

**Reprint  
as at 1 December 2020**



## **Fire and Emergency New Zealand Act 2017**

Public Act    2017 No 17  
Date of assent    11 May 2017  
Commencement    see section 2

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Internal Affairs.**

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

**1 Title**

This Act is the Fire and Emergency New Zealand Act 2017.

**2 Commencement**

(1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:

(a) sections 3 to 6 (which are preliminary and interpretation provisions):

- (b) clause 1 of Schedule 1 (which is the interpretation provision):
  - (c) clause 5 of Schedule 1 (which relates to access by FENZ to records of rural fire authorities):
  - (d) clauses 17, 19, and 20 of Schedule 1 (which contain provisions of a transitional nature that relate to response assets):
  - (e) clauses 21 and 22 of Schedule 1 (which contain provisions of a transitional nature that relate to regulation-making powers):
  - (f) clauses 23 to 32 of Schedule 1 (which relate to the levy for the 2017/18 year):
  - (g) clauses 45 to 51 of Schedule 1 (which relate to the tax treatment for assets that become assets of FENZ under the transitional provisions).
- (2) Sections 75 to 79 (which relate to evacuation schemes for relevant buildings) 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.
- (3) To the extent that a provision specified in subsection (2) is not previously brought into force under that subsection, that provision comes into force on 1 July 2018.
- (4) The following provisions come into force on 1 July 2018:
- (a) sections 65 to 68 (which relate to the removal of things that increase fire risk):
  - (b) section 200 (which repeals certain provisions of the Local Government Act 2002):
  - (c) clause 39 of Schedule 1 (which relates to transitional provisions concerning the removal of fire hazards).
- (5) Sections 80 to 140 (which relate to levies) come into force on a date, not earlier than 1 July 2018, appointed by the Governor-General by Order in Council.
- (6) If sections 80 to 140 are not previously brought into force under subsection (5), those sections come into force on 1 July 2024.
- (7) The rest of this Act comes into force on 1 July 2017.

Section 2(6): amended, on 8 May 2019, by section 4 of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## **Part 1**

### **Fire and Emergency New Zealand**

#### Subpart 1—Preliminary provisions

### **3 Purpose**

The purpose of this Act is to—

- (a) reform the law relating to fire services, including by strengthening the role of communities and improving the support for volunteers in the provision of fire services, and, to that end,—
  - (i) to unify Fire Services by establishing Fire and Emergency New Zealand (**FENZ**); and
  - (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
- (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.

### **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.
- (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.
- (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 either of the following applies:

- (a) the person is authorised to perform or exercise the function, duty, or power under section 23; or
- (b) the person is delegated the performance or exercise of the function, duty, or power under section 24

**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)

**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 72; and
- (b) that relates to firefighting water supplies, including standards of water supply and access to, and volume and pressure of, water supply

**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 81(1)) or any contract of reinsurance

**contractor**, in relation to FENZ,—

- (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
- (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

- (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
- (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 services** means the services that—

- (a) FENZ must deliver under section 11; and
- (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 protect and preserve life, prevent injury, or avoid damage to property and includes—

- (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
- (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

**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;
- (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

**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
- (b) does not include any person carrying out work for FENZ 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

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

- (a) land clearance purposes:
- (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

**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
- (b) a place or thing, or a type of place or thing, that is—
  - (i) prescribed by regulations made under section 187; or
  - (ii) authorised by FENZ

**fire plan** means a plan that FENZ prepares and issues under section 22

**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

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

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

**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
  - (ii) any reservoir, dam, water race, or tank water supply systems

**hazardous substance** means—

- (a) any hazardous substance as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996; and
- (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:
- (b) the EPA:
- (c) the New Zealand Transport Agency:
- (d) the New Zealand Police:
- (e) the Civil Aviation Authority:
- (f) Maritime New Zealand:
- (g) the Ministry of Health:
- (h) territorial authorities and regional councils:
- (i) any other organisation with enforcement responsibilities under section 97 of the Hazardous Substances and New Organisms Act 1996

**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**—

- (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 brigade** means a group of persons organised as an industry brigade in accordance with section 69

**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 15

**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

**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—

- (a) the administration of this Act; and
- (b) the performance and exercise of the functions, 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

**NZ Standards Organisation** has the same meaning as in section 4(1) of the Standards and Accreditation Act 2015

**occupier**, in relation to a building, includes any person lawfully entitled to be in the building (for example, a visitor)

**operational activity** means an activity carried out in relation to FENZ's delivery of designated services

**operational employee** means a FENZ employee carrying out an operational activity

**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**, 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 144

**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
- (c) on an Internet site; or



(d) by any other means prescribed by regulations under section 187

**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:
- (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:
  - (iv) Hazardous Substances and New Organisms Act 1996:
  - (v) Radiation Safety Act 2016:
  - (vi) Sale and Supply of Alcohol Act 2012:
  - (vii) any former enactments replaced by any of the Acts referred to in paragraph (a) and subparagraphs (i) to (vi) of this paragraph or regulations made under those former enactments

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

**spontaneously 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:
    - (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 subparagraphs (A) to (C); and
  - (ii) any material or class of material specified in regulations made under section 187; 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

**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**—

- (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

**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

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

Compare: 1977 No 52 s 2

## 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—
    - (A) to make the substance inert; and
    - (B) to prevent any further reactions involving the substance:
  - (iii) treating the hazardous substance so that the substance is no longer hazardous:
  - (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:
    - (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:
  - (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:
  - (i) containing the substance, to stop it spreading:
  - (ii) stabilising, neutralising, or absorbing the substance—
    - (A) to make the substance inert; and
    - (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:
    - (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.

### 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)

#### **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

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

### *Principal objectives*

#### **10 FENZ’s principal objectives**

The principal objectives of FENZ are—

- (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.

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
  - (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
  - (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.
- (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.
- (4) Subsection (3)(a) is subject to section 12.  
Compare: 1975 No 42 s 14

## 12 Additional functions of FENZ

- (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.
- (3) The matters are—
  - (a) responding to medical emergencies; and
  - (b) responding to maritime incidents; and
  - (c) performing rescues, including high angle line rescues, rescues from collapsed buildings, rescues from confined spaces, rescues from unrespirable and explosive atmospheres, swift water rescues, and animal rescues; and
  - (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
  - (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
  - (i) any other function conferred on FENZ as an additional function by the Minister in accordance with section 112 of the Crown Entities Act 2004.
- (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,—  
**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—

- (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

**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
- (b) an artificial island; and
- (c) a floating platform; and
- (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—
  - (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
    - (iii) to carry out consultation with relevant stakeholders and organisations.
- (3) In formulating the operating principles, the board must take into account the following matters:
  - (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—
  - (i) FENZ personnel:
  - (ii) the associations or unions that represent or advocate on behalf of FENZ personnel:
  - (iii) local advisory committees:
  - (iv) organisations referred to in section 12(4).

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

#### *Local advisory committees*

#### **14 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.
- (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
  - (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—
    - (i) the operational service agreement with the Department of Conservation under section 147; and
    - (ii) the operational service agreement with the New Zealand Defence Force under section 148; and
    - (iii) the memorandum of understanding with the Ministry of Education under section 151; and
  - (f) to provide regular advice on FENZ's progress in relation to its local planning.
- (3) Each local advisory committee must, in carrying out its functions, have regard to the operating principles developed by the board under section 17.

**15 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 19.
- (2) However, the board must ensure that—
  - (a) every area within the territorial limits of New Zealand is included in a local area; and
  - (b) there is a local advisory committee for every local area.

**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 designated services to operate within the local area;
    - (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—
    - (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.
- (2) The board must consult the public on the proposed boundaries of the local advisory committees.

**17 Operating principles for local advisory committees**

The board must develop operating principles to guide—

- (a) the way in which the local advisory committees operate; and
- (b) the interactions between the local advisory committees and FENZ.

**18 Obligation of board to local advisory committees**

The board must—

- (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 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.

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

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
- (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 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 188.

## **20 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.

### *Local planning by FENZ*

## **21 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 147; and
  - (B) the operational service agreement with the New Zealand Defence Force under section 148; and
  - (C) the memorandum of understanding with the Ministry of Education under section 151; 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.

(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.

## 22 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*

## 23 Authorised person for purposes of this Act and regulations under this Act

- (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 or trained to perform or exercise the function, duty, or power.
- (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.
- (5) The board may revoke an authorisation at any time by written notice to the authorised person.

*Delegations by board*

**24 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:
  - (a) FENZ personnel:
  - (b) a member or members of the board:
  - (c) a committee:
  - (d) any other person or persons approved by the board:
  - (e) any class of persons that comprises any of the persons listed in paragraphs (a) to (d):
  - (f) a Crown entity subsidiary of FENZ.
- (2) 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 the delegate (as the case may be) is satisfied is suitably qualified or trained to perform or exercise the function, duty, or power.
- (3) 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) 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
  - (b) delegate the function or power subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.
- (4) 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.
- (5) 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).
- (6) 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.
- (7) In this section, **private sector** means any person or organisation outside the State services as defined in section 5 of the Public Service Act 2020.

Compare: 1975 No 42 s 15

Section 24(7): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

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

### *Appointments and vacancies*

#### **25 Appointment to roles and ranks**

- (1) The board may make appointments to roles, ranks, or positions in FENZ.
- (2) An appointee must be—
  - (a) an employee of FENZ; or
  - (b) a FENZ volunteer.
- (3) An appointment in any role, rank, or position in FENZ may be held separately or in conjunction with any other role, rank, or position in FENZ.
- (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.

Compare: 1975 No 42 s 27

#### **26 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)

#### **27 Obligation to notify vacancies**

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)

#### **28 Obligation to notify appointments**

The board must notify the 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)

#### **29 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 Public Service Commission for such review procedures.

- (3) Nothing in this section relates to an acting appointment.

Compare: 1975 No 42 s 67

Section 29(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

**30 Sections 26 to 29 do not apply to appointments of FENZ employees in certain circumstances**

Sections 26 to 29 (which relate to standard procedural steps in relation to appointments to FENZ) do not apply to the appointment of a person as a FENZ employee if—

- (a) the person is a current employee of FENZ; and
- (b) that FENZ employee has received a notice of redundancy; and
- (c) before that FENZ employee's employment has ended, the employee—
  - (i) is offered and accepts another position in FENZ that—
    - (A) begins before, on, or immediately after the date on which the employee's current employment ends; and
    - (B) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable to the employee; and
    - (C) is on terms that treat service within FENZ as if it were continuous service; or
  - (ii) is offered an alternative position in FENZ that—
    - (A) begins before, on, or immediately after the date on which the employee's current employment ends; and
    - (B) is a position with comparable duties and responsibilities to those of the employee's current position; and
    - (C) is in substantially the same general locality or a locality within reasonable commuting distance; and
    - (D) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable to the employee; and
    - (E) is on terms that treat service within FENZ as if it were continuous service.

*Leaving FENZ compulsorily due to incapacity*

**31 Board to prescribe health standards**

- (1) For the purpose of section 32, 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.

- (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.
- (3) Before prescribing standards, the board must consult with the associations or unions that represent or advocate on behalf of personnel.

Compare: 1975 No 42 s 72A; 2008 No 72 s 72

### **32 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—
  - (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:
  - (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.

Compare: 2008 No 72 ss 29, 73

### **33 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.
- (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—
    - (i) that the person's incapacity is because of the person's inability to meet any standards prescribed under section 31; 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.

- (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.
- (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.

Compare: 1975 No 42 ss 72(1), (2), 72C(1), (2); 2008 No 72 s 74

#### **34 When operational employee required to leave FENZ ceases to be employee**

- (1) An operational employee who is required under section 33(1) to leave FENZ ceases to be a FENZ employee—
  - (a) on the expiration of the time specified in the notice referred to in section 33(3)(a); or
  - (b) if, the employee waives the right to notice under section 33(4), on the date on which the board gives to the employee written notice of consent to the waiver.
- (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
  - (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

#### **35 Appeal by volunteer against requirement to leave FENZ compulsorily**

- (1) A volunteer who is required under section 33 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 33(3).
- (3) An appeal under this section is governed by the dispute resolution provisions in subpart 5 of Part 4.

- (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.

Compare: 1975 No 42 s 72(3), (4)

## Subpart 7—Volunteers

### **36 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 37 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.

### **37 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 brigades, water supply, and evacuation schemes**

#### Subpart 1—Operational functions, duties, and powers

##### *Functions, duties, and powers in emergencies*

#### **38 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:
- (c) request any person, either 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(2); 1996 No 30 s 137(1)

#### **39 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—
    - (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 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 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.

Compare: 1975 No 42 s 28(3A), (3B); 1996 No 30 s 137(1)

#### **40 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:

- (a) stabilise or render safe any other substance emergency:
- (b) take whatever action is necessary to save lives and property in danger:
- (c) direct any person to stop any activity that may contribute to the emergency:
- (d) request any person, either orally or in writing, to take any action to prevent or limit the extent of the emergency:
- (e) direct any person to leave any place near the emergency:
- (f) 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)

#### **41 Duty of authorised person to control and direct**

The authorised person who is in charge of personnel responding to an emergency must control and direct—

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

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

#### **42 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.
- (2) The authorised person who is in charge of personnel responding to 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:
  - (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 emergency, any flammable, combustible, explosive, or dangerous material found in the building or structure:

- (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 in whole or in part):
  - (f) cause any building or structure to be pulled down or shored up (either in whole or in part) at the time of the 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.
- (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
  - (b) includes any personal equipment or clothing provided by FENZ.

Compare: 1975 No 42 s 28(4)(b)–(e), (l)

#### **43 Powers of authorised person in relation to vegetation**

- (1) The authorised person who is in charge of personnel responding to an emergency may do 1 or more of the things mentioned in subsection (2) or (3) for the purpose of—
- (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,—
- (a) cause any vegetation that is on fire or otherwise endangered to be cut down or pulled down (either in whole or in part):
  - (b) cause any vegetation that is adjacent to, or in the vicinity of, any building, structure, or vegetation that is on fire or otherwise endangered to be cut down or pulled down (either in whole or in part):
  - (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 vegetation has been damaged to the extent that it is, or is likely to become, dangerous to life or property, cause the vegetation to be cut down or pulled down (either in whole or in part) at the time of the emergency or within a reasonable time afterwards.

(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.

(5) In this section,—

**backburn** means a counterfire commenced from within an area of continuous flammable material for the purpose of fighting a fire

**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)

#### 44 Other powers of authorised person

(1) The authorised person who is in charge of personnel engaged in an emergency—

(a) may, subject to section 48, 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:

(b) may cause any road or railway in the vicinity of the emergency to be closed to people or traffic during the emergency:

(c) may—

(i) remove any vehicle impeding personnel; and

(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 emergency; or

(ii) who, in the authorised person's opinion,—

(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:

(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:

(g) may generally do all other things that are reasonably necessary—

(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.

(2) In this section, **road** includes—

- (a) a street; and
- (b) a motorway; and
- (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)

#### **45 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—

- (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
- (c) the authorised person reasonably considers it necessary or appropriate to destroy or dispose of the by-product.

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

The performance or exercise by any person of any function, duty, or power under sections 38 to 45 is conclusive evidence of his or her authority to perform or exercise that function, duty, or power.

Compare: 1975 No 42 s 28(6)

#### **47 Sections 38 to 46 apply subject to certain enactments**

Sections 38 to 46 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)

#### **48 Power to use water 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
  - (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
  - (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 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.

Compare: 1975 No 42 s 30(1)

#### **49 Duty to notify hazardous substance agencies in case of hazardous substance emergencies**

- (1) If an authorised person takes action during a hazardous substance emergency under section 39, 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
  - (b) include the nature and location of the hazardous substance emergency.

#### **50 Duty to provide reports to hazardous 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.
- (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 substance emergency; and
  - (c) state the total cost of FENZ's responses to hazardous substance emergencies that FENZ attended.

#### **51 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.

*Prohibitions and restrictions for fire control*

**52 FENZ may prohibit fire in open air and prohibit or restrict other activities**

- (1) FENZ may, in the circumstance described in subsection (2),—
  - (a) prohibit the lighting of 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.
- (2A) At any time while the Epidemic Preparedness (COVID-19) Notice 2020 is in force, FENZ may also prohibit the lighting of fires in open air in any area without needing to consider the matters in section 52(2).
- (2B) This subsection and subsection (2A) are repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.
- (3) FENZ may not prohibit a person who resides or works in an area from accessing the area.
- (4) This section and sections 53, 54, and 55 do not apply to any person carrying out essential services in the area to which a prohibition or restriction under this section applies.
- (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)

Section 52(2A): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 52(2B): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

**53 Fire in open air prohibited**

- (1) A person who has notice that the lighting of fires in open air in an area is prohibited under section 52 must not, while the prohibition is in effect, light or allow another person to light a fire in open air in that area.
- (2) Subsection (1) does not apply to a person who lights or allows another person to light a fire in accordance with—
  - (a) a permit granted under regulations made under section 190; and
  - (b) any conditions of the permit.
- (3) A person **has notice that the lighting of fires in open air in an area is prohibited** if the person knows or ought reasonably to know that the lighting of fires in open air in that area is prohibited.

- (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:
  - (b) in any other case, to a fine not exceeding \$600,000.

#### **54 Prohibited activities**

- (1) A person who has notice that an activity in an area is prohibited under section 52 must not, while the prohibition is in effect, carry out the prohibited activity in that area.
- (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,—
  - (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)

#### **55 Restricted activities**

- (1) A person who has notice that an activity in an area is restricted under section 52 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).
- (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.

#### *Fire seasons*

#### **56 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.
- (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.
- (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 190.

Compare: 1977 No 52 s 22

#### **57 Fire in open air during prohibited fire season**

- (1) A person must not light or allow another person to light 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 or allows another person to light a fire in accordance with—
  - (a) a permit granted under regulations made under section 190; 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,—
  - (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.

#### **58 Fire in open air during restricted fire season**

- (1) A person must not light or allow another person to light a fire in open air in an area that is in a restricted fire season.
- (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 190; and
    - (ii) any conditions of the permit; or
  - (b) on public conservation land to which a restriction under section 56(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,—
  - (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*

**59 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 190.
- (2) The person lighting the fire must—
  - (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).
- (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.

*Further provisions relating to fire control*

**60 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.
- (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
  - (b) in any other case, to a fine not exceeding \$600,000.

**61 Burning or smouldering substance in open air**

- (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.
- (2) The person must, as soon as practicable after discovering the burning or smouldering substance or an ensuing fire,—

- (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.
- (3) A person commits an offence if the person knowingly or recklessly contravenes subsection (2).
- (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
  - (b) in any other case, to a fine not exceeding \$600,000.
- (5) 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
  - (b) a place or thing, or a type of place or thing, that is—
    - (i) prescribed by regulations made under section 187; or
    - (ii) authorised by FENZ.

Compare: 1977 No 52 s 26

## **62 Firebreaks**

- (1) FENZ may, by notice, if FENZ reasonably considers it necessary for the purpose of fire control, require a landholder—
- (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 landholder that specifies the time and the manner in which a requirement under subsection (1) must be met.
- (3) In this section, **landholder**—
- (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.

Compare: 1977 No 52 s 27(1)

## **63 Appeal against notice under section 62**

- (1) A landholder may, within 14 days after receipt of a notice under section 62, 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.

**64 Landholder must comply with notice under section 62**

- (1) A landholder must comply with a notice under section 62 within 1 month after—
- (a) the landholder receives the notice; or
  - (b) if the landholder appeals against the notice under section 63, the notice is confirmed in accordance with the dispute resolution provisions.
- (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.

**65 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.

Compare: 2002 No 84 s 183(1)

**66 Appeal against notice under section 65**

- (1) An owner or occupier may, within 14 days after receipt of a notice under section 65, 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.

**67 Owner or occupier must comply with notice under section 65**

- (1) An owner or occupier must comply with a notice under section 65 within 1 month after—
- (a) the owner or occupier receives the notice; or
  - (b) if the owner or occupier appeals against the notice under section 66, 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.

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

**68 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.

Compare: 2002 No 84 s 183(5)

## Subpart 2—Industry brigades

### 69 Organisation and maintenance of industry 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 brigade; and
  - (b) appoint a principal officer for the industry 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:
  - (d) any person holding, controlling, or administering land under any enactment.
- (3) In this section and in section 70,—

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

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

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

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

**residential purpose**, 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)

### 70 Agreements relating to industry brigades

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

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

Compare: 1975 No 42 s 36(3)

**71 Powers of industry brigades**

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

- (a) the principal officer of the industry 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 41 to 45 if—
  - (i) no such person is present at the emergency; or
  - (ii) the principal officer is in charge in accordance with an agreement under section 70; and
- (b) sections 160 to 162 apply with all necessary modifications.

Compare: 1975 No 42 s 36(10)

**Subpart 3—Provisions relating to water supply***Code of practice for firefighting water supplies***72 Minister may approve code of practice for firefighting water supplies**

- (1) The Minister may approve a code of practice for firefighting water supplies that FENZ recommends to the Minister under section 73.
- (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 73(2).

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

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

- (1) For the purposes of section 72, 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—
  - (a) local advisory committees; and
  - (b) any local authority, association of local authorities, or any other appropriate authorities or organisations.
- (3) After developing a code of practice in accordance with subsection (2), FENZ 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*.
- (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
  - (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 72, be presented to the House of Representatives under section 41 of that Act.

Compare: 1975 No 42 s 30(3)

*Powers and duties in relation to firefighting water supply*

**74 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—

- (a) in any water main; or
- (b) in any area.

Compare: 1975 No 42 s 30(2)

Subpart 4—Evacuation schemes

**75 Relevant building defined for purposes of sections 76 to 79**

- (1) In sections 76 to 79, **relevant building** means a building or part of a building used for 1 or more of the following purposes:
- (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 persons (other than in 3 or fewer household units);
  - (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);
  - (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):

- (i) any other prescribed purpose.
- (2) However, in sections 76 to 79, **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 10(1) of the Education and Training Act 2020.

Compare: 1975 No 42 s 21A

Section 75(3): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

## **76 Owner must provide and maintain evacuation scheme for relevant building**

- (1) The owner of a relevant building must provide 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.
- (2) The owner of a relevant building must maintain an evacuation scheme that has been approved by FENZ under section 77.
- (3) However, the owner of a relevant building is not required to provide or maintain an evacuation scheme for the building if—
  - (a) the building is used for a purpose specified in section 75(1)(b) or (c); and
  - (b) the building has an automatic sprinkler system; and
  - (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.
- (4) A person who knowingly 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 6 months or to a fine not exceeding \$75,000, or both;
  - (b) in any other case, to a fine not exceeding \$150,000.
- (5) In this section,—

**automatic sprinkler system** means an automatic sprinkler system that satisfies the minimum standard required by regulations made under section 192(1)(c)

**evacuation scheme** means an evacuation scheme that complies with regulations made under section 192(1)(b).

Compare: 1975 No 42 ss 21B, 21E



**77 Owner must apply to FENZ for approval of evacuation scheme**

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 76.

Compare: 1975 No 42 s 21C

**78 FENZ may revoke, or require variation of, approved evacuation scheme**

- (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 77.

**79 District Court order closing relevant building**

- (1) If the owner of a relevant building has failed to comply with section 76, 77, or 78(2), FENZ may apply to the District Court for an order requiring the owner of the relevant building to comply with section 76, 77, or 78(2) within a specified period of time that the Court considers appropriate.
- (2) 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.
- (3) FENZ must give the owner of the building at least 10 days' written notice before applying for an order under subsection (1).
- (4) Before making an order under subsection (1) or (2), the District Court 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 76, 77, or 78.

Compare: 1975 No 42 s 21G

## **Part 3**

### **Levy**

#### Subpart 1—Purpose and interpretation

**80 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:

- (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):
- (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—
  - (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.

## 81 Interpretation in this Part

- (1) In this Part, unless the context otherwise requires,—

**adjudicator** means an adjudicator appointed under section 131

**amount insured** has the meaning given in section 82

**carries on insurance business in New Zealand** has the same meaning as in section 8 of the Insurance (Prudential Supervision) Act 2010

**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 loss or damage; or
    - (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 loss or damage (whatever the cause of the loss or damage), including—
    - (A) temporary or repairable loss or damage; and
    - (B) any consequential loss or damage; but
- (b) does not include—
  - (i) a contract for reinsurance;
  - (ii) a contract of marine insurance;
  - (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

**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:
  - (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
- (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 determined in accordance with section 83

**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

**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:
- (b) relieving a person from liability to pay the levy:
- (c) avoiding, postponing, or reducing any liability to pay the levy

**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:
- (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)

**levy payer** means—

- (a) an insurer who is liable to pay a levy to FENZ under section 86; or
- (b) if section 87 applies, a policyholder or an insurance intermediary who is liable to pay a levy to FENZ under that section

**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

**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—

- (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** 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—

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

**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
- (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
- (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:

- (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:
- (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)

**relevant court**, in relation to a dispute under subpart 5, 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

**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 landholding on which the household unit or units are situated:

- (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:
- (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)

**residential property** means—

- (a) a household unit:
- (b) any residential land

**respondent** means a person to whom FENZ provides a notice of levy shortfall

**specialised accommodation** means a building that is specified, in regulations made under section 141, as specialised accommodation for the purposes of this Part

**third party liability** means a person's liability to any other person arising from or in connection with a motor vehicle

**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
  - (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 80.

## 82 Meaning of amount insured

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 property is, under the contract, insured against physical 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 as determined under section 83.

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### *Example 1*

A contract of insurance provides, in the case of physical 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.

### *Example 2*

A contract of insurance provides, in the case of physical 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.

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## 83 Declared value

- (1) This section applies in the case of property described in section 82(b).
- (2) The declared value is the maximum amount (excluding any goods and services tax) for which the property is, under the contract of insurance, insured against physical loss or damage over the term of the contract.
- (3) The declared value must be set out in—

- (a) a statement 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.
- (4) A levy payer must provide a statement 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 that the amount set out in a statement provided in accordance with subsection (4) is not a fair and reasonable declared value,—
- (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).
- (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
  - (b) the declared value is the amount set out in the certificate obtained under paragraph (a).
- (7) A statement or certificate under this section must contain a statement that the declared value in the statement or certificate is fair and reasonable.

### Subpart 2—Levy on insured property

#### **84 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 141 pro-rated in respect of the period of insurance.

#### **85 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 141.

#### **86 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.
- (3) This section is subject to section 87.

**87 Circumstances where policyholder or insurance intermediary 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—
  - (a) does not carry on business in New Zealand (within the meaning of section 332 of the Companies Act 1993); or
  - (b) does not carry on insurance business in New Zealand; or
  - (c) 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.
- (3) However, if an insurance intermediary carrying on business in New Zealand directly or indirectly negotiates a contract of insurance to which this section applies,—
  - (a) that insurance intermediary (and not the policyholder) becomes liable to pay the levy to FENZ; and
  - (b) sections 89 to 91 apply, with any necessary modifications, to the insurance intermediary as if the insurance intermediary were the insurer.
- (4) The levy payable by a policyholder described in subsection (2) is a debt due by the policyholder to FENZ and is recoverable by FENZ.
- (5) A contract referred to in subsection (1) is to be treated as being governed by New Zealand law for the purposes of this Part.

Compare: 1975 No 42 s 49A

**88 When levy must be paid**

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*

**89 Policyholder must pay amount of levy to insurer**

- (1) On entering into a contract of insurance under which property is insured against physical loss or damage, the policyholder becomes liable to pay the amount of levy that is payable by the insurer under section 86 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.

**90 Insurer must identify levy on invoice, etc**

- (1) An insurer that is entitled to recover an amount of levy under section 89 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.

**91 FENZ may release insurer from liability**

- (1) If FENZ considers that an amount payable to the insurer under section 89 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.
- (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 89 relates:
- (b) subject to any conditions that FENZ thinks fit.

Compare: 1975 No 42 s 48(10)

**92 Joint and several liability**

If 2 or more persons are liable to pay any amount under section 86, 87, or 89, their liability is joint and several.

Subpart 3—Returns, records, and information

*Returns*

**93 Levy payer must make return**

- (1) A levy payer must provide a return to FENZ for every month in which the levy payer entered into 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).
- (3) The return must set out the total amount of levy payable by the levy payer in relation to the month specified in subsection (1).
- (4) The return must—
- (a) contain any information that is required by regulations; and
- (b) be made in a form provided by FENZ for the purpose (or in any other manner approved by FENZ).
- (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:
- (b) in any other case, to a fine not exceeding \$50,000.

### *Records*

#### **94 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 calendar year to which the records relate.
- (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:
  - (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 141.
- (4) A person who knowingly, and without reasonable excuse, contravenes subsection (1) 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) In this section, **arrange** has the same meaning as in section 2(1) of the Insurance Intermediaries Act 1994.

### *FENZ may require information*

#### **95 Power to require information**

- (1) FENZ may require a person specified in section 94(2) to provide to FENZ any information (including a return or any record that person is required to keep under section 94) 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.
- (2) A person who is required to provide any information under subsection (1) must provide the information.
- (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.

Compare: 1994 No 166 s 17

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

Every person required to provide information and documents to FENZ under section 95 has the same privileges as witnesses have in proceedings before a court.

Compare: 2011 No 5 s 56

*Confidentiality*

**97 Confidentiality of information and documents**

- (1) This section applies to—
  - (a) information and documents provided to FENZ under sections 93 and 95;
  - (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
  - (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, duty, or power conferred or imposed on FENZ by this Act or any other enactment; or
  - (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.
- (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 2020).

Compare: 2011 No 5 s 59

Section 97(3): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

## **98 Conditions relating to publication or disclosure of information or documents**

- (1) FENZ may, by written notice to a person to whom any information or document is published or disclosed under section 97(2)(c), (d), or (e), impose any conditions in relation to the publication, disclosure, or use of the information or document by the person.
- (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 2020):
  - (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,—
  - (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.

Compare: 2011 No 5 s 60

Section 98(3)(a): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### *False or misleading information*

## **99 Offence to provide false or misleading information**

- (1) A person commits an offence if the person knowingly provides false or misleading information—
  - (a) in a levy return; or
  - (b) when providing information under section 95.
- (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:
  - (b) in any other case, to a fine not exceeding \$50,000.

#### Subpart 4—Avoidance arrangements and shortfall penalties

##### **100 Levy shortfall and shortfall penalties must be recovered under subpart 5**

FENZ must provide a notice of levy shortfall under section 116—

- (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 102);
- (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*

##### **101 Levy avoidance arrangement void**

- (1) A levy avoidance arrangement is void as against FENZ for the purposes of the levy.
- (2) Under section 102, FENZ may counteract a levy advantage that the person obtains from or under a levy avoidance arrangement.

Compare: 2007 No 97 s BG 1

##### **102 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 101.
- (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.

Compare: 2007 No 97 s GA 1

##### *Shortfall penalties*

##### **103 Interpretation and other matters related to shortfall penalties**

- (1) In this section and in sections 104 to 111,—

**abusive levy position** has the meaning given in section 107(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

**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 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 104 to 111,—
- (a) whether a levy position is acceptable or unacceptable must be determined at the time at which the levy payer takes the levy position:
  - (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 93, if the levy payer does not provide a return in relation to the contract of insurance:
  - (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
    - (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).

#### **104 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.
- (3) If subsection (1) applies, the shortfall penalty that is payable is 20% of the levy shortfall.

Compare: 1994 No 166 s 141A

#### **105 Unacceptable levy position**

- (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

- (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

#### **106 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.

Compare: 1994 No 166 s 141C

#### **107 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
  - (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—
    - (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.
- (3) If subsection (1) applies, the shortfall penalty that is payable is 100% of the levy shortfall.

Compare: 1994 No 166 s 141D

#### **108 Reduction of penalty for previous behaviour**

- (1) Subsection (2) applies if—
  - (a) a shortfall penalty (the **current penalty**) is payable under any of sections 104 to 107; and
  - (b) the levy payer is not—
    - (i) convicted of a disqualifying offence; or

- (ii) liable for a disqualifying penalty.
- (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 93, 94, 95, or 99 for which a conviction is entered in the relevant period

**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;
  - (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
- (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

### **109 Reduction of penalty for disclosure of unacceptable levy position**

- (1) A shortfall penalty payable under section 105 or 107 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.
- (2) If subsection (1) applies, the shortfall penalty (as reduced under section 108, if relevant) is reduced by 50%.
- (3) FENZ may specify—
  - (a) the information required for adequate disclosure; and
  - (b) the form in which the information must be provided.

Compare: 1994 No 166 s 141H

### **110 Reduction of penalty for voluntary disclosure of levy shortfall**

- (1) A shortfall penalty payable under any of sections 104 to 107 is reduced if FENZ considers that full voluntary disclosure is made to FENZ by any of the persons specified in section 111(1) of all the details of the levy shortfall before FENZ issues a notice of levy shortfall under subpart 5.
- (2) If subsection (1) applies, the shortfall penalty (as reduced under sections 108 and 109, if relevant) is reduced by 50%.



- (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*

**111 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;
  - (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
  - (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;
    - (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
- 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:
- (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—
- (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
  - (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

### **112 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.
- (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 5—Notice of levy shortfall process and adjudication

##### *Preliminary matters*

### **113 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.

### **114 Time limit for assessment of levy**

- (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;
  - (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.

Compare: 1994 No 166 ss 107A, 108B

### **115 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:

- (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.

*Notice of levy shortfall and notice of response*

**116 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.
- (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.

Compare: 1994 No 166 s 89B

**117 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.
- (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
    - (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):
  - (d) state how the law applies to the facts.

Compare: 1994 No 166 s 89F

**118 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.

- (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
  - (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

### **119 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 118(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—
  - (a) another respondent provides a notice of response to FENZ within the period specified in section 118(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 118(1).

Compare: 1994 No 166 s 89H

### **120 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.
- (2) If FENZ provides a new notice of levy shortfall, this subpart applies accordingly.

### **121 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.
- (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.

- (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 122 to 130 do not apply.

### *Statements of position*

#### **122 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
  - (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.

#### **123 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,—
  - (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
  - (d) specify the propositions of law on which the respondent intends to rely.

#### **124 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 123(1) must be treated as having accepted FENZ's statement of position.
- (2) Subsection (1) does not apply if—
  - (a) another respondent provides a statement of position to FENZ within the period specified in section 123(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 123(1).

**125 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.
- (2) If FENZ provides a new notice of levy shortfall, this subpart applies accordingly.

*Adjudication***126 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.
- (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.
- (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.
- (5) If FENZ and each respondent agree to submit the matter to the relevant court under subsection (4), sections 127 to 130 do not apply.

**127 Conduct of adjudication**

- (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 141(3)(h) that prescribe the procedure for adjudication.

**128 Decision of adjudicator**

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.

### **129 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.

### **130 Appeal**

- (1) FENZ or a respondent may appeal the adjudicator's decision to the relevant court.
- (2) An appeal under subsection (1)—
  - (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.

#### *Provisions relating to adjudicators*

### **131 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.
- (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.

### **132 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—

- (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

### **133 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.

*Other matters*

**134 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).
- (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).
- (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;
  - (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

**135 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.
- (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—
  - (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.

### Subpart 6—Interest

#### **136 Purpose of section 137**

- (1) The purpose of section 137 is,—
- (a) in appropriate circumstances,—
    - (i) to compensate FENZ for the loss of use of money through levy payers paying too little levy; and
    - (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 137 is not a penalty.

Compare: 1994 No 166 s 120A(1)

#### **137 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 138.
- (2) FENZ may recover interest payable on unpaid levy as though it were levy payable by the levy payer.
- (3) A person who is liable, under subpart 5, to pay a shortfall penalty is liable to pay interest on unpaid shortfall penalty in accordance with section 138.
- (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 138 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.

Compare: 1994 No 166 ss 120A(2), 120D

#### **138 Amount of interest payable**

- (1) In this section,—
- due date** means,—
- (a) in relation to levy, the day by which a levy payer must pay the levy under section 88:

- (b) in relation to a shortfall penalty, the day by which a person must pay the levy to which the shortfall penalty relates

**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 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

**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.
- (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—

- t is the unpaid or overpaid levy or the unpaid or overpaid shortfall penalty on which the interest is payable
- 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
  - (b) any interest that has been paid by that time.

Compare: 1994 No 166 s 120E

### **139 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.
- (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.

Compare: 1994 No 166 s 120F

### **140 Interest payable immediately**

Interest payable to FENZ under this subpart is payable immediately and without the need for a demand.

Compare: 1994 No 166 s 120G

## Subpart 7—Regulations relating to levy

### **141 Levy regulations**

- (1) For the purpose of this Part, the Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with sections 142 and 143, make regulations prescribing a levy in respect of property that is insured against physical loss or damage.
- (2) The regulations must,—
  - (a) for every motor vehicle that is insured against physical loss or damage, prescribe an annual rate of levy per vehicle:
  - (b) for all other property that is insured against physical loss or damage, prescribe an annual rate of levy as a proportion of the amount insured.
- (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:
    - (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:
    - (iii) any other property or class of property:

- (c) 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:
    - (iii) property that is exempt from the levy:
    - (iv) a motor vehicle:
    - (v) any other type of property:
  - (d) provide for the payment and collection of the levy:
  - (e) provide for an exemption from the levy for—
    - (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:
  - (f) provide for waivers or refunds of the whole or any part of the levy, any shortfall penalty, or interest:
  - (g) specify buildings or classes of buildings that are specialised accommodation for the purposes of this Part:
  - (h) provide for any other matters that are necessary or desirable to set, calculate, administer, collect, and enforce the levies, including (without limitation)—
    - (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:
    - (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:
    - (v) the procedure for adjudication under subpart 5.
- (4) Before making a recommendation for the making of regulations relating to an exemption or a waiver under subsection (3)(e) or (f), the Minister must have regard to—
- (a) the purpose set out in section 80; and
  - (b) the likely effect of the exemption or waiver on the cost-effectiveness and efficiency of the administration of the levy and this Part.

- (4A) Regulations prescribing a rate of levy under subsection (2) or (3)(a) or prescribing a maximum amount of levy under subsection (3)(b) must not come into force earlier than 4 months after the date on which they are published.
- (5) If the Minister recommends the making of regulations under subsection (3)(e) or (f), the Minister's reasons must be published together with the regulations.

Section 141(1): amended, on 8 May 2019, by section 5(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Section 141(4A): inserted, on 8 May 2019, by section 5(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## 142 Procedure for levy regulations

- (1) The Minister must, in at least every third financial year, estimate the amount of FENZ's net costs for an upcoming period specified by the Minister (the **period**).
- (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
  - (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) In making a determination, 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:
  - (b) an estimate of the total amount insured for insured properties and the likelihood of any change in that amount:
  - (c) an estimate of the total amount of exemptions and waivers from the payment of the levy that are expected to apply in relation to the period:
  - (d) any amount by which actual levy income received in a preceding period exceeded FENZ's actual net costs in a preceding period:
  - (e) any amount by which actual levy income received in a preceding period was less than FENZ's actual net costs in a preceding period:
  - (f) the benefit of maintaining the stability of each rate of the levy in the long term.
- (5) The Minister must then recommend the making of regulations under section 141 to recover, in each year of the period, the annual portion of FENZ's net costs for the period that the Minister has determined are to be met by levies.
- (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
- (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted.

Compare: 2012 No 2 s 57

Section 142(1): amended, on 8 May 2019, by section 6(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Section 142(4): replaced, on 8 May 2019, by section 6(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Section 142(5): replaced, on 8 May 2019, by section 6(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

### **143 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 determination under section 142(3).
- (2) FENZ must consult levy payers, policyholders, and any other 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 period to which the proposed regulations relate.
- (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
  - (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
    - (ii) the rates of levy.
- (4) FENZ must consider any comments received under subsection (3).
- (5) Regulations made under section 141 are not invalid on the grounds that—
  - (a) subsections (2) to (4) were not complied with before the Minister made a determination under section 142(3); 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.

Compare: 2012 No 2 s 60

Section 143(1): amended, on 8 May 2019, by section 7(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Section 143(5)(a): amended, on 8 May 2019, by section 7(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## 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*

#### 144 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

**conservation area**—

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

**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
  - (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 the Forest and Rural Fires Act 1977; 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

- (b) unless declared to be public conservation land by notice in the *Gazette* under paragraph (a)(v), does not include—
- (i) any conservation area for the time being expressly excluded from 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:
  - (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:
  - (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:
  - (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 Land Act 1948:
  - (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.

**145 Policy for fire 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 control services that relate to, have an impact on, or have implications for public conservation land and additional land.
- (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.



**146 Review of policy for fire control in relation to public conservation land and additional land**

After any policy referred to in section 145 comes into force, the policy is subject to review by FENZ and the Director-General of Conservation as considered necessary by agreement between FENZ and the Director-General of Conservation.

**147 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—

- (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.

*Provisions relating to New Zealand Defence Force*

**148 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
- (b) the designated services that the New Zealand Defence Force will deliver to FENZ.

**149 Functions, duties, and powers of Chief of Defence Force in relation to defence area**

- (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 41 to 45.

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

Compare: 1975 No 42 s 36A(2)

**150 Command of defence fire brigade and any other personnel**

- (1) Every agreement entered into between the Chief of Defence Force and FENZ under section 148 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.
- (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 duties and exercise all the powers of the person in charge of personnel under sections 41 to 45.

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

*Provision relating to Ministry of Education*

**151 Memorandum of understanding with Ministry of Education**

- (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
  - (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—
  - (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.

**Subpart 2—Offences**

*Infringement offences*

**152 Proceedings for infringement offence**

- (1) If a person is alleged to have committed an infringement offence, that person may—
  - (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 153.
- (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.

**153 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.

- (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.
- (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
  - (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
  - (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
  - (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.

**154 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:
  - (a) the person’s full name:
  - (b) the person’s residential, business, or postal address:
  - (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,—
  - (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.

#### **155 Payment of infringement fees**

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

#### *Other offences*

#### **156 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; or
  - (b) a FENZ inspector; or
  - (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)

#### **157 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 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)

**158 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,—
  - (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.

**159 Offence to knowingly or recklessly store spontaneously combustible material in breach of requirements**

- (1) A person commits an offence if the person knowingly or recklessly stores spontaneously combustible material in breach of requirements under this Act or under regulations made under section 187 or 191.
- (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 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

**160 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
  - (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.
- (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 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

### **161 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, duties, or powers in relation to designated services under any relevant fire safety legislation or any other enactment:

- (a) the Crown:
- (b) FENZ:
- (c) the board:
- (d) any FENZ personnel:
- (e) any other person.

- (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.

- (4) In this section, **specified person** means—

- (a) an authorised person:
- (b) any personnel:
- (c) any other person.

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

### **162 Defences in actions or proceedings relating to designated services**

- (1) This section applies in any relevant proceeding taken against any of the following in relation to the delivery of designated services:

- (a) FENZ:
- (b) the board:
- (c) any FENZ personnel:
- (d) any authorised person.

- (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:
  - (d) the delivery of designated services, where required,—
    - (i) to protect and preserve life:
    - (ii) to prevent or limit injury:
    - (iii) to prevent or limit damage to property and land:
    - (iv) to prevent or limit damage to the environment.

Compare: 1975 No 42 s 43(2)

### **163 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.

Compare: 1975 No 42 s 43(3)

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

- (1) Sections 160 and 161 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
  - (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 delivery of designated services in an emergency, it is a defence to prove that—
- (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
  - (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**

### **165 Interpretation in this subpart**

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, FENZ's delivery of designated services

**pre-incident planning**—

- (a) means planning for the purposes of 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.

#### **166 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 Public Service Act 2020);
  - (c) a public service employee as defined in section 65 of the Public Service Act 2020;
  - (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

Section 166(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 166(1)(c): replaced, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **167 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.
- (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

### **168 Suspension and ending of appointment of FENZ inspectors**

- (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

### **169 FENZ inspectors subject to directions from FENZ**

- (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.

Compare: 2015 No 70 s 166

### **170 Powers of entry and inspection**

- (1) A FENZ inspector may, at any reasonable time, enter and inspect any land or building.
- (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 under any relevant fire safety legislation;
  - (c) conduct post-incident analysis.
- (3) This section is subject to section 171.
- (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

### **171 Power to enter homes and marae**

- (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 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
  - (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 an emergency for which FENZ has powers, duties, or functions and entry is necessary for a FENZ inspector to conduct post-incident analysis.
- (3) A warrant issued under subsection (2) authorises a FENZ inspector to exercise only the powers specified in sections 170, 173, and 174 and Part 4 (except sections 118 and 119) of the Search and Surveillance Act 2012.
- (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.

Compare: 2015 No 70 s 169

### **172 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 170 or 171 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 an emergency (**the thing that is the cause of imminent danger**).

- (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
    - (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.
- (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

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

- (1) A FENZ inspector who enters any land or a building under section 170 or 171 may, if the FENZ inspector believes on reasonable grounds that it is necessary to do so, do either of the following:
  - (a) take or remove a sample of any material, substance, or thing for analysis;
  - (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.
- (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 material, substance, or thing is proposed to be seized the opportunity, if it is practicable to do so, to surrender the material, substance, or thing to the inspector.
- (3) Despite subsection (2), a FENZ inspector may exercise the power set out in subsection (1), if—
  - (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.
- (4) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3 and sections 118 and 119) apply.

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

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

#### **174 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.
- (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).
- (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.
- (4) In this section, **specified person** means—
- (a) a FENZ inspector; or
  - (b) FENZ personnel; or
  - (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.

Compare: 2015 No 70 s 173

#### **175 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 an emergency if the FENZ inspector or authorised person (as the case may be) believes on reasonable grounds that it is necessary—

- (a) to preserve or record evidence in relation to the emergency; or
  - (b) to prevent the tampering with, or alteration, mutilation, or destruction of, any thing involved in any manner in the emergency.
- (2) The prohibition or restriction on access to any land or building may apply only 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)

**176 Application to FENZ for access to sites to which entry is prohibited or restricted**

- (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 restricted under section 175.
- (2) The persons are—
- (a) the owner of the land or building;
  - (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—
- (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 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 decision in writing.

Compare: 2012 No 24 s 156

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

- (1) A person described in section 176(2) may apply to the District Court for access to any land or building to which entry is prohibited or restricted under section 175 if the person has made an application under section 176 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—
    - (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.
- (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

#### **178 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—
  - (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, duty, or power by a Minister:
  - (d) a dispute relating to Part 3:
  - (e) any other dispute of a kind specified under section 180(1)(c).

#### **179 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:

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

### 180 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**):
  - (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—
    - (i) is frivolous or vexatious; or
    - (ii) involves events that occurred more than a specified period before the application was made; or
    - (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:
  - (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):
  - (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:
    - (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:
    - (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:
  - (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):
  - (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 187 for the purposes of this paragraph.
- (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.
- (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
  - (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—
- (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.

### **181 Consultation**

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

### **182 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—
  - (a) FENZ has developed the scheme in accordance with this subpart; and
  - (b) the scheme is consistent with the principles set out in section 179.
- (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.
- (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.
- (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 178 to 181 and subsections (1) to (5) apply with all necessary modifications to a variation or replacement).

### **183 Participation is voluntary**

- (1) No person is required to participate in the resolution of a dispute using the dispute resolution scheme.
- (2) However,—
  - (a) a person who appeals under section 35, 63, or 66 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:
  - (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 185.

### **184 Other proceedings**

- (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).

### **185 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—

- (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 180(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.
- (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.
- (4) Subsection (3) overrides subsections (1) and (2) and section 180(3).

### **186 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.
- (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
    - (ii) any further time the court allows on application made before or after that period expires.

## Subpart 6—Regulations

### **187 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*

- (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 180(1)(m):

*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:
  - (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—
  - (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:
- (g) prescribing the form of infringement notices and infringement offence reminder notices:

*Definitions*

- (h) prescribing other purposes for the purposes of the definition of fire as a land management tool in section 6:
- (i) prescribing a place or thing, or a type of place or thing, for the purposes of the definition of fire in open air in section 6 and the definition of in open air in section 61:
- (j) specifying a material or class of material as spontaneously combustible material for the purposes of section 159:

*Public notification*

- (k) prescribing requirements relating to the giving of public notice of any document or other matter:

*Forms*

- (l) prescribing the information that must be contained in forms for the purposes of this Act:

*General*

- (m) 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—
- (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.

**188 Regulations relating to operating processes for local advisory committees**

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:
- (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.

### **189 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.

### **190 Regulations relating to permits for 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 fires in open air that would otherwise be prohibited under Part 2.
- (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:
  - (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.
- (3) The Minister must not make any recommendation under subsection (1) unless the Minister has received a recommendation from FENZ.
- (4) In addition to the matters referred to in section 187(2), different regulations may be made under this section to apply in respect of different types of permits or permit holders.
- (5) FENZ may require a person who has applied for a permit to supply further relevant information before determining whether or not to grant the permit.
- (6) Regulations made under this section must not permit FENZ to grant a permit for the purposes of—

- (a) section 53, 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 57, unless—
    - (i) FENZ considers that the permit is necessary to prevent, reduce, or overcome any hazard to life or because of any other serious emergency; or
    - (ii) weather or other conditions have temporarily reduced the fire hazard so as to make it apparently safe to light a fire.
- (7) 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).
- (8) The grant of a permit under regulations made under this section does not—
- (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.

**191 Regulations relating to fire safety and evacuation procedures in relation to buildings**

- (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).
- (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 buildings (including the duty to keep escape routes free of flammable materials):
  - (b) having evacuation procedures in place:
  - (c) the taking of fire prevention precautions for systems and appliances in buildings:
  - (d) controls on open flames in buildings:
  - (e) the packing and unpacking of goods in flammable packaging materials inside buildings:
  - (f) the storage of spontaneously combustible materials inside and outside of buildings:
  - (g) the storage of goods in flammable packaging materials inside and outside of buildings.
- (3) A building owner commits an offence if the owner knowingly fails to maintain 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 subsection (1).

- (4) A person who commits an offence under subsection (3) is liable on conviction,—
- (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.

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

- (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:
- (a) specifying,—
    - (i) for the purposes of section 75, the minimum amounts of hazardous substances that may be stored or processed in a relevant building;
    - (ii) for the purposes of section 75, 1 or more purposes that qualify a building as a relevant building;
  - (b) prescribing, for the purposes of sections 75 and 76,—
    - (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—
      - (A) section 76(3) applies; and
      - (B) FENZ decides that an evacuation scheme is not necessary;
  - (c) prescribing, for the purposes of section 76, the minimum standards required for automatic sprinkler systems;
  - (d) prescribing, for the purposes of section 78, the process that FENZ must follow for revoking, or requiring the variation of, an approved evacuation scheme.
- (2) In this section, **relevant building** has the meaning given in section 75.

## Subpart 7—General provisions

### 193 Status of FENZ under Reserves Act 1977

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)

**194 FENZ may acquire or take and hold land under the Public Works Act 1981**

- (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.
- (3) Any land, any particular estate or interest in land, or any easement over land acquired or taken and 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.

Compare: 1975 No 42 ss 4(7), 61

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

**195 Repeals**

The following Acts are repealed:

- (a) Fire Service Act 1975 (1975 No 42):
- (b) Forest and Rural Fires Act 1977 (1977 No 52).

**196 Revocations**

The following legislative instruments are revoked:

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

**197 Consequential amendments**

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

**198 Amendments to Local Government Act 2002**

Sections 199 and 200 amend the Local Government Act 2002.

**199 New section 152B inserted (Effect of Fire and Emergency New Zealand Act 2017 on bylaws)**

After section 152A, insert:

**152B Effect of Fire and Emergency New Zealand Act 2017 on bylaws**

- (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
  - (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
  - (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 2017 or any regulations or notice under that Act,—
- (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 2017 or any regulations or notice under that Act.

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

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



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

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## Part 1

### Provisions relating to this Act as enacted

#### Subpart 1—Organisation-related provisions

##### *Interpretation*

### 1 Interpretation

In this Part, unless the context otherwise requires,—

**affected entity** means any of the following:

- (a) a volunteer fire brigade;
- (b) a volunteer fire police unit;
- (c) a fire brigade auxiliary unit;
- (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

**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

**asset** has the meaning given in clause 45(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

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

**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 45(2)

**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

**rural fire 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)

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

**transferred employee**—

- (a) means a person who, immediately before the commencement date,—
  - (i) is employed by 1 or more affected rural fire authority or the Fire Service Commission; and
  - (ii) is employed solely for rural fire duties on a full-time or part-time basis; and
  - (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

- (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
- (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
- (iv) a person who is employed by an affected rural fire authority on a part-time basis to perform rural fire 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—

- (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.

### *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.

Compare: 1975 No 42 s 4(5)

### *Dissolution of rural fire committees*

## **3 Dissolution of rural fire committees**

- (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.

- (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.
- (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.

#### **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 69 of the Privacy Act 2020.

Schedule 1 clause 5(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

#### **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 69 of the Privacy Act 2020.

Schedule 1 clause 6(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

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

- (1) A 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,—
- (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.
- (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 69 of the Privacy Act 2020.

Schedule 1 clause 7(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

*Other consequences of continuation of FENZ*

**8 Consequences of continuation of FENZ**

- (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
  - (b) all property belonging to an affected rural fire authority may be transferred to, or used by, FENZ, subject to any transfer or use arrangement that applies under clause 17 or 18; 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 17 or 18; and
  - (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 17 or 18; and
  - (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 17 or 18; 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
  - (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.
- (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.

*Transferred employees***9 Transfer of employees**

- (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
  - (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.
- (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
  - (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.

*Volunteers***10 Transfer of volunteers**

A transferred volunteer is treated as a FENZ volunteer.

*Volunteer fire brigades***11 Agreements of service between volunteer fire brigades and New Zealand Fire Service Commission continued**

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



- (b) any new arrangements are agreed between the volunteer fire brigades and the Commission.

*Industry brigades*

**12 Agreements for coordination between industrial fire brigades and New Zealand Fire Service Commission continued**

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

- (a) those agreements expire, or those arrangements are ended, in accordance with their terms; or
- (b) those agreements are replaced under section 70.

**13 Continuation of industry brigades**

- (1) Industry brigades are the same groups of persons as the industrial fire brigades 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 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 brigade.

*Government Superannuation Fund*

**14 Government Superannuation Fund**

- (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
  - (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.
- (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.

- (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*

#### **15 Gratuities on retirement or death of transferred members of Fire Service**

- (1) Despite its repeal by section 195(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.
- (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;
  - (c) a reference to service in the Fire Service includes service as an employee of FENZ.

Compare: 1975 No 42 s 55

#### **16 Gratuities on retirement or death of transferred volunteers**

- (1) Despite its repeal by section 195(a) of this Act, section 56 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 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
  - (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;
  - (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

#### **17 Duties in relation to transfer or use arrangements for response assets**

- (1) All parties, when negotiating transfer or use arrangements for response assets, must—

- (a) act collaboratively with each other and in good faith; and
- (b) take into account—
  - (i) the preferences of the asset owners; and
  - (ii) the principles specified in subclause (2).
- (2) The principles are—
  - (a) transfer or use arrangements may vary from case to case, depending on legal, commercial, and financial circumstances; and
  - (b) response assets acquired substantially through fund-raising or community donations should be allowed to be retained by the community that made the greatest contribution towards the acquisition of those assets.
- (3) Asset owners must engage with FENZ for the purposes of this subpart.
- (4) 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 18.
- (5) 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 use of the asset—
  - (a) without any restriction; and
  - (b) as soon as is reasonably practicable after the person receives a request for use from FENZ.
- (6) FENZ is responsible for any liabilities transferred to FENZ only to the extent as agreed under a transfer arrangement entered into under this clause.
- (7) All parties must endeavour to complete transfer or use arrangements by the close of 30 June 2017.
- (8) 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.
- (9) Subclause (8) is subject to subclause (1).

## **18 Use of response assets**

- (1) On and from the commencement of this clause, a person who is in possession of a response asset is to give FENZ use of the response asset for the purposes of FENZ carrying out its main functions and additional functions.
- (2) The use of the response asset is to be given to FENZ under a use arrangement—
  - (a) on terms and conditions negotiated in good faith with FENZ in accordance with this subpart; and
  - (b) subject to the other provisions of this Act.

**19 Transfer or 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—

- (a) any other enactment; or
- (b) any agreement with a third party.

**20 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.
- (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
    - (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
  - (c) does not release any surety in whole or in part from all or any obligation; and
  - (d) does not invalidate or discharge any contract or security.

*Regulations***21 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.
- (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) to enable—
    - (i) the transfer of response assets to FENZ; or
    - (ii) the use of response assets by FENZ; and
  - (b) for the orderly implementation of this Act.

## 22 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
  - (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
  - (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
  - (b) are necessary or desirable for the orderly implementation of this Act.

### Subpart 3—Levy for transitional period

## 23 Levy for transitional period

This subpart—

- (a) provides for a levy to fund a portion of FENZ's costs in the transitional period;
- (b) applies only in relation to the transitional period.

## 24 Interpretation in this subpart

- (1) In this subpart, unless the context otherwise requires,—

**2017/18 financial year** means the period beginning on 1 July 2017 and ending on 30 June 2018

**archive** has the meaning given in clause 25A(2)

**cultural heritage body** has the meaning given in clause 25A(2)

**cultural heritage items** has the meaning given in clause 25A(2)

**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

**transitional period** means the period beginning on 1 July 2017 and ending with the close of the day before the date on which sections 80 to 140 commence (in accordance with section 2).

- (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
- (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.

Schedule 1 clause 24(1) **archive**: inserted, on 1 July 2019, by section 8(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Schedule 1 clause 24(1) **cultural heritage body**: inserted, on 1 July 2019, by section 8(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

Schedule 1 clause 24(1) **cultural heritage items**: inserted, on 1 July 2019, by section 8(1) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## 25 Levy for transitional period payable in respect of property insured against fire

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.

### 25A Art and items in collections exempt from levy

- (1) Despite clause 25, a levy is not payable for art or items that—
  - (a) are insured against fire under any contract of fire insurance made in New Zealand; and
  - (b) are in a collection of a cultural heritage body (whether or not the art or items are currently present in or on that body's premises).
- (2) In this clause,—
  - archive**—
    - (a) includes Archives New Zealand (Te Rua Mahara o te Kāwanatanga) and the National Library of New Zealand Te Puna Mātauranga o Aotearoa; and
    - (b) includes specialist archival units (for example, an archival unit within a general university library such as the Hocken Collections—Uare Taoka o Hākena); but
    - (c) does not include a library

**cultural heritage body** means a museum/whare taonga, archive, or art gallery that—

- (a) is a permanent non-profit-making body whose primary purpose is to exhibit or conserve cultural heritage items in perpetuity to enable public education, public enjoyment, or the preservation of those cultural heritage items; and

- (b) exhibits or conserves its collection or collections in or on premises that are not a private residence and that are usually open to the public or a class of the public

**cultural heritage items** means property (tangible or intangible) that is significant from a scientific, historical, artistic, or cultural perspective.

Schedule 1 clause 25A: inserted, on 1 July 2019, by section 8(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## **25B New Zealand Defence Force property exempt from levy**

Despite clause 25, a levy is not payable for property that is insured—

- (a) against fire under any contract of fire insurance made in New Zealand; and
- (b) by, and for the purposes of, the New Zealand Defence Force.

Schedule 1 clause 25B: inserted, on 1 July 2019, by section 8(2) of the Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16).

## **26 Certain provisions of Fire Service Act 1975, and Fire Service Regulations 2003, continue to apply for transitional period**

- (1) For the purpose of the levy for the transitional period, the following provisions of the Fire Service Act 1975 continue to apply, despite their repeal by section 195(a) of this Act, subject to the modifications set out in subclause (2):
  - (a) section 47B:
  - (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.
- (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 the Fire Service Regulations 2003 (as continued and modified by subclauses (3) and (4)) and to regulations made under clause 27:
  - (c) every reference to a prescribed form must be treated as if it were a reference to a form prescribed by the Fire Service Regulations 2003 (as continued and modified by subclauses (3) and (4)) or by regulations made under clause 27:
  - (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 27(1)(b).

- (3) For the purpose of the levy for the transitional period, the Fire Service Regulations 2003 continue to apply, despite their repeal by section 196(b) of this Act, subject to the modifications set out in subclause (4).
- (4) The modifications are that, in the Fire Service Regulations 2003,—
  - (a) every reference to the Commission must be treated as if it were a reference to FENZ;
  - (b) the words “Buyer Created Tax Invoice—IRD Approved” in forms 1, 3, and 4 in Schedule 1 must be treated as if they had been deleted.

## **27 Regulations relating to levy for transitional period**

- (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
  - (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:
    - (i) residential buildings;
    - (ii) personal property;
    - (iii) any other property;
  - (b) prescribe a maximum amount of levy payable for each of the following:
    - (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 28;
  - (d) provide for and regulate the collection, receipt, and payment of money under this subpart;
  - (e) require insurance companies to make returns and keep books and accounts for the purposes of this subpart;
  - (f) specify any information (including information that may enable or assist in the determination of the rates or amounts of levy payable after the end of the transitional period) that a person that is required to make or pro-



vide a return, certificate, or statutory declaration under section 49, 49A, 49B, 50, or 51A of the Fire Service Act 1975 must provide to FENZ:

- (g) 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 195(a).
- (3) If the period of the contract referred to in subclause (1)(b)(ii) is any period other than a complete year, the levy must be calculated as a pro rata proportion of the levy for a complete year.
  - (4) Information specified in regulations made under subclause (2)(f) must be provided in a form specified by FENZ for the purpose (or in any other manner approved by FENZ).

## **28 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 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 27:
  - (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 27.
- (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).
- (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 27.

## **29 Review relating to levy for transitional period**

- (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—
  - (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.
- (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 27 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.
- (5) If the transitional period continues beyond the close of 30 June 2018 (because sections 80 to 140 commence later than 1 July 2018), the levy rate or rates prescribed in regulations made under clause 27 in accordance with a recommendation made under subclause (4) continue to apply until the end of the transitional period.
- (6) However, the Minister may, at any time during the transitional period, recommend the amendment of the regulations if the Minister is satisfied that—
  - (a) actual net costs in the transitional period are likely to vary significantly from the estimate of net costs under subclause (2) on which the regulations were based (after that estimate has been adjusted to reflect the expected length of the transitional period); and
  - (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted.

### **30 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 27(1).
- (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.
- (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).
- (5) Regulations made under clause 27 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.

### **31 Pre-commencement review and consultation**

Clauses 29 and 30 are satisfied in relation to regulations made under clause 27 if action of the kind described in those provisions was taken before their commencement to facilitate the making of the regulations.

### **32 Confidentiality of information and documents**

- (1) Section 97(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).
- (2) Section 98 applies to information and documents provided to FENZ under this subpart and published or disclosed under section 97(2)(c), (d), or (e) (as applied by subclause (1)).

#### Subpart 4—Miscellaneous provisions

##### *Code of practice for firefighting water supplies*

### **33 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 72.

##### *Evacuation schemes*

### **34 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—
  - (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 77.

### **35 Previously approved evacuation schemes**

An evacuation scheme is to be treated as having been approved under section 77 if—

- (a) it was approved under section 21C of the Fire Service Act 1975; and
- (b) the approval was given before the commencement of sections 75 to 79 of this Act.

Compare: 1975 No 42 s 21I

### **36 Certain provisions saved**

- (1) Sections 21A to 21I of the Fire Service Act 1975 (which relate to evacuation schemes) continue to apply, despite their repeal by section 195(a) of this Act, until the commencement of sections 75 to 79 of this Act.
- (2) For the purposes of subclause (1), every reference to the National Commander in sections 21C to 21I of the Fire Service Act 1975 must, unless the context otherwise requires, be treated as if it were a reference to FENZ.

#### *Permits for lighting of open fires*

### **37 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 190 if—

- (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*

### **38 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 22.

#### *Removal of fire hazards*

### **39 Requirement to remove fire hazards**

Despite their repeal by section 200, 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*

**40 Bylaws to prevent the spread of fires involving vegetation**

- (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,—
  - (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.

*Levy relief in period ending with close of 30 June 2025*

**41 Interpretation in clauses 42 to 44**

In clauses 42 to 44, words or expressions have the meanings given in Part 3 of this Act.

**42 Levy relief in period ending with close of 30 June 2025**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for exemptions from the levy in relation to the whole or part of the period that commences on the date on which sections 80 to 140 commence (in accordance with section 2) and that ends with the close of 30 June 2025.
- (2) Regulations made under subclause (1) must specify—
  - (a) the policyholders or the classes of policyholder who may qualify for an exemption (in whole or in part) from the levy (**specified policyholders**):
  - (b) the circumstances in which a specified policyholder may qualify for an exemption (**qualifying circumstances**):
  - (c) the property to which an exemption may apply (for example, a type or types of property or the property of a specified policyholder that is under or over a certain threshold of amount insured) (**specified property**):
  - (d) how the amount of an exemption may be determined:
  - (e) any conditions that attach to an exemption.

- (3) The regulations may specify the qualifying circumstances by specifying a formula that defines the qualifying circumstances.
- (4) The formula may include a variable or variables based on—
  - (a) the amount of levy the specified policyholder paid in the transitional period in relation to the policyholder's specified property (or, if levy was not payable in respect of the property in that period, the amount that the policyholder would have paid in the transitional period had levy been payable in respect of the property); and
  - (b) the amount of levy that the specified policyholder would, in the absence of an exemption under regulations made under this clause, pay in levy in relation to the policyholder's specified property in any period falling within the period commencing on the date on which sections 80 to 140 commence and ending with the close of 30 June 2025.
- (5) For the purposes of specifying how the amount of an exemption may be determined, the regulations must—
  - (a) specify a formula for the calculation of the amount of the exemption; or
  - (b) provide for the amount of the exemption to be agreed between FENZ and the specified policyholder.
- (6) If the regulations provide for exemptions by agreement, the regulations must specify—
  - (a) the maximum amount of levy or maximum proportion of levy that may be the subject of an exemption by agreement;
  - (b) any matters to which FENZ must have regard in considering whether to agree to an exemption.
- (7) In this clause, **transitional period** has the meaning given in clause 24(1).

#### **43 Minister's recommendation under clause 42**

- (1) The Minister may recommend the making of regulations under clause 42 only if the Minister is satisfied that the regulations are 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 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) The Minister may recommend the making of regulations under clause 42 only after having regard to—
  - (a) the purpose set out in section 80; and
  - (b) the likely effect of the exemption on the cost-effectiveness and efficiency of the administration of the levy and Part 3 of the Act.

- (3) If the Minister recommends the making of regulations under clause 42, the Minister's reasons must be published together with the regulations.
- (4) Before recommending the making of regulations under clause 42, the Minister must—
  - (a) consult the persons that the Minister considers are likely to be substantially affected, or their representatives, about the proposed regulations; and
  - (b) publish a notice that describes the proposed regulations and invites written comments on the proposed regulations; and
  - (c) consider any comments received under paragraph (b).
- (5) Regulations made under clause 42 are not invalid on the grounds that subclause (4) of this clause was not complied with before the Minister recommended the making of the regulations.

#### **44 FENZ's consideration of exemption by agreement**

If regulations made under clause 42 provide for the amount of an exemption to be agreed between FENZ and a specified policyholder, FENZ must, in considering the amount of an exemption to agree with a specified policyholder, have regard to—

- (a) the increase in the amount of levy payable by the policyholder as a consequence of the commencement of sections 80 to 140; and
- (b) the extent to which paying the increased amount places an unreasonable burden on the policyholder; and
- (c) any other matter specified in regulations made under clause 42.

### *Taxation*

#### **45 Application**

- (1) This clause and clauses 46 to 51 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.
- (2) In this clause and clauses 46 to 51,—

**asset** means all assets of any kind, whether in the form of real or personal property, money, shares, securities, rights, or interests

**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

**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 46 to 51, terms defined in the Inland Revenue Acts have the meanings given by those Acts.

#### **46 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.

#### **47 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.

#### **48 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.
- (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.

#### **49 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.

#### **50 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 45 to 49.



**51 Goods and services tax**

- (1) When an asset of a transferring entity becomes the asset of FENZ, the transfer is treated as the supply 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.

## Schedule 2

### Consequential amendments

s 197

#### Part 1

#### Amendments to Acts

##### **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:

##### **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 76 of the Fire and Emergency New Zealand Act 2017”.

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**”.

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”.

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”.

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”.

**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 2017:

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 services”.

After section 17(3), insert:

- (4) In subsection (1), **designated services** has the same meaning as in section 6 of the Fire and Emergency New Zealand Act 2017.

**Employment Relations Act 2000 (2000 No 24)**

In Schedule 1, Part A, replace clause 6 with:

- 6 The delivery of designated services (within the meaning of section 6 of the Fire and Emergency New Zealand Act 2017) 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 services”.

After section 18(3), insert:

- (4) In subsection (1), **designated services** has the same meaning as in section 6 of the Fire and Emergency New Zealand Act 2017.

**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 2017”.

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”.

In section 26(1A)(a), after “1975”, insert “or to Fire and Emergency New Zealand pursuant to the Fire and Emergency New Zealand Act 2017”.

**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 2017”.

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 2017”.

In section 136(1)(b)(ii), replace “Fire Service Act 1975” with “Fire and Emergency New Zealand Act 2017”.

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 2017”.

**Health Act 1956 (1956 No 65)**

In section 69T(a), replace “the New Zealand Fire Service” with “Fire and Emergency New Zealand”.

**Health Act 1956 (1956 No 65)—continued**

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

**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”.

In section 92(4), definition of **emergency services worker**, replace paragraph (b) with:

- (b) designated services (as defined in section 6 of the Fire and Emergency New Zealand Act 2017)

**Inquiries Act 2013 (2013 No 60)**

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—

- (a) a defence fire brigade and an industry brigade (as those terms are defined in section 6 of the Fire and Emergency New Zealand Act 2017); and
- (b) employed firefighters or other members of a defence fire brigade or an industry brigade; and
- (c) employees, volunteers, and contractors of Fire and Emergency New Zealand who are operational personnel delivering designated services (as those terms are defined in section 6 of the Fire and Emergency New Zealand Act 2017)

Replace section 30O(4)(b) with:

- (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:

- (c) as a vehicle for the delivery of designated services (as defined in section 6 of the Fire and Emergency New Zealand Act 2017) by an employee, volunteer, or contractor of Fire and Emergency New Zealand.

**Local Authorities (Members' Interests) Act 1968 (1968 No 147)**

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”.

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”.

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.”.

In section 647(6), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

**Local Government Act 2002 (2002 No 84)**

Repeal section 146(c).

Repeal section 153(1)(e).

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 2017”.

**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

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:

**Radiation Safety Act 2016 (2016 No 6)**—*continued*

- (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 2017 or regulations made under that Act; or

In section 54(1)(c), replace “Fire Service Act 1975” with “Fire and Emergency New Zealand Act 2017”.

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 2017”.

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 2017”.

In section 57(6), replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”.

**Resource Management Act 1991 (1991 No 69)**

In section 14(3)(e), replace “firefighting purposes” with “emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017”.

**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”.

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 76 of the Fire and Emergency New Zealand Act 2017”.

In section 127(2)(e)(i), replace “section 21B of the Fire Service Act 1975” with “section 76 of the Fire and Emergency New Zealand Act 2017”.

In section 152(1)(b), replace “a member of the fire service” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

In section 204(2)(a), replace “a member of the fire service” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

**Sale and Supply of Alcohol Act 2012 (2012 No 120)—continued**

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 166 of the Fire and Emergency New Zealand Act 2017”.

In section 286(2), replace “section 21B of the Fire Service Act 1975” with “section 76 of the Fire and Emergency New Zealand Act 2017”.

**Search and Surveillance Act 2012 (2012 No 24)**

In the Schedule, insert in its appropriate alphabetical order:

Fire and Emergency New Zealand Act 2017	170(1)	FENZ inspector may enter and inspect land and buildings for the purposes specified in section 170(2) of the Fire and Emergency New Zealand Act 2017	All (except subpart 3 and sections 118 and 119)
	171(1)	FENZ inspector may enter homes and marae with the consent of an occupier or pursuant to a warrant	All (except sections 118 and 119)
	172(2)	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 an emergency	All (except subpart 3 and sections 118 and 119)
	173(1)	FENZ inspector who has entered land or a building may, if the 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 under fire safety legislation	All (except subpart 3 and sections 118 and 119)
	174(1)	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:



**Sentencing Act 2002 (2002 No 9)—continued**

- (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)**

In section 2(1), definition of **infringement notice**, after paragraph (jb), insert:

- (jc) section 153 of the Fire and Emergency New Zealand Act 2017; or

**Part 2**

**Amendments to legislative instruments**

**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 76 of the Fire and Emergency New Zealand Act 2017”.

**Education (Hostels) Regulations 2005 (SR 2005/332)**

In regulation 49(b), replace “Fire Service Act 1975” with “Fire and Emergency New Zealand Act 2017”.

**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 2017”.

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”.

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 2017”.

**Land Transport (Road User) Rule 2004 (SR 2004/427)**

In 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 2017”.

In clause 1.6, revoke the definition of **Fire Authority**.

In clause 1.6, replace the definition of **fire service vehicle** with:

**fire service vehicle** means a vehicle that is—

- (a) owned or operated by Fire and Emergency New Zealand; or

**Land Transport (Road User) Rule 2004 (SR 2004/427)—continued**

- (b) owned or operated by a defence fire brigade or an industry 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:

**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 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 2017, and other fire service resources owned by private organisations

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”.

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”.

In the Schedule, revoke clause 45(5).

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 2017 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.

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”.

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:

- (e) the Fire and Emergency New Zealand Act 2017:

In the Schedule, replace clause 124(6)(l) with:

- (l) Fire and Emergency New Zealand:

**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)**  
—*continued*

In the Schedule, replace clause 133(2)(i) with:

(i) Fire and Emergency New Zealand:

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”.

In the Schedule, Appendix 1, item relating to wild fire, replace “Forest and Rural Fires Act 1977” with “Fire and Emergency New Zealand Act 2017”.

In the Schedule, Appendix 1, item relating to urban fire, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand” in each place.

In the Schedule, Appendix 1, item relating to urban fire, replace “Fire Service Act 1975” with “Fire and Emergency New Zealand Act 2017”.

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 2017”.

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 2017”.

**Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (SR 2004/309)**

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 2017

**Traffic Regulations 1976 (SR 1976/227)**

In regulation 2, revoke the definition of **fire authority**.

## Reprints notes

### **1** *General*

This is a reprint of the Fire and Emergency New Zealand Act 2017 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Privacy Act 2020 (2020 No 31): section 217

COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3

Fire and Emergency New Zealand (Levy) Amendment Act 2019 (2019 No 16)