

## Property Council New Zealand

---

# Submission to the Governance and Administration Committee on the Fire and Emergency New Zealand (Levy) Amendment Bill

25 October 2022

**For more information and further queries, please contact**

Logan Rainey

Logan@propertynz.co.nz

021410787

## **Submission to the Governance and Administration Committee on the Fire and Emergency New Zealand (Levy) Amendment Bill**

### **1. Summary**

- 1.1. Property Council New Zealand (“Property Council”) welcomes the opportunity to submit to the Governance and Administration Committee on the *Fire and Emergency New Zealand (Levy) Amendment Bill*. Given the significant national importance of Fire and Emergency New Zealand (“FENZ”), we consider it is critical to ensure that FENZ is properly funded through a fit-for-purpose funding regime.
- 1.2. While Property Council has longstanding and deep reservations regarding the long-term retention of the insurance-based funding model, we acknowledge Cabinet’s decision to retain the insurance-based model. We have endeavoured to work collaboratively with Government to ensure that legislation results in the best possible outcome for New Zealand.
- 1.3. In that light, we support the proposed definition of ‘*contract of insurance*’ and are comfortable with the approach taken to defining ‘*sum insured*’. We recommend that legislation adopt a risk-based approach to setting motor vehicle levies, with levies that are differentiated in cost by risk. Comments and recommendations are provided on issues relevant to Property Council’s members.

### **2. Recommendations**

2.1 At a high level, Property Council:

- Supports the proposed definition of ‘*contract of insurance*’ contained within section 81(1);
- Supports the proposed definition of ‘*sum insured*’;
- Recommends that legislation differentiates the cost/size of the motor vehicle levy by risk;
- Urges Government to provide a more appropriate level of crown contribution to FENZ;
- Urges public entities with property portfolios to take a leadership role in contributing a fair and equitable portion to FENZ funding; and
- Adopt mandatory reporting of FENZ data into legislation and/or regulation.

### **3. Introduction**

- 3.1. Property Council is the leading not-for-profit advocate for New Zealand’s most significant industry, property. Our organisational purpose is, “Together, shaping cities where communities thrive”.
- 3.2. The property sector shapes New Zealand’s social, economic and environmental fabric. Property Council advocates for the creation and retention of a well-designed, functional and sustainable built environment, in order to contribute to the overall prosperity and well-being of New Zealand. We advocate for regulatory and tax settings that are both fit for purpose and fundamentally equitable.
- 3.3. Property is New Zealand’s largest industry and fastest growing source of employment. There are nearly \$1.6 trillion in property assets nationwide, with property providing a direct

contribution to GDP of \$41.2 billion (15 percent) and employment for around 200,000 New Zealanders every year.

- 3.4. Property Council is the collective voice of the property industry. We connect over 10,000 property professionals and represent the interests of over 540 members organisations across the private, public and charitable sectors.

#### **4. General Comment on FENZ Funding**

- 4.1. Property Council strongly believes in the importance of a strong national fire service, with FENZ providing a critical public service to New Zealanders. FENZ services not only provide a direct benefit to property and other asset owners, but further provide a significant public good to wider society.
- 4.2. As stated in our previous submissions, we have historically opposed the current insurance levy-based funding regime for FENZ as we view it as inequitable, inefficient and unsustainable long-term.
- 4.3. Significant portions of FENZ resources go into responses and activities unrelated to fire insured assets. These responses and activities tend to be for a range of public good activities such as medical emergencies, rescuing people or pets and natural disaster relief. As an example, the 2020/2021 [FENZ Annual Report](#) highlights that 17.7 per cent of FENZ responses were for medical emergencies, yet the medical system does not fund this activity, with the cost of delivering this service being met by levies on fire insured assets.
- 4.4. For the 2021/2022 financial year, **data from FENZ shows that 59% of the total revenue from the FENZ Levy revenue, is raised from the commercial property sector.** The 2020/2021 [FENZ Annual Report](#) shows that the majority of call outs sit outside of the commercial property sector, yet the commercial sector funds the majority of FENZ. This outcome is grossly inequitable, given the limited requirements that commercial property places on FENZ resources.
- 4.5. This data shows a clear failing of the current FENZ funding regime to provide funding for the wide range of public good activities that FENZ engages in, such as medical responses. The current status quo is also directly contrary to the legislative funding principles established in the Fire and Emergency Act 2017.
- 4.6. There is also a significant issue with ‘free-riders’, who benefit from the universal nature of FENZ services but do not contribute to FENZ funding. This occurs either when asset owners choose to self-insure (and therefore not contribute levies) or when the public benefit from FENZ’s public good services.
- 4.7. Given the importance of FENZ, and its wider mandate than just fire insured assets related instances, it is imperative to ensure that FENZ is properly funded through a fit-for-purpose funding regime. Despite the recent Cabinet decision to retain the insurance-based model, Property Council has endeavoured to work collaboratively with government to resolve our longstanding concerns regarding FENZ funding.
- 4.8. Property Council is strongly of the view that there is an urgent need for greater crown contributions to FENZ funding. Ensuring a more appropriate level of crown contribution, in order to fund the vital public good work that FENZ devotes significant resource to, would be a sizable step towards establishing a more equitable long-term approach to FENZ funding.

Property Council recommends that DIA actively work to introduce a more appropriate level of crown contribution to FENZ.

- 4.9. Property Council is also deeply concerned over the extent to which public institutions, often with significant property portfolios, choose to self-insure and thus not contribute to the cost of funding FENZ services. The current approach of good citizens payments in lieu of levies, is inadequate. Continued reliance on self-insurance by public institutions, especially when viewed in tandem with the lack of crown public good funding, further perpetuates the inequitable imbalance between FENZ funders and FENZ users/beneficiaries. In practical terms, this results in the private sector subsidising the Crown property portfolio, as it relates to FENZ levies.
- 4.10. We urge that as part of the funding review process, public entities with property portfolios, are encouraged to take a leadership role in contributing a fair and equitable portion to FENZ funding.
- 4.11. Property Council believes that there needs to be greater transparency regarding emergency response cost and beneficiary data. This would enable further investigation into who benefits and who pays for the fire service. The current level of data transparency is less than ideal, especially given that future system tweaks are likely to be necessary, in order to ensure the system is more equitable and costs are more fairly spread across those who benefit (public sector, private sector and individuals). We recommend that as part of the funding review process, DIA adopt mandatory reporting of FENZ data into legislation and/or regulation.

## 5. Giving effect to 'Fire Damage' decision

- 5.1. In order to give effect to Cabinet's decision to now charge the FENZ levy on insurance policies for fire damage instead of any material damage, the Fire and Emergency (Levy) Amendment Bill proposes an amended definition of 'contract of insurance' in section 81(1).
- 5.2. The amended definition proposed for section 81(1) would define a 'contract of insurance' as either 'a contract of fire insurance' or a 'contract of motor vehicle insurance'. The meaning of both terms is shown in the table below.

**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—

(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

**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;
- (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

- 5.3. Property Council is comfortable with the proposed definition of ‘*contract of insurance*’. We are also comfortable with the proposed definitions of a ‘*contract of fire insurance*’ or a ‘*contract of motor vehicle insurance*’. We believe that the definitions provided for in section 81(1) are fit for the purpose outlined by Cabinet and will be straightforward to implement.
- 5.4. Property Council is pleased to see the move towards FENZ levies being charged on fire damage as opposed to material damage. Limiting the scope of FENZ levies to fire damage is more equitable and avoids outcomes where the commercial sector could plausibly pay for multiple levies (for example on separate fire and earthquake insurance policies). Therefore, we support the proposed amendment under section 81(1).

## 6. Definition of ‘Sum Insured’

- 6.1. The *Fire and Emergency New Zealand (Levy) Amendment Bill* proposes the following definition of ‘*sum insured*’ shown in the table below.

***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.

- 6.2. Property Council firmly believes that any definition of ‘*sum insured*’ in the Fire and Emergency (Levy) Amendment Bill should be fair and equitable to those who contribute to the funding of FENZ through levies.
- 6.3. In our view, a fair and equitable outcome would see the size of a FENZ levy linked to the maximum level of insurance taken out for a given asset. In the event that FENZ levies were linked to values greater than the maximum level of insurance taken, some asset owners might be disincentivised from taking out appropriate levels of fire insurance. This would be a poor policy outcome.
- 6.4. Ensuring that FENZ levies are clearly linked to the maximum level of insurance taken by a property owner is also important for maintaining a broad base of contributors to FENZ. Having a broad base of contributors positively enhances the long term funding pool available to FENZ and prevents upward price pressure on properties that take out relevant insurance.
- 6.5. Accordingly, Property Council is comfortable with the proposed definition of ‘*sum insured*’. Our support is a result of the provision of clear examples within the legislation, which highlight the intent that FENZ levies will not be collected on a greater value than a given policies potential loss limit.
- 6.6. Without the provision of examples, there could be a risk of ambiguity with regards to the term ‘insured value’. When it comes to a multi-property portfolio, this term could plausibly refer to the individual insured values of each separate property listed in the insurance policy. We are concerned that in this scenario the levy could be applied to a greater value than a policies potential loss limit.

## **7. Motor Vehicle Levies**

- 7.1. Motor vehicle insurance is included within the definition of ‘contract of insurance’ in section 81(1) of the Fire and Emergency (Levy) Amendment Bill. Property Council supports motor vehicle insurance being included in the FENZ funding regime and as previously stated, supports the proposed approach to amending section 81(1).
- 7.2. Property Council has consistently favoured FENZ funding models that incorporate elements of risk into the funding regime, where beneficiaries of FENZ services make a contribution commensurate to their level of demand and likelihood of use.
- 7.3. It is on this basis that we have concerns regarding the intent to charge motor vehicles at a fixed rate expressed in Section 141(2). The amendment to Section 141(2) would see motor vehicles charged ‘*an annual levy rate per vehicle*’.
- 7.4. In our view, the risk profile (and subsequent demand for FENZ services) will differ across different classes of motor vehicles, that exist under current regulation. For example, a large multi-axle truck will likely have a different risk profile and demand on services to a small automobile. Charging different classes of motor vehicles with different risk profiles the same fixed FENZ levy rate is inequitable and will result in significant cross-subsidisation overtime.
- 7.5. To mitigate this outcome and introduce greater equity into the funding system, we recommend that in section 141(2), this legislation adopts a motor vehicle levy model that varies in size based on the risk associated with each class of motor vehicle, as set out in regulation.

## 8. Conclusion

- 8.1. Property Council wishes to thank the Governance and Administration Committee for the opportunity to submit on the *Fire and Emergency New Zealand (Levy) Amendment Bill*. We firmly believe in the importance of a strong fire service, that is properly funded through a fit-for-purpose funding regime.
- 8.2. While we have our reservations regarding the long-term retention of the insurance levy based funding regime, nonetheless we support the proposed definition of ‘*contract of insurance*’ and are comfortable with the approach taken to defining ‘*sum insured*’. We recommend that legislation adopt a risk based approach to setting motor vehicle levies, with levies that are differentiated in cost by risk.
- 8.3. Comments and recommendations are provided on issues relevant to Property Council’s members. Any further enquiries, please do not hesitate to contact Logan Rainey, Advocacy Advisor, via email: [Logan@propertynz.co.nz](mailto:Logan@propertynz.co.nz) or cell: 021410787.

Yours Sincerely,



Leonie Freeman  
CEO Property Council New Zealand