



Severe Weather Emergency Recovery Legislation Bill

242—1

Report of the Governance and Administration
Committee

April 2023

Contents

Recommendation.....	2
About the bill as introduced.....	2
Process for considering this bill.....	3
Submissions process.....	3
Legislative scrutiny.....	3
Ensuring scrutiny of the operation of the legislation	4
Safeguards and restrictions on the making of Orders in Council.....	4
Orders in Council that modify legislation to deal with new subject matter	6
Post-enactment review	7
Severe Weather Events Recovery Review Panel.....	7
Response and recovery.....	8
Refining definitions.....	8
Unanimity and near unanimity	8
Affected local authority and local authority.....	9
Amendments to the Resource Management Act.....	9
Local Māori.....	9
New emergency recovery legislation is needed.....	10
Repeal dates of the Act.....	11
Differing views.....	11
National Party differing view	11
ACT Party differing view	12
Green Party differing view	14
Appendix.....	17

Severe Weather Emergency Recovery Legislation Bill

Recommendation

The Governance and Administration Committee has examined the Severe Weather Emergency Recovery 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, the upper North Island of New Zealand experienced severe weather events, including Cyclones Gabrielle and Hale. The events resulted in slips and large-scale flooding across parts of New Zealand, causing loss of lives and significant damage and destruction to property and infrastructure.

As we expressed in our report on the Severe Weather Emergency Legislation Bill, we wish to acknowledge the deaths of fifteen people in those events. We extend our sympathy to their families. We also acknowledge those who were injured and those who sustained significant damage to their property.

This Severe Weather Emergency Recovery Legislation Bill is the second bill introduced in response to these recent events. It follows the Severe Weather Emergency Legislation Act 2023, which came into force on 21 March 2023. It does not replace that Act; the two pieces of legislation deal with different subject matter.

This bill is an omnibus bill. It would amend the Local Government Act 2002 (LGA), the Local Government (Auckland Council) Act 2009, and the Resource Management Act 1991 (RMA). Further, it would enable Orders in Council (OIC) to be made to amend these Acts and an additional 24 Acts set out in Schedule 2 of the bill, and any other Act deemed relevant.

The measures in this bill would give the Government flexible powers to assist the emergency response and recovery in the affected areas. The bill's proposed changes seek to:

- assist economic recovery, planning processes, and the rebuilding and recovery of land, infrastructure, and other property
- increase safety and resilience
- ensure that central and local government activity can continue to be undertaken
- temporarily enable the relaxation or flexible operation of some legislative requirements
- provide opportunities for local Māori and community groups to participate in the development of Orders in Council.

As well as applying to areas directly affected by the severe weather events, the bill could also apply to areas indirectly affected.

Process for considering this bill

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

Our report covers the main concerns members have about the bill, drawing on feedback from the submissions process. It does not discuss minor, technical, or consequential amendments.

Submissions process

We acknowledge that the timeframe for public submissions and select committee scrutiny was extremely short. The referral to this committee, and the report-back date of Wednesday 5 April 2023, were agreed upon by the House of Representatives shortly before 9pm on Tuesday 28 March 2023.

We opened for public submissions on Tuesday 28 March shortly after 9pm, and closed for public submissions on Wednesday 29 March at 5pm. We directly invited 500 interested groups and individuals to submit on the bill. We received written submissions from 204 people and organisations and heard oral evidence from 31 submitters at hearings in Wellington and via videoconference.

Many submitters commented on the short report-back date for this bill and the small amount of time for people to prepare written and oral submissions. We appreciate the submissions that were made at short notice, and acknowledge that doing so was difficult for many. However, most of us are satisfied that this legislation is sufficiently urgent to merit a truncated consideration period. We believe that the submissions process we set enabled us to scrutinise the legislation as effectively as possible, given the short timeframe.

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 some issues raised in clauses 7, 8, and 19 relating to Orders in Council; clause 18(2) relating to retrospectivity; and clause 3 relating to the purpose of the bill. We discuss our concerns about the operation of the Order-in-Council regime later in this report.

Some submitters were concerned about the retrospective nature of OICs, particularly in clause 18(2), which states that an OIC may be expressed to come into force before the date it is made. We received advice that OICs can have retrospective effect. An order can be retrospective, and come into effect before it is made, so long as that date is not earlier than the earliest severe weather event. We consider that, within the context of this bill, retrospectivity is appropriate.

Several submitters noted that the purpose of the bill as outlined in clause 3 is vague. It includes providing for the planning, rebuilding, and recovery of affected communities and persons, and for economic recovery. Advisers told us that these subclauses are designed to be broad to encompass the scale of the emergency situation. In the early stages of recovery,

not all needs are known. It is difficult to anticipate which legislation will need to be amended, and in what context. Therefore, we consider it appropriate to maintain a broad purpose.

We do consider that the bill as introduced needs some amendments. The rest of this report discusses in more detail the operation of the clauses mentioned above, and the concerns we had.

Ensuring scrutiny of the operation of the legislation

We are aware that this bill would grant extensive powers to the Government. The truncated legislative process means these powers have been scrutinised less than they may have been under a more typical process. This is evident not only through the select committee process, but in the consultation on this legislation before it was introduced to the House. We therefore propose several amendments that we consider will strengthen the bill's safeguards and ensure that actions taken under the bill are reasonable, accountable, and equitable.

Safeguards and restrictions on the making of Orders in Council

An Order in Council is a type of secondary legislation. The power to make secondary legislation is usually formally delegated in a particular Act. Unlike primary legislation, secondary legislation is not made by Parliament; OICs are made by the Executive Council. The Executive Council is composed of all Ministers of the Crown, both inside and outside Cabinet, and is presided over by the Governor-General.

OICs made under this bill would be able to grant exemptions from, modify, or extend any provision of the 27 Acts listed in Schedule 2.¹ Clause 19 of the bill would allow more Acts to be added to Schedule 2 by Order in Council. This means that OICs under this bill would allow the Government to amend primary legislation without having to take the amendments through the usual legislative process, during which they would be considered by the House.

We accept that Governments need broad and flexible powers when they respond to emergencies. We understand that the recovery from the severe weather events will demand action in a wide range of areas, and that not all of those actions can be anticipated at the current time. The OIC mechanism would facilitate recovery without needing to anticipate every power or statutory provision that may need to be amended to achieve the bill's purpose. It is designed to be flexible to deal with a range of potential matters: for instance, demolition or repair of certain buildings, and streamlining planning and consenting processes. This way, OICs can fast-track locally-led recovery.

We heard that the OIC process outlined in this bill is not unprecedented, and similar legislation was developed for the Canterbury earthquakes recovery, the Hurunui/Kaikōura earthquakes recovery, and the COVID-19 response.² For example, the Canterbury Earthquake Recovery Act 2011 (CERA) used OICs to allow for temporary accommodation for displaced people and permit the storing, sorting, and processing of earthquake waste.

¹ Appendix 3 of the departmental report on this bill sets out the Acts and the basis for their inclusion.

² The Canterbury Earthquake Recovery Act 2011; the Hurunui/Kaikōura Earthquakes Recovery Act 2016; and the COVID-19 Public Health Response Act 2020.

We also note that the bill as introduced proposes a number of safeguards for making OICs. They include requiring Ministers who have created OICs to keep them under review, and requiring the Minister responsible for the administration of the Act to report regularly to the House on the OICs. The bill also includes a range of requirements that aim to ensure that any OICs created relate closely to the recovery efforts. The agency responsible for the administration of the Act that an OIC proposed to amend would have to assess whether an OIC was needed. It would engage with affected local authorities, local communities, local Māori, and stakeholders to provide advice to the relevant Minister in this regard. We acknowledge that, given the scale of the recent severe weather events, local authorities themselves will likely ask the Minister to develop OICs. The legislation also establishes a review panel to advise the Minister on draft OICs, or, if requested, to propose OICs that may be required.

Even with these safeguards, however, we acknowledge that the OIC power proposed by the bill is extremely broad and merits scrutiny. It would allow for amendments to 27 pieces of legislation—plus potentially many others that have not been specified but could be added at any time—without going through the typical legislative process. As a result, we consider that some of the provisions for consultation on the creation of OICs in this bill need amending or clarifying.

The Minister should be able to extend the timeframe for consulting on OICs

Clause 8(1) of the bill would require a Minister considering making an Order in Council to consult the Regulations Review Committee,³ with comments from the committee to be received within 3 working days. We consider that this is a relatively short amount of time for the committee to consider a proposed OIC. We recommend that the relevant Minister be able to extend this timeframe (but not shorten it) to allow the committee more time to comment on an order, where that is possible. This would align with clause 16(2), which would permit the Minister to extend the 3 working day period for the Severe Weather Events Recovery Review Panel to review the draft and give comment. Some of us would prefer a timeframe of up to 10 working days, but we acknowledge this may make it difficult to achieve the objectives of the bill.

Consultation of party leaders during the interregnum

As noted above, clause 8(1) would require the Minister to consult the Regulations Review Committee. However, clause 8(1)(c) stipulates that, where that is not practicable, the Minister may consult “each leader of a political party represented in the present or previous Parliament”. We consider that this clause is not particularly clear.

Officials have advised us that this clause is intended to apply during an interregnum—the period when a Parliament has dissolved for the election period and a new Parliament has not yet been established. During an interregnum, the Regulations Review Committee, like other committees, does not exist and cannot be consulted. We recommend that clause 8 be amended to ensure that it is clear that party leaders should only be consulted during an

³ The legislation requires the Minister to consult with “the Committee of the House of Representatives that is responsible for the review of secondary legislation”; at present that is the Regulations Review Committee.

interregnum. We also recommend that the reference to leaders in the “previous Parliament” be amended to make it clear that it applies only to leaders in the most recent Parliament.⁴

Necessary or desirable

Clause 8(1)(a)(i) requires a Minister making an OIC to be satisfied that it is “necessary or desirable” for one or more purposes of the Act. We sought clarification of these terms and the justification for using them. “Necessary” sets a higher requirement for compliance, while “desirable” gives more flexibility.

Advisers told us that they considered that restricting OICs to those that are “necessary” set too high a threshold to allow for a sufficiently flexible response. The test of “necessary or desirable” is used in over 200 Acts, such as section 133BD of the Building Act 2004 to determine whether to designate an area for the management of buildings following an emergency. It has also been used in similar emergency recovery legislation, such as the Hurunui/Kaikōura Earthquakes Recovery Act.

We accept that flexible powers are needed and that not all OICs may meet the “necessary” threshold. For example, it may not be considered necessary to substantially repair a local road in six months rather than two years, but it may be desirable to do so, to reduce the risk of population and business loss. However, some of us would still like to see amendments in this area to ensure that OICs that are made are all in accordance with the purpose of the legislation.

Geographical scope

Clause 8(1)(a)(ii) would require that the making of an order only be recommended if the relevant Minister is satisfied that the order’s extent “is not broader than is reasonably necessary to address the matters that gave rise to the order”. This includes geographical breadth. Some submitters noted that the provision should allow different emergency powers to be unlocked for different regions and districts. In previous emergencies, OICs have referred to a specific geographic location, so they are no broader than necessary to achieve the aim of the OIC.

We recommend amending this clause to clarify that orders can be made for specific geographic locations, and provide the ability to limit an order’s geographic application.

Orders in Council that modify legislation to deal with new subject matter

The bill as introduced would allow OICs to amend primary legislation, including inserting “provisions that are additional or dealing with a new subject matter”, as outlined in clause 7(5)(a). We are concerned that this provision would allow for unacceptably broad changes to legislation without the scrutiny of the House. We recommend removing the phrase “dealing with a new subject matter” from this clause, and inserting an additional clause 7(5)(c) to the following effect: “includes dealing with a new subject matter if that is reasonably necessary to achieve the purposes of an order”.

⁴ During the interregnum period of the 2023 election year, between the 53rd and 54th Parliaments, only leaders of political parties in the 53rd Parliament could be consulted.

Post-enactment review

We have discussed both the broad powers that would be conferred by this bill and its truncated consideration by the House. We acknowledge that this legislation is urgently needed. This has meant that select committee scrutiny has been relatively rushed. As a result, we understand that many concerns remain about the provisions in this bill, especially the broad powers to make Orders in Council. Numerous submitters felt that the bill's consideration did not allow for adequate scrutiny. We agree with submitters that the broad powers conferred by this legislation to amend primary and secondary legislation by OIC should receive considerable scrutiny.

Scrutiny by select committee inquiry

Because of these concerns, we consider that it would be wise to include a provision that would allow for parliamentary scrutiny of this legislation after it has been enacted. We received advice from the Clerk of the House of Representatives on this matter and discussed a number of options for post-enactment review.

Some of us favour inserting a provision in the bill that would require an inquiry to be held by a select committee, to be determined by the Clerk, at some interval after the bill is introduced. This would be similar to provisions used previously, such as section 37 of the Returning Offenders (Management and Information) Act 2015. This section required a select committee, determined by the Clerk, to review the operation of the Act 18 months after its commencement. Some of us would prefer that a similar provision be inserted in this bill. However, the majority of us do not consider this to be the best option because there is a long standing convention that, in general, Parliament does not legislate to determine parliamentary processes.

Nevertheless, we are of a strong view that a select committee inquiry is necessary given the wide-ranging powers of the bill and the truncated process. A select committee inquiry is a good opportunity for public participation and parliamentary scrutiny of the bill. Select committees may consult the public and call for submissions from experts. Subject-matter select committees would also be able to examine any aspect of the use of powers, including the impacts and outcomes of particular OICs. We recommend that the review of the legislation be initiated immediately after it is enacted.

Severe Weather Events Recovery Review Panel

Clauses 13 to 16 of the bill would establish the Severe Weather Events Recovery Review Panel. The panel would comprise up to 12 members, appointed by the Minister, with expertise in various subjects including law, environment, Māori and community interests, emergency response and recovery, and local perspectives. The panel's role would be to review draft Orders in Council and provide advice to the relevant Ministers about these orders, or, on request of the Minister or relevant Minister, advice on OICs that may be required to support the recovery. The panel would not lead the emergency recovery and would be considered a body of members with knowledge, experience, and expertise rather than a representative body.

A number of submissions expressed concerns about the role of the panel and its membership criteria. Some submitters were concerned that the panel would not represent the communities and areas most affected. Suggestions were made about requiring expertise in other areas not already specified, including but not limited to climate change, public health, and Māori interests, and about including representatives from local councils. We wish to note that the panel would comprise members who could advise the Minister; it is not intended to be a representative panel. However, we acknowledge submitters' concerns about some of these areas. We recommend amending clause 13(3)(a) to include expertise in primary industries, and environmental and public health protection.

Another area of expertise identified in clause 13(3)(a)(iv) is “emergency response and recovery”. We consider that this phrase is too narrow and recommend amending it to “emergency management (including recovery and resilience)” to capture the breadth of possible expertise in this area.

Response and recovery

New Zealand’s approach to civil defence emergency management is defined by four main areas: reduction, readiness, response, and recovery (known as the 4R model). We asked for clarity between the terms “response” and “recovery” and how this would operate in the context of the bill. We heard that:

- “response” indicates the immediate actions required to prevent the loss of life and address the needs of affected people and communities
- “recovery” indicates the co-ordinated efforts and processes used to rebuild and regenerate affected communities over the immediate, medium, and long terms.

We note that the panel would assist both the response and recovery phases of the recent severe weather events by providing advice on the effectiveness of draft OICs, or, if requested, on OICs that may be required to support the ongoing recovery. Public sector agencies will also be required to regularly review the OICs they administer, which would provide a greater understanding of what effective recovery and response looks like, to ensure a more resilient approach to emergency management in the future.

Refining definitions

We believe it is imperative that this bill be as clear, understandable, and useable as possible to assist the emergency response and recovery in the affected areas. For this reason, we recommend changes to some terms used in this bill, to align them more closely with the bill’s purpose.

Unanimity and near unanimity

Clause 19(2)(c) of the bill requires that a Minister only make an OIC including further Acts in Schedule 2 where the Minister is satisfied that there is unanimous or near-unanimous support from political party leaders. We expressed concerns about the provision of “near unanimity” and whether this is clear. Some of us have observed in parliamentary contexts, such as the Business Committee, that the term “unanimity or near unanimity” is highly subjective and not always well understood. It does not always operate well.

Some of us would suggest amending this to target a specific number, such as seeking the agreement of party leaders representing at least 75 percent of members of Parliament. Such a provision could be modelled on section 267B of the Electoral Act. This section requires the agreement of party leaders representing at least 75 percent of members of Parliament before the Minister can recommend regulations be made. We consider this approach, or a similar approach, would reduce the ambiguity of the current phrasing.

Affected local authority and local authority

We received submissions from a number of local authorities asking that they be included in the list of local authorities identified in this bill as being affected by the severe weather events. We recommend that Manawatū-Whanganui Regional Council and 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 and powers relate to the affected area of a territorial authority located within their region.

For example, Wellington Regional Council would be considered an affected local authority for its functions relating to Masterton, Carterton, and South Wairarapa district councils, and part of the Tararua district. This would not apply to its functions relating to Wellington City Council or the other district and city councils in its region that are not named in the bill. This would allow the council to make amendments to regional council planning documents such as amending its Regional Plan to enable flood protection works.

Amendments to the Resource Management Act

Clauses 30 to 32 of the bill would amend the Resource Management Act. Clause 32(4) would expand 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”. We consider the word “near” to be ambiguous. We recommend amending clause 32 to replace the term “near” with “within, adjacent to, or directly affecting”. This would be consistent with the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

Local Māori

The bill uses the term “local Māori” in clauses 3, 9, and 13. Clause 3 would provide opportunities for local Māori as a purpose of the bill, clause 9 would require the Minister to consult local Māori along with other local community groups when consulting on a draft Order in Council, and clause 13 specifies local Māori or community interests as a type of expertise the Minister would need to consider in appointing members of the Severe Weather Events Recovery Review Panel. A number of submitters recommended that references to “local Māori” be amended to include reference to whānau, hapū, and iwi. However, we understand that using the term “local Māori” seeks to emphasise the importance of locally-led recovery. The phrase has been used in other legislation, including a range of Treaty settlement legislation.

Some submitters felt that the bill does not adequately recognise the role that Māori play in emergency response and recovery. We understand that new emergency legislation (which would replace the Civil Defence Emergency Management Act 2002) yet to be introduced to the House would better recognise the role of Māori in the emergency management system at all levels, including governance, planning, and operations.

We wish to acknowledge that Māori have been significantly affected by these recent severe weather events and the effects on whānau and their communities. We recognise the mahi that Māori and marae have been undertaking to assist emergency response and recovery.

New emergency recovery legislation is needed

We strongly support this bill to ensure an efficient response and swift recovery in areas affected by recent heavy rain events. However, in our view, repeatedly introducing bespoke legislation with truncated, urgent processes to respond to individual emergency events is not an appropriate long-term strategy for managing emergency situations. This is particularly important given the likely increasing severity and frequency of weather events due to climate change. New Zealand is also vulnerable to the effects of earthquakes, due to the Alpine Fault, and the potential for tsunamis following earthquakes in the Pacific.

While we acknowledge that every event is different, the similarities between this legislation, the Canterbury Earthquake Recovery Act 2011, the Hurunui/Kaikōura Earthquakes Recovery Act 2016, and the COVID-19 Public Health Response Act 2020 are notable.

We consider that it is time for a new emergency recovery framework. Legislation should be introduced establishing such a framework. Developing emergency recovery legislation that is not directly connected with an emergency event would allow for adequate consultation before a piece of legislation comes to the House, and a normal period of consideration in select committee. This would also enable a more participatory process for Parliament and the public. If such a framework did not entirely remove the need for bespoke legislation, our hope is that it would at least substantially reduce the need.

There are some features we think are essential for a new emergency recovery framework. First, the framework should be scalable and flexible but still equip the Government with necessary powers and establish standard processes for scrutinising emergency decision-making. It should apply the same principles to emergency situations of differing scale and scope.

We acknowledge that regions like Marlborough, which have been significantly affected by flooding events in 2021 and 2022, are not included in this bill. This is despite still being in the recovery phases for some of these events. However, we accept that including councils affected by events other than in January and February 2023 would be outside the scope of this bill. We encourage the development of future recovery legislation that could assist the recovery of regions that are affected by smaller events as well as larger events.

Second, the framework should allow for recovery that is both resilient and preventative. It should enable the Government to take actions that both protect New Zealanders from future, similar emergencies, and, where possible, reduce the chances of those emergencies occurring at all. For example, in emergencies related to climate change, the framework should allow for actions that both adapt to climate change, and reduce its extent.

Third, the new framework should allow for good oversight of and safeguards over government action, including parliamentary scrutiny.

We understand that the Government is reviewing the CDEM Act and considering introducing new legislation relating to emergency management. However, we understand that this will

not address issues related to long-term recovery such as those covered in this bill. We hope to see legislation that would develop a new long-term emergency recovery framework that addresses our concerns.

Repeal dates of the Act

Clause 34(5) states that this legislation, as a whole, would be repealed on 31 March 2028. Submitters raised concerns, suggesting that the repeal dates for certain provisions should be earlier. Some submitters suggested that the Act should be repealed within shorter periods, such as six months or two years, unless it was actively extended by Parliament.

In the view of the majority of members in this committee, the repeal date in the bill as introduced is appropriate. This date allows adequate time to make and action OICs. Setting an earlier date would create uncertainty for entities such as Waka Kotahi and KiwiRail, which are tasked with undertaking large-scale infrastructure projects in the aftermath of the severe weather events. We do not suggest any amendments to the expiry of this legislation.

Differing views

National Party differing view

National members remain committed to supporting the bill's stated aims to accelerate recovery efforts in areas affected by recent severe weather events.

The criticism made by some submitters about the breadth of powers afforded by the bill are noted, however, and these concerns are shared. National members have adopted a number of suggestions made by those submitters, to strengthen accountability mechanisms in the regime to be established by this legislation.

These will be highlighted in the remaining stages of the legislative process, including in the form of Supplementary Order Papers where these points are not brought formally to the attention of the House by other means. These include:

- requiring that the Minister only recommend orders that are in accordance with the purposes of the legislation, rather than measures that are merely “necessary or desirable”
- requiring that the assessment of whether orders are consistent with the New Zealand Bill of Rights Act 1990 be conducted by the Attorney-General, not the Minister making the order
- requiring that local authorities be provided with draft copies of orders affecting their areas
- removing the bill's specific statement about who the Minister “may” contact to seek nominations for appointments to the Panel, thereby emphasising that the Minister may contact any person or entity for this purpose
- requiring that the Minister consult with Opposition parties about proposed members of the Panel, given its highly influential role in the regime to be established by this bill
- requiring that party leaders representing at least 75 percent of Parliament need to agree whenever another Act is proposed to be subject to the amendment powers in this bill

(rather than relying on the concept of “near unanimous” approval, currently in the bill as introduced)

- requiring that a body be established comprising representatives of political parties currently in Parliament (a “cross-party group”) to advise relevant Ministers on matters connected with the purposes of the bill.

ACT Party differing view

ACT cannot support the Government’s Severe Weather Emergency Recovery Legislation Bill. It is Henry VIII legislation that gives Ministers responsible for 27 Acts of Parliament enormous powers unrelated to cyclone recovery.

- The committee received high-quality submissions setting out valid and extremely concerning objections to the bill. Submitters pointed out that 20 hours’ notice is totally inappropriate for a bill giving the Government practically unlimited power and recommended that the bill be abandoned or otherwise returned to Parliament for a more thorough evaluation.
- Despite changes proposed by ACT and submitters during the select committee consideration of the bill, the Department of the Prime Minister and Cabinet would not agree to any recommendations to modify the purpose clause, or the overall direction of the bill.
- A proposal to include a clause to protect property rights was declined.
- Despite declaring a “climate emergency”, the Government had failed to heed the advice of experts to prepare for future large-scale responses to natural disasters, such as recommended by the New Zealand Initiative who, in their submission, referenced their 2018 report—*Recipe for disaster: Building policy on shaky ground*. To summarise:
 - Post-disaster plans should recognise not only the importance of clarity about infrastructure rebuild (roads and other essential utilities) but also the importance of regulatory (regime) certainty to aid organic development within urban areas.
 - A recovery agency should again be set up expeditiously. Its structure should be to allow competent local authorities to play a full role while playing a more supportive role where needed.
 - Anchor projects and precinct designations should be avoided as this has the effect of sterilising land for what may be more efficient uses unknown to Government at the time.
 - The planning and building functions should be separated for any future anchor projects. The skills are different.
 - Government should ensure any post-disaster emergency legislation incorporates provisions for takings based on the Public Works Act rather than bespoke measures. This has relevance given the concept of “managed retreat” advanced by the Government, in the absence of any detail to assist decision making.
 - Government should quickly seek declaratory judgments in key test cases arising after a major disaster.

The Marlborough District Council, which is still working on their region's recovery from severe flooding in 2022, rightly pointed out that they could have benefited from having a well-considered piece of legislation to create a framework for recovery from natural disasters. Instead, while other regions affected by severe weather in 2023 will have access to bespoke legislation, Marlborough continues to battle red tape.

They need to rebuild roads and jetties but inflexible RMA planning and consenting frameworks are making this very difficult, and a land transport funding system which fails to recognise infrastructure needs to be rebuilt to a higher standard, not just replaced in the same location and to the previous standard.

- There are insufficient checks and balances for any Orders in Council which will be produced to modify the 27 laws affected by this bill. The primary check is a panel review that must be completed in three days and does not require input from local government, local industry, engineers, or experts in infrastructure.
- The political safeguards offered by the Government include scrutiny of a Minister's recommendation by Cabinet. Unfortunately ACT does not believe this safeguard should be relied on given the extremely wide powers available to so many Ministers under this legislation, and the temptation there will be to use them.
- There are claims this legislation is like Christchurch and Kaikōura emergency Acts that circumvented the RMA, but it is far more powerful and far-reaching in the authority it gives to Ministers. A local response needs to take precedence and the Government's job should be to limit intervention and cut red tape and regulations that hinder this.
- There is nothing in the bill to ensure a Minister's actions are related to cyclone recovery; the changes just have to take place in the regions affected. People living in Auckland, Northland, Bay of Plenty, Hawke's Bay, and Gisborne would essentially be at the mercy of a Minister who could do whatever they want without consultation.

Alternative options

The Government has chosen to use an Order in Council mechanism to modify legislation which it considers necessary to support a timely and efficient recovery from the severe weather events. This would involve a government department bringing a proposal to their Minister to champion, and having the proposal approved by Cabinet. This prioritises Government and administration needs over those of land owners and communities.

ACT would instead support an alternative approach described in the Regulatory Impact Statement—Direct amendment of statutes by Parliament—on an “as-required” basis.

ACT would accept an extremely limited provision for an Order in Council to be used only in the interregnum period between when a Parliament is dissolved and until a new Parliament is sworn in, and, to modify secondary legislation. Any order should be subject to review and confirmation by Parliament's Regulations Review Committee, and otherwise be disallowed.

The Government introduced and passed under urgency a related bill, now the Severe Weather Emergency Legislation Act 2023, which received assent on 21 March 2023. This Act identified legislation which required specific and time limited modification such as the RMA, Food Act 2014, and the Local Government Act. While ACT did not agree that this legislation went far enough to enable urgent response and economic recovery, this is a

much more appropriate way to progress any legislative changes necessary to expedite recovery activities.

Submitters on the bill pointed to changes that should be made with urgency to several Acts of Parliament. These recommendations were specific enough that these changes could be incorporated into an omnibus bill to amend the Severe Weather Emergency Legislation Act 2023.

For example, submitters, including Council, proposed that modifications could be made to specific clauses and to regulations made under the following Acts:

- the Local Government Act (LGA), to allow for more flexible time frames and scope for councils' annual plans and changes to long-term plans
- the Land Transport Act (LTA) and Land Transport Management Act (LTMA), to allow the New Zealand Transport Agency (NZTA) and councils to use funding restricted to one bucket (e.g. walking and cycling) to be used to repair and replace roads and bridges
- the LGA, LTA, and LGMA, to allow councils and NZTA to replace infrastructure in new and more resilient locations, rather than replace "like for like" as required by current rules
- the RMA and regulations such as the National Environmental Standard for Freshwater Management to allow for activities such as excavating silt which has inundated waste water effluent ponds, ponds which are consented to normally discharge treated effluent to water courses.

The legislation needs to be amended so that it can only be used for situations that are directly related to cyclone recovery, not any situation the Minister of the day feels like using it for. It is surprising such great powers will be assumed by the Government without even the check of having to seek renewal on a regular basis, as for COVID-19 response legislation.

ACT would work constructively with the Government to modify legislation to expedite recovery activities, on the basis that any modifications are submitted to Parliament to debate the costs and the benefits, and to identify any improvements that can be made. However, the Government has taken an approach that ACT finds unacceptable, and for this reason we cannot support this legislation proceeding.

Green Party differing view

The Green Party supports the bill's objective of assisting communities and local authorities and facilitating recovery in areas affected by Cyclones Hale and Gabrielle and the Auckland Anniversary Weekend storm. The impacts on households and communities from these climate change related events have been severe. The need for relaxation of some administrative requirements is recognised but the Green Party has significant concerns with the bill, which some submitters share. As the New Zealand Law Society stated, "we do not consider this bill is a constitutionally appropriate way to [assist communities devastated by Cyclone Gabrielle], and it raises fundamental rule of law issues".

The Green Party's concerns include:

- The very limited time for public submissions (one day), hearings, and select committee scrutiny of a bill which shifts significant power from Parliament to the Executive.

- The extensive Henry VIII powers which allow the Executive, through Orders in Council made by the Governor-General on the recommendation of a Minister, to override and amend the application and effect of more than 27 Acts of Parliament without prior scrutiny by Parliament, select committee or a public submission process.
- The ability in clause 19 for the Executive to use the Order-in-Council process to add other Acts to the list in Schedule 2 that can be amended by Orders in Council, again with no prior consideration by, or input from, Parliament. The Green Party seek the deletion of clause 19 and Parliament to consider and decide if further Acts need to be added to Schedule 2.
- The overly broad purpose of the bill in clause 3(1)(a). As submitters noted, “facilitating the restoration and improvement of the economic, social, and cultural well-being and enhancing the resilience, of affected communities” which is part of the bill’s purpose covers much of the work of Government. The broad purpose combined with a low threshold in clause 8(1)(a)(i) for the relevant Minister to recommend an Order in Council provides scope for overuse of these powers. The Minister has to be satisfied that “the order is necessary or desirable” for one or more of the bill’s purposes. The Green Party seeks the deletion of “or desirable” so that Orders in Council are restricted to ones that are “necessary”.
- The absence of any requirement in the bill’s purpose for rebuilding and recovery, and economic recovery to promote a reduction in climate emissions and prioritise adaptation to climate change in recovery and rebuilding. While improving the resilience of land, infrastructure, or other property is part of the purpose, the Green Party seeks a more explicit focus on climate adaptation and improving climate resilience in the investment and recovery work that Orders in Council may enable.
- The large geographic area (around 80 percent of the North Island and more than 36 council areas) to which Orders in Council can apply. This contrasts with the much smaller geographic area covered by the Canterbury Earthquake Recovery Act 2011 (three territorial authority areas) and the Hurunui/Kaikōura Earthquakes Act 2016 (two territorial authority districts). Submitters suggested a more targeted approach could be used.
- The ministerial powers to make Orders in Council last for too long. The bill is not repealed until 31 March 2028. The Green Party would prefer that Parliament had the ability to debate and extend the application of the bill and the powers within it every six months. This could be done by providing for the bill to be repealed after six months, unless the House of Representatives resolved to continue it within that period, or any other period it chose. The COVID-19 Act included a mechanism for Parliament to resolve to continue its emergency powers every 90 days, for example.
- The conflation of emergency response and recovery. Recovery from these severe weather events will take decades. The decisions made under the bill and the Orders in Council it enables will affect communities for generations. Considerable funds will be spent. Communities must be involved in decisions about their recovery. Normal legal processes such as the RMA provide for public input to and involvement in decisions. Decisions made quickly without community involvement and sweeping Orders in Council risk important decisions about elements of the recovery being imposed on communities.

- The waiving of the requirement for the Office of the Auditor-General to audit amendments to councils' long-term plans removes an important check and balance on the accuracy of council budgets.

The Green Party supports the changes recommended by the Governance and Administration Committee, including the provision for some limited parliamentary scrutiny by a select committee review of the use of the powers.

Appendix

Committee procedure

The Severe Weather Emergency Recovery Legislation Bill was referred to the committee on 28 March 2023. The closing date for submissions was 29 March 2023. We received and considered submissions from 204 interested groups and individuals. We heard oral evidence from 31 submitters at hearings in Wellington and via videoconference.

We received advice on the bill from the Department of the Prime Minister and Cabinet, the National Emergency Management Agency, the Department of Internal Affairs, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry for Primary Industries, the Department of Conservation, the Ministry of Transport, the Ministry for Culture and Heritage, Land Information New Zealand, Te Puni Kōkiri, the Ministry of Justice, and the Clerk of the House of Representatives.

The Office of the Clerk of the House of Representatives provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to the committee on the powers contained in the bill.

Committee members

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

Simon Court, Anna Lorck, Dr James McDowall, Chris Penk, Hon Eugenie Sage, and Teanau Tuiono also participated in our consideration.

Advice and evidence received

The documents that we received as advice and evidence are available [on the Parliament website](#).

Recordings of our hearings can be accessed at the following links:

30 March 2023: • Part 1 • Part 2 • Part 3 • Part 4 • Part 5	31 March 2023: • Part 1
---	---