



Proactive Release

The following documents have been proactively released by the Department of the Prime Minister and Cabinet (DPMC):

Responding to Recent Severe Weather Events: Severe Weather Emergency Recovery Legislation Bill

Proposed Emergency Legislation to Support Extreme Weather Recovery

The following documents have been included in this release:

Title of paper: Responding to Recent Severe Weather Events: Severe Weather Emergency Recovery Legislation Bill (CAB-23-SUB-0101 refers)

Title of minute: Responding to Recent Severe Weather Events: Severe Weather Emergency Recovery Legislation Bill (CAB-23-MIN-0101 refers)

Title of paper: Proposed Emergency Legislation to Support Extreme Weather Recovery (CAB-23-SUB-0078 refers)

Title of minute: Proposed Emergency Legislation to Support Extreme Weather Recovery (CAB-23-MIN-0078 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)(h), to maintain legal professional privilege
- section 18(d), as the information will soon be publicly available

~~In Confidence~~

Office of the Minister for Emergency Management

Cabinet

**Responding to recent severe weather events - Severe Weather
Emergency Recovery Legislation Bill**

Proposal

- 1 I seek agreement to introduce the Severe Weather Emergency Recovery Legislation Bill (the Bill) to the House.
- 2 The Bill allows changes to be made to a limited range of legislative instruments via an Order in Council mechanism, to facilitate recovery in the areas affected by the recent severe weather events. The Bill also includes some direct amendments to primary legislation that need to be made urgently ahead of the creation of the Order in Council mechanism. To introduce legislation in a timely manner, I am seeking policy approvals at the same time as approval for the introduction of the Bill.

Relation to government priorities

- 3 This paper relates to the Government's ongoing response to and recovery from the recent severe weather events.

Executive summary

- 4 We are now transitioning into the recovery phase following the recent severe weather events in the North Island. There is a need to ensure the recovery can happen in a timely and effective manner and is not slowed down unnecessarily by the existing regulatory environment.
- 5 To achieve this, I propose the Severe Weather Emergency Recovery Legislation Bill be introduced to Parliament and passed urgently, by 6 April 2023. The Bill enables certain legislation to be amended temporarily via Orders in Council to exempt, modify or extend existing statutory obligations where necessary to support recovery in areas affected by the severe weather.
- 6 Cabinet agreed, in principle, to the development of this legislation on 13 March 2023 [CAB-23-MIN-0078 refers]. Similar legislation was passed following the Canterbury and Hurunui/Kaikōura earthquakes to support the recovery from those events.

- 7 Given that amendments to legislation would usually be made by Parliament and not the Executive, the Bill contains several safeguards that will prevent the Order in Council mechanism from being used inappropriately. These include requiring the Minister proposing the Order in Council to consult with those impacted (including local Māori and local community groups), publish their reasons for recommending the Order in Council and keep all Orders in Council under regular review.
- 8 In addition, a panel will be appointed to review all proposed Orders in Council and provide advice to the relevant Minister proposing the Order in Council be made. In appointing up to 12 panel members, the Minister for Cyclone Recovery must consider appointing members with the appropriate knowledge, skills and experience, including law, environmental protection, biodiversity, climate change, Māori and community interests and emergency response and recovery.
- 9 If enacted, the Act and Orders in Council made under it will be time limited. Orders in Council made under the Act will be automatically revoked on 31 March 2028 (if not revoked sooner). The powers to make new Orders in Council will repeal two years earlier, on 31 March 2026 (if not repealed sooner). The Bill also requires relevant Ministers to keep their Orders in Council under review.
- 10 I believe the inclusion of these safeguards will ensure that the Bill strikes a suitable balance between enabling amendments to be made in an expeditious manner to support recovery, while ensuring an appropriate level of scrutiny of proposed Orders in Council.
- 11 The Bill also includes some direct amendments to primary legislation that need to be made urgently ahead of the creation of the Order in Council mechanism. This includes amendments to local government legislation to provide local authorities affected by the severe weather with some flexibility to meet statutory deadlines and obligations, and amendments to the Resource Management Act 1991 (RMA) to ensure it is consistent with the provisions of the Severe Weather Emergency Recovery Legislation Bill.

Background

- 12 The recent severe weather events in the North Island, including Cyclones Hale and Gabrielle and the heavy rain events over the upper North Island in January and February, have caused widespread damage to the natural and built environment, including land, waterways, biodiversity, fisheries, infrastructure, businesses and homes. The extent of the damage is on a comparable scale to that caused by the Canterbury and Hurunui/Kaikōura earthquakes.
- 13 There is a risk that the pace of the recovery will be constrained or prohibited by the current regulatory environment. Previous emergencies have required legislation to enable urgent measures to support recovery. For example, following the

Hurunui/Kaikōura magnitude 7.8 earthquake and tsunami events, Parliament passed urgent legislation modifying constraints in the RMA.

- 14 In addition, the Hurunui/Kaikōura Earthquakes Recovery Act 2016 enabled amendments to legislation by way of an Order in Council mechanism, including, for example, to enable works to restore the coastal road and rail network to occur as quickly as possible.

15 s18(d)

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- 16 On 13 March 2023, Cabinet approved a two-step approach to enacting the changes required [CAB-23-MIN-0078 refers]. The first step was the enactment of the Severe Weather Emergency Legislation Act (the SWEL Act) making several amendments to primary legislation that need to be made as soon as possible to support the recovery.

- 17 The SWEL Act came into force on 21 March 2023 and made urgent amendments to the following Acts:

- a. Civil Defence Emergency Management Act 2002 (CDEM Act) – to address issues relating to concurrent declarations of states of emergency and notices of transition periods under the CDEM Act to ensure emergency powers are available when needed.
- b. RMA – to extend timeframes for advising local authorities and applying for retrospective consents for emergency work, to recognise that it may not be possible for those dealing with the impacts of the weather events to meet existing timeframes for retrospective consents.
- c. Local Government Act 2002 – to enable local authorities and CDEM Groups to attend meetings via audio/visual for the purposes of quorum and decision making, and to enable all local authorities to amend their long-term plans in relation to water infrastructure and services to take action to improve the resilience of these.
- d. Food Act 2014 and Food Regulations 2015 – to allow an extended period for a food business to renew its registration and to continue operating during the time a registration may have expired. This recognises that it may not be possible for affected communities to undertake their regulatory requirements for food businesses and allows them to remain open.

- 18 Cabinet also agreed, in principle, to the development and passing of a separate bill, prior to 6 April 2023, creating a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery. This paper seeks final policy approvals and

approval to introduce this bill, the Severe Weather Emergency Recovery Legislation Bill.

The need for additional legislative change

- 19 New Zealand does not have a legislative framework that allows for a greater degree of flexibility in the aftermath of an emergency once a state of emergency or transition period ends. The legislative framework is a critical element to facilitate, enable and expedite recovery following the severe weather events. It is important that individuals and businesses impacted by the severe weather can focus on recovery and not how they will meet legislative obligations that, given the circumstances, are overly burdensome.

Framework to be created by the Severe Weather Emergency Recovery Legislation Bill

- 20 In addition to the direct amendments made by the SWEL Act, to enable a timely and efficient recovery, officials have identified a range of further potential changes that could support severe weather recovery, or to provide relief where it is not practical for individuals, businesses, or central or local government to meet current legislative requirements due to the impact of the severe weather events.
- 21 The most appropriate way to enable these changes is to create a mechanism whereby Ministers can modify existing legislation to provide those impacted by the severe weather with relief from legislative requirements that are overly burdensome in the circumstances, or that divert resources away from the recovery effort. Modifications should also be permitted where necessary to ensure actions required to support an efficient and timely recovery can happen in an expedited manner.
- 22 For example, the mechanism could be utilised to extend statutory deadlines that cannot be met because of the recent severe weather events. To date, agencies have identified close to 30 Acts of Parliament to which there will likely be proposed amendments via Order in Council. These include modifying existing restrictions on work in conservation areas, extensions to review requirements for certain bylaws and expediting processes to enable the extensive work required on the roading network.

Purpose of the Bill

- 23 Clearly stating the purpose of this Bill is important given the constitutional impact of the creation of a mechanism under which Parliament is delegating the power to modify certain Acts of Parliament to the Executive.
- 24 The principal purpose of the Bill is to assist communities and councils affected by the recent severe weather events to recover from, the impacts of the severe weather. This includes providing for the planning, rebuilding and recovery of affected communities, for example, the repair and rebuilding of land, property and infrastructure, safety enhancements and improvements to the resilience of land, property and infrastructure and facilitating co-ordinated efforts and processes for short, medium and long-term recovery.

- 25 The Bill specifies the additional purposes of:
- a. ensuring that certain activities normally undertaken by people and agencies interacting with government agencies, Crown Entities, and local authorities can continue to be undertaken after a severe weather event,
 - b. supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly to take account of the severe weather events or actions taken to respond to, or recover from, severe weather events; and
 - c. amending other Acts to facilitate recovery from severe weather events
- 26 The Bill facilitates these purposes by providing opportunities for local Māori and local community group participation in the development of Orders in Council that affect them, without impeding a focussed, timely and expeditious recovery.

Order in Council making power

- 27 I propose that the Governor-General makes the Order in Council on the recommendation of the Minister responsible for the legislation being amended. For example, the Minister for Building and Construction will be the relevant Minister if changes are proposed to the Building Act 2004. This is consistent with the approach undertaken with the Canterbury and Hurunui/Kaikōura earthquakes legislation.
- 28 Given the need to expedite recovery activities and provide protection for those activities taken since the beginning of the severe weather on 8 January, when Cyclone Hale first made landfall, I propose that Orders in Council made under the legislation can have retrospective effect where appropriate. This is again consistent with the approach undertaken with the Canterbury and Hurunui/Kaikōura earthquake legislation. Unlike the Hurunui/Kaikōura legislation however, the Bill does not restrict the ability of the courts to examine the recommendation and decisions of the relevant Minister.
- 29 Finally, the Bill enables the Order in Council making process to begin before the Bill is enacted so that Orders in Council can be made as soon as the Order in Council mechanism comes into force. As was done for the Hurunui/Kaikōura legislation, the Bill provides that any engagement undertaken by the relevant Minister before the Bill comes into force will be valid. Any appointments to the review panel made and consultation undertaken before the Bill comes into force will also be valid.

The scope of the Bill will be limited to specified areas impacted by specified severe weather events

- 30 To limit the scope of the powers in the Bill, I propose that the powers be available in relation to specified areas only, including:
- a. the areas of local authorities that were affected (either directly or indirectly) by the specified weather events;

- b. areas where land, infrastructure, other property, resources or services are required to support an area affected by the specified weather events; and
 - c. parts of the coastal marine areas adjacent to those areas.
- 31 It is important to note that the local authorities affected now includes the Manawatu and Rangitīkei district councils. These councils were not included in the amendments made by the Severe Weather Emergency Legislation Act 2023, nor were they covered by the states of emergency or the transition periods. However, the Ministry for the Environment has now advised it is now clear that these areas have suffered sufficient damage to justify their inclusion in the areas in scope of the Order in Council mechanism.
- 32 The specified weather events are Cyclones Hale and Gabrielle and the heavy rainfall from 26 January 2023 to 3 February 2023 in the Northland, Auckland, Waikato and Bay of Plenty regions.
- 33 The powers in the Bill will not be available to address issues either outside of these areas or not caused by one of the specified weather events. However, Orders in Council will be available where subsequent events exacerbate the impacts of the original severe weather events.
- 34 The ability to make Orders in Council will be limited to specific Acts (and secondary legislation and other documents made under those Acts) listed in Schedule 2 of the Bill. This will further limit the scope of the Bill. The inclusion of each Act listed in Schedule 2 has been approved by the relevant Minister. The Bill enables Acts to be added to Schedule 2 via Order in Council where necessary for the purposes of the Bill.

The Bill contains safeguards to mitigate the risks associated with amending legislation via Orders in Council

- 35 Good constitutional practice would suggest that amendments to primary legislation should generally be made by Parliament and not the Executive, as the actions of the Executive are not subject to the same scrutiny as those of Parliament. On occasions where it is justified to establish such a mechanism, it is important to provide a set of robust safeguards to ensure the mechanism is not used inappropriately given the constitutional implications.
- 36 As such, the Bill includes a range of checks and balances to ensure appropriate oversight of the exercise of the Order in Council mechanism. These largely mirror the safeguards included in the Hurunui/Kaikōura legislation, including the establishment of a panel to review draft Orders in Council and provide advice to the relevant Minister.
- 37 Importantly, the Hurunui/Kaikōura model has been enhanced by including provisions aimed at strengthening Māori engagement as part of the development of Orders in Council. This is particularly important in the context of the recent severe weather events. Many of the impacted areas have large Māori populations, high Māori land ownership and many Treaty settlement entity interests.

- 38 Officials have worked closely with the Legislation Design and Advisory Committee, Crown Law Office, Parliamentary Counsel Office, and the Treaty Provisions Oversight Group on designing these checks and balances appropriately.

Engagement

- 39 Before the relevant Minister recommends an Order in Council be made, the engagement process specified in the Bill must have been complied with. The Bill requires the Minister to provide a document explaining the effect and purpose of the proposed Order in Council to persons or representatives of persons the Minister considers appropriate (including local Māori and local community groups) given the proposed effect of the order.
- 40 Those provided with the document will then have three working days to provide written comments, to which the Minister must have regard before making a final recommendation. The Bill provides that the Minister may extend that period if the Minister considers that is desirable in light of the local Māori and local community interests likely to be affected by the order.
- 41 The relevant Minister may forego the engagement requirements if satisfied that engagement is impracticable in the circumstances, or the urgency of the situation requires that an Order in Council be made as soon as practicable without engagement. If the Minister relies on these exceptions, the reasons for doing so must be published with the Order in Council.

Severe Weather Events Recovery Review Panel

- 42 Similar to the Canterbury and Hurunui/Kaikōura earthquakes legislation, the Bill provides for the creation of a Severe Weather Events Recovery Review Panel.
- 43 The Panel will review draft Orders in Council and provide advice to the Minister for Cyclone Recovery and the relevant Minister on proposed Orders in Council. The Panel must provide its recommendations on draft orders within three working days of receiving the draft Order in Council (or any longer period allowed by the relevant Minister) and must also include the reasons for its recommendations.
- 44 The relevant Minister must have regard to the Panel's recommendations and must make the Panel's recommendations publicly available to provide full transparency on the advice received.
- 45 The Panel will be chaired by a former or retired Judge of the High Court, and the Minister for Cyclone Recovery must consider appointing members with local perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga, and te ao Māori and members with knowledge, experience and expertise relating to:
- a. the law (including, if possible, the Māori land tenure system under Te Ture Whenua Māori Act 1993), public administration, or local government;
 - b. environmental protection, biodiversity, or climate change;

- c. local Māori or community interest in the areas affected by the severe weather events (whether that knowledge, experience, and expertise is local, regional, or applies more widely in the severe weather events affected areas); and
 - d. emergency response and recovery.
- 46 The Minister for Cyclone Recovery must appoint up to 12 people with the appropriate knowledge, skills and experience to sit on the Panel. This number of members will support the Minister to appoint sufficient people who bring perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga and te ao Māori, and local/regional experience.
- 47 The Minister may seek nominations for appointment to the Panel from Local Government New Zealand and Māori entities the Minister considers have relevant knowledge of the affected areas.

Expiry of Act and Orders in Council

- 48 To ensure the Order in Council mechanism and Orders in Council themselves are not in place longer than reasonably necessary, the Bill specifies that all Orders in Council made under the Act will be automatically revoked on 31 March 2028 (if not revoked sooner). The Act itself will also automatically repeal on that date, but the powers to make new Orders in Council will repeal earlier, on 31 March 2026 (if not repealed sooner).
- 49 This means that no new Orders in Council will be able to be made after the end of the third year, but the Orders in Council made will be able to remain in place for up to five years. This is based on advice from agencies that, due to the extent of the damage from the severe weather, Orders in Council are likely to be required for a period of longer than three years. This ensures that Orders in Council remain in place for as long as they are required, but the ability to make new Orders in Council will be removed after three years.

Further restrictions

- 50 The Bill also includes the following additional safeguards:
- a. draft Orders in Council must be provided to the Regulations Review Committee;
 - b. if the Order in Council relates to the RMA, the relevant Minister must consider the effects on the environment that could occur as a result of the Order in Council and whether those adverse effects can be avoided, remedied or mitigated;
 - c. if the relevant Minister recommends an Order in Council is made, they must publish the reasons for the recommendation with the Order in Council;
 - d. the relevant Minister must keep all Orders in Council made under review; and
 - e. the Minister for Cyclone Recovery must report to the House of Representatives at least once every six months on the operation of the Act since the last report,

including a list of all Orders in Council made under the Act in that period, with a brief description of each.

The Bill also includes some direct amendments to primary legislation

- 51 On 13 March 2023, Cabinet agreed, in principle, that the Severe Weather Emergency Recovery Legislation Bill may also include direct amendments to primary legislation identified after the enactment of the SWEL Act that are not appropriate to be made via Order in Council, subject to Cabinet's approval of the individual amendments [CAB-23-MIN-0078 refers].

Amendments to local government legislation

- 52 I propose that the Bill makes direct amendments to both the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009. These need to be passed urgently and cannot wait to be made via Order in Council. The amendments will be temporary and will only apply to councils in areas directly or indirectly impacted by the severe weather.

- 53 The proposed amendments modify statutory timeframes to enable councils to focus on the recovery rather than operational statutory requirements by providing some flexibility in relation to when timeframes must be met. Specifically, the changes to the Local Government Act 2002 are:

- a. modifying the special consultative procedure requirements to reduce the consultation period from one month minimum to two weeks minimum and making some process aspects discretionary (but still highly desirable);
- b. modifying the requirements for a consultation report on the long-term plan so that councils do not have to provide a report from the Auditor-General;
- c. waiving the requirement for an amendment to a long-term plan to contain a report from the Auditor-General;
- d. extending the council 2023/24 annual plan deadline by three months to 30 September 2023; and
- e. increasing the extension mechanism for council-controlled organisations' statements of intent deadlines from the current one-month extension to three months (with the final statement of intent being required by 30 September 2023 at the latest).

- 54 I also propose the Local Government (Auckland Council) Act 2009 be amended to extend the timeframe for holding a public meeting on a council-controlled organisation's statement of intent by two months (to be held by 31 August 2023).

Amendments to the Resource Management Act 1991

- 55 Officials have identified two amendments to the RMA processes modified by the SWEL Act, which are included in the Bill.
- 56 The first is a technical amendment to ensure that Ngā Hapu o Ngāti Porou are notified, and their written permission is sought, if the activity is on, or will impact on Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (as indicatively shown in Schedule 3 of the Ngā Rohe Moana o Ngā Hapu o Ngāti Porou Act 2019). The Ngā Rohe Moana statutory overlay is not Treaty redress and, although it has similar practical effect to a “statutory acknowledgement”, it is not covered by that definition in the SWEL Act.
- 57 To ensure consistency between similar mechanisms, and to achieve the policy intent of the definition of “culturally significant sites” in the SWEL Act, which is to mitigate the potential loss or detriment to culturally significant sites, this statutory overlay needs to be included in the definition of culturally significant land.
- 58 The second amendment is the addition of Manawatu and Rangitikei Districts to the list of regions defined as “affected areas” which can use the modified RMA processes set out in the SWEL Act. The regions received similar rainfall levels to the regions covered in the SWEL Act, and the emergency works needed, including a Bailey bridge, were only recently assessed and notified to officials. The damage to farms and river management infrastructure is still being assessed. Federated Farmers have also asked for Manawatu and Rangitikei to be included in the list of “affected areas”. This change needs to be made sooner than would be possible under the Bill’s Order in Council mechanism.

Risks

- 59 The primary risk of not enacting the Bill is that the pace of the recovery will be constrained or prohibited by the current regulatory environment.
- 60 While the Bill raises constitutional considerations in relation to the proper process for making amendments to legislation (discussed above at paragraph 35), I believe the Bill contains sufficient safeguards to mitigate these concerns. If the Order in Council mechanism is not created, all amendments will need to be taken through a full Parliamentary process, which will mean the required amendments are not in place in a sufficiently timely manner to facilitate an efficient and effective recovery.
- 61 Using a truncated Parliamentary process to progress this Bill could be contentious because it reduces the ability of the public and other organisations to provide input into the Bill and for the full scrutiny of a Parliamentary select committee process. However, this needs to be balanced with the need to provide certainty for the recovery effort on what emergency legislation may be provided. This is critical as recovery efforts will likely encounter substantive repair and rebuild issues and individuals and business may face regulatory requirements that they struggle to meet.
- 62 On balance, I believe the Bill itself and the truncated Parliamentary process are justified in the circumstances.

Financial Implications

63 There are no financial implications arising directly from this paper.

Legislative Implications

64 I seek Cabinet's agreement to the Bill and to introduce the Bill to the House by 28 March 2023.

65 On 13 March 2023, Cabinet approved the inclusion of the Bill on the 2023 Legislation Programme, with a category 2 priority (must be passed before the 2023 General Election) [CAB-23-MIN-0078 refers].

Regulatory Impact Analysis

66 A Regulatory Impact Statement (RIS) has been prepared to support the Bill and is attached to this paper.

67 The independent inter-agency RIS Quality Assurance panel has reviewed the RIS and has concluded that the RIS partially meets the quality criteria. In reaching this view, the panel is mindful that the RIS has been written under significant time constraints, given the context, and there has been limited opportunity for consultation.

68 The panel considers that the RIS provides reasonable evidence that the scale of damage justifies bespoke legislation and makes good use of relevant experience and readily accessible information in reaching a preferred option.

69 The Treasury's Regulatory Impact Analysis team has determined that the six proposals to amend the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009 are exempt from the requirement to provide a Regulatory Impact Statement. The exemptions are on the grounds that the proposals are intended to either temporarily defer or extend legislative deadlines or provide limited temporary exemptions or modifications to existing legislative requirements, in a situation where a declared emergency has made compliance with existing legislative requirements impossible, impractical or unreasonably burdensome.

70 The Treasury's Regulatory Impact Analysis team has also determined that the following two amendments to the RMA are exempt from the requirement to provide a Regulatory Impact Statement:

- a. to include the Ngā Rohe Moana o Ngā Hapu o Ngāti Porou statutory overlay in the definition of "culturally significant land"; and
- b. to include the Manawatu and Rangitīkei District Councils in the list of districts with extended timeframes for emergency works.

71 These are granted on the grounds that the proposals are intended to manage the short-term impacts of a declared emergency event and required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

Compliance

- 72 The Bill complies with each of the following:
- a. the principles of Te Tiriti o Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c. the disclosure statement requirements;
 - d. the principles and guidelines set out in the Privacy Act 2020;
 - e. relevant international standards and obligations; and
 - f. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Te Tiriti o Waitangi

- 73 The Bill must reflect the principles of Te Tiriti o Waitangi and the Crown's obligations as a Te Tiriti partner. Ensuring the views and needs of Māori are reflected in Orders in Council made under this legislation is critical to achieving this. Many of the areas affected by the recent severe weather have high Māori populations, particularly Northland, Auckland, Tairāwhiti and Hawke's Bay. There have been strong calls for local Māori communities to be involved in decision-making throughout the recovery phase.
- 74 The Bill includes several requirements on Ministers relating to Māori individuals, communities and organisations. Taken together, these provisions create a framework for ensuring Māori views and interests are given due consideration in the making of Orders in Council under the Act.
- 75 The importance of Māori involvement in the making of Orders in Council under the Act is acknowledged in the Bill's purpose clause which specifies that one of the purposes of the Bill is to provide opportunities for local Māori to participate in the development of Orders in Council that affect them.
- 76 To give effect to this, the Bill provides specific mention of local Māori when describing the relevant Minister's obligation to consider how to appropriately engage on proposals to make Orders in Council. The Bill also enables the relevant Minister to extend the timeframe for the provision of comments if desirable considering local Māori interests likely to be affected by the Order in Council.
- 77 Finally, Māori interests must be taken into account when appointing members of the Severe Weather Events Recovery Review Panel. Specifically, the Minister for Cyclone Recovery must consider appointing members with knowledge and experience and expertise in relation to local Māori interests in the affected area and the Māori land tenure system under Te Ture Whenua Māori Act 1993 (if possible). The Minister must also consider local perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga and te ao Māori. The Minister may seek nominations for the Panel from Māori entities the Minister considers have relevant knowledge of the affected areas.

New Zealand Bill of Rights Act 1990 and Human Rights Act 1993

- 78 The Bill does not raise issues under the New Zealand Bill of Rights Act 1990 (NZBORA) or the Human Rights Act 1993 and does not limit any personal or democratic civil rights.
- 79 The Bill specifies that the relevant Minister must be satisfied that a proposed Order in Council does not limit, or is a justified limit, on the rights and freedoms in the NZBORA.

Consultation

- 80 The following agencies were consulted on the proposals in this paper: the Department of Corrections, the Ministry of Justice, New Zealand Customs Service, the Department of Internal Affairs, the Department of Conservation, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry for the Environment, the Ministry of Transport, the Ministry for Primary Industries, the National Emergency Management Agency, the Ministry of Defence, the New Zealand Security Intelligence Service, Te Arawhiti, Inland Revenue, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Statistics New Zealand, New Zealand Police, the Public Service Commission, the Ministry of Social Development, the Ministry of Education, the Ministry of Housing and Urban Development, Oranga Tamariki, Serious Fraud Office, the Ministry of Health, the Ministry for Pacific Peoples, the Education Review Office, the Treasury, Crown Law Office and the Government Communications Security Bureau.

Binding on the Crown

- 81 This Bill binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 82 The Bill does not create a new agency that is legally separate from the Crown.
- 83 The legislation will not amend the existing coverage of the Ombudsman Act 1975 and the Official Information Act 1982 or the Local Government Officials Information and Meetings Act 1987.

Associated regulations

- 84 Regulations are not needed to bring the Bill into operation.

Other instruments

- 85 The Bill includes provisions empowering the making of secondary legislation.

Commencement of legislation

- 86 The Bill comes into force on the day after the date of Royal assent.

Parliamentary stages and next steps

- 87 I propose that the Severe Weather Emergency Recovery Legislation Bill be introduced by 28 March 2023 and passed through all stages by 6 April 2023, including a truncated select committee process.
- 88 I propose the Bill is referred to the Governance and Administration Committee, with the Committee required to report back by 4 April 2023.

Proactive release

- 89 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982, once the Bill is introduced.

Publicity

- 90 I intend to make an announcement relating to this Bill at the same time it is introduced into Parliament.

Recommendations

I recommend that Cabinet:

- 1 **Note** that existing statutory requirements and powers are too constraining or not adequate to facilitate a timely, efficient and effective recovery from recent severe weather events;
- 2 **Note** previous emergencies such as the Hurunui/Kaikoura earthquake of 2016 and the Canterbury earthquakes of 2010 and 2011 have required legislation to enable urgent measures to support recovery;
- 3 **Note** on Monday 13 March 2023, Cabinet agreed in principle to the development of legislation creating a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery [CAB-23-MIN-0078 refers];

Purpose and scope of the Severe Weather Emergency Recovery Legislation Bill

- 4 **Agree** the general purpose of the Severe Weather Emergency Recovery Legislation Bill is to assist communities and councils affected by the recent severe weather events to respond to, and recover from, the impacts of the severe weather;
- 5 **Agree** the Severe Weather Emergency Recovery Legislation Bill has the additional purposes of:
 - 5.1 ensuring that certain activities normally undertaken by people and agencies interacting with government agencies, Crown entities and local authorities can continue to be undertaken after a severe weather event;
 - 5.2 supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly, to take account of the severe

weather events or actions taken to respond to, or recover from, severe weather events; and

- 5.3 amending other Acts to facilitate recovery from the severe weather events;
- 6 **Agree** that the Governor-General may make Orders in Council, on the recommendation of the relevant Minister, to grant exemptions from, modify or extend specified legislation in relation to an area affected by the specified severe weather events;
- 7 **Agree** that the Orders in Council may be for the purposes of enabling the relaxation or suspension of legislation that:
- 7.1 may divert resources away from the effort to efficiently respond to the damage caused by a severe weather event or minimise further damage; or
- 7.2 may not be reasonably capable of being complied with, owing to the circumstances caused by a severe weather event, the effect of the event or work undertaken to respond to or recover from the event;
- 8 **Agree** Orders in Council can have retrospective effect, where appropriate, to no earlier than 8 January 2023;
- 9 **Agree** that any requirements under the Bill relating to engagement, consultation or the appointment of members of the Review Panel undertaken prior to the Bill coming into force will be valid for the purposes of the Bill;
- 10 **Agree** that the use of Orders in Council only be available in relation to:
- 10.1 the areas of, and coastal marine areas adjacent to, specified local authorities affected by one or more of the severe weather events, or where land, infrastructure, other property, resources or services are required to support an area affected by those events;
- 10.2 Cyclones Hale and Gabrielle and the heavy rainfall from 26 January 2023 to 3 February 2023 in the Northland, Auckland, Waikato and Bay of Plenty regions and later events that exacerbate damage caused by the original severe weather events; and
- 10.3 Acts listed in Schedule 2 of the Bill and secondary legislation and other documents made under those Acts;

Engagement requirements in making Orders in Council

- 11 **Agree** that before recommending an Order in Council be made, the engagement process specified in the Bill must have been complied with, including:

- 11.1 the provision of a document explaining the effect and purpose of the proposed Order in Council to persons or representatives of persons the Minister considers relevant given the proposed effect of the Order in Council (including local Māori and local community groups);
- 11.2 providing those persons with three working days to provide written comments;
- 11.3 having regard to any written comments in determining whether to make a recommendation that an Order in Council be made;
- 12 **Agree** the relevant Minister is not required to comply with the engagement requirements in recommendation 11 if satisfied that engagement is impracticable in the circumstances, or the urgency of the situation requires that an Order in Council be made as soon as practicable without engagement;
- 13 **Agree** that if the relevant Minister decides not to comply with the engagement requirements in recommendation 11, the reasons for doing so must be published with the Order in Council;

Severe Weather Events Recovery Review Panel

- 14 **Agree** the Severe Weather Emergency Recovery Legislation Bill will establish the Severe Weather Events Recovery Review Panel;
- 15 **Agree** the Severe Weather Events Recovery Review Panel will review draft Orders in Council and provide advice to the Minister for Cyclone Recovery and the relevant Minister;
- 16 **Agree** the Panel must provide its recommendations within three working days of receiving the draft Order in Council (or any longer period allowed by the relevant Minister) and must include the reasons for its recommendations;
- 17 **Agree** the Minister must have regard to the Panel's recommendations and must make the Panel's recommendations publicly available;
- 18 **Agree** the Minister for Cyclone Recovery may appoint up to 12 people with appropriate local perspectives, knowledge, skills and experience to the Severe Weather Events Recovery Review Panel;
- 19 **Agree** the Panel will be chaired by a former or retired Judge of the High Court, and the Minister for Cyclone Recovery must consider appointing members with local perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga, and te ao Māori and with knowledge, experience and expertise relating to:
 - 19.1 the law (including, if possible, the Māori land tenure system under Te Ture Whenua Māori Act 1993), public administration, or local government;
 - 19.2 environmental protection, biodiversity, or climate change;

19.3 the local Māori or community interests in the affected areas (whether that knowledge experience, and expertise is local, regional, or applies more widely); and

19.4 emergency response and recovery.

20 **Agree** the Minister for Cyclone Recovery may seek nominations for appointment to the Panel from Local Government New Zealand and Māori entities the Minister considers have relevant knowledge of the affected areas;

Expiration of Orders in Council made under the Act and the Act itself

21 **Agree** that Orders in Council made will be automatically revoked on 31 March 2028 (if not revoked sooner) and the Act itself will also automatically repeal on that date, but the powers to make Orders in Council will repeal earlier, on 31 March 2026 (if not repealed sooner);

Additional safeguards

22 **Agree** that draft Orders in Council must be presented to the Regulations Review Committee;

23 **Agree** that if an Order in Council relates to the Resource Management Act, the relevant Minister must consider the effects on the environment that could occur as a result of implementing the Order in Council and whether any adverse effects can be avoided, remedied or mitigated;

24 **Agree** that if the relevant Minister recommends an Order in Council is made, they must publish the reasons for the recommendation with the Order in Council;

25 **Agree** the relevant Minister must keep all Orders in Council made under review;

26 **Agree** the Minister for Cyclone Recovery must report to the House of Representatives at least once every six months on the operation of the Act since the last report, including a list of all Orders in Council made under the Act in that period, with a brief description of each;

Direct amendments to local government legislation

27 **Agree** to make the following amendments to the Local Government Act 2002:

27.1 modify the special consultative procedure requirements to reduce the consultation period from one month minimum to two weeks minimum and making some process aspects discretionary (but still highly desirable);

27.2 modify the requirements for a consultation report on the long-term plan so that councils do not have to provide a report from the Auditor-General;

27.3 waive the requirement for an amendment to a long-term plan to contain a report from the Auditor-General;

27.4 extend the council 2023/24 annual plan deadline by three months to 30 September 2023; and

27.5 increase the extension mechanism for council-controlled organisations' statements of intent deadlines from the current one-month extension to three months (with the final statement of intent being required by 30 September 2023 at the latest).

28 **Agree** to amend the Local Government (Auckland Council) Act 2009 to extend the timeframe for holding a public meeting on a council-controlled organisation's statement of intent by two months (to be held by 31 August 2023).

Direct amendments to the Resource Management Act

29 **Agree** to amend the Resource Management Act to:

29.1 include the Ngā Rohe Moana o Ngā Hapu o Ngāti Porou statutory overlay alongside the statutory acknowledgements in the Resource Management Act 1991 (as amended by the Severe Weather Emergency Legislation Act 2023) to require written permission of the local iwi and hapū for activities undertaken which may impact on the land; and

29.2 add the Manawatu and Rangitīkei districts to the list of regions defined as "affected areas" which can use the Resource Management Act 1991 processes (as amended by the Severe Weather Emergency Legislation Act 2023);

Introduction of the Severe Weather Emergency Recovery Legislation Bill

30 **Approve** the Severe Weather Emergency Recovery Legislation Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

31 **Agree** that the Severe Weather Emergency Recovery Legislation Bill be introduced by 28 March 2023;

32 **Agree** that the government propose that the Severe Weather Emergency Recovery Legislation Bill be:

32.1 referred to the Governance and Administration Committee for consideration;

32.2 enacted by 6 April 2023;

33 **Agree** that the Minister for Emergency Management is authorised to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper up until the Bill is introduced;

- 34 **Agree** that Parliamentary Counsel Office can continue to make minor changes to the Bill to settle technical matters in line with Cabinet's policy decisions and incorporate feedback from Parliamentary Counsel Office proofreading and quality control processes up until the Bill is printed for introduction.

Authorised for lodgement

Hon Kieran McAnulty

Minister for Emergency Management

Proactively Released



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Responding to Recent Severe Weather Events: Severe Weather Emergency Recovery Legislation Bill

Portfolio Emergency Management

On 27 March 2023, Cabinet:

Background

- 1 **noted** that existing statutory requirements and powers are too constraining or not adequate to facilitate a timely, efficient, and effective recovery from recent severe weather events;
- 2 **noted** that previous emergencies such as the Hurunui/Kaikoura earthquake of 2016 and the Canterbury earthquakes of 2010 and 2011 have required legislation to enable urgent measures to support recovery;
- 3 **noted** that on 13 March 2023, Cabinet agreed in principle to the development of legislation creating a mechanism permitting the Governor General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify, or extend legislation to support recovery, subject to a report-back [CAB-23-MIN-0078];

Purpose and scope of the Severe Weather Emergency Recovery Legislation Bill

- 4 **agreed** that the general purpose of the Severe Weather Emergency Recovery Legislation Bill (the Bill) is to assist communities and councils affected by the recent severe weather events to respond to, and recover from, the impacts of the severe weather;
- 5 **agreed** that the Bill has the additional purposes of:
 - 5.1 ensuring that certain activities normally undertaken by people and agencies interacting with government agencies, Crown entities, and local authorities can continue to be undertaken after a severe weather event;
 - 5.2 supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly, and to take account of the severe weather events or actions taken to respond to, or recover from, severe weather events;
 - 5.3 amending other Acts to facilitate recovery from the severe weather events;
- 6 **agreed** that the Governor General may make Orders in Council, on the recommendation of the relevant Minister, to grant exemptions from, modify or extend specified legislation in relation to an area affected by the specified severe weather events;

- 7 **agreed** that the Orders in Council may be for the purposes of enabling the relaxation or suspension of legislation that:
- 7.1 may divert resources away from the effort to efficiently respond to the damage caused by a severe weather event or minimise further damage; or
 - 7.2 may not be reasonably capable of being complied with, owing to the circumstances caused by a severe weather event, the effect of the event, or work undertaken to respond to or recover from the event;
- 8 **agreed** that Orders in Council can have retrospective effect, where appropriate, to no earlier than 8 January 2023;
- 9 **agreed** that any requirements under the Bill relating to engagement, consultation, or the appointment of members of the Review Panel undertaken prior to the Bill coming into force will be valid for the purposes of the Bill;
- 10 **agreed** that the use of Orders in Council only be available in relation to:
- 10.1 the areas of, and coastal marine areas adjacent to, specified local authorities affected by one or more of the severe weather events, or where land, infrastructure, other property, resources, or services are required to support an area affected by those events;
 - 10.2 Cyclones Hale and Gabrielle and the heavy rainfall from 26 January 2023 to 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions and later events that exacerbated damage caused by the original severe weather events;
 - 10.3 Acts listed in Schedule 2 of the Bill and secondary legislation and other documents made under those Acts;

Engagement requirements in making Orders in Council

- 11 **agreed** that before recommending an Order in Council be made, the engagement process specified in the Bill must have been complied with, including:
- 11.1 the provision of a document explaining the effect and purpose of the proposed Order in Council to persons or representatives of persons the Minister considers relevant given the proposed effect of the Order in Council (including local Māori and community groups);
 - 11.2 providing those persons with three working days to provide written comments;
 - 11.3 having regard to any written comments in determining whether to make a recommendation that an Order in Council be made;
- 12 **agreed** that the relevant Minister is not required to comply with the engagement requirements in paragraph 11 if satisfied that engagement is impracticable in the circumstances, or the urgency of the situation requires that an Order in Council be made as soon as practicable without engagement;
- 13 **agreed** that if the relevant Minister decides not to comply with the engagement requirements in paragraph 11, the reasons for doing so must be published with the Order in Council;

Severe Weather Events Recovery Review Panel

- 14 **agreed** that the Bill will establish the Severe Weather Events Recovery Review Panel (the Panel);
- 15 **agreed** that the Panel will review draft Orders in Council and provide advice to the Minister for Cyclone Recovery and the relevant Minister;
- 16 **agreed** the Panel must provide its recommendations within three working days of receiving the draft Order in Council (or any longer period allowed by the relevant Minister), and must include the reasons for its recommendations;
- 17 **agreed** that the Minister must have regard to the Panel's recommendations and must make the Panel's recommendations publicly available;
- 18 **agreed** that the Minister for Cyclone Recovery may appoint up to 12 people with appropriate local perspectives, knowledge, skills, and experience to the Panel;
- 19 **agreed** the Panel will be chaired by a former or retired Judge of the High Court, and the Minister for Cyclone Recovery must consider appointing members with local perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga, and te ao Māori, and with knowledge, experience and expertise relating to:
 - 19.1 the law (including, if possible, the Māori land tenure system under Te Ture Whenua Māori Act 1993), public administration, or local government;
 - 19.2 environmental protection, biodiversity, or climate change;
 - 19.3 the local Māori or community interests in the affected areas (whether that knowledge, experience, and expertise is local, regional, or applies more widely);
 - 19.4 emergency response and recovery;
- 20 **agreed** that the Minister for Cyclone Recovery may seek nominations for appointment to the Panel from Local Government New Zealand and Māori entities the Minister considers to have relevant knowledge of the affected areas;

Expiration of Orders in Council made under the Act and the Act itself

- 21 **agreed** that Orders in Council made will be automatically revoked on 31 March 2028 (if not revoked sooner) and the Act itself will also automatically repeal on that date, but the powers to make Orders in Council will repeal earlier, on 31 March 2026 (if not repealed sooner);

Additional safeguards

- 22 **agreed** that draft Orders in Council must be presented to the Regulations Review Committee;
- 23 **agreed** that if an Order in Council relates to the Resource Management Act 1991, the relevant Minister must consider the effects on the environment that could occur as a result of implementing the Order in Council and whether any adverse effects can be avoided, remedied, or mitigated;
- 24 **agreed** that if the relevant Minister recommends an Order in Council is made, they must publish the reasons for the recommendation with the Order in Council;
- 25 **agreed** that the relevant Minister must keep all Orders in Council made under review;

- 26 **agreed** that the Minister for Cyclone Recovery must report to the House of Representatives at least once every six months on the operation of the Act since the last report, including a list of all Orders in Council made under the Act in that period, with a brief description of each;

Direct amendments to local government legislation

- 27 **agreed** to make the following amendments to the Local Government Act 2002:
- 27.1 modify the special consultative procedure requirements to reduce the consultation period from one month minimum to two weeks minimum and making some process aspects discretionary (but still highly desirable);
 - 27.2 modify the requirements for a consultation report on an amendment to a long-term plan so that councils do not have to provide a report from the Auditor General;
 - 27.3 waive the requirement for an amendment to a long-term plan to contain a report from the Auditor General;
 - 27.4 extend the council 2023/24 annual plan deadline by three months to 30 September 2023;
 - 27.5 increase the extension mechanism for council-controlled organisations' statements of intent deadlines from the current one month extension to three months (with the final statement of intent being required by 30 September 2023 at the latest);
- 28 **agreed** to amend the Local Government (Auckland Council) Act 2009 to extend the timeframe for holding a public meeting on a council-controlled organisation's statement of intent by two months (to be held by 31 August 2023);

Direct amendments to the Resource Management Act 1991

- 29 **agreed** to amend the Resource Management Act 1991 to:
- 29.1 include the Ngā Rohe Moana o Ngā Hapu o Ngāti Porou statutory overlay alongside the statutory acknowledgements in the Resource Management Act 1991 (as amended by the Severe Weather Emergency Legislation Act 2023) to require written permission of the local iwi and hapū for activities undertaken which may impact on the land;
 - 29.2 add the Manawatu and Rangitīkei districts to the list of regions defined as "affected areas" which can use the Resource Management Act 1991 processes (as amended by the Severe Weather Emergency Legislation Act 2023);

Introduction of the Severe Weather Emergency Recovery Legislation Bill

- 30 **approved** the Bill for introduction [PCO 25370/6.0], subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 31 **agreed** that the Bill be introduced by 28 March 2023;
- 32 **agreed** that the government propose that the Bill be:
- 32.1 referred to the Governance and Administration Committee for consideration;
 - 32.2 enacted by 6 April 2023;

- 33 **authorised** the Minister for Emergency Management to further clarify and develop policy matters relating to the decisions in the paper under CAB-23-SUB-0101 in a manner not inconsistent with the policy decisions contained in the paper, up until the Bill is introduced;
- 34 **agreed** that the Parliamentary Counsel Office can continue to make minor changes to the Bill to settle technical matters in line with Cabinet's policy decisions, and incorporate feedback from Parliamentary Counsel Office proofreading and quality control processes up until the Bill is printed for introduction.

Rachel Hayward
Secretary of the Cabinet

Proactively Released

~~In Confidence~~

Office of the Minister for Emergency Management

Cabinet

Proposed emergency legislation to support extreme weather recovery

Proposal

- 1 I seek agreement to introduce the Severe Weather Emergency Legislation Bill (the Bill) to the House.
- 2 The Bill will make changes to statutes that are urgently needed to facilitate recovery in areas affected by the recent extreme weather events. To introduce legislation in a timely manner, I am seeking policy approvals at the same time as approval for the introduction of the Bill.
- 3 This paper also seeks Cabinet's in-principle agreement to the development and introduction of a second bill permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend provisions of any enactment to support extreme weather recovery. Cabinet's approval for the introduction of the second bill will be sought in two weeks' time.

Relation to government priorities

- 4 This paper concerns the Government's ongoing response to the recent extreme weather events.

Executive Summary

- 5 The recent extreme weather events in the North Island have caused widespread damage to land, waterways, infrastructure and roading. As we move into the recovery phase, there is a need to ensure the recovery is not unnecessarily constrained by the existing legislative framework and that actions that need to be taken to support the recovery can happen in a timely and efficient manner.
- 6 Previous emergencies such as the Canterbury earthquakes and Hurunui/Kaikoura earthquake have required urgent legislation to remove or modify existing legislative constraints to support recovery. I propose a similar approach is taken to assist with the recovery from the recent extreme weather events, with two separate bills to be passed within the next month.
- 7 The first bill, the Severe Weather Emergency Legislation Bill, will make urgent direct amendments to the Civil Defence Emergency Management Act 2002, the Local Government Act 2002, the Resource Management Act 1991, the Food Act 2014 and

Food Regulations 2015 to provide affected persons and communities with relief from consenting process where appropriate to support recovery and to provide authorities with the powers necessary to support an efficient, timely and effective recovery.

- 8 This paper recommends the Bill is introduced to Parliament this week and passed before the House next rises on 16 March 2023. These amendments are required urgently to provide individuals, businesses and authorities with the certainty required to undertake the necessary actions to support the recovery.
- 9 I propose that a second bill be introduced later in the month creating a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery.
- 10 This is similar to the approach taken following the Canterbury earthquakes and the Hurunui/Kaikōura earthquakes and will enable legislative modifications necessary to support recovery to be made in a more efficient manner, with appropriate oversight mechanisms in place. Lessons learned from the operation of the Canterbury and Hurunui/Kaikōura earthquakes legislation will be incorporated into this legislation.
- 11 This paper seeks Cabinet's in-principle agreement to the development of this second bill. A paper will be presented to Cabinet in two weeks' time seeking final policy approvals and agreement to introduce the bill to the House during the week of 27 March 2023 and have it enacted no later than 6 April 2023.
- 12 While there is some risk with passing this legislation through a truncated process, it is outweighed by the risk of our status quo regulatory environment unnecessarily constraining the pace of our recovery. On balance, I believe this legislation is necessary and an important step to ensure we have a legislative framework in place that will support an efficient recovery as far as possible rather than constrain it.

Background

- 13 Recent extreme weather events, including Cyclones Hale and Gabrielle and heavy rain events in the upper North Island in January and February, have resulted in widespread damage to land, infrastructure and roading in the northern and eastern parts of the North Island. Most of these areas are now moving away from the initial emergency and response phase into the recovery phase, where the community needs are broader and more complex.
- 14 There is risk that the pace of the recovery will be constrained or prohibited by the status quo regulatory environment. Previous emergencies have required legislation to enable urgent measures to support recovery. For example, following the Hurunui/Kaikōura magnitude 7.8 earthquake and tsunami events, Parliament passed urgent legislation modifying constraints in the Resource Management Act 1991. In addition, the Hurunui/Kaikōura Earthquakes Recovery Act 2016 enabled amendments to legislation by way of an Order in Council mechanism, to enable works to restore the coastal road and rail network to occur as quickly as possible.

- 15 s18(d)

s18(d)

Emergency legislation is needed to support an effective and timely recovery

- 16 The need for emergency legislation to support extreme weather recovery has now been more fully assessed. I have considered the scope and extent of the damage caused by the recent extreme weather and consider that existing statutory requirements and powers are too constraining or not adequate to deal with the recovery in a timely, efficient and effective manner. For example:
- a. there are limited powers in existing legislation to truncate processes in emergencies to allow significant roading and land repair projects to be expedited;
 - b. emergency powers for emergency works under the Resource Management Act 1991 are limited and require short timeframes for applying for retrospective notification and consenting that may not be possible; and
 - c. people, businesses, Civil Defence Emergency Management Groups and local authorities in impacted communities have not been able to meet existing regulatory requirements or would benefit from them being modified so they can concentrate on recovery. For example, local authority committees are currently required to meet in person for to be counted for decision making purposes, however some are unable to travel to meetings due to the damage to roads.
- 17 New Zealand does not have legislation that allows for a greater degree of flexibility, in the aftermath of an emergency once a state of emergency or transition period ends. Previous emergencies have required legislation to enable urgent measures to support the recovery. For example:
- a. Hurunui/Kaikōura Earthquake Recovery Act 2016: permitted changes to certain enactments by way of an Order in Council to enable, for example, works to restore the coastal road and rail network to occur as quickly as possible.
 - b. Hurunui/Kaikōura Earthquake Emergency Relief Act 2016: enabled a streamlined process for the rehabilitation of Kaikōura harbour; modifications to the Resource Management Act 1991 to extend the timeframes for lodging resource consents; and enabled the owner or occupier of rural land to take emergency preventative works or remedial action.
 - c. Canterbury Earthquake Recovery Act 2011: enabled changes to enactments by way of an Order in Council mechanism and provided a new legal framework for the recovery from the Canterbury Earthquakes of 2010 and 2011. The Act also required the development of a recovery strategy and recovery plans.

- 18 The legislative framework is a critical element to facilitate, enable and expedite recovery following the extreme weather events.
- 19 Government agencies have identified a range of potential changes that could support recovery, or to provide relief where it is not practical for individuals, businesses or central or local government to meet current legislative requirements. Some of this work is in the initial stages and as the recovery progresses further changes will likely be identified that are necessary to support the recovery.

A two-step approach is proposed to enact the legislative changes required

- 20 I recommend that Parliament passes two separate bills within the next month to make the legislative changes necessary to ensure the recovery is not unnecessarily constrained by the existing regulatory environment.

Step one – enact urgent amendments to primary legislation

- 21 The first step is the passing of the Severe Weather Emergency Legislation Bill urgently before the House next rises on 16 March 2023. The Bill makes several amendments to primary legislation that need to be made as soon as possible to support the recovery.
- 22 This paper seeks both policy approvals for these changes and the introduction of the Bill to the House. Further detail on the amendments proposed is provided at paragraphs 33 to 58 below.

Step two – create a mechanism enabling legislative amendments via Order in Council

- 23 The second step is the passing of a separate bill, prior to 6 April 2023, that creates a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery.
- 24 For example, the mechanism could be utilised to extend statutory deadlines that cannot be met because of the recent extreme weather events. Agencies have identified approximately 35 amendments that are likely required and appropriate for the Order in Council process. These include modifying existing restrictions on work in conservation areas near protected wildlife, extensions to review requirements for certain bylaws and expediting processes to enable the extensive work required on the roading network.
- 25 I propose that the Order in Council mechanism created to support recovery following the Hurunui/Kaikōura earthquake is used as a model to support extreme weather recovery.
- 26 Given the need to provide protection for activities that have taken place since the first extreme weather event (Cyclone Hale), it is likely the second bill will include the ability to give Orders retrospective application. This is consistent with the approach taken with the Canterbury and Hurunui/Kaikōura earthquakes legislation.

- 27 I consider the proposed Order in Council mechanism to be the most cost-effective and appropriate means of resolving a wide range of issues, some of which are not yet known. The alternative to the Order in Council mechanism is regularly passing legislation making the required changes, which is a more time and resource consuming process and would likely have a negative impact on the pace and trajectory of the recovery.
- 28 To mitigate the constitutional risks associated with amending primary legislation via Order in Council, the legislation will include appropriate checks and balances to ensure oversight of the exercise of the Order in Council mechanism. These will largely mirror the safeguards included in the Hurunui/Kaikōura legislation, including the establishment of a panel to review draft Orders and provide advice to the relevant Minister. The bill will also be limited in its application to issues arising in those areas either directly or indirectly impacted by the extreme weather.
- 29 Importantly, the Hurunui/Kaikōura model will be enhanced by including provisions aimed at strengthening Māori engagement as part of the Order in Council development process. This is particularly important in the context of the North Island where there are a large number of iwi, hapu, Māori landowners, Māori community and settlement entity interests impacted.
- 30 Officials are working with the Legislation Design and Advisory Committee, Crown Law Office, Parliamentary Counsel Office, and the Treaty Provisions Oversight Group on designing these checks and balances appropriately.
- 31 It is likely the second bill will enable the Order in Council making process to begin before the Bill is enacted so that Orders can be made as soon as the Order in Council mechanism comes into force. As was done for the Hurunui/Kaikōura legislation, the bill will provide that any engagement undertaken by the relevant Minister before the bill comes into force will be valid. Any appointments to the review panel made before the bill comes into force will also be valid.
- 32 This paper seeks Cabinet's in-principle agreement to the second bill. A paper will be presented to Cabinet in two weeks' time seeking final policy approvals and agreement to introduce the second bill to the House. This bill may also include any direct amendments to primary legislation identified after the enactment of the Severe Weather Emergency Legislation Bill that are not appropriate to be made via Order in Council.

Amendments to be made via the Severe Weather Emergency Legislation Bill

- 33 Relevant agencies have obtained approval from the relevant Ministers for the following legislative amendments to be made urgently via the Bill. This paper seeks Cabinet's approval for their inclusion in the Bill.

Civil Defence Emergency Management Act 2002

- 34 I propose amendments to the Civil Defence Emergency Management Act 2002 (CDEM Act) to address issues relating to concurrent declarations of states of emergency and notices of transition periods under the CDEM Act.

- 35 Cabinet approval has been obtained for these amendments as part of the Emergency Management Bill [CAB-22-MIN-0039.01]. However, that Bill is yet to be introduced to Parliament and I recommend they are brought forward to support extreme weather recovery, on a temporary basis until 2 June 2024.
- 36 The CDEM Act prevents a declaration of a state of local emergency whilst a state of national emergency is in force for the same area. This means if a local area faced an earthquake, or flash flood, while a state of national emergency was in place, the local Civil Defence Emergency Management Group (CDEM Group) would need to request the Minister for Emergency Management amend the existing declaration of state of national emergency to include the new emergency to access the necessary powers response under the CDEM Act. This could result in delays in accessing the powers in the CDEM Act to respond to the new emergency, increasing risks to life safety.
- 37 It is essential that CDEM Groups have quick access to the full range of powers available under the CDEM Act to respond to any other emergencies that may impact their communities while we respond to and recover from recent extreme weather events.
- 38 Another issue relating to concurrent emergencies is that if a national transition period is in place to manage the recovery from Cyclone Gabrielle, it could be terminated by a state of local emergency being issued for a non-Cyclone Gabrielle event in that area.
- 39 To avoid this situation, I recommend that the CDEM Act is amended to enable states of local emergency or local transition periods to be declared for other emergencies (for example flash floods or earthquakes/tsunami), even while there is a state of national emergency (or national transition period) in place for Cyclone Gabrielle. This allows access to powers that may be needed to deal with a concurrent emergency such as requiring persons to evacuate an unsafe area due to threat of tsunami, flood or earthquake.
- 40 I also recommend the existing requirements in the Act which require Controllers and Recovery Managers to not act contrary to the priorities for the use of resources and services that have been determined by the Director or National Controller/National Recovery Manager to apply in concurrent emergencies.

Local Government Act 2002

- 41 Schedule 7, clause 25A of the Local Government Act 2002 (the LGA) governs remote attendance at local authority meetings, including CDEM Group meetings. It authorises attendance at meetings by audio link or audio-visual link where that is provided for in local authority or committee standing orders but does not allow attendance to count to a quorum.
- 42 During an emergency this can be impractical or unsafe and can result in delayed decision-making. For example, damaged roads and bridges are creating challenges for elected officials to attend meetings in person.
- 43 I propose that the current arrangements requiring local authorities and CDEM Groups to meet in person are amended to enable local authorities and CDEM Groups to meet

by audio or visual link and for the members to be counted as present. The amendment will enable timely decision-making in support of the response to, and recovery from, the recent extreme weather.

- 44 I also propose amendments to the LGA to ensure local authorities are not prohibited from amending their current long-term plans in relation to water services and infrastructure, and will apply retrospectively from 12 February 2023 (Cyclone Gabrielle) until April 2024.
- 45 Following the recent water services reforms, local authorities cannot include any content relating to water services in their long-term planning, given these responsibilities are due to be transferred to new water services entities. This restriction applies in relation to a draft or final long-term plan, or an amendment to a long-term plan.
- 46 The recent extreme weather caused significant damage to water infrastructure and water services. This will require local authorities to amend their current long-term plans in response to this damage (that is, the plans that cover the 2021-2024 period). Local authorities that are unaffected by the cyclone may also wish to amend their current long-term plans to take immediate action to improve their resilience to future weather events.
- 47 I propose the LGA be amended to enable local authorities to amend their current long-term plans in relation to water services. The restriction on including water services content in draft or final versions of long-term plans (and associated documents), will only apply to those plans that will take effect from 1 July 2024.

Resource Management Act 1991

- 48 I propose an amendment to the Resource Management Act 1991 (RMA) to permit rural landowners and occupiers to take preventative or remedial action to prevent or mitigate the damage of the extreme weather, except where the activity is prohibited under any relevant national environmental standard or regional or district plan. These preventative or remedial actions will be deemed to be permitted activities. There will be no retrospective requirement to seek resource consent.
- 49 This would be accompanied by a requirement that any action undertaken because of, or in connection, with the severe weather events or an adverse effect on the environment and is causing or has potential to cause loss of life or injury to humans; loss of life or serious detriment to the health or well-being of animals; or serious damage to land or property.
- 50 This would be modelled on a provision in Hurunui/Kaikōura Earthquake Emergency Relief Act 2016. I understand that after the Hurunui/Kaikōura earthquakes this provision provided significant help and certainty to rural landowners and occupiers, as has been outlined by Federated Farmers in a letter to the Minister for the Environment (dated February 2023).
- 51 While this approach carries some environmental risks, I consider that on balance these are outweighed by the need to provide people with certainty through a

pragmatic approach. The risks can also be reduced through providing the permitted activity approach for a limited period of time.

- 52 I also propose amendments to the RMA to extend timeframes for advising local authorities and applying for retrospective consents for emergency work. Similar amendments were made following the Hurunui/Kaikōura earthquakes. Infrastructure providers, including local authorities and utility operators, need to carry out emergency works quickly to enable the return of critical services.
- 53 The RMA requires people (other than an occupier) to advise the consent authority of any emergency work done within seven working days of the activity being undertaken and seek necessary consents within 20 working days of notification (or 60 working days if a state of emergency is declared or transition period notified under the CDEM Act 2002). Time begins to run from the date of the activity, not the end of the state of emergency.
- 54 These timeframes for notification and retrospective consenting are too restrictive given the scale of emergency repair and restoration work needed. I recommend these timeframes are extended to 100 working days and 160 working days respectively.
- 55 Under the RMA, councils have rights of entry without prior notice to any place. Given the large number of evacuations that have occurred I recommend that anyone entering a place under those powers when the occupier is not there be required to display a notice with the date, purpose of entry and the contact details in a prominent place on the land and serve written notice on the relevant ratepayer. This is the same approach taken following the Hurunui/Kaikōura earthquake.

Food Act 2014 and Food Regulations 2015

- 56 I propose amendments to registration and verification requirements in the Food Act 2014 and Food Regulations 2015. This will mean that a food business whose registration would expire during the specified period would have an extended period to renew its registration and would be able to continue operating during that time.
- 57 These amendments will provide a three-month extension to registration renewal and an exemption from verifications for six months for businesses subject to a National Programme and three months for those operating under Food Control Plans.
- 58 This is important not just for certainty for businesses, but also to ensure food security by facilitating affected businesses to remain open throughout this uncertain period. This is currently of particular concern, especially in isolated communities.

Risks

- 59 The primary risk of not enacting the proposed emergency legislation is that the pace of the recovery will be constrained or prohibited by the status quo regulatory environment. The urgent amendments to be made via the Bill will help to facilitate the initial stages of the recovery and provide legal certainty where needed. These amendments are needed to be made as soon as possible and as such, cannot wait for the Order in Council mechanism to be created via the proposed second bill.

- 60 Using a truncated Parliamentary process could be contentious because it reduces the ability of the public and other organisations to provide input into the Bill and for the full scrutiny of a Parliamentary select committee process. However, this needs to be balanced with the need to provide certainty for the recovery effort on what emergency legislation may be provided. This is critical as recovery efforts will likely encounter substantive repair and rebuild issues and individuals and business may face regulatory requirements that they struggle to meet.
- 61 On balance, I believe the truncated Parliamentary process is justified for these legislative changes.
- 62 The proposals relating to the RMA could result in either temporary or longer term adverse environmental effects, particularly the proposal to permit rural landowners and occupiers to take preventative or remedial action to prevent or mitigate the damage of the extreme weather. A similar provision was enabled through the Hurunui/Kaikōura Earthquake Emergency Relief Act 2016.
- 63 Lessons from this legislation have been that it was helpful in enabling rural landowners/occupiers to take necessary measures such as recutting farm tracks or undertaking earthworks, however councils have limited information on the works that occurred and some works occurred in areas that would otherwise have not been allowed (such as farm tracks in outstanding natural landscapes).
- 64 The proposals relating to the RMA that enable preventative or remedial measures to prevent or mitigate damage caused by the extreme weather, could result in investment decisions being made that lead towards rebuilding back in locations that are at risk of further damage from future climate change induced events. This could risk climate adaptation. It will be important to remind landowners or occupiers that some of these issues are under further active consideration. One of the reasons for limiting the changes to rural landowners and occupiers is reducing the number of people who may take measures that could lead to rebuilding in risky locations.

Financial Implications

- 65 There are no financial implications arising directly from this paper.

Legislative Implications

- 66 The legislative implications arising from this paper are the introduction of the Bill and the development of the second bill creating the Order in Council mechanism.

Regulatory Impact Analysis

- 67 The Treasury's Regulatory Impact Analysis team has determined that:
- a. The proposal to address issues relating to concurrent emergencies under the Civil Defence Emergency Management Act 2002, and the proposal to enable the use of audio or visual link by local governments, are exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the grounds that

they have been addressed by existing impact analysis [GOV-20-MIN-0035 and CAB-22-MIN-0339.01 refer].¹

- b. The proposals to extend timeframes for advising local authorities and applying for retrospective consents for emergency work, and to extend the period for a food business to renew its registration and continue operating, are also exempt from the requirement to prepare a RIS. These exemptions are granted on the grounds that they are intended to temporarily defer or extend legislative deadlines where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome.
- c. Cabinet's impact analysis requirements apply to the proposal to create a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support extreme weather recovery. However, there is not accompanying Regulatory Impact Statement and the Treasury has not exempted this proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- d. On behalf of respective Ministers, the Regulatory Impact Analysis team at the Treasury and the Department of the Prime Minister and Cabinet have agreed that supplementary analysis will be provided when final decisions are sought at Cabinet in two weeks' time.

Compliance

68 The Bill complies with each of the following:

- a. the principles of the Treaty of Waitangi;
- b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- c. the disclosure statement requirements;
- d. the principles and guidelines set out in the Privacy Act 2020;
- e. relevant international standards and obligations;
- f. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 [Legally privileged]

69 The amendments to the Resource Management Act 1991 do not raise issues under the New Zealand Bill of Rights Act 1990 (NZBORA) or the Human Rights Act 1993. The changes do not limit any personal or democratic civil rights.

¹ The RIS relating the use of audio/visual links can be found at: <https://www.civildefence.govt.nz/assets/Uploads/publications/cabinet-paper-updating-the-legislative-framework-03-08-20.pdf>.

The RIS relating to concurrent emergencies will be publicly available in due course.

70 s9(2)(h)



71 s9(2)(h)



Consultation

72 The amendments in the Severe Weather Emergency Legislation Bill were developed in consultation with the National Emergency Management Agency, the Department of Internal Affairs, the Ministry for the Environment and the Ministry for Primary Industries.

73 The following agencies were consulted on the proposals in this paper: the Department of Corrections, the Ministry of Justice, New Zealand Customs Service, the Department of Internal Affairs, the Department of Conservation, Land Information New Zealand, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, the Ministry for the Environment, the Ministry of Transport, the Ministry for Primary Industries, the National Emergency Management Agency, the Ministry of Defence, the New Zealand Security Intelligence Service, Te Arawhiti, Inland Revenue, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, Statistics New Zealand, New Zealand Police, the Public Service Commission, the Ministry of Social Development, the Ministry of Education, the Ministry of Housing and Urban Development, Oranga Tamariki, Serious Fraud Office, the Ministry of Health, the Ministry for Pacific Peoples, the Education Review Office, the Treasury, Crown Law Office and the Government Communications Security Bureau.

74 Because of the urgency of this matter, only limited departmental consultation was undertaken.

75 The Ministry for the Environment have discussed the policy proposals that relate to the Resource Management Act 1991 with: Northland Regional Council, Auckland Council, Gisborne District Council, Hastings District Council, Greater Wellington Regional Council. All of these councils supported the proposed timeframe extensions and a number of councils supported permitting rural landowners and occupiers to undertake preventative works on their properties, noting that there are risks to the environment in enabling such a provision.

Binding on the Crown

76 This Bill binds the Crown.

Creating new agencies or amending law relating to existing agencies

- 77 The Bill does not create a new agency that is legally separate from the Crown.
- 78 The legislation will not amend the existing coverage of the Ombudsman Act 1975 and the Official Information Act 1982 or the Local Government Officials Information and Meetings Act 1987.

Associated regulations

- 79 Regulations are not needed to bring the Bill into operation.

Other instruments

- 80 The Bill does not include any provision empowering the making of secondary legislation.

Commencement of legislation

- 81 The Bill comes into force on the day after the date of Royal assent. Note, some amendments to primary legislation made by the Bill will have retrospective application.

Parliamentary stages and next steps

- 82 I propose that the Extreme Weather Emergency Bill be introduced by 14 March 2023 and passed through all stages by 16 March 2023, including a truncated select committee process.
- 83 I propose the Bill is referred to the Governance and Administration Committee, with the Committee required to report back on 15 March 2023.
- 84 I intend to return to Cabinet in two weeks' time seeking final policy approval and agreement to introduce a second bill creating the Order in Council mechanism.

Proactive release

- 85 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982 once the Bill has come into force.

Publicity

- 86 I intend to announce the Government is working towards emergency legislation to provide for immediate and medium-term legislative changes necessary to support the recovery.

Recommendations

I recommend that Cabinet:

- 1 **Note** that existing statutory requirement and powers are too constraining or not adequate to facilitate a timely, efficient and effective recovery from recent extreme weather events;

- 2 **Note** previous emergencies such as the Hurunui/Kaikoura earthquake of 2016 and the Canterbury earthquakes of 2010 and 2011 have required legislation to enable urgent measures to support recovery;

Urgent amendments to primary legislation

- 3 **Agree** to urgent amendments to legislation, included in the Severe Weather Emergency Legislation Bill, to support recovery from the recent extreme weather events;

- 4 **Agree** to amend the Civil Defence Emergency Management Act 2002, until 1 June 2024, to:

4.1 enable a state of emergency or transition period (national or local) to be declared for other emergency events even while there is a state of national emergency in force for that location;

4.2 enable states of emergency or transition periods (national or local) to remain in force, if a state of national emergency is declared for other emergency events in that location;

4.3 enable a state of emergency (national or local) to be declared for other emergency events, without terminating any national transition period in force for that location;

4.4 enable a local transition period to be given for other emergency event, while there is a national transition period in force for that location;

4.5 enable a local transition period to remain in force, if a national transition period is given for other emergency event in that location;

4.6 enable a local transition period to remain in force, if a state of local emergency is given for another emergency event in that location;

4.7 prevent a local or group controller or recovery managers from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National Recovery Manager during concurrent emergencies;

- 5 **Agree** to amend the Local Government Act 2002 to:

5.1 enable local authority committees, including Civil Defence Emergency Management Groups, to be able to meet via audio or audio-visual link and be counted as present for the purposes of decision making, with effect from 12 February 2023 to 1 April 2024;

5.2 enable local authorities to amend their current long-term plans in relation to water services to respond to damage to water infrastructure and services caused by the recent extreme weather events, and to take immediate action to improve resilience to future weather events;

- 6 **Agree** to amend the Resource Management Act 1991 to:
 - 6.1 to enable immediate preventative or remedial measures taken by rural landowners or occupiers to prevent or mitigate any damage caused by the extreme weather, except any activities that are otherwise prohibited in a national environmental standard or regional/district plan, and that these measures are deemed to be permitted activities and will not require retrospective resource consent;
 - 6.2 require local authority or consent authorities who enter a place, and the occupier is not there, to display a notice with the date, purpose of entry and contact details in a prominent place on the land;
 - 6.3 extend the timeframes for providing notification to consent authorities of emergency work and for seeking any necessary resource consents, so that notification is required within 100 working days of undertaking the activity (currently 7 working days), and consent must be sought within 160 working days of notification (currently 20 working days, or 60 working days if a state of emergency is declared or transition period notified under the Civil Defence Emergency Management Act 2002);
- 7 **Agree** to amend the Food Act 2014 to provide a three-month extension for registration renewals, with retrospective effect from the beginning of Cyclone Gabrielle;
- 8 **Agree** to amend the Food Regulations 2015 to provide certain operators of food businesses with verification exemptions for six months for businesses subject to a National Programme and three months for those operating under Food Control Plans, with retrospective effect;

Introduction of the Severe Weather Emergency Legislation Bill

- 9 **Approve** the Severe Weather Emergency Legislation Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 10 **Agree** that the Severe Weather Emergency Legislation Bill be introduced by 14 March 2023;
- 11 **Agree** that the government propose that the Severe Weather Emergency Legislation Bill be:
 - 11.1 referred to the Governance and Administration Committee for consideration;
 - 11.2 enacted by 16 March 2023;
- 12 **Approve** the inclusion of the Severe Weather Emergency Legislation Bill in the 2023 Legislation Programme, with a priority category 2 (must be passed this year);

- 13 **Agree** that the Minister for Emergency Management is authorised to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper up until the Bill is introduced;
- 14 **Agree** that Parliamentary Counsel Office can continue to make minor changes to the Bill to settle technical matters in line with Cabinet's policy decisions and incorporate feedback from Parliamentary Counsel Office proofreading and quality control processes up until the Bill is printed for introduction;

Additional bill permitting amendments to legislation via Order in Council where necessary and appropriate to support extreme weather recovery

- 15 **Agree**, in principle, to the development of a separate bill that will create a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery;
- 16 **Agree**, in principle, that the bill include the ability to give Orders in Council retrospective application, where appropriate;
- 17 **Agree**, in principle, that the second bill may also include any direct amendments to primary legislation identified after the enactment of the Severe Weather Emergency Legislation Bill that are not appropriate to be made via Order in Council;
- 18 **Note** this bill will include appropriate checks and balances to ensure appropriate oversight of the exercise of the Order in Council mechanism, including provisions aimed at strengthening Māori engagement as part of the Order in Council development process;
- 19 **Note** a paper will be presented to Cabinet in two weeks' time seeking final policy approvals and agreement to introduce the second bill to the House;
- 20 **Approve** the inclusion of the bill in the 2023 Legislation Programme, with a priority category 2 (must be passed this year).

Authorised for lodgement

Hon Kieran McAnulty

Minister for Emergency Management



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Proposed Emergency Legislation to Support Extreme Weather Recovery

Portfolio Emergency Management

On 13 March 2023, Cabinet:

- 1 **noted** that existing statutory requirements and powers are too constraining or not adequate to facilitate a timely, efficient and effective recovery from recent extreme weather events;
- 2 **noted** previous emergencies such as the Hurunui/Kaikoura earthquake of 2016 and the Canterbury earthquakes of 2010 and 2011 have required legislation to enable urgent measures to support recovery;

Urgent amendments to primary legislation

- 3 **agreed** to make urgent amendments to legislation, to be included in the Severe Weather Emergency Legislation Bill, to support recovery from the recent extreme weather events;
- 4 **agreed** to amend the Civil Defence Emergency Management Act 2002, until 1 June 2024, to:
 - 4.1 enable a state of emergency or transition period (national or local) to be declared for other emergency events even while there is a state of national emergency in force for that location;
 - 4.2 enable states of emergency or transition periods (national or local) to remain in force, if a state of national emergency is declared for other emergency events in that location;
 - 4.3 enable a state of emergency (national or local) to be declared for other emergency events, without terminating any national transition period in force for that location;
 - 4.4 enable a local transition period to be given for another emergency event, while there is a national transition period in force for that location;
 - 4.5 enable a local transition period to remain in force, if a national transition period is given for another emergency event in that location;
 - 4.6 enable a local transition period to remain in force, if a state of local emergency is given for another emergency event in that location;
 - 4.7 prevent a local or group controller or recovery managers from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National Recovery Manager during concurrent emergencies;

- 5 **agreed** to amend the Local Government Act 2002 to:
- 5.1 enable local authority committees, including Civil Defence Emergency Management Groups, to be able to meet via audio or audio-visual link and be counted as present for the purposes of decision making, with effect from 12 February 2023 to 1 April 2024;
 - 5.2 enable local authorities to amend their current long-term plans in relation to water services to respond to damage to water infrastructure and services caused by the recent extreme weather events, and to take immediate action to improve resilience to future weather events;
- 6 **agreed** to amend the Resource Management Act 1991 to:
- 6.1 enable immediate preventative or remedial measures taken by rural landowners or occupiers to prevent or mitigate any damage caused by the extreme weather, except any activities that are otherwise prohibited in a national environmental standard or regional/district plan, and that these measures are deemed to be permitted activities and will not require retrospective resource consent;
 - 6.2 require local authority or consent authorities who enter a place, and the occupier is not there, to display a notice with the date, purpose of entry and contact details in a prominent place on the land;
 - 6.3 extend the timeframes for providing notification to consent authorities of emergency work and for seeking any necessary resource consents, so that notification is required within 100 working days of undertaking the activity (currently 7 working days), and consent must be sought within 160 working days of notification (currently 20 working days, or 60 working days if a state of emergency is declared or transition period notified under the Civil Defence Emergency Management Act 2002);
- 7 **agreed** to amend the Food Act 2014 to provide a three-month extension for registration renewals, with retrospective effect from the beginning of the Auckland flooding events in January 2023;
- 8 **agreed** to amend the Food Regulations 2015 to provide certain operators of food businesses with verification exemptions for six months for businesses subject to a National Programme and three months for those operating under Food Control Plans, with retrospective effect;

Introduction of the Severe Weather Emergency Legislation Bill

- 9 **approved** the Severe Weather Emergency Legislation Bill [PCO 25410] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 10 **agreed** that the Severe Weather Emergency Legislation Bill be introduced by 14 March 2023;
- 11 **agreed** that the Government propose that the Severe Weather Emergency Legislation Bill be:
- 11.1 referred to the Governance and Administration Committee for consideration;
 - 11.2 enacted by 16 March 2023;
- 12 **approved** the inclusion of the Severe Weather Emergency Legislation Bill on the 2023 Legislation Programme, with a category 2 priority (must be passed before the 2023 General Election);

- 13 **authorised** the Minister for Emergency Management to further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner not inconsistent with the policy recommendations contained in the paper up until the Bill is introduced;
- 14 **authorised** the Parliamentary Counsel Office to make minor changes to the Bill to settle technical matters in line with Cabinet's policy decisions and incorporate feedback from the proofreading and quality control processes up until the Bill is printed for introduction;

Additional bill permitting amendments to legislation via Order in Council where necessary and appropriate to support extreme weather recovery

- 15 **agreed, in principle**, to the development of a separate bill that will create a mechanism permitting the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery, subject to paragraph 19;
- 16 **agreed, in principle**, that the bill include the ability to give Orders in Council retrospective application, where appropriate, subject to paragraph 19;
- 17 **agreed, in principle**, that the second bill may also include any direct amendments to primary legislation identified after the enactment of the Severe Weather Emergency Legislation Bill that are not appropriate to be made via Order in Council, subject to paragraph 19;
- 18 **noted** this bill will include appropriate checks and balances to ensure appropriate oversight of the exercise of the Order in Council mechanism, including provisions aimed at strengthening Māori engagement as part of the Order in Council development process;
- 19 **noted** a paper will be presented to Cabinet in two weeks' time seeking final policy approvals and agreement to introduce the second bill to the House;
- 20 **approved** the inclusion of the bill referred to in paragraph 15 above on the 2023 Legislation Programme, with a category 2 priority (must be passed before the 2023 General Election).

Rachel Hayward
Secretary of the Cabinet