

# **Fire and Emergency New Zealand Bill**

Government Bill

As reported from the Government Administration Committee

## **Commentary**

### **Recommendation**

The Government Administration Committee has examined the Fire and Emergency New Zealand Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Fire and Emergency New Zealand Bill would repeal and replace the Fire Service Act 1975 and the Forest and Rural Fires Act 1977. The bill seeks to establish a single, unified fire services organisation for New Zealand

The bill as introduced was developed as a result of two reviews of the fire services that were carried out in 2012 and 2015. The bill would enable changes to be made to fire services legislation that has not substantially changed since the 1940s. The bill aims to take an enabling approach. The reform of the fire services would promote flexibility, adaptability, and efficiency.

The organisation established by the bill would be named Fire and Emergency New Zealand (FENZ). The renaming of the organisation is intended to reflect the wide range of services that firefighters provide. FENZ would remain a Crown entity. It would combine rural and urban fire services, and establish local advisory committees to provide regional advice to FENZ on national and regional issues.

There is currently a variety of funding sources for rural fire services. The principal source of funding for FENZ, should this bill be passed, would be a levy paid on insurance for property.

The bill also aims to improve support for volunteers, placing them in a direct relationship with FENZ.

Additionally, the bill would:

- provide for the objectives, functions, operating principles, and powers of FENZ

- facilitate changes for the design and operational policy of FENZ
- make changes to update the legal mandate of the fire services to reflect both fire and non-fire functions.

### **Proposed amendments**

This commentary discusses the main amendments that we recommend to the bill, and other significant issues. It does not cover minor, consequential, or technical amendments.

For example, we propose a number of changes to the definitions in the interpretation clause of the bill. However, we only discuss in detail those that we consider to be key changes.

All of the amendments that we propose are incorporated in the revision-tracked version of the bill, to which this commentary is attached.

### **Commentary structure**

The commentary first covers what we consider to be the key issues that arose during our consideration of the bill. Then we describe some of the less substantial amendments we propose to the bill.

### **Local advisory committees**

The bill (clause 14) would require the FENZ board to establish local committees to provide advice, from a local perspective, to FENZ. The board would be required to take into account advice from local committees when undertaking planning for each local area.

We recommend amending the bill to replace any reference to “local committees” with “local advisory committees”. This name would be more appropriate because the committees are advisory in nature, and local in their representative capacity. It is a more accurate reflection of their role in the organisation.

We propose a number of amendments to change the order of the provisions relating to local advisory committees. The bill contains a mixture of obligations and requirements of the board in relation to local advisory committees, their functions, and requirements of FENZ. We believe that these should be ordered and grouped on the basis of who they apply to.

We recommend inserting new clause 13A, which would relocate the information from clauses 14(2) and 15. This new clause would set out the purpose and functions of local advisory committees.

We recommend replacing clause 14(2) with new subclause (2). This new subclause would make it clear that the board must ensure that all areas across New Zealand are covered within local areas, and that there is a local advisory committee for every local area.

### **Functions of local advisory committees**

Proposed new clause 13A sets out the purpose and functions of local advisory committees. These include carrying out local engagement for the board, providing local advice to FENZ, considering and promoting the interests of the local volunteers, considering the interest of the industry brigades in the local area, and providing regular advice on FENZ's progress in its national planning.

We recommend that new clause 13A include new subclause 2(e), to include consideration of operational service agreements and memoranda of understanding relevant to the local area.

We consider that this amendment is necessary because operational service agreements and memoranda of understanding between respective organisations may affect the FENZ services that are required within the local area. Understanding the implications of the operational service agreements for the local area would assist local advisory committees in providing informed advice on local risks and capabilities.

### **Guidelines for local planning**

We also recommend inserting new clause 21A. This new clause would cover the local planning that FENZ must undertake. Our amendment would transfer the information in clause 17 of the bill as introduced, to new clause 21A.

We recommend inserting new clause 21B to ensure that local planning would include a specific fire plan for the local area.

Clause 21B would require that FENZ prepare and issue a fire plan for each local area. Each fire plan would include policies and procedures for fire control.

We are aware that there was some uncertainty about the intentions of the provisions relating to local planning. Our amendment would provide some clarification about fire plans.

### **Operating principles for local advisory committees**

We have examined the implications of clause 18, which deals with operating principles for local advisory committees. We were initially concerned that clause 18(1) is not general enough, and could constrain the activities of local advisory committees. We consider that it is important that local advisory committees be able to retain a certain degree of autonomy. However, we understand that these operating principles are for guidance only, and that committees would not be bound by them. We consider that there should be nationwide consistency in the way that local advisory committees operate across the country, and in the interactions of local advisory committees with FENZ.

### **Appointments to local advisory committees**

When appointing members of local advisory committees, the board must have regard to a number of factors. These factors are outlined in clause 20.

We recommend amending clause 20(e) to replace the term “industrial brigades” with “industry brigades”. This would align with terminology used elsewhere in the bill, and avoid confusion. The term “industrial fire brigades” was used in the Fire Service Act 1975, so this would update the legislation.

### **The levy regime for funding FENZ**

Part 3 of the bill provides for a levy (paid on insurance for property) that would be the principal source of funding for FENZ. The bill would allow for the levy to be broadened to include insurance for material damage as well as for fire damage, in order to better reflect the services that would be provided by FENZ.

Additionally, the levy would be payable on insurance for motor vehicles against damage or loss.

The levy would be subject to public consultation at least every three years.

We examined this issue at length during our consideration of the bill and accordingly, we recommend a number of amendments to Part 3.

### **Broadening the levy base**

We recommend amending clauses 70, 71, and 72 to replace any occurrence of “physical damage or loss” with “physical loss or damage”. This would change the definition of a “contract of insurance”.

We were informed that the bill’s definition would affect the meaning or administration of some insurance policies. Our proposed amendment would clarify that non-fire material damage policies insuring against physical loss or damage would be levied, but not policies insuring against economic losses.

We are aware of concerns about the levy being broadened to cover insurance on physical loss or damage. Concerns include:

- the relationship between FENZ services and the types of risk covered by this type of insurance is unclear
- the levy payable and resulting costs would increase substantially in some instances
- disproportionate increases in levy costs relative to risk.

We acknowledge the concerns that have been raised.

We have some sympathy with the view that basing the levy on the amount insured against physical loss presents a problem for some policyholders, such as public museums and galleries, and may lead to unfair and inequitable outcomes. Museums and galleries have valuable—and often irreplaceable—collections. However, they are often limited in their ability to generate income from their holdings.

Under the bill, the levy cost based on a fully insured collection could increase substantially. The increased cost of the levy would seem disproportionate to some policyholders’ need to call on FENZ services, their potential to benefit from the services, or their ability to fund the higher cost.

It has been suggested that the levy could be waived or capped in the case of public gallery or museum collections, but could apply to their buildings or other property. We would like to see consideration given to this approach in the regulations proposed to be developed under this legislation.

We are pleased that there is a requirement under clause 106 of the bill for FENZ to publicly consult on the making of levy exemptions, and we consider that this would facilitate better public understanding of the potential benefits and consequences of the new levy regime.

### **Definition of “amount insured”**

Clause 71 of the bill explains the meaning of the term “amount insured” for the purposes of calculating the levy. In the case of property covered by a policy that contains an “express maximum limit” on the amount for which it is insured against physical damage or loss, that express maximum limit is the amount insured.

In any other cases, it means the “declared value” of the property. The declared value of the property is the maximum amount for which the property is insured against physical damage or loss, and is used where the policy does not expressly set out the maximum amount payable. The valuation would be made by a qualified person and agreed by FENZ and the levy payer.

We note the point raised by a number of submitters that the term “sum insured” would be preferable, because express maximum limit is not standard terminology in the insurance sector. It was brought to our attention that using this term in the bill could create uncertainty and ultimately lead to compliance costs for insurers.

We consider that the terms “amount insured” and “express maximum limit” should be retained in the bill.

The term “amount insured” is intended to capture the maximum amount an insurer would pay out in the event of property damage. This may not always be the same amount as the “sum insured”. Using the term “express maximum limit” eliminates the risk of some parties avoiding levy liability.

### *Contesting a determination of declared value*

We recommend amending clause 72 to replace subclauses (5) and (6) with new subclauses (5) and (6).

New subclause (5) would retain the provision that where FENZ considers that an amount set out in a declaration is not a fair and reasonable declared value, FENZ may determine the declared value by obtaining a valuation certificate.

Following from this, proposed new subclause (6) would introduce a new provision, allowing the policyholder to obtain a valuation from a qualified person should they wish to contest the valuation that FENZ provided, and that valuation prevails.

### **Circumstances where policyholder or broker must pay the levy**

We consider that the levy should still apply where the cover for risk is provided by an overseas entity. We see that, in many cases, this would be accounted for by the definition of “contract of insurance” in the bill and by clause 76. However, it would be beneficial to include an amendment to make this clearer.

We recommend amending clause 76(1) to do so. New subparagraph (aa) would ensure that the section would apply to a contract of insurance between a policyholder and a person that “does not carry on business in New Zealand”. This clarifies that, in instances where cover for risk is provided by an overseas entity, the policyholder is liable to pay the levy.

We further consider that brokers should be included as levy payers. We therefore recommend amending clause 76 to insert “or broker” into the clause title, and inserting new clause 2A, which would provide that a broker that negotiates a contract of insurance between a policyholder and an overseas entity described in clause 76(1) would be liable to pay the levy to FENZ.

### **Levy exemptions**

#### *Exemption in legislation for aircraft that fly scheduled international services*

We recommend amending the definition of a “contract of insurance” in clause 70, by inserting subparagraph (b)(iii) to exclude the insurance of aircraft that fly scheduled international services.

We note that aircraft are currently exempt from the levy under the Fire Service Act. We acknowledge that there are significant reasons not to apply the levy to aircraft that fly scheduled international services. These include that:

- aircraft spend a lot of time in the air, beyond the reach of fire services
- there are generally specialist emergency fire services located at airports which respond to incidents at airports
- the fire service levy would be administratively complex to apply to foreign airlines
- only a small number of aircraft in fleets of international airlines would benefit from FENZ services
- there may be negative consequences for the New Zealand tourism market.

We gave thought to whether a proportional levy system would effectively address these issues, but we concluded that it would be too complex to administer. We agree with the view that these aircraft are in a situation comparable to that faced by marine craft. We are satisfied that a specific exemption for aircraft that fly scheduled international services is justifiable. Given the circumstances, we consider that inclusion of this exemption in the bill (as opposed to in regulations) is appropriate.

However, we questioned the limitation of this clause to international services. We queried whether domestic aircraft should also be exempt for the above reasons, and

because some airports have industry brigades (not provided by FENZ) for firefighting on aircraft.

#### *Exemption-making power*

Subpart 6 of Part 3 sets out regulations relating to the levy.

We believe that, at present, the exemption-making power in the bill is too narrow, and there are virtually no types of property that would fall within the scope of the criteria.

We recommend amending clause 104 by replacing subclause (4) with a new subclause (4). This would remove the requirement that an exemption may only be made where there is “no potential for FENZ’s services to be required”, and replace it with a requirement that, in recommending an exemption, the Minister must have regard to the purposes of the levy regime (clause 69), and to the potential impact on the cost-efficiency and effectiveness of administering the levy.

We also recommend amending clause 104(3) to insert new subparagraphs (d)(ii) and (iii). This would provide that regulations may establish exemptions from the levy for certain types of property, contracts or classes of insurance, and policyholders or classes of policyholder.

#### *Lack of recognition of policyholders’ fire protection measures*

Submitters (particularly museums) told us that they would face a significant increase in the levy due to the broadening of the levy base. We also note that museums have extensive mitigation measures, plans, and systems in place to protect their assets and collections from damage.

We are satisfied that the bill goes some way towards addressing these potential increases in cost in clauses 35 to 38 of Schedule 1, which deal with levy relief in the financial years of 2018/19 to 2024/2025. We support clause 38(b), which stipulates that FENZ may consider “whether paying the increased amount would place an unreasonable burden on the policyholder” when granting exemptions under regulations.

We understand that it is a deliberate policy decision to provide most levy exemptions by regulation in order to allow some flexibility in what is included. However, we still hold some concerns that the proposed exemption for some aircraft is incorporated in primary legislation, while any other exemptions, such as for museums, would be left to regulations made under the bill.

#### **Anti-avoidance**

Subpart 4 of Part 3 empowers FENZ to respond to cases of avoidance or underpayment (shortfall) of the levy. We have recommended recasting subpart 4 to clarify the intent and operation of this part of the bill, as well as to respond to some concerns raised by submitters.

*Definitions of levy avoidance and levy advantage*

The inclusion of anti-avoidance provisions is an attempt to address situations where structures are developed with the aim of avoiding levy obligations. Such arrangements are held to be void.

We recommend an amendment to the definition of “levy avoidance arrangement” in clause 70, to insert new paragraph (b). This amendment would clarify that merely reducing one’s sum insured, or under-insuring, would not amount to avoidance. We acknowledge that some businesses may make legitimate business decisions to reduce their insurance cover, and the amendment to the definition should clarify that having reduced cover is not, in itself, levy avoidance.

We note the particular relevance of this with regard to museums. We were assured that, if a museum chose to insure its collection only in part, it could not find itself accused of levy avoidance.

*Shortfall penalties*

We recommend inserting new clause 92A, which covers definitions, interpretation, and other matters related to shortfall penalties. Clauses 93 to 96 deal with different kinds of situations where a person avoids the levy. These graduate from “not taking reasonable care” in determining the levy position, which attracts a penalty of 20% of the levy shortfall, to the most serious “abusive levy position”, which attracts a penalty of 100% of the shortfall.

We recommend inserting new clauses 97A and 97B to provide for reductions for levy shortfall penalties, in alignment with those available under the Tax Administration Act 1994.

Clause 97A would reward persons with a penalty reduction if the levy payer has made adequate disclosure of the levy position at the time the levy payer takes the levy position.

Clause 97B would allow for a reduction in penalty if a person makes full, voluntary disclosure prior to FENZ issuing a notice of levy shortfall.

*Joint and several liability for penalties*

We recommend inserting new clause 97C to provide that an insurer, policyholder, or insurance intermediary can be held jointly and severally liable for shortfall penalties and interest.<sup>1</sup> We were made aware that there are cases where parties other than an insurer are responsible to some extent for levy avoidance or shortfall. As a result, we are of the view that liability for penalties should be extended beyond only levy payers.

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<sup>1</sup> The joint and several liability rule determines the liability of multiple parties in civil proceedings where a person has suffered loss, and how responsibilities for the loss are allocated where there are several liable defendants. Law Commission, *Joint and Several Liability project*, available at: <http://www.lawcom.govt.nz/our-projects/joint-and-several-liability>

Our proposed new clause 97C(2) would provide for defences against the application of shortfall penalties, where a party to an insurance contract can demonstrate that they were not involved in the taking of the levy position, that they reasonably relied on information from another person, or that the contravention was beyond their control and they took reasonable precautions and exercised due diligence to avoid it.

### **Power to require information (FENZ)**

In the bill as introduced, clause 86 provides for FENZ to require persons (levy payers or insurance intermediaries) to provide information that FENZ considers necessary or relevant for administration or enforcement of the levy.

We consider it important that FENZ is required to act reasonably in seeking such information, and we are aware that this is a common requirement for subjective tests. Accordingly, we recommend amending clause 86 to reflect that FENZ should be acting reasonably.

### **Levy disputes, avoidance, and exemptions**

The bill as introduced provides for FENZ to develop a general dispute resolution scheme.

The Legislation Design and Advisory Committee (LDAC) suggested that it is difficult to assess the rigour of the dispute resolution scheme as currently proposed in the bill. It also commented that matters such as avoidance arrangements and shortfall penalty disputes are particularly complex. In such cases, careful interpretation of the meaning of the legislation will be essential. We agree with the LDAC that the levy disputes resolution scheme should be described more comprehensively in the legislation.

After due consideration, we decided that the proposed dispute resolution scheme is insufficient for disputes relating to the levy. As a result, we propose a number of changes to the bill to set out the key elements of the levy disputes resolution scheme.

### **Notice of levy shortfall process and adjudication**

We recommend inserting new subpart 4A which contains the provisions relating to levy disputes.

The aim of this new subpart is to establish a process that ensures fair and transparent dispute resolution, tailored to the fire service levy scheme.

New clause 98A would relocate the information contained in clause 82 about burden of proof. The new clause sets out that in an adjudication or process relating to levy shortfall or shortfall penalties, the burden of proof is on the respondent disputing FENZ's assessment of the liability.

New clause 98B is a relocation from clause 83. This sets out that FENZ is not able to provide a notice of levy shortfall if four years have passed after the date on which a contract of insurance was entered.

New clause 98C provides that the Minister may approve forms of documents, such as a notice of levy shortfall, notice of response, FENZ's statement of position, and a respondent's statement of position.

New clause 98D would allow FENZ to provide a notice of levy shortfall to a levy payer and to a person responsible for a shortfall penalty. This would include FENZ's assessment of liability for levy shortfall and any shortfall penalty.

New clause 98E sets out what is required for the content of a notice of levy shortfall. The notice must:

- identify the levy shortfall FENZ considers to be payable by the levy payer
- identify any shortfall penalty that FENZ considers to be payable
- identify each respondent whom FENZ considers is liable to pay the shortfall penalty
- provide a statement of the key facts and details in enough detail to inform the respondent of the grounds for the liability
- state how the law applies to the facts.

New clause 98F specifies that any party identified as potentially liable must prepare a response to the notice of proposed adjustment to FENZ within 40 working days of the notice being provided. Also, the clause sets out what a notice of response must concisely state. This includes facts, legal arguments, and quantitative adjustments to figures.

New clause 98G provides that if a respondent does not provide a notice of response to FENZ within the required timeframe, the respondent is deemed to have accepted their liability as set out in the notice.

New clause 98H allows FENZ to provide a new notice of levy shortfall if FENZ considers that an additional person is liable to pay a shortfall penalty, but to whom a notice was not provided.

New clauses 98I, 98J, 98K, 98L, and 98M all cover the next steps of the process if parties do not agree. A key aspect of this is for FENZ and the respondent to prepare statements of position. These clauses include a deemed acceptance provision, and a provision for providing a new notice of levy shortfall, as above.

New clause 98N provides that outstanding disputes (after 80 working days from the date that FENZ provided the statement of position) would be referred to adjudication by an independent authority. However, this would not apply in situations where both respondents agree that the matter would be better resolved in the relevant court, without completing the disputes process.

New clauses 98O, 98P, and 98Q cover the conduct of adjudication, decision of the adjudicator, and costs and orders, respectively.

New clause 98R establishes the right of FENZ or any respondent to appeal the decision of the adjudicator to the relevant court.

New clauses 98S, 98T, and 98U cover the appointment, removal, and remuneration of adjudicators.

Matters relating to test cases are covered by new clause 98V. New clause 98W was proposed because we consider it important to note that decisions made by adjudicators would be made publicly available to help inform people, but that names and identifying details of respondents would be removed.

## **Fire in the open air**

### **Fire as a land management tool**

We are aware of concern about the fact that there is not an explicit provision in the bill for the use of fire as a land management tool. We agree that the bill should make it clear that fire can be used as a land management tool, and so we recommend the following two amendments.

We recommend amending clause 6 to add a definition of “fire as a land management tool”. The definition outlines the purposes for which fire can be used. We consider that this list should not be exclusive, and we are confident that this is achieved by the wording “includes, without limitation”, and by paragraph (c), which allows for any other prescribed purpose.

We also recommend amending clause 11(2)(a) to expand the function of FENZ in promoting fire safety to include providing guidance on the safe use of fire as a land management tool.

### **FENZ’s powers in fire risk conditions**

Part 2, subpart 1 of the bill comprises provisions outlining prohibitions and restrictions for fire control. We recommend a number of amendments to these provisions, mainly to improve clarity.

We recommend amending clause 6 so that the definition of “essential services” reflects the terms of the Forest and Rural Fires Act. We recognise that the definition of “essential services” as currently proposed in clause 6 is unclear, and inconsistent with references elsewhere in the bill.

We further recommend an amendment to clause 6 to replace the defined term “open fire” with fire in open air. Our new definition would also exclude a fireplace that complies with the Building Act 2004. This would account for situations where a district plan did not have compliance requirements for fireplaces.

We also recommend inserting subparagraph (b)(ii) into the criteria of the new definition of “fire in open air”. It should be constructed in a way that excludes any use of fire in a thing or place authorised by FENZ, to allay concerns that the declaration of a restricted fire season would stop all types of fires being lit.

The use of the term “open fires” in clauses 49, 50, 54, and 55 would then be replaced with “fires in open air”, for consistency throughout the bill. We understand that it is possible that the term “open fire” would be confused with “open season”. Our amendment would prevent this confusion.

To make the bill consistent, we also recommend replacing clause 57(4) with new subclause (4) to match the new definition in clause 6.

### **Fire seasons and fire permits**

Clauses 53 to 55 set out FENZ's powers to establish fire seasons, with open season as the default. These clauses also cover permits for fires in open air during prohibited and restricted fire seasons, and related penalties for breaches or offences.

We note that the bill currently does not expressly provide for FENZ to revoke or vary a fire season. We recommend amending clause 53 to insert new subclause (3) to expressly allow for this. We also recommend inserting new subclause (4), which allows for restrictions on the lighting of fires during restricted fire seasons. This would enable campfires to be lit during restricted fire seasons on public conservation land.

We recommend adding new clause 55A to the bill. This new clause would require a person to show a fire permit on request to an authorised person. This would align with an existing requirement in the Forest and Rural Fires Act.

New clause 55A would also create a new offence for failure to provide a fire permit when requested to do so by an authorised person.

We received advice from the Regulations Review Committee regarding the regulation-making powers in clause 151 relating to permits for fires in open air. The committee drew our attention to the fact that the bill does not specify that the permits made by this clause are time-limited. To maintain consistency with the safeguards recommended by the LDAC for using regulations to grant exemptions, we recommend amending clause 151 to set a five-year expiry on permits issued for lighting fires in open air under any associated regulations.

### **Fire or fire hazard in vegetation offences**

We understand that it is the policy intent of the offence established in clause 56 to capture a person's risky or dangerous behaviour with fire. We consider it is important that this intention be explicit, and therefore recommend replacing clause 56 of the bill as introduced with a new clause 56. This would reframe the offence to better capture its meaning—causing or allowing fire to get out of control and to spread. We want to avoid potential confusion with more specific offences, such as arson.

We consider that the use of the word “leave” in clause 57 as introduced is vague. We recommend amending clause 57(1) to make it clear that it refers to a person who has started a fire in open air, then left it in a state that means it is likely to spread (or left it smouldering in a state that means it is likely to start burning again) and cause harm or damage.

We also recommend inserting new clause 57(1A) which would make it clear that after discovering the burning or smouldering substance or an ensuing fire, if the person is able to, they must make a reasonable attempt to reduce harm or damage from the fire before notifying FENZ.

## **Firebreaks**

Clause 58 in the bill as introduced would enable FENZ to require forestry landholders to make and clear firebreaks.

The definition of “forestry land” in clause 58 is too narrow, so we recommend replacing it with “land”.

We recommend removing clause 58(1)(a)(ii) from the bill. It is redundant because every landholder is responsible for their own land.

We also recommend inserting new clause 58A so that any dispute over any aspect of the notice would be governed by the dispute resolution provisions provided for under subpart 5 of Part 4 of the bill as introduced.

## **Power to remove fire risks from private property**

We recommend inserting new clauses 58C to 58F in the bill to provide FENZ with the power to ensure the removal of things posing a fire risk from private property.

The intention of the bill is that, from 1 July 2017, all rural and urban fire services would be delivered by FENZ. The reform seeks to address concerns that multiple independent organisations delivering fire services results in inconsistent approaches and variable leadership.

Territorial authorities currently have the power under the Local Government Act 2002 to manage material and vegetation that is, or may become, a fire hazard on private property.

Giving FENZ the power to remove fire risks from private property transfers the current power of territorial authorities to FENZ. We also propose consequential amendments to the Local Government Act.

These provisions would authorise FENZ to require an owner or occupier of a property to remove any vegetation or other thing increasing the fire risk. If the owner or occupier either failed to respond or did not comply within the set time, FENZ would be able to take action by issuing an infringement notice and/or entering the property to remove the fire danger. If an imminent danger is posed, FENZ may enter the property and remove the vegetation or other thing increasing the fire risk.

Disputes over the notice to remove vegetation or other thing increasing the fire risk would be able to be pursued under the dispute resolution provisions.

## **Operational powers, functions, duties, and water supplies**

### **Alarm of fire or fire reported (letting a fire burn)**

We recommend amending clause 35 to specify that an authorised person may let a fire burn. We consider it appropriate to make it explicit that this is a valid response to an alarm of fire, or a fire reported. We emphasise that this decision should be made with due care, and that all of the other possible response options should be weighed up.

### **Powers of authorised person in relation to tree or other plant**

We recommend three amendments to clause 40 as follows:

- replace “tree or other plant” with “vegetation”
- insert new subclause (4) to allow for vegetation that has been cut or pulled down to be moved to a safe area
- amend clause 40(2) to insert new paragraph (c) so that an authorised person may burn vegetation, through backburns or burnouts, for the purpose of fighting fires
- insert new subclause (5) to provide definitions of the terms “backburn” and “burnout” as used in this section.

We support the use of the term “vegetation” because it is more widely applicable. This approach is consistent with the use of the term throughout the bill.

We also consider it sensible to enable vegetation to be removed from a site, for the purposes of extinguishing or preventing the spread of fire or reducing danger.

We see value in making it explicit that authorised persons can use backburns or burnouts as a fire response.

### **Other powers of authorised person**

We recommend amending clause 41(1)(d) to include the phrase “or is likely to cause danger to others”. The bill as introduced provides for the removal of a person who is interfering or is in danger. However, to ensure the safety of FENZ personnel and others, we believe this power should be expanded.

FENZ is empowered to do things reasonably necessary for protecting life or property in responding to a fire or other emergency under clause 41(1)(g) of the bill. We recommend amending this clause to include the environment as one of these factors. Preventing or limiting damage to the environment is a main objective of FENZ.

### **Removing “in mains” from the clause 45 title**

The heading of clause 45 is “Power to use water in mains for any emergency and training purposes”. We recommend amending this clause heading to remove “in mains” because it does not accurately reflect the water use for which the clause provides. The water use is much more extensive than just water mains—it applies to any source of water.

### **FENZ power to alter water supply**

We queried the powers provided to FENZ in clause 41(a) of the bill, to cause water to be shut off from, or turned into, any pipe to obtain greater pressure, and enable firefighters to access water mains. Our primary concern about these powers was the negative consequences that may arise from altering or shutting off water supply, for example, the impact this may have on a dialysis patient.

We were informed that fire personnel would contact the relevant water organisation to take appropriate action when necessary. Firefighters do not access water mains or

pipes themselves. Water organisations can identify if there are any vulnerable customers in the area. Additionally, we were assured that dialysis patients are trained in what to do if their water supply is suddenly shut off during an emergency.

We are confident that the appropriate steps would be taken when exercising these powers.

### **Firefighting water supplies**

We recommend some amendments to clauses in the bill regarding the consultation requirements on the development and publication of a code of practice for firefighting water supplies.

We recommend amending clause 6 (Interpretation) to add a definition of “firefighting water supplies”. This definition would include both reticulated water supply systems and tank supplies. This amendment would make it clearer which water supplies the code of practice would apply to.

We recommend amending clause 62 by inserting new subclause (2) to provide that the Minister must be reasonably satisfied that FENZ has consulted the parties specified in the bill before approving a code of practice. We consider that including this in legislation highlights the importance of the consultation process.

Similarly, we recommend amending clause 63(2) to expand the consultation requirements to include local authorities and any other person or organisation responsible for firefighting water supplies. This would ensure that territorial authorities and council-controlled organisations are captured in the consultation requirements. Additionally, for the relevant organisations, it would facilitate a better understanding of when the code might need to be considered and what action they may need to take as a result.

### **Volunteers**

This bill would provide that FENZ has a direct relationship with volunteer firefighters. This relationship would be one of engagement as opposed to employment. The bill would establish a framework for volunteers in the new organisation.

We acknowledge the significant role of volunteer firefighters, noting that they constitute over 80 percent of the fire services workforce. Because volunteers have such a significant role, it is essential that the bill contains appropriate support, and that there is clear accountability between FENZ and volunteers.

We were pleased to see that clause 6 of the bill includes volunteers in the definition of FENZ personnel, which is a clear indication of their inclusion in the new organisation.

Clause 33 of the bill specifies the duty of FENZ in relation to volunteers, and clause 34 provides an ability to make independent advocacy and support services available to FENZ volunteers on an ongoing basis, and at no cost. We consider that the United Fire Brigades Association (UFBA) advocacy and representation service may not always be the advocacy service volunteers may wish to utilise, so we encourage FENZ to also make other independent advocacy services available.

We are encouraged that clause 33 includes a requirement to consult with volunteers on matters that may affect them, and that FENZ would have obligations under the Crown Entities Act 2004 in relation to volunteers working for FENZ. We also support the proposal in the bill (clause 138) to develop a dispute resolution scheme that would be accessible to volunteers.

We understand that improving the support available to volunteers and recognising their importance is an integral aspect of the review and reform of the fire services. We were advised that new support for volunteers would be funded at approximately \$23.3 million per annum, for a total of four years. Funding for volunteer support is expected to continue after four years, but this funding would be from efficiencies we were advised were projected to be gained from the merging and streamlining of a large number of organisations into a single organisation.

We expressed concern that, because the baseline review had not yet been completed at the time of the bill's consideration, there had been no modelling of how the predicted \$47 million a year in overall savings, from which the ongoing support for volunteers is proposed to be funded, would be achieved.

### **Transitional provisions**

The transitional provisions which relate to the operational aspects of FENZ are provided for in Schedule 1 of the bill. We discuss a number of key issues, such as transferred employees, gratuities, response assets, and organisational matters.

We heard from the Transition Project team, who are in charge of the FENZ transition project. The team told us about the "Day One Blueprint" that gives a high-level summary of the work being undertaken to integrate the fire functions of over 40 organisations into a single, unified organisation commencing on 1 July 2017.

We were pleased to hear from the transition team that the feedback received, and the engagement to date, has been predominantly positive. We urge the team to maintain this engagement with those who would be affected if this legislation is to be passed and come into force in the near future.

We believe that it is essential that the information provided to us by the Transition Project team is readily available to the public. It may contribute to greater certainty and a better understanding about how the transition to the new organisation would work in practice. For this reason, these documents are attached to our report (Appendix B).<sup>2</sup>

### **Employment**

Clause 9 of Schedule 1 of the bill relates to the transfer of employees. During our consideration of the bill, we noted a lack of clarity around the term "transferred

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<sup>2</sup> Some of the material is also available on the FENZ Transition Project website: <http://www.fenzproject.co.nz>

employee”, and sought more information about the policy reasoning for the definition.

It is our understanding that only rural fire authority or Fire Service Commission employees whose role is solely in fire service duties would be automatically transferred to become FENZ employees.

The intention of the provision is to afford FENZ and its former organisations the flexibility to deal with situations where employees have split duties, for example, an individual working for a local authority who has part-time fire duties but also has part-time duties as a dog control officer or park ranger.

We were informed that there is a relatively small number of employees who would be in this situation (possibly fewer than 100 people). We were also told that decisions would be made on a case-by-case basis, and there would be a negotiation in good faith between employees and employers to reach a solution or agreement. We are aware that the FENZ Transition Project team has committed to establishing a process for staff in these circumstances.

We are confident that these agreements would be made appropriately and satisfactorily, with consideration of employees’ conditions of employment and their individual circumstances.

### **Gratuities**

The existing provisions under the Fire Service Act for gratuities for current New Zealand Fire Service members and volunteers (transferred to FENZ) would be retained in the new organisation, as confirmed by clauses 14 and 15 of Schedule 1 of the bill. We note that the Fire Service Act refers to gratuities in sections 55 and 56; however, the Forest and Rural Fires Act does not refer to gratuities.

We heard concerns that the gratuities provisions may be interpreted as taking away a negotiated entitlement from future personnel. We were advised that it is not the intention of the law to remove gratuities, which would remain for both current and future personnel unless they are later removed. In the case of FENZ employees, gratuities could only be removed by negotiation, through changes in future employment agreements. This is the current situation and the bill does not change that situation. For volunteers, gratuities would be determined by policy arrangements under the new organisation. We note in that regard that there is a requirement in the bill (clause 33(1)(b)) that FENZ consult with volunteers and other relevant organisations (such as unions and associations representing them) on matters that might reasonably be expected to substantially affect volunteers.

To make this clear in the bill and to avoid doubt, we recommend amending clause 23 by inserting new subclause (4) so that nothing in the Act affects the ability of the board to pay gratuities to a FENZ employee or volunteer.

### **Response assets**

We are aware of concerns about the provisions in the bill regarding the transfer of response assets. These concerns generally stem from the provisions being interpreted to

mean that, from the bill's commencement date, FENZ immediately and automatically has a right to the assets.

We recognise that the policy intention is that, from 1 July 2017, FENZ should have the ability to use response assets in order to perform all of its functions. We believe that the bill should provide a process for making agreements about transfers of ownership.

We do not consider that the bill as introduced accurately reflects the policy intent, and accordingly we recommend a number of amendments to remedy this.

We recommend amending Schedule 1, clause 8(1)(b), to replace "vests in FENZ" with "may be transferred to, or used by, FENZ".

We recommend amending clause 16 to insert "or use" before "arrangements for response assets".

We recommend other amendments to Schedule 1, clauses 16 and 17 to ensure:

- that the transfer of assets is dealt with separately from the use of response assets ("transfer arrangements" is removed from the title of clause 17)
- that asset owners are not obligated to transfer or provide the use of assets (remove "must" from 17(2) to help mitigate some concern)
- that a transfer arrangement may result in a decision by either party where an asset may not transfer (reflected by the insertion of new subclause (5) in clause 16).

We consider that this clarifies that both parties may decide that FENZ would not receive the asset if an agreement cannot be reached.

We recognise the concerns about what would happen to community-funded assets. We are satisfied that this would be dealt with as provided for in clause 16(2)(a).

However, we recommend amending clause 16(2)(b) to replace "significantly" with "substantially", and replacing "has the greatest need of, and interest in" with "made the greatest contribution towards the acquisition of those assets". We believe that this would give people greater certainty about response assets acquired by fund-raising or community donations, and hope that this provides some reassurance.

#### *Consistency with approaches to drafting tax-related legislation*

We were made aware that changes to the bill were necessary for greater consistency with approaches to drafting tax-related legislation. We recommend the following amendments to achieve this purpose.

We recommend amending Part 1, subpart 1, clause 1 of Schedule 1, to insert a definition of "liabilities". This definition would be the same as that used in clause 39(2) of Schedule 1.

To align the bill with tax legislation, we recommend amending Schedule 1, clause 44(1), to clarify how the transfer of an asset to FENZ is treated with regards to goods and services tax. In the bill as introduced, a zero-rating rule would be applied because goods and services tax would be charged at a rate of 0%. This is inappropriate in non-

tax legislation. Our amendment would treat a transfer as if it was the supply of a going concern for the purposes of section 11(1)(m) of the Goods and Services Tax Act 1985.

We recommend amending Schedule 1, subpart 4, by inserting new clause 41A. This would provide valuation rules for the treatment of income from transferred assets.

### **Organisational provisions**

We propose some amendments to the organisational provisions of the bill to improve the clarity of some terms.

We recommend two amendments to Schedule 1, clause 1 (Interpretation). We recommend removing “an industrial brigade” from the definition of “affected entity”.

We also recommend amending the definition of “fire service duties” to “rural fire duties”. We see how there may be some confusion over the use of this term, because the New Zealand Fire Service is commonly referred to as the fire service. This amendment also better reflects the nature of the duties.

We are aware of concerns that agreements of service and associated registrations which are currently operating may be jeopardised by the bill. To ease these concerns and provide some certainty during the initial stages of the transition, we recommend adding new clause 10A to Schedule 1 of the bill. This would expressly provide that agreements of service between volunteer fire brigades and the New Zealand Fire Service Commission would continue until either the agreements expire, or are replaced.

## **Consequential amendments to other Acts**

### **Local Government Act 2002**

We recommend some consequential amendments to the Local Government Act 2002 (LGA) to reflect the policy intent to unify the roles and functions of fire service in FENZ and to facilitate the transfer of responsibilities from territorial authorities to FENZ.

In both rural and urban areas, territorial authorities are able to make bylaws for fire prevention and reducing fire risk, under sections of the LGA. These consequential amendments would provide a streamlined process for bylaws covering FENZ activities to be removed.

We recommend amending Schedule 2 to make consequential amendments to repeal section 146(c), section 153(1)(e), and section 229(a)(ii) of the LGA.

We recommend inserting new clause 160 to insert a new section into the LGA such that where bylaws made under the LGA are inconsistent with the FENZ legislation, the FENZ legislation prevails.

We also recommend inserting new clause 161 to repeal sections 183 and 184 of the LGA.

Consequentially, we recommend amending clause 2(4) which sets the commencement date for several provisions to come into force on 1 July 2018.

## Functions and objectives of FENZ

### Main and additional functions of FENZ

Clauses 11 and 12 of the bill set out the main and additional functions of FENZ. Main functions are a priority, and must be undertaken. Additional functions would be undertaken if FENZ had the capability and capacity to do so.

#### *Fire investigation*

We discussed the status of fire investigation in the bill. Fire investigation supports many of the principal functions of FENZ. Additionally, it supports the objective of reducing the incidence of unwanted fires. However, fire investigation is not a principal function of FENZ in and of itself.

We had a number of concerns with the provisions regarding fire investigation, particularly that the bill does not specifically require FENZ to employ fire investigators. Moreover, the bill does not specify qualifications for fire investigators, or that funding is available for this purpose. As a result of this, we think there is a risk that FENZ would have to rely on investigations carried out by fire investigators in the insurance sector. Ultimately, this may pose a threat to the independence and reliability of the Government's investigation of fires.

We understand that in cases of criminal investigation of arson, the Police have the primary responsibility. However, we anticipate that FENZ and the Police would work collaboratively in these circumstances.

#### *Industry brigades*

Industry brigades are those formed in response to specific needs at commercial premises, such as at an airport. We gave thought to whether airport brigades should be referenced in the bill.

After obtaining further information and examining the issue in more detail, we decided that it is not appropriate for industry brigades to be regulated by the bill, because they are independently funded and operated. We are satisfied by the requirement in clause 60 and clause 11 of Schedule 1 of the bill that existing coordination agreements would continue until the time that they expire, or are replaced.

We are also pleased that there are arrangements in the bill for FENZ to respond to events in cooperation with industry brigades.

#### *Fire safety*

We recommend amending clause 6 to add subparagraphs (b)(iva) and (b)(ivb) under the definition of "relevant fire safety legislation". This would add two Acts—the Radiation Safety Act 2016 and the Sale and Supply of Alcohol Act 2012. This is necessary because FENZ would have additional functions under these two Acts.

## **Operating principles of FENZ**

We recommend amending clause 13(3)(d) to insert new subparagraph (ia). The new subparagraph would mean that FENZ must take into account the importance of engagement with associations or unions that represent or advocate on behalf of FENZ personnel when formulating its operating principles.

## **Delegations, appointments, and health standards**

### **Delegations of functions, duties, and powers**

We recommend inserting new clause 21C to provide a central provision under which an “authorised person” may be authorised to perform or exercise specific functions, duties, and powers under the bill. This amendment would ensure that appropriate consideration is given to training and qualifications of the person prior to their authorisation.

We also recommend that the definition of an “authorised person” in clause 6 be adjusted to clarify that, for the purposes of this legislation, authorised persons are persons authorised under new clause 21C or a person who has delegated authority under clause 22.

We recommend amending clause 22(2) to allow conditions to be set out in a delegation so that particular delegated functions or powers may not be subdelegated. This would make the bill more specific about when powers may and may not be subdelegated.

The bill allows the board of FENZ to revoke a delegation by written notice. We recommend amending clause 22(4) to extend this so that it also applies to subdelegation.

### **Leaving FENZ compulsorily due to incapacity**

We recommend amending clause 32 to add new subclause (4). This would enable the board of FENZ to prohibit a volunteer from partaking in operational activity while appealing a requirement to leave FENZ under clause 30(1).

This amendment is necessary in order to create a similar requirement to that in clause 31(2)(a), where an operational employee is taking a personal grievance action in respect of the requirement to leave FENZ.

The health standards prescribed by the bill are designed to encompass both physical and mental health standards.

## **Evacuation schemes**

The bill requires owners of relevant buildings to provide and maintain evacuation schemes. “Relevant buildings” include those buildings where 10 or more people are employed, and those providing early childhood facilities in early childhood education and care centres.

### Evacuation schemes

We recommend amending clause 6 to insert a new definition of “household unit”. This definition is based on the Building Act and is intended to capture the ordinary meaning of “household unit”.

We recommend amending clause 65(1)(c) to replace “more than 5” persons, with “6 or more persons” for consistency.

We further recommend amending clause 65 by inserting new subclause (3). This new clause would clarify that the meaning of “early childhood education and care centre” is broadly equivalent to that in section 310 of the Education Act 1989. This would improve the certainty and clarity of the policy intent.

The bill as introduced enables FENZ to apply to a District Court Judge for an order to close a building until the owner complies with the evacuation scheme requirements in clauses 66 and 67. We recommend amending clause 68(1) to enable FENZ to apply to the District Court for an order requiring the building owner to comply with section 66, 67, or 67A(2). This would be more effective, because it places the emphasis on the building owner to comply with evacuation scheme provisions.

We also recommend amending clause 68 to insert new subclause (1A), to provide that if a compliance order is made, the District Court would have discretion to make an order that the building be closed until the relevant sections are complied with.

We recommend inserting new clause 67A, so that FENZ would have the power to revoke or require variation of an approved scheme. This would also give FENZ the power to require a building owner to resubmit a revised evacuation scheme. An example of where this may be necessary is when FENZ considers that a scheme does not enable people to safely evacuate a building.

We recommend amending clause 153 (regulations relating to evacuation schemes for relevant building) by inserting subparagraphs (1)(b)(i), (ii), and (iii), to provide that regulations may be made, prescribing for the purposes of sections 65 and 66:

- what must be included in an evacuation scheme
- requirements for evacuation schemes for particular types of buildings
- the process for approval of evacuation schemes and the notification requirements, including when no scheme is required.

Additionally, we recommend amending clause 153(1)(b) by inserting new subparagraph (d) so that regulations may be made prescribing the process that FENZ must follow for revoking or requiring the variation of an approved scheme.

### Agreements with DOC and NZDF

There are processes under the bill for FENZ to enter service agreements with the Department of Conservation (DOC) and the New Zealand Defence Force (NZDF). Both of these organisations provide operational fire services.

We recommend amending the interpretation clause in subpart 1 of Part 4 of the bill (clause 107), to replace “State area” with “public conservation land”. This would bet-

ter reflect the intention that DOC should deliver fire services only to land it administers.

We also recommend adding subparagraph (a)(v) to the definition of public conservation land so that the definition would apply to any class of land declared by the Minister of Conservation to be so under the Act. Furthermore, we recommend amending subparagraph (a)(iv) to capture land previously declared a State area for the purposes of the Forest and Rural Fires Act, as public conservation land.

We recommend amending relevant clauses throughout the bill (including clauses 108, 109, 110, and 111) to streamline the use of “designated services”. The clauses mentioned refer to “fire services and designated emergency services”. It is repetitive and unnecessary, because this is already encapsulated in “designated services”. Additionally, related amendments to clauses 110(b) and 111(b) are necessary to more accurately reflect the actual services provided by DOC and NZDF.

We recommend amending clauses 108 and 109 (and other clauses where necessary), to replace occurrences of “fire services” with “fire control”. We consider that this would more accurately reflect the activities of FENZ and DOC in the relevant areas.

## **Offences**

### **Definition of spontaneously combustible material**

Clause 121 of the bill provides that it is an offence to knowingly or recklessly store spontaneously combustible material in breach of requirements.

We believe that it is important to clarify that clause 121 is not intended to cover materials that the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 already regulate.

For this reason, we recommend amending clause 6 to add an interpretation of “spontaneous combustible material”. This would include an exemption for materials that are stored properly and safely.

### **Infringement scheme and offence for failing to provide information**

We recommend inserting new clause 116A which would give an authorised person the power to demand information.

This new clause would require a person to provide their full name, address, and any other relevant information necessary for an authorised person to issue an infringement notice.

It would also create an offence for failing to provide the information requested by an authorised person, without a reasonable excuse.

A person convicted of this offence would face a penalty of up to \$10,000. This is consistent with maximum penalty levels with similar offences in other Acts.

We consider that criminalising this conduct and making it an offence is appropriate due to its seriousness.

## **Entry and search powers**

### **Appointment and role of inspectors**

Submitters commented on the appointment of FENZ inspectors (clause 128). The key theme underlying these comments was that more clarity was needed around the role of FENZ inspectors.

It is necessary to explain that the intent of the clause is to allow FENZ to appoint inspectors from a range of candidates. This is because limiting the appointment to employees of FENZ only may exclude other people who have the skills necessary to perform the role.

Also, the title “FENZ inspector” is primarily for statutory purposes, and may not be the official job title given to people appointed to the role. The job title would be an operational decision for FENZ.

### **Powers of entry**

The bill provides for new powers of entry and inspection, to help facilitate FENZ’s function of reducing the incidence of unwanted fires.

We recommend amending clause 6 of Part 1, to add a definition of “home”, which is pertinent to subpart 4 of Part 4—powers of entry, inspection, and search. This is especially relevant for the power to enter homes and marae, contained in clause 133. The definition of home has been developed so as not to unintentionally exclude some areas (including gardens, yards, and garages).

There are safeguards in place under the bill for the use of these powers. However, we propose an amendment to add an additional safeguard of reasonableness. We recommend amending clause 132(1) to read “A FENZ inspector may, at any reasonable time, enter and inspect any land or building”.

We recommend amending clause 127 to insert a definition of “issuing officer” for the purposes of this subpart. The definition takes its meaning from the Search and Surveillance Act 2012. Although “issuing officer” is a relatively well-understood term in the context of issuing search warrants, we consider it important to directly refer to it in this bill.

### **Powers of inspection and search**

We recommend some amendments to the clauses in the bill covering powers relating to inspection and search. Clauses 135 to 137 cover further powers of inspectors including the power to take samples, seize items, and restrict access to sites. Additionally, there is an enabling power in clause 136 for searching of premises, subject to consent or a search warrant.

#### *Power to take samples and other objects and things*

We recommend amending clause 135(1) to insert new paragraphs (a) and (b). These new paragraphs would confirm a FENZ inspector’s powers to take or remove a sample of any material, or seize an object. This power would be used for the purpose of

assessing compliance with the requirements under relevant fire safety legislation, or for conducting post-incident analysis.

We support the inclusion of adding “if it is practicable to do so” in the provisions about consulting the person from whom things are to be seized. We recommend amending clause 135(2), and inserting new clause 2A accordingly. This would enable FENZ inspectors to exercise the necessary powers in situations where a person cannot reasonably be located or has refused to cooperate.

#### *Power to restrict or prohibit entry*

We recommend amending clause 137(1) so that an authorised person (appointed by the board) would have the power to restrict or prohibit access or entry to land or a building until the arrival of a FENZ inspector.

We also recommend amending clause 137 to add new subclause (2). This new subclause states that the restriction would only apply for as long as is reasonably necessary. We agree with the view of the LDAC that the period should be time-limited. This would help to ensure that the power is used appropriately.

#### *Application for access to prohibited or restricted sites*

We recommend inserting new clauses 137A and 137B. The new provisions we propose would allow a person who had been restricted from accessing land or a building by FENZ, to apply to FENZ by written notice for access. The description of persons able to apply for access includes the insurer (as well as a duly authorised agent of the insurer) of the land or building.

FENZ is able to refuse an application subject to certain conditions, but if it does so the applicant must be informed of the decision in writing.

The LDAC also suggested that there should be means of disputing a restriction imposed by a FENZ inspector. We agree that this is necessary. Therefore, we recommend inserting new clause 137B which would allow for an application to be made to the District Court for access to sites to which entry is prohibited or restricted, where an application made to FENZ has been refused or is not accepted. New clause 137B would follow a similar format to Section 158 of the Search and Surveillance Act (with some modifications).

The District Court would be able to grant the application, or refuse it for specified reasons.

### **General dispute resolution scheme**

Subpart 5 of Part 4 of the bill would require FENZ to develop a dispute resolution scheme. This scheme would cover any disputes relating to matters under the bill, or associated regulations. As discussed above, disputes relating to the levy are dealt with in new subpart 4A of Part 3. An amendment is necessary in order to explicitly exclude disputes related to the levy from this scheme, so we recommend amending clause 138(2), by inserting new paragraph (ca), to this effect. For the same reason, we

recommend amending clause 140 to delete subparagraph (h)(vi), and deleting clause 147.

Clause 141 contains a consultation requirement prior to the approval of the dispute resolution scheme. We do not consider that it is appropriate to name specific organisations that need to be consulted. However, we recommend amending clause 141(1) to replace “FENZ considers will be substantially affected” with “are likely to be substantially affected”. This would lessen the subjectivity of the consultation requirement.

We recommend amending clause 142(2) to provide that the Minister be “reasonably satisfied” that FENZ has complied with the consultation requirement. We consider that this is a fair test and aligns with requirements proposed elsewhere in the bill.

We recommend amending clause 143 by replacing subclause (2) with new subclause (2). Our proposed amendment would require parties to participate in the scheme in certain circumstances.

While participation in the scheme is voluntary, clause 143(2)(c) would require that, if FENZ is identified as a party to a dispute, it must participate in accordance with the rules of the scheme. We consider that this is appropriate because FENZ would develop the scheme. This applies to all FENZ personnel (employees, volunteers, and contractors).

Subclause 143(2)(a) would require a person to participate in the scheme for the resolution of certain appeals, because in these cases an outcome would need to be reached.

## **Appendix A**

### **Committee process**

The Fire and Emergency New Zealand Bill was referred to the committee on 5 July 2016. The closing date for submissions was 18 August 2016. We received and considered 104 submissions from interested groups and individuals. We heard oral evidence from 47 submitters.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 151.

### **Committee membership**

Hon Ruth Dyson (Chairperson)

Barry Coates

Kris Faafoi

Paul Foster-Bell

Brett Hudson

Mark Mitchell

Jan Logie replaced Barry Coates for this item of business.

Adrian Rurawhe replaced Kris Faafoi for this item of business.

**Appendix B**

The advice provided to the committee by the FENZ Transition Project team, named “FENZ Bill committee commentary Appendix B”, is available on the Parliament website at:

[https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH\\_BILL69468\\_1/tab/submissionsandadvice](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL69468_1/tab/submissionsandadvice)

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Peter Dunne*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Fire and Emergency New Zealand Act **2016**.

**2 Commencement**

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5
- (a) **sections 3 to 6** (which are preliminary and interpretation provisions):
  - (b) **clause 5 of Schedule 1** (which relates to access by FENZ to records of rural fire authorities):
  - (c) **clauses 16 to, 18, and 19 of Schedule 1** (which contain provisions of a transitional nature that relate to response assets): 10
  - (d) **clauses 20 and 21 of Schedule 1** (which contain provisions of a transitional nature that relate to regulation-making powers):
  - (e) **clauses 22 to 31 of Schedule 1** (which relate to the levy for the 2017/18 year): 15
  - (f) **clauses 39 to 44 of Schedule 1** (which relate to the tax treatment for assets that become assets of FENZ under the transitional provisions).
- (2) The following provisions come into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates and appointing different dates for different purposes: 20
- (a) **sections 65 to 68** (which relate to evacuation schemes for relevant buildings):
  - (b) **clauses 32 to 34 of Schedule 1** (which relate to transitional provisions relating to applications for approval of evacuation schemes for relevant buildings). 25
- (3) To the extent that a provision specified in **subsection (2)** is not previously brought into force under ~~**subsection (2)**~~ that subsection, that provision comes into force on **1 July 2018**.
- (4) ~~**Sections 69 to 103**~~ (which relate to levies) ~~come into force on **1 July 2018**~~. 30
- (4) The following provisions come into force on **1 July 2018**:
- (a) **sections 58C to 58F** (which relate to the removal of things that increase fire risk):
  - (b) **sections 69 to 103** (which relate to levies):
  - (c) **section 161** (which repeals certain provisions of the Local Government Act 2002): 35
  - (d) **clause 34C of Schedule 1** (which relates to transitional provisions concerning the removal of fire hazards).

- (5) The rest of this Act comes into force on **1 July 2017**.

## Part 1 Fire and Emergency New Zealand

### Subpart 1—Preliminary provisions

- 3 Purpose** 5
- The purpose of this Act is to—
- (a) reform the law relating to fire services, including by strengthening the role of ~~the~~ communities and improving the support for volunteers in the provision of fire services, and, to that end,—
- (i) to unify Fire Services by establishing Fire and Emergency New Zealand (**FENZ**); and 10
- (ii) to provide for FENZ’s objectives, functions, and operating principles; and
- (iii) to provide for FENZ’s powers; and
- (iv) to provide for a levy-based system to fund FENZ; and 15
- (b) provide for local advisory committees to influence and advise FENZ; and
- (c) improve support for volunteers and enable them to communicate directly with FENZ; and
- (d) provide new offences and penalties to improve fire safety. 20
- 4 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 5 Act binds the Crown**
- (1) This Act binds the Crown. 25
- (2) However, except as expressly provided in this Act, nothing in this Act applies to—
- (a) any defence area; or
- (b) any defence fire brigade; or
- (c) any member of the New Zealand Defence Force within any defence area. 30
- (3) Despite **subsection (2)**, an agreement made under this Act may expressly provide for the Act to apply to any area, brigade, or person listed in that subsection.

Compare: 1975 No 42 s 2A; 1977 No 52 s 3

## Subpart 2—Interpretation

**6 Interpretation**

In this Act, unless the context otherwise requires,—

**authorised person**, in relation to a function, duty, or power, means a person to whom the following apply: 5

- (a) ~~the person is authorised by the board in writing to perform or exercise the function, duty, or power;~~
- (b) ~~the performance or exercise of the function, duty, or power is delegated to the person; and~~

**authorised person**, in relation to a function, duty, or power, means a person to whom either of the following applies: 10

- (a) the person is authorised to perform or exercise the function, duty, or power under **section 21C**; or
- (b) the person is delegated the performance or exercise of the function, duty, or power under **section 22** 15

**board** means the board of FENZ

**building** has the same meaning as in sections 8 and 9 of the Building Act 2004

**by-product** means any material or substance that results from, or is used during, a hazardous substance emergency or any other emergency involving a substance (whether or not the substance or material is caused by a reaction) 20

**Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990

**code of practice for firefighting water supplies** means a code of practice—

- (a) that is approved by the Minister under **section 62**; and
- (b) ~~that relates to water that may be used for firefighting purposes~~ firefighting water supplies, including standards of water supply and access to, and volume and pressure of, water supply 25

**contract of fire insurance** means an agreement under which any property is insured against loss or damage from fire, whether the agreement includes other risks or not, but does not include any contract of marine insurance (as defined in **section 70(1)**) or any contract of reinsurance 30

**contract of insurance**,—

- (a) ~~in **Part 3**, has the meaning given in **section 70(1)**;~~
- (b) ~~in the rest of this Act,—~~
  - (i) ~~has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010), except that it does not include—~~ 35
    - (A) a contract for reinsurance;

- (B) a contract of marine insurance:
- (ii) ~~in relation to any property, means a contract under which the property is insured against physical damage or loss~~
- contract of marine insurance** has the same meaning as in section 3 of the Marine Insurance Act 1908, except that it does not include— 5
- (a) a contract of insurance in respect of any cargo after any of the following has occurred:
- (i) ~~the delivery of the cargo to the consignee's or any other final warehouse or place of storage at the destination named in the contract of insurance:~~ 10
- (ii) ~~the delivery of the cargo to any other warehouse or place of storage, whether or not at the destination named in the contract of insurance, that the insured elects to use either for storage other than in the ordinary course of transit, or for allocation or distribution:~~
- (iii) ~~the expiry of 60 days after completion of discharge overseas of the cargo from an overseas vessel at the final port of discharge; or~~ 15
- (b) a contract of insurance in respect of any ship or vessel normally or customarily removed from the water and transported or stored on land when not in use
- contractor**, in relation to FENZ,— 20
- (a) means a person engaged by FENZ under a contract for services; and
- (b) includes a subcontractor to a person described in **paragraph (a)** who is engaged to assist with the performance of those services
- Crown**—
- (a) means the Sovereign in right of New Zealand; and 25
- (b) includes all Ministers of the Crown and all departments; but
- (c) does not include—
- (i) an Office of Parliament; or
- (ii) a Crown entity; or
- (iii) a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986; or 30
- (iv) an organisation named in Schedule 4 of the Public Finance Act 1989; or
- (v) a company; or
- (vi) a mixed ownership model company; or 35
- (vii) an entity named or described in Schedule 6 of the Public Finance Act 1989
- defence area** has the same meaning as in section 2(1) of the Defence Act 1990

**defence fire brigade** means a unit or any other part of the Armed Forces established and trained under the authority of the Chief of Defence Force under the Defence Act 1990 for the prevention, suppression, and extinguishment of fires

**designated emergency services** means the emergency services that—

- (a) FENZ must deliver under **section 11**; and 5
- (b) FENZ delivers under **section 12** if FENZ has the capability and capacity to do so

**emergency** means an event requiring an immediate action to ~~save~~ protect and preserve life, prevent ~~serious~~ injury, or avoid damage to property and includes— 10

- (a) a fire (including an alarm of fire); and
- (b) a hazardous substance emergency; and
- (c) a state of emergency declared under the Civil Defence Emergency Management Act 2002; and
- (d) any other substance emergency; and 15
- (e) an incident attended by emergency services (including the New Zealand Police, FENZ, and hospital and health services)

**EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

**equipment**— 20

- (a) ~~means any plant, appliance, or device belonging to or in the possession of FENZ; and~~
- (b) ~~includes any personal equipment or clothing provided by FENZ~~

~~**essential services** means the work of FENZ in carrying out the functions set out in **section 11** (other than work carried out by FENZ volunteers)~~ 25

**essential services** means services—

- (a) for the supply and distribution of food, water, fuel, power, and other necessities;
- (b) for the maintenance of transport and communication facilities that are essential to the well-being of the community; 30
- (c) for the maintenance of the health of the community;
- (d) for the maintenance of law and order, public safety, and the defence of New Zealand;
- (e) for the preservation of property at immediate risk of destruction or damage 35

**FENZ personnel** or **personnel**, in relation to FENZ, includes—

- (a) employees:
- (b) volunteers:

- (c) contractors

**FENZ volunteer or volunteer—**

- (a) means a person who carries out work for FENZ, in a volunteer capacity in relation to the functions of FENZ, and with the knowledge and consent of FENZ; but

5

- (b) does not include any person carrying out work for FENZ ~~in relation to work carried out~~ under a contract of employment or under a contract for services

**Fire and Emergency New Zealand or FENZ** means Fire and Emergency New Zealand continued under **section 8**

10

**firebreak** means a natural or an artificial physical barrier against the spread of fire from or into any area of continuous flammable material

**fire as a land management tool** includes, without limitation, the use of fire for any of the following:

- (a) land clearance purposes:

15

- (b) disease control purposes in agricultural or horticultural industries:

- (c) any other prescribed purpose

**fire control** means—

- (a) preventing, detecting, controlling, and putting out fire:

- (b) protecting persons and property from fire

20

**fire control measure** means any measure that promotes fire control

**fire in open air** means fire other than in—

- (a) a fireplace that is located in a building or structure and that complies with any relevant requirement of the Building Act 2004 and the relevant district plan; or

25

- (b) a place or thing, or a type of place or thing, that is—

- (i) prescribed by regulations made under **section 148**; or

- (ii) authorised by FENZ

**fire plan** means a plan that FENZ prepares and issues under **section 17 21B** for each local area, including policies and procedures for fire control

30

**fire risk conditions** means weather or other conditions that will, or are likely to, endanger persons or property by increasing the risk of the outbreak or spreading of fire

**firefighting** means taking any action to control, restrict, suppress, or extinguish fire

35

**firefighting water supplies—**

- (a) means water supplies—

- (i) that may be used for firefighting purposes; and

- (ii) to which the code of practice for firefighting water supplies applies; and
- (b) includes water from—
- (i) any reticulated water supply, waterworks, or fixed bulk water supply systems; and 5
- (ii) any reservoir, dam, water race, or tank water supply systems
- ~~forestry land~~ means ~~land on which exotic trees are grown for the purpose of producing timber or for other commercial purposes~~
- hazardous substance** means—
- (a) any hazardous substance as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996; and 10
- (b) any infectious or radioactive substance that may harm human, animal, or plant health
- hazardous substance agency** means any of the following organisations:
- (a) WorkSafe: 15
- (b) the EPA:
- (c) the New Zealand Transport Agency:
- (d) the New Zealand Police:
- (e) the Civil Aviation Authority:
- (f) Maritime New Zealand: 20
- (g) the Ministry of Health:
- (h) ~~the Ministry for Primary Industries:~~
- (i) territorial authorities and regional councils:
- (j) any other organisation with enforcement responsibilities under section 97 of the Hazardous Substances and New Organisms Act 1996 25
- hazardous substance emergency** means the release or potential accidental release of any hazardous substance from any building or other premises, or from any container or pipe, or from any means of transport (whether motorised or not)
- home—** 30
- (a) means a place occupied as a dwelling house; and
- (b) includes any garden, yard, garage, outhouse, or other appurtenance of a home
- household unit** has the same meaning as in section 7 of the Building Act 2004
- industry fire brigade** means a group of persons organised as an industry fire brigade in accordance with **section 59** 35

- infringement fee**, in relation to an infringement offence, means an infringement fee for an offence prescribed in regulations made under this Act
- infringement offence** means an offence against this Act or regulations made under this Act that is declared by regulations to be an infringement offence
- local advisory committee** means a committee established in accordance with **section 14** 5
- local area** means the area within the boundaries of a local advisory committee that are set in accordance with **section 16**
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002 10
- ~~local committee~~ means a ~~committee established in accordance with~~ **section 14**
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is the person for the time being responsible for— 15
- (a) the administration of this Act; and
  - (b) ~~the exercise and performance~~ performance and exercise of the functions, ~~powers, and duties~~ duties, and powers of a responsible Minister in relation to FENZ
- national strategy** means the document or documents expressing the national strategic directions or intentions of FENZ 20
- NZ Standards Organisation** has the same meaning as in section 4(1) of the Standards and Accreditation Act 2015
- ~~occupant~~**occupier**, in relation to a building, includes any person lawfully entitled to be in the building (for example, a visitor) 25
- ~~open fire~~ means a fire that is not in one of the following:
- (a) ~~a fireplace that is located in a building or structure and that complies with the relevant district plan;~~
  - (b) ~~a type of barbecue, container, or place that is prescribed by regulations made under~~ **section 148** ~~or that is authorised by FENZ~~ 30
- operational activity** means an activity carried out in relation to ~~performing the main or additional functions of FENZ under~~ **section 11 or 12** FENZ's delivery of designated services
- operational employee** means a FENZ employee carrying out an operational activity 35
- operational personnel** means any FENZ personnel carrying out an operational activity
- other substance emergency** means the release or potential accidental release of any substance, other than a hazardous substance, from any building or other

premises, or from any container or pipe, or from any means of transport (whether motorised or not)

**owner**,—

- (a) ~~in relation to property, includes—~~
  - (i) ~~any person with any interest in the property:~~ 5
  - (ii) ~~any person who is entitled to any benefit under a contract of insurance in respect of the property:~~
- (b) ~~in relation to a building for which a unit plan (within the meaning of section 5(1) of the Unit Titles Act 2010) has been deposited, means the body corporate~~ 10

**owner**, in relation to a building for which a unit plan (within the meaning of section 5(1) of the Unit Titles Act 2010) has been deposited, means the body corporate

**property** means any real or personal property in New Zealand

**public conservation land** has the meaning given in **section 107** 15

**publicly notified**, in relation to a notice or any other document, means to publish the document—

- (a) in the *Gazette*; or
- (b) in 1 or more newspapers circulating in the area to which the document relates; or 20
- (c) on an Internet site; or
- (d) by any other means prescribed by regulations under **section 148**

**relevant fire safety legislation** means—

- (a) this Act, and regulations made under this Act, and any former enactments replaced by this Act or those regulations: 25
- (b) any provisions of the following Acts (or regulations made under those Acts) under which FENZ has functions:
  - (i) Building Act 2004:
  - (ii) Local Government Act 2002:
  - (iii) Local Government Act 1974: 30
  - (iv) Hazardous Substances and New Organisms Act 1996:
  - (iva) Radiation Safety Act 2016:
  - (ivb) Sale and Supply of Alcohol Act 2012:
  - (v) any former enactments replaced by any of the Acts referred to in **paragraph (a)** and **subparagraphs (i) to (iv)(ivb)** of this paragraph or regulations made under those former enactments. 35

**rendering safe** has the meaning given in **section 7**, and **render safe** has a corresponding meaning

**spontaneous combustible material—**

- (a) includes—
  - (i) 1 or more of the following materials that are heaped higher than 3 m above the ground:
    - (A) wood residues: 5
    - (B) wood products:
    - (C) hay, straw, or other plant cuttings:
    - (D) any product composed of more than 50% of 1 or more of the materials described in **subsubparagraphs (A) to (C)**; and 10
  - (ii) any material or class of material specified in regulations made under **section 148**; but
- (b) does not include any materials referred to in **paragraph (a)(i) or (ii)** that are stored in a fireproof container or building constructed for the purpose of storing the materials 15

**tank water supply system** means a water supply system that uses 1 or more water storage tanks that—

- (a) contain water from any source; and
- (b) are immovable structures

**vegetation—** 20

- (a) means any plant or the produce of any plant, whether dead or alive; and
- (b) includes peat and fossil fuels lying on, or within 20 metres below, the surface of any land; but
- (c) does not include processed wood or any structure

**volunteer capacity**, in relation to work carried out by any person, means work carried out by the person without the purpose of obtaining financial gain or profit 25

**water race** has the same meaning as in section 5(1) of the Local Government Act 2002

**waterworks** has the same meaning as in section 5(1) of the Local Government Act 2002 30

**WorkSafe** means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013.

Compare: 1977 No 52 s 2

*Meaning of rendering safe* 35

**7 Meaning of rendering safe**

In this Act, unless the context otherwise requires, **rendering safe**,—

- (a) in relation to a hazardous substance emergency, includes 1 or more of the following actions to minimise harm to people, property, and the environment:
- (i) containing the hazardous substance to stop it spreading:
  - (ii) stabilising, neutralising, or absorbing the hazardous substance— 5
    - (A) to make the substance inert; and
    - (B) to prevent any further reactions ~~between~~ involving the substance ~~and any other matter~~:
  - (iii) treating the hazardous substance so that the substance is no longer hazardous: 10
  - (iv) transferring the hazardous substance to the owner of the substance:
  - (v) if the owner of the hazardous substance cannot readily be found, transferring the substance to—
    - (A) another authority with the means to dispose of the substance: 15
    - (B) any other person who, in the reasonable opinion of the authorised person, is technically competent to dispose of, or destroy, the substance:
  - (vi) removing the hazardous substance from the site of the emergency for destruction, disposal, or recycling: 20
  - (vii) as a matter of last resort, or if FENZ considers it to be the most appropriate course of action in the circumstances, destroying, disposing of, or recycling the hazardous substance:
- (b) in relation to any other substance emergency, includes 1 or more of the following actions to minimise harm to people, property, and the environment: 25
- (i) containing the substance, to stop it spreading:
  - (ii) stabilising, neutralising, or absorbing the substance—
    - (A) to make the substance inert; and 30
    - (B) to prevent any further reactions involving the substance:
  - (iii) transferring the substance to the owner of the substance:
  - (iv) if the owner of the substance cannot readily be found, transferring the substance to—
    - (A) another authority with the means to dispose of the substance: 35
    - (B) any other person who, in the reasonable opinion of the authorised person, is technically competent to dispose of, or destroy, the substance:

- (v) removing the substance from the site of the emergency for destruction, disposal, or recycling:
- (vi) as a matter of last resort, or if FENZ considers it to be the most appropriate course of action in the circumstances, destroying, disposing of, or recycling the substance.

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### Subpart 3—Fire and Emergency New Zealand and board

#### 8 Continuation of Fire and Emergency New Zealand

- (1) There continues to be an organisation to be called Fire and Emergency New Zealand or FENZ.
  - (2) FENZ is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
  - (3) The Crown Entities Act 2004 applies to FENZ except to the extent that this Act expressly provides otherwise.
  - (4) FENZ is the same body as the New Zealand Fire Service Commission constituted under section 4 of the Fire Service Act 1975.
- Compare: 1975 No 42 s 4(2)–(4)

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#### 9 Board of FENZ

The board of FENZ consists of not fewer than 5, and not more than 6, members.

Compare: 1975 No 42 s 6

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### Subpart 4—FENZ’s ~~main-principal~~ objectives, functions, and operating principles

#### *Main-Principal objectives*

#### 10 FENZ’s ~~main-principal~~ objectives

The ~~main-principal~~ objectives of FENZ are—

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- (a) to reduce the incidence of unwanted fire and the associated risk to life and property:
- (b) in relation to the main functions of FENZ under **section 11** and the additional functions of FENZ under **section 12**,—
  - (i) to protect and preserve life; and
  - (ii) to prevent or limit injury; and
  - (iii) to prevent or limit damage to property and land; and
  - (iv) to prevent or limit damage to the environment.

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Compare: 1975 No 42 s 20(2)(a)

*Functions***11 Main functions of FENZ**

- (1) FENZ must carry out the main functions specified in **subsection (2)**.
- (2) The main functions are—
- (a) to promote fire safety, including providing guidance on the safe use of fire as a land management tool; and 5
  - (b) to provide fire prevention, response, and suppression services; and
  - (c) to stabilise or render safe incidents that involve hazardous substances; and
  - (d) to provide for the safety of persons and property endangered by incidents involving hazardous substances; and 10
  - (e) to rescue persons who are trapped as a result of transport accidents or other incidents; and
  - (f) to provide urban search and rescue services; and
  - (g) to efficiently administer this Act. 15
- (3) FENZ must also—
- (a) perform and exercise the functions, duties, and powers conferred or imposed on FENZ as a main function by or under this Act and any other enactment; and
  - (b) perform any other functions conferred on FENZ as a main function by the Minister in accordance with section 112 of the Crown Entities Act 2004. 20
- (4) **Subsection (3)(a)** is subject to **section 12**.  
Compare: 1975 No 42 s 14

**12 Additional functions of FENZ** 25

- (1) The functions of FENZ are also to assist in matters as provided for in **subsection (3)**, to the extent that FENZ has the capability and capacity to do so.
- (2) However, before performing any functions under this section, FENZ must ensure that it retains the capacity and capability to perform the functions specified in **section 11** efficiently and effectively. 30
- (3) The matters are—
- (a) responding to medical emergencies; and
  - (b) responding to maritime incidents; and
  - (c) performing ~~technical~~ rescues, including high angle line rescues involving high angles and ropes, rescues from collapsed buildings, rescues from confined spaces, rescues from unrespirable and explosive atmospheres, swift water rescues, and animal rescues; and 35

- (d) providing assistance at transport accidents (for example, crash scene cordoning and traffic control); and
- (e) responding to severe weather-related events, natural hazard events, and disasters; and
- (f) responding to incidents in which a substance other than a hazardous substance presents a risk to people, property, or the environment; and 5
- (g) promoting safe handling, labelling, signage, storage, and transportation of hazardous substances; and
- (h) responding to any other situation, if FENZ has the capability to assist; and 10
- (i) any other function conferred on ~~it~~ FENZ as an additional function by the Minister in accordance with section 112 of the Crown Entities Act 2004; 2
- (4) This section does not limit or affect the responsibilities of any other organisation in relation to the situations specified in **subsection (3)**.
- (5) In this section,— 15
- exclusive economic zone** means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
- maritime incident** means an incident that occurs on a ship, an aircraft, or an offshore marine structure within— 20
- (a) the territorial sea; or
- (b) the exclusive economic zone; or
- (c) the continental shelf; or
- (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf, but within New Zealand's search and rescue region 25
- New Zealand's search and rescue region** means the region in respect of which New Zealand has search and rescue responsibilities under international law
- offshore marine structure** includes—
- (a) an offshore installation that is an artificial structure used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of exploration for, or the exploitation or associated processing of, any mineral; and 30
- (b) an artificial island; and
- (c) a floating platform; and 35
- (d) a submarine cable; and
- (e) a submarine pipeline.

*Operating principles***13 Operating principles of FENZ**

- (1) The board must formulate the operating principles of FENZ in accordance with this section.
- (2) The operating principles must— 5
- (a) be aimed at guiding FENZ; and
  - (b) be designed to assist FENZ—
    - (i) to carry out its functions effectively and in a co-ordinated manner; and
    - (ii) to work co-operatively and collaboratively with other relevant organisations; and 10
    - (iii) to carry out consultation with relevant stakeholders and organisations-effectively.
- (3) In formulating the operating principles, the board must take into account the following matters: 15
- (a) the importance of providing evidence-based, efficient, and effective services:
  - (b) local interests and differences:
  - (c) the importance of transparency in decision making:
  - (d) the importance of engagement with— 20
    - (i) FENZ personnel:
    - (ia) the associations or unions that represent or advocate on behalf of FENZ personnel:
    - (ii) local advisory committees:
    - (iii) organisations referred to in **section 12(4)**. 25

Subpart 5—Local advisory committees, local planning by FENZ, and delegations by board

*Local advisory committees***13A Purpose and functions of local advisory committees**

- (1) The main purpose of local advisory committees is to provide advice, from a local perspective, to FENZ. 30
- (2) The functions of the local advisory committees are—
- (a) to undertake efficient and effective local engagement for the board; and
  - (b) to provide local advice to FENZ on the national strategy, local issues, and local planning; and 35

- (c) to consider and promote the interests of the local area's FENZ volunteers; and
- (d) to consider the interests of the industry brigades operating in the local area; and
- (e) to consider the provisions of any current operational service agreement and memorandum of understanding that FENZ has and that is relevant to a local area in relation to which the local advisory committee has responsibilities, including— 5
- (i) the operational service agreement with the Department of Conservation under **section 110**; and 10
- (ii) the operational service agreement with the New Zealand Defence Force under **section 111**; and
- (iii) the memorandum of understanding with the Ministry of Education under **section 114**; and
- (f) to provide regular advice on FENZ's progress in relation to its local planning. 15
- (3) Each local advisory committee must, in carrying out its functions, have regard to the operating principles developed by the board under **section 18**.

#### **14 Local advisory committees**

- (1) The board must establish as many local advisory committees as it considers appropriate in the manner set out in **sections 16 and 20**. 20
- ~~(2) The main purpose of local committees is provide advice, from a local perspective, to FENZ.~~
- (2) However, the board must ensure that—
- (a) every area within the territorial limits of New Zealand is included in a local area; and 25
- (b) there is a local advisory committee for every local area.

#### **15 Functions of local committees**

The functions of the local committees are—

- (a) ~~to undertake efficient and effective local engagement for the board; and~~ 30
- (b) ~~to provide local advice to FENZ on the national strategy, local issues, and local planning; and~~
- (c) ~~to consider and promote the interests of the local area's FENZ volunteers; and~~
- (d) ~~to consider the interests of the industry fire brigades operating in the local area; and~~ 35
- (e) ~~to provide regular advice on FENZ's progress in relation to its local planning.~~

**16 Matters relating to setting local advisory committee boundaries**

- (1) The board must—
- (a) consider the following matters when setting the boundaries of the local advisory committees:
    - (i) ~~the efficiency and effectiveness of the local fire services and designated emergency services to operate within the local area:~~ 5
    - (ii) local risk profiles:
    - (iii) the boundaries of other relevant organisations; and
  - (b) endeavour to ensure that the boundaries of the local advisory committees support— 10
    - (i) the efficiency and effectiveness of the local advisory committees; and
    - (ii) the working relationship of the local advisory committees with FENZ; and
    - (iii) the ability of the local advisory committees to represent the relevant communities. 15
- (2) The board must consult the public on the proposed boundaries of the local advisory committees.

**17 Local planning**

- (1) FENZ must undertake local planning for each local area— 20
- (a) that takes into account—
    - (i) ~~the national strategy; and~~
    - (ii) ~~emergency services required within the local area; and~~
    - (iii) ~~the advice from engagement with civil defence emergency management groups; and~~ 25
    - (iv) ~~the advice from the relevant local committee; and~~
    - (v) any current operational service agreement that FENZ has, including—
      - (A) ~~the operational service agreement with the Department of Conservation under **section 110**; and~~ 30
      - (B) ~~the operational service agreement with the New Zealand Defence Force under **section 111**; and~~
      - (C) ~~the operational agreement with the Ministry of Education under **section 114**;~~
  - (b) that identifies— 35
    - (i) ~~specific needs, resources, constraints, and capabilities in the local area relevant to FENZ's functions; and~~

- (ii) ~~local activities that address those needs (and do not duplicate national activities or the activities of other relevant organisations); and~~
- (e) ~~in relation to which FENZ has developed and issued a specific fire plan; and~~ 5
- (d) ~~that demonstrates how the local allocation of resources by FENZ fits in with the national plan.~~
- (2) ~~In this section, unless the context otherwise requires,—~~
- ~~**local activities** means activities carried out by FENZ at a local area level in relation to the performance of FENZ's main or additional functions~~ 10
- ~~**national activities** means activities carried out by FENZ at a national level in relation to the performance of FENZ's main or additional functions.~~
- 18 Operating principles for local advisory committees**
- The board must develop operating principles to guide—
- (a) the way in which the local advisory committees ~~must~~ operate; and 15
- (b) the interactions between the local advisory committees and FENZ.
- (2) ~~Each local committee must, in carrying out its functions under **section 15**, have regard to the operating principles developed by the board.~~
- 19 Obligation of board to local advisory committees**
- The board must— 20
- (a) support local advisory committees to enable the committees to be efficient and effective, including by providing administrative support, resources, facilities, and relevant information to the committees; and
- (b) have regard to advice from local advisory committees; and
- (c) appoint a person representing FENZ to each local advisory committee 25  
for the purposes of—
- (i) advising the local advisory committee; and
- (ii) enabling the local advisory committee to provide informed advice to FENZ and the board.
- 20 Appointments to local advisory committees** 30
- For the purposes of appointing the chairperson, deputy chairperson, and members of a local advisory committee, the board must have regard to—
- (a) the necessary skills, knowledge, and experience relevant to FENZ's main and additional functions specified in **sections 11 and 12**; and
- (b) relevant community and stakeholder needs within the local area; and 35
- (c) the extent to which the members are representative of the local area's communities and stakeholders; and

- (d) the diversity of perspectives on each committee; and
- (e) the interests of ~~industrial~~ industry brigades operating within the boundaries of the local advisory committee; and
- (f) any prescribed requirements for local advisory committees specified in regulations made under **section 149**.

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## **21 Certain provisions of Crown Entities Act 2004 apply to members of local advisory committees**

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies to the members of the local advisory committees as if they were members of a committee appointed by the board under clause 14 of that schedule and with all other necessary modifications.

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### *Local planning by FENZ*

#### **21A Local planning**

- (1) FENZ must undertake, for each local area, local planning—
  - (a) that takes into account—
    - (i) the national strategy; and
    - (ii) the designated services required within the local area; and
    - (iii) the fire plan for the local area; and
    - (iv) the advice from engagement with civil defence emergency management groups; and
    - (v) the advice from the relevant local advisory committee; and
    - (vi) any current operational service agreement and memorandum of understanding that FENZ has, including—
      - (A) the operational service agreement with the Department of Conservation under **section 110**; and
      - (B) the operational service agreement with the New Zealand Defence Force under **section 111**; and
      - (C) the memorandum of understanding with the Ministry of Education under **section 114**; and
  - (b) that identifies—
    - (i) specific needs, resources, constraints, and capabilities in the local area that are relevant to FENZ’s functions; and
    - (ii) local activities that address those needs (and do not duplicate national activities or the activities of other relevant organisations); and
  - (c) that demonstrates how the local allocation of resources by FENZ fits in with the national plan.

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- (2) In this section,—  
**local activities** means activities carried out by FENZ at a local area level in relation to the performance of FENZ’s main or additional functions  
**national activities** means activities carried out by FENZ at a national level in relation to the performance of FENZ’s main or additional functions. 5

**21B FENZ must prepare and issue fire plan for each local area**

FENZ must prepare and issue a fire plan for each local area, including policies and procedures for fire control.

*Authorised person*

**21C Authorised person for purposes of this Act and regulations under this Act** 10

- (1) The board may, by written notice to any person, authorise that person to perform or exercise a function, duty, or power under this Act and regulations made under this Act.
- (2) The board may only authorise a person who the board is satisfied is suitably qualified and trained to perform or exercise the function, duty, or power. 15
- (3) Any authorisation made by the board is subject to any conditions or limitations specified in the notice.
- (4) However, the performance or exercise of a function, duty, or power by an authorised person is not invalid merely because it does not comply with the conditions specified in the notice. 20
- (5) The board may revoke an authorisation at any time by written notice to the authorised person.

*Delegations by board*

**22 Delegation of functions, duties, and powers**

- (1) The board may delegate any of the functions, duties, and powers of FENZ or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons: 25
- (a) ~~personnel of FENZ~~ personnel:
  - (b) a member or members of the board:
  - (c) a committee: 30
  - (d) any other person or persons approved by the board:
  - (e) any class of persons that comprises ~~of~~ any of the persons listed in **paragraphs (a) to (d)**:
  - (f) a Crown entity subsidiary of FENZ.
- (1A) The board may only delegate, and a delegate may only subdelegate, the performance or exercise of a function, duty, or power to a person who the board or 35

- the delegate (as the case may be) is satisfied is suitably qualified and trained to perform or exercise the function, duty, or power.
- (2) A delegate to whom any functions or powers of FENZ or the board are delegated may, subject to any conditions set out in the delegation,—
- (a) ~~may, unless the delegation provides otherwise,~~ perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the person were FENZ or the board; and 5
- (b) ~~may~~ delegate the function or power subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.
- (3) However, in cases of delegations made to or by persons in the private sector, a delegate may subdelegate the function or power only with the prior written consent of the board. 10
- (4) A delegation or subdelegation may be revoked at any time by written notice of the board to the delegate, or by written notice of the board or the delegate to the subdelegate (as the case may be). 15
- (5) Sections 73(1) to (3), 74(1), and 76(2) of the Crown Entities Act 2004 do not apply to any delegations or subdelegations made under this section.
- (6) In this section, **private sector** means any person or organisation outside the State services as defined in section 2 of the State Sector Act 1988. 20
- Compare: 1975 No 42 s 15

## Subpart 6—Appointments, vacancies, and requirement to leave FENZ

### *Appointments and vacancies*

#### **23 Appointment of officers to roles and ranks**

- (1) The board may make appointments to roles, ranks, ~~or levels of position~~ positions in FENZ. 25
- (2) An appointees must be either—
- (a) an employee of FENZ; or
- (b) a FENZ volunteer.
- (3) An appointment in any role, rank, ~~or level of position~~ in FENZ may be held separately or in conjunction with any other role, rank, ~~or level of position~~ in FENZ. 30
- (4) To avoid doubt, nothing in this Act affects the ability of the board to pay gratuities to any person as—
- (a) an employee of FENZ; or
- (b) a FENZ volunteer. 35

Compare: 1975 No 42 s 27

- 24 Appointments on merit**
- The board, in making an appointment to FENZ under this Act, must give preference to the person who is best suited to the position.
- Compare: 1975 No 42 s 65(1)
- 25 Obligation to notify vacancies** 5
- If the board intends to fill a position in FENZ that is vacant or is to become vacant, the board must, if practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.
- Compare: 1975 No 42 s 65(2) 10
- 26 Obligation to notify appointments**
- The board must notify the ~~personnel~~ of FENZ personnel of every appointment (other than that of an acting, temporary, or casual employee) made by the board to a role, rank, or level of position in FENZ.
- Compare: 1975 No 42 s 65(3) 15
- 27 Review of appointments**
- (1) The board must put in place for FENZ a procedure for reviewing appointments made within FENZ that are the subject of any complaint by FENZ personnel.
- (2) The procedure must comply with the guidelines prescribed by the State Services Commission for such review procedures. 20
- (3) Nothing in this section relates to an acting appointment.
- Compare: 1975 No 42 s 67
- Leaving FENZ compulsorily due to incapacity*
- 28 Board to prescribe health standards**
- (1) For the purpose of **section 29**, the board may prescribe standards of health required of operational personnel to ensure that they are fit to perform competently their duties and any other duties that may reasonably be required of them. 25
- (2) Standards prescribed may be expressed to apply to operational personnel generally, or to any particular class or description of operational personnel, whether designated by reference to roles, ranks, or levels of position or duties, or otherwise. 30
- (3) Before prescribing standards, the board must consult with the associations or unions that represent or advocate on behalf of personnel. 35
- Compare: 1975 No 42 s 72A; 2008 No 72 s 72

**29 Form of, and communication of, health standards**

- (1) The board must take reasonable steps to ensure that health standards are communicated to all operational personnel.
- (2) A health standard is taken to have been communicated to operational personnel when the standard has been— 5
- (a) published in a magazine that is published under the authority of the board and distributed to all operational personnel; or
  - (b) brought to the personal notice of operational personnel.
- (3) Any communication referred to in **subsection (2)(a) or (b)** may be made in 1 or more of the following ways: 10
- (a) by electronic communication (for example, by email):
  - (b) in non-electronic form (for example, by distributing the publication in a paper-based format):
  - (c) by distribution by any other form of technology that allows the dissemination of the material in question to operational personnel. 15

Compare: 2008 No 72 ss 29, 73

**30 Board may require member of operational personnel to leave FENZ due to incapacity**

- (1) The board may require a member of operational personnel to leave FENZ if the conditions in **subsection (2)** exist. 20
- (2) The conditions are—
- (a) that the board is satisfied that the member of operational personnel is incapable of performing competently his or her duties and any other duties that may reasonably be required of the person; and
  - (b) that 2 medical practitioners, or a medical practitioner and another health practitioner, nominated in each case by the board certify— 25
    - (i) that the person's incapacity is because of the person's inability to meet any standards prescribed under **section 28**; and
    - (ii) that the person has failed to respond, or is unlikely to respond, within a reasonable time to treatment, counselling, or any other remedial assistance. 30
- (3) If, under this section, the board requires a member of operational personnel to leave FENZ, the board must—
- (a) notify the person in writing; and
  - (b) specify in the notice the time (being not less than 1 month from the date of the notice) within which the board requires the person to leave. 35

- (4) In any case to which the conditions described in **subsection (2)** apply, the member of operational personnel may, with the consent of the board, waive the right to notice and leave FENZ immediately.
- (5) However, in any case described in **subsection (2)**, the board may, where appropriate, offer to transfer a member of operational personnel to a non-operational role in FENZ commensurate with that person's knowledge, skills, and experience. 5  
 Compare: 1975 No 42 ss 72(1), (2), 72C(1), (2); 2008 No 72 s 74
- 31 When operational employee required to leave FENZ ceases to be employee**
- (1) An operational employee who is required under **section 30(1)** to leave FENZ ceases to be a FENZ employee— 10
- (a) on the expiration of the time specified in the notice referred to in **section 30(3)(a)**; or
- (b) if, the employee waives the right to notice under **section 30(4)**, on the date on which the board gives to the employee written notice of consent to the waiver. 15
- (2) Despite **subsection (1)**, if the operational employee takes a personal grievance action in respect of the requirement to leave FENZ,—
- (a) the employee remains a FENZ operational employee but may be placed on unpaid leave until the action is determined or completed; but 20
- (b) if reinstatement is not ordered, the employee ceases to be a FENZ employee on the date on which written notice of the decision determining or completing the action is given to the employee.
- Compare: 1975 No 42 s 72C(3); 2008 No 72 s 75
- 32 Appeal by volunteer against requirement to leave FENZ compulsorily** 25
- (1) A volunteer who is required under **section 30** to leave FENZ due to incapacity may appeal against the requirement.
- (2) An appeal is commenced by notice of appeal delivered to the board within 14 days after the receipt of the notice referred to in **section 30(3)**.
- (3) An appeal under this section is governed by the dispute resolution provisions in **subpart 5 of Part 4**. 30
- (4) If a volunteer commences an appeal under this section, the board may prohibit the volunteer from undertaking any operational activity until after the determination of the appeal. 35  
 Compare: 1975 No 42 s 72(3), (4)

### Subpart 7—Volunteers

#### **33 Duty of FENZ in relation to volunteers**

- (1) FENZ must take reasonable steps—

- (a) to recognise, respect, and promote the contribution of FENZ volunteers—
    - (i) to the performance and exercise of FENZ’s functions, duties, and powers; and
    - (ii) to the maintenance of the well-being and safety of communities; and
  - (b) to consult with FENZ volunteers and relevant organisations referred to in **section 34** on matters that might reasonably be expected to substantially affect those volunteers; and
  - (c) to develop policy and organisational arrangements that encourage, maintain, and strengthen the capability of FENZ volunteers.
- (2) The duty imposed on FENZ under section 118 of the Crown Entities Act 2004 applies, with all necessary modifications, in relation to volunteers working for FENZ.
- (3) A FENZ volunteer is not an employee within the meaning of section 6 of the Employment Relations Act 2000.

**34 FENZ to make advocacy and support services available to FENZ volunteers**

- (1) FENZ may enter into agreements with any organisations providing independent advocacy and support services to make those services available to FENZ volunteers.
- (2) FENZ must ensure that any advocacy and support services available to FENZ volunteers are available—
  - (a) at no cost to FENZ volunteers; and
  - (b) on an ongoing basis.

**Part 2**

**Emergencies, fire control, industry fire-brigades, water supply, and evacuation schemes**

Subpart 1—Operational functions, duties, and powers

*Functions, duties, and powers in emergencies* 30

**35 Alarm of fire or any fire reported**

If an alarm of fire is raised or any fire is reported, an authorised person responding to the emergency may do 1 or more of the following:

- (a) endeavour by all practicable means—

- (i) to extinguish or prevent the spread of the fire (if any), or if the authorised person considers it appropriate under the circumstances, to let any fire burn:
  - (ii) to save lives and property in danger:
  - (b) direct any person to stop any activity that may contribute to the emergency: 5
  - (c) request any person, either ~~verbally~~ orally or in writing, to take any action to prevent or limit the extent of the emergency:
  - (d) direct any person to leave any place near the emergency:
  - (e) direct any person to refrain from entering the vicinity of the emergency. 10
- Compare: 1975 No 42 s 28(2); 1996 No 30 s 137(1)

### 36 Hazardous substance emergency

- (1) If a hazardous substance emergency occurs, the authorised person responding to the emergency may do 1 or more of the following:
    - (a) endeavour by all practicable means— 15
      - (i) to stabilise or render safe the hazardous substance emergency:
      - (ii) to save lives and property in danger:
    - (b) direct any person to stop any activity that may contribute to the emergency:
    - (c) request any person, either ~~verbally~~ orally or in writing, to take any action to prevent or limit the extent of the emergency: 20
    - (d) direct any person to leave any place in the vicinity of the emergency:
    - (e) direct any person to refrain from entering the vicinity of the emergency.
  - (2) If this section applies, the authorised person has the powers of an enforcement officer under the Hazardous Substances and New Organisms Act 1996 relating to the hazardous substance emergency until the arrival of an enforcement officer. 25
- Compare: 1975 No 42 s 28(3A), (3B); 1996 No 30 s 137(1)

### 37 Emergency that does not involve fire or hazardous substance

- If an emergency occurs that does not involve fire or a hazardous substance, the authorised person responding to the emergency may do 1 or more of the following: 30
- (aa) stabilise or render safe any other substance emergency:
  - (a) take whatever action is necessary to save lives and property in danger:
  - (b) direct any person to stop any activity that may contribute to the emergency: 35

- (c) request any person, either ~~verbally~~ orally or in writing, to take any action to prevent or limit the extent of the emergency:
  - (d) direct any person to leave any place near the emergency:
  - (e) direct any person to refrain from entering the vicinity of the emergency.
- Compare: 1975 No 42 s 28(3); 1996 No 30 s 137(1)

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### 38 Duty of authorised person to control and direct

The authorised person who is in charge of personnel responding to ~~a fire or other~~ an emergency must control and direct—

- (a) all FENZ personnel, defence fire brigades, and industry ~~fire~~-brigades; and
- (b) all persons who place their services at the authorised person's disposal.

10

Compare: 1975 No 42 s 28(4)(a)

### 39 Powers of authorised person in relation to land, building, or structure

- (1) An authorised person may exercise the powers under this section for the purpose of taking any steps that the authorised person considers necessary or desirable in order to perform or exercise his or her functions, duties, or powers. 15
- (2) The authorised person who is in charge of personnel responding to ~~a fire or other~~ an emergency may do 1 or more of the following:
  - (a) enter any land, building, or structure:
  - (b) break into any building or structure that may be on fire or otherwise endangered or that is near the emergency: 20
  - (c) take or send any equipment or machine required to be used into, through, or upon any land, building, or structure:
  - (d) remove from any land, building, or structure that is on fire or otherwise endangered, or that is near the ~~fire or~~ emergency, any flammable, combustible, explosive, or dangerous material found in the building or structure: 25
  - (e) cause any building or structure that is on fire or otherwise endangered, or that is adjacent to or in the vicinity of any building or structure that is on fire or otherwise endangered, to be pulled down or shored up (either ~~wholly~~ in whole or in part): 30
  - (f) cause any building or structure to be pulled down or shored up (either ~~wholly~~ in whole or in part) at the time of the ~~fire or~~ emergency or within a reasonable time afterwards.
- (3) The authorised person may exercise the power in **subsection (2)(f)** if, in the authorised person's opinion, the building or structure or any portion of any building or structure has been so damaged that it is, or is likely to become, dangerous to life or property. 35

- (4) If the authorised person decides to exercise the power in **subsection (2)(f)**, the authorised person may exercise that power after, in his or her discretion, first removing the contents of the building or structure.
- (5) In this section, **equipment**—
- (a) means any plant, appliance, or device belonging to or in the possession of FENZ; and 5
- (b) includes any personal equipment or clothing provided by FENZ.
- Compare: 1975 No 42 s 28(4)(b)–(e), (l)
- 40 Powers of authorised person in relation to ~~tree or other plant~~ vegetation**
- (1) The authorised person who is in charge of personnel responding to ~~a fire or other~~ an emergency may do 1 or more of the things mentioned in **subsection (2) or (3)** for the purpose of— 10
- (a) extinguishing or preventing the spread of fire (if any); or
- (b) reducing danger from any emergency.
- (2) The authorised person may, if he or she considers it necessary,— 15
- (a) cause any ~~tree or other plant~~ vegetation that is on fire or otherwise endangered, to be cut down or pulled down (either ~~wholly in whole~~ or in part):
- (b) cause any ~~tree or other plant~~ vegetation that is adjacent to, or in the vicinity of, any building, structure, ~~tree, or other plant~~ or vegetation that is on fire or otherwise endangered to be cut down or pulled down (either ~~wholly in whole~~ or in part); 20
- (c) set fire to vegetation in an effort to cause the backburn or burnout of any fire.
- (3) The authorised person may, if, in the authorised person’s opinion, any ~~tree or plant~~ vegetation has been ~~so~~ damaged to the extent that it is, or is likely to become, dangerous to life or property, cause the ~~tree or other plant~~ vegetation to be cut down or pulled down (either ~~wholly in whole~~ or in part) at the time of the ~~fire or~~ emergency or within a reasonable time afterwards. 25
- (4) The authorised person may, if he or she considers it necessary, remove or cause to be removed to a safe area any vegetation that has been cut down or pulled down (in whole or in part) under this section. 30
- (5) In this section,—
- backburn** means a counterfire commenced from within an area of continuous flammable material for the purpose of fighting a fire 35
- burnout** means a counterfire commenced from a natural or previously constructed firebreak for the purpose of fighting a fire.

Compare: 1975 No 42 s 28(4)(f), (m)

**41 Other powers of authorised person**

- (1) The authorised person who is in charge of personnel engaged in ~~a fire or an other~~ emergency—
- (a) may, subject to **section 45**, cause water to be shut off from, or turned into, any main or pipe in order to obtain a greater pressure and supply of water: 5
  - (b) may cause any road or railway in the vicinity of the ~~fire or other~~ emergency to be closed to people or traffic during the emergency:
  - (c) may—
    - (i) remove any vehicle impeding personnel; and 10
    - (ii) in order to remove the vehicle, use force or break into the vehicle if the authorised person considers it reasonably necessary:
  - (d) may remove, using reasonable force if necessary, any person—
    - (i) who, by his or her presence or otherwise, interferes with operations to deal with the ~~fire or~~ emergency; or 15
    - (ii) who, in the authorised person's opinion, ~~is in danger:—~~
      - (A) is in danger; or
      - (B) is likely to cause danger to any other person or property:
  - (e) may shut off or disconnect, or order any person able to do so to shut off or disconnect, the supply of gas, fuel oil, or electricity to any building or structure that is on fire or otherwise endangered or that is in the vicinity of the emergency: 20
  - (f) may require the owner or occupier of the property, or the owner's agent, to provide any information relating to the emergency that is reasonably necessary or desirable in order to perform or exercise his or her functions, duties, or powers: 25
  - (g) may generally do all other things that are reasonably necessary ~~for protecting life or property in responding to the fire or other emergency:—~~
    - (i) to protect and preserve life; and
    - (ii) to prevent or limit injury; and 30
    - (iii) to prevent or limit damage to property and land; and
    - (iv) to prevent or limit damage to the environment.
- (2) In this section, **road** includes—
- (a) a street; and
  - (b) a motorway; and 35
  - (c) a highway; and
  - (d) a beach; and
  - (e) a place to which the public has access, whether as of right or not; and

- (f) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in **paragraph (e)**.

Compare: 1975 No 42 s 28(4)(g)–(k), (n), (na)

#### **42 Power to destroy or dispose of any by-product**

An authorised person may destroy or dispose of any by-product after rendering safe a hazardous substance emergency or other substance emergency, if— 5

- (a) the owner of the hazardous substance, other substance, or by-product cannot readily be contacted or identified; or
- (b) the authorised person reasonably considers that it is not appropriate or feasible to transfer the by-product to another authority; or 10
- (c) the authorised person reasonably considers it necessary or appropriate to destroy or dispose of the by-product.

#### **43 Conclusive evidence of authority to perform function or duty or exercise power**

~~The fact that any person performs performance or exercise by any person of any function or duty, or exercises any power under **sections 35 to 42** is conclusive evidence of his or her authority to do so, and no person is required to inquire whether the occasion requiring or authorising him or her to do so has arisen or has ceased perform or exercise that function, duty, or power.~~ 15

Compare: 1975 No 42 s 28(6) 20

#### **44 Sections 35 to 43 apply subject to certain enactments**

**Sections 35 to 43** apply subject to—

- (a) the Diplomatic Privileges and Immunities Act 1968; and
- (b) any regulations made under section 93(1) of the Defence Act 1990.

Compare: 1975 No 42 s 28(6A) 25

#### **45 Power to use water in mains for any emergency and training purposes**

- (1) All FENZ personnel may, free of charge,—
- (a) use all hydrants and control valves installed in any water mains and any water in the water mains for—
- (i) the purposes of performing or exercising FENZ’s functions, duties, or powers; or 30
- (ii) training for the purposes of performing or exercising FENZ’s functions, duties, or powers; and
- (b) use water from any water supply or any source of water for—
- (i) the purposes of performing or exercising FENZ’s functions, duties, or powers; or 35

- (ii) training for the purposes of performing or exercising FENZ's functions, duties, or powers.
- (2) The provisions of this section apply in relation to defence fire brigades and industry fire-brigades with all necessary modifications.
- (3) The exercise of powers under this section is subject to the overall requirements of the National Controller under the Civil Defence Emergency Management Act 2002 if a state of emergency exists under that Act. 5  
Compare: 1975 No 42 s 30(1)
- 46 ~~Duty to notify enforcement organisations~~ hazardous substance agencies in case of hazardous substance emergencies** 10
- (1) If an authorised person takes action during a hazardous substance emergency under **section 36**, FENZ must notify the relevant hazardous substance agencies in accordance with this section.
- (2) The notification must—
- (a) be made as soon as practicable after FENZ is called to the hazardous substance emergency; and 15
- (b) include the nature and location of the hazardous substance emergency.
- 47 ~~Duty to provide reports to hazardous substances enforcement organisations~~ substance agencies**
- (1) FENZ must, at least once every 12 months, provide a report to the EPA and any other relevant hazardous substance agency in accordance with this section. 20
- (2) The report, for the period that it covers, must—
- (a) include the details of hazardous substance emergencies attended by FENZ in accordance with its main functions under **section 11**; and
- (b) state whether staff from any hazardous substance agency attended the hazardous ~~substances~~ substance emergency; and 25
- (c) state the total cost of FENZ's ~~response~~ responses to hazardous ~~substances~~ substance emergencies that FENZ attended.
- 48 ~~Power of authorised person to direct personnel~~**
- The authorised person may, instead of acting personally, direct any personnel to do anything that the authorised person is required to do under this **subpart**. 30
- Prohibitions and restrictions for fire control*
- 49 ~~FENZ may prohibit open fires~~ fire in open air and prohibit or restrict other activities**
- (1) FENZ may, in the circumstance described in **subsection (2)**,— 35
- (a) prohibit the lighting of ~~open fires~~ fires in open air in an area:

- (b) prohibit or restrict any other activity in an area, including access to the area, that FENZ considers may cause a fire to start or to spread.
- (2) The circumstance referred to in **subsection (1)** is that FENZ considers that—
- (a) fire risk conditions exist or are likely to exist in the area; and
- (b) the prohibition or restriction is necessary or desirable for fire control. 5
- (3) FENZ may not prohibit a person who resides or works in an area from accessing the area.
- (4) This section and **sections 50, 51, and 52** do not apply to any person carrying out essential services in the area to which a prohibition or restriction under this section applies. 10
- (5) FENZ may—
- (a) publicly notify a prohibition or restriction:
- (b) provide notice of the prohibition or restriction directly to any person.
- Compare: 1977 No 52 ss 20(1), (2), 21(1), (2)
- 50 ~~Open fires~~ Fire in open air prohibited** 15
- (1) A person who has notice that the lighting of ~~open fires~~ fires in open air in an area is prohibited under **section 49** must not, while the prohibition is in effect, light an ~~open fire~~ or permit or allow another person to light an ~~open fire~~ a fire in open air in that area.
- (2) **Subsection (1)** does not apply to a person who lights a ~~fire~~ or permits or allows another person to light a fire in accordance with— 20
- (a) a permit granted under regulations made under **section 151**; and
- (b) any conditions of the permit.
- (3) A person **has notice that the lighting of ~~open fires~~ fires in open air in an area is prohibited** if the person knows or ought reasonably to know that the lighting of ~~open fires~~ fires in open air in that area is prohibited. 25
- (4) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (5) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both: 30
- (b) in any other case, to a fine not exceeding \$600,000.
- 51 Prohibited activities**
- (1) A person who has notice that an activity in an area is prohibited under **section 49** must not, while the prohibition is in effect, carry out the prohibited activity in that area. 35

- (2) A person **has notice that an activity in an area is prohibited** if the person knows or ought reasonably to know that the activity is prohibited in that area.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (4) A person who commits an offence under this section is liable on conviction,— 5
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
- (b) in any other case, to a fine not exceeding \$600,000.
- Compare: 1977 No 52 ss 20(3), 21(1), (2)

## **52 Restricted activities** 10

- (1) A person who has notice that an activity in an area is restricted under **section 49** must not, while the restriction is in effect, breach that restriction.
- (2) A person **has notice that an activity in an area is restricted** if the person knows or ought reasonably to know that the activity is restricted in that area.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**. 15
- (4) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
- (b) in any other case, to a fine not exceeding \$600,000. 20

### *Fire seasons*

## **53 Prohibited or restricted fire seasons**

- (1) FENZ may, by public notice, declare, for any area,—
- (a) a prohibited fire season:
- (b) a restricted fire season. 25
- (2) An area that is not in a prohibited or restricted fire season is in an open season.
- (3) FENZ may, by public notice, amend or revoke a declaration that it has made under **subsection (1)**.
- (4) FENZ may, by public notice, impose restrictions on the lighting of fires in open air on public conservation land that is in an area that is in a restricted fire season. 30
- (5) A restriction under **subsection (4)** applies to the lighting of fires in open air other than in accordance with a permit granted under regulations made under **section 151**. 35
- Compare: 1977 No 52 s 22

**54 ~~Open fires~~ Fire in open air during prohibited fire season**

- (1) A person must not light or allow another person to light ~~an open fire~~ a fire in open air in an area that is in a prohibited fire season.
- (2) **Subsection (1)** does not apply to a person who lights ~~an open fire~~ or permits or allows another person to light ~~an open fire~~ a fire in accordance with— 5
- (a) a permit granted under regulations made under **section 151**; and
- (b) any conditions of the permit.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (4) A person who commits an offence under this section is liable on conviction,— 10
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
- (b) in any other case, to a fine not exceeding \$600,000.

**55 ~~Open fires~~ Fire in open air during restricted fire season**

- (1) A person must not light or allow another person to light ~~an open fire~~ a fire in open air in an area that is in a restricted fire season. 15
- (2) **Subsection (1)** does not apply to a person who lights ~~an open fire~~ or permits another person to light ~~an open fire~~ in accordance with—
- (a) a permit granted under regulations made under **section 151**; and 20
- (b) any conditions of the permit.
- (2) **Subsection (1)** does not apply to a person who lights or allows another person to light a fire in the area—
- (a) in accordance with—
- (i) a permit granted under regulations made under **section 151**; and
- (ii) any conditions of the permit; or 25
- (b) on public conservation land to which a restriction under **section 53(4)** applies, in accordance with the restriction.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (4) A person who commits an offence under this section is liable on conviction,— 30
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
- (b) in any other case, to a fine not exceeding \$600,000.

Compare: 1977 No 52 s 23(1)(b), (c)

*Permit holder must produce permit for inspection***55A Permit must be produced for inspection when required**

- (1) This section applies in relation to a fire that is lit in accordance with a permit granted under regulations made under **section 151**.
- (2) The person lighting the fire must— 5
- (a) carry the permit when making preparations for the fire, when lighting the fire, and until the fire is extinguished; and
- (b) provide the permit to an authorised person on demand.
- (3) A person commits an offence if the person, without reasonable excuse, contravenes **subsection (2)**. 10
- (4) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both;
- (b) in any other case, to a fine not exceeding \$50,000.

*Vegetation*

15

**56 Spread of fire to vegetation**

- (1) ~~A person must not—~~
- (a) ~~cause or permit any fire to spread to any vegetation; or~~
- (b) ~~leave any fire that the person has lit (or that the person has allowed another person to light) without first taking precautions against the spread of the fire to any vegetation.~~ 20
- (2) ~~**Subsection (1)** does not apply to a person who lights a fire or permits another person to light a fire in accordance with—~~
- (a) ~~a permit granted under regulations made under **section 151**; and~~
- (b) ~~any conditions of the permit.~~ 25
- (3) ~~A person commits an offence if—~~
- (a) ~~the person knowingly or recklessly contravenes **subsection (1)**; and~~
- (b) ~~as a consequence, fire—~~
- (i) ~~burns or damages vegetation or other property; or~~
- (ii) ~~damages the stability, structure, quality, or fertility of soil.~~ 30
- (4) ~~A person who commits an offence under this section is liable on conviction,—~~
- (a) ~~in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both;~~
- (b) ~~in any other case, to a fine not exceeding \$600,000.~~

*Further provisions relating to fire control*

- 56** **Causing or allowing fire to get out of control and to spread**
- (1) A person must not cause or allow a fire to get out of control and to spread to vegetation or property.
- (2) **Subsection (1)** does not apply to a person who, as soon as practicable after discovering the fire, notifies FENZ. 5
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (4) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$300,000, or both; or 10
- (b) in any other case, to a fine not exceeding \$600,000.
- 57** **Leaving burning or smouldering substance in open air**
- (1) ~~A person must not leave a burning or smouldering substance in open air so as to cause a fire hazard in vegetation and—~~ 15
- (a) ~~fail to take all reasonable steps to extinguish the substance or any ensuing fire (whether or not there is an immediate danger of it causing damage); or~~
- (b) ~~if the person is unable to extinguish the substance or fire, fail—~~
- (i) ~~to notify FENZ immediately; and~~ 20
- (ii) ~~to continue, so far as possible, to endeavour to control and extinguish the substance or fire until—~~
- (A) ~~the substance or fire is brought under control; or~~
- (B) ~~the person obtains the consent of FENZ to desist.~~
- (1) This section applies to a person who causes or allows a substance to burn or smoulder in open air and leaves the burning or smouldering substance in a way that increases the likelihood of harm or damage arising from the start or spread of fire. 25
- (1A) The person must, as soon as practicable after discovering the burning or smouldering substance or an ensuing fire,— 30
- (a) if the person is able to take reasonable steps to reduce the likelihood of harm or damage arising from the start and spread of fire,—
- (i) take those steps; and
- (ii) as soon as practicable after taking those steps, notify FENZ; or
- (b) if the person is not able to take steps described in **paragraph (a)**, notify FENZ. 35

- (2) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)subsection (1A)**.
- (3) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$300,000, or both; or 5
- (b) in any other case, to a fine not exceeding \$600,000.
- (4) In this section,—
- fire hazard** means the danger of potential harm and degree of exposure arising from—
- (a) the start and spread of fire; and 10
- (b) the smoke and gases that are generated by the start and spread of fire
- open air**, in relation to fires, means otherwise than within 1 of the following:
- (a) a fireplace that is located in a building or structure and that complies with the relevant district plan;
- (b) a type of barbecue, container, or place that is prescribed by regulations under **section 148** or that is authorised by FENZ. 15
- (4) In this section, **in open air** means other than in—
- (a) a fireplace that is located in a building or structure and that complies with any relevant requirement of the Building Act 2004 and the relevant district plan; or 20
- (b) a place or thing, or a type of place or thing, that is—
- (i) prescribed by regulations made under **section 148**; or
- (ii) authorised by FENZ.

Compare: 1977 No 52 s 26

### *Firebreaks* 25

#### **58 Firebreaks on forestry land**

- (1) FENZ may, if it considers it necessary for the purpose of fire control, require the landholder of forestry land—
- (a) to make and clear any firebreak on—
- (i) the forestry land; 30
- (ii) any other land (with the consent of the occupier of the land or of the owner if the land is unoccupied);
- (b) to remove from any firebreak, or from any other part of the land on which no trees are standing, any vegetation or other material of any kind.
- (1) FENZ may, by notice, if FENZ reasonably considers it necessary for the purpose of fire control, require a landholder— 35

- (a) to make and clear any firebreak on the landholder's land:
- (b) to remove from any firebreak any vegetation or other thing.
- (2) FENZ must serve a notice on the ~~owner~~ landholder that specifies the time and the manner in which a requirement under **subsection (1)** must be met.
- (3) In this section, **landholder**— 5
- (a) means any person having a lawful right to use or occupy any land for an unexpired period of not less than 10 years, including any rights of extension or renewal; and
- (b) includes a mortgagee in possession.
- ~~**firebreak** means a natural or an artificial physical barrier against the spread of fire from or into any area of continuous flammable material~~ 10
- ~~**landholder** means any person having a right lawfully to use or occupy any forestry land for an unexpired period of not less than 10 years, including any rights of extension or renewal, and includes a mortgagee in possession.~~
- Compare: 1977 No 52 s 27(1) 15
- 58A Appeal against notice under section 58**
- (1) A landholder may, within 14 days after receipt of a notice under **section 58**, appeal against a requirement in the notice.
- (2) An appeal under this section is governed by the dispute resolution provisions in **subpart 5 of Part 4**. 20
- 58B Landholder must comply with notice under section 58**
- (1) A landholder must comply with a notice under **section 58** within 1 month after—
- (a) the landholder receives the notice; or
- (b) if the landholder appeals against the notice under **section 58A**, the notice is confirmed in accordance with the dispute resolution provisions. 25
- (2) If the landholder fails to comply with **subsection (1)**, FENZ may enter the land and do the thing or things required by the notice.
- 58C Removal or destruction of vegetation or other thing increasing fire risk**
- FENZ may, by notice, require the occupier or (if there is no occupier) the owner of land to remove or destroy any vegetation or other thing on the land if FENZ reasonably considers that the vegetation or other thing is likely to endanger persons or property by increasing the risk of the outbreak or spread of fire. 30
- Compare: 2002 No 84 s 183(1)
- 58D Appeal against notice under section 58C** 35
- (1) An owner or occupier may, within 14 days after receipt of a notice under **section 58C**, appeal against a requirement in the notice.

- (2) An appeal under this section is governed by the dispute resolution provisions in **subpart 5 of Part 4.**

**58E** Owner or occupier must comply with notice under section 58C

- (1) An owner or occupier must comply with a notice under **section 58C** within 1 month after— 5

- (a) the owner or occupier receives the notice; or  
 (b) if the owner or occupier appeals against the notice under **section 58D**, the notice is confirmed in accordance with the dispute resolution provisions.

- (2) If the owner or occupier fails to comply with **subsection (1)**, FENZ may enter the land and do the thing or things required by the notice. 10

Compare: 2002 No 84 s 184(4), (5)

**58F** Removal or destruction of vegetation or other thing that is source of imminent danger

FENZ may, after oral notice from an authorised person to the occupier or (if there is no occupier) the owner of land, remove or destroy any vegetation or other thing on the land if FENZ reasonably considers that the vegetation or other thing is a source of imminent danger from fire to life, property, or any road. 15

Compare: 2002 No 84 s 183(5)

20

Subpart 2—Industry fire-brigades

**59** Organisation and maintenance of industry fire-brigades

- (1) A person or an organisation specified in **subsection (2)** may, for the purpose of protecting industrial premises in any emergency,—

- (a) organise and maintain a group of persons as an industry fire-brigade; and 25  
 (b) appoint a principal officer for the industry fire-brigade.

- (2) The persons and organisations include any of the following:

- (a) the owner or occupier of any industrial premises;  
 (b) the owner or occupier of any forestry land;  
 (c) any local authority in which land is vested under any enactment; 30  
 (d) any person holding, controlling, or administering land under any enactment.

- (3) In this section and in **section 60**,—

**forestry land** means land on which trees are grown for the purpose of producing timber or for other commercial purposes 35

**industrial or commercial purpose** means any purpose other than residential purposes

**industrial premises** includes the following ~~that if they~~ are used ~~exclusively~~ for industrial or commercial purposes:

- (a) land; ~~or~~ and
- (b) buildings; ~~or~~ and
- (c) movable property on land or in buildings that are industrial premises 5

**residential purpose** ~~means for the purpose of using, or intended for the purpose of using, for occupation by any person as a place of residence, in relation to land and buildings, means the use, or intended use, of the building for occupation by any person as a place of residence.~~

Compare: 1975 No 42 s 36(1) 10

## 60 Agreements relating to industry fire brigades

FENZ and the owner or occupier of any industrial premises protected or proposed to be protected by an industry fire brigade may enter into an agreement that sets out—

- (a) the services FENZ will deliver in relation to the industrial premises; and 15
- (b) the services that the industry fire brigade will deliver to FENZ, including fire services relating to fire control and designated emergency services.

Compare: 1975 No 42 s 36(3)

## 61 Powers of industry fire brigades

If any industry fire brigade operates either on the premises for the protection of which it is maintained or outside those premises under an agreement,— 20

- (a) the principal officer of the industry fire brigade may perform all the functions and duties and exercise all the powers of the person for the time being in charge of personnel under **sections 38 to 42** if—
  - (i) no such person is present at the fire emergency; or 25
  - (ii) the principal officer is in charge of the command in accordance with an agreement under **section 60**; and
- (b) **sections 122 to 124** apply with all necessary modifications.

Compare: 1975 No 42 s 36(10)

Subpart 3—Provisions relating to water supply 30

*Code of practice for firefighting water-supply supplies*

## 62 Minister may approve code of practice for firefighting water-supply supplies

- (1) The Minister may approve a code of practice for firefighting water-supply supplies that FENZ recommends to the Minister under **section 63**. 35

- (2) Before approving a code of practice for firefighting water supplies, the Minister must be reasonably satisfied that FENZ has complied with its obligation under **section 63(2)**.

Compare: 1975 No 42 s 21(5), (6)

**63 Duty to develop, consult on, recommend the approval of, and publish and notify code of practice for firefighting water supplies** 5

- (1) For the purposes of **section 62**, FENZ must develop, consult on, recommend the approval of, and publish an approved code of practice for firefighting water supplies (**code of practice**) in accordance with this section.
- (2) FENZ must develop a code of practice in consultation with— 10
- (a) local advisory committees; and
  - (b) any local authority, association of local authorities, or any other appropriate authorities; ~~and or organisations.~~
  - (c) ~~the NZ Standards Organisation.~~
- (3) After developing a code of practice in accordance with **subsection (2)**, FENZ 15 must submit the code of practice to the Minister for approval.
- (4) FENZ must—
- (a) publish the approved code of practice on an Internet site maintained by, or on behalf of, FENZ; and
  - (b) notify the approved code of practice by notice in the *Gazette*. 20
- (5) FENZ must review the approved code of practice at intervals of no more than 3 years.
- (6) An approved code of practice that is reviewed under **subsection (5)**, must—
- (a) be consulted on in accordance with **subsection (2)**; and
  - (b) be submitted to the Minister in accordance with **subsection (3)**; and 25
  - (c) be published and notified in accordance with **subsection (4)**.
- (7) A code of practice is a disallowable instrument for the purposes of the Legislation Act 2012 and must, following approval by the Minister under **section 62**, be presented to the House of Representatives under section 41 of that Act. 30
- Compare: 1975 No 42 s 30(3)

*Powers and duties in relation to firefighting water supply*

**64 Powers in relation to checks as to adequacy of firefighting water supplies**

FENZ may check, and require checks to be made as to, the adequacy of firefighting water supplies, including tests of water volume and pressure, as FENZ considers necessary or desirable, in order to check compliance with a code of practice for firefighting water supplies— 35

- (a) in any water main; or

(b) in any area.

Compare: 1975 No 42 s 30(2)

#### Subpart 4—Evacuation schemes

### 65 Relevant building defined for purposes of sections 66 to 68

- (1) In **sections 66 to 68**, **relevant building** means a building or part of a building used for 1 or more of the following purposes: 5
- (a) the gathering together, for any purpose, of 100 or more persons:
  - (b) providing employment facilities for 10 or more persons:
  - (c) providing accommodation for 6 or more ~~than 5~~ persons (other than in 3 or fewer household units): 10
  - (d) a place where hazardous substances are present in quantities exceeding the prescribed minimum amounts, whatever the purpose for which the building is used:
  - (e) providing an early childhood education and care centre (other than in a household unit): 15
  - (f) providing nursing, medical, or geriatric care (other than in a household unit):
  - (g) providing specialised care for persons with disabilities (other than in a household unit):
  - (h) providing accommodation for persons under lawful detention (not being persons serving a sentence of home detention or community detention, or serving a sentence of imprisonment on home detention, or on parole subject to residential restrictions imposed under section 15 of the Parole Act 2002): 20
  - (i) any other prescribed purpose. 25
- (2) However, in **sections 66 to 68**, **relevant building** does not include premises of a mission (as defined in section 2(1) of the Diplomatic Privileges and Immunities Act 1968).
- (3) In this section, **early childhood education and care centre** has the same meaning as in section 310 of the Education Act 1989. 30
- Compare: 1975 No 42 s 21A

### 66 Owner must provide and maintain evacuation scheme for relevant building

- (1) The owner of a relevant building must provide ~~and maintain~~ an evacuation scheme that is designed to enable evacuation from the scene of a fire or an alarm of fire safely to a place of safety within a reasonable time. 35
- (1A) The owner of a relevant building must maintain an evacuation scheme that has been approved by FENZ under **section 67**.

- (2) However, the owner of a relevant building is not required to provide ~~and~~ or maintain an evacuation scheme for the building if—
- (a) the building is used for a purpose specified in **section 65(1)(b) or (c)**; and
  - (b) the building has an automatic sprinkler system; and 5
  - (c) the owner of the relevant building notifies FENZ, in writing and in the prescribed form (if any), that the building does not require an evacuation scheme.
- (3) A person who knowingly contravenes **subsection (1)** commits an offence and is liable on conviction,— 10
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$75,000, or both;
  - (b) in any other case, to a fine not exceeding \$150,000.
- (4) In this section,—
- automatic sprinkler system** means an automatic sprinkler system that satisfies the minimum standard required by regulations made under **section 153(c)** 15
- evacuation scheme** means an evacuation scheme that complies with regulations made under **section 153(b)**.
- Compare: 1975 No 42 ss 21B, 21E
- 67 Owner must apply to FENZ for approval of evacuation scheme** 20
- The owner of a relevant building must apply to FENZ, in accordance with prescribed requirements, for approval of the evacuation scheme provided for the building under **section 66**.
- Compare: 1975 No 42 s 21C
- 67A FENZ may revoke, or require variation of, approved evacuation scheme** 25
- (1) FENZ may, in accordance with prescribed requirements, revoke the approval of, or require the variation of, an approved evacuation scheme.
  - (2) If FENZ revokes the approval of, or requires the variation of, an approved evacuation scheme, the owner of the relevant building must resubmit a revised evacuation scheme to FENZ for approval under **section 67**. 30
- 68 District Court order closing relevant building**
- (1) If the owner of a relevant building has failed to comply with **section 66 or 67, 67, or 67A(2)**, FENZ may apply to ~~the~~ District Court Judge for an order that ~~the building be closed until the section is complied with.~~ requiring the owner of the relevant building to comply with **section 66, 67, or 67A(2)** within a specified period of time that the Court considers appropriate. 35

- (1A) If the District Court makes a compliance order under **subsection (1)**, the Court may, in the Court’s discretion, also make an order that the building be closed until the relevant section or sections is or are complied with.
- (2) FENZ must give the owner of the building at least 10 days’ written notice before applying for an order under **subsection (1)(a)**. 5
- (3) Before making an order under **subsection (1) or (1A)**, the District Court Judge must—
- (a) conduct a hearing, and give FENZ and the owner of the building an opportunity to be heard; and
- (b) be satisfied that the owner has failed to comply with **section 66 or 67, 67, or 67A**. 10

Compare: 1975 No 42 s 21G

## Part 3 Levy

### Subpart 1—Purpose and interpretation 15

#### 69 Purpose of this Part

The purpose of this Part is to provide for a levy that is—

- (a) a stable source of funding to support FENZ in the performance of functions and duties and exercise of powers under this Act:
- (b) universal, so that FENZ’s costs are generally shared among all who benefit from the potential to use FENZ’s services: 20
- (c) equitable, so that policyholders should generally pay a levy at a level commensurate with their use of, or benefit from the potential to use, FENZ’s services and with the risks associated with the activities that policyholders carry out (but without strict apportionment according to use, benefit, or risk having to be observed): 25
- (d) predictable, so that policyholders and levy payers are able to predict the amounts that they will need to pay and FENZ is able to predict how much levy income it will receive:
- (e) flexible, so that the levy can adapt to— 30
- (i) changes in the use, benefit, or risk associated with those who benefit from the potential to use FENZ’s services; and
- (ii) variations in FENZ’s costs; and
- (iii) changes to the expectations of the Crown and the strategic needs of FENZ. 35

**70 Interpretation in this Part**

- (1) In this Part, unless the context otherwise requires,—
- ~~abusive levy position~~ has the meaning given in ~~section 96(2)~~
- ~~acceptable levy position~~ has the meaning given in ~~section 93(3)~~
- adjudicator** means an adjudicator appointed under **section 98Q** 5
- amount insured** has the meaning given in **section 71**
- broker** has the meaning given in section 2(1) of the Insurance Intermediaries Act 1994
- carries on insurance business in New Zealand** has the same meaning as in section 8 of the Insurance (Prudential Supervision) Act 2010 10
- contract of insurance**—
- (a) means a contract of insurance (within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010)—
- (i) relating to a motor vehicle in New Zealand under which—
- (A) the motor vehicle is insured against physical ~~damage or loss~~ loss or damage; or 15
- (B) any person is insured against third party liability; or
- (ii) relating to any property other than a motor vehicle under which the property is insured against ~~physical damage or loss~~ loss or damage (whatever the cause of the ~~damage or loss~~ loss or damage), including— 20
- (A) temporary or repairable ~~damage or loss~~ loss or damage; and
- (B) any consequential ~~damage or loss~~ loss or damage; but
- (b) does not include—
- (i) a contract for reinsurance: 25
- (ii) a contract of marine insurance:
- (iii) ~~an indemnity under section 65ZD of the Public Finance Act 1989~~
- (iii) a contract of insurance under which an aircraft that performs a scheduled international air service (within the meaning of section 87A of the Civil Aviation Act 1990) is insured 30
- contract of marine insurance** has the same meaning as in section 3 of the Marine Insurance Act 1908, except that it does not include—
- (a) a contract of insurance in respect of any cargo after any of the following has occurred:
- (i) the delivery of the cargo to the consignee's or any other final warehouse or place of storage at the destination named in the contract of insurance: 35

- (ii) the delivery of the cargo to any other warehouse or place of storage, whether or not at the destination named in the contract of insurance, that the insured elects to use either for storage other than in the ordinary course of transit, or for allocation or distribution:
- (iii) the expiry of 60 days after completion of discharge overside of the cargo from an overseas vessel at the final port of discharge; or 5
- (b) a contract of insurance in respect of any ship or vessel normally or customarily removed from the water and transported or stored on land when not in use
- declared value** means the value of property as determined in accordance with **section 72** 10
- ~~gross carelessness~~ has the meaning given in ~~section 95(3)~~
- ~~GST Act~~ means the Goods and Services Tax Act 1985
- ~~household unit~~—
- (a) ~~means a building or group of buildings, or part of a building or group of buildings, that is—~~ 15
- (i) ~~used, or intended to be used, only or mainly for residential purposes; and~~
- (ii) ~~occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but~~ 20
- (b) ~~does not include a hostel, boardinghouse, or other specialised accommodation~~
- insurance intermediary** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994
- insurer** means a person that carries on insurance business in New Zealand and that is liable as the insurer under a contract of insurance in respect of property 25
- levy advantage** means a reduction in, or the avoidance of, liability to pay the levy
- levy avoidance** includes directly or indirectly—
- (a) altering the incidence of the levy: 30
- (b) relieving a person from liability to pay the levy:
- (c) avoiding, postponing, or reducing any liability to pay the levy
- ~~levy avoidance arrangement~~ means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly— 35
- (a) ~~has levy avoidance as its purpose or effect; or~~
- (b) ~~has levy avoidance as one of its purposes or effects, whether or not any other purpose or effect is referable to ordinary dealings, if the levy avoidance purpose or effect is not merely incidental~~

**levy avoidance arrangement—**

- (a) means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly—
- (i) has levy avoidance as its purpose or effect; or
  - (ii) has levy avoidance as one of its purposes or effects (whether or not any other purpose or effect is referable to ordinary dealings) where the levy avoidance purpose or effect is not merely incidental; 5
- (b) does not include an arrangement that confers a levy advantage on a person merely because the person affected by the arrangement assumes the risk of physical loss or damage to any property to the extent that the property is not insured (in whole or in part) 10

**levy payer means—**

- (a) an insurer who is liable to pay a levy to FENZ under **section 75**; or
- (b) if **section 76** applies, a policyholder or broker who is liable to pay a levy to FENZ under **section 76** that section 15

**levy payer's levy position means a levy position—**

- (a) that is taken by a levy payer in a return in respect of property insured under a contract of insurance; or
- (b) if a levy payer does not make a return in respect of any property, that no levy is payable in respect of the property 20

**levy position** means a position or an approach taken in relation to a contract of insurance with regard to the levy payable in respect of any property under this Part, including, without limitation, a position or an approach that ~~no levy is payable in respect of any property or that a levy payer is not required to file a return in respect of any property—~~ 25

- (a) no levy is payable in respect of the property; or
- (b) a levy payer is not required to file a return in respect of the property; or
- (c) the property has a particular amount insured or declared value

**levy shortfall**, ~~for a taxable period,~~ means, in relation to a levy position that results in too little levy being paid or payable by the levy payer, the difference in the amount of levy payable under— 30

- (a) the correct levy position; and
- (b) the levy payer's levy position

**motor vehicle—** 35

- (a) ~~means a motor vehicle (as defined in section 2(1) of the Land Transport Act 1998); but~~
- (b) ~~does not include a heavy RUC vehicle (as defined in section 5(1) of the Road User Charges Act 2012)~~

**motor vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998

**personal property**—

- (a) means property that is located in or on a household unit; and
- (b) includes property that is usually located in or on a household unit but is temporarily removed from the household unit for any reason; but 5
- (c) does not include any property used solely or principally for commercial purposes

**policyholder**, in relation to a contract of insurance,—

- (a) has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and 10
- (b) includes any person who is entitled to any indemnity or benefit under the contract of insurance

**property** means any real or personal property in New Zealand

**qualified person**, in relation to any property, means any of the following persons who has the qualifications and experience suitable for valuing the property: 15

- (a) a chartered professional engineer (within the meaning of section 6 of the Chartered Professional Engineers of New Zealand Act 2002):
- (b) a plant and machinery valuer: 20
- (c) a quantity surveyor:
- (d) a registered architect (within the meaning of section 6 of the Registered Architects Act 2005):
- (e) a registered valuer (within the meaning of section 2 of the Valuers Act 1948) 25

**registered person** has the same meaning as in section 2(1) of the GST Act

**relevant court**, in relation to a dispute under **subpart 4A**, means—

- (a) if the total amount that FENZ seeks to recover comes within the District Court's civil jurisdiction, the District Court; and
- (b) in any other case, the High Court 30

**reinsurance** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

**residential land** means, in relation to a building or group of buildings that only consists of 1 or more household units, the following property situated within the land holding on which the household unit or units are situated: 35

- (a) the land on which any household unit is situated:
- (b) all land within 8 metres in a horizontal line of any household unit:
- (c) that part of the land holding that—

- (i) is within 60 metres, in a horizontal line, of any household unit; and
- (ii) constitutes the main access way or part of the main access way to any household unit from the boundary of the land holding or is land supporting that access way or part: 5
- (d) all bridges and culverts situated within any area specified in **paragraphs (a) to (c)**:
- (e) all retaining walls and their support systems within 60 metres, in a horizontal line, of any household unit that are necessary for the support or protection of any household unit or of any property referred to in any of **paragraphs (a) to (c)** 10
- residential property** means—
- (a) a household unit:
- (b) any residential land
- respondent** means a person to whom FENZ provides a notice of levy shortfall 15
- specialised accommodation** means a building that is specified, in regulations made under **section 104**, as specialised accommodation for the purposes of this Part
- tax year** has the same meaning as in section YA 1 of the Income Tax Act 2007
- taxable period**, in relation to a registered person, has the same meaning as in section 15 of the GST Act 20
- third party liability** means a person's liability to any other person arising from or in connection with a motor vehicle
- ~~**unacceptable levy position** has the meaning given in **section 94(2)**~~
- ~~**unpaid levy** includes any shortfall penalty imposed in respect of unpaid levy.~~ 25
- working day** means a day of the week other than—
- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and 30
- (c) a day in the period commencing on 25 December in any year and ending on 15 January in the following year.
- (2) The provisions of this Part must be interpreted in a manner that best gives effect to the purpose set out in **section 69**.
- 71 Meaning of amount insured** 35
- In this Part, **amount insured** means,—
- (a) in the case of property that is insured under a contract of insurance that contains an express maximum limit on the amount for which the proper-

ty is, under the contract, insured against ~~physical damage or loss~~ loss or damage over the term of the contract, that maximum limit (excluding any goods and services tax):

- (b) in any other case, the declared value ~~of the property~~ as determined under **section 72**. 5

*Example 1*

A contract of insurance provides, in the case of ~~physical damage or loss~~ loss or damage to property, that the insurer must pay to the policyholder an amount equal to the cost of replacing or reinstating the property up to a maximum of \$800,000. The amount insured is \$800,000. 10

*Example 2*

A contract of insurance provides, in the case of ~~physical damage or loss~~ loss or damage to property, that the insurer must pay to the policyholder an amount equal to the cost of replacing or reinstating the property. The amount insured is the declared value ~~of the property~~. 15

**72 Declared value**

- (1) This section applies in the case of property described in **section 71(b)**.
- (2) The declared value ~~of property~~ is the maximum amount (excluding any goods and services tax) for which the property is, under the contract of insurance, insured against ~~physical damage or loss~~ loss or damage over the term of the contract. 20
- (3) The declared value ~~of property~~ must be set out in—
  - (a) a ~~statutory~~ declaration made by or on behalf of the policyholder; or
  - (b) a valuation certificate given by a qualified person and obtained by or on behalf of the policyholder. 25
- (4) A levy payer must provide a declaration or certificate to FENZ at the same time the levy payer provides the levy return in relation to the contract of insurance to which the property relates.
- (5) ~~If FENZ considers the amount set out in the declaration or certificate under **subsection (4)** is not a fair and reasonable declared value, FENZ may determine the declared value by obtaining a valuation certificate given by a qualified person.~~ 30
- (6) ~~If **subsection (5)** applies, the declared value is the amount set out in the valuation certificate obtained by FENZ.~~
- (5) If FENZ considers that the amount set out in a declaration provided in accordance with **subsection (4)** is not a fair and reasonable declared value,— 35
  - (a) FENZ may determine the declared value by obtaining a valuation certificate given by a qualified person; and
  - (b) the declared value is the amount set out in the certificate obtained by FENZ under **paragraph (a)**. 40

- (6) However, if the policyholder considers that the declared value determined under **subsection (5)** is not a fair and reasonable declared value,—
- (a) the policyholder (or a person acting on the policyholder’s behalf) may obtain a valuation certificate given by a qualified person that sets out the declared value; and 5
- (b) the declared value is the amount set out in the certificate obtained under **paragraph (a)**.
- (7) A declaration or certificate under this section must contain a statement that the declared value in the declaration or ~~statement~~certificate is fair and reasonable.

## Subpart 2—Levy on insured property 10

### 73 Levy payable on motor vehicles

- (1) A levy is payable in respect of a motor vehicle that is the subject of a contract of insurance.
- (2) The amount of levy that is payable is the annual amount prescribed in regulations made under **section 104** pro-rated in respect of the period of insurance. 15

### 74 Levy payable on other property

- (1) A levy is payable in respect of any property, other than a motor vehicle, that is insured under a contract of insurance.
- (2) The amount of levy that is payable is an amount calculated on the basis of the amount insured and pro-rated in respect of the period of insurance in accordance with regulations made under **section 104.** 20

### 75 Insurer must pay levy to FENZ

- (1) On entering into a contract of insurance, the insurer becomes liable to pay the levy to FENZ.
- (2) The levy payable by the insurer is a debt due by the insurer to FENZ and is recoverable by FENZ. 25
- (3) This section is subject to **section 76.**

### 76 Circumstances where policyholder or broker must pay levy to FENZ

- (1) This section applies in relation to a contract of insurance between a policyholder and a person that is liable as the insurer under the contract where the person that is liable as the insurer— 30
- (aa) does not carry on business in New Zealand (within the meaning of section 332 of the Companies Act 1993); or
- (a) ~~between a policyholder who is not ordinarily resident in New Zealand or that is not incorporated or formed in New Zealand and an insurer that~~ 35  
does not carry on insurance business in New Zealand; or

- (b) ~~between a policyholder and an insurer that carries on insurance business in New Zealand but does not hold a licence (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).~~
- (2) On entering into a contract of insurance to which this section applies, the policyholder becomes liable to pay the levy to FENZ. 5
- (2A) However, if a broker carrying on business in New Zealand directly or indirectly negotiates a contract of insurance to which this section applies,—
- (a) that broker (and not the policyholder) becomes liable to pay the levy to FENZ; and
- (b) sections 78 to 80 apply, with any necessary modifications, to the broker as if the broker were the insurer. 10
- (3) The levy payable by a policyholder described in **subsection (2)** is a debt due by the policyholder to FENZ and is recoverable by FENZ.
- (4) A contract referred to in **subsection (1)** is to be treated as being governed by New Zealand law for the purposes of this Part. 15

Compare: 1975 No 42 s 49A

#### **77 When levy must be paid**

- (1) ~~A levy payer that is a registered person and that becomes liable to pay the levy during a taxable period must pay the levy to FENZ on or before the final day on which the person is required to file a return for the taxable period under section 16 of the GST Act.~~ 20
- (2) ~~A levy payer that is not a registered person must pay the levy to FENZ on or before—~~
- (a) ~~the 28th day of the month following the month in which the levy payer becomes liable to pay the levy:~~ 25
- (b) ~~15 January, if the month in which the levy payer becomes liable to pay the levy is November:~~
- (c) ~~7 May, if the month in which the levy payer becomes liable to pay the levy is March.~~

#### **77 When levy must be paid** 30

A levy payer that is liable to pay the levy in relation to a contract of insurance must pay the levy to FENZ not later than the 15th day of the third month after the end of the month in which the contract of insurance was entered into.

#### *Policyholder to pay insurer*

- #### **78 Policyholder must pay amount of levy to insurer** 35
- (1) On entering into a contract of insurance under which property is insured against ~~physical damage or loss~~ loss or damage, the policyholder becomes

- liable to pay the amount of levy that is payable by the insurer under **section 75** to the insurer, in accordance with the contract of insurance.
- (2) The amount payable by the policyholder under **subsection (1)** is a debt due by the policyholder to the insurer and is recoverable by the insurer.
- 79 Insurer must identify levy on invoice, etc** 5
- (1) An insurer that is entitled to recover an amount of levy under **section 78** must, in any invoice, demand, or statement of account, set out the amount of the levy separately from any premium or other amount.
- (2) No person may require the payment of any brokerage, agency, or commission in respect of the levy. 10
- 80 FENZ may release insurer from liability**
- (1) If FENZ considers that an amount payable to the insurer under **section 78** is irrecoverable by the insurer, FENZ may release an insurer from liability for the unpaid levy, and any interest payable on the unpaid levy, to which the amount relates. 15
- (2) A release under **subsection (1)** may be—
- (a) in respect of all or part of the unpaid levy or interest to which the amount payable under **section 78** relates:
- (b) subject to any conditions that FENZ thinks fit.
- Compare: 1975 No 42 s 48(10) 20
- Other matters relating to levy*
- 81 Joint and several liability**
- If 2 or more persons are liable to pay any amount under **section 75, 76, or 78**, their liability is joint and several.
- 82 Dispute relating to levy or shortfall penalty** 25
- In any proceeding relating to the assessment of levy or a shortfall penalty, the burden of proof is on the insurer or policyholder disputing FENZ's assessment.
- 83 Time limit for assessment for levy**
- (1) If 4 years have passed from the end of the tax year in which a contract of insurance was entered into, FENZ may not assess or adjust its assessment of liability for the levy in relation to the contract of insurance. 30
- (2) **Subsection (1)** does not apply if FENZ considers that—
- (a) any information provided to FENZ by or on behalf of the levy payer is fraudulent or wilfully misleading:

- (b) ~~there are reasonable grounds to consider that the levy payer failed to make a return in respect of a contract of insurance.~~

Compare: 1994 No 166 s 107A

### Subpart 3—Returns, records, and information

#### *Returns*

5

#### **84 Levy payer must make return**

- (1) ~~A levy payer that becomes liable to pay a levy to FENZ during a taxable period must provide a return on or before the final day on which the levy payer is required to file a return for the taxable period under section 16 of the GST Act.~~
- (2) ~~A levy payer who is not registered under the GST Act must provide a return to FENZ on or before—~~ 10
- (a) ~~the 28th day of the month following the month in which the levy payer becomes liable to pay the levy;~~
- (b) ~~15 January, if the month in which the levy payer becomes liable to pay the levy is November;~~ 15
- (c) ~~7 May, if the month in which the levy payer becomes liable to pay the levy is March.~~
- (1) A levy payer must provide a return to FENZ for every month in which the levy payer entered a contract of insurance for which levy was payable.
- (2) The levy payer must provide the return not later than the 15th day of the third month after the end of the month specified in **subsection (1)**. 20
- (3) The return must set out the total amount of levy payable by the levy payer for the taxable period or, if **subsection (2)** applies, for the month in which the levy payer became liable to pay the levy in relation to the month specified in **subsection (1)**. 25
- (4) The return must be in the form prescribed by regulations made under **section 104** and must contain any other information that is required by regulations.
- (5) A person who knowingly, and without reasonable excuse, contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both; 30
- (b) in any other case, to a fine not exceeding \$50,000.

#### *Records*

#### **85 Levy payers and insurance intermediaries must keep records for 7 years**

- (1) A person specified in **subsection (2)** must keep the records specified in **subsection (3)** for a period of at least 7 years after the end of the ~~tax~~ calendar year to which the records relate. 35

- (2) The persons are—
- (a) levy payers:
  - (b) every insurance intermediary who arranges a contract of insurance.
- (3) The records are—
- (a) a copy of every contract of insurance entered into or arranged by the person: 5
  - (b) a record of every payment of levy made by the person:
  - (c) any other information that the person is required to keep under regulations made under **section 104**.
- (4) A person who knowingly, and without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable on conviction,— 10
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both:
  - (b) in any other case, to a fine not exceeding \$50,000.
- (5) In this section, **arrange** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994. 15

*FENZ may require information*

**86 Power to require information**

- (1) FENZ may require a person specified in **section 85(2)** to provide to FENZ any information (including a return or any record that person is required to keep under **section 85**) within the person's knowledge, possession, or control that FENZ considers is reasonably necessary or relevant for any purpose relating to the administration or enforcement of this Part. 20
- (2) A person who is required to provide any information under **subsection (1)** must provide the information. 25
- (3) A person who knowingly, and without reasonable excuse, contravenes **subsection (2)** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both:
  - (b) in any other case, to a fine not exceeding \$50,000. 30

Compare: 1994 No 166 s 17

**87 Persons required to provide information have privileges of witnesses in court**

Every person required to provide information and documents to FENZ under **section 86** has the same privileges as witnesses have in proceedings before a court. 35

Compare: 2011 No 5 s 56

*Confidentiality***88 Confidentiality of information and documents**

- (1) This section applies to—
- (a) information and documents provided to FENZ under **sections 84 and 86**: 5
  - (b) information derived from information and documents referred to in **paragraph (a)**.
- (2) FENZ must not publish or disclose any information or document to which this section applies unless—
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or 10
  - (b) the information is in a statistical or summary form; or
  - (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, ~~power, or duty~~ duty, or power conferred or imposed on FENZ by this Act or any other enactment; or 15
  - (d) the publication or disclosure of the information or document is to a person who FENZ is satisfied has a proper interest in receiving the information or document; or
  - (e) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential. 20
- (3) FENZ must not publish or disclose, or direct an authorised person to publish or disclose, any information or document under **subsection (2)(c)** unless FENZ is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993). 25

Compare: 2011 No 5 s 59

**89 Conditions relating to publication or disclosure of information or documents** 30

- (1) FENZ may, by written notice to a person to whom any information or document is published or disclosed under **section 88(2)(c), (d), or (e)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 35
- (2) FENZ must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.

- (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993): 5
  - (b) the storing of, the use of, or access to anything provided:
  - (c) the copying, returning, or disposing of copies of documents provided.
- (4) ~~A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000.~~ 10
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both:
  - (b) in any other case, to a fine not exceeding \$50,000. 15
- Compare: 2011 No 5 s 60

*False or misleading information*

**90 Offence to provide false or misleading information**

- (1) A person commits an offence if the person knowingly provides false or misleading information— 20
- (a) in a levy return; or
  - (b) when providing information under **section 86**.
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both: 25
  - (b) in any other case, to a fine not exceeding \$50,000.

Subpart 4—Avoidance arrangements and shortfall penalties

**90A Levy shortfall and shortfall penalties must be recovered under subpart 4A**

FENZ must provide a notice of levy shortfall under **section 98D**—

- (a) to the levy payer, in order to recover a levy shortfall (including a levy shortfall that results from a determination by FENZ under **section 92**): 30
- (b) to any person that FENZ considers liable for a shortfall penalty, in order to recover a shortfall penalty provided for in this subpart.

*Levy avoidance arrangements*

- 91 Levy avoidance arrangement void**
- (1) A levy avoidance arrangement is void as against FENZ for the purposes of the levy.
- (2) Under **section 92**, FENZ may counteract a levy advantage that the person obtains from or under a levy avoidance arrangement. 5  
Compare: 2007 No 97 s BG 1
- 92 FENZ's power to determine liability for levy in case of levy avoidance arrangement**
- (1) This section applies if an arrangement is void under **section 91**. 10
- (2) FENZ may determine a levy payer's liability for the levy, in a way that FENZ considers appropriate, in order to counteract a levy advantage that a person obtains from or under a levy avoidance arrangement.
- (3) When applying **subsection (2)**, FENZ may have regard to the amount insured that FENZ considers would have applied, would in all likelihood have applied, or might be expected to have applied had the arrangement not occurred. 15  
Compare: 2007 No 97 s GA 1

*Shortfall penalties*

- 93 Not taking reasonable care**
- (1) A levy payer is liable to pay a shortfall penalty if the levy payer does not take reasonable care in taking a levy position and the taking of that levy position by that levy payer results in a levy shortfall. 20
- (2) However, if the levy position is an acceptable levy position, the levy payer has taken reasonable care in taking the levy position.
- (3) An ~~acceptable levy position~~ means a levy position that meets the standard of being about as likely as not to be correct. 25
- (4) The penalty payable for not taking reasonable care is 20% of the resulting levy shortfall.  
Compare: 1994 No 166 s 141A
- 94 Unacceptable levy position** 30
- (1) A levy payer is liable to pay a shortfall penalty if the levy payer takes an unacceptable levy position and the levy shortfall arising from the levy payer's levy position is more than both—
- (a) \$50,000; and
- (b) 1% of the total levy for the property for the relevant taxable period. 35
- (2) An ~~unacceptable levy position~~—

- (a) means a levy position that, viewed objectively, fails to meet the standard of being about as likely as not to be correct; but
- (b) does not include a levy position described in **paragraph (a)** that is taken merely as a consequence of a mistake in the calculation or recording of numbers used in, or for use in preparing, a return. 5
- (3) If **subsection (1)** applies, the shortfall penalty payable is 20% of the resulting levy shortfall.
- (4) Whether any levy position is acceptable or unacceptable must be determined as at the time at which the levy payer takes the levy position.
- (5) The time at which a levy payer takes a levy position in relation to a contract of insurance is— 10
- (a) the time at which the levy payer provides the return containing the levy position, if the levy payer provides a return in relation to the contract of insurance;
- (b) the last day on which a levy payer is able to file a return under **section 84**, if the levy payer does not provide a return in relation to the contract of insurance. 15
- (6) The matters that must be considered in determining whether the levy payer has taken an unacceptable levy position include—
- (a) the actual or potential application to the levy position of the provisions of this Part and of any regulations made under this Part that are relevant; and 20
- (b) any decisions of a court on the interpretation of this Part and of any regulations made under this Part that are relevant (unless the decision was issued up to 1 month before the levy payer takes the levy position). 25

Compare: 1994 No 166 s 141B

## 95 Gross carelessness

- (1) A levy payer is liable to pay a shortfall penalty if the levy payer is grossly careless in taking a levy position unless the levy position is an acceptable levy position (that is, it meets the standard of being about as likely as not to be correct). 30
- (2) The penalty payable for gross carelessness is 40% of the resulting levy shortfall.
- (3) For the purposes of this Part, **gross carelessness** means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences, and **grossly careless** has a corresponding meaning. 35

Compare: 1994 No 166 s 141C

**96 Abusive levy position**

- (1) A levy payer is liable to pay a shortfall penalty if the levy payer takes an abusive levy position.
- (2) An **abusive levy position** means a levy position that—
- (a) is an unacceptable levy position at the time at which the levy position is taken; and 5
  - (b) viewed objectively,—
    - (i) the levy payer takes in respect, or as a consequence, of an arrangement that is entered into with a dominant purpose of avoiding levy, whether directly or indirectly; or 10
    - (ii) where the tax position does not relate to an arrangement described in **subparagraph (i)**, the levy payer takes with a dominant purpose of avoiding levy, whether directly or indirectly.
- (3) The penalty payable for taking an abusive levy position is 100% of the resulting levy shortfall. 15
- (4) **Section 94(5)** applies for determining the time when a levy payer takes an abusive levy position.
- Compare: 1994 No 166 s 141D

*Shortfall penalties***92A Interpretation and other matters related to shortfall penalties** 20

- (1) In this section and in **sections 93 to 97C**,—
- abusive levy position** has the meaning given in **section 96(2)**
- acceptable levy position** means a levy position that meets the standard of being about as likely as not to be correct
- gross carelessness** means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences, and **grossly careless** has a corresponding meaning 25
- unacceptable levy position**—
- (a) means a levy position that, viewed objectively, fails to meet the standard of being about as likely as not to be correct; but 30
  - (b) does not include a levy position that is taken merely because of a mistake in the calculation or recording of numbers used in, or for use in preparing, a return.
- (2) For the purposes of **sections 93 to 97C**,—
- (a) whether a levy position is acceptable or unacceptable must be determined at the time at which the levy payer takes the levy position: 35
  - (b) the time at which a levy payer takes a levy position in relation to a contract of insurance is—

- (i) the time at which the levy payer provides the return containing the levy position, if the levy payer provides a return in relation to the contract of insurance;
- (ii) the last day on which a levy payer is able to file a return under **section 84**, if the levy payer does not provide a return in relation to the contract of insurance; 5
- (c) the matters that must be considered in determining whether a levy payer has taken an unacceptable levy position include—
- (i) the actual or potential application to the levy position of the provisions of this Part and of any regulations made under this Part that are relevant; and 10
- (ii) any decision of a court on the interpretation of this Part and of any regulations made under this Part that is relevant (unless the decision was issued up to 1 month before the levy payer took the levy position). 15
- 93** **Not taking reasonable care**
- (1) A shortfall penalty is payable if the levy payer—
- (a) takes a levy position that results in a levy shortfall; and
- (b) does not take reasonable care in taking the levy position.
- (2) **Subsection (1)** does not apply if the levy position is an acceptable levy position. 20
- (3) If **subsection (1)** applies, the shortfall penalty that is payable is 20% of the levy shortfall.
- Compare: 1994 No 166 s 141A
- 94** **Unacceptable levy position** 25
- (1) A shortfall penalty is payable if the levy payer—
- (a) takes a levy position that results in a levy shortfall; and
- (b) the levy position is an unacceptable levy position; and
- (c) the levy shortfall is greater than both—
- (i) \$1,000; and 30
- (ii) 1% of the amount of levy that is payable for the correct levy position.
- (2) If **subsection (1)** applies, the shortfall penalty that is payable is 20% of the levy shortfall.
- Compare: 1994 No 166 s 141B 35
- 95** **Gross carelessness**
- (1) A shortfall penalty is payable if the levy payer—

- (a) takes a levy position that results in a levy shortfall; and
- (b) is grossly careless in taking the levy position.
- (2) **Subsection (1)** does not apply if the levy position is an acceptable levy position.
- (3) If **subsection (1)** applies, the shortfall penalty that is payable is 40% of the levy shortfall. 5  
 Compare: 1994 No 166 s 141C
- 96 Abusive levy position**
- (1) A shortfall penalty is payable if the levy payer—
- (a) takes a levy position that results in a levy shortfall; and 10
- (b) the levy position is an abusive levy position.
- (2) An **abusive levy position** means a levy position—
- (a) that is an unacceptable levy position at the time at which the levy position is taken; and
- (b) that, viewed objectively, the levy payer takes— 15
- (i) in respect of, or because of, an arrangement that is entered into with a dominant purpose of avoiding levy, whether directly or indirectly; or
- (ii) with a dominant purpose of avoiding levy, whether directly or indirectly. 20
- (3) If **subsection (1)** applies, the shortfall penalty that is payable is 100% of the levy shortfall.  
 Compare: 1994 No 166 s 141D
- 97 Reduction of penaltiespenalty for previous behaviour**
- (1) **Subsection (2)** applies if— 25
- (a) a levy payer is liable for a shortfall penalty (the **current penalty**) is payable under any of **sections 93 to 96**; and
- (b) the levy payer is not—
- (i) convicted of a disqualifying offence; or
- (ii) liable for a disqualifying penalty. 30
- (2) The current penalty is reduced by 50% of the amount that would be payable in the absence of this section.
- (3) In this section,—
- disqualifying offence** means an offence under **section 84, 85, 86, or 90** for which a conviction is entered in the relevant period 35
- disqualifying penalty** means a shortfall penalty other than the current penalty that—

- (a) relates to a levy position that is taken in the relevant period; and
- (b) if the current penalty is—
  - (i) for gross carelessness or taking an abusive levy position, is a shortfall penalty for gross carelessness or taking an abusive levy position: 5
  - (ii) for not taking reasonable care or taking an unacceptable levy position, is a shortfall penalty of any sort

**relevant period** means the period—

- (a) beginning on the date that is 2 years before the date on which the levy payer takes the levy position that relates to the current penalty; and 10
- (b) ending on the date on which the levy payer takes the levy position that relates to the current penalty.

Compare: 1994 No 166 s 141FB

**97A Reduction of penalty for disclosure of unacceptable levy position**

- (1) A shortfall penalty payable under **section 94 or 96** is reduced if, in FENZ’s opinion, the levy payer has made adequate disclosure of the levy position at the time at which the levy payer takes the levy position. 15
- (2) If **subsection (1)** applies, the shortfall penalty (as reduced under **section 97**, if relevant) is reduced by 50%.
- (3) FENZ may specify— 20
  - (a) the information required for adequate disclosure; and
  - (b) the form in which the information must be provided.

Compare: 1994 No 166 s 141H

**97B Reduction of penalty for voluntary disclosure of levy shortfall**

- (1) A shortfall penalty payable under any of **sections 93 to 96** is reduced if FENZ considers that full voluntary disclosure is made to FENZ by any of the persons specified in **section 97C(1)** of all the details of the levy shortfall before FENZ issues a notice of levy shortfall under **subpart 4A**. 25
- (2) If **subsection (1)** applies, the shortfall penalty (as reduced under **sections 97 and 97A**, if relevant) is reduced by 50%. 30
- (3) FENZ may specify—
  - (a) the information required for a full voluntary disclosure; and
  - (b) the form in which disclosure must be provided.

Compare: 1994 No 166 s 141G

*Joint and several liability of person involved in levy shortfall***97C Joint and several liability of person involved in levy shortfall**

- (1) Each of the following persons is jointly and severally liable to pay a shortfall penalty under this subpart:
- (a) the insurer: 5
  - (b) the policyholder:
  - (c) every insurance intermediary who arranged the contract of insurance.
- (2) However, a person described in **subsection (1) (person A)** is not jointly and severally liable to pay a shortfall penalty under this subpart if—
- (a) person A was not involved in the contravention; or 10
  - (b) person A's contravention was due to reasonable reliance on information supplied by another person; or
  - (c) both of the following apply:
    - (i) person A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond person A's control: 15
    - (ii) person A took reasonable precautions and exercised due diligence to avoid the contravention.
- (3) In this section,—
- another person** does not include a director, an employee, or an agent of person A 20
- arrange** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994
- contravention** means whichever of the following is relevant to the shortfall penalty: 25
- (a) failing to take reasonable care in the taking of a levy position:
  - (b) being grossly careless in the taking of a levy position:
  - (c) taking an unacceptable levy position:
  - (d) taking an abusive levy position.
- (4) In this section, a person is **involved in a contravention** if the person— 30
- (a) has aided, abetted, counselled, or procured the contravention; or
  - (b) has induced, whether by threats or promises or otherwise, the contravention; or
  - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or 35
  - (d) has conspired with others to effect the contravention.

- (5) The fact that a levy payer is, by reason of **subsection (2)**, not liable for a shortfall penalty does not, by itself, relieve any other person described in **subsection (1)** from liability for the shortfall penalty.

Compare: 2013 No 69 ss 499, 533

**98 ~~When shortfall penalties must be paid~~** 5

~~A levy payer that is liable to pay a shortfall penalty must pay the penalty to FENZ no later than 60 days after the levy payer took the levy position that relates to the shortfall penalty.~~

**98 When shortfall penalties must be paid**

- (1) A person who is liable to pay a shortfall penalty must pay the penalty to FENZ on or before the due date for payment that FENZ notifies to the person. 10

- (2) The due date for payment must be not less than 20 working days after the date on which FENZ notifies the person of the due date.

Subpart 4A—Notice of levy shortfall process and adjudication

*Preliminary matters* 15

**98A Burden of proof in dispute relating to levy shortfall or shortfall penalty**

In any process or adjudication under this subpart, and in any related proceeding relating to liability for a levy shortfall or a shortfall penalty, the burden of proof is on the respondent who disputes FENZ's assessment.

**98B Time limit for assessment of levy** 20

- (1) If 4 years have passed after the date on which a contract of insurance was entered into, FENZ may not provide a notice of levy shortfall to a respondent in relation to the contract of insurance.

- (2) **Subsection (1)** does not apply if FENZ considers that—

(a) any information provided to FENZ by or on behalf of the levy payer is fraudulent or wilfully misleading; 25

(b) there are reasonable grounds to consider that the levy payer failed to make a return in respect of a contract of insurance.

- (3) FENZ and any potential respondent may agree to extend the time in which FENZ may provide a notice of levy shortfall to the respondent under **subsection (1)** by a period not exceeding 12 months. 30

Compare: 1994 No 166 ss 107A, 108B

**98C Minister may approve forms**

- (1) The Minister may, by notice in the *Gazette*, approve the form of the following documents for the purposes of this subpart: 35

(a) a notice of levy shortfall:

- (b) a notice of response:
  - (c) FENZ's statement of position:
  - (d) a respondent's statement of position.
- (2) If the Minister approves the form of a document specified in **subsection (1)**, a person who provides the document must provide it in the approved form. 5

*Notice of levy shortfall and notice of response*

**98D FENZ may provide notice of levy shortfall to levy payer and to person liable for shortfall penalty**

- (1) FENZ may provide a notice of levy shortfall in relation to a return if FENZ considers that the levy payer takes, in a return, a levy position that results in a levy shortfall. 10
- (2) FENZ must provide the notice to the levy payer that took the levy position in the return.
- (3) If FENZ considers that a shortfall penalty is payable in respect of the levy position, FENZ must also provide the notice to every other person that FENZ considers is liable to pay the shortfall penalty. 15

Compare: 1994 No 166 s 89B

**98E Content of notice of levy shortfall**

- (1) A notice of levy shortfall must contain sufficient detail to identify the issues arising between FENZ and each respondent. 20
- (2) In order to identify the issues, the notice must—
  - (a) identify the levy shortfall that FENZ considers is payable by the levy payer:
  - (b) identify—
    - (i) any shortfall penalty that FENZ considers is payable; and 25
    - (ii) each respondent whom FENZ considers is liable to pay the shortfall penalty:
  - (c) provide a concise statement of the key facts and the law in sufficient detail to inform each respondent of the grounds for the liability identified in accordance with **paragraphs (a) and (b)**: 30
  - (d) state how the law applies to the facts.

Compare: 1994 No 166 s 89F

**98F Notice of response**

- (1) To reject a notice of levy shortfall, each respondent must provide a notice of response to FENZ within 40 working days of the date on which the notice of levy shortfall was provided to the respondent. 35
- (2) A notice of response must state concisely—

- (a) the facts or legal arguments in the notice of levy shortfall that the respondent considers are wrong; and
- (b) why the respondent considers those facts or legal arguments to be wrong; and
- (c) any facts and legal arguments relied on by the respondent; and 5
- (d) how the legal arguments apply to the facts; and
- (e) the quantitative adjustments to any figure referred to in the notice of levy shortfall that result from the facts and legal arguments relied on by the respondent.

Compare: 1994 No 166 s 89G

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### **98G Deemed acceptance of notice of levy shortfall**

- (1) If a respondent does not provide a notice of response to FENZ within the period specified in **section 98F(1)**, the respondent must be treated as having accepted the respondent's liability as set out in the notice of levy shortfall.
- (2) **Subsection (1)** does not apply if— 15
  - (a) another respondent provides a notice of response to FENZ within the period specified in **section 98F(1)**; or
  - (b) because of an event or circumstance beyond the respondent's control, the respondent has a reasonable justification for not providing a notice of response within the period specified in **section 98F(1)**. 20

Compare: 1994 No 166 s 89H

### **98H FENZ may provide new notice of levy shortfall to add respondent**

- (1) FENZ may provide a new notice of levy shortfall if, after considering any notice of response and any other information available to it, FENZ considers that any person to whom FENZ did not provide the notice of levy shortfall is liable to pay the shortfall penalty. 25
- (2) If FENZ provides a new notice of levy shortfall, this subpart applies accordingly.

### **98I Next step if parties do not agree**

- (1) If, 80 working days after the date on which FENZ provided the notice of levy shortfall, FENZ and each respondent have not agreed on liability for the levy shortfall and on liability for any shortfall penalty, FENZ may provide a statement of position to each respondent. 30
- (2) If there is more than 1 respondent, the date on which FENZ provided the notice of levy shortfall is the date on which FENZ provided the notice to the last respondent to receive the notice. 35

- (3) **Subsection (1)** does not apply if FENZ and each respondent agree that the matter would be resolved more efficiently by being submitted to the relevant court without completion of the process set out in this subpart.
- (4) If FENZ and each respondent agree to submit the matter to the relevant court under **subsection (3), sections 98J to 98Q** do not apply. 5

*Statements of position*

**98J FENZ's statement of position**

- (1) FENZ's statement of position must, with sufficient detail to fairly advise each respondent,—
- (a) give an outline of the facts on which FENZ intends to rely; and 10
  - (b) give an outline of the evidence on which FENZ intends to rely; and
  - (c) give an outline of the issues that FENZ considers will arise; and
  - (d) specify the propositions of law on which FENZ intends to rely.
- (2) FENZ's statement of position must also include a copy of each notice of response received by FENZ in response to the notice of levy shortfall. 15

**98K Respondent's statement of position**

- (1) To reject FENZ's statement of position, each respondent must provide a statement of position to FENZ within 40 working days after the date on which FENZ's statement of position was provided to the respondent.
- (2) Each respondent's statement of position must, with sufficient detail to fairly advise FENZ,— 20
- (a) give an outline of the facts on which the respondent intends to rely; and
  - (b) give an outline of the evidence on which the respondent intends to rely; and
  - (c) give an outline of the issues that the respondent considers will arise; and 25
  - (d) specify the propositions of law on which the respondent intends to rely.

**98L Deemed acceptance of FENZ's statement of position**

- (1) A respondent who does not provide a statement of position to FENZ within the period specified in **section 98K(1)** must be treated as having accepted FENZ's statement of position. 30
- (2) **Subsection (1)** does not apply if—
- (a) another respondent provides a statement of position to FENZ within the period specified in **section 98K(1)**; or
  - (b) because of an event or circumstance beyond the respondent's control, the respondent has a reasonable justification for not providing a statement of position within the period specified in **section 98K(1)**. 35

**98M FENZ may provide new notice of levy shortfall to add respondent**

- (1) FENZ may provide a new notice of levy shortfall if, after considering any of the respondents' statements of position and any other information available to it, FENZ considers that any person to whom FENZ did not provide the notice of levy shortfall is liable to pay the shortfall penalty. 5
- (2) If FENZ provides a new notice of levy shortfall, this subpart applies accordingly.

*Adjudication***98N Referral for adjudication**

- (1) If, 80 working days after the date on which FENZ provides the statement of position, FENZ and the respondent or respondents have not agreed on liability for the levy shortfall and on liability for any shortfall penalty, FENZ must arrange for the statements of position to be referred for adjudication. 10
- (2) If there is more than 1 respondent, the date on which FENZ provides the statement of position is the date on which FENZ provides the statement to the last respondent to receive the statement. 15
- (3) If there is more than 1 respondent, FENZ must, as soon as practicable after referring the statements of position to the adjudicator, provide to each respondent a copy of each statement of position filed by each other respondent.
- (4) **Subsection (1)** does not apply if FENZ and each respondent agree that the matter would be resolved more efficiently by being submitted to the relevant court without completion of the process set out in this subpart. 20
- (5) If FENZ and each respondent agree to submit the matter to the relevant court under **subsection (4), sections 98O to 98Q** do not apply.

**98O Conduct of adjudication**

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- (1) An adjudicator must act independently when adjudicating a dispute.
- (2) The adjudicator may regulate the procedure of the adjudication as he or she sees fit, subject to any regulations made under **section 104(3)(g)** that prescribe the procedure for adjudication.

**98P Decision of adjudicator**

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At the conclusion of an adjudication, the adjudicator must issue a decision that—

- (a) specifies the amount of any levy or shortfall, or both, that is payable by each respondent; and
- (b) includes the adjudicator's reasons for the decision. 35

**98Q Costs**

- (1) The adjudicator may make any order against FENZ or against 1 or more respondents for the payment of costs and expenses that the adjudicator thinks just.
- (2) The due date for payment of costs and expenses is 20 working days after the date of the adjudicator's order. 5

**98R Appeal**

- (1) FENZ or a respondent may appeal the adjudicator's decision to the relevant court.
- (2) An appeal under **subsection (1)**— 10
- (a) is by way of rehearing; and
- (b) must be made within 20 working days after the date on which the adjudicator's decision is issued; and
- (c) does not operate as a stay of enforcement of the adjudicator's decision unless the court orders otherwise. 15

*Provisions relating to adjudicators***98S Appointment of adjudicators**

- (1) The Minister must appoint adjudicators for the purposes of this subpart.
- (2) Before appointing an adjudicator, the Minister must be satisfied that the adjudicator has sufficient expertise to adjudicate disputes under this Part. 20
- (3) The Minister may, by notice in the *Gazette*, appoint an adjudicator for a 3-year term and otherwise on any terms and conditions that the Minister thinks fit.
- (4) An adjudicator may be reappointed.

**98T Removal of adjudicators**

- The Minister may, by notice in the *Gazette*, remove an adjudicator from office before the end of the 3-year term, but only— 25
- (a) due to the misconduct of the adjudicator; or
- (b) if the adjudicator is unable to perform the functions of office; or
- (c) if the adjudicator has neglected his or her duty.

Compare: 2013 No 60 s 8

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**98U Remuneration of adjudicators**

- (1) An adjudicator is entitled to be—
- (a) paid remuneration at a rate and of a kind determined in accordance with the fees framework; and

- (b) reimbursed for actual and reasonable travelling and other expenses in accordance with the framework.
- (2) In **subsection (1)**, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 5

*Other matters*

**98V Test cases**

- (1) FENZ and the respondent (or FENZ and the respondents) may agree to suspend the process set out in this subpart in relation to a levy position in the circumstances described in **subsection (2)**. 10
- (2) The circumstances are that—
- (a) FENZ is engaged in the process set out in this subpart or a proceeding in a court in relation to a levy position (a **test case**); and
- (b) there is a significant similarity between the facts and questions of law in the test case and the facts and questions of law arising in the process referred to in **subsection (1)**. 15
- (3) The suspension starts on the date of the agreement and ends on the earliest of the following:
- (a) the date of the court’s decision in the test case;
- (b) the date on which the test case is otherwise resolved; 20
- (c) the date on which the suspended process is otherwise resolved.
- (4) FENZ may provide a new notice of levy shortfall or take any other action in relation to the suspended process that is consistent with the resolution of the test case.
- Compare: 1994 No 166 s 89O 25

**98W Decisions to be made available**

- (1) FENZ must make decisions made by adjudicators under this subpart available on its Internet site.
- (2) **Subsection (1)** is subject to **subsections (3) and (4)**.
- (3) FENZ must remove from each decision it makes available the name of the respondent (or respondents) and any details of the decision that would identify a respondent or any other person. 30
- (4) An adjudicator may, on application by FENZ or a respondent, or on the adjudicator’s own initiative, make an order prohibiting or restricting the publication of— 35
- (a) any report of an adjudication;
- (b) a decision or any part of a decision.

- (5) A person who, without reasonable excuse, contravenes an order made under **subsection (4)** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both;
- (b) in any other case, to a fine not exceeding \$50,000. 5

### Subpart 5—Interest

#### 99 Purpose of section 100

- (1) The purpose of **section 100** is,—
- (a) in appropriate circumstances,—
- (i) to compensate FENZ for the loss of use of money through levy-payers paying too little levy; and 10
- (ii) to compensate levy payers for the loss of use of money through their paying too much levy; and
- (b) to encourage levy payers to pay the correct amount of levy on time.
- (2) Interest payable under **section 100** is not a penalty. 15
- Compare: 1994 No 166 s 120A(1)

#### 100 Interest on unpaid and overpaid levy and shortfall penalty

- (1) A levy payer is liable to pay interest on unpaid levy to FENZ in accordance with **section 101**.
- (2) FENZ may recover interest payable on unpaid levy as though it were levy payable by the levy payer. 20
- (3) ~~FENZ is liable to pay interest on overpaid levy to a levy payer that has paid too much levy in accordance with **section 101**.~~
- (3) A person who is liable, under **subpart 4A**, to pay a shortfall penalty is liable to pay interest on unpaid shortfall penalty in accordance with **section 101**. 25
- (4) FENZ may recover interest payable on unpaid shortfall penalty as though it were shortfall penalty payable by the person liable to pay the shortfall penalty.
- (5) FENZ is liable to pay interest in accordance with **section 101** on—
- (a) overpaid levy to a levy payer that has paid too much levy;
- (b) overpaid shortfall penalty to a person who has paid too much shortfall penalty. 30
- Compare: 1994 No 166 ss 120A(2), 120D

#### 101 Amount of interest payable ~~on unpaid and overpaid levy~~

- (1) In this section,—
- due date** means the last day on which a levy payer is able to pay the levy under **section 75** 35

**due date** means,—

- (a) in relation to levy, the day by which a levy payer must pay the levy under **section 77**:
- (b) in relation to a shortfall penalty, the day by which a person must pay the levy to which the shortfall penalty relates

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**interest period** means,—

- (a) in relation to unpaid levy or unpaid shortfall penalty, the period (both dates inclusive)—
- (i) beginning on the day after the due date of payment of the unpaid levy or shortfall penalty; and
- (ii) ending on the date the levy or shortfall penalty is paid:
- (b) in relation to overpaid levy or overpaid shortfall penalty, the period (both dates inclusive)—
- (i) beginning on the day after the later of the due date ~~or~~ and the date on which the overpaid levy or shortfall penalty was paid; and
- (ii) ending on the date on which the overpaid levy or overpaid shortfall penalty is refunded by FENZ

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**relevant interest rate** means,—

- (a) in relation to unpaid levy and unpaid shortfall penalty, the rate of interest established and notified as the taxpayer's paying rate by an Order in Council made under section 120H of the Tax Administration Act 1994:
- (b) in relation to overpaid levy or overpaid shortfall penalty, the rate of interest established and notified as the Commissioner's paying rate by an Order in Council made under section 120H of the Tax Administration Act 1994.

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- (2) The amount of interest payable on unpaid or overpaid levy and on unpaid or overpaid shortfall penalty is calculated for each day in the interest period in accordance with the following formula:

$$t \times r \div 365$$

where—

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t is the unpaid or overpaid levy or the unpaid or overpaid shortfall penalty on which the interest is payable; ~~and~~

r is the relevant interest rate.

- (3) The amount of interest payable in an interest period is the sum of the amounts calculated under **subsection (2)** for each day in the interest period.
- (4) The amount of interest outstanding at any time in an interest period is—
- (a) the sum of the amounts calculated under **subsection (2)** for each day in the interest period that falls before that time; less

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(b) any interest that has been paid by that time.

Compare: 1994 No 166 s 120E

#### **102 Interest priority**

- (1) **Subsection (2)** applies if a levy payer has unpaid levy to pay and the levy payer is liable to pay interest on the unpaid levy. 5
- (2) Any payment that FENZ receives on account of the levy payer's liability to pay the unpaid levy and interest must first be applied towards payment of interest.
- (3) If, at any time, a levy payer is liable to pay FENZ interest on unpaid levy and FENZ is liable to pay the levy payer interest on overpaid levy, the net amount of interest is payable by whoever has the greater liability. 10

Compare: 1994 No 166 s 120F

#### **102 Interest priority**

- (1) If a levy payer has levy to pay and the levy payer is liable to pay interest on the unpaid levy, any payment that FENZ receives on account of the levy payer's liability to pay the unpaid levy and interest must first be applied towards payment of interest. 15
- (2) If a person has shortfall penalty to pay and the person is liable to pay interest on the unpaid shortfall penalty, any payment that FENZ receives on account of the person's liability to pay the unpaid shortfall penalty and interest must first be applied towards payment of interest. 20

Compare: 1994 No 166 s 120F

#### **103 Interest payable immediately**

Interest payable by a levy payer to FENZ on unpaid levy under this subpart is payable immediately and without the need for a demand.

Compare: 1994 No 166 ss 120G

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### Subpart 6—Regulations relating to levy

#### **104 Levy regulations**

- (1) For the purpose of this Part, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a levy in respect of property that is insured against physical ~~damage or loss~~ loss or damage. 30
- (2) The regulations must,—
- (a) for every motor vehicle that is insured against physical ~~damage or loss~~ loss or damage, prescribe an annual rate of levy per vehicle:
- (b) for all other property that is insured against physical ~~damage or loss~~ loss or damage, prescribe a an annual rate of levy as a proportion of the amount insured. 35

- (3) The regulations may—
- (a) prescribe rates of levy under **subsection (2)(b)** for the following types of property that differ from the rate of levy prescribed for other property under that subsection:
    - (i) residential property: 5
    - (ii) personal property:
    - (iii) any other property or class of property:
  - (b) prescribe maximum amounts of levy payable for—
    - (i) residential property:
    - (ii) personal property: 10
    - (iii) any other property or class of property:
  - (ba) provide for the calculation of the levy for a contract of insurance under which the property that is insured comprises 2 or more of the following:
    - (i) residential property:
    - (ii) personal property: 15
    - (iii) property that is exempt from the levy:
    - (iv) a motor vehicle:
    - (v) any other type of property:
  - (c) provide for the payment and collection of the levy:
  - (d) provide for an exemption from the levy for ~~any property or class of property:—~~ 20
    - (i) any property or class of property:
    - (ii) any contract of insurance or class of contract of insurance:
    - (iii) any policyholder or class of policyholder:
  - (e) provide for waivers or refunds of the whole or any part of the levy, any shortfall penalty, or interest: 25
  - (f) specify buildings or classes of buildings that are specialised accommodation for the purposes of this Part:
  - (g) provide for any other matters that are necessary or desirable to set, calculate, administer, collect, and enforce the levies, including (without limitation)— 30
    - (i) the returns to be made to FENZ for the purpose of enabling or assisting in the determination of the amounts of levy payable:
    - (ii) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levies: 35

- (iii) the circumstances in which, and conditions subject to which, FENZ may waive all or part of an amount of levy, shortfall penalty, or interest:
  - (iv) the keeping and retention of accounts, statements, or records specified by FENZ for a specified period for the purpose of ascertaining whether regulations are being complied with; 5
  - (v) the procedure for adjudication under **subpart 4A**.
- (4) ~~The Minister may recommend the making of regulations relating to an exemption under **subsection (3)(d)** only if the Minister is satisfied that the exemption is for property or a type of property in relation to which there is no potential for FENZ's services to be required.~~ 10
- (4) Before making a recommendation for the making of regulations relating to an exemption under **subsection (3)(d)**, the Minister must have regard to—
- (a) the purpose set out in **section 69**; and
  - (b) the likely effect of the exemption on the cost-effectiveness and efficiency of the administration of the levy and this Part. 15
- (5) If the Minister recommends the making of regulations under **subsection (3)(d)**, the Minister's reasons must be published together with the regulations.
- 105 Procedure for levy regulations**
- (1) The Minister must, in at least every third financial year, estimate the amount of FENZ's net costs for the next period of 3 financial years (the **period**). 20
- (2) For the purposes of **subsection (1)**, FENZ's net costs in a period are—
- (a) its estimated direct and indirect costs of performing functions and duties and exercising powers under this Act, regulations made under this Act, or any other enactment that will arise in the period; less 25
  - (b) any estimated income that FENZ will receive in the period from any source other than the levy.
- (3) The Minister must then determine the portion of FENZ's net costs for the period that are to be met by levies.
- (4) The Minister must then recommend the making of regulations under **section 104** to recover, in each year of the period, one-third of the portion of FENZ's net costs for the period that the Minister has determined are to be met by levies. 30
- (5) In making a recommendation, the Minister must take into account the following (in addition to the purpose of this Part):
- (a) an estimate of the total number of motor vehicles in respect of which the levy is payable and the likelihood of any change in that number: 35
  - (b) an estimate of the total amount insured for insured properties and the likelihood of any change in that amount:

- (c) the benefit of maintaining the stability of each rate of the levy in the long term.
- (6) The Minister may recommend the amendment of the regulations in the period to which they apply if the Minister is satisfied that—
- (a) actual net costs in the period are likely to vary significantly from the estimate of net costs under **subsection (2)** on which the regulations were based; and 5
- (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted. 10
- Compare: 2012 No 2 s 57 10
- 106 Consultation about levy regulations**
- (1) The Minister must be reasonably satisfied that **subsections (2) to (4)** have been complied with before the Minister makes a recommendation under **section 105(4)**.
- (2) FENZ must ~~consult the~~ consult levy payers, policyholders, and any other persons that FENZ considers are likely to be substantially affected, or their representatives, about— 15
- (a) the proposed regulations; and
- (b) the activities that FENZ proposes to undertake in the period to which the proposed regulations relate. 20
- (3) FENZ must publish a notice that—
- (a) describes the activities that FENZ proposes to undertake in the period; and
- (b) sets out the estimate of FENZ's net costs and the proposed rates of levy; and 25
- (c) sets out the methods and any assumptions leading to the estimate and to the proposed rates of levy; and
- (d) invites written comments, to be provided to FENZ in the manner and by the date specified in the notice, on—
- (i) the activities that FENZ proposes to undertake in the period; and 30
- (ii) the rates of levy.
- (4) FENZ must consider any comments received under **subsection (3)**.
- (5) Regulations made under **section 104** are not invalid on the grounds that—
- (a) **subsections (2) to (4)** were not complied with before the Minister recommended the making of the regulations; or 35
- (b) the consultation carried out was about a specific rate or specific rates of levy that differ from the rate or rates set in the regulations.

Compare: 2012 No 2 s 60

## Part 4

### Miscellaneous and enforcement provisions

#### Subpart 1—Agreements with Department of Conservation, New Zealand Defence Force, and Ministry of Education

##### *Provisions relating to Department of Conservation* 5

#### 107 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

**additional land** means land (other than public conservation land) for which the Department of Conservation has responsibility for fire control under any enactment, agreement, or other instrument 10

**conservation area**—

- (a) has the same meaning as in section 2(1) the Conservation Act 1987; and
- (b) includes land being managed under section 61 or section 62 of that Act; but
- (c) ~~but~~ does not include any marginal strip as defined in section 2(1) of that Act 15

**public conservation land**,—

- (a) subject to **paragraph (b)**, means—
  - (i) any conservation area; and
  - (ii) any national park within the meaning of the National Parks Act 1980; and
  - (iii) any government purpose reserve within the meaning of section 22 of the Reserves Act 1977 that is classified under section 16 of that Act for the purpose of wildlife management or for other specified wildlife purposes; and 25
  - (iv) any other land or class of land (whether or not vested in or administered by the Crown) previously declared by the Minister of Conservation by notice in the *Gazette* to be a State area for the purposes of ~~this Act~~ the Forest and Rural Fires Act 1977; ~~but and~~
  - (v) any other land or class of land (whether or not vested in or administered by the Crown) declared by the Minister of Conservation by notice in the *Gazette* to be public conservation land for the purposes of this Act; but 30
- (b) unless declared to be a State area public conservation land by notice in the *Gazette* under **paragraph (a)(iv)(v)**, does not include— 35

- 
- (i) any conservation area for the time being expressly excluded from ~~any State area public conservation land~~ by the Director-General of Conservation by notice in the *Gazette*:
- (ii) any land reserved from sale or other disposition under Part 4A of the Conservation Act 1987 or any former enactment: 5
- (iii) any reserve within the meaning of the Reserves Act 1977 that is controlled and managed by any administering body within the meaning of that Act:
- (iv) any government purpose reserve within the meaning of section 22 of the Reserves Act 1977 that is classified under section 16 of that Act other than for the purpose of wildlife management or other specified wildlife purposes: 10
- (v) any local purpose reserve within the meaning of section 23 of the Reserves Act 1977:
- (vi) any easement acquired and held for conservation purposes under section 7(2) of the Conservation Act 1987: 15
- (vii) any right of way or other easement acquired for the purposes of section 12 of the Reserves Act 1977 and held for those purposes under that Act:
- (viii) any lands of the Crown within the meaning of section 176 of the Lands Act 1948: 20
- (ix) the common marine and coastal area (as defined in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011):
- (x) reclaimed land vested in the Crown under section 30 or 31 of the Marine and Coastal Area (Takutai Moana) Act 2011. 25
- 108 ~~Policy for fire services and designated emergency services control in relation to public conservation land and additional land~~**
- (1) FENZ and the Director-General of Conservation must take all reasonable steps to agree on any policy for ~~fire services and designated emergency control~~ services that relate to, have an impact on, or have implications for public conservation land and additional land. 30
- (2) The policy must be published and maintained on 1 or more Internet sites maintained by, or on behalf of, FENZ and the Department of Conservation.
- (3) The policy comes into force on the date that FENZ and the Director-General of Conservation agree that the policy should come into force. 35
- 109 ~~Review of policy for fire services and designated emergency services control in relation to public conservation land and additional land~~**
- After any policy referred to in **section 108** comes into force, the policy is subject to review by FENZ and the Director-General of Conservation as con-

sidered necessary by agreement between FENZ and the Director-General of Conservation.

#### **110 Agreement with Department of Conservation**

FENZ and the Department of Conservation must take reasonable steps to enter into a 3-yearly operational service agreement that sets out— 5

- (a) the designated services that FENZ will deliver to the Department of Conservation; and
- (b) the fire control services that the Department of Conservation will deliver to FENZ, ~~including services relating to fire services and designated emergency services.~~ 10

#### *Provisions relating to New Zealand Defence Force*

#### **111 Agreement with New Zealand Defence Force**

FENZ and the New Zealand Defence Force must take reasonable steps to enter into a 3-yearly operational service agreement that sets out—

- (a) the designated services that FENZ will deliver to the New Zealand Defence Force; and 15
- (b) the designated services that the New Zealand Defence Force will deliver to FENZ, ~~including services relating to fire services and designated emergency services.~~

#### **112 Functions, duties, and powers of Chief of Defence Force in relation to defence area** 20

(1) The Chief of Defence Force has, in relation to any defence area, all the functions, duties, and powers of—

- (a) the board; and
- (b) an authorised person under **sections 38 to 42.** 25

(2) **Subsection (1)** is subject to any agreement between the Chief of Defence Force and FENZ.

Compare: 1975 No 42 s 36A(2)

#### **113 Command of defence fire brigade and any other personnel**

(1) Every agreement entered into between the Chief of Defence Force and FENZ under **section 111** must provide for the command of a defence fire brigade and any other FENZ personnel when they are operating together, whether in a defence area or otherwise. 30

(2) If the Chief of Defence Force has been vested with a command in accordance with **subsection (1)** or a defence fire brigade is operating on its own outside a defence area, the Chief of Defence Force may perform all the functions and 35

duties and exercise all the powers of the person in charge of personnel under **section 38 to 42**.

Compare: 1975 No 42 s 36A(3), (4)

*Provision relating to Ministry of Education*

- 114 Memorandum of understanding with Ministry of Education** 5
- (1) FENZ and the Ministry of Education may enter into a memorandum of understanding that records the way in which FENZ and the Ministry of Education will work together in relation to—
- (a) FENZ’s main and additional functions in relation to land and buildings held by the Ministry for educational purposes; and 10
- (b) any obligations, under this Act or regulations made under this Act, of the Ministry and other owners and occupiers of land and buildings used for educational purposes; and
- (c) fire safety education and educational materials related to fire safety.
- (2) A notice published in the *Gazette* may— 15
- (a) include the contents of the memorandum of understanding in their entirety; or
- (b) provide a general description of the memorandum of understanding and provide an indication of where the full text of memorandum of understanding may be obtained. 20

Subpart 2—Offences

*Infringement offences*

- 115 Proceedings for infringement offence**
- (1) If a person is alleged to have committed an infringement offence, that person may— 25
- (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
- (b) be served with an infringement notice under **section 116**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 30
- 116 Infringement notices**
- (1) An authorised person may issue an infringement notice to a person if the authorised person believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 35
- (2) The authorised person may—

- (a) deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence; or
- (b) send the notice by post addressed to that person's last known place of residence or business or postal address.
- (3) An infringement notice (or a copy of it) sent by post to a person is to be treated as having been served on that person when it was posted. 5
- (4) An infringement notice and infringement offence reminder notice must be in the prescribed form and must contain the following particulars:
- (a) the details of the alleged infringement offence that are sufficient to inform a person of the time, place, and nature of the alleged offence; and 10
- (b) the amount of the infringement fee; and
- (c) in relation to the payment of the infringement fee,—
- (i) the bank account into which the infringement fee may be paid; or
- (ii) the address of the place at which the infringement fee may be paid; and 15
- (d) the time within which the infringement fee must be paid; and
- (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
- (f) a statement that the person served with the notice has a right to request a hearing; and 20
- (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
- (h) any other particulars that may be prescribed.
- (5) If an infringement notice has been issued under this section and the authorised person wishes to proceed, the procedure under section 21 of the Summary Proceedings Act 1957 must be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications. 25

#### **116A Power of authorised person to demand information**

- (1) An authorised person who believes on reasonable grounds that a person is committing, or has committed, an infringement offence, may require the person to provide the following particulars for the purpose of issuing the person with an infringement notice: 30
- (a) the person's full name:
- (b) the person's residential, business, or postal address: 35
- (c) any other relevant information.
- (2) However, nothing in **subsection (1)(c)** limits or affects the privilege against self-incrimination (as described in section 60 of the Evidence Act 2006).

- (3) An authorised person who believes on reasonable grounds that the particulars provided under **subsection (1)** are false may require the person concerned to provide satisfactory evidence of the particulars.
- (4) A person who has been required by any authorised person to provide any particulars or evidence under this section commits an offence if the person, without reasonable excuse,— 5
- (a) refuses or fails to provide the particulars or evidence; or
- (b) provides any particulars or evidence knowing that the particulars or evidence are false in a material respect.
- (5) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$10,000. 10

### 117 Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

### *Other offences* 15

### 118 Offence to impersonate personnel with intent to deceive

- (1) A person commits an offence if, with intent to deceive, the person pretends to be—
- (a) operational personnel of FENZ; or
- (b) a FENZ inspector; or 20
- (c) a person who works for any brigade.
- (2) A person who commits an offence under this section is liable on conviction to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both.
- Compare: 1975 No 42 s 88(1)(g) 25

### 119 Offence to knowingly give false alarm of fire

- (1) A person commits an offence if the person knowingly gives or causes to be given to any personnel or brigade any false alarm of fire.
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 30  
months or to a fine not exceeding \$75,000, or both; or
- (b) in any other case, to a fine not exceeding \$150,000.
- Compare: 1975 No 42 s 88(1)(c)

- 120 Offence to interfere with exercise of powers and duties under Act**
- (1) A person commits an offence if the person knowingly obstructs, hinders, resists, or deceives a FENZ inspector or an authorised person in the performance or exercise by that officer or person of powers or duties under this Act.
- (2) A person who commits an offence under this section is liable on conviction,— 5
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both; or
- (b) in any other case, to a fine not exceeding \$600,000.
- 121 Offence to knowingly or recklessly store spontaneously combustible material in breach of requirements** 10
- (1) A person commits an offence if the person knowingly or recklessly stores spontaneously combustible material ~~(as defined in regulations made under **section 148**)~~ in breach of requirements under this Act or under regulations made under **section 148 or 152**.
- (2) A person who commits an offence under this section is liable on conviction,— 15
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$75,000, or both; or
- (b) in any other case, to a fine not exceeding \$150,000.
- Compare: SR 2005/153 r 54
- Subpart 3—Liability-related provisions** 20
- 122 Damage in firefighting to be damage by fire within meaning of contract of fire insurance**
- (1) Damage to property must be treated as damage by fire within the meaning of any contract of fire insurance covering the damaged property if—
- (a) the damage is caused by an authorised person or any other personnel (A); and 25
- (b) the damage is caused during—
- (i) the performance in good faith of A's functions or duties; or
- (ii) the exercise in good faith of A's powers at, or in connection with, any fire or suspected fire. 30
- (2) However,—
- (a) if any fire or suspected fire is a natural disaster within the meaning of the Earthquake Commission Act 1993, the damage must be treated as damage by natural disaster fire; and
- (b) if any damage to property is natural disaster damage, the damage must 35  
be treated as damage by natural disaster.

- (3) In this section, **natural disaster damage** has the same meaning as in section 2(1) of the Earthquake Commission Act 1993.

Compare: 1975 No 42 s 42

### 123 Limitation of liability

- (1) No proceeding may be taken against any of the following to recover damages for any loss or damage to property resulting from any act or omission of a specified person resulting from the performance, or intended performance, or the exercise or intended exercise, in good faith of that person's functions, ~~powers, or duties~~ duties, or powers in relation to designated services under any relevant fire safety legislation or any other enactment: 5  
10
- (a) the Crown:
  - (b) FENZ:
  - (c) the board:
  - (d) any FENZ personnel:
  - (e) any other person. 15
- (2) However, nothing in this section releases or exonerates any person from, or in any way affects the liability of any person for, any damage to property caused by, or in connection with, the use of any fire engine or other motor vehicle for transport purposes.
- (3) **Subsections (1) and (2)** apply despite section 121 of the Crown Entities Act 2004. 20
- (4) In this section, **specified person** means—
- (a) an authorised person:
  - (b) any personnel:
  - (c) any other person. 25

Compare: 1975 No 42 s 43(1), (1A)

### 124 Defences in actions or proceedings relating to designated emergency services

- (1) This section applies in any relevant proceeding taken against any of the following in relation to the ~~carrying out of functions of FENZ in an emergency, specified in sections 11 and 12~~ delivery of designated services: 30
- (a) FENZ:
  - (b) the board:
  - (c) any FENZ personnel:
  - (d) any authorised person. 35
- (2) The defendant has a defence if the defendant proves that the defendant had complied with all relevant policies, standards, and operational instructions of FENZ or the board.

- (3) In this section, **relevant proceeding** means a proceeding relating to the failure to make, or the negligence in making, adequate provision for—
- (a) the prevention of fire:
  - (b) the suppression and extinguishment of fire:
  - (c) the protection of property endangered by fire: 5
  - (d) the protection of ~~persons or property that are or is~~ any of the following in circumstances where they are endangered in or by any situation that requires the delivery of designated ~~emergency services~~:
    - (i) people:
    - (ii) property: 10
    - (iii) the environment.

Compare: 1975 No 42 s 43(2)

#### **125 Application of sections 120 to 126 of Crown Entities Act 2004 to volunteers**

Sections 120 to 126 of the Crown Entities Act 2004 apply to a FENZ volunteer as if that volunteer were an employee of FENZ. 15

Compare: 1975 No 42 s 43(3)

#### **126 Damage and liability provisions in relation to defence fire brigades**

- (1) **Sections 122 and 123** apply, in relation to a defence fire brigade, whether operating within or outside a defence area, as if—
- (a) every reference to FENZ or the board were also a reference to the Chief of Defence Force; and 20
  - (b) every reference to FENZ personnel or to any other person were also a reference to personnel of a defence fire brigade.
- (2) However, in any relevant proceeding in relation to ~~the carrying out of functions of FENZ, in an emergency, specified in~~ **sections 11 or 12** delivery of designated services in an emergency, it is a defence to prove that— 25
- (a) any provision made for the prevention of fire, the suppression and extinguishment of fire, and the protection of property endangered in fire was made in accordance with standards approved by the Chief of Defence Force; and 30
  - (b) the personnel of the defence fire brigade concerned complied with all relevant requirements and instructions of the Chief of Defence Force.

Compare: 1975 No 42 s 36A(5)

#### Subpart 4—Powers of entry, inspection, and search

#### **127 Interpretation in this subpart** 35

In this subpart, unless the context otherwise requires,—

**compliance power** means the functions and powers conferred on a FENZ inspector under this Act or regulations made under this Act, or any other relevant fire safety legislation

**issuing officer** has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

**post-incident analysis** means an analysis for the purposes of ascertaining or determining the cause or origin of an emergency that involved, or could have involved, ~~the carrying out of functions under section 11 or 12~~ FENZ's delivery of designated services

**pre-incident planning**—

- (a) means planning for the purposes of ~~carrying out functions under section 11 or 12~~ FENZ's delivery of designated services in an emergency; and
- (b) includes planning for the purposes of—
  - (i) evacuation of persons from any land or building; and
  - (ii) other matters relating to the protection of human life.

## 128 Appointment of FENZ inspectors

- (1) FENZ may, by notice in writing, appoint any of the following as a FENZ inspector:
  - (a) FENZ personnel:
  - (b) an employee of a department (within the meaning of the State Sector Act 1988):
  - (c) an employee of the State services (within the meaning of the State Sector Act 1988):
  - (d) a statutory officer:
  - (e) a prescribed person:
  - (f) any other person who FENZ is satisfied—
    - (i) is suitably qualified and trained to exercise any or all of the powers of, and carry out any or all of the duties of, a FENZ inspector under relevant fire safety legislation; or
    - (ii) belongs to a class of persons who are suitably qualified and trained to exercise any or all of the powers of, and carry out any or all of the duties of, a FENZ inspector under relevant fire safety legislation.
- (2) A FENZ inspector's compliance powers are subject to any conditions or limitations specified in the notice of the inspector's appointment.
- (3) However, the exercise of a compliance power by a FENZ inspector is not invalid merely because it does not comply with the conditions specified in the notice of the inspector's appointment.

- (4) In this section, **statutory officer** means a person who—
- (a) holds or performs duties of an office established by an enactment; or
  - (b) performs duties expressly conferred on the person because of his or her office by an enactment.
- Compare: 2015 No 70 s 163 5
- 129 Identity cards**
- (1) FENZ must give each FENZ inspector an identity card that—
- (a) states the person’s name and appointment as a FENZ inspector; and
  - (b) includes any other prescribed matter.
- (2) A FENZ inspector must, when exercising compliance powers, produce his or her identity card for inspection on request. 10
- (3) A person who ceases to be a FENZ inspector must as soon as practicable return the identity card to FENZ.
- Compare: 2015 No 70 s 164
- 130 Suspension and ending of appointment of FENZ inspectors** 15
- (1) FENZ may suspend or end the appointment of a FENZ inspector at any time.
- (2) To avoid doubt, a person’s appointment as a FENZ inspector ends when the person ceases to be eligible for appointment as a FENZ inspector.
- Compare: 2015 No 70 s 165
- 131 FENZ inspectors subject to directions from FENZ** 20
- (1) A FENZ inspector (whether or not an employee) is subject to directions from FENZ in the exercise of the inspector’s compliance powers.
- (2) A direction may be of a general nature or may relate to a specified matter or specified class of matter.
- (3) A failure to comply with a direction does not invalidate the exercise of a FENZ inspector’s compliance power. 25
- Compare: 2015 No 70 s 166
- 132 Powers of entry and inspection**
- (1) A FENZ inspector may, at any reasonable time, enter and inspect any land or building. 30
- (2) The purpose of entry and inspection under this section is to do 1 or more of the following:
- (a) obtain information necessary for pre-incident planning;
  - (b) assess compliance with the requirements ~~imposed on owners~~ under any relevant fire safety legislation: 35
  - (c) conduct post-incident analysis.

- (3) This section is subject to **section 133**.
- (4) The provisions of Part 4 (except subpart 3 and sections 118 and 119) of the Search and Surveillance Act 2012 apply.
- Compare: 1975 No 42 s 29; 2015 No 70 s 168

### **133 Power to enter homes and marae** 5

- (1) A FENZ inspector must not, except with the consent of an occupier or under a warrant, enter any land or building that is a home or a marae or a building associated with a marae.
- (2) An issuing officer may, on an application made by a FENZ inspector in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant to enter a home or a marae or a building associated with a marae if he or she is satisfied that there are reasonable grounds to believe that the home or the marae or the building associated with a marae—
- (a) may be the site of ~~a fire or any other~~ an emergency for which FENZ has powers, duties, or functions and entry is necessary for a FENZ inspector to carry out inspection for pre-incident planning; or 15
- (b) may be the site of any other emergency for which FENZ has powers, duties, or functions and entry is necessary for a FENZ inspector to exercise compliance powers; or
- (c) has been the site of ~~a fire or other~~ an emergency for which FENZ has powers, duties, or functions and entry is necessary for a FENZ inspector to conduct post-incident analysis. 20
- (3) A warrant issued under **subsection (2)** authorises a FENZ inspector to exercise only the powers specified in **sections 132, 135, and 136** and Part 4 (except sections 118 and 119) of the Search and Surveillance Act 2012. 25
- (4) Any exercise of the power of entry at a marae or a building associated with a marae must take account of the kawa of the marae so far as practicable in the circumstances.
- (5) The provisions of Part 4 (except sections 118 and 119) of the Search and Surveillance Act 2012 apply. 30
- Compare: 2015 No 70 s 169

### **134 Power to deal with cause of imminent danger**

- (1) This section applies if a FENZ inspector who enters any land or a building under **section 132** or **133** reasonably believes that any material, substance, structure, or thing on or in the land or the building is defective or hazardous to a degree that it is likely to imminently cause ~~a fire or other~~ an emergency (**the thing that is the cause of imminent danger**). 35
- (2) The FENZ inspector may seize, destroy, suppress, or take a sample of the thing that is the cause of imminent danger.

- (3) The FENZ inspector must,—
- (a) before exercising the power under **subsection (2)**, if it is practicable to do so,—
    - (i) obtain the consent of the owner or occupier of the land or building; and 5
    - (ii) take a sample of the thing that is the cause of imminent danger; and
  - (b) as soon as practicable after exercising the power under **subsection (2)**, give the owner or occupier of the land or building written notice of the action taken in relation to the cause of imminent danger. 10
- (4) The provisions of Part 4 (except subpart 3 and sections 118 and 119) of the Search and Surveillance Act 2012 apply.

Compare: 2015 No 70 s 170

### 135 Power to take samples and other objects and things

- (1) A FENZ inspector who enters any land or a building under **section 132** or **133** may, if the FENZ inspector believes on reasonable grounds that it is necessary to take or remove a sample of any material, substance, or thing (**item**) for analysis, or seize and retain item for the purpose of assessing compliance with the requirements imposed on owners and occupants under relevant fire safety legislation, to do so, do either of the following: 15
- (a) take or remove a sample of any material, substance, or thing for analysis; 20
  - (b) seize and retain any material, substance, or thing for the purpose of—
    - (i) assessing compliance with the requirements under relevant fire safety legislation; or
    - (ii) conducting post-incident analysis. 25
- (2) A FENZ inspector may exercise the power set out in **subsection (1)** only after he or she has given the person from whom the ~~item~~ material, substance, or thing is proposed to be seized the opportunity, if it is practicable to do so, to surrender the ~~item~~ material, substance, or thing to the inspector.
- (2A) Despite **subsection (2)**, a FENZ inspector may exercise the power set out in **subsection (1)**, if— 30
- (a) it is not practicable to give the person the opportunity to surrender the material, substance, or thing; or
  - (b) having given the person the opportunity to surrender the material, substance, or thing, the person has refused or failed to surrender the material, substance, or thing. 35
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3 and sections 118 and 119) apply.

- (4) To avoid doubt, **subsection (1)** does not authorise a FENZ inspector to search any person.

Compare: 2015 No 70 s 172; 2003 No 51 s 336

### 136 Power of FENZ to authorise making of applications for search warrants

- (1) FENZ may authorise a specified person to enter and search any land or building, vehicle, or other thing if FENZ is satisfied that there are reasonable grounds to believe that an offence has been committed against this Act or regulations made under this Act or any other relevant fire safety legislation and that the search will find evidential material in or on any part of the land or building, vehicle, or thing. 5  
10
- (2) The specified person may enter and search the land or building, vehicle, or other thing if—
- (a) the owner or occupier of the land or building, or the person in charge of the vehicle or thing (as the case may be) consents; or
- (b) the specified person obtains a warrant under **subsection (3)**. 15
- (3) An issuing officer may issue a search warrant in relation to any land or building, vehicle, or other thing, on an application made in the manner provided by subpart 3 of Part 4 of the Search and Surveillance Act 2012 by the specified person, if the issuing officer is satisfied that there are reasonable grounds to believe that an offence has been committed against this Act or regulations made under this Act and that the search will find evidential material in or on any part of the land or building, vehicle, or thing. 20
- (4) In this section, **specified person** means—
- (a) a FENZ inspector; or
- (b) FENZ personnel; or 25
- (c) any other person who FENZ is satisfied—
- (i) is suitably qualified and trained to act under this section; or
- (ii) belongs to a class of persons who are suitably qualified and trained to act under this section.
- (5) The provisions of subpart 2 of Part 3 and Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications. 30

Compare: 2015 No 70 s 173

### 137 Power to restrict or prohibit entry to sites

- (1) A FENZ inspector, or, until the arrival of a FENZ inspector, an authorised person, may prohibit or restrict access of persons or classes of persons to any land or building that is the site of a fire or any other an emergency if the FENZ inspector or authorised person (as the case may be) believes on reasonable grounds that it is necessary— 35

- (a) to preserve or record evidence in relation to the ~~fire or other~~ emergency;  
or
- (b) to prevent the tampering with, or alteration, mutilation, or destruction of,  
any thing involved in any manner in a ~~fire or any other~~ the emergency.
- (2) The prohibition or restriction on access to any land or building may apply only 5  
for a period that is no longer than is reasonably necessary in the circumstances  
to meet the objectives set out in **subsection (1)**.

Compare: 1994 No 104 s 59(a)

**137A Application to FENZ for access to sites to which entry is prohibited or**  
**restricted** 10

- (1) Any of the persons described in **subsection (2)** may apply, by written notice,  
to FENZ for access to any land or building to which entry is prohibited or re-  
stricted under **section 137**.
- (2) The persons are—
- (a) the owner of the land or building; 15
- (b) the occupier of the land or building immediately before access to the  
land or building was prohibited or restricted;
- (c) the insurer (including a duly authorised agent of the insurer) of the land  
or building.
- (3) FENZ may grant an application for access to any land or building— 20
- (a) unconditionally; or
- (b) on reasonable conditions.
- (4) FENZ may refuse an application if FENZ has reasonable grounds to believe  
that granting access to any land or building may—
- (a) prejudice the preservation or recording of evidence in relation to the 25  
emergency; or
- (b) lead to the tampering with, or alteration, mutilation, or destruction of,  
any thing involved in any manner in the emergency.
- (5) If FENZ refuses an application, FENZ must inform the applicant of the deci-  
sion in writing. 30

Compare: 2012 No 24 s 156

**137B Application to District Court for access to sites to which entry is**  
**prohibited or restricted**

- (1) A person described in **section 137A(2)** may apply to the District Court for  
access to any land or building to which entry is prohibited or restricted under 35  
**section 137** if the person has made an application under **section 137A** and  
the application—
- (a) has been refused; or

- (b) has been granted, but subject to conditions that the applicant does not accept.
- (2) The District Court may—
- (a) grant the application; or
- (b) refuse the application on the ground that allowing the person to have access to the land or building or varying or cancelling the conditions concerned is likely to— 5
- (i) prejudice the preservation or recording of evidence in relation to the emergency; or
- (ii) lead to the tampering with, or alteration, mutilation, or destruction of, any thing involved in any manner in the emergency. 10
- (3) The District Court may require sureties and impose conditions if it grants an application.

Compare: 2012 No 24 s 158

#### Subpart 5—Dispute resolution 15

#### 138 Duty to develop dispute resolution scheme

- (1) FENZ must develop a dispute resolution scheme for resolving disputes on any matter under this Act or regulations made under this Act other than the disputes set out in **subsection (2)**.
- (2) The excluded disputes are— 20
- (a) an employment dispute that may be dealt with under the Employment Relations Act 2000:
- (b) a dispute relating to offences under this Act:
- (c) a dispute relating to the performance or exercise of a function, ~~power, or duty~~ duty, or power by a Minister: 25
- (ca) a dispute relating to **Part 3**:
- (d) any other dispute of a kind specified under **section 140(1)(c)**.

#### 139 Principles of dispute resolution scheme

The development of the dispute resolution scheme must be guided by, and the dispute resolution scheme must be based on, the following principles: 30

- (a) accessibility:
- (b) independence:
- (c) fairness:
- (d) accountability:
- (e) efficiency: 35
- (f) effectiveness.

**140 Content of rules of dispute resolution scheme**

- (1) The rules of the dispute resolution scheme developed and approved under this subpart may provide for 1 or more of the following:
- (a) the appointment of a person to be responsible for the administration of the scheme (the **administrator**): 5
  - (b) who may apply for a dispute to be resolved using the scheme and how the application may be made:
  - (c) the jurisdiction of the scheme, including specifying the kinds of disputes that may not be resolved using the scheme:
  - (d) the circumstances in which the scheme may or must refuse to deal with a dispute or may or must stay or dismiss a proceeding relating to a dispute, including, for example, where the administrator considers that an application— 10
    - (i) is frivolous or vexatious; or
    - (ii) involves events that occurred more than a specified period before the application was made; or 15
    - (iii) involves a dispute that would be more appropriately dealt with by the courts (for example, because it involves difficult issues of law):
  - (e) the circumstances in which and the manner in which a dispute may or must be investigated under the scheme: 20
  - (f) the information that may be considered in relation to a dispute:
  - (g) how the dispute may or must be otherwise dealt with and considered under the scheme (which may, for example, include a tiered process for resolving disputes by mechanisms such as negotiation, conciliation, or mediation or by a decision made by an adjudicator or any other decision maker): 25
  - (h) the remedial action that can be imposed on a party to resolve a dispute, which may include, for example, an order to—
    - (i) comply with a requirement under the Act or the regulations: 30
    - (ii) remedy or avoid the breach or likely breach of a requirement under the Act or the regulations:
    - (iii) avoid any further breach of a requirement under the Act or the regulations:
    - (iv) compensate a party to the dispute: 35
    - (v) provide non-monetary redress for any loss or damage suffered by a party to the dispute or to take any other action to remedy the matter complained about:

- (vi) ~~in the case of a dispute relating to **Part 3**, pay or refund any levy, shortfall, penalty, or interest:~~
- (i) how remedial action may be enforced:
- (j) the functions, duties, and powers of persons who act on behalf of the scheme (for example, a mediator or an adjudicator): 5
- (k) the payment of costs incurred by a party in connection with a proceeding before the scheme:
- (l) the review of a decision made by an adjudicator or any other decision maker:
- (m) any other matters prescribed by regulations made under **section 148** for the purposes of this paragraph. 10
- (2) The rules must ensure that disputes are dealt with and considered under the scheme in a way that is—
- (a) consistent with the rules of natural justice; and
- (b) fair and reasonable in the circumstances. 15
- (3) The resolution of a dispute under the dispute resolution scheme is binding on all parties to the dispute only if—
- (a) the resolution is an order or another decision of an adjudicator or any other decision maker that is made under an adjudication or another determinative process; or 20
- (b) the resolution is produced by mediation or another process undertaken by or on behalf of the scheme whose outcome the parties to the dispute have agreed will be binding.
- (4) However, an order or another decision of an adjudicator or any other decision maker made under the dispute resolution scheme must not— 25
- (a) require a person to pay an amount exceeding \$15,000;
- (b) declare that a person is not liable to any other person for an amount exceeding \$15,000;
- (c) vest any property that exceeds \$15,000 in value in any person:
- (d) direct the transfer, assignment, or delivery of possession of any property that exceeds \$15,000 in value. 30
- (5) **Subsection (4)** does not apply in relation to a dispute relating to **Part 3**.

#### 141 Consultation

- (1) FENZ must, before applying for the approval of the dispute resolution scheme, consult the persons or representatives of the persons that ~~FENZ considers will be are likely to be~~ substantially affected by the approval of the scheme. 35
- (2) A failure to comply with **subsection (1)** does not affect the validity of the dispute resolution scheme.

**142 Approval and publication of dispute resolution scheme**

- (1) After developing a dispute resolution scheme in accordance with this subpart, FENZ must apply to the Minister for approval of the scheme.
- (2) Before approving a dispute resolution scheme, the Minister must be reasonably satisfied that— 5
- (a) FENZ has developed the scheme in accordance with this subpart; and
  - (b) the scheme is consistent with the principles set out in **section 139**.
- (3) The dispute resolution scheme comes into effect on the Minister's approval being notified in the *Gazette*.
- (4) FENZ must publish a copy of the rules of the approved dispute resolution scheme on an Internet site maintained by, or on behalf of, FENZ. 10
- (5) The rules of the approved dispute resolution scheme are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 15
- (6) The Minister may approve a variation to the rules of the approved dispute resolution scheme or the revocation and replacement of those rules (and **sections 138 to 141** and **subsections (1) to (5)** apply with all necessary modifications to a variation or replacement).

**143 Participation is voluntary** 20

- (1) ~~Except as provided in **subsection (2)**, no~~ No person is required to participate in the resolution of a dispute using the dispute resolution scheme.
- (2) ~~However, if a person agrees to participate in the resolution of a dispute using the dispute resolution scheme, the person must participate in accordance with the rules of the scheme.~~ 25
- (2) However,—
- (a) a person who appeals under **section 32, 58A, or 58D** against a requirement must participate in the resolution of the appeal using the scheme:
  - (b) a person who agrees to participate in the resolution of a dispute using the scheme must participate in accordance with the rules of the scheme: 30
  - (c) if FENZ is a party to a dispute described in **paragraph (a) or (b)**, FENZ must participate in accordance with the rules of the scheme.
- (3) This section is subject to **section 145**.

**144 Other proceedings** 35

- (1) Nothing in this subpart affects the right of any person to—
- (a) apply for judicial review;
  - (b) commence any other proceeding in any court or tribunal.

- (2) If a proceeding relating to any conduct is commenced in a court or tribunal, a proceeding before the dispute resolution scheme relating to the same conduct is stayed (unless the court or tribunal orders otherwise).

#### **145 District Court to enforce dispute resolution scheme**

- (1) The District Court may, on the application of a party to a dispute or the administrator, make an order— 5
- (a) requiring a party to comply with the rules of the dispute resolution scheme; or
  - (b) to give effect to any resolution that is binding under **section 140(3)**.
- (2) If an order of an adjudicator or any other decision maker made under the dispute resolution scheme requires a party to pay an amount to any person, that order may be enforced as if it were a judgment by the District Court for the payment of that amount to that person. 10
- (3) If the District Court is satisfied that the terms of the resolution of a dispute under the dispute resolution scheme are manifestly unreasonable, the court may modify the resolution before giving effect to it. 15
- (4) **Subsection (3)** overrides **subsections (1) and (2)** and **section 140(3)**.

#### **146 Appeals**

- (1) A person who is aggrieved by the decision made by an adjudicator or any other decision maker under the dispute resolution scheme may appeal to the District Court. 20
- (2) An appeal must be brought—
- (a) in accordance with the rules of court; and
  - (b) within—
    - (i) 20 working days after the date of the decision; or 25
    - (ii) any further time the court allows on application made before or after that period expires.

#### **147 ~~Disputes relating to Part 3~~**

- (1) ~~This section applies to a decision made by an adjudicator or any other decision maker under the dispute resolution scheme that —~~ 30
- (a) ~~relates to a dispute under **Part 3**; and~~
  - (b) ~~requires a party to pay an amount to FENZ exceeding \$200,000.~~
- (2) ~~If this section applies, the references to the District Court in **sections 145 and 146** must be treated as if they were references to the High Court.~~

## Subpart 6—Regulations

**148 General regulation-making power**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- Fees and charges* 5
- (a) prescribing fees and charges payable in respect of any matter under this Act or the manner in which fees and charges may be calculated:
- Dispute resolution scheme*
- (b) prescribing the kinds of disputes excluded from the dispute resolution scheme and other matters for the purposes of **section 140(1)(m)**: 10
- Offences and penalties*
- (c) creating offences in respect of the contravention of regulations made under this Act or the contravention of a provision of this Act and providing for the imposition of fines, which must not exceed—
- (i) \$15,000, in the case of an individual: 15
- (ii) \$30,000, in any other case:
- Infringement offences*
- (d) prescribing infringement offences for the purposes of this Act and regulations made under this Act:
- (e) setting the infringement fee payable for an infringement offence, which must not exceed— 20
- (i) \$1,000, in the case of an individual:
- (ii) \$5,000, in any other case:
- (f) setting different infringement fees for different infringement offences or in respect of different persons or individuals: 25
- (g) prescribing the form of infringement notices and infringement offence reminder notices:
- Definitions*
- (ga) prescribing other purposes for the purposes of the definition of fire as a land management tool in **section 6**: 30
- (h) prescribing types of barbecues, containers, or places a place or thing, or a type of place or thing, for the purposes of the definition of open fire fire in open air in **section 6** and the definition of in open air in **section 57**:
- (i) defining specifying a material or class of material as spontaneously combustible material for the purposes of **section 121**: 35

- Public notification*
- (j) prescribing requirements relating to the giving of public notice of any document or other matter:
- Forms*
- (k) prescribing the information that must be contained in forms for the purposes of this Act: 5
- General*
- (l) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this Act may apply— 10
- (a) generally throughout New Zealand or in particular areas of New Zealand only; and
- (b) generally over a range of circumstances or in particular circumstances only.
- 149 Regulations relating to operating processes for local advisory committees** 15
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for specifying requirements on, and operating processes for, local advisory committees, including 1 or more of the following:
- (a) notification of meetings:
- (b) notification of membership and changes in membership: 20
- (c) nomination and appointment of members:
- (d) meeting procedures:
- (e) development of specified policies:
- (f) processes for recording disagreements between members:
- (g) performance management of committees or individual members. 25
- 150 Regulations relating to fire plans**
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations relating to fire plans, including—
- (a) prescribing the content of fire plans; and
- (b) prescribing the consultation that FENZ must undertake in relation to the content of fire plans. 30
- 151 Regulations relating to permits for ~~lighting of open fires~~ fires in open air**
- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations relating to the grant of permits by FENZ to allow for ~~the lighting of open fires~~ the lighting of fires in open air that would otherwise be prohibited under **Part 2**. 35

- (2) Regulations made under **subsection (1)** may be made for 1 or more of the following purposes:
- (a) providing for the application for permits and for the grant, renewal, variation, cancellation, surrender, and expiry of permits:
  - (b) prescribing conditions that attach to every permit, or to every permit of a particular type: 5
  - (c) prescribing conditions or the type of conditions that FENZ may attach to a permit or to a type of permit:
  - (d) prescribing the circumstances in which permits or a type of permit may or may not be granted. 10
- (3) The Minister must not make any recommendation under **subsection (1)** unless the Minister has received a recommendation from FENZ.
- ~~(4) Different regulations may be made to apply in respect of different types of permits, permit holders, or circumstances.~~
- ~~(5) Regulations made under this section may apply generally throughout New Zealand or to a specified area or specified areas. 15~~
- (4) In addition to the matters referred to in **section 148(2)**, different regulations may be made under this section to apply in respect of different types of permits or permit holders.
- (6) Regulations made under this section must not permit FENZ to grant a permit for the purposes of— 20
- (a) **section 50**, unless FENZ considers that the permit is necessary to prevent, reduce, or overcome any hazard to life or because of any other serious emergency; or
  - (b) **section 54**, unless weather or other conditions have temporarily reduced the fire hazard so as to make it apparently safe to light a fire. 25
- (6A) A permit granted under regulations made under this section expires 5 years after the date on which the permit was issued (unless the permit or the regulations provide for the permit to expire sooner).
- (7) The grant of a permit under regulations made under this section does not— 30
- (a) relieve the permit holder from liability for any actionable damage sustained by any other person as a consequence of any act, matter, or thing done by the permit holder under the permit; or
  - (b) impose on FENZ any liability because of the grant of the permit.
- 152 Regulations relating to fire safety and evacuation procedures in relation to buildings 35**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations relating to 1 or more matters specified in **subsection (2)**.

- (a) ~~1 or more matters specified in **subsection (2)**; and~~  
 (b) ~~evacuation procedures for occupants of buildings.~~
- (2) Regulations under **subsection (1)** may be made prescribing duties in relation to specified types of buildings, relating to—
- (a) ~~the maintenance of escape routes in specified types of buildings in build-~~ 5  
~~ings (including the duty to keep escape routes free of flammable mater-~~  
~~ials):~~
- (b) having evacuation procedures in place:
- (c) the taking of fire prevention precautions for systems and appliances in 10  
 buildings:
- (d) controls on open flames in buildings:
- (e) the packing and unpacking of goods in flammable packaging materials 15  
 inside buildings:
- (f) the storage of spontaneously combustible materials inside and outside of 15  
 buildings:
- (g) the storage of goods in flammable packaging materials inside and out-  
 side of buildings.
- (3) A building owner commits an offence if the owner knowingly fails to maintain 20  
 a means of escape from fire in the building if the building is of a kind pre-  
 scribed for the purposes of this provision by regulations made under **subsec-**  
**tion (1)**.
- (4) A person who commits an offence under **subsection (3)** is liable on convic-  
 tion,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 6 25  
 months or to a fine not exceeding \$75,000, or both; or
- (b) in any other case, to a fine not exceeding \$150,000.

### 153 Regulations relating to evacuation schemes for relevant building

- (1) The Governor-General may, by Order in Council made on the recommendation 30  
 of the Minister, make regulations for 1 or more of the following purposes:
- (a) ~~prescribing, for the purposes of **section 65**, the minimum amounts of~~ 30  
~~hazardous substances stored or processed in a relevant building; specify-~~  
~~ing,—~~
- (i) for the purposes of **section 65**, the minimum amounts of hazard-  
ous substances that may be stored or processed in a relevant build- 35  
ing:
- (ii) for the purposes of **section 65**, 1 or more purposes that qualify a  
building as a relevant building:
- (b) prescribing, for the purposes of **sections 65 and 66**, the matters to be  
 included in an evacuation scheme:—

- (i) the matters to be included in an evacuation scheme:
  - (ii) requirements for evacuation schemes for any relevant building or class of relevant building:
  - (iii) the process for approval of evacuation schemes, including the notification requirements on FENZ if— 5
    - (A) **section 66(2)** applies; and
    - (B) FENZ decides that an evacuation scheme is not necessary:
  - (c) prescribing, for the purposes of **section 66**, the minimum standards required for automatic sprinkler systems;
  - (d) prescribing, for the purposes of **section 67A**, the process that FENZ must follow for revoking, or requiring the variation of, an approved evacuation scheme. 10
- (2) In this section, **relevant building** has the meaning given in **section 65**.

#### Subpart 7—General provisions

- 154 Status of FENZ under Reserves Act 1977** 15
- FENZ must be treated as if it were a local authority for the purposes of the Reserves Act 1977.
- Compare: 1975 No 42 s 4(7)
- 155 FENZ may acquire or take and hold land under the Public Works Act 1981** 20
- (1) FENZ may acquire or take and hold any land that is reasonably necessary for the purposes of any work that FENZ is empowered to undertake under this Act or for carrying out any of the purposes of this Act.
  - (2) For the purposes of **subsection (1)**, FENZ must be treated as if it were a local authority within the meaning of Part 2 of the Public Works Act 1981, and the provisions of that Act apply to the acquisition or taking and holding of land by FENZ accordingly. 25
  - (3) Any land, any particular estate or interest in land, or any easement over land acquired or taken and or held under **subsection (1)** vests in FENZ.
  - (4) In this section, **land** has the same meaning as in section 2 of the Public Works Act 1981. 30
- Compare: 1975 No 42 ss 4(7), 61

#### Subpart 8—Repeals, revocations, and consequential amendments

- 156 Repeals**
- The following Acts are repealed: 35
- (a) Fire Service Act 1975 (1975 No 42):

- (b) Forest and Rural Fires Act 1977 (1977 No 52).

### 157 Revocations

The following legislative instruments are revoked:

- (a) Fire Service Levy Order 1993 (SR 1993/330):
- (b) Fire Service Regulations 2003 (SR 2003/241): 5
- (c) Forest and Rural Fires Regulations 2005 (SR 2005/153):
- (d) Rural Fire Fighting Fund Regulations 1992 (SR 1992/300).

### 158 Consequential amendments

Amend the enactments specified in **Schedule 2** as set out in that schedule.

### 159 Amendments to Local Government Act 2002 10

**Sections 160 and 161** amend the Local Government Act 2002.

### 160 New section 152B inserted (Effect of Fire and Emergency New Zealand Act 2016 on bylaws)

After section 152A, insert:

#### **152B Effect of Fire and Emergency New Zealand Act 2016 on bylaws** 15

- (1) If a territorial authority is satisfied, after consultation with Fire and Emergency New Zealand, that it is appropriate to amend or revoke a relevant fire bylaw, the territorial authority may, despite anything in this Act, amend or revoke the bylaw by resolution publicly notified without being required to—
- (a) consult in accordance with section 82; or 20
- (b) use the special consultative procedure set out in section 83.
- (2) In **subsection (1)**, **relevant fire bylaw** means a bylaw that—
- (a) relates to the removal of fire hazards; or
- (b) declares prohibited or restricted fire seasons; or
- (c) prohibits or otherwise regulates or controls the lighting of fires in open air; or 25
- (d) relates to the prevention of the spread of fires involving vegetation.
- (3) If any bylaw made by a territorial authority is inconsistent with the Fire and Emergency New Zealand Act **2016** or any regulations or notice under that Act,— 30
- (a) the Act, regulations, or notice prevails and the bylaw has no effect to the extent of the inconsistency; and
- (b) the territorial authority must amend or revoke the bylaw to remove the inconsistency.

- 
- (4) The territorial authority may, despite anything in this Act, amend or revoke the bylaw to remove the inconsistency by resolution publicly notified, without being required to—
- (a) consult in accordance with section 82; or
  - (b) use the special consultative procedure set out in section 83.
- (5) A territorial authority must not make a bylaw that is inconsistent with the Fire and Emergency New Zealand Act 2016 or any regulations or notice under that Act.

5

**161 Sections 183 and 184 and cross-heading above section 183 repealed**

Repeal sections 183 and 184 and the cross-heading above section 183.

10

**Schedule 1**  
**Transitional, savings, and related provisions**

s 4

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## Part 1

### Provisions relating to this Act as enacted

#### Subpart 1—Organisation-related provisions

##### *Interpretation*

<b>1</b>	<b>Interpretation</b>	<b>5</b>
	In this Part, unless the context otherwise requires,—	
	<b>affected entity</b> means any of the following:	
	(a) a volunteer fire brigade:	
	(b) a volunteer fire police unit:	
	(c) a fire brigade auxiliary unit:	10
	(d) a voluntary rural fire force:	
	(e) a Fire Authority (as defined in section 2(1) of the Forest and Rural Fires Act 1977), other than—	
	(i) the Minister of Conservation; or	
	(ii) the Minister of Defence	15
	(f) <del>an industrial brigade</del>	

**affected rural fire authority** means—

- (a) a territorial authority acting in its capacity as a Fire Authority (within the meaning of section 2(1) of the Forest and Rural Fires Act 1977); and
- (b) a rural fire committee in which the administration of a rural fire district is vested under the Forest and Rural Fires Act 1977

5

**asset** means ~~property of any kind that is, or may be, used for performing or exercising FENZ's functions, duties, or powers~~ has the meaning given in **clause 39(2)**

**commencement date** means the date on which this clause comes into force

**fire brigade auxiliary unit** means a unit that has been authorised under section 35 of the Fire Service Act 1975

10

**Fire Service Commission** or **Commission** means the New Zealand Fire Service Commission constituted under section 4(1) of the Fire Service Act 1975

**fire service duties**—

- (a) means duties under the Forest and Rural Fires Act 1977; and
- (b) ~~includes any duties that are necessary for, or incidental to, the performance of the duties under **paragraph (a)**~~

15

**industrial-industry brigade** means an industrial fire brigade organised and maintained under section 36(1) of the Fire Service Act 1975

**liabilities** has the meaning given in **clause 39(2)**

20

**member of the Fire Service** has the same meaning as in section 2(1) of the Fire Service Act 1975

**response assets** means assets owned, leased, or licensed, by or on behalf of, an affected entity and needed to carry out FENZ's delivery of designated services

- (a) ~~means assets needed to carry out FENZ's objectives under **section 10** and FENZ's functions under **section 11 or 12**, as at the commencement date; and~~

25

(b) includes—

- (i) ~~assets owned, leased, or licensed by, or on behalf of, an affected rural fire authority; and~~
- (ii) ~~assets owned, leased, or licensed by, or on behalf of, a volunteer fire brigade; and~~
- (iii) ~~assets owned, leased, or licensed by, or on behalf of, a voluntary rural fire force; but~~

30

(e) does not include—

- (i) ~~assets owned, leased, or licensed by, or on behalf of, the Minister of Conservation; or~~

35

- (ii) ~~assets owned, leased, or licensed by, or on behalf of, the Minister of Defence; or~~
- (iii) ~~assets owned, leased, or licensed by, or on behalf of, FENZ; or~~
- (iv) ~~assets leased or licensed by, or on behalf of, an industrial brigade~~
- rural fire duties**— 5
- (a) means duties under the Forest and Rural Fires Act 1977; and
- (b) includes any duties that are necessary for, or incidental to, the performance of the duties under **paragraph (a)**
- territorial authority** has the same meaning as in section 5(1) of the Local Government Act 2002 10
- transferred employee**—
- (a) means a person who, immediately before the commencement date,—
- (i) is employed by ~~an 1 or more~~ affected rural fire authority or the Fire Service Commission; and
- (ii) is employed solely for rural fire service duties on a full-time or part-time basis; and 15
- (iii) is referred to in **clause 9** and is offered and accepts employment in FENZ; but
- (b) does not include—
- (i) an employee of the Department of Conservation, in relation to the functions of the Minister of Conservation as a Fire Authority under the Forest and Rural Fires Act 1977; or 20
- (ii) any defence personnel, in relation to the functions of the Minister of Defence as a Fire Authority under the Forest and Rural Fires Act 1977; or 25
- (iii) any member of a voluntary force (as defined in regulation 3(1) of the Forest and Rural Fires Regulations 2005) who is treated as an employee of the Fire Authority that established the force under regulation 37(1) of the Forest and Rural Fires Regulations 2005; or 30
- (iv) a person who is employed by an affected rural fire authority on a part-time basis to perform rural fire service duties, but who is also employed by any employer to carry out any other type of work
- transferred volunteer** means a person who, immediately before the commencement date, was— 35
- (a) a volunteer member of a volunteer fire brigade; or
- (b) a member of a volunteer fire police unit; or
- (c) a member of a fire brigade auxiliary unit; or

(d) a member of a voluntary rural fire force

**volunteer fire brigade** means a fire brigade established under section 34 of the Fire Service Act 1975

**volunteer fire police unit** means a unit established under section 33 of the Fire Service Act 1975.

5

*References to New Zealand Fire Service Commission*

**2 References to New Zealand Fire Service Commission in enactments and documents**

Every reference in any enactment (other than this Act), or in any document, to the New Zealand Fire Service Commission, the New Zealand Fire Service, or the National Rural Fire Authority must, unless the context otherwise requires, be taken to be a reference to FENZ.

10

Compare: 1975 No 42 s 4(5)

*Dissolution of rural fire committees*

**3 Dissolution of rural fire committees**

15

(1) Any rural fire committee that is constituted under section 8 of the Forest and Rural Fires Act 1977 and that is in existence immediately before the commencement of this clause is dissolved.

(2) Any rural fire committee referred to in this clause is treated as continuing in existence after the commencement of this clause for the sole purpose, and only so long as it is necessary for that purpose, of transferring assets, debts, engagements, and liabilities to FENZ.

20

(3) **Subclause (1)** is subject to **subclause (2)**.

**4 No compensation for loss of office**

(1) No compensation is payable by the Crown or any other person for loss of office as a member of a rural fire committee (as constituted under section 8 of the Forest and Rural Fires Act 1977) as a result of the dissolution of rural fire committees.

25

(2) If there is any inconsistency between this clause and any other enactment or rule of law, this clause prevails over that enactment or rule of law.

30

**5 Access to records by FENZ**

(1) FENZ may inspect and copy all relevant records and documentary information held by an affected rural fire authority, other than records that have been transferred, or copies of which have been given, to FENZ under **clause 6 or 7**.

(2) The inspection and copying of information under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

35

**6 Transfer of records**

- (1) All relevant records and documentary information, so far as they relate to the main and additional functions of FENZ, held by a rural fire committee immediately before the commencement of this clause must be transferred to FENZ.
- (2) The transfer of information under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 5

**7 Copies of records held by affected rural fire authorities**

- (1) A ~~local-territorial~~ authority that was an affected rural fire authority immediately before the commencement of this clause must give copies of all relevant records and documentary information in its possession to FENZ,— 10
- (a) to the extent that the records and information relate to the main and additional functions of FENZ; and
- (b) to the extent that is reasonably practicable after the commencement of this clause. 15
- (2) The giving of information under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

*Other consequences of continuation of FENZ***8 Consequences of continuation of FENZ** 20

- (1) On the commencement date,—
- (a) the functions, duties, and powers of an affected rural fire authority under any enactment vest in FENZ, except as specifically provided otherwise in this Act, but only to the extent that those functions, duties, and powers are consistent with the functions, duties, and powers of FENZ under this Act and any other enactment (subject to **subclause (3)**); and 25
- (b) all property belonging to an affected rural fire authority ~~vests in~~ may be transferred to, or used by, FENZ, subject to any ~~contrary transfer or use~~ arrangement that applies under **clause 16 or 17**; and
- (c) all money payable to or by an affected rural fire authority becomes payable to or by FENZ, subject to any contrary transfer or use arrangement that applies under **clause 16 or 17**; and 30
- (d) all rights, liabilities, contracts, entitlements, and engagements of an affected rural fire authority become the rights, liabilities, contracts, entitlements, and engagements of FENZ, subject to any contrary transfer or use arrangement that applies under **clause 16 or 17**; and 35
- (e) anything done, omitted to be done, or to be done by or in relation to an affected rural fire authority is to be treated as having been done, or having been omitted to be done, or having to be done by or in relation to

- FENZ, subject to any contrary transfer or use arrangement under **clause 16 or 17**; and
- (f) the commencement, continuation, or enforcement of proceedings by or against an affected rural fire authority may instead be commenced, continued, or enforced by or against FENZ without amendment to the proceedings; and 5
- (g) the completion of a matter or thing that would, but for this clause, have been completed by an affected rural fire authority may be completed by FENZ.
- (2) The dissolution of affected rural fire authorities or of rural fire committees does not, by itself, affect any decision made, or anything done or omitted to be done, by a committee in relation to the performance or exercise of its functions, duties, or powers under any enactment 10
- (3) Despite **subclause (1)(a)**, it is a function of FENZ to perform or exercise any functions, duties, or powers of an affected rural fire authority that are necessary or desirable for it to perform or exercise, on a temporary basis, for the purpose of effectively managing the transition of functions from an affected rural fire authority to FENZ. 15

*Transferred employees*

- 9 Transfer of employees** 20
- (1) A transferred employee is not entitled to receive any payment or other benefit on the ground that the position held by the transferred employee has ceased to exist if—
- (a) the position ceases to exist as a result of the transfer of functions to FENZ; and 25
- (b) in connection with that transfer of functions,—
- (i) the employee is offered equivalent employment in FENZ (whether or not the employee accepts the offer); or
- (ii) the employee is offered, and accepts, other employment in FENZ.
- (2) The employment of a transferred employee by FENZ does not constitute new employment for the purposes of the KiwiSaver Act 2006. 30
- (3) In **subclause (1)**, **equivalent employment** to the employee's employment in an affected rural fire authority is employment in FENZ that is—
- (a) in substantially the same position; and
- (b) in the same general locality; and 35
- (c) on terms and conditions of employment that are no less favourable to the employee than those that applied to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and

- (d) on terms that treat the period of service with an affected rural fire authority (and any other period of service recognised by an affected rural fire authority as continuous service) as if it were continuous service with FENZ.
- (4) This clause overrides Part 6A of the Employment Relations Act 2000. 5

*Volunteers*

**10 Transfer of volunteers**

A transferred volunteer is treated as a FENZ volunteer.

*Volunteer fire brigades*

**10A Agreements of service between volunteer fire brigades and New Zealand Fire Service Commission continued** 10

On and from the commencement date, all agreements of service under section 34 of the Fire Service Act 1975 between volunteer fire brigades and the Commission continue until—

- (a) those agreements expire in accordance with their terms; or 15
- (b) any new arrangements are agreed between the volunteer fire brigades and the Commission.

*Industry brigades*

**11 Agreements of service for coordination between industry industrial fire brigades and New Zealand Fire Service Commission continued** 20

On and from the commencement date, all agreements of service for coordination under section 36 of the Fire Service Act 1975 between industry owners or occupiers of industrial or commercial premises and the Commission, and arrangements for industrial fire brigades and with the Commission continue until— 25

- (a) those agreements expire, or those arrangements are ended, in accordance with their terms; or
- (b) those agreements are replaced under **section 60**.

*Industry fire brigades*

**12 Continuation of industry fire brigades** 30

- (1) Industry ~~fire~~ brigades are the same groups of persons as the industrial fire brigades ~~organised and maintained~~ registered with the Commission under section 36(7) of the Fire Service Act 1975.
- (2) Unless the context otherwise requires, every reference to an industrial fire brigade in any enactment, agreement, deed, instrument, application, notice, or 35

other document in force immediately before the commencement of this clause must, on and after that commencement, be read with all necessary modifications as a reference to an industry fire-brigade.

*Government Superannuation Fund*

- 13 Government Superannuation Fund** 5
- (1) This clause applies to a person who,—
- (a) immediately before the commencement of this clause, was—
- (i) a member of the Fire Service; and
- (ii) a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956; and 10
- (b) on and from the commencement of this clause, is an employee of FENZ.
- (2) For the purposes of the Government Superannuation Fund Act 1956, the person is treated as being employed in the Government service as long as the person continues to be an employee of FENZ. 15
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of FENZ were Government service.
- (4) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 20
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Commission is the controlling authority.
- Compare: 1975 No 42 s 54

*Gratuities*

- 14 Gratuities on retirement or death of transferred members of Fire Service** 25
- (1) Despite its repeal by **section 156(a)** of this Act, section 55 of the Fire Service Act 1975 continues to apply to any person who,—
- (a) immediately before the commencement of this clause, was a member of the Fire Service; and
- (b) on and from the commencement of this clause, is an employee of FENZ. 30
- (2) For the purposes of **subclause (1)**, in section 55 of the Fire Service Act 1975,—
- (a) a reference to a member of the Fire Service is to be read as a reference to an employee of FENZ:
- (b) a reference to the chief executive is to be read as a reference to FENZ: 35

- (c) a reference to service in the Fire Service includes service as an employee of FENZ.

Compare: 1975 No 42 s 55

### 15 Gratuities on retirement or death of transferred volunteers

- (1) Despite its repeal by **section 156(a)** of this Act, section 56 of the Fire Service Act 1975 continues to apply to any person who,— 5
- (a) immediately before the commencement of this clause, was a member of a volunteer fire brigade (other than a member of the Fire Service attached to a volunteer fire brigade under section 18(4) of the Fire Service Act 1975); and 10
- (b) on and from the commencement of this clause, is a FENZ volunteer.
- (2) For the purposes of **subclause (1)**, in section 56 of the Fire Service Act 1975,—
- (a) a reference to a member of a volunteer fire brigade is to be read as a reference to a FENZ volunteer: 15
- (b) a reference to the chief executive is to be read as a reference to FENZ:
- (c) a reference to service with the volunteer fire brigade includes service as a FENZ volunteer.

Compare: 1975 No 42 s 56

### Subpart 2—Response assets 20

### 16 Duties in relation to transfer or use arrangements for response assets

- (1) All parties, when negotiating transfer or use arrangements for ~~use of~~ response assets, must—
- (a) act collaboratively with each other and in good faith; and
- (b) take into account— 25
- (i) the preferences of the asset owners; and
- (ii) the principles specified in **subclause (2)**.
- (2) The principles are ~~as follows~~:—
- (a) transfer or use arrangements may vary from case to case, depending on legal, commercial, and financial circumstances; and 30
- (b) ~~firefighting response~~ assets acquired ~~significantly~~ substantially through fund-raising or community donations should be allowed to be retained by the community that ~~has the greatest need of, and interest in, made the greatest contribution towards the acquisition of~~ those assets.
- (3) Asset owners must engage with FENZ for the purposes of this subpart. 35

- (3A) An owner of response assets who is an affected entity is to transfer ownership or allow use of the response assets to FENZ in accordance with the relevant transfer or use arrangement entered into under this clause and **clause 17**.
- (3B) For the purposes of enabling FENZ to exercise due diligence in relation to the intended transfer or use of a response asset, a person who is in possession of a response asset is to give FENZ access to the asset— 5
- (a) without any restriction; and
- (b) as soon as is reasonably practicable after the person receives a request for access from FENZ.
- (3C) FENZ is responsible for any liabilities transferred to FENZ only to the extent as agreed under a transfer arrangement entered into under this clause. 10
- (4) All parties must endeavour to complete transfer or use arrangements by the close of **30 June 2017**.
- (5) Any party negotiating transfer or use arrangements of response assets may decide that a transfer or use arrangement cannot be reached, in which case, 1 or more response assets may not be transferred to, or used by, FENZ. 15
- (6) **Subclause (5)** is subject to **subclause (1)**.
- 17 ~~Transfer arrangements for use~~ Use of response assets**
- (1) ~~On and after the day after the date on which this Act receives the Royal assent, On and from the commencement of this clause,~~ a person who is in possession of a response asset ~~transferred in accordance with **clause 16** must is~~ give to FENZ access to the response asset for the purposes of FENZ carrying out its main functions and additional functions. 20
- (2) The access to the response asset ~~must is~~ to be given to FENZ under a use arrangement— 25
- (a) ~~without any restriction; and~~
- (b) ~~as soon as is reasonably practicable after the person receives a request from FENZ; and~~
- (c) on terms and conditions negotiated in good faith with FENZ in accordance with this subpart; and 30
- (d) subject to the other provisions of this Act.
- (3) ~~Owners of response assets who are an affected entity must transfer ownership of the assets to FENZ in accordance with the relevant transfer arrangement entered into under **clause 16**.~~
- (4) ~~FENZ is responsible for any liabilities transferred to it under a transfer arrangement entered into under **clause 16**.~~ 35

**18 Transfer and use arrangements not affected by any other enactment or agreement with third party**

Transfer or use arrangements for response assets entered into in accordance with this subpart are not affected by, and may proceed irrespective of, any requirements for additional consents under—

5

- (a) any other enactment; or
- (b) any agreement with a third party.

**19 Certain matters not affected by transfer or use arrangements under this Part**

(1) This clause applies to the transfer or use arrangements for response assets made and any related action taken under this Part.

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(2) Any action to which this clause applies—

- (a) is not to be treated as—
  - (i) placing a person in breach of, or in default under, any contract, or in breach of trust, or in breach of confidence; or

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- (ii) otherwise making the person guilty of a civil wrong; and

(b) is not to be treated as entitling a person to—

- (i) terminate or cancel or modify a contract, an agreement, or an arrangement; or
- (ii) enforce or accelerate the performance of an obligation; or
- (iii) require the performance of an obligation not otherwise arising for performance; and

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(c) does not release any surety ~~wholly~~ in whole or in part from all or any obligation; and

(d) does not invalidate or discharge any contract or security.

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*Regulations*

**20 Regulations for giving effect to transfer or use arrangements**

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to give effect to any transfer or use arrangements for response assets, subject to any conditions stated in the regulations.

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(2) The Minister must not recommend the making of regulations under this clause unless the Minister is satisfied that the regulations are necessary or desirable—

(a) ~~are necessary or desirable to enable the transfer of response assets to FENZ; and~~

- (i) the transfer of response assets to FENZ; or

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- (ii) the use of response assets by FENZ; and

- (b) ~~are necessary or desirable~~ for the orderly implementation of this Act.

## 21 Regulations for enabling FENZ

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) enabling FENZ to inquire into, assess, accept, or decline legal and financial liabilities and obligations under any contract entered into by any of the affected entities before the commencement date; and 5
  - (b) prescribing principles that FENZ must take into account in assessing whether to accept or decline legal and financial liabilities and obligations that relate to the provision of fire and other emergency services; and 10
  - (c) subject to any conditions stated in the regulations.
- (2) The Minister must not recommend the making of regulations under this clause unless the Minister is satisfied that the regulations—
- (a) are necessary or desirable to enable FENZ to access, accept, or decline responsibilities for liabilities and obligations that relate to the provision of fire and other emergency services; and 15
  - (b) are necessary or desirable for the orderly implementation of this Act.

### Subpart 3—Levy for 2017/18 year

## 22 Levy for 2017/18 financial year

- This subpart— 20
- (a) provides for a levy to fund a portion of FENZ's costs in the 2017/2018 financial year:
  - (b) applies only in relation to the 2017/18 financial year.

## 23 Interpretation in this subpart

- (1) In this subpart, unless the context otherwise requires,— 25
- 2017/18 financial year** means the period beginning on 1 July 2017 and ending on 30 June 2018
- personal property** has the meaning given in section 2(1) of the Earthquake Commission Act 1993
- residential building** has the meaning given in section 2(1) of the Earthquake Commission Act 1993. 30
- (2) In this subpart, unless the context otherwise requires,—
- (a) any word or expression used in this subpart but not defined in this subpart has the meaning set out in section 2 or 47B of the Fire Service Act 1975; and 35

- (b) any word or expression used in this subpart but not defined in this subpart or in section 2 or 47B of the Fire Service Act 1975 has the meaning (if any) given to it in **section 6** of this Act.
- 24 Levy for 2017/18 financial year payable in respect of property insured against fire** 5
- Every insurance company with which any property is insured against fire under any contract of fire insurance made in New Zealand must pay a levy to FENZ in accordance with this subpart.
- 25 Certain provisions of Fire Service Act 1975 continue to apply for 2017/18 financial year** 10
- (1) For the purpose of the levy for the 2017/18 financial year, the following provisions of the Fire Service Act 1975 continue to apply, despite their repeal by **section 156(a)** of this Act, subject to the modifications set out in **subclause (2)**:
- (a) section 47B: 15
- (b) section 48(6) to (13), but not section 48(6)(a) and (b):
- (c) sections 49 to 51A:
- (d) section 51C:
- (e) sections 53 and 53A:
- (f) Schedule 3. 20
- (2) The modifications are that, in the provisions specified in **subclause (1)**,—
- (a) every reference to the Commission must be treated as if it were a reference to FENZ:
- (b) every reference to regulations must be treated as if it were a reference to regulations made under **clause 26**: 25
- (c) every reference to a prescribed form must be treated as if it were a reference to a form prescribed by regulations made under **clause 26**:
- (d) a reference to subsection (2)(b) of section 48 of the Fire Service Act 1975 must be treated as if it were a reference to **clause 26(1)(b)**.
- 26 Regulations relating to levy for 2017/18 financial year** 30
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—
- (a) prescribe the rate of the levy that must be computed at a uniform rate per annum on every motor vehicle that is insured in terms of any contract of fire insurance, whether or not the contract specifies the sum insured; and 35
- (b) prescribe the rate or rates of the levy that must be computed on all other property on—

- (i) the amount for which the property is insured for the period of the contract of fire insurance; and
- (ii) the period of the contract of fire insurance.
- (2) Regulations made under **subclause (1)** may also—
- (a) prescribe a different rate for each of the following: 5
- (i) residential buildings:
- (ii) personal property:
- (iii) any other property:
- (b) prescribe a maximum amount of levy payable for each of the following: 10
- (i) a residential building:
- (ii) personal property:
- (c) fix amounts for the purpose of determining the amount for which residential property and personal property is insured for a contract of fire insurance in accordance with **clause 27**:
- (d) prescribe a maximum amount of levy payable for a residential building: 15
- (e) provide for and regulate the collection, receipt, and payment of money under this subpart:
- (f) require insurance companies to make returns and keep books and accounts for the purposes of this subpart:
- (g) prescribe the form of any return, certificate, or statutory declaration 20  
under sections 49, 49A, 49B, 50, and 51A of the Fire Service Act 1975:
- (h) provide for any other matter that could have been provided for in relation to the levy under the Fire Service Act 1975 immediately before the repeal of that Act by **section 156(a)**.
- (3) If the period of the contract referred to in **subclause (1)(b)(ii)** is any period 25  
other than a complete year, the levy must be calculated as a pro rata proportion of the levy for a complete year.
- 27 Amounts for which residential buildings and personal property are insured**
- (1) For the purposes of this subpart, the amount for which a residential property is 30  
insured for a contract of fire insurance is the amount for which that building is insured as determined in accordance with section 18 of the Earthquake Commission Act 1993, subject to the following modifications:
- (a) in subsection (1)(c) of that section, the amount by which the number of dwellings in the building must be multiplied is the amount fixed by regulations made under **clause 26**: 35

- (b) in subsection (2) of that section, the amount by which the area in square metres of the residential building must be multiplied is the amount fixed by regulations made under **clause 26**.
- (2) For the purposes of this subpart, the amount for which any personal property is insured for a contract of fire insurance is the amount for which that property is insured as determined in accordance with section 20 of the Earthquake Commission Act 1993, subject to the modification in **subclause (3)**. 5
- (3) The modification referred to in **subclause (2)** is that the amount provided for in paragraph (b) of that section (whether \$20,000 or any other amount that is fixed for the purposes of that section by regulations made under that Act) is the amount fixed by regulations made under **clause 26**. 10
- 28 Review relating to levy for 2017/18 financial year**
- (1) The Minister must, before the commencement of the 2017/18 financial year, estimate the amount of FENZ's net costs for the 2017/18 financial year.
- (2) For the purposes of **subclause (1)**, FENZ's net costs for the 2017/18 financial year are— 15
- (a) its estimated direct and indirect costs of performing functions and duties and exercising powers under this Act or any other enactment that will arise in the 2017/18 financial year; less
- (b) any estimated income that FENZ will receive in the 2017/18 financial year from any source other than the levy. 20
- (3) The Minister must then determine the portion of FENZ's net costs for the 2017/18 financial year that must be met by levy.
- (4) The Minister must then recommend the making of regulations under **clause 26** to recover, in the 2017/18 financial year, the portion of FENZ's net costs for the 2017/18 financial year that the Minister has determined are to be met by levies. 25
- 29 Consultation relating to levy for 2017/18 financial year**
- (1) The Minister must be reasonably satisfied that **subclauses (2) to (4)** have been complied with before the Minister makes a recommendation under **clause 26(1)**. 30
- (2) FENZ must consult the persons that FENZ considers are likely to be substantially affected, or their representatives, about—
- (a) the proposed regulations; and
- (b) the activities that FENZ proposes to undertake in the 2017/18 financial year to which the proposed regulations relate. 35
- (3) FENZ must publish a notice that—
- (a) describes the activities that FENZ proposes to undertake in the 2017/18 financial year; and

- (b) sets out the estimate of FENZ’s net costs and the proposed rates of levy; and
- (c) sets out the methods and any assumptions leading to the estimate and to the proposed rates of levy; and
- (d) invites written comments, to be provided to FENZ in the manner and by the date specified in the notice, on—
- (i) the activities that FENZ proposes to undertake in the 2017/18 financial year; and
  - (ii) the rates of levy.
- (4) FENZ must consider any comments received under **subclause (3)**. 10
- (5) Regulations made under **clause 26** are not invalid on the grounds that—
- (a) **subclauses (2) to (4)** of this clause were not complied with before the Minister recommended the making of the regulations; or
  - (b) the consultation carried out was about a specific rate or specific rates of levy that differ from the rate or rates set in the regulations. 15
- 30 Pre-commencement review and consultation**
- Clauses 28 and 29** are satisfied in relation to regulations made under **clause 26** if action of the kind described in those provisions was taken before their commencement to facilitate the making of the regulations.
- 31 Confidentiality of information and documents** 20
- Section 88(2) and (3)** applies to—
- (a) information and documents provided to FENZ under this subpart:
  - (b) information derived from information and documents referred to in **paragraph (a)**.
- Subpart 4—Miscellaneous provisions 25
- Code of practice for firefighting water supplies*
- 31A Previously approved code of practice for firefighting water supplies saved**
- The provisions of the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 continue to apply until the Minister approves a code of practice for firefighting water supplies under **section 62**. 30
- Evacuation schemes*
- 32 Transitional provisions relating to applications for approval of evacuation scheme for relevant building**
- (1) This clause applies to an application for approval of an evacuation scheme for a relevant building— 35

- (a) that was made under section 21C of the Fire Service Act 1975; and
- (b) that has not been granted, rejected, or withdrawn before the commencement of this clause.
- (2) On and from the commencement of this clause, the application must be dealt with as if it were an application for approval of an evacuation scheme for a relevant building to be made under **section 67**. 5

### 33 Previously approved evacuation schemes

An evacuation scheme is to be treated as having been approved under **section 67** if—

- (a) it was approved under section 21C of the Fire Service Act 1975; and 10
- (b) the approval was given before the commencement of **sections 65 to 68** of this Act.

Compare: 1975 No 42 s 21I

### 34 Certain provisions saved

Sections 21A to 21I of the Fire Service Act 1975 (which relate to evacuation schemes) continue to apply, despite their repeal by **section 156(a)** of this Act, until the commencement of **sections 65 to 68** of this Act. 15

#### *Permits for lighting of open fires*

### 34A Previously approved permits for lighting of open fire

A permit for lighting of open fire is to be treated as having been approved under regulations made under **section 151** if— 20

- (a) the permit was granted under the Forest and Rural Fires Act 1977; and
- (b) the permit is still in force on the commencement of this clause; and
- (c) FENZ has not revoked that permit.

#### *Fire plans* 25

### 34B Previously prepared and issued fire plans saved

A fire plan issued under the Forest and Rural Fires Act 1977, and in effect on the commencement of this clause, continues to apply in relation to any area until FENZ prepares and issues a fire plan for that area under **section 21A**.

#### *Removal of fire hazards* 30

### 34C Requirement to remove fire hazards

Despite their repeal by **section 161**, sections 183 and 184 of the Local Government Act 2002 (which relate to the removal of fire hazards) continue to apply to—

- (a) any notice that was given under section 183(1), or any request that was made under section 183(2), of that Act before 1 July 2018; and
- (b) any right, obligation, or other matter relating to such a notice or request.

### *Bylaws*

- 34D Bylaws to prevent the spread of fires involving vegetation** 5
- (1) This clause applies to any bylaw that—
- (a) was made or had effect under section 146(c) of the Local Government Act 2002; and
  - (b) was in force immediately before **Schedule 2** comes into force.
- (2) Despite the repeal by **Schedule 2** of sections 146(c) and 153(1)(e) of the Local Government Act 2002,— 10
- (a) every bylaw to which this clause applies continues in force as if section 146(c) had not been repealed; and
  - (b) whilst such a bylaw is in force, section 153(1)(e) of the Local Government Act 2002 continues to apply to the bylaw as if section 153(1)(e) had not been repealed. 15

### *Levy relief in 2018/19 to 2024/2025 financial years*

- 35 Interpretation in clauses 36 to 39**
- In **clauses 36 to 39**, words or expressions have the meanings given in **Part 3** of this Act. 20
- 36 Levy relief in 2018/19 to 2024/2025 financial years**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations specifying—
- (a) the circumstances in which FENZ may grant, to a policyholder, an exemption (in whole or in part) from the levy; and 25
  - (b) the policyholders or classes of policyholder to whom FENZ may grant an exemption; and
  - (c) the conditions that FENZ may impose in relation to exemptions.
- (2) FENZ may grant exemptions under the regulations in relation to the whole or part of the period commencing on 1 July 2018 and ending with the close of 30 June 2025. 30
- 37 Minister's recommendation under clause 36**
- (1) The Minister may recommend the making of regulations under **clause 36** only if the Minister is satisfied that the ability to grant exemptions is necessary or desirable to ensure that the specified policyholders are not subject to an unreasonable burden because of any increase in the amount of levy payable by 35

- the policyholders as a consequence of the commencement of **Part 3** (and the calculation of the levy amount on the amount insured or the declared value of property rather than on the basis set out in section 48 of the Fire Service Act 1975).
- (2) Before recommending the making of regulations under **clause 36**, the Minister must be satisfied that FENZ has— 5
- (a) consulted the persons that FENZ considers are likely to be substantially affected, or their representatives, about the proposed regulations; and
  - (b) published a notice that describes the proposed regulations and invites written comments on the proposed regulations; and 10
  - (c) considered any comments received under **paragraph (b)**.
- (3) Regulations made under **clause 36** are not invalid on the grounds that **sub-clause (2)** of this clause was not complied with before the Minister recommended the making of the regulations.
- 38 FENZ’s consideration of exemption** 15
- FENZ may, in considering whether to grant an exemption to a policyholder under regulations made under **clause 36**, have regard to—
- (a) any increase in the amount of levy payable by the policyholder as a consequence of the commencement of **Part 3** (and the calculation of the levy amount on the amount insured or the declared value of property rather than on the basis set out in section 48 of the Fire Service Act 1975); and 20
  - (b) whether paying the increased amount would place an unreasonable burden on the policyholder.
- Taxation* 25
- 39 Application**
- (1) This clause and **clauses 40 to 44** apply for the purposes of the Inland Revenue Acts when, in relation to a transfer under this Act, an asset of an entity (the **transferring entity**), whether a terminating or continuing entity, becomes the asset of FENZ. 30
- (2) In this clause and **clauses 40 to 44**,—
- ~~asset has the meaning given in **clause 1**, and includes any debts, engagements, and liabilities associated with the asset~~ means all assets of any kind, whether in the form of real or personal property, money, shares, securities, rights, or interests 35
- date of transfer** means the date on which an asset of a transferring entity becomes the asset of FENZ

- Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994
- liabilities** includes debts, charges, duties, contracts, or other obligations whether present, future, actual, contingent, payable, or to be observed or performed in New Zealand or elsewhere 5
- transfer** means a method of conveying an asset under this Act so that an asset that the transferring entity has before the date on which the conveyance takes place becomes the asset of FENZ on and after that date.
- (3) In **clauses 40 to 44**, terms defined in the Inland Revenue Acts have the meanings given by those Acts. 10
- 40 General treatment**
- (1) The transferring entity and FENZ are treated on and after the date of transfer as if they were the same person.
- (2) In relation to the transfer of an asset, a thing done by the transferring entity before the date of transfer is treated as if it had been done by FENZ on the date on which it was done by the transferring entity. 15
- 41 Income and expenditure**
- An amount of income derived or expenditure incurred by a transferring entity before the date of transfer does not become income or expenditure of FENZ merely because an asset of a transferring entity has become the asset of FENZ. 20
- 41A Valuation of assets**
- (1) If the income derived from an asset that is a financial arrangement, trading stock, or revenue account property is not exempt income of a transferring entity and is exempt income of a receiving entity, the transferring entity is treated as having disposed of the asset on the date of transfer at its market value on that date. 25
- (2) If the income derived from an asset that is an item of depreciable property is not exempt income of a transferring entity and is exempt income of a receiving entity, the transferring entity is treated as having disposed of the property on the date of transfer at its adjusted tax value on that date. 30
- 42 Charitable status**
- When a transferring entity is deregistered as a charitable entity under the Charities Act 2005 as a consequence of changes made under this Act, sections CV 17 and HR 12 of the Income Tax Act 2007 do not apply in relation to the transferring entity. 35

**43 Association**

A person is not associated with another person for the purposes of sections CB 6 to CB 15 of the Income Tax Act 2007 merely through the application of **clauses 39 to 42**.

**44 Goods and services tax**

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- (1) When an asset of a transferring entity becomes the asset of FENZ, the transfer is treated as ~~a taxable supply that is charged with goods and services tax at the rate of 0% of a going concern under section 11(1)(m) of the Goods and Services Tax Act 1985.~~
- (2) Subject to **subclause (1)**, for the purposes of calculating the amount of tax payable, or input tax deductible, on the transfer of an asset described in **subclause (1)**, the transferring entity and FENZ are treated on and after the date of transfer as if they were the same person. 10

## Schedule 2

### Consequential amendments

s 158

#### Part 1

#### Amendments to Acts

5

**Biosecurity Act 1993 (1993 No 95)**

Replace section 87(1)(d) to (f) with:

(d) Fire and Emergency New Zealand:

Replace section 98(1)(d) to (f) with:

(d) Fire and Emergency New Zealand:

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**Building Act 2004 (2004 No 72)**

In section 11(c), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 35(1)(e), replace “section 21A of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

15

In the heading to section 46, replace “**New Zealand Fire Service Commission**” with “**Fire and Emergency New Zealand**”.

In section 46(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In the heading to section 47, replace “**New Zealand Fire Service Commission**” with “**Fire and Emergency New Zealand**”.

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In section 47(1) and (2), replace “The New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 47(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

25

In section 48(3)(a), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 121(2)(a), replace “members of the New Zealand Fire Service” with “employees, volunteers, and contractors of Fire and Emergency New Zealand”.

In section 121(2)(a), replace “Fire Service National Commander” with “board of Fire and Emergency New Zealand”.

30

In section 170(a), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 212(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

35

**Building Act 2004 (2004 No 72)—continued**

In section 238(1)(b), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

**Civil Defence Emergency Management Act 2002 (2002 No 33)**

In section 4, definition of **emergency services**, replace “New Zealand Fire Service, National Rural Fire Authority, rural fire authorities” with “Fire and Emergency New Zealand”.

Replace section 17(3)(c) and (d) with:

(c) **Fire and Emergency New Zealand Act 2016:**

Replace section 20(1)(c) with:

(c) a senior employee, volunteer, or contractor of Fire and Emergency New Zealand who is assigned for the purpose by the board of Fire and Emergency New Zealand; and

**Crown Entities Act 2004 (2004 No 115)**

In Schedule 1, Part 1, repeal the item relating to the New Zealand Fire Service Commission.

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Name	Exemption from acquisition of financial products, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Fire and Emergency New Zealand					✓

**Electricity Act 1992 (1992 No 122)**

In section 2, repeal the definition of **fire brigade**.

In section 17(1), replace “a member of a fire brigade” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand carrying out designated emergency services”.

After section 17(3), insert:

(4) In subsection (1), **designated emergency services** has the same meaning as in **section 6 of the Fire and Emergency New Zealand Act 2016**.

**Employment Relations Act 2000 (2000 No 24)**

Repeal section 137(1)(a)(ix).

In Schedule 1, Part A, replace clause 6 with:

6 The delivery of designated emergency services (within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**) by employees of Fire and Emergency New Zealand.

**Gas Act 1992 (1992 No 124)**

In section 2, repeal the definition of **fire brigade**.

In section 18(1), replace “a member of a fire brigade” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand carrying out designated emergency services”.

5

After section 18(3), insert:

- (4) In subsection (1), **designated emergency services** has the same meaning as in **section 6 of the Fire and Emergency New Zealand Act 2016**.

**Goods and Services Tax Act 1985 (1985 No 141)**

In section 5(6AB), replace “the New Zealand Fire Service Commission under section 48 of the Fire Service Act 1975” with “Fire and Emergency New Zealand under **sub-part 2 of Part 3 of the Fire and Emergency New Zealand Act 2016**”.

10

In section 5(6AB), replace “penalty surcharge” with “shortfall penalty (within the meaning of that Act)”.

In section 5(6AB), replace “insured person” with “levy payer or policyholder”.

15

In section 26(1A)(a), after “1975”, insert “or to Fire and Emergency New Zealand pursuant to the **Fire and Emergency New Zealand Act 2016**”.

**Hazardous Substances and New Organisms Act 1996 (1996 No 30)**

In section 46(1)(c), replace “section 2 of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”.

20

Replace section 82A(5)(ba) with:

- (ba) the board of Fire and Emergency New Zealand:

In section 109(1)(m), replace “fire services officer” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

In section 135, definition of **enforcement officer**, replace “Chief Fire Officer or person exercising the powers of a Chief Fire Officer under section 28 or section 28A or section 29 of the Fire Service Act 1975” with “any employee, volunteer, or contractor of Fire and Emergency New Zealand exercising powers under the **Fire and Emergency New Zealand Act 2016**”.

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In section 136(1)(b)(ii), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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In section 136(4)(c), replace “a Chief Fire Officer” with “Fire and Emergency New Zealand”.

In section 136(4)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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**Health Act 1956 (1956 No 65)**

In section 69T(a), replace “the New Zealand Fire Service” with “Fire and Emergency New Zealand”.

Replace section 69ZZR(4)(a) to (c) with:

- (a) that person is an employee, volunteer, or contractor of Fire and Emergency New Zealand and is carrying out an operational activity; or 5

**Health and Safety at Work Act 2015 (2015 No 70)**

In section 16, repeal the definition of **New Zealand Fire Service**.

In section 16, definition of **regulatory agency**, paragraph (h), replace “the New Zealand Fire Service” with “Fire and Emergency New Zealand”. 10

Replace ~~In section 92(4)(b), definition of **emergency services worker**, replace paragraph (b) with:~~

- (b) designated ~~emergency~~ services (as defined in **section 6 of the Fire and Emergency New Zealand Act 2016**)

**Inquiries Act 2013 (2013 No 60)** 15

In Schedule 1, repeal the item relating to the Fire Service Act 1975.

In Schedule 1, repeal the item relating to the Forest and Rural Fires Act 1977.

**Land Transport Act 1998 (1998 No 110)**

In section 2(1), replace the definition of **fire brigade** with:

- fire brigade** includes— 20
- (a) a defence fire brigade and an industry fire-brigade (as those terms are defined in **section 6 of the Fire and Emergency New Zealand Act 2016**); and
- (b) employed firefighters or other members of a defence fire brigade or an industry fire-brigade; and 25
- (c) employees, volunteers, and contractors of Fire and Emergency New Zealand who are operational personnel delivering designated ~~emergency~~ services (as those terms are defined in **section 6 of the Fire and Emergency New Zealand Act 2016**)

Replace section 30O(4)(b) with: 30

- (b) Fire and Emergency New Zealand; or

In section 30ZC(5), replace “, a fire brigade, or a rural fire party” with “or a fire brigade”.

**Land Transport Management Act 2003 (2003 No 118)**

Replace section 52(6)(c) with: 35

**Land Transport Management Act 2003 (2003 No 118)—continued**

- (c) as a vehicle for the delivery of designated emergency services (as defined in **section 6 of the Fire and Emergency New Zealand Act 2016**) by an employee, volunteer, or contractor of Fire and Emergency New Zealand.

**Local Authorities (Members' Interests) Act 1968 (1968 No 147)**

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Repeal section 6(6)(i), (j) and (k).

**Local Government Act 1974 (1974 No 66)**

In section 647(1), replace “, or, in any part of the district that is included in a fire district under section 26 of the Fire Service Act 1975, as the New Zealand Fire Service Commission approves” with “with the approval of Fire and Emergency New Zealand”.

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In section 647(3), replace “or, in the case of hydrants fixed in any part of the district that is included in a fire district of the New Zealand Fire Service Commission, as that Commission approves” with “with the approval of Fire and Emergency New Zealand”.

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In section 647(4), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 647(4), delete “, in the case of a hydrant fixed in any part of the district that is included in a fire district of that Commission, or, in any other case, approved by the council.”.

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In section 647(6), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

**Local Government Act 2002 (2002 No 84)**

In section 146(e), replace “sections 20 to 22 of the Forest and Rural Fires Act 1977” with “**sections 53 to 55 of the Fire and Emergency New Zealand Act 2016**”.

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Repeal section 146(c).

Repeal section 153(1)(e).

Replace section 183(1)(b) and (c) with:

- (b) a person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**

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Replace section 183(7) with:

- (7) The powers in this section are in addition to any powers that a territorial authority has under any other enactment.

Replace section 229(a)(ii) with:

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- (ii) an employee, volunteer, or contractor of Fire and Emergency New Zealand; or

**Local Government Act 2002 (2002 No 84)—continued**

Repeal section 229(a)(ii).

**Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)**

In section 63, definition of **emergency activity**, paragraph (c)(v), replace “section 2(1) of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”.

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**Ombudsmen Act 1975 (1975 No 9)**

In Schedule 1, Part 2, repeal the item relating to the New Zealand Fire Service Commission.

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Fire and Emergency New Zealand

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In Schedule 1, Part 3, repeal the item relating to fire boards.

**Radiation Safety Act 2016 (2016 No 6)**

Replace section 34(2)(c) with:

(c) a person approved by the board of Fire and Emergency New Zealand; or

In section 53, definition of **enforcement officer**, replace paragraph (b) with:

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(b) any constable, or an employee, volunteer, or contractor of Fire and Emergency New Zealand exercising functions under the **Fire and Emergency New Zealand Act 2016** or regulations made under that Act; or

In section 54(1)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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In section 54(2)(a), replace “fire officer” with “employee, volunteer, or contractor of Fire and Emergency New Zealand who is”.

In section 55(1)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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In section 55(2)(a), replace “fire officer” with “employee, volunteer, or contractor of Fire and Emergency New Zealand who is”.

In section 55(5)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

In section 57(6), replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”.

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**Resource Management Act 1991 (1991 No 69)**

In section 14(3)(e), replace “firefighting purposes” with “emergency or training purposes in accordance with **section 45 of the Fire and Emergency New Zealand Act 2016**”.

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**Sale and Supply of Alcohol Act 2012 (2012 No 120)**

In section 5, repeal the definition of **fire service**.

In section 10(1)(d), replace “the New Zealand Fire Service Commission constituted by section 4(1) of the Fire Service Act 1975” with “Fire and Emergency New Zealand”.

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In section 10(3)(d), replace “the New Zealand Fire Service Commission constituted by section 4(1) of the Fire Service Act 1975, means the chief executive appointed under section 17A or section 17I(3) of that Act” with “the board of Fire and Emergency New Zealand, means that board”.

In section 100(d)(i), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

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In section 127(2)(e)(i), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

In section 152(1)(b), replace “a member of the fire service” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

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In section 204(2)(a), replace “a member of the fire service” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

In section 286(1), replace “any member of the fire service authorised to enter buildings under section 21F or 29 of the Fire Service Act 1975” with “any person appointed as a FENZ inspector under **section 128 of the Fire and Emergency New Zealand Act 2016**”.

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In section 286(2), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

**Search and Surveillance Act 2012 (2012 No 24)**

In the Schedule, insert in its appropriate alphabetical order:

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<b>Fire and Emergency New Zealand Act 2016</b>	<b>132(1)</b>	FENZ inspector may enter and inspect land and buildings for the purposes specified in section 132(2) of the <b>Fire and Emergency New Zealand Act 2016</b>	All (except subpart 3 and sections 118 and 119)
	<b>133(1)</b>	FENZ inspector may enter homes and marae with the consent of an occupier or pursuant to a warrant	All (except sections 118 and 119)
	<b>134(2)</b>	FENZ inspector who has entered land or a building may seize, destroy, suppress, or take a sample of a material, substance, structure, or thing that the inspector reasonably believes is likely to imminently cause a fire or <del>other</del> an emergency	All (except subpart 3 and sections 118 and 119)
	<b>135(1)</b>	FENZ inspector who has entered land or a building may, if the	All (except subpart 3 and sections 118 and 119)

**Search and Surveillance Act 2012 (2012 No 24)—continued**

	inspector believes on reasonable grounds that it is necessary, take or remove a sample of any material, substance, or thing for analysis, or seize and retain any material, substance, or thing, for the purpose of assessing compliance with the requirements <del>imposed on owners and occupants</del> under fire safety legislation	
<b>136(1)</b>	FENZ may authorise a specified person to enter and search any land, building, vehicle, or other thing, with consent or pursuant to a warrant, if FENZ is satisfied that there are reasonable grounds to believe an offence has been committed under fire safety legislation and that the search will find evidential material	All (except sections 118 and 119)

**Sentencing Act 2002 (2002 No 9)**

Replace section 9(4A)(b) with:

- (b) services provided by or on behalf of Fire and Emergency New Zealand to save life, prevent serious injury, or avoid damage to property.

**Summary Proceedings Act 1957 (1957 No 87)**

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In section 2(1), definition of **infringement notice**, after paragraph (jb), insert:

- (jc) **section 116 of the Fire and Emergency New Zealand Act 2016**; or

**Part 2****Amendments to legislative instruments**

10

**Education (Early Childhood Services) Regulations 2008 (SR 2008/204)**

In regulation 9(1)(c), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

**Education (Hostels) Regulations 2005 (SR 2005/332)**

In regulation 49(b), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

**Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 (SR 2001/116)**

In regulation 38(5)(d), replace “Chief Fire Officer” with “person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**”.

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**Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 (SR 2001/116)**  
—*continued*

Replace regulation 39(2)(a) with:

- (a) Fire and Emergency New Zealand; and

In regulation 39(3), replace “the Fire Service” with “Fire and Emergency New Zealand”.

In regulation 44(2)(a), replace “the New Zealand Fire Service or the New Zealand Rural Fire Authority” with “Fire and Emergency New Zealand”. 5

In regulation 44(2)(b), replace “Chief Fire Officer” with “a person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**”.

**Land Transport (Road User) Rule 2004 (SR 2004/427)** 10

In ~~rule clause~~ 1.6, definition of **defence fire brigade**, replace “section 2 of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”.

In ~~rule clause~~ 1.6, revoke the definition of **Fire Authority**.

In ~~rule clause~~ 1.6, replace the definition of **fire service vehicle** with: 15

**fire service vehicle** means a vehicle that is—

- (a) ~~owned or operated~~ by Fire and Emergency New Zealand; or  
(b) ~~owned or operated~~ by a defence fire brigade or an industry fire-brigade.

**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)**

In the Schedule, clause 2(1), replace the definition of **fire services** with: 20

**fire services** includes employees, volunteers, and contractors of Fire and Emergency New Zealand carrying out operational activities, airport rescue fire services, the New Zealand Defence Force, industry fire-brigades that have entered into an agreement with Fire and Emergency New Zealand under **subpart 2 of Part 2 of the Fire and Emergency New Zealand Act 2016**, and other fire service resources owned by private organisations 25

In the Schedule, clause 35, replace “the New Zealand Fire Service, the National Rural Fire Authority, the rural fire authorities” with “Fire and Emergency New Zealand”.

In the Schedule, clause 42, replace “The National Commander of the New Zealand Fire Service” with “Fire and Emergency New Zealand”. 30

In the Schedule, clause 44, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”.

In the Schedule, clause 44(e), delete “other members of the”.

In the Schedule, clause 45(1), (3), (4), and (5), replace “The New Zealand Fire Service” with “Fire and Emergency New Zealand”. 35

In the Schedule, revoke clause 45(5).

**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)***—continued*

In the Schedule, clause 46(1)(c), replace “the New Zealand Fire Service” with “Fire and Emergency New Zealand”.

In the Schedule, replace clause 46(3) with:

- (3) **Subpart 1 of Part 2 of the Fire and Emergency New Zealand Act 2016** confers authority on an authorised person (as defined in **section 6** of that Act) to direct those under that person’s control to do whatever is necessary, within reason, for the protection of life and property.

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In the Schedule, clause 46(4)(a), replace “the Fire Region Commander of the New Zealand Fire Service, or the Fire Region Commander’s designated representative” with “the board of Fire and Emergency New Zealand, or a delegate of the board”.

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In the Schedule, clause 46(4)(b), replace “the National Commander of the New Zealand Fire Service, or the National Commander’s designated representative” with “the board of Fire and Emergency New Zealand, or a delegate of the board”.

In the Schedule, revoke clause 46(5), (6), and (7).

In the Schedule, replace clause 89(e) with:

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- (e) **the Fire and Emergency New Zealand Act 2016:**

In the Schedule, replace clause 124(6)(l) with:

- (l) Fire and Emergency New Zealand:

In the Schedule, replace clause 133(2)(i) with:

- (i) Fire and Emergency New Zealand:

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In the Schedule, replace clause 147(3)(g) with:

- (g) Fire and Emergency New Zealand:

In the Schedule, Appendix 1, item relating to wild fire, replace “National Rural Fire Authority” with “Fire and Emergency New Zealand”.

In the Schedule, Appendix 1, item relating to wild fire, replace “Rural Fire Authority” with “Fire and Emergency New Zealand”.

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In the Schedule, Appendix 1, item relating to wild fire, replace “Forest and Rural Fires Act 1977” with “**Fire and Emergency New Zealand Act 2016**”.

In the Schedule, Appendix 1, item relating to urban fire, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand” in each place.

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In the Schedule, Appendix 1, item relating to urban fire, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

In the Schedule, Appendix 1, item relating to hazardous substance incidents, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand” in each place.

In the Schedule, Appendix 1, item relating to hazardous substance incidents, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)**  
—*continued*

In the Schedule, Appendix 1, item relating to radiation incident, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”.

In the Schedule, Appendix 1, item relating to radiation incident, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

**Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (SR 2004/309)** 5

In regulation 3(1), replace the definition of **firefighter** with:

**firefighter** means an employee, volunteer, or contractor of Fire and Emergency New Zealand who carries out an operational activity within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**

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**Traffic Regulations 1976 (SR 1976/227)**

In regulation 2, revoke the definition of **fire authority**.

**Legislative history**

30 June 2016  
5 July 2016

Introduction (Bill 148–1)  
First reading and referral to Government Administration  
Committee