

**Insurance Council of New Zealand**

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8 September 2017

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

Emailed to: [FireServicesTransition@dia.govt.nz](mailto:FireServicesTransition@dia.govt.nz)

To Whom It May Concern,

**RE: ICNZ submission on FENZ regulations (offences and penalties)**

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Thank you for the opportunity to submit on these regulations. We provide this submission for the Insurance Council of New Zealand ("ICNZ"). ICNZ represents the interests of its members, who are 26 general insurers who collectively insure over half a trillion dollars' worth of New Zealand assets and liabilities.

Our submission has two parts. The first regards our concern about passive fire protection and so relates to Part 1 of the Discussion Documents. Our submission on Part 2 of the Discussion Document is limited to offences and penalties for insurers as levy payers.

**On fire safety and evacuation of buildings**

ICNZ has concerns about the quality of the passive fire protection in many buildings in New Zealand. We have been presented with many examples of faulty and non-compliant passive fire protection work that has been identified by ICNZ member risk surveyors. Several experts in the fire protection industry have commented that there appears to be a growing systemic problem of passive fire non-compliance in many residential and commercial multi-unit and high-rise buildings.

Many of the building service trades that are involved with installing fire separation and protection devices in building services systems such as heating and ventilation, hydraulics and electrical that penetrate fire rated walls and floors are not doing their jobs correctly and need specific training in passive fire protection.

The passive fire issues combined with the risk posed by flammable cladding systems used on some buildings make it as important as ever to have effective fire evacuation procedures in place.

ICNZ supports the proposed ability for FENZ to be able to require an already approved building evacuation scheme to be updated and improved further. There will be many reasons for a building evacuation scheme improvement. The most common reason is with building renovation construction

works when buildings are still occupied or the occupancy activities of the building change. We support the trigger thresholds outlined on page 9 of the Discussion Document.

We say FENZ needs to have a multi-tiered audit system in place that focuses on public buildings such as cinemas, libraries and hospitals as well as commercial buildings and multi-unit residential buildings.

We support that there be no exemption for having a building evacuation scheme.

We support the adoption of Option A3 out of the three options for information required by FENZ about the building occupancy and fire evacuation. Option A3 provides the most information to FENZ to allow it to determine if an evacuation scheme is fit for purpose.

We are concerned about the lower standards contained in the Building Act for automatic fire sprinkler compliance. Automatic fire sprinkler systems must comply with current New Zealand Standards. This should reduce the current confusion with some building owners about complying with FENZ and insurer requirements that follow the higher New Zealand standards such as NZS4541.

Finally, we support the following options in the Discussion Document:

- Option B3, that requires building occupants as well as building owners to play their part. If the building owner is absent from New Zealand, we say the owner must have a New Zealand agent responsible for upholding the fire evacuation scheme.
- Option C2. Option C1 is potentially dangerous as it can allow disabled persons to remain within the building for FENZ personnel to rescue. With the passive fire issues that we highlighted earlier, the risk of smoke spreading throughout the building is a risk and could result in smoke inhalation of the disabled person awaiting rescue.
- Option D2. It is likely that false fire alarms will be more common, now that FENZ will not be charging building owners for false alarm call outs. The FENZ funding through the levy on insurance products has increased to cover false alarms. False alarms should be counted as a full evacuation so to limit disruption to business by requiring additional full evacuations through the year.

### **On offences**

Our members are levy payers under the levy provisions of the Fire and Emergency New Zealand (“FENZ”) Act. Levy payers will be liable under sections 93 to 95 of the Act for knowingly and without reasonable excuse:

- failing to make a levy return
- failing to keep records for 7 years, and
- failing to provide FENZ information.

We understand the offences proposed in the Discussion Document go further than the Act by creating additional strict liability offences for the exact same conduct. We understand this means levy payers who accidentally, innocently, or unintentionally fail to make a levy return, keep records or provide FENZ with information would commit an offence and be liable for a penalty.

We say this extension of liability for the same conduct is inappropriate. Insurers should not be forced by legislation to act as FENZ’ collection agent and then punished for innocent mistakes. Government should instead focus on giving FENZ tools to give levy payers positive incentives to comply with the levy regime, rather than cynical punishments for innocent non-compliance.

Parliament expressly required the offences for the relevant conduct in sections 93 to 95 of the Act to have an element of intention. We say it is inappropriate to extend the boundaries set out by Parliament for making that conduct an offence by creating strict liability offences for the same conduct in the regulations.

Failing to fail to make a levy return, keep records or provide FENZ with information should not be an offence in the regulations. It is inappropriate and disproportionate to punish insurers' innocent conduct. The Act already appropriately targets more serious intentional offending.

### **On penalties**

If there are regulatory offences for levy payers, we support option F1. Its spread of penalties allows for a more proportionate response to the level of offending. Option F2, in contrast, charges almost half (40 percent) of the maximum penalty for conduct that is deemed to be in the lowest level of offending. This is disproportionate and inappropriate in our view.

We underscore the need for there not to be mandatory minimum penalties. We note that FENZ' enforcement strategy will include proportionate responses to conduct being targeted, and we say more effective compliance can be achieved through education and guidance as identified on page 26 of the Discussion Document.

### **Clarity is required for compliance purposes**

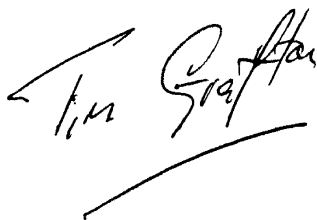
FENZ is given broad discretion under the levy provisions and proposed regulations. Clarity is needed on implementation and compliance with the regime and guidance from FENZ may be useful in this respect. Clarity or guidance is needed as soon as possible to assist levy payers understanding of the levy provisions, and, if the relevant conduct is an offence in the proposed regulations, to minimise the risk of insurers being punished for innocent technical breaches of regulation.

For example, we have questions around:

- What information FENZ considers is "reasonably necessary or relevant for administering or enforcing the levy provisions". FENZ' view may differ from insurers. We say FENZ should prescribe this information in writing in advance before an insurer can be liable for failing to provide that information.
- What relevant considerations FENZ will consider under its enforcement strategy. For example, we say materiality of the offence is relevant, and that if an immaterial mistake is made, the consequences for the insurer should be different to the consequences for an insurer that made a material mistake.

Thank you for the opportunity to submit. If you have any questions please contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Grafton', with a long horizontal flourish underneath.

**Tim Grafton**  
Chief Executive