Proposals for Fire and Emergency New Zealand regulations (fire safety and evacuation of buildings, and offences and penalties)

 Discussion Document

**August 2017**

Foreword

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| On 1 July 2017 the Fire and Emergency New Zealand Act (FENZ Act) came into force, and Fire and Emergency New Zealand (FENZ) was established. This new organisation brings together rural and urban firefighters, the New Zealand Fire Service, the National Rural Fire Authority, 38 Rural Fire Authorities for the first time in New Zealand’s history. It represents the biggest change to New Zealand’s fire services in 70 years, and the most significant change to fire legislation in over 40 years.The new Act recognises the expanded mandate of firefighters in New Zealand, and provides them with the appropriate powers and functions to do their jobs effectively. It recognises the importance of volunteers, the input of communities, and the need for greater funding.The Fire Services Review and the creation of Fire and Emergency New Zealand would not have been possible without the input and support from stakeholders, communities and individuals.Some regulations to support the FENZ Act have already been put in place. However we are seeking your views on two key areas of regulation - the replacement of the Fire Safety and Evacuation of Buildings Regulations 2006, and offences and penalties which will form part of the compliance and enforcement strategy to be developed by FENZ.These regulations are important to provide for the safety of buildings occupants, and ensure safe evacuation in the event of a fire or fire alarm. The offences and penalties are an important avenue for FENZ to address issues of non-compliance with the new legislation and to provide appropriate and proportional penalties. Please take the opportunity to have your say on these important issues. |
| Hon Peter DunneMinister of Internal Affairs |
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Contents

[Introduction 4](#_Toc488059426)

[Background to fire service reform 4](#_Toc488059427)

[Purpose of this discussion document 4](#_Toc488059428)

[How to respond to this consultation 5](#_Toc488059429)

[How your submissions will be used 5](#_Toc488059430)

[Part 1: Fire Safety and Evacuation of Buildings 6](#_Toc488059431)

[Policy objectives 6](#_Toc488059432)

[Fire Safety and Evacuation of Buildings Regulations 2006 7](#_Toc488059433)

[Fire and Emergency New Zealand Act 2017 7](#_Toc488059434)

[Key changes from the FSEBR 9](#_Toc488059435)

[Key Issues for new regulations 11](#_Toc488059436)

[Issue 1: Information relating to evacuation schemes 11](#_Toc488059437)

[Issue 2: Interaction and consistency with other agencies and their legislation 14](#_Toc488059438)

[Issue 3: Responsibilities of building owners and occupants 15](#_Toc488059439)

[Issue 4: Evacuation of those requiring assistance to evacuate during a fire emergency 19](#_Toc488059440)

[Issue 5: Timing of evacuation schemes and trial evacuations 22](#_Toc488059441)

[Updates or other changes 25](#_Toc488059442)

[Part 2: Offences and penalties 26](#_Toc488059443)

[Background 26](#_Toc488059444)

[Policy objectives 28](#_Toc488059445)

[Issue 1: What offences should there be? 28](#_Toc488059446)

[Issue 2: Options for setting offence penalties 30](#_Toc488059447)

[Interaction of fire safety and evacuation of buildings regulations with the options for offences 33](#_Toc488059448)

[Appendix A: Matters to be included an in evacuation scheme under the FSEBR 34](#_Toc488059449)

[Appendix B: Interaction of FSEBR and other legislation 35](#_Toc488059450)

[Appendix C: Offences and penalties in Fire and Emergency New Zealand Act, Fire Service Act, and Forest and Rural Fires Act 36](#_Toc488059451)

# Introduction

## Background to fire service reform

On 1 July 2017, the New Zealand Fire Service (NZFS), National Rural Fire Authority (NRFA), and 38 Rural Fire Authorities (RFAs) amalgamated to become one organisation, Fire and Emergency New Zealand (FENZ). This is the most significant reform of New Zealand’s fire services since the 1940s.

The Fire and Emergency New Zealand Act 2017 (FENZ Act) was passed in May 2017 giving effect to Cabinet’s decisions on fire services reform. The new legislation addresses key issues identified in the reform including changing expectations of the fire services, lack of coordination and variable leadership, inconsistent investment for community needs and differences in culture between rural and urban fire services.

## Purpose of this discussion document

This discussion document discusses options and proposals relating to new regulations to support the FENZ Act. This discussion document seeks your views on:

* new regulations to replace the current Fire Safety and Evacuation of Buildings Regulations 2006; and
* offences and penalties for infringement offences, which will form part of the compliance and enforcement strategy to be developed by FENZ.

New regulations for these matters are expected to be ready by 1 May 2018, and come into force on 1 July 2018.

## How to respond to this consultation

Submissions can be emailed to: FireServicesTransition@dia.govt.nz

Submissions can also be posted to:

Fire Services Review
Department of Internal Affairs
PO Box 805
Wellington 6140

This document is a summary of information only. If you’d like more information on the decisions made by Cabinet on Fire and Emergency New Zealand and the latest news on the transition programme, please visit: <https://www.dia.govt.nz/Fire-Services-Transition>

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| **The closing date for submissions is 5pm Friday 8 September 2017.** |

## How your submissions will be used

All feedback received by the closing date will be taken into consideration before the government makes final decisions about the proposals in this discussion document.

Anyone can make a submission. If you have a view about the proposed regulations – please tell us what you think.

All submissions will be kept by the Department of Internal Affairs (the Department). The Department may publish the submissions it receives and provide a summary of them on its website www.dia.govt.nz. This would include your name or the name of your group, but not your contact details.

Submissions may be subject to a request to the Department under the Official Information Act 1982. Personal details can be withheld under this Act, including names and addresses. If you or your group do not want any information contained in your submission to be released, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal.

The Department will take your request into account. The Privacy Act 1993 governs how the Department collects, holds, uses and discloses personal information about submitters and their applications. Submitters have the right to access and correct personal information.

# Part 1: Fire Safety and Evacuation of Buildings

The FENZ Act has repealed the Fire Service Act 1975 (FS Act), and will revoke the current Fire Safety and Evacuation of Buildings Regulations 2006 (the FSEBR) as of 30 June 2018.

There are transitional saving provisions in the FENZ Act which allow the relevant provisions from the FS Act, and the FSEBR to remain in force until new regulations are made. There are also provisions which recognise the ongoing validity of already approved evacuation schemes.

In effect this means that the current FSEBR can remain in place until 30 June 2018, and new regulations will come into force on 01 July 2018, unless new regulations are made prior to this date.

New regulations replacing the FSEBR are necessary to ensure that there continues to be requirements and an approval system for the safe evacuation of buildings within a reasonable time in the event of a fire, or fire alarm.

The current system for fire safety and requiring building owners to provide and maintain either an evacuation procedure or an evacuation scheme works effectively to ensure the safety of building occupiers during a fire emergency.

As this system is widely understood and broadly effective we are not proposing to fundamentally change the basic requirements of providing and maintaining an evacuation procedure or evacuation scheme for relevant buildings.

The key consideration for any new fire safety and evacuation of buildings regulations is the safety of all building occupiers, their ability to be notified of any fire emergency, and to safely evacuate in the event of a fire emergency as well as the safety of responding firefighters. The options presented in this discussion document reflect these key considerations of occupier and firefighter safety.

## Policy objectives

We are seeking to meet the following policy objectives for the new regulations:

* improves safety and effectiveness in relation to building safety and evacuations;
* improves consistency, accountability and clarity;
* improves integration with other building design or compliance regimes; and
* improves ease of compliance for users and assessment of compliance for FENZ.

## Fire Safety and Evacuation of Buildings Regulations 2006

The FSEBR is in two parts – part one (fire safety and evacuation procedures) and part two (evacuation schemes).

Part one of the FSEBR covers most buildings that the public frequent such as hotels, hospitals, airports, shopping centres, places of worship, child care centres, restaurants and bars, libraries and cultural institutions. The FSEBR sets out the requirements and offences relating to means of escape, evacuation procedures, appliances and firefighting equipment for these types of buildings.

Part two of the FSEBR details additional requirements for an approved evacuation scheme, which covers ‘relevant buildings’ that are used for gatherings of 100 or more people, provide employment for 10 or more persons, provide accommodation for over a specified numbers of persons, or have hazardous substances present over minimum amounts.

Early childhood facilities, places providing nursing, medical specialised care for those with disabilities, geriatric care or places of lawful detention are also ‘relevant buildings’ covered by the FSEBR.

There are also four schedules to the regulations which cover:

* buildings to which part one applies (schedule 1);
* minimum amounts of hazardous substances (schedule 2);
* requirements relating to evacuation schemes (schedule 3); and
* forms related to evacuation schemes (schedule 4).

## Fire and Emergency New Zealand Act 2017

The FENZ Act contains provisions similar to some of the requirements under the FS Act for evacuation schemes. The FENZ Act sets out:

* a definition of ‘relevant buildings’ that require an evacuation scheme (section 75);
* requirements for owners of relevant buildings to provide and maintain evacuation schemes (section 76);
* that owners must apply to FENZ for approval of their evacuation scheme (section 77);
* that FENZ may revoke or require variations of an approved evacuation scheme (section 78);
* the ability for the District Court to order a relevant building be closed if the owner fails to comply with legislative requirements relating to evacuation schemes; and
* the ability for FENZ inspectors to enter and inspect buildings to ensure compliance, or undertake pre-incident planning (sections 165 and 170).

The FENZ Act contains two regulation making powers which provide for the creation of new regulations relating to fire safety, evacuation procedures (section 191) and evacuation schemes (section 192).

Regulations can be made under section 191 prescribing duties for fire safety and evacuation procedures for buildings and covering:

* the maintenance of escape routes in buildings;
* having evacuation procedures in place;
* the taking of fire prevention precautions for systems and appliances;
* controls on open flames in buildings;
* the packing/unpacking of goods in flammable packaging materials inside buildings;
* the storage of spontaneously combustible materials inside and outside of buildings; and
* the storage of goods in flammable packing materials inside and outside of buildings.

Regulations can be made under section 192 relating to evacuation schemes for relevant buildings:

* specifying the minimum amounts of hazardous substances that may be stored or processed in a building;
* specifying other purposes that buildings may be used for that would require the building to have an evacuation scheme (in addition to the ‘relevant buildings’ already identified under section 75);
* prescribing the matters to be included in an evacuation scheme;
* prescribe requirements for evacuation schemes;
* prescribing the process for approval of evacuation schemes including notification requirements on FENZ if they agree an evacuation scheme is not required, and have been notified as such by the building owner;
* prescribing the minimum standards required for automatic sprinkler systems; and
* prescribing the process for revoking, or requiring variation of an approved evacuation scheme.

## Key changes from the FSEBR

There are three key changes from the current FSEBR in the FENZ Act and expected new regulations. We have highlighted these changes below, but are only seeking comment on the revocation or required variation of an approved evacuation scheme.

The other changes identified are for information only but have been highlighted as they may have an impact on building owners.

### Revocation or required variation of an approved evacuation scheme

The FENZ Act contains the ability for FENZ to revoke or require amendments to an already approved evacuation scheme. This is a change from the FSEBR which allowed the National Commander to require amendments to unapproved schemes but contained no ability to require amendments be made to approved evacuation schemes.

We are considering the thresholds or triggers that may result in amendments being required, or revocation of an approved evacuation scheme. Examples of possible triggers or thresholds might be:

* building work carried out on the building which significantly affects its means of escape from fire;
* unsuccessful or missed trial evacuations; or
* the occupancy, the purpose of the building or the activities carried out in the building change to the extent they impact of the safe and timely evacuation of occupants.

This information is important as changes to the building, its use, or occupancy may affect the efficacy of any previously approved evacuation scheme.

We are also considering the process that would be followed by FENZ when either requiring an amendment to, or the revocation of an already approved scheme. The process could include matters such as:

* FENZ must notify the building owner in writing when requiring an amendment to, or the intention to revoke, an already approved evacuation scheme; or
* timeframes for amendments to be made to an approved scheme and for FENZ to approve an amended scheme.

If you have any comments on this matter, we welcome your views.

### No exemptions from evacuation schemes

The FS Act allowed the National Commander to exempt a building from the requirement of having an approved evacuation scheme if the National Commander was satisfied there were systems and structures in place to ensure the safe evacuation of the building in the event of an emergency.

The FENZ Act removes this ability, which means owners of all relevant buildings will have an approved evacuation scheme.

There are some exceptions to this. Section 76 (3) provides that if a building either provides employment facilities for more than 10 people, or accommodation for more than 6 people, and (in either case) has an automatic sprinkler system, the building owner may notify FENZ the building does not require an evacuation scheme.

### Penalties for non-compliance

Regulation 14 of the FSEBR contains the offence and penalty provisions for any person who breaches a provision of part 1 (fire safety and evacuation procedures). The penalty is a fine not exceeding $200, and if the offence is a continuing offence, a further fine not exceeding $20 for each day or part of a day that the offence continues.

We recognise that this penalty is low, and may no longer provide an appropriate deterrent. The infringement scheme that is being consulted on as part of this discussion document will cover offences made under section 187 of the FENZ Act relating to non-compliance with evacuation procedures and schemes, and will discuss appropriate penalties for non-compliance.

The FENZ Act also provides that FENZ may apply to the District Court for an order requiring the owner of a relevant building to comply with the requirements to provide and maintain an evacuation scheme. The District Court may order the building be closed until the relevant requirements have been met.

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| ***Questions**** Do you agree with the example thresholds or triggers that may result in the revocation or amendment of an approved evacuation scheme?
* What do you consider should be covered by regulations for the process of FENZ requiring an amendment or revoking a previously approved evacuation scheme?
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## Key Issues for new regulations

## Issue 1: Information relating to evacuation schemes

The FSEBR contain matters that must be included within an evacuation scheme. Matters include places of safety, how occupants will be alerted to a fire within the building, how occupants will be informed of an emergency and requirements relating to listing firefighting equipment, the number of signs and notices, and trial evacuations. The full list of matters to be included in an evacuation scheme currently is attached as **Appendix A**.

### What’s the problem?

The current focus of the required evacuation scheme information is how occupants will be notified of an emergency, rather than how occupants will safely evacuate within a reasonable time.

As a result evacuation scheme applications currently lack, or make optional, information that will be important for FENZ to assess whether an evacuation scheme is appropriate.

Information such as the number of occupants, and the purpose/s that a building is used for are not currently required information. Other examples of information that is not currently required include:

* a contact name;
* whether the building is multi-storey and number of floors;
* the activities undertaken within the building;
* hazardous substance information; and
* whether the building has or is required to have an emergency plan under the Hazardous Substances (Emergency Management) Regulations 2001[[1]](#footnote-2) or the Health and Safety at Work (Major Hazard Facilities) Regulations 2016[[2]](#footnote-3).

The information identified above impacts on the effectiveness of an evacuation scheme to evacuate people safely and in a reasonable time if there is a fire or a fire alarm, and FENZ’s response to a fire. As the information is currently optional it is often not supplied which affects FENZ’s ability to assess the suitability of an evacuation scheme for a building.

### Options

Requiring additional information about a building, its use and occupancy will allow informed decisions to be made regarding:

* the appropriateness of the proposed evacuation scheme;
* the degree of assistance required to safely evacuate occupants;
* the level of FENZ resource required to respond to fires within the building;
* the suitability and location of safe assembly places; and
* the expected time required to evacuate the building safely.

It is proposed that regulations require standard information for all evacuation schemes. Additional information could be grouped according to relevant factors such as whether the building stores hazardous substances over the minimum amounts, is multi-purposed or multi-storey. This would make it easier for those applying for an evacuation scheme to provide the information required by FENZ.

| Options | Description |
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| **Option A1 –** *Status quo continued* | Continue status quo. Some information is required, but some is optional.  |
| **Option A2 –** *Optional information is required, information is grouped*  | Make current optional information required and expand the list of relevant information to be included. This could include information such as number of floors, number of occupants and the purpose/s the building is used for. Additional information required is grouped according to relevant factors such as whether the building exceeds the minimum amounts of hazardous substances, or is multi-purposed or multi-storey.  |
| **Option A3 –** *Optional information is required, requirements are specified, information is grouped* | Regulate for required outcomes as well as require relevant information. Relevant information would include current information, as well as additional information similar to option A2. Requirements could include, for example, that an evacuation scheme must specify how a building will be evacuated safely within a reasonable time. Additional information required is grouped according to relevant factors such as whether the building exceeds the minimum amounts of hazardous substances, or is multi-purposed or multi-storey. |

### Analysis of options

**Option A1, Status quo continued -** This option would provide limited information to FENZ about the suitability of an evacuation scheme and the ability of building occupiers to safely evacuate in the event of fire or fire alarm.

**Option A2, Optional information is required, information is grouped** - This option would provide a greater level of information to FENZ when determining whether an evacuation scheme is appropriate or not. The grouping of information required would assist building owners to comply with requirements for their buildings when submitting an evacuation scheme.

**Option A3, optional information is required, requirements are specified, information is grouped -** Option A3 would provide a high level of assurance for building occupiers and FENZ as to the suitability of an evacuation scheme. Having required information as well as appropriate requirements would provide for evacuation schemes to set out the details of the building, occupiers, uses etc. as well as how the building will be evacuated in the event of a fire or alarm of fire.

The grouping of information required would assist building owners to comply with requirements for their buildings when submitting an evacuation scheme.

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| Option | Objective – improves safety and effectiveness for building evacuations | Objective – improves consistency, clarity and accountability | Objective – improves integration with other building design/compliance regimes | Objective – improves ease and assessment of compliance |
| Option A1 | Does not meet the objective – FENZ would be constrained in their ability to assess the suitability of an evacuation scheme | Does not meet the objective – information required is limited which reduces the clarity and accountability of an evacuation scheme | Partially meets the objective – would continue current levels of integration with other regimes | Partially meets the objective – would make compliance easier for building owners, but would not assist FENZ in their assessments |
| Option A2 | Partially meets the objective – would increase FENZ’s ability to assess the suitability of an evacuation scheme | Meets the objective – would give FENZ greater information which would improve consistency of safety, provide clarity for FENZ and accountability of building owners | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective - would make compliance easier for building owners, but would not assist FENZ in their assessments |
| Option A3 | Meets the objective – would allow FENZ to accurately assess the suitability of an evacuation scheme for a building | Meets the objective – would give FENZ greater information which would improve consistency of safety, provide clarity for FENZ and accountability of building owners | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective – would require additional information and consideration by building owners, but would enable FENZ to assess the suitability of an evacuation scheme |

### Preferred option

Our preferred option is option A3. Requiring this level of information from an evacuation scheme application means that FENZ will know how persons will be notified of a fire or alarm of fire, how the building will be safely evacuated within a reasonable time as well as providing certain requirements for the evacuation of buildings.

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| ***Questions**** What information do you consider should be required for an evacuation scheme application?
* What issues might there be from requiring more information on an evacuation scheme application?
* What is your preferred option and why?
* Any other comments?
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## Issue 2: Interaction and consistency with other agencies and their legislation

The FSEBR are part of a complex system of legislation that governs buildings, workplaces, safety and evacuation. The Building Act 2004 (Building Act), the Health and Safety at Work Act 2015, the Sale and Supply of Alcohol Act 2012 (SSA Act), the Gas Act 1992, the Electricity Act 1992 and the Residential Tenancies Act 1986 all interact with the FSEBR in various ways. Examples of these interactions are set out in **Appendix B.**

For example the Building Act contains various requirements relating to fire safety including consideration of the means of escape from fire which ensures that buildings can be evacuated. The FSEBR governs how building occupants will be notified of a fire emergency and how those evacuations will take place.

The SSA Act requires those applying for a liquor licence to state that they have provided and maintain an evacuation scheme in accordance with the FS Act. However evacuation schemes do not note whether the scheme is for a building that has or is applying for a liquor licence.

### What’s the problem?

As a result of multiple legislative requirements it can be difficult and confusing for building users and owners to determine what is required, what is covered and what is not by legislation and how to comply with requirements. For example building occupants or agencies involved in approving buildings for certain uses sometimes consider that an evacuation scheme covers all types of emergencies such as earthquakes, and not just fires.

Conflicts can arise where one legislative requirement is more stringent than another, such as requirements around automatic sprinkler systems within buildings. The FSEBR require full compliance with identified New Zealand Standards, however the Building Act (through compliance documents for the Building Code) allows variations from the standards. This can mean a building’s automatic sprinkler system is compliant with the Building Act and the Building Code, but does not meet the standards required for an evacuation scheme.

### Options

As we are seeking to understand the magnitude and complexity of these issues, particularly from the perspective of building owners and occupiers we have not developed any options at this time. Where possible we will look to align any new regulations with current legislative requirements.

We welcome your views on what issues arise from differing legislative requirements and how we might address these.

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| ***Questions**** What are the key areas of interaction for you between the current FSEBR and other legislation?
* Are there issues or inconsistencies for you that result from differences in the current FSEBR and other legislation?
* Any other comments?
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## Issue 3: Responsibilities of building owners and occupants

Under the FS Act and the FSEBR the onus of providing and maintaining an evacuation procedure or scheme is on the building owner. The FENZ Act continues this allocation of responsibility on building owners by requiring the building owner to provide and maintain an evacuation scheme for their relevant building. The FENZ Act does not prescribe responsibilities in relation to evacuation procedures; however these responsibilities will be prescribed through regulation.

The FS Act and FSEBR do not address how owners, tenants, and occupiers are to work together to comply with the requirements around evacuation procedures and evacuation schemes.

### Evacuation Procedures - What’s the problem?

The FSEBR currently contain certain requirements for evacuation procedures that relate to building tenants, but not other occupants. This can make it unclear that all building occupants must comply with an evacuation procedure.

### Evacuation schemes - What’s the problem?

Building owners do not necessarily occupy the building that they own, and there are an increasing number of absentee owners or offshore owners who do not reside in New Zealand. This can make ensuring building owners compliance with providing and maintaining an evacuation scheme difficult to enforce. There is also no requirement for a building owner to nominate an alternate point of contact if they are absent from the country or do not occupy the building.

Evacuation schemes do not specify responsibilities of building occupants in relation to the safe evacuation of the building.

### Options

It is important that there are clear lines of responsibility for the provision and maintenance of evacuation procedures and schemes. However there also needs to be provision for other points of contact in the event the building owner does not occupy the building or is not present in New Zealand.

Placing duties or responsibilities on building tenants and occupants, not just building owners would recognise the role of tenants and occupants in the compliance with, and maintenance of, the provisions in evacuation procedures and schemes.

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| Options | Description |
| **Option B1 –** *Status quo continued* | Maintain status quo. Responsibility for compliance with evacuation requirements sits predominately with buildings owners, with some requirements on building tenants. |
| **Option B2 –** *emphasis on tenants and owners, providing points of contact* | ***Evacuation procedures and schemes***Describe **specific** duties and requirements for all building tenants’ compliance with evacuation procedures and schemes.The overall responsibility for providing and maintaining evacuation procedures and schemes would sit with the building owner. |
| ***Evacuation schemes*** Require buildings owners to nominate a contact if absent or overseas for a length of time. Specify requirements for authorised agents or applicants if not the building owner. |
| **Option B3 –** *emphasis on all building occupants, primary responsibilities still on building owners, providing points of contact* | ***Evacuation procedures and schemes***Describe **specific** duties and requirements for all building occupants’ compliance with fire safety requirements, evacuation procedures and schemes i.e. building occupants must keep means of escape from fire unobstructed. The overall responsibility for providing and maintaining an evacuation procedure would sit with the building owner.  |
| ***Evacuation schemes***Require building owners to nominate a contact if absent or overseas for a length of time. Specify requirements for authorised agents or applicants if not the building owner. |

### Analysis of options

**Option B1, Status quo continued -** This option limits the ability of FENZ to work with or contact buildings owners who are absent or are overseas. It would limit the responsibilities to building tenants, not all building occupants.

**Option B2, emphasis on tenants and owners, providing points of contact –**

* ***Evacuation procedures and schemes:*** under option B2 building tenants would have prescribed responsibilities (not all building occupants). This could result in building occupants being unaware of requirements such as keeping a means of escape unobstructed, and would limit FENZ’s ability to address issues where identified.
* ***Evacuation schemes:*** option B2 would allow for greater flexibility for building owners, and increase FENZ’s ability to work with a building owner, or their nominated contact if required.

**Option B3, emphasis on all building occupants, primary responsibilities still on building owners, and providing points of contact –**

* ***Evacuation procedures and schemes:*** Describing specific duties for all building occupants would make it clear that building occupants have responsibilities to ensure the safety of building occupants, and the ability to safely evacuate if required.
* ***Evacuation schemes:*** option B3 would allow flexibility for building owners, while ensuring there is a point of contact for FENZ to communicate with if required.

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| Option | Objective – improves safety and effectiveness for building evacuations | Objective – improves consistency, clarity and accountability | Objective – improves integration with other building design/compliance regimes | Objective – improves ease and assessment of compliance |
| Option B1 | Does not meet the objective – does not make clear nor prescribe responsibilities on all building occupants and owners | Does not meet the objective - does not make clear or prescribe responsibilities on all building occupants | Partially meets the objective – would continue current levels of integration with other regimes | Partially meets the objective – would allow building owners to comply but limits FENZ’s ability to assess compliance with an evacuation scheme |
| Option B2 | Partially meets the objective – would make clear and prescribe responsibilities for building tenants and owners | Partially meets the objective – would prescribe responsibilities for only some building occupants | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective – would require compliance from a wider group of people, limits FENZ’s ability to assess compliance with an evacuation scheme |
| Option B3 | Meets the objective – makes clear the responsibilities and duties for all building occupants and owners | Meets the objective – would make clear the responsibilities and duties for all building occupants and owners | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective – would require compliance from a wider group of people but would give FENZ confidence evacuation procedure and schemes are being complied with |

### Preferred option

Our preferred option is option B3. This option would continue the responsibility of building owners to provide and maintain an evacuation procedure or scheme, but would also make allowances for instances where the building owner is not always present or is outside of New Zealand.

It would also help ensure that all building occupants have a level of responsibility in maintaining safety and compliance within the building they occupy.

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| ***Questions**** Do you agree that building owners should be required to identify point of contact if they are absent or overseas?
* Do you agree that all building tenants and occupants should have specific duties and responsibilities in ensuring safety within the building they occupy?
* What is your preferred option and why?
* Any other comments?
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## Issue 4: Evacuation of those requiring assistance to evacuate during a fire emergency

The evacuation from buildings of persons requiring assistance such as disabled persons, the elderly or young children, is not currently well catered for in the FSEBR.

The FSEBR currently provide that if disabled persons cannot be evacuated from a building using its buildings means of escape, they can be gathered in a place or places within the building.

There are no specific considerations for buildings such as rest homes, or early childhood centres where the occupants may need a higher level of assistance to safely evacuate within a reasonable time.

### What’s the problem?

Leaving disabled persons inside a building during an evacuation potentially places those left inside at risk. This increases the reliance on firefighters to safely evacuate those left inside a building during an emergency, and results in greater risk to the responding firefighters.

The needs of other persons requiring assistance to evacuate such as the elderly or young children are also not well catered for. These groups of people may require additional support and resources to evacuate safely however there are not specific requirements for evacuation schemes relating to these groups.

For example evacuation schemes are often based on assumed levels of staffing. For buildings such as rest homes staffing levels fluctuate between day and night meaning that if an evacuation is required during the night there could be insufficient staff on hand to evacuate the building’s occupants safely and within a reasonable time.

### Options

It is important that evacuation procedures and schemes cater for the safety of all building occupants whether through evacuation from the building or being moved to a place of safety.

It is also important to consider the safety of firefighters if they are required to enter buildings to evacuate those left in a place of safety.

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| Options | Description |
| **Option C1 –** *Status quo continued* | Maintain status quo. Disabled persons may be moved to a place within the building if they cannot be evacuated by a building’s means of escape. No specific additional information or considerations for other people requiring assistance i.e. elderly or young children. |
| **Option C2 –** *require additional information, incl. minimal staffing, schemes must identify evacuation or movement to place of safety* | Require additional information regarding how people who require assistance will be evacuated or moved to an internal place of safety, including during times of minimal staffing. People requiring assistance to evacuate may be moved to an internal place of safety if they cannot be evacuated by a building’s means of escape to a place of safety outside. |

### Analysis of options

**Option C1, Status quo continued –** This option makes it difficult for FENZ to determine the suitability of an evacuation scheme particularly in relation to those requiring assistance to evacuate or move to a place of safety.

**Option C2, require additional information, incl. minimal staffing, schemes must identify evacuation or movement to place of safety –** This option would provide FENZ a greater level of information to determine the suitability of an evacuation scheme, as well as better provide for the evacuation or the movement to an internal place of safety for those requiring assistance.

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| --- | --- | --- | --- | --- |
| Option | Objective – improves safety and effectiveness for building evacuations | Objective – improves consistency, clarity and accountability | Objective – improves integration with other building design/compliance regimes | Objective – improves ease and assessment of compliance |
| Option C1 | Does not meet the objective – continues current issues with FENZ being unable to assess the suitability of an evacuation scheme | Does not meet the objective – continues current issues of the lack of information and consideration in evacuation schemes of all those requiring assistance  | Partially meets the objective – would continue current levels of integration with other regimes | Partially meets the objective – would continue current levels of compliance, restricts FENZ’s ability to assess an evacuation scheme for all occupants |
| Option C2 | Meets the objective – would address current issues and improve FENZ’s ability to assess the suitability of an evacuation scheme  | Meets the objective – would provide greater consistency and clarity for building occupants and greater accountability for building owners  | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective – would require greater information from building owners but would give FENZ confidence evacuation procedure and schemes are appropriate |

### Preferred option

Our preferred option is option C2. This option would provide better consideration and information regarding the safety and evacuation from buildings for those requiring assistance. It would also ensure evacuation schemes are safe and practical for all building occupants and responding firefighters.

|  |
| --- |
| ***Questions**** Do you agree that additional information should be required for evacuation schemes that cover buildings with persons who require assistance to evacuate?
* Do you consider it appropriate for certain building occupants to remain in an internal place of safety within the building during a fire emergency?
* What is your preferred option and why?
* Any other comments?
 |

## Issue 5: Timing of evacuation schemes and trial evacuations

#### Application for approval of an evacuation scheme

The FSEBR require that an application for approval of an evacuation scheme be made no later than 30 days after the earlier of building code compliance certificate is issued or the date that the building is first lawfully occupied.

The National Commander, now FENZ, has 20 working days to decide whether to approve an evacuation scheme, with one extension of 10 working days if further information is required or a trial evacuation is carried out.

#### Timing of trial evacuations

The FSEBR currently contains the requirements for building owners who provide and maintain evacuations schemes to undertake a trial evacuation[[3]](#footnote-4) every 6 months, to notify FENZ no less than 10 days before a trial evacuation, as well as notify FENZ of the result of the trial evacuation no later than 10 working days after the trial evacuation has taken place.

### Application for an evacuation scheme - What’s the problem?

The current timings can result in buildings being occupied for 30 working days before an evacuation scheme must be applied for, and up to another 30 plus working days between the evacuation scheme application and the approval of that evacuation scheme. Two months is a significant amount of time for a building to be potentially occupied with no approved evacuation scheme and no trial evacuations of the building.

For temporary structures such as event marquees the current timings can mean that the structure is built, occupied, and taken down before the timeframe for applying for an evacuation scheme expires. This means the requirement to apply for an evacuation scheme can be avoided, even though the building triggers the requirement and may require a building consent[[4]](#footnote-5). Large temporary structures can have capacity for large numbers of people which could pose a risk to occupiers in a fire emergency.

### Timing of trial evacuations – What’s the problem?

Currently under the FSEBR if an unscheduled building evacuation, such as a false alarm, takes place this cannot be counted as a valid trial evacuation as FENZ will not have been notified within the required timeframe of 10 days. This could mean that a building could be evacuated due to a false alarm one week, but then be required to run a trial evacuation the next week to meet the obligations under the FSEBR. This is inconvenient and frustrating for building owners, tenants and occupiers.

### Options

We are seeking to understand the impact of changes to timing for both application for and approval of evacuation schemes. We are also seeking to understand the impact of requiring evacuation schemes for temporary structures such as those that require building consents.

As a result we have not developed options for the timing of applications or approvals for evacuation schemes, both generally for relevant buildings, or how they might apply to temporary structures.

We welcome your views on these matters, and how new requirements relating to the timing of applications and approvals for evacuation schemes, and evacuation schemes for temporary structures may impact you.

Where possible we would like to align with other legislative requirements such as those under the Building Act.

The options outlined below describe options for the timings and requirements of trial evacuations and unscheduled evacuations.

|  |  |
| --- | --- |
| Options | Description |
| **Option D1 –** *Status quo continued* | Maintain status quo. Trial evacuations must be undertaken every 6 months, with FENZ notified no less than 10 days prior. Other evacuations such as false alarms cannot be counted as a trial evacuation. FENZ must still be notified of the result of the trial evacuation.  |
| **Option D2 –** *unscheduled evacuations within notice period can be counted as trial evacuations* | If an unscheduled evacuation takes place within the 10 day notice period for a scheduled trial evacuation, the unscheduled evacuation may ’count' as the trial evacuation. FENZ must still be notified of the result of the evacuation. |
| **Option D3 –** *unscheduled evacuations can be counted as trial evacuations* | Maintain the requirement for building owners to conduct trial evacuations every 6 months, but allow unscheduled evacuations to be counted if within the 6 month time period. FENZ must still be notified of the result of the evacuation. |

### Analysis of options

**Option D1, Status quo continued –** This option allows for the continuation of trial evacuations but carries over the current limitations of timings.

**Option D2, unscheduled evacuations within notice period can be counted as trial evacuations –** This option allows for improved flexibility for trial evacuations, but is limited in the time that unscheduled evacuations can be counted. Most unscheduled evacuations would still not be able to be used as a trial evacuation.

**Option D3, unscheduled evacuations can be counted as trial evacuations –** This option would allow for greater flexibility with trial evacuations, and unscheduled evacuations. It would ease the compliance burden of trial evacuations on building owners and occupiers while maintaining building safety.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Option | Objective – improves safety and effectiveness for building evacuations | Objective – improves consistency, clarity and accountability | Objective – improves integration with other building design/compliance regimes | Objective – improves ease and assessment of compliance |
| Option D1 | Partially meets the objective – would continue trial evacuations as an effective tool but remains inflexible | Does not meet the objective -  | Does not meet the objective | Does not meet the objective – restricts trial evacuations to only scheduled trials |
| Option D2 | Partially meets the objective – would continue trial evacuations as an effective tool with some flexibility | Partially meets the objective -  | Meets the objective – new regulations can be made taking account of and aligning current regimes | Partially meets the objective – would allow some flexibility for trial evacuations |
| Option D3 | Meets the objective – would continue trial evacuations as an effective tool with flexibility about when trial evacuations occur | Meets the objective – would provide greater consistency and clarity for building occupants and greater accountability for building owners | Meets the objective – new regulations can be made taking account of and aligning current regimes | Meets the objective – would allow flexibility while maintain safety requirements for trial evacuations |

### Preferred option

Our preferred option is D3. This option would allow greater flexibility for building owners, tenants and occupiers while ensuring the requirements of the evacuation scheme are met. It would also ensure FENZ is notified of the result whether the evacuation is scheduled or not.

|  |
| --- |
| ***Questions**** If the timings for the application for and approval of an evacuation scheme were changed, what do you consider to be suitable timeframes?
* If evacuations schemes were required for temporary structures such as those that require a building consent, how would this impact you?
* Do you agree that unscheduled evacuations should be able to be counted as trial evacuations for the purposes of maintaining an evacuation scheme?
* What is your preferred option and why?
* Any other comments?
 |

## Updates or other changes

There are a number of updates or other changes that will need to be made in any new FSEBR regulations. These are set out in the table below.

|  |  |
| --- | --- |
| Change | Details |
| Update the minimum amounts of hazardous substances allowed to be present. **This may require more relevant buildings to provide and maintain an evacuation scheme.**  | The minimum amounts for hazardous substances are currently set out in schedule 2 of the FSEBR. The current amounts are based on 10% of the amount for transportation which does not necessarily tie to the impact of those hazardous substances during a fire emergency. The amounts that will trigger the requirement for an evacuation scheme will be reviewed and will be based on the risk the substance poses during a fire.Where possible we will look to align requirements with other regimes. The new amounts may result in some buildings that did not previously require an evacuation scheme to develop one.  |
| Definitions | Updating current definitions, aligning definitions with other legislation where possible and adding new definitions where required. |
| Updating and simplifying Schedule one (relevant buildings for Part one of the FSEBR)  | Schedule one lists the buildings to which part one of the FSEBR applies. We will be reviewing the list to update and simplify the list but expect the list to cover the same or similar buildings as the FSEBR. |
| Contents of signs and notices | We will look at updating the content of signs and notices to reflect the changes to the regulations.  |

# Part 2: Offences and penalties

## Background

Section 187 of the FENZ Act provides for the establishment of offences and their associated penalties through regulations. Regulations can be made:

* prescribing the offences;
* providing for the maximum infringement fee or maximum court imposed fine;
* setting different fees for different offences or in respect of different persons or individuals; and
* prescribing the form of infringement notices and reminder notices.

The offences and penalties made through regulation will form part of the compliance and enforcement strategy that is being developed by FENZ. They will be targeted at low to moderate offending.

More serious offending is covered by offences contained in the FENZ Act, and higher maximum fines or terms of imprisonment are attached to them.

The offences made through regulations will be part of a range of compliance tools available to FENZ to ensure that there are proportionate responses to the conduct being targeted. FENZ will take a tiered approach to these compliance tools, for example:

* education and guidance – *make education and guidance available so the public knows what they can and cannot do;*
* warnings – *issue warnings where non-compliance is identified*;
* offences made through regulation – *will deal with low to moderate level offending*; and
* criminal offences – *for serious offending where identified*.

Offences made under section 187 will have either a lower level infringement fee prescribed to it, or in some cases offences will have both a lower level infringement fee, and a higher level court imposed fine available to it.

Which penalty will apply will be a matter for FENZ to determine based on the offending at the time. The fees and fines payable in respect of offences must be paid into a Crown (Government) bank account.

The two levels of penalty for offences prescribed through regulations are:

* **lower level penalties** –*dealt with by way of an infringement notice and infringement fee. The maximum fee is $1,000 for an individual, and $5,000 in any other case.*
* **higher level penalties** –*dealt with through the courts. FENZ will file a charging document, and the court will impose a fine as appropriate up to the maximum amounts prescribed in regulations. The maximum fine is $15,000 for an individual or $30,000 in any other case.*

For offences created under section 187 of the FENZ Act and that are dealt with by way of a court imposed fine, section 375 of the Criminal Procedure Act 2011 will apply. In effect this section means that if an offence has both an infringement fee, and a court imposed fine available to it, when a court imposed fine is issued the Court may not enter a criminal conviction for that offence.

We intend that any offences made under section 187 will not have a criminal conviction attached to them, and will not result in a term of imprisonment.

In setting the penalties for offences, we want to take a similar approach with how criminal offences are treated under the FENZ Act. That is, grouping offences by the relative seriousness of the offending.

Depending on the seriousness of the behaviour, having offences made through regulations provides an efficient method of encouraging compliance with the law by imposing a set financial penalty following relatively lower level offences.

However, it is important to ensure that fees and potential fines are set at a level commensurate with the risks posed by behaviour being controlled. If fees or fines are too lenient, there is a risk that non-compliance will be common as it would be cheaper to pay the penalty than comply with the law.

### Process for offences made through regulations

The FENZ Act sets out two ways that offences made through regulations can be dealt with. Either approach may be taken by FENZ. The approaches are set out in the table below:

Table : Two approaches to processing offences

|  |  |  |
| --- | --- | --- |
|  | Infringement notice  | Charging document filed  |
| How the offence processed | FENZ serves an infringement notice | FENZ files a charging document in court |
| Maximum penalty in the Act | Individual: $1,000Any other case: $5,000 | Individual: $15,000Any other case: $30,000 |
| How is the amount of the fee or fine decided?  | The regulations will set a fixed infringement fee for that offence | If a person is found guilty, the court would be able to impose a fine, up to the maximum fine set in regulations for that offence |

## Policy objectives

This discussion document asks questions about:

* the types of conduct that should be captured by offences made through regulation; and
* determining and setting the amount of penalties for these offences.

We are seeking to meet the following policy objectives for the new regulations:

* provides consistency and effectiveness of offence penalties;
* improves accountability of offenders;
* encourages good fire safety practices;
* improves clarity of the offences and penalties;
* creates a fair system;
* supports the overall FENZ enforcement and compliance strategy; and
* makes it easier to understand and comply with the law.

As part of considering whether a system is fair, we will consider:

* the harm (potential or actual) to people or property from the offending; and
* the affordability and appropriateness of the penalty for the target group.

Regarding the appropriateness of the penalty, we note that offences made through regulation are for less serious offending than criminal offences such as those in the FENZ Act. However, there may be levels of seriousness within the less serious offending. For example, leaving a burning substance in open air is potentially more serious than failing to keep records for seven years, because the first action creates a potential fire risk.

## Issue 1: What offences should there be?

**Appendix C** sets out the criminal offences in the FENZ Act and the proposed conduct to be covered by new offences. The Government has agreed that low to moderate level offending would be dealt with by infringement fees and court-imposed fines[[5]](#footnote-6). The specific types of conduct captured by these offences needs to be confirmed before regulations can be made.

Some of these proposed offences to be made through regulations were previously offences within the FS Act and the FRF Act. They are proposed offences to be made through regulations under the FENZ Act because:

* the behaviour generally involves straightforward issues of fact an enforcement officer could easily identify and issue an infringement notice for them;
* penalising this conduct through infringement notices is expected to achieve a proportionate deterrent effect; and
* charges could be filed in court for more serious misconduct (including repeated behaviours) and the court can impose a much higher penalty, though still without imposing a criminal conviction.

We are seeking your feedback on whether the following conduct, or similar conduct, should be captured by offences made through regulations:

***Lower-level offences (these do not have equivalent criminal offences under the FENZ Act)***

* Unlawfully interfering with a fire alarm;
* Obliterating or removing fire hydrant markings;
* Removing, defacing, obscuring, or otherwise rendering ineffective or inoperative any forest gate, or any notice board, placard, indicator, other warning or sign set up for the purpose of fire control;
* Preventing, obstructing, interfering with, impairing, otherwise rendering inoperative or less effectual any apparatus or any other fire control measure;
* Setting fire to vegetation by way of a backburn without the specific directions from FENZ or an authorised person;
* Operating spark hazardous machine e.g. helicopter without consent (agriculture excluded);
* Undertaking activities in breach of a prohibition or restriction;
* For person who has a lease or licence on Crown land, failing to take all measures necessary to prevent spread of fire;
* Entering an area in breach of a prohibition or restriction;
* Failing to comply with the standards for water supply volume and pressure in the Code of Practice; and
* Failing to comply with FENZ direction to remove vegetation or other things creating a fire risk.

***Moderate-level offences (these have equivalent criminal offences under the FENZ Act)***

* Lighting or allowing another person to light a fire in open air when there is a prohibition on lighting fire in open air in effect and has notice, without a permit or in breach of permit conditions;
* Carrying out prohibited or restricted activity if have notice of prohibition or restriction;
* Lighting or allowing another person to light a fire in open air during a prohibited or restricted season, without a permit or in breach of permit conditions;
* Causing or allowing a burning or smouldering substance in open air without taking reasonable steps to reduce likelihood of harm damage, or notifying FENZ;
* An owner of a relevant building (set out in section 75 e.g. early childhood education and care centre) not providing or maintaining an evacuation scheme;
* Failing to make a levy return to FENZ;
* Failing to keep specified levy records for 7 years;
* Failing to provide information that FENZ considers is reasonably necessary or relevant for administering or enforcing the levy provisions;
* Failing to provide information that FENZ considers is reasonably necessary or relevant for administering or enforcing the levy provisions;
* Giving false alarm of fire;
* Obstructing, hindering, resisting or deceiving a FENZ inspector or authorised person in the performance of duties; and
* Storing spontaneously combustible material in breach of requirements under Act or regulations.

|  |
| --- |
| ***Questions**** Do you have any comments on the proposed conduct that should be captured by offences made under section 187 of the FENZ Act?
 |

## Issue 2: Options for setting offence penalties

For infringement fees the maximum penalty for an individual of up to $1000, and $5000 in any other case. These maximum fees are prescribed in the FENZ Act. Infringement fees for each offence will be set out in regulations and will be the amount charged for an offence identified in an infringement notice.

Court-imposed fines are recovered through court proceedings and have a maximum amount fixed in the FENZ Act. This means that this amount will be the maximum amount a court can impose for an offence processed through a court proceeding. For a fine imposed by the court the maximum fine for an individual is $15,000, or $30,000 in any other case.

Even though the court has discretion to fine an offender less than the maximum penalty set in the FENZ Act, setting maximum penalties in the regulations allows for less serious conduct to have a lower maximum penalty.

In some cases, the offence can only be undertaken by an individual, for example, the impersonation of operational personnel. In those cases, only the individual penalty is relevant.

After determining what types of conduct will be captured by offences made through regulations, we intend to group these offences into three groups (low, moderate and serious offences).

Each group will have a corresponding penalty, with serious offences attracting the highest penalty.

### Options

We are considering what percentages of the maximum amount of penalty should be applied to each level of offending (low, moderate and serious offending). Both options set penalties based on the seriousness of the conduct, with more serious offending attracting a higher penalty.

The highest proposed penalty is not set at the maximum penalty in the Act (i.e. 100%), to allow for upward adjustment to penalties in regulations in the future, if appropriate.

There is no set formula for how penalty levels might be decided or set. We have used the percentages as we consider that both options could provide appropriate penalty levels.

#### Option F1: Apply the following percentages: 25%, 50%, 75%

Table : Setting penalties: Option 1

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Group 1 penalty(low) | Group 2 penalty(moderate) | Group 3 penalty(serious) | Maximum penalty in Act |
| **Fixed fee set in regulation** |
| Individual | $250 | $500 | $750 | $1,000 |
| Body Corporate | $1,250 | $2,500 | $3,750 | $5,000 |
| **Maximum fine set in regulation** |
| Individual | $3,750 | $7,500 | $11,250 | $15,000 |
| Body Corporate | $7,500 | $15,000 | $22,500 | $30,000 |

#### Option F2: Apply the following percentages: 40%, 60%, 80%

Table : Setting penalties: Option 2

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Group 1 penalty(low) | Group 2 penalty(moderate) | Group 3 penalty(serious) | Maximum penalty in Act |
| **Fixed fee set in regulation** |
| Individual | $400 | $600 | $800 | $1,000 |
| Body Corporate | $2,000 | $3,000 | $4,000 | $5,000 |
| **Maximum fine set in regulation** |
| Individual | $6,000 | $9,000 | $12,000 | $15,000 |
| Body Corporate | $12,000 | $18,000 | $24,000 | $30,000 |

### Analysis of options

In considering the affordability and appropriateness of the penalty for the target group, the goal is to strike a balance between:

* being sufficient to adequately deter unwanted behaviour; and
* being limited, to reflect the ability of the offender to pay (i.e. affordability).

The deterrence element is in conflict with the affordability element and they must be balanced in the maximum penalties.

Having different penalties for individuals and bodies corporate is one way to reflect the ability of the offender to pay, as organisations may be more likely to be able to afford a higher penalty.

The difference between the two options is a trade-off between deterrence and relative affordability of the infringement penalty.

### Preferred option

We have no preferred option at this stage.

|  |
| --- |
| ***Questions**** Do you agree that non-criminal offences should be grouped on the basis of the seriousness of offending, with more serious offences attracting a higher penalty?
* What option for setting penalties do you prefer? Where do you see the balance between deterrence and affordability?
* Do you have other percentage amounts you consider to be more appropriate?
 |

##

## Interaction of fire safety and evacuation of buildings regulations with the options for offences

Currently, it is an offence to breach Part 1 of the Fire Safety and Evacuation of Buildings Regulations 2006. The requirements in Part 1 of the Regulations apply to particular types of buildings and include:

* failing to maintain means of escape;
* failing to have evacuation procedures;
* tenants failing to follow evacuation procedures; and
* owners and occupants failing to take reasonable fire prevention precautions.

The specific offences relating to fire safety, evacuation procedures and evacuations schemes will depend on what is included in the new regulations. When setting these offences and penalties, we will align the new fire safety and evacuation regulations with decisions on penalties.

The FENZ Act already contains criminal offences for an owner knowingly failing to maintain a means of escape from fire for specified buildings (section 191 (4)), or failure to maintain an approved evacuation scheme (section 76 (4)). The penalty for these offences is for an individual a term of imprisonment not exceeding 6 months, or a fine not exceeding $75,000, or both. A fine not exceeding $150,000 applies in any other case.

|  |
| --- |
| ***Questions**** Do you have any comments on the proposed interaction between the fire safety and evacuation regulations and offences?
 |

##

1. Matters to be included an in evacuation scheme under the FSEBR

**General matters to be included in an evacuation scheme:**

* Designated place of safety inside or outside of the building if the building has and automatic sprinkler system;
* If no sprinkler system a designated place of safety outside the building;
* How the building occupants will be alerted to a fire emergency within the building;
* How the buildings occupants are informed of:
	+ The measures they should take for their personal safety;
	+ The need, if necessary to evacuate to a place of safety;
	+ Where the place/s of safety are, and the fastest way to reach them;
* A list and location of firefighting equipment available for use by the buildings occupants;
* Requirements for appropriate numbers of signs and notices to be erected in the building;
* Requirement that the building owner must notify the National Commander in writing if certain things happen (i.e. building work alters the means of escape, the building life is extended, the occupancy of the building changes to an extend that affects the evacuation of the building);
* A requirement that trial evacuations of the building be undertaken in the prescribed manner (i.e. every 6 months, National Commander must be notified no less than 10 days prior) or if appropriate prepare and implement an evacuation training programme.

**Matters to be included in evacuation schemes in relation to persons with disability:**

* Designated place/s of safety where disabled person are gathered if they can’t evacuate using the buildings means of escape;
* How the buildings occupants and firefighters are notified of the place/s of safety;
* How firefighters are notified whether there are people still inside the building;
* Details of equipment available for assisting disabled persons to evacuate from the building and how people are trained in its use.

**Matters to be included for certain buildings automatic sprinkler systems:**

* Requirement certain persons specified in the scheme to remain in the building with the building occupants in a place/s of safety;
* Requirement for building occupants to evacuate from the place/s of safety if directed to do so by the specified persons, or a member of the NZFS.
1. Interaction of FSEBR and other legislation

|  |  |
| --- | --- |
| Act or other legislation  | Details |
| Building Act 2004 | Provides that new building work must comply with the building code and sets out requirements for upgrading means of escape from fire when altering existing buildings.  |
| The Building Code | Sets out performance standards for buildings, including occupant movement to places of safety and access and safety for firefighting operations.  |
| Sale and Supply of Alcohol Act 2012 | Contains requirements for those applying for a liquor licence (or renewal) to state that they have provided and maintain an evacuation scheme approved by FENZ.  |
| Residential Tenancies Act 1986 | Contains requirements on landlords and tenants for the installation and maintenance of smoke alarms, and tenants’ obligations not to interfere with or render inoperative any means of escape from fire. |
| Gas Act 1992, and associated regulations | Sets out safety, inspection and certification requirements for certain types of gas fitting work.  |
| Electricity Act 1992, and associated regulations | Sets out safety, inspection and certification requirements for certain types of electrical work  |
| Health and Safety at Work Act 2015, and associated regulations  | Governs health and safety in workplaces, including those with hazardous substances and major hazard facilities.  |

1. Offences and penalties in Fire and Emergency New Zealand Act, Fire Service Act, and Forest and Rural Fires Act

| No. | Description of offence | Cabinet decision on offence | Fire and Emergency New Zealand Act criminal offence | Fire Service Act (repealed)  | Forest and Rural Fires Act (repealed) |
| --- | --- | --- | --- | --- | --- |
| **Offences with no criminal equivalent** |
|  | Interference with fire alarm | Offence for a person to unlawfully interfere with a fire alarm | N/A | s88(1)d), s89(2) | N/A |
|  | Remove fire hydrant marking | Offence for a person to obliterate or remove hydrant marking | N/A | s88(1)(f), s89(2) | N/A |
|  | Interference with gates notices etc for fire control | Offence to remove, deface, obscure, or otherwise render ineffective or inoperative any forest gate, or any notice board, placard, indicator, other warning or sign set up for the purpose of fire control | N/A | N/A | s61(1)(d), s61(4) |
|  | Interference with apparatus or other fire control measure | Offence to prevent, obstruct, interfere with, impair otherwise render inoperative or less effectual any apparatus or any other fire control measure | N/A | N/A | S61(1)(e), s61(4) |
|  | Backburning | Offence to set fire to vegetation by way of a backburn without the specific directions from FENZ or an authorised person | N/A | N/A | s40, s61(3) |
|  | Operating spark hazardous machine e.g helicopter etc without consent (agriculture excluded) | Offence to operate spark hazardous machine e.g helicopter etc without consent (agriculture excluded) | N/A | N/A | S31, s61(4) |
|  | Undertaking activities in breach of a prohibition or restriction | Offence to fail or refuse to comply with requirements for sawmill or tree felling operation | N/A | N/A | S33, s61(4) |
|  | Undertaking activities in breach of a prohibition or restriction | Offence to fail to obtain a fire safety clearance if required in respect of a processing plant | N/A | N/A | r59 FRFRegs 2005, r60 FRFRegs 2005 |
|  | Obligations of licensees etc for fire prevention measures and provision of equipment | Offence for person who has a lease or license on Crown land to fail to take all measures necessary to prevent spread of fire | N/A | N/A | s34, s61(4) |
|  | Restriction on entry into forest | Offence to enter forest without permit or breaches permit | N/A | N/A | r57 FRF Regs 2005r60 FRFRegs 2005 |
|  | Entry into forests | Offence to enter forest when been excluded by fire control measure | N/A | N/A | S32, s61(4) |
|  | Failing to comply with the standards for water supply volume and pressure in the Code of Practice | Offence to fail to comply with the standards for water supply volume and pressure in the Code of Practice | N/A | N/A | N/A |
| **Offences with a criminal equivalent** |
|  | Failure to produce permit | N/A | S59Offence to fail, without reasonable excuse, to carry and provide on demand permit when preparing for fire, lighting fire and until fire is extinguished2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A | N/A |
|  | Failing to provide information (including returns) that must be provided to the new organisation under the new Act | Offence for levy payer to without reasonable excuse, fail to make a levy return to FENZ | S93Offence for levy payer to knowingly and without reasonable excuse, fail to make a levy return to FENZ2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A – but see r9 FS Regulations 2003 | s61(1)(f) |
|  | Failure of levy payers and insurance intermediaries to keep records for 7 years | Offence to without reasonable excuse, fail to keep specified records for 7 years  | S94Offence to knowingly and without reasonable excuse, fail to keep specified records for 7 years 2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A | N/A |
|  | Failing to provide additional information | Offence to without reasonable excuse, fail to provide information that FENZ considers is reasonably necessary or relevant for administering or enforcing the levy provisions | S95 Offence to knowingly and without reasonable excuse, fail to provide information that FENZ considers is reasonably necessary or relevant for administering or enforcing the levy provisions2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A – but see r9 FS Regulations 2003 | N/A |
|  | Failure to comply with conditions relating to publication or disclosure of information  | N/A | S98Offence to refuse or fail without reasonable excuse to comply with any conditions set on the publication or disclosure of information relating to levy returns2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A | N/A |
|  | Providing false or misleading information | N/A | S99Offence to knowingly provide false or misleading information in a levy return or in response to a request from FENZ2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A | N/A |
|  | Contravening an order prohibiting or restriction publications in relation to adjudications | N/A | S135Offence to knowingly contravene an order prohibiting or restricting the publication of a report of an adjudication or a decision on disputes in relation to levy shortfalls2 months imprisonment, $25,000 fine (individual)$50,000 fine (body corporate) | N/A | N/A |
|  | Impersonating personnel with intent to deceive | N/A | s156 Offence if person, with intent to deceive, pretends to be operational personnel, FENZ inspector or person who works for any brigade2 months imprisonment, $25,000 fine | s88(1)(g), s88(3) | N/A |
|  | Owner must provide and maintain evacuation scheme for a relevant building  | Offence for an owner of a relevant building (set out in s75 eg early childhood education centre) to not provide or maintain an evacuation scheme | S76 Offence for an owner of a relevant building (set out in s75 eg early childhood education centre) to knowingly not provide or maintain an evacuation scheme6 months imprisonment, $75,000 fine (individual)$150,000 fine (body corporate) |  |  |
|  | Causing a false alarm of fire to be made | Offence to give false alarm of fire  | s157Knowingly give false alarm of fire6 months imprisonment $75,000 (individual), $150,000 fine (body corporate) | s88(1)(c), s89(1), s88(2), s88(3) | s61(1)(b), s61(4) |
|  | Storage of spontaneously combustible material by industrial operator | Offence to store spontaneously combustible material in breach of requirements under Act or regulations  | S159 offence to knowingly or recklessly store spontaneously combustible material in breach of requirements under Act or regulations6 months imprisonment, $75,000 fine (individual)$150,000 fine (body corporate) | N/A | r54 FRFRegs 2005r60 FRFRegs 2005 |
|  | Interference with people or equipment at fire / emergency | Offence to obstruct, hinder, resist or deceive a FENZ inspector or authorised person in the performance of duties | s158Offence to knowingly obstruct, hinder, resist or deceive a FENZ inspector or authorised person in the performance of duties2 years imprisonment, $300,000 fine (individual), $600,000 fine (body corporate) | s88(1)(a) and (b), s88(2), s88(3) | s36(1), s36(4), s61(4) |
|  | Causing or allowing fire to get out of control and to spread | Offence to cause or allow a fire to get out of control and to spread | s60Offence to knowingly or recklessly cause or allow a fire to get out of control and to spread2 years imprisonment, $300,000 fine (individual)$600,000 fine (body corporate) | N/A | s25(1) |
|  | Leaving a burning or smouldering substance in the open air  | Offence to cause or allow a burning or smouldering substance without taking reasonable steps to reduce likelihood of harm damage, or notifying FENZ | S61Offence of knowingly or recklessly causing or allowing a burning or smouldering substance in open air without taking reasonable steps to reduce likelihood of harm damage, or notifying FENZ2 years imprisonment, $300,000 fine (individual)$600,000 fine (body corporate) | N/A | s26(1), s61(3) |
|  | Variety of offences around lighting fires or carrying out operations in breach of prohibitions or restrictions:* Lighting fires in the open air
* Lighting fire during extreme fire hazard
* Lighting fire, or carrying out operations in breach of order for fire control measures

Failing to comply with fire control measures | Offence to light or allow another person to light a fire in open air when there is a prohibition or restriction in effect and has noticeOffence to carry out prohibited activity if have notice of prohibitionOffence to carry out restricted activity if have notice of restriction | s53 – Offence to knowingly or recklessly light, or allow another person to light a fire in open air when prohibition is in effect and has notices54 – Offence to knowingly or recklessly to carry out prohibited activity if have notice of prohibition or restrictions55 – Offence to knowingly or recklessly to carry out restricted activity if have notice of prohibition or restrictions57 – Offence to knowingly or recklessly lighting fire in open air during prohibited fire season without permit or in breach of permit conditionss58 – Offence to knowingly or recklessly lighting fire in open air during restricted fire season without permit or in breach of permit conditions2 years imprisonment, $300,000 fine (individual)$600,000 fine (body corporate) | N/A | s23(1), s61(3)S20(3), Form 7 FRF Regs 2005, s61(2) FRF ACT s21(1), s61(2)s61(1)(a), s61(4), s27(1) |
| **Offences to be developed** |
|  | Breaches of fire safety and evacuation regulations e.g.: * failing to maintain means of escape
* failing to have evacuation procedures
* tenants failing to follow evacuation procedures
* owners and occupants of particular types of buildings failing to take reasonable fire prevention precautions
 | The specific offences will depend on what is included in the new regulations (also part of this consultation process) Penalty: to be confirmed | S76Offence for knowingly no providing or maintaining an approved evacuation schemeS191Offence for knowingly failing to maintain a means of escape from fire | Offence to breach Part 1 of Fire Safety and Evacuation of Buildings Regulations 2006 | N/A |

1. The Hazardous Substances (Emergency Management) Regulations 2001 describe the requirements for having an emergency plan in place when certain quantities of hazardous substances are present. [↑](#footnote-ref-2)
2. The Health and Safety at Work (Major Hazard Facilities) Regulations 2016 describe the requirements for major hazard facilities to have emergency plans that cover the plan for a major incident at the site. [↑](#footnote-ref-3)
3. Evacuation training programmes are a permissible alternative to regular trial evacuations for some buildings. [↑](#footnote-ref-4)
4. Temporary structures that are over 100 square metres, or are in place longer than one month require a building consent. [↑](#footnote-ref-5)
5. See Cabinet paper EGI-16-SUB-007 and Cabinet Minute EGI-16-MIN-0075. [↑](#footnote-ref-6)