

Submission to DEPARTMENT OF INTERNAL AFFAIRS on
“DISCUSSION DOCUMENT: PROPOSED REGULATIONS TO SUPPORT
FIRE AND EMERGENCY NEW ZEALAND” (AUGUST 2016)

INTRODUCTION

1. Straterra¹ welcomes the opportunity to submit on the discussion document² released in July 2016, proposing regulations to support the revamped fire service, Fire and Emergency New Zealand (FENZ). The submission deadline of 18 August is noted.
2. Our focus is on the proposed removal of the exemption of mining and quarrying from the proposed levy on insurance contracts for physical damage and loss. In preparing this submission, Straterra has consulted with OceanaGold.
3. Straterra submits from the point of view that New Zealand needs to be fair when setting levies for services provided by statutory agencies. We will also submit in the same vein on the Fire and Emergency New Zealand Bill.

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RECOMMENDATIONS

4. Straterra recommends the Department of Internal Affairs to:
 - a) Note that Straterra is focusing this submission on the effects of proposals on mining / quarrying companies;

¹ Straterra represents NZ minerals production, exploration, research, services, and support
<http://www.straterra.co.nz/about/>

² [https://www.dia.govt.nz/vwluResources/FENZ-Regulations-Discussion-Documents/\\$file/Discussion-Documents-Regulations-for-Fire-and-Emergency-New-Zealand-Bill.pdf](https://www.dia.govt.nz/vwluResources/FENZ-Regulations-Discussion-Documents/$file/Discussion-Documents-Regulations-for-Fire-and-Emergency-New-Zealand-Bill.pdf)

- b) Agree that mining companies already pay levies to the Mines Rescue Trust, which provides some services that Fire and Emergency New Zealand would also provide;
- c) Agree that some mining operators / quarries also have in-house industrial brigades that provide some services that FENZ would also provide;
- d) Agree that in the event of an emergency at a mine / quarry that FENZ's services may not be required, or may be only partially required;
- e) Agree that to uphold a funding policy objective of equity, the levy rates for mining companies must reflect the foregoing considerations;
- f) Agree to reconsider the basis for setting levies, from insurance contracts to property value (as proposed by NZIER); and
- g) Agree to repeal the Energy Resource Levy Act 1976 in the course of enacting the FENZ Bill, as archaic, and as taking money from coal mining companies to no coherent purpose.

EXECUTIVE SUMMARY/DISCUSSION

General

- 5. Mining companies already pay a levy to the Mines Rescue Service, including for first response to emergencies, and in many cases, also have in-house "industrial brigades".
- 6. When imposing a Fire and Emergency New Zealand levy on these companies, the above should be taken into full consideration. That has not been done in this consultation.
- 7. In the interests of the Department of Internal Affairs' objective of "equity", mining companies should be identified as a special category for the setting of levies, to ensure fair treatment. It is noted that the Bill, in principle, provides for fit-for-purpose setting of levies.
- 8. That said, the proposal to calculate levies on the basis of insurance contracts for physical damage and loss is deeply flawed. There is no direct relationship between such insurance and FENZ services to policy holders. Australian States are moving away from insurance-based levies to property-based levies, as logical and equitable.
- 9. The opportunity should be taken to repeal the Energy Resource Levy Act 1976, an archaic piece of legislation that levies opencast coal miners \$2 a tonne of coal produced, to no coherent purpose.

Background

- 10. The Fire and Emergency New Zealand Bill proposes to amalgamate existing fire services, including the rural fire service and volunteer brigades, into one organisation. The current system is under strain, financially and for other reasons.

11. FENZ will have expanded powers and functions to acknowledge the increasing frequency of non-fire related responses, e.g., medical emergencies, natural disasters, hazardous substances emergencies, extreme weather events, rescue operations.
12. The funding is to be largely through a levy on insurance contracts for physical damage and loss, whether or not caused by fire. This is an expansion of scope in setting levies.
13. Levy rates will be a matter for separate regulation, on which stakeholders will be consulted separately, expected later this year (DD, page 13). The Fire and Emergency New Zealand Bill specifies a process for, and scope of consultation in clauses 105 and 106.
14. For large mining / quarry companies, the levies are expected to be significant, based on the following statement in the DD, page 16: *“some large policyholders ... may face potentially significant levy increases”*.
15. To date there have been 21 categories of exemption from the fire service levy, including mining / quarrying. It is proposed that the exemption in mining / quarrying be removed, alongside 17 other categories, e.g., farming, goods in transit, aircraft, civil infrastructure.
16. Objectives for funding of FENZ are listed on page 10 of the discussion document as: equity (*“policyholder’s contribution reflects potential service use”*); sufficiency (FENZ has enough funding); predictability (no sudden changes to levies); and cost effectiveness (the regime is simple and easy to administer), cf. clause 69, FENZ Bill.

Removal of mining / quarrying from exemption from levy

17. Straterra considers that the rationale for removing the exemption of levy payment from mining / quarrying is an oversimplification. This is that mining operations / quarries *“may benefit from the fire services’ wider response mandate, including natural disasters, extreme weather events, hazardous substances etc”* (DD, pages 17-18).
18. At issue is that mining companies already pay a levy to the Mines Rescue Trust under the Mines Rescue Act 2013 for, among other things, *“deploying mines rescue brigades and other resources, and providing advice to mine operators, during emergencies”* (s8 (c), MRA).
19. For many mining operations, the Mines Rescue Trust provides the first response to an emergency, and / or the operator will have the in-house resources (an industrial brigade) to provide the first response.
20. It is noted that the fire service may also have a role in emergency response, and this is envisaged in the MRA, e.g., s23 (b), which states: *“nothing in this Part affects the functions, duties, or powers of an agency or service [including fire and ambulance services], or any person acting for or on behalf of an agency or service.”*
21. In practical terms, the fire service may provide the secondary response (e.g., rescue of buried mine workers), after the first response has been conducted by the Mines Rescue Service, and / or by the company (e.g., evacuation of workers who are not buried and arrangement of any

medical treatment, incident control, risk assessment of the situation, determination of next steps).

22. An additional scenario is an underground fire in a gold mine, which the mining company puts out using its own resources, while also rescuing and evacuating mine workers.
23. The Bill oversimplifies matters in clause 104 (4) when it states: *“The Minister may recommend the making of regulations relating to an exemption ... only if the Minister is satisfied that the exemption is for property or a type of property in relation to which there is **no potential** for FENZ’s services to be required.”*
24. From the above discussion, there certainly is potential for FENZ’s services to be required, but not always, or in a joint role with, or in a subsidiary role to other service providers. This reflection would be consistent with clause 69 (c) and (e) (i).
25. In consideration of the DIA’s objective of “equity” for insurance policyholders (DD, page 10), it is, therefore, wrong to levy mining companies on the same basis as other property owners.

Basis for setting levies

26. The concept of levying on the basis of insurance contracts for physical damage and loss, whether or not related to fire, is fundamentally flawed.
27. If a company suffered physical damage to or loss of equipment, for example, FENZ services in most cases would not be required.
28. Straterra is concerned that this issue looks to be out of scope for the present consultation, and urges DIA to reconsider the basis on which levies would be calculated.
29. In 2013 and 2014 the New Zealand Institute of Economic Research prepared a series of reports³ for the Insurance Council of New Zealand⁴ on policy for funding fire services. We reproduce below the following excerpts (emphasis added):
 - *“The response of Australian States to these changing priorities [away from fire towards other types of emergency] ... has been to shift funding away from insurance to **levies on property**”;*
 - *“It is feasible to devise levy regimes based on property values (capital values or improvement values) under which levy rates per unit value are no higher than those based on insurance indemnity values in the current regime, and **levy rates are significantly lower for higher-value properties.**”*
 - *“Our arguments for changing to a different funding system were based upon **public policy principles**, including equity and fairness, efficiency, legitimacy, transparency and visibility, as well as on revenue design and administration principles including neutrality, breadth of*

³ <http://www.icnz.org.nz/wp-content/uploads/Funding-the-Fire-Service-L Levy-on-Commercial-Real-Property-NZIER-Final-Report-May-2014.pdf>

⁴ <http://www.icnz.org.nz/urgent-change-required-to-unfair-insurance-based-fire-service-levy/>

base, certainty of revenue, simplicity, ease of administration, and convenience of payment”;

- *“Among those preferred options were regimes with increased government funding, along with the collection of levies based upon the **value of property** and a levy as part of the registration charge for motor vehicles”;*
- *“**All but two of the Australian States and Territories** now fund their fire services through levies on property values, or from consolidated government funds, rather than via a levy on insurance.”*

30. If the NZIER’s recommendations were followed, property owners who do not insure their property or under-insure would not be able to avoid paying a fair contribution to FENZ.
31. We strongly recommend DIA to consider the NZIER reports, and develop an understanding of the policy being followed by most Australian States and Territories. We will be submitting in this vein on the Bill.

Energy Resources Levy

32. The opportunity should be taken to repeal the Energy Resources Levy Act 1976, *“An Act to make provision for the imposition, assessment, and collection of a levy on certain energy resources produced in New Zealand”*.⁵
33. The objective of the Act was stated to be: *“to set the price for energy and various energy resources in New Zealand at a level that encourages the conservation of those resources and gives them relativity with other alternative sources of energy”* (1st Reading, Hansard).
34. This archaic and muddled objective has been superseded by concepts such as free trade and market economics, and the Crown Minerals Act, none of which existed in New Zealand in 1976.
35. The ERL Act was amended in 1978 to limit its application to opencast coal mines only. Previously it also covered underground operations. The amendment was to minimise the losses then being incurred by State Coal Mines (later renamed Solid Energy NZ) on its underground mining operations. The exemption also benefited underground operations run by private coal miners.)
36. In April 2009 the Office of the Minister for Regulatory Reform recommended to the Cabinet Economic Growth and Infrastructure Committee the repeal of the ERL Act in 2009, noting that a suitable regulatory vehicle would need to be found⁶.
37. It would be a straightforward matter to repeal the ERL Act when enacting the Fire and Emergency New Zealand Bill.

⁵ ERL Act 1976

http://www.legislation.govt.nz/act/public/1976/0071/latest/DLM439695.html?search=ta_act_E_ac%40ainf%40anif_an%40bn%40rn_25_a&p=2#DLM439850

⁶ <http://www.treasury.govt.nz/regulation/informationreleases/pdfs/egi-09-7.pdf> (paras. 38-41)