

Insurance Council of New Zealand

P.O. Box 474 Wellington 6140
Level 2, 139 The Terrace

Tel 64 4 472 5230

email icnz@icnz.org.nz

Fax 64 4 473 3011

www.icnz.org.nz

22 August 2016

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

Emailed to: FireServicesTransition@dia.govt.nz

To Whom It May Concern,

Submission on the proposed regulations to support FENZ

1. Thank you for the opportunity to submit on the proposed regulations to support Fire and Emergency New Zealand ('FENZ'), and for granting us an extension on the submission deadline.
2. We provide this submission for the Insurance Council of New Zealand ('ICNZ'). ICNZ represents the interests of its 28 members, who are general (as opposed to life and health) insurers, and who collectively insure over \$600 billion worth of New Zealand property and liabilities.
3. We provide this submission in the context of a parallel submission to the Parliament's Government Administration Select Committee on the FENZ Bill. We have provided a copy of our FENZ Bill submission for your reference; the two submissions should be read together for completeness.
4. This submission focuses on the proposed regulations for levy exemptions and the proposed regulations for insurance information requirements for levy payers. We have outlined our concerns in the body of the submission, and appended specific answers to the questions in the Discussion Document.

Exemptions

5. At a principled level, we support the removal of exemptions for clarity and simplicity in the levy regime. ICNZ has previously submitted in favour of not exempting any property from levy, unless there are compelling reasons to grant an exemption. In our view, there are two groups of compelling reasons to exempt five specific types of insurance policy. Those two groups are set out in the next two sections of this submission. But first, we wish to make some general comments on the levy provisions and exemptions.
6. There is a distinction to be made between exempting **types of property** and exempting **types of insurance policy**. There are certain **types of insurance policy** that absolutely should not be levied.¹
7. We understand that government policy was to levy **property insurance**, which is a type of insurance policy. What has actually happened in the Bill is that specific types of property are levied through any type of insurance. This is an administrative nightmare, complex, and costly for insurers, which impacts insurer's cost of business and insurance affordability for property owners. It is also particularly inequitable for insured policyholders of non-property insurance policies, who could end up paying a disproportionate and inequitable share of levy.²
8. If government had wanted to levy types of property, it would have levied property rates instead of contracts of insurance. What is proposed in the Bill is a poor proxy for trying to create a levy that looks as much like a levy on property values as possible, while using insurers as a collection agent for that levy.
9. The complexities and inequities in administering a levy specific to individual pieces of property through the medium of insurance policies include:
 - a. Different pieces of property can be insured in different ways under the same policy, which can make it difficult to determine what the "express maximum limit" recoverable for the property is, or whether to levy the "amount insured" or the "declared value" of the property.
 - b. If specific types of property are exempt, there is complexity in first determining whether the property is a type of property that is exempt, and second in adjusting the overall levy calculation for all of the property insured under the policy, which requires time-consuming and costly adjustments by insurers. This cost will ultimately be borne by insured policyholders.
 - c. The same piece of property can be insured under two different policies, which creates the inequitable "double-dipping" problem.
 - d. Some policies contain sums insured that bear no relationship to the value of the property insured. There are two examples of this:

¹ Please refer to paragraphs 109 and 110 of our submission on the FENZ Bill to the Government Administration Committee. We note there is technically not an explicit ability for Regulations to exempt types of property insurance in the Bill at this stage. We have submitted in favour of such a power to be introduced.

² Please refer to the travel insurance example provided in paragraph 9.d.ii below.

- i. One is active decisions by policyholders to underinsure, for example, through first-loss commercial property insurance. These decisions to underinsure are based on risk management assessments and are a completely legitimate commercial risk management practice.
- ii. Another is that travel insureds have sums insured for property while travelling that are set at a maximum capped amount common to all travelling insureds. These caps often bear no relationship to the value of property an insured travels with. So a student in New Zealand, insured under an inbound student travel policy by a New Zealand insurer for \$20,000, and who brings a rucksack and a laptop with them, would have circa \$2,000 in property on them, but would be charged levy at a proportion of the \$20,000, not the \$2,000. This means the student would pay the same levy as a person insuring their contents under a house and contents policy, who actually has \$20,000 in property and is insuring their property for that value.

Liability, bailee and travel insurance should be exempt

10. Reinsurance and marine insurance contracts are already excluded under the Bill. We have identified issues with levying liability insurance, bailee insurance and travel insurance, and submit that these types of policy should also be excluded.³ Our reasons are:
 - a. **Commercial liability insurance policies.** These exist to protect the interests of the insured when the insured incurs a legal liability to a third party. On one interpretation of the Bill, the third party's property is 'insured' by the insured's contract of insurance, potentially subjecting it to clause 74(1) of the Bill. But calculating a levy on liability insurance would make no sense. It is impossible to quantify the damage a liability insured could cause to third party property. Their sum insured is not calculated by reference to any property, but instead to their multifarious potential liabilities to third parties for all kinds of legal wrong. We strongly submit that, for clarity, the Bill and/or the regulations should specifically exclude contracts of liability insurance.
 - b. **Bailee's insurance** covers a bailee of property during their temporary possession of another person's property. A drycleaner, for example, would take out bailee's insurance to cover their custody of their customers' clothes. Again, this type of insurance policy is not a property insurance policy, it is a liability insurance policy. Unless the levy attachment provisions are clarified, there is a risk that bailee's insurance could be unintentionally levied as the property the bailee is custody of under bailee's insurance could arguably be "insured" under the bailee's insurance. We strongly submit that, for clarity, the Bill and/or the regulations should specifically exclude bailee insurance.

³ These are the types of insurance policy that we have currently identified. There may be more types of insurance policy that are caught in an unintended way that we identify in future.

- c. **Travel insurance** for visitors to New Zealand could attract levy under the current Bill.⁴ There is certainly the potential for FENZ's services to be required in respect of that property. However, there are two issues with levying travel insurance. The first is that travellers to New Zealand will be difficult to identify, and will insure with an insurer which is not carrying on business in New Zealand. Further, as a matter of policy, it would seem unwise to levy travellers to New Zealand to fund FENZ. Doing so would have a negative impact on tourism. A related problem concerns **inbound student travel insurance**, which some New Zealand insurers would provide to travellers to New Zealand for study purposes. Again, these travel insurance policies cover the student's property, and so meet the levy attachment provisions in clauses 74(1) and 76 of the Bill. We submit that any difference in the treatment of travel insurance policies and inbound student travel insurance policies would be unfair and inequitable as between different types of traveller, and so both types should be exempt from the levy provisions. A further, final, and much bigger problem is that most travel insurance policies taken out by New Zealanders heading overseas cover the insured traveller's property (among other risks) from their point of departure. This means the property will be, for a very short amount of time, be insured, and in New Zealand, and therefore technically subject to the levy provisions. We submit that levying travel insurance for New Zealanders travelling overseas makes no sense, for the reasons outlined above.

11. In short, there are very good reasons for exempting these particular types of insurance policy:
 - a. Liability insurance does not insure property; it insures legal liability. It is therefore far removed from the purposes of the levy. Levying liability insurance would be inequitable and distortionary, aside of our argument that we do not believe it is the intention of the Bill to capture liability insurance policies in the first place.
 - b. Bailee insurance should be exempt for the same reasons as liability insurance, and for the reasons noted at paragraph 10.b. above.
 - c. Travel insurance should be exempt, again because it is primarily an insurance policy to guard against personal risks, not property.

Marine insurance and aviation insurance should be exempt

12. First, we are uncertain about whether marine insurance is exempt as a matter of policy and proposed law at present. The definition of "contract of insurance" in the Bill excludes contracts of marine insurance. "Contract of marine insurance" is further defined in clause 6 of the Bill, and excludes certain marine cargo and marine trailer craft policies, meaning these types of policies are meant to be levied. However, the Discussion Documents on the

⁴ Travel insurance insures the travel insured's belongings against loss or damage among many other non-property related benefits, like cancellation costs, lost deposits, medical expenses, repatriation, et cetera. Clause 76(1)(a) of the Bill means that insured property under any type of policy is levied, even if the insurer and property owner do not carry on business in New Zealand and do not usually reside in New Zealand respectively.

proposed regulations to support FENZ proposes that the current exemption for “any ship or anything in a ship...” be removed because “fire service activities may include responses to at-sea emergencies...”

13. We submit marine insurance and aviation insurance should be exempt. While both marine and aviation insurance look more like property insurance than our previous examples of liability, bailee and travel insurance, they are in fact highly specialised types of insurance that create unique problems in respect of the levy. We submit that there are compelling reasons to exempt marine and aviation insurance.
14. Marine insurance should be exempt because of the extremely limited potential for the FENZ to ever respond to a marine incident. Other centrally funded support exists for ships. Maritime New Zealand has a Rescue Coordination Centre that involves Police, Coastguard, Defence, Search and Rescue, and the Civil Aviation Authority. FENZ is not currently involved in maritime emergency response, and nor does there appear to be a need for FENZ to duplicate the efforts of the other organisations already involved in maritime response. Further, we also note the transitory nature of many marine trading vessels. Many often travel overseas, and levying time spent overseas is unfair and inequitable. Further, we note that marine trading vessels are not often owned or insured in New Zealand. Any levy that attaches to marine insurance products applying to New Zealand owners or insurers but not offshore owners or insurers is unfair, and puts those New Zealand companies at a competitive disadvantage for having to pay additional costs to operate their business.
15. The same rationale and arguments that exist for exempting marine insurance apply to aviation insurance, particularly airline insurance. Aside of the unfairness and inequity of levying an airline for the time its craft were outside of New Zealand, it would put New Zealand owned and insured airlines at a competitive disadvantage.
16. Ports and airports invest in their own fire and emergency response services, reducing the risk of or need for a FENZ response.
17. There are significant practical difficulties for FENZ and insurers or policyholders calculating and administering levy payments for transitory property like ships and planes that move in and out of New Zealand, both in terms of time spent on the ground in New Zealand and in terms of identifying when an offshore-owned, offshore-insured ship or plane comes in to New Zealand.

Insurance information requirements

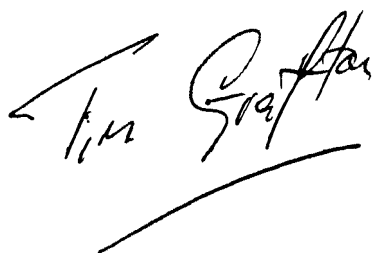
18. We support option 3, for levy payers to provide the information noted in the Discussion Document for levy payments greater than \$1,000. We support this option as it essentially legislates for the status quo, where information is provided by insurers to FENZ on a voluntary, good faith basis.

19. However, we must rebut the insinuation in the Discussion Document that insurers would stop voluntarily providing information to FENZ in good faith simply because of a disputed levy payment. Historic levy payment disputes have not resulted in this outcome, and if they have, no evidence has been provided in the Discussion Document. In our view this kind of hypothetical reasoning provides poor policy rationale for regulating private industry.
20. We strongly oppose option 4. We are disappointed at the lack of detailed reasoning to support option 4, and we are unsure of the specific problems that give rise to a need to collect information down to the \$100 level, or the degree of extra certainty FENZ would get in the short term.
21. We are particularly disappointed at the lack of cost-benefit analysis for proposed regulation that will add significant and permanent compliance costs for the industry. If information is collected on levy payments down to the \$100, then, depending on the levy rate struck, insurers would need to provide information in respect of most residential property in New Zealand. We fail to see how this kind of granular detail is necessary.
22. We note that Cabinet's expectations of Regulatory Stewardship include the requirement **not** to propose regulatory change without clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust. Cabinet has also determined that where regulatory functions are undertaken outside departments, appropriate monitoring and accountability arrangements are maintained which reflect Cabinet's expectations around regulatory stewardship. We see little evidence of this in DIA's proposals and request that those be provided.
23. DIA notes that predictability is 'moderate' where insurers provide information above \$1,000. 'Moderate' does not suggest to us that this option (option 3) is particularly problematic for FENZ. Even if a short term problem exists, it makes no sense to apply a costly and disruptive long term solution through regulations.
24. While it might be relatively simple for some of the smaller insurers with state of the art systems to make changes to provide information for levy payments greater than \$100, the same cannot be said of our larger insurers, who will collect and pay the largest chunk of FENZ revenues. Small or large, there is compliance cost associated with up front system changes. Codifying the status quo requires no additional compliance cost. We do not see the point in adding cost to the industry for a minimal short-term benefit.
25. We note the reason DIA appears to prefer option 4 is that it would improve certainty of short-term funding for FENZ because levy payments over \$1000 only makes up 30-40 percent of FENZ' levy receipts. Unless 'receipts' is a proxy for revenue in dollar terms, this statistic does not tell us how much FENZ' revenue stream will be affected. If 'receipts' is a proxy for 'revenue', we accept there will inevitably be some uncertainty for FENZ revenues in the transition to the new regime, but we do not agree that this should lead to potentially significant up front compliance costs, and ongoing compliance costs, just to meet this short

term need. Any shortfall in the transitory period can be recovered over time as the new regime beds in and FENZ revenues become more certain.

26. The Bill provides FENZ with sweeping powers to require information, penalties available to enforce non-compliance, and auditing powers. These measures give FENZ more than adequate tools to ensure it can validate its revenue requirements. Further there is no incentive for insurers not to accurately collect the levy required. We are unaware of any problem with the status quo.
27. Finally, to support our submission on privacy and confidentiality in the FENZ Bill, we must note that we have concerns about the security of information provided to FENZ. The information provided, even under the status quo, is either highly commercially sensitive or highly personal (or both). We submit that FENZ must provide a secure online portal for this information to be submitted.
28. Thank you again for the opportunity to submit. If you have any questions, please contact our legal counsel Nick Mereu at nick@icnz.org.nz or on (04) 495 8008.

Yours sincerely,



Tim Grafton
Chief Executive



Nick Mereu
Legal Counsel

APPENDIX: ANSWERS TO SPECIFIC QUESTIONS IN THE DISCUSSION DOCUMENT

3. Do you agree with the suggested levy exemptions?

Yes, subject to clarifying whether marine insurance is exempt under the FENZ Bill or not, and subject to whether aviation insurance will also be exempt under the FENZ Bill.

4. Are there any other property types that should be exempt from the levy?

No, but there are specific types of insurance policy that should be exempt for the reasons set out in our submission above.

5. Do you think there are owners of certain types of properties who should be exempt?

Yes. There may be situations when particular property owners are unfairly affected, or for whom FENZ would have no potential to service. We submit these property owners should have the right to apply to FENZ or the Minister for an exemption.

6. Do you agree with the preferred option (Option 4)? If no, why not?

No, for the reasons set out at paragraphs 18 to 23 above.

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?

We are unable to quantify the cost involved in option 4, suffice to say the costs of system change would be significant, and will affect different insurers in different ways.

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)?

Yes. Please refer to paragraph 97 of our FENZ Bill submission, where we argued:

“We strongly support the need for appropriate protections to ensure that FENZ private and commercially sensitive information is held in the strictest confidence and with high standards of security. We support the provisions in the Bill to this effect, however we would add there is a need to incentivise FENZ to take practical steps to set high standards to treat the information it receives securely. We note the high cyber security risk and data breach risk posed by government agencies, including the fire service.⁵ We submit that, at the very least, FENZ requires a secure online portal to receive the information provided by levy payers under the Bill. “

⁵ The Fire Service was recently subject to a ‘whaling’ attack which cost it \$52,000 [http://www.radionz.co.nz/news/national/292881/fire-service-scammed-out-of-\\$52,000](http://www.radionz.co.nz/news/national/292881/fire-service-scammed-out-of-$52,000). ACC has had a string of privacy breaches http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10865475, and EQC has a

9. Is there any other information needed to support FENZ's management of funding streams?

No. Inherently there will be some degree of uncertainty in the short term as the new funding regime beds in.

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?

Yes, under the powers in the FENZ Bill noted at paragraph 26 above.

large breach <http://www.stuff.co.nz/the-press/news/christchurch-earthquake-2011/10470248/Earthquake-data-privacy-breach-avoidable>.