



LEGISLATION DESIGN AND ADVISORY COMMITTEE

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Chairperson
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Tēnā koe

Severe Weather Emergency Legislation Bill

Introduction

1. This submission is made by the Legislation Design and Advisory Committee (**LDAC**).
2. The LDAC is mandated by Cabinet to scrutinise Bills against the *Legislation Guidelines* (2021 Edition) (**Guidelines**). The Guidelines have been created to promote legislation that is well designed and accords with fundamental legal and constitutional principles.
3. LDAC's focus is not on policy, but rather on legislative design and the consistency of a legislative proposal or Bill with the principles contained in the Guidelines.
4. Given the timeframes provided, LDAC has not had the opportunity to conduct a robust analysis of the Severe Weather Emergency Legislation Bill (**the Bill**).

The Bill

5. Between 26 January 2023 and 16 February 2023, the North Island of New Zealand was impacted by severe weather events including cyclones Hale and Gabrielle, and heavy rainfall in Northland, Auckland, Waikato, and the Bay of Plenty.
6. The primary purpose of the Bill set out in the explanatory note is to assist the recovery of, and improve resilience in, the areas affected by these severe weather events – including their councils and communities.
7. To achieve this the Bill proposes to amend: the Civil Defence Emergency Management Act 2002 (**CDEM Act**), the Resource Management Act 1991 (**RMA**); the Local Government Act 2002 and the Food Act 2014. The most substantial amendments are to the CDEM Act. These amendments primarily relate to concurrent declarations of states of emergency.
8. In brief, the other proposed amendments are as follows:
 - to the Food Act and related secondary legislation – the extension of timeframes for operators of food businesses in affected areas.

- to the Local Government Act – amendments to transitional periods re water services in light of the severe weather events and to allow for remote attendance at local authority meetings.
- to the RMA – amending notice requirements in affected areas, extending timeframes and the deeming of preventative or remedial measures taken by owners or occupiers of land as being permitted activities.

Context

9. LDAC classifies legislation relating to emergencies into 3 broad categories: emergency preparedness (for example, the Epidemic Preparedness Act 2006), emergency response (for example, the COVID-19 Public Health Response Act 2020) and emergency recovery (for example, the COVID-19 Recovery (Fast-track Consenting) Bill). Sometimes response and recovery are combined, as was the case in some of the legislation relating to the Christchurch and the Kaikōura/Hurunui earthquakes.
10. On this classification, the Bill appears focused on emergency response and recovery. Given the nature and scale of the damage caused by these severe weather events and the experience in relation to other emergency events, it is likely that there is sufficient justification for bespoke legislation. The key question for Parliament is whether these are the right responses and does the legislation contain fit for purpose safeguards.
11. For LDAC, the key principles for response and recovery legislation are that any overriding of the general settings should be no greater than is reasonably necessary for the purposes of recovery, and that there should be ongoing scrutiny of the use of powers to override. These principles support the three core objectives for high quality law in Chapter 1 of the guidelines.
12. We recommend that, the Committee satisfy itself that the amendments in the Bill are justifiable in order to respond to and recover from the emergency.

Emergency readiness for emergency legislation

13. LDAC notes that the amendments contained in the Bill seem capable of a more considered and permanent solution. For example, the amendments to the CDEM Act to deal with differing national and local emergency seem, on the face of the Bill, foreseeable and capable of remedy by way of a non-emergency amendment to the CDEM Act, as does the amendments to the Food Act 2014 and the Food Regulations 2015, to provide an exemption from certain requirements.
14. Departmental regulatory stewardship should include an ongoing focus on the scope of legislation administered and any limitations of that legislation, particularly in an emergency.
15. Departments should know and understand their existing emergency response and recovery framework to ensure a clear understanding in advance of what can be done when a crisis occurs. Departments should also understand the limits of the legislation, and the triggers for an emergency legislative response.
16. Undertaking ongoing reviews of their ability to maintain business-as-usual development of legislation and support for legislative processes in times of crisis or emergency will also assist with the response and recovery but also minimise the need to pass urgent bespoke legislation.

Speed through the House

17. LDAC is concerned about the extreme speed through the House of this Bill. LDAC acknowledges the emergency situation and the need to support the response and recovery . However, select committee periods that allow time for submitters, advisers, and lawmakers to gather their thoughts and take a considered perspective on a Bill is necessary for good law making.
18. While extremely short select committee stages can add some value, it is difficult for submitters, advisers, and lawmakers to engage with the Bill's content. LDAC's recommendations about improving the emergency preparedness of legislation would help address this point for the future.
19. Given the extremely short timeframe it may be worth considering adopting a post enactment review process. We do not recommend legislating for a post enactment review in this case, rather we propose that the committee could recommend in its report that a post enactment review be completed by the Government with a view to a more considered and permanent solution. This will allow further consideration of the matters in this Bill and will go some way to addressing inadequate consideration during its parliamentary stages.

Recommendations

20. LDAC recommends that, the Committee satisfy itself that the amendments in the Bill are justifiable in order to respond and recover from the emergency.
21. To avoid repeated amendments in an emergency context, LDAC recommends that the committee highlight in its report that as part of Departmental regulatory stewardship Departments should include an ongoing focus on the scope of legislation administered and any limitations of that legislation, particularly in an emergency.
22. LDAC recommends that the committee consider adding a post enactment review process recommendation to their report on the Bill.
23. Thank you for considering our submission. We do not wish to be heard.

Yours sincerely



Mark Steel

Chair, Legislation Design and Advisory Committee