

Fire and Emergency New Zealand (Levy) Amendment Bill

Government Bill

Explanatory note

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, amongst 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:

- 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.

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.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=167>

Regulatory impact statement

The Department of Internal Affairs produced a regulatory impact statement on 13 October 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Fire and Emergency Act 2017 (the **principal Act**).

Clause 4 replaces section 2(5) and repeals section 2(6) of the principal Act which provide for the commencement of the new levy regime to fund Fire and Emergency New Zealand set out in Part 3 of the principal Act. The amendments change the date on which Part 3 comes into force (unless earlier brought into force by Order in Council) from 1 July 2024 to 1 July 2026.

Clauses 5 to 14 amend section 6 (the interpretation section) and provisions of Part 3 of the principal Act. The amendments made by these clauses—

- change the insurance contracts on which the levy to fund Fire and Emergency New Zealand will be charged when Part 3 comes into force so that, in relation to property other than motor vehicles, the levy will be charged on contracts of insurance for fire damage rather than contracts of insurance for material damage (as would be the case under the existing provisions of Part 3 of the principal Act). Property that is insured against loss or damage by fire will be within the scope of the levy regime, but property that is insured against physical damage or loss from other causes will not be. In relation to motor vehicles, the position will remain the same as currently provided for in Part 3 of the principal Act. An annual levy will continue to be charged on every contract insuring

against motor vehicle physical loss or damage, third party liability in connection with the use of the vehicle, or both:

- change how the amount of the levy payable for any property insured against damage or loss, other than a motor vehicle, must be calculated. Instead of being calculated on the amount insured, the levy must be calculated on the basis of the sum insured. *Clause 6(3)* inserts a definition of sum insured into section 81 of the principal Act.

Clause 15 amends *clauses 42 and 43* of Schedule 1 so that the period in relation to which levy relief may be granted under those clauses following the commencement of Part 3 of the principal Act is extended from the close of 30 June 2025 to the close of 30 June 2030.

Hon Jan Tinetti

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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 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 this Part) 15

(1) In section 81(1), repeal the definition of **amount insured**.

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

contract of insurance means—

(a) a contract of fire insurance:

(b) a contract of motor vehicle insurance 20

(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

(ii) a contract of marine insurance within the meaning of this section 30

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: 35

- (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

sum insured means—

- (a) the insured value of the property as stated in the schedule of the contract of insurance; and
- (b) if no insured value is stated in the schedule of the contract of 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;
 - (ii) additional limits, sub-limits, clauses, or extensions to the contract of 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)**.

Example 2

A contract of 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 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.

Example 3

The schedule of a contract of 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 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 (b)(i) and (ii)** respectively.

The sum insured is \$800,000.

- (4) In section 81(1), repeal the definition of **declared value**.

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- (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)**
Repeal section 82. 5
- 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”. 10
- 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)** 15
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)**
In section 102(3), replace “amount insured” with “sum insured”. 20
- 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,— 25
(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. 30
- 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

- (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**”. 5
- (3) In Schedule 1, clause 42(1), replace “30 June 2025” with “30 June 2030”.
- (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”. 10