

# Departmental Disclosure Statement

---

Severe Weather Emergency Recovery 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 and the Department of Internal Affairs.

The Department of the Prime Minister and Cabinet, the Ministry for the Environment 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.

24 March 2023

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	5
Part Three: Testing of Legislative Content.....	8
Part Four: Significant Legislative Features .....	11

## Part One: General Policy Statement

The Severe Weather Emergency Recovery Legislation Bill (the Bill) is the second Bill in response to the heavy rain events in the upper North Island and Cyclone's Hale and Gabrielle in January and February 2023. It is an omnibus Bill that amends more than one Act and is introduced in accordance with Standing Order 267(1)(a) as the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy for this Bill is to ensure that Government agencies and Crown entities, and affected local authorities and communities, can appropriately respond to and/or recover from the recent severe weather events, including by providing the Government with flexibility to facilitate, enable and expedite the recovery.

### *Purpose*

The general purpose of the Bill is to assist local authorities and communities in the areas affected by the severe weather events. In particular, the purpose is to –

- assist economic recovery, planning processes, rebuilding and recovery of land, infrastructure, and other property, and increasing safety and resilience, as these relate to people and the natural and built environment;
- ensure that governmental activity can continue to be undertaken following the severe weather events;
- temporarily enable the relaxation or flexible operation of some legislative requirements following the severe weather events; and
- provide opportunities for the local Māori and local community groups to participate in the development of Orders in Council, without impeding a focused, timely and expedited recovery.

There is provision for the legislation to apply to areas indirectly affected by the severe weather events in limited circumstances. This is important to cover-

- effects initiated or exacerbated by the severe weather events that occurred, or occur, after the severe weather events; and
- situations where effects occurred at a location directly affected by the severe weather events, but work is required in another, indirectly or non-affected location, as a result in the response or recovery. For instance, enabling transport corridors to work effectively or opening up new land required for re-housing.

### *Delegated legislation*

The Bill provides a power for the Governor-General to make Orders in Council, on the recommendation of the relevant Minister, to exempt, modify, or extend provisions of certain legislation that are set out in the Bill. The reference to relevant Minister means, for example, the Minister for the Environment will be the relevant Minister if changes are proposed to the Resource Management Act 1991.

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 in Council process was used in previous emergency recovery legislation –

- 67 Orders in Council (including Amendment Orders) were issued under the Canterbury Earthquake Response and Recovery Act 2010 and the Canterbury Earthquake Recovery Act 2011;
- 5 Orders in Council (including an Amendment Order) were issued under the Hurunui/Kaikōura Earthquakes Recovery Act 2016.

The Order in Council mechanism is designed to be flexible to deal with a range of potential matters: for instance, demolition or repair of certain buildings, accommodation supplements, streamlining planning and consenting processes, and providing greater flexibility around tax reporting deadlines.

There are several controls in the Bill to provide checks and balances on the process. These checks and balances are more extensive than in previous emergency recovery legislation and include –

- the order must be necessary or desirable for one or more of the proposed purposes, and the extent of the order must not be broader than is required:
- an order can only relate to one or more of the Acts listed in the Schedule, and some Acts are specifically excluded (for example, the Constitution Act 1986 and the New Zealand Bill of Rights Act 1990):
- draft orders must be provided to the Regulations Review Committee, or if that is not practicable, to leaders of political parties represented in the present or previous Parliament:
- draft orders must also be given to persons or representatives of those persons the Minister considers appropriate (unless the Minister is satisfied that engagement is impractical in the circumstances or urgent):
- local Māori and community groups are specified as examples of the persons the Minister must consider engaging with on draft orders (unless the Minister is satisfied that engagement is impracticable in the circumstances or urgent):
- the standard timeframe for engagement may be extended by the relevant Minister if they consider it desirable to consider community and Māori interests likely to be affected by the order:
- a Review Panel must review draft orders and provide advice to both the relevant Minister and the Minister:
- the Minister must appoint members to a Review Panel and, in doing so, consider whether they have knowledge, experience and expertise in relation to certain matters including law, emergency response and recovery, and local Māori and local communities in the severe weather events affected areas:
- the relevant Minister will be required to publish their reasons for recommending an order, to increase transparency:
- the relevant Minister is obliged to keep their orders under review:
- there are sunset clauses for both the legislation and any orders.

There is provision to add additional Acts by an order in council mechanism provided certain safeguards are met –

- the Minister –
  - must be satisfied that it is necessary or desirable to do so for one or more of the purposes of the Bill; and
  - must be satisfied that there is unanimous or near unanimous support from the leaders of the other political parties in Parliament; and
- the Minister is required to publish their reasons for recommending that additional Acts are added; and
- the House of Representatives must approve the order to add additional Acts, otherwise the order will be revoked.

### *Timing*

By 31 March 2028 the Act will be repealed. The Orders in Council that are still in force will be revoked on that same day but the power to make new Orders in Council will be repealed earlier, on the close of 31 March 2026.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<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>This includes the recommendations of the Regulations Review Committee who, in December 2016, completed an inquiry into Parliament's legislative response to future national emergencies which can be found: <a href="https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa">https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR71932_1/4c3e70120c8c2d0189705b2f2b1e0575ed1746fa</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<b>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?</b>	<b>NO</b>
There are no international treaty impacts identified in relation to this Bill.	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>Regulatory Impact Statement: Severe Weather Events Recovery Bill from 21 March 2023, Department of Prime Minister and Cabinet, March 2023. The RIS can be accessed at <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p> <p>RIS exemptions were granted for aspects of the Bill – see 2.3.1 below.</p>	
<b>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?</b>	<b>YES</b>

The Regulatory Impact Statement was assessed by an independent panel which included panellists from the RIA Team in the Treasury, the Department of the Prime Minister and Cabinet, and the Ministry of Justice.

The independent inter-agency RIS QA panel has reviewed the RIS and has concluded that the RIS partially meets the quality criteria. In reaching this view, the panel is mindful that the RIS has been written under significant time constraints, given the context, and there has been limited opportunity for consultation. The panel considers that the RIS provides reasonable evidence that the scale of damage justifies bespoke legislation and makes good use of relevant experience and readily accessible information in reaching a preferred option.

In addition, the Treasury's Regulatory Impact Analysis team has determined that the following two amendments to the Resource Management Act 1991 as amended by the Severe Weather Emergency Legislation Act 2023 are exempt from the requirement to provide a Regulatory Impact Statement:

- to include the Ngā Rohe Moana o Ngā Hapu o Ngāti Porou statutory overlay in the definition of “culturally significant land”, and
- to include the Manawatu and Rangitīkei District Councils in the list of districts with extended timeframes for emergency works.

These are granted on the grounds that the proposals are intended to manage the short term impacts of a declared emergency event and required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

In relation to the local government amendments, The Treasury's Regulatory Impact Analysis team has determined that the six proposals to amend the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009 are exempt from the requirement to provide a Regulatory Impact Statement. The exemptions are on the grounds that the proposals are intended to either temporarily defer or extend legislative deadlines, or provide limited temporary exemptions or modifications to existing legislative requirements, in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.

**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:**

<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## 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.

The Department of Internal Affairs notes no steps have been undertaken in relation to the temporary amendments to the Local Government Act 2002 or the Local Government (Auckland Council) Act 2009.

The Ministry for the Environment notes no steps have been undertaken in relation to the temporary amendments to the Resource Management Act 1991.

### 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.

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

The Department of Internal Affairs acknowledge no engagement has been undertaken due to the compressed timeframe for developing the temporary amendments to the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009.

Officials acknowledge limited consultation and partnership has been undertaken due to the compressed timeframe for developing the urgent Bill. There have been discussions with representatives of Nga Hapū o Ngāti Porou for the addition of the reference to the statutory overlay in the Ngā Rohe Moana o Nga Hapū o Ngāti Porou Act 2019.

The Ministry for the Environment notes that emergency powers already exist in the Act and those using the powers in the relevant areas (Manawatū and Rangitikei) 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; activities under s 12 of the RMA; and those undertaken on or impacting culturally significant land (with accompanying notification provisions).

### 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?**

[YES/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 in the relevant areas (Manawatū and Rangitikei) 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

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
A copy of the Bill was provided to the Ministry of Justice for the purpose of the Bill of Rights vet.	

### Privacy issues

<b>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?</b>	<b>NO</b>
---	-----------

## External consultation

<b>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?</b>	<b>YES</b>
<p>DPMC notes there has been limited time for formal consultation, with only limited consultation with the National Iwi Chairs Forum.</p> <p>The following agencies were consulted on the Bill the Department of Corrections, the Ministry of Justice, New Zealand Customs Service, the Department of Internal Affairs, the Department of Conservation, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry for the Environment, the Ministry of Transport, the Ministry for Primary Industries, the National Emergency Management Agency, the Ministry of Defence, the New Zealand Security Intelligence Service, Te Arawhiti, Inland Revenue, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Statistics New Zealand, New Zealand Police, the Public Service Commission, the Ministry of Social Development, the Ministry of Education, the Ministry of Housing and Urban Development, Oranga Tamariki, Serious Fraud Office, the Ministry of Health, the Ministry for Pacific Peoples, the Education Review Office, the Treasury, Crown Law Office and the Government Communications Security Bureau.</p> <p>The Department of Internal Affairs notes there was insufficient time to undertake external consultation in relation to the amendments to the Local Government Act 2002 and the Local Government (Auckland Council) Act 2006.</p> <p>The Ministry for the Environment undertook limited consultation with local authorities in relation to the amendments to the Resource Management Act 1991 and with representatives of Nga Hapū o Ngāti Porou in relation to the statutory overlay in the Ngā Rohe Moana o Nga Hapū o Ngāti Porou Act 2019.</p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>The details of the Bill have been informed by lessons gathered during the response to the Christchurch and Hurunui/ Kaikōura earthquakes, and lessons gathered during COVID-19. Similar temporary measures such as the amendments to the Local Government Act 2002 in clause 23, 24 and 25 of the Bill have been put in place before.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
Not directly. However, the Bill provides the ability to make Orders in Council that apply retrospectively to no earlier than the first day of the earliest relevant severe weather event.	

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

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
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

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

<b>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?</b>	<b>NO</b>
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

<b>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?</b>	<b>YES</b>
<p>The Bill provides a power for the Governor-General to make Orders in Council, on the recommendation of the relevant Minister, to exempt, modify, or extend provisions of certain legislation that are set out in the Bill.</p> <p>There are several controls in the Bill to provide checks and balances on the process. These checks and balances are more extensive than in previous emergency response legislation and include:</p> <ul style="list-style-type: none"> <li>• the order must be necessary or desirable for one or more of the proposed purposes, and the extent of the order must not be broader than is required;</li> <li>• an order can only relate to one of the Acts listed in the Schedule, and some Acts are specifically excluded (for example, the Constitution Act 1986 and the New Zealand Bill of Rights Act 1990);</li> <li>• draft orders must be provided to the Regulations Review Committee, and if that is impracticable to leaders of political parties</li> <li>• the standard timeframe for engagement may be extended by the relevant Minister if they consider it desirable to consider community and Māori interests likely to be affected by the order;</li> <li>• a Review Panel must review draft orders and provide advice to both the relevant Minister and the Minister;</li> <li>• the Minister must appoint members to a Review Panel and, in doing so, consider whether they have knowledge, experience and expertise in relation to certain matters including law, emergency response and recovery, and local Māori and local communities in the severe weather events affected areas;</li> <li>• the relevant Minister will be required to publish their reasons for recommending an order, to increase transparency;</li> <li>• the relevant Minister is obliged to keep their orders under review;</li> <li>• there are sunset clauses for both the legislation and any orders.</li> </ul> <p>There is provision to add additional Acts by an order in council mechanism provided certain safeguards are met: the Minister:</p> <ul style="list-style-type: none"> <li>○ must be satisfied that it is necessary or desirable to do so for one or more of the purposes of the Bill; and</li> <li>○ must be satisfied that there is unanimous or near unanimous support from the leaders of the other political parties in Parliament; and</li> <li>• the Minister is required to publish their reasons for recommending that additional Acts are added; and</li> <li>• the House of Representatives must approve the order to add additional Acts, otherwise the order will be revoked.</li> </ul>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
--	-----------

## Any other unusual provisions or features

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