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Committee Secretariat
Governance and Administration Committee
Parliament Buildings
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Emailed to: ga@parliament.govt.nz

ICNZ'S SUBMISSION ON THE REGULATORY SYSTEMS (INTERNAL AFFAIRS) AMENDMENT BILL

Thank you for the opportunity to provide a submission on The Regulatory Systems (Internal Affairs) Amendment Bill.

Te Kāhui Inihua o Aotearoa / The Insurance Council of New Zealand (ICNZ) represents general insurers. ICNZ's members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, professional indemnity, directors & officers, cyber insurance, commercial property, forestry, livestock and horticultural insurance).

Our members as well as the members of the Insurance Brokers Association of New Zealand (IBANZ) are responsible for collecting the Fire & Emergency Levy that is charged on contracts of fire insurance and funds approximately 95% of the budget of Fire & Emergency New Zealand.

We are submitting on the amendments in Part 7 of the Bill that are made to the Fire and Emergency New Zealand Act 2017 and the Fire and Emergency New Zealand (Levy) Regulations 2024 made under that Act.

Summary

ICNZ generally supports the changes to the FENZ Act 2017 outlined in Part 7 of the Bill.

Some modest additions are required to:

- Clause 92 of the Bill to ensure the policy intent regarding the application of FENZ levy to mixed use buildings under clause 15 of the FENZ Levy Regulations is achieved.
- Schedule 3 of the Bill to make the application of the levy workable for multi-year contract works policies.
- Part 7 of the Bill must be enacted by 1 April 2026 to facilitate insurance renewals occurring in advance of the commencement of the new FENZ Levy regime applying to contracts from 1 July 2026.

Submission

1. Since the Fire Emergency New Zealand Act 2017 was introduced, ICNZ and IBANZ has been working jointly with the Department of Internal Affairs to ensure that the levy collection regime provided under Part 3 of that Act will be workable, fair and efficient.

This has been a long journey and with issues having been worked through the Insurance Sector is currently investing in making significant system changes to enable the new Part 3 levy regime to be applied to insurance contracts with dates commencing 1 July 2026. That work is being done in reliance on and is contingent on the changes to the FENZ Act contained in the Bill being enacted before Part 3 comes into effect.

2. The Fire Emergency New Zealand Act contains a number of unintended drafting errors that were identified in 2024. The first is associated with the definition of "personal property" and would prevent the collection of the levy from certain classes of non-residential property such as stock, fixed assets, plant and machinery, cargo, crops or livestock. Unless this change is made there is no legal basis for insurers to collect a levy on these types of property after 1 July 2026, which would have material financial implications for FENZ.
3. It was also identified that the Act also contains definitions of "residential property" and "household unit" that are too narrow in application for levy purposes and misaligned with the equivalent levy legislation, the Natural Hazards Insurance Act 2023, creating unnecessary uncertainty and meaning that people living in apartment buildings would pay more levy than was intended as well as creating additional compliance costs and complexity for the collection of the FENZ levy for insurers, brokers and apartment building owners.
4. The other significant concern that was identified was the potential application of the Fire and Emergency Act to "mid-term adjustments" to insurance contracts being inconsistent with longstanding industry practice and practically unworkable. It was the view of FENZ that the Act would require that after 1 July 2026 insurers would need to recalculate the levy rate on the levy regime that applied at the time of a policy mid-term adjustment (i.e. the new regime), rather than charge the levy based on the rate that was charged when the policy originally incepted. This would create unfairness for customers, interfere with sensible insurance practice (by discouraging rational changes to policies), and could not practically be implemented through insurers IT systems. This FENZ view was finalised in early 2025 and at that point it became clear that the legislation would also require new transitional legislative provisions to make application of the levy workable for mid-term adjustments.
5. This would have been especially difficult on the transition from the current transitional levy arrangements where commercial property has the levy charged on indemnity value verses the new July 2026 requirement were the levy is charged on the sum insured, and there are other changes to the levy regime including different exemptions and multiple rates etc. The only way compliance could have been met was to cancel and reissue the insurance contract and that would have been impractical and would have also created many risks and costs for customers, insurers and brokers.
6. We are pleased to see that the Part 7 amendments in the Bill now appear to correct the previous drafting errors through clauses 82 to 85 amending Section 81 of the principal Act and clauses 87 to 92 amending the principal regulations and through the insertion of clause 85 and Schedule 3 insertion of the new Part 2 into Schedule 1 of the principal Act, which addresses the mid-term adjustment issue noted above.
7. While we generally support the amendments provided in Part 7 of the Bill, there are some specific amendments required to the principal Act and regulations to ensure that aspects of the policy intent are properly achieved. One relates to the treatment of mixed-use

buildings under clause 15 of the regulations and the other the application of the levy to mid-term adjustments for multi-year contract works policies.

Mixed use buildings under clause 15 of the regulations

8. In reviewing the drafting of the Bill and the changes in it that are made to the Regulations, we have identified that the due to the internal cross references used the drafting of clause 15 of the Regulations does not clearly achieve the policy intent. To be clear this was the case when the Regulations were first issued in December 2024, and the changes contained in the Bill to clause 15, while otherwise fine, don't address this issue.
9. The policy intent is that where a building is less than 50% residential the policyholder may provide the insurer with a valuation of the mixed-use property for the purpose of apportioning the sum insured between the residential property and the other class or classes of property. This is to achieve a degree of equivalence in the treatment of residential units (e.g. apartments) in buildings with varying proportions of residential occupants. For such buildings the levy would then be calculated by adding the following two amounts (bolding for emphasis):
   I. 10.74 cents for each $100 of the sum insured that is apportioned to the residential part or parts of the property **up to a maximum of $107.40 per household unit**; and
   II. 7.76 cents for each $100 of the sum insured that is apportioned to the non-residential part or parts of the property.
10. The intent that the residential cap of $107.40 per residential unit would apply is also clearly outlined in the following section of the draft FENZ Levy guide.

Levy applied to contracts of fire insurance covering mixed-use properties

Mixed-use property is where a property is comprised of residential property and any other class or classes of real property and is insured against the risk or consequence of fire under one sum insured.[15]

If...	then:
50% or more of the total area of the mixed-use property is comprised of household units	the levy is charged at the residential property rate of 10.74 cents for each $100 of the sum insured (0.1074%) per household unit.[16] The maximum levy amount for residential property of $107.40 can be applied per household unit.
less than 50% of the area of the property is comprised of 1 or more household units	the levy is charged at the non-residential/commercial levy rate of 7.76 cents for each $100 of the sum insured (0.0776%).[17] However, a policyholder may provide the insurer with a valuation of the mixed-use property for the purpose of apportioning the sum insured between the residential property and the other class or classes of property. The valuation must: • be prepared and signed by a registered valuer (as defined in section 2 of the Valuers Act 1948); and • show how the value of the property is apportioned between the residential art or parts of the property and the non-residential part or parts of the property. If a policyholder provides an insurer with a valuation, the insurer must apportion the sum insured art or parts of the property and the non-residential part or parts of the property in the same way as the property value is apportioned between those parts in the valuation.[18] In this case, the annual levy payable in respect of the property is the *lesser* of (a) or (b): (a) the total of the following amounts: (i) 10.74 cents for each $100 of the sum insured that is apportioned to the residential part or parts of the property up to a maximum of $107.40 per household unit; and (ii) 7.76 cents for each $100 of the sum insured that is apportioned to the non-residential part or parts of the property. (b) 7.76 cents for each $100 of the sum insured.[19]

11. However, the way clause 15 of the regulations is drafted, specifically the cross reference to regulation 14(4) and the absence of any mention of the maximum amount of levy payable per year for a residential property of $107.40 per dwelling (as is contained in regulation 7(2)) – means the residential cap (per unit) would not clearly apply. This is inconsistent with the policy intent, would financially disadvantage the owners and occupiers of such buildings (less than 50% residential), and renders the entirety of clauses 14 and 15 of the Regulations an effective nullity. This is because without the application of the residential cap, applying the residential levy rate (which is higher per $ of sum insured) would simply increase the amount of FENZ levy payable, meaning no policyholder would ever choose to use this option.

12. This drafting issue must be fixed. Positively it can be easily addressed by making the following amendment to sub-clause 15(2)(a) of the Regulations.

> **15 Rate of levy payable for mixed-use property if sum for which property is insured is apportioned**
>
> …..
>
> (2) The annual levy payable in respect of the property is the lesser of—
>
> (a) the total of the following 2 amounts:
>
> (i) 10.74 cents for each $100 of the sum insured that is apportioned to the residential part or parts of the property in accordance with regulation 14(4), **up to a maximum amount of levy payable per year for each residential property of $107.40; and**
>
> (ii) 7.76 cents for each $100 of the sum insured that is apportioned to the non-residential part or parts of the property in accordance with regulation 14(4); ~~**and**~~ **or**
>
> (b) 7.76 cents for each $100 of the sum insured.

13. We note "lesser" means only (2)(a)(i) and (ii), or 2(b) can apply, they are not cumulative. Given this we have also suggested in the above drafting that the "and" would seem to better sit at the end of (2)(a)(i) and it may be appropriate for there to be an "or" at the end of 2(a)(ii).These simple changes would achieve the policy intent and make regulation 15 consistent with regulation 7 (Rate of levy payable for residential property).

Mid-term adjustments for multi-year contract works policies.

14. As noted above we have advocated for and generally welcome the provisions applying to mid-term adjustments to insurance contracts following the introduction of the new levy regime on 1 July 2026. The proposed amendments found in Schedule 3 of the Bill positively address the vast majority of common situations where annual insurance contracts are amended in the year following the introduction of the new levy regime (through section 52(1)(b)), or for longer than 1-year contracts that are not subject to any changes after 1 July 2026). The only gap we have identified that requires addressing is for multi-year contract works policies that are modified post 1 July 2026.

15. Multi-year contract works polices are issued to insure large single construction projects such as public civil works like roads, tunnels and bridges (e.g. NZTA), some large buildings and some marine construction risks. These policies typically run for periods of 3 to 6 years, sometimes even longer. During the multi-year policy period, changes are commonly made to these contract works policies to take account for contract variations and could increase the sum insured and, in some cases, to extend the policy period due to construction delay. Adjustments to the levy paid (often increases) to reflect these changes are calculated and applied accordingly. This happens now, however for these adjustments to be workable after 1 July 2026 for any mid contract changes, the FENZ levy settings must continue to be on the basis of the FENZ levy rate that applied at the start of the insurance contract and the same would need to apply to property types that may be included or excluded from the levy, i.e. the property type exemptions that applied and the start of the insurance contract period.

16. It's important to note that these policies cannot be simply cancelled and reissued as that would be a breach of the standard construction contract terms as outlined in construction

standards such as NZS 3910:2023 (Conditions of contract for building and civil engineering construction).

17. As mentioned in above, the transition solution proposed in Schedule 3 of the Bill will not work for this multi-year contract works policies in situations where they are modified after 1 July 2026, because they may extend beyond 1 July 2027. The impact on the levy paid under these contracts is complex given the change in the basis of the levy (sum insured vs. amount insured) and changes to the way rates are applied for this type of contract. This means it is not necessarily simply a matter of applying a different rate to the remainder of the contract, and because of the multi-year duration of these contracts and the common changes the transitional provisions contained in the Bill, that will work for most insurance contracts won't work for these. The hypothetical financial consequences of this (vs. no transition) would be mixed and depend on the specifics as the new applicable levy rate is actually lower and there are property type exemptions that are different. Because of the lower rate applying (3.38c rather than 11.95c per $100 amount insured levied at 50% as currently[1]) it is more likely than not that switching to applying the new levy regime and adjusting the levy due accordingly would reduce the amount of FENZ levy due.

18. We recommend that the levy regime recognises that these multi-year contract works policies should be treated differently in terms of the levy due to their longer duration and special nature. Specifically, we recommend that the levy rate that applies at the beginning of the contract period remains the same levy rate throughout the policy period, even where adjustments are made due to normal contract variations etc. Contract works are already differently under the levy regulations

19. This could be achieved through the following amendment to the provision provided in Schedule 3 of the Bill:

> **52 Transitional levy arrangement continues to apply to certain contracts entered into before 1 July 2026**
>
> (1) Despite clause 23(b), subpart 3 of Part 1 of this schedule continues to apply in respect of—
>
> (a) a contract of fire insurance that was entered into on or before 30 June 2026 and is not varied on or after 1 July 2026; and
>
> (b) a contract of fire insurance that was entered into on or before 30 June 2026 and is varied on or after 1 July 2026 but only if, at the time of the variation, the contract is intended to terminate on or before 30 June 2027.
>
> <u>(c) a contract of contract works insurance that was entered into on or before 30 June 2026 and is varied on or after 1 July 2026 but only if, at the time of the variation, the contract is intended to terminate on or before 30 June 2031.</u>
>
> (2) For the purposes of subclause (1), a variation includes a variation that changes the sum insured under the contract.

Part 7 of the Bill must be passed by 1 April 2026

20. It is critical that Amendments in Part 7 of the Bill are passed before the new Fire and Emergency levy regime takes effect on 1 July 2026. Insurers and brokers began work on

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[1] https://www.fireandemergency.nz/assets/Documents/About-FENZ/Levy-and-payment-forms/Calculating-levy-for-property-in-course-of-construction-or-alteration.pdf

making changes to their IT systems to accommodate the new levy regime 6–12 months ago and are now at advanced stages with their system changes and will be entering into the testing phase before the end of 2025. All this is being done in reliance on the specific but important changes to that regime that are provided in this Bill are brought into effect before the new regime begins.

21. The change in levy regimes involves insurers identifying all the changes required across the multitude of insurance products, then implementing those changes to IT systems, calculator and documentation, testing those changes and then deploying them to insurance renewals and new business and reporting, while also manging existing contracts (including mid-term adjustments) until they conclude. For some insurers this is taking place across multiple IT systems. Insurers are committing human and financial resources on the basis that the three key legislative amendments provided in the Bill are made before the regime comes into effect. Insurers need more than a year (i.e. 18 months) for implementing the significant changes to the levy regime and so without insurers committing on this basis, and in reliance on these changes occurring, it would be impossible for this new levy regime to come into effect on 1 July 2026 as scheduled.

22. To implement the levy changes comprehensively and accurately involves a long lead time and it is not possible to chop and change details of any aspect late in the piece or for insurers to simply delay renewals to wait for the Bill to pass. This has three implications in relation to the content of the Bill:

    - First the Select Committee should not make unexpected changes to the drafting as insurers will have already implemented into their systems the policy intent and detail as it is now or is expected to be (although some minor changes are required as outlined in this submission).
    - Second, the Select Committee will need to report the Bill back to Parliament no later than 12 February as currently scheduled however earlier would be welcomed.
    - Third, the Bill must be passed by 1 April 2026.

23. The first insurance policy renewals for intermediated business (typically commercial) under the new levy regime for the period post-1 July 2026 will be generated and sent to brokers up to 3 months earlier from April 2026. This documentation will need to have the FENZ levy calculated for the post 1 July period and there will need to be a clear legal basis for collecting that levy from these customers. Therefore, if the changes to the FENZ Act have not yet been enacted by April 2026 then there could be (legitimate) questions as to the legality of those FENZ levy calculations and the basis for the levy being sought from those customers. This would be an untenable situation for the insurance sector and its customers and is a risk that must be avoided.

24. As noted above there would also be no ability for insurers to change their approach at this time (i.e. April 2026) as system changes will have long been locked in by that point. System changes are already starting to be hard coded into systems now. It is therefore critical that the changes provided in Part 7 of the Bill are passed and enacted by 1 April 2026, there is no alternative to this.

25. Both ICNZ & IBANZ have submitted on previous occasions that a minimum of 18 months lead time on the levy rules being finalised is required so insurers and brokers have adequate time to implement the required systems changes, test systems and be able to produce the first post 1 July 2026 insurance renewals that will need to start being sent to customers' brokers three months earlier in April 2026. The only way the required 18-month lead time has been enabled in this case is for the insurance sector to progress the implementation work in reliance that the necessary amendments now contained in this Bill will be enacted in the anticipated way and in time.

26. We recognise that the Bill is not due to be reported back by Select Committee until 12 February. Nonetheless we must put the Government on notice that its legislative programme for 2026 needs to ensure that this Bill is passed during the remainder of February, or during March 2026 so that the changes to Part 3 of the FENZ Act are enacted by 1 April 2026.

27. A failure to achieve this legislative timing could lead to major complications that would impact FENZ, the insurance sector and its customers both businesses and consumers. We are aware that it is unusual for an omnibus amendment Bill of this kind to be passed through Parliament that swiftly, however, the facts of the situation are unique will require that in this case the Bill to be swiftly passed.

Thank you again for the opportunity to make this submission. We wish to appear before the Select Committee.

Please contact John Lucas at john@icnz.org.nz if you have any questions.

Ngā mihi,

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