



Proactive Release

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

Briefings from the Cyclone Recovery Unit

The following documents have been included in this release:

Title of briefing: Severe Weather Events Recovery Review Panel Appointments

Title of briefing: Progression of Orders in Council Under the Severe Weather
Emergency Recovery Legislation Act 2023

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)(a), to protect the privacy of individuals
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials



Coversheet

Briefing: Severe Weather Events Recovery Review

Panel appointments

Date:	19/04/2023	Report No:	DPMC-2022/23-1299
		Security Level:	IN-CONFIDENCE
		Priority level:	Urgent

	Action sought	Deadline
Hon Grant Robertson Minister for Cyclone Recovery	agree to recs	21/04/2023

Name	Position	Telephone	1 st Contact
Paul O'Connell	Executive Director (Acting), Policy, Cyclone Recovery Unit	s9(2)(a)	
Victoria Nicholson	Principal Advisor, Cyclone Recovery Unit	s9(2)(a)	✓

Departments/agencies consulted on Briefing
N/A

Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes

Briefing

Severe Weather Events Recovery Review Panel appointments

To: Hon Grant Robertson
Minister for Cyclone Recovery

Date	19/04/2023	Security Level	[IN CONFIDENCE]
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Purpose

1. This briefing seeks your agreement to the short-list of nominees for appointment to the Severe Weather Events Recovery Review Panel established by the Severe Weather Emergency Recovery Legislation Act 2023.

Recommendations

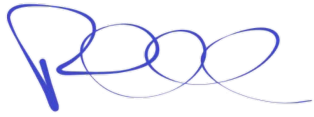
We recommend you:

1. **note** that the Severe Weather Emergency Recovery Legislation Act 2023 came into force on 13 April 2023
2. **note** that the Act creates a mechanism to amend legislation via Orders in Council where needed to support recovery from the recent severe weather events
3. **note** the Act also establishes a Severe Weather Events Recovery Review Panel to review draft orders and provide advice to relevant Ministers
4. **note** the Minister responsible for the administration of the Act must appoint up to 12 members with appropriate knowledge, skills, expertise and experience to assist the Panel to perform its functions
5. **note** previous agreement to appoint fewer than the maximum number of panel members in order to undertake further consultation with Māori entities and nominate additional panel members with Māori expertise
6. **note** you may wish to discuss the long-list with your Ministerial colleagues, in particular the Minister for Maori-Crown Relations, the Minister for Maori Development, the Minister for Emergency Management, and the Associate Minister for Cyclone Recovery.
7. **agree** to put forward Hon Denis Clifford as the Convenor of the Panel

YES / NO

8. **agree** to the following being put forward for appointment as members of the Panel (select up to eleven):
- 8.1. Rachael Schmidt-McCleave YES / NO
 - 8.2. Natalie Coates YES / NO
 - 8.3. Horiaana Irwin-Easthope YES / NO
 - 8.4. Liana Huia Poutu YES / NO
 - 8.5. Rachel Devine YES / NO
 - 8.6. s9(2)(a) YES / NO
 - 8.7. s9(2)(a) YES / NO
 - 8.8. s9(2)(a) YES / NO
 - 8.9. s9(2)(a) YES / NO
 - 8.10. s9(2)(a) YES / NO
 - 8.11. Dr Charlotte Severne YES / NO
 - 8.12. Dr Veronica Jacobsen YES / NO
 - 8.13. s9(2)(a) YES / NO
 - 8.14. Anne Carter YES / NO
 - 8.15. Assoc Prof Dr Hamish Rennie YES / NO
 - 8.16. Steve Wyn-Harris YES / NO
9. **note** individuals not preferred to progress to the short list will be added to an inter-agency list of individuals or groups to be consulted on relevant Orders in Council as part of the policy development phase and during the statutory public consultation period
10. **note** officials will continue to work with Te Arawhiti and Te Puni Kōkiri on further engagement with Māori entities to identify additional nominations for appointees to the Review Panel
11. **agree** to proactively release this report, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982. YES / NO

12. **note** that following your approval of a shortlist of nominees, officials will provide you with a draft Cabinet paper for Ministerial consultation on Monday 24 April, with the intent that it be considered by the Cabinet Appointments and Honours Committee on 3 May.



Paul O'Connell
Executive Director, Policy
Cyclone Recovery Unit

19 April 2023

Hon Grant Robertson
Minister for Cyclone Recovery

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Proactively Released

Background

2. The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) came into force on 13 April 2023. The Act establishes an Order in Council (OiC) mechanism for legislation to be amended by OiCs where needed to support the recovery from Cyclones Hale and Gabrielle and the heavy rain events over the upper North Island in January and February 2023.
3. To mitigate the constitutional risks associated with amending primary legislation via Order in Council, the legislation includes appropriate checks and balances to ensure oversight of the exercise of the OiC mechanism.

The Severe Weather Events Recovery Review Panel

4. One of the primary safeguards included in the Act is the establishment of the Severe Weather Events Recovery Review Panel (the Panel) to review draft orders and provide advice to the relevant Minister.
5. The Act requires the Minister responsible for the administration of the Act (the Minister) to appoint a Panel of up to 12 persons with appropriate knowledge, skills and experience to assist the Panel to perform its functions.
6. One of the Panel members, who is also the Convenor, must be a former or retired Judge of the High Court.
7. In appointing members of the Panel, the Minister must consider appointing members with:
 - a. knowledge, experience or expertise in relation to one or more of the following:
 - i. law (including if possible, the Māori land tenure system under Te Ture Whenua Maori Act 1993), public administration or local government;
 - ii. environmental protection, health protection, primary industries, biodiversity or climate change;
 - iii. local Māori interests and community interests (including rural interests) in the severe weather events affected areas;
 - iv. emergency management (including resilience and recovery);
 - b. local perspectives in the severe weather events affected areas of Māori, Māori communities, and their interests and values, including mātauranga Māori (Māori traditional knowledge) and tikanga Māori (Māori protocol and culture), iwi and hapu.
8. It is important to note that this is not a representative panel, but one where appointments are based on skills, experience and knowledge.
9. The Panel must provide relevant Ministers with its advice within three working days of receiving the draft order (or within any longer time allowed by the Minister).

Timing for appointment of Panel members

10. It is anticipated that the first orders will be drafted and ready for the Panel's review in mid-May. Accordingly, Panel members need to be appointed in early May. It is proposed that the Cabinet Appointments and Honours Committee (APH) considers the members to be appointed on 3 May 2023, ahead of final Cabinet approval on 8 May 2023.
11. To facilitate this timeline, you will receive a briefing and draft Cabinet paper for Ministerial consultation on Monday 24 April, which will reflect your preferences for the shortlist of nominees as sought in this briefing. Ministerial consultation on the draft cabinet paper will

need to be truncated and concluded by close of business Wednesday 26 April to provide for lodgement of the Cabinet paper on Thursday 27 May.

Terms of Reference for the Panel

12. The proposed Terms of Reference for the Panel are included as Attachment B. The Terms of Reference were circulated to the Cabinet Extreme Weather Recovery Committee (EWR) members on 31 March 2023 for feedback. No feedback was received. The Terms of Reference will be presented to APH for approval at the same time as the member appointments.
13. Although the full membership of the Panel is up to 12 members, the Terms of Reference note that the Panel will primarily operate in division (convenor and at least three Panel members). This is to reflect the nature and geographical areas which may be subject to a specific Order. Encouraging the Panel to operate by division also factors in Panel members' availability, acknowledging that there could be many OiCs and advice is required within three days.

Nominees for appointment to the Panel

14. The Act specifies that the Minister may seek nominations for appointments to the Panel from Local Government New Zealand and those Māori entities that the Minister considers have relevant knowledge of the severe weather events affected areas.
15. In preparing the short-list of nominations, nominations were sought from:
 - a. Government nomination services - including the Ministry for Ethnic Communities, Whakaha Ministry for Disabled People, Te Puni Kōkiri, Manatū Wāhine Ministry for Women and Ministry for Pacific Peoples;
 - b. Māori entities - including Te Tumu Paeroa (the Māori Trustee), Federation of Māori Authorities, Urban Māori Authorities (Manukau Urban Māori Authority and Te Whānau o Waipareira), New Zealand Māori Council, the National Iwi Chairs Forum and Māori Women's Welfare League;
 - c. Local Government New Zealand; and
 - d. Crown Law Office - the Solicitor-General was also engaged as nominations relate to the identification of a former or retired Judge of the High Court and persons with knowledge in the area of law.

Short-list of nominees for appointment

16. Officials recommend that the following persons be short-listed for appointment to the Panel, subject to relevant due diligence checks having been completed.

Panel Convenor

17. I propose that Hon Denis Clifford be appointed as the convenor of the Panel, for a period of three years. The Solicitor-General was consulted in Hon Clifford's shortlisting.
18. Hon Clifford was appointed to the High Court in 2006, and to the Court of Appeal in 2017. He retired from this role in mid-2022 and was appointed as an Acting Judge in the Court of Appeal shortly afterwards, with this term to end on 1 April 2023.

Panel Members

19. A matrix of nominee skills and experience relevant to assisting the Panel to perform its functions is attached as Attachment A. Having taken into account the criteria for appointment of panel members, officials recommend eleven persons from the list below are shortlisted for appointment:

- a. Racheal Schmidt-McCleave – Ms Schmidt-McCleave is an experienced lawyer with expertise in public law, professional disciplinary law, health and safety.
- b. Natalie Coates – Ms Coates is based in Whakatane, and has significant experience advising on public law, Te Tiriti o Waitangi, tikanga in the law, Māori land law and Māori, human and indigenous rights.
- c. Horiana Irwin-Easthope – Ms Irwin-Easthope is a lawyer with expertise in Resource Management Act matters, Māori land law and commercial litigation.
- d. Liana Huia Poutu – Ms Poutu is a lawyer with a strong focus on Treaty of Waitangi, Māori land and Māori governance matters. She has been engaged in various governance roles including chair of an iwi post-settlement governance entity, Treaty claims negotiator as well as ministerial appointments including, most recently, her appointment to the Ministerial Advisory Committee on Emergency Management.
- e. Rachel Devine – Ms Devine is a lawyer with significant experience in resource management and public law. She has significant experience advising on infrastructure, resource consenting and planning projects.
- f. s9(2)(a) [Redacted]
- g. s9(2)(a) [Redacted]
- h. s9(2)(a) [Redacted]
- i. s9(2)(a) [Redacted]
- j. s9(2)(a) [Redacted]
- k. Dr Charlotte Severne – Ms Severne is the Chief Executive of Te Tuma Paeroa and a Māori Trustee. She is held a range of business and research strategy roles, including as the former NIWA Chief Scientist and Deputy Vice-Chancellor Māori and Pasifika at Lincoln and Massey University.
- l. Dr Veronica Jacobsen – Ms Jacobsen is an experienced public policy advisor across a wide range of issues including science technology, education, justice, social policy, natural resources, labour markets standards and conformance and international trade. She also has a background in law and economics.
- m. s9(2)(a) [Redacted]
- n. Anne Carter – Ms Carter is a professional director and advisor on policy design and development in relation to the management of whenua Māori, natural resources and the

environment. She has extensive experience in public sector policy and legislation and has held senior management roles in the New Zealand public service.

- o. Assoc Prof Dr Hamish Rennie -Assoc Prof Dr Rennie is the Head of Department of Environmental Management at Lincoln University. He is greatly experienced in analysing policy and legislation for its impact on the environment, including land resources, biodiversity and climate change, with 35 years' experience in undertaking, researching or teaching environmental impact assessment. He also has 16 years' experience teaching planning law.
- p. Steve Wyn-Harris – Mr Wyn-Harris would provide a specialist rural perspective as a Hawke's Bay farmer (but not in the severe impacted areas). He writes for farmers weekly, is well respected within the sector, and also brings primary industries and biodiversity experience.

20. The Candidate CV Forms for the above candidates are included as Attachment C.

21. NB: The CV Form from Liana Huia Poutu remains outstanding at the time of sign-out; this form is expected to arrive with the Cyclone Recovery Unit this evening (19 April) and will be forwarded to your office as soon as it is received.

22. Individuals not preferred to progress to the short list will be added to an inter-agency list of individuals or groups to be consulted on relevant Orders in Council as part of the policy development phase and during the statutory public consultation period.

Representativeness of appointment

23. In compiling the short-list of Panel members, officials have sought to appropriately balance the Panel in terms of gender, age, ethnicity, and geographic representation, and mix of skills and experience.

Remuneration of Panel Members

24. The Panel is classified as a Group 4 Level 1 Body under the Cabinet Fees Framework. However, given the likely nature and number of OiCs proposed, particularly within the four months from appointment, officials recommend that the panel members are paid outside this framework, on a pro rata basis as follows:

- a. \$1,500 per day for the Convenor person
- b. \$1,200 per day for Members.

25. This is consistent with the fees paid to the Review Panel for the Canterbury and Hurunui/Kaikoura Earthquakes Review Panels. A letter to the Minister for Public Services requesting this exemption from the fees framework will be drafted and provided to you next week along with the draft APH paper for Ministerial consultation.

Next steps

26. You may wish to discuss the long-list with your Ministerial colleagues, the Minister for Maori-Crown Relations, the Minister for Maori Development, the Minister for Emergency Management, and the Associate Minister for Cyclone Recovery, particularly given the shortened time provided for formal Ministerial consultation as discussed in paragraph 31.

27. Following relevant due diligence checks being undertaken, officials will finalise this list for approval by Cabinet on 8 May 2023, and appointment by the Minister for Cyclone Recovery. You will receive a briefing and draft Cabinet paper for Ministerial consultation on Monday 24 April, to be concluded by close of business Wednesday 26 April to provide for lodgement of

the Cabinet paper on Thursday 27 May (with APH consideration and Cabinet confirmation on 3 May and 8 May respectively).

28. Following your confirmation of the preferred short list of nominees, officials will undertake the appropriate enquiries concerning conflicts of interest, in accordance with the Public Service Commission appointment guidelines, to identify any conflict of interest that could reasonably be identified. Officials will work with the nominees regarding the management of identified conflicts of interest.
29. Officials will also draft a letter to the Minister for Public Services requesting exemption from the fees framework. This will be provided to you next week for signature along with the draft APH paper for Ministerial consultation.

Tranche One Orders in Council

30. Officials will continue to work with agencies to develop the first tranche of OiCs, according to the timetable attached in Attachment D. It is anticipated this first tranche will be enacted the week of 5 June.
31. Officials are developing a forward plan of OiCs mapped against the proposed five tranches. This forward plan will be provided to you and all EWR Ministers next week, for visibility of the OiC process over the next five months. Talking points and key messages will also be provided, to ensure consistency of communications.

Attachments:	Title	Security classification
Attachment A:	Matrix of nominee skills and experience relevant to assisting the Panel to perform its functions	In Confidence
Attachment B:	Severe Weather Events Recovery Review Panel Terms of Reference	In Confidence
Attachment C:	Candidate CV Forms	In Confidence
Attachment D:	Proposed timeline for progression of tranche one Orders in Council	In Confidence

Attachment A: Matrix of nominee skills and experience relevant to assisting the Panel to perform its functions

In appointing members, the Minister must consider whether members of the Panel have knowledge, experience, or expertise in relation to one or more of the following matters captured in the following table:

Nominee	Matter 1: Law (including, if possible, the Māori land tenure system under Te Ture Whenua Maori Act 1993), public administration, or local government	Matter 2: Environmental protection, health protection, primary industries, biodiversity, or climate change	Matter 3: Local Māori interests or community interests (including rural interests) in the severe weather events affected areas	Matter 4: Emergency management (including recovery and resilience)	Matter 5: Local perspectives in the severe weather events affected areas of Māori, Māori communities, and their interests and values (including mātauranga Māori and tikanga Māori), iwi and hapū.	Other relevant matters (specify)
Rachael Schmidt-McCleave	Expertise in public law, professional disciplinary law, and health and safety					
Natalie Coates	Significant experience advising on public law, Te Tiriti o Waitangi, tikanga in the law, Māori land law and Māori, human and indigenous rights				Based in Whakatane, see experience in Matter 1.	
Horiana Irwin-Easthope	Expertise in Resource Management Act matters, Māori land law and commercial litigation.		Whakapapa is to Ngāti Porou (Te Whānau a Putaanga), Ngāti Kahungunu, Rakaipaaka, see experience in Matter 1.		Whakapapa is to Ngāti Porou (Te Whānau a Putaanga), Ngāti Kahungunu, Rakaipaaka, see experience in Matter 1.	
Liana Huia Poutu	Expertise in Treaty of Waitangi, Māori land and Māori governance matters. Experienced in in the development of legislation, regulation and policy.			Member of the Ministerial Advisory Committee on Emergency Management		
Rachel Devine	Significant experience in public law, as well as resource management, infrastructure, resource consenting and planning projects.					
s9(2)(a)	s9(2)(a)					
s9(2)(a)		s9(2)(a)				
s9(2)(a)		s9(2)(a)				

Nominee	Matter 1: Law (including, if possible, the Māori land tenure system under Te Ture Whenua Maori Act 1993), public administration, or local government	Matter 2: Environmental protection, health protection, primary industries, biodiversity, or climate change	Matter 3: Local Māori interests or community interests (including rural interests) in the severe weather events affected areas	Matter 4: Emergency management (including recovery and resilience)	Matter 5: Local perspectives in the severe weather events affected areas of Māori, Māori communities, and their interests and values (including mātauranga Māori and tikanga Māori), iwi and hapū.	Other relevant matters (specify)
s9(2)(a)	s9(2)(a)			s9(2)(a)		
s9(2)(a)			s9(2)(a)	s9(2)(a)		
Dr Charlotte Severne <i>Nominated by Māori Trustee</i>		Former NIWA Chief Scientist	Chief Executive of Te Tuma Paeroa and a Māori Trustee. Deputy Vice-Chancellor Māori and Pasifika at Lincoln and Massey University			
Dr Veronica Jacobsen	Background in law and economics. LLB in Law and PhD in Law and Economics.	Experienced public policy advisor across a wide range of issues including science technology, education, justice, social policy, natural resources, labour markets standards and conformance and international trade.				Economic matters Experienced economist, former Chair of the New Zealand Government Economics Network and past President and life member of the Law and Economics Association of New Zealand
s9(2)(a)	s9(2)(a)					s9(2)(a)
Anne Carter <i>Proposed by Federation of Māori Authorities</i>	Extensive experience in public sector policy and legislation and has held senior management roles in the New Zealand public service,	Professional director and advisor on policy design and development in relation to the management of whenua Māori, natural resources and the environment.				
Assoc Prof Dr Hamish Rennie	16 Years' experience teaching planning law.	Skilled in Environmental Awareness, Natural Resource Management, Coastal/Marine/Freshwater and Fisheries/Aquaculture Policy and Planning.		A participant in the National Science Resilience Challenge, which included case studies in Hawkes Bay and post-quake Canterbury.		

Nominee	Matter 1: Law (including, if possible, the Māori land tenure system under Te Ture Whenua Maori Act 1993), public administration, or local government	Matter 2: Environmental protection, health protection, primary industries, biodiversity, or climate change	Matter 3: Local Māori interests or community interests (including rural interests) in the severe weather events affected areas	Matter 4: Emergency management (including recovery and resilience)	Matter 5: Local perspectives in the severe weather events affected areas of Māori, Māori communities, and their interests and values (including mātauranga Māori and tikanga Māori), iwi and hapū.	Other relevant matters (specify)
Steve Wyn-Harris <i>Proposed by Minister McAnulty</i>		Expertise in biodiversity and primary industries. Experience in climate change issues facing farmers.	Rural perspective.			

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Attachment B: Severe Weather Events Recovery Review Panel Terms of Reference

Background

1. The Severe Weather Emergency Review Panel (the Panel) was established under section 13 of the Severe Weather Recovery Act 2023 (the Act).
2. Parliament passed the Act to assist councils and communities with the recovery and improve resilience for the areas affected by severe weather events. In order to mitigate the constitutional risks associated with amending primary legislation via Orders in Council (OiCs), the legislation will include appropriate checks and balances to ensure oversight of the exercise of the OiC mechanism, including the establishment of a panel to review draft Orders and provide advice to the relevant Minister.
3. The purpose of the Act is to assist communities and local authorities affected by severe weather events to respond to, and recover from, the impacts of severe weather events, as set out in section 3 of the Act.

Orders in Council

4. The Act achieves its purpose by providing for an OiC mechanism which can grant exemptions from, modify or extend specified enactments in Schedule 2 of the Act. Other enactments can also be added to Schedule 2. This is to enable expedited, cost-effective recovery processes, and to achieve earlier or greater certainty for communities and local authorities during severe weather events.

Roles and Responsibilities

5. The Panel is a statutory body and its functions are set out in section 16 of the Act. They are to:
 - a. review all draft OiCs that may be required for the purpose of the Act; and
 - b. provide advice on request to the Minister in relation to OiCs that may be required for the purpose of the Act.
6. The Panel is an important check and balance on the significant powers in the Act.
7. The Panel has been appointed to provide expert, technical advice and scrutiny of the draft OiCs. The Panel does not have investigatory powers nor is it empowered to hear from interested parties. It does not have a representative function and is not a forum for general engagement or community participation.
8. Although the full Panel membership may be up to 12 members, it is expected that the Panel will operate in division (section 15), depending on the nature of a proposed OiC and the geographical areas it applies to (see section 25 below). The Convenor will have responsibility for determining appointment to any division of the panel, taking into account the relevant skills, experience and knowledge of members and the matters subject to the proposed OiC.

Role of the Convener

9. The Convener will lead the Panel to run an effective and rigorous review process. The Convener has responsibility for and oversight of the Panel's operations.
10. The Convener will:
 - a. Agree a forward work programme with the Cyclone Recovery Unit within the Department of Prime Minister and Cabinet (DPMC) (or the relevant inheriting agency) and oversee the progression of the work in conjunction with the Secretariat;
 - b. Set meeting agendas, with the assistance of the Secretariat, and approve meeting minutes;
 - c. Determine, with assistance from the Secretariat, what action is appropriate if a member has a potential conflict of interest;
 - d. Represent the Panel in any meetings with the Minister, the Cyclone Recovery Unit DPMC (or the relevant inheriting agency) or other stakeholders, as required;
 - e. Seek written approval from the Cyclone Recovery Unit DPMC (or from the relevant inheriting agency) before incurring any significant expenditure or financial commitment on behalf of the Panel (excluding incidentals such as travel, accommodation and reasonable expenses); and
 - f. If the Convener is absent from a meeting, the Convener may designate an Acting Convener for that meeting. If the Convener does not designate an Acting Convener, then the Minister may designate any other member of the Panel to act in the Convener's place for that meeting (section 14(2)).
 - g. Determine the make-up of Panel members on any division of the Panel (Clause 15).

Roles of the Panel Members, including the Convener

11. All Panel members, including the Convener, have the following roles and responsibilities:
 - a. Make every effort to attend each meeting and report anticipated absences to the Secretariat;
 - b. Prepare adequately prior to each meeting and participate actively in meetings, contributing to actions when agreed;
 - c. Bring matters of significance to the attention of the Panel and use professional perspectives to undertake analysis or prepare advice as required;
 - d. Maintain a broad knowledge of the issues and interests that relate to the operations of the Panel, not regarding themselves as representatives or advocates for particular sectors or interests;
 - e. Comply with the Standards of Conduct in Appendix 1; and,
 - f. Record any actual or perceived conflict in writing and provide it to the Convener at the first opportunity, and at any time during the term if a new conflict arises. In the event

of a conflict of interest being identified the Convenor will provide guidance on the appropriate response.

Requirements for Panel's review and recommendations

12. The Panel's recommendations must meet the requirements of section 16 of the Act.
13. Within 3 working days after the date on which a draft OiC is received by the Review Panel the Convenor must give the Minister, and the relevant Minister, a report that includes the Panel's recommendations and the reasons for making those recommendations, which will be made publicly available.
14. The Panel's recommendations may also address:
 - a. Whether the draft OiC is sufficiently certain and clear, and if they are not, options to improve;
 - b. The identification of any unintended or unforeseen but likely outcomes of the draft Order in Council, and ways to address these; and
 - c. Any other matters the Panel considers relevant to the scope of its review of the draft Order in Council.
15. The Minister must have regard to the Panel's recommendations before making a final decision on whether to recommend the making of an OiC to the Governor General.
16. The Panel's review may be conducted in any manner that the Convenor thinks appropriate, including by telephone or video conference (section 16(3)). It is anticipated that the majority of Panel review meetings will be conducted by video conference.
17. In reviewing a draft Order in Council, the Panel is expected to not advocate for any particular values or represent any interest group but to be fair and open-minded in its assessment.
18. Any requests for information required by the Panel in order to discharge its functions and duties should be directed to the Cyclone Recovery Unit DPMC (or to the relevant inheriting agency).
19. The Panel's report will be sent by the Secretariat to the relevant Minister's office signed by the Convenor on behalf of the Panel. Electronic copies of the Panel's report will also be sent to the relevant Minister's Office and copying in the Minister for Cyclone Recovery.

Term of the Panel

20. The Panel will commence its role on 15 May 2023, as per the date of the letters of appointment.

Administrative support to the Panel

21. The Panel will be supported by a Secretariat based in Wellington.
22. The Secretariat will:
 - a. Support the Convenor and prepare meeting agendas;

- b. Record meeting minutes and action points from Panel meetings;
- c. Circulate meeting packs (agenda, minutes and any papers required);
- d. Create or commission papers for Panel meetings as required;
- e. Procure research on behalf of the Panel if required;
- f. Book travel, accommodation, catering and venues as required; and
- g. Administer expenditure requests, member remuneration and reimbursement as required.

23. The Secretariat will provide the Panel members with:

- a. Copies of draft OiCs;
- b. A copy of the draft reasons for the Minister's recommendation to the Governor-General under section 8(1), including why the draft OiC is appropriate;
- c. A summary of any written comments received by the Minister out of the engagement process required under section 9. This might include comments from local Māori and local community groups, local authorities and other persons, or the public generally; and
- d. Other relevant documentation to assist with the development of the Panel's recommendations.

Membership

24. The Panel is comprised of up to 12 members, including the Convenor, appointed by the Minister, who have appropriate knowledge, skills, and experience to assist the Panel to perform its functions.

25. It is proposed that the Panel will primarily operate in division (convenor and at least three Panel members). This is to reflect the nature, geographical areas and matters which may be subject to a specific Order. If, for example, an OiC primarily related to transport matters in the Hawke's Bay area, the Panel division may include additional members with knowledge and experience or local interests and perspectives relevant to the Order subject matters.

26. The Convenor must be a former or retired Judge of the High Court (section 13(2)).

27. All members are appointed on the terms and conditions specified in their letter of appointment and these Terms of Reference.

28. An appointed member vacates office if he or she:

- a. Is removed by written notice given by the Minister or
- b. Resigns by written notice given to the Minister.

Appendix 1: Standards of Conduct

A. All members are expected to adhere to the following standards of conduct.

Conflicts of interest

- B. A conflict of interest will occur when a member's private interests interferes, or appears to interfere, with an issue that faces the Panel. A conflict of interest will also occur when there is a possibility that a benefit may apply to a sector, industry or organisation that they represent. A conflict of interest may be real or perceived. Further guidance can be found in [Managing conflicts of interest: A guide for the public sector](#).
- C. Any situation that involves or may be expected to involve a conflict or perceived conflict of interest must be declared immediately to the Convener and recorded in writing, as soon as the conflict arises.
- D. The Convener will be responsible for the management of declared conflicts of interest, and all declared conflicts of interest must be reported to DPMC, or to the relevant inheriting agency.

Confidentiality and media

- E. In order for the Panel to operate effectively, members must maintain the confidence of the Panel, including maintaining confidentiality of matters discussed at meetings, and any information or documents provided to the Panel.
- F. Any approaches by media to Panel members must be referred to the Convener who then must also alert the Department of the Prime Minister and Cabinet (via the Secretariat), or the relevant inheriting agency, and the Minister about the request.

Privacy Act 2020

- G. Members must at all times comply with the requirements of the Privacy Act 2020 and keep information about identifiable individuals confidential.

Official Information Act 1982

- H. All information held by the Minister and the Department of the Prime Minister and Cabinet or the inheriting agency (including information provided by the Panel) is official information under the Official Information Act 1982 and, subject to the requirements of that Act, may be released to the public.
- I. If the Minister or DPMC or the inheriting agency is considering releasing information relating to the Panel under the Official Information Act 1982, the Department of the Prime Minister and Cabinet or the inheriting agency will inform the Convener before it is released.

Respect for others

- J. Members will treat each other and the opinions of others with respect at all times. Members will not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing practices.

Advocacy

- K. Members must avoid actively promoting a standpoint or cause of their industry and will participate in meetings with the aim of reaching an outcome that is acceptable to all participants.

Attachment C: Candidate CV Forms

Pages 18-67 have been withheld under the Privacy Act.

Proactively Released



Coversheet

Briefing: Progression of Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023

Date:	28/04/2023	Report No:	DPMC-2022/23-1420
		Security Level:	[IN CONFIDENCE]
		Priority level:	Moderate

		Action sought	Deadline
Hon Barbara Edmonds Acting Minister for Cyclone Recovery		agree to recs	05/05/23

Name	Position	Telephone	1 st Contact
Paul O'Connell	Acting Executive Director, Policy, Cyclone Recovery Unit	s9(2)(a)	
Victoria Nicholson	Principal Advisor, Cyclone Recovery Unit	s9(2)(a)	✓

Departments/agencies consulted on Briefing
N/A

Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: Yes

Briefing

PROGRESSION OF ORDERS IN COUNCIL UNDER THE SEVERE WEATHER EMERGENCY RECOVERY LEGISLATION ACT 2023

To: Hon Barbara Edmonds
Acting Minister for Cyclone Recovery

Date	28/04/2023	Security Level	[IN CONFIDENCE]
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Purpose

1. This briefing provides you with
 - 4.1 A plan for the progression of five tranches of Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023
 - 4.2 Key messages regarding the passing of the Act and the use of the new Orders in Council mechanism to support any conversations you may be having with stakeholders.
2. It also informs you of the intention for agencies to start consulting with Councils, Iwi/Māori and stakeholders on the Order in Council process, the timeframes and potential content.

Recommendations

We recommend you:

1. **note** five tranches of Orders in Council have been planned between now and early September 2023
2. **note** the tranche approach sets timeframes that Orders in Council must meet in order to progress within each tranche
3. **note** the importance of Councils and Iwi/Māori within the affected areas:
 - 3.1. understanding the Order in Council process and their role in it
 - 3.2. being able to inform and escalate issues for inclusion in the proposed Orders in Council, and
 - 3.3. being consulted meaningfully at the appropriate stages during their progression

4. **note** that statutory requirements for consultation with stakeholders such as Iwi/Māori are not amended by the Severe Weather Emergency Recovery Legislation Act 2023 unless included in Schedule 2 of the Act and amended via Order in Council process

5. **agree** that the key messages provided in Attachment B be used to inform upcoming outwards-facing communications from the Cyclone Recovery Unit and agencies **YES / NO**

6. **note** agencies will begin contacting Councils, Iwi/Māori and stakeholders in a coordinated manner to understand any on the ground needs to inform future Orders in Council

7. **agree** to circulate this briefing to: **YES / NO**

7.1. all members of the Cabinet Extreme Weather Recovery Committee

7.2. the Minister of Forestry


7.3. the Minister of Conservation

7.4. the Minister for Land Information

7.5. the Minister of Justice

7.6. the Minister for Māori-Crown Relations, and

7.7. the Minister for Māori Development.



Paul O'Connell
Acting Executive Director, Policy
Cyclone Recovery Unit

28/04/2023

Hon Barbara Edmonds
Acting Minister for Cyclone Recovery

...../...../.....

Background

3. The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) came into force on 13 April 2023. The Act establishes an Order in Council mechanism for legislation to be amended by Orders in Council where needed to support the recovery from Cyclones Hale and Gabrielle and the heavy rain events over the upper North Island in January and February 2023.

There are five tranches of Orders in Council planned

4. Five tranches of Orders in Council have been planned between now and early September 2023. The following high-level principles informed the development of the process and timelines for these tranches (as detailed in a previous briefing circulated to EWR members [DPMC-2022/23-1079 refers]):
 - 4.3 Due to the number of Acts agencies have identified as possibly requiring amendment, it is important that the Order in Council making process is consistent and streamlined.
 - 4.4 Some Orders in Council need to be made as soon as possible to be effective. To facilitate this, we must ensure there is an appropriate amount of Cabinet-level oversight, an efficient and timely decision-making process, and that Ministers' and Cabinet's time is used efficiently.
 - 4.5 It is important to ensure Orders under the Bill are produced in a co-ordinated and streamlined manner that minimises the impact on the ability for the Government's other priority legislation to be produced (particularly in the lead-up to the election).
 - 4.6 Some Orders in Council will be complex and amend several Acts, with multiple Ministers and agencies involved. In such situations, it is intended that the relevant Ministers agree one lead Minister who will be responsible for taking the policy proposal through Cabinet, supported by one lead agency who will be responsible for the policy development and providing collated advice on the Order in Council process.
5. The appended table in **Attachment A** shows the proposed content of the five tranches, including proposed lead Ministers and agencies for complex Orders in Council, and approximate timing.
6. While there is certainty regarding the content of tranches one and two, the number and content of Orders in Council in tranches three onwards may deviate significantly from that currently indicated, as more information about the need on the ground is fed upwards from Councils, Iwi/Māori and other stakeholders. Likewise, there is the possibility of tranches being removed from the schedule if they are no longer required. The table in **Attachment A** therefore provides an indication of proposed content of future Orders in Council only, though the timing of tranches is set.
7. The tranche approach has been consulted on with all affected agencies and referenced in previous advice [DPMC-2022/23-1079 refers]. The tranche approach creates set timeframes in order to assist agencies like Crown Law Office and Parliamentary Counsel Office with scheduling their input and avoiding situations where they are rushed into advising on or drafting last minute legislative changes (unless a truly urgent Order in Council is required for as yet unforeseen circumstances).
8. If agencies proposing an Order in Council miss a key milestone in a given tranche (such as Cabinet approval of policy decisions, or completion of consultation), they must wait until the

next tranche comes around before continuing the Order in Council process. Ad hoc progression of Orders in Council will not be possible, unless under extenuating circumstances.

9. Officials at agencies have indicated there may be a need for further tranches to be planned for enactment after the House rises for the 2023 election, to accommodate later policy decisions. While this is possible, the process for gaining policy and Cabinet approvals as required to progress the Orders in Council becomes considerably more complicated. Officials will advise further on the requirements of this process if and when it becomes apparent that additional tranches will be required.

Communication and consultation with affected Councils, Iwi/Māori and stakeholders is important

10. It is important that Councils, Iwi/Māori and stakeholders within the affected areas understand the Order in Council process and their role in it, are able to inform and escalate issues for inclusion in the proposed Orders in Council, and are consulted meaningfully at the appropriate stages during their progression. There are three ways in which this communication and consultation will be achieved:
 - 10.1 During the development of initial policy advice, to inform the policy rationale and ensure the need on the ground is well understood.
 - 10.2 Through the Severe Weather Recovery Review Panel, utilising the skills, experience and knowledge of the Review Panel members.
 - 10.3 Through the Minister's public consultation on policy approvals, where targeted consultation with subject matter experts may also be undertaken.
11. There is a tension, however, between the need to progress rapidly with Orders in Council to provide certainty and relief as soon as possible to those in affected areas, and the need for agencies to comply with consultation requirements in other legislation, where they are not included in Schedule Two of the Act for potential amendment (such as Settlement Acts).
12. Where the consultation requirements of other legislation are not amended and they are not able to be satisfied within the timelines of the scheduled tranches, an Order in Council may begin the process in one tranche and conclude it in a later tranche once their consultation is complete.
13. We are aware of the burden placed on Councils and Iwi/Māori by the progression of multiple Orders in Council at pace and are mitigating this by being as joined up as possible while not undermining current consultation processes and timeframes. The Cyclone Recovery Unit and Te Puni Kōkiri are working with Te Arawhiti and the Department of Internal Affairs to develop a collaborative approach to undertaking consultation with Iwi/Māori, and with Council Chief Executives, respectively.
14. Agencies are required to complete a high-level Engagement Proposal as part of the development of their Orders in Council and present these for consideration along with the Cabinet papers seeking policy approvals. More detail of the proposed consultation activities for each Order in Council will be provided in those high-level Engagement Proposals.

Key messages are provided

15. To support these activities, and any discussions you may have with stakeholders about the Order in Council process, key messages are provided for you in **Attachment B**. With your agreement, these key messages will also form the basis of upcoming outwards-facing communications from the Cyclone Recovery Unit and agencies.

16. Key messages are also included regarding the truncated legislative process followed for the Act, as officials are aware of questions regarding this being raised by various stakeholders.

Next steps

17. It is recommended that you circulate this briefing to all members of the Cabinet Extreme Weather Recovery Committee to inform their understanding of the Order in Council process and set expectations for upcoming Order in Council activities, along with the following Ministers who may be responsible for proposed Orders in Council:

- 16.1 The Minister of Forestry.
- 16.2 The Minister of Conservation.
- 16.3 The Minister for Land Information.
- 16.4 The Minister of Justice.
- 16.5 The Minister for Māori-Crown Relations.
- 16.6 The Minister for Māori Development.

18. The Cyclone Recovery Unit will turn the key messages in **Attachment B** and key information from this briefing about the content and high-level timing of tranches into a format appropriate for dissemination to Councils, Iwi/Māori and stakeholders in affected areas.

19. Officials will continue to progress the Orders in Council in accordance with the timelines provided in **Attachment A**.

Attachments:	Title	Security classification
Attachment A:	Proposed tranches for Orders in Council under the SWERL Act	In Confidence
Attachment B:	Key messages for stakeholder conversations and communications	In Confidence

Attachment A: Proposed tranches for Orders in Council under the SWERL Act

Note: the content for tranches three onwards is indicative only. The rationale and impacts are still being confirmed through real time information from the regions, and changes in content and timing are expected to be made over the next few weeks.

Tranche	Key dates		Proposed content of Orders in Council	Agency/ies leading the Order in Council
Tranche One	Wednesday 19 April	Ministers' approval of policy proposals.	<ul style="list-style-type: none"> Amending Annual Plan consultation and content requirements for those severely impacted councils which are unable to meet legislative requirements due to severe weather impacts. Extending the time for local authorities within a region to enter into an agreement following the triennial election from 1 March 2023 to 1 June 2023. Extending the time that local authorities must publish a governance statement from 8 April 2023 to 8 July 2023. 	Department of Internal Affairs
	Monday 1 May	Cabinet consideration of policy proposals.		
	Tuesday 2 May - Friday 5 May minimum (could extend to Friday 12 May if longer period required)	Ministerial public engagement on the draft proposal.		
	Thursday 18 May - Tuesday 23 May	Review Panel consideration.	<ul style="list-style-type: none"> Extending completion dates for revaluations by Hastings District Council. 	Land Information New Zealand
	Tuesday 6 June	Cab/CBC acting as LEG approval.		
	Wednesday 7 June	Enactment.		
Tranche Two	Thursday 11 May	Ministers' approval of policy proposals.	[REDACTED]	s9(2)(f)(iv)
	Wednesday 31 May	EWR consideration of policy proposals.	[REDACTED]	[REDACTED]
	Wednesday 7 June - Tuesday 13 June minimum (could extend to Tuesday 20 June if longer period required).	Ministerial public engagement on the draft proposal.	[REDACTED]	[REDACTED]
	Thursday 29 June - Tuesday 4 July	Review Panel consideration.	[REDACTED]	[REDACTED]
	Wednesday 19 July	LEG approval.	[REDACTED]	[REDACTED]
	Tuesday 25 July	Enactment.	[REDACTED]	[REDACTED]

Tranche	Key dates	Proposed content of Orders in Council	Agency/ies leading the Order in Council																					
Tranche Three	<table border="1"> <tr> <td>Thursday 25 May</td> <td>Ministers' approval of policy proposals.</td> </tr> </table>	Thursday 25 May	Ministers' approval of policy proposals.	<div style="background-color: #cccccc; height: 15px; width: 100%;"></div>	<div style="background-color: #cccccc; height: 15px; width: 100%;"></div>																			
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Attachment B: Key messages for stakeholder conversations and communications

Key messages regarding the passing of the Severe Weather Emergency Recovery Legislation Act 2023

Background

- The Severe Weather Emergency Recovery Legislation Act 2023 (the Act) came into force on 13 April 2023.
- The Act will ensure emergency powers are available when needed and that these can be carried out efficiently. The amendments will help local authorities to take immediate action to improve resilience to future weather events. They will also help all local authorities and civil defence and emergency management groups to operate safely and effectively.
- As well as making urgent changes to statutes to facilitate recovery in the areas affected by recent weather events, the Act enabled the Governor-General to make Orders in Council to modify other statutes to provide those impacted by the severe weather with relief from legislative requirements that are overly burdensome. Modifications are also permitted where necessary to ensure actions required to support an efficient and timely recovery can happen quickly.
- It is possible to specify additional statutes to be amended by an Order in Council through the same process, although no additional statutes are currently being considered.
- The Orders in Council made under the Act can have retrospective effect where appropriate. This ensures that local resources can continue to focus on and contribute effectively to the recovery.
- This approach is consistent with amendments and urgent legislation related to previous emergencies, such the Hurunui / Kaikōura Earthquake Recovery Act (2016).
- Oral submissions on the Bill were heard on 30 and 31 March 2023. The Committee received a total of 204 submissions. The majority of submitters were not supportive, with the main objection being that it was undemocratic. However, the majority of local authorities who submitted were supportive.

Regarding the truncated legislative process

- The Act passed through a fast-tracked legislative process. I recognise that passing emergency legislation can reduce both the ability of the public and other organisations to provide input into the legislation as it is being developed, and for the full scrutiny of parliamentary select committee processes to be applied.
- However, this needs to be balanced with the desire to provide certainty for the recovery effort on what emergency legislation may be provided. This is critical as recovery efforts will likely encounter substantial repair and rebuild issues, and individuals and businesses may face regulatory requirements that they struggle to meet.
- A number of safeguards are built into the Act to ensure Orders in Council are made appropriately, including:

- Cabinet scrutiny is required for all proposals, and Orders in Council can only be made upon the recommendation of the relevant Minister;
 - modifications by Orders in Council can only be made to statutes and documents included in Schedule Two of the Act;
 - Orders in Council must be necessary or desirable for one or more purposes of the Act, and must be connected to areas affected by specified severe weather events; and
 - Orders in Council must not be broader than is necessary, and can be subject to terms or conditions.
- There are also a number of safeguards that apply after an Order in Council has been made:
 - Orders in Council must be published, along with Ministers' reasons for recommending an Order in Council;
 - the Courts can examine the recommendations and decisions of Ministers;
 - the Minister for Cyclone Recovery must report to the House of Representatives at least once every six months on the operation of the Act;
 - relevant Ministers must keep their Orders in Council under review; and
 - the provisions of the Act will be repealed in a staged manner to ensure that the amendments to primary legislation are not in force longer than necessary.

Key messages on the Severe Weather Recovery Review Panel

- One of the primary safeguards included in the Act is the establishment of the Severe Weather Events Recovery Review Panel (the Panel) to review draft orders and provide advice to the relevant Minister.
- The Act requires the Minister responsible for the administration of the Act to appoint a Panel of up to 12 persons with appropriate knowledge, skills and experience to assist the Panel to perform its functions.
- The Minister for Cyclone Recovery is currently undertaking the appointment process and anticipates having a Review Panel appointed by 12 May 2023.

Key messages for Councils, Iwi/Māori and stakeholders feeding into future Orders in Council

- The Order in Council process is following a tranche approach, whereby there are scheduled tranches of Orders in Council progressing along set timelines. This is to manage the workload of high numbers of Orders in Council to be drafted and advised on, while ensuring proper processes are followed to inform quality decision-making.
- There are five proposed tranches of Orders, bring enacted as follows:
 - tranche one enacted week of 6 June (policy decisions are being made for this tranche concurrent with this briefing);
 - tranche two enacted week of 25 July (policy advice is being finalised for this tranche concurrent with this briefing);

- tranche three enacted week of 7 August;
 - tranche four enacted week of 28 August; and
 - tranche five enacted week of 4 September (all policy decisions to be made prior to the House rising).
- It is important that Councils, Iwi/Māori and stakeholders within the affected areas understand the Order in Council process and their role in it, are able to inform and escalate issues for inclusion in the proposed Orders in Council, and are consulted meaningfully at the appropriate stages during their progression.
 - Councils, Iwi/Māori and stakeholders will soon be provided with high-level information on the scheduled tranches of Orders in Council through various communications channels, including through their relevant government agency contacts and the Cyclone Recovery Unit website. This information will include when they will be able to feed into upcoming Orders in Council, and when they will likely be consulted on the content of the Orders in Council both during policy development stages and the public Ministerial consultation stage.
 - Government agencies will also be reaching out directly to Councils, Iwi/Māori and stakeholders to discuss potential changes to be made to statutes through the Order in Council process to address needs or barriers identified on the ground.

Proactively Reviewed