



Proactive Release

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

Emergency Management Systems Reform Proposals

The following documents have been included in this release:

- **Title of paper:** Emergency Management System Reform Proposals (GOV-22-SUB-0031 refers)
- **Title of paper:** Regulatory Impact Statement: Emergency Management System Reforms
- **Title of minute:** Report of the Cabinet Government Administration and Expenditure Review Committee Minute (CAB-22-MIN-0339 refers)
- **Title of minute:** Emergency Management Systems: Reform Proposals (CAB-22-MIN 0339.01 refers)

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 code:

- Section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials; and
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

~~In Confidence~~

Office of the Minister for Emergency Management

Government Administration and Expenditure Review Committee

Emergency Management System Reform Proposals

Proposal

- 1 This paper seeks agreement to the final tranche of policies to be included in the Emergency Management Bill (the Bill) to improve New Zealand's future response to natural disasters and other emergencies.

Relation to government priorities

- 2 The 2020 Labour Party Manifesto committed to ensuring Aotearoa New Zealand's emergency management system is geared towards inclusive, community-led responses to natural disasters and other emergencies. The Manifesto also committed to working with iwi and Māori on the role they play in emergency management.
- 3 Budget 2021 provided Vote Prime Minister and Cabinet \$46.6m allocated over four years for the 'Enabling the National Emergency Management Agency to Build Safe and Resilient Communities' initiative.
- 4 The proposed emergency management system reforms will deliver on the government's commitments and build up the core capability of the emergency management system.

Executive Summary

- 5 The proposals covered in this paper build on past Cabinet decisions¹ to address the five key areas for improvement set out in the government's response² to the report of the Technical Advisory Group (the TAG report):
 - 5.1 putting the safety and wellbeing of people at the heart of the emergency response system
 - 5.2 strengthening the national leadership of the emergency management system
 - 5.3 making it clear who is responsible for what, nationally and regionally
 - 5.4 building the capability and capacity of the emergency management workforce

¹ GOV-20-0035, CAB-21-MIN-0366, GOV-21-MIN-0043, CAB-21-MIN-0472 refers

² Delivering better responses to natural disasters and other emergencies – Government response to the Technical Advisory Group's recommendations, August 2018.

- 5.5 improving the information and intelligence system that supports decision making in emergencies.

Background

- 6 The first tranche of changes addressing the five key areas for improvement was considered by GOV on 30 July 2020 [GOV-20-Min-0035 refers] and by Cabinet on 3 August 2020 [CAB-20-Min-0366 refers]. A further tranche of changes was approved in November 2021 [GOV-21-Min-0043 and CAB-21-Min-0472 refers]. This paper covers the final tranche of changes.
- 7 The emergency management system is supported by several regulatory instruments including the Civil Defence Emergency Management Act 2002 (the CDEM Act), the National Civil Defence Emergency Management Plan Order 2015 (the National Plan), and the National Disaster Resilience Strategy (NDRS). These documents set the legal authority (CDEM Act), agreed delivery approach (National Plan), and future development and direction (NDRS) for emergency management across the 4Rs (risk reduction, readiness, response, and recovery).
- 8 Emergency management is delivered collaboratively depending on the nature of the emergency – in general it is nationally supported (by NEMA and other government departments), regionally co-ordinated (by CDEM Groups made up of members from local authorities), and locally led (by local authorities).

Analysis

- 9 The issues for agreement are covered off at a high-level in the body of this paper, with more detail and underlying analysis provided for each matter in **Appendix 1**.

Clarifying the roles and responsibilities of CDEM Groups and local authorities

- 10 The lack of clarity in the Civil Defence Emergency Management Act 2002 (the CDEM Act) about the roles and responsibilities of Civil Defence Emergency Management Groups (CDEM Groups) and local authorities has impacted the effectiveness of, and confidence in, the emergency management system.
- 11 Cabinet previously agreed to local authorities being required to cooperate as a CDEM Group within each region with shared emergency management services and personnel.
- 12 However, I am proposing an amendment to the equivalent of sections 17 and 64(1) in the CDEM Act to clarify that:
- 12.1 CDEM Groups are responsible for regional coordination and governance
 - 12.2 local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group.

Publication of CDEM Group Plans

- 13 The publication requirements of CDEM group plans and which materials are reasonable to incorporate by reference are not clear in the CDEM Act.
- 14 I am proposing to make it explicit in the Bill that CDEM Group plans must be published, and to introduce updated principles to guide which documents can be incorporated by reference.

Clarifying the administering authority process

- 15 The CDEM Act requires an administering authority for each CDEM Group. An administering authority provides administrative and related services for the CDEM Group. In 2020, the Government agreed to amend the CDEM Act to provide for more flexibility as to who could act as an administering authority.
- 16 I propose to include clauses in the Bill:
- 16.1 specifying that any member of the CDEM Group that is a territorial authority or regional council or unitary authority may be the administering authority by agreement
- 16.2 that if the members of a CDEM Group fail to agree on an administering authority, and if the Group:
- 16.2.1 has a regional council as a member, then the regional council must be the administering authority
- 16.2.2 does not have a regional council as a member, then the existing arrangement for the Minister to appoint or direct will apply
- 16.3 removing the current requirement that the administering authority can only be changed if the Minister agrees.

Further strengthening Māori³ participation and protection from liability for Māori members of Joint Committees⁴

- 17 I want to enable Māori participation throughout the emergency management system, both to enhance Māori participation, and to greater recognise the existing role Māori play before, during, and after emergency events.

Further strengthening Māori participation throughout the emergency management system

- 18 The CDEM Act is currently silent on the importance of the role of Māori in the

³ Māori is any representatives of Māori (for example, of iwi, and of Māori organisations) that the person considers appropriate. NEMA will work with Parliamentary Counsel Office during drafting to confirm an appropriate and inclusive definition to correctly identify Māori in the Bill.

⁴ Joint Committees (for multi-local authority CDEM Groups) and Standing Committees (for unitary authorities) provide governance for CDEM Group activities. Joint Committees is used to refer to both in this paper.

emergency management system. On November 2021, Cabinet agreed in-principle to a set of proposals for the new Bill that aim to enable Māori participation throughout the system [CAB-21-MIN-0472, confirming GOV-21-MIN 0043]. This includes enabling Māori to join CDEM Group governance and operational structures and requiring specific consultation with Māori partners during the development of emergency management planning and strategy documents.

- 19 The proposals outlined in the November Cabinet Paper were subject to targeted stakeholder engagement with the CDEM sector and key Māori partners, including the Ministerial Advisory Committee on Emergency Management.⁵ During this engagement, the government heard that two members on Joint Committees, as earlier agreed in principle by Cabinet, is insufficient or does not represent an improvement to participation in some regions. For example, Taranaki has three iwi participating in their Joint Committee and Manawatu has seven Māori participants on their Coordinating Executives Group, while other regions currently have none. It is appropriate that Māori membership is determined on a region-by-region basis and that the system allows for local tailoring of appointment processes. For these reasons, I propose:
- 19.1 introducing a requirement in the Bill to have Māori members with full voting rights on both CDEM Group Joint Committees and Coordinating Executive Groups
 - 19.2 that Māori members be appointed via systems to be developed locally – an empowering clause will be included in the Bill for Regulations to allow for more prescription, which will be developed in collaboration with Māori and local government to deliver locally appropriate appointment mechanisms. A ministerial backstop will also be included in the Bill to ensure appointments do happen and to make decisions where regions cannot agree on members. This mitigates the risk that no, or insufficient, appointments are made while supporting the policy intent for a consistent expectation of Māori participation but with local determination led by Māori working with local government
 - 19.3 the costs of Māori members will be centrally funded from NEMA's baseline as part of the national support on which the emergency management system relies.⁶ This helps remove a disincentive for Māori participation, and acknowledges that other members on CDEM Group Joint Committees and Coordinating Executive Groups are salaried local government or emergency sector employees and membership of these groups is part of their duties, which is not the case for Māori members

⁵ The Ministerial Advisory Committee comprises Māori members with experience in emergency management.

⁶ The cost implications will place a baseline pressure on NEMA. However, given that there is no certain number of Māori members, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.

- 19.4 the establishment of a National Māori Emergency Management Advisory Group⁷ to replace the existing Ministerial Advisory Committee on emergency management. Establishing the Advisory Group in primary legislation puts this stream of advice on a permanent footing. This will not create duplication as the existing Ministerial Advisory Committee on emergency management will be disestablished. The Bill will include a requirement that the responsible Minister appoint a National Māori Emergency Management Advisory Group to provide advice to the Chief Executive of NEMA across all aspects of the role of Māori in the emergency management system. This includes advising on NEMA's role to assure that the Crown system delivers for Māori. It is intended that the responsible Minister can set Terms of Reference to direct the Group and how it works with NEMA, including any expectations for reporting to the Minister.
- 20 I propose no change or only minor wording changes (see Appendix for detail) to the earlier proposals that:
- 20.1 update the permanent legislative authority so that Māori organisations can be reimbursed for welfare expenses incurred during emergency responses – the Bill will update the parties that can be paid, with further detail to be included as part of the National Civil Defence Emergency Management Plan Order 2015 (the National Plan) and guide review
- 20.2 require CDEM Groups to engage Māori organisations in the development of their CDEM Group Plans and strategies – in addition to what has already been agreed by Cabinet, CDEM groups will notify draft CDEM Group Plans on Māori and have regard to the comments received
- 20.3 include Māori roles and responsibilities in the National CDEM Plan – a requirement will be included in the Bill that the National Plan can include specific roles and responsibilities for Māori organisations where these have been agreed with those organisations and ensure that Māori are enabled to participate in all levels of the emergency management system.
- 20.4 Establish CDEM Group functions relating to identification of and addressing the needs of iwi and Māori in the Group's area in the replacement to section 17 of the Act.
- 21 I propose that a descriptive Te Tiriti o Waitangi / Treaty of Waitangi clause be included in the Bill, to expressly reference the Crown's Te Tiriti / Treaty responsibilities and describe how the proposals to strengthen the role of Māori (outlined above) are to be given effect. See also the Treaty Analysis section of this paper at paragraphs 92-94 below.

⁷ An appropriate name for the Group may be determined following enactment of the Bill. This Group would replace the existing Ministerial Advisory Committee.

22 As noted in the November 2021 Cabinet paper, legislative changes are only the beginning of improving how Māori participate in emergency management. [CAB-21-MIN-0472]. NEMA will continue to work with the CDEM Sector and key Māori partners in the development of the National Plan and other secondary legislation, as well as for the implementation of the Bill and as part of their broader work programme.

Liability under the Health and Safety at Work Act 2015

23 Currently, the Health and Safety at Work Act 2015 (HSWA) excludes members of territorial authorities elected in accordance with the Local Electoral Act 2002 from liability for failing to comply with their duties as an officer of a Person Conducting a Business or Undertaking (PCBU). The protection from liability aims to remove any disincentive for participation in local democracy that would result if elected members of councils and other elected positions were to face the risk of prosecution for breach of the due diligence duty.

24 However, under my proposals for improving Māori participation in joint committees, Māori members will not be elected under the Local Electoral Act.

25 In addition, it is unclear whether joint committees are Persons Conducting a Business or Undertaking (PCBU) for the purposes of HSWA.

26 If joint committees are PCBUs, then all joint committee members will have duties as officers of PCBUs under section 50 of HSWA. However, only those members elected in accordance with the Local Electoral Act will be protected from liability under HSWA. Māori members of joint committees will be exposed to liability under HSWA if CDEM Groups are in fact PCBUs.

27 To address this anomaly, I propose the insertion of a clause in the Bill to the effect that joint committees are not PCBUs. If joint committees are not PCBUs, then all members will be treated the same and will therefore not be exposed to liability.

28 NEMA officials will continue to work with MBIE and in-house legal teams to refine the PCBU proposals and ensure all risks are covered off.

29 I also propose amendments to who holds certain statutory powers to align with this PCBU clarification.

Enabling equitable outcomes

30 New Zealand is a party to a range of international instruments⁸ that commit New Zealand to:

30.1 an inclusive 'all of society' approach to participation

⁸ These instruments include the United Nations Conventions on the Rights of Persons with Disabilities, the Sendai Framework for Disaster Risk Reduction 2015–2030 and the United Nations Declaration on the Rights of Indigenous Peoples.

- 30.2 ensuring that our existing institutional structures and processes prioritise equity for people who are disproportionately impacted by emergencies.
- 31 The CDEM Act requires emergency management planners to ‘have regard to’ such international obligations.
- 32 Emergencies amplify existing inequalities with the result that some communities are disproportionately impacted by emergencies. The Bill provides an opportunity for New Zealand to provide for the needs of communities disproportionately impacted by emergencies in alignment.
- 33 I propose to include a clause in the Bill for CDEM Groups and their local authorities to engage with communities disproportionately impacted by emergencies in the development of their CDEM Group Plan. The purpose of this clause is to require CDEM Groups to identify communities disproportionately impacted by emergencies and address their needs in the Group Plan.

Clarifying the roles of the Chief Executive and Director

- 34 The current legal arrangements for the national statutory role holders require updating to take account of NEMA’s creation in 2019 as an operationally autonomous departmental agency with its own Chief Executive.
- 35 I propose that the Chief Executive of NEMA hold the role of Director of Civil Defence Emergency Management. The Chief Executive can delegate national emergency response and recovery functions and powers to the National Controller and National Recovery Manager as appropriate.
- 36 I also propose that those statutory functions and powers of the Director that sit with a Chief Executive under other legislation (for example, the Public Service Act 2020), or which do not require a statutory power or function, be removed.

Lead and Support Agency Regulations

- 37 Secondary legislation confirms that lead agencies have responsibilities in relation to managing the response to managing an emergency, but there is no provision in the Act relating to lead agencies. In addition, agency roles and responsibilities for the management of hazards across all 4Rs need to be clarified, as uncertainty contributes to misunderstanding of roles and responsibilities before, during, and after emergencies.
- 38 I propose to include clauses in the Bill that enables the making of regulations which:
- 38.1 confirm the roles and responsibilities of lead and, due to the inherent interdependencies, support agencies⁹

⁹ Note that different terminology may be used in the final Regulations following consultation.

- 38.2 establish the mechanisms and criteria by which lead and support agencies are allocated
 - 38.3 set out the expectations of, and from, governance
 - 38.4 specify the triggers and thresholds that determine the lead agency for a specific event.
- 39 I also propose that the Bill require the Minister for Emergency Management to consult with other relevant Ministers and agency chief executives when developing new regulations for lead and support agencies. This reinforces that roles and responsibilities are determined via consultation rather than being unilaterally assigned by the Minister for Emergency Management or by NEMA.
- 40 The financial implications of additional roles and responsibilities for lead agencies across all 4Rs will depend on the operating model selected. Options for the operating model will be included as part of further consultation to be undertaken in late 2022-early 2023.

Ambulance services

- 41 Ambulance services are not defined as an emergency service for the purposes of the CDEM Act. This has resulted in instances of ambulance services being excluded from decision-making and information sharing processes in an emergency, despite their role as a first responder and their responsibilities under the Coordinated Incident Management System.
- 42 In addition, ambulance services do not hold a permanent position on Coordinating Executive Groups, which means that CDEM Groups do not have access to advice from all the core emergency responders.
- 43 I propose that the Bill:
- 43.1 include a definition of an Ambulance Service
 - 43.2 include Ambulance Services within the definition of “emergency service”
 - 43.3 establish a permanent position for a chief executive or senior officer of an ambulance service on Coordinating Executive Groups.

Critical Infrastructure (lifeline utilities)

- 44 Critical infrastructure entities (‘lifeline utilities’ in the CDEM Act) provide essential and enabling infrastructure and services that support commercial and domestic activity. In the broader infrastructure sector, there are a number

of initiatives underway to improve the resilience of New Zealand's infrastructure and infrastructure services.¹⁰

- 45 The critical infrastructure proposals discussed in this section have been designed to avoid overlaps with the other infrastructure initiatives. Some of these proposals (for example, the change from lifeline utilities to critical infrastructure, creating a definition, criteria and information sharing requirements) also act as stepping-stones to the wider reforms.

Three Waters reforms and critical infrastructure

- 46 In June 2021 Cabinet agreed that, in respect of Crown support, the Civil Defence and Emergency Management Act 2002 arrangements will be extended to apply to water service entities, such that it continues to apply to three water assets once the assets are transferred to the water services entities from local authorities [CAB-21-MIN-0227 refers].
- 47 NEMA officials will work with the Department of Internal Affairs to give effect to this decision, which may include legislative changes. NEMA and DIA officials are working on the details to ensure that when the water services entities are established, the CDEM Act 2002 arrangements (if not yet replaced by reforms proposed in this paper) are fit for purpose for the water services entities and the local government system.
- 48 In addition, the reform of the CDEM Act 2002 means policy work is required to determine how Crown funding for three water assets is provided to the Three Water Entities following an emergency event. I therefore seek agreement to delegate the power to act to make the final decision on these matters to the Ministers of Local Government and Emergency Management, in consultation with the Minister of Finance.
- 49 For clarity, the water services entities will fall within the scope of the definition for entities carrying on certain businesses regarding lifeline utilities (Schedule 1, Part B of the current Act). Accordingly relevant legal obligations and responsibilities will carry over to the new water service entities. They are also likely to be in scope for the new process to confirm new critical infrastructure providers through Ministerial decision and Gazettal.

Planning Emergency Levels of Service

- 50 Lifeline utilities¹¹ are required to "ensure that [they are] able to function to the fullest possible extent, even though this maybe at a reduced level, during and after an emergency".¹² This duty is vague and not measurable.

- 51 I propose that:

51.1 critical infrastructure entities be required to establish and publish their

¹⁰ These include the DPMC-led Critical National Infrastructure work and the Treasury-led government response to the Infrastructure Strategy.

¹¹ Lifeline utilities will be renamed critical infrastructure in the Bill.

¹² Section 60(a), Civil Defence Emergency Management Act 2002.

planned emergency levels of service

- 51.2 critical infrastructure entities be required to review their planned emergency levels of service every five years
- 51.3 the empowering clause for making critical infrastructure regulations allows for regulations setting out further detail and procedural matters for planning emergency levels of service.

Annual compliance reporting

- 52 Currently, critical infrastructure entities are not required to report on how well their organisations are meeting their obligations under the CDEM Act. This makes assessing compliance problematic.
- 53 In view of this, I propose that critical infrastructure entities be required to:
 - 53.1 annually report to NEMA and their regulatory agencies on compliance with their duties under the new Act
 - 53.2 make relevant information available to NEMA or CDEM Groups on request.
- 54 Therefore, I propose that the empowering clause in the Bill for making critical infrastructure regulations specifically allows for setting out the details of reporting requirements.
- 55 Significant support came from agencies and the emergency management sector. However, the electricity, telecommunications, and ports sectors were not in favour of the proposal.
- 56 Given the need to assure compliance in these critical infrastructure sectors, I recommend that Cabinet approve this proposal. To address the concerns raised by critical infrastructure entities, NEMA will provide ongoing support and guidance to minimise the impact of this proposal on their business activities.

Delayed commencement

- 57 Cabinet has previously agreed to a proposal for the Minister for Emergency Management to specify critical infrastructure entities by means of a *Gazette* notice [CAB-21-MIN-0472, confirming GOV-21-MIN-0043, refers]. At present, existing entities are set out in a Schedule to the CDEM Act. To provide for a review of the entities listed in Schedule 1 and the issuing of a new *Gazette* notice, I am proposing that the relevant provisions in the new Bill be subject to delayed commencement for two years, unless brought in earlier via Order in Council.
- 58 The new legislative regime for critical infrastructure will involve significant change for existing lifeline utilities, especially in relation to planning and reporting. To provide time for the necessary adjustment, I am proposing a

two-year transition arrangement commencing from the date that the new Act comes into effect. This would apply only to the planning emergency levels of service and annual compliance reporting proposals.

Concurrent emergencies

- 59 The CDEM Act does not allow for concurrent emergencies (with the temporary exception of COVID-19). This has become increasingly problematic given the increasing number of overlapping emergency events in recent years.
- 60 I propose that the current arrangements in the CDEM Act are revised through the Bill, with changes to be made that:
- 60.1 enable CDEM Groups and Mayors to declare a state of local emergency for other emergency events even while there is a state of national emergency in force in that location
 - 60.2 allow states of local emergency to remain in force, if a state of national emergency is declared for other emergency events in that location
 - 60.3 enable CDEM Groups and Mayors to declare states of local emergency for other emergency events, without terminating any national transition period in force in that location
 - 60.4 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a state of national emergency in force for that location
 - 60.5 enable a local transition period to remain in force, if a state of national emergency is declared for other emergency events in that location
 - 60.6 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a national transition period in force for that location
 - 60.7 enable a local transition period to remain in force, if notice of a national transition period is given for other emergency events in that location
 - 60.8 prevent a Local or Group Controller from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National Recovery Manager during concurrent emergencies.
- 61 I am also proposing that technical details setting out the management of concurrent emergencies at a local, regional and national level is provided via regulations, Emergency Management Rules and guidance as appropriate.

Modernising the Minister's and CDEM Groups' duties when creating regulatory instruments

- 62 The CDEM Act imposes duties on the Minister for Emergency Management and CDEM Groups to be complied with when creating specific types of regulatory instruments. It is unusual for Acts to deal with policy methodologies, such as those set out in section 65 of the CDEM Act. In view of this, the duties set out in section 65 no longer need to be set out in an Act.
- 63 To address this, I am proposing that section 65, "Duties to consider alternatives, assess benefits and costs, etc" not be included in the Bill.

Offences and penalties

- 64 The current offences and penalties regime in the CDEM Act consists entirely of prosecutable offences. However, the penalties specified were set in 2002 and have not been reviewed since. Compared with similar pieces of emergency legislation, there is scope for the maximum amounts to be increased commensurate with other legislation that makes requirements of people's behaviour to achieve a public safety goal.
- 65 Alongside this, there is an opportunity to introduce infringement offences. Infringement offence regimes are useful because they provide a practical and immediate response for offending, such as obstruction during an emergency or failing to comply with a prohibition. An infringement scheme can also act as an effective deterrent to reduce harm caused by minor offending and promote a sense of responsibility and accountability for unacceptable conduct.
- 66 In view of this, I propose:
- 66.1 to increase, for an individual, the upper maximum amount for a court-imposed fine for prosecutable offences with a working position of an upper amount of \$8,000
 - 66.2 that an infringement offence regime for emergency management is established through the new Act
 - 66.3 that the Governor-General is enabled to make regulations providing for an infringement offence regime, including allowing for penalties to be set up to a maximum of \$1,000
 - 66.4 to ensure flexibility of the infringement offence regime, that regulations are empowered to prescribe:
 - 66.4.1 breaches of the rules that constitute offences against the Bill
 - 66.4.2 if an act or omission constitutes an infringement offence
 - 66.4.3 defences to offences (if applicable)
 - 66.4.4 the maximum penalty for each individual offence (within the statutory maximums provided for in the Bill).

67 Officials will continue to work with the Ministry of Justice on the details of the infringement regime, including:

67.1 Who may issue infringement notices

67.2 How proceedings for infringement offences may be commenced

67.3 When an infringement notice may be issued, how it may be delivered, and the form of the notice.

68 Officials are also continuing to work with the Ministry of Justice on appropriate penalties for prosecutable offences, including for body corporates. I will report back on the outcomes of discussions in the Approval for Introduction Cabinet paper.

Climate change and definition of emergencies

69 Climate change is an exacerbator of hazards and risks that may escalate to an emergency event. The CDEM Act currently provides for the identification assessment and management of all hazards and risks, regardless of their causative or exacerbating factors.

70 To support the climate change work currently underway across government, there is scope to include in the Bill a small number of considered references to the effects of climate change as an exacerbator that must be considered, planned for, and responded to. This will help make the Bill responsive to the changing emergency management environment in the future.

71 I am, therefore, proposing to include in the Bill:

71.1 a reference to emergencies of all kinds being contemplated by the Bill, including events exacerbated by climate change in the General Policy Statement section

71.2 a reference to the Climate Change Response Act 2002 in the list currently found in section 17 of the CDEM Act, signposting responsibilities for various persons with civil defence emergency management functions in relation to “legislative provisions that may be relevant to the purpose of this Act,” which will be shifted into the Bill.

Naming conventions

72 The naming conventions used throughout the Act are out of date and do not accurately reflect current roles and responsibilities. The Bill provides an opportunity to update the naming conventions to reflect the modern understanding of emergency management, with the concept of civil defence (as a society- or community-wide effort) being retained for frontline-facing activities and emergency management being used to describe the overall system that sits behind this.

- 73 To address this, I propose to replace:
- 73.1 “civil defence emergency management” with “emergency management” where appropriate
 - 73.2 “civil defence” with “emergency management” where appropriate
 - 73.3 “Civil Defence Emergency Management Group” and “Co-ordinating Executive Group” in favour of “Emergency Management Committee” and “Emergency Management Co-ordinating Executive” respectively.
- 74 Officials will continue to work on an appropriate transitional arrangement for the name change and I will advise Cabinet further in the Approval for Introduction Cabinet Legislation Committee paper.

Regulation Making Powers

- 75 A new emergency management legal framework is being introduced, which includes both regulations and Emergency Management Rules [GOV-21-Min-0043 and CAB-21-Min-0472 refers]. Both the empowering clause for regulations in the CDEM Act and the regulation-making proposals in the Government Response to the TAG Recommendations include subject matter that is more suitable for rules and guidance material.
- 76 To address these issues, I propose to:
- 76.1 revise the list in section 115 before it is shifted into the Bill, to remove any out-of-date regulation making powers and to include new regulation making powers for critical infrastructure, lead agency, and Māori member appointments mechanisms
 - 76.2 review the regulation-making powers set out in the Government Response to the TAG Recommendations, to determine what can be proceeded with as part of the legislative reform process and through what legislative or non-legislative mechanism.
- 77 This review would include the proposal for regulations requiring consistent CDEM Group organisational arrangements, which is a fundamental shift in the current devolved emergency management structures. Such a requirement would need to be in the primary statute if it were to proceed.

Use of secondary legislation

- 78 Cabinet has previously agreed [GOV-21-Min-0043 and CAB-21-Min-0472 refers] that the Bill empowers the making of the Emergency Management Rules as an instrument of secondary legislation that set out administrative and technical requirements to ensure compliance with the Bill, Emergency Management Regulations and National Plan.
- 79 Previous advice to Cabinet has recommend that the Bill provide for the effective use of secondary legislation to ensure flexible and responsive

legislative design. This includes the use of regulations and other instruments such as the National Plan and the Emergency Management Rules. The clauses in the Bill that empower these instruments require Cabinet approval.

80 In view of this, I am proposing that the Bill empowers the making of the Emergency Management Regulations, that may include at a minimum (but are not restricted to):

80.1 regarding roles and responsibilities:

80.1.1 establish the roles and responsibilities of (lead and support) agencies with regards to the management of hazards and emergencies

80.1.2 specify (including by incorporating by reference) any minimum standards for suitably qualified and experienced personnel with statutory functions

80.1.3 provide the process by which those standards are set including consultation and notification requirements, over and above the standard consultation and notification requirements of regulations generally (if relevant)

80.2 regarding the establishment of an Administering Authority:

80.2.1 the operational requirements to fulfil the role of the administering authority

80.3 regarding communities disproportionately impacted by emergencies, CDEM Group Plans include:

80.3.1 principles for the identification and confirmation of representative bodies

80.3.2 minimum requirements for consultation activities

80.4 regarding Māori membership on CDEM governance structures and input minimum requirements for locally appropriate appointment mechanisms and/or criteria for Māori appointments

80.5 critical infrastructure regulations setting out further detail and procedural matters for minimum planning emergency levels of service and reporting requirements

80.6 the principles, roles and responsibilities for the management of concurrent emergencies at a local, regional and national level

80.7 details of the proposed offences and penalties measures

80.8 that the Bill empowers the making of the National Plan as an instrument of secondary legislation, with appropriate requirements for consultation, approval and review (to be developed with advice from the Legislation Design Advisory Committee and Parliamentary Counsel Office)

- 80.9 that the National Plan will be empowered to prescribe at a minimum (but is not restricted to):
- 80.9.1 default tasks and arrangements for how agencies subject to the Bill will work together
 - 80.9.2 the outcomes sought for equity in emergency management and the roles and responsibilities of national agencies in delivering those outcomes
 - 80.9.3 the process for co-development of national level planning arrangements with Māori partners
 - 80.9.4 the national-level outcomes for the provision of early warnings and advisories to individuals and communities at risk from hazards
 - 80.9.5 details regarding the operation of the permanent legislative authority.

Rescinding previous decisions and recommendations

- 81 Further policy work undertaken after Cabinet's decisions in August 2020 [CAB-20-Min-0366, confirming GOV-20 Min 0035] has demonstrated that the following proposed changes are not required. I am, therefore, proposing to rescind them.

Controllers and Recovery Managers operating anywhere in New Zealand

- 82 Cabinet had agreed to amend the CDEM Act to enable Controllers and Recovery Managers to operate anywhere in New Zealand. The amendment is not required because there is no statutory barrier to the effective deployment of substitute Controllers and Recovery Managers anywhere in New Zealand.
- 83 As an associated issue, there are no appointment requirements specified in the CDEM Act for Local Controllers.
- 84 I am proposing that:
- 84.1 Cabinet rescind its previous agreement to amend the CDEM Act to enable Controllers and Recovery Managers to operate anywhere in New Zealand
 - 84.2 CDEM Groups be empowered to appoint either by name or by reference to an office holder, at least one suitably qualified and experienced person to be a Local Controller.

Statutory recognition of Emergency Management Assistance Team

- 85 Cabinet previously agreed to amend the CDEM Act to provide for EMAT's existence and its broad function of providing additional support in an emergency response or recovery. However, it is apparent that establishing

EMAT in the Act risks constraining the ability of teams to operate effectively on deployment.

- 86 In view of this, I am proposing that Cabinet rescind its previous agreement to provide for the establishment of EMAT in the CDEM Act.

Protection from civil liability during a state of emergency or transition period

- 87 Cabinet has agreed to amend the CDEM Act to extend protection from civil liability to members of the New Zealand Emergency Management Assistance Team (EMAT), and volunteers acting under the direction of a person performing functions, duties, and powers under the Act.

- 88 There is a need to ensure that protection from civil liability is extended to cover any persons acting under the direction of a person performing functions, duties, or powers under the Emergency Management Act, (including both EMAT members and volunteers but also others who fall into this category).

- 89 I propose that:

- 89.1 protection from civil liability is drafted in an inclusive way to cover any persons acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act where the loss or damage is due directly or indirectly to a state of emergency or transition period
- 89.2 Cabinet rescind its previous agreement to recommendations relating to protection from civil liability for EMAT members and volunteers.

New functions for Controllers to co-ordinate responses

- 90 The Government Response to the TAG recommendations proposed creating explicit functions in the Act for the National Controller, Group Controllers, and Local Controllers to co-ordinate responses. This was an expansion of the TAG recommendation which focused on Group Controllers only.

- 91 Subsequent policy work has clarified that explicit functions are not required for the National Controller and Group Controllers.

- 92 I am therefore proposing that the previous amendments for the National Controller and Group Controllers to have explicit functions to co-ordinate emergency responses are not progressed.

General Power to act

- 93 I propose that the Minister for Emergency Management make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy directions in this paper. I propose to report back to Cabinet on any such decisions made when completing final approvals that shape drafting instructions.

Treaty of Waitangi implications

- 94 These reforms are intended to recognise the importance of the role of Māori, as Te Tiriti / Treaty partners to the Crown, in the emergency management system. The policy proposals focus explicitly on ensuring partnerships with Māori through participation in CDEM Group governance and ensuring and requiring specific consultation with Māori partners during the development of emergency management planning and strategy documents.
- 95 As the reforms are implemented, I expect to see Māori contributions recognised, resourced and reflected at all levels of the emergency management system. This includes valuing the role Māori communities, marae, hapū, iwi and Māori organisations play.
- 96 These reforms look to enable Māori-specific solutions for enabling Māori participation at all levels of the emergency management system. The reforms will also remove a significant structural impediment (liability under HSWA) to Māori leadership and engagement across the emergency management system. I expect that through this multi-pronged approach, the government will be able to make progress on achieving equity for Māori communities in the context of emergency management.

Financial Implications

- 97 There are no direct financial implications associated with the recommendations of this paper. Indirect implications are summarised by topic below.

Additional Māori CDEM Group members

- 98 As discussed above in paragraph 19.3, there is a cost implication of adding Māori seats to governance bodies. This has been assessed at approximately \$100,000 per annum. It is intended to pay for the costs of Māori members centrally from NEMA's baseline as part of the national support on which the emergency management system relies.
- 99 However, given that there is no certain number of Māori members, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.

Critical infrastructure entities

- 100 It is also difficult to quantify the increased burden of compliance costs and regulatory functions on critical infrastructure entities and may vary. However, it is expected that the cost impact will be low to medium given that critical infrastructure entities will not be required to invest in upgrading existing systems or engage additional staff.

- 101 There will also be some consequential costs to agencies such as NEMA and CDEM Groups and sector responsible agencies such as MBIE, MOT etc. to support implementation, compliance and facilitation.

Three Waters Reform

- 102 Additional resourcing will also be required within NEMA to implement changes arising from Three Waters reform. There may be some financial implications for local authorities and water services entities in respect of the extension of CDEM Act arrangements, however the intention is to adhere to the status quo as far as practicable. Officials will work through the policy and financial implications before the projected commencement of the Three Waters Reforms in 2024.

Phased implementation to minimise cost impacts

- 103 A phased implementation process will be used to minimise the impacts on local government of implementing the reforms, to enable the changes to be delivered from within baselines. This approach includes:
- 103.1 ensuring that new CDEM Group Plans are not required immediately upon commencement of the Bill. Approximately half the CDEM Groups have held off updating their CDEM Group Plans in anticipation of these changes and would be undertaking their regular review and updating activities to implement the new requirements upon commencement. The remaining CDEM Groups will have their current CDEM Group Plans remain in effect, provided they were last updated no more than 4 years before Royal Assent of the Bill, until their next scheduled Plan update, at which point their updated Plan must comply with the new requirements in the Bill
 - 103.2 other changes, such as appointing Māori members, establishing an Administering Authority, developing new Standard Operating Procedures and negotiating cost sharing agreements, will also have a phased implementation. These changes will be further developed and brought into force via secondary legislation such as Regulations, the National Plan or Rules, and the requirement of an appropriate phasing will be included in the development of those instruments.
- 104 Four CDEM Groups have been identified as needing additional support or expertise to enable compliance with new requirements s9(2)(g)(i) [REDACTED]. NEMA will provide support and advice through their Regional Engagement to support those CDEM Groups in meeting their obligations, as they do currently. Knowledge transfer from capable CDEM Groups to under-resourced neighbouring CDEM Groups will also be supported and encouraged.

Legislative Implications

105 s9(2)(f)(iv)

Impact Analysis

Regulatory Impact Statement

- 106 The Regulatory Impact Analysis Team at the Treasury has determined that the proposal to replace the Civil Defence Emergency Management Act 2002 with a new Emergency Management Bill is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has minor impacts on individuals, businesses and not-for-profit entities.
- 107 A Regulatory Impact Statement for proposals relating to improving emergency management system performance and capability, further strengthening Māori participation in emergency management and raising risk awareness and consequence reduction has been completed and is attached to this paper.

Climate Implications of Policy Assessment

- 108 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 109 The population implications are covered in paragraphs 17-22 and 30-33, and in Appendix 1 below.

Human Rights

- 110 The proposals in this paper are consistent with rights and freedoms listed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1983.
- 111 It is envisaged that the proposals to enable equitable outcomes will address the inequitable impact of emergencies on particular communities and in doing so, enhance the protection of the individual's right to life and the security of the person and their property.
- 112 A final review as to whether the proposals will be consistent with the Bill of Rights Act will be undertaken once the legislation has been drafted. Officials from the Ministry of Justice, National Emergency Management Agency and the Department of the Prime Minister and Cabinet will work together on these issues to ensure consistency with the Bill of Rights Act.

Consultation

- 113 NEMA has received feedback from the Ministerial Advisory Committee on Emergency Management (see appendix 1 for more detail). Targeted engagement on some policy proposals has also been undertaken with Māori emergency management practitioners.
- 114 Targeted engagement was undertaken with CDEM Sector stakeholders including local government elected officials, Coordinating Executive Group members, and CDEM Group Offices.
- 115 The following Departments and organisations have been consulted: Department of Internal Affairs, Department of the Prime Minister and Cabinet, the Earthquake Commission, Fire and Emergency New Zealand, Ministry for Primary Industries, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Culture and Heritage, Ministry of Health, Ministry of Social Development, Ministry of Transport, New Zealand Defence Force, New Zealand Police, Te Arawhiti, Te Kawa Mataaho Public Service Commission, Te Puni Kōkiri, Waka Kotahi, the Treasury, Kāinga Ora, Ministry of Housing and Urban Development, New Zealand Search and Rescue Secretariat and the Ministry for Disability Issues.
- 116 Also engaged have been St John Ambulance, National Ambulance Sector Operations and Wellington Free Ambulance.
- 117 Departments and organisations were generally supportive of the proposals, but also:
- 117.1 noted the mixed support for the critical infrastructure proposals
 - 117.2 questioned the impact of the proposed secondary legislation on their functions, powers and budgets
 - 117.3 requested further operational details about how the proposals will work in specific types of emergencies and fit in with their reform programmes (e.g., Three Waters) and legislation (e.g., Resource Management Act 1991)
 - 117.4 raised concerns about how NEMA will give effect to the Crown's Treaty obligations in the text of the Bill
 - 117.5 questioned the potential coverage of proposals relating to enabling equitable outcomes (previously referred to as people disproportionately impacted by emergencies)
 - 117.6 requested further details on the assignment of lead and support agency roles along with their respective powers and obligations.
- 118 These issues have been noted and this draft of the paper has been amended where appropriate.

- 119 The issue of animal welfare during an emergency event has been the subject of discussions between the Ministry for Primary Industries (MPI) and NEMA. MPI and NEMA officials will continue to work together on non-legislative mechanisms to improve animal welfare matters during an emergency response, for example through guidance.
- 120 I have also received feedback on the potential cost impact of the critical infrastructure proposals. It is expected that the cost impact of the planning and reporting proposals will be low to medium and will be adequately addressed by the mitigations identified in paragraphs 112 and 119 in Appendix 1 to this paper.

Ministry of Business, Innovation and Employment (MBIE) comment

- 121 MBIE is strongly supportive of NEMA's objectives in this paper. While we view the new Act as an important step to strengthen New Zealand's emergency management regime, we note that any increased infrastructure resilience will have cost of living implications for consumers. There are also significant risks that the critical infrastructure proposals in the paper may not lead to all the outcomes NEMA is seeking, and some of the proposals could instead lead to compliance costs without any corresponding benefits to New Zealanders. Our key concerns are:
- 121.1 lack of coordination between the emergency management and broader critical national infrastructure (CNI) reforms – Government is currently progressing two separate and significant reform programmes seeking to lift resilience of critical infrastructure: NEMA's emergency management reforms and the CNI reforms currently led by DPMC. Such an approach creates significant coordination risks that could lead to regulatory confusion and unnecessary compliance costs for Government and CNI operators. We also question the ability of the public service to resource both reform programmes given the breadth of other reform programmes that are currently underway across Government. Our preference is that CNI reforms are progressed in a single, integrated reform package
- 121.2 Planning Emergency Levels of Service (PELOS) are unlikely to achieve stated objectives – the proposed PELOS regime is unlikely to provide meaningful information to communities, other CNI operators, or CDEM groups because of the significant number of assumptions/caveats that CNI operators will put on restoration times. MBIE notes that annual compliance reporting was the only option considered in the RIS, and that there is no evidence of CNI providers not complying with information requests under the current CDEM Act. This raises questions about what problem the PELOS regime is seeking to solve
- 121.3 the costs of the CDEM reforms are unclear – MBIE notes there is very little detail on what the role/functions of lead agencies are vis-à-vis NEMA and CDEM groups, and the paper does not outline where the significant funding required to carry out lead agency functions or

administer the PELOS regime will come from.

- 122 Given the importance of lifting the resilience of New Zealand's critical infrastructure, MBIE considers that it would be desirable to integrate the proposed CNI reforms into a single reform process and undertake further engagement with infrastructure operators to work through the most appropriate options to materially lift the resilience of critical infrastructure while minimising the cost-of-living implications. We look forward to working with NEMA and DPMC on remaining policy work and legislative drafting.

Response to MBIE's comments

Sequential delivery of Critical Infrastructure reforms aligned to broader CNI reforms

- 123 The critical infrastructure reforms will be delivered sequentially in a coordinated manner rather than as an integrated package. It is intended that the emergency management infrastructure reforms be concluded first, with the more complex and comprehensive Critical National Infrastructure work being led by the Department of Prime Minister and Cabinet. This approach will:
- 123.1 ensure that some of the most consequential gaps in our regulatory settings (such as the small number of critical infrastructure entities currently required to meet centrally set resilience standards) are filled in the immediate term
- 123.2 create space for DPMC's longer term work to progress more slowly, given it will require significant engagement and is unlikely to be legislated for until 2025.
- 124 Some of the proposed reforms are stepping-stones towards the wider reform. For example, changing from 'lifeline utilities' to 'critical infrastructure', creating a definition of 'critical infrastructure' and specifying the criteria for information sharing requirements. Other reforms are more CDEM-specific and are required irrespective of the wider reform. This includes for example, the PELOS and annual reporting proposals in this paper.
- 125 At the time of lodgement of this paper, Cabinet External Relations and Security committee are due to consider timing of the Critical National Infrastructure work programme on the 2 August 2022.

Planning Emergency Levels of Service (PELOS)

- 126 The main objective of the critical infrastructure proposals is not to address refusals to provide information. Rather, the critical infrastructure proposals are intended to:
- 126.1 set consistent standards against which the somewhat vague and unmeasurable duty in section 60(a) of the CDEM Act can be

assessed¹³

126.2 provide a level of assurance that critical infrastructure entities can fulfil this duty in the event of an emergency.

127 In addition, there is a wide range of benefits in terms of community resilience and preparedness in developing planning emergency levels of service:

127.1 the information gained through PELOS reporting can provide significant support to national and regional planning

127.2 communities can be better prepared based on realistic expectations of critical infrastructure services during an emergency

127.3 PELOS reporting:

127.3.1 can inform the development of effective readiness and response planning

127.3.2 could help critical infrastructure entities to plan based on identified interdependencies and expected emergency service levels

127.3.3 inform the development of innovative solutions where services may be severely compromised due the severity of the emergency scenario being planned for.

128 The information regarding the performance of a critical infrastructure entity's assets and services against hazard scenarios should already exist as part of their Business-as-usual risk mitigation measures and business continuity planning. These are required under the existing CDEM legislation for Lifeline Utilities which requires entities to have such plans and assessments in place.

The costs of the CDEM reforms

129 I acknowledge the lack of detail about the cost implications of the reforms. However, it is not possible at this point to quantify the increased burden of compliance costs and regulatory functions on critical infrastructure entities.

130 However, I assess that the cost impact of meeting the proposed reporting requirements will be low to medium for the following reasons:

130.1 the information regarding the performance of critical infrastructure entities assets and services against hazard scenarios should already exist as part of their business-as-usual risk mitigation measures and business continuity planning. These are required under the existing CDEM legislation for lifeline utilities (critical infrastructure entities) to have such plans and assessments in place

¹³ Section 60(a) of the CDEM Act states that lifeline utilities must “ensure that [they are] able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency”.

- 130.2 NEMA is proposing a Delayed Commencement of this proposal of up to 24 months to help further reduce the cost to comply with this proposal
- 130.3 NEMA will also develop comprehensive guidance and guidelines for critical infrastructure entities on clarity of outputs, how best to meet these requirements, what processes to follow and what scenarios to use for developing PELOS
- 130.4 NEMA will also support and facilitate development of PELOS via existing engagement networks such and New Zealand Lifelines Council and Regional CDEM Lifeline Utilities group.
- 131 The cost impact on CDEM Groups is also anticipated to be low to medium. This is because many CDEM Groups are already delivering the new requirements (for example, publishing the Group Plans).
- 132 I note MBIE's concerns about the cost impact of lead agency status on government agencies and departments. MPI, Ministry for Environment (MfE) and Police raised similar concerns about roles and responsibilities being assigned to them without consideration of their own statutory functions and mandates and budgetary limitations.
- 133 However, I note that:
- 133.1 roles and responsibilities in the area of lead and support agencies cannot be unilaterally assigned by NEMA, but will be allocated in consultation with the affected departments and agencies
- 133.2 the new Act will require the Minister for Emergency Management to consult with other relevant Ministers and agency Chief Executives when developing new regulations for lead and support agencies
- 133.3 neither the Minister for Emergency Management nor NEMA can unilaterally impose roles and responsibilities on other government agencies that override the powers and functions of that agency as set out in their primary legislation.

Communications

- 134 Subject to Cabinet agreement to this paper, I propose that NEMA advises CDEM Groups and key Māori partners of the decisions prior to the proactive release of this paper.
- 135 No public communications are proposed following the approval of the recommendations in this paper. However, we anticipate public announcements following the Cabinet Legislation Committee approval to introduce the Bill. Communications advice will be provided in that paper.

Proactive Release

- 136 I will release this paper proactively, subject to redactions as appropriate under the Official Information Act 1982. The Regulatory Impact Statement will be withheld until the Bill is introduced in the House.
- 137 Proactive release shortly after Cabinet approval and before introduction will allow further engagement on transition and implementation with partners and stakeholders. Making this paper publicly available prior to the introduction of the Bill will also help people make better submissions on the Bill.

Recommendations

The Minister for Emergency Management recommends that the Committee:

- 1 **Note** that the policy proposals with drafting implications are subject to Parliamentary Counsel's discretion concerning how best to express the policy in legislation.
- 2 **Authorise** the Minister for Emergency Management to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy proposals in this paper with drafting implications.
- 3 **Agree** to grant the Minister for Emergency Management the power to act to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with the policy directions in this paper.

CDEM Groups and local authorities

- 4 **Approve** an amendment of the equivalent to sections 17 and 64(1) in the CDEM Act to clarify the functions of CDEM Groups and local authorities so:
 - 4.1 CDEM Groups are responsible for regional coordination and governance, including the following requirements:
 - 4.1.1 to develop, approve, implement, and monitor a CDEM Group plan and regularly review the plan
 - 4.1.2 for overall responsibility to ensure there are suitably trained and competent personnel, including volunteers, and an appropriate organisational structure for those personnel for effective emergency management in the area of the Group
 - 4.1.3 to lead identification and assessment of hazards and risks for the Group area
 - 4.1.4 to coordinate management of hazards and risks within the Group area

- 4.1.5 to support local authorities with their hazard and risk identification/assessment, and with the consultation and communication to their communities
- 4.1.6 to respond to and manage the adverse effects of emergencies in the area
- 4.1.7 to plan and carry out recovery activities within the area.
- 4.1.8 to coordinate emergency management across the area.
- 4.2 Local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group, including the following requirements:
 - 4.2.1 to provide input into the development and review of the CDEM Group plan and to implement the plan as applicable to their district or region
 - 4.2.2 to plan for local emergency management in their district (or region) in alignment with the CDEM Group plan
 - 4.2.3 to ensure alignment between CDEM Group plan and local government planning instruments in legislative clauses relevant to the purpose of this Act.
 - 4.2.4 to arrange for the provision of suitably qualified personnel, including volunteers, and provide appropriate organisational structures at the local level/area subject to their district or region
 - 4.2.5 to identify and assess the hazards and risks relevant to their district or region and report to the CDEM Group
 - 4.2.6 in relation to those identified hazards and risks:
 - 4.2.6.1 manage those hazards and risks
 - 4.2.6.2 consult and communicate with the community
 - 4.2.6.3 identify and implement cost-effective risk reduction
 - 4.2.7 to plan and carry out recovery activities within their district or region
 - 4.2.8 to respond to and manage the adverse effects of emergencies within their district or region
 - 4.2.9 to take all steps to maintain and provide material, services, information, and any other resources for effective emergency management in its district or region.

- 5 **Agree** to delegate to the Minister for Emergency Management and Minister for Local Government the power to act to make decisions regarding who will be responsible for delivering the functions referred to in Rec 4.1 and 4.2 above in respect of the offshore islands that the Minister for Local Government is the territorial authority.
- 6 **Agree** that the existing statutory process for making CDEM Group Plans includes a requirement to publish CDEM Group Plans, and updated principles for the incorporation of other documents by reference.
- 7 **Agree** to inserting clauses in the Bill:
 - 7.1 specifying that any member of the CDEM Group that is a territorial authority or regional council or unitary authority) may be the administering authority upon agreement by the Group members
 - 7.2 that if the members of a CDEM Group fail to agree on an administering authority, and if the Group:
 - 7.2.1 has a regional council as a member, then the regional council must be the administering authority
 - 7.2.2 does not have a regional council as a member, then the existing arrangement for the Minister to appoint or direct will apply
 - 7.3 removing the current requirement that the administering authority can only be changed if the Minister agrees

Further strengthening Māori participation throughout the emergency management system

- 8 **Agree** that the Bill will include a requirement to have Māori members on both Joint Committees and Coordinating Executive Groups with full voting rights.
- 9 **Agree** to an empowering provision to be included in the Bill for Regulations to allow for more prescription, which will be developed in collaboration with Māori and local government, to provide for locally appropriate appointment mechanisms.
- 10 **Agree** that Māori members will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group, which will be funded by NEMA.
- 11 **Agree** that the compensation liabilities in the current CDEM Act be retained but restricted to local authority members.
- 12 **Agree** to the inclusion of a Ministerial backstop in the Bill to ensure appointments do happen and to make decisions where regions cannot agree on members.

- 13 **Agree** to include in the Bill a requirement that the responsible Minister must appoint a National Māori Emergency Management Advisory Group of between five and eight members to advise the Chief Executive of NEMA across all aspects of the role of Māori in the emergency management system.
- 14 **Agree** to update the Permanent Legislative Authority so that Māori organisations can be reimbursed for welfare costs incurred during an emergency.
- 15 **Agree** to include requirements in the Bill to ensure CDEM Groups:
- 15.1 engage with Māori and iwi partners in the development of CDEM Group Plans
 - 15.2 have systems and processes to ensure that it has the capability and capacity to engage with Māori and to understand perspectives of Māori
 - 15.3 notify iwi and Māori partners as a requirement of planning – starting with the CDEM Group Plan and moving to other plans, as appropriate
 - 15.4 have regard to the comments received from Māori on CDEM Group planning documents
 - 15.5 set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans.
- 16 **Agree** to the inclusion of a requirement in the Bill that the National Plan must consider roles and responsibilities of Māori.
- 17 **Agree** to amend the equivalent to section 17 of the Act to include, in the list of CDEM Group functions, functions relating to the identification of, and addressing the needs of, iwi and Māori.
- 18 **Agree** that a descriptive Treaty of Waitangi / Te Tiriti o Waitangi clause will be included in the Bill to describe how the above proposals are to be given effect.

Liability under the Health and Safety at Work Act 2015

- 19 **Agree** to the insertion of a clause in the Bill to the effect that joint committees are not Persons Conducting Business or Undertaking for the purposes of the Health and Safety at Work Act 2015, allowing all members to be treated the same and not be exposed to liability.
- 20 **Agree** to amendments to who holds certain statutory powers (for example, power to do works, or make safe dangerous structures) to align with this Persons Conducting Business or Undertaking clarification.

Enabling equitable outcomes

- 21 **Approve** a requirement for CDEM Groups and their local authorities to identify and engage with communities which are likely to be disproportionately

impacted by emergency events in their area, in the development of the CDEM Group Plans.

Clarifying the roles of the Chief Executive and Director

- 22 **Agree** that the NEMA Chief Executive hold the role of Director of Civil Defence and Emergency Management and can delegate the national emergency response and recovery functions and powers to the National Controller and National Recovery Manager as appropriate.
- 23 **Agree** that the statutory functions and powers of the Director that sit with the Chief Executive under other legislation, or which do not require a statutory power or function, be removed.

Lead and Support Agency Regulation

- 24 **Agree** to clauses being included in the Bill to enable the making of regulations which:
- 24.1 confirm the roles and responsibilities of lead and, due to the inherent interdependencies, support agencies¹⁴
 - 24.2 establish the mechanisms and criteria by which lead and support agencies are allocated
 - 24.3 set out the expectations of, and from, governance
 - 24.4 specify the triggers and thresholds that determine the lead agency for a specific event.
- 25 **Agree** that the Bill require the Minister for Emergency Management to consult with other relevant Ministers and agency chief executives when developing new regulations for lead and support agencies.
- 26 **Note** that Water Service Entities, to be established under the Three Waters Reform, have responsibilities across the 4Rs in relation to the management of three waters infrastructure.

Ambulance services

- 27 **Agree** to the Bill
- 27.1 including a definition of Ambulance Services
 - 27.2 including Ambulance Services within the definition of Emergency Services
 - 27.3 establishing a permanent position for a chief executive or senior officer of an ambulance service on Coordinating Executive Groups.

¹⁴ Note that different terminology may be used in the final Regulations following consultation.

Critical Infrastructure

- 28 **Agree** that critical infrastructure entities are required to establish and publish their planned emergency levels of service.
- 29 **Agree** that critical infrastructure entities are required to review their planned emergency levels of service every five years unless required earlier by the Director due to changing circumstances.
- 30 **Agree** that the empowering clause for making critical infrastructure regulations allows for regulations setting out further detail and procedural matters for planning emergency levels of service.
- 31 **Agree** that critical infrastructure entities are required to annually report to NEMA and their regulatory agencies on compliance with their obligations under the Bill.
- 32 **Agree** that for the purposes of annual compliance reporting, critical infrastructure entities are required to make relevant information available to NEMA or CDEM Groups on request.
- 33 **Agree** that the empowering clauses for making critical infrastructure regulations specifically allows for regulations setting out the details of reporting requirements.
- 34 **Agree** that in order for a review of the entities listed in Schedule 1 of the CDEM Act to be undertaken and a new Gazette notice issued, that the relevant provisions come into force on a date two years after the commencement of the new Act or on an earlier date appointed by the Governor-General by Order in Council.
- 35 **Agree** that a two-year transition period commencing from the date that the new Act comes into effect be provided for, to give existing entities time to comply with the new legal requirements for planning emergency levels of service and annual compliance reporting.

Three Waters Reform

- 36 **Note** that:
- 36.1 Cabinet has agreed that the CDEM Act 2002 arrangements will be extended to apply to water service entities established under the Three Waters Reform Programme [CAB-21-MIN-0227]; and
- 36.2 NEMA and DIA officials are working on the details to ensure that when the water services entities are established, the CDEM Act 2002 arrangements (if not yet replaced by reforms proposed in this paper) are fit for purpose for the water services entities and the local government system.

- 37 **Note** that the reform of the CDEM Act 2002 means policy work is required to determine how Crown funding is provided to water services entities following an emergency event in the reformed system.
- 38 **Agree** to delegate to the Minister of Local Government and the Minister for Emergency Management (in consultation with the Minister of Finance) the power to act to make technical decisions regarding the matters set out in recommendations 33 and 34.

Concurrent emergencies

- 39 **Agree** to clauses being included in the Bill to:
- 39.1 enable CDEM Groups and Mayors to declare a state of local emergency for other emergency events even while there is a state of national emergency in force in that location
 - 39.2 allow states of local emergency to remain in force, if a state of national emergency is declared for other emergency events in that location
 - 39.3 enable CDEM Groups and Mayors to declare states of local emergency for other emergency events, without terminating any national transition period in force in that location
 - 39.4 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a state of national emergency in force for that location
 - 39.5 enable a local transition period to remain in force, if a state of national emergency is declared for other emergency events in that location
 - 39.6 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a national transition period in force for that location
 - 39.7 enable a local transition period to remain in force, if notice of a national transition period is given for other emergency events in that location
 - 39.8 prevent a local or group controller from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National Recovery Manager during concurrent emergencies.
- 40 **Agree** that secondary legislation (regulations and rules) may be made that set out the operational approach to the management of concurrent emergencies at a local, regional and national level.

Modernising the Minister's and CDEM Groups' duties when creating regulatory instruments

- 41 **Agree** that section 65 of the CDEM Act, "Duties to consider alternatives, assess benefits and costs, etc", is not included in the Bill.

Offences and penalties

- 42 **Agree** to increase, for an individual, the upper maximum amount for a court-imposed fine for prosecutable offences with a working position of an upper amount of \$8,000 (to be confirmed with Ministry of Justice).
- 43 **Agree** to an infringement offence regime for emergency management being established through the new Act.
- 44 **Agree** to penalties for infringement offences being set through regulations, up to a maximum of \$1000.
- 45 **Agree** to include an empowering provision in the new Bill enabling regulations to be made for an infringement offence regime, covering matters such as:
- 45.1 breaches of the rules that constitute offences against the Act
 - 45.2 if an act or omission constitutes an infringement offence
 - 45.3 defences to offences (if applicable)
 - 45.4 the maximum penalty for each individual offence (within the statutory maximums provided for in the Act).

Updating CDEM Functions to provide for Climate Change

- 46 **Agree** to include a reference to the Climate Change Response Act 2002 in the list currently found in section 17 of the CDEM Act.
- 47 **Note** that the General Policy Statement for the Bill will include an explanation that events exacerbated by climate change are emergencies contemplated by the Bill.

Naming conventions

- 48 **Agree** to replace:
- 48.1 "civil defence emergency management" with "emergency management" where appropriate
 - 48.2 "civil defence" with "emergency management" where appropriate
 - 48.3 "Civil Defence Emergency Management Group" and "Co-ordinating Executive Group" in favour of "Emergency Management Committee" and "Emergency Management Co-ordinating Executive" respectively.

Regulation-making powers

- 49 **Agree** to revise the list in section 115 of the CDEM Act before it is shifted into the Bill, to remove any out-of-date regulation making powers.
- 50 **Agree** to the inclusion of new regulation making powers for critical infrastructure and lead agency.
- 51 **Agree** to review the regulation-making powers set out in the Government Response to the TAG Recommendations, to determine what can be proceeded with as part of the legislative reform process and through what legislative or non-legislative mechanism.

Use of secondary legislation - form and content of the Emergency Management Regulations

- 52 **Agree** that the Bill empowers the making of Emergency Management Regulations, that may include at a minimum (but is not restricted to):
- 52.1 regarding roles and responsibilities:
- 52.1.1 establish the roles and responsibilities of lead and support government agencies with regards to the management of hazards and emergencies
- 52.1.2 specify (including by incorporating by reference) any minimum standards for suitably qualified and experienced personnel with statutory functions
- 52.1.3 provide the process by which those standards are set including consultation and notification requirements, over and above the standard consultation and notification requirements of regulations generally (if relevant)
- 52.2 regarding the establishment of an Administering Authority
- 52.2.1 the operational requirements to fulfil the role of the administering authority
- 52.3 regarding CDEM Group Plans:
- 52.3.1 principles for the identification and confirmation of representative bodies and
- 52.3.2 minimum requirements for engaging with communities identified as disproportionately impacted by emergencies.
- 52.4 regarding Māori membership on CDEM governance structures and input, minimum requirements for locally appropriate appointment mechanisms and/or criteria for Māori appointments

- 52.5 critical infrastructure regulations setting out further detail and procedural matters for minimum planning emergency levels of service and reporting requirements
- 52.6 the principles, roles and responsibilities for the management of concurrent emergencies
- 52.7 details of the proposed offences and penalty measures
- 52.8 that the Bill empowers the making of the National Plan as an instrument of secondary legislation, with appropriate requirements for consultation, approval and review.

Use of secondary legislation - form and content of the National Plan

- 53 **Agree** that the National Plan will be empowered to prescribe at a minimum (but is not restricted to):
 - 53.1 default tasks and arrangements for how agencies subject to the Bill will work together
 - 53.2 the outcomes sought for equity in emergency management and the roles and responsibilities of national agencies in delivering those outcomes
 - 53.3 the process for co-development of national level planning arrangements with Māori partners
 - 53.4 principles for Māori appointments to Joint Committees and Coordinating Executive Groups
 - 53.5 the national-level outcomes for the provision of early warnings and advisories to individuals and communities at risk from hazards
 - 53.6 details relating to the operation of the permanent legislative authority.

Rescinding previous decisions

- 54 **Agree** to rescind the following Cabinet decisions [CAB-20-Min-0366, confirming GOV-20 Min 0035 refers]:
 - 54.1 the requirement that local authorities co-operate as a CDEM Group within each region with shared emergency management services and personnel
 - 54.2 Cabinet's agreement to amend the CDEM Act to enable Controllers and Recovery Managers to operate anywhere in New Zealand
 - 54.3 Cabinet recommendations establishing EMAT in the current Act
 - 54.4 Cabinet recommendations relating to protection from civil liability for EMAT members and volunteers.

- 55 **Agree** that protection from civil liability covers any person acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act where the loss or damage is due directly or indirectly to a state of emergency or transition period.
- 56 **Agree** not to progress with previously agreed amendments for the National Controller and Group Controllers to have explicit functions to co-ordinate emergency responses.

Authorised for lodgement

Hon Kieran McAnulty

Minister for Emergency Management

Regulatory Impact Statement: Emergency Management System Reforms

Purpose of Document	
Decision sought:	Agreement to the proposals for the new Emergency Management Bill, aiming to improve system performance and capability, further strengthening Māori participation in emergency management, and improving risk awareness.
Advising agencies:	National Emergency Management Agency
Proposing Ministers:	Minister for Emergency Management
Date finalised:	22 July 2022

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Proactively Released

Problem Definition

The 2017 Ministerial Review into New Zealand's responses to natural disasters and other emergencies (Technical Advisory Group – TAG) identified vulnerabilities in Aotearoa's emergency management system.

Since then, the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies have increased, including those, like the Whakaari White Island eruption of 2019 and COVID-19, which have resulted in multiple fatalities, serious injuries, serious harm to people's wellbeing, and damage to the environment and the economy. These events have also demonstrated that vulnerabilities in the emergency management system identified in the TAG and other reviews remain a challenge.

New Zealand's emergency management system must be improved if it is to realise the Government and public's ambition for a modern and fit-for-purpose system aligned with international best practice.

Currently, the Civil Defence Emergency Management Act 2002 (CDEM Act) provides for a permissive and enabling approach to operational and administrative arrangements for civil defence and emergency management. This has allowed for a measure of innovation and flexibility, enabling Civil Defence Emergency Management Groups (CDEM Groups) to develop best practice arrangements to suit local circumstances. However, in their 2017 report, the TAG found that this approach has led to inconsistent and incompatible approaches between CDEM Groups.¹ TAG also found varying levels of capability and a lack of clarity about roles and responsibilities within the emergency management system.

The lack of clarity extends to various administrative and operational arrangements intended to raise risk awareness in communities and prepare for the impact of emergency events. For example, ambulance services are not included in the definition of emergency services and the CDEM Act does not make adequate provision for the management of concurrent emergencies.

Additionally, there is a lack of recognition of the contribution Māori² make to the emergency management system. The CDEM Act is silent on the role of Māori in emergency management, membership on CDEM Groups is limited to local authorities (represented by the mayor or chairperson of that authority), and Māori representation on co-ordinating executive groups is inconsistent across the country. Planning is another crucial element of emergency management. However, there are currently no legislative provisions requiring collaboration with, and mandatory notification to, iwi and Māori partners in emergency management planning.

This lack of formal recognition has resulted in workarounds such as the inappropriate and cumbersome process to reimburse of Māori for costs incurred during an emergency response. It has also resulted in Māori not being consulted in planning and being excluded from response operations. The current state is fundamentally inconsistent with the trajectory of the Māori-Crown Treaty relationship.

Failure to address the issues will degrade the performance of the emergency management system at a time when the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies are increasing.

Executive Summary

The 2017 Ministerial Review into New Zealand's responses to natural disasters and other emergencies (Technical Advisory Group – TAG) identified vulnerabilities in Aotearoa's emergency management system.

Since then, the frequency, duration, complexity and socio-economic consequences of hazard events and emergencies have increased. This has resulted in multiple fatalities, serious injuries, serious harm to people's wellbeing, and damage to the environment and the economy. These events also demonstrated that vulnerabilities in the emergency management system identified in the TAG and other reviews remain a challenge.

In August 2018, the then Minister for Civil Defence released the Government's response to the TAG report. The Government's response addressed the concerns raised in the TAG report and set the direction for the changes required to deliver better responses to natural disasters and other emergencies. The response set out five key areas for improvement:

- strengthening the national leadership of the emergency management system
- making it clear who is responsible for what, nationally and regionally
- building the capability and capacity of the emergency management workforce
- putting the safety and wellbeing of people at the heart of the emergency response system
- improving the information and intelligence system that supports decision making in emergencies.

For context, attached in Appendix One is an overview of the policy informing the EM Bill as it relates to delivering on the Emergency Management System reforms.

In November of 2021, a paper was considered by Cabinet that addressed the first suite of options to develop the new Emergency Management Bill (EM Bill). This paper also had an associated Regulatory Impact Statement (RIS) that looked at a new legal framework, significant changes for the critical infrastructure sector and initial proposals for ensuring Māori participation throughout the system.

In this RIS, the proposals are assessed against three of the emergency management system reform programme outcomes:

1. **Risk Awareness and Consequence reduction:** communities are enabled to better understand the risks they face and are better prepared to act during and after emergencies, and the impacts of emergencies on people, the economy and the environment are reduced.
2. **Māori participation:** Māori participation is recognised, enabled and valued.
3. **System performance and capability:** the emergency management system is well-coordinated, high performing and enjoys widespread trust and confidence.

Nestled under each outcome are a suite of changes being proposed, each being evaluated with the principles of clarity and operability applied, as well as being evaluated on how well each option meets the intended outcome.

Clarity

Clarity was chosen as a design principle for the following reasons:

- TAG identified considerable uncertainty about roles and responsibilities within the emergency system
- TAG also noted the desire for greater clarity of processes and legislation expressed by submitters
- in the Government's response to the TAG Report, 'making it clear who is responsible for what, nationally and regionally', is one of the government's five key areas for improvement.

Achieving clarity ensures that proposals make it clear which responsibilities people and agencies in the emergency management system hold, or how responsibilities will be determined in an emergency.

Operability

Operability describes the extent to which legislation, institutional structures and processes contribute to achieving a high performing system by providing for:

- Flexibility – legislation and operational processes do not impede the exercise of functions and powers and are flexible enough to allow for adaptive responses to emergency events.
- Consistency – participants in the emergency management system can expect broadly similar processes and outcomes that allow for regional and local variations.

Improved operability will contribute to the achievement of a high performing emergency management systems, as encapsulated in the Government's five areas of improvement.

Limitations and Constraints on Analysis

Scope

The Regulatory Reform Programme was not intended to be transformative. It was assumed that an amendment Bill would suffice to introduce the necessary changes. However, the amendment Bill was subsequently dropped in favour of a new Bill. The scope remains non-transformative, but the change to a new Bill created the opportunity to address a wider range of issues. Given that major updates of emergency management legislation tend to operate on a 20-year cycle, NEMA took advantage of this opportunity and expanded the scope of the Bill to address the wider issues. This, along with the tight timeframe, has impacted on our ability to provide detailed costings and a cost/benefit analysis.

Timeline

s9(2)(f)(iv)

This RIS has therefore been prepared under a tight timeframe. The tight timeframe constrained the extent of consultation that could be undertaken. Although the targeted consultation that was undertaken indicated broad support for the change proposals, the project would have benefitted from wider consultation of emergency management academics and practitioners.

Operational factors

As an emergency response agency, key NEMA staff have been withdrawn on a number of occasions to participate in emergency response and training. This diversion of resources has also impacted on our ability to engage in wider consultation and to deliver detailed costings.

Responsible Manager(s) (completed by relevant manager)



Adam Allington
Manager, Policy
National Emergency Management Agency

Date: 22 July 2022

Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Prime Minister and Cabinet

Panel Assessment & Comment: The DPMC Quality Assurance Panel has reviewed the Regulatory Impact Statement prepared by NEMA and associated supporting material, and has determined that it Partially Meets the Quality Assurance criteria.

There is a clear policy framework, problem definition and appropriate set of criteria supporting the analysis. The logic behind the preferred proposals is generally clear.

However, there are limitations to the analysis. The work would have benefited from a more robust cost-benefit analysis, and a wider consultation process.

We acknowledge the constraints NEMA has faced in developing the work, which has impacted on goals for the RIS to be complete, convincing, consulted, and clear. In particular, time pressures resulting from the sequencing of the legislative programme have impacted NEMA's ability to consult as widely and as deeply as it might have preferred, develop a wider range of options and develop more robust costings.

The Panel notes these constraints were clearly understood and believes that NEMA made every effort, where possible, to offset these. These efforts have included: identifying where there is stakeholder concern associated with a preferred option and working to identify mitigations. NEMA also updated the RIS to reflect the panel's comments on the first draft.

More broadly, the Panel notes the strong foundation of this work – beginning with the Technical Advisory Group in 2017, and subsequent policy work and sector engagement undertaken by NEMA/DPMC since then. This work is an extension of these efforts, and builds on analysis undertaken for the earlier Cabinet papers and RIS.

Proactively Released

Section 1: System performance and capability

Purpose

1. The Government's response³ to the Technical Advisory Group⁴ (TAG) report identified five key areas for improvement:
 - putting the safety and wellbeing of people at the heart of the emergency response system
 - strengthening the national leadership of the emergency management system
 - making it clear who is responsible for what, nationally and regionally
 - building the capability and capacity of the emergency management workforce
 - improving the information and intelligence system that supports decision making in emergencies.
2. The changes proposed in this section of the RIS address the following areas for improvement:
 - strengthening the national leadership of the emergency management system
 - making it clear who is responsible for what, nationally and regionally.

1A. Clarifying Roles and Responsibilities of CDEM Groups and local authorities

What is the issue and the objectives of a solution?

3. Section 17 of the Civil Defence Emergency Management (CDEM) Act 2002 (the Act) sets out the functions for each CDEM Group which apply concurrently to each member local authority. However, Section 64(1) also outlines a separate duty for local authorities to "plan and provide for civil defence emergency management within its district".
4. There is a lack of distinction between the individual duties of local authorities, their functions as members of the CDEM Group, and the collective function of the CDEM Group. This contributes to a wide variation of approaches to emergency management and misunderstanding about roles and responsibilities.
5. The options for managing this misunderstanding must consider the following objectives:
 - Regional and local emergency management is collaborative, and participants are clear on their roles and responsibilities in the emergency management system.

³ Ministerial Review – Better Responses to Natural Disasters and Other Emergencies. 17 November 2017. [Ministerial Review: Better Responses to Natural Disasters and Other Emergencies in New Zealand - Technical Advisory Group - 18 January 2018 \(dpmc.govt.nz\)](#)

⁴ Delivering better responses to natural disasters and other emergencies – Government response to the TAG's recommendations. August 2018. [natural-disasters-emergencies-government-response-tag-report.pdf \(dpmc.govt.nz\)](#)

- The needs of local communities with different population and risk profiles are understood and accounted for in emergency management planning and decision-making.
6. The CDEM Group structure must enable recognition and participation for the role Māori play in emergency management.

What are the options?

7. Three options were considered to address the issue and achieve the policy objectives:

Option One: Improve role clarity through functional separation

This option involves specifying the distinct and separate functions of local authorities and CDEM Groups to clarify that:

- CDEM Groups are responsible for regional coordination and governance
- Local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group.

Option Two: Strengthened regional approach

CDEM Groups retain the section 17 functions and also have additional, explicit functions including duties to coordinate. Local authorities are removed from section 17 and must 'give effect' to the CDEM Group decisions.

Option Three: Regional approach with local support

CDEM Groups retain the section 17 functions and also have additional, explicit functions including duties to coordinate and consult. Local authorities are removed from section 17 but are expected to have capability and capacity to support their CDEM Group.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – lack of role clarity	Option One: functional separation	Option Two: strengthened regional approach	Option Three: regional approach with local support
Clarity	0 The roles and responsibilities of CDEM Groups are not universally understood which leads to inconsistent approaches between different regions.	+	-	+
Operability	0 Lack of clarity leads to inconsistency in the response function.	+	+	+
System performance and capability	0 The possibility and occurrence of role confusion will continue. Response may be impaired and public confidence undermined.	+	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

9. The best option to address the problem is Option One: Functional separation. This ensures a consistent approach between all regions in Aotearoa New Zealand. All CDEM Groups will share similar relationships between the local authorities in the relevant jurisdictions. This will go some way towards addressing the inconsistency and incompatibility noted by TAG.
10. This option ensures they each understand their own responsibilities within the emergency management system and across all the 4Rs⁵. It also addresses the unique perspective that local authorities have into the needs of the community and ensures that these are considered in the planning process. This option would strengthen consistency of readiness functions and will ensure alignment between local authority and CDEM Group plans.
11. The achievement of consistency will help improve leadership of the emergency management system and make it clearer who is responsible for what in emergency situations.
12. Feedback from a survey of stakeholders in May 2021 indicated support for clarifying the roles and responsibilities of local authorities in the CDEM Act. The proposal was revised following engagement with local government and CDEM sector stakeholders in February 2022.
13. Submissions following the February engagement showed broad support for clarification of the roles and responsibilities for CDEM Groups and local authorities, but mixed support across the options proposed.
14. The majority of submitters preferred Option One – Functional separation over Option Two – Strengthened regional approach (recommended by TAG). Submitters noted that Option One:
 - highlights that local activity and a place for local delivery is paramount for our community emergency response and welfare support
 - allows for strengthening around legislation and accountability without re-engineering our current model
 - clarifies roles and provides local authorities with the autonomy to manage local events, this is crucial as local authorities understand their communities and have extensive links into networks which can be leveraged during these events.
15. With regards to Option Two, local authorities indicated that they want to remain responsible for their districts and did not want to be directed to implement all decisions of the Group. Local authorities were also concerned about losing autonomy in decision making under Option Two.
16. Option Three – Regional approach with local support was the least preferred option. Submitters indicated that their main concern was about the potential loss of connections with individual communities under this option.

⁵ Risk Reduction, Readiness, Response, Recovery

1B. CDEM Group Plan publication

What is the issue and the objectives for the solution?

17. Many CDEM Groups already publish their group plans. However, the Act does not have sufficient guidance on which materials may be incorporated by reference⁶ resulting in confusion and inconsistency across CDEM Groups. CDEM Groups rely on the common law principles for decision making when considering which documents to make publicly available and by what means.
18. The public and those involved in the emergency management system do not have a clear understanding of what information is available and where to find it. Taken together, these shortcomings have raised concerns about accountability, as there is no common standard to assess CDEM Group practices against with respect to the publication of their group plans.
19. The proposal aims to improve clarity and consistency of what information is published across all regions and ensure that all documents that form part of the plan are easily accessible to the public.

What are the options?

20. Two options were considered to address the issue and achieve the policy objective:

Option 1: Publish without referenced documents

Make publication of CDEM Group Plan explicit, allowing for plan documents to be incorporated by reference, but not including requirements to enable access to these.

Option 2: Publish with referenced documents

Make publication of CDEM Group Plan explicit but allow for plan documents to be incorporated by reference. These referenced documents must be accessible to the public by reasonable means.

⁶ Incorporation by reference is the act of including a second document within another document by only mentioning the second document in the original document.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no guidance or requirement to publish	Option One – Publish without referenced documents	Option Two – Publish with referenced documents
Clarity	0 There is no guarantee of what information the public can find to prepare for an emergency. The legislation does not ensure that the public can improve their risk awareness.	0 Plans without specifications for documents incorporated by reference does not improve the consistency of the accessibility of plans, as most CDEM Groups already publish plans.	+ Specifications for documents incorporated by reference ensure that essential information is communicated clearly, and consistently across all CDEM Groups. Clarity of expectations leads to a transparent system ensuring that communities have access to the information required to better understand the risks, and what might happen in the event of an emergency.
Operability	0 A lack of guidance and consistency about the content of Plans impedes the flexibility of responses.	+ This option allows each CDEM group the flexibility to choose how they publish plans and what documents incorporated by reference may contain, and emergencies may be better adapted to.	+ Sets expectations that documents incorporated by reference are available to the public, ensuring that the system earns trust. Limited flexibility and increased costs for CDEM Groups as the guidance for documents incorporated by reference are more prescriptive under this option, but CDEM Groups are still able to choose what may be incorporated by reference.
System performance and capability	0 In the absence of a common understanding about content, there will be no standard and CDEM Group practice will remain inconsistent.	- This flexibility is likely to perpetuate inconsistent practices. The public will not have access to all relevant documentation on a consistent basis, undermining confidence in the system.	+ Although this expectation is not equivalent to a standard, it at least establishes a common understanding that such documents <i>should</i> be available.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

21. Option Two is the preferred option to address the inconsistencies with current arrangements. Option Two creates requirements to publish making CDEM Groups accountable for improving risk awareness in their communities and can be supported by guidance on the best format and method of publication.
22. This option allows for documents which form the plan to be incorporated by reference, introducing greater specificity of which documents are reasonable to incorporate by reference and similarly sets expectations that these are reasonably available to the public.
23. Local government stakeholders supported the intent to improve accessibility of CDEM Group Plans. Most preferred the option which required publication of the Group Plan but enabled flexibility for documents to be incorporated by reference provided they meet certain principles such as accessibility and transparency. This option was preferred as it was deemed the most practical and cost effective, because documents incorporated by reference are likely to be lengthy and operationally focused.
24. The cost impact of imposing a publication requirement is expected to be low. CDEM Groups and local authorities already have resources to support the production of their existing plans. It is anticipated that any additional requirements as a result of implementing Option Two will be absorbed from within baseline expenditure. Any additional expenditure will be spread out over a number of years by the phased implementation approach planned by NEMA. Costs may also be contained by CDEM Groups exercising their limited discretion under Option Two regarding which documents incorporated by reference are physically published with the Group Plan.

1C. Clarifying the role of the administering authority

What is the issue and the objectives for the solution?

25. Section 23 of the CDEM Act requires that an administering authority be established for each CDEM Group. An administering authority provides administrative and related services for the CDEM Group. The CDEM Act also prescribes who shall be an administering authority and sets out the Minister's powers if CDEM Group members are unable to agree.
26. The current requirements are unnecessarily prescriptive as to who can be an administering authority. This prevents the development of more suitable arrangements by agreement between the CDEM Group members and for tailoring across different regions. The CDEM Act does not make provision for the provision of services between each local authority member of the CDEM Group and the administering authority.
27. The objectives of the proposals are to clarify the organisation arrangements and to provide for more flexibility as to who could act as an administering authority.

What are the options?

28. Given that the current administering authority arrangements are in primary legislation, the only option considered was the repeal and replacement of section 23 in the Bill. The new section will establish that:

- any member of the CDEM Group (that is a territorial authority or regional council or unitary authority) may be the administering authority by agreement
- administering authorities must put in place a service level agreement with each local authority member of the CDEM Group
- there will be one administering authority per Group.

29. If the members of a CDEM Group fail to agree on an administering authority, and if the Group:

- has a regional council as a member, then then the regional council must be the administering authority
- does not have a regional council as a member, then the existing provision for the Minister to appoint or direct will apply.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – insufficient role clarity for administering authority	New Bill clause
Clarity	0 The functions of administering authorities are unclear.	+ The requirement to put in place a service level agreement between the administration authority and each local authority member of the CDEM Group will clarify the services and functions of the administering authority.
Operability	0 Lack of clarity regarding whether variations in regional practices can be accommodated	+ The new Bill clause will provide for greater flexibility by empowering local authorities and CDEM Groups to agree among themselves who can be the administering authority.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

30. The Bill option will provide flexibility for the Group to agree which member local authority will act as the Group's administering authority and how the Group will apportion the costs of administrative and related services among the local authority members.

31. The regional council remains as a default administering authority unless the Group agrees otherwise.
32. Through shared emergency management service agreements, the Group would provide for emergency management across the 4Rs on behalf of its member local authorities. Activities could be delivered on a region-wide basis or tailored to the characteristics of each district, including its hazards and risks and what is needed to manage them.
33. These changes will effectively address the issues regarding interoperability and capability identified in the TAG Report, such as improved shared service arrangements.
34. This option was not consulted on as it is building on previously agreed to work and is not consequential for the operation of CDEM groups.

1D. Engaging with communities disproportionately impacted by emergencies

What is the issue and the objectives for the solution?

35. Section 38 of the CDEM Act requires that all persons exercising functions in relation to the development of CDEM plans must 'have regard' to New Zealand's international obligations⁷, however there are no specific mandatory requirements to support this. These obligations commit New Zealand to an inclusive 'all of society' approach to participation and prioritising equity for people who are disproportionately impacted by emergencies.
36. As emergencies amplify existing inequalities, there is room for New Zealand to do better, and to achieve more equitable outcomes. Inclusive CDEM Group planning catering to the needs of these communities is inconsistent and sometimes insufficient.
37. Our objective is to ensure that community groups representing people who are disproportionately impacted by emergencies can meaningfully participate in the development, implementation, and monitoring of CDEM plans so that the needs of vulnerable people and communities are included at the outset.
38. A secondary objective is to ensure that the emergency management legislative framework contributes to New Zealand's international commitments, including the Sendai Framework and the Declaration on the Rights of Indigenous Peoples.

What are the options?

39. Only one option was considered to address the inequitable outcomes faced by communities disproportionately impacted by emergencies. This is because
 - engaging with communities disproportionately impacted by emergencies is a requirement under section 38 of the current CDEM Act, but this provision is not supported by specific mandatory requirements.

⁷ New Zealand's international commitments include the UN Convention on the Rights of Persons with Disabilities, the Sendai Framework for Disaster Risk Reduction 2015-2030, and the UN Declaration on the rights of Indigenous Peoples.

- putting the safety and wellbeing of people at the heart of the emergency response system is one of the five key areas for improvement identified in the Government’s response⁸ to the TAG report⁹.

40. It is proposed to require CDEM Groups and their local authorities to identify and engage with communities in their area that are disproportionately impacted by emergencies in the development of CDEM Group plans.

41. Under this option, CDEM Groups will be responsible for identifying which communities to consult with as it is likely to vary according to the composition of an area.

How do the options compare to the Status Quo?

Key

+ better than doing nothing/the Status Quo/counterfactual

0 about the same as doing nothing/the Status Quo/counterfactual

- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no legislative requirement	New Bill Clause
Clarity	0 It is not clear what CDEM Groups’ responsibilities are to meet NZ’s international requirements, as these are not specified in legislation. Each CDEM Group may use different criteria and expectations to “have regard” to commitments.	+ Each CDEM group and local authority has a clear and unambiguous expectation to identify and engage but has the flexibility to do so in ways that suit the needs of the people in each region.
Operability	0 Individuals and groups that are disproportionately impacted by emergencies are not effectively considered in CDEM Group Plans. This may mean working at haste and not very thoroughly to meet the needs of these groups to ensure they have equitable outcomes.	+ Each CDEM group and local authority is allowed the flexibility to determine the methods and terms of engagement that is most appropriate for the people in its jurisdiction, ensuring that the function of the CDEM group is not impeded in situations that do not work.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

42. The proposed change will address planning deficiencies that do not effectively consider individuals and communities that are disproportionately impacted by

⁸ Ministerial Review – Better Responses to Natural Disasters and Other Emergencies. 17 November 2017. [Ministerial Review: Better Responses to Natural Disasters and Other Emergencies in New Zealand - Technical Advisory Group - 18 January 2018 \(dpmc.govt.nz\)](https://www.dpmc.govt.nz/ministerial-review-better-responses-to-natural-disasters-and-other-emergencies-in-new-zealand-technical-advisory-group-18-january-2018)

⁹ Delivering better responses to natural disasters and other emergencies – Government response to the TAG’s recommendations. August 2018. [natural-disasters-emergencies-government-response-tag-report.pdf \(dpmc.govt.nz\)](https://www.dpmc.govt.nz/natural-disasters-emergencies-government-response-tag-report.pdf)

emergencies. It ensures that advocates for these communities are consulted throughout the planning process and that they will not be an afterthought during an emergency.

43. Meaningful participation in planning by communities disproportionately impacted by emergencies will contribute to the achievement of one of the Government's key areas of improvement. That is, it will help ensure that the safety and wellbeing of people is at the heart of the emergency response system. This work will also be further developed in the National Plan over the coming year.
44. Each CDEM group is able to determine who in their region is most impacted and develop specific plans that address the unique needs in each area. This proposal will more effectively meet New Zealand's commitments to international agreements and ensure the most vulnerable in our society are considered in the case of an emergency.
45. Submissions following targeted engagement with local government stakeholders in February 2022 saw strong in principle support for this proposal. Stakeholders agreed it was important to have local knowledge of disproportionately impacted people and groups, and to actively engage with them. It was also noted that those communities wanted representation in CDEM Group plans, so they could better understand services and assistance available to them and what to do in emergencies.

1E. Clarifying the roles of Chief Executive and Director of Civil Defence

What is the issue and the objectives for the solution?

46. The current legal arrangements for the Director of Civil Defence Emergency Management (the Director) require updating to take account of NEMA's establishment in 2019 as an operationally autonomous departmental agency with its own Chief Executive. Along with the National Controller and the National Recovery Manager, the Director is a national statutory role holder.
47. The creation of NEMA has resulted in the need to:
 - improve role clarity and accountability at the national level, with the aim of increasing public and sector confidence and trust in key decision-makers during a state of national emergency or national transition period
 - maintain the current status of the national level emergency response and recovery powers which are significant, extensive, and relatively unconstrained
 - clearly identify the "peacetime / business as usual" roles and functions of NEMA, through the Chief Executive, in particular before and after an emergency response.
48. The objectives of addressing this issue are to ensure that:
 - it is clear to the CDEM sector and the public who the decision-makers are that have responsibility for exercising national level emergency and recovery functions and powers
 - sufficient and robust procedural safeguards are in place to ensure the retention of the national level emergency and recovery functions and powers with minimal constraint on their exercise, and to protect against misuse.

What are the options?

49. Three options were considered to address the problem and satisfy the policy objectives:

Option One: Chief Executive holds the Director's role and may delegate or retain functions and powers.

The Chief Executive holds the Director's role and can choose to retain or delegate any national emergency response or recovery functions and powers to the National Controller or National Recovery Manager, as appropriate.

Option Two: Chief Executive holds the Director's role and must designate another person to exercise functions and powers.

The Chief Executive holds the Director's role but must designate a NEMA or State Sector employee holding either the position of National Controller or National Recovery Manager to exercise specific national emergency response or recovery functions and powers (as listed in the EM Bill).

Option Three – abolish the Director's role and divide powers.

The Director's role is abolished, with the Director's functions and powers divided between the Chief Executive, and a permanent National Controller and National Recovery Manager. The Chief Executive would have the business as usual/peace-time emergency management functions and powers, and the National Controller and the National Recovery Manager would have the appropriate national emergency response and recovery functions and powers.

How do the options compare to the Status Quo?

Key

- +** better than doing nothing/the Status Quo/counterfactual
- 0** about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One CE is Director and may delegate	Option Two CE is Director and must designate other people to exercise powers	Option Three Abolish the role of Director
Clarity	0 It remains unclear to the CDEM sector and the public who has the functions and powers.	+	+	+
Operability	0 Safeguards on the exercise of emergency functions and powers will remain insufficient	+	+	0
System performance and capability	0 In absence of role clarity and sufficient safeguards, system performance and public confidence will remain precarious.	+	0	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

50. Option One is the option most likely to deliver optimum results. Having the Chief Executive also holding the Director's role is the most straightforward option, and makes it clear who is accountable for delivering an effective national level emergency response or recovery.
51. There is also potential for greater trust and confidence, given that the Director is the head of the organisation responsible for the emergency management system. This includes from a Ministerial perspective, in view of the ramifications of a national level emergency response or recovery.
52. Option One also has the advantage of enabling the CE to delegate their powers as Director as required. This allows the CE to continue running the organisation and share the load if there's a big emergency that would otherwise distract them.
53. Te Kawa Mataaho – the Public Service Commission has indicated its support for this proposal. It is consistent with prior advice to Cabinet. In 2019, Cabinet was advised that on NEMA's establishment, the Chief Executive/Director roles would be combined, and the CDEM Act amended to reflect this.

1F. Critical Infrastructure: Annual Compliance reporting

What is the issue and the objectives for the solution?

54. Currently, critical infrastructure entities are not required to report on how well their organisations are meeting their obligations under legislation. It is difficult to hold critical infrastructure entities to account for non-compliance with significant statutory obligations without annual reporting.
55. As outlined in section 3C of this RIS, additional requirements for levels of service are also being introduced to the Act. This builds on policy proposals introduced and agreed to in the November Cabinet paper and RIS, which focused on defining Critical infrastructure, the entities involved and their responsibilities.
56. Critical infrastructure entities are not required to proactively share information on emergencies which limits the emergency management sectors' ability to plan.
57. The objective is to provide assurance of compliance and an opportunity for entities to internally assess their capability and capacity to respond to events.

What are the options?

58. Given the current absence of a requirement to undertake annual compliance reporting, and in view of the need for primary legislation to ensure compliance, only one option was considered to achieve the policy objective. The proposal is to introduce a clause into the Bill requiring critical infrastructure entities to annually report to NEMA and their regulatory agencies on compliance with their duties under the new EM Act and for entities to be required to make relevant information available to NEMA or CDEM Groups on request.
59. This option would also involve the introduction via the Bill of the power to make regulations setting out the details of reporting requirements.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no reporting requirement	Annual reporting requirement
Clarity	0 Roles and responsibilities will be outlined in the Act, but NEMA will not have any oversight or understanding about compliance.	+ It will be clear to critical infrastructure entities what their roles and responsibilities are to complete annual reporting.
Operability	0 Regulatory expectations will be outlined in the new Act but there will be no way to monitor or enforce the action under the Act, thus there will be reduced confidence in the security of the system in an emergency, and the potential to provide urgent fixes in an emergency.	+ NEMA can determine whether or not critical infrastructure entities are complying with their roles and responsibilities under legislation and can take the appropriate actions to ensure that critical infrastructure will perform as expected in an emergency.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

60. This option will ensure critical infrastructure entities provide details about their compliance with their responsibilities are under the Act.
61. This will allow NEMA to hold critical infrastructure entities to account for non-compliance with significant statutory obligations and provide assurance that critical infrastructure entities are complying these obligations (or clarity on how to rectify situations when they are not). The public can then be confident that critical infrastructure will perform as expected in an emergency.
62. NEMA consulted on this proposal, which received mixed support from sector and agency consultation, but received a positive response from Mayors and CEGs.
63. The impact of the new requirements, such as resourcing implications and duplication of effort were the main concerns raised during consultation. However, NEMA expects that the new reporting requirement will not put significant additional cost and resourcing burdens on critical infrastructure entities. It is expected the cost for government agencies will be minimal as their role is only collation of reporting and not producing these.
64. To address these concerns, NEMA intends to:
 - develop guidance and provide support over the implementation period
 - develop evaluation methodologies that support reporting

- identify opportunities to align reporting under the critical infrastructure legal regime with the requirements and processes of other regulatory reporting regimes where possible.

1G. Regulation-making powers

What is the issue and the objectives for the solution?

65. A new emergency management legal framework is being introduced, which includes both regulations and rules. Both the empowering clause for regulations in the CDEM Act and the regulation-making proposals in the Government Response to the TAG Recommendations include subject matter that is more suitable for secondary legislative instruments and guidance material.
66. Section 115, which empowers the making of regulations, has not been updated since it came into law in 2002. As a result, regulations can be made for matters that would now be appropriately placed into rules. These include setting competency standards or levels to be met by people carrying out specific civil defence emergency management functions (section 115(d)).
67. The same issue affects the regulation-making proposals set out in the Government's Response to the TAG Recommendations. As an example, the Government proposed that regulations should be made to establish minimum standards for CDEM Groups, including performance standards.
68. The objectives here are to ensure that the regulation and rule-making powers are drafted to reflect modern regulatory drafting practices and ensure that the new legal framework is fit for purpose.
69. This work builds on powers and frameworks agreed to by Cabinet in November 2021, and the option is evaluated on the assumption that these changes are the status quo.

What are the options?

70. Given that the regulation-making powers in section 115 of the CDEM Act require updating, the only option available was to amend the existing legislation in the Bill. Under this option the existing list of regulation-making powers in section 115 of the CDEM Act will be revised before being shifted into the Bill to:
 - remove any out-of-date regulation making powers
 - provide for an empowering clause to make critical infrastructure regulations setting out further detail and procedural matters for planning emergency levels of service and for reporting requirements
 - enable the making of regulations which establish the roles and responsibilities of lead and support agencies with regards to the management of hazards and emergencies
71. The regulation-making powers set out in the Government Response to the TAG Recommendations will be reviewed, to determine what can be proceeded with as part of the legislative reform process and through what legislative or non-legislative mechanism.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Revised regulation-making
Clarity	<p style="text-align: center;">0</p> <p>When the new rule-making powers comes into force, it will be unclear what the purpose of the new rules is. It will also be unclear what matters are appropriate for regulations and which matters are best suited for rules.</p>	<p style="text-align: center;">+</p> <p>The matters appropriate for each category of regulations, rules and guidance will be clarified, enabling NEMA to make best use of the tools available.</p>
Operability	<p style="text-align: center;">0</p> <p>If this issue is not addressed, full use of the new rule-making power may be achieved. Matters more appropriate for rules may be unnecessarily elevated to regulations, while matters suitable for regulations may be elevated to the primary legislation.</p>	<p style="text-align: center;">+</p> <p>A key principle of the new legal framework is that all matters are located in the appropriate legislative (or non-legislative instrument). This is intended to achieve greater flexibility and responsiveness in NEMA's regulatory actions. A structured framework of subject will help achieve this.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

72. To make full use of the regulatory and non-regulatory tools available, the Bill will need to specify the subject matter for rules and regulations. The proposed update will achieve this, whereas retaining the existing powers will undermine the implementation of a more flexible and response legal framework.
73. NEMA did not consult on this proposal, as this is simply clarifying how other policy options will be implemented.

Section 2: Further strengthening Māori participation in emergency management

Purpose

74. The lack of recognition of the contribution Māori make to the emergency management system, along with inconsistent participation in CDEM Groups, does not reflect the trajectory of the Māori-Crown Treaty relationship or the reality of ongoing, significant contributions of Māori to emergency management.
75. The changes proposed in this section of the RIS address the following areas for improvement:
 - recognising the capability that Māori bring to emergency management
 - legislating to enable iwi to participate in CDEM Group planning for and responding to a natural disaster or other emergency
 - bring clarity to the role Māori will perform in the emergency management system.
76. These changes are in addition to a suite of changes from the Cabinet paper and associated Regulatory Impact Statement in November 2021. That paper agreed to proposals in principle, subject to targeted engagement which has now been complete.

2A. National Māori Emergency Management Advisory Group

What is the issue and the objectives for the solution?

77. In the Government's response to the TAG Report, it was recognised that Māori bring capability to emergency management. Putting the safety and wellbeing of people at the heart of the emergency response system requires greater recognition, understanding and integration of Māori perspectives in emergency management.
78. To ensure Māori participation at the highest level of the emergency management system, a new national body, the National Māori Emergency Management Advisory Group, is being proposed.
79. The objective is to ensure that Ministers, the government and the Chief Executive of NEMA have ongoing access to advice on:
 - the role of Māori in the emergency management system
 - all aspects of the functions of NEMA, as it relates to a Māori perspective
 - NEMA's role to assure that the Crown system delivers for Māori.

What are the options?

80. Two options were considered to achieve these objectives. Both involved establishing a new Māori Emergency Management Group at the national level, with one option being an advisory group and the other being a body with decision making authority and accountabilities independent from NEMA.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	New national Māori advisory Group	New national Māori Body with independent responsibilities and accountabilities
Clarity	0 The extent of the contribution by Māori to emergency management may not be fully appreciated by CDEM practitioners and the public, who may consequently miss opportunities to improved Māori participation and emergency event outcomes.	+	+
Operability	0 Advice on Māori participation in the emergency system will continue to be provided on an ad hoc basis and may not reflect the strategic objective of achieving improved levels of Māori participation across the whole system.	+	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

81. A clause in the Bill requiring the responsible Minister to appointing a National Māori Emergency Management Advisory Group (NMEMAG) is the preferred option because it balances the need for robust Māori participation without conflicting with CE accountability arrangements.
82. The NMEMAG will not provide advice directly to CDEM Groups as this can confuse accountability arrangements. As an advisory group, the NMEMAG does not cut

across the Chief Executive's decision rights. Similarly, it is the Director's role to advise in relation to, and assist in the planning, preparation, co-ordination, and carrying out of, civil defence emergency management. The Director is responsible for providing this advice to CDEM Groups. Therefore, we advise that the NMEMAG functions be limited to providing advice to the NEMA Chief Executive. It is also important to distinguish that the NMEMAG does not have a role in an emergency event but may well consider events through the lens of lessons management.

83. The scope of the advisory group will be broad, and will include:
- providing advice to NEMA on a range of matters relating to the involvement of Māori in the system; and
 - shaping the development of NEMA's advice and guidance to CDEM Groups on roles and responsibilities for Māori at the regional level.
84. Feedback highlighted the importance of having Māori participation at a national level with a strong desire that a national group "have teeth" to support advice to Ministers and agencies on the role of Māori in the system.
85. Establishing the National Māori Emergency Management Advisory Group in primary legislation highlights the importance of input from Māori into the emergency management system and ensures that appropriate consideration of Māori and the Treaty is embedded throughout the system in the development of plans and other future work. This will also contribute to improving the information and intelligence system that supports decision making in emergencies.
86. Establishing a separate Māori body with decision-making and accountabilities independent of NEMA is not preferred as it would cut across NEMA's role, including to act as a Treaty partner and as the government's lead advisor on the emergency management system.

2B. Further strengthening Māori participation throughout the emergency management system

What is the issue and the objectives for the solution?

87. In the November 2021 Cabinet Paper and RIS, it was proposed that Māori elect two members with full voting rights to CDEM Group Joint Committees and Coordinating Executive Groups (CEGs). This proposal was subject to targeted stakeholder engagement with the CDEM sector and key Māori partners, including the Ministerial Advisory Committee.
88. Engagement with our partners and stakeholders indicated that:
- the two members on joint committees agreed by Cabinet in November 2021 is insufficient or does not represent an improvement to participation in some regions
 - the number of members should be agreed by local Māori, working with local government, based on their collective understanding of what is appropriate.
89. The policy objective of this piece of work is to ensure clarity for a required minimum number of Māori members of CDEM Groups but does not inappropriately constrain local arrangements.

What are the options?

90. Three options were considered to achieve the policy objective.

Option One – Mandatory minimum of two Māori members

In this option, there will be a mandatory requirement to have a minimum of two Māori members on CDEM Group JCs and CEGs. This minimum may be exceeded by mutual agreement.

Option Two – Māori membership fixed at two members

This option would see Māori membership fixed at two per JC and CEG. Cabinet agreed to this proposal in November 2021, subject to further engagement with Māori.

Option Three – Mandatory Māori membership with no numbers specified

Under this option, the Bill would mandate Māori membership on JCs and CEGs with no minimum number specified.

91. There will be a cost to membership options, to be absorbed by NEMA's baseline. This is estimated to be \$0.1M to \$0.2M pa (see below: *NEMA costs associated with Issue 2B: Māori Joint committee and Coordinating Executive Group Membership*).

92. However, under options One and Three, there is no certain number of Māori members. In view of this, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future Budget process as necessary.

93. The options were assessed against the following criteria:

- **Participation** – Māori participation is empowered at every level of the emergency management system
- **Operability** – clear and consistent structures and processes contribute to achieving a high performing system while also providing for regional tailoring to suit the needs of local Māori communities
- **Alignment** – aligns with the views of our Māori partners as closely as possible in the circumstances.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – no provision for Māori membership	Option One – Mandatory minimum of two Māori members	Option Two – Māori membership fixed at two members	Option Three – Mandatory membership with no numbers specified
Participation	0 The status quo does not ensure Māori participation in CDEM Groups or CEGs.	+	+	+
Operability	0 CDEM Group membership is restricted to local authorities, who are represented by either the mayor or chairperson. The membership on CEGs is more flexible, and although many CEGs do have adequate Māori participation, in the absence of a standard process and specified minimums, participation is inconsistent across the country.	+	-	+

Criteria	Status quo – no provision for Māori membership	Option One – Mandatory minimum of two Māori members	Option Two – Māori membership fixed at two members	Option Three – Mandatory membership with no numbers specified
			members, so only having two members reduces this flexibility.	
Alignment	<p style="text-align: center;">0</p> <p>The CDEM Act is silent on the importance of the role of Māori in the emergency management system.</p> <p>Feedback highlighted the importance of having Māori participation at every level of the emergency management system. Māori partners supported having appropriate Māori representation on the JC and on CEGS.</p>	<p style="text-align: center;">+</p> <p>A legislative minimum of two Māori members is closer to the views of Māori partners in the EM system because:</p> <ul style="list-style-type: none"> • it supports the policy intent more strongly • creates more opportunity for Māori participation and determination of the members to be included in emergency management governance structures; and • better aligns with feedback from Māori partners. 	<p style="text-align: center;">-</p> <p>The original proposal to have only two members on each joint committee was not well received by Māori partners and would not be pragmatic for those regions where only two members would constitute a backward step for some CDEM Groups (e.g., Manawatu has 7 Māori participants on the CEG, Taranaki has 3 observers on their Joint Committee).</p>	<p style="text-align: center;">+</p> <p>Our Māori partners indicated that iwi and Māori need to determine their own representation. We also heard a desire for 50% membership. Although Options 1 and 2 create greater certainty regarding membership, they also create the risk of defaulting to 2 members only (Option 1) or instituting a requirement for an insufficient number of Māori members in some situations (Option 2). With the ministerial backstop to address the risk of no members being appointed, Option Three provides for a degree of certainty while also allowing flexibility for local Māori to determine the extent of membership.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

94. Option Three – Mandatory Māori membership with no numbers specified, is the best option to address the problem and meet the policy objective.
95. Minimum standard (Option One) and fixed Māori membership (Option Two) approaches support the policy intent and create more opportunity for Māori participation and determination of the members to be included in emergency management governance structures.
96. Both approaches enable Māori membership to be determined on a region-by-region basis, allowing for local tailoring of appointment processes. The main difference between options One and Two is that there is an additional level of flexibility under Option One, as the minimum numbers can be exceeded by mutual agreement.
97. However, the proposals to include a minimum of two Māori members or to fix the number of Māori members at two were not well received by Māori practitioners and partners. Feedback from a survey of stakeholders in May 2021 indicated dissatisfaction with the minimum and fixed membership proposals. Respondents considered that iwi boundaries may be different to Regional Council boundaries, and that two Māori members may be insufficient to ensure Māori participation in regions incorporating multiple iwi. A common theme in survey responses was that iwi and Māori need to determine their own representation.
98. Our Māori partners voiced strong support for 50% mandatory membership to achieve equitable outcomes. This was a view shared by the Ministerial Advisory Committee (MAC) who recommend introducing minimum legislative requirements for Māori members on JCs and CEGs.
99. A legislated minimum risks creating a default of Māori membership on CDEM Groups. Only Option Three (no specified numbers) has the flexibility to accommodate the highly diverse needs of Māori across the country. The main risk with Option Three is that in the absence of a specified minimum, no or insufficient Māori members may be appointed to CDEM Groups. This risk can be effectively eliminated by the creation of a ministerial backstop through which the Minister for Emergency Management may appoint Māori members to CDEM Groups as required.

2C. Liability Protections for Māori members of Joint Committees

What is the issue and the objectives for the solution?

100. The legal status of CDEM Groups under the CDEM Act and the Local Government Act 2002 is somewhat unclear. The CDEM Groups' standing as a Person Conducting a Business or Undertaking (PCBU) under the Health and Safety at Work Act 2015 (HSWA) is important, because the officers' duty under section 50 of HSWA relates to the officers' role in relation to a PCBU. If the Group is not a PCBU then there is not an officer's duty in relation to it as a PCBU.¹⁰
101. Under HSWA, a member of the governing body of a local authority elected in accordance with the Local Electoral Act 2001, when acting in that capacity, does not commit an offence under the HSWA for a failure to comply with a duty as an officer.

¹⁰ This is not related to the issues raised in the Whakaari proceedings.

This means that even if local authority Group members are defined as officers of a PCBU, they cannot be prosecuted for offences under the HSWA for failing to comply with their duties. The protection from liability aims to prevent a chilling effect on local democracy that would result if elected members of councils and other elected positions were to face the risk of prosecution for breach of the due diligence duty.

102. Under the proposals to strengthen the participation of Māori through membership on CDEM Group governance structures, Māori members would be appointed through processes designed locally by Māori (which could include election). Māori members would therefore not be elected in accordance with the Local Electoral Act. In effect, this would mean that Group members elected in accordance with the Local Electoral Act would be protected from prosecution under HSWA, whereas Māori members would not.
103. The objective of the options for change is to remove all uncertainty about the status of CDEM Groups, and the liability of Māori members of CDEM Groups under HSWA in an equitable manner. The intended result of this change is to remove disincentives for Māori to participate in CDEM Groups.

What are the options?

104. Three options were considered to address the issue and achieve the policy objectives:

Option One: Amend the Health and Safety at Work Act 2015

In this option, section 52 of the Health and Safety at Work Act 2015 (HSWA) would be amended via the Emergency Management Bill to include all members of a CDEM Group as office holders with limited liability.

Option Two: Establish that CDEM Groups are not PCBUs in the Emergency Management Bill

Under this option, the Emergency Management Bill will include a provision clarifying that a CDEM Group is not a Person Carrying a Business or Undertaking. This provision aligns with the proposed clarification that CDEM Groups are responsible for regional coordination and governance, while local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group. This amendment would further mean that no members of the CDEM group would hold the officers' duty as the CDEM Group would not be a PCBU.

Option Three: Protect Māori members via the Emergency Management Bill

In this option, the Emergency Management Bill would specifically protect Māori members from health and safety related liabilities on Civil Defence Emergency Management joint committees.

How do the options compare to the Status Quo?

Key

- +** better than doing nothing/the Status Quo/counterfactual
- 0** about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One – amend HSWA	Option Two – CDEM Groups are not PCBUs	Option Three – protect Māori members in the Bill
Clarity	<p>0</p> <p>The status of the CDEM Group as a PCBU would remain indeterminate.</p>	<p>+</p> <p>Protection would be established in the operative legislation.</p> <p>However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Amending s 52 to remove liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.</p>	<p>+</p> <p>This option goes to the heart of the matter: whether or not a CDEM Group is a PCBU. It would clearly establish that they are not and would do so in the legislation regulating CDEM Groups.</p> <p>Both Māori and other members would be protected from liability on the same grounds via the same legislation.</p>	<p>-</p> <p>Creating protection from liability for appointed members under HSWA via different legislation to that for elected members could create uncertainty for duty holders.</p> <p>However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Having the Bill remove HSWA liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.</p>
Operability	<p>0</p> <p>The potential HSWA liability will discourage Māori from participating in CDEM Groups, contrary to</p>	<p>+</p> <p>Protection from liability would be established on the same basis as all other CDEM Group members.</p>	<p>+</p> <p>Protection from liability would be established on the same basis as all other CDEM Group members without unnecessarily amending other legislation.</p>	<p>0</p> <p>Although this option would apparently remove the disincentive for Māori to participate in CDEM Groups, the protection provided by HSWA may</p>

Criteria	Status quo	Option One – amend HSWA	Option Two – CDEM Groups are not PCBUs	Option Three – protect Māori members in the Bill
	specific intent of the reforms.	However, there is uncertainty as to whether CDEM Groups are considered to be a business or undertaking. Amending s 52 to remove liability for members of CDEM Groups would imply that they were (or could be in some circumstances) and this would not resolve the uncertainty about the standing of the CDEM Groups as PCBUs.		be seen as providing additional protection to non-Māori members. Lacking this additional protection, Māori members may be reluctant to participate. This option does not clarify the status of CDEM Groups.

Proactively Released

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

105. Option Two, establish that CDEM Groups are not PCBUs in the Emergency Management Bill, is the preferred option. This option directly addresses the core of the problem; the uncertainty about the status of CDEM Groups as PCBUs.
106. By extending statutory protection for liability to protect Māori members, Option One upholds the principles of Te Tiriti and creates an equitable position to serve on CDEM Group joint committees. This in turn would allow effective participation for Māori on joint committees as they are not disincentivised to serve due to a lack of protection. This option also keeps the legislative settings easy to navigate and avoids a conflict of laws, keeping the delegation of workplace health and safety regulation under the operative provision in the HSWA.
107. However, given the uncertainty about the status of CDEM Groups as PCBUs, given that CDEM Groups are, pursuing Option One would imply that there were at least some instances in which CDEM Groups could be considered a PCBU and would therefore not resolve the uncertainty.
108. Option Three, creating a provision in the Bill, could create confusion for duty holders as the operative provision protecting local authority members from liability on the basis of conformity with the Local Electoral Act 2001 is in HSWA. This option would add technical layers in legislation that require unnecessary navigation. Local Government representatives would be protected by the HSWA, while Māori members would be protected from the HSWA under our legislation, even if the roles and responsibilities are the same between the two officers. In addition. Option Three does not resolve the uncertainty about the standing of CDEM Groups as PCBUs.
109. Option Two is the only option that clarifies the status of CDEM Groups as not being PCBUs while also ensuring that members of CDEM Groups are protected from liability on the same basis. This achieves the objectives outlined above in that it removes uncertainty about the status of CDEM Groups as PCBUs on an equitable basis.

Consultation

110. The proposals relating to strengthening the role of Māori in the emergency management system were subject to targeted stakeholder engagement with the CDEM sector and key Māori partners.
111. The Ministerial Advisory Committee on Emergency Management was supportive of the direction of travel of all these proposals but also advised going further in some areas (for example, 50% membership for Māori on Joint Committees, or at least one Māori representative from the geographical area of each territorial authority).
112. MBIE has advised that clearly demarcating that the CDEM Group is not a PCBU, and that its members are not officers, will make the law clearer and avoid the potential inequities and disincentives for elected or non-elected members participating.

2D. Inclusion of a Treaty Clause in the Bill

What is the issue and the objectives for the solution?

113. The current Act is silent on the role of Māori in the emergency management system and on the role of Te Tiriti o Waitangi / the Treaty of Waitangi. The Crown has obligations under the Treaty, but these are not explicitly referred to in the Act.
114. Engagement with Māori partners highlighted that a Treaty clause is essential to support NEMA and other parties to exercise their obligations, powers, and to ensure that the needs of Māori are met equitably and appropriately.
115. A Treaty clause will make the intent of Parliament clear as to how the Bill provides for Te Tiriti o Waitangi / the Treaty of Waitangi in the emergency management context.

What are the options?

116. Two options were considered to resolve the problem and satisfy the policy objectives:

Option One: General Treaty Clause

Under this option, a general / or operative Clause is included in the Bill that requires all provisions of the Bill to be read in a manner consistent with the principles of Te Tiriti o Waitangi / the Treaty of Waitangi.

Option Two: Descriptive Treaty Clause and non-legislative measures

This proposal includes a descriptive Treaty clause which expressly references the Crown's Treaty responsibilities and describes how these are given effect in the Bill. It also considers non-legislative measures that can be taken, such as embedding Te Ao Māori approaches in CDEM Group operations.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One: General Clause	Option Two: Descriptive Clause
Clarity	0 The Crown's Treaty obligations are acknowledged, but it is not stipulated in writing in any central location. This makes it likely that these may not be considered during an emergency.	0 This option would create unclear obligations for role holders, which may mean that they are not adhered to during an emergency.	+ It will be clear how the Crown's Treaty responsibilities have been given effect in the legislation and will ensure that all participants in the emergency management system will know their responsibilities.
Operability	0 The lack of clarity or explicit expectations about what the government must do in the emergency management system will result in ad-hoc approaches that do not effectively consider Māori.	0 Insufficient explicit expectations about what the government must do in the emergency management system will result in ad-hoc approaches that do not effectively consider Māori.	+ The Māori-Crown relationship will be well supported with generalised, but specific information in the legislation that ensures that the needs of Māori can be appropriately planned for and addressed in an emergency.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

117. Recognition of Te Tiriti o Waitangi / Treaty of Waitangi should not be reliant on having a "catch all" clause in legislation, and this would not be consistent with best practice policy development. A general clause is not recommended as it provides uncertainty during emergency responses. Option Two, a descriptive clause is therefore the preferred option.
118. A descriptive clause provides greater certainty for decision-makers than the operative clause. A descriptive clause will show upfront what Parliament determined is required to comply with the Treaty in the emergency management context.
119. Considering non-legislative measures also ensures that the Treaty is considered through all actions that are taken in the emergency management system, and that a Māori worldview is embedded into the system, creating a more equitable partnership for Māori.

The Ministerial Advisory Committee on Emergency Management was consulted on the two options and advised that its preference was for a general Treaty clause. Other key Māori partners also expressed a preference for a general Treaty clause when this was raised at the conference and at the hui in February 2022.

Section 3: Risk Awareness and Consequence Reduction

Purpose

120. A central tenet of the Emergency Management system reforms is to support local leadership and regional tailoring in emergency management. This means enabling communities to respond effectively to emergencies and to better understand the risks they face.
121. The changes proposed in this section of the RIS address the following areas for improvement:
 - improving effective emergency management by reducing risk; and
 - reducing the impacts of emergencies on people, the economy, and the environment.

3A. Enable regulations to establish roles and responsibilities of Lead Agencies

What is the issue and the objectives for the solution?

122. The concept of Lead Agencies is not in the Act. A lack of a standard statutory definition of a lead agency (and support agencies) across the Emergency Management System and National Security System, contributes to the misunderstanding about what is required of agencies.
123. This work aims to formally establish clear definitions for lead and support agencies across all 4Rs and create clear mechanisms and criteria to determine their roles and responsibilities to improve clarity and lower risk.

What are the options?

124. The selected option must provide for the prescription of:
 - the roles and responsibilities of lead and support agencies
 - the mechanisms and criteria by which lead and support agencies are allocated
 - the expectations of, and from, governance
 - the triggers and thresholds that determine the lead agency for a specific event.

125. Three options were considered to achieve this.

Option One – Emergency Management Regulations. This option will establish an empowering framework via a clause in the Bill that enables the making of regulations to prescribe the matters set out in paragraph 133. Prescribing these matters will have an impact on the budget and work programme of the agencies involved. In view of this, regulations are appropriate as they must be submitted to Cabinet to make the policy decision in each case.

Option Two – Emergency Management Rules and guidance. Under this option, an empowering clause will be inserted in the Bill that enables the Chief Executive of NEMA to make Emergency Management Rules prescribing the matters set out in

paragraph 133. The Rules will be supported by a suite of guidance material that provides context and explains in detail the roles and responsibilities of each lead and support agency.

Option Three – Emergency Management Bill. In this option, the matters set out in paragraph 133 will be prescribed in the Bill.

Proactively Released

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Option One – Regulations	Option Two – Rules/ guidance	Option Three – Bill
Clarity	<p style="text-align: center;">0</p> <p>There is no established mechanism or definition for a lead agency in the Act, leading to inconsistent approaches. Determining this for each event takes up additional time and resource.</p>	<p style="text-align: center;">+</p> <p>It is clear that there must be Lead Agencies and there is a definition of Lead Agencies, and a mechanism for determining them to create certainty of roles and responsibilities.</p>	<p style="text-align: center;">+</p> <p>Rules supported by explanatory guidance would be highly effective in achieving clarity about Lead Agencies' roles and responsibilities. Errors and omissions, or a lack of clarity, can be addressed immediately as they are identified.</p>	<p style="text-align: center;">+</p> <p>Roles and responsibilities could be clearly defined initially, but this clarity will tend to be eroded over time by changing circumstances.</p>
Operability	<p style="text-align: center;">0</p> <p>The lack of established regulations means that the performance of functions in events is impeded.</p>	<p style="text-align: center;">+</p> <p>This will help agencies to improve timeliness for response and recovery activities but retain the flexibility of a risk and hazard-based approach.</p> <p>This option also achieves a balance between the need for:</p> <ul style="list-style-type: none"> • flexibility; and • legislative effect to ensure compliance 	<p style="text-align: center;">0</p> <p>Most flexible and responsive legislative instrument available to NEMA for Lead Agency purposes. However, Rules do not have the same legislative effectiveness as regulations and primary legislation.</p>	<p style="text-align: center;">0</p> <p>Provisions in the Bill would have the most legislative effect. However, this would come at the direct expense of flexibility and usability of the legislation.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

126. Option One (Emergency Management Regulations) is the best option to address the issues, meet the policy objective and deliver the highest net benefits. This option achieves the optimal balance between having the appropriate legislative effect to require compliance and the need for a flexible instrument to respond to changing circumstances.
127. Primary legislation (Option Three) has the strongest legislative effect and could achieve, at least initially, clarity about roles and responsibilities. However, this would come at the direct expense of flexibility and usability of the legislation. Defining the roles and responsibilities of all Lead Agencies in primary legislation would significantly delay the introduction of the Bill and result in an unfeasibly large and unusable document.
128. Incorporating Lead Agency requirements into primary legislation is the least flexible option of all. The emergency management legislation operates on a 20-year replacement cycle and an approximately 5-year amendment cycle. NEMA's ability to change Lead Agency roles and responsibilities and address new hazards would therefore be severely restrained.
129. Rules would be the most flexible and responsive legislative instrument available to NEMA for Lead Agency purposes. However, Rules are made by the CE without the involvement of Cabinet or the Minister. Given that agreeing to be a Lead Agency will impact that agency's budget and work programme, Cabinet approval with Ministerial consultation is necessary. Moreover, rules do not have the same degree legislative effect as regulations and primary legislation.
130. Agencies were generally supportive of this regulating making power. However, MPI, MfE and Police raised concerns about roles and responsibilities being assigned to them without consideration of their own statutory functions and mandates and budgetary limitations.
131. However, NEMA cannot impose operational or budgetary requirements on these agencies unless this is specifically provided for. There will be no such provision in the Bill, and regulations will be developed in consultation with the relevant agencies.

3B. Including ambulance services in the definition of emergency services

What is the issue and the objectives for the solution?

132. Ambulance services are not defined as an emergency service in the CDEM Act, despite their role as emergency responders and responsibilities under the Coordinated Incident Management System (CIMS). This has, on occasion, reportedly led to ambulance services being excluded from Emergency Operation Centres (EOC).
133. The objective of this proposal is to ensure that ambulance services are enabled to fully participate in the emergency management system.

What are the options?

134. This issue is primarily due to the absence of 'ambulance services' from the definition of emergency services. In view of this, there is only one option available to address

this issue. It is proposed to amend the definition of ‘emergency services’ that will be shifted into the Bill to include Ambulance Services and require ambulance services to be included in the membership of CEGs.¹¹

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Explicit Legal Status
Clarity	0 It is not clear to some that ambulance services are essential first responders in an emergency and may continue to be excluded from Emergency Operations Centres.	+ It is explicitly stated that ambulance services are an emergency service, and therefore must be included in EOCs and CEGS across all regions.
Operability	0 Potential exclusion from planning for emergencies and the early stages of response mean that ambulance services are unable to perform lifesaving duties effectively.	+ Ensuring that ambulance services are represented in EOCs and GEGs ensures that ambulance services are involved in all 4Rs and can adequately prepare to perform their duties effectively in an emergency.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

135. Ambulance services being included in the definition of emergency services and included as a member on co-ordinating executive groups ensures alignment with other first responders such as Police, FENZ, and health providers which are already included in the definition of emergency services in the Act.
136. This will also ensure that ambulance services are included in emergencies right from the outset and are able to advise and respond to an emergency and will be better placed to provide lifesaving support.
137. The majority of participants in engagement agreed that ambulance services should be included within the definition of emergency services. Participants also recognised the need to clarify which types of vehicles (e.g., air ambulances) and providers (e.g., private ambulances) are not covered by the proposal.

3C. Critical Infrastructure: Planning emergency levels of service

What is the issue and the objectives for the solution?

138. Currently, critical infrastructure entities (previously called lifeline utilities) are required to “ensure that [they are] able to function to the fullest possible extent, even though

¹¹ Currently, it is only optional for the groups to include them.

this may be at a reduced level, during and after an emergency” (section 60(a) CDEM Act). This duty is vague and not measurable.

139. The introduction of minimum planning emergency levels of service (PELOS) is intended to:
- improve readiness and facilitate the response to an emergency event (establishing a specific and measurable level of emergency provision will upgrade the performance and capability of the emergency management system and raise public confidence
 - ensure that by providing access to information on emergency levels of service, that planning to reduce the consequences of an emergency will be facilitated
 - deepen community understanding of the risks that people face and to enhance readiness planning.
140. The Reporting requirements in section 1F of this RIS will allow NEMA to monitor compliance with these requirements, among other responsibilities outlined by the Act.

What are the options?

141. Given the vagueness of the duty required under section of the 60(a) CDEM Act, and in view of the need for primary legislation to ensure compliance, only one option was considered to achieve the policy objective. Under this option, the Bill will include clauses requiring critical infrastructure entities to:
- establish and publicly state their planned emergency levels of service; and
 - review their planned emergency levels of service every five years, unless required earlier by the Director due to changing circumstances.
142. The Bill will also include an empowering provision for making critical infrastructure regulations prescribing further detail and procedural matters for planning emergency levels of service.

How do the options compare to the Status Quo?

Key

- + better than doing nothing/the Status Quo/counterfactual
- 0 about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo	Planning requirement
Clarity	<p style="text-align: center;">0</p> <p>The exact nature of critical infrastructure requirements will remain unclear.</p> <p>Unclear requirements also means that the inability to assess entities performance will continue.</p>	<p style="text-align: center;">+</p> <p>Communities will be better able to prepare for emergencies, based on realistic expectations of service availability.</p> <p>The planning requirement will:</p> <ul style="list-style-type: none"> inform the development of effective readiness and response planning provide better transparency and clarity across the critical infrastructure sector.
Operability	<p style="text-align: center;">0</p> <p>CI entities <i>may</i> be prepared and perform adequately in an emergency, but this will remain untested until an emergency event occurs.</p>	<p style="text-align: center;">+</p> <p>Despite the concerns raised by the sector, there is net benefit to New Zealand as a whole given that the planning requirement will:</p> <ul style="list-style-type: none"> • enable other critical infrastructure entities to plan, based on interdependencies and expected emergency levels of service • encourage the development of innovative solutions where scenario planning indicates that services will be severely compromised. • be supported by guidance and other resources to reduce the effort and cost impact of meeting these requirements.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

143. The proposed clauses to be included in the Bill directly address the policy objectives. In addition, this option will address three of the five key areas for improvement identified by the Government:

- making it clear who is responsible for what, nationally and regionally
- building the capability and capacity of the emergency management workforce
- improving the information and intelligence system that supports decision making in emergencies.

144. NEMA consulted on this proposal, which received overall support from sector and agency consultation, and received a positive response from Mayors and CEGs.

145. Significant support came from agencies and the emergency management sector. However, the electricity, telecommunications, and ports sectors were not in favour of the proposal. Their concerns centred on the potential complexity and cost of the reporting requirement.
146. To address these concerns, NEMA is engaging with the sector on an ongoing basis to define their concerns and develop mitigations. As indicated in this RIS (see *Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)* below) NEMA believes that the cost will not be as high as the sector expects. NEMA will develop clear guidelines on how to develop PELOS reports and CDEM/NEMA will facilitate the development with the entities. It is also intended to provide for an extended transitional period (up to 24 months).

3D. Concurrent Emergencies

What is the issue and opportunities for the solution?

147. The Act does not provide explicit guidance for the management of multiple events in one location, particularly concurrent events involving a state of national emergency or national transition period and a local emergency. Except for COVID-19, the Act does not allow for there to be concurrent local and national events declared. This means that if there is a national emergency declared for one event, a Group cannot declare a local state of emergency for a different event.
148. Greater clarity and flexibility is required regarding the management of different concurrent emergencies to enable better system performance. CDEM Groups should have quick access to the full range of powers available to respond to local emergencies whilst also dealing with a state of national emergency or transition period.

What are the options?

149. This issue involves the exercise of statutory powers (declarations of emergency). In view of this, only one option, amending the primary legislation, is available to resolve the issue and meet the policy objective. This proposal contains several parts:
- enabling local emergencies concurrently with national emergencies for a different event, regarding the management of concurrent emergencies at a regional and national level,
 - ensuring that locally declared emergencies do not terminate national transition periods in force,
 - and ensuring that resources are prioritised for national emergencies.

How do the options compare to the Status Quo?

Key

- +** better than doing nothing/the Status Quo/counterfactual
- 0** about the same as doing nothing/the Status Quo/counterfactual
- worse than doing nothing/the Status Quo/counterfactual

Criteria	Status quo – Clarifying guidance	Amendments
Clarity	<p style="text-align: center;">0</p> <p>The lack of flexibility leads to slow reaction or inaction when there are concurrent emergencies, which could have negative outcomes for the emergency management efforts</p>	<p style="text-align: center;">+</p> <p>National and local emergencies that happen at the same time are able to be declared as required (i.e., at the same or different times). This will enable quick decisive action to be taken when it is important.</p>
Operability	<p style="text-align: center;">0</p> <p>The lack of flexibility means that local emergencies or transition periods may not be declared when there is a national state of emergency (or transition period) in place for a different event due to the requirement to issue a new national notice that would cover that local event</p>	<p style="text-align: center;">+</p> <p>Quick action means that the powers that are available under declared states of emergency are available to local authorities when required.</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

150. Amending the legislation is the best option to enable the flexibility to have concurrent national and local events. It will ensure that CDEM Groups have quick access to the full range of powers available to respond to local emergencies without negating the importance of a state of national emergency or transition period.
151. NEMA consulted across the emergency management sector. Consultees were generally supportive, but observed that during concurrent local and national emergencies, there must be provision for the inclusion of local resources/groups.

Section 4: What are the marginal costs and benefits of the options?

152. It is difficult to determine the cost impact of legislating for additional Māori members on CDEM Groups. It is expected that the cost implications will place a baseline pressure on NEMA. However, given that there is no certain number of Māori members, it is not possible to accurately forecast the cost impact of this proposal (see *2B. Further strengthening Māori participation throughout the emergency management system* above). If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.
153. Another area of cost that is hard to quantify is the increased burden of compliance costs and regulatory functions on critical infrastructure entities. However, it is expected that the cost impact will be low to medium given that critical infrastructure entities will not be required to invest in upgrading existing systems or engage additional staff (see *Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)* below).
154. In a Morrison Low report commissioned by the Department of Internal Affairs into the costs and funding of local government, Councils reported that the costs of complying with new government regulations can often be large and difficult to fund¹². The report concluded that while larger councils may have sufficient resources to be able to absorb some of these regulatory activities within current staff levels, small councils may need to employ additional resource to manage some of this compliance burden.
155. Nevertheless, it is expected that the overall monetised costs of the suite of options will generally be low, and primarily borne by NEMA. This is due mainly to the incremental rather than transformative nature of the proposals. To achieve the necessary improvements in system performance, the Regulatory Reform Programme has intentionally built on established structures and processes that are already working well.
156. In addition, the system changes will be introduced over an extensive transitional period to minimise the potential cost impact on local government of implementing the reforms, to enable the changes to be delivered from within baselines. This approach includes:
- Ensuring that new CDEM Group Plans are not required immediately upon commencement of the Bill. Approximately half the CDEM Groups have held off updating their CDEM Group Plans in anticipation of these changes and would be undertaking their regular review and updating activities to implement the new requirements upon commencement. The remaining CDEM Groups will have their current CDEM Group Plans remain in effect, provided they were last updated no more than 4 years before Royal Assent of the Bill, until their next scheduled Plan update, at which point their updated Plan must comply with the new requirements in the Bill.

¹² Department of Internal Affairs Costs and funding of local government July 2018, [https://www.dia.govt.nz/diawebsite.nsf/Files/Central-Local-Government-Partnerships/\\$file/Costs-and-funding-of-local-government-Morrison-Low-report.docx](https://www.dia.govt.nz/diawebsite.nsf/Files/Central-Local-Government-Partnerships/$file/Costs-and-funding-of-local-government-Morrison-Low-report.docx)

- Other changes, such as appointing Māori members, establishing an Administering Authority, developing new Standard Operating Procedures and negotiating cost sharing agreements, will also have a phased implementation. These changes will be further developed and brought into force via secondary legislation such as Regulations, the National Plan or Rules, and the requirement of an appropriate phasing will be included in the development of those instruments.

157. Four CDEM Groups have been identified as needing additional support or expertise to enable compliance with new requirements (Tairāwhiti; the West Coast; the Chatham Islands; and Marlborough). NEMA will provide support and advice through their Regional Engagement to support those CDEM Groups in meeting their obligations, as they do currently. Knowledge transfer from capable CDEM Groups to under-resourced neighbouring CDEM Groups will also be supported and encouraged.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
NEMA	Ongoing per annum costs associated with Issue 2B: Māori Joint committee and Coordinating Executive group Membership – funding for additional Māori members on joint committees and coordinating executive groups. See assumptions below in paragraphs 159 and 160.	For coordinating executive group membership (min 3 members) \$68,256 pa to \$136,512 (max 6 members) For joint committee participation (min 3 members) \$28,800 to \$57,600 (max 6 members) Total: \$0.1M to \$0.2M pa	Medium
NEMA	Ongoing per annum costs associated with Issue 2A: National Māori Emergency Management Advisory Group – funding for NEMAG. See paras 159-162 below	Fees for participation and associated costs involved in attending NEMAG: \$80,000 pa	

Departments of public service with responsibilities under the Emergency Management Bill	No additional financial resourcing required beyond baselines.	N/A	High
	Non-monetised costs of: <ul style="list-style-type: none"> engagement with the Bill and content as it progresses, including ensuring all roles and responsibilities are mirrored under their primary legislation; negotiating or re-negotiation agreements as to roles and responsibilities; feeding into new SOPs as they are developed, and; implementing new or revising existing training and operating procedures. 	Low	High
Total monetised costs	N/A	\$0.18M to \$0.28M recurring annually	Medium
Non-monetised costs	N/A	Low	Medium

Additional non-monetised benefits of the preferred option compared to taking no action

Those with responsibilities under the Emergency Management Bill	Decision-making sits at the right level and with the right people	Medium	Medium
	All involved know their roles and how to execute them	Medium	Medium
	Practices are improved through greater Māori participation and consultation.	Medium	Medium
	Consistent approaches taken by regions, positively impacts the effectiveness of, and confidence in, the Emergency Management System.	Medium	Medium
	Communities are enabled to better understand the risks they face and are better prepared to act during and	Medium	Medium

	after emergencies, and the impacts of emergencies on people, the economy and the environment are reduced.		
NEMA	Decisions to intervene are easier to make and risk of inappropriate decision-making and judicial review is reduced	Low	Medium
	The emergency management system is responsive to the needs and priorities of Government	Medium	Medium
New Zealand Public	Greater confidence that the emergency management system is capable of responding to and actively managing hazards and emergencies	Medium	Medium
	The needs of those disproportionately affected by emergencies are identified and met	Medium	Medium
	Practices identify and meet the needs of Māori.	Medium	Medium
Non-monetised benefits		Medium	Medium

NEMA costs associated with Issue 2A: National Māori Emergency Management Advisory Group

158. Cost estimates for the proposed National Māori Emergency Management Advisory Group (NMEMAG) are based on the process undertaken to generate fees and costs for the Ministerial Advisory Committee (MAC).¹³
159. The following key assumptions were made:
- Remuneration for members of the NEMAG is calculated at the same rate as the MAC.
 - The NEMAG is classified under the Public Service Commission's Fees Framework 14 as 'Group 4: all Other Committees and other Bodies.'

¹³ This committee was established in 2021 to advise the Minister for Emergency Management about recognising Māori participation in the emergency management system.

¹⁴ Cabinet Fees Framework for Members Appointed to Bodies in which the Crown has an Interest.

- For Group 4 bodies, fees are calculated on a daily basis. The NEMAG fits in the level 1 fees category. This means that the fee for:
 - the Chair is \$845 per day
 - committee members is \$635 per day.
160. In addition to fees, travel and accommodation costs were allocated to support the operations of the MAC. On this basis, \$80,000 was budgeted for the Committee's operations.
161. Given the similarities between the Advisory Group and the Committee, \$80,000 will be used as a base estimate for the projected costs of the Advisory Group.

NEMA costs associated with Issue 2B: Māori Joint committee and Coordinating Executive Group Membership

162. In practice, the inclusion of Māori members on CEGs is well advanced, with 12 CDEM Groups already having Māori participation in their CEGs, and a further 2 groups actively seeking Māori members. Groups without existing Māori members are aware of the issue and actively working on options to improve this. The Bill requirements will therefore help solidify existing practice, while legislating to enforce an expectation for Māori membership.

Key assumptions for the costs associated with Issue 2B: Māori Joint committee and Coordinating Executive group Membership:

163. That NEMA will be funding the additional roles from its baseline.¹⁵
164. That CEGs and joint committees are Group 4 bodies under the Cabinet Fees Framework, with the following fees being appropriate:
- For CEGs:
 - they fit in the level 3 category, which applies a total daily fee range of \$205 - \$395;
 - the scoring of descriptors indicating the level of expertise and effort involved in carrying out the work of the committee results in a total score of 17 points. That equates to 60% of the 15–19-point range with 60% of the group 4 level 3 maximum rate being \$237.00;
 - CEGs generally meet for around 4 hours. It is assumed that around 2 hours preparation is required per meeting, amounting to a 6-hour working day. The Fees Framework allows for a daily fee to be paid where a total of 6-8 hours is worked in one day. This includes where a member spends time, for example one evening, preparing for a meeting the next day; and

¹⁵ As noted at paragraph 163 above, there is no certain number of Māori members. In view of this, it is not possible to accurately forecast the cost impact of this proposal. If the cost of covering Māori participation in CDEM Groups and resultant pressure on NEMA baseline is higher than anticipated, then this can be attended to through a future budget process as necessary.

- the total annual costs to Government could amount to a minimum of \$68,256 (based on 3 Māori members) to \$136,512 (based on 6 Māori members), assuming that the 16 CEGs:
 - meet 6 times per year; and
 - meet for 4 hours with 2 hours preparation (i.e., a 6-hour working day)
 - pay their Māori members \$237 per day.
- For Joint Committees:
 - they fit in the level 3 category, which applies a total daily fee range of \$205 - \$395;
 - the scoring of descriptors indicating the level of expertise and effort involved in carrying out the work of the committee results in a total score of 19 puts Joint Committees at the upper end of the 15-19 range. On this basis, the maximum daily fee of \$395 is justified; and
 - the total annual costs to Government could amount to a minimum of \$28,800 (based on 3 Māori members) to a maximum of \$57,600 (based on 6 Māori members), assuming that the 16 joint committees:
 - meet 4 times per year; and
 - meet for 2 hours with 1 hour preparation (i.e., a 3-hour working day)
 - pay their Māori members \$395 per day (pro rata for the hours worked to \$150 per day).

Costs associated with Issues 1F (annual compliance reporting) and 3C (planning emergency levels of service)

Potential cost impact of planning emergency levels of service

165. The cost impact on critical infrastructure entities of the requirement to establish and publicly state their planned emergency levels of service (PELOS) is expected to be low to medium. The CI entities, as part of their emergency planning and operational activity, should already know how various hazards and risk impact their service delivery and asset performance. The PELOS requirements provides a structure on developing a cohesive reporting on how the entity is planning to deliver their services including restoration periods post specific credible event scenarios such as an earthquake on the Alpine or Hikurangi Fault, eruption of Taranaki. It is expected that developing PELOS would require them to collate existing information within the organisation and run a few workshops with other CI entities, CDEM Groups and NEMA.
166. Based on these assumptions the cost is expected to be low to medium. The cost of reviewing their plan every 5 years is expected to be low, as the updated plan will only need significant work if the hazard and/or their own infrastructure has significantly changed. The cost for agencies is expected to be low as their role will be to facilitate engagement with CI entities and support NEMA in the development.

Potential cost impact of annual compliance reporting

167. The reporting requirement is only an enabling provision in the Bill. Details on the content and information provided in the report is yet to be developed. However, the intention of reporting is to not put significant additional cost and resourcing burden on the entity.
168. It is expected the cost for agencies will be minimal as their role is only collation of reporting and not producing these. The cost to NEMA could be low to medium depending on the level of monitoring and evaluation is required.

Proactively Released

Section 5: Delivering the options

How will the new arrangements be implemented?

169. The implementation and transition of the new regulatory framework is a critical phase which will determine the practical success or otherwise of delivering the Programme outcomes.
170. The regulatory framework review is not transformative, however it will impose changes to how the sector operates, for example, through statutory requirements. For the system to remain cohesive and effective, it is important that there is clarity for sector partners about when the changes come into force, how the changes impact their activities, and what tools and resources are available to effect change. As steward, operator and assurer of the emergency management system in Aotearoa New Zealand, it is important that NEMA support stakeholders and partners through the transition and implementation phase, and that the new regulatory framework enables service delivery at the regional and local level.
171. Sitting alongside the Bill project, a Programme Implementation and Transition (PIT) workstream has been stood up, to enable clear and effective implementation of the new regulatory framework and alignment with other projects in the programme including the National Plan review.
172. The PIT workstream will plan and deliver activities to support the emergency management sector, nationally and regionally to achieve the Trifecta Programme outcomes through the implementation and transition phases, so that:
- communities understand the risks they face and are prepared to act during and after emergencies
 - Māori participation is recognised, enabled, and valued
 - the emergency management system is well-coordinated, high-performing and enjoys widespread trust and confidence
 - impacts of emergencies on people, the economy and the environment are reduced.
173. The PIT workstream will:
- work to ensure clarity about the implications and expectations of regulatory changes for CDEM Groups, local authorities, stakeholders, and partners in the emergency management sector
 - strive to be effective in its implementation activities including to anticipate support required, and to engage with key stakeholders and partners
 - collaborate with subject matter experts, CDEM Groups, Māori Emergency Management practitioners, and across NEMA to ensure that:
 - communities are at the heart of this Kaupapa; and
 - every view and opinion has value: we will be free, frank, open and curious.

174. The PIT workstream is working closely with CDEM Groups, especially CDEM Group Managers given their expertise and access to the wider system. It will also be critical to work closely with Māori Emergency Management practitioners, guided by Te Kāhui Mataara¹⁶ and NEMA's new Senior Advisor, Māori Policy Practice Lead to understand 'what good implementation looks like for Māori', and how this workstream can work to implement changes as a Treaty Partner.
175. Government is carrying out a range of reforms that impact on emergency management and local government. As part of planning and workstream activities, we will also need to work with these agencies to minimise disruption. Notably, DPMC, DIA, Ministry of Health, and Ministry for the Environment have intersecting reform programmes that intersects with our work.
176. To deliver the desired Programme outcomes (see purpose section), the outcomes for this workstream are that:
- communities and CDEM sector partners understand how the changes impact them, and are able to effectively implement them – for example, we prepare accessible and intuitive resources that practically support CDEM Groups, local authorities, and CDEM sector partners to implement the changes
 - Māori are enabled and empowered to act as an integral and influential partner in the emergency management system – for example, by ensuring that our implementation activities are inclusive
 - the foundations for inclusive and collaborative future change are set
 - a culture of learning and continuous improvement is embedded – for example, by including review and continuous improvement practices
 - pathways to achieve equitable outcomes across the motu are clear and easy to use reducing the negative impacts of emergencies for people who have been disproportionately impacted
 - NEMA draws on its operator, stewardship, and assurer functions to shape the implementation and transition and position itself as a responsive and reliable partner.
177. The deliverables will be confirmed as part of preparing the workplan – the three main deliverables for the scoping and planning phase are summarised in the table below.

¹⁶ Te Kāhui Mataara Work Programme will ensure that Māori participation in the emergency management system is recognised, enabled and valued. The programme will see The emergency management sector working with whānau, hapū, marae, iwi and hāpori Māori to build meaningful partnership recognising and enabling Māori participation across all levels of emergency management system.

Deliverable	Purpose	Likely timing	Connection to other work
Workplan	Set out the phases of work and initial scoping of scale and intensiveness, structure (e.g., working grounds), deliverables (e.g., Digital platform), sequencing, resourcing needs, and prioritising for consideration by the Steering Group	Aug/Sept 2022	Policy decisions feed into scope of this work, along with initial decisions about changes to the Plan. Interdependency with the Stocktake (below) and Roadmap project
Stocktake	Identify existing resources within NEMA and across the emergency management sector that will need updating or replacing, and what doesn't already exist that will need to be created.	Aug/Sept 2022	Interdependency with the Workplan for this workstream.
Budget initiative assessment (for Budget 2023)	Source of funding for set-up costs for implementing the Programme, including for CDEM Groups and local government needs to be identified and this may require a Budget initiative.	Aug/Sept 2022	Interdependency with Workplan and Stocktake for this workstream

How will the new arrangements be monitored, evaluated, and reviewed?

178. NEMA will continue to exercise stewardship over the emergency management system and legislative framework, including ongoing monitoring of implementation and review of products as they are produced (such as CDEM Group Plans) and post facto reviews of local/national emergency responses.
179. In addition, review points are also built into the proposed legislation as follows:
- the National Plan will be reviewed every 5 years
 - critical infrastructure entities will be required to review update their planned emergency levels of service every three years, and report on their compliance with requirements annually, enabling oversight and monitoring at a level not currently possible
 - the secondary legislation empowered by the Act, including regulations and rules, will also have appropriate review periods built in (yet to be determined).



Overview of proposals for the new Emergency Management Bill

The development of a new Emergency Management Bill is one of three projects that make up the [Regulatory Framework Review "Trifecta" Programme](#). The [Civil Defence Emergency Management \(CDEM\) Act 2002](#) is the primary legislation for the emergency management system. The CDEM Act creates a framework within which New Zealand can prepare for, deal with, and recover from local, regional, and national emergencies.

Why change is needed

In 2018, in response to a Technical Advisory Group's report (TAG Report) into how New Zealand responds to natural disasters and emergencies, the Government set out a multi-year work programme to improve New Zealand's emergency response system.

The Government is committed to ensuring New Zealand's emergency management system is geared towards inclusive, community-led responses to natural disasters and health events, as well as continuing to work with iwi and Māori on the role they play in emergency management.

What's changing

Legislative change is required to implement the [Government's response to the TAG Report](#). Since then, further shortcomings have been identified which the Bill is seeking to address. The objectives for the Bill are to achieve a modern and fit-for-purpose Act for emergency management, which:

- is part of a consistent, coherent, and streamlined overarching emergency management regulatory framework
- reflects the place of Te Tiriti o Waitangi / Treaty of Waitangi in emergency management
- is consistent with modern legislative design and fit for purpose for end user and sector needs
- provides for greater integration of the "4Rs" (risk reduction, readiness, response, and recovery) into emergency management

The Bill will replace the current Civil Defence Emergency Management Act 2002. Changes introduced through the Bill will directly and indirectly achieve change across four key outcomes for the Trifecta programme outlined on this page.

The Bill will build upon existing systems and structures and is not intended to be significantly transformative. It will not reform the current emergency management powers, nor remove the existing key local and regional response and recovery roles.

Outcomes the Bill is seeking to achieve

Iwi and Māori participation is recognised, enabled, and valued

Communities better understand the risks they face and are better prepared to respond to and recover from emergencies

The emergency management system is well-coordinated, high-performing and enjoys widespread trust and confidence

The impacts of emergencies on people, the economy and the environment are reduced

How will the Bill get us there: some key policy proposals

- establish a National Māori Emergency Management Advisory Group to provide advice and guidance for the systems' strategic direction
- introducing a requirement for Māori members on regional emergency management decision-making structures
- requiring consultation with Māori on the development of CDEM Group Plans
- including Māori roles and responsibilities in the [National CDEM Plan](#)

- requiring CDEM Groups to identify and consult with communities disproportionately impacted by emergencies to address their needs in the Group Plan
- improving public access to CDEM Group plans

The Bill will also indirectly achieve change by:

- clarifying the roles and responsibilities of CDEM groups and local authorities
- clarifying the roles and responsibilities of critical infrastructure providers

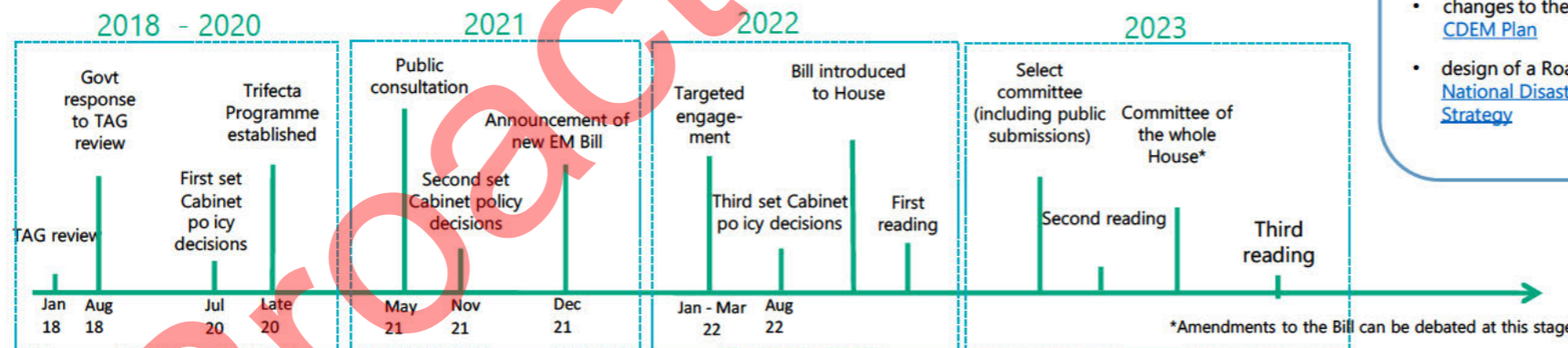
These outcomes will be further progressed through:

- changes to the [National CDEM Plan](#)
- design of a Roadmap for the [National Disaster Resilience Strategy](#)

- clarifying the roles and responsibilities of CDEM groups and local authorities across the 4Rs
- clarifying the roles and responsibilities of critical infrastructure providers including introducing minimum levels of service
- adding ambulance services in the definition of emergency services
- providing guidance for managing concurrent events
- updating offences and penalties for non-compliance and providing for infringement offences

The Bill will also indirectly achieve change by:

- authorising the Chief Executive of NEMA to make 'Emergency Management Rules'
- enabling regulations to establish roles and responsibilities of lead and support agencies



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Appendix 1 – Analysis of proposals

Clarifying the roles and responsibilities of CDEM Groups and local authorities

Issue

- 1 There is a lack of clarity about roles and responsibilities for emergency management at the local and CDEM Group level. This has resulted in a wide variety of approaches to emergency management delivery across Aotearoa. The functions for each CDEM Group are set out in section 17 of the CDEM Act and apply concurrently to each member local authority. Section 64(1) also outlines a separate duty for member local authorities to “plan and provide for civil defence emergency management within its district”.
- 2 In 2017, the TAG found that the wide variation of approaches taken by regions impacted the effectiveness of, and confidence in the emergency management system. Submitters sought consistency in operating practice across CDEM Groups, and clarity about the respective roles for territorial and regional councils. The TAG recommended CDEM Groups take a regional approach to emergency management with a majority in support of requiring shared emergency management services in each region (TAG recommendations 2.1 and 2.6).¹⁵
- 3 The Government response to the TAG (2018) agreed that the overall benefits of strengthened regional coordination and clear lines of accountability to the CDEM Group outweighed the loss of local autonomy. They proposed to give CDEM Group and member local authorities clear and separate responsibilities for emergency management. CDEM Groups would continue planning with an explicit function to coordinate across the region while local authority members would be required to give effect to, and resource decisions of the CDEM Group (TAG recommendation 2.1).
- 4 In August 2020, Cabinet agreed to require local authorities to cooperate as a CDEM Group within each region with shared emergency management services and personnel [CAB-20-Min-0366 refers]. However, recent engagement has demonstrated lack of support for a fully regionalised approach and the importance of maintaining a locally led and flexible approach to emergency management.

Proposals

- 5 I propose to:
 - 5.1 rescind Cabinet’s August 2020 decision requiring local authorities to cooperate as a CDEM Group within each region with shared emergency management services and personnel

¹⁵ Ministerial Review: Better Responses to Natural Disasters and Other Emergencies in New Zealand – Technical Advisory Group - 18 January 2018 (dpmc.govt.nz).

- 5.2 improve role clarity through specifying the distinct and separate functions of local authorities and CDEM Groups. My proposal would allocate separate functions to clarify that:
- 5.2.1 CDEM Groups are responsible for regional coordination and governance
 - 5.2.2 Local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group.
- 6 The Minister for Local Government is the territorial authority for a range of offshore islands, as set out in section 22 of the Local Government Act 2002, for example Whakaari/White Island and Mōtītī Island in the Bay of Plenty. NEMA proposes to consult with the Department of Internal Affairs regarding who will be responsible for the delivery of the functions referred to in paragraph 5.2.2 above in respect of these islands. For example, should the Minister for Local Government be responsible or should the CDEM Group (or another local authority) be responsible. I therefore seek agreement to delegate the power to act to make final decision on these matters to the Ministers of Local Government and Emergency Management
- 7 CDEM Groups may still agree to adopt shared service agreements, but this proposal maintains the flexibility for local authorities to employ personnel directly and maintain their own emergency management work programme for their area.
- 8 Local authority and CDEM Group members will both retain functions for emergency management across the '4 Rs' of risk reduction, readiness, response and recovery but responsibilities will be divided to clarify the different contributions each party makes.
- 9 The proposal would strengthen consistency of readiness requirements whilst maintaining flexibility for local response and recovery. For example, under this proposal the respective planning functions will include:
- 9.1 for CDEM Groups to develop, approve, implement, and monitor a CDEM Group plan and regularly review the plan
 - 9.2 for local authorities to:
 - 9.2.1 provide input into the development and review of the CDEM Group plan and to implement the plan as applicable to their district (or region)
 - 9.2.2 plan for local emergency management in their district (or region) in alignment with the CDEM Group plan
 - 9.2.3 ensure alignment between CDEM Group plan and local government planning instruments in legislative clauses relevant to the purpose of this Act. For example, they should ensure alignment to member Council's Long-Term Plans and spatial plans.

- 10 This proposal would allocate distinct readiness functions pertaining to emergency management personnel and organisational structures. Under this proposal:
- 10.1 CDEM Groups would have overall responsibility to ensure there are suitably trained and competent personnel, including volunteers, and an appropriate organisational structure for those personnel for effective emergency management in the area of the Group. This proposal could be further supported by the use of secondary legislation to develop minimum standards for suitably qualified and experienced personnel
 - 10.2 as the entities which fund emergency management, local authorities would be required to arrange for the provision of those suitably qualified personnel, including volunteers, and provide appropriate organisational structures at the local level/area subject to their local authority jurisdiction.
- 11 The risk reduction functions will also be distinguished to clarify the CDEM Group role in coordinating risk assessment across the region and the role of local authorities in implementing cost-effective risk reduction. Functions would be allocated as below:
- 11.1 CDEM Groups to:
 - 11.1.1 lead identification and assessment of hazards and risks for the Group area
 - 11.1.2 coordinate management of hazards and risks within the Group hazard-scape
 - 11.1.3 support local authorities with their hazard and risk identification/assessment and the consultation and communication to their communities
 - 11.1.4 to identify and implement cost-effective risk reduction.
 - 11.2 Local authorities to:
 - 11.2.1 identify and assess the hazards and risks subject to their jurisdictional area and report to the CDEM Group
 - 11.2.2 manage those hazards and risks
 - 11.2.3 consult and communicate with the community
 - 11.2.4 identify and implement cost-effective risk reduction.
- 12 This proposal will not affect the ability for persons authorised to declare a local state of emergency or local transition period nor will it affect the role of the local controller or local recovery manager in the CDEM Act. Rather, the proposal for separate and distinct functions will mirror the decision of Cabinet in August 2020 to distinguish between a mayor's responsibility for declaring for wards and districts and the Group appointee's responsibility for declaring for the Group area.

- 13 Appendix two sets out in more detail remaining proposed changes for functions for CDEM Groups and local authorities including an explicit function for CDEM Groups to coordinate across the region.

Consultation

- 14 Feedback from a survey of stakeholders in May 2021 indicated support for clarifying the roles and responsibilities of local authorities in the CDEM Act.
- 15 I have revised this proposal following engagement with local government and CDEM sector stakeholders in February 2022. Submissions following the February engagement showed broad support for clarification of the roles and responsibilities for CDEM Groups and local authorities, but mixed support across the options proposed.
- 16 Submitters emphasised the importance of locally led emergency management and local authorities' connections to their communities, and concern about the potential loss of local authority autonomy in emergency management under the options proposed.

Publication of CDEM Group plans

Issue

- 17 The CDEM Act does not set out the requirements for publication of CDEM Group plans or which materials can be incorporated by reference. Rather CDEM Groups are required to rely on the common law principles for decision making when considering which documents to make publicly available (and by what means). This has created some confusion for CDEM Groups as to what the requirements are.
- 18 Although CDEM Groups do publish their plans, this work aims to improve consistency of what information is published across the regions and ensure that all documents that form part of the plan are easily accessible to the public.

Proposal

- 19 I propose to require that CDEM Group plans must be published, and to introduce updated principles to guide which documents can be incorporated by reference. Documents incorporated by reference will still form part of the plan but be exempt from the publication requirement.
- 20 For example, the following principles could be used to determine documents that are appropriate to incorporate by reference:
- 20.1 written material that deals with technical matters and is too large or impractical to include in, or print, as part of, the plan
- 20.2 standards, requirements, or recommended practises of any national

organisation

20.3 documents that are clearly defined and can be clearly identified by the public

20.4 each CDEM Group and local authority must ensure that copies of the CDEM Group Plan and any material incorporated by reference is made available free of charge on the Internet and copies of the plan and material incorporated by reference are readily available at local authority offices (either free of charge or for purchase at a reasonable cost) documents can be incorporated by reference only if impractical to do otherwise (for example, it is long or complex, covers technical matters only).

21 I anticipate that providing clear requirements for mandatory publication will improve public access to CDEM Group plans, and consequently raise risk awareness in the community. Greater clarity will also improve the consistency of information published across the regions.

Consultation

22 Local government stakeholders supported the intent to improve accessibility of CDEM Group Plans. Most preferred the option which required publication of the Group Plan but enabled flexibility for documents to be incorporated by reference provided they meet certain principles such as accessibility and transparency. This option was preferred as it was deemed the most practical and cost effective, because documents incorporated by reference are likely to be lengthy and operationally focused.

23 Some stakeholders noted that publication of CDEM Group plans was insufficient for improving accessibility to some communities and that further work could be done to increase accessibility for Culturally and Linguistically Diverse (CALD) communities. Departmental feedback noted that improving accessibility for some communities would need to focus on the format and method of publication, rather than the requirement itself.

Clarifying the process for selecting an administering authority

Issue

24 The CDEM Act requires an administering authority for each CDEM Group to provide administrative and related services.

25 In late 2020, the Government responded to the TAG report by agreeing to amend the CDEM Act to provide that any CDEM Group member can be a statutory administering authority, but that the regional council will be the statutory administering authority by default. This change would provide for more flexibility for a territorial authority to act as the Group's statutory administering authority. The Government subsequently agreed to amend the

CDEM Act to provide for more flexibility as to who could act as an administering authority [CAB-20-Min-0366 refers].

Proposal

- 26 I am proposing to include in the Bill a clause setting out that any member of the CDEM Group (that is a territorial authority or regional council or unitary authority) may be the administering authority by agreement. As the administering authority of CDEM groups is already in place, this clause will be utilised when the membership of the CDEM Group seeks to change the administering authority.
- 27 I am also proposing that if the members of a CDEM Group fail to agree on an administering authority, and if the Group:
- 27.1 has a regional council as a member, then the regional council must be the administering authority
- 27.2 does not have a regional council as a member, then the existing arrangement for the Minister to appoint or direct will apply.
- 28 To ensure clarity that this Minister's role is limited to circumstances in which agreement cannot be reached and there is no regional council member, I propose removing the current requirement that the administering authority can only be changed if the Minister agrees.

Further strengthening Māori participation and protection from liability for Māori members of Joint Committees

Proposals to improve Māori participation in joint committees

Issue

- 29 The CDEM Act is currently silent on the importance of the role of Māori in the emergency management system. On November 2021, Cabinet agreed to a set of proposals for the new Bill that aim to enable Māori participation throughout the system [CAB-21-MIN-0472, confirming GOV-21-MIN 0043]. This includes enabling Māori to join CDEM Group governance and operational structures and requiring specific consultation with Māori partners during the development of emergency management planning and strategy documents.

Māori will have a decision-making role at regional CDEM group governance structures

- 30 Joint Committees (JCs)¹⁶ and Coordinating Executive Groups (CEGs)¹⁷ are governance bodies which determine and lead emergency management in

¹⁶ Joint Committees currently comprise Mayors of territorial authorities and chairpersons of regional councils (or delegates).

¹⁷ Coordinating Executive Groups comprise the management personnel with CDEM responsibilities from all Councils within a region.

each region. While some Groups have local arrangements for Māori participation on their CEGs, this is inconsistent, and not included in the current legislation.

- 31 Mandating Māori participation on Joint Committees and Coordinating Executive Groups will allow for greater participation of Māori at the local and regional levels and ensure their input in matters concerning CDEM Group governance and planning. This will develop and enhance the existing relationship between CDEM Groups and Māori.
- 32 Cabinet agreed to the proposal that Māori elect two members with full voting rights to Joint Committees. However, the proposal to have only two members on Joint Committees was not well received by Māori partners and does not well suit those regions where only two members would be a backward step or would not be pragmatic (for example some regions have more than 20 iwi or hapū).
- 33 I have revised the proposal to introduce a mandatory requirement to have Māori members on both Joint Committees and Coordinating Executive Groups, and to provide that Māori membership is to be determined on a region-by-region basis that allows for local tailoring of appointment processes.
- 34 This allows for flexibility that recognises the many different arrangements across regions that are likely to be needed, while leveraging existing relationships, and providing a mechanism for Māori to determine who represents them.
- 35 It is intended to pay for the costs of Māori members centrally from NEMA's baseline as part of the national support on which the emergency management system relies.¹⁸ Māori members will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group.
- 36 Compensation liabilities in the current CDEM Act will be retained but restricted to local authorities, not Māori members, for circumstances where the CDEM group will be liable to pay compensation.¹⁹

Māori members will be appointed via systems to be developed locally

- 37 Māori, including Iwi and hapū, and Māori organisations with a role in emergency management, should identify nominees best suited for the position and locally agree on the appointments. This provides a "by Māori for Māori" mechanism, while recognising the need to partner with local government in the process. The selection process should be flexible to account for the needs of the different regions.
- 38 An empowering clause will be included in the Bill for Regulations to allow for

¹⁸ The cost implications will place a baseline pressure on NEMA which will be considered as part of any future budget bid.

¹⁹ Section 108 of the CDEM Act 2002 provides compensation for loss or damage to personal property to be paid by CDEM Group members arising from activity under the direction of the Director or a Civil Defence Emergency Management Group or a Controller or a Recovery Manager.

more prescription, which will be developed in collaboration with Māori and local government to provide for locally appropriate appointment mechanisms.

- 39 An empowering provision future-proofs the new Act to enable processes to be modified over time. A transition period for these arrangements will be incorporated into the Bill, which will allow time for guidance to be developed and for CDEM groups to receive and act upon that guidance.
- 40 A ministerial backstop will also be included in the Bill to ensure appointments do happen and to make decisions where regions cannot agree on members.

The Bill will introduce a permanent National Māori Emergency Management Advisory Group

- 41 The CDEM Act is silent on the importance of the role of Māori in the emergency management system. I have heard a desire for greater input by Māori into how the system operates at a national level, including being responsive to Māori needs during an emergency event.
- 42 The Bill will include a requirement that the responsible Minister appoint a National Māori Emergency Management Advisory Group (NMEMAG) to provide advice to the Chief Executive of NEMA across all aspects of the role of Māori in the emergency management system.²⁰ This includes, but is not limited to:
- 42.1 policy development, including for rules and regulations
 - 42.2 advising on NEMA's role to assure that the Crown emergency management system delivers for Māori
 - 42.3 development of guidance (for example for Māori and local government to agree Māori member appointments to CDEM Group decision making bodies).
- 43 The NMEMAG will not provide advice directly to CDEM Groups as this can confuse accountability arrangements. As an advisory group, the NMEMAG does not cut across the Chief Executive's decision rights. Similarly, it is the Director's role to advise in relation to, and assist in the planning, preparation, co-ordination, and carrying out of, civil defence emergency management. The Director is responsible for providing this advice to CDEM Groups. Therefore, we advise that the NMEMAG functions be limited to providing advice to the NEMA Chief Executive. It is also important to distinguish that the NMEMAG does not have a role in an emergency event but may well consider events through the lens of lessons management.
- 44 Being appointed by the Minister will ensure that the Group has the required mana and allows flexibility for the Minister to set Terms of Reference for the NMEMAG to direct its areas of focus, how it works with NEMA, and any expectations for reporting to the Minister. The Bill will include a requirement

²⁰ An appropriate name for the Group may be determined following enactment of the Bill.

for the group to comprise between five and eight members.

- 45 Establishing the NEMAG in primary legislation puts this stream of advice on a permanent footing. This will not create duplication as the existing Ministerial Advisory Committee on emergency management will be disestablished and replaced by the NEMAG.

The permanent legislative authority will be updated so that Māori organisations can be reimbursed for welfare expenses incurred during emergency responses

- 46 Māori entities often incur significant welfare costs supporting the wider community in an emergency response but are unable to access reimbursements directly from the Government. Instead, they are required to lodge claims with local authorities, who in turn request the reimbursement from the government.
- 47 Feeding from engagement shows that funding for reimbursement of costs incurred by Marae and other Māori and iwi resources is currently regarded as not clear, slow and complex.
- 48 The Bill will update the permanent legislative authority so that Māori organisations can be reimbursed for welfare expenses incurred during emergency responses. This proposal remains unchanged from Cabinet's decision in November 2021. Further detail will be developed as part of the National Plan and guide review.

CDEM Groups will be required to consult Māori in the development of their CDEM Group Plans and strategies

- 49 Section 52 of the Act requires CDEM Groups to notify the public before making a Civil Defence Emergency Management Group Plan (CDEM Group Plan). At their discretion, CDEM Groups must also notify specific entities and individuals that the Group considers appropriate. There is currently no explicit requirement to notify and consult Māori.
- 50 I am confirming Cabinet's earlier decisions with minor updated text to ensure alignment with existing legislative conventions. Specifically, CDEM Groups will be required to:
- 50.1 engage with Māori and iwi partners in the development of CDEM Group Plan
 - 50.2 have systems and processes to ensure that it has the capability and capacity to engage with Māori and to understand perspectives of Māori
 - 50.3 notify iwi and Māori partners as a requirement of planning – starting with the CDEM Group Plan and moving to other plans, as appropriate
 - 50.4 have regard²¹ to the comments received from Māori on CDEM Group

²¹ "Have regard" is an additional refinement in this proposal.

planning documents

- 50.5 set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans.

The Bill will require that the National Plan must consider roles and responsibilities of Māori

- 51 Despite the contribution Māori make to emergency management, the National CDEM Plan does not assign explicit roles and responsibilities to Māori entities.
- 52 I propose that a requirement will be included in the Bill that the National Plan can include specific roles and responsibilities for Māori organisations where these have been agreed with those organisations and ensure that Māori are enabled to participate in all levels of the emergency management system. This proposal remains unchanged from Cabinet's decision in November 2021.

The Bill will include a CDEM Group function to identify and address needs of iwi and Māori

- 53 I am confirming Cabinet's earlier decision to include, in the list of CDEM Group functions, functions relating to iwi and Māori including:
- 53.1 identifying the needs of iwi and Māori within their CDEM region
- 53.2 developing plans to address these needs
- 53.3 identifying the contributions iwi and Māori can make to managing an emergency event
- 53.4 communicating this information to the wider CDEM Group, their communities and others as required.

A descriptive Treaty of Waitangi / Te Tiriti o Waitangi clause will be included in the Bill

- 54 Māori have an important role in responding to emergencies, including activation of marae, the provision of welfare, and communication networks. However, Māori participation in emergencies is not included in the CDEM Act.
- 55 The Māori-Crown relationship would be best served by the inclusion of provisions that directly provide for Treaty recognition and Māori participation in emergency management.
- 56 I intend for a descriptive Treaty of Waitangi / Te Tiriti o Waitangi clause to be included in the Bill to expressly reference the Crown's Treaty responsibilities and describe how these are given effect to in the emergency management context, and to give effect to the proposals to strengthen the role of Māori (outlined in paragraphs 31-58 of Appendix 1). A more general Treaty clause would not be appropriate given the emergency response powers included in

the Bill. See also the Treaty Analysis section of this paper at paragraphs 91-93 above.

- 57 As noted in the November 2021 Cabinet paper, legislative changes are only the beginning of improving how Māori participate in emergency management. [CAB-21-MIN-0472]. The National Emergency Management Agency will continue to work with the CDEM Sector and key Māori partners in the development of the National Plan and other secondary legislation, as well as for the implementation of the Bill and as part of their broader work programme.

Consultation

- 58 The proposals relating to strengthening the role of Māori in the emergency management system, outlined in this and earlier Cabinet papers, were subject to targeted stakeholder engagement with the CDEM sector and key Māori partners.
- 59 Key Māori partners were supportive of the direction of travel of all these proposals. The Ministerial Advisory Committee on Emergency Management also advised going further in some areas, specially:
- 59.1 the potential for a more independent National Emergency Management body
 - 59.2 50% membership for Māori on Joint Committees, or at least one Māori member from the geographical area of each territorial authority
 - 59.3 a general Treaty clause.

Liability under the Health and Safety at Work Act 2015

Issue

- 60 To strengthen the role of Māori in the emergency management system, I am proposing to enable the appointment of Māori members onto Joint Committee with full voting rights. Cabinet agreed to this proposal in 2021 [GOV-21-Min-0043 and CAB-21-Min-0472 refers].
- 61 The legal status of joint committees under the CDEM Act and the Local Government Act 2002 is somewhat unclear. The joint committees' standing as a Person Conducting a Business or Undertaking (PCBU) under the Health and Safety at Work Act 2015 (HSWA) is important because the officers' duty under section 50 of Health and Safety at Work Act 2015 (HSWA) relate to the officers' role in relation to a PCBU. If the Group is not a PCBU then there is not an officer's duty in relation to it as a PCBU.²²
- 62 Under HSWA, a member of the governing body of a local authority elected in accordance with the Local Electoral Act 2001, when acting in that capacity,

²² This is not related to the issues raised in the Whakaari proceedings.

does not commit an offence under the HSWA for a failure to comply with a duty as an officer. This means that even if joint committee members are defined as officers of a PCBU, they cannot be prosecuted for offences under the HSWA for failing to comply with their duties. The protection from liability aims to prevent a chilling effect on local democracy that would result if elected members of councils and other elected positions were to face the risk of prosecution for breach of the due diligence duty.

- 63 Under the participation proposals, Māori members would be selected through processes designed locally by Māori. Māori members would therefore not be elected in accordance with the Local Electoral Act. In effect, this would mean that joint committee members elected in accordance with the Local Electoral Act would be protected from prosecution under HSWA, whereas Māori members would not.

Proposal

- 64 I propose to clarify in the Bill that CDEM Groups are not a PCBU for the purposes of the HSWA.
- 65 This amendment would further mean that no members of the CDEM Group would hold the officers' duty as the CDEM Group would not be a PCBU. If they are not a PCBU then there is not an officer's duty in relation to a committee as a PCBU. This means that all members of joint committees would not have duties under HSWA as an officer of a PCBU.
- 66 I am also proposing amendments to who holds certain statutory powers to align with this PCBU clarification (for example, the power to do works, or make safe dangerous structures to sit with the Controller, rather than the CDEM Group in a state of emergency). This provision aligns with the proposed clarification that CDEM Groups are responsible for regional coordination and governance, while local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group.
- 67 NEMA officials will continue to work with MBIE and in-house legal teams to refine the PCBU proposals and ensure all risks are covered off.

Consultation

- 68 MBIE has advised that they have discussed their position with WorkSafe NZ and do not consider that CDEM Groups are PCBUs. MBIE's preferred option at this stage is to work with NEMA to include a clause in the Bill that clarifies that CDEM Groups are not PCBUs. MBIE advised they were comfortable with this approach if the joint committees are fulfilling a statutory role that is advisory and co-ordinating in nature and can only act or provide resources, employ people etc. through their constituent territorial authorities.
- 69 MBIE has further advised that clearly demarcating that the CDEM Group is not a PCBU, and that its members are not officers, will make the law clearer

and avoid the potential inequities and disincentives for elected or non-elected members participating.

Enabling equitable outcomes

Issue

- 70 The current Act requires that people developing CDEM plans to 'have regard to New Zealand's international obligations' (s38(c)).
- 71 New Zealand's international obligations or commitments include those under:
- 71.1 the United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD)
 - 71.2 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 72 Common themes across the treaties include the requirement for New Zealand to enable an inclusive 'all of society' approach to participation and to ensure that our existing institutional structures and processes prioritise equity for people who are disproportionately impacted by emergencies.
- 73 Emergencies amplify existing inequalities; there is room for New Zealand to do better, and for greater consistency across New Zealand to achieve more equitable outcomes. This proposal represents one means by which we can achieve this.

Proposal

- 74 I am proposing to include a requirement in the Bill for CDEM Groups and their local authorities to identify communities in their regions which are disproportionately impacted by emergencies and to engage with those communities in the development of the CDEM Group plans.
- 75 Some communities are known to be more vulnerable to the negative impacts of emergencies than others. These include, but are not limited to:
- 75.1 disabled people
 - 75.2 people with mental health, drug, and alcohol problems
 - 75.3 children and young people
 - 75.4 recent migrants and members of the CALD (Culturally and Linguistically Diverse) community
 - 75.5 people living in rural communities.
- 76 Under this proposal, CDEM Groups will be responsible for identifying which communities to engage with as it is likely to vary according to the make-up of

an area (for example, there may be a high proportion of rurally isolated people, tourists, or migrant seasonal workers). Local authority members of CDEM Groups already maintain strong relationships with their communities and know which groups are best placed to represent them. Guidance could be developed to support CDEM Groups to identify the communities, and tools to support the engagement to give effect to this requirement.

Consultation

- 77 Submissions following targeted engagement with local government stakeholders in February 2022 saw strong in principle support for this proposal. However, submitters recommended finding a new way of describing this work, previously called 'disproportionately impacted people', to better reflect its intent, purpose, and strengths-based approach. I am now referring to this work as enabling equitable outcomes.
- 78 Participants in engagement questioned the scope of this proposal and whether it would require consultation for broader CDEM Group planning or just the CDEM Group plan. Some participants suggested that local level planning would be more effective for enabling equitable outcomes for communities.
- 79 Concerns about resourcing and funding to perform these new requirements were raised. Some submitters also noted risk of duplication as many councils have community development teams who are already doing this work.
- 80 Stakeholders agreed it was important to have local knowledge of disproportionately impacted people and groups, and to actively engage with them. It was also noted that those communities wanted representation in CDEM Group plans, so they could better understand services and assistance available to them and what to do in emergencies. However, concern was raised that the proposal for consultation could put additional pressure on these groups who may have limited capacity and capability.
- 81 In addition to engaging with CDEM Groups, emergency management practitioners in local authorities, and Māori emergency management practitioners we have also discussed how to enable equitable outcomes with entities and groups such as New Zealand Red Cross, Ministry for Disability Issues, National Welfare Coordination Group, and Ministry for Ethnic Communities. These discussions have helped shape this advice, and I will continue to work with these entities as work on the Bill and National Plan progress.

Clarifying the roles of the Chief Executive and Director

Issue

- 82 The current legal arrangements for the Director of Civil Defence Emergency Management (the Director) require updating to take account of NEMA's creation in 2019 as an operationally autonomous departmental agency with its

own Chief Executive. Along with the National Controller and the National Recovery Manager, the Director is a national statutory role holder.

- 83 The creation of NEMA has resulted in the need to:
- 83.1 improve role clarity and accountability at the national level, with the aim of increasing public and sector confidence and trust in key decision-makers during a state of national emergency or national transition period
 - 83.2 maintain the current status of the national level emergency response and recovery powers which are significant, extensive, and relatively unconstrained
 - 83.3 clearly identify the “peacetime / business as usual” roles and functions of NEMA, through the Chief Executive, in particular before and after an emergency response.

Proposal

- 84 To address these needs, I am proposing that:
- 84.1 the Chief Executive of NEMA hold the statutory officer role of Director of Civil Defence and Emergency Management
 - 84.2 same as the status quo, the Director have the discretion to delegate certain functions and powers to the National Controller or National Recovery Manager for the purpose of dealing with a state of national emergency or a national transition period respectively
 - 84.3 those statutory functions and powers of the Director that sit with a Chief Executive under other legislation (for example, the Public Service Act 2020), or which do not require a statutory power or function, be removed.
- 85 Under this proposal:
- 85.1 the Chief Executive/Director maintain overall responsibility for the emergency response and recovery
 - 85.2 the National Controller and National Recovery Manager would be independently accountable for the exercise of their powers.
- 86 This proposal will make it clear who is accountable for delivering an effective national emergency response or recovery. Having the Chief Executive also holding the Director’s role provides greater clarity for the public and the sector as to who is the key decision maker during a national emergency or recovery.
- 87 The delegations process enables a faster response if the National Controller or National Recovery Manager needs to be temporarily relieved of their functions and powers (for example, due to fatigue) or replaced because of

performance issues. Moreover, the sector is familiar with the delegations process.

Consultation

- 88 Te Kawa Mataaho – the Public Service Commission have indicated their support for this proposal. It is also consistent with prior advice to Cabinet, where in 2019, Cabinet was advised that on NEMA's establishment, the Chief Executive/Director roles would be combined, and the CDEM Act amended to reflect this.

Lead and support agency regulations

Issue

- 89 The current National CDEM Plan confirms that lead agencies have responsibilities in relation to managing the response to managing an emergency, but there is no provision in the Act relating to lead agencies.
- 90 The roles and responsibilities of lead and support agencies across the 4 Rs needs to be clarified, as the uncertainty contributes to misunderstanding of roles and responsibilities before, during, and following emergencies.

Proposal

- 91 I am proposing to include clauses in the Bill that enables the making of regulations which:
- 91.1 confirm the roles and responsibilities of lead and, due to the inherent interdependencies, support agencies²³
 - 91.2 establish the mechanisms and criteria by which lead and support agencies are allocated
 - 91.3 set out the expectations of, and from, governance
 - 91.4 specify the triggers and thresholds that determine the lead agency for a specific event.
- 92 I am also proposing that the Bill explicitly require the Minister for Emergency Management to consult with other relevant Ministers and agency chief executives when developing new regulations for lead and support agencies. This reinforces that roles and responsibilities are determined via consultation rather than being unilaterally assigned by the Minister for Emergency Management or by NEMA.

²³ Note that different terminology may be used in the final Regulations.

Consultation

- 93 Agencies were generally supportive of this regulating making power. However, MPI, MfE and Police raised concerns about roles and responsibilities being assigned to them without consideration of their own statutory functions and mandates and budgetary limitations.
- 94 In responding to these agencies, NEMA noted that:
- 94.1 roles and responsibilities in the area of lead and support agencies cannot be unilaterally assigned by NEMA, but will be allocated in consultation with the affected departments and agencies
- 94.2 the new Act will require the Minister for Emergency Management to consult with other relevant Ministers and agency Chief Executives when developing new regulations for lead and support agencies
- 94.3 in addition, NEMA is prevented from unilaterally imposing roles and responsibilities on other government agencies by the convention that secondary legislation cannot be used to amend the powers and functions of another agency as set out in primary legislation unless explicitly provided for.
- 95 Options for specifying the roles and responsibilities of lead and support agency across the 4Rs are currently being developed. These options, along with options for the operating model and the definition of lead agency will be consulted on in late 2022-early 2023.
- 96 The financial implications of additional roles and responsibilities for lead agencies across all 4Rs will depend on the operating model selected. Options for the operating model will be included as part of further consultation to be undertaken in late 2022-early 2023.

Ambulance services

Issue

- 97 Ambulance services play a core role in responding to emergency events and have a wide range of responsibilities under the Coordinated Incident Management System (CIMS). However, it is not practicably possible to fulfil these responsibilities if ambulance managers are not specifically included in the decision-making and information sharing processes.
- 98 The TAG recommended that Coordinating Executive Group membership should include ambulance services as emergency services. The Government in its response to the TAG Report, accepted the recommendation in principle. Although CDEM Groups can currently co-opt a senior officer of an ambulance service to serve on a Coordinating Executive Group, this is entirely at their discretion. To ensure ambulance services are included in the Coordinating Executive Group, their needs to be a mandatory requirement in the legislation.

- 99 Ambulance services are not included within the definition of emergency services in the current Act, despite their role as emergency responders. Therefore, there needs to be clarity over what entities are an ‘ambulance service’.

Proposal

- 100 For ambulance services to be recognised as legitimate emergency services I propose that the Bill include:
- 100.1 a definition of an ambulance service
 - 100.2 ambulance services within the definition of ‘emergency service’.
- 101 Currently, ambulance services are not regulated. This has enabled private providers to set up as “emergency” health transport providers. NEMA will work with Parliamentary counsel to create a definition of “ambulance services”, which will capture those services with Coordinated Incident Management System responsibilities and be consistent with the Ambulance Service Standards.
- 102 To ensure that ambulance services are fully engaged in emergency management, I am also proposing that a permanent position for a Chief Executive or senior officer of an ambulance service be established on Coordinating Executive Groups.

Consultation

- 103 All participants through engagement agreed that ambulance services should be included within the definition of emergency services recognising there is room to clarify mode of vehicles (e.g., air ambulances).

Critical Infrastructure (lifeline utilities)

- 104 In conjunction with critical infrastructure entities, nine proposals have been developed to address issues and gaps with the current lifeline utilities legislative regime. In November 2021, Cabinet agreed to seven of the proposals [CAB-21-MIN-0472, confirming GOV-21-MIN-0043]. This section focuses on the two remaining proposals.²⁴

Planning Emergency Levels of Service

Issue

- 105 Currently, lifeline utilities are required to “ensure that [they are] able to function to the fullest possible extent, even though this may be at a reduced

²⁴ See the ‘Consultation’ section above for MBIE’s comments and NEMA’s responses.

level, during and after an emergency” (section 60(a)). This duty is vague and not measurable.

Proposal

- 106 To address this issue, I am proposing that critical infrastructure entities be required to:
- 106.1 establish and publicly state their planning emergency levels of service
 - 106.2 review their planned emergency levels of service every five years, unless required earlier by the Director due to changing circumstances²⁵
 - 106.3 the empowering clause for making critical infrastructure regulations specifically allows for regulations prescribing further detail and procedural matters for planning emergency levels of service.
- 107 This proposal reflects both the high level of support for planning emergency levels of service and the significance of the objectives that we are seeking to achieve from a public interest perspective. The introduction of planning emergency levels of service will:
- 107.1 help communities better prepare for emergencies, based on realistic expectations of service availability
 - 107.2 inform the development of effective readiness and response planning
 - 107.3 provide better transparency and clarity across the critical infrastructure sector
 - 107.4 enable other critical infrastructure entities to plan, based on interdependencies and expected emergency levels of service
 - 107.5 encourage the development of innovative solutions where scenario planning indicates that services will be severely compromised.
- 108 To provide for greater clarity and improved measurability, planning emergency levels of service will be:
- 108.1 measurable and timebound
 - 108.2 meaningful to the end-user
 - 108.3 publicly available
 - 108.4 stated against a known hazard, as nominated in conjunction with the respective CDEM Group

²⁵ The original proposal was for planning emergency levels of service to be updated every three years. I am proposing that they should be updated every five years unless the Director requires an earlier date due to changing circumstances. This aligns with the review period for CDEM Group Plans and reduces the compliance burden for critical infrastructure entities.

- 108.5 developed in conjunction with the relevant sector lead agency and CDEM Group
- 108.6 shown, in conjunction with a description of whether the level of service is projected to be achievable, at suburb level
- 108.7 accompanied by statements:
 - 108.7.1 acknowledging that the service may not be delivered by the business-as-usual mechanisms
 - 108.7.2 to the effect that emergency levels of service are not what will be achieved, rather what the Critical Infrastructure entity is planning to achieve, matched against hazard and risk scenarios
 - 108.7.3 acknowledging that there are times when a zero level of service may be achieved by the Critical Infrastructure entity
 - 108.7.4 to the effect that (in consultation with the relevant stakeholders and communities) the emergency management sector, Non-Governmental Organisations and the impacted stakeholders and communities themselves may be providing, or contributing to the delivery of, the emergency levels of service.

Consultation

- 109 NEMA consulted on a proposal to require critical infrastructure entities to establish and publicly state their planning emergency levels of service. The proposal received majority support:
 - 109.1 targeted sector and agency consultation: 29 respondents in favour and 22 not in favour
 - 109.2 consultation with Mayors and Coordinating Executive Groups: 32 respondents in favour and 1 not in favour.²⁶
- 110 Significant support came from agencies and the emergency management sector. In relation to critical entities, the electricity, telecommunications, and ports sectors were not in favour of the proposal.
- 111 The main concerns raised during consultation were:
 - 111.1 the need for co-ordination and guidance to develop planning emergency levels of service
 - 111.2 the complexity involved in developing planning emergency levels of service because of large number of scenarios and the interdependency with other critical infrastructure
 - 111.3 the potential for additional costs and resourcing to comply with the new

²⁶ The Nelson Tasman Council did not support the proposal.

requirement

111.4 the nature of the actual event could differ from those planned for.

112 To mitigate these concerns, NEMA intends to:

112.1 provide for a realistic extended implementation period, discussed in paragraphs 121 and 122 of Appendix 1

112.2 prepare guidance material and templates to support entities to carry out planning emergency levels of service development and planning

112.3 provide ongoing support to agencies and entities involved in planning emergency levels of service development and planning.

Annual Compliance Reporting

Issue

113 Currently, critical infrastructure entities are not required to report on how well their organisations are meeting their obligations under the current Act. It is not possible to hold critical infrastructure entities to account for non-compliance with significant statutory obligations without annual reporting.

Proposal

114 I am proposing that critical infrastructure entities be required to:

114.1 annually report to NEMA and their regulatory agencies on compliance with their obligations under the new Act

114.2 make relevant information available to NEMA or CDEM Groups on request

114.3 the empowering clause for making critical infrastructure regulations specifically allows for regulations setting out the details of reporting requirements.

115 Regulations are an appropriate mechanism for addressing the critical infrastructure entities' concerns about overlapping regulatory requirements and operational issues. The greater flexibility of regulations and the process for making them, enables us to develop effective and tailored reporting requirements with the involvement of the entities concerned.

Consultation

116 NEMA consulted on a proposal to require critical infrastructure entities to annually report on their compliance with their obligations under the new Act and to make relevant information available to NEMA or CDEM Groups on request. The proposal received mixed support:

- 116.1 targeted sector and agency consultation: 25 respondents in favour and 24 not in favour
- 116.2 consultation with Mayors and Coordinating Executive Groups: 27 respondents in favour and 4 not in favour.²⁷
- 117 The respondents in favour agreed that this proposal would be beneficial for emergency management planning and contribute to readiness planning across New Zealand.
- 118 The main concerns raised during consultation were:
- 118.1 the resourcing implications for organisations
- 118.2 the impact of the new requirements on responsible entities
- 118.3 the duplication of effort as a number of entities already have regulatory reporting requirements.
- 119 To address these concerns, NEMA intends to:
- 119.1 develop guidance and provide support over the implementation period
- 119.2 develop evaluation methodologies that support reporting
- 119.3 identify opportunities to align reporting under the critical infrastructure legal regime with the requirements and processes of other regulatory reporting regimes where possible.

Delayed commencement

- 120 Cabinet has previously agreed to a proposal for the Minister to specify critical infrastructure entities by means of a *Gazette* notice [CAB-21-MIN-0472, confirming GOV-21-MIN-0043, refers]. At present, existing entities are set out in a Schedule to the CDEM Act. To provide for a review of the entities listed in Schedule 1 and the issuing of a new *Gazette* notice, I am proposing that the relevant provisions in the new Bill be subject to delayed commencement for two years, unless brought in earlier via Order in Council.
- 121 The new legislative regime for critical infrastructure will involve significant change for existing lifeline utilities, especially in relation to planning and reporting. To provide time for the necessary adjustment, I am proposing a two-year transition arrangement commencing from the date that the new Act comes into effect. This would apply only to the planning emergency levels of service and annual compliance reporting proposals.

²⁷ Local Government New Zealand, Nelson Tasman District Council, Waitaki District Council, and Western Bay of Plenty District Council did not support the proposal.

Concurrent emergencies

Issue

- 122 There have been an increasing number of emergency events in recent years, and in a number of situations there have been multiple emergency events in one geographical location at the same time (for example, a flood and fire, or a flood and pandemic). Currently the CDEM Act does not provide explicit guidance for the management of concurrent events (two or more distinct local or national emergency events taking place in the same place/time). The CDEM Act does not allow for concurrent states of emergency, or concurrent states of emergency and transition periods (with the exception of COVID-19).
- 123 There are four aspects of concurrent emergencies to provide for:
- 123.1 concurrent national and local states of emergency (i.e., a national state of emergency for an earthquake and a local state of emergency for a flood)
 - 123.2 concurrent local states of emergency and a national transition period (i.e., requiring a local state of emergency for a flood event when the area is subject to a national transition period to enable recovery from an earthquake)
 - 123.3 concurrent local transition periods and a state of national emergency or national transition period (i.e., a local transition period to enable the recovery from a localised flood and a national state of emergency for an earthquake)
 - 123.4 concurrent local states of emergency (or emergencies generally) (i.e., a flood event followed by a localised earthquake).
- 124 With the exception of temporary clauses in the CDEM Act for COVID-19, the current Act does not allow states of local emergency to be declared while there is a state of national emergency or national transition period in force. Additionally, there is a risk that if a national transition period is in place, it could be terminated by a state of local emergency being issued for a different event over that area, which is undesirable.

Proposal

- 125 I am proposing that the current clauses in the CDEM Act are revised before being shifted into the Bill, with changes to be made that:
- 125.1 enable CDEM Groups and Mayors to declare a state of local emergency for other emergency events even while there is a state of national emergency in force in that location
 - 125.2 allow states of local emergency to remain in force, if a state of national emergency is declared for other emergency events in that location

- 125.3 enable CDEM Groups and Mayors to declare states of local emergency for other emergency events, without terminating any national transition period in force in that location
 - 125.4 enable CDEM Groups and Mayors to give notice of a local transition period for other emergency events even while there is a state of national emergency in force for that location
 - 125.5 enable a local transition period to remain in force, if a state of national emergency is declared for other emergency events in that location
 - 125.6 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a national transition period in force for that location
 - 125.7 enable a local transition period to remain in force, if notice of a national transition period is given for other emergency events in that location
 - 125.8 prevent a local or group controller from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National recovery manager during concurrent emergencies.
- 126 To improve flexibility and responsiveness, I am also proposing that secondary legislation (regulations and rules) and guidance be enabled to set out the operational approach to the management of concurrent emergencies at a local, regional and national level.
- 127 This proposal will improve system performance by providing greater clarity regarding the management of different concurrent emergencies. This includes:
- 127.1 concurrent national and local emergencies (i.e., a national state of emergency for COVID-19 plus a local state of emergency for a flood event). This aspect has already been considered and resolved through amendments to the CDEM Act to provide for the COVID-19 pandemic²⁸
 - 127.2 concurrent local emergencies (for example, a local emergency for a fire event plus a local emergency for a flood event).

Consultation

- 128 NEMA consulted across the emergency management sector. Consultees observed that during concurrent emergencies there must be provision for the inclusion of local resources/groups as part of the planning process. Whilst it was agreed that local action with regional support remains the best approach for communities, there were concerns about the capability and capacity to deliver the proposed changes, in addition to the financial implications.

²⁸ See sections 66, 68, 94B and 94E of the CDEM Act.

Modernising the Minister's and CDEM Groups' duties when creating legislative instruments

Issue

- 129 The CDEM Act imposes duties on the responsible Minister and CDEM Groups to be complied with when proposing, recommending, or adopting specific types of regulatory instruments. The duties include:
- 129.1 having regard to the extent that the regulatory instruments are necessary to achieve the CDEM Act's purpose
 - 129.2 having regard to other means of achieving the CDEM Act's purpose, such as information, services, or incentives
 - 129.3 having regard to the reasons for and against the proposed regulatory instrument and the principal alternative means (including taking no action)
 - 129.4 carrying out an evaluation of the likely benefits and costs of the principal alternative means (section 65(1)).
- 130 The types of regulatory instruments are:
- 130.1 any clauses in the national civil defence emergency management plan
 - 130.2 regulations imposing requirements on persons other than the Minister, the Director, or a CDEM Group (including employees and agents)
 - 130.3 an Order in Council amending Schedule 1 of the CDEM Act, which lists lifeline utilities
 - 130.4 any clauses in the CDEM Group plans that impose requirements on persons other than the CDEM Group, its member local authorities, or emergency services (including employees and agents) (section 65(1)).
- 131 I do not consider that section 65 is still required. It is unusual for Acts to deal with policy methodologies, including cost benefit analyses. Since 2002, requirements such as those set out in section 65 have been incorporated within regulatory impact analyses. The use of these as part of progressing regulatory proposals, such as new regulations, has been formalised through Cabinet Circulars, the most recent being issued in 2020.²⁹

Proposal

- 132 I am proposing that section 65, "Duties to consider alternatives, assess benefits and costs, etc", is not included in the Bill.

²⁹ CO (20) 2: Impact Analysis Requirements.

- 133 The modern legislative approach is for Acts to set out targeted decision-making criteria and any key procedural safeguards that must be followed when developing and approving regulatory instruments. Engagement requirements, either of a general or a targeted nature (or both), is one of the most critical safeguards for ensuring that the interests of affected parties have been identified and considered.
- 134 In addition, guidance material can be provided to address more detailed operational matters. As an example, the Director's Guidelines on CDEM Group Planning specify that risk reduction objective for inclusion in the CDEM Group Plan "should be written as statements that will ensure over the life of the Plan, and against which progress, and outcomes can be measured".³⁰

Offences and penalties

Issue

- 135 There are two types of offences that might be used to influence the behaviour of individuals to avert, mitigate or manage emergency situations where failure to do so could have serious consequences:
- 135.1 infringement offences, which are strict liability and apply a fee at the time of the action or a fine if prosecuted through the courts – there is no intent/knowledge defence to strict liability infringement offences
 - 135.2 prosecutable offences which must be prosecuted through the courts and for which there are intent/knowledge defences available.
- 136 The current offences and penalties regime in the CDEM Act consists entirely of prosecutable offences. However, the penalties specified were set in 2002 and have not been reviewed since. These are:
- 136.1 in the case of an individual, imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, or both
 - 136.2 in the case of a body corporate, a fine not exceeding \$50,000
- 137 Compared with similar pieces of emergency legislation, there is scope for the maximum amounts to be increased commensurate with other legislation that makes requirements of people's behaviour to achieve a public safety goal. The Building Act 2004, the COVID-19 Public Health Response Act 2020, the Biosecurity Act 1993 and the Health and Safety at Work Act 2015 are considered comparable as they all deal with managing the behaviour of individuals to avert, mitigate or manage emergency situations where failure to do so could have serious consequences for individuals, animals, environments and buildings.

³⁰ "CDEM Group Planning: Director's Guidelines for Civil Defence Emergency Management Groups [DGL 09/18], "Identifying issues and developing objectives", page 26.

Building Act 2004	COVID-19 Public Health Response Act 2020	Biosecurity Act 1993	Health and Safety at Work Act 2015
Most offences result in fines ranging from \$50,000 to \$1,000,000 depending on whether the offence was committed by an individual or a corporate body.	Infringement offence result in a fine from \$4,000 - \$15,000. Offences result in imprisonment not exceeding 6 months or a fine not exceeding \$12,000 (individual).	\$1000 fine - \$500,000 fine for an individual \$10,000,000 and 3 times the value of the commercial gain resulting from the contravention for a body corporate. Imprisonment term not exceeding 5 years	Fine from \$300,000 – \$3,000,000 for offences that risk death or serious injury or serious illness. Threshold can be reckless intent. Imprisonment not exceeding 5 years.

- 138 There are no infringement offences in the CDEM Act providing for monetary penalties to encourage compliance with the law. Infringement offence regimes are useful because they enable a practical and immediate response to lower-level offending.
- 139 Infringement offences are more appropriate for less serious matters such as obstruction during emergency or failing to comply with a prohibition. An infringement scheme can also act as an effective deterrent to reduce harm caused by minor offending and promote a sense of responsibility and accountability for unacceptable conduct.
- 140 By contrast, the serious implications of an individual impersonating an emergency management official would likely justify a prosecutable offence.
- 141 In line with Ministry of Justice guidance, the maximum infringement amount should be \$1,000. This is to ensure that the fine is proportional to the behaviour and that individuals are actually able to afford to pay the fine, as infringement fines need to be paid within 28 days.

Proposal

- 142 I am proposing:
 - 142.1 to increase the upper maximum amount for an individual to \$8,000 for a court-imposed fine for prosecutable offences
 - 142.2 that an infringement offence regime for emergency management is established through the new Act
 - 142.3 that the Governor-General is enabled to make regulations providing for an infringement offence regime, including allowing for penalties to be set up to a maximum of \$1,000
 - 142.4 that to ensure flexibility of the infringement offence regime, that regulations are empowered to prescribe:
 - 142.4.1 breaches of the rules that constitute offences against the Act

142.4.2 if an act or omission constitutes an infringement offence

142.4.3 defences to offences (if applicable)

142.4.4 the maximum penalty for each individual offence (within the statutory maximums provided for in the Act).

143 Officials will continue to work with the Ministry of Justice on the details of the infringement regime, including:

143.1 Who may issue infringement notices

143.2 How proceedings for infringement offences may be commenced

143.3 When an infringement notice may be issued, how it may be delivered, and the form of the notice.

144 Officials are also continuing to work with the Ministry of Justice on appropriate penalties for prosecutable offences, including for body corporates. I will report back on the outcomes of discussions in the Approval for Introduction Cabinet paper.

Consultation

145 I have consulted the Ministry of Justice's Offences and Penalties team about the proposed increase in penalties. The Offences and Penalties team advises that infringement fines are designed for low-level offending to deter conduct that doesn't require the full imposition of the criminal law. In line with Ministry of Justice guidance, the Offences and Penalties team advise that the maximum infringement amount should be \$1,000.

146 This is to ensure that the fine is proportional to the behaviour and that individuals are actually able to afford to pay the fine, (as infringement fines need to be paid within 28 days). Although the \$1,000 amount is the maximum, there is scope to have varying penalty amounts for different infringement offences.

Climate change and the definition of emergencies

Issue

147 Climate change is an exacerbator of hazards and risks that may escalate to an emergency event. I consider there to be no case for fundamental change in the Bill to recognise and provide for the effects of climate change on emergency management planning or response, as the appropriate role of emergency management legislation is to provide for the identification of, and management and mitigation of all hazards, regardless of their causative or exacerbating factors.

- 148 However, to support the climate change work currently underway across government, there is scope to include in the Bill a small number of careful references to the effects of climate change as an exacerbator that must be considered, planned for, and responded to. This will help make the Bill responsive to the changing emergency management environment in the future.

Proposal

- 149 I am therefore proposing to include:
- 149.1 a reference to emergencies of all kinds being contemplated by the Bill, including events exacerbated by climate change in the General Policy Statement section of the Bill
- 149.2 a reference to the Climate Change Response Act 2002 in the list currently found in section 17 of the CDEM Act, signposting responsibilities for civil defence emergency management groups in relation to “legislative clauses relevant to the purpose of this Act” the Bill.

Naming conventions

Issue

- 150 ‘Civil defence’ is both a logo and a brand name. It is used throughout the current Civil Defence and Emergency Management Act 2002 (CDEM Act) and use of the logo is protected by the Civil Defence and Emergency Management Regulations 2003 (CDEM Regulations). However, ‘civil defence’ does not accurately reflect current roles and responsibilities and is out of date.
- 151 In August 2018 the government released its decision to “Retire the name ‘civil defence’ and replace it with ‘emergency management’ to better reflect the broad and integrated nature of who the emergency management sector is and what it does.”
- 152 This change from civil defence emergency management to emergency management is already underway both in New Zealand and internationally. The use of the ‘emergency management’ branding and logo was pioneered as early as December 2002 in Director’s Guidelines 1/02.³¹

Proposal

- 153 I am proposing to replace:
- 153.1 “civil defence emergency management” with “emergency management” where appropriate

³¹ Working Together: The Formation of CDEM Groups – Director’s Guidelines for local authorities and emergency services (DGL 1/02).

- 153.2 “civil defence” with “emergency management” where appropriate
- 153.3 “Civil Defence Emergency Management Group” and “Co-ordinating Executive Group” in favour of “Emergency Management Committee” and “Emergency Management Co-ordinating Executive” respectively.
- 154 The proposal to replace the terminology of CDEM Groups with Emergency Management Committee better reflects the governance nature of this role as either a joint committee or committee of council and delineates the role from other emergency management committees at the local level.
- 155 This proposal reflects the overall intent of the emergency management system reforms. The intent is not to change the way in which the emergency management system works, but to update naming conventions to reflect the modern understanding of emergency management.
- 156 The ‘civil defence’ brand is a trusted national brand with wide recognition.
- 157 Further work will be undertaken on how this change will flow through to the civil defence logo, and advice will be provided on this through the implementation and regulation-making workstreams.

Consultation

- 158 The proposals have also been discussed with CDEM Group Managers, who supported the change from ‘civil defence’ to ‘emergency management’. However, Group Managers noted that retaining aspects of civil defence brand³² could prove confusing.
- 159 I have also heard from some mayors and CDEM Groups that ‘civil defence’ is a wider concept than ‘emergency management’ and should be retained.
- 160 At this point, I do not intend to engage in public consultation on this change, given that ‘civil defence’ will remain in use until the transition to the new brand and logo is complete.

Regulation making powers

Issue

- 161 A new emergency management legal framework is being introduced, which includes both regulations and rules. Both the empowering clause for regulations in the CDEM Act and the regulation-making proposals in the Government Response to the TAG Recommendations include subject matter that is more suitable for rules and guidance material.

³² This includes retaining the civil defence logo.

- 162 In November 2021, Cabinet agreed to a new legal framework incorporating emergency management rules [CAB-21-MIN-0462, confirming GOV-21-MIN-0043].
- 163 Section 115, which empowers the making of regulations, has not been updated since it came into law in 2002. As a result, regulations can be made for matters that would now be appropriately placed into rules. These include setting competency standards or levels to be met by people carrying out specific civil defence emergency management functions (section 115(d)).
- 164 The same issue affects the regulation-making proposals set out in the Government's Response to the TAG Recommendations, which Cabinet was asked to approve for drafting in August 2020 [CAB-20-Min-0366, confirming GOV-20 Min 0035]. As an example, the Government proposed that regulations should be made to establish minimum standards for Groups, including performance standards.

Proposal

- 165 To address this issue, I am proposing to:
- 165.1 revise the list in section 115 before it is shifted into the Bill, to remove any out-of-date regulation making powers and to include new regulation making powers for critical infrastructure and lead agency
- 165.2 review the regulation-making powers set out in the Government Response to the TAG Recommendations, to determine what can be proceeded with as part of the legislative reform process and through what legislative or non-legislative mechanism. This would include the proposal for regulations requiring consistent CDEM Group organisational arrangements, which is a fundamental shift in the current devolved emergency management structures. Such a requirement would need to be in the primary statute if it were to proceed.

Use of secondary legislation

Issue

- 166 Currently the CDEM Act provides for the use of Regulations, and the National Civil Defence Emergency Management Plan (the CDEM Plan). The CDEM Plan contains different types of legislative requirements, including requirements, standard operating procedures and guidance all in the same document.
- 167 Cabinet has previously agreed that additional secondary legislation instruments should be empowered by the new Bill in order to provide the detail necessary for the implementation of the Bill.

Proposal

- 168 The principles of legislative drafting were reviewed to establish the principles and general categories of content for the different proposed instruments of regulations, rules and national plan.
- 169 The previous recommendations of the TAG report, and the government response to them, were scanned for references to the use of secondary legislation. The previous Cabinet papers were also reviewed to ensure those recommendations and responses were carried through. A framework of secondary legislation was drafted, showing the flow-through of empowerment and content from one instrument to another, and draft content for inclusion in the instruments.

Form and content of the Emergency Management Regulations

- 170 I propose that the Bill empowers the making of Emergency Management Regulations, that may include at a minimum (but is not restricted to):
- 170.1 regarding roles and responsibilities:
 - 170.1.1 establish the roles and responsibilities of (lead and support) agencies with regards to the management of hazards and emergencies
 - 170.1.2 specify (including by incorporating by reference) any minimum standards for suitably qualified and experienced personnel with statutory functions
 - 170.1.3 provide the process by which those standards are set including consultation and notification requirements, over and above the standard consultation and notification requirements of regulations generally (if relevant)
 - 170.2 regarding the establishment of an Administering Authority
 - 170.2.1 the operational requirements to fulfil the role of the administering authority
 - 170.3 regarding CDEM Group Plans:
 - 170.3.1 principles for the identification and confirmation of representative bodies and
 - 170.3.2 minimum requirements for consultation activities
 - 170.4 regarding Māori membership on CDEM governance structures and input, minimum requirements for locally appropriate appointment mechanisms and/or criteria for Māori appointments
 - 170.5 critical infrastructure regulations setting out further detail and procedural matters for minimum planning emergency levels of service and reporting requirements

- 170.6 the principles, roles and responsibilities for the management of concurrent emergencies
- 170.7 details of the proposed offences and penalties measures
- 170.8 that the Bill empowers the making of the National Plan as an instrument of secondary legislation, with appropriate requirements for consultation, approval and review (to be developed with advice from the Legislation Design Advisory Committee and Parliamentary Counsel Office)
- 170.9 that the National Plan will be empowered to prescribe at a minimum (but is not restricted to):
 - 170.9.1 default tasks and arrangements for how agencies subject to the Bill will work together
 - 170.9.2 the outcomes sought for equity in emergency management and the roles and responsibilities of national agencies in delivering those outcomes
 - 170.9.3 the process for co-development of national level planning arrangements with Māori partners
 - 170.9.4 the national-level outcomes for the provision of early warnings and advisories to individuals and communities at risk from hazards
 - 170.9.5 details regarding the operation of the permanent legislative authority.

Form and content of the National Plan

- 171 The National Civil Defence Emergency Management Plan Order and the accompanying Guide to the National CDEM Plan 2015 are being reviewed as part of the Emergency Management Regulatory Review Programme.
- 172 A new National Emergency Management Plan (the Plan) will reflect both the changes to the Emergency Management Bill and the needs of the sector. It will achieve greater equity of outcomes and put people at the heart of the emergency management system by using an outcome-based approach to planning. Furthermore, the Plan will set out the national-level roles and responsibilities and coordination arrangements for events that are either led, supported, or coordinated at a national level.
- 173 As noted, I propose the Plan will be an instrument of secondary legislation, with appropriate requirements for consultation, approval and review (to be developed with advice from the Legislation Design Advisory Committee and Parliamentary Counsel Office).
- 174 To achieve this, I propose that the Plan be empowered to prescribe at a minimum (but is not restricted to):

- 174.1 default tasks and arrangements for how agencies subject to the Bill will work together
- 174.2 the outcomes sought for equity in emergency management and the roles and responsibilities of national agencies in delivering those outcomes
- 174.3 the process for co-development of national level planning arrangements with Māori partners
- 174.4 the national-level outcomes for the provision of early warnings and advisories to individuals and communities at risk from hazards
- 174.5 with regards to the update of the permanent legislative authority.

Consultation

- 175 Further work including consultation will be undertaken on the content of regulations and rules as drafting of the Bill progresses and during the select committee consideration of the Bill (approval of the Clerk will be sought for consultation activities during select committee). The regulations, National Plan and rules will also be consulted on once drafted in accordance with legislative requirements.

Rescinding previous Cabinet decisions

Controllers and Recovery Managers operating anywhere in New Zealand

Issue

- 176 In August 2020, Cabinet agreed to amend the CDEM Act to enable Controllers and Recovery Managers to operate anywhere in New Zealand [CAB-20-Min-0366, confirming GOV-20 Min 0035]. It is unclear whether the amendment is required.
- 177 In proposing the establishment of fly-in teams, the TAG recommended that during events, qualified people should be able to act in the Controller role anywhere in the country.
- 178 In 2018, the TAG proposed the establishment of “fly-in” teams (now called EMAT – Emergency Management Assistance Team) to support responses to local emergencies. The TAG recommended that qualified people brought in during events should be able to act in the Controller role anywhere in the country. In agreeing to the recommendation, the Government proposed amending the CDEM Act so that, if a Group requested, an accredited Controller would be automatically authorised to operate as the Group controller in that region.
- 179 In the 2020 Cabinet paper, “Updating the legislative framework to strengthen New Zealand’s response to emergencies – tranche one”, the CDEM Act was identified as a barrier to Controllers or Recovery Managers from outside a

Group being able to intervene quickly if needed during an emergency response. It was mentioned that the CDEM Act limited who could be a Controller or Recovery Manager to those people or position listed in a CDEM Group plan. It was proposed that the CDEM Act be amended to allow any Controller or Recovery Manager to operate anywhere in New Zealand, upon agreement of the relevant CDEM Group.

180 There is no requirement in the CDEM Act for CDEM Groups to name specific people or office holders as Controllers and Recovery Managers in their Group Plans. The CDEM Act requires CDEM Groups to appoint:

180.1 either by name or by reference to an office holder, suitably qualified and experienced people to be the Group Controller, the Group Recovery Manager, and the Local Recovery Manager

180.2 one or more people to be a Local Controller

180.3 either by name or by reference to an office holder, at least one suitably qualified and experienced person to act as an alternate in the event of a vacancy or an absence from duty for any reason.

181 The CDEM Act does not state how appointments should be made or recorded. However, the CDEM Act is not the barrier; the need to name specific people or office holders as Controllers and Recovery Managers in Group Plans is set out in the 2018 Director's Guidelines.

182 The naming of individuals in specific roles, such as the Group Controller, in Group Plans is the recommended best practice set out in the Director's Guidelines on CDEM Group Planning [DGL 09/18]. CDEM Groups, such as the West Coast CDEM Group, have followed this advice, which creates a potential difficulty in changing names because of the five-year duration of the Group Plan. The West Coast CDEM Group has noted that there is no expectation that the list in their Group Plan will remain current and that the current list is available on request from the Group Office.

183 Rather than amending the CDEM Act, any issues associated with placing a list of named individuals in the Group Plan can be addressed by revising the 2018 Director's Guidelines.

184 CDEM Groups can remove or suspend a person as a Controller or Recovery Manager on several grounds, including that they are temporarily absent or incapacitated (section 45 Legislation Act 2019). CDEM Groups can also delegate the authority to replace the Group Controller or Group Recovery Manager in a state of emergency or transition period to one or more representatives (sections 26(4) and 29(4) CDEM Act).

Proposal

185 I am proposing that:

185.1 Cabinet's agreement to amend the Civil Defence Emergency

Management Act 2002 to enable Controllers and Recovery Managers to operate anywhere in New Zealand is rescinded

185.2 Under the new Act, CDEM Groups are required to appoint either by name or by reference to an office holder, at least one suitably qualified and experienced person to be a Local Controller.

Statutory recognition of the New Zealand Emergency Management Assistance Team (EMAT)

Issue

186 In August 2020, Cabinet agreed to amend the CDEM Act to provide for EMAT's existence and its broad function of providing additional support in an emergency response or recovery.³³ It is unclear whether the amendment is required, given that the one legislative barrier to EMAT's effective operation is being addressed.

Proposal

187 In view of this, I am proposing that the Cabinet recommendations establishing EMAT be rescinded.

Protection from civil liability

Issue

188 Protection from civil liability is being extended to cover named categories of individuals. This approach risks creating a list, which can lead to greater uncertainty about who is or is not protected from civil action.

189 Cabinet previously agreed to amend the Civil Defence Emergency Management Act 2002 to:

189.1 provide all members of EMAT, whether CDEM employees or contractors, with the same liability protection as other CDEM officials

189.2 provide volunteers acting under the direction of a person performing functions, duties, or powers under the Civil Defence Emergency Management Act 2002 with liability protection [CAB-20-MIN-0366, confirming GOV-20-MIN-0035].

Proposal

190 The Crown, CDEM Groups, their respective officers, employees and members, and any other person are protected from civil liability arising from loss or damage that is due directly or indirectly to a state of emergency or

³³ Established in 2019, EMAT provides a national cadre of specially trained emergency managers who can go wherever needed to assist and support local teams to manage emergencies across all hazards and risks.

transition period. However, the person's act or omission which results in the loss or damage must have taken place in the exercise or performance of their functions, duties, or powers under the CDEM Act (section 110).

- 191 A feature of emergency management is the reliance on individuals acting under the direction of a person with a statutory role and responsibilities, to provide assistance during an emergency response or recovery. The TAG identified the absence of liability protection for volunteers (including members of New Zealand Response Teams and Urban Search and Rescue Teams) as an issue to be addressed.
- 192 In the Cabinet paper, "Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one", the need to provide for liability protection for EMAT members was also identified as an issue. Cabinet agreed to amend the CDEM Act to:
- 192.1 provide all members of EMAT, whether CDEM employees or contractors, with the same liability protection as other CDEM officials
 - 192.2 provide volunteers acting under the direction of a person performing functions, duties, or powers under the CDEM Act with liability protection [CAB-20-MIN-0366, confirming GOV-20-MIN-0035].
- 193 The extension of liability protection to named categories of individuals risks creating a list. This approach is likely to result in future uncertainty as to whether liability protection extends to any categories of individuals, groups or organisations not specifically named. It is also inconsistent with the approach taken to providing liability protection for those persons exercising or performing statutory functions, duties, or powers.
- 194 We consider that a broader approach is preferable to avoid the need to repeatedly amend the equivalent clause in the new Emergency Management Act. We suggest that liability protection should be provided for those persons acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act.
- 195 In view of this, I am proposing that:
- 195.1 protection from civil liability is drafted in an inclusive way to cover any persons acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act where the loss or damage is due directly or indirectly to a state of emergency or transition period
 - 195.2 Cabinet rescind its previous agreement to recommendations relating to protection from civil liability for EMAT members and volunteers.

Rescinding new functions for Controllers to co-ordinate responses

Issue

- 196 The Government Response to the TAG Recommendations proposed creating explicit functions in the CDEM Act for the National Controller, Group Controllers, and Local Controllers to co-ordinate responses.
- 197 In 2018, the TAG recommended that the Government ensure that when a state of local emergency is declared under the CDEM Act, the Group Controller has control over the emergency response. This would include being able to task other agencies.
- 198 In agreeing in part to the recommendation, the Government proposed amending the CDEM Act so that the National Controller, Group Controller, and Local Controller each had a clear function to co-ordinate the response in appropriate circumstances (for example, a state of national emergency).
- 199 Currently, the CDEM Act does not set out any specific functions for Local Controllers. A Local Controller is appointed to carry out any of the functions and duties of the Group Controller and is subject to the Group Controller's direction (section 27).
- 200 The 2020 Cabinet paper, "Updating the legislative framework to strengthen New Zealand's response to emergencies – tranche one", proposed amendments to improve the operation of the emergency management system at the local level. As part of clarifying roles and responsibilities, the Minister proposed that the functions of Local Controllers should be specified in the CDEM Act. However, Local Controllers would remain subject to the Group Controller's direction.
- 201 Cabinet has agreed to Local Controllers having the function of co-ordinating a response to a [local] emergency and the power to direct personnel and control other resources made available by agencies [CAB-20-Min-0366, confirming GOV-20-Min 0035].
- 202 The 2020 Cabinet paper did not address the proposal for the CDEM Act to be amended to provide equivalent functions for the National Controller and Group Controller. Subsequent policy work has clarified that the amendments are not required.
- 203 Under the CDEM Act, in a state of national emergency, the Director has the function of directing and controlling the "resources available for civil defence emergency management" (section 8(2)(h)). The Director may co-ordinate the use of and "use the personnel, material, information, services and any other resources made available" by other agencies and people (section 9(2)(a)).
- 204 Both the function and the power can be delegated to the National Controller for "the purposes of dealing with any state of national emergency" (section 10(1)). Given that I have recommended the retention of the Director's role and the delegation arrangements, I do not support creating a separate stand-alone

function for the National Controller to co-ordinate the response in a state of national emergency.

- 205 With Group Controllers, the CDEM Act specifies that during a state of local emergency, they must direct and co-ordinate the “use of the personnel, material, information, services and any other resources made available” by other agencies and people (section 28(1)). As Group Controllers can already task agencies in a state of local emergency, the issue which the associated TAG recommendations indicate needs to be addressed is the inconsistent behaviour of the agencies themselves. This is being considered as part of the lead agency workstream, with recommendations having been identified for the Bill.

Proposal

- 206 I am proposing to not progress the previously recommended amendments for the National Controller and Group Controllers to have explicit functions to co-ordinate emergency responses as it is apparent that these are not required.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Government Administration and Expenditure Review Committee: Period Ended 26 August 2022

On 29 August 2022, Cabinet made the following decisions on the work of the Cabinet Government Administration and Expenditure Review Committee for the period ended 26 August 2022:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

GOV-22-MIN-0031 **Emergency Management System: Reform Proposals**
 Portfolio: Emergency Management

Separate minute:
 CAB-22-MIN-0339.01

Rachel Hayward
 Acting Secretary of the Cabinet



Cabinet

Minute of Decision

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Emergency Management System: Reform Proposals

Portfolio **Emergency Management**

On 29 August 2022, following reference from the Cabinet Government Administration and Expenditure Review Committee (GOV), Cabinet:

- 1 **noted** that the following decisions with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express the policy in legislation;
- 2 **invited** the Minister for Emergency Management to issue drafting instructions to the Parliamentary Counsel Office to give effect to the below decisions with drafting implications;
- 3 **authorised** the Minister for Emergency Management to make decisions on any issues of detail that may arise during the drafting process, provided those decisions are consistent with the policy directions in the paper under GOV-22-SUB-0031;

CDEM Groups and local authorities

- 4 **approved** an amendment of the equivalent to sections 17 and 64(1) in the Civil Defence Emergency Management (CDEM) Act 2002 (the CDEM Act) to clarify the functions of CDEM Groups and local authorities so:
 - 4.1 CDEM Groups are responsible for regional coordination and governance, including the following requirements:
 - 4.1.1 to develop, approve, implement, and monitor a CDEM Group plan and regularly review the plan;
 - 4.1.2 for overall responsibility to ensure there are suitably trained and competent personnel, including volunteers, and an appropriate organisational structure for those personnel for effective emergency management in the area of the Group;
 - 4.1.3 to lead identification and assessment of hazards and risks for the Group area;
 - 4.1.4 to coordinate management of hazards and risks within the Group area;
 - 4.1.5 to support local authorities with their hazard and risk identification/assessment, and with the consultation and communication to their communities;

- 4.1.6 to respond to and manage the adverse effects of emergencies in the area;
- 4.1.7 to plan and carry out recovery activities within the area;
- 4.1.8 to coordinate emergency management across the area;
- 4.2 local authorities are responsible for delivering local emergency management in their communities and for participating in the CDEM Group, including the following requirements:
 - 4.2.1 to provide input into the development and review of the CDEM Group plan and to implement the plan as applicable to their district or region;
 - 4.2.2 to plan for local emergency management in their district (or region) in alignment with the CDEM Group plan;
 - 4.2.3 to ensure alignment between CDEM Group plan and local government planning instruments in legislative clauses relevant to the purpose of this Act;
 - 4.2.4 to arrange for the provision of suitably qualified personnel, including volunteers, and provide appropriate organisational structures at the local level/area subject to their district or region;
 - 4.2.5 to identify and assess the hazards and risks relevant to their district or region and report to the CDEM Group;
 - 4.2.6 in relation to those identified hazards and risks:
 - 4.2.6.1 manage those hazards and risks;
 - 4.2.6.2 consult and communicate with the community;
 - 4.2.6.3 identify and implement cost-effective risk reduction;
 - 4.2.6.4 to plan and carry out recovery activities within their district or region;
 - 4.2.6.5 to respond to and manage the adverse effects of emergencies within their district or region;
 - 4.2.6.6 to take all steps to maintain and provide material, services, information, and any other resources for effective emergency management in its district or region;

5 **authorised** the Minister for Emergency Management and Minister of Local Government to take decisions regarding who will be responsible for delivering the functions referred to in paragraphs 4.1 and 4.2 above in respect of the offshore islands that the Minister for Local Government is the territorial authority;

6 **agreed** that the existing statutory process for making CDEM Group Plans includes a requirement to publish CDEM Group Plans, and updated principles for the incorporation of other documents by reference;

- 7 **agreed** to insert the following clauses in the Emergency Management Bill (the Bill):
- 7.1 specifying that any member of the CDEM Group that is a territorial authority or regional council or unitary authority) may be the administering authority upon agreement by the Group members;
 - 7.2 that if the members of a CDEM Group fail to agree on an administering authority, and if the Group:
 - 7.2.1 has a regional council as a member, then the regional council must be the administering authority;
 - 7.2.2 does not have a regional council as a member, then the existing arrangement for the Minister to appoint or direct will apply;
 - 7.3 removing the current requirement that the administering authority can only be changed if the Minister agrees;

Further strengthening Māori participation throughout the emergency management system

- 8 **agreed** that the Bill include a requirement to have Māori members on both Joint Committees and Coordinating Executive Groups with full voting rights;
- 9 **agreed** to an empowering provision to be included in the Bill for Regulations to allow for more prescription, which will be developed in collaboration with Māori and local government, to provide for locally appropriate appointment mechanisms;
- 10 **agreed** that Māori members will not be required to pay the costs of administrative and related services otherwise shared by the CDEM Group, which will be funded by the National Emergency Management Agency (NEMA);
- 11 **agreed** that the compensation liabilities in the current CDEM Act be retained but restricted to local authority members;
- 12 **agreed** to the inclusion of a Ministerial backstop in the Bill to ensure appointments do happen and to make decisions where regions cannot agree on members;
- 13 **agreed** to include in the Bill a requirement that the responsible Minister must appoint a National Māori Emergency Management Advisory Group of between five and eight members to advise the NEMA Chief Executive across all aspects of the role of Māori in the emergency management system;
- 14 **agreed** to update the Permanent Legislative Authority so that Māori organisations can be reimbursed for welfare costs incurred during an emergency;
- 15 **agreed** to include requirements in the Bill to ensure CDEM Groups:
- 15.1 engage with Māori and iwi partners in the development of CDEM Group Plans;
 - 15.2 have systems and processes to ensure that it has the capability and capacity to engage with Māori and to understand perspectives of Māori;
 - 15.3 notify iwi and Māori partners as a requirement of planning – starting with the CDEM Group Plan and moving to other plans, as appropriate;

- 15.4 have regard to the comments received from Māori on CDEM Group planning documents;
- 15.5 set out the arrangements for coordination with Māori during response/recovery in CDEM Group Plans;
- 16 **agreed** to the inclusion of a requirement in the Bill that the National Plan must consider roles and responsibilities of Māori;
- 17 **agreed** to amend the equivalent to section 17 of the CDEM Act to include, in the list of CDEM Group functions, functions relating to the identification of, and addressing the needs of, iwi and Māori;
- 18 **agreed** that a descriptive Treaty of Waitangi clause be included in the Bill to describe how the above decisions are to be given effect;

Liability under the Health and Safety at Work Act 2015

- 19 **agreed** to the insertion of a clause in the Bill to the effect that joint committees are not Persons Conducting Business or Undertaking for the purposes of the Health and Safety at Work Act 2015, allowing all members to be treated the same and not be exposed to liability;
- 20 **agreed** to amendments to who holds certain statutory powers (for example, power to do works, or make safe dangerous structures) to align with this Persons Conducting Business or Undertaking clarification;

Enabling equitable outcomes

- 21 **approved** a requirement for CDEM Groups and their local authorities to identify and engage with communities which are likely to be disproportionately impacted by emergency events in their area, in the development of the CDEM Group Plans;

Clarifying the roles of the Chief Executive and Director

- 22 **agreed** that the NEMA Chief Executive hold the role of Director of Civil Defence and Emergency Management (the Director) and can delegate the national emergency response and recovery functions and powers to the National Controller and National Recovery Manager as appropriate;
- 23 **agreed** that the statutory functions and powers of the Director that sit with the Chief Executive under other legislation, or which do not require a statutory power or function, be removed;

Lead and Support Agency Regulation

- 24 **agreed** to clauses being included in the Bill to enable the making of regulations which:
 - 24.1 confirm the roles and responsibilities of lead and, due to the inherent interdependencies, support agencies;
 - 24.2 establish the mechanisms and criteria by which lead and support agencies are allocated;
 - 24.3 set out the expectations of, and from, governance;
 - 24.4 specify the triggers and thresholds that determine the lead agency for a specific event;

- 25 **agreed** that the Bill require the Minister for Emergency Management to consult with other relevant Ministers and agency chief executives, and the Chair of the Officials Committee for Domestic and External Security Coordination when developing new regulations for lead and support agencies;
- 26 **noted** that Water Service Entities, to be established under the Three Waters Reform, have responsibilities across the 4Rs (risk reduction, readiness, response, and recovery) in relation to the management of three waters infrastructure;

Ambulance services

- 27 **agreed** that the Bill:
- 27.1 include a definition of Ambulance Services;
 - 27.2 include Ambulance Services within the definition of Emergency Services;
 - 27.3 establish a permanent position for a chief executive or senior officer of an ambulance service on Coordinating Executive Groups;

Critical Infrastructure

- 28 **agreed** that critical infrastructure entities are required to establish and publish their planned emergency levels of service;
- 29 **agreed** that critical infrastructure entities are required to review their planned emergency levels of service every five years unless required earlier by the Director due to changing circumstances;
- 30 **agreed** that the empowering clause for making critical infrastructure regulations allows for regulations setting out further detail and procedural matters for planning emergency levels of service;
- 31 **agreed** that critical infrastructure entities are required to annually report to NEMA and their regulatory agencies on compliance with their obligations under the Bill;
- 32 **agreed** that for the purposes of annual compliance reporting, critical infrastructure entities are required to make relevant information available to NEMA or CDEM Groups on request;
- 33 **agreed** that the empowering clauses for making critical infrastructure regulations specifically allows for regulations setting out the details of reporting requirements;
- 34 **agreed** that in order for a review of the entities listed in Schedule 1 of the CDEM Act to be undertaken and a new Gazette notice issued, the relevant provisions come into force on a date two years after the commencement of the new Act or on an earlier date appointed by the Governor-General by Order in Council;
- 35 **agreed** that a two-year transition period commencing from the date that the new Act comes into effect be provided for, to give existing entities time to comply with the new legal requirements for planning emergency levels of service and annual compliance reporting;
- 36 **agreed** that all advice to Ministers on critical infrastructure proposals articulate how they align with other components of the government's broader resilience work programme;

Three Waters Reform

37 **noted** that:

37.1 in June 2021, Cabinet agreed that the CDEM Act arrangements will be extended to apply to water service entities established under the Three Waters Reform Programme [CAB-21-MIN-0227];

37.2 NEMA and Department of Internal Affairs officials are working on the details to ensure that when the water services entities are established, the CDEM Act 2002 arrangements (if not yet replaced by reforms set out in the paper under GOV-22-SUB-0031) are fit for purpose for the water services entities and the local government system;

38 **noted** that the reform of the CDEM Act means policy work is required to determine how Crown funding is provided to water services entities following an emergency event in the reformed system;

39 **authorised** the Minister of Local Government and the Minister for Emergency Management, in consultation with the Minister of Finance, to make technical decisions regarding the matters set out in paragraphs 33 and 34 above;

Concurrent emergencies

40 **agreed** to clauses being included in the Bill to:

40.1 enable CDEM Groups and Mayors to declare a state of local emergency for other emergency events even while there is a state of national emergency in force in that location;

40.2 allow states of local emergency to remain in force, if a state of national emergency is declared for other emergency events in that location;

40.3 enable CDEM Groups and Mayors to declare states of local emergency for other emergency events, without terminating any national transition period in force in that location;

40.4 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a state of national emergency in force for that location;

40.5 enable a local transition period to remain in force, if a state of national emergency is declared for other emergency events in that location;

40.6 enable CDEM Groups and Mayors to give notice of a local transition period for the recovery from other emergency events even while there is a national transition period in force for that location;

40.7 enable a local transition period to remain in force, if notice of a national transition period is given for other emergency events in that location;

40.8 prevent a local or group controller from acting contrary to any priorities for the use of resources or services that have been determined by the Director or National Controller/National Recovery Manager during concurrent emergencies;

- 41 **agreed** that secondary legislation (regulations and rules) may be made that set out the operational approach to the management of concurrent emergencies at a local, regional and national level;

Modernising the Minister's and CDEM Groups' duties when creating regulatory instruments

- 42 **agreed** that section 65 of the CDEM Act, "Duties to consider alternatives, assess benefits and costs, etc", is not included in the Bill;

Offences and penalties

- 43 **agreed** to increase, for an individual, the upper maximum amount for a court imposed fine for prosecutable offences with a working position of an upper amount of \$8,000 (subject to confirmation with Ministry of Justice);
- 44 **agreed** to an infringement offence regime for emergency management being established through the new Act;
- 45 **agreed** to penalties for infringement offences being set through regulations, up to a maximum of \$1000;
- 46 **agreed** to include an empowering provision in the Bill enabling regulations to be made for an infringement offence regime, covering matters such as:
- 46.1 breaches of the rules that constitute offences against the new Act;
 - 46.2 if an act or omission constitutes an infringement offence;
 - 46.3 defences to offences (if applicable);
 - 46.4 the maximum penalty for each individual offence (within the statutory maximums provided for in the new Act);

Updating CDEM Functions to provide for Climate Change

- 47 **agreed** to include a reference to the Climate Change Response Act 2002 in the list currently found in section 17 of the CDEM Act;
- 48 **noted** that the General Policy Statement for the Bill will include an explanation that events exacerbated by climate change are emergencies contemplated by the Bill;

Naming conventions

- 49 **agreed** to replace:
- 49.1 "civil defence emergency management" with "emergency management" where appropriate;
 - 49.2 "civil defence" with "emergency management" where appropriate;
 - 49.3 "Civil Defence Emergency Management Group" and "Co-ordinating Executive Group" in favour of "Emergency Management Committee" and "Emergency Management Co-ordinating Executive" respectively;

Regulation-making powers

- 50 **agreed** to revise the list in section 115 of the CDEM Act before it is shifted into the Bill, to remove any out-of-date regulation making powers;
- 51 **agreed** to the inclusion of new regulation making powers for critical infrastructure and lead agency;
- 52 **agreed** to review the regulation making powers set out in the Government Response to the Technical Advisory Group Recommendations, to determine what can proceed as part of the legislative reform process and through what (legislative or non-legislative) mechanism;

Use of secondary legislation - form and content of the Emergency Management Regulations

- 53 **agreed** that the Bill empowers the making of Emergency Management Regulations, that may include at a minimum (but is not restricted to):
 - 53.1 regarding roles and responsibilities:
 - 53.1.1 establishing the roles and responsibilities of lead and support government agencies with regards to the management of hazards and emergencies;
 - 53.1.2 specifying (including by incorporating by reference) any minimum standards for suitably qualified and experienced personnel with statutory functions;
 - 53.1.3 providing the process by which those standards are set including consultation and notification requirements, over and above the standard consultation and notification requirements of regulations generally (if relevant);
 - 53.2 regarding the establishment of an Administering Authority;
 - 53.2.1 the operational requirements to fulfil the role of the administering authority;
 - 53.3 regarding CDEM Group Plans:
 - 53.3.1 principles for the identification and confirmation of representative bodies; and
 - 53.3.2 minimum requirements for engaging with communities identified as disproportionately impacted by emergencies;
 - 53.4 regarding Māori membership on CDEM governance structures and input, minimum requirements for locally appropriate appointment mechanisms and/or criteria for Māori appointments;
 - 53.5 critical infrastructure regulations setting out further detail and procedural matters for minimum planning emergency levels of service and reporting requirements;
 - 53.6 the principles, roles and responsibilities for the management of concurrent emergencies;
 - 53.7 details of the proposed offences and penalty measures;

- 53.8 that the Bill empowers the making of the National Plan as an instrument of secondary legislation, with appropriate requirements for consultation, approval and review;

Use of secondary legislation - form and content of the National Plan

- 54 **agreed** that the National Plan will be empowered to prescribe at a minimum (but is not restricted to):
- 54.1 default tasks and arrangements for how agencies subject to the Bill will work together;
 - 54.2 the outcomes sought for equity in emergency management and the roles and responsibilities of national agencies in delivering those outcomes;
 - 54.3 the process for co-development of national level planning arrangements with Māori partners;
 - 54.4 principles for Māori appointments to Joint Committees and Coordinating Executive Groups;
 - 54.5 the national-level outcomes for the provision of early warnings and advisories to individuals and communities at risk from hazards;
 - 54.6 details relating to the operation of the permanent legislative authority;

Rescinding previous decisions

- 55 **note** that in July 2020, GOV agreed to amendments to the CDEM Act, including:
- 55.1 the requirement that local authorities co-operate as a CDEM Group within each region with shared emergency management services and personnel;
 - 55.2 to amend the CDEM Act to enable Controllers and Recovery Managers to operate anywhere in New Zealand;
 - 55.3 to provide for the existence of the Emergency Management Assistance Team (EMAT) and its broad function to provide additional support in an emergency response or transition to recovery;
 - 55.4 to provide that EMAT members have the same protection from liability as other CDEM officials, including contracted members of EMAT (e.g. members who are contracted for their expertise and are not employees), but this protection does not extend to any act or omission to act that constitutes bad faith or gross negligence;
 - 55.5 to make the Act clear that volunteers under the direction of a person performing functions, duties, or powers under the Act are protected from civil liability;

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- 56 **noted** that further analysis by officials has determined that the above changes are not required;
- 57 **rescinded** the decisions referred to in paragraph 55 above;
- 58 **agreed** that protection from civil liability covers any person acting under the direction of a person performing functions, duties, or powers under the new Emergency Management Act

where the loss or damage is due directly or indirectly to a state of emergency or transition period;

- 59 **agreed** not to progress amendments for the National Controller and Group Controllers to have explicit functions to coordinate emergency responses.

Rachel Hayward
Acting Secretary of the Cabinet

Secretary's Note: This minute replaces GOV-22-MIN-0031. Cabinet agreed to amend paragraph 25, add paragraph 36 and to the rescinding recommendation in paragraph 57.

Proactively Released