



DISCUSSION DOCUMENT:

Proposed regulations to support Fire and Emergency New Zealand



Discussion document: Proposed regulations

**to support Fire and Emergency New
Zealand
July 2016**

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Te Tari Taiwhenua
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Foreword



New Zealand's fire services are on the cusp of an amalgamation that will bring together more than 40 separate organisations, over 600 fire forces, more than 12,000 volunteers, and approximately 3000 paid staff into a single new organisation.

Fire and Emergency New Zealand (FENZ) is an exciting new development and one of the most significant changes to the fire sector since the 1940s.

We have made great progress in the year since I first sought your views on how to build a 21st century fire service for New Zealand.

I have appointed a new Board of the New Zealand Fire Service Commission to lead the transition. The Board has set up a Board sub-committee to govern this major change. A programme team is being formed, and one of its first tasks will be to determine how stakeholders' views can inform the work of the various transition workstreams.

The introduction of the Fire and Emergency New Zealand (FENZ) Bill into the House of Representatives and the release of this discussion document are major steps forward.

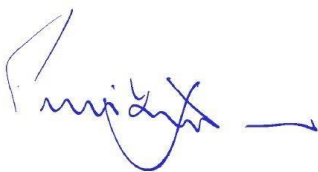
We would not have got here without the time, energy and critical input that you have so willingly given to the Fire Services Review. Thank you.

We now need your thinking on the details of how Fire and Emergency New Zealand will operate. Some of the regulations proposed here need to be in place when FENZ commences on 1 July 2017. Others can be enacted later.

This discussion document seeks your views on possible exemptions from the fire levy, the information needed from levy payers, fire plans, and whether regulations are needed for the local committees that FENZ will set up.

I remain committed to listening to you as we work together to build a robust and flexible fire service that will serve New Zealand well for many decades.

Please take the opportunity to have your say on these next important steps, by giving the Select Committee your views on the Bill, and responding to this discussion document with your views on regulation.



Hon Peter Dunne

Minister for Internal Affairs

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Introduction

What are fire services?

Fire services in New Zealand include:

- services that operate in rural communities whose prime focus is managing vegetation fire risks, such as Rural Fire Authorities (RFAs), the Department of Conservation, New Zealand Defence Force, forest owners and Volunteer Rural Fire Forces;
- services that operate in urban communities and rural towns, such as New Zealand Fire Service (NZFS) career and volunteer brigades; and
- privately-funded services that operate on behalf of private business owners (industrial brigades), such as airports and large commercial operations.

How are fire services currently organised?

The New Zealand Fire Service Commission (the Commission) is the Crown entity responsible for coordination of fire safety throughout New Zealand. A Board governs the Crown entity¹.

The NZFS is the operational arm of the Commission, which provides fire services through the volunteer and career brigades based in urban communities and rural towns, and administrative support (through national headquarters and regional offices).

The National Rural Fire Authority (NRFA) is the part of the Commission that has the role of coordinating and promoting rural fire control matters.

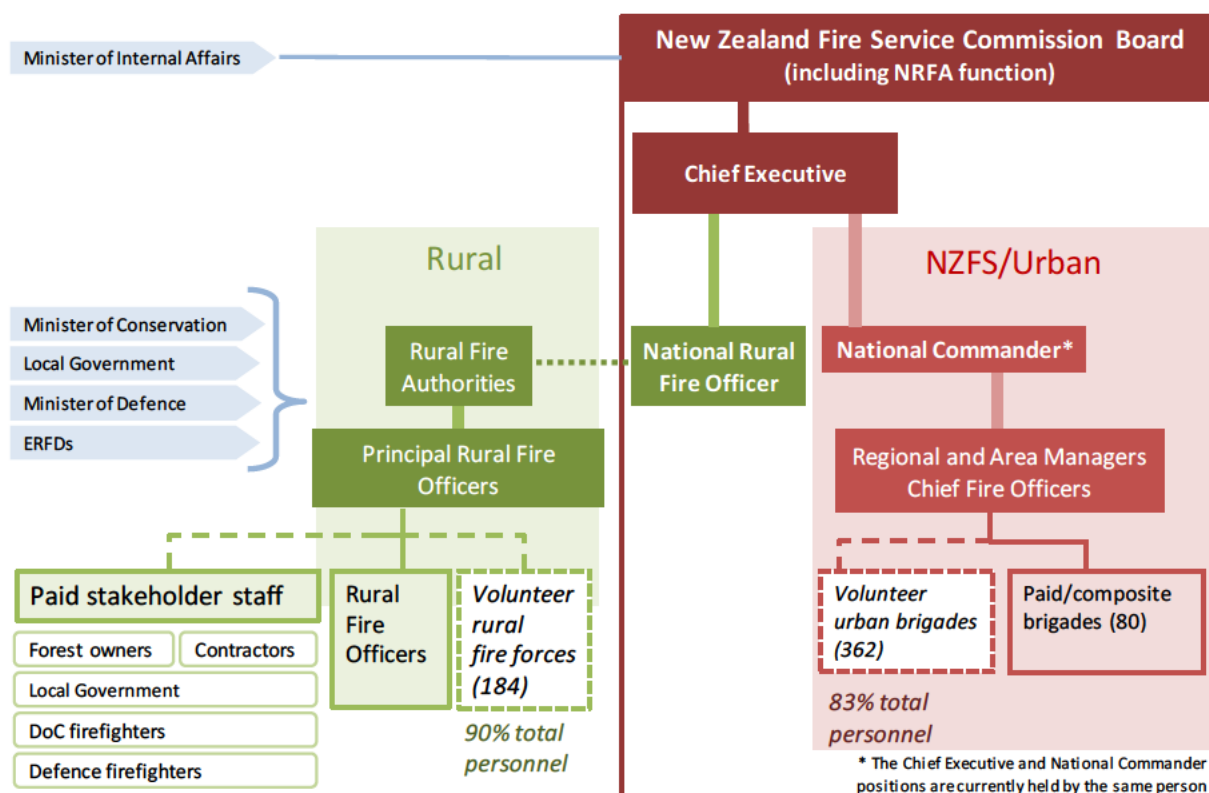
Other terms are defined in **Appendix A: Glossary of Terms**.

There are differences in the way the various fire services and their workforces operate on the ground, as well as how they are structured, legislated, mandated, governed and funded.

Figure 1 below shows the current structure of the urban and rural fire services in New Zealand. The diagram does not show industrial brigades.

¹ A new Board was appointed in April 2016.

Figure 1: Current structure of fire services in New Zealand



Why are the fire services being reformed?

This structuring of New Zealand’s fire services has not fundamentally changed since the 1940s and the last significant change in rural fire services occurred in the late 1970s, with the passing of the Forest and Rural Fires Act 1977.

Despite this, firefighters now respond to a wide range of emergencies, including medical callouts, flooding, spills of hazardous substances, and road accidents. This “non-fire” activity now takes up more time – about 60 per cent – compared to responding to either building fires or vegetation or forest fires.

Additionally, there are a number of developing issues that will have a significant impact on the future of fire services unless they are addressed. There is an increasing understanding of the importance of risk management and of the need for fire services to be adaptable when responding to the particular risk profile of different communities and industries.

There is also a growing awareness that with an ageing population and increasing urbanisation, the pool of volunteer fire fighters is under pressure, particular in small rural towns. Volunteers make up 80% of our firefighting workforce – more commitment to volunteer firefighters is crucial to strengthen our overall ability to respond effectively to all communities. During public consultation, stakeholders also cited the following problems:

- changing legal, societal, and role expectations of firefighters;
- variable leadership and lack of coordination within and between fire services;

- inconsistent investment for some community needs; and
- cultural differences between fire services and other emergency services generating operational coordination problems.

The new organisation – ‘Fire and Emergency New Zealand’

On 13 November 2015, the government agreed to bring urban and rural fire services together into one unified fire services organisation (Fire and Emergency New Zealand or FENZ) in order to set up a modern and fit for purpose organisation. The new organisation will be mandated and funded to undertake a wide variety of emergency response activities (including natural disaster response, medical emergencies and rescue operations). It will have local committees to support planning that recognises local differences and the delivery of emergency services (refer Figure 2).

The new organisation will modernise its approach to volunteer management, including direct organisational support; commitment to volunteers’ role and engagement in the new organisation; and development pathways for volunteers. FENZ will be funded to provide appropriate training, equipment and support for its volunteers.

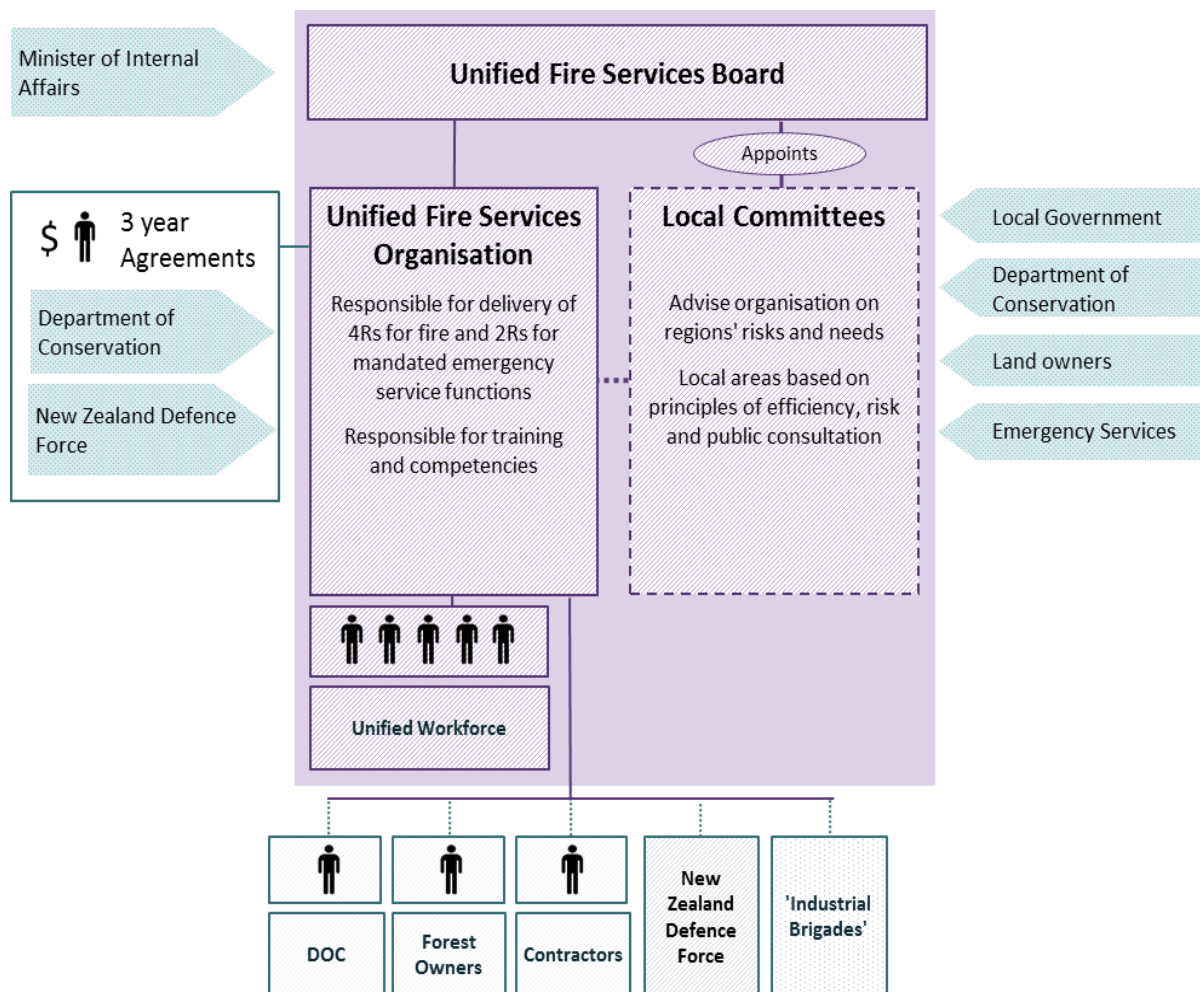
The Board is starting to design FENZ as part of the transition process. The Board has established a sub-committee to provide governance and oversight of the transition work-plan. If you want to know more or get involved in this process you can visit the following address: <https://www.dia.govt.nz/Fire-Services-Transition>

The Fire and Emergency New Zealand Bill (FENZ Bill) is currently in the House. Submissions on the Bill will be called for (alongside this discussion document) once the Bill is referred to the Select Committee. This section will be revised to include instructions for submitting on the Bill once the Select Committee calls for submissions.

You can view a copy of the FENZ Bill here:

<http://www.legislation.govt.nz/bill/government/2016/0148/latest/DLM6712701.html>

Figure 2: Overview of FENZ



Purpose of this discussion document

The purpose of this discussion document is to set out our initial perspective on proposed regulations required by FENZ.

We discuss whether and how the regulation-making powers should be used and to seek your feedback and advice on the development of regulations.

Guiding principles

Cabinet agreed that the following principles be applied in the drafting of the FENZ Bill:

- the legislation should be broad and enabling;
- the legislation will place high level obligations on FENZ to ensure that it delivers unified fire and mandated emergency services and appropriately manages land, vegetation, residential, commercial, and industrial fire risks across all New Zealand;
- the Crown Entities Act 2004 will prevail unless there is a need for specific provisions within the new fire services legislation;
- provisions in existing legislation will be retained unless no longer needed, or should be in regulation, or operational policy; and

- existing provisions need modernising including to update and to take into account the Official Information Act 1982, the Employment Relations Act 2000, Health and Safety at Work Act 2015, and others.

New regulation-making powers

The FENZ Bill includes a number of regulation-making powers. These provisions will allow the Government to make detailed and flexible policies that are designed to support the operation and governance of FENZ.

The new regulation-making powers include:

- the ability to set different fire service levy rates for residential and non-residential levy payers, and to cap levy payments;
- the ability to exempt different types of property and property owners from the fire service levy;
- the establishment of a disputes resolution process to govern levy disputes;
- the ability to prescribe details for the infringement offence scheme (including offences, and penalties); and
- specifying requirements on operating processes for local committees.

The FENZ Bill also retains many of the existing regulation-making powers contained in the Fire Service Act 1975 and the Forest and Rural Fires Act 1977, including regulating:

- the collection, receipt and payment of levy, and the requirement to make returns and keep books and accounts;
- fire plans; and
- fire safety in and around buildings (including offences for breaching fire safety requirements), and evacuation schemes.

Why give feedback?

Given how important fire services are to the safety and strength of New Zealand, it is vital that the wide range of people impacted by, or involved in, fire services have their say about the future of the sector.

Anyone can make a submission, whether you are a member of the public, a firefighter, a member of rural communities, workforce representatives, community members and representatives, businesses, forest, farm and land owners and their representatives, local authorities, and fire and emergency service providers.

If you have a view about the proposed regulations – please tell us what you think.

All feedback received by the closing date will be taken into consideration before the government makes decisions about the final form of the regulations.

The decision-making process is as follows:

- the Minister will consider feedback received and then make recommendations for the proposed regulations in early 2017;
- if the FENZ Bill is successfully passed through the House, and if the government agrees to make regulations, then these would be drafted and considered by Cabinet for introduction to Parliament. Initial regulations will come into force with FENZ from 1 July 2017;
- further regulations may be made over the course of the transition to FENZ (which is scheduled to be finalised in 2020). The Department will publicly consult on the development of subsequent regulations as required.

More information

Have your say

Submissions can be emailed to:

FireServicesTransition@dia.govt.nz

Submissions can also be posted to:

Fire Services Review
Department of Internal Affairs
PO Box 805
Wellington 6140

Find out more

This document is a summary of information only. If you'd like more information on the decisions made by Cabinet on FENZ and the latest news on the transition programme, please visit:

<https://www.dia.govt.nz/Fire-Services-Transition>

The closing date for submissions is Thursday 18 August 2016

What will happen to your submission

All submissions will be kept by the Department of Internal Affairs (the Department). The Department may publish the submissions it receives and provide a summary of them on its website www.dia.govt.nz. This would include your name or the name of your group, but not your contact details.

Submissions may be subject to a request to the Department under the Official Information Act 1982. Personal details can be withheld under this Act, including names and addresses. If you or your group do not want any information contained in your submission to be released, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. The Department will take your request into account.

The Privacy Act 1993 governs how the Department collects, holds, uses and discloses personal information about submitters and their applications. Submitters have the right to access and correct personal information.

Deciding on the best option

We want to ask your opinion about:

- proposed regulations for levy exemptions;
- proposed insurance information requirements for levy payers;
- proposed regulations for local committees; and
- proposed regulations for fire plans (covering use of fire control measures).

For some of these proposals, we have a preferred approach which we have indicated in the relevant section of the discussion document. For others, we have yet to decide.

To help us choose our preferred approach, we considered several objectives and critical success factors as listed below.

For regulations related to the funding of FENZ (i.e levy exemptions), we considered the following objectives:

- equity – policyholder’s contribution reflects potential service use;
- sufficiency – FENZ has the necessary funding to carry out responses to fire and other designated emergency services across New Zealand;
- predictability – FENZ’s revenues are not subject to sudden significant changes, and can be calculated and forecast readily and easily; and
- cost effectiveness – the costs of administering and collecting the funding are kept to a minimum.

For regulations related to information requirements for levy payers, local committees and fire plans, the following objectives were considered:

- improves consistency and effectiveness;
- improves flexibility;
- improves governance and accountability; and
- contributes to regional resilience.

We used these four objectives earlier in the fire services review process (e.g. when considering the range of structure and governance options for fire services), and we consider these objectives remain helpful when looking at the options in this discussion document.

Finally, we considered the following four factors as critical to the success of all of the proposed regulations:

- enables progress of FENZ’s strategic direction;
- addresses stakeholder expectations;
- is affordable; and
- supports legislation.

You might have a different way of thinking about which option you prefer. We're interested in your reasons for preferring one option over another.



- 1. Do you have any other objectives or critical success factors that you think should be included for assessing the different options?**
- 2. Which of the objectives or critical success factors are the most important to you when helping you decide the best option?**

Proposal to phase the introduction of the regulations

Legislation and regulations

The Government passes laws; this is called legislation. Government regulators, such as the Department, enforce the law. The regulators look at the law and work out the specific details that need to be followed in order for the law to be enacted in the way it was intended. These details are specified in regulations which are enabled by the main piece of legislation. In other words, legislation is the over-arching governing law and regulations are the lower level details that make everything work.

In this case, the Government expects to pass the FENZ Bill to become the governing piece of legislation. Supporting regulations also need to come into force, in this case, at phased intervals. Some of these regulations are discussed in this document. Others will be consulted on at a later date.

The current discussion document covers the first set of regulations

It is proposed that not all of the regulations in the FENZ Bill will come into force at the same time. The rationale for a phased approach is that the government and the Board want to ensure that the changes are done right and done well.

Cabinet agreed that the FENZ Bill would initially commence on 1 April 2017, allowing up to six months implementation time after the new legislation commences [CAB-15-MIN-0207 refers]. It is proposed that FENZ will begin operation from 1 July 2017. Cabinet also noted that there may be different commencement dates depending on the timing of the transition.

We expect that regulations that are essential to the operations and administration of FENZ will come into force with the new organisation on 1 July 2017.

Other regulations can come into force later to help manage the overall implementation of the FENZ Bill in an achievable and affordable way. We have included some of these in the discussion document because we think it is essential to start the conversation now on what the later regulations might look like.

The following table outlines the regulations which are proposed to come into force straight away and those which may be made later.

Note that regulations setting the new fire service levy rate that will apply to insurance contracts will come into force from 1 July 2017. The Board will consult on the levy rate in a separate discussion document, to be published later in 2016. As such, the levy rate is not discussed in this document.

Phasing of proposed regulations

Proposed regulations	Phasing	Reason for phasing	Included in this discussion document
Insurance information requirements for levy payers	To come into force from 1 July 2017	<ul style="list-style-type: none"> information is needed early from the insurance sector to support the 2018/19 funding arrangements important to test with the public whether the information required and held by the insurance sector and FENZ is appropriate 	✓
Local committees	If regulations are required, these will come into force from 1 July 2017	<ul style="list-style-type: none"> essential that these local committees are able to be set up to support FENZ and transition; however, the regulations would be enabling, and would not require the local committees to be set up as soon as the regulations come into force 	✓
Levy exemptions	Made later	<ul style="list-style-type: none"> supports insurers and levy payers understanding of the FENZ Bill 	✓
Fire plans (including use of measures for fire control)	Made later	<ul style="list-style-type: none"> the provisions in the FENZ Bill propose to allow for fire plans from 1 July 2017, but it is envisaged that the fire plans (covering the use of measures for fire control) are developed and come into force after the local committees have been established, with the local committees and stakeholders helping to inform the fire plans 	✓
Fire service levy rates for 2017/18	To come into force from 1 July 2017	<ul style="list-style-type: none"> in order to set the levy rate for 2017/18, it is necessary to evaluate current levy revenues and what is likely to be required next year the New Zealand Fire Service Commission is in the best position to do this; the Board will develop their own public consultation to support the new levy rate for 2017/18 this consultation document will be released later in 2016. 	×

Proposed regulations	Phasing	Reason for phasing	Included in this discussion document
Infringement offences (includes offences currently in the Forest and Rural Fires Act 1977, Forest and Rural Fires Regulations 2005, Fire Service Act 1975 and in Part 1 of the Fire Safety and Evacuation of Buildings Regulations 2006)	Made later	<ul style="list-style-type: none"> the regulations for infringement offences are required to operate with the new offences and penalties regime under the Bill the FENZ Bill proposes that the new offences and penalties provisions will be enabled from 1 July 2017, but it is envisaged that FENZ will not rely on the provisions until later, to allow the new organisation time to develop a comprehensive compliance and enforcement strategy, which identifies and indicates the appropriate use of a range of tools for addressing non-compliance (including infringement offences) 	x
Levy disputes resolution process, and anti-avoidance	Made later	<ul style="list-style-type: none"> it is intended that the 2017/18 year will be a transitional year it is not intended to introduce the anti-avoidance regime until 2017/18, to coincide with the extension of the levy to material damage insurance and to allow the FENZ and the Department to prepare guidance on how the anti-avoidance provisions will be interpreted 	x
Smoothing or capping of non-residential levies	Made later	<ul style="list-style-type: none"> the purpose of this regulation-making power is to moderate levy increases as a result of the decision to collect levy on material damage insurance rather than fire insurance the levy will not be collected on material-damage insurance until 1 July 2018 	x
Update Part 2 of the Fire Safety and Evacuation of Buildings Regulations 2006 (relating to evacuation schemes under sections 21A – 21I of the Fire Service Act 1975)	Made later	<ul style="list-style-type: none"> this allows for appropriate consultation and possible alignment with other work, including the Ministry of Building, Innovation and Employment's review of the building warrant of fitness system 	x

Proposed regulations for levy exemptions

Status quo

The fire service levy is collected from property owners who take out fire insurance for property or motor vehicles in New Zealand. The levy is the main source of funding for the Commission. Under Schedule 3 of the Fire Service Act 1975, 21 property types are currently exempt from the levy (refer to the Table below).

What's the problem?

With the unification of the fire services, and the removal of the separate funding and cost recovery streams for rural fire, it is no longer appropriate to exempt rural property from assessment of levy (e.g. forests and crops).

Furthermore, FENZ's activities will be widened to include a number of designated emergency services in the FENZ Bill, including responding to medical emergencies, performing rescues, providing assistance at transportation incidents and responding to natural disasters and hazardous substance spills. The clarification of FENZ's activities and the expansion of the levy to insurance for physical damage to (or loss of) property (rather than being limited to fire insurance) means that many of the exemptions relating to property types that can't burn are also no longer relevant.

In April 2016, Cabinet agreed to remove the current levy exemptions and introduce a new regulation-making power to allow the establishment of exemptions of various property types and policyholders from the levy in regulations. This change will come into effect from 1 July 2018.

What the FENZ Bill proposes

The new funding arrangements set out in the FENZ Bill seek to address some of the technical issues with the funding base, and to better ensure that those who benefit from the fire services wider emergency response capability contribute to FENZ.

New levy regime

To reflect that all communities will now be served by FENZ, the sources of rural fire funding set out in the Forest and Rural Fires Act are being removed. FENZ's broadened functions will be funded primarily by a levy on insurance contracts. However, while the current fire service levy is based on insurance for fire damage, the new Bill proposes that the levy will be based on insurance covering physical damage to, or loss of, property. This change will come into effect from 1 July 2018.

There are several reasons for this change:

- it reflects that fire services are responding to a growing number of non-fire related threats to property (e.g. work to protect housing and businesses from flooding);

- it makes it more difficult for some levy payers and policyholders to avoid contributions to the fire services² by separating out fire insurance from other forms of insurance; and
- it is relatively simple to administer.

Because the levy will be collected on insurance for property damage rather than fire, some large policyholders (e.g. government agencies, big business) may face potentially significant levy increases. The FENZ Bill also creates a regulation-making power to either cap levy increases or phase them in over time, in order to address any affordability issues created by the new funding regime.

A separate levy is applied to motor vehicles weighing less than 3.5 tonnes. This levy will apply from 1 July 2018 to all motor vehicles under 3.5 tonnes insured against physical damage (either to the vehicle or to a third party).

Levy review process

FENZ will also be required to review its costs at least every three years. The FENZ Bill proposes that the three yearly review provide the basis for the Minister of Internal Affairs recommending regulations setting the levy rate for the next three years.

Before a recommendation is made on the levy rate, FENZ must first publicly consult on:

- the activities and capability (e.g. training, equipment) to be funded by the levy;
- the estimate of FENZ's resulting costs, and the methods and assumptions underlying them; and
- the proposed rates of levy to fund FENZ's activities.

This will provide an opportunity for the public to gain visibility of the scope of FENZ's activities and funding, and the opportunity to comment on them.

Criterion

A policyholder / property type may only be eligible for an exemption from the levy if the Minister is satisfied that there is no potential for FENZ's services to be required at the property.³

² Fire service levy avoidance has historically been a significant issue, although the extent of levy minimisation in the private sector is unknown. In 2015, the Commission estimated that without intervention, revenues would likely decline by as much as \$25 million as a result of a variety of levy avoidance arrangements. The FENZ Bill includes anti-avoidance arrangements to help minimise avoidance.

³ Note, if you wish to comment on this criterion, please make a submission to the Select Committee on the FENZ Bill.

Options

Whether a property type is a potential direct beneficiary of FENZ's fire and designated emergency functions depends on what activities FENZ is funded for from time to time through the levy. This will be established through the three yearly levy review and setting process, starting from 1 July 2018. What is exempt from the levy is also dependent on the range of activities that FENZ is funded for through the levy. As a result, the three-yearly levy review process is linked to the process of setting levy exemptions.

The purpose of this discussion is to request your input on what (if any) types of properties do not potentially directly benefit from the new organisation's fire and designated emergency functions. Based on the urban and rural fire services' current range of activities, and the criteria for making exemptions, our view is that most of the levy exemptions in Schedule 3 of the Fire Service Act are no longer appropriate. Our rationale for retaining or removing an exemption is shown in the Table below.

	Current exemptions (under Schedule 3 Fire Service Act 1975)	Retain or remove?	Reason
1	Any ship or anything in a ship, except while the ship is on land:	Remove	Fire service activities may include responses to at-sea emergencies (e.g. the Rena) within New Zealand's waters. [NOTE: the mandate of the new organisation is still being developed as part of the drafting process].
2	Any standing bush or forest:	Remove	Fire service will respond to emergencies in rural communities including bush and forests.
3	Any road, street, or path:	Remove	Public infrastructure may benefit from FENZ's wider response mandate, including natural disasters, extreme weather events, hazardous substances, motor vehicle accidents, swift-water rescues etc.
4	Any railway/tramway track or pole:	Remove	
5	Any bridge/viaduct, completed or otherwise:	Remove	
6	Any tunnel or cutting:	Remove	
7	Any retaining wall, dam, breakwater, mole, groyne, fence, or wall:	Remove	
8	Any drain or channel:	Remove	
9	Any reservoir, swimming bath, water tank (other than a water tank installed as part of the water supply system of any dwelling/ farm building), water tower, or septic tank:	Remove	
10	Any water reticulation pipe:	Retain	Piping will not benefit from the new organisation's mandated and levy funded activities. Piping also supports the delivery of the fire services' main functions.
11	Any electric supply, telegraph, or telephone	Remove	May benefit from the fire services'

	pole, line, or cable:		wider response mandate, including natural disasters, extreme weather events, hazardous substances etc.
12	Any mine or quarry:	Remove	
13	Any aircraft (incl contents) except while insured under a contract of fire insurance:	Remove	While located in New Zealand, and travelling within New Zealand, aircraft may benefit from the fire services' emergency response capabilities.
14	Any goods in transit, except while insured under a contract which is substantially a contract of fire insurance:	Remove	Goods in transit may benefit from fire services' wider response mandate including natural disasters, extreme weather events, motor vehicle accidents, hazardous substances, etc.
15	Any hazardous substance (as defined in section 2 of the Hazardous Substances and New Organisms Act 1996):	Remove	Fire service activities include attendances at hazardous substance emergencies.
16	Any livestock:	Remove	Livestock may benefit from fire service animal rescue activities.
17	Any growing crops:	Remove	Fire services respond to emergencies in rural communities including at farms.
18	Any ensilage insured in the open field:	Remove	
19	Any hay /cut crops insured in the open field:	Remove	
20	Any offshore installation for petroleum mining operations:	Retain	Fire services do not have the capability to respond to offshore installations.
21	Any pipeline, electricity/telecommunications cable which is located on the sea floor.	Retain	Fire services do not have the capability to respond to piping and cables on the sea-floor.

Preferred option

Our preferred option is to remove **all** exemptions listed in the above table **except** for water reticulation piping, offshore oil installations and cables and pipelines on the sea floor. This is equitable, as the removal of most exemptions better reflects the fact that because of the wider emergency functions of modern fire services, most property types now stand to benefit from FENZ's activities. Removing most exemptions will also be more cost effective for both the fire service and the insurance sector to manage. Finally, the wider funding base provided by removing exemptions will better ensure that FENZ has sufficient funding to undertake its responsibilities.

Note that the exemptions may change in the future depending on what activities the new organisation is funded for through the fire service levy.

Questions



3. Do you agree with the suggested levy exemptions?
4. Are there any other property types that should be exempt from the levy?
5. Do you think there are owners of certain types of properties who should be exempt?

Proposed insurance information requirements for levy payers

Status quo

There is a requirement under the Fire Service Regulations 2003 for insurance brokers to provide information to the Commission which identifies the insured party, commencement date of the policy, type of policy and the amount of levy paid. However, insurance companies are only required to complete a summary of this information that provides data on aggregate levy payments across different property types.

What's the problem?

The Commission has no statutory backing to gain an understanding of the features of the levy paying population from insurance companies other than through auditing. Current regulations only require insurance companies to provide aggregated summaries of levy receipts. The Commission's supply of more detailed information is dependent on the voluntary cooperation of the insurance sector. Insurance companies currently provide more detailed information on a voluntary basis for all clients who pay levy over \$1000. While there has been no interruption in the supply of voluntary data during the last three years, it is possible that disputes over levy payments could jeopardise the supply of information.

If the current scheme of voluntary compliance was interrupted, FENZ would not be able to identify where parties are not paying the levy. Forecasting of future revenues would become increasingly difficult, especially as the new funding arrangements agreed to by the Government are transitioned into operation.

Further, FENZ will require basic information on levy payments, to support the effective use of the new anti-avoidance powers included in the new FENZ Bill. Without basic information on the levy, FENZ would be unable to identify potential avoidance activity (for example when there is a sudden and otherwise unexplained change in levy returns).

What the FENZ Bill proposes

The FENZ Bill retains the existing regulation-making powers for the collection, receipt and payment of levy and requiring insurance companies to make returns. Additionally, under the FENZ Bill, FENZ may require a levy payer (defined in the FENZ Bill as an insurer, or a policyholder directly liable to FENZ) to provide any information within the levy payer's knowledge, possession, or control that FENZ considers is necessary or relevant for any purpose relating to administering the levy.

Options

There are four main options considered for the requirement of information provided by levy payers along with levy receipts.

Under Option 1, FENZ could continue to rely on summary level information (the status quo), possibly supported by a memorandum of understanding between FENZ and representatives of the insurance sector (e.g. the Insurance Council of New Zealand and the Insurance Brokers Association of New Zealand).

Option 2 would also see the retention of the current regulatory requirements placed on levy payers. Under this option, FENZ would look to overcome the risks of information not being provided by conducting audits of all insurance companies on an annual basis.

Options 3 and 4 both involve the creation of regulations requiring provision of itemised information relating to key insurance details. These regulations can be established under the provisions in the existing Fire Service Act 1975 (sections 48 and 92).

Option 3 would effectively require the current information provided by insurers on a voluntary basis, to be supplied alongside levy returns. The information could be provided to FENZ in a standardised electronic format, with levy returns. The information would be supplied directly to FENZ and would be protected by the modernised confidentiality provisions in the FENZ Bill. Under these provisions, FENZ must not publish or disclose any information, except in certain prescribed cases (e.g. to the agency monitoring FENZ in order to carry out the functions and duties under the Act).⁴

Under Option 3, levy payers would be required to provide the following information for all policies assessable for levy payments greater than \$1000:

- Policy type (commercial, domestic, motor vehicle, marine cargo);
- Amount insured under the policy / indemnity value of property
- Policy start and end date;
- Policy invoice date;
- Insured's name; and
- Levy paid.

Option 4 would involve the same information being required in regulations as Option 3. However, levy payers would need to provide this information to FENZ for all policies requiring levy payments greater than \$100 (as opposed to \$1000 under Option 3).


More information about the options and how they meet the objectives can be found in **Appendix B**. Appendix B rates each of the four options against the funding objectives set out on page 8 and provides the basis for the Department's current preference.

⁴ Note, if you wish to comment on the confidentiality provisions, please make a submission to the Select Committee on the FENZ Bill. You can do so at the following link: [<http://www>]

Preferred option

Our preferred option is Option 4 (regulating increased information provision for all policies contributing levy of above \$100). This would best ensure that FENZ has the information necessary to support an effective funding regime, especially as the new funding arrangements are established. Option 2 is not preferred because the costs of running an expanded auditing programme would be prohibitive, for both FENZ and the insurance sector. Option 3 would not provide optimal information to support FENZ during the initial years of the new funding regime.

Questions

	<ol style="list-style-type: none">6. Do you agree with the preferred option (Option 4)? If no, why not?7. What would the costs be to provide the information set out in Option 4? Are there means of potentially limiting these costs for insurers and policyholders?8. Do you have any concerns about commercially confidential information or privacy related to the provision of this information to FENZ (keeping in mind the modernised levy confidentiality provisions in the Bill)?9. Is there any other information needed to support FENZ's management of funding streams?10. Are there any other options for ensuring that FENZ has the information it needs to ensure sufficient funding, and to allow it to effectively forecast future levy revenue trends?
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Proposed regulations for local committees

Status quo

Fire services in New Zealand have a strong community support base which has been identified as a key factor in their success to date. This is reflected through the large number of volunteer firefighters throughout New Zealand, and the number of submissions on the Fire Services review received highlighting the contribution of the fire services to their local communities. However there lacks a single source of representation for local areas, representing and advocating the needs, risk and capabilities of rural and urban fire.

What's the problem?

The success of FENZ is dependent on retaining and enhancing the strong community support base already present in the fire services.

Cabinet recommended that regional committees (called “local committees” in the FENZ Bill) be formed as the most effective way of ensuring that the interests and needs of local areas are represented, and community support bases are retained. Cabinet noted:

“The purpose of the committees would be to provide strong regional influence in the assessment of regional risks and needs (urban and rural) and FENZ’s planning and delivery of fire and mandated emergency services at regional and national level. Too much control would reduce fire services’ effectiveness because regional directions would over-balance the national directions.

Strong regional influence balances national direction, and is essential because:

- *risks vary substantially on a regional basis;*
- *emergency response arrangements vary regionally;*
- *to be successful our fire services need to have a close link to communities and local stakeholders;*
- *it strengthens the relationship with volunteers;*
- *it builds strong regional resilience for fire as well as other emergencies; and*
- *stakeholders advise that the effectiveness of our fire services would be improved if national service delivery is well-informed at a regional level”.*

The detail of how local committees will interact with the Board and what this will look like in practice is still being developed as part of transition programme of work.

It is expected that the local committees will be the mechanism through which local issues, risks, and interests are represented, and that local committees will work closely with FENZ’s local managers. It is critical to ensure the lines of communication between the Board, FENZ and the local committees are established and will be effective.

What the FENZ Bill proposes

As outlined below, much of what will be needed to establish, maintain and operate local committees has already been agreed by Cabinet and is contained in the FENZ Bill. This includes local committee operating principles, regional planning and terms of office. As such, we are not intending to prescribe these through regulations. The following discussion provides information and context on these Cabinet decisions, in order to support the discussion on what aspects of local committee operations should be regulated.

Operating Principles

Cabinet agreed that the Board will develop principles to guide how the committees operate and to guide the interactions between the committees and FENZ. These principles will need to effectively balance the role of the:

- Board, in setting national direction and the parameters within which committees operate; and
- committees, ensuring the local work programme is appropriately targeted to local risks and needs and that FENZ reflects stakeholder interests.

Local Planning

Cabinet agreed that in order for FENZ to manage its operations and allocate its workforce and resources in each local area⁵, it will need to undertake planning for that area. This will include:

- taking into account the national strategy, other services delivered by the other emergency services and civil defence emergency management groups within the area;
- identifying specific needs in the local area and local activities that address those needs that do not duplicate national activities;
- having a specific fire plan;
- showing how the local allocations of resources by the Board fit with the national plan; and
- taking into account the views of the local committee.

Terms of office

The local committees will be established so that they are consistent with the Crown Entities Act 2004 (CE Act). Certain provisions of the CE Act will apply to the members of the local committees. These are set out in clause 15 of schedule 5 of the CE Act and cover:

- no compensation for loss of office;
- remuneration and expenses of committee members;

⁵ The proposed regions are not the same as current NZFS regions. The number of local areas and their boundaries will be consulted on.

- member's duty not to disclose information;
- that the powers and functions of the committee are not affected by vacancies;
- obligations of FENZ to be a good employer;
- protections and immunity from liability;
- indemnities and insurance for liability;
- members of the committees are considered to be officials;
- disclosure of payments;
- existing protection from liability and existing insurance cover; and
- disclosure of conflicts of interest, obligations and consequences of conflicts of interest.



- 11. Do the above provisions of the CE Act provide an adequate foundation for local committees?**
- 12. Or, are there additional provisions of the CE Act that should be included?**

Options

Some aspects of how local committees are to operate are not set out in the FENZ Bill, including the process for appointing committees, committee functions and the setting of committee boundaries. There are two options for establishing these policies:

- inclusion within regulations; or
- operational policies and procedures.

We have no preferred option relating to these matters and welcome your views on what could be included in regulations and why.

Establishment and appointment of Committees


The establishment of local committees is a requirement under the FENZ Bill. When making appointments to the committees the Board must consider the:

- balance of perspectives on each committee;
- degree to which the members are representative of the local area's stakeholders and communities; and
- necessary skills, knowledge and experience relevant to fire services and specific stakeholder and community needs within the local area.

The nomination and appointment process for committees is identified in the Bill as a matter that may be regulated. This **could** include:

- how nominations are made and by whom;
- requirement to advertise vacancies;

- the timeframe of appointments (including maximum term); and
- the size of committees, including minimum and maximum numbers of members.

	<p>13. Are regulations needed for the nomination and appointment process for local committees?</p> <p>14. If yes, are there particular aspects of the nomination and appointment process you would like to see contained in regulations, rather than in operational policy?</p>
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Functions of the committees

The local committees will have a number of functions, as set out in the Fire and Emergency New Zealand Bill, including:

- providing a strong voice that reflects the needs of local stakeholders;
- providing advice to FENZ at a local and national level;
- providing advice on FENZ's national strategy and plan to ensure that local interests are adequately considered;
- contributing to the development and finalisation of local planning with FENZ to help ensure that local activity is most effectively targeted towards local priorities, risks and needs (including the use of fire as a land management tool);
- providing regular feedback and guidance on FENZ's progress against its local planning; and
- providing a strong voice for the unified workforce, particularly fire services' volunteer communities and their unique interests.

Further details relating to the functions of the local committees could be provided for by way of regulation or could be included in FENZ's policies and procedures. These **could** include:

- reporting requirements of the local committees i.e. quarterly or annual reports; and
- identifying certain matters which the committees must provide advice on i.e. local risks, capabilities, priorities and needs. It does not limit what the committees can report or provide advice on, but could set mandatory minimums.



- 15. Are regulations needed to provide for the functions of local committees?**
16. If yes, what aspects should be covered?

Boundaries

Cabinet agreed the Board will be responsible for determining the boundaries for each committee. The boundaries will be consistent with operational boundaries to enable the local committees to most effectively represent the interests and needs of their local areas. In setting the boundaries the Board will consider the following principles:

- efficiency and effectiveness of the fire services to operate within the local areas;
- local risk profiles; and
- other organisations' boundaries, e.g. emergency services, civil defence, local government, DOC, and landowners.

The boundaries for each committee may need to be reviewed periodically. Regulations relating to boundaries **could** include:

- timeframes for reviews of boundaries. These could include minimum and maximum periods of time between reviews; and
- who may initiate a review of committee boundaries. This could be restricted to the Board, or could be requested by committees.



- 17. Do you think there should be regulations relating to boundaries?**
18. Should there be a minimum and maximum time between reviews of boundaries? What do you think would be a good timeframe for this?
19. Who do you think should initiate a review of committee boundaries, if anyone?
20. Are there other matters relating to boundaries that need to be regulated?

Preferred option

We have no preferred options at this time. We seek your views on your preferred options.

Proposed regulations for fire plans (covering use of measures for fire control)

Status quo

Currently, each Rural Fire Authority is required to issue a fire plan. A fire plan is a statement defining policy, chain of command, and procedure, in relation to fire control by a Rural Fire Authority.

Regulations prescribe the process for preparing and adopting a fire plan, along with what a fire plan must cover. A fire plan must include policies and procedures for reduction (i.e. to reduce the likelihood and consequence of fires), readiness (i.e. for a firefighting event), response (i.e. for responding to a fire), and recovery (i.e. for activities a Rural Fire Authority undertakes following a fire event).

A fire plan guides the Rural Fire Authority's use of fire control measures; this is important, as fire control measures can affect land management operations. "Fire control measures" apply to forest, rural and other areas of vegetation. They are measures that assist in the prevention, detection, control, restriction, suppression, and extinction of fire, and include measures to safeguard life and property from damage by fire. Fire control measures can be temporary, or continue indefinitely. They can apply widely, or be limited to an area or property.

The form of fire control measures is wide-ranging, with current regulations requiring notification of specific types of fire control measures that are issued. More broadly, fire control measures can include:

- the assessment of fire hazard;
- the provision of fire danger information;
- a policy/procedure (e.g. on reduction, readiness, response, recovery – the 4Rs);
- a declaration on fire season status;
- management and administration of the fire permitting system;
- a warning; or
- an order prohibiting activities during periods of extreme fire hazard where life and property may be endangered (though this measure has not been used recently).

What's the problem?

Neither the legislation nor regulations currently require Rural Fire Authorities to consult on the fire plan, or on the use of fire control measures.

However, good practice means that Rural Fire Authorities regularly engage and collaborate with affected land and forest stakeholders in establishing fire control measures. Rural Fire Authorities involve stakeholders during the development of the fire plan. Given the close alignment between fire and land management practices, it is highly likely that this local engagement would continue in future.

However, the inability to rely on consultation requirements in legislation or regulations could become a problem if current engagement practices broke down.

What the FENZ Bill proposes

The FENZ Bill proposes:

- what FENZ's main functions are, including promoting fire safety, and providing fire prevention, response and suppression functions;
- that FENZ is required to undertake local planning⁶, which must take into account the advice from the relevant local committee⁷;
- that the Board formulates operating principles, designed to assist FENZ in carrying out effective consultation with relevant stakeholders and organisations; and
- that various measures for fire control are provided for, pared back from the description under the "status quo" (e.g. this includes fire permitting and the declaration of fire seasons), but no longer limiting these measures to rural areas.

Options

A: Options to ensure that the fire plan content adequately covers use of fire control measures


- Option 1 - "no regulation beyond the details in the FENZ Bill"
 - regulations would not provide any additional guidance on matters the fire plan must cover; the content of the fire plan would be guided by the FENZ Bill's broad definition of "fire plan"⁸, and FENZ's powers and functions in the FENZ Bill. This option would likely meet the "improves flexibility" objective, due to the low level of prescription in how and to what degree fire plans cover the use of fire control measures. For similar reasons (i.e. a low level of prescription meaning fire plans in each local area could differ reasonably significantly in what they cover), this option would be unlikely to meet the "improves consistency" objective.
- Option 2 - "regulation of main (required) fire plan content, but not in detail"

⁶ Local planning specifically includes having a fire plan covering each local committee's area.

⁷ Local committees are intended to provide a strong voice that reflects the needs of stakeholders. These local committees will contribute to the development and finalisation of local planning with FENZ to help ensure that local activity is most effectively targeted towards local priorities, risks and needs (including the use of fire as a land management tool).

⁸ The FENZ Bill as introduced, refers to a plan FENZ prepares and issues for each local area, including policies and procedures for fire control.

- regulations would set the main matters a fire plan must cover. For example, the main matters could include reference to integrated emergency management (which would include the current “4Rs” approach), and the use of measures for fire control – however, the regulations would neither prescribe these main matters in detail, nor other matters that the fire plan could cover. This option would likely meet the “improves consistency” objective and the “contributes to regional resilience” objective, due to the level of prescription providing greater certainty over coverage.
- Option 3 - “regulation of main (required) and additional (discretionary) fire plan content, with greater detail”
 - similar to Option 2 (i.e. the regulations would set the main matters a fire plan is required to cover), but the regulations would also prescribe other matters that the fire plan could cover (e.g. discretionary matters that might be relevant depending on the area and/or other factors). This option would likely meet the “improves consistency” objective, but would be unlikely to meet the “improves flexibility” objective (i.e. it has the opposite effect, when compared to option 1).

	<p>21. Which of three options do you prefer?</p> <p>22. Do you think that regulating the main content of the fire plan (Option 2) would provide sufficient guidance to stakeholders on the use of fire control measures?</p> <p>23. What should the main content of the fire plan contain, i.e what core details would you expect each fire plan to cover?</p>
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B: Options to ensure consultation is undertaken on the use of fire control measures (as part of a fire plan)

Three options have been considered for establishing the consultation requirements for fire control measures:

- Option 1 - “no regulation of consultation on the fire plan, beyond the consultation requirements contained in the FENZ Bill”
 - regulations would not require consultation on the fire plan (where the fire plan covers the use of fire control measures), but the current approach of regularly engaging with stakeholders and collaborating with them would be expected to continue in line with provisions in the FENZ Bill, including the specific reference to FENZ carrying out effective consultation with relevant stakeholders and organisations. This option would likely meet the “improves flexibility” criteria around how and to what degree consultation occurs, due to there being no additional prescription (beyond the FENZ Bill’s requirements).
- Option 2: “regulate for targeted consultation on the fire plan”
 - regulations would require consultation on the development of the fire plan (where the fire plan covers the use of fire control measures), with consultation targeted to affected stakeholders. Targeted consultation would also be required if amendments to the plan are proposed. This option would likely meet the “contributes to regional resilience” objective, due to targeted consultation providing a focus on those most affected in a local area.

- Option 3: “regulate for public consultation on the fire plan”
 - regulations would require public consultation on the same basis as the targeted consultation described in Option 2. It is arguable that there is some potential for this option to reduce effectiveness, due to the steps and process that might be required for public consultation (and for considering the volume of feedback that might be received).



24. Which of the three options do you prefer?

25. Does current engagement with stakeholders on the fire plan enable sufficient input to how fire control measures are used?

Preferred option

We have no preferred options at this time. We seek your views on your preferred options.

Appendix A: Glossary of Terms

Term	Meaning
4Rs	Four pronged service based on reduction, readiness, response and recovery.
Board	Board of Fire and Emergency New Zealand (or FENZ).
Commission/New Zealand Fire Service (NZFS) Commission	The Crown entity responsible for coordination of fire safety throughout New Zealand, governance and operation of the NZFS and coordination of rural fire management (in its role as the National Rural Fire Authority (NRFA)). Name used under status quo.
Department of Internal Affairs/Department	The Department responsible for advising the Minister of Internal Affairs on matters relating to the fire services, including advising on fire services' policy and legislation. The Department also provides advice to the Minister about the performance of the Commission and the suggested levy rate for the fire service levy.
Enlarged Rural Fire District(s) (ERFD/ERFDs)	Areas where Rural Fire Authorities have amalgamated to form an Enlarged Rural Fire District, governed by a rural fire committee.
FENZ Bill	Fire and Emergency New Zealand Bill.
Fire control	Fire control means— (a) preventing, detecting, controlling, and putting out fire: (b) protecting persons and property from fire
Fire control measure	Fire control measure means any measure that promotes fire control.
Fire plan	A plan FENZ prepares and issues for each local area, including policies and procedures for fire control.
Fire Service Act 1975	Legislation establishing the Commission (including in its capacity as the NRFA) and NZFS for the protection of life and property from fire and certain other emergency services.
Fire service levy	The primary source of funding for both the Commission and FENZ. The levy is payable on property and motor vehicle fire insurance. The levy will be extended from contracts protecting property against fire damage, to contracts protecting property against material damage as part of the new funding arrangements.
Fire services	All fire services in New Zealand, including NZFS and Rural Fire Authorities.
Forest and Rural Fires Act 1977 (FRF Act)	Legislation establishing Rural Fire Authorities, and relating to the safeguarding of life and property by the prevention, detection, control, restriction, suppression and extinction of fire in forest and rural areas and other areas of vegetation.

Term	Meaning
Indemnity value	The depreciated value of an item/property, taking into account its age and condition. Currently used to calculate the fire service levy for non-residential property owners.
Levy payer	An insurer, or a policyholder directly liable to FENZ
Levy receipt	The sum of levy received by the Commission / new organisation from levy payers.
Levy return	The information provided to the Commission / new organisation by levy payers along with their levy receipts.
New organisation	Fire and Emergency New Zealand, or FENZ
Rural fire/rural fire sector	The rural fire system that provides services operating in rural communities (whose prime focus is managing vegetation fire risks), along with the parties who provide those services and/or have an interest in those services.
Rural Fire Authorities	Authorities that administer and are responsible for fire control in rural fire districts or other areas, including the Minister of Conservation, the Minister of Defence, rural fire committees, and local authorities.
Rural fire districts	Areas where Rural Fire Authorities are responsible for fire control.

Appendix B: Levy information options assessment

Criteria	Option 1 Status quo	Status quo plus auditing programme	Option 3: regulations for levy payments above \$1000	Option 4: regulations for levy payments above \$100
Equity	Score: moderate <ul style="list-style-type: none"> While information is currently provided, the voluntary provision of information could be stressed by anti-avoidance investigations, reducing the effectiveness of FENZ's ability to use its anti-avoidance powers. 	Score: positive <ul style="list-style-type: none"> An annual auditing regime would provide FENZ with a strong overview of insurance arrangements and trends. 	Score: positive <ul style="list-style-type: none"> The certain and timely provision of insurance information would allow FENZ to be more focussed and strategic in the use of inspection and anti-avoidance powers. This would also level the playing field, in terms of information provision requirements, between all levy payers. 	Score: positive <ul style="list-style-type: none"> The certain and timely provision of insurance information would allow FENZ to be more focussed and strategic in the use of inspection and anti-avoidance powers. This would also level the playing field, in terms of information provision requirements, between all levy payers.
Sufficiency	Score: moderate <ul style="list-style-type: none"> As long as voluntary arrangement holds, FENZ will have access to sufficient information to inform the levy setting process. Any interruption of data provision would impinge on the ability to set an appropriate levy rate. 	Score: positive <ul style="list-style-type: none"> Certainty of information supports FENZ's three yearly levy review cycle. 	Score: positive <ul style="list-style-type: none"> Certainty of information supports FENZ's three yearly levy review cycle. 	Score: positive <ul style="list-style-type: none"> Certainty of information supports the FENZ's 3 yearly levy review cycle.
Predictability	Score: moderate <ul style="list-style-type: none"> While the insurance sector has insisted that there is little danger of current information not being provided in future, the Commission has advised that historically at least one company has suggested withdrawing from the current arrangement. 	Score: positive <ul style="list-style-type: none"> Annual auditing of levy payers would improve the certainty of revenue flows. 	Score: near term moderate, long term positive <ul style="list-style-type: none"> Information requirements (supported by the new infringements and penalties regime) would provide FENZ with improved certainty of levy income. Infringements fees for non-compliance potentially ensure better quality and consistency of information provision. If information on insurance policies is restricted to levy payments of more than \$1000 (only 30-40% of total levy receipts), then FENZ may have difficulty predicting levy in the near term, once the levy payment dates are aligned with GST requirements. 	Score: positive <ul style="list-style-type: none"> Current information requirements (supported by the new infringements and penalties regime) would improve the fire service certainty of levy. Infringement fees for non-compliance potentially ensure better quality and consistency of information provision. Requiring provision of information on any levy payments greater than \$100 would capture the majority of levy receipts, allowing FENZ to better estimate the variability in levy as a result of the change in levy payment dates.
Cost-effective	Score: moderate <ul style="list-style-type: none"> Current costs are managed effectively by the insurance sector. However, if information provided voluntarily ceases, levy payers and FENZ may face increased costs due to the greater need to audit and investigate. 	Score: negative <ul style="list-style-type: none"> The costs of implementing an expanded annual auditing scheme would be expensive for both FENZ and the insurance sector. It would also be highly intrusive for the insurance sector. As a result this option is unfeasible. 	Score: positive <ul style="list-style-type: none"> The Insurance Council has advised that listing all policies with levy returns will take time and money to operate on an ongoing basis. However, as insurance companies already provide this data on a voluntary basis, it is evident that provision of the information is manageable. Any potential costs could likely be ameliorated by allowing provision of information in a specified electronic format. 	Score: positive <ul style="list-style-type: none"> May be some increased costs for insurers as a result of increase in the amount of information provided to FENZ. However, this may be offset by reducing the need for FENZ to audit in order to explain shifts in levy as a result of the alignment of levy and GST payment dates.