

# Regulatory impact statement

## Fire Services Review: detailed policy design

### Agency disclosure statement

This regulatory impact statement (RIS) has been prepared by the Department of Internal Affairs (DIA). It follows Cabinet agreeing (in principle, subject to funding) to unify fire services, and to develop new fire services legislation [CAB-15-MIN-0207].

This RIS is in three main parts (Parts 1A, 1B and 2). It provides an analysis of the options to modernise current legislative details; ensure that a new levy (the Levy) proposed for the fire service is paid at the correct amounts and on the correct dates by those liable for the Levy; and help effect the unification of the fire service through transition.

This RIS is partly limited by a lack of data. For example, there is no single, national, incident reporting data for the fire services. This means that a lot of specific information on the work undertaken in the rural fire sector is unknown (e.g. the number and type of prosecutions that Rural Fire Authorities take annually, as well as there being no central record of each Rural Fire Authority's use of cost recovery under section 43 of the Forest and Rural Fires Act 1977). Further, each of the Rural Fire Authorities would have to collect data in a way that could be shared in order to effectively analyse the activities of all of them. These issues are expected to be resolved through implementation of the proposed reforms. The reforms would introduce improved systems providing the ability to report on, analyse and monitor performance.

For levy integrity, the proposed model is based on extensive discussions with fire service personnel on the nature of gaps and weaknesses in the current levy integrity provisions and with IRD and Ministry of Justice officials on the appropriateness of applying integrity provisions associated with the collection of tax (e.g. GST). Discussions have yet to take place with the insurance industry on the proposal. DIA considers the analysis to be a reliable basis for making policy decisions in support of fire service Levy integrity.

Finally, the merging of multiple independent entities (including 650 brigades and fire forces, and a large workforce, of which the majority are volunteers) is significant, complex and poses a number of operational and reputational risks. It is possible that further issues not covered in this paper could emerge during detailed transition design planning.

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## Contents

Executive summary .....	4
PART 1A: Future state - modernising current legislative details .....	5
Status quo and problem definition .....	5
Status quo .....	5
Problems .....	6
Objectives.....	9
Options and impact analysis .....	9
Rural fire cost recovery .....	9
Charging for responding to hazardous substances incidents, and power to destroy .....	12
Offences and penalties.....	13
Entry and investigation, and search powers .....	15
Ensuring firefighting water supplies .....	18
Disputes resolution .....	19
Conclusions and recommendations .....	22
Apply for costs award, and create new offence (Option A) is recommended for cost recovery.....	22
Removing charging for responding to hazardous substances incidents, and funding by the new funding arrangements (Option A) recommended, with new power to destroy some hazardous substances and property .....	22
Three main components (Option A) is recommended for offences and penalties .....	22
Entry and inspection, and search and seizure model (Option A) is recommended .....	22
Mandatory Code (Option A) is recommended to ensure firefighting water supplies.....	22
Principles basis (Option A) is recommended for disputes resolution.....	23
PART 1B: Future state – Fire levy integrity.....	24
Status quo and problem definition .....	24
Objectives section .....	26
Options and impact analysis .....	27
Status quo .....	27
IRD tax integrity model .....	27
Modified IRD tax integrity model.....	29
Discarded Options .....	31
Specific anti-avoidance rules.....	31
Conclusions and recommendations .....	32
PART 2: Transition .....	33

Status quo and problem definition ..... 33

- Industrial relations ..... 33
- Asset management ..... 34
- Legal entities ..... 35

Objectives..... 35

Options and impact analysis ..... 36

- Option 1: One step transition ..... 36
- Option 2: ‘As is’ transition ..... 37
- Option 3: Phased transition ..... 37

Conclusions and recommendations ..... 38

PART 3: Consultation, implementation, and monitoring, evaluation and review ..... 40

Consultation ..... 40

- Government ..... 40
- Stakeholders..... 41

Implementation plan..... 41

Monitoring, evaluation, and review ..... 42

## Executive summary

This RIS accompanies the Cabinet paper “Fire Services Review: detailed policy design”, and follows Cabinet’s decision (in principle, subject to funding) to unify fire services [CAB-15-MIN-0207].

This RIS is in three main parts (Parts 1A, 1B and 2). It provides an analysis of the options to modernise current legislative details; ensure that a new levy (the Levy) proposed for the fire service is paid at the correct amounts and on the correct dates by those liable for the Levy; and help effect the unification of fire services through transition. Part 3 of this RIS contains the following sections, which apply to all three parts of analysis (Parts 1A, 1B and 2): consultation section, implementation plan, and the monitoring, evaluation and review section.

In summary, this RIS concludes that:

- *the preferred option for modernising current legislative details* comprises a package of items. Specifically, to retain the ability to apply for costs (on conviction) and create a new offence in place of more general rural fire cost recovery; to remove the ability to charge for responding to hazardous substances incidents and to create a new power to destroy some hazardous substances and property; to have an offences and penalties regime with three main components (consolidation of offences and update of penalties, new compliance strategy, addition of an infringement scheme); an entry and inspection and search and seizure model for the new organisation’s roles in risk reduction and compliance, and enforcement; having a mandatory Code to ensure firefighting water supplies; and use of a principles basis for disputes resolution;
- *the preferred option for levy integrity* is a modified Inland Revenue tax integrity model. This option places obligations on Levy payers to retain records, and gives audit and inspection powers to the new organisation. Appropriate sanctions are also available to the new organisation to ensure compliance with Levy returns and payment due dates; and
- *the preferred option for transition* is a phased transition. This option is intended to minimise disruption to core emergency services, while managing tensions with, and between, the need for an expeditious merging of multiple organisations and the need for meaningful consultation with communities, fire service personnel and other stakeholders during the entire transition process. A key theme in this analysis therefore is to provide the new fire service organisation with sufficient certainty over personnel and equipment to be effective from its inception, while allowing enough flexibility for a transition team to manage the many foreseen and unforeseen issues emerging during the transition process.

## **PART 1A: Future state - modernising current legislative details**

### **Status quo and problem definition**

#### ***Status quo***

1. The two Acts for fire services reflect the current separation of urban and rural fire services under the New Zealand Fire Service (Commission) and numerous Rural Fire Authorities (RFAs). With Cabinet agreeing (in principle, subject to funding) to unify fire services, Cabinet also agreed to develop new fire services legislation, and to repeal the Fire Service Act 1975 and the Forest and Rural Fires Act 1977 [CAB-15-MIN-0207].
2. Currently, RFAs (or the Commission as the NRFA) can seek to recover an RFA's costs of rural fire control, restriction, suppression or restriction from a person who caused a rural fire (s43 of the Forest and Rural Fires Act). The Commission cannot seek to recover costs in urban fire districts.
3. The New Zealand Fire Service (NZFS) leads the response to stabilise and render safe hazardous substances incidents, and assists to promote hazardous substances' safe handling, labelling, storage and transport. NZFS currently charges to attend hazardous substances incidents. While it attends approximately 3,500 hazardous substances incidents a year, NZFS estimates that it charges for no more than 20 per cent of these incidents, recovering approximately \$500,000 in costs. NZFS personnel also rely on the powers of an enforcement officer under the Hazardous Substances and New Organisms Act 1996 (HSNO Act), including to destroy substances and property in relation to an emergency incident (see section 137(1)(i) of the HSNO Act).
4. Currently, the Fire Service Act 1975 and the Forest and Rural Fires Act 1977 both contain offences and penalties to deter certain fire related conduct. The Commission has not taken any prosecutions under the Fire Service Act, while the use of offence provisions under the Forest and Rural Fires Act (and underlying regulations) depends on each RFA's policy. For example, the Department of Conservation (DOC) as the single largest RFA has used the Forest and Rural Fires Act offence provisions the most, taking eight prosecutions under the Forest and Rural Fires Act over the past decade. The offences are strict liability or mens rea offences, with penalties ranging from \$200 to \$10,000. The two Acts also provide for a range of imprisonment penalties, up to a maximum of 6 months' imprisonment.
5. For fire incidents, the Fire Service Act provides access powers for pre-incident planning and post-incident investigation, the Forest and Rural Fires Act contains access powers including to check that fire control measures are being met. While both Acts contain powers to secure and hold premises, and remove and hold property, this is in the context of the Minister's rarely used power to hold an inquiry into the circumstance of a fire. The persons appointed to hold the inquiry are a Commission of Inquiry with powers under the Commissions of Inquiry Act 1908.

6. The National Commander of NZFS may check the adequacy of water supplies in urban fire districts and other areas NZFS has obligations to protect, and advise the relevant territorial authority of the adequacy of water supplies for firefighting and fire protection systems in buildings or properties (s30(2) Fire Service Act). In carrying out its duties, the National Commander publishes a Code of Practice, which specifies standards of water supply volume and pressure (s30(3) Fire Service Act). The current approach of NZFS to ensuring adequate water supplies for firefighting is to seek to have territorial authorities adopt the provisions of the voluntary Code of Practice. Those territorial authorities that adopt the Code would generally refer to it in their District Plan (with this adoption occurring during the preparation of the District Plan or as part of a plan change, which is subject to the normal public consultation processes under the Resource Management Act 1991). Where adopted, local government is responsible for monitoring and enforcing compliance with the provisions.
7. For resolving disputes, there are currently a wide range of matters that parties can dispute (e.g. disputes about appointments within NZFS), mechanisms and forums to manage or resolve disputes (e.g. a dispute between an NZFS volunteer or volunteer fire brigade and the Commission or NZFS can ultimately be referred to the Minister for consideration), and parties who might be involved in a dispute (e.g. from volunteer brigades to an insurance company in relation to fire service levy). Some dispute types have no legislated disputes processes.

### ***Problems***

8. The overarching problem is that in a number of areas, the policy positions expressed through the legislation no longer reflect best practice. The specific areas are: rural fire cost recovery; charging for responding to hazardous substances incidents; offences and penalties; investigation of fire emergencies; ensuring sufficiency of firefighting water supplies; and disputes resolution.
9. Another problem these specific areas face are the lack of clear connections between these areas in the urban and rural legislative environment. For example, with two separate Acts, the policy positions expressed in the legislation focus almost solely on urban/structure fire to the exclusion of rural/vegetation fire (or the reverse). The shift to unified fire services will effectively remove this distinction. Consequently, a policy position for some matters (e.g. disputes resolution) is needed to adequately cover the unified fire services.

### ***Rural fire cost recovery***

10. The problem for rural fire cost recovery, by a RFA or the Commission (as the NRFA), is that it:
  - 10.1 is an outdated deterrence tool. This is because it cannot favourably influence the behaviour of land users who do everything reasonable to prevent the outbreak of fire i.e. costs could still be recovered from a person who acts reasonably. This also means that cost recovery can be unfairly punitive by capturing people across the compliance triangle, including at the bottom (i.e. those willing to comply);

- 10.2 can be disproportionate. For example, the costs recovered can be out of proportion to the person's culpability, as cost recovery can apply regardless of the degree of culpability (so long as it can be established that the person caused the fire). Nor does cost recovery need to take into account other contributing factors, meaning that only minor costs might be recovered when a fire does not take hold, while significant costs might be recovered when the same action in different conditions leads to a large fire;
- 10.3 does not reflect service use (i.e. while it covers the use of the service by the person causing the fire, it does not align costs with all those who benefit from the fire being put out). Also, it does not reflect service use due to cost recovery focussing on the response, rather than the readiness capability; and
- 10.4 is inconsistent (both in application by different RFAs and across the urban and rural fire sector i.e. with the Commission being unable to recover costs in urban fire districts).

*Charging for responding to hazardous substances incidents, and gap in powers to destroy substances and property in relation to emergency incidents*

- 11. The problems with charging for hazardous substances incidents are:
  - 11.1 it is not a good funding source, with the funding's unreliability leading to a lack of strategic planning and NZFS providing a mixed level of service across the country;
  - 11.2 it breaches good tax criteria by being insufficient, uncertain, and inequitable (because others benefit from NZFS's readiness and response for hazardous substances incidents); and
  - 11.3 it is based on the person causing the hazardous substances incident, and does not take into account or require culpability.
- 12. The problems with not having powers to destroy substances and property in relation to an emergency incident are that the new organisation could face some risk of legal challenge from property/hazardous substance owners about the decisions firefighters make as part of the emergency response to destroy substances and property. More specifically, the problems are:
  - 12.1 NZFS does not have these powers to destroy where the emergency incident is covered by the HSNO Act, and the enforcement officer attends (i.e. under the Fire Service Act, the powers can be exercised, but only until the enforcement officer arrives); and
  - 12.2 NZFS has no powers to destroy substances and property where the emergency incident falls outside the definition of "hazardous substance" under the HSNO Act (which does not, for example, cover infectious or radioactive substances that may impair human, animal, or plant health, but which are currently covered by the definition of "hazardous substance" under the Fire Service Act).

*Offences and penalties*

- 13. Specifically, the problems with the offences and penalties regimes in the two Acts are:

- 13.1 the extensive use of strict liability offences, which were created before the New Zealand Bill of Rights Act 1990 (i.e. so those offences were not analysed to see whether they were a justifiable limitation on a person's right to be presumed innocent under section 25(c) of the New Zealand Bill of Rights Act );
- 13.2 the regimes only address a fairly narrow range of conduct (i.e. reasonably serious to serious conduct, with offences ranging from strict liability to mens rea offences);
- 13.3 some broadly similar offences in the two Acts have quite different penalties; and
- 13.4 the penalties available are not in proportion to the seriousness of the offence (e.g. when compared to penalties for broadly similar offences or conduct in more recent legislative schemes).

#### *Entry and inspection, and search powers*

14. For current powers for entry and inspection, and search in relation to planning and investigation of incidents, and enforcement, the problems are:
  - 14.1 investigations are provided for through different powers under the two Acts;
  - 14.2 investigations can be hampered by the limited powers under the current legislation (e.g. no power to secure sites or remove items for offsite examination, unless the Minister holds an inquiry);
  - 14.3 the powers are not consistent with modern legislative requirements under the New Zealand Bill of Rights Act 1990 and legislation for search and seizure; and
  - 14.4 the powers do not support the new organisation's new compliance and enforcement regime (including for appropriate prosecution of offences).

#### *Ensuring firefighting water supplies*

15. For ensuring adequate firefighting water supplies, the problems are:
  - 15.1 the Fire Service Act refers to publication of a Code of Practice specifying standards for water supply volume and pressure for firefighting, but it is not adopted uniformly across the country by territorial authorities. In addition, NZFS and local government incur significant costs when NZFS attempts to have the Code adopted during planning processes (e.g. as part of the District Plan). If the Code is not adopted or referred to in the District Plan, then water supply requirements are generally dealt with at later stages of planning or building consent processes (i.e. when a person seeks consent to subdivide land, or it can even arise when considering building consent applications);
  - 15.2 there is also variability across the country, with the adoption of the Code largely depending on the territorial authority (i.e. the National Commander can advise the relevant territorial authority of the adequacy of water supplies for firefighting and fire protection systems in buildings or properties, but the Code's adoption is a local matter); and
  - 15.3 NZFS has to rely on local government to enforce compliance with the adopted Code.



### *Disputes resolution*

16. The problems for resolving disputes are:
  - 16.1 the two Acts provide different forums and mechanisms for different disputes. Some processes are unclear, and some dispute types have no process at all, meaning that two similar disputes might be treated differently leading to very different outcomes, which might be unfair to parties; and
  - 16.2 the two Acts provide processes that can be out of proportion to the scale or nature of the dispute.

### **Objectives**

17. For the detailed policy matters, currently expressed in legislation, the objectives are:
  - 17.1 firstly, to determine these matters consistently with Cabinet's earlier decisions in CAB-15-MIN-0207 (unless a good reason to depart from those earlier decisions can be demonstrated);
    - 17.1.1 for example, the decisions include those to unify fire services, to develop new legislation that is broad and enabling, and to review the offences and penalties regime to provide for an infringement regime for identified low level offences;
  - 17.2 secondly, to further the objectives of the fire services review's governance and support reform, being to:
    - 17.2.1 improve consistency and effectiveness;
    - 17.2.2 improve flexibility;
    - 17.2.3 improve governance and accountability;
    - 17.2.4 contribute through partnership to regional resilience;
  - 17.3 thirdly, to enable drafting of quality legislation that achieves the policy objectives, while having proper respect for important legal principles (including human rights) and smoothly integrate with existing law (e.g. Crown Entities Act 2004).

### **Options and impact analysis**

#### ***Rural fire cost recovery***

##### *Option A. Apply to Court for costs on conviction, and new offence*

18. This option discontinues the cost recovery mechanism under s43 of the Forest and Rural Fires Act. With the removal of cost recovery, this option instead seeks to help deter unwanted conduct and to reduce risk by providing for a new offence. This offence is for acts or omissions that cause unnecessary fire danger or fire risk. In addition to the causation aspect, the new offence would require culpability (i.e. with "recklessly" as the mens rea element).

19. This option continues, in a modified form, the current approach under s61(5) of the Forest and Rural Fires Act. This approach allows the new organisation to apply to the court for an award of an amount, where a person is convicted of an offence under the Forest and Rural Fires Act. The amount is for the person’s liability for the new organisation’s costs, loss, damage or expense incurred, and which is caused by the act constituting the offence. By continuing the requirement for a conviction, a person could not be liable for costs, loss, damage or expense incurred from committing an infringement offence.
20. Overall, this option deters unwanted conduct by using the criminal law system (i.e. through the ability to apply for costs on conviction, and the creation of a new offence). It leaves the courts to consider the evidence, and to determine whether a person has committed an offence, and the appropriate penalty and possible costs award.

*Option B. Status quo*

21. This option continues the current approach under s43 of the Forest and Rural Fires Act, where RFAs can recover the costs of control, restriction, suppression or extinction of the fire by the person who caused the fire, without requiring culpability. Essentially, cost recovery operates through the civil system, with judicial scrutiny of the amount recoverable continuing to occur only on appeal.
22. This status quo option also has the criminal law system available, by continuing the current s61(5) of the Forest and Rural Fires Act (described in more detail above). However, cost recovery under s43 would likely be favoured over applying for an award of costs under s61(5), since s61(5) requires a conviction (with the prosecution having to prove guilt beyond reasonable doubt).

*Assessment of options against objectives*

<b>Objective</b>	<b>Option A – Apply for costs award, and new offence</b>	<b>Option B – Status quo</b>
Consistency with earlier Cab decision	Fully met – ensure that sanctions are available for behaviour resulting in a high cost fire	Partially met –sanctions are available for behaviour resulting in a high cost fire (but “sanctions” is cost recovery, with no new offence for conduct)
Improve consistency and effectiveness	Fully met – greater effectiveness through independent judicial decisions on costs, and through ability to prosecute risky conduct using new offence	Not met – cost recovery would continue to be used, despite it being inconsistent and not proportionate (i.e. it is based on causation, without regard to the degree of fault or other contributing factors). Also, it continues inconsistencies by allowing cost recovery for rural but not urban fires. Nor is cost recovery through the civil system consistent with the new approach to compliance and enforcement, an important element of which is criminal offences and penalties

Objective	Option A – Apply for costs award, and new offence	Option B – Status quo
Improve flexibility	Partially met – provides flexibility through a different route (e.g. in determining whether to prosecute a person, according to an enforcement strategy)	Partially met – maintains (but does not improve) cost recovery’s current flex
Improve governance and accountability	Fully met –accountability of person determined through courts i.e. for committing of offence (which requires culpability) and award of amount on conviction; organisation is accountable through judicial decisions on costs (rather than organisation making costs decision)	Partially met – continues current accountability e.g. person who causes fire can also be responsible for costs, without a need to show culpability. For organisation, there is little accountability around decision to cost recover or to not cost recover
Contribute through partnership to regional resilience	Fully met – contributes to regional resilience by fairer approach (i.e. committing of offence and award of amount on conviction is determined through courts), and improves fire safety, and helps reduce number and seriousness of unwanted fires	Not met – cost recovery does not take a “partnership” approach, with inconsistent treatment and lack of proportionality (i.e. it is based on causation, without regard to the degree of fault or other contributing factors)
Enable drafting of quality legislation	Fully met – enables more logical legislative approach than status quo (i.e. award of costs requires criminal conviction with the prosecution proving guilt beyond reasonable doubt, with an inability to use cost recovery for conduct that might only meet the lesser civil standard of balance of probabilities)	Not met – legislation appears to attempt to deter conduct by addressing cost recovery twice (through the criminal system with a court award of costs, and through the civil system with cost recovery). With cost recovery subject to a lesser standard of proof, there is a risk of favouring cost recovery over seeking costs on conviction (meaning no automatic judicial scrutiny)

*Impact analysis of Option A apply to costs award on conviction, and new offence*

23. *New organisation* – impacted by need for greater capability and resourcing for compliance and enforcement functions (including prosecution capability).
24. *Others* – impacted by possibly being prosecuted for risky conduct, which could lead to a criminal conviction and penalties. (This is different to the status quo where cost recovery operates through the civil system).

*Impact analysis of rural fire cost recovery Option B*

25. Status quo means that cost recovery continues to enable people to be penalised differently for the same action (e.g. recovering minor costs when a fire does not take hold, while recovering significant costs when the same action in different conditions leads to a large fire). The status quo also means that culpability is not taken into account when applying cost recovery.

***Charging for responding to hazardous substances incidents, and power to destroy***

*Option A. Removing the ability to charge, and providing a new power to destroy some hazardous substances, substances and property*

26. This option removes the current ability to charge for mandated hazardous substances incidents. Instead, this activity would be funded by the new funding arrangements (primarily from the non-residential sector levy).
27. This option also provides the new organisation with new powers to destroy hazardous substances, other substances (or property), which can be used as appropriate for the new organisation’s responses to hazardous substances and other substance emergencies.

*Option B. Status quo*

28. The new organisation would carry over NZFS’s current approach, described earlier.

*Assessment of options against objectives*

<b>Objective</b>	<b>Option A - Removing charging ability and new power to destroy</b>	<b>Option B – Status quo</b>
Consistency with earlier Cab decision	Fully met – fits with funding decisions	Not met – does not fit with funding decisions
Improve consistency and effectiveness	Fully met – enables greater effectiveness. Reliable funding helps support strategic planning across the country	Not met – is not effective, with lack of reliability of funding leading to an inability to plan strategically
Improve flexibility	Partially met – achieve flexibility through strategic planning that’s enabled through a reliable funding source	Partially met – continued flexibility through ability to charge, or not charge
Improve governance and accountability	Fully met – instead of variable accountability (due to decision on whether to charge), accountability can occur through compliance regime	Partially met – variable decisions on whether to charge can mean accountability also varies
Contribute through partnership to regional resilience	Fully met – contributes to regional resilience through enabling strategic planning (for the level of service across the country) because of more reliable funding	Not met – mixed level of service across the country continues, largely due to lack of reliable funding

Objective	Option A - Removing charging ability and new power to destroy	Option B – Status quo
Enable drafting of quality legislation	Fully met – enables broad legislative drafting	Partially met – continues current legislative drafting

*Impact analysis of Option A Removing charging for mandated hazardous substances incidents, and providing a new power to destroy some hazardous substances and property*

29. *New organisation* – impacted by no longer relying on charging as a funding source, and will have a stable funding source to enable improved effectiveness. The changes to mandated functions of the new organisation might lead to increased expectations that the new organisation is responsible for all clean-up costs of a hazardous substance emergency incident. The new organisation is responsible for stabilising and rendering safe. Depending on the incident, full clean-up costs (once the emergency has ended and the substances have been made safe) are outside the mandate of the new organisation and have no public benefit. The property/hazardous substance owner will be responsible for meeting these costs beyond the new organisation’s mandated functions.
30. *General public* – the public good benefits of resolving hazardous substances emergency incidents are shared across those who benefit. Individuals who are responsible for a hazardous incident are no longer subject to a potential charge but would still face sanction if they are found guilty of a breach of hazardous substances or health and safety legislation.
31. *Enforcement agencies* – impacted through changes to mandate and emergency response powers of new organisation. Where an enforcement agency and the new organisation both attend an incident, they will need to have operational policies in place dealing with their respective roles and functions, including any incident handover.

*Impact analysis of Option B Status quo*

32. No change from current impacts.

**Offences and penalties**

*Option A. Three main components (consolidate offences and update penalties, new compliance strategy, add an infringement scheme)*

33. Option A has three main components:
  - 33.1 consolidate the two offences and penalties regimes into one, with increased penalties;
  - 33.2 identify the offences and penalties regime within a broader national compliance strategy; and
  - 33.3 add an infringement scheme to the offences and penalties regime.

- 34. This option brings the two offences and penalties regimes into one. The penalty levels are revisited, taking into account modern legislative penalty levels for offences targeting behaviour that could lead to harm to people and property.
- 35. To deter non-compliance and to address low level offending, an infringement scheme is added to help fill the “gap” between low level interventions (e.g. guidance, warnings) and high level interventions (e.g. prosecutions). Creating an infringement scheme also enables current strict liability offences to be shifted into infringement offences.
- 36. This option also requires the development of a compliance strategy that identifies all of the tools available to address non-compliance and reduce fire risk (i.e. from education, to informal warnings, to issuing infringement notices, to prosecutions).

*Option B. Status quo*

- 37. The status quo is described above.

*Assessment of options against objectives*

<b>Objective</b>	<b>Option A – Three components</b>	<b>Option B – Status quo</b>
Consistency with earlier Cab decision	Fully met - provides an infringement regime, and aligns and consolidates the offences and penalties	Partially met – fails to provide an infringement regime, and does not align and consolidate the offences and penalties
Improve consistency and effectiveness	Fully met – wider range of tools (e.g. infringement scheme, education, higher penalties for offences) means non-compliance is more effectively deterred, and national compliance strategy enables greater consistency	Not met – wider range of tools, and compliance strategy encompassing the tools, are not available
Improve flexibility	Fully met – national compliance strategy identifies full range of compliance tools available, and infringement scheme gives more flexibility to address low level offending	Not met – the lack of an infringement scheme means there is little flexibility to deal with low level offending (i.e. either disregard conduct, or prosecute)
Improve governance and accountability	Substantially met – sound regime to make offenders accountable and penalise appropriately (e.g. infringements for low level offending)	Partially met – makes some offenders accountable, but lack of appropriate accountability for low level offending
Contribute through partnership to regional resilience	Substantially met – wider range of tools for ensuring compliance would better meet stakeholder needs and improve risk reduction	Not met – wider range of tools not available

Objective	Option A – Three components	Option B – Status quo
Enable drafting of quality legislation	Fully met – shifting strict liability offences into infringement offences means there are no offences where the burden of proof is reversed	Not met – continuation of strict liability offences could potentially be inconsistent with s25(c) of the New Zealand Bill of Rights Act

*Impact analysis of offences and penalties Option A (three components)*

38. *New organisation* – impacted by costs of developing a compliance strategy, and the tools to underpin it (e.g. guidance). The new organisation also needs an enforcement strategy, with authorised people to issue infringement notices. It needs the capability to investigate potential non-compliance, and to take prosecutions. There will also be compliance costs of establishing electronic processes for infringement fees, and collecting and reporting on enforcement information. However, a complete approach to compliance is more likely to enable the new organisation to meet its purpose of improving fire safety and reducing unwanted fires.
39. *Ministry of Justice* – impacted by possible need for the Ministry to send reminder notices for unpaid infringement fees.
40. *Others (e.g. stakeholders, general public)* – issuing infringement notices requiring payment of an infringement fee impacts those who would otherwise not be prosecuted. If prosecuted, offenders may be impacted by higher penalties. However, Option A may positively impact some landowners or stakeholders, due to the use of compliance tools leading to a reduction in the incidence and effects of unwanted fires. Option A will also impact positively on public safety if there is an improvement in compliance with fire safety measures such as evacuation scheme requirements.

*Impact analysis of offences and penalties Option B (status quo)*

41. The Ministry of Justice is not impacted, as there is no infringement scheme. For others, there is no change from the status quo and current impacts (e.g. general public can be prosecuted, and subject to penalties).

***Entry and investigation, and search powers***

*Option A. Entry and inspection, and search powers*

42. One option is to use entry and inspection (for pre-incident planning, post-incident investigations and compliance), together with search and seizure (for enforcement). This could be based on similar models in health and safety and hazardous substance legislation (and including legislation for agencies which have emergency response, regulatory, and enforcement roles).
43. For example, entry and inspection, and search and seizure powers support a workplace health and safety inspector’s respective roles in ensuring compliance with the Health and Safety at Work Act and investigating incidents, and supporting enforcement of the relevant legislation. Similarly, changes are pending to the HSNO Act to give enforcement officers new powers of entry and inspection, including power to take or remove anything for analysis of testing. These powers are for the purposes of monitoring compliance with HSNO Act and investigating incidents.

44. To support fire safety and fire risk reduction, the proposed entry and inspection, and search and seizure model would provide appropriate powers to enable determination of the cause of a fire, but also to support the new compliance regime, and new enforcement regime (including appropriate prosecutions). For example, the new organisation would authorise appropriate personnel who would have entry and inspection powers including to take samples and other objects for the purposes of determining causes of incidents, monitoring fire safety, and assessing compliance with fire legislation. Unless the occupier consented, authorised personnel could only enter dwellings with a warrant issued by a judicial officer, and marae in accordance with the hika of the marae. In addition, authorised personnel would have powers of search and seizure (with appropriate warrants), which would support enforcement action. While the entry and inspection powers are invasive, access into premises is key for the new organisation’s roles in improving fire safety, and enhancing the safety of people, property, and emergency responders.

*Option B. Entry and investigation option – no attribution of fault*

45. An option is to adopt an entry and investigation model, based on the Transport Accident Investigation Commission (TAIC) model. TAIC determines the causes of accidents to avoid similar occurrences; it has no powers to prosecute (these functions are held by the Police) or to assign fault to a person. The new organisation (specifically, authorised persons):

- 45.1 could enter a place for post incident investigation and seize items they reasonably believe have caused or contributed to a fire;
- 45.2 could restrict or prohibit persons from accessing the incident site. This power could only be used where the new organisation reasonably believed the restriction or prohibition necessary to preserve or record evidence, or to prevent tampering with or destruction of relevant items; and
- 45.3 would require a warrant to exercise the powers of entry, control and seizure in private residences or marae.

*Assessment of options against objectives*

Objective	Option A - Entry and inspection for planning, investigation and compliance, and search and seizure for enforcement	Option B – Entry and investigation – no attribution of fault
Consistency with earlier Cab decision	Fully met – earlier decision identified investigation, uplift and seizure powers as a matter officials should consider to support reduction in risk of fire and to implement the compliance and enforcement regime	Partially met – earlier decision identified investigation powers as a matter officials should consider to support reduction in risk of fire



Objective	Option A - Entry and inspection for planning, investigation and compliance, and search and seizure for enforcement	Option B – Entry and investigation – no attribution of fault
Improve consistency and effectiveness	Fully met – more appropriate powers means the new organisation is better enabled to determine incident causes to improve fire safety and risk reduction, and to implement the compliance and enforcement regime	Partially met – investigation focus improves effectiveness by reducing fire risk by learning from previous incidents, but does not improve effectiveness for deterring conduct through enforcement
Improve flexibility	Fully met – entry and inspection, and search and seizure powers mean greater flexibility than process of requesting the Minister hold an inquiry (which then enables taking damaged/destroyed property)	Partially met – greater flexibility than process of requesting the Minister hold an inquiry (which then enables taking damaged/destroyed property), but does not improve flexibility for enforcement
Improve governance and accountability	Partially met – wider powers require controls and accountability for their use	Partially met – powers require controls and accountability for their use
Contribute through partnership to regional resilience	Fully met – contributes to regional resilience with powers that better enable planning, incident investigation, to understand causes (and to improve communities’ fire safety), as well as tools to encourage compliance, and powers to support enforcement	Partially met – contributes to regional resilience with powers that better enable incident investigation, to understand causes (and to improve communities’ fire safety)
Enable drafting of quality legislation	Partially met – fits with enabling legislation (with limits - warrant to enter private residence, warrants to enter premises for search and seizure), but wider powers generally require controls with detailed prescription in legislation	Partially met – fits with enabling legislation (with limits – warrant to enter private residence)

*Impact analysis of entry and inspection, and search powers Option A*

- 46. *New organisation* – impacted by need to increase capability and resourcing, due to different framework for investigating fire incidents and monitoring compliance, and for enforcement purposes.
- 47. *General public* - impacted (compared to status quo), by changes to powers e.g. new organisation’s ability to seize items post-incident. Impacted by new organisation’s ability to use powers for enforcement (e.g. gather evidence to prosecute).

*Impact analysis of entry and investigation – no attribution of fault Option B*

- 48. *New organisation* – impacted by need to increase capability and resourcing, due to different framework for investigating fire incidents and monitoring compliance, and for enforcement purposes.
- 49. *General public* – same as Option A, but powers are not for compliance and enforcement (i.e. not for gathering evidence to prosecute).

**Ensuring firefighting water supplies**

*Option A. Mandatory Code of Practice*

- 50. A mandatory Code of Practice would specify standards of water supply volume and pressure. This would ensure sufficient water supplies to enable effective firefighting and training, and would ensure water for firefighting supplies is a matter considered early in planning processes, meaning that expectations of requirements are clear. The new organisation would develop the Code in consultation with stakeholders. However, monitoring of compliance would shift to the new organisation.

*Option B. Status quo*

- 51. The new organisation would carry over NZFS’s current approach, described earlier.

*Assessment of options against objectives*

<b>Objective</b>	<b>Option A - Mandatory Code</b>	<b>Option B – Status quo</b>
Consistency with earlier Cab decision	Fully met – fits with decision to unify fire services	Not met –does not sit well with decision to unify, as it leaves decisions about compliance with territorial authorities
Improve consistency and effectiveness	Fully met – enables greater effectiveness with mandatory nature, and more consistency (with appropriate local variation)	Not met – is not effective, with inconsistent territorial authority adoption of Code provisions
Improve flexibility	Partially met – mandatory nature does not improve flexibility, but improves better application of flexible Code allowing local variation, where appropriate	Partially met – continued flexibility through territorial authorities’ ability to choose whether to adopt Code provisions
Improve governance and accountability	Fully met – better accountability through requiring local government compliance, with new organisation monitoring	Not met – continues local government’s multiple roles i.e. adopts Code provisions, and monitors its compliance
Contribute through partnership to regional resilience	Fully met – new organisation sets Code in consultation with stakeholders	Partially met – territorial authorities that adopt Code provisions are working with/trying to work with fire services
Enable drafting of quality legislation	Fully met – enables broad legislative drafting, but with clear needs (e.g. mandatory Code)	Partially met – continues current legislative drafting for a voluntary Code

*Impact analysis of Option A mandatory Code*

52. *New organisation* – impacted by need to consult with stakeholders on Code, need to work with local government and developers to ensure flexible and appropriate application of Code, and by need to monitor and enforce Code provisions. Impacted by a decrease in costs from no longer having to seek incorporation of Code provisions into District Plans.
53. *Impact on local government* – impacted by removal of monitoring/enforcement roles. Also impacted by an inability to “choose” whether to adopt (and therefore, require compliance) with the Code, meaning a saving in planning and consenting processes. However, meeting the requirements of the Code is not expected to create new costs for local government; rather costs of water supplies would continue to be met by local government, developers and building owners (depending on the circumstance).
54. *Impact on developers* – impacted by need to comply, as they are currently where the Code has been adopted (e.g. through development contributions or putting in water supplies or fire suppression). For some developers, this could lead to increased costs. For example, developers in districts where territorial authorities currently choose not to require compliance could no longer choose cheaper assets that do not meet the Code or do nothing. However, due to flexibility in the Code and its application, some developers may pay less through using alternative means of compliance with the Code (e.g. sprinklers in buildings or static water supplies, rather than reticulated firefighting water supplies).
55. *Impact on public* – better transparency about firefighting water supplies for understanding capability of new organisation to carry out emergency responses. Potentially impacted as costs of infrastructure for water supplies are passed on.

*Impact analysis of Option B status quo*

56. *Impact on new organisation* – some of the likely impacts would be similar to the current impact on NZFS. Since territorial authorities may incorporate the Code in bylaws, or in District Plans, NZFS incurs costs monitoring District Plan changes and subdivision consent applications. These costs can be small for small District Plan changes, but can run into the tens of thousands where larger territorial authorities propose changes or where territorial authorities disagree with the Code. Other impacts may be greater than current impacts e.g. continuing cost pressures may lead to more territorial authorities choosing not to comply, likely resulting in the new organisation having a reduced firefighting ability.
57. *Impact on local government* – territorial authorities continue to bear the costs of monitoring and enforcing compliance with the Code, where adopted.
58. *Impact on public* – continued lack of understanding of risks of lack of adequate water supplies.

***Disputes resolution***

*Option A. Principles based option*

59. The principles based option uses a set of guiding principles that apply to the disputes resolution scheme (including how it is developed), as well as to the resolution of disputes. These principles are:

- 59.1 objectivity, fairness and integrity (e.g. facilitators and decision-makers in system are objective, and seen as objective, with no conflicts of interest);
  - 59.2 accountability and transparency (e.g. process is transparent for all parties, with data able to be collected on the number and range of disputes);
  - 59.3 efficiency (e.g. appropriate process and forum for each dispute, as the available outcomes should be proportional to the complexity of issues and users’ needs);
  - 59.4 effectiveness (e.g. the system enables resolution of different disputes, and changing volumes of different dispute types);
  - 59.5 user focus (e.g. design of system takes into account the range of possible users, including users’ likely needs and likely experience with disputes processes).
60. This option enables the new organisation to develop a flexible disputes resolution scheme that can change over time. To ensure the integrity of the scheme and wide acceptance of it, a range of stakeholders would be expected to be involved in the scheme’s development, with final approval of the scheme left up to the Minister of Internal Affairs. The scheme would be published, and would involve a tiered disputes resolution process, including Alternative Disputes Resolution. The flexible scheme would manage the wide range of dispute types fire services face, including unknown dispute types that could arise. Certain disputes could have a disputes process specific to those matters, if appropriate (e.g. levy disputes).

*Option B. Prescriptive option*

- 61. This option involves prescribing in legislation the known dispute types, the parties involved and the processes (including details such as form types, and timeframes). It would use very formal, traditional dispute resolution mechanisms, meaning that the courts would often hear disputes.

*Assessment of options against objectives*

Objective	Option A – Principles based	Option B – Prescriptive
Consistency with earlier Cab decision	Fully met – enables a modern, and transparent disputes resolution system to develop	Not met – provides for a traditional system (e.g. reliance on courts) rather than a modern, system
Improve consistency and effectiveness	Fully met – enables treatment of like disputes in a like manner, and manages disputes through appropriate process and forum	Partially met – provides users with certainty as to process, but might not be effective as court imposed outcomes can damage relationships
Improve flexibility	Fully met – system flexes to different users’ needs, and to new dispute types	Not met – need to prescribe a new dispute type and applicable process when new dispute types arise
Improve governance and accountability	Partially met - clear standards of accountability through the organisation that help ensure systematic resolution of disputes	Partially met – clear organisational accountability for identified disputes types, but accountability for any new dispute types might be unclear

Objective	Option A – Principles based	Option B – Prescriptive
Contribute through partnership to regional resilience	Partially met – better relationships with users through more flexible process, and through users’ involvement, and ability to agree an outcome	Not met – limited outcomes are available in a court process (e.g. focus is on determination), meaning users might not be satisfied at end of process, use of court processes may mean that some users are unable to access dispute resolution (cost and time involved is prohibitive and disproportionate to issues)
Enable drafting of quality legislation	Fully met – principles basis aligns with broad and enabling legislation	Partially met – enables legislation which provides certainty, but prescriptiveness means provision for new dispute types might require legislative change

*Impact analysis of disputes resolution Option A*

- 62. *New organisation* – impact depends on detail of system developed. However, likely impacts are the costs of an “end to end” process, and reporting costs. For example, the cost of potentially setting up a “triage” process to distinguish disputes from other matters, and an alternative disputes resolution tier would involve the cost of independent facilitators or decision-makers. Compliance costs would arise from collecting data to report on the number and range of disputes. Longer terms benefits to the new organisation would likely include better relationships with stakeholders (due to disputes being resolved at the earliest opportunity with users’ involvement).
- 63. *Disputes resolution system users* – impact depends on detail of system developed. Earlier resolution of disputes (compared to status quo) means avoiding the costs of court processes, and maintenance of relationships.<sup>1</sup> However, depending on dispute type, some users may bear a portion of the costs of disputes resolution.

*Impact analysis of disputes resolution Option B*

- 64. *New organisation and users* – impacts are the potential for significant costs due to the main disputes resolution mechanism being the courts (e.g. can be a slow process, involving legal costs).

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<sup>1</sup> For example, Alternative Dispute Resolution was used in 374 cases by one UK government department in 2007/08, resulting in estimated savings of £26.3million. UK Government departments are now required to use ADR (see MBIE, Dispute Resolution: Best Practice Report 1 of 2 to Joint Ministers, October 2013, p.8).

## Conclusions and recommendations

### ***Apply for costs award, and create new offence (Option A) is recommended for cost recovery***

65. This option best meets the objectives, by providing greater accountability through judicial decision-making on the costs award (so long as the offender is convicted), and through accountability for risky conduct through the creation of a new offence. While the option of cost recovery under s43 of the Forest and Rural Fires Act would enable a fairly simple approach of capturing those who cause a fire to continue, it would also continue to lack effectiveness as a deterrent (e.g. costs could still be recovered from a person who acts reasonably).

### ***Removing charging for responding to hazardous substances incidents, and funding by the new funding arrangements (Option A) recommended, with new power to destroy some hazardous substances and property***

66. This option best meets the objectives. With a more reliable funding source, more strategic planning over the level of service across the country is enabled, which contributes to regional resilience, and enables greater effectiveness.

### ***Three main components (Option A) is recommended for offences and penalties***

67. Option A - three main components (consolidate offences and update penalties, new compliance strategy, add an infringement scheme) is recommended. This best meets the objectives. A wider range of tools available means greater flexibility, while improving consistency through use of a national compliance strategy. While the new organisation is likely to incur new costs under this option (e.g. authorised persons issuing infringement notices) the new organisation is likely to achieve greater fire safety and fire reduction through a complete approach to compliance.

### ***Entry and inspection, and search and seizure model (Option A) is recommended***

68. This option best meets the objectives for the new organisation's roles in risk reduction and compliance, and enforcement. It provides greater flexibility than, for example, requesting the Minister hold an inquiry. It also contributes to regional resilience by providing powers that better enable incident investigation, to understand incident causes (and ultimately, improving fire safety in communities). It also contributes to greater effectiveness by supporting the organisation's ability to take enforcement action against those who create fire risk.

### ***Mandatory Code (Option A) is recommended to ensure firefighting water supplies***

69. This option best meets the objectives by enabling greater effectiveness through the Code being mandatory, and shifting compliance monitoring to the new organisation.

***Principles basis (Option A) is recommended for disputes resolution***

70. This option best meets the objectives, particularly by enabling the new organisation to develop a flexible disputes resolution scheme. There would be costs to the new organisation (e.g. independent facilitators and/or decision-makers for Alternative Dispute Resolution), but it would be expected that disputes would more often be resolved at the earliest opportunity, leading to a greater likelihood of maintaining relationships.

## PART 1B: Future state – Fire levy integrity

### Status quo and problem definition

71. Current fire service funding provisions reflect current differences in the structure of fire services. Legislation for urban fire services (the Fire Service Act 1975) makes provision for the Commission to be funded primarily from the fire service levy (Levy), paid on contracts of fire insurance on motor vehicles and property, and collected and paid by insurance companies.
72. Rural fire services are funded by local government, forest owners and the Department of Conservation, with provision in the Forest and Rural Fires Act 1977 to seek costs from those responsible for fires and/or a levy on land owners within a fire district. Where costs cannot be recovered from those responsible for a fire, the costs of fire suppression can be sought from the Rural Fire Fighting Fund (which is funded from the Levy and by DOC (for DOC lands)).
73. Cabinet has agreed in principle to combine rural and urban fire services and to introduce a single Act for fire services. As part of this, it is intended that all fire services are resourced according to a common funding model. The preferred funding model comprises a mix of funding streams, with most funding coming from a Levy on the amount insured on motor vehicles and property for material damage (similar to the Commission's current Levy), and a lesser amount coming from a Crown appropriation for services not otherwise funded by the Levy (e.g. medical emergencies).
74. The fire service cannot operate without sufficient revenue and cannot engage in effective forward planning without some certainty about revenue flows in future years. Part of the solution to these issues lies with the rate at which the levy is set and reliability of projected volumes or measures by which Levy rates and projected revenue are calculated.
75. These elements are necessary but not sufficient to maintain sufficient and sustainable sources of revenue. Provisions must also be in place for ensuring the integrity of the Levy (i.e. to ensure that those liable for the levy pay the correct amounts at the correct times).
76. The current Fire Service Act has a range of measures for maintaining the integrity of the existing Levy. These are as follows:
  - 76.1 where an owner or agent arranges fire insurance with an offshore insurance company (i.e. one that does not have business premises in New Zealand), the owner or agent is liable for the Levy;
  - 76.2 where a property owner contributes any money to another person or company (which is not an insurer) for the purposes of covering fire risk, the owner is liable for the Levy;
  - 76.3 insurers must keep records of insurance contracts and authorised fire service personnel have the power to audit these records;
  - 76.4 companies, corporations, partnerships, and local and public authorities are required to supply evidence of insurance arrangements;
  - 76.5 the Commission can employ agents to conduct a Levy audit; and



- 76.6 late or non-payment of the Levy attracts a penalty interest rate of 1.5% per month, with a further 10% applied to any balance owing after six months.
77. Unlike tax legislation there are no explicit anti-avoidance provisions in current fire service legislation.
78. Given the similarity between the current and proposed levies, these provisions could simply be carried over to new legislation which replaces the Fire Service Act and Forest and Rural Fires Act.
79. However, these provisions are dated; most have been in place since the 1980s and early 1990s. The key question is whether these are the best or only provisions needed for ensuring a fit-for-purpose, modern fire levy framework.
80. Decades of experience in applying (or attempting to apply) these provisions suggests that they have a number of gaps and weaknesses that could be addressed as part of the development of new fire services legislation.
81. These gaps and weaknesses are as follows:
- 81.1 the penalty associated with failing to provide records for the purposes of audit or a levy return is too low to be of deterrent value (a maximum of \$200 on conviction);
- 81.2 larger organisations can deliberately structure their risk and insurance arrangements to avoid paying levies. The current framework provides no general means of responding to this possibility.
82. Provisions for late or non-payment are similar to current IRD provisions in that penalty interest is applied for late payment; in this instance, at 1.5% per month and another 10% after six months). In the 2014/15 financial year, the Fire Service collected \$5.1 million in late payment interest.
83. With respect to levy avoidance under the current levy regime, in 2015 the Supreme Court ruled in favour of the New Zealand Fire Service Commission (the Commission) in terms of how the levy should be calculated on excess of indemnity and collective insurance products. In the case of excess of indemnity insurance<sup>2</sup>, the Insurance Brokers Association of New Zealand argued that the excess of indemnity policy was exempt from the levy under s 48(7) of the Act, which states that the levy shall not apply on “any part of a contract of fire insurance” that “is limited to an excess over the indemnity value of the property”. However, the Supreme Court found that section 48(7) does not exempt the excess of indemnity policy, except to the extent that it provides cover in excess of the true indemnity value.

■ [REDACTED] section 18(c)  
[REDACTED] (i) of the  
[REDACTED] Official  
[REDACTED] Information  
[REDACTED] Act 1982

<sup>2</sup> In this situation the insured has cover for both a nominated indemnity sum insured (e.g. \$100,000) and, in addition, excess of indemnity cover, which provides cover for the difference between the true indemnity value (e.g. \$200,000) of the property and the replacement value of the property (e.g. \$300,000). There is an uninsured portion between the stated indemnity sum and the true indemnity value of the property.

85. The current levy also has an inherent weakness in that only those paying fire insurance pay the fire levy. For some larger organisations (often Crown entities) the cost of carrying fire and other property related risks is less than the cost of insurance and they elect not to insure and to carry the risk themselves. Consequently, but not deliberately, they make no contribution to the levy, despite being able to access fire services.
86. In a number of these instances the fire service has been able to negotiate a 'good citizen contribution'. The agencies paying this include the Police, the Reserve Bank, and British Petroleum Ltd. The amount collected in 2014/15 was \$2 million. However, the good corporate citizen contribution does not always reflect the risk that the fire service must respond to. For example, Housing New Zealand makes a contribution to the fire service of \$2.2 million. At the current levy rate (7.6c per \$100 of insured value) this represents just 30% of the value of Housing New Zealand's asset portfolio.
87. Objectives for a framework that could address these weaknesses are listed in the next section. The options presented later in this analysis have been assessed against these.

### **Objectives section**

88. To be successful, a framework for ensuring the integrity of the fire service Levy should meet the following objectives:
  - 88.1 minimal compliance costs for levy payers and the new fire organisation in terms of collecting, enforcing, calculating and paying the Levy;
  - 88.2 minimal transition/implementation costs associated with the shift from the current to a new Levy regime;
  - 88.3 minimises deliberate Levy avoidance by those liable for the Levy. For the purposes of the analysis, this objective carries more weight than that of the first two objectives. If avoidance activity cannot be stemmed, the Levy will be largely ineffective as a revenue stream. The regime will also be seen as inequitable by those who are actually paying the Levy;
  - 88.4 the Levy integrity regime has clear and proportionate consequences for non-compliance with Levy payment requirements. This relates to the need to have a spectrum of sanctions, ranging from small penalties (e.g. infringement fees) for minor breaches of Levy requirements to full criminal prosecution (and relatively heavy penalties, including imprisonment) for offences involving the falsification of information or records associated with Levy returns;<sup>3</sup> and for the purposes of this analysis, this objective carries more weight than that of the first two objectives. If there are no effective consequences for non-compliance, the Levy will be largely ineffective as a revenue stream.

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<sup>3</sup> These sit in the top half of the Braithwaite compliance pyramid, above education/persuasion and warning letters.

## Options and impact analysis

### *Status quo*

89. The current framework for maintaining the integrity of the current Levy has minimal operating costs. If retained, there would be no transition or implementation costs other than shifting to the new levy base (i.e. to the amount insured) in insurance contracts for material damage).
90. However, current powers and sanctions associated with minimising free-riding and avoidance have serious limitations. While there is an obligation on insurers and others to retain and make available insurance contract information to the Commission, the sanctions for non-compliance are ineffective.
91. While the current framework has financial penalties for non- or late payment, the range of penalties available overall for non-compliance is very limited. In particular, there is no appropriate offence or penalty for serious offences such as deliberately falsifying financial records. Neither are there readily available sanctions for strict liability offences, like failing to provide a return.

### *IRD tax integrity model*

92. The tax integrity model applied by the Inland Revenue Department (IRD) was considered as a model for ensuring the integrity of the new fire Levy because (like the current levy) the proposed levy has some similarities with GST (e.g. both are calculated as a percentage on income, and paid recurrently to a legislated schedule). The current levy integrity model has also been criticised by the insurance industry for being out of step with the one applied by the IRD. Further, the legislation which underpins the IRD model is more up to date than equivalent fire services legislation.
93. The IRD's tax integrity model offers a range of powers, offences and penalties that are available for ensuring compliance with tax law. These include the following:
  - 93.1 similar to the current fire service Levy framework, unpaid GST attracts penalty interest of 1% for an amount not paid on the due date. For amounts not paid at the end of the 7th day from the due date, a further 4% is charged. Every month the amount owing remains unpaid, a further 1% penalty is applied to the amount owing. While these penalties appear lower than the equivalent Levy provisions, the IRD also applies an interest rate for use of money. This changes from year to year and is currently set at 9.21% per annum;
  - 93.2 the IRD also has automatic financial penalties for late filing. The penalty for late filing ranges from \$50 - \$250, depending on the accounting basis (payment vs invoice) used by the tax payer;

- 93.3 failing to provide information (including a tax return) is an absolute liability<sup>4</sup> offence which attracts maximum fines of \$4,000 for a first offence, \$8,000 for a second offence and \$12,000 for any subsequent offence. Knowingly breaching a tax requirement (e.g. failing to keep and/or provide required information or providing misleading information) can result in a criminal prosecution and attract maximum fines of \$25,000 for a first offence and \$50,000 for a later offence.
- 93.4 New Zealand tax legislation also makes provision for anti-avoidance behaviour. Under these provisions, the IRD can assess a tax arrangement as an avoidance situation where there is a reduction in tax liability, and the arrangement has a purpose of avoiding tax which is more than merely incidental. Under these circumstances, the IRD assess the amount of tax to be paid (supported by the information collection powers above), and send the person a request for that amount. The IRD has advised that the anti-avoidance powers available in the Income Tax Act have proved to be an effective tool for negating avoidance arrangements. A disputes process is available where the person disagrees with the IRD's decision, and the burden of proof rests with the taxpayer to overturn the assessment.
94. The IRD tax integrity framework is more complex than the current levy framework and would have higher administration costs (e.g. dispute resolution over fire levy assessments) if implemented to support the new Levy. However, these costs would need to be traded off against the recovery of additional Levy revenue. Further, the provisions themselves could encourage voluntary compliance in many cases, minimising the need for the new organisation to take enforcement action.
95. There would be some transition costs. However, Levy payers are generally also tax payers and should already be familiar with, and know how to act in accordance with, the IRD's tax integrity provisions. The insurance industry generally sees tax legislation as fair, this is reflected in the Insurance Council New Zealand's submission which supports alignment of penalty interest rates on Levy with those applied by the IRD.
96. The IRD's model allows the IRD to respond to organisations which deliberately structure their tax arrangements to avoid tax liability. However, under the current and proposed Levy model, Levy liability can be avoided or reduced because some (usually large) organisations and adopt insurance arrangements which greatly reduce their Levy liability. It would be hard to argue that these measures were more than incidental in terms of reduced Levy liability as they are usually designed to reduce insurance costs in general.
97. The IRD model provides for a wider range of penalties than the current levy provisions, particularly at the higher end of offending. However, lower level offending for not keeping or providing information still requires a full prosecution under the IRD model. Further, it could be argued that the absolute liability nature of some of the IRD's tax integrity offences, and the size of some penalties might be appropriate for maintaining New Zealand's general taxation system but excessive for maintaining the integrity of the new Levy.

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<sup>4</sup> A mistake of fact on the part of a defendant cannot be used as a defence

98. The application of the IRD tax integrity model to a new fire service Levy was discussed with IRD and Ministry of Justice officials. IRD officials suggested that their use of money interest (UOMI) rate was more effective than penalty interest in effecting compliance with correct payments on due dates. Ministry of Justice officials also questioned whether non-compliant fire Levy payers should be subject to the same sanctions as those applied to protect the integrity of the general taxation system.
99. For these reasons, and other weaknesses in the IRD model noted above, a modified version of the IRD tax integrity model was considered.

***Modified IRD tax integrity model***

100. A modified IRD tax integrity model could have the following characteristics:
  - 100.1 retention of Levy liability provisions for purchase of insurance with offshore providers;
  - 100.2 retention of the power to appoint third party auditors;
  - 100.3 continuation of the good corporate citizen approach for negotiating a contribution from those organisations that carry their own material damage risk;
  - 100.4 a requirement for levy payers to align their payment cycle and accounting basis with their GST payment cycle and accounting basis;
  - 100.5 a use of money interest (UOMI) rate for overdue payments (and overpayments) at the same rates as those applied by the IRD;
  - 100.6 penalty interest of 20% and 40% respectively for failing to meet the standard of being about as likely as not to be correct in calculating a Levy return, and for gross carelessness in calculating a Levy return;
  - 100.7 an infringement fee of a maximum of \$5,000 for failing to provide information (including failure to file a return) or retain information for audit purposes (the actual amount would be set in regulations), with a maximum infringement offence penalty maximum of \$15,000 for an individual and \$30,000 for a corporation;
  - 100.8 criminal offences for breaching a fire service Levy requirement with intent to mislead or deceive, with penalties of up to 2 months imprisonment, and maximum fines of \$25,000 for an individual and \$50,000 for a body corporate;
  - 100.9 a power which allows the new organisation to assess the Levy liability for an insurer or property owner where it is evident that general anti-avoidance rules (consistent with those applied by IRD) have been breached. Levy payers would be able to consult the new fire service organisation to reach a determination as to whether an insurance arrangement breached anti-avoidance rules;
  - 100.10a power which allows the new organisation to make an assessment of the amount of levy liability in the absence of a liable person lodging a Levy return; and
  - 100.11a robust, independent disputes process to help resolve disagreements over Levy assessments. This would be defined in regulations, in consultation with affected parties. (Options for disputes resolution are discussed in pages 19-21; estimated costs of dispute resolution are discussed in paragraphs 104-105).

**IN-CONFIDENCE**

- 101. Like the IRD tax integrity model, Levy liability re-assessments would be limited to a period within four years of the end of the tax year when the Levy return in question was provided, unless there was reasonable cause to suspect that a Levy payer knowingly or fraudulently failed to disclose all of the material facts needed to determine the amount.
- 102. This model would address major forms of possible revenue leakage in the Levy scheme, including instances of deliberate avoidance, and late or underpayments, thus reducing free riding on the fire services.
- 103. By adopting an infringement scheme for minor offending at one end of scale and establishing criminal offences for serious offending at the other end, this model would allow a proportionate response to a wide range of offending against Levy requirements.

*Table showing difference between IRD and modified*

The table below indicates key points of similarity and difference between the IRD tax integrity model and the proposed model for the new fire service Levy.

GST trigger points and payment dates	Failing to retain or provide records	Late and non-filing of returns	Carelessness in calculating returns	Intent to deceive	Late payment penalties	Specific anti-avoidance	General anti-avoidance	Good citizen contribution
Aligned	Aligned, but less severe penalties	Aligned, but less severe penalties	Aligned	Aligned but less severe penalties	No late payment interest but UOMI applied	Not aligned	Aligned	Not aligned

*Administration costs and impacts associated with the proposed levy integrity model*

- 104. The ongoing costs of administering the new Levy should generally be no greater than the costs of running the current levy regime, with one exception. The preferred model will provide the new organisation with a range of enhanced powers to minimise revenue leakage associated with the new Levy. This will probably have a knock-on effect in terms of the number of disputes and enforcement actions the new organisation will manage.
- 105. The IRD’s Dispute Review Unit handles 55 - 80 disputes a year to protect a revenue base of about \$60 billion a year. For a revenue base of about \$500 million, the number of fire Levy disputes should be no greater than 3 – 6 per year. Assuming that the workload associated with such disputes could be handled by 3 – 5 FTEs, the additional cost of administering the new Levy could range from \$800,000 - \$1,000,000 per year and certainly no more than \$2,000,000 taking into account possible enforcement action (e.g. infringement notices, prosecutions and appeals through the Courts).
- 106. This cost should be more than offset by recovering Levy revenue that would otherwise remain unpaid. In this respect it is worth noting that the IRD’s Dispute Review Unit has an 80% success rate in terms of finding in favour of the IRD’s assessments.

107. Greater compliance is likely to be effected from Levy payers because the proposed levy regime makes compliance easier to achieve and more difficult to avoid. While Levy payers will pay more, the costs of compliance with Levy requirements should be less. The insurance industry has called for the new fire Levy to be more aligned with IRD tax collection framework (e.g. because it aligns with their cash flows). To do this, we have aligned levy payment provisions with those related to GST and adopted powers, offences and penalties which are similar (but generally less severe) than those applied by the IRD under tax administration legislation.
108. The proposal for a general anti-avoidance rules is likely to create some sense of uncertainty for Levy payers. To reduce this, the new organisation can provide advance rulings to Levy payers prior to the adoption of a particular insurance arrangement (similar to those provided by the IRD and Customs). One of the advantages of aligning the fire Levy integrity regime with that applied by the IRD is that substantial case law and guidance exists that is relevant to the application of anti-avoidance rules<sup>5</sup>. Finally, a robust, independent disputes process will be available in the event of disagreements. These checks and balances will accompany the introduction of anti-avoidance rules and reduce uncertainty for Levy payers.

## Discarded Options

### *Specific anti-avoidance rules*

109. Early in the analysis of detailed funding options, one option for addressing avoidance was discarded: implementing specific anti-avoidance rules (SAAR). Unlike the general anti-avoidance rules proposed under the modified IRD model, SAAR would clearly specify the types of insurance arrangements that are considered to be avoidance (including certain collective insurance policies<sup>6</sup> and use of reinstatable loss limits).
110. This option would have the advantage that it provides levy payers and insurers with greater certainty regarding where and when the Levy will apply. It could also address some of the current avoidance issues and risks faced by the Commission, improving equity in Levy contributions and removing distortionary incentives from the market – at least in the near term.
111. However, as long as the Levy is assessable on insurance, Levy payers will be incentivised to find new ways of structuring their insurance to minimise their levy liability. In the longer term, as new arrangements are developed that circumvent the SAAR, it is likely that the impact of the reform on equity will diminish.
112. Furthermore, there is no certainty that the SAAR will work as intended. The SAAR may even worsen distortionary incentives. If the SAAR are not carefully drafted, they could create new legal loopholes for levy payers to exploit. Generally speaking, the more detailed a tax system becomes, the more ways people find to circumvent the rules. Avoidance often involves the exploitation of loopholes that were designed to reduce unfairness.

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<sup>5</sup> <https://www.ird.govt.nz/resources/1/0/10876180402363a989fbef5d802abedf/is1301.pdf>

<sup>6</sup> While the Supreme Court ruled against the specific collective loss policy under consideration in *IBANZ v NZFS*, the judgment did not definitively rule that collective loss policies could never be used.

**Conclusions and recommendations**

113. This RIS considered a range of options for protecting the integrity of the fire service Levy. The status quo ranked poorly in terms of minimising free riding and having proportionate responses for non-compliance, but ranked more highly than the other two options for minimal operating and compliance costs. The IRD model addressed free-riding through anti-avoidance provisions, but contained penalties that were disproportionately high for non-compliance with a fire service-specific Levy (as compared with non-compliance against the general taxation system). The modified IRD tax integrity model retained suitable anti-avoidance measures, but with a simplified penalty structure and lower penalty levels.

114. The table below provides a summary of the analysis above.

115. Table 1: Summary of options assessed against objectives

	<b>Status quo</b>	<b>IRD model</b>	<b>Modified IRD model</b>
Compliance costs	Met	Partly met	Partly met
Transition costs	Met	Partly met	Partly met
Avoidance	Not met	Met	Met
Consequences	Not met	Partly met	Met



## **PART 2: Transition**

### **Status quo and problem definition**

116. Last November, Cabinet agreed, in principle and subject to funding, to unify fire services into a new organisation [CAB-15-MIN-0207]. The Cabinet paper *Fire Services Review: Agreeing Future Directions and Next Steps* referred to the Minister's intention to submit a Cabinet paper early this year on a number of matters, including "any transition design issues that are contentious or have cost implications, including assets and transfers" (see paragraph 13).
117. The size and scope of the transition is complex and very large. It will involve bringing over 11,000 volunteers and 2,400 paid staff, the New Zealand Fire Service Commission (Commission), the functions of multiple independent Rural Fire Authorities (RFAs) and 650 fire brigades and rural fire forces, into a single organisation.
118. The greatest risk surrounding transition is the possible disruption to core emergency responses provided by fire services. Throughout the transition process, the new organisation must be able to continue to respond to fires and other mandated emergencies (e.g. traffic accidents) in a rapid and coordinated manner. Lives and property depend on this.
119. The transition design issues which have major structural and operational implications relate to:
  - 119.1 industrial relations;
  - 119.2 asset management; and
  - 119.3 legal entities.

### **Industrial relations**

120. Current fire services legislation (Fire Service Act 1975 and the Forest and Rural Fires Act 1977) prescribe a number of roles and certain details about those roles. These include the National Rural Fire Officer and National Commander under the Fire Service Act and Principal Rural Fire Officers and Rural Fire Officers under the Forest and Rural Fires Act.
121. Certain aspects of the relationship between the Commission and the United Fire Brigades' Association of New Zealand (an advocacy group for its member fire brigades and fire forces) are also contained in current legislation.
122. Retaining these statutory roles in legislation is inconsistent with newer legislation that already provides a statutory framework (e.g. Crown Entities Act, Employment Relations Act, and Health and Safety at Work Act 2015). Neither do these provisions meet the Review's objective to have flexible, fit for purpose legislation.
123. The fragmented nature of the current urban and rural fire services also means that there are a variety of reporting lines and accountabilities, and contractual arrangements which will need to be aligned with the functions, culture and design of the new organisation. Some fire service personnel, for example, are employed by territorial authorities, and have a mix of fire and non-fire related duties. Confusion could arise as to their lines of accountability and in relation to the continuation of their current employment relationships.

124. The absence of a clear and robust transition pathway from the status quo to a new organisational structure and new roles under a unified fire service raises the following risks:
- 124.1 the new organisation could have difficulty in deploying and coordinating personnel in emergency situations during the transition process;
  - 124.2 the new organisation could be hampered in its ability to design and implement a new, fit for purpose organisational structure and associated roles; and
  - 124.3 uncertainty for fire service personnel (paid and volunteer) could result in a loss of morale, confusion and industrial relations difficulties.

### **Asset management**

125. Unification of the fire services will involve the merger of multiple independent entities, many with assets. Assets owned, used or leased by other entities involved in the merger have been built up by a variety of means, including community fundraising and donations, and with assistance from grants from the NZFS or the National Rural Fire Authority (NRFA).
126. As part of the transition process, all assets could be transferred to the new organisation from day one of the new organisation. However, there are a number of complexities and considerations that suggest difficulties with this approach. These include the following:
- 126.1 some assets used by brigades and rural fire authorities are not directly related to firefighting, but are used for the social benefit of its members;
  - 126.2 rural fire authorities use assets which may be owned by other organisations (e.g. forest owners);
  - 126.3 assets are used under a variety of legal mechanisms (e.g. leases, licensing);
  - 126.4 tax implications of merging and taxable and non-taxable entities; and
  - 126.5 local communities who have gifted or funded assets will have a sense of ownership in these assets.
127. The new organisation will require confidence that assets, currently owned by other entities (that are required to carry out the mandated functions of the new organisation) are available for use from day one of the new organisation. This does not require asset ownership to be resolved with the commencement of new fire services legislation.
128. Crown entities are also expected to engage in long, medium and short term asset investment planning (Cabinet Circular CO (15) 5), and report asset investment performance as part of their annual reporting to Parliament. The uncertain nature of asset ownership and control across the fire services will be the subject of early transition design focus to avoid undue challenges for meeting expected standards of public sector performance for asset management.

## Legal entities

129. Fire brigades and Volunteer Rural Fire Forces have adopted a wide variety of legal forms, including incorporated societies under the Incorporated Societies Act, Charitable Trusts under the Charitable Trusts Act and charities registered under the Charities Act.
130. These entities have a variety of governance arrangements, including provisions for how they are wound up and how they dispose of assets and liabilities. They may also be party to a range of agreements (e.g. insurance, rental) and future commitments surrounding the supply of goods and services. Further, as noted above, they may also hold assets and funds from gifts and community donations. Some entities may also serve a function beyond their emergency response functions (e.g. as social clubs for members), and hold funds for non-firefighting purposes.
131. As a result of the transition to a unified fire service, Rural Fire Authorities (RFAs) will also cease to have their responsibilities for fire control when the new organisation comes into effect. RFAs will also have agreements, trust deeds and expectations of local communities that support them. Treatment in the unification of assets owned or used by these entities is also an added complexity, as noted above.
132. Some entities may continue to exist, albeit for a purpose that falls outside the functions of the new organisation.

## Objectives

133. The merging of multiple independent entities (including 650 brigades and fire forces, and a large workforce, of which the majority are volunteers) is significant, complex and poses a number of operational and reputational risks. Options for dealing with these potentially contentious transition issues are assessed below against the following objectives.
  - 133.1 minimal disruption occurs to core fire and emergency services. Disruption to core fire and emergency services could result in serious, undue damage to property and unnecessary loss of life. Consequently, this objective carries greatest weight for the purposes of this analysis;
  - 133.2 practical and palatable to implement. Paid and volunteer personnel need to be able to understand, inform and constructively participate in the change process. This will assist in maintaining morale throughout the transition process and achieving a sense of commitment to the new organisation;
  - 133.3 transparent, orderly and involves stakeholder input. Firefighting services in rural areas are often an integral part of their communities. The entities and many of the assets they deploy are often the product community input and fund raising. The winding down of entities and possible transfer of assets could create uncertainty for communities unless the process for doing so is transparent and gives opportunity for stakeholder input;
  - 133.4 supports the aim of establishing a unified fire service in an expeditious way. This objective sits in tension with the three previous objectives. A slower process will result in benefits being achieved later than desirable, and could even result in a loss of momentum and commitment to change.

## Options and impact analysis

### ***Option 1: One step transition***

134. On day one of the new organisation, all independent entities could be transferred in full (i.e. all personnel, assets, liabilities and processes) to the new organisation at the same time.
135. Within this option there are two possibilities:
  - 135.1 Option 1a: the full transition is effected as soon as new fire service legislation commences; or
  - 135.2 Option 1b: the transition is effected in one step after an orderly wind-down of entities (where that is applicable), completion of process for disposing of assets and transfer of workforce from old to new roles (and associated employment agreements), and volunteer engagement arrangements.
136. Option 1a has the advantage of speed, and cost and time savings, if mandated in legislation.
137. It also has the following disadvantages:
  - 137.1 elevated risk of disruption to core fire and emergency services because of the very tight timeframes and a low appetite within the sector for such an approach;
  - 137.2 transparency will be less than desirable and stakeholders (including staff) will have insufficient time to contribute (and commit) to the process. A lack of genuine engagement and involvement of stakeholders (particularly those affected) runs against the principles which have been advocated strongly for and have been integral to the sector's general support for the reform;
  - 137.3 disputes, litigation and claims are more likely and could offset any costs savings.
138. Rapid implementation could have a beneficial impact on Levy payers and the Crown by realising efficiencies associated with unification more quickly than would otherwise be the case. However, it would also impact negatively on fire service personnel and community stakeholders because there would be little opportunity for them to understand and contribute to the process. The latter impact would likely have an adverse flow-on impact on the quality of fire and emergency services.
139. Option 1b, is likely to be less disruptive and more transparent and acceptable than Option 1a. However, the winding down of some entities and disposal of assets could take a matter of years, resulting in delays to the realisation of benefits from reform and a possible loss of momentum in the change process.
140. In other words, if implemented, Option 1b would have a positive impact on fire service personnel and community stakeholders. However, Levy payers and the Crown would have to carry the costs of an inefficient fire services for a number of years.

**Option 2: 'As is' transition**

141. Under this option, the new organisation would take the form of a federation. All entities existing prior to the commencement of the new organisation would continue to exist. Direct reporting lines and control of assets of would remain with each entity, with indirect lines of accountably and control to the new organisation. The federal structure would be dismantled over time as the unification process took place.
142. Option 2 has the advantage of allowing for a process which integrates the various functions of each organisation involved, in a planned and considered manner, over an agreed period of time, based on agreed factors such as: risk profile, cost, size of brigade or rural fire force, and change readiness. It allows for a transparent, orderly process that takes account of stakeholder input.
143. However, it also has the following disadvantages:
  - 143.1 there would be indirect, and potential for confused lines of accountability and control which could result in disruption to core fire and emergency services;
  - 143.2 while the option sounds simple in principle, in practice it would be complex and difficult to communicate and administer; and
  - 143.3 unification at the point of commencement of the new organisation would be minimal, thereby extending the time taken for full unification.

**Option 3: Phased transition**

144. Under this option some aspects of unification would be completed to ensure the new organisation functions effectively from its commencement. Other changes would be subject to a longer term change management plan) overseen by the new organisation's Board.
145. Certain key aspects of fire services' industrial relations, asset management and legal entities would be subsumed within, or under the control of, the new organisation in the following manner:
  - 145.1 all fire services personnel would be made responsible to the new organisation, with existing workforce (paid and volunteer) transitioning with entitlements no less favourable than those under their previous employers or organisations. The new organisation would then work with its personnel to design the organisation so that it is fit for purpose (which may involve the removal of some existing roles and creation of some new roles). Fire service personnel employed by territorial authorities would remain employed by these organisations, but made available to the new organisation during the transition process for mandated services until a decision was made as to their role and/or ongoing employment with their current employer. Normal employment relations provisions would apply to any change proposal of this nature;
  - 145.2 where assets are not vested in the new organisation, the new organisation will have the power to deploy any asset used for the mandated purpose of the new organisation from day one; and

- 145.3 all records and information (e.g. legal contracts related to employment, insurance agreements, leases, correspondence) held by existing (but redundant) fire service entities would be made available to the new organisation from day one.
146. A transition plan would cover the management of asset disposal and transfer, and the orderly winding down of these entities (where that is applicable).
147. As part of this, the new organisation could be expected to:
- 147.1 consult with all relevant stakeholders and take account of their views before approving the plan;
  - 147.2 complete the unification process as soon as practically possible; and
  - 147.3 participate in a disputes process where there is a disagreement. Employment related disputes would be dealt with under the provisions of the Employment Relations Act 2000. Disputes involving the winding down and transfer of assets could be dealt with under the Arbitration Act 1996.
148. Option 3 has the following advantages:
- 148.1 it provides the new organisation with immediate control over the fire services' workforce (paid and volunteer) and information, access from day one to assets required for mandated services, which will help to minimise disruption to core fire and emergency services;
  - 148.2 the process is transparent, orderly and takes account of stakeholder input;
  - 148.3 full unification will be achieved more quickly than either Option 1b or Option 2; and
  - 148.4 simpler to understand and apply than Option 2.
149. Full unification under this option would take longer and would possibly be more expensive than Option 1a.
150. Further, while the risks of disputes relating to employment and asset ownership and transfer are diminished under this option, some risk still remains. These risks can be further reduced by establishing a draft transition plan in full consultation with all major stakeholders (including unions) and by applying the provisions the Employment Relations Act 2000 and the Arbitration Act 1996 in the case of disputes. A more detailed risk identification and mitigation strategy will also be developed and monitored by a programme transition team as part transition planning and implementation (see Implementation Plan section, below).

## Conclusions and recommendations

151. This RIS considered a range of options for dealing with potentially contentious transition issues associated with the unification of the fire service. While the phased option ranked only moderately for simplicity and speed of implementation, it ranked highly in terms of transparency and stakeholder input. Most importantly, it also ranked highly for minimising disruption to core fire and emergency services. It is the preferred option for these reasons.

The table below provides a summary of the analysis above.

**IN-CONFIDENCE**

	<b>One step (a)</b>	<b>One step (b)</b>	<b>As is</b>	<b>Phased</b>
Minimal disruption	Not met	Met	Not met	Met
Palatable	Partially met	Partially met	Not met	Partially met
Transparent, stakeholder input	Not met	Met	Partially met	Met
Expeditious	Met	Not met	Partially met	Partially met

## **PART 3: Consultation, implementation, and monitoring, evaluation and review**

### **Consultation**

#### ***Government***

152. Consultation has occurred with the New Zealand Fire Service Commission, The Treasury, the State Services Commission, New Zealand Police, the Departments of Conservation, Corrections, National Ambulance Sector Office, New Zealand Defence Force, Accident Compensation Corporation, Housing New Zealand Corporation, WorkSafe New Zealand, Maritime New Zealand, Ministry for Primary Industries, and Ministries of Culture and Heritage, Defence, Health, Business, Innovation and Employment, Transport, Environment, Education, Civil Defence and Emergency Management and the Department of Internal Affairs' Local Government and Community and Voluntary Sector. The Department of Prime Minister and Cabinet has been informed. These agencies received an early draft of this RIS on 22 March 2016 for comment.

#### ***Discussions on rural fire cost recovery***

153. The fire services review team contacted some Principal Rural Fire Officers, and discussed the removal of cost recovery. While Principal Rural Fire Officers generally favour cost recovery, they received comfort from their discussion with the review team that the new compliance and enforcement regime would function as an appropriate deterrent.

#### ***Discussions on offences and penalties***

154. The fire services review team has worked with Ministry of Justice officials on the proposed offences and penalties. For example, Minister of Justice officials noted that the rationale for the maximum infringement fee makes use of the key considerations listed in the Ministry of Justice Infringement Guidelines. Ministry of Justice officials also considered that the rationale for the maximum infringement fine seems appropriate, and noted that the appropriateness of the proposed fees/fines for each infringement would be considered when making the regulations.

#### ***Discussions on water supplies***

155. The fire services review team has consulted with DIA's Local Government policy team, as well as Local Government New Zealand (LGNZ). LGNZ suggested targeted consultation with local government stakeholders, which occurred, with no concerns being raised over the policy proposed.



### *Discussions on levy integrity*

156. The fire services review team discussed possible adoption of the IRD's tax integrity model with Ministry of Justice, and IRD. IRD officials suggested that a use of money interest rate for late payment was sufficient incentive for compliance in this area. Therefore, further consideration of other forms of late filing penalty, such as that provided for GST late payment (e.g. \$250 for not filing on the due date) was dropped. IRD officials also advised that having to conduct a full prosecution for lower level non-filing offences could be difficult. Instead, an infringement fee approach was therefore adopted for this type of offending against proposed fire Levy requirements.
157. Ministry of Justice officials queried whether the type of offences (i.e. absolute liability) and penalty levels associated with the IRD tax integrity model were appropriate to the level of possible offending against fire Levy requirements. Consequently, officials considered that a reduced range and reduced penalties (relative to those applied for tax integrity) would be more appropriate for the fire Levy. Unlike the IRD model, it is proposed that lower level offending against fire service Levy requirements be infringement offences.

### *Discussions on transition*

158. The IRD indicated that they would support the continuation of a tax exempt status for the new organisation (currently permitted for the Commission under section 62A of the Fire Service Act 1975). They also support tax provisions that would ensure any reorganisation of NZFS is carried out in a tax neutral manner, in addition to specific provisions dealing with the transfer of assets and liabilities from taxable entities to the new entity. The approach would be similar to that taken in past restructurings involving local government entities, such as the Auckland Council reorganisations.

### **Stakeholders**

159. Consultation with stakeholders has been continuing throughout the review and transition to the new organisation. This includes Ambulance New Zealand; Aviation Industry Association; Earthquake Commission; Enlarged Rural Fire Districts Chairperson Group; New Zealand Fire and Rescue Commanders Association; Federated Farmers; Forest and Rural Fire Association of New Zealand; Insurance Brokers' Association of New Zealand; Insurance Council of New Zealand; LandSAR; Local Government New Zealand; New Zealand Forest Owners' Association; New Zealand Professional Firefighters' Union; Principal Rural Fire Officers Group for the Enlarged Rural Fire Districts; Principal Rural Fire Officers from non-amalgamated Rural Fire Authorities; Public Service Association; Scion's Rural Fire Research Group; New Zealand Farm Forestry Association; Society of Local Government Managers; St John Ambulance; United Fire Brigades' Association; Wellington Airport Fire Service; and Wellington Free Ambulance.

### **Implementation plan**

160. Legislative change is the consistent element needed to implement many of the items discussed in this RIS. For example, legislation is needed to create an infringement scheme, and it is also needed for the disputes resolution framework (e.g. to establish the guiding principles).

161. However, legislation is only one element. Other elements include the need to develop regulations and policies. Examples of regulations needed are those to set the fixed fees for infringement offences, and criteria for assessing Levy liability. Other examples of elements required for implementation are the need to develop a national compliance and enforcement strategy, and the need to develop both the disputes scheme and the mandatory code for firefighting water requirements in consultation with stakeholders.
162. To achieve implementation, it is important to have a transition programme team that is resourced appropriately for complex sector transformation and will seek stakeholder input. A plan for transition is contained in the management case section of the programme business case, developed by the Commission's management.
163. A transition governance group could be established as a sub-committee of the Board of the new organisation. Ideally, the group would consist of 6 to 8 members. These would comprise:
  - 163.1 at least one Board member of the new organisation;
  - 163.2 external members with a successful track record in leading significant organisational change or sector knowledge
164. A transition programme team, led by an experienced programme manager, would be accountable to the Chief Executive and responsible to transition governance group. It would apply a robust programme methodology and implement the transition programme within the parameters provided by legislation, the governance group, and the expectations of the Board and the Minister. It would draw on sector expertise (e.g. via reference groups).
165. Consideration could also be given to the continuation of the Ministerial Reference Group. This is a forum of Ministers with an interest in fire services reform which provides guidance and support to the Minister responsible for leading the transition (i.e. the Minister of Internal Affairs).

### **Monitoring, evaluation, and review**

166. The Department of Internal Affairs will, as part of its monitoring role, dedicate resources to assess both the adequacy of transition arrangements and the implementation of the changes under the new legislative regime. The transition programme will develop outcomes and measures for successful implementation of the reforms which will be accommodated within an enhanced monitoring framework and planning and accountability documents. Qualitative assessment of the reform will be undertaken with and informed by discussion with stakeholder groups and other government agencies.
167. Subject to resourcing, a formal post-implementation review of the new organisation should also be conducted within two years of the changes, including (for example) the effectiveness of the new fire service levy integrity provisions.
168. Ongoing monitoring and review would also be achieved through memorandum accounting and three yearly Levy reviews.