



## Proactive Release

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

### **Briefings related to the Severe Weather Emergency Recovery Legislation Bill**

The following documents have been included in this release:

**Title of briefing:** Talking Points For Extreme Weather Recovery Committee – 7 March 2023

**Title of briefing:** Talking Points For Cabinet – Severe Weather Emergency Legislation Bill – 13 March 2023

**Title of briefing:** Decisions Relating to the Severe Weather Emergency Recovery Bill

**Title of briefing:** Talking Points – Severe Weather Emergency Recovery Legislation Bill – 27 March 2023

**Title of briefing:** Severe Weather Emergency Recovery Legislation Bill: Proposed Changes

**Title of briefing:** Severe Weather Emergency Recovery Legislation Bill: Proposed Amendments For Supplementary Order Paper

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

#### **Key to redaction codes:**

- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- section 9(2)(g)(i), to maintain the free and frank expression of opinions
- section 9(2)(g)(ii), to prevent improper pressure or harassment
- section 9(2)(h), to maintain legal professional privilege.




# Aide-Mémoire

## TALKING POINTS FOR EXTREME WEATHER RECOVERY COMMITTEE – 7 MARCH 2023

<b>To:</b>	Hon Grant Robertson, Minister for Cyclone Recovery Hon Kieran McAnulty, Minister for Emergency Management		
<b>From:</b>	Peter Mumford, Chief Advisor, Cyclone Legislation, DPMC	<b>Date:</b>	6/03/2023
<b>Briefing Number:</b>	DPMC-2022/23-1045	<b>Security Level:</b>	[IN CONFIDENCE]

### Purpose

1. This Aide Mémoire attaches talking points to support your attendance at the Extreme Weather Recovery Committee (EWRC) on 7 March 2023 to provide an update on the Emergency Cyclone Recovery Legislation.

 Peter Mumford <b>Chief Advisor, Cyclone Legislation</b> <b>Cyclone Recovery Unit</b>	Hon Grant Robertson <b>Minister for Cyclone Recovery</b>  ...../...../.....
07/03/2023	Hon Kieran McAnulty <b>Minister for Emergency Management</b>  ...../...../.....

<b>Attachment:</b>	
<b>Attachment A:</b>	Attachment A – Talking Points

Contact for telephone discussion			
<i>Name</i>	<i>Position</i>	<i>Telephone</i>	<i>1st contact</i>
Peter Mumford	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	
Simon Dunkerley	Policy Manager, DPMC	s9(2)(g)(ii)	

\*Attachment A is withheld in full under section 9(2)(g)(i).

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## Coversheet

# Aide-Mémoire: Talking Points for Cabinet – Severe Weather Emergency Legislation Bill – 13 March 2023

Date:	10/03/2023	Report No:	DPMC-2022/23-1091
		Security Level:	[IN-CONFIDENCE]
		Priority level:	[Medium]

	Action sought	Deadline
Hon Kieran McAnulty Minister for Emergency Management	Note the contents of this Aide-Mémoire	13/03/2023

Name	Position	Telephone	1 <sup>st</sup> Contact
Peter Mumford	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	
Simon Dunkerley	Policy Manager, DPMC	s9(2)(g)(ii)	

### Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes

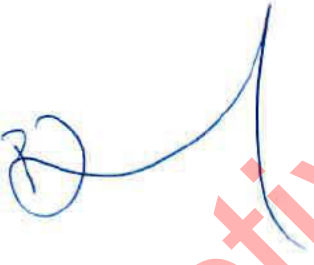

# Aide-Mémoire

## Talking Points for Cabinet – Severe Weather Emergency Legislation Bill – 13 March 2023

<b>To:</b>	Hon Kieran McAnulty Minister for Emergency Management		
<b>Copy to:</b>	Hon Grant Robertson Minister for Cyclone Recovery		
<b>From:</b>	Peter Mumford, Chief Advisor, Cyclone Legislation, DPMC	<b>Date:</b>	10/03/2023
<b>Briefing Number:</b>	DPMC-2022/23-1091	<b>Security Level:</b>	<del>[IN-CONFIDENCE]</del>

### Purpose

1. This Aide Mémoire attaches talking points to support your attendance at the Cabinet on 13 March 2023 to seek agreement to introduce the Severe Weather Emergency Legislation Bill to the House.

 <b>Peter Mumford</b> Chief Advisor, Cyclone Legislation Department of the Prime Minister and Cabinet  10 / 03 / 23	 <b>Hon Kieran McAnulty</b> Minister for Emergency Management  11 / 3 / 23
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Attachments:	Title	Security classification
Attachment A:	Attachment A – Talking Points	<del>[IN-CONFIDENCE]</del>

Aide Mémoire: Talking Points for Cabinet – Severe Weather Emergency Legislation Bill 13 March 2023	DPMC-2022/23-1091
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Contact for telephone discussion			
Name	Position	Telephone	1 <sup>st</sup> Contact
Peter Mumford	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	
Simon Dunkerley	Policy Manager, DPMC	s9(2)(g)(ii)	

\*Attachment A is withheld in full under section 9(2)(g)(i).

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# Briefing

## DECISIONS RELATING TO THE SEVERE WEATHER EMERGENCY RECOVERY BILL

To: Hon Grant Robertson, Minister for Cyclone Recovery  
Hon Kieran McAnulty, Minister for Emergency Management

Date	21/03/2023	Priority	Urgent
Deadline	22/03/2023	Briefing Number	DPMC-2022/23-1162

### Purpose

1. This briefing seeks your urgent decisions on matters to be included in the proposed second Bill enabling, amongst other things, modification to legislation via order in council to support the recovery from the recent severe weather events.

### Recommendations


1. **Note** on 13 March 2023 Cabinet agreed in principle to the development of a 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 (CAB-23-MIN-0078).
2. **Note** that we intend to provide you with a draft Bill and Cabinet paper for submission to Cabinet Office on Friday 24 March.
3. **Note** that policy decisions are required on components of the Bill so that it can be finalised prior to Friday 24 March.

4. **Agree** that the purpose of the Bill is to: **YES / NO**
- assist communities and councils affected by the recent severe weather events to respond to, and recover from, the impacts of the severe weather, including providing for the planning, rebuilding and recovery of affected communities and persons;
  - ensure that certain activities normally undertaken by people interacting with government agencies, Crown entities and local authorities can continue to be undertaken after a severe weather event; and
  - to signal the Act's intent of providing opportunities for local Māori and local community group participation, while balancing this against the need for timely recovery.
5. **Agree** the powers in the Bill be available in specified areas impacted by specified severe weather events only. **YES / NO**
6. **Agree** 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. **YES / NO**
7. **Agree** the powers in the Bill cover districts or regions of the councils where land, infrastructure, other property, resources or services are required to support areas affected by one or more of the severe weather events. **YES / NO**
8. **Agree** the powers in the Bill will be available where subsequent events exacerbate the impacts of the original severe weather events. **YES / NO**
9. **Agree** the Minister for Cyclone Recovery must consider appointing members to the Review Panel with knowledge, experience and expertise relating to: **YES / NO**
- the law (including, if possible, the Māori land tenure system under Te Ture Whenua Māori Act 1009), public administration, or local government;
  - environmental protection, biodiversity, or climate change;
  - local/regional perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga and te ao Māori;
  - Māori or community interests in the areas affected by severe weather (whether that knowledge, experience and expertise is local, regional or applies to the wider area; and
  - emergency response and recovery.
10. **Agree** the number of the Review Panel members appointed by the Minister may be up to 12 members. **YES / NO**



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|---|------------------------|
| <p>11. <b>Agree</b> the Bill will give effect to Treaty principles through the following provisions:</p> <ul style="list-style-type: none"> <li>• 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 that affect them;</li> <li>• relevant Ministers will engage with Māori on proposed orders and have regard to comments provided when considering whether to recommend an order be made (unless the relevant Minister is satisfied that engagement is impracticable in the circumstances, or the urgency of the situation requires that the order be made as soon as practicable without that engagement).</li> <li>• Māori interests must be taken into account when appointing members of the Severe Weather Events Recovery Review Panel.</li> </ul> | <p><b>YES / NO</b></p> |
| <p>12. <b>Agree</b> the Bill will not include a clause providing that the recommendation and decisions of the relevant Minister may not be challenged, reviewed, quashed, or called into question in any court but that, except for that, nothing in the Act prevents a court from determining whether an order is authorised by the Act (“ouster clause”).</p>   | <p><b>YES / NO</b></p> |
| <p>13. <b>Agree</b> the Bill will include a review clause that would require the relevant Ministers to keep their orders under review.</p>  | <p><b>YES / NO</b></p> |
| <p>14. <b>Agree</b> the Act will remain in force for five years until it automatically repeals at the close of 31 March 2028, but that new orders in council can only be made until the close of 31 March 2026.</p>   | <p><b>YES / NO</b></p> |
| <p>15. <b>Agree</b> that (subject to further discussion and confirmations) the Bill will include provisions that give Māori governance entities relief from both statutory obligations and obligations in their constitutions, and other rules that may not be reasonably capable of being complied with as a result of the severe weather event.</p>   | <p><b>YES / NO</b></p> |
| <p>16. <b>Agree</b> to discuss with Hon Davis and the Attorney-General whether to include sections 145 or 338(11)(a) of Te Ture Whenua Maori Act 1993 in the list of legislation excluded from the Order in Council mechanism.</p>  | <p><b>YES / NO</b></p> |
| <p>17. <b>Agree</b> that the Bill will directly amend (temporarily) the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009.</p>   | <p><b>YES / NO</b></p> |

18. **Agree** that the relevant Minister must be satisfied that the order does not limit (or is a justified limit on) the rights and freedoms in the New Zealand Bill of Rights Act 1990 before recommending that an order is made. **YES / NO**

 Katrina Casey <b>Chief Executive, Cyclone Recovery</b>
21/03/2023

Hon Grant Robertson <b>Minister for Cyclone Recovery</b>
...../...../.....
Hon Kieran McAnulty <b>Minister for Emergency Management</b>
...../...../.....

**Contact for telephone discussion if required:**

Name	Position	Telephone	1st contact
Katrina Casey	Chief Executive, Cyclone Recovery Unit	s9(2)(g)(ii)	s9(2)(g)(ii)
Caroline Greaney	Chief Advisor, Cyclone Legislation, DPMC		s9(2)(g)(ii) ✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	s9(2)(g)(ii)

**Minister's office comments:**

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

Proactively Released

# SEVERE WEATHER EMERGENCY RECOVERY BILL

## Purpose

1. This briefing seeks your urgent decisions on matters to be included in the proposed second Bill enabling modification to legislation via order in council to support the recovery from the recent severe weather events.

## Background

2. On 13 March 2023, Cabinet agreed to make urgent amendments to legislation to support recovery from the recent severe weather events, to be included in the Severe Weather Emergency Legislation Bill [CAB-23-MIN-0078 refers].
3. The Severe Weather Emergency Legislation Act 2023 was enacted on Friday 16 March and came into force on Tuesday 21 March 2023.
4. On 13 March 2023, Cabinet also [CAB-23-MIN-0078 refers]:
  - a) agreed, in principle, to the development of a second 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 (e) below;
  - b) agreed, in principle, that the bill include the ability to give Orders in Council retrospective application, where appropriate, subject to paragraph (e) below;
  - c) 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 (e) below;
  - d) noted that 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;
  - e) 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;
  - f) approved the inclusion of the Bill on the 2023 Legislation Programme, with a category 2 priority (must be passed before the 2023 General Election).
5. Drafting of the second Bill is underway, under the title the Severe Weather Emergency Recovery Bill. The Bill, amongst other things, creates an Order in Council mechanism that permits the Governor-General to make Orders in Council on the recommendation of the relevant Minister to exempt, modify or extend legislation to support recovery. For example, the mechanism could be utilised to extend statutory deadlines that cannot reasonably be met because of the recent extreme weather events.
6. The Bill is based on the similar Order in Council mechanism created to support recovery in the Hurunui/Kaikōura Earthquakes Act 2016.



## Policy decisions are required on components of the Bill prior to finalisation of the pending Cabinet paper

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7. We seek policy decisions on areas of the Bill, so that we can finalise the Bill this week. In the main, these policy decisions are required where the Bill differs from the Hurunui/Kaikōura Earthquakes Act.

### *Purpose Clause*

8. The principal purpose of 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. This includes providing for the planning, rebuilding and recovery of affected communities and persons. For example, the repair and rebuilding of land, property and infrastructure, safety enhancements to, and improvements to the resilience of land, property and infrastructure and facilitating co-ordinated efforts and processes for short, medium and long-term recovery.
9. The Bill has the additional purpose of ensuring that certain activities normally undertaken by people interacting with government agencies, Crown entities and local authorities can continue to be undertaken after a severe weather event.
10. We seek your agreement that the purpose clause also signals the Act's purpose of providing opportunities for local/regional Māori and local community group participation in the development of orders that affect them, without impeding a focussed, timely and expeditious recovery. This is a new provision and was not included in the Hurunui/Kaikōura Earthquakes Act. The full text of the purpose clause is set out at **Attachment A**.

### *Scope of the events and areas covered by the Bill*

11. We seek your agreement to the scope of the Bill. We propose that the powers in the Bill be available in specified areas impacted by specified severe weather events only. The affected areas are described as the districts or regions of specified councils affected by a severe weather event. 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.<sup>1</sup>
12. 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, except in limited circumstances. The Bill also covers districts or regions of the councils where land, infrastructure, other property, resources or services are required to support areas affected by one or more of the severe weather events. This broader scope is necessary to cover situations where effects occurred at a location directly affected by a severe weather event, but work is required in another, indirectly or non-affected location, as a result in the recovery. For instance, enabling transport corridors to work effectively or opening up new land required for re-housing.
13. However, officials recommend that orders will be available where subsequent events exacerbate the impacts of the original severe weather events. This could apply where a subsequent event such as further rainfall or an earthquake exacerbates the impact caused by the severe weather event, meaning the damage is only discovered at a later date after it becomes worse. This is intended to avoid confusion as to whether damage within the affected

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<sup>1</sup> This includes all the regions and districts subject to the declaration of state of national emergency and notice of national transition period for Cyclone Gabrielle (officials are considering whether this should also extend to cover the Manawatu and Rangitikei districts).

regions that was not immediately apparent and/or has subsequently become worse is included within the powers in the Bill.

### **Membership of the Review Panel**

14. We seek your decisions on the make-up of the Severe Weather Events Recovery Review Panel. Like the Canterbury and Hurunui/Kaikōura earthquakes legislation, the Bill provides for the creation of a Panel to review draft orders and provide advice to the Minister for Cyclone Recovery and the relevant Minister on proposed orders. The Panel also has the ability to provide advice on orders that may be required for one or more purposes of the Act.
15. We seek your agreement to the knowledge, experience and expertise that Minister needs to consider for the Panel. As currently drafted 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 knowledge, experience and expertise relating to:
  - a) the law (**including, if possible, the Māori land tenure system under Te Ture Whenua Māori Act 1009**), public administration, or local government;
  - b) environmental protection, **biodiversity, or climate change**;
  - c) **local/regional perspectives in the affected areas of mana whenua**, mātauranga Māori, tikanga and te ao Māori;
  - d) **Māori or community interests in the areas affected by severe weather (whether that knowledge, experience and expertise is local, regional or applies to the wider area;** and
  - e) **emergency response and recovery.**
16. The areas of expertise in bold above are additional to the Panel requirements in the Hurunui/Kaikōura earthquakes legislation. The addition of these areas is recommended by officials to reflect the wide geographical extent of the damage caused by the severe weather and the diverse range of local Māori interests in the affected area.
17. Prior to appointing members to the Panel, the Minister must seek nominations for appointments from Local Government New Zealand, and those Māori entities that the Minister considers have relevant knowledge of the severe weather events affected areas. Officials are currently seeking these nominations on your behalf.
18. We also seek your decision on the number of members able to be appointed to the panel. Te Arawhiti and Te Puni Kokiri have raised that if the Panel breaks into smaller divisions or sub-groups in order to manage scrutiny of the orders within the necessary timeframes, the Minister will need to be able to appoint sufficient who bring perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga and te ao Māori; and local/regional experience.
19. In response to this, we propose the bill enable the Minister for Cyclone Recovery to appoint up to 12 people with the appropriate knowledge, skills and experience to sit on the Panel. This is an increase from the number of members on the Canterbury Earthquakes and Hurunui/Kaikōura Review Panels, which had four and six members respectively.
20. Officials anticipate that potential orders in council relating to infrastructure and roading will be developed over the next two months, for enactment in late May/early June. It is likely that other orders in council, for example, those which extend statutory reporting timeframes may be progressed for enactment in mid-May.
21. To ensure there is a panel in place, prior review of draft orders in council being required, officials propose to provide you with a short-list of nominees for membership late next week, to enable discussions with your Extreme Weather Committee colleagues on 5 April (if required). It is proposed that final membership for appointment to the Panel be approved by Cabinet on 1 May 2023.



22. It is noted that there is no ability for nominees to be subject to the Honours and Appointment process prior to this date. However officials will ensure all relevant checks (for example, conflicts of interest) are undertaken in accordance with the Public Service Commission's appointment guidelines prior to the final list of Panel nominees being provided for Cabinet approval.

***How we are meeting the Crown's Treaty of Waitangi obligations***

23. We seek your agreement to the elements of the Bill that reflect the principles of Te Tiriti o Waitangi and the Crown's obligations as a Te Tiriti partner. 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. Ensuring the views and needs of Māori are reflected in Orders made under this legislation is critical to achieving this.
24. Rather than proposing a general Treaty clause, officials have been working with relevant agencies to identify specific requirements to build into provisions of the Act to give effect to Treaty principles.
25. The Bill includes a number of provisions with requirements specific to Māori individuals, communities and organisations. These aspects of the Bill have been strengthened beyond the provisions of the Hurunui/Kaikōura earthquakes legislation, which only made specific provision in relation to Māori skills and interests in the appointment of the panel. Taken together, these provisions create a framework for ensuring Māori views and interests are given due consideration in the making of orders under the Act.
26. As noted above under the purpose heading, the importance of Māori involvement in the making of orders 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 that affect them.
27. To give effect to this, the Bill requires relevant Ministers (which can be through their officials) to engage with Māori on proposed orders and have regard to comments provided when considering whether to recommend an order be made. The Bill also enables the relevant Minister to extend the timeframe for the provision of comments if desirable (beyond the three-day period specified in the bill) in light of Māori interests likely to be affected by the order. This will not apply, however, if the relevant Minister is satisfied that engagement is impracticable in the circumstances, or the urgency of the situation requires that the order be made as soon as practicable without that engagement.
28. Finally, as noted above under the panel heading, 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 the Māori land tenure system under Te Ture Whenua Māori Act 1993 (if possible), local perspectives in the affected areas of mana whenua, mātauranga Māori, tikanga and te ao Māori, and local Māori in the affected areas. The Minister is also required to seek nominations for the Panel from Māori entities the Minister considers have relevant knowledge of the affected areas.

s9(2)(h)

s9(2)(h)



**Review clause**

- 35. We seek your agreement to include a review clause that would require the relevant Ministers to keep their orders under review.
- 36. The review clause has been proposed as an additional safeguard. The Canterbury and Hurunui/Kaikōura legislation did not include a review clause. However, the more recent COVID-19 legislation did include such a clause. The proposed review clause in the Bill is based on section 14(5) of the COVID-19 Public Health Response Act 2020.

**Duration of Act**

- 37. We seek your agreement regarding duration of the Act.
- 38. Officials recommend that any new orders in council can only be made for three years, until the close of 31 March 2026.
- 39. It is proposed that the Act remains in force for five years, however, until it automatically repeals at the close of 31 March 2028.
- 40. This is based on advice from agencies that, due to the extent of damage from the severe weather, orders in council are likely to be required for a period longer than three years. This ensures that orders remain in place for as long as they are required, but the Act will not remain operative in terms of authorising new modifications any longer than necessary.

***Provide Māori governance organisations with relief from governance obligations***

41. Te Arawhiti and Te Puni Kokiri have proposed the Bill includes provisions that give Māori governance entities relief from both statutory obligations and obligations in their constitutions, and other rules that may not be reasonably capable of being complied with as a result of the severe weather events.
42. Similar provisions were included in primary legislation as part of the response to the COVID-19 pandemic. Those provisions were broader than Māori Governance organisations, and also applied to companies, incorporated societies and other entities. We understand the broader range of organisations does not need the same relief due to the extreme weather events, and that it is primarily Māori organisations 'on the ground' in remoter areas that will find it challenging to comply with requirements at this time.
43. The provisions would:
- enable the use of electronic communications (including electronic voting and the use of electronic signatures) when an entity's constitution or rules don't permit this
  - allow entities to make certain modifications to their constitutions or rules (such as calling or holding meetings, rules relating to dispute resolution or waiving, suspending, deferring or reducing fees payable by members); and
  - give certain registrars and Ministers<sup>2</sup> the power to grant exemptions from certain statutory obligations (such as calling or holding meetings and auditing, assurance, or financial reporting or review requirements).
44. The provisions would apply to the following Māori governance entities, such as:
- assembled owners (under the Te Ture Whenua Māori Act);
  - a mandated iwi organisation (under the Māori Fisheries Act);
  - a Māori Association (under the Māori Community Development Act);
  - a Māori land trust;
  - a Māori incorporation;
  - a body corporate or the trustees of a trust appointed to administer a Māori reservation; and
  - a Māori Trust Board
  - a post-settlement governance entity (PSGE).
45. We seek your agreement to include these provisions in the draft Bill, subject to:
- Hon Davis, Minister for Māori-Crown Relations confirming that he supports these provisions being included in the Bill. Te Arawhiti is briefing Hon Davis and will advise whether he is in agreement the provisions be included in the Bill; and
  - Parliamentary Counsel Office confirming that these provisions can be drafted in the timeframe necessary for the Bill to be considered by Cabinet on Monday.
  - Discussions with the Clerk of the House about these provisions fitting within the scope of the Bill. If they do not fit within the scope of the Bill, agreement of the Business

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<sup>2</sup> The responsible registrars or Ministers for the purposes of the exemption provisions are:

- the Minister for Maori Development (for entities under the Te Ture Whenua Maori Act, the Maori Community Development Act and the Maori Trust Boards Act); and
- the Minister for Fisheries (for entities under the Maori Fisheries Act)



Committee would need to be obtained in order for these provisions to be included in the Bill.

***Te Arawhiti request regarding Te Ture Whenua Māori Act 1993***

46. The Bill as currently drafted makes it clear that important constitutional legislation cannot be amended by order in council. This means for example, that changes could not be made to the Electoral Act, or the NZ Bill of Rights Act.
47. Te Arawhiti considers the restrictions on orders should include a provision expressly preventing an exemption from or modification of the requirements under sections 145 and 338(11)(a) and Part 7 of Te Ture Whenua Māori Act 1993. Its concern is that orders in council to, for example, the Public Works Act, could have the effect of alienating, vesting or acquiring Māori reservation land (or Māori customary land).
48. Te Arawhiti would like the Bill to provide that an order in council must not have the effect of modifying sections 145 or 338(11)(a) of Te Ture Whenua Māori Act 1993. This would ensure an order in council could not have the effect of alienating, disposing, vesting, or acquiring Māori customary land or Māori reservation land.

s9(2)(h)

50. In our view the legislation that is safeguarded by the Bill is of a fundamentally constitutional nature. There may be good reasons why an order in council needs to engage with the relevant provisions of Te Ture Whenua Māori Act 1993. The Bill includes a clear expectation that the relevant agency will have engaged with local Māori and local community groups as part of their process of considering an order. In a situation, where relevant Māori groups agree with the need for an order in council, it would not be able to be progressed if Te Arawhiti's proposed changes are included.
51. This decision as to whether to include this exclusion in the Bill, requires weighing up the risk that excluding Māori customary land or Māori reservation land in the Bill may prevent actions which are otherwise considered necessary as part of the severe weather recovery, for example acquiring land to build stop banks. On the other hand, not including Te Arawhiti's proposal in the Bill may be seen as a deliberate action by the Crown to enable the acquisition Māori customary land or Māori reservation land.
52. We recommend that you discuss the issue with Hon Davis, Minister for Māori-Crown Relations, and the Attorney-General.

***Direct amendments to local government legislation***

53. The Department of Internal Affairs has requested that the Bill includes a number of direct amendments to local government legislation, specifically 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 under the order in council process created by the Bill. The amendments will be temporary and will only apply to councils in areas directly or indirectly impacted by the severe weather.
54. The proposed amendments extend/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. DIA has sought approval from the Minister for Local Government for these changes. Specifically, the changes are:

*Local Government Act 2002*

- 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);
- 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;
- waiving the requirement for an amendment to a long-term plan to contain a report from the Auditor-General;
- extending the council 2023/24 annual plan deadline by three months to 30 September 2023;
- 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);

*Local Government (Auckland Council) Act 2009*

- 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);

***New Zealand Bill of Rights Act considerations – when a Minister recommends an order is made***

55. The Bill as currently drafted says that relevant Ministers may recommend making an order to amend an Act. When they do, they must be satisfied that the order is necessary and that it isn't broader than necessary.
56. We seek your decision on whether the relevant Minister should also be satisfied that the order does not limit (or is a justified limit on) the rights and freedoms on the New Zealand Bill of Rights Act. This requirement wasn't included in the similar legislation for Kaikoura/Hurunui. However, a clause of this nature was included in the similar legislation as part of the COVID-19 response. While the nature of the response in this case is different from that for COVID-19, it could still involve limits on fundamental human rights.
57. This provision ensures potential limitations are considered before amending primary legislation. It is the extraordinary nature of the power to amend primary legislation that justifies this provision, not just the nature of the amendments being contemplated at the moment.
58. In the absence of the provision, any modifications would still need to comply with the Bill of Rights Act because it is unlikely that the Bill would be interpreted as authorising modifications that would override the Bill of Rights (the modifications being made through secondary legislation). However, we recommend a requirement that Ministers be satisfied an order in Council does not breach NZBORA, as it makes intent of the Bill clear.
59. We have consulted the Ministry of Justice on this advice and they support this view.

**Next Steps**

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60. Should you agree to the recommended approach to the enactment of the second Bill addressing the severe weather legislation as outlined above, officials will continue to work with Parliamentary Counsel Office on the draft legislation and on the draft Cabinet paper.

<b>Attachments:</b>	
<b>Attachment A:</b>	Purpose clause

## ATTACHMENT A

*Proposed wording of purpose clause***3 Purposes**

(1) The principal purpose of this Act is to assist communities and councils affected by severe weather events to respond to, and recover from, the impacts of severe weather events and, in particular, to—

(a) provide for the planning, rebuilding, and recovery of affected communities and persons, including—

- (i) the repair and rebuilding of land, infrastructure, and other property of affected communities or of any affected persons; and
- (ii) the development, building, and rebuilding of land, infrastructure, or other property or access to resources or services in areas not affected by severe weather events; and
- (iii) safety enhancements to, and improvements to the resilience of, that land, infrastructure, or other property; and
- (iv) facilitating co-ordinated efforts and processes for short-term, medium-term, and long-term recovery; and
- (v) facilitating the restoration and improvement of the economic, social, and cultural well-being, and enhancing the resilience, of affected communities or of any affected persons; and
- (vi) facilitating the restoration and resilience of the environment; and

(b) provide for economic recovery; and

(2) This Act also has the purpose 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 (whether in the same or a different way); and

(b) supporting the operation of other legislation or enabling it to be relaxed or operate more flexibly, to take account of—

- (i) the severe weather events; or
- (ii) actions taken to respond to, or recover from, severe weather events:

(c) providing opportunities for local Māori and community participation in the development of orders that affect them, without impeding a focussed, timely, and expeditious recovery.





## Coversheet

### Aide-Mémoire: Talking Points - Severe Weather Emergency Recovery Legislation Bill - 27 March 2023

Date:	23/03/2023	Report No:	DPMC-2022/23-1079
		Security Level:	
		Priority level:	[Medium]

	Action sought	Deadline
Hon Kieran McAnulty Minister for Emergency Management	Note the contents of this Aide-Mémoire	27/03/2023

Name	Position	Telephone	1 <sup>st</sup> Contact
Caroline Greaney	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	
Simon Dunkerley	Policy Manager, DPMC	s9(2)(g)(ii)	

#### Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes


# Aide-Mémoire

## Talking Points - Severe Weather Emergency Recovery Legislation Bill - 27 March 2023

<b>To:</b>	Hon Grant Robertson Minister for Cyclone Recovery		
<b>From:</b>	Caroline Greaney, Chief Advisor, Emergency Management, DPMC	<b>Date:</b>	24/03/2023
<b>Briefing Number:</b>	DPMC-2022/23-1079	<b>Security Level:</b>	

### Purpose

1. This note is to support your attendance at Cabinet on 27 March 2023 to seek agreement to introduce the Severe Weather Emergency Recovery Legislation Bill to the House.

  Caroline Greaney Chief Advisor, Cyclone Legislation Department of the Prime Minister and Cabinet .....24...../.....3...../.....2023.....	          Hon Kieran McAnulty Minister for Emergency Management   ...../...../.....
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Attachments:	Title	Security classification
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Aide Mémoire: Talking Points - Severe Weather Emergency Recovery Legislation Bill - 27 March 2023	DPMC-2022/23-1079
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**Attachment A:**

Attachment A – Talking Points

**Contact for telephone discussion**

<i>Name</i>	<i>Position</i>	<i>Telephone</i>	<i>1<sup>st</sup> Contact</i>
Caroline Greaney	Chief Policy Advisor, Emergency Management, DPMC	s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)	
Simon Dunkerley	Policy Manager, DPMC	s9(2)(g)(ii)	

\*Attachment A is withheld in full under section 9(2)(g)(i).

DPMC-2022/23-1079

**Aide Mémoire: Talking Points - Severe Weather Emergency Recovery  
Legislation Bill - 27 March 2023**



# Briefing

## SEVERE WEATHER EMERGENCY RECOVERY LEGISLATION BILL: PROPOSED CHANGES

To: Hon Grant Robertson, Minister for Cyclone Recovery  
Hon Kieran McAnulty, Minister for Emergency Management


Date	31/03/2023	Priority	Urgent
Deadline	31/03/2023	Briefing Number	DPMC-2022/23

### Purpose

1. This briefing seeks your decisions on matters arising from submissions on the Severe Weather Emergency Recovery Legislation Bill. We seek your agreement to several changes for inclusion in the Departmental Report on the Bill.

### Recommendations

1. **Note** during the select committee process some issues have been identified that we seek your decisions on.
2. **Note** that the issues requiring your decision are set out in **Attachment A**.
3. **Agree** to record your decisions directly into **Attachment A**. **YES / NO**

 Katrina Casey Chief Executive, Cyclone Recovery
31/03/2023

Hon Kieran McAnulty Minister for Emergency Management
...../...../.....

**Contact for telephone discussion if required:**

Name	Position	Telephone	1st contact
Katrina Casey	Acting Chief Executive, Cyclone Recovery Unit	s9(2)(g)(ii) s9(2)(g)(ii)	
Caroline Greaney	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii) s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii) s9(2)(g)(ii)	

**Minister's office comments:**

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

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# SEVERE WEATHER EMERGENCY RECOVERY LEGISLATION BILL

## Purpose

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1. This briefing seeks your decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill (the Bill).

## Background

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2. The Governance and Administration Select Committee called for submissions on 28 March 2023. The submission period ended on 29 March 2023 (although late submissions were also accepted).
3. Oral submissions were heard on 29 and 30 March 2023. Approximately 210 written submissions were received, and several submitters appeared in person.
4. Many submitters disagreed with the Bill, with many commenting that the Bill is undemocratic. The main concerns raised by submitters were:
  - there was insufficient time to allow the public to consider the Bill and provide submissions;
  - the Select Committee does not have sufficient time to properly scrutinise the Bill; and
  - the Bill allows for over-reach by the government, and there is no social license.
5. Organisations involved in infrastructure projects in affected areas, affected councils and other organisations such as Federated Farmers and New Zealand Insurance Council supported the Bill. Some noted that it would be useful for future events to have permanent legislation in place but appreciate the need for urgent legislation to provide for truncated recovery
6. Some submitters suggested changes to the Bill, in particular relating to the scope of the purpose clause, definitions in the Bill, the engagement provisions, safeguards, and duration of the Act.

## Policy decisions are required for advice in the Departmental Report

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7. We seek policy decisions on areas of the Bill for inclusion in the Departmental Report.
8. The policy matters requiring your decision are set out in **Attachment A** of this Briefing. We ask for your decision on each matter to be recorded in the Attachment.

## Next Steps

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9. A copy of the draft Departmental Report has also been provided with this Briefing for your information.
10. Officials will continue to work on the Report over the weekend and will finalise it on Monday when we have your decisions.
11. The finalised Report is due to be presented to the Select Committee at noon on Monday 3 April.

Attachments:



<b>Attachment A:</b>	Decisions for Minister on Departmental Report
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Proactively Released

**Appendix 1:**

**Decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill.**

Part of the Bill	Issues	Officials' proposal	Minster's decision Agree/Disagree with officials' proposal
1. Purpose	<p>Some submitters are concerned about the wide scope of this purpose clause. While by virtue of 3(1) it is linked to effects of the severe weather events,</p> <p>They suggest a tighter purpose clause, and in particular deleting 3(1)(a)(v) which is about assisting communities and local authorities affected by the severe weather events including to 'facilitate the restoration and improvement of the economic, social, and cultural well-being, and enhancing the resilience, of affected communities or of any affected persons'.</p>	<ul style="list-style-type: none"> <li>• We recommend keeping the purpose clause as it is.</li> <li>• We need a broad purpose clause because:               <ul style="list-style-type: none"> <li>○ Recovery from emergency events is complex.</li> <li>○ The clause is built on the experience of the previous two recovery Acts.</li> <li>○ It is important to include provision for social and economic recovery within the purpose clause as well as infrastructure. In other words, people and communities must be included as well as the natural and built environment.</li> <li>○ In the early stages of recovery not all the recovery needs are known. Therefore, it is important to have reasonably wide scope for undertaking recovery elements to avoid constraining the recovery.</li> <li>○ Our concern with narrowing the purpose clause is that we may unintentionally limit a recovery matter that we hadn't anticipated.</li> </ul> </li> </ul>	Agree/Disagree
2. Definitions	<p>Palmerston North City Council asked to be included as a list local authority in the Bill because there are six properties affected by flooding following Cyclone Gabrielle.</p> <p>It is concerned it would be considered unfair if the six properties were excluded from application of the Bill when flooded properties in the neighbouring district were included.</p>	<ul style="list-style-type: none"> <li>• We seek your agreement that Palmerston North City Council is not included as a listed local authority in the Bill on the basis that no clear need has been established for their inclusion.</li> <li>• While heavy rain events are unfortunate, we consider that business as usual processes could be applied to the six properties affected. Horizon Regional Council also noted that there was some downstream damage to flooding infrastructure in the Palmerston North City Council area following Cyclone Gabrielle. However, Horizon Regional Council did not foresee the need for any emergency powers to be used.</li> </ul>	Agree/Disagree

## Appendix 1:

### Decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill.

3. Definitions	The Horizons Regional Council has requested it be included within the list of local authorities.	<ul style="list-style-type: none"><li>• We seek your agreement to include the Manawatu–Whanganui Regional Council (trading as Horizons Regional Council) to the extent that its functions apply to geographical areas of Rangitikei and Manawatu District Councils.</li><li>• This change is required to ensure amendments can be made to regional council planning documents, for example, the Regional Plan to enable flood protection or river works.</li><li>• We also seek agreement to include the Wellington Regional Council (trading as Greater Wellington Regional Council) to the extent that its functions apply to the geographical areas of the Masterton, Carterton, and South Wairarapa District Councils, for the same reasons).</li><li>• The inclusion ensures that, where required, amendments can be made to regional council planning documents etc to support the recovery in these districts.</li><li>• The limitation to the affected districts within the region prevents the geographical scope of the order in council mechanism from being extended.</li></ul>	Agree/Disagree
4. Definitions	The Marlborough District Council has requested inclusion in the Bill to support their recovery from the July 2021 and August 2022 flood events (they are still in recovery for these events and a local transition period under the Civil Defence Emergency Management Act).	<ul style="list-style-type: none"><li>• We recommend the Bill is not extended to include Marlborough District Council recovery from the July 2021 and August 2022 flood events.</li><li>• This is outside scope of this Bill, as the single broad policy for this Bill is to respond and recovery from the recent severe weather events (being the heavy rain events in the upper North Island and Cyclones Hale and Gabrielle of January and February 2023).</li></ul>	Agree/Disagree

**Appendix 1:**

**Decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill.**

<p>5. Engagement on the order</p>	<p>Submitters asked that we amend “local Māori” to include iwi, hapu, whanau or remove it from the act</p>	<ul style="list-style-type: none"> <li>• We recommend keeping this terminology as it is.</li> <li>• Experience of recovery in New Zealand and internationally emphasise the importance of locally led recovery, which relies on hearing local voices and local involvement in decision-making about the recovery. The use of the word ‘local’ sends an important signal that engagement about orders in council in affected areas will involve an opportunity for the people who live in those areas to have a say. It is to signal that engagement will not be about consulting a small number of umbrella national organisations or entities. The use of the word local is also to include informal groupings of people and organisations and is not to suggest a need for a group to be formally constituted or have a statutory status.</li> </ul> <p>The phrase ‘local Māori’ was used in legislation in the 1990s:</p> <ul style="list-style-type: none"> <li>• Section 184(3) of the Fisheries Act 1996: “The committee of management shall be appointed on the nomination of persons who appear to the Minister to be representative of the local Māori community”.</li> <li>• Section 12 of the Reserves and Other Lands Disposal Act 1993. It is also used in section 29 of the Pae Ora (Healthy Futures) Act 2022.</li> </ul>	<p>Agree/Disagree</p>
<p>6. Engagement on the order</p>	<p>The Bill includes the description of “community interests” as a category of people who should be included on the review panel Submitters queried whether this includes the knowledge, skills, and expertise of the rural/agricultural/horticultural sector.</p>	<p>We recognise the importance of this expertise being included in the panel.</p> <p>We suggest we work with Parliamentary Counsel Office to look at ways to adjust the drafting relating to community interests, perhaps by adding an illustrative example.</p>	<p>Agree/Disagree</p>

**Appendix 1:****Decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill.**

7. The test for when an Order can be made	Necessary or desirable  Some submitters and the Committee have suggested that the test for making an Order in Council should be that it is 'necessary', not as currently worded 'necessary or desirable'.	We recommend keeping the test at 'necessary or desirable'.  Case law has defined 'necessary' as excluding the issue of expediency. The courts interpret 'necessary' as having no other options, which is a very high threshold to meet. Truncated recovery and reducing regulatory burden are desirable outcomes but are unlikely to meet the test of 'necessary' as defined by the Courts.	Agree/Disagree
8. Consultation with the Regulations Review Committee	Clerk of the House of Representatives recommends a change to clause 8(1)(d)(ii) requires the relevant Minister to have regard to comments on the draft order only if they are provided by the committee within three working days. This is a tight time frame and may not allow time for dialogue between the committee and the relevant Minister to understand and address any concerns within the draft order. This would especially be the case during the summer adjournment, for example.	We recommend adding the ability for the Minister to local the timeframe for the Regulations Review Committee to review the draft Order.  This would also align with clause 16(2) which permits the relevant Minister to extend the 3 working day period for the Panel.	Agree/Disagree
9. Safeguards	The Regulations Review Committee suggested Ministers should be required to review each order every 6 months and to consider what, if any, changes should be considered	We propose not supporting this recommendation.  Orders will be at different points and having to review each of them every 6 months will be administratively burdensome, and difficult to apply to a range of orders. The current requirement to 'keep under review' means that when the orders no longer meet the statutory test, they need to be revoked.	Agree/Disagree

**Appendix 1:**

**Decisions on matters to be included in the Departmental Report on the Severe Weather Emergency Recovery Legislation Bill.**

10. Duration of the Act	Clause 17 provides that the orders made under this Bill remain valid for a period of five years (unless revoked sooner). This timeframe is too long given the significant potential effects of the Orders in Council in modifying or suspending legislation. In our view, this period should be two years at most. If Parliament still considers in two years' time that a longer duration is needed, the legislation could then be amended to provide for a longer period.	<p>We propose not supporting this recommendation.</p> <p>Confirmation processes are used where it is necessary or desirable that a particular piece of secondary legislation receives proactive Parliamentary scrutiny. However, as LDAC notes, this process should be applied sparingly. Particularly in these circumstances, there is a need to provide certainty to affected communities as well as entities working on recovery efforts about the length of time an order will remain in force.</p> <p>The proposed change in timeframes for the Act would create some uncertainty for Waka Kotahi and KiwiRail, and other areas that need significant infrastructure rebuild.</p>	Agree/Disagree
11. Severe Weather Events Recovery Review Panel	The committee questioned whether the Panel should include persons with knowledge, experience, or expertise in resilience	We proposed that the reference to “emergency response and recovery” be amended to “emergency management (including recovery and resilience)”	Agree/Disagree





# Briefing

## SEVERE WEATHER EMERGENCY RECOVERY LEGISLATION BILL: PROPOSED AMENDMENTS FOR SUPPLEMENTARY ORDER PAPER

To: Hon Kieran McAnulty, Minister for Emergency Management

Date	5/04/2023	Priority	Urgent
Deadline	5/04/2023 (by 1pm)	Briefing Number	DPMC-2022/23-1257

### Purpose


1. This briefing seeks your decisions on matters arising from the Governance and Administration Committee's draft report on the Severe Weather Emergency Recovery Legislation Bill. We seek your agreement to several amendments to the Bill for inclusion in a Supplementary Order Paper.
2. We require your decisions by 1pm today to enable the SOP to be drafted.

### Recommendations

1. **Note** that we expect the Governance and Administration Committee to recommend several amendments to the Severe Weather Emergency Recovery Legislation Bill when their report is presented on 5 April 2023.
2. **Note** should you agree to these amendments, they will be made via a Supplementary Order Paper to be tabled during the Committee of the Whole House stage.
3. **Note** that the issues requiring your decision are set out in **Attachment A**.

4. **Agree to record your decisions directly into Attachment A.**

**YES / NO**

 <b>Annabel Ritchie</b> <b>Chief Legal Advisor, Corporate, DPMC</b>	Hon Kieran McAnulty <b>Minister for Emergency Management</b>
5/04/2023	...../...../.....

**Contact for telephone discussion if required:**

Name	Position	Telephone	1st contact
Caroline Greaney	Chief Advisor, Cyclone Legislation, DPMC	s9(2)(g)(ii)      s9(2)(g)(ii)	✓
Annabel Ritchie	Chief Legal Advisor, DPMC	s9(2)(g)(ii)      s9(2)(g)(ii)	

**Minister's office comments:**

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

# SEVERE WEATHER EMERGENCY RECOVERY LEGISLATION BILL: PROPOSED AMENDMENTS FOR SOP

## Purpose

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1. This briefing seeks your decisions on matters arising from the Governance and Administration Committee's draft report on the Severe Weather Emergency Recovery Legislation Bill (the Bill). We seek your agreement to several amendments to the Bill for inclusion in a Supplementary Order Paper (SOP).

## Background

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2. The Governance and Administration Select Committee is due to present its report on the Bill on 5 April 2023.
3. Officials have fact-checked a draft version of the Committee's report. Based on this, we expect the Committee to recommend several amendments to the Bill to address issues raised by submitters.

## Policy decisions are required for inclusion in an SOP

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4. We seek your decisions on the Committee's recommendations. If you agree to these changes, they will be included in an SOP to be tabled at the Committee of the Whole House stage. The Committee's recommendations largely reflect the recommendations made by officials in the Departmental Report.
5. The decisions required are set out in **Attachment A**. We ask for your decisions to be recorded in the Attachment itself.
6. The table includes one additional amendment recommended by officials relating to Māori perspectives on the Severe Weather Events Recovery Review Panel. We do not expect this amendment to be included in the Committee's report.
7. We will provide updated advice if there are any substantial changes in the final version of the Committee's report that require additional decisions.
8. We expect the Committee's report to also include a list of additional amendments proposed by the National, ACT and Green parties, which will be included in SOPs to be tabled by those parties. We will provide you with information on these proposed changes in the House folder and during the House process.

## Next Steps

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9. Once you have taken decisions on the recommendations in Attachment A, the SOP will be finalised for tabling during the Committee of the Whole House stage.

<b>Attachments:</b>	
<b>Attachment A:</b>	Table of decisions for supplementary order paper

Clause	Select Committee recommendation	Officials' comment	Minister's decision Agree/disagree with recommendation
4(1)	<p>The Committee received submissions from several local authorities asking to be included in the list of local authorities identified in the Bill as being affected by the severe weather events.</p> <p><b>The Committee recommends that Manawatū-Whanganui Regional Council and Greater Wellington Regional Council be included in the list of councils under the definition of “affected local authority or local authority”, but only to the extent that their functions or powers relate to the affected area of a territorial authority listed in the definition of “affected local authority or local authority”.</b></p> <p>For example, Greater Wellington Regional Council would be considered an affected local authority for its functions and powers relating to Masterton, Carterton, South Wairarapa district councils, and the parts of the Tararua District within its boundary. However, the Wellington Regional Council’s functions and powers relating to the areas of the Wellington City or Kapiti Coast District councils (for example).</p>	Officials recommend this amendment is included in the SOP	Agree / Disagree
7(5)	<p>The Bill enables orders to amend primary legislation, including inserting “provisions that are additional or dealing with a new subject matter”.</p> <p><b>The Committee is concerned that this provision would allow for unacceptably broad changes to legislation without the scrutiny of the House and recommends replacing “dealing with a new subject matter” with words to the effect of “dealing with a new subject matter if reasonably necessary to achieve the purposes of the Order”.</b></p>	Officials recommend this amendment is included in the SOP	Agree / Disagree
Clause 8(1)(a)(ii)	Clause 8(1)(a)(ii) specifies that the relevant Minister must be satisfied that an order is not broader than reasonably necessary to address the matters that gave rise to the order.	Officials recommend this amendment is included in the SOP	Agree / Disagree



	<p><b>The Committee recommends that clause 8(1)(a)(ii) is amended to clarify that “not broader” includes not “geographically broader”.</b></p> <p>This will make it clearer that orders can be made for specific geographical locations.</p>		
Clause 8(1)(c)(ii)	<p>Clause 8(1)(c)(ii) specifies that where it is not practicable to consult with the Regulations Review Committee, the Minister is required to consult with each leader of a political party represented in the present or previous Parliament party leaders.</p> <p>This clause is intended to apply during an interregnum only – the period when a Parliament has dissolved for the election period and a new Parliament has not yet been established.</p> <p><b>This drafting is currently unclear and the Committee recommends that clause 8(1)(c)(ii) is amended to make clear that party leaders should only be consulted during an interregnum, and that reference to “previous Parliament” be clarified so that it applies to only the leaders in the “most recent Parliament”.</b></p>	Officials recommend this amendment is included in the SOP	Agree / Disagree
Clause 8(1)(d)(ii)	<p>Clause 8(1)(c) requires the relevant Minister to provide draft orders to the Regulations Review Committee (RRC) or party leaders.</p> <p>Clause 8(1)(d)(ii) requires the Minister to have had regard to any comments from them provided within 3 working days from receiving the draft order.</p> <p><b>The Committee considers 3 working days too short an amount of time and recommends amending clause 8(1)(d)(ii) so the Minister can extend this timeframe (but not shorten it) to allow the Regulations Review Committee or party leaders more time to make comment.</b></p>	<p>Officials recommend this amendment is included in the SOP.</p> <p>We note this would align clause 8(1)(d)(ii) with clause 9(1)(c) which enables the Minister to extend the timeframe for public engagement and clause 16(2) which enables the Minister to extend the timeframe for review by the Severe Weather Recovery Review Panel.</p>	Agree / Disagree

13(1)(a)	<p>Clause 13 sets out what the Minister for Cyclone Recovery must consider when appointing members of the Severe Weather Events Recovery Review Panel.</p> <p>Several submissions expressed concerns about the role of the panel and its membership criteria. Suggestions were made about requiring expertise in other areas not already specified, including but not limited to climate change, public health, Māori interests, and about including representatives from local councils. The Committee noted that the panel was not intended to be a representative panel.</p> <p><b>However, the Committee did acknowledge some of these areas and recommends amending clause 13(1)(a) to include expertise in primary industries and health protection.</b></p>	<p>Officials recommend this amendment is included in the SOP</p> <p>Officials also recommend that “rural interests” be included as an example of a type of ‘community interests’ in the list of matters the Minister for Cyclone Recovery must consider when appointing members (note this was not included in the Committee’s recommendations).</p>	Agree / Disagree
13(3)(a)(iv)	<p>Another area of knowledge, experience or expertise identified in clause 13(3)(a)(iv) is “emergency response and recovery”. <b>The Committee considers this phrase too narrow and recommends amending it to “emergency management (including recovery and resilience)”.</b></p>	<p>Officials recommend this amendment is included in the SOP</p>	Agree / Disagree
19(2)(c)	<p>Clause 19(2)(c) of the Bill specifies that a Minister can only make an Order in Council adding Acts to Schedule 2 where satisfied that there is “unanimous or near-unanimous” support from political party leaders. Based on experience, the Committee is concerned that “unanimity or near unanimity” is highly subjective and not always well understood.</p> <p><b>Some of the Committee recommend amending clause 19(2)(c) to specify that the relevant Minister must be satisfied that there is the agreement of party leaders representing at least 75% of members of Parliament.</b></p> <p>Such a provision could be modelled on section 267B of the Electoral Act.</p>	<p>Officials recommend careful consideration before this is added to the SOP.</p> <p>Requiring 75% majority of members is a super-majority in the House and is usually reserved for matters that require an entrenched provision, which is not the case here. The example referred to by the Committee is an example from Electoral law, where there is a long-standing convention of cross-party support for changes to electoral law, to protect electoral laws from political partisanship. We query whether the same level of specificity is necessary for this Bill.</p>	Agree / Disagree

Clause 32	<p>Clauses 30 to 32 of the Bill amends the Resource Management Act. Clause 32(4) expands the definition of “culturally significant land” to include land that “is on or near the statutory overlay of ngā rohe moana and ngā rohe moana o ngā hapū o Ngāti Porou”.</p> <p><b>The Committee considers the word “near” to be ambiguous and recommends amending clause 32 to replace the term “near” with “within, adjacent to, or directly affecting”.</b></p> <p>This would be consistent with the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.</p>	Officials recommend this amendment is included in the SOP	Agree / Disagree
N/A	<p>The Committee is concerned that the truncated select committee process has not provided sufficient time for full scrutiny of the broad powers in the Bill.</p> <p><b>The Committee strongly supports a select committee review, but with mixed views as to whether it should be legislated for. Some members consider it should be left to usual parliamentary process and standing orders, while others consider it should be required through legislation.</b></p>	<p>Confirm whether you would like this amendment included in the SOP.</p> <p>It is generally preferable that parliamentary process is not legislated for.</p> <p>In light of the significant number of constitutional safeguards contained in the Bill, including the ability for the Courts to review decisions made under it, you may consider there is not a need to legislate for post enactment scrutiny by a select committee.</p> <p>The Bill contains a significant number of constitutional safeguards – more than was previously contained in the Acts for either Christchurch or Kaikoura/Hurunui. In particular, this Bill does not remove the role of the Courts in reviewing decisions made under it.</p>	Agree / Disagree

**Additional recommended amendment**

Clause	Officials' recommendation	Minister's decision Agree/disagree with recommendation
13(3)(b)	<p>Clause 13(3)(b) specifies that in appointing Panel members, the Minister for Cyclone Recovery must consider appointing members with “local perspectives in the severe weather events affected areas of mana whenua, mātauranga Māori, tikanga, and te ao Māori”.</p> <p><b>Officials recommend clause 13(3)(b) is amended to “local perspectives in the severe weather events affected areas of local Māori, Māori communities and their interests and values, including mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture), iwi and hapū.</b></p> <p>This new construction more appropriately includes Māori concepts and removes concepts that don't fit within the role of the panel (such as te ao Māori) and provides them with a translation to aid understanding. This change is supported by officials from Te Puni Kokiri and Te Arawhiti, and Ministers Jackson and Davis.</p>	Agree / Disagree

Proactively