

Fire and Emergency New Zealand Bill

Government Bill

Explanatory note

General policy statement

New Zealand's fire services legislation has not fundamentally changed since the 1940s. This Bill is intended to enable—

- “fit-for-purpose” 21st century fire services that are flexible, modern, effective, and efficient; and
- fire services that work well, are funded appropriately, and value the paid and volunteer workforce.

This Bill repeals the 2 Acts governing fire services, the Fire Service Act 1975 and the Forest and Rural Fires Act 1977, to give effect to a single, unified fire services organisation for New Zealand.

The organisation continued as Fire and Emergency New Zealand (**FENZ**) will combine urban and rural fire services and will have local committees to ensure FENZ is responsive to the risks and needs of the communities in which it serves.

The Bill is the result of 2 reviews of the fire services undertaken by the Government in 2012 and 2015 that looked at mandate, rural and urban governance and support structures, legislation modernisation, funding, and co-ordination with other emergency services.

A discussion document released in 2015 asked for public feedback on ways to improve support for firefighters, reflect local needs, align funding, and enhance the governance of fire services. Stakeholders agreed that—

- changing expectations and circumstances are putting the fire services under pressure (for example, public and societal expectations, and environmental circumstances such as changing weather patterns):

- there is a lack of co-ordination within and among urban and rural fire services, unclear accountability for non-fire response activities, and variable leadership (multiple governance structures):
- investment is inconsistent with some communities' needs and is driven by who delivers the service rather than by risk:
- there are cultural differences between urban and rural fire services and between volunteer and career firefighters that can generate operational issues and grievances:
- the Fire Service levy does not adequately align costs to where potential use of services lies, is out of date and ambiguous, and is not adequately aligned to performance.

A clear view emerged from the 2 reviews that change was needed and welcomed. There has been extensive consultation with stakeholders and agreement on the type of fire services needed in New Zealand and how best those services should be supported and funded, given the risks that fire services and communities face.

This Bill gives the existing Crown entity, the New Zealand Fire Service Commission, expanded functions and a new name that reflects the wide range of services that firefighters provide for communities, including call-outs to road accidents, natural disasters, and medical emergencies. Local committees will be set up to provide local input to FENZ's national planning.

The levy (paid on insurance for property) will become the principal source of funding for FENZ. It will replace a variety of funding sources for rural fire services.

The Bill enables the levy to be broadened to include insurance for material damage, not just fire damage, to better reflect the range of services that FENZ will provide. The levy on motor vehicle insurance will be extended to include third party insurance. There will be public consultation at least every 3 years on the level of the levy, making the funding of fire services more transparent and allowing the funding of FENZ to be aligned to its strategic and business planning processes.

The Bill introduces a range of changes and new measures for the detailed design and operational policy of FENZ, including the following:

- an updated offences and penalties regime, including a new infringement offence scheme:
- removal of powers to recover the cost of rural fires:
- new powers for managing hazardous substances incidents:
- new measures to encourage compliance among levy-payers and to protect the integrity of the levy:
- new powers for firefighters to enter premises to investigate the causes of fires and to take a sample or samples of objects for analysis.

The Bill provides that the existing paid and volunteer workforce will retain its existing entitlements. Volunteers will move into a direct relationship with FENZ, and there

is provision for independent advocacy services and support for FENZ volunteers, at no charge to those volunteers. FENZ will be required to develop a framework for supporting volunteers, based on modern volunteer principles.

The Bill also contains provisions empowering FENZ to develop a new code of practice to ensure adequate firefighting water supplies, and a new dispute resolution scheme. The code and the scheme will be developed with input from stakeholders. As these are powers to make disallowable instruments, they will be approved by the responsible Minister, notified in the *Gazette*, and presented to the House of Representatives under section 41 of the Legislation Act 2012.

The Bill also provides for new provisions for evacuation schemes for relevant buildings. These provisions will come into force on 1 July 2018, if not brought into force by Order in Council earlier. This approach is intended to allow time to consult with the sector on new regulations to update Part 2 of the Fire Safety and Evacuation of Buildings Regulations 2006.

Named roles will no longer be specified in legislation. However, the Bill enables the delegation of powers and functions to appropriately qualified or trained personnel. Firefighters will still have the powers to act decisively and competently in emergency situations.

The Bill will make the firefighting assets (fire engines, fire equipment, etc) of current fire services available to FENZ to use to perform its fire and emergency functions. The transfer of assets will be determined using a principles-based approach and in collaboration with the owner of the asset.

Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=148>

Regulatory impact statement

The Department of Internal Affairs produced the following 3 regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill:

- Fire Services Review, produced on 29 October 2015:
- Fire Services Review: costs of change and new funding arrangements, produced on 22 March 2016:
- Fire Services Review: detailed policy design, produced on 7 April 2016.

Copies of those regulatory impact statements can be found at—

- <http://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. Most of the Bill comes into force on 1 July 2017. Preliminary provisions and some transitional provisions come into force on the day after Royal assent. Some other provisions about evacuation schemes come into force on 1 July 2018 unless earlier brought into force by Order in Council. Provisions relating to the levy come into force on 1 July 2018.

Part 1

Fire and Emergency New Zealand

Subpart 1—Preliminary provisions

Clause 3 sets out the purpose of the Bill. The purpose is to—

- reform the law relating to fire services, including strengthening the role of the community in the provision of those services; and
- unify fire services by establishing FENZ and to provide for FENZ’s objectives, functions, operating principles, and powers; and
- provide for a levy-based system to fund FENZ; and
- provide for local committees to influence and advise FENZ; and
- improve support for volunteers and enable them to communicate directly with FENZ; and
- provide new offences and penalties to improve fire safety.

Clause 4 and *Schedule 1* provide for transitional, savings, and related provisions (*see* the explanation of *Schedule 1*).

Clause 5 provides that the Bill binds the Crown. However, except as expressly provided, nothing in the Bill applies to defence areas, members of the New Zealand Defence Force in those areas, or defence fire brigades.

Subpart 2—Interpretation

This subpart (*clauses 6 and 7*) defines certain words and expressions that are used in the Bill.

Subpart 3—Fire and Emergency New Zealand and board

This subpart continues FENZ as a Crown entity under the Crown Entities Act 2004 (*clause 8*). FENZ will be a Crown agent under that Act. FENZ is the same body as the New Zealand Fire Service Commission.

Clause 9 provides that FENZ's board (the **board**) consists of not fewer than 5, and not more than 6, members.

Subpart 4—FENZ's main objectives, functions, and operating principles

Main objectives

Clause 10 sets out the main objectives of FENZ, which include—

- reducing the incidence of unwanted fire and the associated risk to life and property; and
- in relation to its main functions, protecting and preserving life, preventing or limiting injury, and preventing or limiting damage to property, land, and the environment.

Functions

Clause 11 sets out the main functions of FENZ, which include—

- promoting fire safety:
- providing fire prevention, response, and suppression services:
- stabilising or rendering safe incidents that involve hazardous substances:
- rescuing trapped persons (for example, from a car that has been in an accident):
- providing urban search and rescue services:
- efficiently administering the Bill (once enacted).

Clause 12 sets out additional functions. Before performing these additional functions, FENZ must ensure that it retains the capacity to perform its main functions. The additional functions include—

- responding to medical emergencies:
- performing technical rescues (for example, from a collapsed building):
- providing assistance at transportation incidents (for example, crash scene cordoning and traffic control):
- responding to severe weather-related events, natural hazard events, and disasters:
- responding to certain incidents involving substances or materials that create a risk:
- promoting safe practices relating to hazardous substances.

Operating principles

Clause 13 requires FENZ to develop operating principles to guide FENZ and to assist it to—

- carry out its functions effectively and in a co-ordinated manner:
- work co-operatively and collaboratively with other organisations:

- carry out effective consultation with stakeholders.

In formulating the principles, the board must take into account various matters including local interests and differences, the importance of transparency, and the importance of engagement with personnel, local committees, and various relevant organisations.

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

This subpart (*clauses 14 to 22*) provides for—

- the establishment of local committees. The main purpose of local committees is to provide advice, from a local perspective, to FENZ. FENZ’s board owes duties towards these committees, including to support the committees to be efficient and effective and to take into account advice from local committees:
- the setting of local committee boundaries:
- local planning for each local area. In undertaking the planning, FENZ must take into account various matters, including the national strategy, the emergency services required within the local area, advice from the local committee, and various operational service agreements. The planning must identify the specific needs in the local area and the local activities that address those needs. There must be a specific fire plan for the local area and the planning must demonstrate how the local allocation of resources fits in with the national plan:
- the delegation of the functions or powers of FENZ or its board.

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

Appointments and vacancies

Clauses 23 to 27 provide for the appointment of officers to different roles and ranks. An officer must be either an employee of FENZ or a volunteer. These clauses also contain requirements that appointments be made on merit, requirements regarding the notification of vacancies and appointments, and requirements for the review of appointments.

Leaving FENZ compulsorily due to incapacity

Clauses 28 to 32 provide—

- for the board to prescribe standards of health required of operational personnel to ensure that they are fit to competently perform their duties:
- for the standards to be communicated to all operational personnel:
- that the board may require a member of operational personnel to leave FENZ if—
 - the person is incapable of competently performing his or her duties; and
 - 2 medical or health practitioners certify that the person’s incapacity is referable to the person’s inability to meet the health standards and that the

person has failed to respond, or is unlikely to respond, to treatment, counselling, or other remedial assistance:

- for when an operational employee who is required to leave FENZ ceases to be an employee (subject to any personal grievance action in respect of the requirement):
- that an operational volunteer may appeal against a requirement to leave in accordance with the dispute resolution provisions in *subpart 5 of Part 4*.

Subpart 7—Volunteers

Clause 33 requires FENZ to—

- take reasonable steps to recognise, respect, and promote the contribution of FENZ volunteers:
- consult FENZ volunteers and relevant organisations:
- develop arrangements that encourage, maintain, and strengthen the capability of FENZ volunteers.

The clause also provides that section 118 of the Crown Entities Act 2004 applies in relation to volunteers working for FENZ. Section 118 requires FENZ to operate a personnel policy that complies with the principle of being a good employer.

Clause 34 requires FENZ to make advocacy and support services available to FENZ volunteers (at no cost to those volunteers).

Part 2

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

Subpart 1—Operational functions, duties, and powers

This subpart (*clauses 35 to 58*) provides—

- that, if an alarm of fire is raised or a fire is reported, an authorised person is empowered to do various things, including to endeavour by all practicable means to extinguish or prevent the spread of the fire, to save lives and property, to direct any person to stop an activity that may contribute to the emergency, and to direct any person to leave, or refrain from entering, a place:
- that, if a hazardous substance emergency occurs, an authorised person is empowered to do various things, including to endeavour by all practicable means to stabilise or render safe hazardous substances involved in the emergency, to save lives and property, to direct any person to stop an activity that may contribute to the emergency, and to direct any person to leave, or refrain from entering, a place:

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- that, if other emergencies occur, an authorised person is empowered to do various things, including taking whatever action is necessary to save lives and property in danger:
 - for the authorised person to control and direct all FENZ personnel, defence fire brigades, and industry fire brigades and all persons who place their services at his or her disposal:
 - for various powers of an authorised person in relation to land, buildings, or structures. These powers include a power to enter any land, building, or structure, to break into a building or structure, to take equipment onto or into any land, building, or structure, to remove any flammable or other dangerous material, and to pull down or shore up a building or structure:
 - for powers of an authorised person in relation to trees or other plants:
 - for various other powers (for example, a power to 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 and a power to shut off or disconnect a supply of gas, fuel oil, or electricity):
 - for powers to destroy or dispose of any by-product after rendering safe a hazardous substance emergency or other substance emergency:
 - for powers to use water in mains for various purposes:
 - for a duty for FENZ to notify, or report to, various organisations in relation to hazardous substance emergencies:
 - that FENZ may prohibit the lighting of open fires in an area, or prohibit or restrict any other activity in an area that FENZ considers may cause a fire to start or to spread, if FENZ considers that fire risk conditions exist or are likely to exist in the area and that the prohibition or restriction is necessary or desirable for fire control:
 - that it is an offence for a person who has notice of a prohibition (relating to the lighting of open fires or any other activity) to knowingly do the prohibited activity except in accordance with a permit:
 - that it is an offence for a person who has notice of a restriction to knowingly do the restricted activity in a way that breaches the restriction:
 - for prohibited or restricted fire seasons to be declared for an area:
 - that it is an offence to knowingly or recklessly light or allow another person to light an open fire in an area that is in a prohibited or restricted season except in accordance with a permit:
 - that it is an offence to knowingly or recklessly cause or permit a fire to spread to vegetation (or to leave such a fire without first taking precautions against the spread of the fire to vegetation) if, as a consequence, fire burns or damages vegetation or other property or damages soil:

- that it is an offence to knowingly or recklessly leave a burning or smouldering substance so as to cause a fire hazard in vegetation and—
 - to fail to take all reasonable steps to extinguish any smouldering substance and any ensuing fire; or
 - if the person is unable to extinguish the smouldering substance or fire, to fail to notify FENZ immediately and to continue, as far as possible, to endeavour to control or extinguish the substance or fire:
- for FENZ to require the landholder of forestry land to make and clear fire-breaks if FENZ considers it necessary for the purpose of fire control.

Subpart 2—Industry fire brigades

This subpart (*clauses 59 to 61*) provides for various persons to organise and maintain an industry fire brigade. For example, an owner of commercial or industrial premises may organise a brigade for the purpose of protecting the premises from fire.

The subpart—

- allows the board to enter into agreements with owners or occupiers of premises protected by an industry fire brigade:
- allows a principal officer of an industry fire brigade to perform or exercise functions, duties, and powers under *clauses 38 to 42* in certain circumstances.

Subpart 3—Provisions relating to water supply

Code of practice for firefighting water supply

Clause 62 allows the Minister to approve a code of practice for firefighting water supply (the **code**).

Clause 63 requires FENZ to develop, consult on, and publish the code.

Powers and duties in relation to water supply

Clause 64 provides for checks on the adequacy of water supplies (for example, tests of water volume and pressure) in order to check that the code is being complied with.

Subpart 4—Evacuation schemes

This subpart (*clauses 65 to 68*)—

- requires the owners of various buildings to maintain an evacuation scheme to enable evacuation from the scene of a fire. The relevant buildings include buildings used for the gathering together, for any purpose, of 100 or more persons or buildings used to provide employment facilities for 10 or more persons. A person who knowingly contravenes the requirement commits an offence and is liable to a penalty of imprisonment for a term not exceeding 6 months or a fine not exceeding \$75,000 (in the case of an individual) or a fine not exceeding \$150,000 (in any other case):

- requires the evacuation scheme to be approved by FENZ;
- allows a District Court to order that a building be closed until the requirements relating to evacuation schemes are complied with.

Part 3

Levy

Part 3 provides for a levy to fund FENZ. In summary, the levy is payable in respect of—

- every motor vehicle that is insured against physical damage or loss or in relation to which any person is insured against third party liability;
- any other property that is insured against physical damage or loss.

The amount of the levy that is payable in relation to—

- a motor vehicle is an annual amount to be prescribed in regulations;
- any other property is an amount calculated by reference to the amount for which the property is insured against physical damage or loss (the amount insured) under the insurance contract.

Subpart 1—Purpose and interpretation

Subpart 1 (clauses 69 to 72) sets out the purpose of *Part 3* and defines various terms used in this Part.

Clause 69 sets out the purpose of *Part 3*.

Clause 70(1) defines certain words and expressions used in *Part 3*. *Clause 70(2)* provides that the provisions of *Part 3* must be interpreted in a manner that best gives effect to the purpose set out in *clause 69*.

Clause 71 defines the term amount insured. If a contract of insurance contains an express maximum limit on the amount for which the property is insured against physical damage or loss, the amount insured is that maximum limit. In any other case, the amount insured is the declared value.

Clause 72 sets out how the declared value of property is determined.

Subpart 2—Levy on insured property

This subpart (*clauses 73 to 83*) provides—

- that the levy is payable on—
 - any motor vehicle that is the subject of a contract of insurance; and
 - any other property that is insured under a contract of insurance;
- that the amount of levy payable for:
 - a motor vehicle is an annual amount prescribed in regulations; and
 - any other property is an amount calculated on the basis of the amount insured in accordance with regulations;

- that insurers are liable to pay the levy to FENZ when they enter a contract of insurance:
- for circumstances in which the levy is payable by the policyholder to FENZ directly:
- for the last date for payment of levy:
- for the policyholder to reimburse their insurer in accordance with the contract of insurance:
- for the levy to be set out separately in any invoice, demand, or statement of account:
- that FENZ may release an insurer from liability for an unpaid levy if FENZ considers that the amount that is payable by the policyholder to the insurer in respect of the unpaid levy is irrecoverable:
- that, if 2 or more persons are liable to pay a levy or to reimburse an insurer in respect of a levy, their liability is joint and several:
- that in any proceeding relating to the assessment of a levy or a shortfall penalty, the burden of proof is on the insurer or policyholder disputing FENZ's assessment:
- for a deadline, being 4 years from the end of the tax year in which an insurance contract was entered into, after which FENZ may not, except in certain circumstances, assess or adjust its assessment for the levy.

Subpart 3—Returns, records, and information

This subpart (*clauses 84 to 90*) provides—

- for levy payers and insurance intermediaries to make returns and to keep records in relation to the levy and contracts of insurance:
- that FENZ may require levy payers and insurance intermediaries to provide information to FENZ:
- for restrictions on the publication and disclosure of information and documents provided to FENZ:
- that it is an offence to fail to provide information to FENZ when required to do so or to provide false or misleading information to FENZ.

Subpart 4—Avoidance arrangements and shortfall penalties

Clauses 91 and 92 relate to levy avoidance arrangements and—

- provide that a levy avoidance arrangement is void as against FENZ for the purposes of the levy:
- enable FENZ to determine a levy payer's liability for the levy in order to counteract a levy advantage that a person obtains from or under a levy avoidance arrangement.

Clauses 93 to 98 relate to shortfall penalties. A levy payer is liable for a shortfall penalty if the levy payer—

- does not take reasonable care in taking a levy position:
- takes an unacceptable levy position:
- is grossly careless in taking a levy position:
- takes an abusive levy position.

Subpart 5—Interest

This subpart (*clauses 99 to 103*) provides for—

- levy payers to pay interest to FENZ on an unpaid levy:
- FENZ to pay interest to any levy payer that has paid too much levy.

Subpart 6—Regulations relating to levy

Clause 104 provides for the making of regulations relating to the levy. Regulations must be made on the recommendation of the Minister.

Clause 105 sets out the process that the Minister must follow before recommending the making of certain regulations under *clause 104*.

Clause 106 provides for consultation in relation to certain regulations under *clause 104*.

Part 4

Miscellaneous and enforcement provisions

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

This subpart (*clauses 107 to 114*) provides for—

- FENZ and the Director-General of Conservation to agree on a policy for fire services and designated emergency services in relation to public conservation land and additional land:
- FENZ and the Department of Conservation to enter into an operational service agreement setting out the services that FENZ will deliver to the Department and the services that the Department will deliver to FENZ:
- FENZ and the New Zealand Defence Force (NZDF) to enter into an operational service agreement setting out the services that FENZ will deliver to the NZDF and the services that the NZDF will deliver to FENZ. An agreement will provide for the command of a defence fire brigade and any FENZ personnel when they are operating together:
- the Chief of Defence Force to have functions, duties, and powers under *clauses 38 to 42* in relation to a defence area:

- FENZ and the Ministry of Education to enter into a memorandum of understanding about FENZ's functions in relation to land and buildings held for educational purposes (for example, schools), obligations (under this Act and regulations made under this Act) on the Ministry and other owners and occupiers of land and buildings used for educational purposes, and about fire safety education and educational materials related to fire safety.

Subpart 2—Offences

Infringement offences

Clauses 115 to 117 provide for infringement offences. Infringement offences will be prescribed by regulations. The infringement fee (which will be set in regulations) must not exceed \$1,000 in the case of an individual or \$5,000 in any other case.

Other offences

Clauses 118 to 121 provide for the following offences:

- an offence of impersonating operational personnel of FENZ or a FENZ inspector (with a penalty of imprisonment for a term not exceeding 2 months or a fine not exceeding \$25,000, or both):
- an offence of knowingly giving a false alarm of fire to any personnel or brigade (with a penalty of imprisonment for a term not exceeding 6 months or a fine not exceeding \$75,000, or both (for an individual), or a fine not exceeding \$150,000 (in any other case)):
- an offence of interfering with the exercise of powers or the performance of duties under the Bill (with a penalty of imprisonment for a term not exceeding 2 years or a fine not exceeding \$300,000, or both (for an individual), or a fine not exceeding \$600,000 (in any other case)):
- an offence of knowingly or negligently storing spontaneously combustible material in breach of prescribed requirements (with a penalty of imprisonment for a term not exceeding 6 months or a fine not exceeding \$75,000, or both (for an individual), or a fine not exceeding \$150,000 (in any other case)).

Subpart 3—Liability-related provisions

This subpart (*clauses 122 to 126*) provides—

- that damage caused during firefighting must be treated as damage by fire within the meaning of any contract of fire insurance:
- a protection against liability for the Crown, FENZ, its personnel, and other people in relation to performing or exercising functions, duties, or powers in good faith under any relevant fire safety legislation:
- a defence in proceedings relating to fires. The defence applies if the defendant proves that the relevant acts or omissions were in accordance with the oper-

ational instructions of the board and the personnel had complied with all relevant requirements and instructions of FENZ or the board:

- that sections 120 to 126 of the Crown Entities Act 2004 apply to volunteers. These sections provide protections from liability for employees of Crown entities:
- for damage and liability provisions in relation to defence fire brigades.

Subpart 4—Powers of entry, inspection, and search

This subpart (*clauses 127 to 137*) provides—

- for the appointment of FENZ inspectors:
- for FENZ inspectors to have powers to enter and inspect any land or building for various purposes. The purposes include obtaining information necessary for pre-incident planning, assessing compliance with requirements imposed under fire safety legislation, and conducting post-incident investigations:
- that a warrant is needed to enter a home or a marae (except when entering with consent):
- a power for a FENZ inspector to deal with a defective or hazardous thing that is likely to imminently cause a fire or other emergency:
- a power for a FENZ inspector to take samples or seize things for the purpose of assessing compliance with requirements imposed under fire safety legislation:
- a power for a FENZ inspector to restrict or prohibit entry to sites.

Subpart 5—Dispute resolution

This subpart (*clauses 138 to 147*) provides for FENZ to develop, and for the Minister to approve, a dispute resolution scheme for resolving disputes on any matter under the Bill or the regulations (other than certain excluded matters).

The subpart provides for—

- the principles of the scheme:
- the content of the rules of the scheme:
- consultation on the scheme and for the approval and publication of the rules:
- participation in the scheme to be voluntary:
- the relationship of the scheme to other proceedings:
- the District Court to make orders to enforce the scheme:
- appeals.

Subpart 6—Regulations

This subpart (*clauses 148 to 153*) provides regulation-making powers, including a power to make regulations for the following purposes:

- creating offences for the contravention of regulations with a maximum penalty of \$15,000 in the case of an individual or \$30,000 in any other case:
- specifying requirements on, and operating processes for, local committees:
- prescribing the content of fire plans:
- providing for matters relating to the grant of permits by FENZ for the lighting of open fires:
- specifying fire safety requirements in relation to buildings and evacuation procedures for occupants (for example, regulations that prescribe duties about maintaining escape routes and taking fire prevention precautions for systems and appliances in buildings):
- prescribing matters relating to evacuation schemes.

Subpart 7—General provisions

This subpart (*clauses 154 and 155*) provides for a number of miscellaneous matters, including—

- that FENZ is treated as if it were a local authority under the Reserves Act 1977; and
- allowing FENZ to acquire or take and hold land under the Public Works Act 1981.

Subpart 8—Repeals, revocations, and consequential amendments

This subpart (*clauses 156 to 158*) provides for—

- the repeal of the Fire Service Act 1975 and the Forest and Rural Fires Act 1977 and the revocation of various regulations made under those Acts:
- consequential amendments in *Schedule 2*.

Schedule 1 provides for transitional, savings, and related provisions.

Subpart 1 of Part 1 of Schedule 1 contains organisation-related provisions, including provisions for—

- the dissolution of rural fire committees:
- the consequences of the continuation of FENZ:
- the transfer of certain employees:
- persons to continue to be volunteers of FENZ if they were, for example, a volunteer member of a volunteer fire brigade or a member of a voluntary rural fire force:
- the continuation of industry fire brigades:
- the continuation of gratuities on retirement or death.

Subpart 2 of Part 1 of Schedule 1 contains provisions relating to response assets. Response assets includes assets owned, leased, or licensed by, or on behalf of, a rural

fire authority, a volunteer fire brigade, or a voluntary rural fire force. The subpart includes provisions that—

- impose duties on parties when negotiating transfer arrangements for the use of response assets. The parties must act collaboratively and in good faith and must take into account the preferences of the asset owners and certain principles:
- require FENZ to be given access to response assets for the purposes of FENZ carrying out its functions:
- allow transfers to occur irrespective of any requirements for consent of a third party:
- provide protections in relation to a transfer of response assets (for example, a transfer must not be treated as placing a person in breach of any contract or in breach of trust):
- allow regulations to be made to give effect to transfer arrangements for response assets or to enable FENZ to inquire into, assess, accept, or decline certain legal and financial liabilities and obligations.

Subpart 3 of Part 1 of Schedule 1 provides for a transitional levy for the 2017/2018 year. The transitional levy is similar to the existing levy under the Fire Service Act 1975 in that—

- the levy is imposed in respect of any property that is insured against fire under any contract of fire insurance; and
- the levy is calculated by reference to the amount for which the property is insured (the **amount insured**).

Subpart 3 provides that, for the purposes of the transitional levy, several of the provisions of the Fire Service Act 1975 are to continue to apply, subject to some modifications. The provisions in the Bill that relate to the transitional levy differ from the provisions in the Fire Service Act 1975 that relate to the existing levy in the following ways:

- caps on the amount insured of residential property and personal property (which are relevant to the calculation of the amount of transitional levy payable in respect of those 2 types of property) will be set by regulations under the Bill rather than by reference to sections 18 and 20 of the Earthquake Commission Act 1993:
- there is a more detailed process for the setting of the transitional levy and for consultation in relation to the regulations that will set levy rates:
- information and documents received by FENZ under this subpart will be subject to the restrictions set out in *Part 3* of the Bill rather than the requirement of secrecy set out in section 51B of the Fire Service Act 1975.

Subpart 4 of Part 1 of Schedule 1 provides for miscellaneous matters, including provisions relating to—

- evacuation schemes:

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- regulations specifying circumstances in which FENZ may grant exemptions from the levy payable under *Part 3* of the Bill in the 2018/19 to 2024/25 years:
 - the required tax treatment for assets that become assets of FENZ under the transfer provisions of the Bill.

Schedule 2 sets out consequential amendments to other enactments.

Hon Peter Dunne

Fire and Emergency New Zealand Bill

Government Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

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

2 Commencement

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

Part 1**Fire and Emergency New Zealand**

Subpart 1—Preliminary provisions

3 Purpose

The purpose of this Act is to—

35

- (a) reform the law relating to fire services, including by strengthening the role of the communities and improving the support for volunteers in the provision of fire services, and, to that end,—
- (i) to unify Fire Services by establishing Fire and Emergency New Zealand (**FENZ**); and 5
- (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 committees to influence and advise FENZ; and 10
- (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** 15
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 20
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 25
provide for the Act to apply to any area, brigade, or person listed in that sub-
section.
- Compare: 1975 No 42 s 2A; 1977 No 52 s 3

Subpart 2—Interpretation

- 6 Interpretation**
- In this Act, unless the context otherwise requires,— 30
- authorised person**, in relation to a function, duty, or power, means a person to whom the following apply:
- (a) the person is authorised by the board in writing to perform or exercise the function, duty, or power:
- (b) the performance or exercise of the function, duty, or power is delegated 35
to the person; and

- 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) 5
- Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990
- code of practice for firefighting water supplies** means a code of practice—
- (a) that is approved by the Minister under **section 62**; and
 - (b) that relates to water that may be used for firefighting purposes, including standards of water supply and access to, and volume and pressure of, water supply 10
- 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 or any contract of reinsurance 15
- contract of insurance,—**
- (a) in **Part 3**, has the meaning given in **section 70(1)**;
 - (b) in the rest of this Act,—
 - (i) has the same meaning as in section 7 of the Insurance (Prudential Supervision) Act 2010), except that it does not include— 20
 - (A) a contract for reinsurance:
 - (B) a contract of marine insurance:
 - (ii) in relation to any property, means a contract under which the property is insured against physical damage or loss 25
- 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: 30
 - (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: 35
 - (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

contractor, in relation to FENZ—

- (a) means a person engaged by FENZ under a contract for services; and 5
 (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 10
 (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 15
 (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 20

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 25

designated emergency services means the emergency 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 save life, prevent serious injury, or avoid damage to property and includes— 30

- (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 35
 (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
- equipment**— 5
- (a) means any plant, appliance, or device belonging to or in the possession of FENZ; and
- (b) includes any personal equipment or clothing provided by FENZ
- essential services** means the work of FENZ in carrying out the functions set out in **section 11** (other than work carried out by FENZ volunteers) 10
- FENZ personnel** or **personnel**, in relation to FENZ, includes—
- (a) employees:
- (b) volunteers:
- (c) contractors
- FENZ volunteer** or **volunteer**— 15
- (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 in relation to work carried out under a contract of employment or under a contract for services 20
- Fire and Emergency New Zealand** or **FENZ** means Fire and Emergency New Zealand continued under **section 8**
- fire control** means—
- (a) preventing, detecting, controlling, and putting out fire: 25
- (b) protecting persons and property from fire
- fire control measure** means any measure that promotes fire control
- fire plan** means a plan FENZ prepares and issues under **section 17** for each local area, including policies and procedures for fire control
- 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 30
- firefighting** means taking any action to control, restrict, suppress, or extinguish fire
- forestry land** means land on which exotic trees are grown for the purpose of producing timber or for other commercial purposes 35
- 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: 5
- (a) WorkSafe:
- (b) the EPA:
- (c) the New Zealand Transport Agency:
- (d) the New Zealand Police:
- (e) the Civil Aviation Authority: 10
- (f) Maritime New Zealand:
- (g) the Ministry of Health:
- (h) the Ministry for Primary Industries:
- (i) territorial authorities and regional councils:
- (j) any other organisation with enforcement responsibilities under section 15 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) 20
- industry fire brigade** means a group of persons organised as an industry fire brigade in accordance with **section 59**
- 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 25
- local area** means the area within the boundaries of a local 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 30
- local committee** means a committee established in accordance with **section 14**
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is the person for the time being responsible for— 35
- (a) the administration of this Act; and
- (b) the exercise and performance of the functions, powers, and duties 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
- occupant**, in relation to a building, includes any person lawfully entitled to be in the building (for example, a visitor) 5
- open fire** means a fire that is not in one of the following:
- (a) a fireplace that is located in a building or structure and that complies with the relevant district plan:
 - (b) a type of barbecue, container, or place that is prescribed by regulations made under **section 148** or that is authorised by FENZ 10
- operational activity** means an activity carried out in relation to performing the main or additional functions of FENZ under **section 11 or 12**
- operational employee** means a FENZ employee carrying out an operational activity 15
- 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, any container or pipe, or any means of transport (whether motorised or not) 20
- owner**,—
- (a) in relation to property, includes—
 - (i) any person with any interest in the property:
 - (ii) any person who is entitled to any benefit under a contract of insurance in respect of the property: 25
 - (b) in relation to a building for which a unit plan (within the meaning of section 5(1) of the Unit Titles Act 2010) has been deposited, means the body corporate
- property** means any real or personal property in New Zealand 30
- 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 35
 - (c) on an Internet site; or
 - (d) by any other means prescribed by regulations under **section 148**
- relevant fire safety legislation** means—

- (a) this Act, and regulations made under this Act, and any former enactments replaced by this Act or those regulations:
- (b) any provisions of the following Acts (or regulations made under those Acts) under which FENZ has functions:
 - (i) Building Act 2004: 5
 - (ii) Local Government Act 2002:
 - (iii) Local Government Act 1974:
 - (iv) Hazardous Substances and New Organisms Act 1996:
 - (v) any former enactments replaced by any of the Acts referred to in **paragraph (a)** and **subparagraphs (i) to (iv)** of this paragraph or regulations made under those former enactments. 10

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

vegetation—

- (a) means any plant or the produce of any plant, whether dead or alive; and 15
- (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 20

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

Compare: 1977 No 52 s 2

Meaning of rendering safe 25

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: 30
 - (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 between the substance and any other matter: 35
 - (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 be found, transferring the substance to—
 - (A) another authority with the means to dispose of the substance: 5
 - (B) any other person who 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: 10
- (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: 15
 - (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: 20
 - (iii) transferring the substance to the owner of the substance:
 - (iv) if the owner of the substance cannot be found, transferring the substance to—
 - (A) another authority with the means to dispose of the substance: 25
 - (B) any other person who 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. 30

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. 35
- (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) 5

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 main objectives, functions, and operating principles 10

Main objectives

10 FENZ’s main objectives

The main objectives of FENZ are—

- (a) to reduce the incidence of unwanted fire and the associated risk to life and property: 15
- (b) in relation to the main functions of FENZ under **section 11**,—
- (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. 20

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— 25
- (a) to promote fire safety; 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 30
- (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 5
- (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**. 10
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. 15
- (3) The matters are—
- (a) responding to medical emergencies; and
- (b) responding to maritime incidents; and
- (c) performing technical rescues, including rescues involving high angles and ropes, rescues from collapsed buildings, rescues from confined spaces, rescues from unrespirable and explosive atmospheres, swift water rescues, and animal rescues; and 20
- (d) providing assistance at transport accidents (for example, crash scene cordoning and traffic control); and 25
- (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 30
- (h) responding to any other situation, if FENZ has the capability to assist; and
- (i) any other function conferred on it as an additional function by the Minister in accordance with section 112 of the Crown Entities Act 2004: 35
- (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— 5

- (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 10

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 15
- (b) an artificial island; and
- (c) a floating platform; and 20
- (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. 25
- (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 30
 - (ii) to work co-operatively and collaboratively with other relevant organisations; and
 - (iii) to carry out consultation with relevant stakeholders and organisations effectively. 35
- (3) In formulating the operating principles, the board must take into account the following matters:

<ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (i) FENZ personnel: (ii) local committees: (iii) organisations referred to in section 12(4). 	5
<p>Subpart 5—Local committees, local planning by FENZ, and delegations by board</p> <p><i>Local committees</i></p>	10
14 Local committees	
<ul style="list-style-type: none"> (1) The board must establish as many local committees as it considers appropriate in the manner set out in sections 16 and 20. (2) The main purpose of local committees is provide advice, from a local perspective, to FENZ. 	15
15 Functions of local committees	
The functions of the local committees are—	
<ul style="list-style-type: none"> (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 fire brigades operating in the local area; and (e) to provide regular advice on FENZ’s progress in relation to its local planning. 	20 25
16 Matters relating to setting local committee boundaries	
<ul style="list-style-type: none"> (1) The board must— <ul style="list-style-type: none"> (a) consider the following matters when setting the boundaries of the local committees: <ul style="list-style-type: none"> (i) efficiency and effectiveness of the local fire services and designated emergency services to operate within the local area: (ii) local risk profiles: (iii) the boundaries of other relevant organisations; and 	30 35

- (b) endeavour to ensure that the boundaries of the local committees support—
- (i) the efficiency and effectiveness of the local committees; and
 - (ii) the working relationship of the local committees with FENZ; and
 - (iii) the ability of the local committees to represent the relevant communities. 5
- (2) The board must consult the public on the proposed boundaries of the local committees.
- 17 Local planning**
- (1) FENZ must undertake local planning for each local area— 10
- (a) that takes into account—
 - (i) the national strategy; and
 - (ii) emergency services required within the local area; and
 - (iii) the advice from engagement with civil defence emergency management groups; and 15
 - (iv) the advice from the relevant local committee; and
 - (v) any current operational service agreement that FENZ has, including—
 - (A) the operational service agreement with the Department of Conservation under **section 110**; and 20
 - (B) the operational service agreement with the New Zealand Defence Force under **section 111**; and
 - (C) the operational agreement with the Ministry of Education under **section 114**.
 - (b) that identifies— 25
 - (i) specific needs, resources, constraints, and capabilities in the local area relevant to FENZ’s functions; and
 - (ii) local activities that address those needs (and do not duplicate national activities or the activities of other relevant organisations); and 30
 - (c) in relation to which FENZ has developed and issued a specific fire plan; and
 - (d) that demonstrates how the local allocation of resources by FENZ fits in with the national plan.
- (2) In this section, unless the context otherwise requires,— 35
- 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.

18 Operating principles for local committees

- (1) The board must develop operating principles to guide—
- (a) the way in which the local committees must operate; and 5
 - (b) the interactions between the local committees and FENZ.
- (2) Each local committee must, in carrying out its functions under **section 15**, have regard to the operating principles developed by the board.

19 Obligation of board to local committees

- The board must— 10
- (a) support local 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 committees; and
 - (c) appoint a person representing FENZ to each local committee for the purposes of— 15
 - (i) advising the local committee; and
 - (ii) enabling the local committee to provide informed advice to FENZ and the board.

20 Appointments to local committees 20

For the purposes of appointing the chairperson, deputy chairperson, and members of a local 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 25
- (c) the extent to which the members are representative of the local area’s communities and stakeholders; and
- (d) the diversity of perspectives on each committee; and
- (e) the interests of industrial brigades operating within the boundaries of the local committee; and 30
- (f) any prescribed requirements for local committees specified in regulations made under **section 149**.

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

Clause 15 of Schedule 5 of the Crown Entities Act 2004 applies to the members of the local committees as if they were members of a committee appointed 35

by the board under clause 14 of that schedule and with all other necessary modifications.

Delegations by board

22 Delegation of functions, duties, and powers

- (1) The board may delegate any of the functions, duties, and powers of FENZ or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons: 5
- (a) personnel of FENZ:
 - (b) a member or members of the board:
 - (c) a committee: 10
 - (d) any other person or persons approved by the board:
 - (e) any class of persons that comprises of any of the persons listed in **paragraphs (a) to (d)**:
 - (f) a Crown entity subsidiary of FENZ.
- (2) A delegate to whom any functions or powers of FENZ or the board are delegated— 15
- (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the person were FENZ or the board; and
 - (b) may delegate the function or power subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate. 20
- (3) However, in cases of delegations made to or by persons in the private sector, a delegate may subdelegate the function or power only with the prior written consent of the board.
- (4) A delegation may be revoked at any time by written notice of the board to the subdelegate. 25
- (5) Sections 73(1) to (3), 74(1), and 76(2) of the Crown Entities Act 2004 do not apply to any delegations or subdelegations made under this section.
- (6) In this section, **private sector** means any person or organisation outside the State services as defined in section 2 of the State Sector Act 1988. 30
- Compare: 1975 No 42 s 15

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

Appointments and vacancies

23 Appointment of officers to roles and ranks

- (1) The board may make appointments to roles, ranks, or levels of position in FENZ. 35

- (2) Appointees must be either—
- (a) an employee of FENZ; or
 - (b) a FENZ volunteer.
- (3) An appointment in any role, rank, or level of position in FENZ may be held separately or in conjunction with any other role, rank, or level of position in FENZ. 5
- Compare: 1975 No 42 s 27
- 24 Appointments on merit**
- The board, in making an appointment to FENZ under this Act, must give preference to the person who is best suited to the position. 10
- Compare: 1975 No 42 s 65(1)
- 25 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. 15
- Compare: 1975 No 42 s 65(2)
- 26 Obligation to notify appointments**
- The board must notify the personnel of FENZ 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. 20
- Compare: 1975 No 42 s 65(3)
- 27 Review of appointments**
- (1) The board must put in place for FENZ a procedure for reviewing appointments made within FENZ that are the subject of any complaint by FENZ personnel. 25
 - (2) The procedure must comply with the guidelines prescribed by the State Services Commission for such review procedures.
 - (3) Nothing in this section relates to an acting appointment.
- Compare: 1975 No 42 s 67
- Leaving FENZ compulsorily due to incapacity* 30
- 28 Board to prescribe health standards**
- (1) For the purpose of **section 29**, the board may prescribe standards of health required of operational personnel to ensure that they are fit to perform competently their duties and any other duties that may reasonably be required of them. 35

- (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. 5
- Compare: 1975 No 42 s 72A; 2008 No 72 s 72

29 Form of, and communication of, health standards

- (1) The board must take reasonable steps to ensure that health standards are communicated to all operational personnel. 10
- (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. 15
- (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): 20
- (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

30 Board may require member of operational personnel to leave FENZ due to incapacity 25

- (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 30
- (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 28**; and 35
- (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. 5
- (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. 10

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

31 When operational employee required to leave FENZ ceases to be employee

- (1) An operational employee who is required under **section 30(1)** to leave FENZ ceases to be a FENZ employee— 15
- (a) on the expiration of the time specified in the notice referred to in **section 30(3)(a)**; or
 - (b) if, the employee waives the right to notice under **section 30(4)**, on the date on which the board gives to the employee written notice of consent to the waiver. 20
- (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 25
 - (b) if reinstatement is not ordered, the employee ceases to be a FENZ employee on the date on which written notice of the decision determining or completing the action is given to the employee.

Compare: 1975 No 42 s 72C(3); 2008 No 72 s 75

32 Appeal by volunteer against requirement to leave FENZ compulsorily 30

- (1) A volunteer who is required under **section 30** to leave FENZ due to incapacity may appeal against the requirement.
- (2) An appeal is commenced by notice of appeal delivered to the board within 14 days after the receipt of the notice referred to in **section 30(3)**.
- (3) An appeal under this section is governed by the dispute resolution provisions in **subpart 5 of Part 4**. 35

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

Subpart 7—Volunteers

- 33 Duty of FENZ in relation to volunteers**
- (1) FENZ must take reasonable steps—
- (a) to recognise, respect, and promote the contribution of FENZ volunteers— 5
 - (i) to the performance and exercise of FENZ’s functions, duties, and powers; and
 - (ii) to the maintenance of the well-being and safety of communities; and
 - (b) to consult with FENZ volunteers and relevant organisations referred to in **section 34** on matters that might reasonably be expected to substantially affect those volunteers; and 10
 - (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. 15
- (3) A FENZ volunteer is not an employee within the meaning of section 6 of the Employment Relations Act 2000.
- 34 FENZ to make advocacy and support services available to FENZ volunteers** 20
- (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— 25
- (a) at no cost to FENZ volunteers; and
 - (b) on an ongoing basis.

Part 2

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

Subpart 1—Operational functions, duties, and powers

Functions, duties, and powers in emergencies 5

35 Alarm of fire or any fire reported

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

- (a) endeavour by all practicable means—
 - (i) to extinguish or prevent the spread of the fire (if any): 10
 - (ii) to save lives and property in danger:
- (b) direct any person to stop any activity that may contribute to the emergency:
- (c) request any person, either verbally or in writing, to take any action to prevent or limit the extent of the emergency: 15
- (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)

36 Hazardous substance emergency

- (1) If a hazardous substance emergency occurs, the authorised person responding to the emergency may do 1 or more of the following: 20
 - (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: 25
 - (c) request any person, either verbally 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. 30
- (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)

35

37 Emergency that does not involve fire or hazardous substance

If an emergency occurs that does not involve fire or a hazardous substance, the authorised person responding to the emergency may do 1 or more of the following:

- (a) take whatever action is necessary to save lives and property in danger: 5
- (b) direct any person to stop any activity that may contribute to the emergency:
- (c) request any person, either verbally 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: 10
- (e) direct any person to refrain from entering the vicinity of the emergency.

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

38 Duty of authorised person to control and direct

The authorised person who is in charge of personnel responding to a fire or other emergency must control and direct— 15

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

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

39 Powers of authorised person in relation to land, building, or structure 20

- (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 a fire or other emergency may do 1 or more of the following: 25
 - (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: 30
 - (d) remove from any land, building, or structure that is on fire or otherwise endangered, or that is near the fire or emergency, any flammable, combustible, explosive, or dangerous material found in the building or structure:
 - (e) cause any building or structure that is on fire or otherwise endangered, or that is adjacent to or in the vicinity of any building or structure that is on fire or otherwise endangered, to be pulled down or shored up (either wholly or in part): 35

- (f) cause any building or structure to be pulled down or shored up (either wholly or in part) at the time of the fire or emergency or within a reasonable time afterwards.
- (3) The authorised person may exercise the power in **subsection (2)(f)** if, in the authorised person's opinion, the building or structure or any portion of any building or structure has been so damaged that it is, or is likely to become, dangerous to life or property. 5
- (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. 10

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

40 Powers of authorised person in relation to tree or other plant

- (1) The authorised person who is in charge of personnel responding to a fire or other emergency may do 1 or more of the things mentioned in **subsection (2) or (3)** for the purpose of— 15
- (a) extinguishing or preventing the spread of fire; or
- (b) reducing danger from any emergency.
- (2) The authorised person may, if he or she considers it necessary,—
- (a) cause any tree or other plant that is on fire or otherwise endangered, to be cut down or pulled down (either wholly or in part): 20
- (b) cause any tree or other plant that is adjacent to, or in the vicinity of, any building, structure, tree, or other plant that is on fire or otherwise endangered to be cut down or pulled down (either wholly or in part).
- (3) The authorised person may, if, in the authorised person's opinion, any tree or plant has been so damaged that it is, or is likely to become, dangerous to life or property, cause the tree or other plant to be cut down or pulled down (either wholly or in part) at the time of the fire or emergency or within a reasonable time afterwards. 25

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

41 Other powers of authorised person 30

- (1) The authorised person who is in charge of personnel engaged in a fire or other emergency—
- (a) may, subject to **section 45**, cause water to be shut off from, or turned into, any main or pipe in order to obtain a greater pressure and supply of water: 35
- (b) may cause any road or railway in the vicinity of the fire or other emergency to be closed to people or traffic during the emergency:
- (c) may—
- (i) remove any vehicle impeding personnel; and

- (ii) in order to remove the vehicle, use force or break into the vehicle if the authorised person considers it reasonably necessary:
- (d) may remove, using reasonable force if necessary, any person—
- (i) who, by his or her presence or otherwise, interferes with operations to deal with the fire or emergency; or 5
- (ii) who, in the authorised person’s opinion, is in danger:
- (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: 10
- (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 for protecting life or property in responding to the fire or other emergency. 15
- (2) In this section, **road** includes—
- (a) a street; and
- (b) a motorway; and
- (c) a highway; and 20
- (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) 25
- 42 Power to destroy or dispose of any by-product**
- An authorised person may destroy or dispose of any by-product after rendering safe a hazardous substance emergency or other substance emergency, if—
- (a) the owner of the hazardous substance, other substance, or by-product cannot readily be contacted or identified; or 30
- (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.
- 43 Conclusive evidence of authority to perform function or duty or exercise power** 35
- The fact that any person performs any function or duty or exercises any power under **sections 35 to 42** is conclusive evidence of his or her authority to do

so, and no person is required to inquire whether the occasion requiring or authorising him or her to do so has arisen or has ceased.

Compare: 1975 No 42 s 28(6)

44 Sections 35 to 43 apply subject to certain enactments

Sections 35 to 43 apply subject to—

5

- (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)

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

- (1) All FENZ personnel may, free of charge,— 10
 - (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 15 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 20 functions, duties, or powers.
- (2) The provisions of this section apply in relation to defence fire brigades and industry fire brigades with all necessary modifications.
- (3) The exercise of powers under this section is subject to the overall requirements of the National Controller under the Civil Defence Emergency Management 25 Act 2002 if a state of emergency exists under that Act.

Compare: 1975 No 42 s 30(1)

46 Duty to notify enforcement organisations in case of hazardous substance emergencies

- (1) If an authorised person takes action during a hazardous substance emergency 30 under **section 36**, FENZ must notify the relevant hazardous substance agencies in accordance with this section.
- (2) The notification must—
 - (a) be made as soon as practicable after FENZ is called to the hazardous 35 substance emergency; and
 - (b) include the nature and location of the hazardous substance emergency.

47 **Duty to provide reports to hazardous substances enforcement organisations**

- (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— 5
 - (a) include the details of hazardous substance emergencies attended by FENZ in accordance with its main functions under **section 11**; and
 - (b) state whether staff from any hazardous substance agency attended the hazardous substances emergency; and
 - (c) state the total cost of FENZ's response to hazardous substances emergencies that FENZ attended. 10

48 **Power of authorised person to direct personnel**

The authorised person may, instead of acting personally, direct any personnel to do anything that the authorised person is required to do under this **subpart**.

Prohibitions and restrictions for fire control 15

49 **FENZ may prohibit open fires and prohibit or restrict other activities**

- (1) FENZ may, in the circumstance described in **subsection (2)**,—
 - (a) prohibit the lighting of open fires 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. 20
- (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.
- (3) FENZ may not prohibit a person who resides or works in an area from accessing the area. 25
- (4) This section and **sections 50, 51, and 52** do not apply to any person carrying out essential services in the area to which a prohibition or restriction under this section applies.
- (5) FENZ may—
 - (a) publicly notify a prohibition or restriction: 30
 - (b) provide notice of the prohibition or restriction directly to any person.

Compare: 1977 No 52 ss 20(1), (2), 21(1), (2)

50 **Open fires prohibited**

- (1) A person who has notice that the lighting of open fires in an area is prohibited under **section 49** must not, while the prohibition is in effect, light an open fire or permit another person to light an open fire in that area. 35

- (2) **Subsection (1)** does not apply to a person who lights a fire or permits another person to light a fire in accordance with—
- (a) a permit granted under regulations made under **section 151**; and
 - (b) any conditions of the permit.
- (3) A person **has notice that the lighting of open fires in an area is prohibited** if the person knows or ought reasonably to know that the lighting of open fires in that area is prohibited. 5
- (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,— 10
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
 - (b) in any other case, to a fine not exceeding \$600,000.

51 Prohibited activities

- (1) A person who has notice that an activity in an area is prohibited under **section 49** must not, while the prohibition is in effect, carry out the prohibited activity in that area. 15
- (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)**. 20
- (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. 25

Compare: 1977 No 52 ss 20(3), 21(1), (2)

52 Restricted activities

- (1) A person who has notice that an activity in an area is restricted under **section 49** must not, while the restriction is in effect, breach that restriction.
- (2) A person **has notice that an activity in an area is restricted** if the person knows or ought reasonably to know that the activity is restricted in that area. 30
- (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: 35
 - (b) in any other case, to a fine not exceeding \$600,000.

*Fire seasons***53 Prohibited or restricted fire seasons**

- (1) FENZ may, by public notice, declare, for any area,—
- (a) a prohibited fire season:
 - (b) a restricted fire season. 5
- (2) An area that is not in a prohibited or restricted fire season is in an open season.
Compare: 1977 No 52 s 22

54 Open fires during prohibited fire season

- (1) A person must not light or allow another person to light an open fire in an area that is in a prohibited fire season. 10
- (2) **Subsection (1)** does not apply to a person who lights an open fire or permits another person to light an open fire in accordance with—
- (a) a permit granted under regulations made under **section 151**; and
 - (b) any conditions of the permit.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**. 15
- (4) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
 - (b) in any other case, to a fine not exceeding \$600,000. 20

55 Open fires during restricted fire season

- (1) A person must not light or allow another person to light an open fire in an area that is in a restricted fire season.
- (2) **Subsection (1)** does not apply to a person who lights an open fire or permits another person to light an open fire in accordance with— 25
- (a) a permit granted under regulations made under **section 151**; and
 - (b) any conditions of the permit.
- (3) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (4) A person who commits an offence under this section is liable on conviction,— 30
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
 - (b) in any other case, to a fine not exceeding \$600,000.
- Compare: 1977 No 52 s 23(1)(b), (c)

*Vegetation***56 Spread of fire to vegetation**

- (1) A person must not—
- (a) cause or permit any fire to spread to any vegetation; or
 - (b) leave any fire that the person has lit (or that the person has allowed another person to light) without first taking precautions against the spread of the fire to any vegetation. 5
- (2) **Subsection (1)** does not apply to a person who lights a fire or permits another person to light a fire in accordance with—
- (a) a permit granted under regulations made under **section 151**; and 10
 - (b) any conditions of the permit.
- (3) A person commits an offence if—
- (a) the person knowingly or recklessly contravenes **subsection (1)**; and
 - (b) as a consequence, fire—
 - (i) burns or damages vegetation or other property; or 15
 - (ii) damages the stability, structure, quality, or fertility of soil.
- (4) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$300,000, or both:
 - (b) in any other case, to a fine not exceeding \$600,000. 20

57 Leaving burning or smouldering substance in open air

- (1) A person must not leave a burning or smouldering substance in open air so as to cause a fire hazard in vegetation and—
- (a) fail to take all reasonable steps to extinguish the substance or any ensuing fire (whether or not there is an immediate danger of it causing damage); or 25
 - (b) if the person is unable to extinguish the substance or fire, fail—
 - (i) to notify FENZ immediately; and
 - (ii) to continue, so far as possible, to endeavour to control and extinguish the substance or fire until— 30
 - (A) the substance or fire is brought under control; or
 - (B) the person obtains the consent of FENZ to desist.
- (2) A person commits an offence if the person knowingly or recklessly contravenes **subsection (1)**.
- (3) A person who commits an offence under this section is liable on conviction,— 35

- (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.
- (4) In this section,—
- fire hazard** means the danger of potential harm and degree of exposure arising from—
- (a) the start and spread of fire; and
- (b) the smoke and gases that are generated by the start and spread of fire
- open air**, in relation to fires, means otherwise than within 1 of the following:
- (a) a fireplace that is located in a building or structure and that complies with the relevant district plan:
- (b) a type of barbecue, container, or place that is prescribed by regulations under **section 148** or that is authorised by FENZ.

Compare: 1977 No 52 s 26

Firebreaks 15

58 Firebreaks on forestry land

- (1) FENZ may, if it considers it necessary for the purpose of fire control, require the landholder of forestry land—
- (a) to make and clear any firebreak on—
- (i) the forestry land: 20
- (ii) any other land (with the consent of the occupier of the land or of the owner if the land is unoccupied):
- (b) to remove from any firebreak, or from any other part of the land on which no trees are standing, any vegetation or other material of any kind.
- (2) FENZ must serve a notice on the owner that specifies the time and the manner in which a requirement under **subsection (1)** must be met. 25
- (3) In this section,—
- firebreak** means a natural or an artificial physical barrier against the spread of fire from or into any area of continuous flammable material
- landholder** means any person having a right lawfully to use or occupy any forestry land for an unexpired period of not less than 10 years, including any rights of extension or renewal, and includes a mortgagee in possession. 30

Compare: 1977 No 52 s 27(1)

Subpart 2—Industry fire brigades

59 Organisation and maintenance of industry fire brigades

- (1) A person or an organisation specified in **subsection (2)** may, for the purpose of protecting industrial premises in any emergency,—
- (a) organise and maintain a group of persons as an industry fire brigade; and 5
 - (b) appoint a principal officer for the industry fire brigade.
- (2) The persons and organisations include any of the following:
- (a) the owner or occupier of any industrial premises:
 - (b) the owner or occupier of any forestry land:
 - (c) any local authority in which land is vested under any enactment: 10
 - (d) any person holding, controlling, or administering land under any enactment.
- (3) In this section and in **section 60**,—
- industrial or commercial purpose** means any purpose other than residential purposes 15
- industrial premises** includes the following that are used exclusively for industrial or commercial purposes:
- (a) land; or
 - (b) buildings; or
 - (c) movable property on land or in buildings that are industrial premises 20
- residential purpose** means for the purpose of using, or intended for the purpose of using, for occupation by any person as a place of residence.
- Compare: 1975 No 42 s 36(1)

60 Agreements relating to industry fire brigades

- FENZ and the owner or occupier of any industrial premises protected or proposed to be protected by an industry fire brigade may enter into an agreement that sets out— 25
- (a) the services FENZ will deliver in relation to the industrial premises; and
 - (b) the services that the industry fire brigade will deliver to FENZ, including fire services and designated emergency services. 30

Compare: 1975 No 42 s 36(3)

61 Powers of industry fire brigades

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

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

Compare: 1975 No 42 s 36(10)

Subpart 3—Provisions relating to water supply

Code of practice for firefighting water supply 10

62 Minister may approve code of practice for firefighting water supply

The Minister may approve a code of practice for firefighting water supply that FENZ recommends to the Minister under **section 63**.

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

63 Duty to develop, consult on, recommend the approval of, and publish and notify code of practice for firefighting water supplies 15

- (1) For the purposes of **section 62**, FENZ must develop, consult on, recommend the approval of, and publish an approved code of practice for firefighting water supplies (**code of practice**) in accordance with this section.
- (2) FENZ must develop a code of practice in consultation with— 20
 - (a) local committees; and
 - (b) any association of local authorities or any other appropriate authorities; and
 - (c) the NZ Standards Organisation.
- (3) After developing a code of practice in accordance with **subsection (2)**, FENZ must submit the code of practice to the Minister for approval. 25
- (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*. 30
- (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 35
 - (c) be published and notified in accordance with **subsection (4)**.

- (7) A code of practice is a disallowable instrument for the purposes of the Legislation Act 2012 and must, following approval by the Minister under **section 62**, be presented to the House of Representatives under section 41 of that Act.

Compare: 1975 No 42 s 30(3)

Powers and duties in relation to water supply 5

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

FENZ may check, and require checks to be made as to, the adequacy of 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— 10

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

Compare: 1975 No 42 s 30(2)

Subpart 4—Evacuation schemes

65 Relevant building defined for purposes of sections 66 to 68 15

- (1) In **sections 66 to 68**, **relevant building** means a building or part of a building used for 1 or more of the following purposes:
- (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 more than 5 persons (other than in 3 or fewer household units): 20
 - (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 early childhood facilities (other than in a household unit): 25
 - (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): 30
 - (i) any other prescribed purpose. 35

- (2) However, in **sections 66 to 68**, **relevant building** does not include premises of a mission (as defined in section 2(1) of the Diplomatic Privileges and Immunities Act 1968).
Compare: 1975 No 42 s 21A
- 66 Owner must provide and maintain evacuation scheme for relevant building** 5
- (1) The owner of a relevant building must provide and maintain an evacuation scheme that is designed to enable evacuation from the scene of a fire or an alarm of fire safely to a place of safety within a reasonable time.
- (2) However, the owner of a relevant building is not required to provide and maintain an evacuation scheme for the building if— 10
- (a) the building is used for a purpose specified in **section 65(1)(b) or (c)**; and
- (b) the building has an automatic sprinkler system; and
- (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. 15
- (3) A person who knowingly 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 6 months or to a fine not exceeding \$75,000, or both: 20
- (b) in any other case, to a fine not exceeding \$150,000.
- (4) In this section,—
- automatic sprinkler system** means an automatic sprinkler system that satisfies the minimum standard required by regulations made under **section 153(c)** 25
- evacuation scheme** means an evacuation scheme that complies with regulations made under **section 153(b)**.
- Compare: 1975 No 42 ss 21B, 21E
- 67 Owner must apply to FENZ for approval of evacuation scheme**
- The owner of a relevant building must apply to FENZ, in accordance with prescribed requirements, for approval of the evacuation scheme provided for the building under **section 66**. 30
- Compare: 1975 No 42 s 21C
- 68 District Court order closing relevant building**
- (1) If the owner of a relevant building has failed to comply with **section 66 or 67**, FENZ may apply to a District Court Judge for an order that the building be closed until the section is complied with. 35

- (2) FENZ must give the owner of the building at least 10 days' written notice before applying for an order.
- (3) Before making an order, the District Court Judge must—
- (a) conduct a hearing, and give FENZ and the owner of the building an opportunity to be heard; and
 - (b) be satisfied that the owner has failed to comply with **section 66 or 67**.
- Compare: 1975 No 42 s 21G

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Part 3 Levy

Subpart 1—Purpose and interpretation

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69 Purpose of this Part

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

- (a) a stable source of funding to support FENZ in the performance of functions and duties and exercise of powers under this Act:
- (b) universal, so that FENZ's costs are generally shared among all who benefit from the potential to use FENZ's services: 15
- (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): 20
- (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— 25
 - (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. 30

70 Interpretation in this Part

- (1) In this Part, unless the context otherwise requires,—
- abusive levy position** has the meaning given in **section 96(2)**
- acceptable levy position** has the meaning given in **section 93(3)**
- amount insured** has the meaning given in **section 71** 35

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)— 5
 - (i) relating to a motor vehicle under which—
 - (A) the motor vehicle is insured against physical damage or loss; 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 damage or loss (whatever the cause of the damage or loss), including— 10
 - (A) temporary or reparable damage or loss; and
 - (B) any consequential damage or loss; but
- (b) does not include— 15
 - (i) a contract for reinsurance:
 - (ii) a contract of marine insurance:
 - (iii) an indemnity under section 65ZD of the Public Finance Act 1989

declared value means the value of property as determined in accordance with **section 72** 20

gross carelessness has the meaning given in **section 95(3)**

GST Act means the Goods and Services Tax Act 1985

household unit—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is— 25
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include a hostel, boardinghouse, or other specialised accommodation 30

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 insurer under a contract of insurance in respect of property 35

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 means an arrangement, whether entered into by the person affected by the arrangement or by another person, that directly or indirectly— 5

- (a) has levy avoidance as its purpose or effect; or
- (b) has levy avoidance as one of its purposes or effects, whether or not any other purpose or effect is referable to ordinary dealings, if the levy avoidance purpose or effect is not merely incidental 10

levy payer means—

- (a) an insurer who is liable to pay a levy to FENZ under **section 75**;
- (b) a policyholder who is liable to pay a levy to FENZ under **section 76**

levy payer's levy position means a levy position—

- (a) taken by a levy payer in a return in respect of property insured under a contract of insurance; or 15
- (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 no levy is payable in respect of any property or that a levy payer is not required to file a return in respect of any property 20

levy shortfall, for a taxable period, means the difference in the amount of levy payable under— 25

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

motor vehicle—

- (a) means a motor vehicle (as defined in section 2(1) of the Land Transport Act 1998); but 30
- (b) does not include a heavy RUC vehicle (as defined in section 5(1) of the Road User Charges Act 2012)

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 35
- (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

5

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)

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

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

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

- (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)**

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residential property means—

- (a) a household unit:
- (b) any residential land
- specialised accommodation** means a building that is specified, in regulations made under **section 104**, as specialised accommodation for the purposes of this Part 5
- tax year** has the same meaning as in section YA 1 of the Income Tax Act 2007
- taxable period**, in relation to a registered person, has the same meaning as in section 15 of the GST Act
- third party liability** means a person's liability to any other person arising from or in connection with a motor vehicle 10
- unacceptable levy position** has the meaning given in **section 94(2)**
- unpaid levy** includes any shortfall penalty imposed in respect of unpaid levy.
- (2) The provisions of this Part must be interpreted in a manner that best gives effect to the purpose set out in **section 69**.
- 71 Meaning of amount insured** 15
- 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 damage or loss over the term of the contract, that maximum limit (excluding any goods and services tax): 20
- (b) in any other case, the declared value of the property as determined under **section 72**.
-
- Example 1*
- A contract of insurance provides, in the case of physical damage or loss 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. 25
- Example 2*
- A contract of insurance provides, in the case of physical damage or loss to property, that the insurer must pay to the policyholder an amount equal to the cost of replacing or reinstating the property. The amount insured is the declared value of the property. 30
-
- 72 Declared value**
- (1) This section applies in the case of property described in **section 71(b)**. 35
- (2) The declared value of property is the maximum amount (excluding any goods and services tax) for which the property is, under the contract of insurance, insured against physical damage or loss over the term of the contract.

- (3) The declared value of property must be set out in—
- (a) a statutory declaration made by or on behalf of the policyholder; or
 - (b) a valuation certificate given by a qualified person and obtained by the policyholder.
- (4) A levy payer must provide a declaration or certificate to FENZ at the same time the levy payer provides the levy return in relation to the contract of insurance to which the property relates. 5
- (5) If FENZ considers the amount set out in the declaration or certificate under **subsection (4)** is not a fair and reasonable declared value, FENZ may determine the declared value by obtaining a valuation certificate given by a qualified person. 10
- (6) If **subsection (5)** applies, the declared value is the amount set out in the valuation certificate obtained by FENZ.
- (7) A declaration or certificate under this section must contain a statement that the declared value in the declaration or statement is fair and reasonable. 15

Subpart 2—Levy on insured property

73 Levy payable on motor vehicles

- (1) A levy is payable in respect of a motor vehicle that is the subject of a contract of insurance.
- (2) The amount of levy that is payable is the annual amount prescribed in regulations made under **section 104**. 20

74 Levy payable on other property

- (1) A levy is payable in respect of any property, other than a motor vehicle, that is insured under a contract of insurance.
- (2) The amount of levy that is payable is an amount calculated on the basis of the amount insured in accordance with regulations made under **section 104**. 25

75 Insurer must pay levy to FENZ

- (1) On entering into a contract of insurance, the insurer becomes liable to pay the levy to FENZ.
- (2) The levy payable by the insurer is a debt due by the insurer to FENZ and is recoverable by FENZ. 30
- (3) This section is subject to **section 76**.

76 Circumstances where policyholder must pay levy to FENZ

- (1) This section applies in relation to a contract of insurance—

- (a) between a policyholder who is not ordinarily resident in New Zealand or that is not incorporated or formed in New Zealand and an insurer that does not carry on insurance business in New Zealand; or
- (b) between a policyholder and an insurer that carries on insurance business in New Zealand but does not hold a licence (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010). 5
- (2) On entering into a contract of insurance to which this section applies, the policyholder becomes liable to pay the levy to FENZ.
- (3) The levy payable by a policyholder described in **subsection (2)** is a debt due by the policyholder to FENZ and is recoverable by FENZ. 10
- (4) A contract referred to in **subsection (1)** is to be treated as being governed by New Zealand law for the purposes of this Part.

Compare: 1975 No 42 s 49A

77 When levy must be paid

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

Policyholder to pay insurer

78 Policyholder must pay amount of levy to insurer

- (1) On entering into a contract of insurance under which property is insured against physical damage or loss, the policyholder becomes liable to pay the amount of levy that is payable by the insurer under **section 75** to the insurer, in accordance with the contract of insurance. 30
- (2) The amount payable by the policyholder under **subsection (1)** is a debt due by the policyholder to the insurer and is recoverable by the insurer.

79 Insurer must identify levy on invoice, etc 35

- (1) An insurer that is entitled to recover an amount of levy under **section 78** must, in any invoice, demand, or statement of account, set out the amount of the levy separately from any premium or other amount.

- (2) No person may require the payment of any brokerage, agency, or commission in respect of the levy.

80 FENZ may release insurer from liability

- (1) If FENZ considers that an amount payable to the insurer under **section 78** is irrecoverable by the insurer, FENZ may release an insurer from liability for the unpaid levy, and any interest payable on the unpaid levy, to which the amount relates. 5
- (2) A release under **subsection (1)** may be—
- (a) in respect of all or part of the unpaid levy or interest to which the amount payable under **section 78** relates: 10
- (b) subject to any conditions that FENZ thinks fit.

Compare: 1975 No 42 s 48(10)

Other matters relating to levy

81 Joint and several liability

If 2 or more persons are liable to pay any amount under **section 75, 76, or 78**, their liability is joint and several. 15

82 Dispute relating to levy or shortfall penalty

In any proceeding relating to the assessment of levy or a shortfall penalty, the burden of proof is on the insurer or policyholder disputing FENZ's assessment.

83 Time limit for assessment for levy 20

- (1) If 4 years have passed from the end of the tax year in which a contract of insurance was entered into, FENZ may not assess or adjust its assessment of liability for the levy in relation to the contract of insurance.
- (2) **Subsection (1)** does not apply if FENZ considers that—
- (a) any information provided to FENZ by or on behalf of the levy payer is fraudulent or wilfully misleading: 25
- (b) there are reasonable grounds to consider that the levy payer failed to make a return in respect of a contract of insurance.

Compare: 1994 No 166 s 107A

Subpart 3—Returns, records, and information 30

Returns

84 Levy payer must make return

- (1) A levy payer that becomes liable to pay a levy to FENZ during a taxable period must provide a return on or before the final day on which the levy payer is required to file a return for the taxable period under section 16 of the GST Act. 35

- (2) A levy payer who is not registered under the GST Act must provide a return to FENZ on or before—
- (a) the 28th day of the month following the month in which the levy payer becomes liable to pay the levy:
 - (b) 15 January, if the month in which the levy payer becomes liable to pay the levy is November: 5
 - (c) 7 May, if the month in which the levy payer becomes liable to pay the levy is March.
- (3) The return must set out the total amount of levy payable by the levy payer for the taxable period or, if **subsection (2)** applies, for the month in which the levy payer became liable to pay the levy. 10
- (4) The return must be in the form prescribed by regulations made under **section 104** and must contain any other information that is required by regulations.
- (5) A person who knowingly, and without reasonable excuse, contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,— 15
- (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

- 85 Levy payers and insurance intermediaries must keep records for 7 years** 20
- (1) A person specified in **subsection (2)** must keep the records specified in **subsection (3)** for a period of at least 7 years after the end of the tax year to which the records relate.
- (2) The persons are—
- (a) levy payers: 25
 - (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: 30
 - (c) any other information that the person is required to keep under regulations made under **section 104**.
- (4) A person who knowingly, and without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (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: 35
 - (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

86 Power to require information

- (1) FENZ may require a person specified in **section 85(2)** to provide to FENZ any information (including a return or any record that person is required to keep under **section 85**) within the person's knowledge, possession, or control that FENZ considers is necessary or relevant for any purpose relating to the administration or enforcement of this Part. 5
- (2) A person who is required to provide any information under **subsection (1)** must provide the information. 10
- (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: 15
- (b) in any other case, to a fine not exceeding \$50,000.

Compare: 1994 No 166 s 17

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

Every person required to provide information and documents to FENZ under **section 86** has the same privileges as witnesses have in proceedings before a court. 20

Compare: 2011 No 5 s 56

Confidentiality

88 Confidentiality of information and documents

- (1) This section applies to—
- (a) information and documents provided to FENZ under **sections 84 and 86**: 25
- (b) information derived from information and documents referred to in **paragraph (a)**. 30
- (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 35
- (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any

- function, power, or duty 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 5
- (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 1993). 10
- Compare: 2011 No 5 s 59 15
- 89 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 88(2)(c), (d), or (e)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 20
- (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— 25
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
- (b) the storing of, the use of, or access to anything provided: 30
- (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000. 35
- Compare: 2011 No 5 s 60

False or misleading information

- 90 Offence to provide false or misleading information**
- (1) A person commits an offence if the person knowingly provides false or misleading information—

- (a) in a levy return; or
 - (b) when providing information under **section 86**.
- (2) A person who commits an offence under this section is liable on conviction,—
- (a) in the case of an individual, to a term of imprisonment not exceeding 2 months or to a fine not exceeding \$25,000, or both: 5
 - (b) in any other case, to a fine not exceeding \$50,000.

Subpart 4—Avoidance arrangements and shortfall penalties

Levy avoidance arrangements

91 Levy avoidance arrangement void

- (1) A levy avoidance arrangement is void as against FENZ for the purposes of the levy. 10
- (2) Under **section 92**, FENZ may counteract a levy advantage that the person obtains from or under a levy avoidance arrangement.

Compare: 2007 No 97 s BG 1

92 FENZ's power to determine liability for levy in case of levy avoidance arrangement 15

- (1) This section applies if an arrangement is void under **section 91**.
- (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. 20
- (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 25

93 Not taking reasonable care

- (1) A levy payer is liable to pay a shortfall penalty if the levy payer does not take reasonable care in taking a levy position and the taking of that levy position by that levy payer results in a levy shortfall.
- (2) However, if the levy position is an acceptable levy position, the levy payer has taken reasonable care in taking the levy position. 30
- (3) An **acceptable levy position** means a levy position that meets the standard of being about as likely as not to be correct.
- (4) The penalty payable for not taking reasonable care is 20% of the resulting levy shortfall. 35

Compare: 1994 No 166 s 141A

94 Unacceptable levy position

- (1) A levy payer is liable to pay a shortfall penalty if the levy payer takes an unacceptable levy position and the levy shortfall arising from the levy payer's levy position is more than both—
- (a) \$50,000; and 5
 - (b) 1% of the total levy for the property for the relevant taxable period.
- (2) An **unacceptable levy position**—
- (a) means a levy position that, viewed objectively, fails to meet the standard of being about as likely as not to be correct; but
 - (b) does not include a levy position described in **paragraph (a)** that is taken merely as a consequence of a mistake in the calculation or recording of numbers used in, or for use in preparing, a return. 10
- (3) If **subsection (1)** applies, the shortfall penalty payable is 20% of the resulting levy shortfall.
- (4) Whether any levy position is acceptable or unacceptable must be determined as at the time at which the levy payer takes the levy position. 15
- (5) The time at which a levy payer takes a levy position in relation to a contract of insurance is—
- (a) the time at which the levy payer provides the return containing the levy position, if the levy payer provides a return in relation to the contract of insurance: 20
 - (b) the last day on which a levy payer is able to file a return under **section 84**, if the levy payer does not provide a return in relation to the contract of insurance.
- (6) The matters that must be considered in determining whether the levy payer has taken an unacceptable levy position include— 25
- (a) the actual or potential application to the levy position of the provisions of this Part and of any regulations made under this Part that are relevant; and
 - (b) any decisions of a court on the interpretation of this Part and of any regulations made under this Part that are relevant (unless the decision was issued up to 1 month before the levy payer takes the levy position). 30

Compare: 1994 No 166 s 141B

95 Gross carelessness

- (1) A levy payer is liable to pay a shortfall penalty if the levy payer is grossly careless in taking a levy position unless the levy position is an acceptable levy position (that is, it meets the standard of being about as likely as not to be correct). 35
- (2) The penalty payable for gross carelessness is 40% of the resulting levy shortfall.

- (3) For the purposes of this Part, **gross carelessness** means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences, and **grossly careless** has a corresponding meaning.
Compare: 1994 No 166 s 141C 5
- 96 Abusive levy position**
- (1) A levy payer is liable to pay a shortfall penalty if the levy payer takes an abusive levy position.
- (2) An **abusive levy position** means a levy position that—
- (a) is an unacceptable levy position at the time at which the levy position is taken; and 10
- (b) viewed objectively,—
- (i) the levy payer takes in respect, or as a consequence, of an arrangement that is entered into with a dominant purpose of avoiding levy, whether directly or indirectly; or 15
- (ii) where the tax position does not relate to an arrangement described in **subparagraph (i)**, the levy payer takes with a dominant purpose of avoiding levy, whether directly or indirectly.
- (3) The penalty payable for taking an abusive levy position is 100% of the resulting levy shortfall. 20
- (4) **Section 94(5)** applies for determining the time when a levy payer takes an abusive levy position.
Compare: 1994 No 166 s 141D
- 97 Reduction of penalties for previous behaviour**
- (1) **Subsection (2)** applies if— 25
- (a) a levy payer is liable for a shortfall penalty (the **current penalty**) under any of **sections 93 to 96**; and
- (b) the levy payer is not—
- (i) convicted of a disqualifying offence; or
- (ii) liable for a disqualifying penalty. 30
- (2) The current penalty is reduced by 50% of the amount that would be payable in the absence of this section.
- (3) In this section,—
- disqualifying offence** means an offence under **section 84, 85, 86, or 90** for which a conviction is entered in the relevant period 35
- disqualifying penalty** means a shortfall penalty other than the current penalty that—
- (a) relates to a levy position that is taken in the relevant period; and

- (b) if the current penalty is—
 - (i) for gross carelessness or taking an abusive levy position, is a shortfall penalty for gross carelessness or taking an abusive levy position:
 - (ii) for not taking reasonable care or taking an unacceptable levy position, is a shortfall penalty of any sort 5

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. 10

Compare: 1994 No 166 s 141FB

98 When shortfall penalties must be paid

A levy payer that is liable to pay a shortfall penalty must pay the penalty to FENZ no later than 60 days after the levy payer took the levy position that relates to the shortfall penalty. 15

Subpart 5—Interest

99 Purpose of section 100

- (1) The purpose of **section 100** is,—
 - (a) in appropriate circumstances,— 20
 - (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. 25
- (2) Interest payable under **section 100** is not a penalty.

Compare: 1994 No 166 s 120A(1)

100 Interest on unpaid and overpaid levy

- (1) A levy payer is liable to pay interest on unpaid levy to FENZ in accordance with **section 101**. 30
- (2) FENZ may recover interest payable on unpaid levy as though it were levy payable by the levy payer.
- (3) FENZ is liable to pay interest on overpaid levy to a levy payer that has paid too much levy in accordance with **section 101**.

Compare: 1994 No 166 ss 120A(2), 120D 35

101 Amount of interest payable on unpaid and overpaid levy

(1) In this section,—

due date means the last day on which a levy payer is able to pay the levy under **section 75**

interest period means,— 5

(a) in relation to unpaid levy, the period (both dates inclusive)—

- (i) beginning on the day after the due date of payment of the unpaid levy; and
- (ii) ending on the date the levy is paid:

(b) in relation to overpaid levy, the period (both dates inclusive)— 10

- (i) beginning on the day after the later of the due date or the date on which the overpaid levy was paid; and
- (ii) ending on the date the overpaid levy is refunded by FENZ

relevant interest rate means,—

(a) in relation to unpaid levy, 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: 15

(b) in relation to overpaid levy, 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. 20

(2) The amount of interest payable on unpaid or overpaid levy 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 on which the interest is payable; and 25

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 30

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

Compare: 1994 No 166 s 120E

102 Interest priority

(1) **Subsection (2)** applies if a levy payer has unpaid levy to pay and the levy payer is liable to pay interest on the unpaid levy. 35

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

Compare: 1994 No 166 s 120F

103 Interest payable immediately

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

Compare: 1994 No 166 ss 120G 10

Subpart 6—Regulations relating to levy

104 Levy regulations

- (1) For the purpose of this Part, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a levy in respect of property that is insured against physical damage or loss. 15
- (2) The regulations must,—
- (a) for every motor vehicle that is insured against physical damage or loss, prescribe an annual rate of levy per vehicle:
- (b) for all other property that is insured against physical damage or loss, prescribe a rate of levy as a proportion of the amount insured. 20
- (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: 25
- (ii) personal property:
- (b) prescribe maximum amounts of levy payable for—
- (i) residential property:
- (ii) personal property:
- (c) provide for the payment and collection of the levy: 30
- (d) provide for an exemption from the levy for any property or class of property:
- (e) provide for waivers or refunds of the whole or any part of the levy, any shortfall penalty, or interest:
- (f) specify buildings or classes of buildings that are specialised accommodation for the purposes of this Part: 35

- (g) 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: 5
 - (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: 10
 - (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.
- (4) The Minister may recommend the making of regulations relating to an exemption under **subsection (3)(d)** only if the Minister is satisfied that the exemption is for property or a type of property in relation to which there is no potential for FENZ's services to be required. 15
- (5) If the Minister recommends the making of regulations under **subsection (3)(d)**, the Minister's reasons must be published together with the regulations.
- 105 Procedure for levy regulations** 20
- (1) The Minister must, in at least every third financial year, estimate the amount of FENZ's net costs for the next period of 3 financial years (the **period**).
- (2) For the purposes of **subsection (1)**, FENZ's net costs in a period are—
- (a) its estimated direct and indirect costs of performing functions and duties and exercising powers under this Act, regulations made under this Act, or any other enactment that will arise in the period; less 25
 - (b) any estimated income that FENZ will receive in the period from any source other than the levy.
- (3) The Minister must then determine the portion of FENZ's net costs for the period that are to be met by levies. 30
- (4) The Minister must then recommend the making of regulations under **section 104** to recover, in each year of the period, one-third of the portion of FENZ's net costs for the period that the Minister has determined are to be met by levies.
- (5) In making a recommendation, the Minister must take into account the following (in addition to the purpose of this Part): 35
- (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) the benefit of maintaining the stability of each rate of the levy in the long term.
- (6) The Minister may recommend the amendment of the regulations in the period to which they apply if the Minister is satisfied that—
- (a) actual net costs in the period are likely to vary significantly from the estimate of net costs under **subsection (2)** on which the regulations were based; and 5
- (b) the persons likely to be substantially affected by the amendment, or their representatives, have been consulted. 10
- Compare: 2012 No 2 s 57 10
- 106 Consultation about levy regulations**
- (1) The Minister must be satisfied that **subsections (2) to (4)** have been complied with before the Minister makes a recommendation under **section 105(4)**.
- (2) FENZ must consult the persons that FENZ considers are likely to be substantially affected, or their representatives, about— 15
- (a) the proposed regulations; and
- (b) the activities that FENZ proposes to undertake in the period to which the proposed regulations relate.
- (3) FENZ must publish a notice that— 20
- (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 25
- (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. 30
- (4) FENZ must consider any comments received under **subsection (3)**.
- (5) Regulations made under **section 104** are not invalid on the grounds that—
- (a) **subsections (2) to (4)** were not complied with before the Minister recommended the making of the regulations; or
- (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. 35

Compare: 2012 No 2 s 60

Part 4

Miscellaneous and enforcement provisions

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

Provisions relating to Department of Conservation 5

107 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

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

conservation area—

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

public conservation land,—

- (a) subject to **paragraph (b)**, means—
 - (i) any conservation area; and
 - (ii) any national park within the meaning of the National Parks Act 1980; and 20
 - (iii) any government purpose reserve within the meaning of section 22 of the Reserves Act 1977 that is classified under section 16 of that Act for the purpose of wildlife management or for other specified wildlife purposes; and 25
 - (iv) any other land or class of land (whether or not vested in or administered by the Crown) declared by the Minister of Conservation by notice in the *Gazette* to be a State area for the purposes of this Act; but
- (b) unless declared to be a State area by notice in the *Gazette* under **paragraph (a)(iv)**, does not include— 30
 - (i) any conservation area for the time being expressly excluded from any State area 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: 35

- (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: 5
 - (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: 10
 - (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 section 176 of the Lands Act 1948: 15
 - (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.
- 108 Policy for fire services and designated emergency services in relation to public conservation land and additional land** 20
- (1) FENZ and the Director-General of Conservation must take all reasonable steps to agree on any policy for fire services and designated emergency services that relate to, have an impact on, or have implications for public conservation land and additional land. 25
 - (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.
- 109 Review of policy for fire services and designated emergency services in relation to public conservation land and additional land** 30
- After any policy referred to in **section 108** comes into force, the policy is subject to review by FENZ and the Director-General of Conservation as considered necessary by agreement between FENZ and the Director-General of Conservation. 35
- 110 Agreement with Department of Conservation**
- FENZ and the Department of Conservation must take reasonable steps to enter into a 3-yearly operational service agreement that sets out—

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

5

Provisions relating to New Zealand Defence Force

111 Agreement with New Zealand Defence Force

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

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

10

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

15

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

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

20

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

Compare: 1975 No 42 s 36A(2)

113 Command of defence fire brigade and any other personnel

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

25

(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 **section 38 to 42**.

30

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

*Provision relating to Ministry of Education***114 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— 5
- (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 10
 - (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. 15

Subpart 2—Offences*Infringement offences***115 Proceedings for infringement offence** 20

- (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 116**. 25
- (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.

116 Infringement notices

- (1) An authorised person may issue an infringement notice to a person if the authorised person believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 30
- (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 35

- (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: 5
- (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,— 10
- (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 15
- (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 20
- (h) any other particulars that may be prescribed.
- (5) If an infringement notice has been issued under this section and the authorised person wishes to proceed, the procedure under section 21 of the Summary Proceedings Act 1957 must be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications. 25

117 Payment of infringement fees

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

Other offences 30

118 Offence to impersonate personnel with intent to deceive

- (1) A person commits an offence if, with intent to deceive, the person pretends to be—
- (a) operational personnel of FENZ; or
- (b) a FENZ inspector; or 35
- (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)
- 119 Offence to knowingly give false alarm of fire** 5
- (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 10
- (b) in any other case, to a fine not exceeding \$150,000.
- Compare: 1975 No 42 s 88(1)(c)
- 120 Offence to interfere with exercise of powers and duties under Act**
- (1) A person commits an offence if the person knowingly obstructs, hinders, resists, or deceives a FENZ inspector or an authorised person in the performance or exercise by that officer or person of powers or duties under this Act. 15
- (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. 20
- 121 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 (as defined in regulations made under **section 148**) in breach of requirements under this Act or under regulations made under **section 148 or 152**. 25
- (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. 30
- Compare: SR 2005/153 r 54

Subpart 3—Liability-related provisions

- 122 Damage in firefighting to be damage by fire within meaning of contract of fire insurance**
- (1) Damage to property must be treated as damage by fire within the meaning of any contract of fire insurance covering the damaged property if— 35

- (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. 5
- (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 10
 - (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. 15
Compare: 1975 No 42 s 42

123 Limitation of liability

- (1) No proceeding may be taken against any of the following to recover damages for any loss or damage to property resulting from any act or omission of a specified person resulting from the performance, or intended performance, or the exercise or intended exercise, in good faith of that person’s functions, powers, or duties under any relevant fire safety legislation: 20
- (a) the Crown:
 - (b) FENZ:
 - (c) the board:
 - (d) any FENZ personnel: 25
 - (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. 30
- (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: 35
 - (c) any other person.
- Compare: 1975 No 42 s 43(1), (1A)

124 Defences in actions or proceedings relating to designated emergency services

- (1) This section applies in any relevant proceeding taken against any of the following in relation to the carrying out of functions of FENZ in an emergency, specified in **sections 11 and 12**: 5
- (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. 10
- (3) In this section, **relevant proceeding** means a proceeding relating to the failure to make, or the negligence in making, adequate provision for— 15
- (a) the prevention of fire: 15
 - (b) the suppression and extinguishment of fire:
 - (c) the protection of property endangered by fire:
 - (d) the protection of persons or property that are or is endangered in or by any situation that requires the delivery of designated emergency services. 20

Compare: 1975 No 42 s 43(2)

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

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

Compare: 1975 No 42 s 43(3)

126 Damage and liability provisions in relation to defence fire brigades

- (1) **Sections 122 and 123** apply, in relation to a defence fire brigade, whether operating within or outside a defence area, as if— 30
- (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 the carrying out of functions of FENZ, in an emergency, specified in **sections 11 or 12**, it is a defence to prove that— 35
- (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)

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Subpart 4—Powers of entry, inspection, and search

127 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 10

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

pre-incident planning— 15

- (a) means planning for the purposes of carrying out functions under **section 11 or 12** 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. 20

128 Appointment of FENZ inspectors

- (1) FENZ may, by notice in writing, appoint any of the following as a FENZ inspector:

- (a) FENZ personnel:
- (b) an employee of a department (within the meaning of the State Sector Act 1988): 25
- (c) an employee of the State services (within the meaning of the State Sector Act 1988):
- (d) a statutory officer:
- (e) a prescribed person: 30
- (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 35

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. 5
- (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. 10

Compare: 2015 No 70 s 163

129 Identity cards

- (1) FENZ must give each FENZ inspector an identity card that—
- (a) states the person's name and appointment as a FENZ inspector; and 15
- (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. 20

Compare: 2015 No 70 s 164

130 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. 25

Compare: 2015 No 70 s 165

131 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. 30
- (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

132 Powers of entry and inspection 35

- (1) A FENZ inspector may 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 imposed on owners under any relevant fire safety legislation: 5
 - (c) conduct post-incident analysis.
- (3) This section is subject to **section 133**.
- (4) The provisions of Part 4 (except subpart 3 and sections 118 and 119) of the Search and Surveillance Act 2012 apply. 10
Compare: 1975 No 42 s 29; 2015 No 70 s 168

133 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— 15
- (a) may be the site of a fire or any other 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 20
 - (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 25
 - (c) has been the site of a fire or other 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 132, 135, and 136** and Part 4 (except sections 118 and 119) of the Search and Surveillance Act 2012. 30
- (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. 35
Compare: 2015 No 70 s 169

134 Power to deal with cause of imminent danger

- (1) This section applies if a FENZ inspector who enters any land or a building under **section 132** or **133** reasonably believes that any material, substance, structure, or thing on or in the land or the building is defective or hazardous to a degree that it is likely to imminently cause a fire or other emergency (**the thing that is the cause of imminent danger**). 5
- (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,— 10
- (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 15
- (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. 20

Compare: 2015 No 70 s 170

135 Power to take samples and other objects and things

- (1) A FENZ inspector who enters any land or a building under **section 132** or **133** may, if the FENZ inspector believes on reasonable grounds that, it is necessary to take or remove a sample of any material, substance, or thing (**item**) for analysis, or seize and retain item for the purpose of assessing compliance with the requirements imposed on owners and occupants under relevant fire safety legislation. 25
- (2) A FENZ inspector may exercise the power set out in **subsection (1)** only after he or she has given the person from whom the item is proposed to be seized the opportunity to surrender the item to the inspector. 30
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3 and sections 118 and 119) apply.
- (4) To avoid doubt, **subsection (1)** does not authorise a FENZ inspector to search any person. 35

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

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

- (1) FENZ may authorise a specified person to enter and search any land or building, vehicle, or other thing if FENZ is satisfied that there are reasonable

- grounds to believe that an offence has been committed against this Act or regulations made under this Act or any other relevant fire safety legislation and that the search will find evidential material in or on any part of the land or building, vehicle, or thing.
- (2) The specified person may enter and search the land or building, vehicle, or other thing if— 5
- (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. 10 15
- (4) In this section, **specified person** means—
- (a) a FENZ inspector; or
- (b) FENZ personnel; or
- (c) any other person who FENZ is satisfied— 20
- (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. 25

Compare: 2015 No 70 s 173

137 Power to restrict or prohibit entry to sites

A FENZ inspector may prohibit or restrict access of persons or classes of persons to any land or building that is the site of a fire or any other emergency if the FENZ inspector believes on reasonable grounds that it is necessary— 30

- (a) to preserve or record evidence in relation to the fire or other emergency; or
- (b) to prevent the tampering with, or alteration, mutilation, or destruction of, any thing involved in any manner in a fire or any other emergency. 35

Compare: 1994 No 104 s 59(a)

Subpart 5—Dispute resolution

138 Duty to develop dispute resolution scheme

- (1) FENZ must develop a dispute resolution scheme for resolving disputes on any matter under this Act or regulations made under this Act other than the disputes set out in **subsection (2)**. 5
- (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, power, or duty by a Minister: 10
 - (d) any other dispute of a kind specified under **section 140(1)(c)**.

139 Principles of dispute resolution scheme

The development of the dispute resolution scheme must be guided by, and the dispute resolution scheme must be based on, the following principles: 15

- (a) accessibility:
- (b) independence:
- (c) fairness:
- (d) accountability:
- (e) efficiency: 20
- (f) effectiveness.

140 Content of rules of dispute resolution scheme

- (1) The rules of the dispute resolution scheme developed and approved under this subpart may provide for 1 or more of the following:
- (a) the appointment of a person to be responsible for the administration of the scheme (the **administrator**): 25
 - (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: 30
 - (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 35

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- (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): 5
 - (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): 10
 - (h) the remedial action that can be imposed on a party to resolve a dispute, which may include, for example, an order to— 15
 - (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: 20
 - (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:
 - (vi) in the case of a dispute relating to **Part 3**, pay or refund any levy, shortfall, penalty, or interest: 25
 - (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: 30
 - (l) the review of a decision made by an adjudicator or any other decision maker:
 - (m) any other matters prescribed by regulations made under **section 148** for the purposes of this paragraph. 35
- (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 5
 - (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— 10
- (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. 15
- (5) **Subsection (4)** does not apply in relation to a dispute relating to **Part 3**.

141 Consultation

- (1) FENZ must, before applying for the approval of the dispute resolution scheme, consult the persons or representatives of the persons that FENZ considers will be substantially affected by the approval of the scheme. 20
- (2) A failure to comply with **subsection (1)** does not affect the validity of the dispute resolution scheme.

142 Approval and publication of dispute resolution scheme

- (1) After developing a dispute resolution scheme in accordance with this subpart, FENZ must apply to the Minister for approval of the scheme. 25
- (2) Before approving a dispute resolution scheme, the Minister must be 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 139**. 30
- (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. 35

- (6) The Minister may approve a variation to the rules of the approved dispute resolution scheme or the revocation and replacement of those rules (and **sections 138 to 141** and **subsections (1) to (5)** apply with all necessary modifications to a variation or replacement).
- 143 Participation is voluntary** 5
- (1) Except as provided in **subsection (2)**, no person is required to participate in the resolution of a dispute using the dispute resolution scheme.
- (2) However, if a person agrees to participate in the resolution of a dispute using the dispute resolution scheme, the person must participate in accordance with the rules of the scheme. 10
- (3) This section is subject to **section 145**.
- 144 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. 15
- (2) If a proceeding relating to any conduct is commenced in a court or tribunal, a proceeding before the dispute resolution scheme relating to the same conduct is stayed (unless the court or tribunal orders otherwise).
- 145 District Court to enforce dispute resolution scheme**
- (1) The District Court may, on the application of a party to a dispute or the administrator, make an order— 20
- (a) requiring a party to comply with the rules of the dispute resolution scheme; or
- (b) to give effect to any resolution that is binding under **section 140(3)**.
- (2) If an order of an adjudicator or any other decision maker made under the dispute resolution scheme requires a party to pay an amount to any person, that order may be enforced as if it were a judgment by the District Court for the payment of that amount to that person. 25
- (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. 30
- (4) **Subsection (3)** overrides **subsections (1) and (2)** and **section 140(3)**.
- 146 Appeals**
- (1) A person who is aggrieved by the decision made by an adjudicator or any other decision maker under the dispute resolution scheme may appeal to a District Court. 35
- (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.

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147 Disputes relating to Part 3

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

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Subpart 6—Regulations

148 General regulation-making power

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

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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

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- (b) prescribing the kinds of disputes excluded from the dispute resolution scheme and other matters for the purposes of **section 140(1)(m)**:

Offences and penalties

- (c) creating offences in respect of the contravention of regulations made under this Act and providing for the imposition of fines, which must not exceed—

25

- (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:

30

- (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:

35

(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:	
	<i>Definitions</i>	5
(h)	prescribing types of barbecues, containers, or places for the purposes of the definition of open fire in section 6 and the definition of open air in section 57 :	
(i)	defining spontaneously combustible material for the purposes of section 121 :	10
	<i>Public notification</i>	
(j)	prescribing requirements relating to the giving of public notice of any document:	
	<i>Forms</i>	
(k)	prescribing the information that must be contained in forms for the purposes of this Act:	15
	<i>General</i>	
(l)	providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.	
(2)	Regulations made under this Act may apply—	20
(a)	generally throughout New Zealand or in particular areas of New Zealand only; and	
(b)	generally over a range of circumstances or in particular circumstances only.	
149	Regulations relating to operating processes for local committees	25
	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 committees, including 1 or more of the following:	
(a)	notification of meetings:	
(b)	notification of membership and changes in membership:	30
(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.	35

150 Regulations relating to fire plans

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations relating to fire plans, including—

- (a) prescribing the content of fire plans; and
- (b) prescribing the consultation that FENZ must undertake in relation to the content of fire plans. 5

151 Regulations relating to permits for lighting of open fires

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations relating to the grant of permits by FENZ to allow for the lighting of open fires that would otherwise be prohibited under **Part 2**. 10
- (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: 15
 - (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. 20
- (3) The Minister must not make any recommendation under **subsection (1)** unless the Minister has received a recommendation from FENZ.
- (4) Different regulations may be made to apply in respect of different types of permits, permit holders, or circumstances. 25
- (5) Regulations made under this section may apply generally throughout New Zealand or to a specified area or specified areas.
- (6) Regulations made under this section must not permit FENZ to grant a permit for the purposes of—
 - (a) **section 50**, unless FENZ considers that the permit is necessary to prevent, reduce, or overcome any hazard to life or because of any other serious emergency; or 30
 - (b) **section 54**, unless weather or other conditions have temporarily reduced the fire hazard so as to make it apparently safe to light a fire.
- (7) The grant of a permit under regulations made under this section does not— 35
 - (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:
 - (b) impose on FENZ any liability because of the grant of the permit.

- 152 Regulations relating to fire safety and evacuation procedures in relation to buildings**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations relating to—
- (a) 1 or more matters specified in **subsection (2)**; and 5
 - (b) evacuation procedures for occupants of buildings.
- (2) Regulations under **subsection (1)** may be made prescribing duties relating to—
- (a) the maintenance of escape routes in specified types of buildings (including the duty to keep escape routes free of flammable materials): 10
 - (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: 15
 - (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. 20
- (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 prescribed 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,— 25
- (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.
- 153 Regulations relating to evacuation schemes for relevant building** 30
- 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) prescribing, for the purposes of **section 65**, the minimum amounts of hazardous substances stored or processed in a relevant building:
 - (b) prescribing, for the purposes of **sections 65 and 66**, the matters to be included in an evacuation scheme: 35
 - (c) prescribing, for the purposes of **section 66**, the minimum standards required for automatic sprinkler systems.

Subpart 7—General provisions

154 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)

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155 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.

10

(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 or held under **subsection (1)** vests in FENZ.

15

(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

20

156 Repeals

The following Acts are repealed:

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

157 Revocations

25

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).

30

158 Consequential amendments

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

Schedule 1
Transitional, savings, and related provisions

s 4

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Part 1

Provisions relating to Act as enacted

Subpart 1—Organisation-related provisions

Interpretation

1	Interpretation	5
	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:	10
	(d) a voluntary rural fire force:	
	(e) a Fire Authority (as defined in section 2(1) of the Forest and Rural Fires Act 1977), other than—	
	(i) the Minister of Conservation; or	
	(ii) the Minister of Defence:	15
	(f) an industrial brigade	
	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	20
	asset means property of any kind that is, or may be, used for performing or exercising FENZ’s functions, duties, or powers	
	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	25
	Fire Service Commission or Commission means the New Zealand Fire Service Commission constituted under section 4(1) of the Fire Service Act 1975	
	fire service duties —	
	(a) means duties under the Forest and Rural Fires Act 1977; and	30
	(b) includes any duties that are necessary for, or incidental to, the performance of the duties under paragraph (a)	

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

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

response assets— 5

- (a) means assets needed to carry out FENZ’s objectives under **section 10** and FENZ’s functions under **section 11 or 12**, as at the commencement date; and
- (b) includes—
 - (i) assets owned, leased, or licensed by, or on behalf of, an affected rural fire authority; and 10
 - (ii) assets owned, leased, or licensed by, or on behalf of, a volunteer fire brigade; and
 - (iii) assets owned, leased, or licensed by, or on behalf of, a voluntary rural fire force; but 15
- (c) does not include—
 - (i) assets owned, leased, or licensed by, or on behalf of, the Minister of Conservation; or
 - (ii) assets owned, leased, or licensed by, or on behalf of, the Minister of Defence; or 20
 - (iii) assets owned, leased, or licensed by, or on behalf of, FENZ; or
 - (iv) assets leased or licensed by, or on behalf of, an industrial brigade

transferred employee—

- (a) means a person who, immediately before the commencement date,—
 - (i) is employed by an affected rural fire authority or the Fire Service Commission; and 25
 - (ii) is employed solely for fire service 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 30
- (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 35

(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 fire service duties, but who is also employed by any employer to carry out any other type of work

transferred volunteer means a person who, immediately before the commencement date, was—

- (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. 5
- (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**. 10
- (2) The inspection and copying of information under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.
- 6 Transfer of records** 15
- (1) All relevant records and documentary information, so far as they relate to the main and additional functions of FENZ, held by a rural fire committee immediately before the commencement of this clause must be transferred to FENZ.
- (2) The transfer of information under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 20
- 7 Copies of records held by affected rural fire authorities**
- (1) A local 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,— 25
- (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 66 of the Privacy Act 1993. 30
- Other consequences of continuation of FENZ*
- 8 Consequences of continuation of FENZ**
- (1) On the commencement date,— 35
- (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 vests in FENZ, subject to any contrary transfer arrangement that applies under **clause 16 or 17**; and 5
 - (c) all money payable to or by an affected rural fire authority becomes payable to or by FENZ, subject to any contrary transfer arrangement that applies under **clause 16 or 17**; 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 arrangement that applies under **clause 16 or 17**; and 10
 - (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 arrangement under **clause 16 or 17**; and 15
 - (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 20
 - (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. 25
- (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. 30

Transferred employees 35

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 5
- (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— 10
- (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 15
- (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. 20
- (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.

11 Agreements of service between industry fire brigades and New Zealand Fire Service Commission continued 25

On and from the commencement date, all agreements of service under section 36 of the Fire Service Act 1975 between industry fire brigades and the Commission continue until—

- (a) those agreements expire in accordance with their terms; or 30
- (b) those agreements are replaced under **section 60**.

Industry fire brigades

12 Continuation of industry fire brigades

- (1) Industry fire brigades are the same groups of persons as the industrial fire brigades organised and maintained under section 36 of the Fire Service Act 1975. 35

- (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 fire brigade. 5

Government Superannuation Fund

13 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 10
- (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. 15
- (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of FENZ were Government service. 20
- (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. 25
- Compare: 1975 No 42 s 54

Gratuities

14 Gratuities on retirement or death of transferred members of Fire Service

- (1) Despite its repeal by **section 156(a)** of this Act, section 55 of the Fire Service Act 1975 continues to apply to any person who,—
- (a) immediately before the commencement of this clause, was a member of the Fire Service; and 30
- (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: 35
- (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

15 Gratuities on retirement or death of transferred volunteers

- (1) Despite its repeal by **section 156(a)** of this Act, section 56 of the Fire Service Act 1975 continues to apply to any person who,— 5
- (a) immediately before the commencement of this clause, was a member of a volunteer fire brigade (other than a member of the Fire Service attached to a volunteer fire brigade under section 18(4) of the Fire Service Act 1975); and 10
- (b) on and from the commencement of this clause, is a FENZ volunteer.
- (2) For the purposes of **subclause (1)**, in section 56 of the Fire Service Act 1975,—
- (a) a reference to a member of a volunteer fire brigade is to be read as a reference to a FENZ volunteer: 15
- (b) a reference to the chief executive is to be read as a reference to FENZ:
- (c) a reference to service with the volunteer fire brigade includes service as a FENZ volunteer.

Compare: 1975 No 42 s 56

Subpart 2—Response assets 20

16 Duties in relation to transfer arrangements for response assets

- (1) All parties, when negotiating transfer arrangements for use of response assets, must—
- (a) act collaboratively with each other and in good faith; and
- (b) take into account— 25
- (i) the preferences of the asset owners; and
- (ii) the principles specified in **subclause (2)**.
- (2) The principles are as follows:
- (a) transfer arrangements may vary from case to case, depending on legal, commercial, and financial circumstances; and 30
- (b) firefighting assets acquired significantly through fund-raising or community donations should be allowed to be retained by the community that has the greatest need of, and interest in, those assets.
- (3) Asset owners must engage with FENZ for the purposes of this subpart.
- (4) All parties must endeavour to complete transfer arrangements by the close of **30 June 2017**. 35

- 17 Transfer arrangements for use of response assets**
- (1) On and after the day after the date on which this Act receives the Royal assent, a person who is in possession of a response asset transferred in accordance with **clause 16** must give to FENZ access to the response asset for the purposes of FENZ carrying out its main functions and additional functions. 5
- (2) The access to the response asset must be given to FENZ—
- (a) without any restriction; and
- (b) as soon as is reasonably practicable after the person receives a request from FENZ; and
- (c) on terms and conditions negotiated in good faith with FENZ in accordance with this subpart; and 10
- (d) subject to the other provisions of this Act.
- (3) Owners of response assets who are an affected entity must transfer ownership of the assets to FENZ in accordance with the relevant transfer arrangement entered into under **clause 16**. 15
- (4) FENZ is responsible for any liabilities transferred to it under a transfer arrangement entered into under **clause 16**.
- 18 Transfer arrangements not affected by any other enactment or agreement with third party**
- Transfer 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— 20
- (a) any other enactment; or
- (b) any agreement with a third party.
- 19 Certain matters not affected by transfer arrangements under this Part** 25
- (1) This clause applies to the transfer 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 30
- (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 35
- (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 wholly or in part from all or any obligation; and
- (d) does not invalidate or discharge any contract or security. 5

Regulations

20 Regulations for giving effect to transfer 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 arrangements for response assets, subject to any conditions stated in the regulations. 10
- (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 the transfer of response assets to FENZ; and
 - (b) are necessary or desirable for the orderly implementation of this Act. 15

21 Regulations for enabling FENZ

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) enabling FENZ to inquire into, assess, accept, or decline legal and financial liabilities and obligations under any contract entered into by any of the affected entities before the commencement date; and 20
 - (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. 25
- (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 30
 - (b) are necessary or desirable for the orderly implementation of this Act.

Subpart 3—Levy for 2017/18 year

22 Levy for 2017/18 financial year

This subpart—

- (a) provides for a levy to fund a portion of FENZ's costs in the 2017/2018 financial year: 35

(b) applies only in relation to the 2017/18 financial year.

23 Interpretation in this subpart

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

2017/18 financial year means the period beginning on 1 July 2017 and ending on 30 June 2018 5

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.

(2) In this subpart, unless the context otherwise requires,— 10

(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. 15

24 Levy for 2017/18 financial year 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. 20

25 Certain provisions of Fire Service Act 1975 continue to apply for 2017/18 financial year

(1) For the purpose of the levy for the 2017/18 financial year, the following provisions of the Fire Service Act 1975 continue to apply, despite their repeal by **section 156(a)** of this Act, subject to the modifications set out in **subclause (2)**: 25

(a) section 47B:

(b) section 48(6) to (13), but not section 48(6)(a) and (b):

(c) sections 49 to 51A: 30

(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: 35

- (b) every reference to regulations must be treated as if it were a reference to regulations made under **clause 26**:
- (c) every reference to a prescribed form must be treated as if it were a reference to a form prescribed by regulations made under **clause 26**:
- (d) a reference to subsection (2)(b) of section 48 of the Fire Service Act 1975 must be treated as if it were a reference to **clause 26(1)(b)**. 5
- 26 Regulations relating to levy for 2017/18 financial year**
- (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 10
- (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 15
- (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: 20
- (i) residential buildings:
- (ii) personal property:
- (iii) any other property:
- (b) prescribe a maximum amount of levy payable for each of the following: 25
- (i) a residential building:
- (ii) personal property:
- (c) fix amounts for the purpose of determining the amount for which residential property and personal property is insured for a contract of fire insurance in accordance with **clause 27**:
- (d) prescribe a maximum amount of levy payable for a residential building:
- (e) provide for and regulate the collection, receipt, and payment of money under this subpart: 30
- (f) require insurance companies to make returns and keep books and accounts for the purposes of this subpart:
- (g) prescribe the form of any return, certificate, or statutory declaration under sections 49, 49A, 49B, 50, and 51A of the Fire Service Act 1975: 35
- (h) provide for any other matter that could have been provided for in relation to the levy under the Fire Service Act 1975 immediately before the repeal of that Act by **section 156(a)**.

- (3) If the period of the contract referred to in **subclause (1)(b)(ii)** is any period other than a complete year, the levy must be calculated as a pro rata proportion of the levy for a complete year.
- 27 Amounts for which residential buildings and personal property are insured** 5
- (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 26**: 10
- (b) in subsection (2) of that section, the amount by which the area in square metres of the residential building must be multiplied is the amount fixed by regulations made under **clause 26**. 15
- (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 26**. 20
- 28 Review relating to levy for 2017/18 financial year**
- (1) The Minister must, before the commencement of the 2017/18 financial year, estimate the amount of FENZ's net costs for the 2017/18 financial year. 25
- (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 30
- (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. 35
- (4) The Minister must then recommend the making of regulations under **clause 26** to recover, in the 2017/18 financial year, the portion of FENZ's net costs for the 2017/18 financial year that the Minister has determined are to be met by levies.

- 29 Consultation relating to levy for 2017/18 financial year**
- (1) The Minister must be satisfied that **subclauses (2) to (4)** have been complied with before the Minister makes a recommendation under **clause 26(1)**.
- (2) FENZ must consult the persons that FENZ considers are likely to be substantially affected, or their representatives, about— 5
- (a) the proposed regulations; and
- (b) the activities that FENZ proposes to undertake in the 2017/18 financial year to which the proposed regulations relate.
- (3) FENZ must publish a notice that— 10
- (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 15
- (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. 20
- (4) FENZ must consider any comments received under **subclause (3)**.
- (5) Regulations made under **clause 26** are not invalid on the grounds that—
- (a) **subclauses (2) to (4)** of this clause were not complied with before the Minister recommended the making of the regulations; or
- (b) the consultation carried out was about a specific rate or specific rates of levy that differ from the rate or rates set in the regulations. 25
- 30 Pre-commencement review and consultation**
- Clauses 28 and 29** are satisfied in relation to regulations made under **clause 26** if action of the kind described in those provisions was taken before their commencement to facilitate the making of the regulations. 30
- 31 Confidentiality of information and documents**
- Section 88(2) and (3)** applies to—
- (a) information and documents provided to FENZ under this subpart:
- (b) information derived from information and documents referred to in **paragraph (a)**. 35

Subpart 4—Miscellaneous provisions

Evacuation schemes

- 32 Transitional provisions relating to applications for approval of evacuation scheme for relevant building**
- (1) This clause applies to an application for approval of an evacuation scheme for a relevant building— 5
- (a) that was made under section 21C of the Fire Service Act 1975; and
 - (b) that has not been granted, rejected, or withdrawn before the commencement of this clause.
- (2) On and from the commencement of this clause, the application must be dealt with as if it were an application for approval of an evacuation scheme for a relevant building to be made under **section 67**. 10
- 33 Previously approved evacuation schemes**
- An evacuation scheme is to be treated as having been approved under **section 67** if— 15
- (a) it was approved under section 21C of the Fire Service Act 1975; and
 - (b) the approval was given before the commencement of **sections 65 to 68** of this Act.
- Compare: 1975 No 42 s 21I
- 34 Certain provisions saved** 20
- Sections 21A to 21I of the Fire Service Act 1975 (which relate to evacuation schemes) continue to apply, despite their repeal by **section 156(a)** of this Act, until the commencement of **sections 65 to 68** of this Act.
- Levy relief in 2018/19 to 2024/2025 financial years*
- 35 Interpretation in clauses 36 to 39** 25
- In **clauses 36 to 39**, words or expressions have the meanings given in **Part 3** of this Act.
- 36 Levy relief in 2018/19 to 2024/2025 financial years**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations specifying— 30
- (a) the circumstances in which FENZ may grant, to a policyholder, an exemption (in whole or in part) from the levy; and
 - (b) the policyholders or classes of policyholder to whom FENZ may grant an exemption; and
 - (c) the conditions that FENZ may impose in relation to exemptions. 35

- (2) FENZ may grant exemptions under the regulations in relation to the whole or part of the period commencing on 1 July 2018 and ending with the close of 30 June 2025.

37 Minister's recommendation under clause 36

- (1) The Minister may recommend the making of regulations under **clause 36** only if the Minister is satisfied that the ability to grant exemptions is necessary or desirable to ensure that the specified policyholders are not subject to an unreasonable burden because of any increase in the amount of levy payable by 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). 5 10
- (2) Before recommending the making of regulations under **clause 36**, the Minister must be satisfied that FENZ has—
- (a) consulted the persons that FENZ considers are likely to be substantially affected, or their representatives, about the proposed regulations; and 15
 - (b) published a notice that describes the proposed regulations and invites written comments on the proposed regulations; and
 - (c) considered any comments received under **paragraph (b)**.
- (3) Regulations made under **clause 36** are not invalid on the grounds that **sub-clause (2)** of this clause was not complied with before the Minister recommended the making of the regulations. 20

38 FENZ's consideration of exemption

- FENZ may, in considering whether to grant an exemption to a policyholder under regulations made under **clause 36**, have regard to— 25
- (a) any increase in the amount of levy payable by the policyholder as a consequence of the commencement of **Part 3** (and the calculation of the levy amount on the amount insured or the declared value of property rather than on the basis set out in section 48 of the Fire Service Act 1975); and 30
 - (b) whether paying the increased amount would place an unreasonable burden on the policyholder.

Taxation

39 Application

- (1) This clause and **clauses 40 to 44** apply for the purposes of the Inland Revenue Acts when, in relation to a transfer under this Act, an asset of an entity (the **transferring entity**), whether a terminating or continuing entity, becomes the asset of FENZ. 35

- (2) In this clause and **clauses 40 to 44**,—
- asset** has the meaning given in **clause 1**, and includes any debts, engagements, and liabilities associated with the asset
- date of transfer** means the date on which an asset of a transferring entity becomes the asset of FENZ 5
- Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994
- 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. 10
- (3) In **clauses 40 to 44**, terms defined in the Inland Revenue Acts have the meanings given by those Acts.
- 40 General treatment**
- (1) The transferring entity and FENZ are treated on and after the date of transfer as if they were the same person. 15
- (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.
- 41 Income and expenditure**
- An amount of income derived or expenditure incurred by a transferring entity before the date of transfer does not become income or expenditure of FENZ merely because an asset of a transferring entity has become the asset of FENZ. 20
- 42 Charitable status**
- When a transferring entity is deregistered as a charitable entity under the Charities Act 2005 as a consequence of changes made under this Act, sections CV 17 and HR 12 of the Income Tax Act 2007 do not apply in relation to the transferring entity. 25
- 43 Association**
- A person is not associated with another person for the purposes of sections CB 6 to CB 15 of the Income Tax Act 2007 merely through the application of **clauses 39 to 42**. 30
- 44 Goods and services tax**
- (1) When an asset of a transferring entity becomes the asset of FENZ, the transfer is treated as a taxable supply that is charged with goods and services tax at the rate of 0%. 35
- (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 **sub-**

clause (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 158

Part 1

Amendments to Acts

5

Biosecurity Act 1993 (1993 No 95)

Replace section 87(1)(d) to (f) with:

(d) Fire and Emergency New Zealand:

Replace section 98(1)(d) to (f) with:

(d) Fire and Emergency New Zealand:

10

Building Act 2004 (2004 No 72)

In section 11(c), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 35(1)(e), replace “section 21A of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

15

In the heading to section 46, replace “**New Zealand Fire Service Commission**” with “**Fire and Emergency New Zealand**”.

In section 46(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In the heading to section 47, replace “**New Zealand Fire Service Commission**” with “**Fire and Emergency New Zealand**”.

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In section 47(1) and (2), replace “The New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 47(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

25

In section 48(3)(a), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 121(2)(a), replace “members of the New Zealand Fire Service” with “employees, volunteers, and contractors of Fire and Emergency New Zealand”.

In section 121(2)(a), replace “Fire Service National Commander” with “board of Fire and Emergency New Zealand”.

30

In section 170(a), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

In section 212(3), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

35

Building Act 2004 (2004 No 72)—continued

In section 238(1)(b), replace “the New Zealand Fire Service Commission” with “Fire and Emergency New Zealand”.

Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 4, definition of **emergency services**, replace “New Zealand Fire Service, National Rural Fire Authority, rural fire authorities” with “Fire and Emergency New Zealand”.

Replace section 17(3)(c) and (d) with:

(c) **Fire and Emergency New Zealand Act 2016:**

Replace section 20(1)(c) with:

(c) a senior employee, volunteer, or contractor of Fire and Emergency New Zealand who is assigned for the purpose by the board of Fire and Emergency New Zealand; and

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 1, repeal the item relating to the New Zealand Fire Service Commission.

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Name	Exemption from acquisition of financial products, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Fire and Emergency New Zealand					✓

Electricity Act 1992 (1992 No 122)

In section 2, repeal the definition of **fire brigade**.

In section 17(1), replace “a member of a fire brigade” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand carrying out designated emergency services”.

After section 17(3), insert:

(4) In subsection (1), **designated emergency services** has the same meaning as in **section 6 of the Fire and Emergency New Zealand Act 2016**.

Employment Relations Act 2000 (2000 No 24)

Repeal section 137(1)(a)(ix).

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

6 The delivery of designated emergency services (within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**) by employees of Fire and Emergency New Zealand.

Gas Act 1992 (1992 No 124)

In section 2, repeal the definition of **fire brigade**.

In section 18(1), replace “a member of a fire brigade” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand carrying out designated emergency services”.

5

After section 18(3), insert:

- (4) In subsection (1), **designated emergency services** has the same meaning as in **section 6 of the Fire and Emergency New Zealand Act 2016**.

Goods and Services Tax Act 1985 (1985 No 141)

In section 5(6AB), replace “the New Zealand Fire Service Commission under section 48 of the Fire Service Act 1975” with “Fire and Emergency New Zealand under **sub-part 2 of Part 3 of the Fire and Emergency New Zealand Act 2016**”.

10

In section 5(6AB), replace “penalty surcharge” with “shortfall penalty”.

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 2016**”.

15

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

In section 46(1)(c), replace “section 2 of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”.

Replace section 82A(5)(ba) with:

20

- (ba) the board of Fire and Emergency New Zealand:

In section 109(1)(m), replace “fire services officer” with “an employee, volunteer, or contractor of Fire and Emergency New Zealand”.

In section 135, definition of **enforcement officer**, replace “Chief Fire Officer or person exercising the powers of a Chief Fire Officer under section 28 or section 28A or section 29 of the Fire Service Act 1975” with “any employee, volunteer, or contractor of Fire and Emergency New Zealand exercising powers under the **Fire and Emergency New Zealand Act 2016**”.

25

In section 136(1)(b)(ii), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

30

In section 136(4)(c), replace “a Chief Fire Officer” with “Fire and Emergency New Zealand”.

In section 136(4)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

Health Act 1956 (1956 No 65)

35

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**. 5

In section 16, definition of **regulatory agency**, paragraph (h), replace “the New Zealand Fire Service” with “Fire and Emergency New Zealand”.

Replace section 92(4)(b) with:

- (b) designated emergency services (as defined in **section 6 of the Fire and Emergency New Zealand Act 2016**) 10

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: 15

fire brigade includes—

- (a) a defence fire brigade and an industry fire brigade (as those terms are defined in **section 6 of the Fire and Emergency New Zealand Act 2016**); and
- (b) employed firefighters or other members of a defence fire brigade or an industry fire brigade; and 20
- (c) employees, volunteers, and contractors of Fire and Emergency New Zealand who are operational personnel delivering designated emergency services (as those terms are defined in **section 6 of the Fire and Emergency New Zealand Act 2016**) 25

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) 30

Replace section 52(6)(c) with:

- (c) as a vehicle for the delivery of designated emergency services (as defined in **section 6 of the Fire and Emergency New Zealand Act 2016**) by an employee, volunteer, or contractor of Fire and Emergency New Zealand. 35

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”. 5

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”. 10

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.”. 15

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

Local Government Act 2002 (2002 No 84)

In section 146(c), replace “sections 20 to 22 of the Forest and Rural Fires Act 1977” with “**sections 53 to 55 of the Fire and Emergency New Zealand Act 2016**”. 20

Replace section 183(1)(b) and (c) with:

- (b) a person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016** 25

Replace section 183(7) with:

- (7) The powers in this section are in addition to any powers that a territorial authority has under any other enactment.

Replace section 229(a)(ii) with:

- (ii) an employee, volunteer, or contractor of Fire and Emergency New Zealand; or 30

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

In section 63, definition of **emergency activity**, paragraph (c)(v), replace “section 2(1) of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”. 35

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 5

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: 10

(b) any constable, or an employee, volunteer, or contractor of Fire and Emergency New Zealand exercising functions under the **Fire and Emergency New Zealand Act 2016** or regulations made under that Act; or

In section 54(1)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”. 15

In section 54(2)(a), replace “fire officer” with “employee, volunteer, or contractor of Fire and Emergency New Zealand who is”.

In section 55(1)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”. 20

In section 55(2)(a), replace “fire officer” with “employee, volunteer, or contractor of Fire and Emergency New Zealand who is”.

In section 55(5)(c), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

In section 57(6), replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”. 25

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”. 30

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”. 35

In section 100(d)(i), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

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

In section 127(2)(e)(i), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

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

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

In section 286(1), replace “any member of the fire service authorised to enter buildings under section 21F or 29 of the Fire Service Act 1975” with “any person appointed as a FENZ inspector under **section 128 of the Fire and Emergency New Zealand Act 2016**”.

In section 286(2), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

Fire and Emergency New Zealand Act 2016	132(1)	FENZ inspector may enter and inspect land and buildings for the purposes specified in section 132(2) of the Fire and Emergency New Zealand Act 2016	All (except subpart 3 and sections 118 and 119)
	133(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)
	134(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 a fire or other emergency	All (except subpart 3 and sections 118 and 119)
	135(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 imposed on owners and occupants under fire safety legislation	All (except subpart 3 and sections 118 and 119)
	136(1)	FENZ may authorise a specified person to enter and search any land, building, vehicle, or other	All (except sections 118 and 119)

Search and Surveillance Act 2012 (2012 No 24)—continued

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

Sentencing Act 2002 (2002 No 9)

Replace section 9(4A)(b) with:

- (b) services provided by or on behalf of Fire and Emergency New Zealand to save life, prevent serious injury, or avoid damage to property.

Summary Proceedings Act 1957 (1957 No 87)

5

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

- (jc) **section 116 of the Fire and Emergency New Zealand Act 2016**;
or

Part 2**Amendments to legislative instruments**

10

Education (Early Childhood Services) Regulations 2008 (SR 2008/204)

In regulation 9(1)(c), replace “section 21B of the Fire Service Act 1975” with “**section 66 of the Fire and Emergency New Zealand Act 2016**”.

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

In regulation 49(b), replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

15

Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 (SR 2001/116)

In regulation 38(5)(d), replace “Chief Fire Officer” with “person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**”.

20

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”.

25

In regulation 44(2)(b), replace “Chief Fire Officer” with “a person who is an authorised person within the meaning of **section 6 of the Fire and Emergency New Zealand Act 2016**”.

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

In rule 1.6, definition of **defence fire brigade**, replace “section 2 of the Fire Service Act 1975” with “**section 6 of the Fire and Emergency New Zealand Act 2016**”.

In rule 1.6, revoke the definition of **Fire Authority**. 5

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

fire service vehicle means a vehicle that is—

- (a) owned by Fire and Emergency New Zealand; or
- (b) operated by a defence fire brigade or an industry fire brigade.

National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140) 10

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 fire brigades that have entered into an agreement with Fire and Emergency New Zealand under **subpart 2 of Part 2 of the Fire and Emergency New Zealand Act 2016**, and other fire service resources owned by private organisations 15

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”. 20

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”. 25

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: 30

- (3) **Subpart 1 of Part 2 of the Fire and Emergency New Zealand Act 2016** confers authority on an authorised person (as defined in **section 6** of that Act) to direct those under that person’s control to do whatever is necessary, within reason, for the protection of life and property.

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”. 35

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

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: 5

(e) the Fire and Emergency New Zealand Act 2016:

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

(l) Fire and Emergency New Zealand:

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

(i) Fire and Emergency New Zealand: 10

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”. 15

In the Schedule, Appendix 1, item relating to wild fire, replace “Forest and Rural Fires Act 1977” with “**Fire and Emergency New Zealand Act 2016**”.

In the Schedule, Appendix 1, item relating to urban fire, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand” in each place 20

In the Schedule, Appendix 1, item relating to urban fire, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”.

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

In the Schedule, Appendix 1, item relating to hazardous substance incidents, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”. 25

In the Schedule, Appendix 1, item relating to radiation incident, replace “New Zealand Fire Service” with “Fire and Emergency New Zealand”.

In the Schedule, Appendix 1, item relating to radiation incident, replace “Fire Service Act 1975” with “**Fire and Emergency New Zealand Act 2016**”. 30

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 2016** 35

Traffic Regulations 1976 (SR 1976/227)

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