



Proactive Release

The following documents have been proactively released by the Department of the Prime Minister and Cabinet (DPMC), and National Emergency Management Agency (NEMA), on behalf of the Minister for Emergency Management, Hon Kieran McAnulty:

Emergency Management Bill: Approval for Introduction

The following documents have been included in this release:

Title of paper: Emergency Management Bill: Approval for Introduction (LEG-22-SUB-0239 refers)

Title of paper: Emergency Management Bill: Draft Departmental Disclosure Statement

Title of minute: Report of the Cabinet Legislation Committee: Period Ended 16 December 2022 (CAB-22-MIN-0601 refers)

Title of minute: Emergency Management Bill: Approval for Introduction (CAB-22-MIN-0601.01 refers)

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.

Key to redaction codes:

- Section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials; and
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

~~In Confidence~~

Office of the Minister for Emergency Management

Chair, Cabinet Legislation Committee

Emergency Management Bill: Approval for Introduction

Proposal

1. I propose to introduce the Emergency Management Bill (the Bill) to improve New Zealand's resilience to natural disasters and other emergencies.

Policy

The Bill will implement policy agreed by Cabinet in three tranches

2. In August 2020, Cabinet [CAB-20-MIN-0366 confirming, GOV-20-MIN-0035 refers] agreed to amend the Civil Defence Emergency Management Act 2002 (CDEM Act) with:
 - 2.1 administrative improvements including to allow for Civil Defence Emergency Management (CDEM) Groups to meet by audio or audio-visual link during an emergency;
 - 2.2 proposals to strengthen local CDEM Groups, including adding an explicit function for CDEM Groups to co-ordinate emergency management activity across the region;
 - 2.3 minor and technical amendments to update and clarify legislation, such as the ability to reduce the geographical area when a state of emergency or transition period is extended.
3. In November 2021, Cabinet [CAB-21-MIN-0472 confirming, GOV-21-MIN-0043 refers] agreed to replace the CDEM Act with a new Emergency Management Bill as part of a new legal framework. Cabinet also agreed to policy proposals:
 - 3.1 authorise the Director of Emergency Management¹ to make 'Emergency Management Rules' to improve the flexibility and responsiveness of the legal framework;
 - 3.2 update provisions for critical infrastructure entities, including modernising the terminology, and specifying the critical infrastructure sectors and entities via a notice made by the Minister in the New Zealand Gazette;
 - 3.3 provide that the Minister may approve a provider to issue warnings and notifications under the Act, and must consult the Director of Civil Defence Emergency Management in this decision;

¹ Under the Bill, the Director of Emergency Management is the Chief Executive of the National Emergency Management Agency

- 3.4 amend the functions of local controllers to reflect their function to co-ordinate the response to an emergency, and direct personnel in the local area.
4. In August 2022, Cabinet [CAB-22-MIN-0339.01 confirming, GOV-22-MIN-0031 refers] agreed to a third tranche of proposals to:
 - 4.1 further enhance Māori participation throughout the emergency management system, including to:
 - 4.1.1 establish a National Māori Emergency Management Advisory Group to provide advice to the NEMA Chief Executive across all aspects of the role of Māori in the emergency management system;
 - 4.1.2 introduce a requirement to appoint Māori members on regional emergency management decision-making structures such as joint committees;
 - 4.1.3 require engagement with Māori and iwi partners on the development of CDEM Group Plans;
 - 4.1.4 include a requirement to consider roles and responsibilities of Māori in the National CDEM Plan;
 - 4.1.5 include a descriptive Treaty of Waitangi clause in the Bill.
 - 4.2 introduce a requirement to publish planned levels of service, and annual compliance reporting for critical infrastructure entities;
 - 4.3 clarify roles and responsibilities in the emergency management sector including:
 - 4.3.1 enabling the making of regulations to confirm the roles and responsibilities of lead and support agencies;
 - 4.3.2 clarifying the roles and responsibilities of CDEM Groups and local authorities;
 - 4.3.3 specifying that any member of the CDEM Group may be the administering authority upon agreement by the CDEM Group members;
 - 4.3.4 clarifying the role of NEMA's Chief Executive and the Director;
 - 4.3.5 clarifying the status of CDEM Groups for the purpose of the Health and Safety at Work Act 2015 to ensure all members are protected equally from liability.

- 4.4 update planning requirements for CDEM Groups including:
 - 4.4.1 a requirement that CDEM Groups identify and engage with communities disproportionately impacted by emergencies in the development of CDEM Group Plans;
 - 4.4.2 clarify the publication requirements of CDEM Group Plans.
- 4.5 ensure the legislation is modern and enduring, including:
 - 4.5.1 adding ambulance services in the definition of emergency services;
 - 4.5.2 allowing for concurrent states of emergency and transition periods;
 - 4.5.3 updating offences and penalties for non-compliance, and providing for infringement offences;
 - 4.5.4 updating the list of other legislation, relevant to the purpose of the Act, to include reference to the Climate Change Response Act 2002;
 - 4.5.5 enabling protection from civil liability for any person acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act, where loss or damage is due (directly or indirectly) to a state of emergency or transition period;
 - 4.5.6 updating the terminology from 'civil defence' to 'emergency management' to reflect modern practice.
 - 4.5.7 empower the making of Emergency Management Regulations.

Some parts of the Bill are likely to be contentious

5. s.9(2)(g)(i)

- 6. Due to the frequency and intensity of recent weather-related emergencies, and increasing public concern about climate change, there may be concern that the Bill does not sufficiently address climate change. The Bill will include reference to existing climate change legislation. Climate change is recognised as an exacerbator of the hazards and risks already managed through this legislation, rather than a new factor requiring further policy. Furthermore, there may be concern that the Bill does not address increased funding for risk reduction or recovery.

7. Critical infrastructure proposals for planning emergency levels of service and annual reporting may also be contentious. These proposals received mixed support during consultation with critical infrastructure providers, and there was some concern regarding their financing and the extent of the reporting.

8. s9(2)(g)(i)

9. Some agencies and local authorities may be concerned about the implementation costs associated with some proposals, such as those that promote greater inclusivity in planning activities. NEMA is seeking to mitigate these costs by sharing existing good practice, developing guidance and tools to support implementation, and allowing sufficient time for adapting current practices.

Legislative change is required to establish a modern emergency management legal framework

10. Legislative action is required to give effect to policy decisions that ensure there is an inclusive, modern, and enduring legal framework. For example, legislation is needed to establish the new emergency management legal framework, including regulations and rules. Legislation is also required to provide the legal mandate for emergency management activities.

Further Cabinet policy approvals are required, and some Cabinet decisions revisited

Amended approach for the form of the National Emergency Management Plan

11. In August 2022, Cabinet agreed that the National Emergency Management Plan (the National Plan) be an instrument of secondary legislation, with appropriate requirements for consultation, approval, and review [CAB-22-MIN-0339.01, rec 54 refers]. The current National Civil Defence Emergency Management Plan is an Order in Council.

12. The Legislative Design Advisory Committee (LDAC) has subsequently advised that because the primary role of the National Plan is to explain and draw together arrangements that already exist across the legislative system, it does not require legislative effect. Accordingly, I propose that the Bill continue the existing requirement for there to be a National Plan, however the Bill will no longer require the National Plan to be secondary legislation. Appropriate consultation and Ministerial oversight provisions relating to the National Plan remain important, and will be added to the Bill.

13. I propose to:

13.1 rescind the Cabinet decision that the National Plan be secondary legislation;

13.2 include requirements that:

13.2.1 the Director of Emergency Management, having consulted with persons and agencies who have roles and responsibilities under the National Plan, develop the National Plan for the Minister's approval;

13.2.2 prior to the Minister approving the National Plan, the Minister must consult with relevant ministers, and may either approve the draft

National Plan, or refer it back to the Director of Emergency Management for reconsideration, together with the Minister's reasons for referring it back;

- 13.2.3 the National Plan be published on an internet site freely available to the public, and notified in the *New Zealand Gazette*.

Offences and Penalties

14. In August 2022, Cabinet agreed to establish an infringement offence regime for emergency management in the Bill [CAB-22-MIN-0339.01, recs 44-45 refers]. Officials from NEMA and the Ministry of Justice (MoJ) worked through further details of the regime, including who may issue infringement notices.
15. Cabinet also agreed to increase the upper maximum amount for a court-imposed fine for prosecutable offences to \$8000, subject to confirmation with MoJ [CAB-22-MIN-0339.01, rec 43 refers]. Following further discussion with MoJ, a scaled approach of penalties for prosecutable offences has been developed, and is proposed as a more suitable option. These penalties are outlined in Appendix One.
16. LDAC have advised that it would be inappropriate for the Bill to make non-compliance with civil defence emergency management plans an offence, because the National Plan will no longer be an instrument of secondary legislation (noting that CDEM Group Plans are also not secondary legislation). Accordingly, the offence in section 95 of the CDEM Act regarding failure to comply with requirements in any civil defence emergency management plan should not be carried over into the Bill. This removal is also supported by MoJ.
17. Therefore, I propose to:
- 17.1 rescind the upper maximum amount for a court-imposed fine for prosecutable offences of \$8000;
- 17.2 update the penalties for prosecutable offences in a scaled approach, as outlined in Appendix One;
- 17.3 not carry over the existing offence from section 95 of the CDEM Act concerning failure to comply with requirements in a civil defence emergency management plan into the Bill.

Local Controller appointments clarification

18. The August 2022 Cabinet paper included a proposal that there be a requirement that any person appointed as a Local Controller be suitably qualified to perform the role [GOV-22-SUB-0031, Appendix One refers]. This proposal did not have an accompanying recommendation in the Cabinet paper, so I am seeking agreement to this recommendation in this paper (see rec 8).

Critical infrastructure reporting clarification

19. In August 2022, Cabinet agreed to a recommendation that critical infrastructure entities be required to make relevant information available to "NEMA or CDEM Groups" on request [CAB-22-MIN-0339.01, rec 32 refers]. This was an error and should instead state that critical infrastructure entities be required to make relevant

information available to “NEMA and their regulatory agencies”.

20. Accordingly, I propose to amend the Cabinet decision that critical infrastructure entities be required to make relevant information available to CDEM Groups, and replace it with making relevant information available to their regulatory agencies, in addition to NEMA.

Requirement for the CDEM Group Plan to provide for arrangements for iwi and Māori across all phases of emergency management

21. Cabinet has agreed for CDEM Group Plans to set out the arrangements for co-ordination with Māori during response and recovery [CAB-22-MIN-0339.01, rec 12 refers].
22. However, engagement with Māori has demonstrated that they want to be included across every stage of emergency management. Departmental feedback on the Bill also suggested that this proposal should be extended across all ‘4 Rs’ of emergency management (risk reduction, readiness, response and recovery). This would ensure that these provisions are consistent with our intention to enhance participation by Māori in the emergency management system.
23. Therefore, I propose to amend this decision to require a CDEM Group Plan to state and provide for the arrangements for co-ordination with iwi and Māori during all stages of emergency management including reduction, readiness, response and recovery.

Costs relating to administering authorities

24. In August 2022, Cabinet agreed that “Māori members on CDEM Group Joint Committees and Coordinating Executive Groups will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group, which will be funded by the National Emergency Management Agency (NEMA).” It should be clarified that NEMA will only be funding Māori member participation in CDEM Groups and Coordinating Executive Groups, not administrative costs.

Ministerial backstop for appointments of Māori members

25. In August 2022, Cabinet agreed to a requirement in the Bill to have Māori members with full voting rights on CDEM Groups’ Joint Committee or Standing Committee, and Coordinating Executive Groups. Members will be appointed via systems to be developed locally. A Ministerial backstop is also required in the Bill to ensure appointments happen, and to make decisions when regions cannot agree on members [CAB-22-MIN-0339.01, rec 12 refers].
26. I propose a requirement for CDEM Groups to appoint Māori member(s), and to inform the Minister of that appointment within a specified timeframe in the relevant regulatory instrument. If no appointment is made, the Minister may appoint a member, but must do so having consulted with the Director of Emergency Management and the CDEM Group.
27. This approach enables the Director of Emergency Management to take advice from the National Māori Emergency Management Advisory Group.

Enabling CDEM Groups to meet by audio or audio-visual link outside of emergencies

28. In August 2020, Cabinet agreed to amend the CDEM Act to allow CDEM Group members to attend meetings of the Group by audio or audio-visual link during an emergency [CAB-MIN-0366 refers]. This proposal was intended to ensure decisions could be made in a timely manner during emergencies.
29. I propose to extend the ability for CDEM Group members to attend Group meetings by audio or audio-visual link and be counted as present for the purposes of quorum, to include times outside of emergencies. Often key decisions need to be made before an emergency occurs. Extending this proposal to allow CDEM Groups to meet by audio or audio-visual link at any time ensures timely decision making before an emergency, or in the recovery phase.

Ability for a declaration of state of emergency / notice of transition period to be signed electronically

30. A declaration of state of emergency, or notice of transition period, can be required to be signed at short notice, often when the person authorised to sign is not at work. Given the advances in technology, both now and in the future, it would be prudent to ensure technology can be used to make it easier to make a declaration or give notice.
31. Therefore, I propose to:
 - 31.1 include a clause that explicitly enables a declaration of state of emergency or notice of transition period (including any extension or termination) to be signed electronically;
 - 31.2 the electronic signature would need to be given in accordance with particular technology requirements, or by means of a particular kind of electronic communication.

Power to Act

32. Cabinet authorised the Minister for Emergency Management to make decisions on any issues of detail that may arise during the drafting process, provided those decisions are consistent with the policy directions in the paper under GOV-22-SUB-0031 [CAB-22-MIN-0339.01, para 3 refers].
33. I am reporting back to Cabinet on decisions I have exercised under this power to act in Appendix Two of this paper.
34. Cabinet also agreed to delegate the authority to make decisions to ministers for two specific policy matters [CAB-22-MIN-0039.01 refers]:
 - 34.1 emergency management responsibilities for offshore islands;
 - 34.2 financial assistance to Water Service Entities after emergencies.

Responsibility for offshore islands

35. Changes to distinguish the emergency management responsibilities for both CDEM Groups, and the local authorities that are members of CDEM Groups, inadvertently created an ambiguity for the arrangements for the offshore islands for which the Minister of Local Government is responsible [CAB-22-MIN-0039,01, recs 4 and 5 refer]. This is because the Minister of Local Government is not required to be a member of a CDEM Group, so the Minister is not responsible for the functions now allocated to local authorities for offshore islands.
36. To address this, in August 2022, Cabinet agreed to delegate the power to determine responsibility for emergency management functions for offshore islands to the Minister of Local Government and the Minister for Emergency Management [CAB-22-MIN-0039,01, rec 5 refers]. The Minister of Local Government has delegated the role of territorial authority to me as the Associate Minister of Local Government, so I made this decision under both the Emergency Management and Local Government portfolios, and notified the Minister of Local Government.
37. I have decided that the Minister of Local Government and the relevant CDEM Groups be jointly responsible for emergency management on offshore islands in the Bill. This option is as close to the status quo as possible without undermining the broader policy goal of clarifying the division of roles and responsibilities for CDEM Groups and local authority members. The arrangements for giving effect to the joint responsibility will be developed as part of implementation of the Bill.

Water Service Entities in emergencies

38. In August 2022, Cabinet agreed to delegate the power to the Ministers of Local Government and Emergency Management, in consultation with the Minister of Finance, to make final decisions regarding Crown financial assistance to Water Service Entities following an emergency event [CAB-22-MIN-0339.01, para 39 refers].
39. These Ministers agreed that the Water Services Entities Amendment Bill include the necessary provisions to expand the scope of the Permanent Legislative Authority (PLA) in the CDEM Act to allow direct reimbursement to water services entities. Subject to the enactment of the Water Services Entities Amendment Bill, these changes to the CDEM Act will also be reflected in the Emergency Management Bill. Officials from NEMA and the Department of Internal Affairs are working through the consequential policy and operational issues which need to be resolved before Water Service Entities go live, ^{s9(2)(f)(iv)} [REDACTED]

Interdependencies with other government reforms

40. Officials have worked with departments on the interdependencies between the Bill and other government reform programmes, ^{s9(2)(f)(iv)} [REDACTED] the Three Waters Reform Programme, and work by the Department of Prime Minister and Cabinet (DPMC) to enhance the resilience of New Zealand's critical infrastructure. Officials will continue to work with departments to ensure operationalisation of the Bill is aligned with ongoing government reforms, for example, the Review into the Future for Local Government and Resource Management System reform.

s9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Impact analysis

45. The following regulatory impact analyses were prepared:

- “Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one” (GOV-20-MIN-0035, CAB-20-MIN-0366);
- “Emergency Management System Reforms” (GOV-21-MIN-0043, CAB-21-MIN-0472);
- “Emergency Management System Reform Proposals” (GOV-22-MIN-0031, CAB-22-MIN-0339); and
- Better Responses to Natural Disasters and Other Emergencies: Proposed Government Response to Technical Advisory Group’s Report (DEV-18-MIN-0169).

Compliance

46. The Bill complies with:
 - 46.1 the principles of the Treaty of Waitangi;
 - 46.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions;
 - 46.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 46.4 the disclosure statement requirements;
 - 46.5 the principles and guidelines set out in the Privacy Act 1993;
 - 46.6 relevant international standards and obligations.
47. A disclosure statement has been prepared, and is attached to the paper as Appendix Three.
48. The Bill takes into account LDAC advice about the form of the National Emergency Management Plan (see paras 11-13).
49. However, the Bill departs from LDAC advice by using regulations to clarify lead and support agencies roles and responsibilities, instead of adding this to primary legislation.
50. Cabinet agreed to the use of regulations [CAB-22-MIN-0339.01, rec 24 refers], but LDAC subsequently advised that:
 - 50.1 they considered some features of the proposed regulation making power were better suited to primary legislation, for example, the mechanisms and criteria by which lead and support agencies are allocated, and who should be accountable for them;
 - 50.2 matters delegated to secondary legislation should be minor or technical matters only relating to the implementation and operation of the Act.
51. However, given the need for flexibility and certainty, I remain of the view that regulations are the most appropriate instrument. Regulations balance flexibility, for example for changes to agencies form and functions, with the need for clarity about which agency is responsible for what in difficult circumstances. Currently, the roles and responsibilities of lead and support agencies are not mentioned in the CDEM Act. They are, however, described in the current National Civil Defence Emergency Management Plan Order (secondary legislation). Our intention is to provide a link to primary legislation, and to cover the details of the roles and responsibilities of lead and support agencies in an appropriate secondary instrument.
52. Furthermore, for a number of lead agencies, the functions and duties relating to the management of specific hazards are set out in separate Acts. The proposed lead and support agency regulations will assist with clarifying the application of those functions

and duties in the wider emergency management context. The regulations will also be developed in consultation with relevant ministers, agency chief executives, and the Chair of the Officials Committee for Domestic and External Security Coordination [CAB-22-MIN-0339.01 para 25 refers].

Consultation

53. Consultation undertaken on the Cabinet papers seeking policy approval included consultation with the following government departments and public bodies:
- 53.1 Department of Internal Affairs; Civil Aviation Authority; 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 of Justice; Ministry for Primary Industries; Ministry of Social Development; Maritime New Zealand; 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; Ministry for Disability Issues; Te Arawhiti; Toka Tū Ake EQC; Fire and Emergency New Zealand; Kāinga Ora; Waka Kotahi New Zealand Transport Agency; and the New Zealand Search and Rescue Secretariat.
54. Targeted engagement for the policy approvals was also undertaken with:
- 54.1 the Ministerial Advisory Committee on Emergency Management, and the National Iwi Chairs Forum Pou Tangata;
- 54.2 Māori emergency management practitioners;
- 54.3 CDEM sector stakeholders, including local government elected officials, Coordinating Executive Group members, and CDEM Group Managers;
- 54.4 the National Ambulance Sector Office, Hato Hone St John, and Wellington Free Ambulance.
55. Cross-party engagement was undertaken in the week of 21 November 2022.

Binding on the Crown

56. As the CDEM Act is binding on the Crown, the Bill will also bind the Crown.

Creating new agencies or amending law relating to existing agencies

57. N/A

Allocation of decision-making powers

58. N/A

Associated regulations

59. The Bill will carryover and extend regulation-making powers, and remove any out-of-date regulation making powers from the CDEM Act. The intended first set of regulations relating to lead and support agencies is likely to be enacted in the first twelve months.

Other Instruments

60. The Bill empowers the Director of Emergency Management to make Emergency Management Rules. The Emergency Management Rules will deal exclusively with technical, administrative, and operational matters related to the implementation and operation of the Act. The Emergency Management Rules will be subject to a range of safeguards, including review by the Regulations Review Committee.
61. Emergency Management Rules will enable NEMA to set mandatory requirements without the complex and lengthy compliance processes required by primary legislation and regulations. This increases the emergency management system's durability and flexibility by enabling it to respond to changing or unforeseen circumstances. It also allows minor updates to be made more easily, and aids the implementation and operation of the legislation.
62. The Explanatory Note to the Bill sets out the reasons for this approach.

Definition of Minister/department

63. The Bill carries across the existing definition of Minister from the CDEM Act.

Commencement of legislation

64. Most of the Bill will come into force on the day after the date of Royal Assent. However, there are aspects of the Bill that require delayed commencement to allow for implementation across the emergency management system.
65. The proposal to specify critical infrastructure entities by means of a Gazette notice will have delayed commencement. At present, existing entities are set out in a Schedule to the CDEM Act. Cabinet has previously agreed that to provide for a review of the entities listed in Schedule 1A and the issuing of a new Gazette notice relevant provisions in the Bill will be subject to delayed commencement for two years, unless brought in earlier via Order in Council.
66. Delayed commencement will also enable a two-year implementation period for critical infrastructure entities to comply with the new legal requirements for planning emergency levels of service and annual compliance reporting.
67. I also propose a 12-month delayed commencement of the following proposals to allow for the regulations to be created, unless brought in earlier via Order in Council:
 - 67.1 extending the permanent legislative authority to provide for direct reimbursement of costs to Māori;
 - 67.2 the establishment of the National Māori Emergency Management Advisory Group.
68. Transition arrangements and delayed commencement are required to enable co-development of rules, regulations and guidance with stakeholders including, for example, development of the regulations for the establishment of the National Māori Emergency Management Advisory Group with Māori and development of critical infrastructure regulations with critical infrastructure entities

69. The remainder of the Bill is to come into force on the day after the date of Royal assent.
70. The Explanatory Note to the Bill sets out the reasons for commencement by Order in Council.

Parliamentary stages

71. s9(2)(f)(iv) [Redacted]

72. I propose the Bill be referred to the Governance and Administration Committee.

Proactive release

73. I propose to release the paper proactively within 30 business days, and may contain some redactions – for example, for cross-references to other agencies’ policy work that is still underway.

Version of the Bill

74. To ensure that QA processes can be completed by the Parliamentary Counsel Office, it is recommended that the version of the Bill presented at LEG may be substituted for an updated version as a result of minor changes arising from the continuing QA processes. Similarly the version of the Bill presented at Cabinet may be substituted before Introduction (relating to technical changes only).

Recommendations

75. The Minister for Emergency Management recommends that the Cabinet Legislation Committee:

1. s9(2)(f)(iv) [Redacted]

3. **note** that the Emergency Management Bill:
 - 3.1 enhances Māori participation throughout the emergency management system;
 - 3.2 clarifies roles and responsibilities across the emergency management sector;
 - 3.3 modernises provisions for critical infrastructure entities to increase resilience and accountability;
 - 3.4 establishes a new legal framework for emergency management including by empowering the making of Emergency Management Rules and Emergency Management Regulations;
 - 3.5 is consistent with modern legislative design and is enduring;

4. **rescind** the Cabinet decision that the National Plan be secondary legislation;

5. **agree** to introduce, for the National Plan, requirements that:
 - 5.1 the Director of Emergency Management, having consulted with persons and agencies who have a roles and responsibilities under the National Plan, develop the National Plan for the Minister's approval;
 - 5.2 prior to the Minister approving the National Plan, the Minister must consult with relevant Ministers and may either approve the draft National Plan or refer it back to the Director for reconsideration, together with the Minister's reasons for referring it back;
 - 5.3 the National Plan be published on an internet site freely available to the public, and notified in the Gazette;
6. **rescind** the upper maximum amount for a court-imposed fine for prosecutable offences of \$8000;
7. **agree** to the update of penalties for prosecutable offences in a scaled approach as outlined in Appendix One;
8. **agree** not to carry over the offence from section 95 concerning failure to comply with requirements in civil defence emergency management plans into the Bill;
9. **agree** that there be a requirement that when a CDEM Group appoints a Local Controller, the person be suitably qualified;
10. **agree** that critical infrastructure entities be required to make relevant information available to NEMA and their regulatory agencies;
11. **agree** that NEMA will fund Māori members participation on the CDEM Group, not the Group's administrative costs;
12. **agree** that CDEM Group plans be required to state and provide for the arrangements for co-ordination with iwi and Māori during all stages of emergency management including reduction, readiness, response and recovery;
13. **Note** that I have exercised my power to act under CAB-22-MIN-0339.01:
 - 13.1 to confirm responsibilities for emergency management on offshore islands;
 - 13.2 to confirm the financial assistance arrangements for Water Service Entities following an emergency;
 - 13.3 to make decisions as outlined in Appendix Two;
14. **approve** the Emergency Management Bill for introduction, subject to the final approval of the Government Caucus and sufficient support in the House of Representatives;
15. s9(2)(f)(iv) [REDACTED]
16. **agree** that the Government propose that the Bill be:
 - 16.1 referred to the Governance and Administration Committee for consideration;
 - 16.2 s9(2)(f)(iv) [REDACTED]

17. **agree** that the version of the Bill presented at LEG may be substituted for an updated version as a result of minor changes arising from continuing QA processes, and similarly the version of the Bill presented at Cabinet may be substituted before Introduction (relating to technical changes only).

Hon Kieran McAnulty
Minister for Emergency Management

Proactively Released

Appendix One: Offences and Penalties proposals

Currently, a person who commits an offence against the CDEM Act, is liable for conviction:

- in the case of an individual, imprisonment for a term not exceeding 3 months, or a fine not exceeding \$5,000, or both;
- in the case of a body corporate, a fine not exceeding \$50,000.

CDEM Act Offence	Proposed change	Rationale for change
<p>Section 95 – Failure to comply with a requirement in a CDEM Plan CDEM Plans are the National Plan and CDEM Group Plans</p>	That the offence provision is not carried into the new Bill.	For the reasons outlined in paragraphs 16-17.
<p>Section 96 (1)(a) - Withholding information As it relates to:</p> <ul style="list-style-type: none"> - a requirement to provide an assessment of the effect of the emergency on structure(s) (s91(2) and 94N(2)) - information reasonably considered necessary for CDEM purposes (76 and 94I(1)) 	No change proposed - as it relates to the withholding of or giving false or misleading information as it relates to an assessment of the effect of the emergency on structures.	Maintaining the status quo ensures alignment between similar provisions in the CDEM Act and the Building Act 2004.
<p>Section 96 (1)(b) – Giving false or misleading information As it relates to:</p> <ul style="list-style-type: none"> - a requirement to provide an assessment of the effect of the emergency on structure(s) (s91(2) and 94N(2)) 	<p>Increase the penalty for individuals:</p> <ul style="list-style-type: none"> - from: \$5,000 fine - to: \$20,000 fine. <p>Increase the penalty for Body Corporates:</p> <ul style="list-style-type: none"> - from: \$50,000 fine - to: \$60,000 fine. 	This aligns with the equivalent offence in the Building Act 2004, to promote consistency with current offence practices for critical infrastructure.
<p>Section 96 (1)(b) – Giving false or misleading information As it relates to:</p> <ul style="list-style-type: none"> - information reasonably considered necessary for CDEM purposes (76 and 94I(1)) 	<p>Increase the penalty for individuals:</p> <ul style="list-style-type: none"> - from: \$5,000 fine - to: \$30,000 fine. <p>Increase the penalty for Body Corporates:</p> <ul style="list-style-type: none"> - from: \$50,000 fine - to: \$100,000 fine. 	<p>This aligns with the equivalent offence in the Civil Aviation Bill, to promote consistency with current offence practices for critical infrastructure.</p> <p>The increase in penalty reflects the seriousness of the implications of receiving false information.</p>
<p>Section 97 – Disclosing information As it relates to information requested by: the Director or CDEM Group for CDEM purposes; information provided by lifeline utilities; or on the effects of the emergency on a structure(s)</p>	No change proposed.	Maintaining the status quo is consistent with other statutes which have similar offence and penalty regimes (for example, the Financial Infrastructure Act 2021).

CDEM Act Offence	Proposed change	Rationale for change
Section 98 Obstruction (where a person, during a state of emergency/transition period, threatens, assaults, or intentionally obstructs or hinders any person performing functions and powers under the Act)	Increase the penalty for individuals: - from: \$5,000 fine - to: \$50,000 fine. Increase the penalty for Body Corporates: - from: \$50,000 fine - to: \$150,000 fine.	If a person performing functions or exercising powers during a state of emergency or transition period is obstructed from doing so, it could result in significant risk to life safety or property. These increases are consistent with a similar offence and penalty provision in the Building Act 2004.
Section 99 - Failure to comply with a direction to evacuate premises or place (this includes a public place)	Increase the penalty for individuals: - from: \$5,000 fine - to: \$10,000 fine.	These changes align with the equivalent offence in the Maritime Transport Act 1994.
Section 100 - Failure to comply with prohibition or restriction on access to road or public place	Increase the penalty for Body Corporates: - from: \$50,000 fine - to: \$100,000 fine.	While a decision not to comply with the direction does not give rise to the same level of risk for the wider community, we need to deter the behaviour as it will nevertheless have an impact on resources detracting from the response.
Section 101 - Offences in relation to requisitioning property (for example, failure to comply with a direction which requisitions any building, vehicle, equipment, materials or supplies etc; or fails to provide the assistance required to enable effective and safe use of that property)		
Section 102 – Failure to comply with a direction (to stop any activity that may cause or substantially contribute to the consequences of an emergency or hinder recovery (section 91(1) and 94N(1))	Increase the penalty for individuals: - from: \$5,000 fine - to: \$50,000 fine. Increase the penalty for Body Corporates: - from: \$50,000 fine - to: \$150,000 fine.	This increase reflects that the failure to comply with direction to stop any activity that may cause or substantially contribute to the consequences of an emergency, or hinder recovery, could result in significant risk to life safety or property.
Section 103 Personation (where a person intentionally personates or falsely represents themselves as the Director, a Controller, Recovery Manager, a CDEM Group (or a person acting under one of these persons authority)	Increase the penalty for individuals: - from: \$5,000 fine - to: \$50,000 fine. Increase the penalty for Body Corporates: - from: \$50,000 fine - to: \$150,000 fine.	The proposed change is similar to the offence provisions for failure to comply with emergency directions in the Water Services Act 2021 (section 185) albeit we propose a lower penalty for body corporates because there is not sufficient evidence to

CDEM Act Offence	Proposed change	Rationale for change
		<p>support a higher penalty for them.</p> <p>Personation carries a significant risk in the context of emergency management (particularly where the impersonation relates to a person with significant statutory powers and the potential for misuse of the powers). It could also significantly undermine trust and confidence in the response.</p>

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Appendix Two: Decisions made under the power to act

Drafting decision	Rationale
<p>Added provisions relating to the Membership of the National Māori Emergency Management Advisory Group including</p> <ul style="list-style-type: none">• requiring the Minister to consult with the Ministers of Māori Development and Māori-Crown Relations before making any appointments• requiring the Minister to appoint only persons who, in the Minister's opinion, have the appropriate knowledge, skills, and experience to assist the Advisory Group to perform its role• requiring appointment of a chairperson.	<p>Cabinet agreed to include in the Bill a requirement that the responsible Minister must appoint a National Māori Emergency Management Advisory Group of between five and eight members but did not specify the appointment process or criteria [CAB-22-MIN-0339.01 para 13 refers].</p> <p>This change sets out the practical detail needed to give effect to the Cabinet decision.</p>
<p>Updated the provisions relating to the appointment of Māori members of Emergency Management Committees and associated enabling provision for regulations to ensure:</p> <ul style="list-style-type: none">• the regulations provide for appointment processes and mechanisms that are locally appropriate• the Minister must consult with any persons who, in the Minister's opinion, who have the required expertise and the ability to reflect relevant perspectives and concerns, including, without limitation, the perspectives and concerns of Māori.• the regulations provide for the appointment criteria, the nomination and appointment process, timeframe for appointments and the term of appointments.	<p>Cabinet agreed to include a requirement to have Māori members on both Joint Committees and Coordinating Executive Groups with full voting rights and to an empowering provision to be included in the Bill for regulations to allow for more prescription, which will be developed in collaboration with Māori and local government, to provide for locally appropriate appointment mechanisms [CAB-22-MIN-0339.01, para 8-9 refers].</p> <p>This change provides necessary detail to the enabling provision to enable the regulations to deliver locally appropriate appointment mechanisms for Māori members of Joint Committees and Coordinating Executive Groups.</p>
<p>Updated the definition of Ambulance services to specify that it (a) operates 1 or more motor vehicles, aircraft, or vessels designed and used principally for the transport of sick or injured persons; and (b) is identified as an emergency ambulance service by the Minister, by notice in the <i>Gazette</i>.</p>	<p>Cabinet agreed to include a definition of Ambulance Service [CAB-22-MIN-0339.01, para 27.1 refers] but did not specify the details of that definition.</p>



Cabinet Legislation Committee

Minute of Decision

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Emergency Management Bill: Approval for Introduction

Portfolio Emergency Management

On 15 December 2022, the Cabinet Legislation Committee:

1 s9(2)(f)(iv) [Redacted]

[Redacted]

3 **noted** that the Emergency Management Bill:

3.1 enhances Māori participation throughout the emergency management system;

3.2 clarifies roles and responsibilities across the emergency management sector;

3.3 modernises provisions for critical infrastructure entities to increase resilience and accountability;

3.4 establishes a new legal framework for emergency management including by empowering the making of Emergency Management Rules and Emergency Management Regulations;

3.5 is consistent with modern legislative design and is enduring;

4 **noted** that in August 2022, Cabinet agreed that the National Emergency Management Plan be an instrument of secondary legislation, with appropriate requirements for consultation, approval, and review [CAB-22-MIN-0339.01];

5 **agreed to recommend** that Cabinet:

5.1 rescind the decision referred to in paragraph 4 above; and instead

5.2 agree to introduce, for the National Emergency Management Plan, requirements that:

5.2.1 the Director of Emergency Management, having consulted with persons and agencies who have a roles and responsibilities under the National Plan, develop the National Plan for the Minister's approval;

- 5.2.2 prior to the Minister approving the National Plan, the Minister must consult with relevant Ministers and may either approve the draft National Plan or refer it back to the Director for reconsideration, together with the Minister's reasons for referring it back;
- 5.2.3 the National Plan be published on an internet site freely available to the public, and notified in the Gazette;

6 **noted** that in August 2022, Cabinet agreed to increase, for an individual, the upper maximum amount for a court imposed fine for prosecutable offences with a working position of an upper amount of \$8,000 [CAB-22-MIN-0339.01]

7 **agreed to recommend** that Cabinet:

- 7.1 rescind the decision referred to in paragraph 6 above; and instead
- 7.2 agree to the update of penalties for prosecutable offences in a scaled approach as outlined in Appendix One to the paper under LEG-22-SUB-0239;
- 7.3 agree not to carry over the offence from section 95 concerning failure to comply with requirements in civil defence emergency management plans into the Bill;

8 **agreed** that there be a requirement that when a Civil Defence Emergency Management (CDEM) Group appoints a Local Controller, the person be suitably qualified;

9 **noted** that in August 2022, Cabinet agreed that for the purposes of annual compliance reporting, critical infrastructure entities are required to make relevant information available to National Emergency Management Agency (NEMA) or CDEM Groups on request [CAB-22-MIN-0339.01];

10 **agreed to recommend** that Cabinet:

- 10.1 rescind the decision referred to in paragraph 9 above; and instead
- 10.2 agree that for the purposes of annual compliance reporting, critical infrastructure entities be required to make relevant information available to NEMA and their regulatory agencies;

11 **noted** that in August 2022, Cabinet agreed that Māori members on both CDEM Group Joint Committees and Coordinating Executive Groups will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group, which will be funded by NEMA [CAB-22-MIN-0339.01];

12 **agreed** that NEMA will fund Māori members participation costs for the CDEM Group, not pay the costs of administrative and related services otherwise shared by the CDEM Group;

13 **noted** that in August 2022, Cabinet agreed to include requirements in the Bill to ensure CDEM Groups set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans [CAB-22-MIN-0339.01];

14 **agreed to recommend** that Cabinet:

- 14.1 rescind the decision referred to in paragraph 13 above; and instead
- 14.2 agree that CDEM Group plans be required to state and provide for the arrangements for co-ordination with iwi and Māori during all stages of emergency management including reduction, readiness, response and recovery;

- 15 **noted** that in August 2022, Cabinet authorised the Minister for Emergency Management to make decisions on any issues of detail that arose during the drafting process, provided those decisions are consistent with the policy agreed by Cabinet [CAB-22-MIN-0339.01];
- 16 **noted** that under the authority delegated above, the Minister has:
- 16.1 confirmed responsibilities for emergency management on offshore islands;
 - 16.2 confirmed the financial assistance arrangements for Water Service Entities following an emergency;
 - 16.3 made other decisions as outlined in Appendix Two of the paper under LEG-22-SUB-0239;
- 17 **approved** the Emergency Management Bill [PCO 21875/6.0] for introduction, subject to the final approval of the government Caucus and sufficient support in the House of Representatives;
- 18 **agreed** that the Bill be introduced by 16 February 2023;
- 19 **agreed** that the government propose that the Bill be:
- 19.1 referred to the Governance and Administration Committee for consideration;
 - 19.2 enacted by 26 September 2023;
- 20 **authorised** the Parliamentary Counsel Office to make any necessary minor drafting changes to the Bill before Introduction.

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Michael Wood (Chair)
Hon Dr David Clark
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet

Minute of Decision

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Emergency Management Bill: Approval for Introduction

Portfolio **Emergency Management**

On 19 December 2022, following reference from the Cabinet Legislation Committee, Cabinet:

- 1 **noted** that the Emergency Management Bill (the Bill) holds a category 2 priority on the 2022 Legislation Programme (to be referred to a Select Committee in 2022);
- 2 **noted** that the Minister for Emergency Management (the Minister) is seeking a category 3 priority for the Bill's inclusion on the 2023 Legislation Programme (to be passed if possible before the 2023 general election);
- 3 **noted** that the Emergency Management Bill:
 - 3.1 enhances Māori participation throughout the emergency management system;
 - 3.2 clarifies roles and responsibilities across the emergency management sector;
 - 3.3 modernises provisions for critical infrastructure entities to increase resilience and accountability;
 - 3.4 establishes a new legal framework for emergency management including by empowering the making of Emergency Management Rules and Emergency Management Regulations;
 - 3.5 is consistent with modern legislative design and is enduring;
- 4 **noted** that in August 2022, Cabinet agreed that the National Emergency Management Plan be an instrument of secondary legislation, with appropriate requirements for consultation, approval, and review [CAB-22-MIN-0339.01];
- 5 **rescinded** the decision referred to in paragraph 4 above; and instead:
 - 5.1 **agreed** to introduce, for the National Emergency Management Plan, requirements that:
 - 5.1.1 the Director of Emergency Management, having consulted with persons and agencies who have a roles and responsibilities under the National Plan, develop the National Plan for the Minister's approval;
 - 5.1.2 prior to the Minister approving the National Plan, the Minister must consult with relevant Ministers and may either approve the draft National

Plan or refer it back to the Director for reconsideration, together with the Minister's reasons for referring it back;

5.1.3 the National Plan be published on an internet site freely available to the public, and notified in the Gazette;

6 **noted** that in August 2022, Cabinet agreed to increase, for an individual, the upper maximum amount for a court imposed fine for prosecutable offences with a working position of an upper amount of \$8,000 [CAB-22-MIN-0339.01]

7 **rescinded** the decision referred to in paragraph 6 above; and instead:

7.1 **agreed** to the update of penalties for prosecutable offences in a scaled approach as outlined in Appendix One to the paper under LEG-22-SUB-0239;

7.2 **agreed** not to carry over the offence from section 95 concerning failure to comply with requirements in civil defence emergency management plans into the Bill;

8 **agreed** that there be a requirement that when a Civil Defence Emergency Management (CDEM) Group appoints a Local Controller, the person be suitably qualified;

9 **noted** that in August 2022, Cabinet agreed that for the purposes of annual compliance reporting, critical infrastructure entities are required to make relevant information available to National Emergency Management Agency (NEMA) or CDEM Groups on request [CAB-22-MIN-0339.01];

10 **rescinded** the decision referred to in paragraph 9 above; and instead:

10.1 **agreed** that for the purposes of annual compliance reporting, critical infrastructure entities be required to make relevant information available to NEMA and its regulatory agencies;

11 **noted** that in August 2022, Cabinet agreed that Māori members on both CDEM Group Joint Committees and Coordinating Executive Groups will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group, which will be funded by NEMA [CAB-22-MIN-0339.01];

12 **agreed** that NEMA will fund Māori members' participation costs for the CDEM Group, not pay the costs of administrative and related services otherwise shared by the CDEM Group;

13 **noted** that in August 2022, Cabinet agreed to include requirements in the Bill to ensure CDEM Groups set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans [CAB-22-MIN-0339.01];

14 **rescinded** the decision referred to in paragraph 13 above; and instead:

14.1 **agreed** that CDEM Group plans be required to state and provide for the arrangements for co-ordination with iwi and Māori during all stages of emergency management including reduction, readiness, response and recovery;

15 **noted** that in August 2022, Cabinet authorised the Minister for Emergency Management to make decisions on any issues of detail that arose during the drafting process, provided those decisions are consistent with the policy agreed by Cabinet [CAB-22-MIN-0339.01];

16 **noted** that under the authority delegated above, the Minister has:

16.1 confirmed responsibilities for emergency management on offshore islands;

- 16.2 confirmed the financial assistance arrangements for Water Service Entities following an emergency;
- 16.3 made other decisions as outlined in Appendix Two of the paper under LEG-22-SUB-0239;
- 17 **approved** the Emergency Management Bill [PCO 21875/6.0] for introduction, subject to the final approval of the government Caucus and sufficient support in the House of Representatives;
- 18 s9(2)(f)(iv)
- 19 **agreed** that the government propose that the Bill be:
 - 19.1 referred to the Governance and Administration Committee for consideration;
 - 19.2 s9(2)(f)(iv)
- 20 **authorised** the Parliamentary Counsel Office to make any necessary minor drafting changes to the Bill before Introduction.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces LEG-22-MIN-0239. Cabinet agreed to the rescinding recommendations in paragraphs 5, 7, 10 and 14.

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Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 16 December 2022

On 19 December 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 16 December 2022:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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LEG-22-MIN-0239

**Emergency Management Bill: Approval for
Introduction**

Portfolio: Emergency Management

Separate minute:

CAB-22-MIN-0601.01

Rachel Hayward
Secretary of the Cabinet

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