

# Departmental Disclosure Statement

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Hurunui/Kaikōura Earthquakes Emergency Relief 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 for the Environment.

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

27 November 2016

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## Part One: General Policy Statement

The Hurunui/Kaikōura earthquakes of magnitude 7.8 northeast of Culverden, New Zealand on 14 November 2016, and subsequent aftershocks, have caused significant damage to land, coastal areas, buildings and infrastructure.

The earthquakes require a number of legislative measures to facilitate recovery. Amending aspects of the Resource Management Act 1991 (RMA) is one of the measures to help ease regulatory requirements while safeguarding the environment.

This Bill seeks to address the legislative constraints in light of the emergency situation to ensure that efforts can be put into recovery, whilst providing that the underlying purposes of the RMA are met.

### *Extending emergency works timeframes under the RMA*

Significant damage to infrastructure requires emergency works to be undertaken by consent authorities, requiring authorities, lifeline utility operators and others with financial responsibility for the work or persons operating under the state of emergency.

The standard time-frames within the RMA for emergency works will put unreasonable pressure on those undertaking the emergency works to give notice and to apply for resource consents. This process could distract from the recovery effort.

The Bill temporarily increases these time-frames to enable efforts to be prioritised on the earthquake response. Specifically, the Bill proposes to:

- increase the time-frames for giving notice to the consent authority that works have been undertaken from 7 days to 40 working days;
- increase the time-frame in which any resource consent required must be applied for from 20 working days to 120 working days;
- relax the requirements to inform occupiers of land about entry for emergency work where occupiers are no longer present and states the manner and form for a notice about that entry and any works;
- include an enabling power for the Minister responsible for the administration of this Act to add, via Order in Council, additional local authorities if necessary or desirable following a significant aftershock of, or other significant event relating to, the Hurunui/Kaikōura earthquakes after the commencement of the legislation; and
- enable the temporary powers until 1 April 2018.

### *Permitted Activity status for emergency farming works*

As a result of the damage caused by the Hurunui/Kaikōura earthquakes there has been significant disruption to farming activities. In order to continue basic farming practice (for example, feeding and watering of stock) some farmers have had to replace and/or repair facilities on their land, e.g. septic tanks and stockwater supplies. In some cases they have had to breach the normal regulatory requirements of the district and regional plans to do this.

To enable land owners and occupiers to respond to significant effects from the earthquakes and in order to avoid, remedy or mitigate the loss of life or injury to humans, loss of life or injury to animals, or serious damage to land or property, the Bill proposes to:

- specify that such emergency farming practices are a permitted activity, provided they are proportionate to the adverse effect being addressed and will not cause significant adverse effects outside the boundaries of the property;
- require the owner or occupier to notify the council, within 40 working days, that the activities have been undertaken but not seek retrospective consents;
- limit the enforcement of the activities to the relevant local authorities; and
- enable these provisions to be used until 30 March 2017.

#### *Restoration of Kaikōura harbours*

The seabed around the North and South Kaikōura harbours has lifted significantly as a result of the earthquakes, meaning that it is no longer safe for ships to use the port. Reliable access to the Kaikōura harbour is necessary to ensure that critical supplies are able to be easily brought to Kaikōura by sea. The closure of the Harbour also has significant economic effects for local businesses, including tourism and fisheries businesses. The work required for harbour rehabilitation needs to be enabled without delay.

The restoration of the Kaikōura harbours is likely to commence under the emergency works provisions of the RMA. Under current RMA district and regional planning rules, applying for resource consents to restore the harbour could be difficult, either in advance of the activities or retrospectively if the works are carried out as emergency works. Some activities in some areas of the harbour is classified as non-complying or prohibited.

The Bill proposes to:

- provide a mechanism by which the harbours may be restored to the extent necessary to allow its port facilities to be safely used while having as little impact on the marine environment and its flora and fauna as is reasonably practicable;
- change the status of the activities needed to be undertaken to restore the harbour to 'controlled', unless already permitted in the relevant plan;
- specify the type of rehabilitation works the legislation applies to;
- require that, prior to using emergency powers under the RMA amended by Part 1 of the legislation, consideration must be given to the environmental effects of the proposed works, including how the environmental effects on marine mammals and seabirds must be monitored and avoided, remedied or mitigated as far as practicable;
- provide for a limited consultation process with specified parties invited to make written comments within a 10 working day period;
- require the consent authority to prepare and consider a summary of the written comments before making a decision on the resource consent application and provide the summary and the consent authority's responses to the comments

be made publically available at the same time as the decision on the consent application;

- remove any opportunity to object or appeal these decisions;
- provide for these provisions to be repealed on 1 April 2018; and
- limit enforcement action in relation to these works to the consent authorities concerned and to Ministers of the Crown.

## 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>NO</b>
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### 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>
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<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>
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### 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>
Regulatory Impact Statement: Emergency legislation to assist recovery in the areas affected by the Kaikōura earthquake sequence from 14 November 2016, Department of Prime Minister and Cabinet, November 2016. Available from: <a href="http://www.mfe.govt.nz/ris/kaikoura-earthquakes-recovery-bill">http://www.mfe.govt.nz/ris/kaikoura-earthquakes-recovery-bill</a> and <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a>	

<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>NO</b>
Given the timeframes associated with the circumstances of the Bill the Treasury's Regulatory Impact Assessment team were unable to provide an independent opinion on the quality of the regulatory impact statement.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

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

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Regulatory Impact Statement: Emergency legislation to assist recovery in the areas affected by the Kaikōura earthquake sequence from 14 November 2016, Department of Prime Minister and Cabinet, November 2016. Available from: <a href="http://www.mfe.govt.nz/ris/kaikoura-earthquakes-recovery-bill">http://www.mfe.govt.nz/ris/kaikoura-earthquakes-recovery-bill</a> and <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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Relevant international obligations were considered when developing the policy for the Bill, such as obligations in relation to the marine environment (e.g. the 1996 London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972).
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### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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The Treaty of Waitangi and relevant Treaty Settlements in the South Island were considered when developing the policy for the Bill.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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Advice has been provided to the Attorney-General on this Bill relating to the provisions of the New Zealand Bill of Rights Act 1990. This advice is available at: <a href="http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/">http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/</a>
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### 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>

### 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>
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## 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>
Consultation has been undertaken with Environment Canterbury, Kaikōura District Council and the following government agencies on the policy: the Departments of Conservation, Internal Affairs; the Earthquake Commission; the Ministries for the Environment, Primary Industries; the Ministries of Business, Innovation and Employment, Culture and Heritage; the State Services Commission; Te Puni Kōkiri; and the Treasury. The Department of the Prime Minister and Cabinet was informed.	

## 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>NO</b>
The policy details have been informed by lessons gathered during the response to the Christchurch earthquakes.	

## 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
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### 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
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### Retrospective effect

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

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
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### 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
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### 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
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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

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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