

FIRE SERVICE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Fire Service Act 1975 in relation to—

- (a) The financing of the Fire Service Commission; and
- (b) The transfer of the responsibility for the Fire Service Commission from the Minister of Local Government to the Minister of Internal Affairs.

Clause 1 relates to the Short Title and commencement date, 1 July 1986, except for *clause 6*, relating to the apportionment of the cost of the Commission between the Crown and the levy payable on fire insurance policies, which is deemed to have come into force on 1 April 1986.

Clause 2 amends the interpretation section.

Subclause (1) substitutes a revised definition of the expression “insurance company”.

Subclause (2) provides that the Minister referred to in the principal Act is the Minister of Internal Affairs and not the Minister of Local Government. This restores the pre 1979 position.

Subclause (3) inserts definitions of the expressions “contract of fire insurance”, “levy”, “marine insurance”, and “Rural Fire Fighting Fund”.

Subclause (4) repeals the definition of the expression “rural insurance company”.

Subclauses (5) to (8) are consequential amendments.

Clause 3 amends section 14 of the principal Act to remove the obligation for the Commission to consult with the insurance industry at least once a year on the estimated expenditure of the Fire Service.

Clause 4 amends section 46 of the principal Act to—

- (a) Remove the requirement that the Commission is obliged to send copies of its annual report to each insurance company;
- (b) Make the Commission’s investment powers identical to those of a trustee under section 4 of the Trustee Act 1956;
- (c) Provide for the accounts of the Commission to be in a form which shows the financial position and financial operation of the Commission, rather than specifying a particular format.

Clause 5 inserts 3 new sections in the principal Act providing for the setting up of a Rural Fire Fighting Fund to be used for assisting those territorial authorities

which are Fire Authorities under the Forest and Rural Fires Act 1977 in meeting the cost of suppressing fires occurring in county areas—

- (a) For which responsibility is not acknowledged or cannot be established; or
- (b) In respect of which a permit had been issued under that Act and the conditions had been complied with.

The new *section 46A* sets up the Fund, the new *section 46B* provides for applications for grants, and the new *section 46C* deals with the grants from the Fund.

Clause 6 substitutes a new section 47 in the principal Act to provide for a new system of apportioning between the Crown and the private sector their respective annual contributions. In each year the Crown contribution is to be 19 percent, less the amount of any other income of the Commission from rents, interest, etc., and the contribution of the private sector is to be 81 percent, financed entirely from the levy.

The present contribution of 22 percent of fire insurance premiums to be paid to the Commission is abolished and the whole contribution of the private sector is to be met by an increase in the levy.

In each year the contribution will be the stated proportion, taking into account any surplus or shortfall in the previous year, and not, as at present where the contributions are balanced over a longer period.

Clause 7 inserts a new section 47A in the principal Act to authorise the Crown to meet 19 percent of the Commission's expenditure, after taking into account any miscellaneous receipts of the Commission, less any surplus in respect of the previous year and plus any shortfall in respect of that year.

Clause 8 inserts a new section 47B in the principal Act to define the expressions "property" and "owner of property" for the purposes of the levy sections.

Clause 9 substitutes a new section 48 in the principal Act to deal with the payment and rate of the levy paid on fire insurance policies.

The levy is to be sufficient to meet 81 percent of the Commission's expenditure and the requirements of the Rural Fire Fighting Fund. The rate of the levy is to be reviewed annually.

Clauses 10, 11, and 12 substitute a new section 49, and insert new *sections 49A and 49B* to ensure that payment of the levy is made—

- (a) By agents of owners of property on all contracts of fire insurance placed overseas:
- (b) By owners of property on all contracts of fire insurance placed overseas where contracts have been negotiated without going through a New Zealand intermediary:
- (c) Where arrangements are made for cover for risk which includes risk of fire, where cover is provided by agencies other than fire insurance companies.

Clause 13 substitutes a new section 50 to provide for the dates on which the levy is payable.

The new section also provides for the payment of a final quarterly instalment of fire insurance premium contribution on 15 September 1986 in recognition of the fact that fire insurance premium contributions have been made quarterly in arrears.

Clause 14 substitutes a new section 51 in the principal Act to take in the audit provisions at present contained in the Fire Service (Levy) Regulations 1975 which are revoked by *clause 18*.

Clause 15 substitutes a new section 52 relating to the protection of commercial information, including provisions at present in the Fire Service (Levy) Regulations 1975.

Clause 16 substitutes a new section 53 of the principal Act to provide for a penalty surcharge of one and one half percent per month on any levy unpaid by the due date.

Clause 17 amends section 92 of the principal Act to provide that regulations may be made for prescribing the form of returns and the statutory declaration required in relation to the payment of the levy.

Clause 18 revokes the Fire Service (Levy) Regulations 1975. All provisions still required have been included in the Bill.

Clause 19 makes consequential amendments to the Forest and Rural Fires Act 1977 in relation to the establishment of the Rural Fire Fighting Fund by *clause 5* of the Bill.

Hon. Peter Tapsell

FIRE SERVICE AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	10. Liability for levy where agents of owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand
2. Interpretation	11. Liability for levy where owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand
3. Functions, duties, and powers of Commission	12. Liability for levy by owner of property where cover for risk including fire is provided by any company, corporation, partnership, or person associated with owner of property
4. Accounts and annual report of Commission	13. Payment of levy
5. New sections relating to Rural Fire Fighting Fund inserted	14. Audit of contracts of fire insurance, etc.
46A. Establishment of Rural Fire Fighting Fund	15. Protection of commercial information
46B. Application for assistance from Rural Fire Fighting Fund	16. Failure to pay levy
46C. Grants from Rural Fire Fighting Fund	17. Regulations
6. Income of Commission	18. Revocations
7. Appropriation by Parliament	19. Consequential amendments to Forest and Rural Fires Act Schedule
8. Definition of terms "property" and "owner of property"	
9. Levy	

A BILL INTITULED

An Act to amend the Fire Service Act 1975

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Fire Service Amendment Act 1986, and shall be read together with and deemed part of the Fire Service Act 1975* (in this Act referred to as the principal Act).
- 10 (2) Subject to subsection (3) of this section, this Act shall come into force on the 1st day of July 1986.

*1975, No. 42

Amendments: 1976, No. 90; 1978, No. 49; 1979, No. 89; 1981, No. 36; 1982, No. 179

(3) **Section 6** of this Act shall be deemed to have come into force on the 1st day of April 1986.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the expression “insurance company” (as amended by section 2 (3) of the Fire Service Amendment Act 1978), and substituting the following definition: 5

“ ‘Insurance company’ means any company, corporation, or partnership which, or person who,—

“(a) Undertakes any liability under any contract of fire insurance (other than marine insurance), whether exclusively or in conjunction with any other business; or 10

“(b) Accepts a payment in respect of any property to provide indemnity or a reserve to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance; or 15

“(c) Makes provision for the establishment of a fund to provide indemnity to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance; or 20 25

“(d) Issues any cover note in respect of a contract of fire insurance or gives any information that insurance which includes cover from fire has been effected, or issues any receipt acknowledging the receipt of a premium in respect of a contract of fire insurance, or receives any premiums, proposals, or requests for insurance which includes cover from fire;— 30

and includes the State Insurance Office and, unless the context otherwise requires, includes the agent, attorney, or representative of any such company, corporation, partnership, or person, whether or not that company, corporation, partnership, or person is incorporated or resident in New Zealand; but does not include any company, corporation, partnership, or person associated with the owner of property, including any parent company, associate company, or subsidiary company of the owner, unless the said company, corporation, partnership, or person 35 40

associated with the owner is engaged solely or principally in providing indemnity or a reserve or a fund to cover future loss or future damage from fire.”.

5 (2) Section 2 of the principal Act is hereby further amended by repealing the definition of the expression “Minister” (as amended by section 10(7) of the Local Government Amendment Act 1979), and substituting the following definition:

10 “‘Minister’ means the Minister of Internal Affairs:”.

(3) Section 2 of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

15 “‘Contract of fire insurance’ means an agreement whereby any property is insured against loss or damage from fire, whether the agreement includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance:

20 “‘County area’ means a county area as defined in section 2 (1) of the Forest and Rural Fires Act 1977:

“‘Levy’ means the levy imposed under **sections 48, 49, 49A, and 49B** of this Act:

“‘Marine insurance’ means marine insurance as defined in section 3 of the Marine Insurance Act 1908:

25 “Provided that—

“(a) A contract of insurance in respect of any cargo shall be deemed not to be marine insurance from the time of delivery—

30 “(i) To the consignee’s or other final warehouse or place of storage at the destination named in the contract; or

35 “(ii) To any other warehouse or place of storage, whether prior to or at the destination named in the contract, which the insured elects to use either for storage other than in the ordinary course of transit, or for allocation or distribution; or

40 “(iii) On the expiry of 60 days after completion of discharge overside of the goods insured from the overseas vessel at the final port of discharge,—

whichever shall first occur.

“(b) A contract of insurance in respect of any ship or vessel normally or customarily removed from the

water and transported or stored upon land when not in use shall be deemed not to be marine insurance;

“ ‘Rural Fire Fighting Fund’ means the fund of that name established under **section 46A** of this Act:”.

(4) Section 2 of the principal Act is hereby further amended 5
by repealing the definition of the expression “rural insurance company”.

(5) The Fire Service Amendment Act 1978 is hereby consequentially amended by repealing section 2 (3).

(6) Section 22 of the principal Act (as amended by sections 6 10
and 8 (3) of the Local Government Amendment Act 1979) is hereby amended—

(a) By omitting from subsections (1), (2), and (3), in each place where it occurs, the word “Minister”, and substituting the words “Minister of Local 15
Government”:

(b) By omitting from subsection (4), in both places where it occurs, the word “Minister”, and substituting the words “Minister of Internal Affairs”.

(7) Section 45 (1) of the principal Act is hereby amended by 20
omitting the words “Minister of Local Government” (as substituted by section 6 of the Local Government Amendment Act 1979), and substituting the words “Minister of Internal Affairs”.

(8) The Local Government Act 1974 is hereby amended by 25
omitting from the Seventeenth Schedule (as inserted by section 6 of the Local Government Amendment Act 1979) the reference to the Fire Service Act 1975.

3. Functions, duties, and powers of Commission—
Section 14 (2) (g) of the principal Act is hereby amended by 30
omitting all the words after the words “economy of the Fire Service”.

4. Accounts and annual report of Commission—
(1) Section 46 of the principal Act is hereby amended by 35
repealing subsection (3) (as substituted by section 16 of the Fire Service Amendment Act 1978), and substituting the following subsection:

“(3) Notwithstanding **subsection (2)** of this section, the Commission may invest money in any investment for the time being authorised as a trustee investment by or under section 4 40
of the Trustee Act 1956.”

(2) Section 46 of the principal Act is hereby further amended by repealing subsection (5), and substituting the following subsection:

5 “(5) The Commission shall, as soon as possible after the 31st day of March in each year, cause to be prepared such statements of account as may be necessary to show fully the financial position of the Commission and the financial results of its operations for the financial year ending with that day, together with a report on its operations for that year, which
10 report shall review all matters relevant to the Fire Service. The statements of account shall be audited by the Audit Office which shall, for that purpose, have the same powers as it has under the Public Finance Act 1977 in respect of money and stores of a local authority and persons dealing therewith. The
15 Commission shall submit the statements of account for audit by the Audit Office and shall send a copy of the statements of account and the annual report to the Minister as soon as practicable after the statements of account have been audited
20 by the Audit Office. A copy of the Commission’s report and statements of account and the Audit Office’s report in each year shall be laid before Parliament as soon as practicable after their receipt by the Minister.”

(3) Section 46 of the principal Act is hereby further amended by repealing subsection (6).

25 (4) The Fire Service Amendment Act 1978 is hereby consequentially amended by repealing section 16.

5. New sections relating to Rural Fire Fighting Fund inserted—The principal Act is hereby amended by inserting, after section 46, the following sections:

30 “46A. **Establishment of Rural Fire Fighting Fund**—
(1) Subject to **subsection (2)** of this section, the Commission shall establish out of the proceeds of the levy a fund, to be known as the Rural Fire Fighting Fund, for the purpose of assisting in meeting the costs of any territorial authority in the control,
35 restriction, suppression, or extinction of any fire to which **subsection (3)** of this section applies and which occurs within any county area.

“**(2)** The Minister shall, in relation to each financial year, determine the amount from the proceeds of the levy to be
40 paid by the Commission into the Rural Fire Fighting Fund, taking into account any balance remaining in the Fund and any outstanding claims on the Fund. Where in any financial year the proceeds of the levy are insufficient to meet the

requirements of the Rural Fire Fighting Fund and the income requirements of the Commission in terms of **section 47 (2) (b)** of this Act, the requirements of the Rural Fire Fighting Fund, as determined by the Minister, shall be a first charge against the proceeds of the levy: 5

“Provided that, in respect of the year ending with the 31st day of March 1987, the amount from the proceeds of the levy to be paid into the Rural Fire Fighting Fund shall be \$500,000.

“(3) Subject to **section 46B** of this Act, an application for assistance from the Rural Fire Fighting Fund may be made by any territorial authority in respect of any fire which occurs within a county area, and— 10

“(a) For which responsibility for the outbreak of fire is not acknowledged, or cannot be established, whether by Court action or otherwise; or 15

“(b) In respect of which a permit has been issued by a territorial authority pursuant to section 23 or section 24 of the Forest and Rural Fires Act 1977 and where the conditions under which the permit had been issued were complied with. 20

“**46B. Application for assistance from Rural Fire Fighting Fund**—(1) Every such application for assistance from the Rural Fire Fighting Fund shall be sent to the Commission and shall be accompanied by a certificate signed by the principal administrative officer or other responsible officer of the applicant stating— 25

“(a) In the case of a fire for which responsibility for the outbreak is not acknowledged, or cannot be established, whether by Court action or otherwise— 30

“(i) The date on which the fire occurred and its point of origin or probable point of origin; and

“(ii) The cause or probable cause of the fire; and

“(iii) The steps taken by the applicant to endeavour to recover the fire-fighting costs; or 35

“(b) In the case of a fire for which a permit has been issued by the applicant pursuant to section 23 or section 24 of the Forest and Rural Fires Act 1977—

“(i) The date on which the fire occurred and its point of origin; and 40

“(ii) The terms and conditions under which the permit had been issued; and

“(iii) The measures taken to determine whether the terms and conditions of the permit had been complied with.

5 “(2) In any case to which **subsection (1) (b)** of this section applies, section 64 of the Forest and Rural Fires Act 1977 shall apply with respect to any dispute concerning compliance with permit conditions.

“(3) In the case of any fire to which **section 46A** of this Act applies—

10 “(a) Where the fire occurs on or after the 1st day of October 1985 and before the 1st day of October 1986, the application for assistance from the Rural Fire Fighting Fund shall be lodged with the Commission within 12 months after the date on which the fire
15 occurred; and

“(b) Where the fire occurs on or after the 1st day of October 1986, the application for assistance from that Fund shall be lodged with the Commission within 6 months after the date on which the fire occurred.

20 “(4) Every such application shall include particulars of the costs of the suppression of the fire, including costs incurred by any other territorial authority or by any rural fire committee established under the Forest and Rural Fires Act 1977 or by the Director-General of Forests or the Secretary of Defence or
25 by the Commission on behalf of the applicant in respect of that fire.

“(5) The Commission shall consult with the Director-General of Forests on the facts supplied on the certificate attached to every such application and the reasonableness of the costs as
30 stated in the application before reporting to the Minister on the application and the amount of the uncommitted balance (if any) of the Fund.

“(6) Where the Commission, after consultation with the Director-General of Forests, is of the opinion that there is
35 insufficient information to determine whether the costs as stated in the application are reasonable, or whether the fire in respect of which the application is made is of a type to which **section 46A** of this Act applies, the Commission shall require the applicant to supply such further information and evidence as
40 the Commission, after consultation with the Director-General of Forests, determines.

“(7) The Commission shall then report to the Minister on the application and shall include in its report such particulars as will enable the Minister to determine whether the fire in

respect of which the application is made is of a type to which **section 46A** of this Act applies, and whether the costs as stated in the application are reasonable.

“46c. Grants from Rural Fire Fighting Fund—(1) On receipt of any application pursuant to **section 46B** of this Act and the report of the Commission thereon, the Minister, having regard to the amount available for distribution and to all relevant matters, shall determine— 5

“(a) Whether or not the application shall be approved; and if so: 10

“(b) The amount that should be granted— and shall notify the Commission of any such determination.

“(2) Subject to **subsection (5)** of this section, any grant approved by the Minister may be paid in either a lump sum or in 2 or more instalments spread over one or more financial 15 years, as the Minister determines, and may be subject to such other terms or conditions (not inconsistent with this Act) as the Minister thinks fit.

“(3) Without otherwise limiting the terms and conditions that the Minister may specify, the Minister may, in respect of 20 any grant approved by the Minister, require, as a condition of the approval, that, where expenditure has been incurred on behalf of the applicant by any other territorial authority or by any rural fire committee established under the Forest and Rural Fires Act 1977 or by the Director-General of Forests or 25 by the Secretary of Defence or by the Commission in suppressing the fire or assisting in the suppression of the fire, the expenditure so incurred shall be a first charge against the proceeds of the grant:

“Provided that where such expenditure has been incurred 30 by the Director-General of Forests or by the Secretary of Defence or by the Commission, the amount of that expenditure shall be deducted by the Commission from the grant paid to the applicant and shall be paid direct to the said Director-General, Secretary, or Commission, as the case may 35 be.

“(4) On receipt of any determination of the Minister made under **subsection (1)** of this section approving a grant, the Commission shall cause the amount of the grant to be paid in accordance with the terms and conditions contained in the 40 Minister’s determination.

“(5) No grant shall be paid from the Rural Fire Fighting Fund if the payment of that grant would result in

overexpenditure of the Fund in the financial year in which the grant is to be paid:

“Provided that nothing in this subsection shall prevent the payment of a portion of a grant or of an instalment if the
5 payment of that portion or instalment does not result in overexpenditure of the Fund.

“(6) The Minister, in consultation with the Minister of Forests, shall from time to time determine, by notice in the *Gazette*, the amount of expenditure in respect of controlling,
10 restricting, suppressing, or extinguishing any fire of a type to which section 46A of this Act applies which shall be met by the applicant before any grant shall be payable under this section:

“Provided that, in respect of the period ending on the 31st day of March 1987, the amount to be met by any applicant
15 shall be \$2,500.

“(7) The Commission shall, as soon as possible after the 31st day of March in each year, cause to be prepared such statements of account as may be necessary in respect of the Rural Fire Fighting Fund, and the provisions of section 46 (5) of
20 this Act shall apply with respect to these statements of account.”

6. Income of Commission—(1) The principal Act is hereby amended by repealing section 47 (as amended by section 17 of the Fire Service Amendment Act 1978), and substituting the
25 following section:

“47. (1) In each financial year there shall be paid to the Commission such income as is required to meet the actual expenditure of the Commission.

“(2) Subject to this section, in relation to any financial
30 year,—

“(a) The income of the Commission from rents received and other receipts and charges together with money appropriated by Parliament in terms of section 47A of this Act shall meet 19 percent of the actual
35 expenditure of the Commission; and

“(b) The proceeds of the levy (other than the portion of the proceeds required for the Rural Fire Fighting Fund) shall meet 81 percent of the actual expenditure of the Commission:

40 Provided that, for the purposes of this paragraph, in relation to the financial year ending on the 31st day of March 1987, the proceeds of the levy shall

include any fire insurance premium contributions payable in that financial year.

“(3) Where in any financial year the income received by the Commission under **subsection (2) (a)** of this section exceeds 19 percent of the actual expenditure of the Commission, that excess shall be deemed to be an advance by the Crown in respect of its contribution for the following year. 5

“(4) Where in any financial year the income of the Commission under **subsection (2) (a)** of this section is less than 19 percent of the actual expenditure of the Commission, that shortfall shall be deemed to be a shortfall in the Crown’s contribution and shall be added to the Crown’s contribution to be paid in the following financial year. 10

“(5) Where in any financial year the income of the Commission under **subsection (2) (b)** of this section exceeds 81 percent of the actual expenditure of the Commission, that excess shall be deemed to be an advance of payment of levy, and shall be taken into account on the next occasion on which the levy is reviewed. 15

“(6) Where in any financial year the income of the Commission under **subsection (2) (b)** of this section is less than 81 percent of the actual expenditure of the Commission, the shortfall shall be deemed to be a shortfall in the payment of the levy and shall be taken into account on the next occasion the rate of the levy is reviewed. 20 25

“(7) The uncommitted surplus (if any) or the amount of the deficit (if any) of the Commission for any financial year shall be taken into account in calculating the income and expenditure of the Commission for the succeeding financial year.

“(8) For the purposes of this section the amount of any financial surplus or deficit of the Commission at the end of any financial year shall not take into account any money contained in the Rural Fire Fighting Fund and any money required to be paid into that Fund.” 30

(2) The Fire Service Amendment Act 1978 is hereby consequentially amended by repealing section 17. 35

(3) Nothing in the foregoing provisions of this section shall affect the payment of the Crown’s contribution or the fire insurance premium contributions due on the 15th day of June 1986 under section 47 (2) of the principal Act, as in force before the commencement of this section. 40

7. Appropriation by Parliament—The principal Act is hereby amended by inserting, after section 47 (as substituted by section 6 of this Act), the following section:

5 “47A. (1) For the purpose of meeting the requirements of section 47 (2) (a) of this Act, there shall be paid to the Commission in respect of the total approved estimated expenditure of the Commission in each financial year, out of money provided by Parliament for the purpose, the Crown’s contribution, having regard to—

10 “(a) Any advance of the Crown’s contribution as determined in accordance with section 47 (3) of this Act:

“(b) Any shortfall as determined in accordance with section 47 (4) of this Act:

15 • “(c) The estimated amount of the Commission’s income from rent received and other receipts and charges as determined in accordance with the approved estimate of expenditure of the Commission:

20 “Provided that the amount of the contributions in respect of the year ending on the 31st day of March 1987 shall take into account the contributions due on the 15th day of June 1986 under section 47 (2) of this Act (as in force before the 1st day of July 1986, the date of commencement of the Fire Service Amendment Act 1986).

25 “(2) The Crown contribution in any financial year, as determined in accordance with subsection (1) of this section, shall be paid in monthly instalments on the 15th day of each month:

30 “Provided that where the Commission has submitted its estimates of expenditure to the Minister and the Commission has not yet received notification in writing of the Minister’s decision the amount of any monthly instalment shall be one-twelfth of the total amount of the Crown contribution paid in respect of the previous year until such time as the Minister’s decision is notified to the Commission.”

35 **8. Definition of terms “property” and “owner of property”**—(1) The principal Act is hereby amended by inserting, after section 47A (as inserted by section 7 of this Act), the following section:

40 “47B. (1) For the purposes of this section and sections 48, 49, 49A, 49B, 50, 51, 52, and 53 of this Act—

“ ‘Property’ means any real or personal property situated in New Zealand; but does not include the categories of property set out in the Third Schedule to this Act,

or any property which is the subject of cover under a contract of marine insurance as defined in this Act:

“ ‘Owner of property’ includes any company, corporation, partnership, or person who is entitled to legal or beneficial ownership of, or is entitled to any form of tenure, possession, or right to, any such property, and shall also include any company, corporation, partnership, or person, whether resident in New Zealand or not, who is entitled to any indemnity or benefit under any contract of fire insurance, whether or not such company, corporation, partnership, or person is entitled to any form of legal or beneficial ownership or to any form of tenure, possession, or right as aforesaid. ”

“(2) The Governor-General may, from time to time, by Order in Council add to the **Third** Schedule any class or classes of property, and every such Order in Council shall have effect according to its tenor.

“(3) Every Order in Council made under **subsection (2)** of this section shall come into force on the day after the date of its notification in the *Gazette* or such earlier or later date as may be specified therein in that behalf.”

(2) The principal Act is hereby amended by adding the **Third** Schedule set out in the Schedule to this Act.

9. Levy—(1) The principal Act is hereby amended by repealing section 48 (as amended by section 2 (1) of the Fire Service Amendment Act 1982), and substituting the following section:

“48. (1) Subject to this Act, every insurance company with which any property is insured against fire under any contract of fire insurance made in New Zealand in respect of any period commencing on or after the 1st day of July 1986 shall pay a levy to the Commission.

“(2) The Minister shall from time to time, by notice in the *Gazette*, declare the rate of the levy which shall be computed on—

“(a) The amount for which the property is insured for the purposes of the contract of fire insurance; and

“(b) The period of the contract of fire insurance:

“Provided that where the period of the contract of fire insurance is in respect of any period other than a complete year, the levy shall be calculated as a pro rata proportion of the levy for a complete year.

“(3) The rate of the levy shall be reviewed annually by the Minister.

“(4) In reviewing the rate of the levy the Minister shall have regard to—

5 “(a) The total amount for which all properties in respect of which the levy is payable are insured at the latest available date, and the likelihood of any increase or decrease in that total amount:

10 “(b) The necessity of ensuring that the amounts received by the Commission in respect of the levy in that financial year are sufficient to meet—

 “(i) The requirements of the Rural Fire Fighting Fund; and

15 “(ii) The portion of the expenditure of the Commission that is required to be met by way of the proceeds of levy in terms of **section 47 (2) (b)** of this Act:

20 “(c) The desirability of ensuring, as far as is reasonably practicable, that any increases or decreases in the rate of the levy are designed to maintain the overall level of stability of the levy in the long term.

 “(5) For the purposes of **subsection (4) (b) (ii)** of this section the Minister shall take into consideration any shortfall in the levy as determined in accordance with **section 47 (6)** of this Act.

25 “(6) Where any contract of fire insurance provides for the settlement of any claim for damage to or destruction of the property upon a basis more favourable to the insured person than its indemnity value or where there is no sum insured in the contract, the levy, at the rate payable under **subsection (2)** of this section, shall be computed on the same amount as that on which the premium payable to the Earthquake and War Damage Commission under the Earthquake and War Damage Act 1944 is computed in respect of that contract of fire insurance.

35 “(7) This section shall not apply to any contract of fire insurance that is limited to an excess over the indemnity value of the property.

40 “(8) Upon the making of any contract of fire insurance to which this section applies, the levy at the rate then declared, computed in respect of the period of the contract of fire insurance, shall thereupon become a debt due by the insurance company to the Commission.

 “(9) The amount of the levy for which any insurance company at any time becomes liable under this section in

respect of any contract of fire insurance shall thereupon become a debt due by the insured person to the insurance company, and may be recovered by the company accordingly. If, at any time before the debt is fully discharged, any other person becomes an insured person under the contract of fire insurance, the amount remaining unpaid shall thereupon become a debt due by that other person to the insurance company, without prejudice to the liability of any other person. Where 2 or more persons are liable for any amount under this subsection, their liability shall be joint and several. 5 10

“(10) Subject to any regulations made under this Act, the Commission may from time to time, upon and subject to such conditions as it thinks fit, release any insurance company wholly or partly from its liability in respect of the levy or part of the levy under this section which, in the opinion of the Commission, is irrecoverable by the insurance company from the insured person. 15

“(11) Every insurance company shall, when forwarding any statement of account or demand for premium to any insured person in respect of any contract of insurance to which the levy applies, provide in that statement of account or demand that the levy is shown in a separate distinct and identifiable fashion from any premium payable to the insurance company or any other premium, tax, or levy paid to any other person or persons including the Crown, and it shall not be lawful for any insurance company to make any payment of brokerage, agency, or commission to any person or persons whatsoever in respect of the levy. 20 25

“(12) All money received by the Commission in respect of the levy under this section shall be deemed to be income of the Commission in the financial year in which it is received, and the provisions of this Act, with any necessary modifications, shall apply accordingly. 30

“(13) Without limiting the general power to make regulations conferred by section 92 of this Act, regulations may be made under that section for all or any of the following purposes: 35

“(a) Providing for and regulating the collection, receipt, and payment of money under this section:

“(b) Requiring insurance companies to make returns and keep books and accounts for the purposes of this section: 40

“Provided that in default of any such regulations and so far as such regulations do not extend, the Minister may give

written directions in respect of any matter referred to in paragraph (a) or paragraph (b) of this subsection.”

(2) Notwithstanding anything in this Act, where a levy was due and payable on any contract of fire insurance on or before the 30th day of June 1986, that levy shall remain due and payable, and the provisions of the principal Act, as in force before the commencement of this section, shall apply accordingly.

(3) Notwithstanding anything in this Act, where the Minister has, pursuant to section 48 of the principal Act, as in force before the commencement of this section, by notice in the *Gazette*, altered the rate of the levy, and the alteration of the levy is to take effect on the 1st day of July 1986 or on any subsequent date, the provisions of that notice shall apply to section 48 of the principal Act (as substituted by subsection (1) of this section).

(4) Section 2 (1) of the Fire Service Amendment Act 1982 is hereby consequentially repealed.

10. Liability for levy where agents of owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand—The principal Act is hereby amended by repealing section 49, and substituting the following section:

“49. (1) For the purposes of this Act, where any company, partnership, corporation, or person in New Zealand in the course of business negotiates, directly or indirectly (whether as a broker or otherwise), any contract of fire insurance between any owner of property and any insurance company that is not carrying on business in New Zealand or with an office or a branch outside New Zealand of an insurance company carrying on business in New Zealand,—

“(a) The company, partnership, corporation, or person shall be deemed to be the agent of the insurance company (whether or not the company, partnership, corporation, or person is also the agent of the owner of the property):

“(b) The contract shall be deemed to be made in New Zealand whether the premium was paid within or beyond New Zealand:

“(c) The agent shall be deemed to be an insurance company carrying on business in New Zealand and shall be subject jointly and severally with the insurance company with whom the contract has been made to

all obligations and liabilities (including payment of the levy) imposed under this Act or under any regulations made under this Act:

“(d) The agent may exercise all the rights, remedies, and powers conferred on the insurance company in relation to the contract under this Act or under any regulations made under this Act. 5

“(2) For the purposes of **subsection (1)** of this section, the agent shall include, together with the payment of the levy, a return and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the agent or by the agent’s authorised representative stating that, to the best of that person’s knowledge or belief, the payment is correct. 10 15

“(3) For the purposes of this section, where any agent transfers or credits money to any company, corporation, partnership, or person outside of New Zealand for the purposes of providing payment for indemnity of any risk which includes risk of fire, that agent shall provide the Commission with a statutory declaration, in the form prescribed, that the levy payable under this section has been paid. 20

“(4) **Section 48** of this Act, to the extent that it is not inconsistent with this section, shall apply with respect to any payment of levy made under this section.” 25

11. Liability for levy where owners of property negotiate contracts of fire insurance with insurance company not carrying on business in New Zealand—The principal Act is hereby amended by inserting, after section 49 (as substituted by **section 10** of this Act), the following section: 30

“49A. (1) For the purposes of this Act, where the owner of property negotiates a contract of fire insurance in respect of that property, either with an insurance company not carrying on business in New Zealand, or with an office or branch outside New Zealand of an insurance company carrying on business in New Zealand, the contract shall be deemed to be made in New Zealand and that owner of property, in respect of the amount insured (whether the premium was paid within or beyond New Zealand), shall accordingly be liable for the payment of the levy under this Act. The provisions of this section shall apply whether or not the negotiations for the contract of fire insurance were carried out by an overseas 35 40

insurance broker or agent acting on behalf of the owner of property.

“(2) For the purposes of **subsection (1)** of this section, the owner of property shall include, together with the payment of
5 the levy, a return and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or by the owner’s authorised representative stating, that to the best of that person’s
10 knowledge or belief, the payment is correct.

“(3) For the purposes of this section, where the owner of property transfers or credits money to any company, corporation, partnership, or person outside of New Zealand for the purposes of providing payment for indemnity of any
15 risk which includes risk of fire, that owner shall provide the Commission with a statutory declaration, in the form prescribed, that the levy payable in terms of this section has been paid.

“(4) The provisions of **section 48** of this Act, to the extent that
20 they are not inconsistent with the provisions of this section, shall apply with respect to any payment of levy made under this section.

“(5) Nothing in this section shall apply to any contract of fire insurance entered into on or before the 30th day of June 1986
25 except where such a contract is for a term exceeding 12 months. Where such a contract was entered into on or before the 30th day of June 1986 and is for a period exceeding 12 months the provisions of this section shall apply to that portion of the said contract that exceeds 12 months.”

30 **12. Liability for levy by owner of property where cover for risk including fire is provided by any company, corporation, partnership, or person associated with owner of property**—The principal Act is hereby amended by inserting, after **section 49A** (as inserted by **section 11** of this Act),
35 the following section:

“49B. (1) For the purposes of this Act, where an owner of property makes a payment to any company, partnership, corporation, or person (other than an insurance company) either within or beyond New Zealand, including any company,
40 corporation, partnership, or person associated with the owner (including any parent company, associate company, or subsidiary company of the owner) and the payment is to provide in respect of that property for arrangements for

indemnity or a reserve or a fund to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance, that owner in respect of that payment shall be liable for the payment of the levy under this Act. The provisions of this subsection shall apply whether or not the said arrangements are in the form of a contract of fire insurance. 5

“(2) For the purposes of **subsection (1)** of this section, the owner of property shall include, together with the payment of the levy, a return and shall include in that return the indemnity value in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or by the owner’s authorised representative stating that, to the best of that person’s knowledge or belief, the payment is correct. 10 15

“(3) For the purposes of any payment under **subsection (1)** of this section, where any company, corporation, partnership, or person, whether acting as the owner of property or otherwise, transfers money out of New Zealand, that company, corporation, partnership, or person shall provide the Commission with a statutory declaration in the form prescribed, that the levy payable in terms of this section has been paid. 20

“(4) **Section 48** of this Act, to the extent that it is not inconsistent with this section, shall apply to any payment of levy made under this section. 25

“(5) Nothing in this section shall apply to any arrangement for cover for risk including fire entered into on or before the 30th day of June 1986 except where such an arrangement is for a term exceeding 12 months. Where such an arrangement was entered into on or before the 30th day of June 1986 and is for a period exceeding 12 months the provisions of this section shall apply to that portion of the said arrangement that exceeds 12 months.” 30 35

13. Payment of levy—(1) The principal Act is hereby amended by repealing section 50, and substituting the following section:

“50. (1) The amount of the levy for which any insurance company or agent or owner of property becomes liable in any month shall be paid to the Commission by the 15th day of the second month following the end of the month in which the contract of fire insurance or other arrangement was made. 40

“(2) Every such payment shall be accompanied by a certificate by the company, or by an officer of the company, or by an agent or other representative of the company (whether or not that person is an agent of the company for the purposes
5 of **section 49** of this Act), or by the owner of property or the owner’s authorised representative, stating that, according to the records and books thereof, and to the best of that person’s knowledge and belief, the payment is correct.

“(3) **Subsections (1) and (2)** of this section shall apply with
10 respect to any unpaid Fire Service levy due and payable in respect of any contract of fire insurance on or before the 30th day of June 1986.”

(2) Notwithstanding anything in this Act, the provisions of the principal Act, as in force before the coming into force of
15 this Act, shall apply with respect to the instalment of fire insurance premium income contribution payable on the 15th day of September 1986, and with respect to any instalment of fire insurance premium income contribution which is unpaid at the time of the coming into force of this Act and which was
20 due and payable prior to the coming into force of this Act.

14. Audit of contracts of fire insurance, etc.—(1) The principal Act is hereby amended by repealing section 51 (as substituted by section 18 of the Fire Service Amendment Act 1978), and substituting the following section:

25 “51. (1) Every insurance company and any agent or other representative of the company (whether or not that person is an agent for the company for the purposes of **section 49** of this Act) shall at all times keep in safe custody all records of contracts of fire insurance, including full particulars of each
30 contract and the amount of the levy and the date of its payment to the Commission.

“(2) For the purpose of ascertaining whether the levy for which any insurance company or its agent is liable has been paid and whether the provisions of this Act have been
35 complied with, the Commission or its authorised officer or agent may from time to time examine the books and accounts of the company or of its agent, and it shall be the duty of the said duly authorised officer or agent of the Commission to report the result thereof to the Commission, and the company
40 or, as the case may be, its agent shall forthwith on demand submit its books and accounts accordingly to the said duly authorised officer or agent of the Commission.

“(3) Where any owner of property is liable for the payment of the levy in terms of **sections 49A or 49B** of this Act, **subsections (1) and (2)** of this Act, shall, with any necessary modifications, apply to the records, books, and accounts of that person.”

(2) Notwithstanding anything in this Act, the provisions of the principal Act, as in force before the commencement of this Act, shall apply with respect to any return of income which was required to be completed and sent to the Commission under section 51 of the principal Act (as in force before the commencement of this Act) prior to the coming into force of this Act, but which was not completed and sent to the Commission.

(3) Notwithstanding anything in this Act or the principal Act, subsections (3) to (7) of section 51 of the principal Act (as in force before the commencement of this Act) shall apply with respect to the instalment of premium contribution payable on 15th day of September 1986 and any instalment of premium contribution which is unpaid at the time of the coming into force of this Act and which was due and payable prior to the coming into force of this Act.

(4) Section 18 of the Fire Service Amendment Act 1978 is hereby consequentially repealed.

15. Protection of commercial information—The principal Act is hereby amended by repealing section 52, and substituting the following section:

“52. (1) The amount of every payment made by an insurance company under **section 48** of this Act and by an agent or other authorised representative of an insurance company (whether or not the person is an agent for the company in terms of **section 49** of this Act) and by any owner of property under **sections 49A and 49B** of this Act shall be kept confidential, except where it is required to be communicated for the purpose of carrying into effect the powers, duties, and functions of the Commission under this Act:

“Provided that nothing in this section shall prohibit the publication of the gross amount of the levy received during or in respect of any period.

“(2) Where disclosure is made to the Commission or its authorised officer or agent concerning the particulars of any contract of fire insurance, the details of those particulars shall be kept confidential, except where it is required to be communicated for the purpose of carrying into effect the

powers, duties, and functions of the Commission under this Act.

“(3) Where disclosure is made to the Commission or its authorised officer or agent concerning the particulars of any
5 arrangement for indemnity or a reserve or a fund to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance, the details of those particulars shall be kept confidential,
10 except where it is required to be communicated for the purpose of carrying into effect the powers, duties, and functions of the Commission under this Act.”

16. Failure to pay levy—(1) The principal Act is hereby amended by repealing section 53 (as amended by section 19 of
15 the Fire Service Amendment Act 1978), and substituting the following section:

“53. (1) If any insurance company liable to pay the levy fails to pay that levy by the date specified in **section 50** of this Act, the amount of that levy, together with interests thereon at the
20 rate of one and a half percent per month calculated from the date payment is due, may be recovered as a debt due from that insurance company to the Commission. Interest will be calculated in monthly instalments for each month, or part thereof, that the payment is due.

25 “(2) Where any person is liable for the payment of the levy as an agent of an insurance company in terms of **section 49** of this Act, **subsection (1)** of this section shall apply to that person.

“3) Where any owner of property is liable for the payment of the levy in terms of **section 49A** or **section 49B** of this Act,
30 **subsection (1)** of this section shall apply to that person.”

(2) Notwithstanding anything in this Act, the provisions of the principal Act, as in force before the commencement of this Act shall apply with respect to the instalment of fire insurance premium contribution due and payable on the 15th day of
35 September 1986 and to any instalment of fire insurance premium contribution which is unpaid at the time of the coming into force of this Act and which was due and payable prior to the coming into force of this Act.

(3) Section 19 of the Fire Service Amendment Act 1978 is
40 hereby consequentially repealed.

17. Regulations—Section 92 (2) of the principal Act is hereby amended by repealing paragraph (i), and substituting the following paragraph:

“(i) Prescribing the form of any return or certificate or statutory declaration under **sections 49, 49A, 49B, and 50** of this Act.” 5

18. Revocations—The Fire Service (Levy) Regulations 1975 and the Fire Service (Levy) Regulations 1975, Amendment No. 1 are hereby revoked.

19. Consequential amendments to Forest and Rural Fires Act—The Forest and Rural Fires Act 1977 is hereby consequentially amended— 10

- (a) By omitting from the proviso to section 14 (4) the expression “47”.
 - (b) By omitting from section 43 (4) the words “or section 47”: 15
 - (c) By omitting from section 46 (1) the words “Subject to section 47 of this Act, in any case where a Fire Authority for any district other than a State area”, and substituting the words “In any case where a Fire Authority for a rural fire district”: 20
 - (d) By repealing section 47:
 - (e) By repealing section 49 (1) (b):
 - (f) By omitting from section 50 (as substituted by section 8 (3) of the Local Government Amendment Act 1979) the words “sections 46 and 47”, and substituting the expression “section 46”: 25
 - (g) By omitting from section 65 (1) the words “section 46 or paragraph (a) or paragraph (b) of section 47 (1)”, and substituting the words “or section 46”.
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SCHEDULE

Section 8 (2)

NEW THIRD SCHEDULE TO PRINCIPAL ACT
"THIRD SCHEDULE"

Section 47a

CATEGORIES OF PROPERTY EXEMPTED FROM FIRE SERVICE LEVY

1. Any ship or anything in a ship, except while the ship is on land:
2. Any standing bush or forest:
3. Any road, street, or path:
4. Any railway track or pole, or any tramway track or pole:
5. Any bridge or viaduct either completed or in course of construction, or any boxing or falsework used in construction of any bridge or viaduct:
6. Any tunnel or cutting:
7. Any retaining wall, dam, breakwater, mole, groyne, fence, or wall:
8. Any drain or channel:
9. Any reservoir, swimming bath, water tank (other than a water tank installed as part of the water supply system of any dwelling or farm building), water tower, or septic tank:
10. Any water or gas reticulation pipe (other than a water or gas reticulation pipe which in the opinion of the Earthquake and War Damage Commission, constitutes a structural part of any building):
11. Any electric supply, telegraph, or telephone pole, line, or cable:
12. Any mine or quarry:
13. Any aircraft or anything in an aircraft except while insured under a contract which is substantially a contract of fire insurance:
14. Any goods in transit, except while insured under a contract which is substantially a contract of fire insurance:
15. Any explosives:
16. Any livestock:
17. Any growing crops (including fruit trees and vines):
18. Any ensilage insured in the open field:
19. Any hay or other cut crops insured in the open field."