



Severe Weather Emergency Legislation Bill

235—1

Report of the Governance and Administration
Committee

March 2023

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Severe Weather Emergency Legislation Bill

Recommendation

The Governance and Administration Committee has examined the Severe Weather Emergency Legislation Bill. We recommend that the bill be passed, and that the House take note of the recommendations in this report.

About the bill as introduced

In January and February 2023, New Zealand experienced severe weather events, including Cyclones Hale and Gabrielle. The events resulted in slips and large-scale flooding across parts of New Zealand, causing significant damage and destruction and also resulting in death.

We wish to acknowledge the eleven people who lost their lives in the events, their families, and the people who were injured or sustained significant damage to their property.

The Severe Weather Emergency Legislation Bill is an omnibus bill, meaning that it would amend the: Civil Defence Emergency Management Act 2002 (CDEM Act), Resource Management Act 1991 (RMA), Local Government Act 2002 (LGA), Food Act 2014, and Food Regulations 2015.

The measures in this bill would enable the next phase of emergency response and recovery in the main areas affected by the recent severe weather events. The bill's purpose is to assist recovery and response efforts for the affected areas, and their councils and communities. To achieve this, the bill's proposed changes would:

- enable issues to be addressed relating to concurrent declarations of states of emergency and notices of transition periods under the CDEM Act, ensuring that emergency powers are available when needed
- allow operators of food businesses in areas impacted by the severe weather events an extended period of time to renew their registrations that expire during the period between 8 January 2023 and 16 May 2023, so that operators can continue to operate
- afford to operators of food businesses in areas impacted by severe weather events a temporary exemption from complying with verification requirements
- enable local authorities and Civil Defence Emergency Management Groups (CDEM) to meet remotely, counting members who attend in an audio-visual format (such as videoconference) as present
- enable local authorities to amend their current long-term plans in relation to water infrastructure and services, so that they can respond to damage caused by the recent severe weather events and improve resilience to future weather events
- for a limited amount of time, allow rural landowners and occupiers to undertake activities to implement preventative or remedial measures on their land to avoid, remedy, or

mitigate loss, injury, detriment, or damage, and for these activities to be deemed permitted activities

- extend timeframes for advising local authorities and applying for retrospective consents for emergency work, recognising it might not be possible for those affected by the weather events to comply with all planning and regulatory requirements, or meet existing time frames for retrospective consents, under the RMA.

Urgency of this legislation

Due to the urgency of this emergency legislation, Parliament required us to report back within a day and a half. For this reason, the changes we recommend are not included in a revision-tracked version of the bill. We recommend the changes be included in a Supplementary Order Paper to be tabled in the House by the sponsoring Minister.

We invited 96 interested groups to submit on the bill. We received 14 written submissions and heard oral evidence from 13 submitters at hearings in Wellington and through videoconference. Our report covers the main themes that we heard about from submitters, and covers some of the main amendments that we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to an issue relating to clauses in Parts 1, 3, and 4 relating to repeal dates for temporary provisions. We also wish to bring attention to issues in clauses 10 and 12, and also in clause 24, relating to new section 331B of the RMA. We discuss these in more detail later in our report.

Amending repeal dates

As introduced, Parts 1, 2, 3, and 4 of the bill contain various repeal dates for the proposed amendments.

We recommend that the repeal dates in Parts 1 and 3, and some dates in Part 4, be changed to 1 October 2024. We consider that our proposed date would provide sufficient time for the bill to achieve its intended purposes, and would make the repeal dates consistent across these parts of the bill.

We also recommend amending clause 21 of the bill as introduced, inserting new section 331F in the RMA, which relates to owners or occupiers of rural land taking emergency preventative or remedial measures. Our recommendation would extend the date in new section 331F(1) until 1 April 2024, enabling such works to happen in the most suitable circumstances, for example so that earthworks can be undertaken in drier conditions.

Extending timeframes for remote attendance at local authority meetings or committees

In the bill as introduced, from 12 February 2023 until 1 April 2024, clause 15, which amends the LGA, would enable remote attendance at local authority meetings, and meetings of local authority committees, so that councillors could meet remotely at any time. This includes at Civil Defence Emergency Management (CDEM) group meetings. Attending in this format would be considered as being present at the meeting, for the purposes of quorum. Roads and bridges destroyed or damaged by the recent weather events can make it difficult for some elected officials to attend meetings in person. Allowing remote attendance would enable timely decision making to support response and recovery efforts.

Some of our submitters supported clause 15 as introduced, but considered that the proposed amendment to the LGA should be made permanent, covering regular business too. We note that such an amendment is outside of the scope of the bill and that further policy consideration would be required. However, we would support a minor amendment to clause 15, extending the time period for which the clause applies by 6 months, until 1 October 2024.

Considering iwi and Māori in the bill and in emergency management

We heard that the bill does not provide for sufficient consideration of iwi and Māori interests. For example, we heard from submitters about concerns relating to matters such as:

- the need for iwi and Māori to have more engagement with emergency management processes, particularly involving iwi and Māori in CDEM groups
- assurances the bill would give iwi and Māori to ensure their needs would be met in the response and recovery
- upholding obligations under the Treaty of Waitangi—Te Tiriti o Waitangi
- protecting treaty settlement processes.

We acknowledge the points raised and have included them in our considerations on the bill. As we discuss later in our report, we note that further emergency management legislation will be introduced to the House, in the near future. We have been advised that some of these matters will be addressed within the incoming legislation.

We also wish to acknowledge the valuable role that Māori play in supporting responses to emergencies, including the work that various marae have undertaken, and the resources they have organised, to assist in the response and recovery from the events.

Permitting activities in affected areas

Part 4 of the bill as introduced contains clauses that would enable rural landowners and occupiers to undertake activities to implement preventative or remedial measures on their land, and for these to be considered as permitted activities.

Although the bill sets thresholds for undertaking these activities, we note that it does not explicitly prevent any significant adverse effects of the activities from going beyond the boundaries of the owner or occupier's land. We consider that, as introduced, this could allow activities deemed as permitted to have effects that go beyond the owner's property boundaries.

We note that the Hurunui/ Kaikōura Earthquakes Emergency Relief Act 2016, which contained a similar modification to the RMA, explicitly stated that activities could only be undertaken if the activity did not cause significant adverse effects beyond the owner's property boundary.

We would support a similar amendment to Part 4 of the bill as introduced, so that permitted activities could not cause significant adverse effects beyond the boundaries of the owner or occupier's rural land.

Protecting sites of cultural significance to Māori

We note that there are concerns relating to some of the proposed changes to the Resource Management Act in Part 4 of the bill as introduced. That is, some submitters are concerned that the proposals in Part 4 could cause inadvertent or deliberate damage to sites of cultural significance to Māori, as well as give rise to instances whereby these sites are entered inappropriately.

We consider that any damage to sites of cultural significance for Māori should be mitigated. Therefore, we would support the bill being amended so that an activity in relation to a culturally significant site by an owner or occupier of rural land to implement preventative or remedial measures can only be deemed a permitted activity if the activity was undertaken with the prior written consent of persons having an interest in the site.

Providing further flexibility in reporting on deemed permitted activities

We consider that providing written notice of deemed permitted activities within 60 working days may cause administrative burdens for council and landowners or occupiers, and may not be able to be practically achieved in some instances.

We recommend amending clause 21, inserting new section 331C(2) in the RMA, to provide a longer timeframe for notice at the discretion of the relevant consent authority.

Future emergency management legislation

Although the bill would make amendments to assist response and recovery to the recent severe weather events, we believe that further amendments to relevant legislation will likely be required. We note that the Government is considering further legislation relating to emergency management and response.

We hope that some of our considerations on the bill are dealt with in the new legislation, such as requiring stronger consideration of Te Tiriti o Waitangi—the Treaty of Waitangi, and making remote attendance at council meetings a permanent option for elected officials.

We look forward to engaging with the new emergency management legislation, when it is introduced to the House.

National Party differing view

While the National Party supports the intention of this bill and its passage through the House, we disagree that changes to the Local Government Act 2002 contained in clause 14 should be made in this bill.

Under Standing Order 267, an omnibus bill must “deal with an interrelated topic that can be regarded as implementing a single broad policy”. National members believe the amendments contained in clause 14 are not related to the purpose of this bill; rather, they are meant to fix issues with the Water Services Entities Act 2022. These issues, which prevent territorial authorities from considering water services in the creation of the Long Term Plans (LTPs), have been canvassed extensively by territorial authorities who have raised their concerns, most recently in the select committee hearings on the Water Services Legislation Bill. While the change may be necessary, this bill is not the appropriate mechanism to fix the issue and should have been removed from this bill. Other mechanisms for fixing this oversight exist, including legislation amending the Water Services Entities Act 2022 that is currently being considered by the Finance and Expenditure Committee.

ACT Party differing view

ACT supports the general purpose of the bill—to assist recovery and improve resilience for those areas affected by severe weather events, and their councils and communities. However, the bill fails to deliver when it comes to making it easier for property owners and councils to clean up their land and recover their position.

Major asset owners including Waka Kotahi and KiwiRail did not submit on the bill, and neither did the Infrastructure Commission which has made valuable contributions to the RMA reform process.

While the committee was assured by officials that the views of these organisations had been taken into account, it would have been helpful to ask them whether this bill could be improved in any way.

Amendments to the Resource Management Act

As a first principle, all restoration work, including any emergency stabilisation or activities to ensure safety or improve resilience, restoration of access or services, or rebuild activity should be automatically permitted. There should be clear criteria for when consenting will be required (including a principle that any significant adverse effects of the restoration work on adjoining landowners must be avoided, remedied, or mitigated), but with a simplified and more rapid consenting process. This will be similar to what was done in Hurunui/ Kaikōura, but would be applied to the entire affected region.

Submitters including Federated Farmers and Horticulture NZ pointed out that land owners will need to burn off the huge volume of timber slash, whole trees and other mixed debris which is piled up on rural properties. However, the presence of incidental treated fence posts, fencing wire, and electrical wire would make this a prohibited activity.

Sorting bulky items like cars and machinery from the woody debris is feasible, but it is not practical to find and remove every fence post or piece of plastic-coated wire.

ACT recommends the bill should be amended to allow for burning waste and debris arising from the severe weather events as a permitted activity, on the basis that a site management plan to control off-site effects is in place. An example of how this can be carried out to minimise risks to human health and the environment can be found at Standard Operating Procedure for Open-Air Solid Waste Burning in Contingency Locations, published by the US Army Corps of Engineers, Engineer Research and Development Center (ERDC).¹

The bill allows for extended notification periods for those who carry out work that requires consents and an extension of time to apply retrospectively for any consents that would normally be required.

Councils pointed out that this would create an unnecessary and burdensome requirement on councils in particular, as they have responsibility for much of the larger-scale reconstruction and asset restoration work. Councils have dual functions as asset owners and regulators so would need to apply to themselves for consent, which normally involves outsourcing technical and legal services in order to avoid the perception of a conflict of interest.

Councils typically apply a higher standard to themselves which results in more consents being publicly notified, in order to avoid the risk of triggering a judicial review of any decisions they might make between departments.

This means that the bill would likely require councils to run expensive consenting processes for earthworks, drainage, silt disposal to land, and other works which are not able to be easily undone.

ACT recommends that the bill be amended so that any activity carried out in accordance with an approved industry code of practice should be exempt from consenting requirements, and land owners should only be required to provide information such as construction and survey records to their local council.

The bill only allows for rural zoned land to be covered by amendments to the RMA. ACT recommends that any amendments which make it easier to recover and rebuild should be applied equally to residential and commercial as well as rural land.

The ACT Party disagrees with the recommendation to amend the bill to require landowners to seek prior written consent from those who have interests in sites with cultural significance for Māori.

This appears to be at odds with other modifications to the RMA which provide for greater flexibility and extended time frames to identify works that require consent, which are intended to give comfort to rural land users that they can clean up and reinstate their land without undue delay, or future prosecution.

¹ <https://apps.dtic.mil/sti/trecms/pdf/AD1180058.pdf>

Amendments to Food Regulations 2015

Temporary exemption for affected food businesses should be extended to liquor licence holders as well. In addition, food and liquor licence holders should be given an extension of time on their current licences until at least 31 March 2024, to allow time to rebuild and renovate their premises, and for normal revenue-generating business activities to recover.

Amendments to Local Government Act 2002

The Water Services Entities Act 2022 made changes to the Local Government Act which meant that councils are unable to change their current Long Term Plan (LTP) to invest in three waters assets unless those projects are completed before 1 July 2024.

The bill makes provision for changes to the Local Government Act which would allow councils to make decisions about investments after consulting with and receiving permission from the National Transition Unit.

ACT recommends that the bill be further amended to allow councils to have sole decision making over the investments needed to restore and improve three waters assets, without the need to seek approval from the Department of Internal Affairs' National Transition Unit.

Other matters which should be addressed by the bill

The ACT Party is concerned that there are a large number of people who have had to leave rental homes damaged by severe weather events. Damaged wall linings and insulation have been removed from these homes and now they have dried out, are awaiting reinstatement.

In this condition these homes are unlikely to meet Healthy Homes standards, so landlords will be unable to let tenants live in these properties. There will be many other existing properties in other parts of New Zealand which also do not meet these standards, and are unoccupied at this time.

ACT recommends that this omnibus bill be amended to include an exemption from compliance with the Healthy Homes standards for all residential properties across New Zealand, so that the largest number of rental properties can be made available to displaced people in their time of dire need.

Appendix

Committee procedure

The Severe Weather Emergency Legislation Bill was referred to the Governance and Administration Committee on 14 March 2023. We invited 96 submissions from targeted organisations and individuals. We received 14 written submissions and heard oral evidence from 13 submitters at a hearing in Wellington and through videoconference.

We received advice from the Department of the Prime Minister and Cabinet, the Department of Internal Affairs, the Ministry for Primary Industries, the National Emergency Management Agency, and the Ministry for the Environment. The Office of the Clerk provided advice on the bill's legislative quality.

Committee members

Ian McKelvie (Chairperson)
Rachel Boyack
Hon David Bennett
Naisi Chen
Jamie Strange

Simon Court, James McDowall, Hon Eugenie Sage, Arena Williams, and Hon Michael Woodhouse also participated in our consideration.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.