



Federated Mountain Clubs of NZ (Inc)

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Liability Insurance Cover For Accidental Escape Of Fire

Clubs frequently ask FMC for information on liability for fire damage and whether insurance is necessary and available. The following general points can be made, but please note that every club's situation is different, and our advice is neither prescriptive nor a "fix-all solution". Also note that this memo is not a legal opinion.

Liability for costs arising from fire arises from common law. Anyone who negligently damages another's property is liable for the costs that arise. In the case of a tramp's campfire, stove or discarded cigarette setting vegetation alight, it would be difficult to argue that he had not been negligent. However in the case of a person falling, and an iceaxe hitting a rock and causing a spark, it could be argued that either the tramp had not been negligent, or that he could not have reasonably foreseen the outcome of his actions and thus could not have been expected to take precautions against such an outcome.

Given the potentially large sums involved – both for property damaged and the costs of fighting the fire - it is desirable that individuals have access to insurance cover against risks such as these. The mechanisms available are:

1. Personal insurance

Home contents policies almost always provide cover for legal liability, usually for a six- or even seven-figure sum.. The advantage of personal cover is that it becomes irrelevant whether the member is engaged in club activities at the time of the fire.

2. Club Insurance

Many clubs already hold Public Liability policies. These will usually extend to indemnify their members individually, as well as the club, with the club having first claim if the cover is inadequate to cover the separate liabilities of the club and individual members. Clubs that own or rent property should already have such policies to cover eventualities other than rural fires. It should be noted that for action to be taken against a club (as opposed to an individual), it would be necessary to show that the club as an organisation caused or contributed to the fire by its acts or omissions. This would appear to be a difficult to do.

The possibility of a group insurance scheme covering clubs has been looked into on several occasions but dismissed as not viable.

The statutory liability for costs contained in the Forest & Rural Fires Act 1977 no longer exists, so it is no longer necessary to ensure that insurance policies specifically cover liabilities imposed by that Act . Large fines and prison terms can now be imposed on anyone who knowingly or recklessly breaches a fire ban. It is highly unlikely that insurance against fines can be purchased.

This paper was prepared by executive member David Barnes, who can be contacted at david.barnes@fmc.org.nz

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APPENDIX

Forest and Rural Fires Act 1977.

43 Recovery From Person Responsible For Fire

(1) Where any property has wholly or partially been destroyed or damaged by or safeguarded from an outbreak or threat of outbreak of fire, and responsibility for the outbreak is acknowledged by, or is established by action or otherwise as caused by, any person—

(a) The costs of control, restriction, suppression or extinction of the fire may be recovered from that person by the Fire Authority or the New Zealand Fire Service Commission or the eligible landholder or eligible landholders of the forest area affected, as the case may be, incurring those costs pursuant to fire control measures under this Act; and

(b) Any loss in, or diminution of, value of that property, and any consequential loss or damage not too remote in law, may be recovered from that person by the owner of the property.

(2) The amount of the costs so recoverable may be wholly or partially established by agreement, or by a Rural Fire Mediator, or by proceedings under section 48(4) of this Act.

(3) This section shall be deemed to be supplementary to and not in substitution for any other rights of recovery that may exist in law or by enactment or otherwise howsoever.

(4) Before imposing any levy under section 46 [or section 46A][] of this Act, a Fire Authority shall reasonably endeavour to recover its costs pursuant to this section.

Status Compendium

Hist. s43(4) inserted expression “or section 46A” on 2 September 1996 by 1996 No 123, s11.

Hist. s43(4) omitted words “or section 47” by s18(b) of the Fire Service Amendment Act 1986.

46 Levy For Costs Of Fire Fighting In Districts Other Than State Areas

(1) [In any case where a Fire Authority for a district (other than a State area)] has incurred any costs of and incidental to fire-fighting operations directed towards the control, restriction, suppression, or extinction of a fire in its district—

(a) The whole or any portion of those costs may be met by all or any of the persons on whom a levy could be imposed under this section, as they mutually agree:

(b) Failing any such agreement, or so far as any such agreement does not extend, the Fire Authority may, for the purpose of recovering the whole or any part of those costs, in accordance with this section impose a levy for such sum or sums as it may specify on all or any of the following persons-

(i) Any landholder in respect of any land in the district:

(ii) Any owner, lessee, licensee, possessor, or occupier of any property which was in the district at the time of the fire and was menaced by the fire.

[(2) No such levy shall be imposed in respect of any land used for residential or farming purposes, or any buildings or chattels situated on such land, unless the land is in a district which is wholly or substantially occupied for farming purposes.

(3) No such levy shall be imposed in respect of—

(a) Any land formally retired from pastoral use under a Soil and Water Conservation Plan, and not used for production forestry:

(b) Any land subject to a conservation covenant pursuant to section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987:

(c) Any land subject to a Nga Whenua Rahui kawenata pursuant to section 77A of the Reserves Act

1977 or section 27A of the Conservation Act 1987:

- (d) Any land declared to be protected private land under section 76 of the Reserves Act 1977:
- (e) Any land held under an open space covenant pursuant to section 22 of the Queen Elizabeth the Second National Trust Act 1977, or any land which is acquired by the Queen Elizabeth the Second National Trust for the purpose of open space as provided by sections 20(2)(i) and 21(2)(a) of that Act.]

- (4) In determining whether a levy is to be imposed under this section and the amount of any such levy, the Fire Authority shall have regard to the following matters:
 - (a) The value of the property which has been saved and for the protection of which the fire-fighting operations were to any extent directed:
 - (b) The extent of the assistance in connection with the fire-fighting operations rendered by or on behalf of any person upon whom the Fire Authority may be entitled to impose the levy:
 - (c) The extent of any loss suffered by any such person as a result of the fire-fighting operations:
 - (d) Such other circumstances as the Fire Authority considers relevant.
- (5) In assessing the amount of the costs so incurred the Fire Authority may take into account the salaries and wages of its officers and servants during any period outside their normal hours of work while they were engaged in the control and suppression of the fire and in work arising from the fire.

[46A Levy For Costs Of Fire Fighting In Fire Safety Margins Of State Areas

- (1) Where the Fire Authority for a State area has incurred any costs of and incidental to fire-fighting operations directed towards the control, restriction, suppression, or extinction of a fire originating within any part of a commercial or semi-commercial forest area that is situated within the fire safety margin of the State area,—
 - (a) The whole or any portion of those costs may be met by all or any of the persons on whom a levy could be imposed under this section, as they mutually agree:
 - (b) Failing any such agreement, or so far as any such agreement does not extend, the Fire Authority may, for the purpose of recovering the whole or any part of those costs, in accordance with this section impose a levy for such sum or sums as it may specify on all or any of the following persons:
 - (i) Any landholder in respect of any land situated in the fire safety margin of the State area:
 - (ii) Any owner, lessee, licensee, possessor, or occupier of any property which was in the fire safety margin at the time of the fire and was menaced by the fire.
- (2) No such levy shall be imposed in respect of any land used for residential or farming purposes, or any buildings or chattels situated on such land, unless the land is in a district which is wholly or substantially occupied for farming purposes.
- (3) No such levy shall be imposed in respect of—
 - (a) Any land formally retired from pastoral use under a Soil and Water Conservation Plan, and not used for production forestry:
 - (b) Any land subject to a conservation covenant pursuant to section 77 of the Reserves Act 1977 or section 27 of the Conservation Act 1987:
 - (c) Any land subject to a Nga Whenua Rahui kawenata pursuant to section 77A of the Reserves Act 1977 or section 27A of the Conservation Act 1987:
 - (d) Any land declared to be protected private land under section 76 of the Reserves Act 1977:
 - (e) Any land held under an open space covenant pursuant to section 22 of the Queen Elizabeth the Second National Trust Act 1977, or any land which is acquired by the Queen Elizabeth the Second National Trust for the purpose of open space as provided by sections 20(2)(i) and 21(2)(a) of that Act.
- (4) In determining whether a levy is to be imposed under this section and the amount of any such levy, the Fire Authority shall have regard to the following matters:
 - (a) The value of the property which has been saved and for the protection of which the fire-fighting operations were to any extent directed:
 - (b) The extent of the assistance in connection with the fire-fighting operations rendered by or on behalf of any person upon whom the Fire Authority may be entitled to impose the levy:
 - (c) The extent of any loss suffered by any such person as a result of the fire-fighting operations:

- (d) Such other circumstances as the Fire Authority considers relevant.
- (5) In assessing the amount of the costs so incurred the Fire Authority may take into account the salaries and wages of its officers and servants during any period outside their normal hours of work while they were engaged in the control and suppression of the fire and in work arising from the fire.]