



## **Proactive Release**

The following briefing has been proactively released by the Department of the Prime Minister and Cabinet (DPMC), and National Emergency Management Agency (NEMA), on behalf of Hon Peeni Henare, Minister of Civil Defence:

### **Termination of National Transition Period**

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it. Where information has been withheld in accordance with section 9(2)(h) of the Act, the redacted information relates to legal advice being sought and given by DPMC Legal and/or Crown Law.

#### **Key to redaction code:**

- 9(2)(a), to protect the privacy of individuals, and
- 9(2)(h), to maintain legal professional privilege.



# Briefing

## TERMINATION OF NATIONAL TRANSITION PERIOD

To Minister of Civil Defence (Hon Peeni Henare)

<b>Date</b>	8/06/2020	<b>Priority</b>	Normal
<b>Deadline</b>	8/06/2020	<b>Briefing Number</b>	20/74

### Purpose

This briefing seeks your agreement to terminate the National Transition Period currently in force for New Zealand.

### Recommendations

1. **Note** the National Transition Period has been in force since 13 May 2020.
2. **Note** <sup>9(2)(h)</sup>
3. **Agree** to terminate the National Transition Period currently in force.  

**agree/disagree/discuss**
4. **Sign** the attached Notice of Termination of National Transition Period.
5. **Agree** that your Office release the attached media statement when the National Transition Period is terminated  

**agree/disagree/discuss**
6. **Forward** a copy of this briefing to the Cabinet Social Wellbeing Committee and the Prime Minister's Office.  

**agree/disagree/discuss**



**Contact for telephone discussion if required:**

Name	Position	Telephone		1st contact
Sarah Stuart-Black	Director CDEM, Deputy Chief Executive NEMA and COVID-19 National Recovery Manager	9(2)(a)	9(2)(a)	
Brian Hallinan	Manager, Emergency Management Policy	9(2)(a)	9(2)(a)	✓

**Minister's office comments:**

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

# TERMINATION OF NATIONAL TRANSITION PERIOD

## Purpose

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1. This briefing seeks your agreement to terminate the National Transition Period currently in force for New Zealand.

## A National Transition Period is currently in force

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2. In my briefing to you on 12 May, I advised that a National Transition Period was necessary and desirable, and in the public interest in accordance with the tests set out under s94A of the Civil Defence Emergency Management Act 2002 (CDEM Act) (Briefing 20/59).
3. On Wednesday 13 May 2020, the State of National Emergency expired and you gave notice of a National Transition Period over the whole of New Zealand. This transition period is due to end on Monday 10 August 2020, unless extended or terminated earlier.
4. A National Transition Period enables a seamless transition from the end of the response phase of an emergency and into recovery over the short-, medium- and long-term. The suite of powers available during a National Transition Period is more limited than that of a State of National Emergency, though there are many similarities.
5. As noted in the previous briefing, with the enactment of the new COVID-19 Public Health Response Act 2020, the National Transition Period may not need to span the entire 90-day duration. Given the fluid nature of the COVID-19 response and recovery, officials at the National Emergency Management Agency (NEMA) and the Department of the Prime Minister and Cabinet (DPMC) undertook to review the situation and provide advice on the need to extend, terminate or otherwise modify the National Transition Period. There is no explicit obligation to review a transition period once in force, however it is good administrative decision making to do so.

## National Transition Period has supported the coordination of CDEM activities in recent weeks

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6. To date, the National Transition Period has provided for continued national level coordination and leadership of civil defence emergency management (CDEM) activities.
7. During the COVID-19 response, CDEM Groups have been responsible for the coordination of the response effort at regional/local levels and including emergency welfare assistance to people in need in their communities. This has continued into the early stages of recovery under the National Transition Period.

8. As a familiar framework for the use of powers, the National Transition Period offered a basis for clarity and direction for CDEM Groups. For example it enabled the National Recovery Manager/Director CDEM, under the CDEM Act and National CDEM Plan, to “require” CDEM Groups to:
- plan to transition out of CDEM welfare services (but to continue to provide support where need still exists);
  - maintain liaison with District Health Boards, social sector agencies, iwi, as necessary;
  - provide, arrange the provision of, or make available materials, services information and any other resources necessary to manage the non-health adverse effects of the pandemic in their area;
  - maintain Emergency Operation Centres operating at activation levels appropriate to regional needs; and
  - provide ongoing reporting to the NEMA.
9. In addition, there was a brief period between when the State of National Emergency expired and when the new COVID-19 Public Health Response Act 2020 came into force. The National Transition Period therefore provided a suite of powers CDEM Groups and Police could have drawn on during this period, should this have been required. In practice, this was not utilised but it was important to have the ability if needed.

### **Decision-making considerations**

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10. Despite there being no express requirement to review the National Transition Period, it is appropriate to consider from time to time whether the National Transition Period should continue or be terminated prior to its expiry. There is no specific test in the CDEM Act for terminating a National Transition Period, but if you consider the threshold for the continued need to invoke the power to manage, co-ordinate, or direct recovery activities then, as a matter of good administrative decision making, it is appropriate to determine whether to issue a notice of termination of the National Transition Period. I consider a decision to either terminate or retain the National Transition Period should be guided by the tests for giving notice of a National Transition Period. The primary consideration is therefore whether the National Transition Period is still required.
11. You should consider whether having access to the powers provided by the transition period continues to be:
- a) in the public interest; and
  - b) necessary or desirable to ensure a timely and effective recovery.

12. You should also “have regard” to:
- a) the areas or districts affected by the emergency;
  - b) whether the focus of activities is moving from response to recovery, including whether a state of emergency is about to expire or be terminated; and
  - c) the capacity of any CDEM Group and any local authority in any area or district affected by the emergency to carry out recovery activities.

### **National Transition Period may no longer be required**

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13. 9(2)(h)

This is because:

*The new legislation is now in force and the CDEM Act powers are not needed*

14. CDEM Groups have not reported the use of any powers during the National Transition Period and the Government has passed bespoke legislation, the COVID-19 Public Health Response Act 2020, which is the primary legislation for accessing powers to respond to COVID-19. NZ Police is able to take enforcement action on Alert Level 2 breaches using the Health Act while orders issued pursuant to the Epidemic Notice remain in force or by using the COVID-19 Public Health Response Act. My advice is therefore that the powers available under the CDEM Act are no longer needed to support the COVID-19 response and recovery.

*Transition of welfare support from CDEM Groups to social sector agencies is now well underway*

15. During a National Transition Period, CDEM Groups must give effect to the directions of the National Recovery Manager. This enables the National Recovery Manager to reinforce leadership and oversight of CDEM recovery activities across New Zealand, which has been particularly valuable during the early stages of recovery where wider ‘all of Government’ recovery arrangements have still been under development.
16. While Groups have played a significant role in the coordination and delivery of emergency welfare assistance, responsibility for addressing the longer-term consequences of COVID-19 rests primarily with government social sector agencies.
17. On 13 May, I (as Director CDEM and as National Recovery Manager) required Groups to plan to transition the provision of CDEM welfare support to social sector agencies from two weeks of moving to Alert Level 2 (by 28 May 2020) or as soon as practical thereafter until the transition to social sector agencies is complete. While capacity to undertake this transition varies across regions, overall transition planning is being well-managed at the Chief Executive/agency level. The social sector has now made significant progress in taking over this responsibility from CDEM Groups.

18. NEMA has raised the possibility of early termination with CDEM Group Managers who do not have concerns with early termination of the National Transition Period. With CDEM Groups transitioning out of the COVID-19 response and recovery, I consider there is a sound basis to conclude that the national coordination of CDEM recovery activity provided for by the National Transition Period is no longer necessary, desirable or in the public interest.

## **Legal Implications of termination of the National Transition Period on the wider COVID-19 response**

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### *Fewer grounds for making section 11 orders*

19. One of the prerequisites for making a section 11 order under the COVID-19 Public Health Response Act is that a state of emergency or transition period in respect of COVID-19 is in force (s8(b)) when the section 11 order is made. Should the current transition period be terminated, this prerequisite can no longer not be relied on for future section 11 orders.
20. However, this is mitigated by other prerequisites in the Act that can still be used. For example, if there is a risk of further spread or subsequent outbreak, the Government can rely on an Epidemic Notice or authorisation from the Prime Minister to issue a section 11 order.
21. The Ministry of Health has advised it views the level of risk associated with the early termination of the National Transition Period as low, given the current circumstances, the ability to make section 11 orders through other means, and the ability to access powers through the Health Act with the Minister of Health's approval. In addition, NZ Police is no longer reliant on the CDEM Act to enable its COVID-19 response requirements and has no concerns about the early termination of the National Transition Period.

### *Possible changes to the COVID-19 Public Health Response Act*

22. The inquiry into the operation of the COVID-19 Public Health Response Act is now before the Finance and Expenditure Committee. The Committee could recommend the amending/rescinding of certain provisions in that Act that could be readily provided for under the National Transition Period. While the Committee is due to deliberate on its report on 22 July 2020, the Government will need time beyond this to report back, and to consider any policy implications.
23. The COVID-19 Public Health Response Act will be automatically repealed after 90 days from its commencement if no resolution is passed to continue the Act by the House of Representatives. Such an automatic repeal will align closely with the automatic 90 day expiration of the current National Transition Period (unless terminated earlier).

24. A decision on whether or not to terminate the National Transition Period must be based on the provisions of the CDEM Act, in particular whether a National Transition Period is still required at the time your decision is made. In deciding whether termination is required you are entitled to take account of the broader public interest and the necessity or desirability of ensuring a timely and effective recovery.
25. Part of that consideration will include the outcome of the Select Committee process, which is uncertain, and the possibility of future amendment to the COVID-19 Public Health Response Act, but that is not determinative of whether the National Transition Period is still required. Should the Committee propose significant changes to the COVID-19 Public Health Response Act, I will provide you with a further briefing on the need for the use of CDEM Act powers at that time, taking into account the public health situation.

### **We will provide further advice should the situation change**

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26. There is now have a bespoke COVID-19 legislative framework designed to support the response and recovery.
27. Should the public health situation change, for example if the number of cases quickly re-escalates, as noted I may need to come back to you with further advice in relation to the CDEM legislation. This could be in relation to a new State of National Emergency or National Transition Period, or CDEM Groups requests for States of Local Emergency or Local Transition Periods. The CDEM Act was recently amended to require your approval for a CDEM Group to declare a State of Local Emergency or a Local Transition Period for COVID-19
28. NEMA and DPMC will continue to work with the All of Government COVID-19 Strategy and Policy Team to monitor the situation and will keep you informed.

### **Next steps**

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29. On the basis you agree that CDEM powers and national coordination are no longer required, and other appropriate mechanisms are in place, I recommend terminating the National Transition Period because it is no longer necessary, desirable, or in the public interest to keep it in place.
30. I recommend that you now terminate the existing National Transition Period. A termination will come into effect at the time when you sign and date the Notice of Termination Form (Appendix A). A termination at this time would be broadly consistent with the timeframe within which Groups are required to plan their transition away from welfare delivery. Should you agree to terminate the National Transition Period, NEMA will advise CDEM Groups via the regular communication channels.
31. You may wish to discuss this advice with the Prime Minister. We recommend that a copy of this briefing be provided to the Prime Minister's Office. If required, answers to several potential questions are included in Appendix C.

32. Under section 94E(5) to terminate a National Transition Period a notice is needed that must:
  - a) specify the time and date on which it is given; and
  - b) specify the areas, districts, or wards to which the transition period applies; and
  - c) be in the form prescribed by regulations made under section 115 or a form of similar effect.
33. A person who terminates a transition period must:
  - a) immediately notify the public by any means of communication that are reasonably practicable in the circumstances of the case (a draft media release is attached as Appendix B); and
  - b) ensure that the notice of termination is published in the *Gazette* as soon as practicable after it is given.
34. Section 94P of the CDEM Act requires the National Recovery Manager to provide the Director with a report outlining the use of powers by Recovery Managers during a National Transition Period within 7 days of the end of that transition period. As you are aware, in this case the roles are held concurrently by the same office holder.<sup>1</sup> The Director CDEM must provide you with a copy of that report, which you must then present to the House of Representatives as soon as practicable.
35. Should you decide to terminate the National Transition Period, the Director CDEM will therefore provide you with a report for presentation to the House.

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<sup>1</sup> The Director CDEM holds the role of National Recovery Manager for the COVID-19 National Transition Period.

## APPENDIX A: NOTICE OF TERMINATION FORM

### Notice of termination of national transition period

*Section 94E, Civil Defence Emergency Management Act 2002*

I, **Peeni Ereataa Gladwyn Henare** terminate the national transition period over the whole of New Zealand owing to the owing to the impacts of COVID-19, notice of which was given at 12.21pm on 13 May 2020.

The transition period is terminated at the time and on the date when this termination notice is given.

**Signed by:**

**Designation:** Minister of Civil Defence

**Time and Date of Notice:** \_\_\_\_\_ AM / PM on June 2020

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## APPENDIX B: MEDIA RELEASE

### National Transition Period ends

The National Transition Period over the whole of New Zealand owing to the impacts of COVID-19 was terminated on XX at XX, Civil Defence Minister Peeni Henare has announced.

The National Transition Period came into force on 13 May at the time the State of National Emergency expired.

“This move does not signal that New Zealanders should stop being vigilant in protecting themselves and others from the virus. It is essential we all follow the Alert Level requirements to ensure we do not lose the gains we have made,” Peeni Henare said.

“The National Transition Period had been put in place to support a nationally consistent and coordinated approach to civil defence emergency management activities, including:

- providing for the conservation and supply of food, fuel and other essential supplies
- directing people to stop any activity that may cause, or substantially contribute to the consequences of, the spread of COVID-19

“With the powers available under the new COVID-19 Public Health Response Act 2020, and the significant progress made by government agencies to assume coordination of longer-term welfare assistance that has been provided by Civil Defence Emergency Management Groups during the emergency phase of New Zealand’s response to COVID-19, I am satisfied that the National Transition Period is no longer required.”

The National Transition Period covered all of New Zealand, including the Chatham Islands, Stewart Island, and other offshore islands and was in force for XX days.

The National Transition Period supported a move from an emergency response into the initial recovery phase and provided the National Recovery Manager – the Director of Civil Defence Emergency Management Sarah Stuart-Black – and others access to special powers designed to assist with recovery.

ENDS

## APPENDIX C: POTENTIAL QUESTIONS AND ANSWERS REGARDING THE TERMINATION OF THE NATIONAL TRANSITION PERIOD

### What is a National Transition Period?

A National Transition Period supports a transition from an emergency response into the initial recovery phase. The National Transition Period provided the National Recovery Manager and others access to special powers designed to assist with the move from response to recovery.

### Why was a National Transition Period put in place?

The National Transition Period came into force on 13 May at the time the State of National Emergency expired. It was put in place to support a nationally consistent and coordinated approach to civil defence emergency management activities, including:

- providing for the conservation and supply of food, fuel and other essential supplies
- directing people to stop any activity that may cause, or substantially contribute to the consequences of, the spread of COVID-19

### What powers were used and why?

During the National Transition Period, Stuart-Black, in her role as the Director Civil Defence Emergency Management and as National Recovery Manager, used powers to direct Civil Defence Emergency Management Groups to continue to deliver necessary Civil Defence Emergency Management functions in support of the response to COVID-19 and the transition to recovery.

To date, there have been no reports provided by Civil Defence Emergency Management Group Recovery Managers detailing their use of National Transition Period powers. The National Recovery Manager is required to provide a final report on any use of these powers within seven days of the National Transition Period being terminated.

### Given that Civil Defence Emergency Management Groups have not used the powers was the National Transition Period required?

Yes. Putting the National Transition Period in place helped to support a nationally consistent and coordinated approach to civil defence emergency management activities.

### Why has the National Transition Period been lifted?

With the powers available under the new COVID-19 Public Health Response Act 2020, and the significant progress made by government agencies to assume coordination of longer-term welfare assistance that has initially been provided by Civil Defence Emergency Management Groups, the Minister of Civil Defence, Hon Peeni Henare, is satisfied that the National Transition Period is no longer required.

### Does the termination of the National Transition Period mean there is a risk there will be insufficient powers to respond to new issues?

No. The COVID-19 Public Health Response Act 2020 now provides access to powers to respond to COVID-19, together with the Health Act.