

# Departmental Disclosure Statement

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Fire and Emergency New Zealand (Levy) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 September 2022.

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## Part One: General Policy Statement

The Fire and Emergency New Zealand (Levy) Amendment Bill (the **Bill**) amends Part 3 of the Fire and Emergency New Zealand Act 2017 (the **principal Act**).

The policy objectives of the Bill are to ensure that the insurance-based levy framework for Fire and Emergency New Zealand (**FENZ**):

- is simple to implement to minimise disruption and compliance costs; and
- adheres to the funding principles in section 80 of the principal Act.

### Context

Part 3 of the principal Act sets out the levy regime for FENZ. The levy is insurance based, which means that insurance policyholders are charged a levy based on the type and amount of insurance they have. Generally, insurance companies and brokers collect the levy from policyholders and pay it to FENZ. The levy will be the primary way that FENZ activities are funded.

Part 3 of the principal Act includes, among other things:

- Funding principles for the levy (section 80 of the principal Act), which are that the levy must be:
  - a stable source of funding;
  - universal;
  - equitable;
  - predictable;
  - flexible.
- Provisions specifying which contracts of insurance the levy applies to; and
- Provisions that outline the value of the property to be used as the basis for calculating the levy.

While most of the principal Act has come into force already, Part 3 of the principal Act has a delayed commencement date of 1 July 2024 and is not yet in force.

The levy rates applying to particular property, and any exemptions to the levy, will not be set through the Bill. This will occur through existing regulation-making powers under sections 141 to 143 of the principal Act, with appropriate public consultation at that time.

### Why this approach is needed

Since the principal Act was enacted, further information has become available on implementation of the levy and how the existing Part 3 levy will likely be applied in practice. Without amendment, the existing Part 3 provisions are likely to create complexity and uncertainty. This will lead to implementation and administrative costs, as well as making levy calculations less predictable and stable for FENZ, the insurance sector, and insurance policyholders.

### Specific measures to achieve policy objectives

The Bill has 4 specific measures that will address the issues identified above, including to:

#### *Charge levy on contracts of insurance for fire damage*

The Fire and Emergency levy will be charged on contracts of insurance for fire damage rather than contracts of insurance for material damage. This aligns with existing practice and will avoid implementation complexities. Property that is insured against

loss or damage from fire would be within the scope of the levy regime, but property that is insured against physical damage or loss from other causes would not be.

*Calculate levy on sum insured*

The basis for calculating the levy will change to the sum insured in contracts for fire damage, instead of the amount insured. This change clarifies what value the levy should be calculated from and aligns with terminology used in insurance contracts. The levy will be calculated based on the maximum amount that the insurance policy can pay to the policyholder for any one incident of loss or damage.

*Clarify how levy applies to motor vehicles*

The Bill clarifies the existing policy intent of the principal Act, making it clear that an annual levy rate will apply to both motor vehicles insured against physical loss or damage and persons insured against third party liability.

*Amend Part 3 commencement date*

The Bill changes the commencement date of the Part 3 regime in the principal Act to 1 July 2026, or an earlier date set by Order in Council. The new commencement date will allow time for levy regulations to be set and for FENZ, insurers, and brokers to implement the new levy system.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Regulatory Impact Statement: Review of the funding model for Fire and Emergency New Zealand - Authored by the Department of Internal Affairs, 13 October 2021.  The statement can be accessed on the Department's website at: <a href="https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument">https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument</a>  It can be also accessed on Treasury's website: <a href="https://www.treasury.govt.nz/publications/search?f[0]=field_resource_type%3A4499">https://www.treasury.govt.nz/publications/search?f[0]=field_resource_type%3A4499</a>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Regulatory Impact Statement did not meet the threshold for Treasury RIA Team assessment.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
The Bill contains the proposal to delay the commencement date of the new levy regime in Part 3 of the Fire and Emergency New Zealand Act 2017 until 1 July 2026. This was not addressed in the Regulatory Impact Statement mentioned under 2.3.  The Treasury's Regulatory Impact Analysis team determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Refer to pages 38-45 of the Regulatory Impact Statement under part 2.3.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The extent to which the potential costs and benefits are likely to materialise depends on the extent to which intended levy payers comply with the requirement to pay levy and accurately calculate the levy in line with regulations. These requirements already exist, and we would expect the existing level of compliance to pay the levy to continue. The changes made by the Bill should make the calculation of the levy simpler, and therefore more accurate, than under the existing Part 3 provisions.</p> <p>Information relating to the nature and level of regulator effort in relation to the levy can be found on Fire and Emergency's website: <a href="https://www.fireandemergency.nz/about-us/about-the-levy/">https://www.fireandemergency.nz/about-us/about-the-levy/</a></p> <p>Fire and Emergency also have a regulatory compliance guide that applies to all regulatory responsibilities on their website: <a href="https://www.fireandemergency.nz/about-us/regulatory-compliance/">https://www.fireandemergency.nz/about-us/regulatory-compliance/</a></p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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There are no international obligations associated with the FENZ Act. This was confirmed by referring to the Departmental Disclosure Statement for the Fire and Emergency New Zealand Bill in 2016.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Department of Internal Affairs consulted with Te Puni Kokiri, Te Arawhiti and Fire and Emergency. We also referred to the Departmental Disclosure Statement for the Fire and Emergency New Zealand Bill in 2016, which identified no issues in relation to the Treaty of Waitangi.
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Significant efforts were made to engage with Māori during the consultation phase of policy development.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Should the Attorney-General agree to waive legal privilege, a copy of the advice will be available at: <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Information on public consultation undertaken on the policy to be given effect by the Bill is contained on in the Regulatory Impact Statement under 2.3.</p> <p>During May and June 2022, targeted consultation on an exposure draft of the Bill occurred with representatives from the insurance sector, large non-residential property owners, and Fire and Emergency New Zealand. These groups had six weeks with a copy of the exposure draft to provide feedback and meet with officials from the Department of Internal Affairs to further discuss the Bill and provide feedback.</p> <p>Feedback focussed on the workability of proposals in the Bill and whether they would give effect to the policy intent in the way intended. Legislative terms relating to the definition of “sum insured” and the application of the levy to third-party motor vehicle insurance were updated following this feedback to better achieve the desired policy intent.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>The power to impose a levy and the safeguards that apply are already established under Part 3 of the Fire and Emergency New Zealand Act 2017. The Bill makes no changes to these features of the levy.</p> <p>However, the Bill amends the parts of the levy framework that set out which insurance arrangements are required to pay the levy, and on what value of property the levy is to be calculated from. These changes are necessary to simplify the levy system and reduce implementation costs as well as ongoing administrative costs of the new levy regime when Part 3 commences.</p> <p>Furthermore, clause 4 of the Bill will delay the commencement date of the new levy regime under Part 3 of the Fire and Emergency New Zealand Act 2017 and therefore when the new levy will apply. This is necessary to ensure that legislative work for the levy setting process can be completed and to provide enough time for the insurance sector (who are legally responsible for collecting the levy in most circumstances) to update systems to implement the change.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
Part 3 of the Fire and Emergency New Zealand Act 2017 has an existing regulation making power under sections 141 to 143 relating to the Fire and Emergency levy. The Bill does not make any substantive changes to the intent or scope of this regulation-making power. However, the Bill does make minor wording amendments to these sections to ensure the regulation-making power is aligned with the substantive policy changes made by the Bill.	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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