



Fire and Emergency New Zealand Bill

**United Fire Brigades' Association of New Zealand
and
Forest and Rural Fire Association of New Zealand**

Joint Submission to the Government Administration Committee

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1. Introduction

This is the joint submission of the United Fire Brigades' Association of New Zealand (UFBA) and the Forest and Rural Fire Association of New Zealand (FRFANZ). The submitters request to appear before the Committee in support of this written submission.

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2. Executive Summary

- 2.1. The submitters **support** the following broad reform objectives of the Fire and Emergency New Zealand (FENZ) Bill:
 - Amalgamating urban and rural fire services into a single new unified organisation to be known as FENZ
 - Broadening the range of emergencies to which FENZ will be authorised to respond
 - Improving support for volunteers and enabling them to communicate directly with FENZ provided the express obligation to consult with the associations representing and advocating for volunteers is included
 - Improving and clarifying the funding arrangements of FENZ.
- 2.2. The submitters **support** the principle of local input into FENZ planning but **do not support** the intent to establish a network of special purpose Local Committees. Instead they **recommend** the FENZ local advisory function be assigned to the existing and closely aligned Civil Defence Emergency Management Co-ordinating Executive Groups established in section 20 of the Civil Defence Emergency Management Act 2002.
- 2.3. The submitters **support** the volunteer-centric principles underpinning the duties imposed on FENZ in clause 33 of the Bill. They submit, however, that the overall duty imposed on FENZ should be stronger than “to take reasonable steps” and **recommend** the duty be amended “to take **all** practicable steps”.
- 2.4. The submitters consider the Bill is silent on too many important issues relating to the high level design of the new organisation, the associated service delivery framework and the chain of command. They understand the merits of the so-called “permissive” and “enabling” approach but assert that it is inherently unsuited to legislating for an entirely new emergency service. In the absence of indications from FENZ on its approach to basic questions of organisational design and service delivery it is difficult to know how to sensibly comment on some aspects of the Bill.
- 2.5. The submitters **recommend** the fundamental relationship between the community, the individual volunteer and FENZ be prescribed in law. They further **recommend** that the relationship be founded on membership of the local volunteer brigade or fire force as it is currently.
- 2.6. The submitters **recommend** a more prescriptive approach apply to key features of the organisational design of FENZ and to the arrangements for command and control and service delivery. They consider this is entirely consistent with the highly prescriptive approach adopted in the Bill with respect to other important aspects of FENZ including its coercive powers, its funding arrangements and asset transfer arrangements.

3. The UFBA

The UFBA was established in 1878, long before New Zealand's first fire legislation was enacted. Its founding objectives were to:

- advocate the interests of fire brigades to their governing councils and fire boards,
- develop firefighting skills and competencies through friendly inter-brigade competitions, and
- foster recruitment and retention of volunteers through service recognition, welfare provision and social events.

Today, the UFBA advocates the interests of its member brigades and fire forces to the New Zealand Fire Service Commission (NZFSC) and to the New Zealand Fire Service (NZFS). It continues to develop firefighting skills and competencies and to foster volunteer recruitment and retention via a mix of challenges, service recognition and technical education programmes.

UFBA membership comprises 441 volunteer urban fire brigades and rural fire forces, and 94 career service brigades, industrial brigades and defence fire forces. The 441 volunteer fire brigades and rural fire forces are made up of over 12,000 active volunteers.

4. FRFANZ

FRFANZ was established in 1987 by a group of senior rural fire officers to improve rural fire control measures and codes of practice. That objective continues today and the Association runs a well-attended annual conference with speakers from abroad and across New Zealand. The Association also offers training seminars in conjunction with the Conference to take advantage of the overseas speakers.

Following the first two FRFANZ conferences, several voluntary rural fire forces approached the Association with a view to the Association promoting and advocating the interests of rural fire volunteers at a national level. At that time the extent of volunteer involvement in the rural sector was poorly understood and there was no national register of rural fire forces or their members.

Rural fire volunteers were also ineligible to join the UFBA or to participate in UFBA or NZFS service honours and awards as this was only open to members of brigades under the control of the NZ Fire Service Commission.

The Association accepted the role of promoting and advocating voluntarism in the rural fire services and today it provides a wide range of services to volunteer members including service honours and awards, study grants, rural fire themed safety clothing and mementoes etc.

5. UFBA / FRFANZ Memorandum of Understanding

In anticipation of the FENZ Bill being introduced to Parliament and New Zealand's urban and rural fire services amalgamating to form a new unified fire and emergency services organisation, the UFBA and FRFANZ entered into an agreement to work together to better represent and advocate for their volunteer constituency.

This joint submission is the first tangible outcome of that agreement and is intended to ensure the voices of the 12,000 volunteers who serve communities through their local urban brigade or rural fire force are heard clearly and distinctly. The Agreement contemplates that the parties will review the state of the relationship from time to time with a view to forging closer formal ties in due course.

6. Arrangement of this Submission

This joint submission broadly follows the sequential order of the Bill. It is preceded by a commentary on the implications of the enabling and permissive approach of the Bill for volunteers, their brigades and fire forces, the communities they serve and the Associations that represent and advocate their interests.

7. Prescriptive Versus Permissive

The Fire Service Act 1975 and the Forest and Rural Fires Act 1977 follow a prescriptive approach. They set out in fine detail how the services responsible for managing the risk of fire and certain other emergencies in urban and rural areas are to be configured and structured, and how:

- the services are governed, managed, and commanded
- the territorial and functional jurisdictions of the separate services are determined
- operational standards are set
- fire safety knowledge, practice and public awareness is advanced and promoted
- specified powers (including coercive powers) are vested directly in named officers
- named officers are held accountable for service delivery
- volunteer fire brigades and voluntary rural forces are established and resourced
- volunteers are recruited, engaged and supported
- volunteers are formally recognised as members of the organisation, and
- liability is limited.

The purpose of this prescriptive approach to legislation is two-fold. First, it provides communities with long-term certainty regarding the key features of their emergency services; governance, management, service delivery framework and performance standards. These prescriptions assure communities that the services will not be lightly or frequently modified and that well-resourced and well-commanded help will be at hand in time of need. Second, it provides those who work and volunteer in the services with clarity and certainty around their role in the organisation, their place in the organisation and the community's expectations of them as members of a national organisation serving their local community.

The Bill takes an entirely different approach. It establishes FENZ's purpose and functions and then leaves it to the Board to establish the management structure, the operational service delivery framework, the performance standards etc. All of the certainty and assurance communities look for is lost with this approach.

For volunteers the implications of the permissive approach of the FENZ Bill are significant. Under the current legislation volunteers enjoy well defined rights to manage their own affairs within the terms of their brigade's Agreement of Service with the Commission or the constitution approved by their Rural Fire Authority. Numerous other rights and privileges including Commission funding of volunteer brigades for service recognition and social purposes, conference travel and accommodation, etc. are prescribed. The urban fire legislation also sets out a mandatory right of their Association (the UFBA) to be consulted on matters that affect volunteers.

Importantly, the current legislation recognises explicitly that the fundamental relationship between the community, the individual volunteer and the national service is by way of membership of the local brigade or fire force. How local brigades/fire forces are established and disestablished, how they are bound to their parent service by Agreements of Service and how their internal rules of association are established are all prescribed in the legislation.

These prescribed rights and privileges were (in the case of NZ Fire Service volunteer fire brigades) carefully negotiated in 1975 when the reforms of the day brought together some 220

separate metropolitan and district fire services into one unified urban fire service. The rights and privileges currently afforded volunteers and their brigades reflect the desire of the community to contribute to and participate in the protection of what it values locally balanced against the needs of a national service for interoperability, a unified command structure and common branding.

By contrast, the Bill is essentially silent on all these matters and removes long-standing rights that historically have worked and served the community well. For volunteers the implications are potentially severe:

- (1) First, they give up all the rights and privileges they enjoy in current legislation of mandatory consultation through the UFBA in exchange for an obligation on FENZ to take reasonable steps to consult with volunteers and 'relevant organisations' (as determined by FENZ) on matters that "*might reasonably be expected to substantially affect*" them.
- (2) Second, they fear that the enactment of the FENZ Bill may render void the Agreements of Service, written agreements and associated registrations that brigades and fire forces currently have with the Commission or relevant Rural Fire Authority. While it may be arguable that these agreements and registrations pass unchanged to FENZ under clause 8(4) Continuation of FENZ (for Volunteer Fire Brigades) and clause 8(1)(d) of Schedule 1 (for Volunteer Rural Fire Forces) there is a degree of uncertainty. This is increased due to the fact there is no express statement that FENZ is declared to be the successor of the NZFSC as was the case previously in s.4(3) of the Fire Service Act.

Urban and rural volunteers expect precisely the same degree of clarity and certainty with respect to the status of their brigades and fire forces as the Bill provides Industry Fire Brigades in clause 11 of Schedule 1. The submitters recommend that for avoidance of any doubt a new clause be inserted into the Bill to the effect:

"On and from the commencement date (a) all agreements of service between the Commission and volunteer fire brigades under section 34(1)(a) and registrations under 34(1)(b) of the Fire Service Act and (b) all written agreements and registrations between Rural Fire Authorities and voluntary rural forces under s 36 of the Forest and Rural Fires Regulations 2005 continue in force until such time as:

- (a) the agreements and registrations expire in accordance with their terms; or*
- (b) Those agreements are replaced by agreements entered into with FENZ under clauses 33 and 34 of the Bill.*

- (3) Third, there is a concern that in the future FENZ is not obliged to enter into Agreements of Service with any organisation providing independent advocacy and support to FENZ volunteers whether they be individual fire brigades or the UFBA.

The submitters record that they are currently working with the Transition sub-committee of the NZ Fire Service Commission and senior officials of the Transition Team on many of these matters. They consider they are making good progress and are reasonably confident of reaching an outcome satisfactory to volunteers. They are conscious, however, that it will be open to future FENZ Boards and senior management teams to revise the terms of whatever arrangements are agreed with the current board and management. They understand the merits of this approach in terms of the ability to respond to unanticipated future circumstances.

On balance, however, the submitters consider the enabling and permissive approach of the Bill with respect to the fundamental relationship between a community, an individual volunteer and FENZ demands too big a leap of faith on the part of volunteers and volunteer brigades.

The submitters **recommend** that the fundamental relationship between the community, the individual volunteer and FENZ be prescribed in law and that it be by way of membership of

independently constituted local brigades or fire forces. More generally they **recommend** the key features of the organisational service delivery framework be prescribed in legislation. .

8. Purpose of the Act

The submitters **support** the purpose of the Act and in particular **strongly support** the purpose set out in clause 3(c) *improve support for volunteers and enable them to communicate directly with FENZ.*

9. Functions of FENZ

The submitters **support** the Main Functions and the Additional Functions of FENZ. Volunteers are pleased that the much broader role fire services play in contemporary society has been recognised in the Bill. The submitters note volunteers are wary that they may be expected or even required to respond to the full range of Additional Functions set in clause 12.

Volunteers will, within reason, always do what their community expects of them. They acknowledge, however, that in many communities there are limits to their capacity and capability. Consistent with the qualification contained in clause 12(2), the submitters **recommend** that the Bill provide for a formal process that enables brigades and fire forces to participate in decision making around their capability and capacity to perform the Additional Functions.

10. Operating Principles

Subject to the reservations expressed in the commentary in paragraph 7 on the Prescriptive versus Permissive approaches, the submitters **support** the Operating Principles set out in clause 13.

Given the practical difficulties of engaging with personnel distributed across the length and breadth of New Zealand the submitters **recommend** clause 13(3)(d) be expanded to include a new subsection (iv) that reads: “**unions and associations** that represent and advocate for FENZ personnel”.

11. Local Committees

The submitters **do not support** the proposal to establish a network of special purpose Local Committees.

The concept of Regional Influencing Committees (as they were originally labelled) arose out of submissions received in response to the May 2015 Fire Services Review discussion document. These submissions stressed the importance of local input to, and involvement in fire and emergency services. They were a reaction to the proposals contained in Option 3 of the discussion document that (1) volunteer brigades and rural fire forces should be “*folded into*” a new unified service and volunteers should be “*directly engaged*” by the new unified service.

In the view of the submitters these submissions should be interpreted as favouring the existing arrangements for capturing local input (i.e. via volunteer fire brigades and voluntary rural fire forces) rather than promoting the establishment of an entirely new and heavily bureaucratic advisory structure.

This submission **recommends** Local Committees be deleted from the Bill.

If the Government Administration Committee determines that local brigades and fire forces are inadequate to support FENZ’s Local Planning function set out clause 17 of the Bill then the submitters **recommend** that s 20 of the Civil Defence Emergency Management Act 2002 be amended to provide for this function along with amendments to membership arrangements to reflect the FENZ advisory function. This approach has the merit of giving instant effect to the operating principle set out in clause 13(2)(b)(ii) “*to work collaboratively with other relevant organisations*”. It has the additional merit of avoiding a massive financial and administrative

burden on the new organisation and instead leverages off an already well understood and well-proven local advisory structure.

If the Government Administration Committee determines Local Committees are to remain in the Bill then the submitters **recommend** the function “*to consider and promote the interests of the local area’s FENZ volunteers*” be deleted. This function is already provided for in clause 34 of the Bill (albeit inadequately at this point). Furthermore it is inconsistent with the primary purpose of the Bill set out in clause 3(c), namely to “*improve support for volunteers and enable them to communicate **directly** with FENZ*” [Emphasis added]. Finally, if this function is intended to address personnel resourcing and planning it is not clear why volunteers have been included but employed staff have been excluded.

12. Compulsory Disengagement

The submitters **support** the need for all operational personnel to maintain a standard of fitness sufficient to ensure they can perform competently their duties. In discussion with volunteers it is apparent that most Chief Fire Officers and Rural Fire Officers know the capability of their crew and instinctively assign them roles at incidents that reflect that capability. In that light some volunteers considered this provision excessive.

Support for this provision is provided subject to amendments being made to:

- Specifically require in clause 28(3) consultation with associations representing and advocating for volunteers as to the prescribed standards as currently there is no guarantee FENZ will recognise any association representing or advocating on behalf of personnel as set out in clause 28(3)
- The changes being made to the dispute resolution provisions in Subpart 5 as set out later in this submission—refer paragraph 17.2.

13. Duty of FENZ in Relation to Volunteers

This submission **supports** the duties imposed on FENZ in relation to volunteers. They consider, however, that the duties are not sufficiently strong given the overall purposes of the Bill. They recommend clause 33(1) be amended to read “*FENZ must take all practicable steps-*”.

In addition, the submitters consider clause 33(1)(b) is too qualified. They **recommend** it be amended to read “*to consult with FENZ volunteers, and associations that represent and advocate for volunteers referred to in clause 34 on all matters that affect, directly or indirectly, those volunteers.*”

14. FENZ to make Advocacy and Support Services Available

The submitters observe that on page 7 of the Explanatory Note that precedes the Bill it states that “*Clause 34 requires FENZ to make advocacy and support services available to FENZ volunteers (at no cost to those volunteers)*”. A close reading of the Bill suggests this is not a requirement but a discretionary matter as it says “*FENZ may enter into agreements with any organisations providing independent advocacy and support services to make those services available to FENZ volunteers*” (clause 34(1)).

The submitters **recommend** clause 34(1) be amended to read: “*FENZ must enter into an agreement with one or more organisations providing independent advocacy and support services to make those services available to FENZ volunteers*”.

15. Part 2. Emergencies, Fire Control, Industry Brigades, Water Supply, Evacuation

This submission supports the powers and functions set out in the Bill and recognise those powers and functions as both necessary and adequate enablers for authorised personnel to operate in a broad based fire and emergency service environment.

The submitters note in clause 45 that FENZ personnel may take water from any water main for firefighting or training purposes and in clause 64, powers are vested in FENZ for testing the adequacy of water supplies for firefighting purposes. Reticulated water supplies are almost exclusively accessed from roadways. Water testing work on every individual hydrant or indeed the ability of FENZ volunteers to conduct training exercises from public hydrants will require an approved traffic management plan issued by a local Road Control Authority (RCA).

In consideration of the vast volume of traffic management plans that would be required daily in often minor circumstances, this is totally impractical and places a burden upon FENZ personnel and severe restrictions upon testing and training.

The submitters **recommend** that FENZ or its authorised personnel are provided with special powers to work on roads in non-emergency circumstances without the consent of the local RCA or FENZ is provided with limited powers to act as a RCA in all areas of New Zealand.

16. Part 3. Levy

Volunteers have no special interest in the funding arrangements of FENZ except to the extent that the arrangements generate sufficient funds to ensure FENZ is adequately resourced to perform its Main and Additional Functions. However, in their capacity as property owners and levy payers volunteers have a legitimate interest in the levy arrangements.

Under the current arrangements volunteers are in the anomalous position of contributing to the protection of their community twice; first through the levy on their insured property and second through their contribution as volunteers in their local brigade or fire force. This is in stark contrast to many who make no contribution because they choose not to insure.

The submitters **recommend** that this anomalous position be addressed and that FENZ volunteers be exempted from paying levy on insurance on their primary place of residence. This could be achieved at a very low transaction cost by FENZ issuing volunteers with a certificate of exemption to present to their insurers.

The loss of revenue to FENZ would be modest. Assuming (a) all 12,000 volunteers took up the measure and (b) all volunteers previously paid the maximum levy on residential property of \$76 per annum the measure would reduce levy income to FENZ by approximately \$0.9 million. Given total levy proceeds in the year ended 31 March 2015 exceeded \$350 million that is a small cost to recognise the contribution of volunteers.

17. Part 4. Miscellaneous and Enforcement Provisions

17.1. Limitation of Liability

The submitters **support** the provisions of clauses 123 and 124 that a) limit the liability of any FENZ personnel in prescribed circumstances and b) provide defences in actions or proceedings related to designated emergency services.

The submitters would like to see clause 123(1) amended from “...*any relevant fire safety legislation*” to “...*any other enactment*”. This is the wording currently found in section 43(1) of the Fire Service Act. It would alleviate concerns that the proposed new wording is limited and would not cover say potential liability arising under the Health and Safety at Work Act even if that potential liability arose whilst they were acting as volunteers.

17.2. Dispute Resolution

The submitters **support** the duty imposed on FENZ to develop a dispute resolution scheme. In making this submission it is noted that clause 141 requires FENZ to consult the persons or representatives of the persons that FENZ considers will be substantially affected by the scheme before applying to the Minister for it to be approved.

The Fire Service Act 1975 at section 34(5) expressly provides for the UFBA to be given prior written notice of any dispute involving volunteers and it is mandatory for the representations of the UFBA to be considered prior to any decision being made. Whilst FENZ may consult with the associations representing and advocating for volunteers as regards to the proposed dispute resolution scheme, clause 141(2) provides that a failure to comply does not affect the validity of the scheme.

Accordingly the submitters seek an amendment to the Bill that requires consultation with the associations that represent volunteers as to the proposed dispute resolution scheme.

18. Schedule 1

18.1. Response Assets

Volunteer brigades and voluntary rural fire forces own substantial inventories of response assets. Many of these assets were acquired from the proceeds of fundraising efforts in the local community and were intended to be held by the local brigade or fire force for the enduring benefit of the community.

Volunteers are concerned that the principle set out in clause 16(2)(b) of Schedule 1 namely *“that firefighting assets acquired significantly through fund raising or community donations should be allowed to be retained by the community that has the greatest need of, and interest in, those assets”* is confusing as it lacks precision and will lead to disputes.

- Does it mean that community funded assets are outside the scope of this section and should be retained **by** the community that funded them rather than transferred to FENZ?
- Does it mean they are within the scope of the section and should be transferred to FENZ but retained **in** the community that funded them?
- Does it mean that assets funded by one community should be transferred to another community that has a greater need?
- Does the use of the word “interest” mean an ownership interest in the asset or something else?

The submitters **assert this section needs substantial clarification** before they can usefully submit on it.

Irrespective of the interpretation to be placed on clause 16(2)(b) of Schedule 1 (discussed above) it appears clear that when clauses 16 and 17 of Schedule 1 are read together, volunteer brigades and voluntary rural forces must transfer ownership of their response assets to FENZ. Volunteers fear that this could be read as representing a compulsory transfer provision when combined with the uncertainty surrounding the future status of brigades may result first, in response assets being stripped out of a community and second, the agreement of service and registration of the brigade or rural force being voided thereby leaving the community unprotected.

The submitters are confident this was not the intention and seek to have the situation clarified. If it was somehow intended that the response assets are to be compulsorily transferred to FENZ then there must be as a minimum, corresponding and ongoing obligations on FENZ to take responsibility for maintaining the response capability in that community to the highest standard

The submitters **recommend** that an additional sub clause be added to clause 17 to the effect:

Where a volunteer fire brigade or voluntary rural fire transfers ownership of a response asset to FENZ in accordance with clause 16 FENZ must continue to provide a response capability of no lesser standard in that community.

In the absence of that certainty and security for communities served by Volunteer Fire Brigades and Volunteer Rural Fire Forces the submitters **recommend** that the definition of affected entity be amended by the deletion of clauses 1(a) to 1(d) of Schedule 1.

Many smaller volunteer fire brigades and voluntary rural fire forces that own response assets are ill-equipped to engage in a commercial negotiation with FENZ if it is decided to proceed as proposed. To ensure fair dealing the submitters **recommend** FENZ make available at its cost independent commercial negotiators to act for affected entities.

18.2. Gratuities

Volunteers do not wish to be paid for what they do. That is a bottom line for fire service volunteers. However, the Bill's apparent unilateral termination via clause 15 of Schedule 1 of the Bill of the token and symbolic gratuity payable after 10 years' service as a volunteer as currently set out in section 56 of the Fire Service Act flies in the face of numerous other sections of the Bill including by way of example clauses 3(a) and (c) and clauses 33(1)(a) and (3).

Such a provision would be entirely at odds with the duty imposed on FENZ to recognise, respect and promote the contribution of FENZ volunteers. At a minimum it is grossly disrespectful of the contribution of volunteers.

The submitters **recommend** that:

- (a) the substance of s 56 of the Fire Service Act be carried over to the FENZ Bill so that gratuities are not only grandparented but continue for all future FENZ volunteers who will be making similar contributions. This aspect could be addressed simply by changing the word *"and"* to *"or"* at the end of clause 15(1)(a) and amending clause 15(2)(b) to read *"from the commencement of this clause are or become a FENZ volunteer"*,
- (b) the annual rate at which gratuity is accrued be increased by a formula derived from the Consumer Price Index so as to restore the gratuity's value to the same relative value as of the date of the previous adjustment,
- (c) the rate of accrual be adjusted by the same formula every two years from the commencement of FENZ, and
- (d) the past service of FENZ volunteers transferred from voluntary rural forces be recognised for the purposes of calculating their eligibility for gratuity.