



## FACT SHEET

# INSPECTOR POWERS

*This factsheet explains powers that inspectors may use under the Fire and Emergency New Zealand Act 2017 (the Act).*

### What is a Fire and Emergency New Zealand inspector?

A Fire and Emergency New Zealand inspector is a person appointed by Fire and Emergency to use relevant compliance powers under the Act.

### What are the powers?

All people who have been appointed as inspectors are able to use the following powers:

- Powers of entry and inspection.
- Power to enter homes and marae.
- Power to restrict or prohibit entry to sites.

A smaller group of inspectors are able to use the additional powers to:

- deal with a cause of imminent danger
- take samples, objects and other things.

### What can inspector powers be used for?

There are three situations in which powers of entry and inspection (including to enter homes and marae) can be used:

- Obtaining information necessary for pre-incident planning.
- Assessing compliance with the requirements under any relevant fire safety legislation.
- Conducting post-incident analysis.

### What is pre-incident planning?

Pre-incident planning is planning for the purposes of Fire and Emergency's delivery of designated services in an emergency. This includes planning for the purposes of evacuation of persons from any land or building and other matters relating to the protection of human life.

### What fire safety legislation are inspectors assessing compliance against?

The relevant fire safety legislation includes the following Acts and associated regulations:

- Fire and Emergency New Zealand Act 2017
- Building Act 2004
- Hazardous Substances and New Organisms Act 1996
- Local Government Act 1974
- Local Government Act 2002
- Radiation Safety Act 2016
- Sale and Supply of Alcohol Act 2012
- any former enactments and regulations replaced by any of these Acts.

### What is post-incident analysis?

Post-incident analysis is the analysis to determine the cause or origin of an emergency that involved or could have involved Fire and Emergency's delivery of designated services. In everyday terms, this includes carrying out a fire investigation.

### What are the powers of entry and inspection?

[Section 170](#) of the Act states that an inspector may at any reasonable time enter and inspect any land or building for the purposes of one or more of the reasons for entry.

An inspector cannot use this power to enter a home, marae or a building associated with a marae without complying with section 171.

### What is the power to enter homes and marae?

[Section 171](#) of the Act states that an inspector must not enter a home, marae or a building associated with a marae, unless the occupier gives consent or an entry warrant is issued.

### **What is entry by consent?**

The inspector, and any person assisting them, can enter land or buildings with the consent of the occupier.

The inspector must explain the purposes of the visit and provide a general explanation of the procedures they intend to carry out, so the occupier can make an informed decision whether to consent to entry.

Entry can only take place during reasonable times. It's up to the occupier to decide whether they consent to entry or not.

### **Who can give consent?**

Any lawful occupier of the land or building who is 14 years or older.

### **Can the inspector enter without consent?**

The inspector only has the power to enter a home or marae without consent when they've been issued an entry warrant or search warrant.

If entering by warrant, the inspector must provide a copy of the warrant to the occupier. If no-one is home when the inspector enters, the inspector must leave a copy of the warrant and notice of entry at the property.

Inspectors have a separate power to prohibit or restrict access to the site in order to preserve or record evidence about the emergency. They don't need consent to use this power.

### **How can I tell if the person is an inspector?**

All inspectors carry a Fire and Emergency New Zealand inspector identity card which will be shown on request or before an inspector first enters land or a building.

### **What will happen when consent is given?**

The inspector will carry out the procedures that have been explained.

If the reason for entry is to conduct post-incident analysis, then the inspector will conduct the analysis to find out the cause or origin of a fire or other emergency.

If the reason for entry is to carry out pre-incident planning, the inspector will inspect the site and obtain information necessary for:

- planning evacuations and other matters to do with the protection of human life, or
- making specific plans to respond to an emergency at the site.

If the reason for entry is to assess compliance with fire safety legislation, the inspector will inspect the site and obtain information necessary for determining compliance with the requirements of relevant fire safety legislation.

Each reason for entry may involve the inspector examining the site, taking photographs and samples, and making sketches and notes, and being assisted by other people.

Some inspectors also have powers to take a sample, seize, destroy or suppress a thing that they reasonably believe is the cause of imminent danger.

### **Can consent be withdrawn?**

Consent can be withdrawn at any time. The inspector and any other person assisting them will leave immediately, unless they have other legal grounds for staying on the property, e.g. exercising an entry or search warrant.

If the occupier feels that they've been treated unreasonably or unfairly, they can lodge a complaint with Fire and Emergency.

### **When would an inspector need to get an entry warrant?**

Entering and inspecting private property – particularly residential property – without consent is a serious matter. People's rights are protected by the Search and Surveillance Act and the New Zealand Bill of Rights Act. To ensure these rights are protected, inspectors are subject to provisions from both of these Acts.

If consent isn't given, or not able to be obtained, e.g. the legal occupier can't be located, an inspector may apply for an entry warrant if there are reasonable grounds to believe that the home, marae or building associated with a marae may be or has been the site of an emergency for which Fire and Emergency has powers, duties or

functions, and entry is necessary for an inspector to carry out one or more of the reasons for entry.

Entry onto a marae or a building associated with a marae, whether it's by consent or by entry warrant, must take account of the kawa (protocol) of the marae so far as practicable. Fire and Emergency inspectors receive support from Māori Liaison Officers to help them understand these requirements.

#### **What is the power to restrict or prohibit entry to sites?**

[Section 175](#) of the Act states that an inspector may prohibit or restrict access to any land or building that is the site of an emergency if they believe on reasonable grounds that it's necessary to:

- preserve or record evidence to do with the emergency
- prevent tampering with, alteration, mutilation, or destruction of anything involved in any manner in the emergency.

The restriction will only be for a period of time that is reasonably necessary in the circumstances.

Prohibition or restriction of access may also be performed by an authorised person of Fire and Emergency until an inspector arrives.

#### **What is the power to deal with cause of imminent danger?**

[Section 172](#) of the Act states that if an inspector enters any land or building under section 170 or 171 and reasonably believes that any material, substance, structure or thing on or in the land or building is defective or hazardous to a degree that it's likely to imminently cause an emergency, then the inspector may seize, destroy, suppress or take a sample of the item in question.

Consent from the owner or occupier and a sample of the item is taken before seizure, destruction, or suppression is carried out, if practicable.

Written notice of the action taken is provided to the owner or occupier as soon as possible after the event.

#### **What is the power to take samples, objects and other things?**

[Section 173](#) of the Act states that if an inspector enters any land or building under section 170 or 171 and believes on reasonable grounds that it's necessary to, can:

- take or remove a sample of any material, substance, or thing for analysis
- seize and retain any material, substance or thing for the purpose of assessing compliance with relevant fire safety legislation or conducting post-incident analysis.

An inspector can only do this if they've given the person responsible for the item the opportunity to surrender it, if practicable to do so.

However, if it's not practicable to give the person the opportunity to surrender the item, or if the person has refused to surrender the item after been given the opportunity to do so, the inspector may still take or remove a sample, or seize or retain the material, substance or thing.

An inspector doesn't have the powers to search any person.

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