

Additional exemptions from 1 July 2019

Introduction

When to use	Use this guideline for assistance in administering the two new exemptions for levy effective from 1 July 2019.
Who it applies to	Anyone required to pay levy under the Fire and Emergency New Zealand Act 2017.
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Background

The Fire and Emergency New Zealand (Levy) Amendment Act 2019 has recently been passed into legislation on 7 May 2019. The legislation introduces two new exemptions from levy :

- New Zealand Defence Force property
- Art and items in collections of cultural heritage bodies

Under the provisions of the legislation, **these exemptions only apply to policies, created or renewed, on or after 1 July 2019.**

We have had enquiries about the use of the phrase "any contract of fire insurance made in New Zealand", and whether or not this means that those policies created offshore would be exempt or not. Whilst the phrase is not defined anywhere in the legislation, the intent of the legislators to provide an exemption is clear. The position taken by Fire and Emergency New Zealand is that this phrase will not be read literally, and that regardless of where the contract is created, onshore or offshore, if it meets the other criteria set out below, it will be considered exempt.

Exemption for property of the New Zealand Defence Force

Under the Act, Section 25B is inserted into the legislation :

25B New Zealand Defence Force exempt from levy

Despite clause 25, a levy is not payable for property that is insured

- (a) against fire under any contract of fire insurance made in New Zealand; and
- (b) by, and for the purposes of, the New Zealand Defence Force.

In order to be exempt from levy, assets must be insured by, and for the purposes of the New Zealand Defence Force. Where a contract includes assets owned by other organisations, these contracts are only exempt to the extent of the [fire] insured value of those assets in the contract owned by the New Zealand Defence Force.

The whole contract does not automatically become exempt as a result of New Zealand Defence Force being a party.

Exemption for art and items in collections by specified organisations

Under the Act, Section 25A is inserted into the legislation :

25A Art and items in collections exempt from levy

(1) Despite clause 25, a levy is not payable for art or items that—

- (a) are insured against fire under any contract of fire insurance made in New Zealand; and
- (b) are in a collection of a cultural heritage body (whether or not the art or items are currently present on that body's premises).

(2) In this clause,—

archive

- (a) includes Archives New Zealand (Te Rua Mahara o te Kāwanatanga) and National Library of New Zealand Te Puna Mātauranga o Aotearoa; and
- (b) includes specialist archival units (for example, an archival unit within a general university library such as the Hocken Collections - Uare Taoka o Hākena); but
- (c) does not include a library

cultural heritage body

means a museum/whare taonga, archive, or art gallery that—

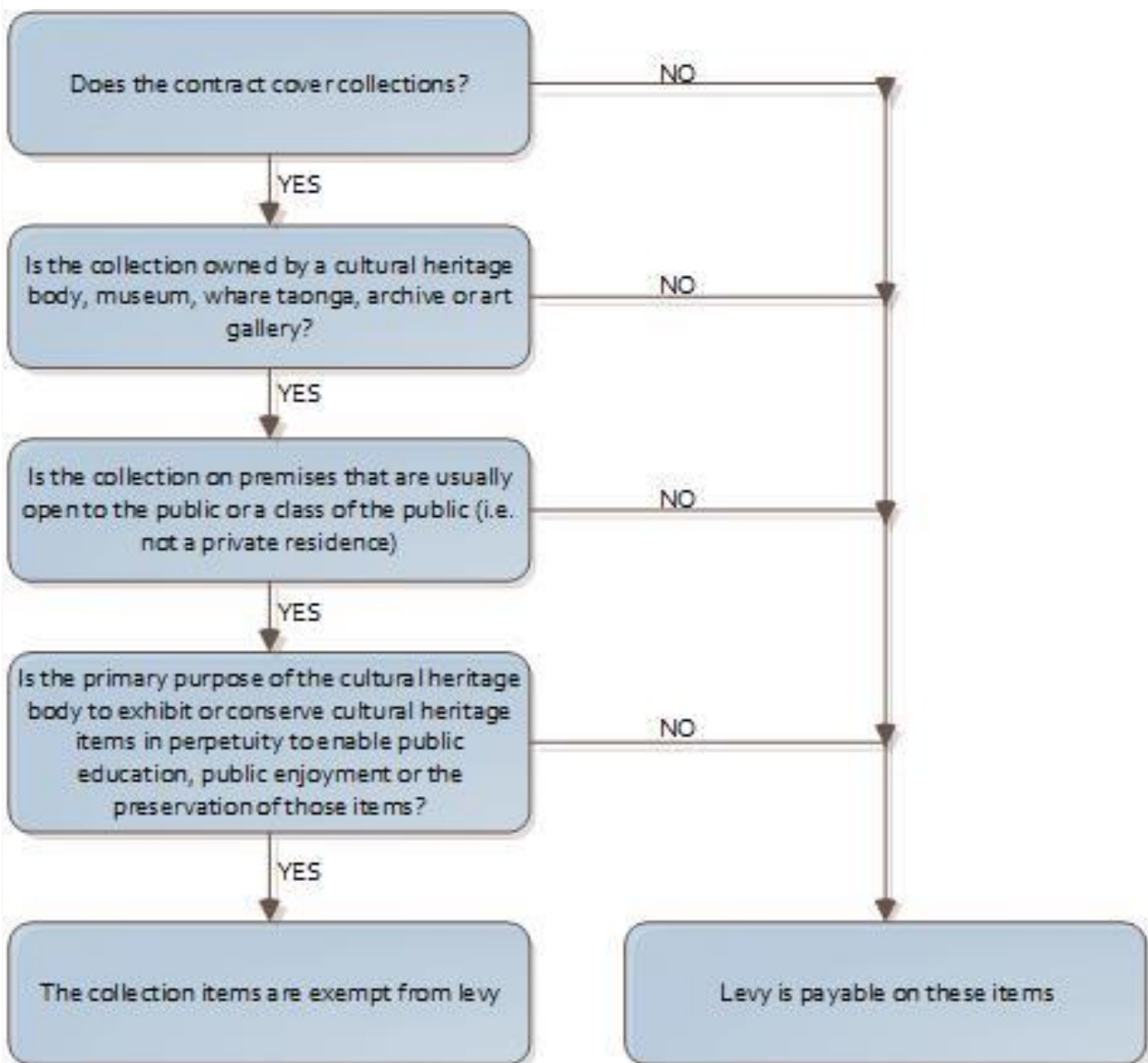
- (a) is a permanent non-profit making body whose primary purpose is to exhibit or conserve cultural heritage items in perpetuity to enable public education, public enjoyment, or the preservation of those cultural heritage items; and
 - (b) exhibits or conserves its collection or collections in premises that are not a private residence and that are usually open to the public or a class of the public
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cultural heritage items

means property (tangible or intangible) that is significant from a scientific, historical, artistic, or cultural perspective

Application of criteria for exemption for art and items in collections by specified organisations

The flowchart below sets out how the application of the criteria applies



Important information relating to exemptions for art and items in collections by specified organisations

- The exemption only applies to collections – levy is still payable on all other assets. These include buildings and other items like equipment or stock. Policies that have these assets are therefore not exempt from levy. However, levy is not payable on items that meet this definition.
 - The collection must also fall within the definition of cultural heritage items. For example, the fact that items are old or rare is not enough. They must also be significant from a scientific, historical, artistic, or cultural perspective.
 - The exemption only applies to permanent non-profit making bodies (and does not include general libraries). Equally, as the exemption is limited to museum/whare taonga, archive and art gallery, then collections held by other organisations like churches do not qualify. Equally, historic villages would not fall under this exemption.
 - There are further qualifying criteria, like accessibility to the public.
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Implementation questions and answers

Given that this is new legislation that has to be implemented in a short time frame, we have worked with DIA, ICNZ and IBANZ to try to create these guidelines. Working with them, we have tried to address some of the commonly expected questions below :

How can I be sure that the organisation meets this criteria?

IBANZ and ICNZ are considering the implementation of a checklist to assist with implementation to help organisations to help understand if they qualify.

How do I demonstrate that it's non-profit making?

Whilst there are many different structures that this can take (charitable trust, CCO), an incorporated organisation that has the power to pay dividends will not meet this criteria.

How do I evidence the primary purpose of the organisation?

The trust deed, the website or any legislation that covers the organisation are all good evidence as to the primary purpose of the organisation.

Is it OK for organisations to cancel their policy to take advantage of the new exemption?

The purpose of levy is to fund the organisation. It's what allows the organisation to provide a response across the length and breadth of this country to a wide variety of incidents affecting individuals and communities. We wouldn't expect that brokers or insurers would be promoting any activity that might impact upon our ability to provide this service.

What does "usually open" mean?

Usually open does not mean that it has to be open for a minimum number of hours. What it does mean is that there is a consistency in their hours of opening – for instance, every weekend except Christmas.

Who do I contact if I have any further questions?

You can email us at FEL@fireandemergency.nz