

Departmental Disclosure Statement

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| Civil Defence Emergency Management Amendment 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 Ministry of Civil Defence & Emergency Management.

The Ministry of Civil Defence & Emergency Management certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 October 2015

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Part One: General Policy Statement

This Bill amends the Civil Defence Emergency Management Act 2002 (the Act) to enable better recovery from New Zealand's most frequent emergencies – those of small to moderate scale.

Since the principal Act came into force, a need has been identified for provisions about recovery from an emergency, and in particular, for provisions that support a timely, coordinated and effective recovery. The current framework provides little direction in terms of planning and managing recovery efforts, which can undermine the resourcing and priority given to these activities. A lack of powers to support transition from response to recovery may prevent the continuation of critical activities necessary to stabilise recovery, and may provide a perverse incentive to keep a state of emergency in place for longer than is strictly necessary.

The Bill strengthens the legislative framework for recovery by introducing provisions that:

- provide a mandate for roles and responsibilities that apply for the duration of the recovery from an emergency
- strengthening recovery planning, and
- ensure a seamless transition from the response to an emergency to the initial recovery period, by ensuring that appropriate and effective statutory powers and arrangements are available.

The Bill also creates a permanent legislative authority to allow for Crown funding of response and recovery costs, and makes a number of minor and technical amendments to the Act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 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? | NO |
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Relevant international treaties

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| 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

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| Title: Review of the legislative framework for recovery from emergencies. Authoring agency: Ministry of Civil Defence & Emergency Management (MCDEM) Date: 18 March 2015. The RIS can be accessed at http://www.civildefence.govt.nz/resources/review-of-the-legislative-framework-for-recovery-from-emergencies , and http://www.treasury.govt.nz/publications/informationreleases/ris . | |

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| 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 |
| No formal independent opinion was given because the RIS did not meet the threshold for RIA Team assessment. However, the Treasury was consulted on the RIS and its Addendum. | |

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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 |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | YES |
| <p>Yes. MCDEM prepared an Addendum to the original RIS to reflect policy decisions about the compensation provisions, following decisions by joint Ministers with power to act.</p> <p>The RIS and its Addendum can be accessed at http://www.civildefence.govt.nz/resources/review-of-the-legislative-framework-for-recovery-from-emergencies, and http://www.treasury.govt.nz/publications/informationreleases/ris.</p> | |

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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? | YES |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | YES |
| <p>(a) the size of the potential costs and benefits?</p> <p>The proposals in the Bill will benefit everyone affected by more timely, effective and focussed recovery from emergencies. Most costs will be incurred by local authorities, with some costs for the Crown and in some cases potentially insurers (with respect to the compensation provisions, if applied).</p> <p>The costs and benefits are not easily predictable or quantifiable, largely because it is difficult to accurately predict the occurrence of events leading to a declaration of a state of emergency and/or the issuing of a transition notice.</p> <p>An analysis of the impact of the costs and benefits can be found in the March 2015 Regulatory Impact Statement and its Addendum, both of which can be accessed at http://www.civildefence.govt.nz/resources/review-of-the-legislative-framework-for-recovery-from-emergencies, and http://www.treasury.govt.nz/publications/informationreleases/ris.</p> | |
| <p>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</p> <p>Once amended, the Act will make certain powers available to Recovery Managers when a transition notice is in effect. The exercise of these powers may increase the likelihood of someone suffering damage or loss.</p> <p>However, this is much more likely to happen in a large scale emergency (which is not the focus of the Bill). In addition, the increased availability of powers is not expected to increase recovery activities, but rather support what happens now (probably under states of emergency that are kept in place for longer than strictly necessary, or by ad hoc means). Furthermore, compensation will be available for damage or loss caused by CDEM officials during a transition notice period.</p> | |

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| 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? | YES |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |
| <p>The realisation of benefits from improved recovery is dependent on CDEM groups complying with requirements around the development of recovery plans and appointment of recovery managers, and on general compliance with transition notices. These issues are partially canvassed in the March 2015 Regulatory Impact Statement, which can be accessed at http://www.civildefence.govt.nz/resources/review-of-the-legislative-framework-for-recovery-from-emergencies, and http://www.treasury.govt.nz/publications/informationreleases/ris.</p> <p>Consultation with CDEM Groups identified broad support for the policy proposals that underpin the proposed amendments; therefore a high-level of compliance is assumed, while being cognisant of resourcing capacities. In addition, as is MCDEM's standard approach, we will provide support and guidance to CDEM Groups, including an implementation programme and the revision of the Director's Guideline on recovery activities. Our day-to-day support includes having Regional Emergency Management Advisors who work closely with CDEM Groups to provide technical expertise and advice. These measures are considered to be integral in ensuring compliance at an appropriate standard. We also encourage the sharing of best practice and resources across CDEM Groups, including that relating to enhanced recovery management and practice.</p> | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 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? |
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| MCDEM consulted with the Ministry for Foreign Affairs and Trade (MFAT). It considers that the policy given effect by this Bill is consistent with New Zealand's international obligations. |
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Consistency with the government's Treaty of Waitangi obligations

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| 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? |
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| MCDEM's analysis did not identify any inconsistencies with the principles of the Treaty of Waitangi. |
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Consistency with the New Zealand Bill of Rights Act 1990

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| 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 |
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| Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights . |
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Offences, penalties and court jurisdictions

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| 3.4. Does this Bill create, amend, or remove: | |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | YES |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | NO |
| <p>The Bill amends existing offence sections within the principal Act to extend them to recovery, as follows.</p> <p><u>Clause 29</u> amends section 96 to make it an offence to knowingly give false information or to intentionally fail or refuse to supply information within the specified timeframe, when that information is requested by the Director or a Recovery Manager under section 76.</p> <p><u>Clause 30</u> amends section 97 to make it an offence for the Director or a Recovery Manager to intentionally disclose or use information for a purpose other than the purposes of the Act.</p> <p><u>Clause 31</u> amends section 98 to make it an offence to threaten, assault, or intentionally obstruct or hinder any person in that person's exercise or performance of a function, power, or duty under the Act during a transition period.</p> <p><u>Clause 32</u> amends section 99 to make it an offence to fail to comply with a direction by a Recovery Manager to evacuate any premise or place, or to fail to comply with a Recovery Manager's decision to exclude persons or vehicles from any premises or places.</p> <p><u>Clause 33</u> amends section 100 to make it an offence to intentionally fail to comply with any prohibition or restriction on access, with or without vehicles, to any road or public place.</p> <p><u>Clause 34</u> amends section 102 to make it an offence to fail to comply with a Recovery Manager's or constable's direction to:</p> <ul style="list-style-type: none"> • stop any activity that may cause or substantially contribute to the after effects of an emergency, or may prevent or substantially hinder recovery from an emergency; • take any action to prevent or limit or reduce the after effects of the emergency. <p><u>Clause 35</u> amends section 103 to make it an offence for someone to intentionally impersonate or falsely represent himself or herself as a Recovery Manager or as a person acting under the authority of a Recovery Manager.</p> | |

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| 3.4.1. Was the Ministry of Justice consulted about these provisions? | YES |
| The Ministry of Justice undertook a vet of the proposed penalty levels; it is comfortable with the proposed penalty levels. | |

Privacy issues

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| 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? | YES |
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| <p>MCDEM consulted government agencies about the Cabinet paper seeking policy approval, the Regulatory Impact Statement and its Addendum, the Cabinet paper seeking approval to introduce the Bill, this disclosure statement, and the draft Bill. Consultation included interagency working groups. A number of changes were made to the Bill as a result.</p> <p>CDEM Groups were involved in the development of proposals relating to Recovery Managers, strategic recovery plans and transition notices. We undertook surveys, written consultation and workshops with them. CDEM Groups are largely supportive of the proposals.</p> <p>The Insurance Council of New Zealand, private insurers, government agencies and CDEM Groups were consulted on the compensation and liability proposals through surveys, meetings and written consultation. There was general support for the proposals, although some parties did not have a preference in terms of the policy options presented.</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 |
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| <p>We were able to utilise the expertise and knowledge of CDEM Groups and Regional Emergency Management Advisors (REMAs) to assess the feasibility of proposals. They have confirmed that the proposed amendments will be usable and will achieve the desired purpose.</p> | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 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

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | YES |
| <p>Section 110 of the principal Act provides protection from liability for CDEM officials and their delegates who carry out CDEM activities in good faith and with due care during a state of emergency.</p> <p>Clause 38 of the Bill amends section 110 to extend civil immunity to CDEM officials and their delegates who carry out CDEM activities in good faith and with due care during a period covered by a transition notice. This immunity is necessary to ensure that CDEM officials and delegates do not refrain from undertaking necessary action due to concern about liability for resulting loss or damage. Immunity is balanced by the proviso that no one will be exempt for liability for acts or omissions that constitute bad faith or gross negligence, and by the availability of compensation for loss or damage.</p> | |

Significant decision-making powers

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| 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 |
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Powers to make delegated legislation

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| 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 |
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| 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

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | YES |
| <p>The Bill will allow transition notices to be issued where there has <i>not</i> been a state of emergency declared under the Act, but only if the Minister of Civil Defence approves. This may occur if an emergency generates impacts of sufficient severity that the recovery may be very challenging initially, but the safety of the public and property is not in immediate danger. Before agreeing to the issuing of a transition notice in these circumstances, the Minister would need to have regard to whether invoking the powers associated with a transition notice is in the public interest, and is necessary or desirable to ensure a timely and effective recovery.</p> <p>In order to ensure democratic accountability and oversight, the Act puts a range of requirements in place. Whenever the Minister of Civil Defence issues a national transition notice, he or she must advise the House of Representatives as soon as practicable. In addition, local authorities must obtain the Minister's approval before they can issue a local transition notice when a state of emergency has not been declared.</p> <p>The principal Act provides for compensation for property damage caused by CDEM officials and their delegates. It allows recovery of losses from private insurers (including EQC), local authorities, and the Crown. Liability rests with insurers in the first instance, followed by local authorities or the Crown for any uninsured damage.</p> <p>An unusual aspect of the existing section 109 of the principal Act is that it specifically prohibits insurers from exercising their equitable right of subrogation, i.e. from recovering from local authorities or the Crown any amounts they have paid out to insured persons in relation to the claims for damages. This was included in the Act to address concerns about the potential financial exposure of local authorities.</p> <p>The Bill will extend this denial of subrogation rights to cover damage arising during the period when a transition notice is in effect. This will limit the potential financial exposure of local authorities and the Crown, and will ensure consistency within the Act in terms of its application to states of emergency and to transition periods.</p> <p>It is important to note that consultation indicated that insurers have never received any claims for compensation for damage done in emergencies (except in relation to the Canterbury earthquakes, a large scale event that the proposals are not focussed on). Any real impact on insurers is therefore likely to be minimal.</p> | |