

# Departmental Disclosure Statement

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## Emergency Management 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 National Emergency Management Agency.

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

16 February 2023

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## Part One: General Policy Statement

The Emergency Management Bill replaces the Civil Defence Emergency Management Act 2002 (the 2002 Act). The Bill builds on the 2002 Act, and retains the existing functions and powers it provides for managing emergencies at local, regional, and national levels.

The Bill makes changes to improve the performance of the emergency management system and modernise the current legislative and regulatory framework. It establishes a more flexible regulatory framework for setting standards and managing the emergency management system across the 4 stages of risk reduction, readiness, response, and recovery (known as the 4 Rs).

The Bill includes provisions addressing recommendations from the 2017 Technical Advisory Group's (the TAG's) Ministerial Review into how New Zealand responds to natural disasters and other emergencies. It also addresses matters raised in the Government's response to the TAG review. The Government's response expanded on the recommendations of the TAG review by making additional proposals aimed at strengthening New Zealand's emergency management system, and acknowledging the importance of community resilience and preparedness.

Māori play a significant role in emergency management, responding swiftly to emergencies and providing valuable insights to inform risk reduction, readiness, response, and recovery activities. However, their roles are not recognised under the 2002 Act. This Bill recognises and enhances Māori participation in the emergency management system at all levels – national, regional, and local and across governance, planning, and operational activity – including by:

- introducing a requirement to include Māori members on Emergency Management Committees and Emergency Management Co-ordinating Executives (currently referred to as Civil Defence Emergency Management Groups, and Coordinating Executive Groups in the 2002 Act)
- establishing a National Māori Emergency Management Advisory Group to advise the Director of Emergency Management on Māori interests and knowledge, as they relate to the purpose and functions of emergency management
- requiring Emergency Management Committees to engage with Māori on the development of emergency management committee plans.

The Bill also includes a descriptive Te Tiriti o Waitangi / Treaty of Waitangi clause.

Critical infrastructure entities (referred to as 'lifeline utilities' in the 2002 Act) provide essential and enabling infrastructure and services that support commercial and domestic activity. The Bill proposes to improve the resilience of New Zealand's infrastructure and infrastructure services before, during, and after an emergency by:

- clarifying the roles and responsibilities of critical infrastructure providers in the emergency management system
- requiring critical infrastructure entities to proactively, and on request, share information with NEMA, responsible agencies, and Emergency Management Committees for monitoring and planning
- requiring critical infrastructure entities to establish and publish their planning emergency levels of service
- requiring annual reporting to the Director of Emergency Management, and the critical infrastructure entity's responsible agency.

The Bill clarifies the roles and responsibilities of local government participants in the emergency management system by specifying the distinct and separate functions of the Emergency Management Committee and local authorities within each area.

The Bill also includes an enabling provision for the making of regulations to establish the roles and responsibilities of lead and support agencies in the management of hazards and emergencies.

The current legal arrangements for the statutory position of Director of Civil Defence Emergency Management required updating to take account of NEMA's creation in 2019 as an operationally autonomous departmental agency with its own chief executive. The Bill specifies that the chief executive of NEMA holds the role of Director of Emergency Management. The Director will continue to delegate emergency response and recovery functions and powers at the national level to the National Controller and National Recovery Manager as appropriate.

The Bill also proposes a new power that enables rule-making by the Director of Emergency Management to improve the responsiveness of the emergency management regulatory framework. The Bill sets out the scope for the rule-making power, and includes additional safeguards to ensure that the use of the power is transparent and follows a participatory development process.

Emergencies can amplify existing inequalities within society and disproportionately impact some population groups during emergency events. These populations may include rural communities, culturally and linguistically diverse communities, seniors, disabled people, children, and those experiencing socio-economic deprivation or isolation. To this end, the Bill requires each Emergency Management Committee to identify communities within their area that may be disproportionately impacted by emergencies, and to engage with them about how to address their needs within the emergency management committee plans.

The Bill comes into force on the day after the date of Royal Assent. However, there are aspects of the Bill requiring delayed commencement, including:

- extending the permanent legislative authority to provide for direct reimbursement of costs to Māori
- establishing the National Māori Emergency Management Advisory Group.

These proposals will be brought into force by Order in Council, or 12-months after the date of Royal Assent if no Order in Council is made, to allow for regulations to be developed with Māori.

To provide time for the necessary adjustments, the Bill also includes delayed commencement for some critical infrastructure proposals, including:

- a two-year delayed commencement for planning emergency levels of service and annual compliance reporting
- a two-year delayed commencement for relevant provisions to enable a review of the entities listed in Schedule 1 (Lifelines Utilities) of the 2002 Act to be undertaken.

## 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>
<ul style="list-style-type: none"> <li>• “Ministerial Review: Better Responses to Natural Disasters and Other Emergencies”, Technical Advisory Group, 17 November 2017 <a href="https://dpmc.govt.nz/publications/ministerial-review-better-responses-natural-disaster-and-other-emergencies">https://dpmc.govt.nz/publications/ministerial-review-better-responses-natural-disaster-and-other-emergencies</a></li> <li>• “Delivering better responses to natural disasters and other emergencies: Government response to the Technical Advisory Group’s recommendations”, August 2018 <a href="https://dpmc.govt.nz/publications/natural-disasters-emergencies-government-response-tag-report.pdf">natural-disasters-emergencies-government-response-tag-report.pdf</a> (dpmc.govt.nz)</li> </ul>	

### 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>N/A</b>

### 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>Four regulatory impact statements were provided to inform the policy decisions that led to the Emergency Management Bill. The regulatory impact statements listed below can be found at: <a href="https://www.civildefence.govt.nz/emergency-management-bill/">https://www.civildefence.govt.nz/emergency-management-bill/</a></p> <ul style="list-style-type: none"> <li>• “Impact Statement: Proposed Government response to the Technical Advisory Group’s report Better Responses to Natural Disasters and Other Emergencies”, Department of the Prime Minister and Cabinet, 30 July 2018</li> <li>• “Impact Statement: Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one”, Department of the Prime Minister and Cabinet, National Emergency Management Agency, 23 July 2020</li> <li>• “Regulatory Impact Statement: Emergency Management System Reforms – iwi and Māori contributions to emergency management, legal framework and critical infrastructure”, National Emergency Management Agency, 28 October 2021</li> <li>• “Regulatory Impact Statement: Emergency Management System Reforms”, National Emergency Management Agency, 22 July 2022.</li> </ul>	
<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 Treasury’s RIA Team did not conduct independent assessments of the quality of the three regulatory impact statements dating from 2020 to 2022. The statements did not meet the threshold for assessment.

In 2018, the RIA Team assessed the regulatory impact statement on the “Proposed Government response to the Technical Advisory Group’s report Better Responses to Natural Disasters and Other Emergencies”. The RIA Team considered that the regulatory impact statement met the quality assurance criteria.

<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>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

Refer to: “Regulatory Impact Statement: Emergency Management System Reforms”, National Emergency Management Agency, 22 July 2022.

<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>

Refer to: “Regulatory Impact Statement: Emergency Management System Reforms”, National Emergency Management Agency, 22 July 2022.

## 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?

The Bill achieves better alignment with the Sendai Framework for Disaster Risk Reduction 2015 – 2030 (<https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>) by ensuring that groups representing people who are more likely to be negatively impacted by emergencies have the opportunity to participate in planning. The Sendai Framework emphasises the importance of including such groups, including those representing disabled people, in the assessment of disaster risk and in the designing and implementation of plans.

### 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 Bill gives effect to a policy of recognising the role of Māori in emergency management. In developing the specific policy proposals for the Bill, NEMA has:

- worked with the Ministerial Advisory Committee on Emergency Management (made up of Māori emergency management experts), Crown Law Office, Parliamentary Counsel Office, Te Puni Kōkiri, and the Office for Māori Crown Relations – Te Arawhiti
- applied the guidance, as appropriate, in Cabinet Circular CO(19) 5: “Te Tiriti o Waitangi | The Treaty of Waitangi Guidance”
- engaged with Pou Tangata (National Iwi Chairs Forum) and Secretariat, and Ohu Mahi (a group of National Emergency Management Agency officials, Māori emergency management practitioners, and iwi representatives)
- held workshops on Bill proposals as part of hui for Māori emergency management practitioners.

NEMA has also worked with the Ministerial Advisory Committee on other Bill related policies.

### 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

Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice’s website at:

<https://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)?

YES

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

NO

For the new emergency management infringement regime, see clauses 131-141 of the Bill. For the offences carried over from the CDEM Act and the revised penalties for eight of the offences, see clauses 125 – 132 of the Bill.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted about the introduction of an emergency management infringement regime, the removal of the offence of failing to comply with a requirement in a civil defence emergency management plan, and the increased financial penalties associated with eight of the existing offences.</p> <p><u>Infringement Regime</u></p> <p>The Ministry advised reducing the proposed maximum penalty from \$8,000 to \$1,000 (the recommended maximum set out in the Ministry's <i>Policy Framework for New Infringement Schemes</i>).</p> <p><u>Offences</u></p> <p>The Ministry supported the removal of the offence of failing to comply with a requirement in a civil defence emergency management plan, and the proposed grouping of offences and penalty levels. The Ministry suggested a new offence covering situations where the withholding or providing of false or misleading information affected safety and provided advice on the creation of stepped penalties.</p>	

### 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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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>N/A</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>
<p>Details of the consultation undertaken on the proposals set out in the suite of Cabinet papers relating to the Bill are set out in Appendix One.</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>NEMA officials met with the Legislation Design and Advisory Committee (LDAC) on a number of matters, including the proposed emergency management rules, in December 2021 and August 2022.</p> <p>In its feedback, LDAC commented on: the importance of clear policy; purpose clauses; Te Tiriti o Waitangi/The Treaty of Waitangi and Māori interests; accessibility of law; creating new powers for entities; transitional arrangements; the regulations for lead and support agencies; and the form of the national emergency management plan.</p> <p>For the Departmental comment on LDAC advice relating to regulations for lead and support agencies, see Appendix One.</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>
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### 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>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### 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>YES</b>
<p>The Bill creates a new infringement offence regime, which will reverse the usual burden of proof for offences identified through regulations. Infringement offences provide for a practical and fast response to conduct which can give rise to immediate safety concerns, such as a refusal to comply with an evacuation order or a road closure. The existence of infringement offences can also act to deter individuals from engaging in such conduct.</p> <p>The Bill sets out several safeguards, including capping the maximum amount for penalties at \$1,000.</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>The Bill carries over the existing protection from civil liability that is provided for in the CDEM Act. The Bill also extends the protection to approved warning providers, and any other person acting under the direction of a person performing a function under the new Act (for example, volunteers and members of Emergency Management Assistance Teams). See clause 122.</p> <p>The protection ensures that individuals and organisations can undertake critical emergency management functions without being constrained by the threat of civil litigation. However, the protection only applies where the act that a person does or omits to do in the performance of their functions is in good faith and relates, directly or indirectly, to a state of emergency or a transition period.</p>	

### 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>
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## 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>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
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See clause 147. The Bill creates a more comprehensive legal framework for emergency management through the expansion of existing regulation-making powers and the introduction of a power for the Director of Emergency Management to make rules. The framework provides more flexibility, is easier to update as circumstances change over time, and being law, has a status that encourages compliance.

For the regulations and rules, the Bill specifies consultation requirements. For the rules, there are additional procedural requirements to be met. Both the regulations and the rules are subject to the jurisdiction of the Regulations Review Committee and the House of Representatives disallowance process.

## 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>
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## Appendix One: Further Information Relating to Part Three

### External consultation – question 3.6

#### Cabinet Paper One: “Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one”

- The following government departments and public bodies were consulted:
  - Department of Internal Affairs; Ministry of Business, Innovation and Employment; Ministry of Education; Ministry for the Environment; Ministry of Foreign Affairs and Trade; Ministry of Health; Ministry of Justice; Ministry for Primary Industries; Ministry of Social Development; Ministry of Transport; Ministry for Women; Te Puni Kōkiri; State Services Commission; The Treasury; Crown Law Office; Office for Disability Issues; Office for Seniors; Parliamentary Counsel Office; Te Arawhiti; New Zealand Customs Service; New Zealand Defence Force; New Zealand Police; Civil Aviation Authority; Fire and Emergency New Zealand; Maritime New Zealand; and Waka Kotahi New Zealand Transport Agency.
- The Department of the Prime Minister and Cabinet (including the Policy Advisory Group) was informed.
- Affected portfolio Ministers, local government stakeholders (elected representatives, chief executives, Civil Defence Emergency Management Group Managers, and other emergency management support personnel), and several iwi and marae representatives were consulted.

#### Cabinet Paper Two: “Emergency Management System Reforms”

- The following government departments and public bodies were consulted:
  - Department of Internal Affairs; Ministry of Business, Innovation and Employment; Ministry of Culture and Heritage; Ministry for the Environment; Ministry of Health; Ministry for Primary Industries; Ministry of Social Development; Ministry of Transport; Te Puni Kōkiri; Department of the Prime Minister and Cabinet (National Security Group and the Policy Advisory Group); Te Kawa Mataaho Public Service Commission; The Treasury; Office for Disability Issues; Te Arawhiti; New Zealand Defence Force; New Zealand Police; the Earthquake Commission; and Fire and Emergency New Zealand.
- The Parliamentary Counsel Office and the Office of the Leader of the House were consulted on procedural matters relating to the Emergency Management Bill.
- The Officials’ Committee for Domestic and External Security Co-ordination (including the Hazard Risk Board) was informed.
- Feedback was received from the Ministerial Advisory Committee on Emergency Management and the National Iwi Chairs Forum Pou Tangata.
- Hato Hone St John and the Wellington Free Ambulance were consulted.

#### Cabinet Paper Three: “Emergency Management System Reform Proposals”

- The following government departments and public bodies were consulted:
  - Department of Internal Affairs; Ministry of Business, Innovation and Employment; Ministry of Culture and Heritage; Ministry for the Environment; Ministry of Health; Ministry of Housing and Urban Development; Ministry for Primary Industries; Ministry of Social Development; Ministry of Transport; Te Puni Kōkiri; Department of the Prime Minister and Cabinet; Te Kawa Mataaho Public Service Commission; The Treasury; New Zealand Defence Force; New Zealand Police; The Ministry for Disability Issues; Te Arawhiti; the Earthquake Commission; Fire and Emergency New Zealand; Kāinga Ora; Waka Kotahi New Zealand Transport Agency; and the New Zealand Search and Rescue Secretariat.

- Feedback was received from the Ministerial Advisory Committee on Emergency Management. Targeted engagement was undertaken with Māori emergency management practitioners.
- Targeted engagement was also undertaken with:
  - CDEM sector stakeholders, including local government elected officials, Coordinating Executive Group members, and Civil Defence Management Group offices; and
  - the National Ambulance Sector Office, Hato Hone St John, and Wellington Free Ambulance.

### **Other testing of proposals – question 3.7**

In relation to the lead and support agency proposals, LDAC queried why secondary legislation (regulations) was being used to set out roles and responsibilities instead of primary legislation. Currently, the CDEM Act does not reference lead and support agencies. These agencies and their roles and responsibilities in an emergency management context are set out in the National Civil Defence Emergency Management Plan Order 2015.

The Bill provides for high level recognition of the role and responsibilities of lead and support agencies, with regulations being used to specify the detail. This arrangement allows for both certainty and the necessary flexibility to make changes over time.

In addition, for a number of lead agencies, their functions and duties relating to the management of specific hazards are set out in separate Acts. The new regulations will assist with clarifying the application of those functions and duties in the wider emergency management context.