

Departmental Disclosure Statement

Severe Weather Emergency Legislation Bill

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, the Ministry for the Environment, the Ministry for Primary Industries, the National Emergency Management Agency and the Department of Internal Affairs.

The Department of the Prime Minister and Cabinet, the Ministry for the Environment, the Ministry for Primary Industries, the National Emergency Management Agency and the Department of Internal Affairs certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 March 2023.

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Part One: General Policy Statement

The Severe Weather Emergency Legislation Bill (the Bill) is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the amendments in this Bill is to enable the next phase of emergency response and recovery in the main areas affected by the recent severe weather events.

Purpose

The general purpose of the Bill is to assist recovery and improve resilience for the areas affected by severe weather events, and their councils and communities. It also enables all councils to take immediate action to improve resilience to future weather events with respect to enabling remote attendance at meetings, facilitating planning and decision-making and allowing for concurrent declarations of states of emergency and transition periods. Specifically, amendments will: ensure emergency powers are available when needed and can be exercised efficiently, including by allowing local authorities an alternative way of providing notice of entry for emergency response activities; modify statutory timeframes that are not practical for businesses or individuals to meet; for a limited time deem certain emergency response activities carried out by rural landowners and occupiers as permitted activities, and facilitate planning and decision-making by all local authorities.

Modifying primary legislation to allow for recovery activity

This Bill is an omnibus Bill that modifies more than one Act and is introduced under Standing Order 267 because the modifications deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Bill modifies:

- the Civil Defence Emergency Management Act 2002 (CDEM Act) to address issues relating to concurrent declarations of states of emergency and notices of transition periods under the CDEM Act to ensure emergency powers are available when needed; and
- aspects of the Resource Management Act 1991 (RMA) for a limited time to deem certain emergency preventive or remedial actions carried out by owners or occupiers of rural land as permitted activities, and extend timeframes for advising local authorities and applying for retrospective consents for emergency work. This recognises that it may not be possible for those dealing with the impacts of the weather events to comply with all Resource Management Act planning and regulatory requirements or meet existing timeframes for retrospective consents; and
- the Local Government Act 2002 (the LGA) to enable local authorities and Civil Defence Emergency Management Groups to meet by audio or visual link and for the members to be counted as present; and to enable local authorities to amend their current long-term plans in relation to water infrastructure and services to take action to respond to damage caused by the recent severe weather events and improve the resilience to future weather events; and
- Registration and verification requirements in the Food Act 2014 and the Food Regulations 2015, to allow an extended period for a food business to renew its registration and to continue operating during the time a registration may have expired. This recognises that it may not be possible for affected communities to

undertake their regulatory requirements for food businesses and allows them to remain open, particularly for isolated communities.

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
The policy for audio-visual or audio meetings for Civil Defence and Emergency Management (CDEM) Groups was recommended by the Government response to the Technical Advisory Group's recommendations following the Ministerial Review: <i>Better Responses to Natural Disasters and Other Emergencies, August 2018</i> . Link: https://dpmc.govt.nz/sites/default/files/2018-08/natural-disasters-emergencies-government-response-tag-report.pdf	

Relevant international treaties

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

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
The Treasury's Regulatory Impact Analysis team has determined that: <ul style="list-style-type: none">• The proposal to address issues relating to concurrent emergencies under the Civil Defence Emergency Management Act 2002, and the proposal to enable the use of audio or visual link by local governments, are exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the grounds that they have been addressed by existing impact analysis [GOV-20-MIN-0035 and CAB-22-MIN-0339.01 refer].• The proposals to extend timeframes for advising local authorities and applying for retrospective consents for emergency work, to exempt for a specified period the requirement for a food business to have verification done, to extend the period for a food business to renew its registration and continue operating, are also exempt from the requirement to prepare a RIS. These exemptions are granted on the grounds that they are intended to temporarily defer or extend legislative deadlines where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome. The RIS relating the use of audio/visual links can be found at: https://www.civildefence.govt.nz/assets/Uploads/publications/cabinet-paper-updating-the-legislative-framework-03-08-20.pdf . The RIS relating to concurrent emergencies will be publicly available in due course.	

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
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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

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

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?

No steps have been undertaken.

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?

The Treaty of Waitangi and relevant Treaty-related clauses in other legislation was considered when developing the policy for the Bill.

Officials acknowledge limited consultation and partnership has been undertaken due to the compressed timeframe for developing the urgent Bill.

The Ministry for the Environment noted that emergency powers already exist in the Act and those using the powers should already be taking into account the Treaty of Waitangi as it relates to the exercise of their functions and powers and any specific provisions in Treaty Settlement Acts that may apply. The changes relate to emergency action that has been taken and the need to apply for retrospective consent under the RMA. Other provisions in the RMA may still need to be considered in applicable circumstances (including, where applicable, Part 2 RMA considerations). Safeguards, including a sunset clause, help to ensure that the focus is on emergency activities with a short time frame. The effect of allowing certain limited emergency responses for activities of rural owners and occupiers is limited by the tightly constrained definition of activities and also excluding prohibited activities.

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

Section 21 of the BORA provides that everyone has the right to be secure against unreasonable search and seizure of property. The amendments to the RMA provide powers of access to property (including dwellings) without the occupier being present which could be of concern. To mitigate this, the proposed amendments require that notices are left and contact details must be provided. The ability to access property does not amount to search and the access has to be for purposes related to the emergency. In the circumstances, an imposition on rights is justified.

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)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO

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

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

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
There was insufficient time to undertake external consultation.	

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
The policy proposals relating to the Resource Management Act, Local Government Act 2002, and the Civil Defence Emergency Management Act and the Food Act and Food Regulations have been informed by lessons gathered during the response to the Hurunui / Kaikōura earthquakes and COVID-19, and related emergency legislation or COVID-19 experience (e.g. during COVID-19 legislative changes were put in place to address the risks of concurrent emergencies).	

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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
A number of clauses in the Bill have retrospective application, but exist to relieve or extend the timing for existing obligations. These do not affect individual rights or impose obligations retrospectively.	

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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

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?	YES
<p>Under the Local Government Act, clause 18 (new s 330AA) allows a local authority or consent authority to enter land (including a dwellinghouse) to carry out emergency response activities without directly notifying the occupier, where the occupier cannot be found. The Bill allows the local or consent authority to affix a notice on the land stating the date and reasons for entry. While the Bill allows entry onto private land without the occupier's consent, the exercise of this power is considered to be reasonable in circumstances where the entry is required to avert or mitigate adverse effects caused by the severe weather events.</p> <p>In addition, Clause 21 (new s331B) allows an owner or occupier of rural land to carry out immediate preventive or remedial measures until 1 October 2023 where those measures are required to avoid, remedy or mitigate impacts arising from the severe weather events, and where the activities undertaken are proportionate to the loss, injury, detriment or damage suffered, or the risk. These actions are deemed to be permitted activities under the RMA (unless they are specifically prohibited by a plan, national environmental standard or regulation). There is a potential risk that such activities may create adverse impacts on third parties, but there are limitations on what can be considered immediate action or remedial measures, and new activities cannot take place under this clause after 1 October 2023. The Bill precludes RMA enforcement action by third parties in relation to these activities, but the common law will still also apply (such as nuisance and tort law).</p>	

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?	NO

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

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