



Fire and Emergency New Zealand Bill

An Analysis from a Volunteer Perspective

Contents

The Fire and Emergency New Zealand Bill	1
What does the FENZ Bill mean for volunteers?	1
Overview of law making process.....	1
Main proposals in the FENZ Bill.....	2
What is 'left out' of the FENZ Bill?.....	2
The current Act—a prescriptive approach	2
FENZ Bill—a more permissive approach	2
The UFBA not mentioned by name	3
The fundamental issue for volunteers	3
Progress on the UFBA submission.....	3
Specific provisions of the FENZ Bill.....	4
Part 1: Purposes of the Act.....	4
Purpose.....	4
Functions	4
Operating Principles	4
Local Committee.....	4
Compulsory Disengagement	4
Duty of FENZ in relation to volunteers	5
Part 2: Emergencies, fire control, industry fire brigades, water supply, evacuation	5
Part 3: Levy	5
Part 4: Miscellaneous and enforcement provisions.....	5
Limitation of liability.....	5
Dispute Resolution	5
Schedule 1	6
Response Assets	6
Main Functions of FENZ.....	6
Additional Functions of FENZ	6
Examples of response assets owned by volunteer brigades and voluntary rural fire forces.....	6
Duties.....	7
Gratuities.....	7
Appendix 1.....	8

The Fire and Emergency New Zealand Bill

On 30 June 2016, the Minister of Internal Affairs, Hon Peter Dunne, introduced the Fire and Emergency New Zealand Bill to Parliament.

When enacted, the Bill will repeal the two Acts that currently govern New Zealand's fire services—the Fire Service Act 1975 and the Forest and Rural Fires Act 1977—and establish a single new unified fire services organisation *Fire and Emergency New Zealand (FENZ)*.

On 5 July, the FENZ Bill had its first reading in Parliament. At the conclusion of the reading, the Bill was referred to the Government Administration Select Committee.

The Select Committee has called for submissions on the Bill—these close on 18 August 2016. The Committee aims to report back to Parliament with its recommendations on the Bill by early January 2017.

What does the FENZ Bill mean for volunteers?

What does the Bill mean for the 12,000 volunteers who belong to the 600 registered volunteer fire brigades, volunteer operational support or fire police units, fire brigade auxiliary units and voluntary rural fire forces that serve their local communities throughout the country?

At one level, the changes proposed in the Bill will have a profound effect on volunteers, their brigades and the organisations that represent and advocate for them.

At another level the changes are more subtle. Given the way the draft legislation is written (more about this below) the practical effects for volunteers may be very positive depending on the service delivery framework, the organisational design and the systems and policies the new FENZ Board adopts.

Overview of law making process

It is forty years since New Zealand's fire services last had to grapple with how new laws are made so before taking a look at the Bill from a volunteer perspective a quick overview of the law making process may be useful.

- A Bill is a proposed new law. In order to ensure the proposal receives proper scrutiny before it becomes law, it goes through a number of separate phases in Parliament which include three 'readings' or debates
- After its first reading, a Bill is normally referred to a committee of Parliament for detailed consideration. Committees usually invite interested parties to make written or oral submissions on the Bill
- Following consideration of the issues the Committee will report back to Parliament with its findings and any recommendations on amendments
- The second reading of the bill provides MPs with an opportunity to debate the principles and objectives of the bill
- The second reading is followed by a clause by clause debate of the Bill in Parliament—this is the opportunity to introduce any last minute amendments
- If a majority of members of Parliament vote in favour of the Bill at the end of the third reading, it is sent to the Governor General for signature making it an Act.

See Appendix 1 for a graphic on how a Bill becomes an Act.

The FENZ Bill is presently with the Select Committee. The UFBA will definitely make a submission on behalf of our members. However, individual brigades and volunteers should make submissions if they wish.

Main proposals in the FENZ Bill

The main proposals in the Bill include:

- Amalgamating urban and rural fire services into a single new unified organisation
- Extending the breadth of emergencies (including a wide range of non-fire emergencies) to which the new organisation will be expected to respond
- Establishing local committees to influence and advise the FENZ Board on priorities and plans
- Improving support for volunteers and enabling them to communicate directly with FENZ.

It is anticipated the new legislation will come into force on 1 July 2017 although some parts will come into force immediately the legislation is enacted. Some of the reforms enabled by the Act may require a 4 to 5 year transition period.

What is 'left out' of the FENZ Bill?

From one perspective, the Bill is more remarkable for what is left out rather than what is included.

The current Act—a prescriptive approach

The current Fire Service Act 1975 goes to great lengths to prescribe how the NZ Fire Service is to be structured for the purposes of command and operation.

So Fire Regions, Fire Areas and Fire Districts are defined in minute detail. Similarly, the roles, functions and powers of the National Commander and the people in charge of Regions, Areas and Districts are set out clearly and comprehensively.

How volunteer brigades are currently formed, registered and operate is subject to this same prescriptive approach.

FENZ Bill—a more permissive approach

In contrast, the Bill takes a different, more permissive approach. It does not specify how the new organisation is to be organised or how the chain of command is to operate.

Instead, it sets out the main objectives and functions of FENZ and vests in the Board (or authorised persons) all the power and authority necessary to achieve those objectives and perform those functions. The Bill authorises the Board to delegate such of its power and authority as it considers appropriate and then leaves the Board and management to get on with it.

So there is no mention of Fire Districts and Chief Fire Officers, Fire Regions and Fire Region Commanders, the National Commander and the National Commander's Operational Instructions, fire brigades or fire forces.

All that and much more (collectively known as the Operating Principles) is left to the Board to determine. Critically though, the Board must formulate the Operating Principles consistent with certain guidelines set out in the Bill.

With respect to volunteers in particular the Board must take reasonable steps to:

- Consult with FENZ volunteers and the organisations that provide independent advocacy and support to FENZ volunteers on matters that substantially affect volunteers, and
- Develop policy and organisational arrangements that encourage, maintain and strengthen the capability of FENZ volunteers.

So if the Bill is passed and becomes law, volunteers and their brigades will lose certain specific rights, privileges and protections presently enshrined in statute. But they will enjoy a new, more supportive, more volunteer-centric and more flexible overall framework in which to operate.

In future, matters of concern to volunteers will be able to be discussed, negotiated and debated with the Board in a much more sympathetic environment framed by the guidelines set out in the Bill.

Furthermore, unanticipated issues that arise from time to time will be able to be addressed on the spot—volunteers will not have to wait for an amendment to the law, a policy decision from Cabinet or an instruction from the Minister to the Commission.

The UFBA not mentioned by name

The permissive approach also has implications for the UFBA. The UFBA is not established by the current Fire Service Act and nor is it an organ of the Commission. However, the Fire Service Act recognises the UFBA by name with respect to funding of the annual conference, the volunteer dispute resolution process, deregistration of volunteer brigades and determination of length of service for gratuity purposes.

The FENZ Bill makes no reference to the UFBA. Instead, following the permissive approach, the Bill enables the FENZ Board to enter into agreements with organisations that provide independent advocacy and support to volunteers and requires the Board to ensure advocacy and support services are available to FENZ volunteers at no cost and on an ongoing basis.

The fundamental issue for volunteers

So for volunteers, volunteer brigades, the UFBA and FRFANZ the fundamental issue with the permissive approach of the Bill is simply this:

Are volunteers confident enough to let go of the handrail of prescriptive statutory protections and privileges enshrined in the law today and instead trust they and the FENZ board, working within the supportive and volunteer-centric principles of the Bill, can arrive at a better and more sensible set of arrangements in the future that suit all volunteers, their brigades and the communities they serve?

Progress on the UFBA submission

For our part, the UFBA Board and management are nearly but not quite ready to let go of the handrail.

The volunteer-centric and supportive framework of the Bill has increased our trust and confidence. In addition, we have received positive answers to questions put to the Minister and the incoming Chair of FENZ on issues such as the:

- Future status of volunteer brigades
- Relationship between volunteer members and their brigade
- Future of local officers including Chief Fire Officers and Deputy Chief Fire Officers
- Status and funding of the UFBA through the transition period and into the first years of the new organisation.

That said, positive answers and supportive noises are not the same as the guarantees provided by the current Act. So the UFBA and FRFANZ are working flat out with the team of officials reporting to the sub-committee of the FENZ Board to fill in the blanks, to clarify areas of concern and to build trust and confidence.

You can be assured the UFBA will be well positioned to make an authoritative submission on the Bill by 18 August.

Specific provisions of the FENZ Bill

Turning now to look at specific provisions of the Bill and the issues they raise for volunteers.

Part 1: Purposes of the Act

Purpose

Clause 3 sets out the purposes of the Act, one of which is to *improve support for volunteers and enable them to communicate directly with FENZ*.

The UFBA expressed concerns over earlier variations on the theme of direct communication variously labelled 'direct engagement' or 'direct relationship'.

We will invite input on whether volunteers are comfortable with the way this purpose is now formulated in the Bill.

Functions

The functions of FENZ fall into two categories:

1. The Main Functions which it must carry out, and
2. The Additional Functions which it performs if it has the capability and capacity to do so without compromising its ability to perform its Main Functions.

We will test whether volunteers wish to have some say in determining what particular Additional Functions their brigade will perform.

Operating Principles

The FENZ Bill provides that when the Board is formulating its Operating Principles it must take into account a range of matters which includes the importance of engagement with FENZ personnel and local committees.

We will invite input on whether this section should include the unions and associations that represent and advocate for FENZ personnel.

Local Committee

These were originally intended to provide the FENZ Board with advice on local risks, priorities and resource needs.

The FENZ Bill goes further and gives the local committee a function to advocate for local volunteers but not for local career staff. This function risks confusion or conflict with the independent advocacy provisions elsewhere in the Bill. It also implies that volunteer advocacy can be undertaken by an internal organ of FENZ.

We will invite volunteers for views on this subject.

Compulsory Disengagement

The FENZ Bill provides for the Board to prescribe "standards of health required of operational personnel to ensure that they are fit to perform competently their duties" and goes on to authorise the Board to discharge operational personnel who are incapable of performing to the prescribed standard.

This provision was never discussed with UFBA representatives prior to the Bill being introduced and we will invite input to inform our submission on the matter.

Duty of FENZ in relation to volunteers

Clauses 33 and 34 of the Bill set out FENZ's obligations in relation to volunteers. The clauses should be read in their entirety and then considered in light of the protections and privileges afforded volunteers and volunteer brigades by Section 34 of the current Fire Service Act.

Our initial view is that Clauses 33 and 34 of the Bill are fine as far as they go but volunteers may consider additional obligations would be advantageous. Additional obligations could include by way of example the requirement to develop a Charter of Volunteer Rights or a Volunteer Collective Engagement Agreement.

We will invite volunteers to give us their views on this subject.

Part 2: Emergencies, fire control, industry fire brigades, water supply, evacuation

Part 2 of the FENZ Bill deals with emergencies, fire control, industry fire brigades, water supply and evacuation schemes.

In contrast to Part 1, Part 2, is relatively prescriptive particularly with respect to the coercive powers an authorised person will have and to rural fire control measures.

Part 3: Levy

Part 3 provides for a levy that is a stable source of funding to support FENZ. On the face of it, this does not present volunteers with any specific issues.

Part 4: Miscellaneous and enforcement provisions

Limitation of liability

Part 4 includes a provision which in the event of a misadventure limits the liability of a person performing in good faith their duty under fire services legislation.

Another provision allows that compliance with all relevant policies, standards and operational instruction is a defence against proceedings relating to designated emergency services.

These are important sections for volunteers particularly given the broadening of the functions of FENZ.

At first glance, they look to be very much in line with the equivalent provisions of the current Fire Service Act and the Forest and Rural Fires Act. Nevertheless we will seek some legal advice to assure ourselves they serve the needs of volunteers.

Dispute Resolution

The current arrangements for resolving disputes between volunteers and management involves the UFBA, the Commission and ultimately the Minister. It is by any measure unwieldy and ineffective.

The Bill requires FENZ to develop a scheme for resolving disputes, sets out the principles on which the scheme must be based and the general content of the rules the scheme must contain.

FENZ must consult the persons and the representatives of the persons affected by the scheme before submitting it to the Minister for approval.

The scheme includes a number of safeguards and processes for appeal but we will invite input from volunteers before making a submission.

Schedule 1

Transitional, savings and related provisions

Response Assets

The Bill provides for FENZ to have access to any existing assets owned, leased or licensed by a volunteer fire brigade or voluntary rural fire force that are needed to support FENZ's objectives, main functions and additional functions.

The Bill goes on to set out duties in relation to the transfer arrangements for response assets. The main functions and additional functions set out in the Bill provide some indication of the type of community provided assets that FENZ may require access to.

Main Functions of FENZ

- Promoting fire safety
- Providing fire prevention, response and suppression services
- Stabilising and rendering safe incidents that involve hazardous substances
- Rescuing trapped persons
- Providing urban search and rescue services

Additional Functions of FENZ

- Responding to medical emergencies
- Performing technical rescues e.g. from collapsed buildings
- Providing assistance at transportation incidents e.g. crash scene cordoning and traffic control
- Responding to severe weather-related events, natural hazard events and disasters
- Certain incidents involving substances or materials that create a risk
- Promoting safe practices relating to hazardous substances

Examples of response assets owned by volunteer brigades and voluntary rural fire forces

These may include:

- Pumping appliances
- Water tankers
- Portable pumps
- Specialist rescue/rapid response vehicles
- Ancillary response vehicles such as vans, 4WD utes and SUVs
- Rescue boats
- Lighting equipment
- Hydraulic rescue tools
- Ancillary rescue tools and equipment
- Rescue stretchers (Stokes Basket etc)
- Thermal imaging cameras
- Chainsaws
- Specialist medical response kits

Duties

The Bill requires that all parties negotiating transfer arrangements of response assets must act collaboratively, in good faith and take into account the preferences of the asset owner.

These arrangements note that any response assets obtained through fundraising or donations should be retained by the community that has the greatest need of or interest in the asset.

Asset owners have no option but to engage with FENZ in these matters and all parties are encouraged to complete transfer arrangements by the close of 30 June 2017.

This represents a large body of work to be completed in a very short time frame. We may assume that the target date is an indication the Government expects work should already be underway on the asset transfer process.

The UFBA would expect to be involved on behalf of our members in the detail of establishing the asset transfer process albeit the Bill notes that transfer arrangements may vary from case to case, depending on legal, commercial and financial circumstances. There is an obvious level of complexity here.

We will invite feedback from volunteers before making a submission.

Gratuities

The subject of gratuities has featured strongly in conversation in the past few years within the UFBA.

Specific ongoing provision for gratuities on retirement or death will not feature in the new legislation.

The Bill allows current members of the NZ Fire Service (qualifying employees) and members of volunteer fire brigades to maintain eligibility for gratuities.

This is in effect a 'grandfathering' clause in relation to the future repeal of the Fire Service Act 1975.

While the Bill is silent on the future of gratuities beyond current members, it would be open to the FENZ Board to continue with gratuity provisions or similar personnel benefits as before.

Of the many advantages this approach brings, administration of gratuities is simplified, especially in the area of gratuity payment reviews and the like.

We will seek the views of members on these matters before we make a submission.

Appendix 1

