, a search using the key words "FENZ complaint" links to the BCO site. Both sites refer to the alternative service (BCO & ICRA) according to their own interpretation (but not necessarily incorrect) of S8 of the Act. This it all adds to the alternate views about what "have to have tried to resolved directly with FENZ" means.

13 Notably there have been no enquiries or disputes raised by the public, not-withstanding that the Rules at Cl 7 include "members of the public" under "Who may apply to the Scheme". ICRA ought to be mindful of engaging with and promoting the Scheme to the public.

in Ignite magazine “which was sent to 620 volunteer fire brigade sites. These spikes highlight the importance of ICRA continually promoting its service to the public and volunteers through the media and other sources. It is reasonable to hypothesize that that direct face to face engagement between ICRA and Volunteers in particular will in the first instance increased awareness and possibly in the second instance increase inquiries and applications.

It ought to be noted that the Scheme Rules place the onus on the Administrator (ICRA) to promote the Scheme and that funds are provided to ICRA through their contract with FENZ to do this.

In particular Cl 44 (2) (a) states:

> *2 The other functions of the administrator –*
> *(a) to promote and publicise the Scheme*

And, Rule 46 (1) states:

> *“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”.*

ICRA acknowledge their responsibility to promote the Scheme under the rules but emphasise that closer cooperative collaboration with FENZ (and other key stakeholders) will be essential to surmount the Scheme awareness problems going forward. Note that FENZ acknowledges that getting volunteers to engage with non-operational information is challenging meaning this issue is not Scheme specific.

Notwithstanding the above discussion, to ICRA application numbers matter. That is a function of commercial arrangement between FENZ and them. However, for the purpose of this Review it is Accessibility that matters, not numbers. So long as Accessibility is not constrained through subjective interpretation or ambiguity of the rules the low Scheme numbers are not of a concern. If there are unreasonable barriers to entry they ought to be addressed and corrected. If no unreasonable barriers exist any commercial concerns that ICRA have can be addressed through their contract negotiations with FENZ.

4.5 Recommendation One

Recommendation One:

That the Clauses 6, 7 and 8 of the Scheme Rules or Guidelines (which-ever is appropriate) be reviewed and modified to ensure the following:

1. That any ambiguity in regard to the role of the Dispute Resolution Scheme be amended to give it a clear meaning and in particular to make clear the meaning of “must have attempted to resolve (Clause xx)” and the exceptions to Clause xx).
   1.1 In making any changes to the Rules or Guidelines particular consideration should be given to more clearly defining the purpose and role of the Dispute Resolution Scheme and its future functional nexus with FENZ’s new Complaints Management Process.
2. That going forward it should be ensured that a working nexus be formed between the FENZ Complaints Management Process and the Dispute Resolution Scheme.
   2.1 Enquiry and Case hand over criteria and protocols should be agreed to between the Complaints Management Process and the Dispute Resolution Scheme.

4.6 Principle Two: Independence

MBIE's Assessing your current scheme (ibid) defines independence (and fair) as:

> *"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".*

Sourdin (ibid) defines independence as:

> *"The decision-making process and administration of the scheme are independent from the scheme members (p.95)".*

Independence must not be a sham and must be of an adequate nature that the processes and decisions of a dispute resolution scheme are objective and unbiased.

Accordingly, to be independent in function there is a requirement to be independent in structure.

To the users, the absolute independence is likely of less importance of any dispute resolution scheme than is the perception of independence[14].

Absolute independence as a separate entity for a dispute resolution scheme is appropriate when the majority of the users are externals or the public and/or when there is a preference for the use of adjudicative dispute resolution process. The Scheme falls within this criteria.

Lesser but adequate independence and a dispute resolution scheme embedded into an organisation is appropriate when the majority of the users are internal and there is a preference for the use of facilitative dispute resolution processes. The current BCO/Hybrid Complaints Management Procedure falls within this criteria.

FENZ currently fall into both categories; firstly offering a high level of independence through the Dispute Resolution Scheme (that may be accessed by the public and Volunteers) and with the new hybrid Complaints Management Procedure a less independent but acceptable level of independence.

I am satisfied that the Scheme has adequate independence in both structure and function.

4.7 Principle Three: Fairness.

> *Clause 20 (5) of the Scheme Rules (Dispute resolution methods and procedures) sets out:*
>
> *(a) act in accordance with what is fair and reasonable in all of 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.*

[14] There exists a dilemma in-so-much as that there is and needs to be a nexus between the Scheme and FENZ for accountability and operational reasons, but without corrupting the perception of bias or lack of independence. For instance, the co-branding with FENZ's logo on the ICRA web site and information might possibly in the first instance cast a negative halo effect for users and applicants. It is well established through dispute resolution theory that claimants and disputants have very strong process interests; a fair and unbiased process is more important to them than achieving all of their substantive goals..

Also, Cl21 (a) of the Scheme rules[15] obliges the Scheme to practice the principles of natural justice.

Assessing your current scheme (ibid) defines fairness as:

> *"All dispute resolution functions are, and are seen to be, are carried out in an objective and unbiased way".*

Sourdin (ibid) defines fairness as:

> *"The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness…(p.95)"*

The Scheme Operational Guidelines (ibid) give some guidance in regard to fairness (Introduction, Principles of the Scheme):

> *Principles of good decision making.*
>
> *When exercising a discretion under the Rules, the Scheme Administrator and dispute resolution practitioners should be guided by the principles of good decision making:*
>
> - *consider only relevant factors (do not consider irrelevant factors)*
> - *act for a proper purpose*
> - *act within the law (i.e. consistent with the Act and Rules)*
> - *act consistently with the available evidence*
> - *act proportionally*

I am satisfied that the intent and content of the Scheme Rules and Guidelines guide a fair dispute resolution process and result in fair outcomes for the scheme's users, and that the Scheme acts consistently with these obligations. The anecdotal evidence from users (complainants) that supports this.

All applicants interviewed rated the Scheme and its processes as being "very fair" and having a "high level" of process certainty.

The applicants rated FENZ engagement during the Scheme's process 8.5/10, while they rated FENZ's engagement during their previous direct or BCO interactions 2/10.

For fairness, accountability and transparency reasons the Scheme should have comprehensive, enforceable and lawful policies (and procedures). In the main ICRA achieve this. The ICRA website contains links to a Privacy & Data Security statement (which is supported by a comprehensive internal policy) and a comprehensive Customer Complaints Process.

For staff use the ICRA processes and policies are supported by a comprehensive ring binder and on line manual entitled *"Case Management Guide (for case Managers and Administrators".*

Clause 16 of the Scheme Rules (ibid) requires the Scheme Administrator to refuse to the accept an application if the administrator is satisfied that the application is frivolous, trivial or vexatious. Ordinarily I would expect a dispute resolution scheme to have a policy in regards to this, and the Scheme does not have a specific policy. However, I am satisfied that the Scheme's

[15] S21 Minimum requirements for conduct of dispute resolution process (a) be consistent with the principles of natural justice.

Operational Guidelines (ibid) in regards to this are adequately comprehensive in their guidance on this and that they suffice in the absence of specific policy.

The Act addressees the issue of power imbalance through S37 (1) & (2) by providing for the provision of independent advocacy and support services at no charge to all volunteers. The UFBA are funded by FENZ for this purpose[16]. However, an anomaly exists in so much as volunteers dismissed from a brigade report that they cannot (or have difficulty) accessing this advocacy service. An alternative to UFBA advocacy exist for these cases but this is poorly promoted and understood and is difficult to access[17]. An illustrative example of this anomaly is a (interviewed) dismissed volunteer who used $14K of their own funds to pay for advocacy at mediation and through to adjudication (through Scheme). The volunteer was unhappy about the adjudicated outcome but did not take their case to appeal because of the cost. Access to justice or a complete process should not be denied – that is contrary to the purpose of S37 of the Act.

I note that the Scheme website makes no reference to the availability of advocacy or representation through the UFBA or the FENZ CEO's Office and a key word search "advocacy" reports "no result found"

I concur with the Clark report (ibid) that the funding of an independent advocacy service by FENZ should be considered. This need not be instead of the service funded by FENZ and provided by the UFBA, but instead be a an alternative for exceptions and for when the UFBA might be compromised through a conflict of interest. It ought to be visual and it ought to be promoted.

4.8 Recommendation two

Recommendation 2:

1. That an independent advocacy service be established as an alternative to that provided by the UFBA.
2. That ICRA include a prominent explanation of advocacy services available to applicants on the Scheme web site and include links to the services

4.9 Principle Four: Accountability

Assessing your current scheme (ibid) defines accountability as:

> *"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".*

In particular accountability is covered in the Scheme Rules (ibid) Clauses 44, 49, 50 and 51.

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[16] The UFBA received Circa $109K advocacy and support funding from FENZ for the 2022 year. As well as 2 full time advocates they have circa 18 trained volunteer support personnel.

[17] The only reference to this advocacy funding was by searching the FENZ portal using the key word "advocacy" which led to the single reference: *"Apply for alternative advocacy services: email **Note:** These applications are considered case by case for management on a 'by exception' basis".*

In particular, Cl 44 (Functions of administrator) sets out:

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, significantly at Cl 49:

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:

(i) mediation:

(ii) adjudication (other than those resolved by fast-track adjudication):

(iii) 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.

I am satisfied that ICRA (the Scheme provider) adequately satisfy these requirements through the publication of *Better Together. Annual Report (June 2023)*, albeit that because of the low uptake of the scheme no data exists for some of the criteria.

Cl 50 of the Scheme Rules covers Complaints about, and monitoring operation of the Scheme:

> *(1) The administrator must have, and must publicise, a process for receiving and resolving complaints about the operation of the Scheme.*

And

> *(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.*

This report has at 4.4.1 (Principle Three: Fairness) acknowledged that the Scheme has an accessible and comprehensive Complaints Process. This process satisfies Cl 50 (1).

The Scheme Annual Report (ibid) provides no evidence, nor do any other sources, that ICRA are complying with Cl 50 (3) (a) (b) of the Rules (conduct and publish regular user satisfaction reports). Not-withstanding the low Scheme numbers to date this is a key accountability provision should be urgently remedied by ICRA.

Further, Clause 51 of the Rules provide for an Independent Review of the Scheme *within 18 months of these rules coming into force.* This requirement is of course being satisfied under the TOR (ibid) of this report.

4.10 Recommendation Three

Recommendation 3:	
1.	That ICRA comply with the provisions of Cl 50(3) (a) (b) of Rules (conduct and publish regular user satisfaction reports) and at a minimum publish the results in the Scheme annual report.

4.11 Principle Five: Efficiency

Assessing your current scheme (ibid) defines efficiency as:

> *"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".*

Sourdin (ibid) defines efficiency as:

> *"The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance (p.95)".*

The Scheme has not been operational long enough nor have the application numbers been high enough to adequately assess whether or not the criteria of *"evolves and improves over time and makes good use of information to identify systemic issues" has been met.* I am satisfied however that save for the obligation through Cl 50 (3) (a) (b) of the Rules (conduct and publish regular user satisfaction reports) which ICRA have not met, that ICRA do collect appropriate data and report adequately as per their obligations as Administrators under the rules.

In regard to *"dispute resolution provides value for money through appropriate, proportionate and timely responses to issues"* I am satisfied that the dispute resolution processes (facilitation, mediation and adjudication) are appropriate. The responses are proportionate and timely[18].

I have reviewed the ICRA administrative, data, information and file management processes and systems and am satisfied that they are fit for the purposes they are intended.

It should be noted that one particular issue in regard to case triage was raised during the interviews; concern was expressed that the respondents to a dispute were not appropriately identified (those named fell outside of the Scheme's jurisdiction) before the case was passed to the adjudicator. This left counsel for the applicant and respondent having to sort out at their client's cost and caused an unnecessary delay. I say advisably that ICRA ought to in the future ascertain exactly who the parties to the dispute are, and ensure the named parties fall within the Scheme's jurisdiction.

4.12 Principle Six: Effectiveness

Assessing your current scheme (ibid) defines effectiveness as:

> *"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".*

Sourdin (ibid) defines effectiveness as:

> *"The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent review of its performance (p.95)".*

I am satisfied that the Scheme delivers sustainable results albeit that as previously discussed on account of ambiguity, unsettled interpretation and miss-understanding the exact purpose and intended objectives of the Scheme are unclear[19]. This is not-withstanding its formation being on the back of the Fire and Emergency New Zealand Act 2017 legislation that obligated FENZ to "improve support for volunteers and enable them to communicate directly with FENZ (s3(c))"; and to "develop policy and organisational arrangements that encourage, maintain, and strengthen the capability of FENZ volunteers (s36 (c)) and a duty to "develop a dispute resolution scheme (s178)". Where the Scheme fits within this continuum of obligations under the Act is a dilemma, thus affecting its' effectiveness.

There exists no FENZ policy or statement that clearly sets out in succinct and understandable terms the proper real world purpose and objectives of the Scheme to Volunteers or the public.

Further, the nexus between the (new) Complaints Management Process and the Scheme within the broad FENZ resolution framework is unsettled and in particular how their roles might exactly interact, and how they might add value one to the other.

Sourdin's (ibid) definition of effectiveness is instructive; *"the scheme is effective by having appropriate and comprehensive terms of reference...* For the purpose of this Review we can read *terms of reference* as Rules. Until the foregoing issues of ambiguity and unsettled

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[18] Although it has not yet been requested to date, fast track Adjudication is allowed under the Scheme rules which allows for a quick and timely decision making process.

[19] As stated previously in particular Clauses 6, 7 & 8 of the Scheme Rules.

interpretations of the Rules have been addressed this useful definition of effectiveness can-not be fully met by the Scheme.

There exists no IDRP policy or statement that clearly states the purpose and objectives of the scheme to FENZ, the public or its users.

The number of disputes that have been accepted by the Scheme have been low (8). The number of disputes that have been settled since July 2017 is extremely low (1).

Table 1

Table 1

Scheme Statistics as of 01 November 2023:

Item	Count
Total Contacts	11
Contacts from Volunteers	11
Contacts from members of the public	0
Applications accepted	9
Applications rejected	1
Mediations ongoing	1
Adjudications ongoing	2
Resolution Pathway Selection Pending	1
Withdrawn	0
Mediations completed	2
Adjudications completed	3
Conciliations completed (3)	1

The effectiveness of the IDRP scheme and the value derived from the scheme through the effective clearance and settlement of disputes, and the benefits of the scheme adding value to a conflict capable FENZ is likely to improve if the recommendations made in this report are adopted.

5. OBLIGATIONS UNDER TE TIRITI AND TIKANGA MAORI PRACTICES[20]

The Terms of Reference for this review (ibid) under Process and Methodology in particular sets out that the review shall:

> *Consider the extent to which the Scheme contributes to Fire and Emergency's role in supporting the Crown to meet its obligations under Te Tiriti, as set out in Fire and Emergency's statement of its Commitment to working with Māori as tangata whenua.*

The Scheme Rules at Cl 20 (4) state:

> *20 Dispute resolution methods and procedures*
>
> *(4) If requested by a party (whether before or during the dispute resolution process), tikanga Maori practices must be adopted must be adopted as part of the dispute resolution process unless, in the particular circumstances, it is not reasonably practicable to do so*[21].

In regard to meeting these obligations, ICRA say:

> *"ICRA has formed a partnership with the Tuhono Collective to deliver our cultural support services. Tuhono's Wi Pere Mita, a leading mediator lawyer, and assessor was our key advisor and conducted training for the ICRA team. Our complaint management services have been designed to incorporate, for those parties who wish to adopt it, a wrap around tikanga-based Maori cultural support frame work that we have called Te Korowai Kakahu o Te Umanga Arotake Amuamu Motuhake (Append **XX**).*
>
> *The framework symbolises us working together in collaboration with our stakeholders to establish unique pathways for guiding and supporting parties to complaint, conflict management and dispute resolution processes as we journey together using Maori beliefs, principles, values, and practices that derive from traditional knowledge (matauranga Maori) for improved outcomes for parties.*

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[20] I have been informed here by 2 particular sources; firstly, the Law Commission report Purongo Rangahau Study 24 (September 2023) https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-SP24_0.pdf and secondly by **Baden Vertongen** (Ngāti Raukawa) http://vertongen.co.nz/?page_id=89 who has reviewed this section and added useful comment.

[21] **Baden Vertongen**: Note that that Rules here only provide that tikanga Māori "***practices***" must be adopted if requested. What isn't captured in here, or throughout the rules, is where tikanga becomes relevant because the issue is about tikanga as a value – for example FENZ have a volunteer that is claiming the brigade is trampling on their mana or that FENZ is failing to exercise manaakitanga or kaitiakitanga in how volunteers are looked after in particular circumstances. In those cases the DR process can incorporate tikanga in the process (open with karakia etc) but there are challenges about whether the practitioner can grapple with those tikanga values. I think a practitioner who is alive to those issues would see enough scope in the Rules to be able to import tikanga values into the scheme – but it does leave a gap that could probably be closed by referencing reflecting tikanga in some way in r5(a) alongside "fair and reasonable".

There are a other specific places in the Rules where the process could be made feel a lot more like its capable of reflecting tikanga – for example, there is scope for an arbitrator to appoint expert assistance or advice at r30. If that were to say '….a subject matter expert **or pūkenga**….' It would achieve the same sort of result but look in a way more responsive to tikanga (see pg241 of the Law Com report (ibid) for a more detailed discussion on pūkenga).

In essence, while there is reference to tikanga practices in the rules currently, they are process focused rather than going to the underlying purposes of the Scheme (and to risk appearing as a token gesture to make a process that may not properly grapple with tikanga seem more palatable). There are opportunities to make some small changes to the rules that would infuse a commitment to tikanga into the Scheme in a much more visible and responsive way.

We trust that access to this cultural assistance supports Fire and Emergency's Vision/Matakitenga of strong communities protecting what matters, and your desire to "help Maori communities become safer and more resilient[22][23]".

It is noted that the Cultural Support Guidelines are posted prominently on the front page of the ICRA website.

ICRA report that no applicants have accessed Cultural Support and further note that staff training in regards to *Te Korowai Kakahu o Te Umanga Arotake Amuamu Motuhake* is provided to all new staff and updating of staff is ongoing.

ICRA further report that they do not currently have a specific Statement of Intent or Policy Statement in regards to support or their obligations to Te Tiriti.

Alignment between the FENZ *Commitment to working with Māori as tangata whenua and* ICRA's high level Policy Statement and Intend would seem to be critical[24].

It is further noted that the ICRA Annual Report/Purongo A -Tau is silent in regards to its self imposed and stated cultural responsibilities, up-take of services and outcomes[25]. ICRA ought to be accountable through publicly transparent KPIs as well as confidential contractual KPIs[26].

5.1 Recommendation Four:

Recommendation 4:

1. That the Scheme Rules be amended to ensure that the Scheme Administrator has an obligation to annually report on meeting the Scheme's obligations under Ti Tiriti.
2. That the Scheme Administrator and FENZ notes the foregoing discussion and associated expert comments in regard to fulfilling their obligations under Ti Tiriti and implement changes as appropriate.

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[22] Fire and Emergency Statement of Intent 2020-2045

[23] **Baden Vertongen**: FENZ's Commitment to Māori is focused on Māori communities as external stakeholders in their work and engagement in service deliver etc – and if those communities have concerns then the DR process might support the FENZ vision and its commitment. But the dispute resolution process is wider than this and also includes disputes that arise internally from volunteers, including Māori volunteers. They seem to be missing from the (FENZ) vision and commitment statements, and seems to have been an issue that was raised in earlier reviews on FENZ workplace culture.

[24] **Baden Vertongen**: Agree – but as noted above one of the problems here is that the FENZ commitments to Māori has shortcomings – it doesn't include Te Tiriti itself and doesn't go to what FENZ's duties/relationships are with groups like volunteers. So even if ICRA had a Policy Statement about their Treaty obligations it won't align with FENZ's Commitment as there is not Treaty reference there and FENZ's commitment doesn't quite extend to all those who might access the scheme. Also, the ICRA's Cultural Support guidance seems to mainly go to the more value based elements of tikanga rather than the process elements – there is a lot of discussion about elements like mana or whakapapa, but not how a mediation or arbitration would actually run. This is appropriate – it's difficult to predict how a specific dispute would run, but setting out the values that may underpin a process is helpful. But, as noted above, the mismatch is that the Rules themselves talk to issue of tikanga practices not values. So there is a misalignment here as well.

[25] See discussion under XXX in regards to ICRA's public accountability to FENZ and confidential contractual accountability.

[26] **Baden Vertongen**: Yes agree here too – and picking up on the comment above that there has been no applicants accessing the Cultural Support, the reporting should be robust enough so you can look at this and understand why. Is it because this is just not an issue? Or is it because it's perceived as not being not much help so those that should be accessing it aren't? Any process might be usefully be looking at demographics of parties to disputes such as uptake to catch these types of issues.

REFERENCES

- The Fire & Emergency Act 2017
- Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2021
- Government Centre for Dispute Resolution (MBIE) Assessing Your Current Scheme
- Operational Guidelines for Fire and Emergency New Zealand's Dispute Resolution Scheme (21 October 2021)
- Better Together Annual Report (2023) Purongo A-Tau (ICRA)
- https://indd.adobe.com/view/abffd79e-a239-4fce-9ba8-6fc8b6612fea
- Clark. (16 June 2022) Independent Review of FENZ's Workplace Culture and Complaint Handling Practices
- Sourdin, T. (2008) Alternative Dispute Resolution 3rd ed. Lawbook Company (NSW)
- *Fire and Emergency's statement of its Commitment to working with Māori as tangata whenua.*

EVALUATION OF FIRE AND EMERGENCY NEW ZEALAND'S DISPUTES RESOLUTION SCHEME

TERMS OF REFERENCE

Introduction

This document sets out the Terms of Reference for an evaluation of Fire and Emergency's Dispute Resolution Scheme to be carried out under Rule 51(1)(a) of the Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2021.

Background

Section 178 of the Fire and Emergency Act 2017 (the Act) requires Fire and Emergency to develop a dispute resolution scheme ('Scheme' or 'DRS') for resolving disputes on matters arising under the Act or regulations made under the Act.

The purpose of the Scheme is to ensure that Fire and Emergency volunteers and people within the communities Fire and Emergency serves, are able to dispute Fire and Emergency's actions or decisions, and that there is an independent and transparent process for resolving those disputes.

Section 179 of the Act requires the Scheme to be based on the following six principles:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness.

The current Scheme was established in December 2021 and rules for the operation of the Scheme came into force on 10 December 2021 – see Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2021.

Fire and Emergency has appointed the Independent Complaint and Review Authority ("ICRA") to administer the Scheme and to provide dispute resolution practitioner services.

The scope of the Scheme and its place within Fire and Emergency's Resolution Framework is explained in more detail in Attachment 1.

The Review

Under the Rules of the Scheme, the Board of Fire and Emergency is required to ensure that an independent evaluation of the Scheme takes place within 18 months of the Rules of the Scheme coming into force[1].

[1] Rule 51(1)(a)

ICRA, as the administrator of the Scheme, is required to co-operate with the independent reviewer, and to make information on matters to be covered by the evaluation available to the reviewer[2].

The report and the Board's response to the report must be published on the Fire and Emergency website[3].

The evaluation must be undertaken by a person who is independent of Fire and Emergency and of ICRA and who has knowledge of, and experience with, disputes and resolution processes.

Scope of Review

The evaluation of the Scheme is required to assess the effectiveness of the Scheme and whether it is fit for purpose, including, as a minimum[4]:

(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 the Rules of the Scheme; and

(c) the time typically taken to resolve a dispute.

ICRA and FENZ have the right to review the findings of the reviewer (as set out in the draft report) for accuracy and fairness, but the reviewer will have the final say on the content of the report that is presented to the Board.

Process and methodology

The reviewer may determine their own process and methodology for carrying out the evaluation, but the evaluation should:

- Assess the Scheme by reference to the statutory context within which it has been established (ie the Fire and Emergency New Zealand Act 2017 and the Fire and Emergency New Zealand Dispute Resolution Scheme Rules 2021);
- Take account of how the Scheme fits within Fire and Emergency's Resolution Framework (as described in Attachment 1;
- Consider the perspectives of all stakeholders, including those raising disputes, ICRA (as the administrator), individual dispute resolution practitioners, investigators, and Fire and Emergency (as the 'owner' of the Scheme);
- Take account of both legal obligations and best practice principles;
- Consider the extent to which the Scheme contributes to Fire and Emergency's role in supporting the Crown to meet its obligations under Te Tiriti, as set out in Fire and Emergency's statement of its Commitment to working with Māori as tangata whenua.
- Identify what is working well, what is not working well, and make recommendations for improvement.

2 Rule 51(3)

3 Rule 51(4)

4 See Rule 51(2)

Governance

Sponsor

The sponsor of this review will be the Deputy Chief Executive Finance and Business Operations. The Sponsor will receive the review report on behalf of Fire and Emergency New Zealand. The Sponsor will decide on any further actions.

Review director

Day to day management of the review will sit with the Chief Adviser to DCE, Finance and Business Operations. This includes ensuring availability of staff of Fire and Emergency for interview, provision of information and support services to the reviewer, and liaison with ICRA as required.