

Fire and Emergency New Zealand (Levy) Amendment Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Fire and Emergency New Zealand (Levy) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would make changes to Part 3 of the Fire and Emergency New Zealand Act 2017. Part 3 provides for a levy, charged on insurance policies, as the main source of funding for Fire and Emergency New Zealand (FENZ). Part 3 has a delayed commencement date, and is not yet in force; FENZ is currently funded under a transitional levy.

The bill seeks to simplify and improve the levy regime originally provided for, to minimise disruption and compliance costs, while keeping to the funding principles set out in section 80 of the Act. The bill would make three main changes:

- The levy would be charged on contracts of insurance for fire damage rather than insurance contracts covering material loss or damage to property, whatever the cause.
- The levy would be calculated based on the sum insured in contracts for fire damage, rather than on the overall amount insured.
- The bill would change the commencement date of the regime from 1 July 2024 to 1 July 2026 or an earlier date set by Order in Council.

The bill would also clarify how the levy applies to motor vehicle insurance.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

We discuss below the amendments we propose, which relate only to clause 6 of the bill. Clause 6 would amend various definitions in section 81 of the principal Act, which is the interpretation section for Part 3 of the Act, dealing with the levy.

Definition of “contract of fire insurance”

Fire and emergency services respond to maritime incidents, including on marine vessels while they are stored on land, moored in marinas, or docked close to land, among others. As introduced, the bill would exclude contracts of marine insurance from the definition of a “contract of fire insurance”. Excluding marine insurance in the definition of contract of fire insurance is not necessary to allow for the levy to be charged on contracts of fire insurance. We understand that decisions regarding whether marine vessels should be exempt from the levy will be considered alongside other exemptions when regulations are made. We therefore consider that marine insurance should not be excluded in primary legislation.

We recommend amending clause 6(3) to replace paragraph (b) of the definition so that it no longer states that a contract of fire insurance does not include a contract of marine insurance.

As a consequence of this change we recommend amending clause 6(1) to repeal the definition of “contract of marine insurance” in section 81(1).

Definition of “sum insured”

We recommend amending the definition of “sum insured” to make it clear that deductions and other matters that cannot be calculated before an insurance event occurs do not need to be considered for the sum insured when it is contained in the schedule of an insurance contract.

We note that the policy intent is to provide a simple definition of “sum insured” that does not necessitate complex calculations. Our amendment would copy some of the wording from paragraph (b) of this definition and insert it into paragraph (a). We believe the phrase “this being the amount that will be paid out in the event of a total loss” would help to clarify the sum insured when insurance contracts are structured in different ways than anticipated. We note that this could also help to avoid insurance contracts being structured so as to minimise the levy paid.

Type of contract is for fire insurance

We also recommend amending the definition of “sum insured” to specify that the contract of insurance referred to is a contract for fire insurance.

As introduced, the bill would change the type of insurance contract that would be levied, from contracts of insurance for material damage to contracts of insurance for fire damage. The sum insured is only used for levying property under a contract of fire insurance. However, the definition of a contract of insurance includes both motor vehicle insurance and fire insurance. We recommend stating that the type of contract is for fire damage to avoid any confusion.

Our amendment would add the word “fire” to the definition and examples of “sum insured” in clause 6(3).

Examples of “sum insured”

The bill provides three examples of how to calculate the sum insured. We consider that example 1 would be more useful if it covered an insurance policy that lacked an overall sum insured but contained multiple sums insured for different types of property, including buildings, plant and contents, and stock.

We recommend replacing example 1 under the definition of “sum insured”. Our new example would show that the individual insured values need to be added together to calculate the “sum insured”, unless the contract of insurance includes an overall sum insured.

Levy exemptions

We heard from a range of submitters about the current levy arrangements for museums and galleries that own art and culturally significant collections. There is currently an exemption included in the transitional part of the Act. We consider this an important exemption and would like to see it continued. We have been assured that exemptions for museums and galleries will be considered when regulations are made.

Appendix

Committee process

The Fire and Emergency New Zealand (Levy) Amendment Bill was referred to the committee on 27 September 2022.

We called for submissions on the bill with a closing date of 25 October 2022. We received and considered 19 submissions from interested groups and individuals. We heard oral evidence from 12 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Department of Internal Affairs. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ian McKelvie (Chairperson)

Rachel Boyack

Naisi Chen

Jamie Strange

Hon Michael Woodhouse

**Fire and Emergency New Zealand (Levy) Amendment
Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jan Tinetti

Fire and Emergency New Zealand (Levy) Amendment Bill

Government Bill

Contents

	Page
1 Title	1
2 Commencement	2
3 Principal Act	2
4 Section 2 amended (Commencement)	2
5 Section 6 amended (Interpretation)	2
6 Section 81 amended (Interpretation of <u>in</u> this Part)	2
7 Section 82 repealed (Meaning of amount insured)	4
8 Section 83 repealed (Declared value)	4
9 Section 84 amended (Levy payable on motor vehicles)	4
10 Section 85 amended (Levy payable on other property)	5
11 Section 89 amended (Policyholder must pay amount of levy to insurer)	5
12 Section 102 amended (FENZ's power to determine liability for levy in case of levy avoidance arrangement)	5
13 Section 141 amended (Levy regulations)	5
14 Section 142 amended (Procedure for levy regulations)	5
15 Schedule 1 amended	5

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fire and Emergency New Zealand (Levy) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Fire and Emergency New Zealand Act 2017. 5

4 Section 2 amended (Commencement)

(1) Replace section 2(5) with:

(5) Sections 80 to 140 (which relate to levies) come into force on 1 July 2026 unless earlier brought into force on a date appointed by the Governor-General by Order in Council. 10

(2) Repeal subsection ~~section~~ 2(6).

5 Section 6 amended (Interpretation)

In section 6, replace the definition of **contract of fire insurance** with:

contract of fire insurance has the meaning given in section 81(1)

6 Section 81 amended (Interpretation of in this Part) 15

(1) In section 81(1), repeal the ~~definition definitions~~ of **amount insured and contract of marine insurance**.

(2) In section 81(1), replace the definition of **contract of insurance** with:

contract of insurance means—

(a) a contract of fire insurance: 20

(b) a contract of motor vehicle insurance

(3) In section 81(1), insert in their appropriate alphabetical order:

contract of fire insurance—

(a) means a contract of insurance, within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010, relating to property under which the property is insured against loss or damage by fire (whether or not the property is insured against other risks under the contract); but 25

(b) does not include—

(i) a contract of reinsurance within the meaning of section 6(1) of that Act; or 30

(ii) a contract of marine insurance within the meaning of this section

(b) does not include a contract of reinsurance within the meaning of section 6(1) of that Act

contract of motor vehicle insurance—

- (a) means a contract of insurance, within the meaning of section 7 of the Insurance (Prudential Supervision) Act 2010, relating to a motor vehicle under which either or both of the following apply:
- (i) the motor vehicle is insured against physical loss or damage: 5
 - (ii) any person is insured against third party liability in connection with the use of the vehicle; but
- (b) does not include a contract of reinsurance within the meaning of section 6(1) of that Act 10

sum insured means—

- ~~(a) the insured value of the property as stated in the schedule of the contract of insurance; and~~ 10
- (a) the insured value of the property as stated in the schedule of the contract of fire insurance, this being the amount that will be paid out in the event of a total loss before taking into account the following: 15
- (i) any amounts to be deducted before payment is made to the policyholder:
 - (ii) additional limits, sub-limits, clauses, or extensions to the contract of fire insurance that cannot be accurately identified as part of a total loss until the event has occurred; and 20
- (b) if no insured value is stated in the schedule of the contract of fire insurance, the insured value of the property as calculated by the insurer, this being the amount that will be paid out in the event of a total loss before taking into account the following:
- (i) any amounts to be deducted before payment is made to the policyholder: 25
 - (ii) additional limits, sub-limits, clauses, or extensions to the contract of fire insurance that cannot be accurately identified as part of a total loss until the event has occurred

Example 1

~~The schedule of a contract of insurance specifies that the insurer will pay for loss or damage to the relevant property for any 1 event up to an amount of \$1,000,000. The sum insured is \$1,000,000 under **paragraph (a)**.~~ 30

Example 1

A single contract of fire insurance insures several different types of property, such as buildings, plant and contents, and stock. Each type of property has an individual insured value in the contract of fire insurance. There is no overall insured value specified under the contract of fire insurance. The individual insured values are— 35

- buildings: \$2,000,000

- plant and contents: \$500,000
- stock: \$800,000

The sum insured is the amount paid out in the event of a total loss (before considering deductions or additional limits in **paragraph (a)(i) and (ii)**). In this example, the insurer will pay up to each individual insured value for each property type for loss or damage from any 1 event.

The sum insured is \$3,300,000 (\$2,000,000 + \$500,000 + \$800,000).

Note: If the contract of fire insurance specifies a total amount to be paid out in the event of a total loss, refer to example 2.

5

Example 2

A contract of fire insurance contains multiple properties. Adding the maximum insured values of each individual property comes to \$2,000,000. However, the schedule of the contract of fire insurance specifies that the insurer will pay for loss or damage for any 1 event up to an amount of \$700,000.

The sum insured is \$700,000.

10

15

Example 3

The schedule of a contract of fire insurance does not specify the insured value of the property under the contract. Under **paragraph (b)**, the insurer calculates they would pay up to \$800,000 in the event of a total loss of the property. However, the final amount that will be paid is dependent on several additional limits in the contract of fire insurance that cannot be accurately identified until the event causing the total loss has occurred, and a deductible amount.

Calculations for the deductible and additional limits are not required under ~~paragraphs~~ **paragraph (b)(i) and (ii)** respectively.

The sum insured is \$800,000.

20

25

- (4) In section 81(1), repeal the definition of **declared value**.
- (5) In section 81(1), definition of **levy position**, paragraph (c), replace “amount insured or declared value” with “sum insured”.
- (6) In section 81(1), repeal the definition of **qualified person**.

7 Section 82 repealed (Meaning of amount insured)

30

Repeal section 82.

8 Section 83 repealed (Declared value)

Repeal section 83.

9 Section 84 amended (Levy payable on motor vehicles)

In section 84(1), replace “contract of insurance” with “contract of motor vehicle insurance”.

35

- 10 Section 85 amended (Levy payable on other property)**
- (1) In section 85(1), replace “contract of insurance” with “contract of fire insurance”.
- (2) In section 85(2), replace “amount insured” with “sum insured”.
- 11 Section 89 amended (Policyholder must pay amount of levy to insurer) 5**
- In section 89(1), delete “under which property is insured against physical loss or damage”.
- 12 Section 102 amended (FENZ’s power to determine liability for levy in case of levy avoidance arrangement) 10**
- In section 102(3), replace “amount insured” with “sum insured”.
- 13 Section 141 amended (Levy regulations)**
- (1) In section 141(1), replace “against physical loss or damage” with “under a contract of insurance”.
- (2) Replace section 141(2) with:
- (2) The regulations must,— 15
- (a) in respect of every motor vehicle that is insured under a contract of motor vehicle insurance, prescribe an annual levy amount per vehicle:
- (b) in respect of all other property that is insured under a contract of fire insurance, prescribe an annual rate of levy as a proportion of the sum insured. 20
- 14 Section 142 amended (Procedure for levy regulations)**
- Replace section 142(4)(b) with:
- (b) an estimate of the total sum insured for property insured under contracts of fire insurance and the likelihood of any change in that amount:
- 15 Schedule 1 amended 25**
- (1) In Schedule 1, heading above clause 41, replace “30 June 2025” with “30 June 2030”.
- (2) In Schedule 1, heading to clause 42, replace “30 June 2025” with “30 June 2030”.
- (3) In Schedule 1, clause 42(1), replace “30 June 2025” with “30 June 2030”. 30
- (4) In Schedule 1, clause 42(2)(c), replace “amount insured” with “sum insured”.
- (5) In Schedule 1, clause 42(4)(b), replace “30 June 2025” with “30 June 2030”.
- (6) In Schedule 1, clause 43(1), replace “amount insured or the declared value of the property” with “sum insured”.

**Fire and Emergency New Zealand (Levy) Amendment
Bill**

Legislative history

20 September 2022

27 September 2022

Introduction (Bill 167–1)

First reading and referral to Governance and Administration
Committee