



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Fire and Emergency New Zealand Bill

18/08/2016

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1 Introduction

- 1.1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Fire and Emergency New Zealand Bill (Bill). The Bill will provide for a new legislative framework governing the reform of and funding for fire services and specified emergency response within New Zealand.
- 1.2 The Law Society proposes a number of minor amendments to particular clauses in the Bill.

2 Definition of “authorised person” in clause 6

- 2.1 The definition of “authorised person” in clause 6 lacks sufficient safeguards to ensure that the very broad powers granted to such persons (as in clauses 35, 36, 37 and 39) are entrusted to those with appropriate experience and expertise. The Law Society recommends that these matters be more clearly defined. A possible model might be the Biosecurity Act 1993, which provides that an authorised person must have the appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to that person.¹

3 Definition of "contract of fire insurance" in clause 6

- 3.1 It appears that a "contract of fire insurance" is intended to be a subset of a "contract of insurance" (as also defined in clause 6). If so, the Law Society suggests the definition of "contract of fire insurance" in clause 6 should be amended as follows, for clarity and to avoid unnecessary duplication:

contract of fire insurance means a contract of insurance ~~an agreement~~ under which any property is insured against loss or damage from fire, whether the contract of insurance agreement includes other risks or not, ~~but does not include any contract of marine insurance or any contract of reinsurance~~

- 3.2 The definition of “contract of fire insurance” in the Bill is evidently intended to track the definition of that term in the Earthquake Commission Act 1993 (EQC Act). Because cover under the EQC Act turns on the property owner holding a contract of fire insurance there should be consistency between the definition in that Act and in the new Fire and Emergency New Zealand Act when it comes into force.

4 Clause 11 – Main functions of FENZ

- 4.1 One of the main functions of Fire and Emergency New Zealand (FENZ) is to rescue “persons who are trapped as a result of transport accidents or other incidents”.² The term “other incidents” is not defined and could extend beyond FENZ’s intended role, which may result in confusion over the extent to which FENZ and other response and emergency agencies like the Police and Search and Rescue agencies are required to assist. This potential for confusion is highlighted by clause 12(3) which extends the functions of FENZ to the “extent that FENZ has the capability and capacity to do so”. The Regulatory Impact Statement notes existing arrangements that are in place with other emergency providers, which implies the need to enable FENZ to perform wider functions to support other agencies. The construction of the Bill does not however make this clear. Effective alignment of

¹ Biosecurity Act 1993, s 103(6).

² Clause 11(2)(e).

emergency powers across various agencies is sensible – especially since each operates under different empowering provisions.

- 4.2 Accordingly, the Law Society recommends that the Bill more clearly identifies the sort of incidents that are intended to be covered by the expression "other incidents" and expressly identifies the primary agencies responsible for specific emergency responses.
- 4.3 Rescuing people trapped in incidents other than fires or transport accidents arguably already falls within clause 12(3)(c), but this could be clarified.
- 4.4 The Law Society also recommends that clause 12(1) be drafted using language that is more positive and expressly enabling – i.e. "FENZ may assist in matters provided for in subsection (3), to the extent that FENZ has the capability and capacity to do so."

5 Clause 22 – delegation of functions, duties and powers

- 5.1 Clause 22 provides very wide powers for the board of FENZ to delegate any of the functions, duties, and powers of FENZ or the Board to a broad range of persons, including "any other person or persons approved by the board". A delegate to whom functions or powers are delegated may, in turn, delegate the function or power to a subdelegate. Private sector delegates may only subdelegate functions or powers with the prior written consent of the board, but no such constraint applies where the delegate is not from the private sector. The Law Society considers that, to ensure the board is able to ensure FENZ efficiently administers the Act (clause 11(2)(g)) all sub-delegations, whether to the private sector or not, should be subject to the prior written consent of the board. As currently drafted, the board might not even be informed that a sub-delegation has occurred.
- 5.2 In addition, the Law Society notes that clause 22(4), which currently provides that "[a] delegation may be revoked at any time by written notice of the board to the subdelegate", arguably only applies to sub-delegations. According to usual administrative law principles, delegations *and* sub-delegations are revocable by the primary holder of the power.
- 5.3 Accordingly, the Law Society suggests that the following amendments be made to clause 22(3) and (4):
 - (3) ~~However, in cases of delegations made to or by persons in the private sector, a~~ A delegate may subdelegate the function or power only with the prior written consent of the board.
 - (4) A delegation or sub-delegation may be revoked at any time by written notice of the board to the delegate or subdelegate.

6 Clauses 28 and 29 – health standards

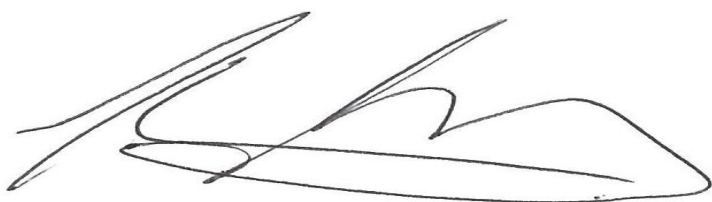
- 6.1 Clause 28 empowers the board to prescribe health standards required of operational personnel to ensure they are fit to competently perform their duties. Clause 29 deems such health standards to be communicated to operational personnel if they have been published in a magazine distributed to all operational personnel or brought to operational personnel's personal notice.
- 6.2 In the interests of accessibility and transparency, the Law Society considers that such health standards should also be required to be made publicly available on FENZ's website.

7 Part 2 of the Bill

- 7.1 The wide powers and functions of authorised persons in clauses 35 – 37 are not specifically constrained to being exercised in a manner that is reasonable or necessary. By contrast, clauses 39(1), 40(2), 41(1) (g), 42(b) and 42(c) include a number of different thresholds of necessity / reasonable necessity. The absence of constraints in clauses 35 – 37 is also inconsistent with the provisions relating to FENZ inspectors, clauses 134 and 135, which are subject to reasonable belief requirements. The number of different thresholds under which the powers may be exercised could be confusing and needlessly complicate the interpretation and application of these provisions.
- 7.2 The Law Society considers that the relationship between the powers contained in clauses 35 – 37 and those in clauses 39 – 42 is unclear. For example, if an unauthorised person breaks into a house that is on fire in order to control the fire, would that person be acting under s 35(a)(ii) or 39(2)(b) or both? In the Law Society’s submission, the relationship between the broad powers in clauses 35 – 37 and the more specific powers in clauses 39 – 42 should be clarified. The exercise of all of those powers should be limited to what is reasonably necessary in the circumstances.
- 7.3 This is particularly important given the proposal in clause 43 that the performance of any function or duty or exercise of any power under clauses 35 – 42 is to be conclusive evidence of that person’s authority to do so and no person is required to inquire into whether authority exists. The Law Society questions the need for such a section, which could prevent necessary scrutiny of the exercise of relevant functions, duties or powers and could be open to abuse. The Law Society submits that clause 43 should be deleted from the Bill.

8 Conclusion

- 8.1 The Law Society does not wish to appear, but is available to meet with officials advising the committee if that would be of assistance.

A handwritten signature in black ink, appearing to read 'Kathryn Beck', written in a cursive style.

Kathryn Beck
President
18 August 2016