

FIRE AND EMERGENCY NEW ZEALAND BILL

SUBMISSION OF: N.Z. PROFESSIONAL FIREFIGHTERS UNION

TO: GOVERNMENT ADMINISTRATION SELECT COMMITTEE

**For and on behalf of:
N.Z. Professional Firefighters Union**

**DEREK BEST
SECRETARY
August 2016**

Committee Members,

Introduction

1. The New Zealand Professional Firefighters Union represents virtually all (career) professional Frontline Operational Firefighters employed by the New Zealand Fire Service. As well virtually all the Communications Centre personnel and the majority of Fire Safety Officers, Training Officers and Volunteer Support staff are members.
2. In the context of the organisation proposed in the Bill, on a conservative estimate over 80% of the work of FENZ will be carried out by our members. Although the numbers of persons involved in the Volunteer/Rural Sector may be larger, this is not reflected in workload/work demands. Over 80% of the work in effect translates to coverage of over 80% of New Zealand population.
3. Firefighters, through the Union, have a real and passionate interest in the Fire Service. They have willingly, often against considerable opposition, provided additional services to their communities – for example, medical assistance, motor vehicle accidents, and natural disasters.
4. The Union welcomes this Bills recognition of this wider role of Firefighters and the provision of a better Legal mandate for this wider Emergency Service Response. The Union has been a leader in calling for this wider mandate.
5. The Union also welcomes amalgamation of Urban and Rural Fire Services. It has been apparent for a long time that the artificial boundaries between Urban and Rural have long ago ceased to serve any useful purpose. Many of our most rural areas have Fire Service Volunteer Brigades and duplication of response services does not benefit anyone.
The Union understands that well over 90% of all vegetation fires are dealt with exclusively by Urban Fire Service at present – that is Fire Service Career and Volunteer Firefighters.
6. So the aspirations of the Bill are good however the Bill itself is flawed in many respects and demonstrates little understanding of the principles and ethos that should underpins any Fire and Emergency Service.

Summary

The Union summarises the key points in its Submission (not necessarily in order of importance) and expands on some of these matters further in its Submission.

- a. The name of the Organisation should include “Service”.
- b. Despite assurances, the Bill contains no guarantee of continued employment of Firefighters.
- c. Despite assurances, the Bill contains no guarantee of continuation of existing Conditions of Employment – the Bill reduces some Conditions.
- d. There appears no specific criteria in the Bill for appointment to the Board – for example the present need for at least someone with Senior Operational experience.
- e. The Bill only provides a Gratuity for existing employees – a recipe for disunity, disharmony and disputation.

- f. The Bill significantly reduces existing protection regarding Medical Disengagement to the considerable disadvantage of Firefighters.
- g. The Bill promotes discrimination between Volunteer and Career personnel – providing a very significant advantage for Volunteers.
- h. The Bill provides little if any recognition that the core of FENZ role is an Operational rank based structure. It seem to be more about generic corporate function.
- i. The Bill does not provide for a Uniformed Operational Head of FENZ.
- j. The Bill appears to allow the Board to issue Operational Instructions.
- k. The Bill appears to allow the Board to delegate to a civilian Chief Executive the power to issue Operational Instruction – and in fact to adopt an Operational Command and Control function itself.
- l. Section 123 and 124 (limitation of Liability) and (defence in action or proceedings relating to designated emergency services) – this is confusing and needs attention. For example Section 123 refers to Fire Safety legislation –what is this? Section 123 refers to ‘good faith’ – this is not repeated in Section 124. Section 124 refers to ‘complied with all relevant policies, standards, and Operational Instruction’. Many of these documents (particularly Operational Instruction) are now issued as guidelines. Where is the protection regarding an Operational Response?
- m. Clauses 127 -1371. It is quite unclear in reading the Bill as to quite what ‘Inspectors’ are. They do not currently exist. It would appear that the Board can appoint anyone as an Inspector.
- n. Dispute Resolution (Clauses 138-147) – Does this have relevance to Career personnel or is it another benefit for Volunteers? Excluded disputes include an ‘employment dispute’ but what is this? Could the Dispute Resolution Process apply to failure to appoint or unappoint as an Inspector; prescribed health standards for example?
- o. Presently the ‘Board’ of the Fire Service is the Fire Service Commission. Why can’t that concept be retained for FENZ to recognise the special nature of Fire and Emergency Services? Why shouldn’t the title “Commission” be retained and that rather than being generic Board members the term “Commissioner” be continued?
- p. The Bill contains extensive provisions regarding ‘Local Committees’ (clause 14 – 21). It is however very unclear as to how ‘Local’ these Committees will be, what and how they will operate and really whether they will serve any useful purpose.
- q. The Bill needs to provide a consequential amendment to section 137 of the Employment Relations Act to make it clear that the rights to seek a compliance order in contained.

Detail Comments

1. Even the name of the organisation – Fire and Emergency NZ – is objectionable and contemptuous of the history and the many years of service provided by the women and men who have dedicated their time to the service of their communities.
2. The removal of the word Service from the name of the organisation is simply wrong. The drafters of the Bill may not know what Service is all about – but our members do, and the Union has no doubt the thousands of Fire Service Volunteer do as well.
3. The new organisation cannot be some sort of template corporate structure that does not recognise or understand that its duty is to serve the community. It always has been, and the Union strongly maintains it needs to continue to be a special institution moulding Career and Volunteer Uniformed Operational Firefighters to proudly and expertly service their communities.
4. The Union sees no reason why “Service” should not be included in the organisations name – Fire and Emergency Service.
5. Why shouldn’t the group charged with the governance of the organisation be a Commission (as at present) rather than the standard template Board? The special nature of the Organisation ought to be properly recognised and differentiated from other organisations.
6. No one would know, in reading the Bill that FENZ will be a Uniformed, Operationally based organisation. Uniformed Operational Officers will be the backbone of FENZ. However the Bill is all about corporate structure and mechanism.
7. Previous necessary references to rank structures and Operational command and control are gone. All authority is vested in a Civilian Board who seemingly can delegate that authority to whoever they wish.
8. There is nothing in the Bill that requires the Operational Head to be a senior Operational Officer. In fact there is nothing in the Bill that requires there to be an Operational head at all – a recipe for complete disaster. The Bill would allow the Board itself to issue operational instruction.
9. There is nothing in the Bill to prevent a future civilian Chief Executive taking Operational powers and purporting to have Operational command and control functions. In fact it would be legally possible for the Board itself to exercise this authority.
10. The Bill must be amended to recognise the new Organisation will be a uniformed, rank based Operational Organisation and Operational command and control must remain in the hands of senior Operational Commanders. If this does not occur, the Union sees, not only a loss of service, but also a significant danger to the Health and Safety of its members.
11. The Bill must be amended to provide a requirement for an Operational Head of FENZ (a senior Operational Officer). Ideally the Union would see this person as also being required also to be the Chief Executive.

12. The Fire Service, some years ago, has had the unfortunate and disastrous experience of having the National Commander subordinate to a civilian Chief Executive. It did not and will not work. It is inconceivable, for example, for the Commissioner of Police to report to a civilian Chief Executive and for very good reason. There are clear and distinct difference between corporate and Operational duties and responsibilities.
13. There are therefore good reason why the present Fire Service Act provides specific provisions detailing what are and who is to exercise Operational powers and duties
14. With only little modification this must be continued in the Bill. The Union refers specifically to the functions, duties and powers as in Section 28 of the current Act.
15. If such a provision is not included into the Bill, then the Union has no doubt at all, that FENZ will become a failed organisation.

Inconsistency

16. There would appear to be significant inconsistencies in the Bill. For example the previous long standing provision relating to the payment of a gratuity (to both Career and Volunteer) disappears (apart from a grandparenting provision) which this submission will discuss later. Apparently such a provision is unacceptable to the Bureaucrats but the Bill has provisions relating to prescribing of health standards relating to the compulsory dismissal due to incapacity.
17. It would seem that conditions of employment that provide a benefit for personnel are somehow ideologically unacceptable but when they give power to the Employer they are acceptable.

Compulsory Disengagement

18. The current Fire Service Act provides a provision for the 'retirement of medically unfit' and also 'compulsory disengagement of unfit'.
19. These provisions have and do work well – quite why something not broken has to be changed is not at all obvious.
20. The present Act (Section 72A) requires the Chief Executive to prescribe standard of physical competence. This is required to be done in consultation with the appropriate Union or Unions.
21. The Bill removes the requirement for the establishment of standards of Physical Competency. These standards are directly related to the work of an Operational Firefighter and Operational personnel are required to undertake and successfully complete the assessment every 2 years. If an Operational Firefighter is unable to meet the prescribed Standard they can be required to leave the Service.
22. The Bill removal of this provision would seem to mean that this requirement to meet Physical Competency Standards has disappeared; to be replaced by prescribed Health Standards.
23. The Union would suggest that Health Standards are quite a different thing to Physical Competency Standards.

24. The Union would suggest that Physical Competency Standards are far more appropriate – they directly relate to whether an Operational Firefighter can do the job required of them.
25. There have been a number of examples where someone on further examination has exhibited no health problems but have been unable to complete the Physical Competency assessment.
26. Physical Competency Standards are quite outcome focused whereas Health Standards do not necessarily relate to any outcome. As well prescribed health standards can easily act as a de facto retirement mechanism. For example an eyesight requirement could be prescribed, that would require anyone wearing glasses to be retired. Whether or not such requirement directly affects the person ability to do the job is never tested.
27. As well Clause 28 (2) of the Bill allows varying standards to be prescribed – dependant on role, rank or level of position.
28. Is this to provide for a further example of discrimination? Will Volunteers be prescribed a lesser standard? Will senior managers be prescribed a lesser standard? At present the National Commander is required to meet the same level of Physical Competency as an Operational Senior Firefighter.
29. The present Act also provides a code for dealing with Medical Disengagement (Section 72). Some of that Code is replicated in the Bill but not all of it.
30. This results in a very significant disadvantage to the Firefighters.
31. The present Code allows an appeal against a decision to medically terminate to 3 Medical Practitioners – one nominated by the employer, one by the applicant and one by the 2 nominees. These three Medical Practitioners hear and determine the appeal.
32. While the appeal is being considered the appellant remains a member of the Service – that is he or she continue to be paid.
33. The new procedure in the Bill, requires an appeal to be pursued using personal grievance action.
34. This is quite inappropriate and unfair.
35. The matter at issue is a medical one and usually is a complex medical issue. It must be considered by medical experts – not by lay adjudicators.
36. As well any appeal using the personal grievances procedure will inevitably be extremely costly for the Firefighters. As well as any legal assistance required, clearly costly medical advice will also be required. This can only be a very significant barrier to any right of appeal.
37. As well the Bill proposes that while any appeal is being considered the Firefighter may be placed on unpaid leave (as opposed to being paid at present).
38. This is a significant reduction in a Condition of Employment – despite the assurance that these changes would not result in such reductions.

39. This complete procedure in clauses 28 -31 is unfair, wrong and significantly reduce existing Conditions of Employment despite assurance that this would not happen.
40. There is a perfectly good process at present, which the Union is not aware of any problems with. The present procedure is fair, it is appropriately specific and it works – why change something that is not broken?

Gratuities

41. Schedule 1 – Clause 14. Quite why the existing provision cannot be included in this Bill is not at all clear but the removal results in a significant reduction in Condition of Employment for new Firefighters and will inevitably result in discontent and dispute.
42. The Bill proposes the existing gratuity will only be for existing employees who transfer to the new organisation.
43. New employees will not be eligible.
44. This is quite unfair, significantly reducing Conditions of Employment, for new employees. The resulting difference must result in disunity, disharmony, disputation and a very unhappy workforce in the future.
45. The Union would strongly submit that the provision of a gratuity must continue as at present.

Discrimination

46. The Bill explicitly provides for discrimination between FENZ personnel. Career Firefighters are used to being second class citizens with the Fire Service. However the Bill elevates this to third class citizen.
47. Section 33 of the Bill provides very significant advantages for volunteers.
- FENZ must take reasonable steps to recognise, respect and promote the contribution of Volunteers. There is no similar requirement for Career Firefighters even though they will carry out around 85% of the work of FENZ – Why not?
 - FENZ must consult with Volunteer organisations – there is no similar requirement to consult with any Career Firefighter organisation when members carry out 85% of the work of FENZ – Why not?
48. Section 34 of the Bill allows FENZ to fully fund independent volunteer advocacy organisations. Apart from the fact that this is an oxymoron, Career Firefighters, get no much support; they must fund their advocacy organisation (although at least it will be genuinely independent).
49. Given the present level of funding provided by the Fire Service to the existing Volunteer advocacy organisation, with the expanded number of Volunteers, the Union see future funding from levy payers, as being in the millions of dollars – for what value to FENZ? Career Firefighters would be pleased to receive even 1/10th of what will be paid for Volunteers.
50. The Bill – regarding Local Committees – in Section 15 provides a formation of a Local Committee

- 'To consider and promote the interest of the Local areas' FENZ Volunteers. There is no similar requirement to consider and promote the interest of the Career Firefighters. Considering that around 80% of the work within the area will be carried out by Career Firefighters, this is an extraordinary omission. Does this effectively mean that the Local Committee only have influence less than 20% of FENZ work within their catchment? Why shouldn't they be able to have an interest in all FENZ work?

Inspectors

51. The Bill is clear (clause 130) that FENZ can suspend or end the appointment of an Inspector at any time (presumably for any or no reason). What is the situation then of a Firefighter who has their appointment as an Inspector terminated? Do they still have a job and if so, how will they be able to do that job?
52. The Bill gives anyone authorised as an Inspector considerable powers
 - Power to enter and inspect any land or building (Clause 132(1))
 - If FENZ issues a warrant to enter my home or marae (Clause 133)
 - Seize, and destroy anything (Section 134)
 - Take or remove any samples (Section 135)
 - Prohibit or restrict access to any land or building.
53. Who will be given this very significant new power? The Bill in Clause 128 would suggest that FENZ can appoint pretty much anyone. All operational Firefighters, if they are to carry out pre-incident planning and post-incident analysis would be appointed as an inspector. Any employee of the State Services can be appointed as an inspector – an extraordinarily wide scope.
54. The Bill only gives a reference to qualified and trained for 'any other person' (Clause 128(f)) so the Bill allows that
 - FENZ personnel
 - An employee of a State Sector Department
 - An employee of the State Services
 - A statutory Officer
 - A prescribed person

Do not have to be suitably qualified or trained.
55. Are all employees required to accept appointment as an Inspector? What happens if they refuse to accept such as appointment? What happens if they are suspended or have their appointment ended – do they lose their job?
56. The title of Inspector could well lead to confusion. Inspector is a well-known rank within the Police.

Local Committees

57. No doubt at the time these Committees were thought of, it seemed a good idea at the time. However there doesn't seem much precedent to go on. Police do not operate with the assistance of Local Committees. Schools have their own Boards of Trustees. The example that the Union has been given is transport – the Regional Transport Advisory Group – well – have they been successful?
58. The advice the Union has received is there are likely to be around 12-16 of these Local Committees – so they will not be very Local. Even if Regional Council boundaries were adopted, in Wellington for example, the Local Committee would cover from Otaki, over the Wairarapa and then down to Wellington City. This is not Local. And a Local Committee that reflects the diversity of the Local area would be very big indeed.
59. If there is any truth that Local needs should be specified, it is hard to see any Local Committee reflecting the need of Foxton, Martinborough, Porirua and Wellington being able to do this.
60. Who will be on these Committees – present and past Local body politicians, M.P's, or party hacks? The Board of FENZ who will make all these decisions are political appointees themselves.
61. There is at present, plenty of opportunities for Local committee input- from Local Bodies, Local interest groups and particularly Local Volunteer Brigades. It would seem that Volunteer Brigades could be denied their input by the existence of some overriding Local Committee.
62. The Employment Relations Act contains a provision (s137(1)(ix)) which enables employees to seek a compliance order where the employer has not complied various specified good employer obligations (ss83, 83A, and 83B).
63. These obligations have been transferred to the Crown Entities Act – and the Union understands are arguably still enforceable under Section 137 of the Employment Relations Act. (The normal rule that a reference to a repealed Section incorporates a reference to its replacement).
64. The Union sees the Bill should therefore amend Section 137 of the Employment Relations Act to explicitly preserve and protect the ability to have compliance order jurisdiction.

Conclusion

1. The Union does support the overall intention of this Bill – merging Urban and Rural Services, clarifying the mandate and providing a fairer funding mechanism.
2. However the Bill in many details and in exclusions, is seriously flawed and needing considerable amendment. It looks like it was hastily thrown together, with little or no consultation with people with expertise in the subject.
3. The Bill is discriminatory, ignores or treats with contempt the interests of Career Firefighters who will carry out over 80% of the work of FENZ.

4. The Bill does not properly recognise the need to distinguish between Corporate and Operational matters and the need to have Operational matters in the hands of experienced, qualified Operational Officers.