

Departmental Disclosure Statement

Hurunui/Kaikōura Earthquakes Recovery Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of the Prime Minister and Cabinet (DPMC).

DPMC certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 December 2016

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Part One: General Policy Statement

The Hurunui/Kaikōura Earthquake Recovery Bill (the Bill) enables the next phase of recovery of the main affected areas (Kaikōura, Hurunui, Marlborough and Wellington) following the earthquake sequence that started on 14 November 2016 with a magnitude 7.8 earthquake 15 km north-east of Culverden in the South Island.

Purpose

The general purpose of the Bill is to assist the earthquake-affected areas and their councils and communities. In particular, the purpose is to assist economic recovery, planning processes, rebuilding and recovery of land and infrastructure, and increasing safety and resilience, as these relate to people, buildings, and natural environments. In addition, there is provision for the legislation to apply to areas indirectly affected by the earthquake sequence. This is particularly important with significant pieces of transport infrastructure, where damage to Centreport, and to the road and rail corridor between Ward and Cheviot, has knock-on effects across the state highway and coastal network.

Delegated Legislation

The Bill creates an Order in Council mechanism (with necessary checks and balances) that permits the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify, or extend provisions of certain enactments. The reference to relevant Minister means, for example, the Minister for Building and Housing will be the relevant Minister if changes are proposed to the Building Act 2004.

This process facilitates recovery without needing to anticipate every power or statutory provision that may need to be amended to achieve the Bill's purpose.

An Order of Council process was included in the Canterbury Earthquake Response and Recovery Act 2010 and continued in the Canterbury Earthquake Recovery Act 2011. The mechanism attracted some criticism. Its operation, however, was largely successful in providing for recovery activities for the greater Christchurch area. There were around 60 Orders in Council and no successful judicial challenges. Not all requests for Orders in Council were granted.

The Order in Council mechanism is designed to be flexible to deal with a range of potential matters: for instance, temporary housing, accommodation supplements, streamlining planning and consenting processes, undertaking geotechnical assessment, and providing greater flexibility around tax reporting deadlines.

There are a number of controls in the Bill to provide checks and balances on the process, which go beyond those in the Canterbury legislation. These checks and balances are as follows:

- the order must be necessary or desirable for the proposed purpose, and the extent of the order must not be broader than is required:
- there is a list of Acts that an order can relate to, and some Acts are specifically excluded (for example, the New Zealand Bill of Rights Act 1990 and the Electoral Act 1993):
- a Review Panel, which must have iwi and local government representation and legal expertise, will review draft orders and provide advice to the relevant Minister:
- the Minister will be required to publish his or her reasons for recommending an Order in Council, to increase transparency:
- providing draft orders to the Regulations Review Committee, or to leaders of political parties if the House is adjourned:
- providing for sunset clauses for both the legislation and any orders.

There is provision to add additional local authorities (in the event of another earthquake after enactment affecting the area of the authority) and to add additional Acts if it is necessary or desirable to do so for the purpose of the Bill.

The House of Representatives must confirm the inclusion of additional Acts within a specified period.

Timing

The powers in this Bill will come into force as soon as possible because it is expected that there is a need to progress some Orders in Council before the House is adjourned in December. The Bill has a repeal date of 1 April 2018.

If another emergency were to happen affecting the areas covered by this Bill, the Civil Defence Emergency Management framework would operate. This Bill does not alter the roles of the Ministry of Civil Defence and Emergency Management, the Civil Defence Emergency Management Groups, emergency services, or the New Zealand Defence Force.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The policy details have been informed by lessons gathered during the response to the Christchurch earthquakes, including use of the Order in Council mechanism under the Canterbury Earthquake Response and Recovery Act 2010 and the Canterbury Earthquake Recovery Act 2011.</p> <p>An interim report of the Regulations Review Committee of October 2011 is available at https://www.parliament.nz/resource/en-nz/49DBSCH_SCR5329_1/7a9fa713740ea02b4151919158bb7443d5250454.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement: Emergency legislation to provide order in council mechanism to assist recovery in the areas affected by the Hurunui/Kaikōura earthquakes from 14 November 2016, Department of Prime Minister and Cabinet, November 2016. The RIS can be accessed at http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>Given the urgency associated with the Bill, the Treasury's Regulatory Impact Assessment Team was not consulted on the regulatory impact statement.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

DPMC considers that the policy given effect to by this Bill is likely to be consistent with New Zealand's international obligations. However, given the urgency associated with the Bill, there was insufficient time to consider New Zealand's international obligations in any detail.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

DPMC's analysis did not identify any inconsistencies with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill at <http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

The Bill provides that the recommendation and decisions of the relevant Minister in relation to the making of an Order in Council may not be challenged or reviewed in any court.

The Order in Council mechanism in the Bill could also potentially change existing appeal rights.

Mitigating mechanisms are provided in the form of the requirements that:

- a draft of the order must have been reviewed by a Review Panel comprising iwi and local government representation and legal expertise;
- a draft Order must be provided to the Regulations Review Committee, or to leaders of political parties if the House is adjourned.

Other safeguards are set out under question 4.7.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

A copy of the Bill was provided to the Ministry of Justice for the purpose of the Bill of Rights vet.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>There has been limited time for formal consultation. The matters set out in the Bill were informed by discussions with the Ministry for the Environment and information from local councils. The following agencies were informed: Department of Internal Affairs, Ministry of Justice, Ministry for Culture and Heritage, Department of Conservation, Land Information New Zealand, Ministry of Transport, New Zealand Transport Agency, Ministry of Health, Ministry of Social Development, the Treasury, State Services Commission, the Crown Law Office, Te Puni Kōkiri, Department of Corrections and the Ministry of Business, Innovation and Employment. The Acting Minister for Civil Defence has held cross-party meetings to inform the content of the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The details of the Bill have been informed by lessons gathered during the response to the Christchurch earthquakes.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
Not directly. However, the Bill provides the ability to make Orders in Council to exempt, modify or extend provisions of a number of enactments, including the Public Works Act 1981.	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
Not directly. However, the Bill provides the ability to make Orders in Council to exempt, modify or extend provisions of a number of enactments, including tax legislation.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
Not directly. However, the Bill provides the ability to make Orders in Council that apply retrospectively to 14 November 2016.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
Not directly. However, the Bill provides the ability to make Orders in Council that to exempt, modify or extend provisions of other enactments.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
Not directly. However, the Bill provides the ability to make Orders in Council that to exempt, modify or extend provisions of other enactments.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
Not directly. However, the Bill provides the ability to make Orders in Council that to exempt, modify or extend provisions of other enactments.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill creates a mechanism where Orders in Council can be made on the recommendation of the relevant Minister (with necessary checks and balances) to exempt, modify or extend provisions of any enactment. This is considered necessary to facilitate the recovery of affected communities.</p> <p>A number of controls and safeguards are attached to the use of those powers including:</p> <ul style="list-style-type: none"> • the order must be necessary or desirable for the purpose of the Bill; • it must be no broader than is reasonably necessary; • it must relate to one of the enactments listed in the Bill, and must not relate to one of the specifically excluded Acts (e.g. the Bill of Rights and Electoral Act); • a draft of the order must have been reviewed by a Review Panel comprising iwi and local government representation and legal expertise; • the Minister's reasons for making the Order must be published; • a draft Order must have been provided to the Regulations Review Committee, or to leaders of political parties if the House is adjourned; and • sunset clauses for both the legislation and any Orders made (expiring 31 March and 1 April 2016 respectively). <p>The Bill also:</p> <ul style="list-style-type: none"> • allows an Order in Council to expand the areas to which the Bill applies to if necessary to respond to a significant aftershock or other significant event; • allows an Order in Council to add other Acts that can be amended through the Bill's primary Order in Council mechanism. Such an order can only be made if a draft of the Order has been provided to the Regulations Review Committee, or to leaders of political parties if the House is adjourned. 	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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